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## EU Competition – Main developments

### Legislation

- The European Commission (the “**Commission**”) adopted the final version of its Guidelines on the assessment of non-horizontal mergers under the EC Merger Regulation.
- The Commission published, for consultation, a draft Commission Notice and a proposal for a Regulation to introduce a new settlement procedure for cartels. Settlements will aim to simplify the administrative proceedings and reduce litigation in cartel cases. The draft proposal will also allow the Commission to impose a lower fine on parties who had agreed to the settlement procedure.
- The Commission adopted a new consolidated Commission Jurisdictional Notice to replace the four 1998 jurisdictional Notices: (i) the Notice on the concept of concentration, (ii) the Notice on the concept of full-function joint ventures, (iii) the Notice on the concept of undertakings concerned and (iv) the Notice on calculation of turnover. The consolidated Notice covers all issues of jurisdiction relevant for establishing the Commission’s competence under the Merger Regulation.
- The Commission launched a consultation on a revised Remedies Notice. Remedies aim to eliminate competition concerns identified by the Commission. One of the changes relate to a new “Form RM” which specifies the information to be provided by parties that intend to submit remedies proposals to the Commission.

### Sector Inquiries

The Commission adopted final reports in three sector inquiries: business insurance, retail banking and energy. The report relating to the business insurance sector raised concerns about practices in the reinsurance and coinsurance markets involving the alignment of premiums and the transparency of remuneration as well as conflicts of interest in insurance brokerage. The report into the retail banking sector found a number of competition concerns in the markets for payment cards, payment systems and retail banking products. The report into the energy sector identified problems relating to high levels of market concentration: vertical integration of supply, generation and infrastructure leading to a lack of equal access to infrastructure and, possible collusion between incumbent operators to share markets.

### Blocked mergers

The Commission prohibited the proposed takeover by Ryanair of Aer Lingus, the two leading airlines operating from Ireland. The Commission concluded that the merger would have harmed consumers by removing competition and creating a monopoly or a dominant position on 35 routes operated by both parties.

### Cartel Fines in 2007

Amount of fine	Sector	Undertakings	Infringement
€ 243 million	Chloroprene rubber cartel	Bayer, Denka, DuPont, Dow, ENI and Tosoh	Price-fixing and market-sharing
€ 74 million	Professional videotapes	Sony, Fuji and Maxell	Price-fixing
€ 486 million	Flat glass	Asahi, Guardian, Pilkington and Saint-Gobain	Co-ordinating price increases and other commercial conditions
€ 183 million	Bitumen	BP, Repsol, Cepsa, Nynäs and Galp	Sharing the market for bitumen and coordinating bitumen prices
€ 328 million	Haberdashery: fasteners and attaching machines	YKK, Prym and Coats	Agreed on coordinated price increases, fixed minimum prices, allocated customers, shared markets and exchanged other commercially important and confidential information
€ 273 million	Beer	Heineken, Grolsch and Bavaria	Coordinating prices and price increases of beer in The Netherlands
€ 992 million	Installation and maintenance of lifts and escalators	Otis, KONE, Schindler and ThyssenKrupp	Rigged bids for procurement contracts, fixed prices and allocated projects to each other, shared markets and exchanged commercially important and confidential information
€ 750 million	Gas insulated switchgear projects	ABB, Alstom, Areva, Fuji Electric, Hitachi Japan AE Power Systems, Mitsubishi Electric Corporation, Schneider, Siemens, Toshiba and VA Tech.	Rigged bids for procurement contracts, fixed prices, allocated projects to each other, shared markets and exchanged commercially important and confidential information

### Other Fines

- The Commission fined Visa €10 200 000 for refusing to admit Morgan Stanley to its credit card payment network without an objective justification.
- The Commission fined the Spanish incumbent telecoms operator Telefónica €151 875 000 for the abuse of its dominant position in the Spanish broadband market.

## Dawn Raids confirmed by the Commission

Date	Sector
13 December	S PVC – Note: The inspection was carried out under Article 13 of the Merger Regulation for implementing a merger prior to a Commission clearance decision. The information exchanged between undertakings prior to a clearance decision may also be contrary to Article 81 EC Treaty.
8 November	Cathode ray tubes
30 November	Fresh exotic fruits
11 October	International freight forwarding
4 July	Hardware for windows and doors
3 May	Marine hoses
13 February	Power transformers
18 January	Calcium carbide

## Statement of Objections issued by the Commission

Date	Sector
21 December	Provision of airfreight services
23 August	Dynamic Random Access Memory chips (DRAMS)
2 August	Sodium chlorate
27 July	Sale of bananas
26 July	Computer Processing Units (CPU)
1 June	Paraffin waxes
8 May	Chloroprene rubber
23 April	Car glass
11 April	Transport of bulk liquids by sea
3 April	On-line music
30 March	Bathrooms fittings and fixtures
20 March	Professional videotapes
14 March	Flat glass

### European Courts

- The Court of First Instance (the “CFI”) confirmed the European Commission’s 2004 decision relating to Microsoft’s abuse of its dominant market position and the totality of the fine imposed. Microsoft was fined € 497 million for infringing the rules on abuse of a dominant market position by leveraging its near monopoly in the market for PC operating systems onto the markets for work group server operating systems and for media players.
- The CFI upheld fines in several cartel cases. However, the CFI increased the fine on BASF in the choline chloride cartel. UCB’s fine was reduced in this case as well as the fine on Prym and Coats (needles cartel), in a later case.
- In the Akzo case, the CFI ruled that the rules protecting the confidentiality of communications between lawyers and their clients (privilege) does not cover in-house counsel communications.
- The CFI ruled that Schneider must be partially compensated by the Commission for loss sustained as a result of the illegal prohibition of its merger with Legrand.

### UK Competition highlights

- In December, three UK businessmen were charged with cartel offences under the Enterprise Act. This was the first time that charges have been brought for the cartel offence which came into force in 2003. Individuals convicted of the cartel offence under the Enterprise Act may be sentenced to up to five years' imprisonment and/ or an unlimited fine.
- The OFT published a report setting out the results of its market study into the distribution of medicines in the UK. The market study looked at new and proposed medicine distribution arrangements - known as “direct to pharmacy”. The study found that DTP schemes could result in efficiency benefits and that manufacturers should be free to select the distribution method that they find the most efficient, although it noted a risk that DTP schemes could result in an increase in costs to the National Health Service.
- The OFT published recommendations to Government to improve the effectiveness of redress for consumers and businesses that have suffered loss as a result of breaches of competition law.
- The OFT published a revised guidance on the “de minimis” exception in merger cases. Under the two-stage merger control system of the Enterprise Act, the OFT has a duty to refer certain mergers to the Competition Commission for an in-depth investigation. The statutory exception allows the OFT to decide whether or not the markets involved are of sufficient importance to justify such a reference. The previous guidance suggested that mergers affecting markets worth as little as £400,000 could be referred. The revised guidance has raised the threshold to £10 million.

- Following the OFT's Statement of Objections of 20 September 2007, which provisionally found evidence of collusion between certain large supermarkets (Asda, Morrisons, Safeway, Sainsbury's and Tesco) and dairy processors (Arla, Dairy Crest, Lactalis McLelland, The Cheese Company and Wiseman) on the retail prices of some dairy products, some of these parties have admitted involvement in anti-competitive practices and have agreed to pay individual penalties which, combined, amount to over £116 million.
- British Airways admitted collusion over the price of long-haul passenger fuel surcharges and was fined £121.5m by the OFT, the highest fine ever imposed by the OFT. The OFT is conducting a criminal investigation into whether any individuals dishonestly fixed the levels of the surcharges - an offence under the Enterprise Act.
- In March, the OFT closed the door on cartel leniency in the construction bid rigging cases and initiated a fast track procedure, by making an offer of reduced financial penalty to all those companies that did not apply for leniency but were willing to cooperate with the OFT.
- Ofwat started a consultation on revised guidance on the application of the Competition Act in the water and sewerage sectors.
- The OFT allowed the "failing firm defence" (the second time under the Enterprise Act 2002) in relation to the acquisition of Kwik Save Stores by Tesco.