

Antitrust & Competition Insight

In association with Hogan & Hartson LLP

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Contents

Foreword	Page 2
Recent Developments in Private Competition Law Enforcement in Germany	Page 3
The Tunney Act Review of Merger Remedies in the US	Page 6
Court Denies FTC's Attempt to Block Western Acquisition of Giant	Page 9
Reuters/Thomson to Face Lengthy Competition Scrutiny on Both Sides of the Atlantic	Page 12
Regional Round-Ups	Page 14
District Court Rejects FTC Challenge to Regulated Utilities' Merger	Page 19
Live Deals Timetable	Page 22

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Foreword

Welcome to this sixth edition of the Antitrust & Competition Insight – brought to you by mergermarket in association with leading international law firm Hogan & Hartson LLP.

The report that brings you an update on the key deals and issues affecting M&A activity in North America, Europe and beyond. We hope that this quarterly newsletter will provide corporate, advisory and investor readers with timely, informed and objective intelligence and guidance.

In addition, the Antitrust & Competition Insight leverages off mergermarket's sister company **dealReporter** – bringing you a listing of live deals sitting with the regulatory authorities. Furthermore the report provides features and case studies that explore and help resolve many of the problems faced by corporations and bankers when conducting M&A and avoiding unnecessary antitrust and competition complications in their daily operations.

In the first article by Hogan & Hartson, Eckhard Bremer and Nele Behr analyse the recent developments in private competition law enforcement in Germany. On page six, Joseph Krauss, David Saylor and Logan Breed give an overview of recent application of the Tunney Act and its influence on the reviews of merger cases. On page nine, Mary Anne Mason and Michaelynn Ware summarise a U.S. federal court's decision to turn down the FTC's attempt to block Western Refining's US\$1.3bn acquisition of Giant Industries. Finally, Mary Anne Mason discusses a U.S. federal court's decision to dismiss an FTC challenge to Equitable Resources' US\$970m acquisition of The Peoples Natural Gas Company from Dominion Resources.

Meanwhile, Sandra Pointel, **dealReporter's** regulatory correspondent examines the antitrust issues surrounding the Reuters/Thomson merger in both Europe and North America on page 12.

Also in this edition of the newsletter are mergermarket's regional round ups of a number of antitrust issues across the globe, this can be found on page 14.

We hope you find this latest edition of interest. We would welcome any feedback you might have for the forthcoming newsletter in September. To do so, please email Katie Jones (kjones@hhlaw.com).

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Recent Developments in Private Competition Law Enforcement in Germany

Introduction

In July 2005, the 7th amendment of the German Act against Restraints of Competition (GWB) came into force. As a result thereof, German cartel law has undergone some major changes. In particular, private law enforcement, that is to say the possibility to bring a claim for damages based on cartel law infringements, has been facilitated substantially by way of extending the group of persons who are entitled to sue, excluding the so-called “passing-on defense” and alleviating the burden of proof for potential litigants by providing for so-called “follow-on actions”, inter alia.

However, the new law does not provide for clear rules concerning its applicability with regard to infringements which occurred prior to July 2005; and the question of whether the old or new law shall be applied, is highly disputed in German antitrust literature. The first ruling of a German Court dealing with this question was rendered by the Regional Court of Düsseldorf on February 21, 2007. In an interlocutory judgment the court held that the old law had to be applied with regard to cartel law infringements which occurred prior to July 2005. At the same time, the Court declared that the 7th amendment of the GWB only clarified the already existing legal situation prior to the amendment. It seems that the court thereby found a way of applying the wider legal framework of the new law without getting into conflict with constitutional principles such as the prohibition of retroactive force.

Private Competition Law Enforcement in Germany

Status of Antitrust Damage Actions under the Old System

Prior to the 7th amendment, claims for damages with regard to infringements of national cartel law were to be based on German antitrust law; infringements of European cartel law, namely Articles 81 and 82 EC, on German tort law. Under both provisions, the majority of German courts held that only those entities which belonged to the group of persons whose protection was intended by the infringed provision of competition law were entitled to claim damages. Based on

this assumption, damage claims by purchasers from cartel members were, in most cases, not successful even when the cartel infringement had already been established by the European Commission. The courts generally held that neither Article 81 EC nor the corresponding Section 1 GWB provide for the protection of certain purchasers of a cartel member but rather protect competition as an institution. Purchasers of cartel members were only held to be protected by the provisions if the cartel was targeted against them, e.g. by way of a boycott¹. Only on very rare occasions were damage claims successful and a purchaser of a member of a price fixing cartel was granted damages suffered from an overcharging².

Apart from the narrow interpretation of the group of persons entitled to sue, the little success of damage claims brought forward against members of a so-called hardcore cartel also resulted from the fact that, under the old system, damages were excluded in case where the purchaser who bought a product from a supplier engaged in anti-competitive behavior was able to mitigate its own economic losses by passing the excess charge on to his own customers³. In this regard, the court held that, in order to obtain compensation, the plaintiff would have to argue and prove that he could not pass-on the excessive prices to his own customers. In a nutshell, under the old system, German competition law did not exclude the so-called “passing-on defense”.

Status of Antitrust Damage Actions under the New System

Under the new system, the possibility of bringing a claim for damages has been facilitated significantly and, although no decision has been rendered yet that grants damages to victims of a price fixing cartel, it is most probable that the chances for the plaintiffs have improved:

First, the standing for persons bringing claims was extended considerably. German law now provides for anyone “affected” by a violation of competition law to be able to sue. Those “affected” by a breach of competition law are defined as “competitors or other market participants who are influenced by the infringement”. In this sense, a purchaser of a cartel member might very well argue that he is affected by the price fixing cartel because he had to pay excessive prices.

¹ See with respect to the international vitamin cartel Regional Court of Mannheim, July 11, 2003, 7 O 326/02; Regional Court of Mainz, January 15, 2004, 12 HK O 52/02; Higher Regional Court of Karlsruhe, January 28, 2004 – 6 U 183/03).

² See Regional Court of Dortmund, April 1, 2004, 13 O 55/02 Kart – vitamin cartel.

³ See explicitly Higher Regional Court of Karlsruhe, January 28, 2004, 6 U 183/03 – vitamin cartel.

Recent Developments in Private Competition Law Enforcement in Germany

Moreover, the newly drafted Section 33 GWB explicitly excludes the so-called “passing-on defense”, stating that “damage claims are generally not excluded in case that the overcharged product had been resold”. Against this background, it is up to the infringer to state and prove that the purchaser did not suffer any losses due to the fact that he could resell the overcharged products.

In addition, the burden of proof for potential litigants has been alleviated due to the fact that the new version of German cartel law allows for so-called “follow-on actions”. By such actions, decisions of the EU-Commission or any national cartel authority are binding upon German courts deciding on damage claims.⁴

Proceedings before the Regional Court of Düsseldorf

Cartel Damage Claims SA ./. Members of the Cement Cartel (34 O (Kart) 147/05)

On February 21, 2007, the first court ruling regarding the restitution of suffered losses caused by a cartel – and especially regarding the question whether old or new law had to be applied to infringements which occurred prior to July 2005 – was rendered by the Regional Court of Düsseldorf. In this case the court made an interlocutory judgment on a damage claim brought forward against members of the German cement cartel.

Underlying Facts

In April 2003, the German Federal Cartel Office (FCO) imposed fines totaling around €660m against companies in the cement sector, who were accused of committing cartel law infringements.

On August 5, 2005, Cartel Damage Claims SA (CDC), a newly founded Belgian company, filed a €113m antitrust damage claim against six members of the cement cartel with the Regional Court of Düsseldorf. The claims had been assigned to CDC by 29 different purchasers of the alleged cartel members against a symbolic price of €100. CDC bundled the claims and filed proceedings in its own name. In the case where CDC wins the proceedings a certain percentage (approx. 80%) of the awarded compensation will be forwarded



to the individual assignors. Thereby, the operation of CDC resembles that of US class actions.

Preliminary Judgment of the Regional Court

In the cement cartel case, CDC, amongst others, argued that the new version of German antitrust law had to be applied. Based on the new law, CDC held that the FCO's findings were binding for the court and that the defendants could not refer to the so-called passing-on defense.

On the other side, the members of the cement cartel argued that the damage claim was already inadmissible, because CDC lacked standing to sue as it was not able to bear the costs of the proceedings in case it lost. In addition, the defendants argued that the old law had to be applied as the alleged cartel was operated and the decision of the FCO was rendered, prior to July 2005. In particular, they invoked arguments based on constitutional law which prohibits a genuine retroactive force of legal amendments. In light of the old version of German

⁴ It is to be expected that this provision will bring about a further relaxation of evidence for the plaintiff. However, one must not forget that, already according to European law, a decision rendered by the EU-Commission is binding for national courts, see Art. 16 Regulation EC No. 1/2003; see as well ECJ, December 14, 2000, C-344/98, Masterfoods/HB Ice Cream Ltd.

Recent Developments in Private Competition Law Enforcement in Germany

cartel law, the defendants claimed that the purchasers from cartel members were not entitled to sue as the cartel had not targeted a particular group. Finally, they argued that the purchasers of the alleged cartel members passed on any damages incurred to their own customers.

The competent fourth panel for commercial matters of the Regional Court of Düsseldorf rendered an interlocutory judgment on 21 February 2007. Therein, it held the claim of CDC to be admissible. The court did not generally object to the validity of the assignment of claims to CDC and rejected the argument brought forward by the defendants that CDC lacks standing to sue, as it did not have enough financial resources to reimburse the defendants in case of procedural loss.

With regard to the applicable law, the court rendered a preliminary opinion wherein it followed the defendants arguments only formally and held that the old law has to be applied as the alleged cartel infringements occurred prior to July 2005. However, according to the preliminary opinion of the court, the 7th amendment of the GWB only clarified the already existing legal situation prior to the amendment. In this respect, the court pointed out that even under the old law, a party who made purchases from a cartel member could successfully sue for damages. However, the court did not yet decide upon the material question, whether the claimants are entitled to damages but left this open to its final decision.

Conclusion

This preliminary ruling of the Regional Court of Düsseldorf is of major importance with regard to future private law enforcement in Germany in two respects:

First, the Court accepted the general business model of CDC. As a consequence of CDC's right to sue, private damage actions may possibly augment.

Secondly, the interlocutory judgment – though not giving a definitive decision in this respect – gives an important indication as to what law will be applied if the cartel law infringement occurred prior to the legal amendments. In indicating that it will apply the old law but at the same time holding that the new law only acted to clarify the already existing legal situation prior to the 7th amendment, the court may have found a way to avoid an in-depth analysis of the very



complex issues of forbidden legal retroactivity. At the same time, the court opens up the possibility for it to apply – in substance – the wider legal framework of the new law.

It remains to be seen whether the Regional Court of Düsseldorf will abide by its preliminary ruling and on what basis it will explain the wide interpretation of the old law. However, the final ruling cannot be expected before 2008, because the interlocutory is currently under legal review before the Higher Regional Court of Düsseldorf.

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The Tunney Act Review of Merger Remedies in the US

Overview

Passed in 1974, the Antitrust Procedures and Penalties Act, commonly referred to as the Tunney Act, requires federal courts to review each consent decree in civil antitrust cases filed by the US Department of Justice (“DOJ”) to ensure that the proposed remedy is in the public interest. Periodically, critics have complained that the courts were not properly fulfilling their responsibilities under the Tunney Act, and were simply “rubber stamping” DOJ settlements. This debate grew louder following the heated criticism of DOJ settlement of the Microsoft case in 2002. Thereafter, Congress decided to address these concerns and amended the Tunney Act in 2004. While the modifications were relatively minor, the legislative history indicates Congress (or at least the amendments’ sponsors) intended to strengthen the judicial role in the process and provide more effective oversight of antitrust consent decrees.

The first significant test of the amendments arose recently in Judge Emmet Sullivan’s reviews of DOJ’s proposed consent decrees in two of the largest telecommunications mergers in American history, the Verizon/MCI and AT&T/SBC transactions. Although Sullivan initially appeared to take an unusually active role in analyzing the proposed settlement, in the end he held that judicial review of DOJ merger remedies did not change substantively and he approved the consent decrees. And so, after much debate and great anticipation, Sullivan found that the requirements of the Tunney Act had remained largely unchanged.

The Tunney Act

The Tunney Act imposes specific rules for the notification of consents, the opportunity for third parties to provide comments, and judicial review of the consent. DOJ must prepare and file a complaint and Competitive Impact Statement (“CIS”) with the proposed consent decree explaining both the alleged antitrust violation and the proposed remedy. These documents are made available for public comment.⁶ DOJ then files the comments publicly and appends its own response to those comments.

In considering the proposed settlement, the court must determine whether entry of the proposed decree is in the public interest. Specifically, the original Tunney Act spelled out two sets of factors for the court to consider. The first is the decree’s competitive impact, including the duration of relief sought, the anticipated effects of alternative remedies actually considered by DOJ, and “any other considerations bearing upon the adequacy” of the decree.⁷ The second is the impact of the consent decree “upon the public generally and individuals alleging specific injury” from the violations stated in the complaint.⁸ Courts enjoy broad leeway to determine the necessary scope of the review.⁹

Judicial Oversight Under The Tunney Act

Courts have generally approved merger decrees with little fanfare, but judges in a few instances have used their Tunney Act powers more expansively. The recent debate about the proper role of the courts in reviewing DOJ settlements was prompted by DOJ’s 1995 settlement with Microsoft, when for the first time a court used its Tunney Act powers to reject a proposed decree on substantive grounds.¹⁰ However, an appellate court reversed, holding that the district court had overstepped its bounds.¹¹ The court emphasized that the judiciary’s authority to review the decree depends entirely on DOJ’s exercise of its prosecutorial discretion. Using language that would later form the basis of the arguments in favor of the 2004 Tunney Act amendments, the court implied (at least to some readers) that courts should accept all decrees that do not “appear[] to make a mockery of judicial power.”¹²

In 2002, the DC Circuit Court was asked again to approve a proposed antitrust consent decree involving Microsoft, this one regarding Microsoft’s monopolization of the operating system market. DOJ had already won on the issue of liability, and the only remaining issue was the proper remedy. This time – despite a prior district court ruling in the case that had ordered the breakup of the company,¹³ as well as intense opposition to the settlement from some of Microsoft’s competitors, customers, and academic critics – the court entered the consent decree with only minor modifications.¹⁴

⁶ 15 U.S.C. §§ 16(b), 16(e).

⁷ *Id.* § 16(e)(1).

⁸ *Id.* § 16(e)(2).

⁹ *Id.* § 16(f). The court may hold hearings, take testimony of government officials or experts, appoint special masters, consultants or expert witnesses, admit amicus curiae or intervenors, review written comments, responses and objections, and “take other such action in the public interest as the court may deem appropriate.”

¹⁰ *United States v. Microsoft Corp.*, 159 F.R.D. 318, 332 (D.D.C. 1995).

¹¹ *United States v. Microsoft Corp.*, 56 F.3d 1448, 1459 (D.C. Cir. 1995) (hereinafter “Microsoft”).

The Tunney Act Review of Merger Remedies in the US

The 2004 Amendments

Following the approval of the second Microsoft consent decree, Congress considered changes to the Tunney Act. Drastic changes were initially proposed, but Congress ultimately enacted a few minor changes to the original statute. First, the Act now states that courts “shall” (instead of “may”) take the enumerated factors into account in an analysis of the consent decree. Second, a new factor was listed requiring the judge to consider “the impact of the entry of such judgment upon competition in the relevant market or markets.”¹⁵ Third, a provision was added stating that the Act did not require the court to conduct an evidentiary hearing or to permit anyone to intervene.

Despite the narrow scope of these changes, official statements by the amendments’ supporters indicated they believed the legislation would “make clear” that the Microsoft court’s interpretation of the Tunney Act (in particular, the “mockery of the judicial function” language) was too narrow.¹⁶ One of the principal sponsoring Senators stated that the amendments would “insure that the courts can take meaningful and measured scrutiny of antitrust settlements.”¹⁷ Congressional Record statements by the amendments’ supporters indicated they believed the legislation would “make clear” that the DC Circuit’s 1995 interpretation of the Tunney Act (in particular, the “mockery of the judicial function” language) was too narrow.¹⁸

Verizon/MCI and SBC/AT&T: The 2004 Amendments in Practice

The meaning of the 2004 amendments became the subject of intense debate when DOJ sought approval of its consent decrees regarding the Verizon/MCI and SBC/AT&T mergers. As in the Microsoft cases, the proposed decrees received strong criticism from many industry participants and commentators. Critics, including customers, competitors, and New York’s Attorney General, argued that DOJ should have sought additional divestitures and that the amended Tunney Act required more in-depth review. DOJ responded that the court’s inquiry was limited to the competitive issues identified



in the complaint, asserting that the 2004 amendments¹⁹ did not alter this basic principle.

DOJ filed its motion for entry of the proposed final judgments on April 5 2006. On July 12 2006, Judge Sullivan held a hearing to determine the proper scope of the court’s review. In advance of the hearing, he issued an order asking the parties to consider a number of questions that created the possibility for a broad debate on the relevance of the 2004 amendments.

On July 25 2006, Sullivan held another hearing and refused to sign the consent decrees without more information, noting that the record “consisted largely or exclusively of unverified legal pleadings.”²⁰ He ordered DOJ to produce “any material necessary for the Court to satisfy its judicial and statutory function” by August 7 2006.²¹ He also indicated that it was “premature” to order a full evidentiary hearing, but he refused to rule out the possibility of such a hearing in the future.

In response, DOJ filed (1) a detailed memorandum explaining its submission, (2) a declaration by the DOJ economist who directed the economic analysis of the transactions, and (3) extensive technical materials DOJ had gathered from the parties and their competitors. All of the admitted amici also filed supplemental submissions, including several declarations by economists and other experts, and DOJ submitted a reply to those responses. On November 30 2006, Sullivan held another hearing to discuss these filings. Finally, the parties submitted supplemental responses regarding specific issues raised at that hearing.

¹² Id. at 1462.

¹³ See *United States v. Microsoft Corp.*, 97 F. Supp. 2d 59 (D.D.C. 2000), rev’d *United States v. Microsoft Corp.*, 253 F.3d 34 (D.C. Cir. 2001).

¹⁴ See *United States v. Microsoft Corp.*, 231 F. Supp. 2d 144 (D.D.C. 2002), aff’d *Massachusetts v. Microsoft Corp.*, 373 F.3d 1199 (D.C. Cir. 2004).

¹⁵ 15 U.S.C. §§ 16(e)(1)(A) & (B). Another new factor added in 2004 is “whether its [i.e., the consent decree’s] terms are ambiguous.”

¹⁶ Id. § 16(e)(1)(a).

¹⁷ 150 Cong. Rec. S3615-18 (Apr. 2, 2004) (statement of Sen. Kohl).

¹⁸ Id. at S3617.

¹⁹ 150 Cong. Rec. S3615-18 (Apr. 2, 2004) (statement of Sen. Kohl).

²⁰ *United States v. SBC Communications, Inc.*, Nos. 03-2512, 03-2513 (D.D.C. July 7, 2006) (order regarding July 12, 2006 hearing).

²¹ SBC at *8.

²¹ Id.

The Tunney Act Review of Merger Remedies in the US

The antitrust bar then waited with anticipation for Sullivan's ruling. His statements from the bench during the review process led some to speculate that, in his view, the 2004 amendments changed the Tunney Act procedurally and maybe substantively as well. But when Sullivan issued his opinion on March 29 2007, he quickly put to rest any speculation that the amendments drastically changed the way the statute worked. In his first paragraph, he stated that "[t]he only question facing this Court, under the procedures crafted by Congress, is whether the divestitures agreed upon by the merging parties and the Department of Justice are 'in the public interest.'" ²² Despite critics' heated protestations over the allegedly inadequate scope of DOJ's remedy, he expressly refused to "decid[e] whether these mergers as a whole run afoul of the antitrust laws, nor whether they are altogether in the public interest, nor whether they should be approved by other branches of the federal government." ²³ In short, while Sullivan required DOJ to provide more evidence than what was in their CIS and Response to Public Comments to support the proposed decrees, he applied basically the same substantive test that the courts used prior to the amendments.

In fact, Sullivan's opinion mounted a three-step defense of the Microsoft decision that ostensibly spurred the 2004 amendments. First, Sullivan reasoned that the Microsoft court's holding was actually compatible with the Tunney Act's traditional focus on whether the proposed decree adequately remedies the alleged harm in the complaint, not whether the complaint encompasses all of the potential anticompetitive harm arising from the transaction.

Second, Sullivan relied on Microsoft for the proposition that the court cannot go beyond the scope of the complaint, and he found nothing in the Tunney Act or the amendments to the contrary. Under his reading of the Tunney Act, the court's sole responsibility is to ensure that the remedy addresses the harm alleged in the complaint – and "the 2004 amendments have left in place the Circuit's holding [in Microsoft] that this Court cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." ²⁴

Finally, Sullivan addressed the proper level of deference accorded to DOJ's evaluation of the adequacy of the proposed settlements. Sullivan determined that, under Microsoft, the Tunney Act does not require DOJ to employ any specific type of analysis in evaluating and settling cases; nor does

it require DOJ to actually prove its underlying allegations.²⁵ Moreover, Microsoft confirmed that DOJ "need not prove that the settlements will perfectly remedy the alleged antitrust harms." ²⁶ In Sullivan's view, the relevant inquiry is whether there is a factual foundation for DOJ's decisions that make its conclusions reasonable.

Applying these principles to the cases at hand, Sullivan approved the decrees. He found that DOJ had "presented a reasonable basis for concluding that the proposed settlements will replace much of the competition lost to the mergers, if perhaps not all of it," and therefore the remedy was within the public interest.²⁷

Conclusion

Judge Sullivan's opinion may put to rest – at least for now – the question of what is the proper role for the courts in reviewing DOJ consent decrees in merger cases. The answer is substantially the same as it was before 2004 – to determine whether the order is in the public interest and not to decide whether the proposed merger violates the antitrust laws. However, the process by which Sullivan reached his conclusions may have some impact on future cases. First, dissatisfied third parties may still find it worthwhile to intervene (or at least submit amici briefs) in future Tunney Act reviews to force DOJ to defend the link between the complaint and the proposed remedy with detailed evidence and legal argument. This will lengthen the review process and may lead to more court-induced modifications of proposed consent decrees. Second, DOJ may seek to forestall any perceived need for submitting detailed investigative materials by including more factual explanation in its CIS and response to public comments. Nonetheless, given the procedural precedent set in Judge Sullivan's court, if future courts want more record material on which to evaluate consent decrees criticized by third parties who have facially credible arguments, DOJ may be hard pressed not to disgorge more information about the investigation and DOJ's theories and judgments.

The effect of this decision on future Tunney Act reviews of merger cases may create a new call for more changes to Tunney Act, but for now Judge Sullivan's decision seems to have left the Tunney Act largely as it was prior to 2004.

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²² See *United States v. SBC Communications, Inc.*, 2007 WL 1020746, *1 (D.D.C. Mar. 29, 2007).

²³ *Id.*

²⁴ *Id.* at *14.

²⁵ See *id.* at *14-15, 20.

²⁶ *Id.* at *16 (emphasis added).

²⁷ *Id.*

Court Denies FTC's Attempt to Block Western's Acquisition of Giant



For the second time in less than a month, the Federal Trade Commission ("FTC") was unable to convince a federal court to issue a preliminary injunction to block a proposed merger in the energy industry.²⁸ On August 28, 2006, Western Refining, Inc. ("Western") agreed to acquire Giant Industries, Inc. ("Giant") for approximately \$1.5 billion. On April 12, 2007, following a lengthy investigation,²⁹ the FTC filed a complaint seeking a preliminary injunction in federal court to block the transaction. The U.S. District Court for the District of New Mexico denied the FTC's request for a preliminary injunction. On May 31, the Court of Appeals for the Tenth Circuit also refused to grant the FTC's emergency motion for an injunction pending appeal. Later that same day, Western completed its acquisition of Giant.

Background on the Parties to the Transaction

Western owned a refinery in El Paso, Texas with capacity to refine approximately 124,000 barrels per day ("bpd") of crude oil into high-value transportation fuels, including gasoline, diesel, and jet fuel. Western supplies gasoline and other refined products primarily in the Southwest region of the United States. Approximately five percent (3,000 to 4,000 bpd) of the refinery's output was delivered to Albuquerque, New Mexico via the Plains All-American Pipeline,³⁰ which has been capacity-constrained in recent years.

Giant owned three refineries – two in northern New Mexico and one in Yorktown, Virginia. The gasoline produced at Giant's New Mexico refineries was primarily sold to customers

in the Four Corners area and in northern New Mexico. Approximately nine percent of Giant's total gasoline output in New Mexico was delivered to terminals in the Albuquerque area.

In August 2005, Giant acquired an idle crude oil pipeline system running from Jal, New Mexico to Bisti, New Mexico. Giant anticipated that its new pipeline would become operational during the second quarter of 2007 and would enable it to increase output at its New Mexico refineries.

FTC's Complaint

On April 10, 2007, in a 5-0 vote, the FTC authorized a lawsuit to block the proposed transaction. Two days later, the FTC filed its initial complaint in the U.S. District Court for the District of New Mexico, seeking a temporary restraining order and preliminary injunction pending an administrative trial.

The FTC argued that the merger would combine two of the six bulk suppliers of gasoline to northern New Mexico and would result in higher gasoline prices in northern New Mexico. According to the FTC, absent the merger, Giant's acquisition of the new crude oil pipeline would prompt it to deliver substantially more gasoline to the Albuquerque area and thus spur price competition in northern New Mexico. The FTC contended that the merged firm would redirect some of Giant's new supply to other markets and away from northern New Mexico, with the result that gasoline prices in northern New Mexico would be higher than they would have been if Giant remained independent.

District Court Decision

District Court Judge James O. Browning issued an order granting the TRO on April 13, and held a hearing on the FTC's motion for preliminary injunction from May 7-11.

On May 29, the District Court denied the FTC's motion for preliminary injunction and dissolved the TRO prohibiting Western from acquiring Giant. In a 103-page opinion, the court cited multiple reasons for its decision to deny an injunction. First, the FTC did not include in its relevant market significant suppliers who currently serve, or could potentially serve, Albuquerque by truck. In particular, the court noted substantial

²⁸ On May 14, 2007, the United States District Court for the District of Pennsylvania dismissed the FTC's motion for a preliminary injunction to prevent Equitable Resource Inc. from acquiring Peoples Natural Gas Company. The FTC is appealing the decision.

²⁹ The FTC issued a Request for Additional Information ("Second Request") on October 10, 2006.

³⁰ The Plains Pipeline, a common-carrier pipeline owned by Plains All American L.P., ships refined product from El Paso to Albuquerque

Court Denies FTC's Attempt to Block Western's Acquisition of Giant

supplies of gasoline currently delivered to Albuquerque by truck from El Paso. Indeed, the court found that the volume of gasoline trucked into Albuquerque exceeded the amount of a hypothetical increase in supply by Giant after its acquisition of the Jal crude oil pipeline – the elimination of which was central to the FTC's theory of post-merger harm. The court was critical of the FTC's economic expert who testified that he never considered trucking to be a viable alternative because it was more expensive. The trucking evidence was of particular importance to the court because it suggested that competing supplies from as far away as the Gulf Coast could provide some measure of pricing discipline after the merger.

Second, the court was unconvinced that the merger would have an effect on gasoline prices. In support of its competitive effects argument, the FTC relied heavily on a draft internal marketing document created in 2005 in connection with Giant's purchase of the Jal crude oil pipeline. The document postulated a price decrease in Albuquerque once the new crude oil supplies from Jal were fed into the Giant refineries. The court noted that the document was a draft created by a Giant employee in less than a day. According to testimony from the author, Giant could not validate the numbers shown in the document, and it was discarded. The court held the document to be insufficient evidence to support the FTC's theory of competitive effects. Moreover, the court reasoned that, in the absence of the merger, Giant would not necessarily have increased net supply to Albuquerque. Instead, acting as a profit-maximizing firm, Giant would have reduced purchases from third-party suppliers, such as Western, to offset the increased supplies from its refineries. Therefore, the merger likely would have had no net effect on the supply of gasoline to northern New Mexico. If it did, however, the court doubted that "these few additional barrels will significantly impact the market or reduce the price as much as the FTC projects."³¹ Importantly, the court found that "[o]ther firms can replace the competitive void – if any – left by Giant's elimination."³² The court discounted the only customer testimony presented by the FTC (a former customer who lives in Michigan) that claimed otherwise.³³

Third, the court was unimpressed by the low combined market

shares of Giant and Western. The FTC's prima facie case for unilateral effects was based on a combined post-merger market share of 18.6 percent: "[This is] less than the thirty-five percent threshold stated in the Merger Guidelines. This market share is less than the market share that a firm that is considered dominant and capable of creating unilateral effect typically holds – sixty to seventy percent."³⁴

Finally, the court ruled that there was no compelling reason to enjoin the merger during the administrative process because: "it will not be difficult to unscramble the business operations if the merger is eventually undone."³⁵ In support of this conclusion, the court pointed to the FTC's considerable experience in the directed divestiture of refineries and related assets as a condition of approval of other oil industry mergers.

FTC's Appeal

On May 29, the FTC filed a motion in the district court for an injunction pending appeal to the U.S. Court of Appeals for the Tenth Circuit. The district court denied this motion following a brief hearing: "The FTC is asking in certain respects, for the same or similar relief, pending appeal, to which the Court decided yesterday the FTC was not entitled."³⁶

Simultaneously, the FTC filed an emergency motion in the Tenth Circuit for a preliminary injunction pending appeal, which was also denied.

Western completed the acquisition immediately, and an FTC decision on whether to proceed with an administrative hearing is pending. The FTC's willingness to challenge this transaction in the face of evidence that alternative supplies were available to counter adverse competitive effects appears to underscore public statements by agency officials that merger enforcement in the oil industry remains vigorous.

**By Mary Anne Mason and Michaelynn R. Ware
Hogan & Hartson, Washington**

³¹ See Memorandum Opinion, Findings of Fact, Conclusions of Law, and Order, *FTC v. Paul L. Foster, Western Refining, Inc., and Giant Industries, Inc.*, No. Civ. 07-352 (D. N.M. May 29, 2007) at ¶ 287 (hereinafter "Opinion").

³² See Opinion at ¶ 239.

³³ The court stated that James Conway (Conway Oil) "admitted that the entirety of his testimony on gasoline supply consisted of personal opinion that was based on second-hand knowledge." See Opinion at ¶ 289.

³⁴ See Opinion at ¶ 280.

³⁵ See Opinion at ¶ 461.

³⁶ See Memorandum Opinion and Order, *FTC v. Paul L. Foster, Western Refining, Inc., and Giant Industries, Inc.*, No. Civ. 07-352 (D. N.M. May 31, 2007) at 4.

SAVE THE DATE

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Reuters/Thomson to Face Lengthy Competition Scrutiny on Both Sides of the Atlantic

The merger between Reuters and Thomson is likely to face lengthy antitrust investigations on both sides of the Atlantic. The deal will require approval from competition authorities in several jurisdictions but the main focus will be in the US and the EU. The European Commission (EC) and the US regulator are expected to launch a Phase II and a Second request respectively unless parties offer the necessary upfront remedies. These latest scenarios, however, appear highly unlikely at this stage, as the parties themselves have already tabled a lengthy scrutiny process and minimised the potential for large divestments.

Tom Glocer, Reuters's chief executive officer, said the merger should not require major disposals to get clearance from competition authorities, although he recognised the investigation would be challenging. The two parties anticipate synergies at an annual run-rate in excess of \$500m by the end of the third year after closing, and Glocer thought these would not be dramatically changed by divestments. "It is more likely than not that we will not have to make divestments," he said. "I would not be surprised if the \$500m figure would go forward regardless of the antitrust process."

Glocer downplayed competition risks, saying the combination brought less overlaps than people thought and would provide a strong competitor to Bloomberg. "The advantage of the merger is that there is now a truly strong player to provide competition at the high-end."

According to Inside Market Data, Bloomberg currently has 33% of the market while a combined Reuters/Thomson would have a 34% market share. As a result the deal does not appear to create a clear market leader since its market share on a global scale will be more or less the same as for Bloomberg. On this basis, the potential competition issues are not as clear cut as if the merger would result in a single player with a high market share.

In the EU, the Commission is likely to first look at coordinated effects and how the industry works. The Commission's focus would dwell particularly on the role of Thomson and its disappearance as a smaller player in Europe, as well as other alternatives in the market. The Commission will want to assess: whether Thomson is a maverick trying to build on its position or not; whether the deal will stifle competition between the two large groups; and whether it will be likely to lead to higher prices, or how much of a competitive force remaining smaller players are likely to be.



Market definitions are likely to be key in the competition authorities' assessment of overlaps and potential remedies. The process of defining such markets is expected to be challenging and time consuming and competition experts point out that feedback from customers of the two companies will be determined on both sides of the Atlantic. Already some banks have reportedly raised concerns on the impact of the merger on costs and quality.

In the US, the deal is likely to be reviewed by the Department of Justice (DoJ) as the authority previously looked at transactions in the same sector. In particular, Reuter's acquisition of Telerate in 2005 and Thomson's sale of Harcourt to Reed Elsevier in 2000. In the Telerate/Reuters deal, the DoJ had thought to launch a second request into the deal but granted early termination after the parties, which had been negotiating with the EC in parallel, offered upfront remedies.

Precedents exist in the US, where the authorities are expected to view the market more narrowly than just the sale of financial data and look at specific overlaps. In the past, well-established groups, such as research and university librarians, attempted to define the market more broadly but were not successful, it was pointed out. The authorities will look at different market segments and who else is out there, especially as some small niche players may provide substantial competition to Reuters and Thomson.

Reuters/Thomson to Face Lengthy Competition Scrutiny on Both Sides of the Atlantic

As for the EU, the EC's 2005 decision on the Telerate/Reuters deal also indicates that the analysis would likely narrow the market down to different segments. At the time, the Commission found that the parties' activities overlapped in four different product areas, all of which related to the sale of market data. They were: the supply of real-time market data to end-users (RTMD); the supply of price and reference data to middle- and back-office functions; the supply of market data platforms (MDPs) and the supply of foreign exchange order management software. Concerning RTMD, the Commission stated that many providers specialise in certain particular asset classes and therefore the provision of RTMD could be further subdivided by reference to the type of asset.

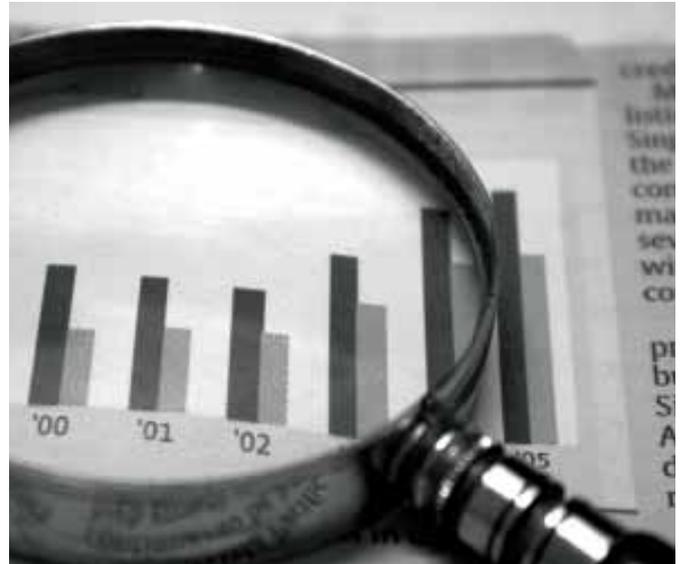
The Commission also concluded that these markets were usually worldwide or at least EEA-wide but left some doors open in specific segments.

Competition experts thought the EC was unlikely to depart very far from these definitions as the market has not changed since 2005. Although, the parties may challenge this, the Commission will give them a hard time especially as two of the industry's main players are merging, which gives one more reason for the authority to look at the deal by segments, it was suggested.

Several industry participants thought divestments, if any, were unlikely to be substantial. Glocer himself pointed out that the combination brought less overlaps than people thought, and in any case, not as many issues as the 2005 Telerate/Reuters deal.

The competition investigation is expected to take longer in Europe than in the US. In this case particularly, the US authorities have reviewed more transactions in the sector and will be more familiar with the market. Furthermore, US authorities also have a relatively "pro-merger view" and do not have a "psychological problem" with prohibition, it was said. Finally, the Commission looks at the competition impact more carefully when it comes to potential coordination between companies and non-horizontal effects.

Although the two key suppliers would have approximately 67% of the market, competition experts agree the EC would likely refrain from bringing the collective dominance argument. This is because blocking a case on these grounds would require a high standard of proof and the authority is now more reluctant to go down this road.



The final assessment would depend on the market, as the authority could consider a stronger number two market player would counterbalance Bloomberg's power. This would be similar to the Boeing/McDonnell case, which was cleared although it cut down the number of players to two. In the end, it may be that the merger is approved without conditions or with conditions the parties can easily live with.

Among other jurisdictions, the merger will also require the approval of the Canadian Competition Bureau. Issues are, however, considered less significant in Canada than in the US and Europe and the timeline for clearance is unlikely to fall behind regulatory processes of the two main jurisdictions. The extent of overlaps in the country and whether divestitures will be required are not clear yet but these are expected to be less than in the US and Europe. Here again, market definitions will be key in the competition authorities' assessment of overlaps and identification of potential remedies. Competition experts have said all agencies involved would likely talk to each other but precise market definitions would depend on product penetration and local market conditions. Although authorities like to talk about convergence, their conclusions can sometimes differ as highlighted in the infamous GE/Honeywell deal, which was cleared in the US and blocked in Europe.

By Sandra Pointel
dealReporter, Brussels

mergermarket's Regional Round Ups

North America/Europe: **United States/United Kingdom**

Information request by DOJ in K&F Industries/ Meggitt-USA tie up

K&F Industries and Meggitt-USA have received both DOJ and OFT clearance regarding their proposed merger. K&F, the New York based company, and Meggitt, the listed UK aerospace and defence company, were required to respond promptly to the information request which was issued pursuant to the Hart-Scott-Rodino (HSR) Antitrust Improvements Act of 1976. It was earlier announced on 6 March 2007 that K&F and Meggitt had entered into a definitive merger agreement whereby Meggitt would acquire K&F for US\$1.8bn. Both companies' stockholders have already approved the proposed transaction.

North America: **United States**

A&P enter into timing agreement with FTC over Pathmark acquisition

Great Atlantic & Pacific Tea (A&P), the listed New Jersey based grocer, announced last month that it has entered a timing agreement with the Federal Trade Commission (FTC) regarding its proposed acquisition of Pathmark. The FTC had earlier issued a second request which effectively extended the applicable waiting period under the HSR Antitrust Improvements Act during which the two companies may not consummate the proposed acquisition. Under the timing agreement, A&P and Pathmark have agreed to not certify that they have substantially complied with the second request prior to 30 June. A&P has said that it is fully cooperating with the FTC and added that it expects the deal to close in the second half of fiscal 2007. A&P's proposed acquisition of Pathmark is valued at US\$1.3bn.

Europe: **Denmark/Switzerland**

Phonak appeals against prohibition by Bundeskartellamt over ReSound buy

Phonak, the listed Swiss hearing aid firm, has appealed against the German competition authority's prohibition of the sale of ReSound to Phonak. The two companies have also applied for an injunction relief to speed up the process, which would see a preliminary decision on whether they can close the transaction by the second half of 2007. German competition experts are, however, doubtful such an injunction would be granted. Although the deal received clearance from all other competition watchdogs, the Bundeskartellamt, the German competition authority, had ruled against Phonak's acquisition of ReSound on the grounds that it would lead to collective dominance in the German market. It also stated that the transaction was indivisible, preventing the parties to close the deal in any other jurisdiction. The CEO of Phonak previously indicated that the company would be unlikely to pursue the acquisition of Resound further if it failed to receive an injunction for the appeal. Phonak agreed to acquire ReSound from GN Store for €2.08bn in October 2006.

Australasia: **Australia/New Zealand**

NZCC rules against Warehouse and Foodstuffs

The New Zealand Commerce Commission (NZCC) has declined applications from Woolworths of Australia and Foodstuffs of New Zealand to acquire 100% of Warehouse Group Limited. The NZCC added that it was not satisfied that either of the proposed acquisitions would not substantially reduce competition in the relevant markets. In line with its usual procedure, the NZCC will not be making any further comment on its decisions until the written reasons are available. Warehouse's board has reviewed the decision and has declined to make any further comment.

North America: United States

DOJ issues second request over UnitedHealth/Sierra Health merger

UnitedHealth and Sierra Health have received a second request from the Antitrust Division of the DOJ regarding the proposed merger between the two companies. The second request will extend the waiting period imposed by HSR until 30 days after UnitedHealth and Sierra Health have complied with the request for additional information. It is likely that any acceptance hinges on whether the companies can gain the support of state regulators in Nevada where market concentration is most pronounced.

The analysis of the proposed mergers effect on employers who purchase health plans is likely to incorporate several different types of product markets. Indeed when the DOJ approved UnitedHealth's acquisition of PacifiCare in 2005, it defined at least three different grounds to evaluate markets. These were grouping customers by size, location and type of plan. The main benefits of the deal are likely to fall upon service providers and large group purchasers such as major employees and unions. Meanwhile, the Nevada State Medical Association is waiting on federal regulators to define the terms of the proposed merger before it takes a stance in support of, or against the deal.

North America: United States/Canada

Alcoa files antitrust notification in connection with US\$32.7bn bid for Alcan

Alcoa, the listed New York based aluminium company, has filed the HSR notification in connection with its outstanding US\$32.7bn bid for Alcan, the listed Canadian aluminium firm. Alcoa's chairman and CEO, Alain Belda, commented that the filing demonstrates the company's commitment to satisfy all regulatory issues. According to a source close to the situation, Alcoa's legal team have already compiled a list of disposals that will be proposed to the DOJ as a voluntary remedy. The list of potential disposals could include Alcan's Ravenswood rolling complex in West Virginia and the North America alumina refineries. With regard to possible buyers of the divested assets, an industry banker observed that the downstream assets could be of interest to private equity firms.

Europe/North America: Netherlands/United States

Mittal gains regulatory extension to dispose of Sparrows Point

Mittal Steel, the listed Dutch steelmaker, has received a regulatory extension to sell its Maryland based Sparrows Point steel mill. Mittal is required to divest the facility in order to meet antitrust issues in its US\$33bn merger with Arcelor which was announced in January 2006. A DOJ statement said that it had agreed to the extension after Mittal had earlier announced that it would miss the original deadline to divest Sparrows Point. According to an industry analyst, Russian firms Evraz Group and Severstal could emerge as bidders with the price tag being around US\$1bn.

North America: United States

FTC to block Whole Foods acquisition of Wild Oats

The FTC will file a lawsuit in the US District Court to block the US\$660m acquisition of Wild Oats Markets by Whole Foods Market. The FTC will also seek a temporary restraining order pending the court's ruling on the FTC's request for a preliminary injunction. In response, Whole Foods has said that it will challenge the FTC as it has failed to recognise the robust competition in the supermarket industry which has grown as competitors increase their offerings of natural, organic and fresh products. The FTC objection is based on its belief that the relevant antitrust product market is limited to natural and organic food stores and excludes other supermarkets. However, Whole Foods believes that the FTC's position is without basis and contrary to its position in past merger reviews. As well as the deal being subject to antitrust clearance, the approval of Wild Oats stockholders is also required and the company plans to hold a stockholders meeting later in the summer.

Europe/North America: **United Kingdom/ Canada**

Reuters/Thomson deal could take as long as a year to gain approval

The €13.4bn acquisition of UK financial news provider Reuters by Canadian rival Thomson could take as long as 12 months to complete according to Thomson's chief executive Dick Harrington. Meanwhile, Reuters' chief executive, Tom Glocer, added that the company may have to dispose of some of its assets in order for the merger to be cleared by the competition authorities but insisted this would be minor. Glocer elaborated that the area of entertainment news could be problematic although no decision is likely to be made by Reuters in the immediate future. (More details in our feature on the Reuters/Thomson deal on page 12.)

Europe: United Kingdom

UK government refer BSkyB's purchase of 17.9% of ITV to CC

The UK government has referred BSkyB's proposed acquisition of a 17.9% stake in ITV to the Competition Commission. Alistair Darling, Secretary of State for Trade and Industry, had earlier issued an intervention notice in respect of the transaction which required the Office of Fair Trading (OFT) and Ofcom to submit reports. In the report, the OFT noted that a merger situation had been created which could result in a substantial lessening of competition within the UK market. Ofcom also found that the transaction raises public interest issues relating to the plurality of news provision to the UK audience for both cross-media and television news.

Europe: **Germany/United Kingdom/ Ireland**

EC approve TUI's buy of First Choice with conditions

The EC has approved the €2.7bn acquisition of First Choice, the UK travel company, by TUI, its German counterpart. The decision is conditional upon TUI divesting its Irish business that operates under the 'Budget Travel' brand. This is due to the fact that the parties would be the leading tour operator for short-haul package holidays, controlling more than 50% of the Irish market.

With regard to the UK market, the EC's investigation concerning this transaction and the Thomas Cook and MyTravel merger, which was cleared on 4 May 2007, showed that the industry has changed markedly since the Airtours and First Choice case. The Commission stated it was "now apparent that the internet gives consumers access to a wide range of travel sites to choose and book holidays independently of a travel agent". As a consequence, the competition authority concluded that the TUI/First Choice deal would not harm UK customers who would continue to have access to package tours at competitive prices. The EC also assessed the impact of the transaction on markets in France, the Netherlands, Austria and Germany and similarly it was found that in light of the parties' position in these markets that competition would not be impeded.

Europe: **Czech Republic**

Ceska Pojistovna/Generali may divest products to remedy competition concerns post merger

Finance companies Ceska Pojistovna (CP) and Generali could be forced to divest products in the Czech Republic by competition authorities following the merger of their Central and Eastern European operations. As a result of the tie up, the two companies' combined market share in the Czech Republic would be around 38%. Moreover, according to a source close to the situation, divestures in the market are likely as CP and Generali are the only two companies offering both life and non-life insurance products in the Czech market. It is yet to be determined whether a decision to approve the merger will be taken by the European Commission or the Czech anti-monopoly office.

Interestingly, a spokesperson for Axa, the French insurer which has 3% market share in the Czech Republic market, said it did not see a problem with the merger creating a company which had a 38% stake in the market. The spokesperson failed to comment on whether Axa would be interested in acquiring any divestments CP and Generali would have to make. The agreement values CP at €3.6bn and Generali's CEE operations at €1.5bn. Generali and CP's owner PPF have said they expected the transaction to be completed in the second half of this year.

Europe: **Ireland**

EC rules against Ryanair's acquisition of Aer Lingus

The EC has prohibited the proposed €1.3bn takeover of Aer Lingus by Ryanair. The transaction would have combined the two leading airlines in Ireland, and the EC concluded that the merger would have harmed consumers by removing competition and creating a monopoly or a dominant position on 35 routes. The EC deemed it likely that this would have led to an increase in prices for more than 14 million customers in the European Union. It also said that Ryanair's proposed remedies were inadequate and would not fully address the competition issues. The investigation revealed that rival airlines would be unlikely to enter into direct competition against a merged Ryanair/Aer Lingus, not only due to its size but also given Ryanair's reputation of aggressive retaliation against any entry attempt by competitors. Furthermore, a merged entity would have had even greater flexibility to engage in short term price reductions as a means of protecting its dominant market position. The EC will not request Ryanair to sell its 25% in Aer Lingus as it not a controlling stake and therefore, the disposal cannot be forced. Ryanair has said that it will appeal the EC's decision.

Europe/North America: **Germany/United States**

EC restarts the clock on SonyBMG with new deadline set to 10 October

The EC has pushed back its deadline for its decision on Sony BMG to 10 October. The Commission, which is carrying a new review of the deal after its previous decision was cancelled by the European Court of First Instance last July, had stopped the clock on its deal as it was waiting for further information from third parties. It has now resumed its inquiry.

Europe/North America: **UK/United States**

DOJ issue second request over FirstGroup €2.7bn buy of Laidlaw

FirstGroup has confirmed that it has received a request for additional information from the US Department of Justice regarding its €2.7bn acquisition of Laidlaw International, the Illinois based bus services firm. This second request is pursuant to HSR and is primarily focused on the parties' school bus businesses and does not include their transit business. The board of FirstGroup had no further update on the likely completion date of the transaction.

North America: **United States**

Microsoft and Google expected to face antitrust scrutiny with regard to their recent acquisitions

Microsoft's US\$5.3bn acquisition of aQuantive is likely to receive a second information request by the FTC. In a similar case, Microsoft's rival Google recently confirmed that the FTC was conducting an investigation into its own US\$3.1bn acquisition of aQuantive's competitor Double Click. As both Microsoft's and Google's acquisitions were vertical transactions into complementary but not overlapping areas, it is likely that both deals will ultimately gain antitrust approval. Furthermore, according to an industry lawyer, as long as Microsoft, Google and Yahoo continue to compete as separate entities then there is enough competition to protect consumer choice. Google effectively controls internet search, internet video (through YouTube) and will now gain some control of online advertising, consequently, the fact that three significant elements of the internet is now in the hands of the same company could be subject to scrutiny. Microsoft and Google have market capitalisations of US\$294.6bn and US\$151.8bn respectively.

Europe: **Italy/Germany**

EC investigates potential market foreclosure by ENI and RWE

The EC has opened antitrust proceedings against the Italian energy company ENI. The investigation will focus on behaviour by ENI, which the EC suspects may have been aimed at excluding potential competitors from Italian gas supply markets. Similarly, the EC has also opened an antitrust investigation against the German energy company RWE. Proceedings will centre around the possibility that RWE aimed to exclude potential competitors from the market by putting in place artificial obstacles to its gas transport network in the North Rhine-Westphalia area of Germany.

Europe

EC to set ownership unbundling as target in autumn proposal

Meanwhile, the EC is likely to set the unbundling of ownership in the energy sector as a target but will leave it to individual countries to decide how best to achieve it. The EC's ultimate aim is to boost competition in European energy markets despite fierce opposition, especially in France and Germany. According to Robert Klotz, the principal administrator of the DG Competition energy team, a share split demerger is one solution that is under discussion. In this case, each share issued in vertically integrated companies would be split into one share for networks and one share for the supply business. Full ownership unbundling would be preferable for the EC as it is more clear-cut and requires less regulation. Meanwhile, an ongoing review is currently taking place in the Netherlands which could lead to commercial and transmission unbundling although an energy lawyer claimed that the process could take up to 30 months.

District Court Rejects FTC Challenge to Regulated Utilities' Merger

On May 14 2007, Judge Schwab of the United States District Court for the Western District of Pennsylvania dismissed a Federal Trade Commission (FTC) challenge to the acquisition of Dominion Peoples Gas (Peoples Gas) by Equitable Resources (Equitable). This paved the way for Equitable to become Pennsylvania's largest natural gas utility. *FTC v. Equitable Resources, Inc.*, 2007 WL 1437447 (W.D. Pa. 2007).

History of the Proceedings

On March 1 2006, Equitable executed an agreement to acquire Peoples Gas for US\$970m. On April 13 2007 Equitable obtained a certificate of public convenience from the Pennsylvania Public Utility Commission (PUC), which made a finding under the State's public utilities law that the transaction would provide affirmative public benefits. On the same day, the FTC filed suit in the US District Court for the Western District of Pennsylvania, requesting a temporary restraining order and preliminary injunction to halt the transaction pending the outcome of a full administrative hearing.

The FTC argued that the merger would eliminate all "gas-on-gas" competition between the two companies for service to 500 large commercial, industrial and institutional customers in western Pennsylvania. In the FTC's view, in other words, the merger would create a monopoly over gas distribution service to schools, hospitals, churches, universities and other large consumers of natural gas in those areas where the two companies presently compete. The result, according to the FTC, would be that Equitable would be able to impose post-merger price increases that would cost customers an additional US\$160m.

On May 14, 2007, District Judge Schwab dismissed the FTC's challenge in a ruling that accepted Equitable's argument that PUC approval rendered the acquisition exempt from the federal antitrust laws under the "State Action" immunity doctrine. In a decision that describes the transaction's elimination of competition as "only one of the many statutory factors" relied on by the PUC (Op. at 14; emphasis in original), Judge Schwab opined that "the real world application" of the



FTC's lawsuit is that it is "attempting to stop a transaction which the PUC has found to be in the overall public interest" of 600,000 residential customers (Id. at 15) with the result that "a few customers will lose the benefit of current competition, but . . . the public as a whole will benefit by not subsidizing said 'competition.'"

If district court's ruling is affirmed on appeal, it could materially alter the contours of federal merger review of transactions between firms that are subject to regulation by state public utility commissions. On June 1, 2007, a three-judge panel of the United States Court of Appeals for the Third Circuit enjoined the transaction pending outcome of an FTC appeal.

District Court Rejects FTC Challenge to Regulated Utilities' Merger

A. State Action Immunity Doctrine

The state action immunity doctrine springs from constitutional principles of federalism and dual sovereignty. It immunizes private conduct from antitrust actions so long as a state (1) clearly articulates a policy displacing competition with regulation and (2) actively supervises the conduct at issue. *California Retail Liquors Association v. Midcal Aluminum, Inc.*, 445 U.S. 97, 103 (1980). For the immunity doctrine to apply, the Commonwealth of Pennsylvania would need to have clearly articulated a policy substituting regulation by the PUC for competition among natural gas distributors to large customers, and the PUC would have to engage in on-going regulation as a substitute for the displaced competition. Although the FTC has argued that neither of the two requirements for immunity are present, it has focused primarily on the absence of a clearly articulated state policy.

B. Equitable and the Clear Articulation Standard

Equitable claimed that the requisite "clearly articulated state policy" existed because the PUC, acting under legislative authority from the Pennsylvania General Assembly, had necessarily considered the anti-competitive effects of the transaction when it issued a certificate of public convenience. *Equitable Br.* at 15. To bolster its claim of a clearly-articulated state policy to displace competition, Equitable pointed to statements by the PUC indicating that gas-on-gas competition for large institutional customers resulted in discounts to them which had a negative impact on the regulated rates paid by "captive," (primarily residential), customers. Thus, Equitable argued that PUC issuance of a certificate of public convenience was sufficient to support an exemption from federal merger review under Section 7 of the Clayton Act.

Equitable maintained a clearly articulated state policy can exist in the absence of an express act by the State's legislature so long as "the suppression of competition is a 'foreseeable result' of what the state authorizes." *Equitable Br.* at 17 (citing *City of Columbia v. Omni Outdoor Adver., Inc.*, 499 U.S. 365, 373 (1991)). On that basis, Equitable contended, the PUC's approval of a transaction that would end gas-on-gas competition for some customers was sufficient to establish immunity.

C. FTC and the Clear Articulation Standard

Both the FTC and the Attorney General of Pennsylvania have appealed the district court's decision. The FTC contention is that the PUC does not represent the State for state action immunity purposes. According to the FTC, the court has erroneously equated a "comprehensive" state regulatory scheme for public utilities, which addresses such diverse concerns as minimum wage laws and environmental controls, with a state policy to displace competition among utilities. The FTC argues that a public utility commission, acting alone, cannot "immunize private anti-competitive conduct" from federal antitrust laws. *Southern Motor Carriers Rate Conference, Inc. v. United States*, 471 U.S. 48, 62 (1985). Rather, the FTC insists that a clearly articulated state policy arises "not simply by adding a layer of regulatory requirements with which competitors must also abide, but by authorizing conduct that is inconsistent with competition," (*FTC Motion* at 11) – a situation that the district court's opinion appeared to reject when it observed that "public interest review of proposed utility mergers that the legislature has entrusted to the PUC is not in conflict with the policy of the federal antitrust laws." *Opinion* at 15.

In its motion for an injunction pending appeal, the FTC stressed that State regulatory schemes, which are ubiquitous in the electric and gas distribution sectors, may not be substituted for the "separate screen of the antitrust laws" if a State has not explicitly stated an intention to reject the pro-competitive principles that underlie federal antitrust laws. *Motion* at 12.

District Court Rejects FTC Challenge to Regulated Utilities' Merger

D. Active State Supervision

Equitable and the FTC also dispute the existence of "active state supervision" sufficient to meet the second requirement for state action immunity. Equitable points to on-going PUC requirements that call for the merged company to report on aspects of its operating practices, safety procedures and charitable contributions and that subject the fairness of its rates to investigation. Public statements from Equitable executives claim that the FTC's challenge is misplaced because the merged company's rates will be subject to PUC regulation. The FTC counters that a pervasive regulatory scheme will only serve to support immunity if the state directly supervises the conduct that may lead to consumer harm. Thus, the FTC argues, PUC regulation must monitor the potential anticompetitive consequences of the transaction such as "elimination of discounts and other favorable contractual terms currently driven by competition, or any postmerger degradation in the quality of service offered to customers who currently reap the benefits of competition." Motion at 16.

Appellate briefs on the case are due to be filed in August, and a final disposition from the Third Circuit Court of Appeals may be expected this fall.

By Mary Anne Mason
Hogan & Hartson, Washington



Live Deals – Europe



Deal	Terms	Ann. Date	Est. Comp	Days to comp	Sett. Date	Target Country	Target Mkt Cap (m)	Net Sprd	Change	Ann. Return
24/7 Real Media. / WPP Group plc	1 RMI = USD11.75	17 May 2007	27 Jun 2007	6		USA	USD597m	0.43%	0.09%	22.29%
ABN AMRO / Barclays plc	1 ABN = 3.225 BAR	23 Apr 2007	31 Aug 2007	71		Netherlands	EUR65,521m	2.58%	0.99%	13.07%
ABN AMRO / Royal Bank of S.	1 ABN = 0.844 RBS + EUR30.40	29 May 2007	30 Nov 2007	162		Netherlands	EUR65,521m	10.22%	1.06%	22.88%
Actavis Group h. / Novator Partner.	1 ACT = EURO.98	01 Jun 2007	03 Jul 2007	12		Iceland	EUR3,578m	-7.72%	0.00%	-216.79%
Alliance Boots . / AB Acquisitions.	1 ABT = GBP11.39	20 Apr 2007	26 Jun 2007	5	10 Jul 2007	United Kingdom	GBP10,982m	0.35%	-0.18%	21.44%
Altinex ASA / Noreco	1 ALT = EUR2.74	21 Jun 2007	03 Aug 2007	43		Norway	EUR540m	0.37%	0.00%	3.11%
Aluminium de Gr. / Mytilineos Hold.	1 ADG = 0.3954 MTL	28 Mar 2007	30 Sep 2007	101		Greece	EUR621m	0.91%	-0.18%	3.27%
Arinso Internat. / Northgate Infor.	1 ARS = 5.00 NIS + EUR18.75	02 May 2007	27 Jul 2007	36		Belgium	EUR371m	-0.43%	-0.04%	-4.26%
Armor Holdings . / BAE SYSTEMS plc	1 ARM = USD88.00	07 May 2007	30 Sep 2007	101		USA	USD3,041m	2.86%	-0.06%	10.25%
ASM Brescia SpA / AEM SPA	1 ASM = 1.60 AEM	04 Jun 2007	31 Dec 2007	193		Italy	EUR3,655m	-1.82%	0.33%	-3.43%
Banca Popolare . / Banca Popolare .	1 BPE = 1.76 BPM	21 May 2007	31 Dec 2007	193		Italy	EUR4,846m	1.43%	0.30%	2.68%
Bank Austria Cr. / Unicredit Group	1 BAU = EUR129.40	26 Mar 2007	31 Aug 2007	71		Austria	EUR29,254m	-10.64%	0.00%	-53.92%
Bank BPH SA / UniCredito Ital.	1 BPH = 33.13 UNI	12 Jun 2005	31 Dec 2007	193		Poland	EUR6,669m	-1.50%	1.97%	-2.82%
Beni Stabili Sp. / Groupe Fonciere.	1 BSI = 0.01 GFR	19 Feb 2007	16 Jul 2007	25	23 Jul 2007	Italy	EUR1,919m	11.00%	2.33%	154.44%
BioVeris Corpor. / F. Hoffmann-La .	1 BVR = USD21.50	04 Apr 2007	29 Jun 2007	8		USA	USD584m	0.37%	0.05%	15.15%
Boehler-Uddehol. / Voestalpine AG	1 BUD = EUR73.00	29 Mar 2007	06 Sep 2007	77	20 Sep 2007	Austria	EUR3,724m	-0.01%	-0.01%	-0.06%
BPI (Banca Popo. / Banco Popolare .	1 BPI = 0.43 BPVN	16 Oct 2006	01 Jul 2007	10	05 Jul 2007	Italy	EUR7,840m	-18.45%	-0.37%	-612.32%
Bristol West Ho. / Zurich Financia.	1 BWH = USD22.50	02 Mar 2007	25 Jun 2007	4	27 Jun 2007	USA	USD3,206m	1.08%	0.14%	78.71%
Camaieu SA / Cinven Ltd	1 CAM = EUR262.00	23 Mar 2007	26 Jul 2007	35	05 Jul 2007	France	EUR1,703m	-6.76%	0.31%	-68.56%
Capitalia SpA (. / Unicredit Group	1 CAP = 1.12 UNI	20 May 2007	10 Oct 2007	111		Italy	EUR20,182m	0.83%	-0.36%	2.70%
Codan A/S / Royal & SunAlli.	1 CDN = EUR81.1754	24 May 2007	21 Jul 2007	30		Denmark	EUR3,673m	-0.07%	0.16%	-0.84%
Compass Bancsha. / Banco Bilbao Vi.	1 CMPS = 1.44 BNCO + USD36.2139	16 Feb 2007	31 Dec 2007	193		USA	USD8,951m	5.20%	1.08%	9.78%
Converium Holdi. / SCOR SA	1 CNV = 0.50 SCO + EUR3.3411	26 Feb 2007	09 Jul 2007	18	10 Aug 2007	Switzerland	EUR2,002m	2.35%	0.50%	45.19%
Datamonitor plc / Informa plc (fo.	1 DAT = GBP6.50	14 May 2007	13 Jul 2007	22	27 Jul 2007	United Kingdom	GBP508m	-1.22%	-0.38%	-19.29%
Eiffage SA / Sacyr Valleherm.	1 EIF = 2.40 SAC	19 Apr 2007	31 Jul 2007	40		France	EUR8,948m	-3.59%	0.27%	-31.92%
EMI Group plc / Maltby Limited	1 EMI = GBP2.65	21 May 2007	27 Jun 2007	6	11 Jul 2007	United Kingdom	GBP2,176m	-2.57%	0.53%	-134.19%
Endemol NV / Bidco for Endem.	1 ENL = EUR24.55	14 May 2007	31 Aug 2007	71		Netherlands	EUR3,033m	1.20%	-0.08%	6.06%
Endesa SA / Enel Energy Eur.	1 END = EUR41.30	11 Apr 2007	31 Aug 2007	71		Spain	EUR42,498m	2.89%	-0.05%	14.65%

Deal	Terms	Ann. Date	Est. Comp	Days to comp	Sett. Date	Target Country	Target Mkt Cap (m)	Net Sprd	Change	Ann. Return
First Choice Ho. / TUI AG (formerl.	1 FCH = GBP3.18	19 Mar 2007	14 Sep 2007	85		United Kingdom	GBP1,763m	-1.17%	2.47%	-4.95%
George Wimpey p. / Taylor Woodrow .	1 WMP = 1.3944 WDR	26 Mar 2007	03 Jul 2007	12	17 Jul 2007	United Kingdom	GBP2,247m	0.51%	-0.26%	14.23%
GFI Informatiqu. / Fujitsu Limited	1 GFI = EUR8.50	02 May 2007	29 Aug 2007	69	18 Sep 2007	France	EUR429m	-8.11%	0.69%	-42.89%
Grupo Agbar / Hisusa	1 AGB = EUR27.00	10 Apr 2007	31 Jul 2007	40		Spain	EUR4,034m	1.41%	0.19%	12.58%
Grupo Media Cap. / Promotora de In.	1 GMS = EUR8.29	26 Oct 2006	20 Jul 2007	29	26 Jul 2007	Portugal	EUR702m	-0.12%	0.00%	-1.47%
Hanson plc /	1 HAN = GBP11.00	15 May 2007	23 Aug 2007	63	06 Sep 2007	United Kingdom	GBP7,805m	2.04%	0.00%	11.64%
Hugo Boss AG / Permira	1 HBS = EUR47.59	01 Jun 2007	31 Aug 2007	71		Germany	EUR1,731m	-1.39%	0.06%	-7.04%
International S. / Deutsche Boerse.	1 ISE = USD67.50	30 Apr 2007	26 Oct 2007	127		USA	USD2,529m	3.61%	-0.17%	10.29%
Invik & Co. AB . / Milestone ehf	1 INV = EUR25.0187	26 Apr 2007	29 Jun 2007	8	06 Jul 2007	Sweden	EUR590m	2.00%	-0.05%	81.20%
Ipsco Inc. / SSAB	1 IPI = USD160.00	03 May 2007	31 Aug 2007	71		Canada	USD7,492m	0.84%	0.04%	4.25%
Irish Continent. / Adonia Aella Li.	1 ICG = EUR22.00	08 Mar 2007	15 Aug 2007	55		Ireland (Republic)	EUR541m	-4.35%	-4.35%	-28.34%
Irish Continent. / Moonduster Lmit.	1 ICG = EUR22.00	15 Jun 2007	14 Sep 2007	85		Ireland (Republic)	EUR541m	-4.35%	-4.35%	-18.45%
K&F Industries . / Meggitt Plc	1 KFI = USD27.00	06 Mar 2007	29 Jun 2007	8	04 Jul 2007	USA	USD1,069m	0.11%	-1.62%	4.51%
Kaufman & Broad. / PAI Partners (f.	1 KFB = EUR55.00	17 May 2007	30 Nov 2007	162		France	EUR1,291m	-5.09%	0.44%	-11.40%
Kemira GrowHow . / Yara Internatio.	1 KMR = EUR12.12	24 May 2007	07 Sep 2007	78	14 Sep 2007	Finland	EUR662m	1.34%	0.25%	15.26%
Kensington Grou. / Investec plc	1 KGN = 0.70 INV	30 May 2007	24 Aug 2007	64		United Kingdom	GBP253m	5.68%	-0.69%	31.88%
KeySpan Corp / National Grid p.	1 KEY = USD42.00	27 Feb 2006	30 Jun 2007	9	07 Jun 2007	USA	USD7,255m	0.94%	0.70%	34.21%
Laidlaw Interna. / FirstGroup plc	1 LWI = USD35.25	09 Feb 2007	31 Jul 2007	40	31 Jul 2007	USA	USD2,730m	2.50%	-0.15%	22.26%
LHS Telecom Gmb. / Ericsson AB	1 LHS = EUR22.50	05 Jun 2007	30 Sep 2007	101		Germany	EUR329m	-0.66%	0.26%	-2.37%
LionOre Mining . / Xstrata Plc (fo.	1 LOM = USD23.435	26 Mar 2007	28 Jun 2007	7	12 Jul 2007	Canada	USD5,574m	-8.11%	0.36%	-369.92%
LionOre Mining . / Norilsk Nickel .	1 LOM = USD25.7785	03 May 2007	18 Jun 2007	Completed	29 Jun 2007	Canada	USD5,573m	1.09%	0.33%	N/A
Metrovacesa SA / Sacresa	1 MVC = 0.585 GEC	02 Mar 2007	31 Dec 2007	193		Spain	EUR8,255m	-8.20%	-4.55%	-15.43%
MyTravel Group . / KarstadtQuelle .	1 MYT = GBP3.60	12 Feb 2007	19 Jun 2007	Completed	03 Jul 2007	United Kingdom	GBP1,388m	11.80%	0.00%	N/A
OMX AB / Nasdaq Stock Ma.	1 OMX = 0.502 NDAQ + EUR10.22	25 May 2007	31 Dec 2007	193		Sweden	EUR2,692m	-2.46%	1.61%	-4.64%
Puma AG Rudolf . / PPR SA (formerl.	1 PUM = EUR330.00	10 Apr 2007	11 Jul 2007	20	03 Jul 2007	Germany	EUR5,319m	-0.04%	0.11%	-0.63%
Reuters Group p. / The Thomson Cor.	1 RTR = 0.16 TMS + GBP3.525	15 May 2007	31 Jan 2008	224		United Kingdom	GBP7,865m	11.09%	0.64%	17.99%
Riofisa SA / Inmobiliaria Co.	1 RIO = EUR44.15	19 Jan 2007	31 Jul 2007	40		Spain	EUR1,972m	1.03%	0.00%	9.17%
Rodamco Europe . / Unibail Holding.	1 RMO = 0.5223 UBA	10 Apr 2007	20 Jun 2007	Completed	02 Jul 2007	Netherlands	EUR9,150m	0.55%	0.16%	N/A

Deal	Terms	Ann. Date	Est. Comp	Days to comp	Sett. Date	Target Country	Target Mkt Cap (m)	Net Sprd	Change	Ann. Return
Suez SA (former. / Gaz de France S.	1 SEZ = 1.00 GAZ	27 Feb 2006	31 Aug 2007	71		France	EUR52,305m	-12.59%	-0.04%	-63.80%
Telelogic AB / IBM Corporation.	1 TEL = EUR2.2514	11 Jun 2007	31 Aug 2007	71		Sweden	EUR559m	-0.45%	-0.26%	-2.29%
UraMin / AREVA SA	1 URA = USD7.75	15 Jun 2007	10 Aug 2007	50		South Africa	USD2,589m	-2.93%	0.58%	-20.99%
Valentino Fashi. / Permira	1 VFG = EUR35.00	01 Jun 2007	31 Aug 2007	71		Italy	EUR2,560m	1.30%	0.23%	6.60%
Wegener NV / Mecom Group plc	1 WGR = 14.287 MCM	08 May 2007	07 Sep 2007	78		Netherlands	EUR869m	0.76%	-0.62%	3.51%

Source: dealReporter, as of 20 June 2007

Live Deals – Asia



Deal	Terms	Ann. Date	Est. Comp	Days to comp	Sett. Date	Target Country	Target Mkt Cap (m)	Net Sprd	Change	Ann. Return
Alinta Ltd / Babcock & Brown.	1 ALN = 0.752 BBI + AUD14.5588	30 Mar 2007	24 Aug 2007	64		Australia	AUD7,604m	6.79%	0.05%	38.72%
AmlInvestment Ba. / AMMB Holdings B.	1 AMIP = USD1.0771	19 Jun 2007	31 Mar 2008	284		Malaysia	USD1,371m	3.69%	-11.93%	4.74%
Amtek Engineeri. / Metcomp Co (Sin.	1 AMT = USD0.7178	22 May 2007	20 Jul 2007	29	10 Aug 2007	Singapore	USD338m	0.25%	-1.10%	3.16%
Asia Satellite . / Modernday Limit.	1 AST = HKD16.00	14 Feb 2007	26 Jun 2007	5	06 Jul 2007	Hong Kong	HKD6,283m	1.27%	4.30%	57.75%
Auspine Ltd / Gunns Limited	1 ANE = AUD6.15	15 May 2007	31 Jul 2007	40		Australia	AUD335m	-3.30%	-0.31%	-30.13%
Bank of Oversea. / Citibank Overse.	1 BOC = USD0.3574	09 Apr 2007	28 Sep 2007	99		Taiwan	USD402m	6.27%	0.06%	23.13%
BMB Corp. / Usen Corporatio.	1 BMB = JPY600.00	11 Jun 2007	10 Jul 2007	19	17 Jul 2007	Japan	JPY42,783m	0.50%	0.17%	9.65%
Bolnisi Gold NL / Coeur d'Alene M.	1 BGN = 0.682 CDM + AUD0.004	03 May 2007	03 Sep 2007	74		Australia	AUD794m	7.73%	4.63%	38.15%
Calpis co Ltd / Ajinomoto Co., .	1 CLP = 0.95 ANM	11 Jun 2007	01 Oct 2007	102	30 Nov 2007	Japan	JPY104,423m	0.96%	-0.12%	3.42%
CanWest MediaWo. / HT Media Limite.	1 MWL = USD1.8349	08 May 2007	11 Jun 2007	Completed	16 Jul 2007	New Zealand	USD404m	3.51%	-2.74%	N/A
China Oriental . / Smart Triumph	1 COGC = HKD3.00	20 Jun 2007	22 Aug 2007	62		Hong Kong	HKD9,412m	-7.41%	-4.18%	-43.61%
Coles Group Lim. / Wesfarmers cons.	1 CGL = AUD16.47	04 Apr 2007	21 Aug 2007	61		Australia	AUD19,774m	-0.48%	1.36%	-2.89%
Consolidated Mi. / Pallinghurst Re.	1 CSM = 0.40 PLR + AUD1.28	23 Feb 2007	30 Jul 2007	39	10 Aug 2007	Australia	AUD614m	-52.62%	-0.89%	-492.47%
Diamond City Co. / AEON Mall Co., .	1 DIC = 0.80 AEM	20 Mar 2007	21 Aug 2007	61	30 Oct 2007	Japan	JPY239,301m	1.47%	0.00%	8.79%
Flight Centre L. / Pacific Equity .	1 FCN = AUD16.50	21 Jun 2007				Australia	AUD1,786m	-10.63%	-1.98%	
Fu Sheng Indust. / Oaktree Capital.	1 FSI = USD1.1357	09 May 2007	27 Jun 2007	6	04 Jul 2007	Taiwan	USD853m	10.81%	-0.74%	657.53%
Fujitsu Devices. / Fujitsu Limited	1 FDI = 2.70 FJT	24 May 2007	01 Aug 2007	41	30 Sep 2007	Japan	JPY59,841m	1.19%	0.42%	10.63%
GFI Informatiqu. / Fujitsu Limited	1 GFI = EUR8.50	02 May 2007	29 Aug 2007	69	18 Sep 2007	France	EUR429m	-8.11%	0.69%	-42.89%
Gloucester Coal. / Xstrata Coal Pt.	1 GCL = AUD4.75	10 Apr 2007	10 Jul 2007	19	24 Jul 2007	Australia	AUD376m	-0.21%	5.36%	-4.04%
Golden Hope Pla. / Synergy Drive S.	1 GHP = USD1.5965	27 Nov 2006	15 Nov 2007	147		Malaysia	USD3,531m	-35.25%	-0.92%	-87.53%
Highlands & Low. / Synergy Drive S.	1 HLD = USD1.462	27 Nov 2006	15 Nov 2007	147		Malaysia	USD1,402m	-36.98%	-0.12%	-91.81%
Indian Petroche. / Reliance Indust.	1 IPC = 0.20 RIL	10 Mar 2007	30 Jun 2007	9		India	INR104,855m	-0.59%	-0.27%	-24.07%
Investa Propert. / Morgan Stanley .	1 IPG = AUD3.00	31 May 2007	23 Aug 2007	63		Australia	AUD4,607m	2.33%	-0.34%	13.47%
Kumpulan Guthri. / Synergy Drive S.	1 GUT = USD1.249	27 Nov 2006	15 Nov 2007	147		Malaysia	USD1,947m	-34.65%	-0.53%	-86.04%
Li Shin Interna. / Lite-On Technol.	1 LSE = 0.4375 LOT	14 Nov 2006	30 Jul 2007	39		Taiwan	USD169m	-16.15%	-0.26%	-151.14%
Malaysian Oxyge. / The Linde Group.	1 MOX = USD4.423	17 Apr 2007	01 Jun 2007	Completed	22 Jun 2007	Malaysia	USD611m	0.19%	-0.64%	N/A
Matsuzakaya Hol. / The Daimaru, In.	1 MTZ = 0.7143 DMR	14 Mar 2007	03 Sep 2007	74	31 Oct 2007	Japan	JPY157,467m	1.01%	-0.23%	4.96%

Deal	Terms	Ann. Date	Est. Comp	Days to comp	Sett. Date	Target Country	Target Mkt Cap (m)	Net Sprd	Change	Ann. Return
Maxis Communica. / Usaha Tegas Sdn.	1 MAX = USD4.39	03 May 2007	08 Jun 2007	Completed	29 Jun 2007	Malaysia	USD11,185m	-0.64%	0.49%	N/A
Mitsubishi UFJ . / Mitsubishi UFJ .	1 MUS = 0.001 MUFG	28 Mar 2007	30 Sep 2007	101	23 Nov 2007	Japan	JPY1,028,049m	-1.13%	0.27%	-4.08%
MMI Holdings Li. / Precision Capit.	1 MMI = USD1.083	05 Apr 2007	06 Jul 2007	15	16 Jul 2007	Singapore	USD646m	2.07%	-0.82%	50.46%
Multiplex Group / Brookfield Asse.	1 MXG = AUD5.05	12 Jun 2007	31 Aug 2007	71		Australia	AUD4,221m	2.18%	0.20%	11.22%
Nichiro Corpora. / Maruha Group In.	1 NIC = 0.905 MAR	12 Apr 2007	01 Oct 2007	102	30 Nov 2007	Japan	JPY35,859m	0.88%	-1.04%	3.14%
Nippon Restaura. / Doutor Coffee C.	1 NRS = 1.687 DTR	26 Apr 2007	01 Oct 2007	102	30 Nov 2007	Japan	JPY61,500m	2.25%	-1.44%	8.05%
Nosan Corporati. / Mitsubishi Corp.	1 NNS = JPY380.00	18 May 2007	15 Jun 2007	Completed	22 Jun 2007	Japan	JPY46,810m	4.97%	-4.22%	N/A
PENTAX Corporat. / Hoya Corporatio.	1 PEN = JPY770.00	21 Dec 2006	30 Aug 2007	70		Japan	JPY97,944m	0.39%	0.52%	2.04%
Primax Electron. / Hong Chuan Inve.	1 PRX = USD0.5432	20 Jun 2007	08 Aug 2007	48		Taiwan	USD245m	1.88%	-0.62%	14.26%
PT Perusahaan P. / Indofood Agri R.	1 LSIP = USD0.7399	26 May 2007	30 Nov 2007	162		Indonesia	USD809m	0.11%	-1.15%	0.24%
RHB Capital Ber. / Employees Provi.	1 RHBC = USD1.404	06 Mar 2007	06 Jul 2007	15	27 Jul 2007	Malaysia	USD2,543m	0.66%	-1.68%	16.05%
Rinker Group Li. / Cemex SA de CV	1 RNK = USD15.85	27 Oct 2006	10 Jun 2007	Completed	13 Jul 2007	Australia	USD14,035m	1.08%	-0.20%	N/A
Sembawang Kimtr. / Toll Express (A.	1 SEK = USD0.5182	13 Jun 2007	02 Sep 2007	73		Singapore	USD198m	5.54%	-1.60%	27.69%
Sesa Goa / Vedanta Resourc.	1 SESA = INR2036.00	24 Apr 2007	20 Jul 2007	29		India	INR68,901m	16.31%	-0.68%	205.32%
Sime Darby Berh. / Synergy Drive S.	1 SIM = USD1.89	27 Nov 2006	15 Nov 2007	147		Malaysia	USD7,183m	-34.90%	-0.86%	-86.67%
Smorgon Steel G. / OneSteel Limite.	1 SSG = 0.4091 OST + AUD0.062	26 Jun 2006	15 Aug 2007	55		Australia	AUD2,540m	0.48%	0.25%	3.16%
Sumitomo Wiring. / Sumitomo Electr.	1 SWS = 1.57 SEI	11 May 2007	01 Aug 2007	41		Japan	JPY115,261m	0.54%	-0.08%	4.85%
Symbion Health . / Healthscope Lim.	1 SYB = 0.4556 HSP + AUD1.9046	29 May 2007	27 Aug 2007	67		Australia	AUD2,692m	5.14%	1.48%	28.02%
Techtronic Indu. / Cordless Indust.	1 TTI = HKD3.60	15 May 2007	03 Jul 2007	12	13 Jul 2007	Hong Kong	HKD15,803m	-65.91%	0.45%	-2004.74%
TOC Co Ltd / K. K. DaVinci A.	1 TOC = JPY1100.00	25 Apr 2007	18 Jul 2007	27	02 Aug 2007	Japan	JPY161,380m	-6.70%	-2.44%	-90.58%
Toho Tenax Co., / Teijin Ltd.	1 TTX = 1.15 TJN	28 May 2007	01 Sep 2007	72	31 Oct 2007	Japan	JPY120,092m	0.31%	-0.43%	1.55%
Tohoku Pioneer . / Pioneer Corpora.	1 TPI = JPY2210.00	14 May 2007	19 Jun 2007	Completed	26 Jun 2007	Japan	JPY42,598m	4.00%	-0.25%	N/A
Tourism Holding. / MFS Living and .	1 THL = USD2.045	30 Apr 2007	21 Jul 2007	30	28 Jul 2007	New Zealand	USD203m	-1.15%	0.12%	-14.00%
Veda Advantage . / VA Australia Fi.	1 VEDA = AUD3.61	02 Apr 2007	30 Jun 2007	9	09 Jul 2007	Australia	AUD811m	0.28%	0.00%	11.27%
Want Want Holdi. / Want Want Inter.	1 WWH = USD2.35	29 May 2007	31 Aug 2007	71		Singapore	USD2,977m	1.73%	-0.44%	8.90%
Winsor Properti. / USI Holdings Li.	1 WSP = 2.825 USI	11 Apr 2007	29 Jun 2007	8	30 Jul 2007	Hong Kong	HKD3,895m	6.41%	2.00%	292.40%
Zhejiang Supor . / SEB Internation.	1 ZJSC = CNY18.00	16 Aug 2006	31 Aug 2007	71		China	CNY6,750m	-53.06%	0.78%	-272.79%

Source: dealReporter, as of 20 June 2007

Live Deals – America



Deal	Terms	Ann. Date	Est. Comp	Days to comp	Sett. Date	Target Country	Target Mkt Cap (m)	Net Sprd	Change	Ann. Return
1-800 CONTACTS. / Fenway Partners.	1 1800 = USD24.25	04 Jun 2007	04 Sep 2007	75		USA	USD333m	2.06%	0.09%	9.90%
21st Century In. / American Intern.	1 TCI = USD22.00	15 May 2007	30 Aug 2007	70		USA	USD1,916m	0.96%	0.00%	4.95%
24/7 Real Media. / WPP Group plc	1 RMI = USD11.75	17 May 2007	27 Jun 2007	6		USA	USD597m	0.43%	0.09%	22.29%
Abitibi-Consoli. / Bowater Inc.	1 ABI = 0.1204 BO	29 Jan 2007	30 Sep 2007	101		Canada	USD1,285m	5.76%	0.84%	20.63%
Acxiom Corporat. / Acxiom Acquisit.	1 AXC = USD27.10	16 May 2007	31 Aug 2007	71		USA	USD2,122m	0.04%	-0.11%	0.19%
Aeroflex Incorp. / Veritas Capital	1 AFI = USD14.50	25 May 2007	25 Aug 2007	65		USA	USD1,050m	2.91%	0.00%	16.09%
AG Edwards Inc / Wachovia Corpor.	1 AG = 0.9844 WACH + USD35.80	31 May 2007	31 Dec 2007	193		USA	USD6,582m	1.86%	-0.32%	3.50%
Alcan Inc / Alcoa Inc	1 ALC = 0.4108 ALA + USD58.60	07 May 2007	31 Dec 2007	193		Canada	USD30,534m	-9.59%	0.65%	-18.03%
Alliance Atlant. / CanWest Global .	1 AAC = USD49.6822	10 Jan 2007	30 Jul 2007	39		Canada	USD1,963m	1.62%	0.47%	14.77%
Alliance Data S. / Blackstone Capi.	1 ADSC = USD81.75	17 May 2007	31 Dec 2007	193		USA	USD6,115m	5.21%	0.20%	9.81%
Alltel Corporat. / Alltel Acquisit.	1 ALL = USD71.50	20 May 2007	31 Jan 2008	224		USA	USD23,389m	5.61%	0.25%	9.11%
aQuantive Inc / Microsoft Corpo.	1 AQT = USD66.50	18 May 2007	31 Dec 2007	193		USA	USD4,944m	5.32%	0.86%	10.01%
Aquila Inc (for. / Great Plains En.	1 AQI = 0.0856 GPE + USD1.80	07 Feb 2007	07 Feb 2008	231		USA	USD1,539m	4.55%	1.73%	7.16%
Archstone-Smith. / Archstone-Smith.	1 ARCH = USD60.75	29 May 2007	30 Sep 2007	101		USA	USD13,073m	2.41%	0.41%	8.63%
Armor Holdings . / BAE SYSTEMS plc	1 ARM = USD88.00	07 May 2007	30 Sep 2007	101		USA	USD3,041m	2.86%	-0.06%	10.25%
Avaya Inc / Sierra Merger C.	1 AVA = USD17.50	04 Jun 2007	30 Nov 2007	162		USA	USD7,652m	2.88%	0.48%	6.45%
Bausch & Lomb / Warburg Pincus .	1 BL = USD65.00	16 May 2007	30 Sep 2007	101		USA	USD3,735m	-5.37%	1.16%	-19.22%
Biomet Inc / LVB Acquisition.	1 BMT = USD46.00	18 Dec 2006	31 Oct 2007	132		USA	USD11,124m	1.28%	0.27%	3.50%
Biosite, Inc. / Inverness Medic.	1 BIOS = USD92.50	17 May 2007	17 Jul 2007	26		USA	USD1,475m	0.17%	0.02%	2.34%
BioVeris Corpor. / F. Hoffmann-La .	1 BVR = USD21.50	04 Apr 2007	29 Jun 2007	8		USA	USD584m	0.37%	0.05%	15.15%
Bolnisi Gold NL / Coeur d'Alene M.	1 BGN = 0.682 CDM + AUD0.004	03 May 2007	03 Sep 2007	74		Australia	AUD794m	7.73%	4.63%	38.15%
Bristol West Ho. / Zurich Financia.	1 BWH = USD22.50	02 Mar 2007	25 Jun 2007	4	27 Jun 2007	USA	USD3,206m	1.08%	0.14%	78.71%
Cablevision Sys. / Charles Dolan f.	1 CBL = USD36.26	02 May 2007	02 Oct 2007	103		USA	USD10,509m	0.78%	-0.85%	2.73%
Cascade Natural. / MDU Resources G.	1 CNG = USD26.50	08 Jul 2006	30 Jun 2007	9		USA	USD301m	0.34%	0.11%	12.44%
Catalina Market. / Hellman & Fried.	1 CMC = USD32.50	17 Apr 2007	30 Sep 2007	101		USA	USD1,481m	2.07%	0.13%	7.42%
CDW Corporation / Madison Dearbor.	1 CDW = USD87.75	29 May 2007	29 Sep 2007	100		USA	USD6,731m	3.21%	-0.01%	11.60%
Ceridian Corp. / Ceridian Consor.	1 CEN = USD36.00	30 May 2007	31 Dec 2007	193		USA	USD5,098m	1.27%	0.14%	2.38%

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Chicago Board o. / Chicago Mercant.	1 CBTH = 0.35 CMEI + USD9.14	17 Oct 2006	30 Jun 2007	9		USA	USD11,068m	-4.76%	-0.66%	-173.64%
Clear Channel C. / Clear Channel A.	1 CLEAR = USD39.00	16 Nov 2006	31 Dec 2007	193		USA	USD19,240m	2.50%	0.11%	4.71%
Coinmach Servic. / Babcock & Brown	1 DRY = USD13.55	15 Jun 2007	30 Sep 2007	101		USA	USD710m	1.97%	-0.46%	7.06%
Color Kinetics . / Koninklijke Phi.	1 CKI = USD34.00	19 Jun 2007	30 Sep 2007	101		USA	USD715m	1.43%	0.39%	5.12%
Community Banks. / Susquehanna Ban.	1 COMB = 0.148 SUS + USD30.60	01 May 2007	30 Nov 2007	162		USA	USD784m	2.11%	1.30%	4.72%
Compass Bancsha. / Banco Bilbao Vi.	1 CMPS = 1.44 BNCO + USD36.2139	16 Feb 2007	31 Dec 2007	193		USA	USD8,951m	5.20%	1.08%	9.78%
Covansys Corpor. / Computer Scienc.	1 COV = USD34.00	25 Apr 2007	15 Jul 2007	24		USA	USD1,237m	0.32%	0.00%	4.74%
Crescent Real E. / Morgan Stanley .	1 CRE = USD22.80	22 May 2007	30 Sep 2007	101		USA	USD2,293m	2.24%	0.00%	8.02%
CT Communicatio. / Windstream Corp.	1 CTC = USD31.50	29 May 2007	31 Dec 2007	193		USA	USD617m	3.04%	0.27%	5.72%
Cytyc Corporati. / Hologic Inc	1 CYTY = 0.52 HOLO + USD16.50	20 May 2007	20 Aug 2007	60		USA	USD4,838m	7.79%	-0.23%	46.61%
Digene Corporat. / QIAGEN N.V.	1 DGE = 1.5563 QGE + USD33.69	03 Jun 2007	01 Sep 2007	72		USA	USD1,420m	5.24%	0.45%	26.22%
Dollar General . / Kohlberg Kravis.	1 DGC = USD22.00	12 Mar 2007	30 Sep 2007	101		USA	USD6,790m	1.10%	0.14%	3.95%
Eagle Global Lo. / CEVA Group Plc .	1 EGL = USD47.50	24 May 2007	30 Sep 2007	101		USA	USD1,895m	2.30%	0.37%	8.25%
Energy Metals C. / SXR Uranium One.	1 EME = 1.15 SXU	04 Jun 2007	01 Aug 2007	41		Canada	USD1,280m	1.52%	0.53%	13.24%
First Data Corp. / Kohlberg Kravis.	1 FRC = USD34.00	02 Apr 2007	30 Sep 2007	101		USA	USD24,563m	4.23%	0.35%	15.14%
First Republic . / Merrill Lynch	1 FRP = 0.3136 MLC + USD27.50	29 Jan 2007	30 Sep 2007	101		USA	USD1,672m	2.26%	-1.11%	8.09%
Florida East Co. / Fortress Invest.	1 FECI = USD84.00	08 May 2007	30 Sep 2007	101		USA	USD2,967m	1.13%	0.61%	4.05%
Florida Rock In. / Vulcan Material.	1 FRI = 0.189 VMY + USD46.90	19 Feb 2007	30 Jun 2007	9		USA	USD4,470m	1.59%	0.05%	57.89%
Genesco Inc / The Finish Line.	1 GEN = USD54.50	18 Jun 2007	18 Oct 2007	119		USA	USD1,209m	2.54%	0.13%	7.73%
Genesis HealthC. / Formation Capit.	1 GEN = USD69.35	16 Jan 2007	31 Jul 2007	40		USA	USD1,355m	1.20%	0.16%	10.65%
Greater Bay Ban. / Wells Fargo & C.	1 GBAY = 0.7988 WFA	04 May 2007	31 Dec 2007	193		USA	USD1,420m	3.06%	-2.12%	5.76%
Harman Internat. / Harman Consorti.	1 HII = USD120.00	26 Apr 2007	30 Aug 2007	70		USA	USD7,702m	2.06%	0.37%	10.58%
Harrah's Entert. / Hamlet Holdings.	1 HAR = USD90.00	19 Dec 2006	31 Dec 2007	193		USA	USD15,873m	5.51%	0.07%	10.37%

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Highland Hospit. / JER Partners	1 HHC = USD19.50	24 Apr 2007	13 Jul 2007	22		USA	USD1,180m	1.51%	0.37%	23.96%
Horizon Offshor. / Cal Dive Intern.	1 HORF = 0.625 CDI + USD9.25	12 Jun 2007	30 Sep 2007	101		USA	USD638m	2.03%	0.66%	7.27%
Infrasource Ser. / Quanta Services.	1 INFRA = 1.223 QUAN	19 Mar 2007	30 Sep 2007	101		USA	USD1,487m	0.96%	0.12%	3.42%
Innkeepers USA. / Apollo Investme.	1 INN = USD17.75	16 Apr 2007	30 Jun 2007	9		USA	USD797m	0.62%	0.00%	22.76%
International S. / Deutsche Boerse.	1 ISE = USD67.50	30 Apr 2007	26 Oct 2007	127		USA	USD2,529m	3.61%	-0.17%	10.29%
Interpool Inc / Fortress Invest.	1 IPOL = USD27.10	20 Apr 2007	20 Aug 2007	60		USA	USD800m	-0.26%	0.11%	-1.54%
Inter-Tel, Inco. / Mitel Networks .	1 INT = USD25.60	26 Apr 2007	07 Jul 2007	16		USA	USD693m	0.31%	-0.28%	6.73%
Investors Finan. / State Street Co.	1 IFS = 0.906 SSC	05 Feb 2007	30 Jun 2007	9		USA	USD4,134m	0.32%	-0.25%	11.61%
Ipsco Inc. / SSAB	1 IPI = USD160.00	03 May 2007	31 Aug 2007	71		Canada	USD7,492m	0.84%	0.04%	4.25%
James River Gro. / D E Shaw & Co	1 JRIV = USD34.50	11 Jun 2007	30 Nov 2007	162		USA	USD515m	1.47%	0.06%	3.29%
K&F Industries. / Meggitt Plc	1 KFI = USD27.00	06 Mar 2007	29 Jun 2007	8	04 Jul 2007	USA	USD1,069m	0.11%	-1.62%	4.51%
K2 Inc / Jarden Corporat.	1 K2 = 0.1086 JAR + USD10.85	25 Apr 2007	15 Jul 2007	24		USA	USD760m	1.54%	-0.50%	22.51%
KeySpan Corp / National Grid p.	1 KEY = USD42.00	27 Feb 2006	30 Jun 2007	9	07 Jun 2007	USA	USD7,255m	0.94%	0.70%	34.21%
Laidlaw Interna. / FirstGroup plc	1 LWI = USD35.25	09 Feb 2007	31 Jul 2007	40	31 Jul 2007	USA	USD2,730m	2.50%	-0.15%	22.26%
Laureate Educat. / Laureate Educat.	1 LAU = USD62.00	29 Jan 2007	30 Jun 2007	9		USA	USD3,192m	0.76%	-0.28%	27.88%
Lear Corporatio. / American Real E.	1 LC = USD36.00	09 Feb 2007	30 Jun 2007	9		USA	USD2,792m	-1.61%	-1.20%	-58.86%
LionOre Mining. / Xstrata Plc (fo.	1 LOM = USD23.435	26 Mar 2007	28 Jun 2007	7	12 Jul 2007	Canada	USD5,574m	-8.11%	0.36%	-369.92%
LionOre Mining. / Norilsk Nickel .	1 LOM = USD25.7785	03 May 2007	18 Jun 2007	Completed	29 Jun 2007	Canada	USD5,573m	1.09%	0.33%	N/A
MAF Bancorp, In. / National City C.	1 MAF = 1.5582 NCI	01 May 2007	31 Dec 2007	193		USA	USD1,782m	-2.21%	-0.62%	-4.15%
Mellon Financia. / The Bank of New.	1 MFC = 1.06 BoNY	04 Dec 2006	01 Jul 2007	10		USA	USD17,974m	0.02%	0.15%	0.82%
Myers Industrie. / GS Capital Part.	1 MYRS = USD22.50	24 Apr 2007	24 Aug 2007	64		USA	USD781m	1.12%	0.00%	6.31%
NorthWestern Co. / Babcock & Brown.	1 NWC = USD37.00	25 Apr 2006	25 Jun 2007	4		USA	USD1,098m	19.90%	0.93%	1452.43%
Nuveen Investme. / Nuveen Consorti.	1 NII = USD65.00	20 Jun 2007	31 Dec 2007	193		USA	USD5,016m	2.95%	-17.07%	5.54%
Oakley, Inc / Luxottica Group.	1 OAK = USD29.30	20 Jun 2007	20 Nov 2007	152		USA	USD1,747m	16.13%	0.00%	38.74%
Ohio Casualty C. / Liberty Mutual .	1 OCC = USD44.00	07 May 2007	30 Sep 2007	101		USA	USD2,596m	1.55%	0.00%	5.53%
Palmarejo Silve. / Coeur d'Alene M.	1 PSG = 2.715 CDM + USD0.003	03 May 2007	03 Sep 2007	74		Canada	USD833m	9.52%	0.35%	46.35%
Pathmark Stores. / The Great Atlan.	1 PSI = 0.1296 GAT + USD9.00	05 Mar 2007	05 Aug 2007	45		USA	USD675m	3.93%	0.11%	31.14%

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Penn National G. / Penn National A.	1 PNG = USD67.00	15 Jun 2007	15 Aug 2008	421		USA	USD5,378m	6.60%	0.74%	5.71%
PHH Corporation. / GE Capital (Gen.	1 PHC = USD31.50	15 Mar 2007	07 Sep 2007	78		USA	USD1,664m	1.29%	0.03%	5.94%
Radian Group In. / MGIC Investment.	1 RADN = 0.9658 MGIC	06 Feb 2007	30 Sep 2007	101		USA	USD4,569m	1.81%	0.53%	6.47%
Reuters Group p. / The Thomson Cor.	1 RTR = 0.16 TMS + GBP3.525	15 May 2007	31 Jan 2008	224		United Kingdom	GBP7,865m	11.09%	0.64%	17.99%
Rinker Group Li. / Cemex SA de CV	1 RNK = USD15.85	27 Oct 2006	10 Jun 2007	Completed	13 Jul 2007	Australia	USD14,035m	1.08%	-0.20%	N/A
Rio Narcea Gold. / Lundin Mining C.	1 RNM = USD4.6715	04 Apr 2007	30 Jun 2007	9		Canada	USD851m	-9.29%	1.17%	-339.19%
Sierra Health S. / UnitedHealth Gr.	1 SHS = USD43.50	12 Mar 2007	31 Dec 2007	193		USA	USD2,323m	4.82%	-0.05%	9.07%
Sky Financial G. / Huntington Banc.	1 SKY = 1.098 HUNT + USD3.023	20 Dec 2006	19 Oct 2007	120		USA	USD2,979m	0.13%	-0.17%	0.39%
SLM Corporation. / SLM Acquisition.	1 SLMC = USD60.00	16 Apr 2007	30 Nov 2007	162		USA	USD23,712m	4.00%	0.05%	8.97%
Sobeys Inc / Empire Company	1 SOB = USD54.32	26 Apr 2007	30 Sep 2007	101		Canada	USD3,560m	-0.01%	0.33%	-0.05%
Soletron Corpo. / Flextronics Int.	1 SLCT = USD3.89	04 Jun 2007	04 Oct 2007	105		USA	USD3,410m	3.73%	1.63%	12.86%
Spirit Finance. / Redford Merger	1 SFI = USD14.50	13 Mar 2007	13 Aug 2007	53		USA	USD1,565m	0.00%	0.68%	0.00%
Station Casinos. / Fertitta Colony.	1 STA = USD90.00	26 Feb 2007	26 Sep 2007	97		USA	USD5,010m	2.76%	0.20%	10.29%
Tanox, Inc. / Genentech Inc	1 TAN = USD20.00	09 Nov 2006	30 Sep 2007	101		USA	USD843m	7.35%	0.86%	26.31%
Tenke Mining Co. / Lundin Mining C.	1 TKE = 1.73 LDM	11 Apr 2007	03 Jul 2007	12		Canada	USD1,257m	-2.92%	-0.67%	-82.02%
The BISYS Group. / Citigroup Inc	1 BIS = USD12.00	02 May 2007	30 Dec 2007	192		USA	USD1,426m	2.04%	0.26%	3.86%
The ServiceMast. / Servicemaster C.	1 TSM = USD15.625	19 Mar 2007	30 Jun 2007	9		USA	USD4,518m	0.87%	0.07%	31.81%
The Stride Rite. / Payless Shoesou.	1 SRC = USD20.50	22 May 2007	30 Sep 2007	101		USA	USD738m	1.43%	0.05%	5.13%
The Topps Compa. / Topps Acquisiti.	1 TOP = USD9.75	06 Mar 2007	30 Jul 2007	39		USA	USD405m	-6.70%	-1.18%	-61.12%
TierOne Corpora. / Capital Source	1 TIER = 1.08 CSF + USD6.80	17 May 2007	17 Nov 2007	149		USA	USD561m	9.84%	-0.33%	23.94%
TODCO / Hercules Offsho.	1 TDCO = 0.979 HERC + USD16.00	19 Mar 2007	19 Jul 2007	28		USA	USD2,865m	1.04%	0.06%	13.12%
Triad Hospitals. / Community Healt.	1 TRH = USD54.00	19 Mar 2007	15 Jul 2007	24		USA	USD4,735m	0.77%	0.06%	11.17%
Tribune Company / Tribune Acquisi.	1 TRBC = USD34.00	02 Apr 2007	31 Dec 2007	193		USA	USD7,157m	13.48%	1.31%	25.37%
TXU Corp / TXU Acquisition.	1 TX = USD69.25	26 Feb 2007	31 Dec 2007	193		USA	USD30,826m	3.17%	0.18%	5.97%
Universal Compr. / Hanover Compres.	1 UCH = 3.0769 HCC	05 Feb 2007	30 Sep 2007	101		USA	USD2,303m	1.49%	-0.13%	5.33%

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Viasys Healthca. / Cardinal Health.	1 VIAS = USD42.75	14 May 2007	15 Jul 2007	24		USA	USD1,421m	0.09%	0.07%	1.37%
Washington Grou. / URS Corporation	1 WGI = 0.772 URC + USD43.80	28 May 2007	31 Dec 2007	193		USA	USD2,359m	1.25%	0.21%	2.35%
Wild Oats Marke. / Whole Foods Mar.	1 WILD = USD18.50	21 Feb 2007	10 Aug 2007	50		USA	USD500m	10.45%	1.82%	74.77%
XM Satellite Ra. / Sirius Satellit.	1 XMR = 4.60 SSR	19 Feb 2007	19 Feb 2008	243		USA	USD2,863m	22.98%	1.58%	34.38%

Source: dealReporter, as of 20 June 2007

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