## EU Competition

### EU – Phase I merger notifications

<table>
<thead>
<tr>
<th>Companies</th>
<th>Sector</th>
<th>Further Information</th>
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| TenneT Offshore GmbH/ Mitsubishi Corporation/ TenneT Offshore 2 | TenneT Offshore GmbH: offshore electricity transmissions.  
Mitsubishi Corporation: general trading in various industries including energy, metals, machinery, chemicals, food and general merchandise.  
TenneT Offshore 2: construction, operation and maintenance of BorWin ½ cables which connect offshore wind farms with an onshore power grid. | Click here |
| Lion Capital/Alain Afflelou group              | Lion Capital: private equity management.  
Alain Afflelou group: distribution of optical products through franchised and fully-owned retail outlets. | Click here |
| Permira Europe III/Telepizza                   | PE III: private equity investment fund.  
Telepizza: restaurants. | Click here |
| Cytec Industries/Umeco                         | Cytec Industries: sale of specialty chemicals and materials.  
Umeco: manufacturer and supplier of advanced composite materials and process materials. | Click here |
| EADS/Israel Aerospace Industries/JV            | Manufacture of aircraft, spacecraft, related machinery, and other transport equipment. | Click here |

### EU – Key merger clearances

<table>
<thead>
<tr>
<th>Companies</th>
<th>Sector</th>
<th>Further Information</th>
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| Posco/MC/MCHC/JV                               | Posco: various activities including steel marking, engineering, construction, energy and IT services.  
MC: general trading including energy, metals, machinery, chemicals, food and general merchandise.  
MCHC: production and marketing of chemicals, pharmaceutical intermediates and ingredients, final dosage pharmaceuticals, plastics and carbon fibre, and recording media.  
JV: production and supply of pitch coke, need coke and other by-products. | Click here |
Companies | Sector | Further Information
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CPPIB/Atlantia/Grupo Costanera | CPPIB: professional investment management of Canada Pension Plan’s assets. Atlantia: management of toll motorways, and provision of ancillary services. Grupo Costanera: management of urban toll motorways, and provision of ancillary services. | Click here

EU Developments

**Competition enforcement: Speech by Joaquín Almunia on recent developments and current themes in antitrust and merger control enforcement** On 15 June 2012, the European Commission published a speech by Almunia, Vice President of the European Commission responsible for competition policy, on competition enforcement. In general, he discussed the economic crisis and the implications this has had for competition authorities in terms of having more responsibilities, and how to make decisions in this context, whether enforcement should be more lenient and if priorities should change. He considered the Commission’s cartel decisions over the last two years where, although last year’s activity was a reduction from the previous year and there has been an increase in “inability-to-pay” requests, this does not imply a change in priorities. Over the last 18 months, the Commission have carried out several inspections and received many leniency applications. He went on to discuss how firm and fair competition enforcement is the best way to enable the knowledge economy to boost innovation and growth which has been demonstrated by enforcement work related to standards and intellectual property rights. It is vital to ensure companies do not extend market exclusivity beyond the limits granted by their intellectual property rights; and standards should be set and adopted in an open and transparent manner at all times. He considered the energy market where the Commission’s main priorities (keeping prices low, ensuring security of supply, and meeting environmental targets) have been reflected in a number of antitrust cases. However, this market still faces significant challenges, including the integration of Central and Eastern European markets and the need for significant investments. He also proposed changes to the Commission’s merger control regime by simplifying the procedure and reviewing certain aspects of the system, to ensure the system is business-friendly and minimises the burden on companies where transactions will clearly not pose a problem. Read more.

**Clarification on motor block exemption: European Court of Justice ruling on meaning of “specified criteria” in definition of quantitative selective distribution in motor vehicle block exemption** On 14 June 2012, the ECJ gave judgment on a reference from a French court on the meaning of “specified criteria”, in respect to a quantitative selective distribution system under Regulation 1400/2002, the motor vehicle block exemption. This exemption provides certain anti-competitive agreements in the motor vehicle sector with a “safe harbour” which prevents them from falling foul of EU competition law. One type of agreement is a selective distribution agreement where a supplier agrees to sell goods/services only to distributors/repairers on the basis of “specified criteria”. In this case, in 2004, Jaguar
Land Rover France SAS (“JLR”) refused to renew its exclusive distributorship agreement with Auto 24, a previously authorised distributor of JLR's selective distribution system, as JLR had decided to place limits on the number of distributors it appointed. The Paris Court of Appeal rejected Auto 24's arguments that JLR was not entitled to place such limits and should have specific, objective, proportionate and non-discriminatory criteria when selecting distributors. Auto 24 appealed to France's Court de cassation which referred to the ECJ on meaning of “specified criteria”. The ECJ found that in the context of a quantitative selective distribution which limits the number of authorised distributors (as in this case), criteria does not need to be objective or non-discriminatory, it merely needs to be precise. However, it also noted that where there is a qualitative selective distribution (i.e. where distributors/repairers are selected on the basis of criteria related to the reputation of the distributor/repairer), criteria should be objectively justified and applied in a uniform and non-differentiated way. Read more.

Abuse of dominance proceedings: European Commission opens formal Article 102 proceedings against Deutsche Bahn AG On 13 June 2012, the Commission announced its decision to open formal proceedings to investigate a suspected abuse of dominance by Deutsche Bahn. The Commission's investigation focuses on the prices for traction current charged by Deutsche Bahn's subsidiary, DB Energie GmbH, the only supplier of traction current in Germany. Traction current is a type of electricity required to move electric locomotives and trains on the railway network. In Germany, traction current needs to be supplied at a specific frequency which differs from the frequency of the general electricity network. The Commission is particularly concerned whether discounts granted by DB Energie to railway undertakings in Germany have led to higher prices for Deutsche Bahn's competitors, placing them at a competitive disadvantage on the rail freight and passenger markets. Read more.

Access to leniency materials: Alstom appeals against European Commission decision to transmit documents to High Court of England and Wales On 9 June 2012, details were published of Alstom's appeal against the Commission's decision to transmit certain documents to the High Court of England and Wales. Alstom claims that transmitting these documents, which had been submitted by Alstom during the Commission's investigation of the gas insulated switchgear cartel, will result in disclosing leniency material, which would jeopardise the effectiveness of the Commission's leniency programme, and is in breach of the Commission's Notice on the cooperation between the Commission and the courts of the EU Member States in the application of Articles 101 and 102 of the Treaty. The Commission's decision is following National Grid Electricity Transmission's (“NGET”) application to the English courts, having suffered damages as a result of the illegal conduct of the cartel participants, including Alstom. NGET received rulings from the High Court on disclosure of certain documents, including potential leniency materials. Read more.
UK Competition

Market investigation guidelines: Competition Commission consults on final draft of revised market investigation guidelines On 15 June 2012, the Competition Commission published a final draft of its revised market investigation guidelines for consultation, which reflect its experience in applying the market investigation regime in practice. The Guidelines are set out in five parts: (1) outlining the nature of competition and explaining how market investigations fit within the overall regime for promoting competition within the UK; (2) providing guidance on the nature of information gathered by the Competition Commission during the course of an investigation, including procedures and timescales; (3) listing the statutory questions which must be addressed by the Competition Commission and describing how it interprets “relevant market”, “features” and an “adverse effect on competition” (“AEC”); (4) considering the three issues considered by the Competition Commission when applying the AEC test: market characteristics and outcomes of competition within the market, definition of the market, and state of competition in the market; and (5) discussing remedial actions which the Competition Commission could prescribe such as divesting subsidiaries and behavioural remedies. The Competition Commission is inviting comments on the draft guidelines by 14 September 2012. Read the Draft Guidelines, Read the Guidelines’ Annexes.

New OFT Chief Executive: Clive Maxwell appointed as new Chief Executive of the Office of Fair Trading On 14 June 2012, the Department for Business, Innovation and Skills announced that the Secretary of State has appointed Clive Maxwell as the new Chief Executive Officer of the OFT, succeeding John Fingleton who announced his retirement in February 2012. Maxwell will lead the OFT alongside Chairman Philip Collins, in the lead up to establishing the new Competition and Markets Authority. He is currently an Executive Director of the OFT since joining the board in September 2010. Maxwell will take over from Fingleton after a hand over period; a formal start date for his new role is yet to be announced. Read more.

Construction materials JV: Competition Commission consults on undertakings in Anglo American/Lafarge joint venture On 15 June 2012, the Competition Commission published for consultation a draft of the undertakings it proposes to accept from Anglo American and Lafarge to address the potential adverse effects of their proposed joint venture in the construction materials sector. Under these undertakings, the parties must not enter into the joint venture until satisfying certain conditions. The two main conditions are: (1) they must dispose or sell specified cement and ready-mix concrete operations to purchaser(s) under an agreement approved by the Competition Commission; and (2) they must agree or commit to sell specified aggregates and asphalt operations, and ready-mix concrete plants under an agreement approved by the Competition Commission and within a set time period. The Competition Commission is inviting comments to the draft undertakings by 29 June 2012. Read more.
Minority shareholdings and merger control: The Office of Fair Trading refers Ryanair's minority stake in Aer Lingus to Competition Commission

On 15 June 2012, the OFT announced its decision to refer the 2006 completed acquisition by Ryanair of a minority stake of 29.8% in Aer Lingus to the Competition Commission. The OFT is concerned that Ryanair's stake could give it the ability to exercise material influence over Aer Lingus' commercial policy and there is a realistic chance that Ryanair's stake resulted in or will result in a substantial lessening of competition on a number of Ryanair and Aer Lingus routes between the UK and Ireland. As a result, the OFT has referred the issue to the Competition Commission for a more detailed investigation. The European Commission initially investigated the public bid and prohibited it in 2007, but did not have the ability to order divestiture of Ryanair's shareholding below the level of "decisive influence", which is the threshold for the European Commission's jurisdiction under the EU merger regime. Decisive influence requires a more significant level of shareholding and influence than material influence, which triggers the OFT's jurisdiction under the UK merger regime. As a result, the OFT subsequently commenced its UK merger investigation which, after being suspended twice, has resulted in the reference to the Competition Commission. Read more.

Progress of Enterprise and Regulatory Reform Bill: Enterprise and Regulatory Reform Bill passes at Second Reading and Committee announce programme

On 11 June 2012, the Enterprise and Regulatory Reform Bill was sent to the Enterprise and Regulatory Reform Bill Committee having passed at Second Reading in the House of Commons. On 14 June 2012, the Committee announced its programme for hearing oral evidence and conducting a line-by-line scrutiny of the Enterprise and Regulatory Reform Bill. The Committee will be meeting on 19 June 2012 for the first time to hear oral evidence, and a line-by-line scrutiny of the Bill will begin on 26 June 2012. The Committee is inviting evidence until 17 July 2012 when the proceedings of the Committee must conclude. Read more about the Second Reading. Read more about the programme.

Banking White Paper: HM Treasury and Department for Business, Innovation and Skills publish Banking White Paper

On 14 June 2012, HM Treasury and BIS published a White Paper on banking reform which set out proposals to implement a bank ring-fence, to increase banks' capacity to absorb losses, and also to protect competition in UK banking. Competition-related measures include proposed reviews by the FSA and the Bank of England of prudential and conduct rules which make the process for setting initial capital requirements opaque and may act as barriers to entry or expansion; industry to introduce a new switching service by September 2013 to enable customers to identify the right account for their needs and switch to it more easily; amending the Financial Services Bill to give the Financial Conduct Authority a new objective of "promoting effective competition in the interests of consumers"; work to improve transparency of retail banking products; and a consultation on options to reform strategy-setting functions of the payments industry including the creation of a new public body to set strategy across the UK payments industry. The Independent Commission on Banking ("ICB") was established in June 2010 to examine the structure of the UK banking sector and make recommendations on measures to promote stability and competition within this sector. The White Paper pushes forward ICB's recommendations and aims to: make banks more resilient and more resolvable; decrease
excessive risk-taking in financial markets; create a better environment to allow competition to flourish; and reduce the perceived guarantee which predominantly benefits the larger systemic banks, to encourage more competition and improve financial stability. The government is inviting comments on the White Paper by 6 September 2012. Read more.

State aid

**State aid for environmental protection: European Commission approves UK renewable heat incentive scheme for Northern Ireland** On 12 June 2012, the Commission announced its approval of a UK scheme to provide renewable incentives in Northern Ireland, under EU State aid rules, as it furthers environmental protection and limitation of carbon emissions without unduly distorting competition. It is also compatible with the EU Environmental Aid Guidelines, which allow Member States to provide aid to support renewable energy provided certain conditions on type and intensity of aid apply. Under the scheme, in helping reach its objectives of 12% renewable heat and 30% renewable electricity by 2020, the UK intends to incentivise the use of renewable energy sources to produce heat, hot water, biomass, ground source, biogas and solar energy sources in Northern Ireland. Tariffs will be paid to the most energy-intensive players, i.e. commercial users of energy sources. The scheme will be managed by the Northern Ireland Executive for up to 20 years and will be worth an estimated £184m. It is aiming to reach a level of 10% renewable heat by 2020, increasing 0.3 TWh currently produced in the territory to 1.3 TWh. Read more.

**Marketing measures: European Commission opens in-depth State aid investigation into Agrarmarkt Austria (“AMA”) marketing measures** On 12 June 2012, the Commission announced that it has opened an in-depth investigation into whether the marketing measures put into effect by AMA between 1995 and 2008 comply with EU State aid rules. This investigation follows the annulment of the Commission's previous decision which did not raise any objections to the AMA scheme. Both the General Court and European Court of Justice ruled that the Commission should have opened an in-depth investigation into these aid measures. AMA is a public law body which supervises the use of quality and organic labels in Austria, plans and coordinates promotion measures, produces information materials on quality programmes and labels, and commissions research on quality in agricultural production. The investigation focuses on marketing measures related to AMA’s quality and organic labels and generic products, which seem to have characteristics of State aid; however, the Commission now doubts whether the aid would be compatible with EU State aid rules. Read more.

**Broadband network: European Commission approves State aid for ultra-fast broadband network in Birmingham** On 12 June 2012, the Commission announced its approval of the UK’s granting €6m of public financing to support the construction of an ultra-fast broadband network in Birmingham. The Commission found that the UK’s arrangements satisfy the Guidelines on the application of the State aid rules to rapid deployment of broadband networks in many ways, such as: the fact that the subsidised network will be genuinely open to all operators for at least 25 years and promote competition; the network will operated on a wholesale basis ensuring more competition at the retail level; and all possible wholesale access products will be offered to third party
operators, including dark fibre, one of the most pro-competitive wholesale access products. Furthermore, this project is also fully in line with conditions of the new draft Broadband Guidelines, for example, by offering significant enhanced technology characteristics when compared to existing networks. Read more.

Credit insurance scheme: European Commission approves Finnish short-term export credit insurance scheme On 12 June 2012, the Commission announced it has approved a Finnish short-term export credit insurance scheme under EU State aid rules. The scheme satisfies the conditions set out in the Communication on short term export credit insurance, mainly due to the fact that it is limited to insurance cover currently not available on the private market and the rates charged are in line with private players' pricing of similar risks. Under this scheme, the Finnish State agency, Finnvera plc, is to provide short-term export credit insurance to companies which are established in Finland and confronted with a temporary unavailability of cover in the private market. This cover will only be available for financially sound transactions. It is believed the scheme has sufficient safeguards in place to prevent adverse effects on competition. For example, there are currently two categories of risk which are inadequately covered by private insurers: (1) risk cover for exporting SMEs with total annual export turnover of a maximum of €2m; and (2) single risk cover where risk is associated to a single export transaction which is not covered under private insurers' portfolio insurance, or where the cover is or includes pre-credit risk. Finnvera will only intervene in such areas where the private sector does not have the capacity to offer credit risk, and only exporters which have been denied cover by a private insurer can apply to Finnvera for export credit insurance. The Commission has authorised the scheme until 31 December 2012. Read more.

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