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Antitrust & Competition Insight

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Part of The Mergermarket Group

www.mergermarket.com

80 Strand
London, WC2R 0RL
United Kingdom

t: +44 (0)20 7059 6100
f: +44 (0)20 7059 6101
sales@mergermarket.com

895 Broadway #4
New York
NY 10003, USA

t: +1 212 686-5606
f: +1 212 686-2664
sales.us@mergermarket.com

Suite 2001
Grand Millennium Plaza
181 Queen's Road, Central
Hong Kong

t: +852 2158 9700
f: +852 2158 9701
sales.asia@mergermarket.com

Foreword

Welcome to the tenth 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. 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 in North America, Europe, Asia and Emerging Europe, Middle East and Africa (EEMEA).

In the first article Joseph Krauss discusses his role as divestiture trustee in Mittal Steel's disposal of Sparrows Point, a US steel making facility in Maryland. On page 6, Thomas Leary discusses the effect the Rambus case could have on antitrust standards for standard-setting organizations. The usual mergermarket round-ups of the most significant antitrust situations across the globe can be found on page 10.

Also in this edition of the newsletter Ben Bschor, dealReporter's regulatory correspondent, looks at the antitrust implications surrounding the Corporate Express/Staples deal; this can be found on page 13. In the final article on page 16, Michel Debroux discusses group liability in EU antitrust rules and analyses whether parent companies should always pay for their children's infringements in cartel cases.

We hope you find this latest edition of interest. Please email Katie Hart at khart@hhlaw.com with any feedback you might have.

Philip C. Larson
Practice Group Director & Chairman
Washington D.C.

Catriona Hatton
Practice Group Director
Brussels

John Pheasant
Practice Group Director
London/Brussels

Sharis Arnold Pozen
Practice Group Director
Washington D.C.

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Divestiture trustees: an unusual result that parties should work hard to avoid

Joseph Krauss writes about his experiences over nine months as divestiture trustee in US v Mittal Steel.

I have just completed my service as the divestiture trustee in *U.S. v. Mittal Steel Co. N.V.,* No. 06-01360 (D.D.C. 2007) one of the most interesting projects on which I have worked in my 24 years as an antitrust lawyer. In my 11 years at the Federal Trade Commission, I was involved in over twenty matters in which the parties entered into a consent decree that required a divestiture. Almost all of these decrees included a provision for the appointment of a trustee if the parties were not able to complete the divestiture within a certain period of time. In none of these cases, however, did the parties fail to divest the assets in question prior to the deadline. As a result, while I had ample experience negotiating the terms of the trusteeship, I was never able to observe the consequences of these terms. In fact, because the trustee provisions in consent decrees so rarely become operative, I suspect that neither the enforcement agencies nor the parties spend as much time thinking about and negotiating these terms as they should. Having now lived through a hectic nine month stint as a divestiture trustee, and seeing first hand how much the language of the trustee provisions mattered, I will never overlook this section again. And you should not either.

The Merger of Mittal and Arcelor and the Events Leading Up to My Appointment

On January 27, 2006, Mittal Steel Company N.V. ("Mittal"), one of the world's largest steel producers, announced its intention to launch a hostile tender offer to acquire Arcelor S.A. ("Arcelor"), another of the world's largest steel producers, for approximately $23 billion in cash and securities.[1] Mittal Steel simultaneously announced an agreement to sell Arcelor's Canadian subsidiary Dofasco Inc. ("Dofasco") for approximately $5 billion to ThyssenKrupp AG ("ThyssenKrupp").[2] Arcelor initially resisted the hostile takeover, but after Mittal increased its tender offer to approximately $33 billion in May 2006, the Arcelor Board agreed to recommend Mittal Steel's offer to Arcelor's shareholders.[3]

On August 1, 2006, the United States, represented by the Antitrust Division of the Department of Justice ("DOJ"), filed a complaint in Federal District Court seeking to permanently enjoin the acquisition.[4] Simultaneously, DOJ filed a Proposed Final Judgment ("PFJ"), which represented a settlement between the parties.[5] Upon the conclusion of the procedures specified by the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (the "APPA"), the Final Judgment proposed by DOJ ("FJ") was entered by the court on May 23, 2007.[6] DOJ's concern about the acquisition related to its impact on the market for tin mill products in the eastern United States.[7] According to DOJ, the market for tin mill products in the eastern United States was already highly concentrated with two firms, one of which was Mittal, accounting for 74% of all sales.[8] It concluded that the acquisition of Arcelor and Dofasco, which collectively accounted for an additional 6% of sales, would "likely [ ] facilitate anticompetitive coordination among the two major Tin Mill Products manufacturers."[9] DOJ, however, also concluded that the divestiture of Dofasco to ThyssenKrupp would resolve these concerns and therefore agreed to allow the acquisition provided that this divestiture was completed.[10]

Unfortunately for the parties, during the period when the acquisition was hostile, in an attempt to make the acquisition more difficult, Arcelor's Board transferred legal title to the shares of Dofasco to an independent Dutch foundation known as a "stichting."[11] The effect of such a transfer was to render it extremely difficult and time-consuming under Dutch law for a third-party to take title to the Dofasco shares. As a result, the FJ included a contingency requiring Mittal, if it were unable to divest Dofasco, to instead divest one of two integrated steel plants in the eastern United States that included a tin mill.[12] These two facilities were located in Weirton, West Virginia and Sparrows Point, Maryland.

[1] Complaint at 3-4, U.S. v. Mittal Steel Co. N.V., No. 06-01360 (D.D.C. Aug. 1, 2006)
[2] *Id.* at 4.
[3] *Id.* at 5.
[4] *See* Complaint.
[5] Proposed Final Judgment, *U.S. v. Mittal Steel Co. N.V.*, No. 06-01360 (D.D.C. Aug. 1, 2006)
[6] Final Judgment, *U.S. v. Mittal Steel Co. N.V.*, No. 06-01360 (D.D.C. May 23, 2007)
[7] Competitive Impact Statement at 8-10, *U.S. v. Mittal Steel Co. N.V.*, No. 06-01360 (D.D.C. Aug. 1, 2006) ("CIS").
[8] *Id.*. at 8.
[9] *Id.* at 9.
[10] *Id.* at 10-11.
[11] *See* Complaint at 4-5.
[12] *See* Final Judgment at 11.

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As it turned out, these provisions of the FJ became relevant. In November 2006, the stichting blocked the sale of Dofasco to ThyssenKrupp and ThyssenKrupp's efforts to compel the sale of Dofasco were rejected by a European court in January 2007.[13] As a result, on February 16, 2007, DOJ, having determined that a divestiture of Dofasco in the time permitted by the FJ was impossible, designated Mittal's facility in Sparrows Point, Maryland ("Sparrows Point") as the alternative asset to be divested by Mittal.[14]

At this point, Mittal was required to divest Sparrows Point within a 90-day period, which could be extended by DOJ for up to 60 days.[15] If Mittal failed to accomplish such a divestiture during this period, the FJ provided that DOJ could appoint a Trustee to do so.[16] After expiration of the initial 90-day divestiture period, DOJ granted three separate extensions totaling 60 days and the Court granted an additional 15-day extension to August 6, 2007.[17]

On August 1, 2007, Mittal, by then known as ArcelorMittal ("AM"), entered into an agreement to sell Sparrows Point for $1.35 billion to a joint venture that ultimately became known as "E2".[18] Because the transaction could not close immediately, and because the agreement was subject to certain conditions and regulatory approvals, DOJ exercised its right under the FJ to appoint a trustee.[19] I was appointed on August 8, 2007.

The Trusteeship

Initially, because AM and E2 had already reached an agreement, my duties were basically limited to monitoring and reporting on the parties' progress toward achieving the necessary regulatory approvals and meeting their respective closing conditions. For reasons that are currently in dispute[20], however, the sale to E2 was never consummated and on December 16, 2007, the agreement between E2 and AM was terminated.

Suddenly, I found myself at the center of a major transaction, but the FJ set forth only the most basic guidelines as to how I was to accomplish the task, including:

- "[O]nly the trustee shall have the right to sell [Sparrows Point]."[21]
- "The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to [DOJ] at such price and on such terms as are then obtainable upon reasonable effort by the trustee . . . ."[22]
- "[T]he trustee may hire at the cost and expense of defendant any investment bankers, attorneys , or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture."[23]
- "[T]he divestiture . . . shall include the entire business and assets of [Sparrows Point], and shall be accomplished in such a way as to satisfy [DOJ], in its sole discretion that [Sparrows Point] can and will be used by the Acquirer as a viable, ongoing business engaged in producing Tin Mill Products."[24]
- "The compensation of the trustee . . . shall be reasonable in light of the value of [Sparrows Point] and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount."[25]
- "Defendant shall not object to a sale by the trustee on any ground other than the trustee's malfeasance."[26]

[13] *See* Memorandum of Points and Authorities in Support of Motion of the United States to Appoint Trustee, *U.S. v. Mittal Steel Co. N.V.*, No. 06-01360 (D.D.C. Aug. 6, 2007).

[14] *See* Motion and Memorandum of Plaintiff United States in Support of Entry of Final Judgment, *U.S. v. Mittal Steel Co. N.V.*, No. 06-01360 (D.D.C. Apr. 20, 2007).

[15] *See* Final Judgment at 11.

[16] *Id.* at 14.

[17] *See* Memorandum of Points and Authorities in Support of Motion of the United States to Appoint Trustee at 3.

[18] *Id.*

[19] *Id.* at 4.

[20] *ArcelorMittal USA, Inc. v. Esmark, Inc.*, No. 08-601403 (N.Y. 2008)

[21] *See* Final Judgment at 14.

[22] *Id.*

[23] *Id.*

[24] *Id.* at 13.

[25] *Id.* at 15.

[26] *Id.*

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So, essentially, I had significant discretion as to how to sell Sparrows Point so long as I sold it to an entity capable of operating it as an ongoing business. I was charged with simultaneously obtaining the best possible price and terms for Mittal and carrying out the DOJ's goal of effectuating the divestiture as soon as possible. As to how to balance these two goals, I had no guidance other than the "timeliness is paramount" language, which was oddly in reference to how the trustee compensation incentives were to be structured.

Ultimately, I was able to accomplish the divestiture as contemplated in the FJ. On March 20, 2008, Severstal North America, Inc. ("Severstal"), a major integrated steelmaker agreed to purchase Sparrows Point for $810 million, and it did so on May 7, 2008. Although the sale price was significantly lower than the price to which E2 agreed in the previous Summer, I believe that the sale process resulted in the best price and terms reasonably obtainable at the time.

Avoid a Divestiture Trustee

Notwithstanding the fact that the divestiture was accomplished pursuant to the FJ, the clearest lesson I learned from serving as a trustee is that a divestiture trustee should be avoided by the merging parties at almost any cost. This means that merging parties must carefully consider the trustee provisions when negotiating a consent decree. To the greatest extent possible, parties should attempt to negotiate as long a period as possible prior to the appointment of a trustee. In addition, parties should seek to enumerate as many contingencies as possible under which the appointment of a trustee could be delayed. Even if the trade-off for avoiding a divestiture trustee is agreeing to a "hold separate" provision and the appointment of a trustee to operate the assets to be divested, it should be considered. The reason is simple: once a divestiture is turned over to a trustee, the seller loses control over all aspects of the process, from the timing to the manner in which the bidding process is conducted to the law firm and bankers to be hired to the relative value of non-price terms. With respect to each of these issues, a trustee can do its best to protect the interest of the seller, but the reality is that the Trustee is also obligated to consider other factors such as scheduling a closing date as soon as possible and selecting a buyer with as high of a likelihood as possible of closing on schedule.

A second reason to avoid a divestiture trustee is that it can become very expensive. Typically trustee provisions contemplate that the trustee will hire corporate and regulatory counsel at the merging parties' expense. As a result, the parties typically bear the cost of two complete teams of lawyers, the trustee's and their own. In the context of a very large transaction, such as that between Arcelor and Mittal, these additional costs may be relatively minor, but in a smaller transaction, they could be very significant.

Aggressively Negotiate the Trustee Provisions in a Consent Decree

Notwithstanding the relatively small chance that a divestiture trustee will be appointed pursuant to any given consent decree, parties would be wise to negotiate the details of the trustee contingency as aggressively as possible. For example, parties should:

- Seek to enumerate a reasonable timeline for trustee to sell the assets on the best terms.
- Seek an explicit balance between trustee's dual objectives of selling the asset as quickly as possible and obtaining the best price and terms. This would empower the trustee to extend the sale process if they believed that doing so would increase the sale price.
- Seek the ability to object to the sale on grounds other than trustee's malfeasance such as on the basis of the existence of unusual market conditions that have resulted in a sale price significantly below that which might be reasonably obtained within one year.

Undoubtedly, the antitrust enforcement agencies will push back on efforts such as those outlined above, and ultimately some or all may not be obtainable. At the time parties are negotiating a divestiture, however, they typically have some negotiating leverage because the alternative for the enforcement agency is the risk of litigation. Therefore, parties should use whatever leverage they have to negotiate favorable trustee provisions.

By Joseph Krauss and Jonathan Grossman, Hogan & Hartson LLP, Washington

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The effect of Rambus on antitrust standards for standard-setting organizations

Background

Standard-setting has a long antitrust history. The activity, by definition, involves a collective effort to influence the selection of winners and losers in the competitive struggle, so the antitrust concerns are obvious. At the same time, it is equally obvious that this collective action can help ensure the safety and the efficacy of products offered for sale. So, a series of antitrust cases have established that standard-setting activities are permissible, but must be conducted in a way that is transparent and based on objective criteria, under a system that does not weight the scales against innovative newcomers in favor of established companies who may control the process.

In recent years, antitrust concerns have arisen from another direction. In certain high-tech industries, in particular, the establishment of a standard has the potential to confer actual monopoly power on a single technology because everyone in the industry has to adapt their own products to accommodate it. (A low-tech analogy would be the standard configuration of electrical sockets and plugs).

If the company with the technology selected had deceived the standard setting organization about its patent position before the selection was made, it could be said to have acquired a monopoly by methods that are just as improper as more familiar predatory tactics. The potential harm caused by this "hold-up" problem is obvious. In a sense, the antitrust issues have migrated from concern about abuse of innovators by the standard-setting group to concerns about abuse of the group by innovators.

Different standard-setting organizations have adopted various strategies to protect themselves against a patent "hold-up," and the strategies are not always successful. In the ongoing Rambus case, the Federal Trade Commission (FTC) found in 2006 that Rambus had unlawfully monopolized the market for certain memory technologies by a course of deceptive conduct in violation of the rules of JEDEC, a standard-setting organization. This opinion of the Commission was reversed in April 2008, by the U.S. Circuit Court in the District of Columbia. The reversal is a major setback for the FTC, and it has already moved for rehearing in the Circuit Court. This article will discuss some flaws in the Court's opinion that bear on the likelihood that these further efforts will succeed, but it will also consider the question of whether the ultimate outcome in Rambus will really have a significant effect on the future conduct of standard-setting bodies.

The Rambus Case

The FTC asserted that JEDEC sought to avoid approval of a standard that would require the use of patented technologies and thereby expose its members to liability for unbounded royalties. Rambus had participated as a member in JEDEC deliberations, without disclosing that it actually had or expected to have patents on some of the technologies that were under consideration.

In fact, the FTC claimed Rambus had gone further and engaged in affirmatively deceptive conduct. Rambus disclosed its true patent position and demanded royalties only after its technology had been incorporated in JEDEC standards and the members had made substantial investments to accommodate them.for exclusive The FTC's complaint charged Rambus with unlawful monopolization, based on this course of conduct.

The theory of the Rambus case was not unprecedented, but it was the first of its kind that was actually litigated in the agency. The FTC lost the first litigation round, when an Administrative Law Judge (ALJ) dismissed the complaint. The most significant element in the ALJ's lengthy opinion was his conclusion that the JEDEC disclosure rules were too indefinite, and internally inconsistent, to support a deception claim. The ALJ also found that it was impractical to require members to disclose all their pending patent applications, and that many other members in fact had not done so. The Commission unanimously reversed the ALJ. The opinion recognized that the JEDEC disclosure rules were less than clear, but found that Rambus' conduct was nevertheless deceptive.

* The author participated in initial deliberations on the Rambus matter, while a member of the Federal Trade Commission, but the comments here are all based on public sources. Participants in the organization may unwittingly become vulnerable to substantial and unavoidable royalty claims if they approve a standard and make substantial investments to accommodate it before they became aware that the standard is based on patented technology.

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The Commission overtly applied the definition of deception that is applied in its numerous consumer deception cases – a definition that depends on whether a reasonable consumer would be materially misled, notwithstanding the fact that the seller's literal representations might be ambiguous, or even accurate, if read very carefully. It is the consumers' perceptions that matter. This was the first time in recent years that the Commission's consumer protection standards have been applied in a competition case, but it makes sense if the predatory conduct involves deception. The standard-setting body may select from competing technologies just as ordinary consumers select from competing sellers in the marketplace.

Therefore, notwithstanding the vagueness of JEDEC's published rules on disclosure, and notwithstanding the fact that some other members had also apparently violated one reading of these written obligations, the FTC relied on the members' generally accepted obligation to proceed in good faith. It reasoned that JEDEC's disclosure obligations "should be judged not only by the letter of its rules but also on how the rules are interpreted by its members as evidenced by their behavior as well as their statement of what they understood the rules to be."

The FTC found that there was abundant contemporaneous evidence to show that all JEDEC members – including Rambus – realized it was not proper to claim royalties for the first time after a standard had been adopted. The disclosure of specific patents or patent applications was not all that important if the inventor did not intend to claim royalties from the members. Because it had violated this common understanding, the FTC found that Rambus had "unlawfully monopolized" a number of markets. After the FTC had issued its final decision, Rambus appealed to the D.C. Circuit Court, which promptly reversed the decision.

Although the Circuit Court did take note of the fact that JEDEC's written directives were less than clear, its opinion ultimately turned on a single sentence in the lengthy FTC opinion, which did not appear to be particularly important at the time. The FTC's opinion had stated that if Rambus had fully disclosed its intellectual property interests "JEDEC either would have excluded Rambus' patented technologies from the JEDEC … standards, or would have demanded … an opportunity for ex ante licensing negotiations …." In the FTC's view, either alternative would support a conclusion that there was competitive harm sufficient to support a monopolization claim. In the Circuit Court's view, however, the first alternative would have supported a monopolization claim, but the second would not. And, since the FTC did not say which outcome was more probable, its ultimate conclusion failed as a matter of law.

The Court reasoned that if the Rambus technology might have been incorporated into a standard, in any event, then Rambus' deception would have only affected the outcome of the ex post licensing negotiations. Under the antitrust laws of the United States, a monopolist that has not illegally acquired or maintained its monopoly is free to charge any price that it pleases. (The United States, unlike the European Union, does not condemn the "abuse" of monopoly power, only the tactics used to obtain or preserve it.) Since the FTC did not expressly conclude that Rambus' monopoly power itself was obtained by deception, then Rambus is a lawful monopolist and its "use of deception simply to obtain higher prices" was also lawful.

This austere logic is reminiscent of something that might have been written by a bewigged English jurist centuries ago. Of course, the FTC could not have been certain about the response of other JEDEC members in an alternative universe where Rambus had forewarned them of potential royalty claims. However, there was ample evidence from which the FTC could conclude that JEDEC members would never have based a standard on known patented technology if they had no idea of the potential costs to the members, and that is the most reasonable way to interpret the "either/or" language of the FTC's opinion. Rambus' deception therefore contributed directly to its acquisition of monopoly power, as well as its exploitation of the power.

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The FTC has shown a keen interest in standard-setting issues, as evidenced not only by its investigations and cases but also by published speeches of individual Commissioners. If the agency loses its motion for rehearing in the Circuit Court, it may well seek Supreme Court review. The private sector may have to accommodate uncertainty for some time. We turn now to the lessons that Rambus will hold for standard-setting organizations generally, regardless of the ultimate outcome of the litigation.

The Impact of Rambus

As indicated above, the ultimate harm in the Rambus scenario was not caused by the failure to disclose, by itself, but rather by the subsequent "hold-up" of companies that had made significant investments to accommodate a standard that they did not realize was based on patented technology. And, as the ALJ found and the Commission acknowledged, it may be difficult to craft specific rules on what must be disclosed and when.

The FTC has not suggested that antitrust laws compel standard-setting organizations to adopt any particular rules on member disclosure of intellectual property interests. But, whatever the disclosure rules may be, it is obvious that they should be consistent and clearly articulated. Even though the FTC may yet prevail in Rambus and establish the proposition that a member's obligations can extend beyond the four corners of written directives, it is obvious that prudent organizations will need to be a lot more specific about what is expected.

One way around the difficulty in specifying the content and timing of disclosures would be simply to require all members to agree in writing that they will not seek to collect royalties based on any intellectual property interests that were not disclosed before the pertinent standard had been approved. The innovator could decide to disclose or not disclose, but a commitment like this – which was not present in the Rambus case – is likely to stimulate broader disclosures from the party most knowledgeable about the facts. And, in the event of an unanticipated claim for royalties after the standard had been established, a written commitment would also provide the organization with a simpler and stronger defense than equitable estoppel based on deception.

The next question is what happens if the innovator does disclose in advance an intellectual property interest, for which it intends to claim royalties. Some standard-setting organizations have taken the position that they will not even consider the merits of a particular technology, in this situation. Other organizations would rather keep their options open. But, most would like to have some idea in advance about the ultimate costs of technology before they include it in a standard and cede substantial bargaining power to the innovator. What binding assurances can be obtained up front?

A number of organizations have obtained commitments by the innovator to license on so-called "RAND" ("reasonable and non-discriminatory") terms. The trouble with this kind of promise is that reasonable minds can often differ on what is "reasonable", so the organization still does not have a firm idea about the ultimate costs of the technology in a standard under consideration. In fact, there has been litigation on the issue of whether the innovator has ex post lived up to the RAND commitments it made ex ante. The organization may want to nail down the potential license terms more firmly before it commits itself to a standard.

However, collective negotiation of terms looks like price-fixing, which is probably per se illegal in every country in the world that has an antitrust law. The heads of the two U.S. antitrust agencies have recently suggested that it would not be per se illegal for the innovator, at the very least, to announce its intended royalty rate in advance. But, there still seems to be some uncertainty about the agencies' likely position on active negotiations. And, that position – whatever it may be – may influence, but not necessarily determine the outcome of private litigation.

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The reason for the distinction between announcement and negotiation is not entirely clear. A bald announcement, with no negotiations, does look more like a firm "unilateral" statement, which antitrust precedent has not considered an invitation to collude, in some contexts. But, the distinction seems unrealistic. Suppose, for example, the innovator unilaterally announces terms that are unacceptable to the organization. If the innovator cannot then modify its proposal to stay in contention, the outcome could be more confining for all parties than a more flexible policy. But, would the flexibility to modify a proposal after initial refusal be considered a questionable "negotiation?" It is likely that the distinction between mere announcements and negotiations will not survive, but there may be some painful litigation before it disappears.

An additional practical issue, which has also given rise to litigation, is the matter of successor liability. It is all very well to obtain advance commitments, with a desired level of specificity, from the innovator. But, the innovator's entire business, or perhaps just its patent portfolio, may be acquired by an outside party that has not promised to do anything. An antitrust claim based on deception may be questionable in this situation, but a well-advised standard-setting organization should be able to address the issue of successor liability, by contract.

Conclusion

These practical issues and solutions will be present and available, regardless of the ultimate outcome of the Rambus case. Whether the FTC wins or loses, the litigation still will have served a public purpose because it has highlighted a number of issues that various interested parties need to address. Different standard-setting organizations and their members may choose to resolve these issues in different ways, and that, too, is a form of healthy competition

By Thomas B. Leary, Hogan & Hartson LLP, Washington

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mergermarket's regional round-ups

North America: **United States**

Hexion files suit against Huntsman merger; epoxy divestitures also required for deal clearance

Huntsman and Hexion will have to divest epoxy businesses in order to facilitate the closing of their merger. It is thought that Hexion's Iserlohn-Letmathe plant in Germany which has an EBITDA of approximately US$30m and produces a family of specialised expoxy products is the only such facility that will be disposed in Europe.

Elsewhere, it is likely that a plant in the United States may also need to be disposed as Hexion also produces multiple epoxy resins there. General specialty companies such as Fuller, Dow, Ashland, Hexcel, and Cytec are considered likely to show an interest in any divestitures. However, an industry source has expressed scepticism over whether the disposals can be executed successfully before the 4 July termination date.

Meanwhile, Hexion announced in mid June that it has filed suit in the Delaware Court of Chancery. It is claimed that the capital structure agreed for the combined company is no longer viable due to Huntsman's increased net debt and it's lower than expected earnings. Hexion argues that consummating the merger on the basis of the originally agreed capital structure would render the combined entity insolvent.

Europe: **Germany**

Edeka and Tengelmann to dispose of Plus branches

Edeka and Tengelmann, the private German retail firms, are reportedly willing to dispose up to 400 branches of supermarket chain Plus. It is hoped that this will satisfy German cartel authorities and push through a deal which will see Tengelmann selling a majority stake in Plus to Edeka via a joint venture model. The proposed transaction was initially rejected by the German cartel office and it is unclear whether these concessions will be sufficient to persuade the authorities.

North America: **Canada/United States**

DOJ require Regal Cinemas and Consolidated Theatres to divest assets in North Carolina

The Department of Justice (DOJ) announced that it will require Regal Cinemas and Consolidated Theatres to divest four North Carolina movie theatre assets as part of their US$210m merger. The DOJ claimed that as originally proposed the transaction would substantially reduce competition in areas of Charlotte, Raleigh and Asheville likely resulting in higher ticket prices and decreased quality of viewing experience. Regal Cinemas owns or operates 540 theatres in 39 states with reported revenues of US$2.6bn.

Europe:/United States: **United Kingdom/ United States**

Sale of Enodis to be settled by "shootout" auction; ITW has "greater antitrust certainty"

The sale of Enodis, the UK listed catering equipment manufacturer, is to be reportedly settled by a "shootout" auction. The Takeover Panel is set to announce this week its ruling on the matter with the auction to start within a matter of weeks. It is claimed that last years auction of Corus which involved nine rounds of bids at a minimum of 5p per share increments will be used as an example.

Manitowoc and Illinois Tool Works (ITW), the US based industrial groups, are the two bidders with Enodis previously recommending Manitowoc's offer of 294p per share. This came after ITW had trumped Manitowoc's original offer of 282p per share. With regard to antitrust issues surrounding the situation, an industry insider has claimed that ITW has a cleaner deal with greater antitrust certainty. Moreover, a Manitowoc/Enodis merger has already lapsed based on competition issues whereas the insider suggests that ITW would only have to overcome minor overlaps.

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Europe: **Austria/Hungary**

EC resumes phase II investigation into OMV/MOL tie up

The European Commission (EC) resumed the phase II investigation into the acquisition of MOL, the Hungarian oil and gas company, by its Austrian counterpart OMV. OMV had asked the EC to investigate whether the proposed transaction would violate competition regulations. The inquiry was initially suspended on 5 May due to insufficient data from OMV regarding possible overlap in the filling station network, however, since then OMV has sent missing data to the EC. A combined MOL/OMV entity would have a marker capitalisation of £21.2bn.

Europe: **Austria**

EC likely to probe Austrian insurance transaction

The EC is likely to launch an in-depth examination of the €1.4bn acquisition of Sparkassen Versicherung, the Austria based insurance services company, by its domestic counterpart Wiener Staedtische. According to a source within the EC, the deal cannot be approved via a simple evaluation process which is why the EC is likely to announce the start of a detailed investigation by early June. Wiener Staedtische has reportedly already mapped out its plans for potential disposals.

Europe/Asia: **United Kingdom/Australia**

BHP delays antitrust filings

BHP Billiton, the listed Australian diversified natural resources company, has delayed antitrust filings to global competitors regarding its €144.1bn acquisition of Rio Tinto, the UK mining group. It is thought that BHP had originally planned to submit the applications to European Union (EU) regulators in April but will now make the submission in June.

Elsewhere, the Australian Competition and Consumer Commission has said that it is likely to only receive initial documents in June. An insider has said that it is vital to get approval from EU regulators as an overly negative decision by the EC could be a potential deal breaker.

Europe: **Italy**

Antitrust conditionally approves BMPS/Antonveneta deal

Antitrust, Italy's competition regulator, has approved with conditions the €9bn acquisition of Banca Antonveneta, by Banca Monte dei Paschi di Siena (BMPS). Antitrust released a statement saying that BMPS will have to dispose of between 110 and 125 branches in Tuscany, Biella, Mantova, Vercelli and Perugia.

BMPS will also have to sell the stake it owns in Finsoe, the company that controls Italian insurer Unipol, and abandon its Vita life assurance joint venture with Unipol. Additionally, BMPS will not be able to renew the bancassurance agreement between Antonveneta and Allianz, the German insurer, when it expires on 31 July 2009.

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Europe: **France/Germany/Italy/Spain**

Enel's and Acciona's buy of Endesa notified to EC; decision expected by mid June

The €40.7bn acquisition of Endesa, the Spain based energy company, by Enel and Acciona has been notified to the EC and a phase I decision will be taken by 17 June. The transaction had already been authorised by the EC on June 5 2007 although a new notification had to be filed when the companies changed which assets were to be sold.

The EC will now examine the updated remedies proposed by Enel and Acciona, which include selling certain businesses and assets in Spain, Italy, France, Poland and Turkey to E.On, the German power and gas company.

Europe: **France/Sweden**

Pernod-Ricard willing to make disposals on V&S buy

Pernod Ricard, the French producer of wine and spirits, has said that it is prepared to make divestments in order to receive a phase I clearance from the EC regarding its €5.6bn acquisition of Swedish company Vin&Spirit. Gronstedts, the Swedish cognac brand, is a disposal candidate as well as Fris Vodka and Plymouth Gin whereas no Pernod brands will be sold. Should Plymouth Gin be divested Campari could be interested in buying the company.

In the meantime, a Pernod spokesman has said the sale of its 10% stake in Beam Spirits&Wine will not have an effect on the outcome of the EC's investigation. However, the 10% stake in Beam needs to be sold to Fortune Brands, the US wine company, who own the remaining shares in Beam, before Pernod can complete its acquisition of V&S. A Swedish court reportedly rejected the request of Fortune to stop the Swedish government from moving V&S's original stake in Beam to a separate company.

Europe: **Germany**

German cartel authority examine TUeV Sued/ TUeV Rheinland deal

TUeV Sued and TUeV Rheinland, the Germany based industrial companies, are in talks with the German cartel office regarding possible concessions to allow their proposed merger to go ahead. The two companies have asked the regulator for an extension of the decision deadline to 18 July.

North America: **United States**

FTC issues complaint over anticompetitive acquisitions made by TALX

The FTC has issued a complaint challenging a series of acquisitions by TALX Corporation that substantially lessened competition in the markets for outsourced unemployment compensation management (UCM) and verification of income and employment (VOIE). The FTC claims that entry into the relevant markets would not be sufficient to counteract the anticompetitive effects of TALX's acquisitions.

Moreover, it is also alleged that entry and expansion in the outsourced UCM market for large, multi-state employers is made more difficult by the large number of customers tied to long-term contracts. Entry and expansion is also made more difficult by non-compete and non-solicitation agreements between TALX and its employees which reduce the number of experienced persons available for hiring by potential competitors. The FTC aims to create market entry and allow long-term TALX customers to terminate their contracts and eliminate non-complete clauses for both former and current TALX employees.

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Corporate Express & antitrust in Europe

Several months ago, in mid February, US office supplier Staples approached its Dutch based counterpart Corporate Express with a €7.25 per share acquisition proposal. The proposal was immediately turned down by Corporate Express as significantly undervaluing the company, but Staples remained firm.

In mid May, Staples increased its offer to €8 per share, which was again turned down by Corporate Express, and the latest offer is €9.15 per share, valuing the company at approximately €2bn.

Around a week after the €8 offer being announced, Corporate Express reacted with a move that came as a surprise for many: The company said it has agreed to acquire Lyreco, a French privately held office supplier, for €1.73bn. This step was widely seen by observers as a move to shake off the unwanted predator Staples.

But Staples was not taken completely by surprise. In fact the US company had considered several weeks earlier that Corporate Express might try to play the Lyreco trump card and had carried out an internal antitrust analysis on a possible Corporate Express-Lyreco tie up. Therefore Staples was able to react early by creating noise in the market. The same day Corporate Express announced its proposal for Lyreco it was leaked from Staples that it was their belief that such a combination would raise serious antitrust concerns.

And indeed independent competition experts widely agree that there are significant differences between a Staples/Corporate Express and a Corporate Express/Lyreco combination from an antitrust perspective.

The European Commission has handled several deals in the office supply industry in the past 10 years, and has therefore developed market definitions over the course of these past investigations, which could well be applied again in the Corporate Express scenario.

Three aspects need to be taken into account: the products, the customers, and the distributors.

Following these past decisions, the broader market for office products includes a wide range of products, such as office supplies, office furniture and office equipment. This means that everything from envelopes to computers, copyiers and even desks and storage solutions are considered.

From the demand side, customers include private households as the smallest entity and offices of all sizes on the other end of the scale.

The distributors are divided by their means of distribution. Most importantly there are retailers with physical outlets, internet and mail order companies, and contract stationers who's business model is based on longer term contracts with the purchasers.

If past definitions are applied to the companies' shapes as of today, Corporate Express would be a contract stationer with a considerable part of its customer base being large offices. According to experts the business relationship between customers and suppliers in these markets can usually be described as a "bidding contest". The customers describe their demands in detail, and the contenders submit their tenders.

Staples works on a different business model, which largely relies on mail order and its retail stores – of which 266 are based in European countries, namely Belgium, Germany, the Netherlands, Portugal and the United Kingdom. Websites and catalogues business models exist in 15 European countries. The majority of Staples' revenues are generated with its US outlets, which contribute 55% to overall sales. Based on 2006 figures only 13% of revenues are generated outside the North American market.

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Therefore experts concluded that a combined Corporate Express/Staples should not face serious antitrust problems within the European Union. Not only that their distribution models widely differ, a second argument is that Staples European business is comparatively small. On top of this, Staples has a stronger focus on smaller and home offices. In a presentation by Corporate Express executives last September, the Dutch company said Staples' sales on the "delivery" side were 26% from mail order, 33% from small or home offices and 41% from middle/large businesses. This compares to around 20% of Corporate Express' sales coming from the mid-market. Corporate Express' biggest market is the US, but the company has no retail outlets there.

This proposed deal has already been notified in Brussels and is currently being investigated in a simplified procedure with an outcome expected in mid June.

A very different picture arises with Lyreco coming into play. The French privately owned company claims to be the market leader in Europe in b to b distribution of office supplies. In its recent shareholder circular on the proposed Lyreco deal, Corporate Express describes a takeover as "the most logical and compelling merger one could envision in our industry". Although Corporate Express says the merging companies would have "complementary global positions, geographical fit and operations", experts have their doubts due to significant overlaps in certain national markets. An expert said that figures on market shares, even though five years old, indicated great overlaps between Lyreco and Corporate Express. According to these figures the combined entity would reach market shares of up to 60% in the Netherlands, 55% in France and 90% in Iceland.

Staples sources, although it should be noted that these have an obvious interest to derail the Corporate Express/Lyreco deal, spread the following figures: The Corporate Express/Lyreco combination would reach a 50% market share in France, Italy and Spain, in Poland almost 80%, in Sweden almost 70% and in the UK 40%.

Corporate Express admits that a full antitrust analysis is still under way. However, it is understood that an early stage analysis done by Corporate Express concluded that the deal with Lyreco would not result in market shares above 25% in any of the national European markets. Further details are currently not available from the Corporate Express side, apart from a vague statement in the shareholder circular that "[o]btaining clearance from the competition authorities may require the divestment of certain parts of the Combination. This may affect the composition and geographic reach of the Combination." A company insider summarised that "the company does not anticipate any significant roadblocks regarding anti-trust arising."

How can these differing views be explained? Persons following the situation suggest the only possibility to argue this way would be to apply different market definitions from the ones used previously by the European Commission.

On expert said it was good practice for the EC to be open to suggestions for market definitions by the merging companies. If Corporate Express provided good economic evidence, for instance by showing who purchased what and how, the company might be able to convince the Commission on a changed approach to market definitions.

It should also be taken into account that market share is not the only relevant variable to examine the market. Even where market shares of some competitors are high, low barriers to entry and dynamic development can still indicate a healthy market. A convincing argument would be to prove that new competitors emerged successfully within the past few years or entered the market from outside.

Wider use of the internet to order office supplies could possibly be used as an additional argument for broader market definitions and lower barriers to entry, compared to the situation a couple of years ago. Again, this argument would work in favour of the merging parties.

But could these arguments be sufficient? Other experts have serious doubts. One pointed out that in the Buhrmann (now Corporate Express)/Samas case back in 2001, the merging companies needed to sell assets based on the market definitions for contract stationing. He speculated that market definitions were probably a major point of negotiations between the Commission and the merging parties at the time, to minimise required disposals. Therefore it would be hard to convince the EC to ease past definitions further.

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He also noted that part of the EC's definition was the requirement of large customers for a one-stop-shop for all office supplies. This could hardly be substituted by smaller competitors who could not deliver the full range of products. Some multinational companies might even require multinational players to negotiate a single contract for several countries, he said. And in a tender market such as in contract stationing, "the question arises how the suppliers compete in a bidding contest if the number of competitors is reduced further."

In Corporate Express' shareholder circular on the Lyreco deal, the company points out that "improved pricing mechanisms" would be expected from the proposed merger. Perhaps this is simply an attempt to gain shareholder approval, however, it may well backfire when the EC looks at the antitrust implications. "I cannot see any other interpretation than this meaning increased prices," an observer said, "which could be a concern for the antitrust authorities."

By Ben Bschor, dealReporter

On 11 June 2008 Corporate Express and Staples announced they had reached agreement on a €9.25 per share offer by Staples for Corporate Express, valuing the target at €3.1bn. At the same time Corporate Express terminated its merger agreement with Lyreco. The proposed takeover of Corporate Express by Staples was cleared unconditionally by the European Commission on 18 June 2008.

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Should parents always pay for their children's infringements in cartel cases? Scope and threats of "Group Liability" in EU antitrust rules

In European antitrust law, it seems that parent companies are systematically held liable for their subsidiaries' infringement of antitrust rules. In recent years indeed, the European Commission has developed a systematic policy to attributing liability for anticompetitive actions of subsidiaries onto their parent companies. As a result of this recent trend, countless groups have realized at a hard price that the actions of a subsidiary, however remote or small, can have a major detrimental impact on all companies in the group.

Consequences may indeed be particularly severe: the 10% ceiling of the maximum fine can be much higher, the amount of the fine itself can be dramatically increased with a view to ensure greater 'deterrence' at group level and, above all, the concept of 'recidivism' will systematically increase risks of much higher fines in future cases.

Potentially, several tens or hundred of millions Euros are at stake, not only in the specific case where the attribution of liability arose, but also in all future EU cartel cases involving the group as a whole. Further, this liability can be passed on, under certain circumstances, to successor companies in case of sale or transmission of the company.[1]

From a mere efficiency perspective, such policy has obvious merits for the EU Commission, EU's main antitrust enforcer, as it increases the deterrence of its decisions and passes onto the legal service of large companies a significant burden of detecting cartels. However, does the quest for efficiency permit any freedom? In Competition law, and specifically when it comes to cartels, can the liability attributed to large groups of companies be extended indefinitely? These are some of the recurring questions that this article will briefly discuss.

I. For Cartel Purposes, What Is A "Group" In EU Antitrust Rules?

European antitrust law is pragmatic and supple by nature and concerns the activities of 'undertakings', an economic notion that is much broader than that of 'company'. The European Court of Justice (ECJ) ruled on several occasions that the concept of 'undertaking' encompasses any entity pursuing an economic goal, irrespective of its legal status or financing (see for instance ECJ, 28 June 2005, *Dansk Rørindustri e.a./ Commission).*

[1] The equally interesting question of the transfer of liability following a sale or restructuring will not be discussed in this article. It is worth noting, however, the recent ECJ decision in response to a preliminary ruling asked by the Italian antitrust authority (ECJ, 11 Dec. 2007, case C-280/06).

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Should parents always pay for their children's infringements in cartel cases?

Since antitrust penalties are 'quasi-criminal', they can only be handed down to legal persons, a concept narrower than 'undertakings' (ECJ, 3 July 2007, *Autorità Garante).* As a result, where the 'undertaking' subject to a penalty is not a single legal entity, as is often the case, the Commission must demonstrate that the various entities are all in fact parts of the same 'undertaking', i.e. that they have a common behaviorr on the market, despite their separate legal personas. In the ICI case of 1972, the ECJ held that for a parent company to be responsible for the illegal actions of its subsidiary, it is necessary to establish that this subsidiary 'does not determine its actions in the marketplace independently, but rather applies, for the most part, those instructions given to it by the parent company'. And in the 1983 AEG case, the Court established the presumption that if a subsidiary is 100% owned by a parent company, it is presumed to apply policies determined by the parent company.

There lies the crux of the matter: is it enough to show a 100% capital ownership to attribute liability? This presumption is crucial in the analysis and is referred to as the 'capitalistic presumption' in this article. By nature, a parent company is in a position to exert some form of influence on its subsidiary. But this should not be enough to retain the parent's liability. As stated in the ICI case cited above, what matters is that the subsidiary had no autonomous behavior on the marketplace, and instead followed its parents' instructions.

There are two conflicting schools of thought on the matter. Not surprisingly, the European Commission assimilates as much as possible the generic influence of a parent company over its subsidiaries to that of a decisive influence on its commercial practices, sometimes to the point of absurdity.

For instance, in a recent cartel decision on the Dutch bitumen market (September 2006), the Commission held Total SA, the mother company, liable for the behaviour of its Dutch subsidiary engaged in the cartel. Total SA on the contrary, argued that it fulfilled solely the role of a holding company with regards to its Dutch subsidiary, in other words it handled only

a) the general human resource policy of the group;

b) consolidation of the turnover of the group and the fiscal policy of the group;

c) supervision of issues such as institutional relations, industrial security, environment and sustainable development, insurance, financial and legal functions of the group; and

d) the management of the subsidiary's principal investments.

However, the Commission ultimately decided that these functions were "exactly the kind of indications that demonstrate that the Total group operates as a single undertaking, headed by Total SA, and that the latter exerts decisive influence as regards the basic orientations of the subsidiaries' operations on the market." With such a wide and catch-all interpretation of the concept of determining influence, virtually no integrated group can hope to escape the "group liability".

There is another approach, though, generally argued by defendant parent companies who adhere to a strict interpretation of the notion of 'influence' in an attempt to increase the Commission's burden of proof. This approach is supported by some court precedents, although the case-law is neither consistent, not totally unambiguous. The Court of First Instance of the European Union, which controls the Commission's decisions in antitrust cases (subject to the ECJ's review), seems indeed to be more concerned with rigorously analyzing the facts. In a recent *Akzo* case [2] (12 December 2007), it provided a list of areas in which a parent may exert a determining influence on the commercial behavior stricto sensu : pricing policy, production and distribution activities, sales objectives, gross margins, sales costs, cash flow, stocks and marketing. However, this list is not comprehensive, and other factors can be taken into account, such as the economic and legal organizational links between the parent and the subsidiary.

[2] CFI, 12 Dec. 2007, Akzo v. Commission, case T-112/05, para. 64.

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Can the capitalistic presumption be overturned? In theory, the answer is in the affirmative: consistent case law has shown that the presumption is rebuttable, as was affirmed recently by the Court in the Akzo case mentioned above. But in practice, the presumption appears very hard to overturn given that the burden of proof lies with the defendant and it often amounts to proving negative facts. How can a subsidiary conclusively establish that its mother company has no ability to influence its commercial policy? This has a lot of practical consequences on the management of integrated companies: at the risk of losing benefits of integration (economies of scale, in particular), a large company may consider granting its subsidiaries a very broad autonomy and organizing very loose reporting lines. But this policy should only be contemplated in very specific circumstances and be designed with a lot of caution, owing to the extremely far-reaching approach favored by the Commission. And even with the widest autonomy, it is likely that the Commission will keep on trying to attribute liability to the whole group, owing to the practical upsides it gives the Commission (access to a deep pocket, greater deterrence, etc.).

Another crucial question is whether it is necessary to corroborate the capitalistic presumption with other, unrelated, factual evidence? On this matter, there seems to be a true divergence of opinion within the other European high court, i.e. the Court of First Instance (CFI). The various chambers of the CFI have recently ruled in diverging directions. For instance, the 5th Chamber decided in the *Daimler Chrysler* (15 September 2005) and *Bolloré* (26 April 2007) cases that the capitalistic presumption was never sufficient in itself, and that the Commission had to bring additional evidence to retain the parent's liability.

The 2nd Chamber, on the other hand, adopts a more lenient approach with regards to the burden of proof weighing on the Commission. In the Tokai Carbon case (15 June 2005), it stated that the Commission may, in substance, assume that a fully-owned subsidiary essentially applies its mother company's instructions. As for the opinion of the ECJ, its solution in the case *Stora* (16 November 2000) is not without ambiguity and did not succeed in dispelling any uncertainty in the matter.

Given this uncertainty, the Commission invokes the capitalistic presumption as often as possible, but also backs it up with other facts as often the case allows, such as for instance:

a) an active role played by the parent company in the antitrust proceedings;

b) the presence of same directors on the boards of both the parent company and the subsidiary, the presence of an in-house lawyer of the parent company's on the subsidiary's premises during the investigations;

c) independent and direct participation by the parent company in the agreement;

d) participation of several subsidiaries of the same parent company in the cartel, etc.

On the basis of the above analysis, one can see that the capitalistic presumption poses many threats as it is broadly defined, difficult to rebut, and sometimes considered sufficient in and by itself to trigger the "group liability". It is now time to see what are the consequences of this policy.

II. The Harsh Consequences Of The Group Liability Policy

In 2007, the Commission handed down a record number of sanctions against cartels. In 8 decisions, the Commission sanctioned a total of 44 companies with fines totaling 3.3 billion Euros. In most cases, parent companies and their subsidiaries were held jointly and severally liable, by application of the systematic policy described above. But beyond the solidarity in the actual payment of the fine, which allows the Commission to dig into the "deep pocket", the group liability policy does affect the actual amount fined by the Commission.

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Firstly, because it automatically increases the ceiling of the maximum amount of the fine, which is calculated on the basis of the whole group's turnover (current ceiling is set at 10% of the turnover). Secondly, because the deterrence factor increases with the size of the group. In its AMCA decision of 2005 , the Commission increased the fine imposed on Arkema by 250% due to the size of the then parent company. Had the parent company not been taken into account, the "deterrence factor" would have reached 'only' 150%. The differences accounted for several millions Euros in fine.

Above all, the long-term consequences stemming from the concept of 'recidivism' are potentially the most devastating. Because recidivism (repeat offence) is analyzed at group level, once a subsidiary in the group has been found guilty, all subsidiaries in the whole group are potential recidivist in the future, with potential huge upsides (up to 100% per case) on future fines. And the Court ruled in the Danone case (25 October 2005)[3] that there is no prescription when it comes to repeat offences, which means in theory that one decision can have ever lasting consequences in the future, although in practice, the Commission seem to consider that the lapse of a 10-year period "resets the clock".

Lastly, one should not underestimate the harm caused by the condemnation of a subsidiary to the group's global image. This type of consequence is difficult to measure, but it is very important since a group's reputation rests on its good name. The Commission is well aware of this, as one can see by reading the press releases accompanying decisions against large company groups.

Conclusion

In practice, parent companies of groups have little room to manœuvre, since the Commission is quick to jump on any amount of control to support its wide interpretation of group liability – with potentially devastating consequences.

By Michel Debroux, Hogan & Hartson MNP, Paris

[3] COMP/E-1/37.773 – AMCA. An appeal is pending (case T-168/05).

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
Ballingslov Int. / Stena AB	1 BALL = EUR6.6274	16 May 2008	02 Jul 2008	23		Sweden	EUR-213m	0.02%	-0.19%	0.34%
Corporate Expre. / Staples Incorpo.	1 CXP = EUR9.15	13 May 2008	27 Jun 2008	18	09 Jul 2008	Netherlands	EUR-1,644m	1.33%	-0.11%	23.10%
Cremonini s.p.a. / Luigi Cremonini	1 CRM = EUR3.00	31 Mar 2008	13 Jun 2008	4	19 Jun 2008	Italy	EUR-425m	2.75%	0.02%	143.51%
D+S europe AG (. / Apax Partners	1 DSJ = EUR13.00	15 Apr 2008	31 Jul 2008	52		Germany	EUR-487m	0.08%	-0.08%	0.51%
Ducati Motor Ho. / Investindustria.	1 DMH = EUR1.70	19 Feb 2008	06 Jun 2008	Completed	13 Jun 2008	Italy	EUR-545m	2.47%	0.12%	N/A
Enodis Plc / Manitowoc Compa.	1 ENO = GBP2.94	14 Apr 2008	31 Aug 2008	83		United Kingdom	GBP-1,131m	-3.82%	-0.16%	-16.20%
Enodis Plc / Illinois Tool W.	1 ENO = GBP2.80	08 May 2008	31 Aug 2008	83		United Kingdom	GBP-1,131m	-8.37%	-0.15%	-35.51%
Ersol Solar Ene. / Robert Bosch Gm.	1 ES6 = EUR101.00	02 Jun 2008	11 Aug 2008	63		Germany	EUR-1,082m	0.13%	-0.01%	0.71%
Expro Internati. / Umbrellastream .	1 EXR = GBP15.50	17 Apr 2008	26 Jun 2008	17		United Kingdom	GBP-1,817m	-4.62%	-0.35%	-84.23%
FKI plc / Melrose Plc	1 FKI = 0.277 MRO + GBP0.40	22 Apr 2008	01 Jul 2008	22	15 Jul 2008	United Kingdom	GBP-513m	1.03%	-0.45%	15.06%
GCap Media Plc / Global Radio UK.	1 GCAP = GBP2.25	31 Mar 2008	06 Jun 2008	Completed	20 Jun 2008	United Kingdom	GBP-373m	0.33%	0.00%	N/A
Geodis SA (form. / SNCF Participat.	1 GEO = EUR135.00	28 Apr 2008	01 Jul 2008	22	21 Jul 2008	France	EUR-1,038m	2.80%	0.01%	40.83%
GfK AG / Taylor Nelson S.	1 GFK = 11.74 TNS	03 Jun 2008	31 Dec 2008	205		Germany	EUR-1,040m	30.55%	-2.00%	53.61%
Hypo Real Estat. / J.C Flowers & C.	1 HRX = EUR22.50	16 Apr 2008	23 Jun 2008	14	09 Jul 2008	Germany	EUR-4,193m	7.91%	-0.68%	169.91%
Interhyp AG / ING Direct	1 IYP = EUR64.00	19 May 2008	31 Jul 2008	52		Germany	EUR-409m	1.68%	-0.23%	11.18%
Marazzi Group S. / Fintiles S.r.l.	1 MRZ = EUR7.15	13 May 2008	09 Jul 2008	30		Italy	EUR-722m	1.20%	-0.01%	13.31%

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Deal	Terms	Ann. Date	Est. Comp	Days to comp	Sett. Date	Target Country	Target Mkt Cap (m)	Net Sprd	Change	Ann. Return
Neuf Cegetel SA / SFR SA (Formerl.	1 NEUF = EUR35.90	23 Apr 2008	30 Jun 2008	21		France	EUR-7,555m	-0.28%	-0.25%	-4.22%
Ocean Rig ASA / DryShips Inc.	1 OCR = EUR5.6602	22 Apr 2008	11 Jun 2008	2	25 Jun 2008	Norway	EUR-963m	0.13%	-0.21%	9.69%
Rio Tinto plc / BHP Billiton pl.	1 RIO = 2.72 BHP + GBP14.51	06 Feb 2008	31 Dec 2008	205		United Kingdom	GBP-60,790m	10.17%	0.39%	17.84%
Scorpion Offsho. / SeaDrill Limite.	1 SCORE = EUR9.98	29 Apr 2008	23 Jun 2008	14	07 Jul 2008	Bermuda	EUR-562m	-3.70%	-0.20%	-79.41%
Strabag AG / Strabag SE (for.	1 STB = EUR260.00	07 May 2008	15 Jul 2008	36		Germany	EUR-1,066m	-1.70%	-0.75%	-15.92%
Suez SA (former. / Gaz de France S.	1 SZE = 0.9545 GAZ + EUR5.4996	27 Feb 2006	31 Aug 2008	83		France	EUR-60,971m	-0.81%	0.36%	-3.42%
Tele Atlas NV / TomTom N.V.	1 TA = EUR30.00	23 Jul 2007	30 May 2008	Completed	08 Jul 2008	Netherlands	EUR-2,677m	0.40%	-0.20%	N/A
Wavefield Insei. / TGS-NOPEC Geoph.	1 WAVE = 0.505 TGS	30 Jul 2007	31 Dec 2008	205		Norway	EUR-671m	-0.58%	-0.21%	-1.01%

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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
Abra Mining Lim. / Hunan Nonferrou.	1 AII = AUD0.806	13 May 2008	04 Jul 2008	25	26 Jul 2008	Australia	AUD-93m	22.12%	1.82%	278.42%
ARC Energy Limi. / Australian Worl.	1 ARQ = 0.30 AWE + AUD0.495	24 Apr 2008	15 Aug 2008	67		Australia	AUD-467m	16.53%	0.12%	86.20%
Aucnet Inc. / IDSP	1 9669 = JPY2100.00	27 May 2008	09 Jul 2008	30	01 Aug 2008	Japan	JPY-22,465m	0.48%	-0.24%	5.29%
Ausdrill Limite. / Macmahon Holdin.	1 ASL = 1.45 MAH	21 May 2008	22 Jul 2008	43	11 Aug 2008	Australia	AUD-449m	-3.05%	-1.23%	-24.23%
Bank Internasio. / Malayan Banking.	1 BNII = USD0.0558	26 Mar 2008	01 Sep 2008	84		Indonesia	USD-2,422m	11.82%	1.33%	49.60%
Bemax Resources. / Cristal Austral.	1 BMX = AUD0.32	26 May 2008	04 Jul 2008	25		Australia	AUD-292m	3.23%	1.64%	42.05%
Bosch Corporati. / Robert Bosch Gm.	1 6041 = JPY600.00	23 Apr 2008	19 Jun 2008	10	26 Jun 2008	Japan	JPY-269,077m	0.17%	0.00%	4.35%
Boustead Proper. / Boustead Holdin.	1 2771 = USD1.6841	15 May 2008	17 Jul 2008	38	02 Sep 2008	Malaysia	USD-423m	1.60%	0.06%	14.29%
Bravura Solutio. / Ironbridge Capi.	1 BVA = AUD1.73	05 May 2008	15 Aug 2008	67		Australia	AUD-182m	33.59%	0.00%	172.68%
CBH Resources L. / Perilya Limited	1 CBH = 0.3333 PEM + AUD0.0338	26 Mar 2008	15 Jul 2008	36		Australia	AUD-215m	0.82%	-1.29%	7.71%
Centurion Bank . / HDFC Bank Ltd	1 CENTBOP = 0.0345 HDFCBANK	29 Feb 2008	23 May 2008	Completed	18 Jun 2008	India	INR-77,728m	3.76%	1.84%	N/A
China Netcom Gr. / China Unicom Lt.	1 906 = 1.508 762	02 Jun 2008	31 Oct 2008	144		Hong Kong	HKD-157,766m	-2.16%	-0.48%	-5.35%
Chongqing Titan. / Panzhihua New S.	1 000515 = 1.78 000629	05 Nov 2007	30 Jul 2008	51		China	CNY-2,864m	13.90%	0.24%	93.93%
Core Healthcare. / Hong Kong Healt.	1 8250 = 1.4286 397	06 Jun 2008	01 Aug 2008	53		Hong Kong	HKD-1,203m	-2.70%	-1.77%	-17.59%
Cosmo Securitie. / CSK Holdings Co.	1 8611 = 0.046 9737	23 May 2008	01 Aug 2008	53		Japan	JPY-44,478m	-0.33%	1.92%	-2.17%
Dabur Pharma Lt. / Fresenius SE	1 DABURPHARM = INR75.634	28 Apr 2008	03 Jul 2008	24	18 Jul 2008	India	INR-11,453m	3.47%	0.00%	46.86%
Dyno Nobel Limi. / Incitec Pivot L.	1 DXL = 0.0141 IPL + AUD0.70	11 Mar 2008	02 Jun 2008	Completed	17 Jun 2008	Australia	AUD-2,567m	8.07%	7.96%	N/A
Eneserve Corpor. / Daiwa House Ind.	1 6519 = JPY609.00	30 May 2008	22 Jul 2008	43	29 Jul 2008	Japan	JPY-25,089m	0.50%	0.17%	3.93%
Equigold NL / Lihir Gold Limi.	1 EQI = 1.32 LGL	20 Mar 2008	04 Jun 2008	Completed	17 Jun 2008	Australia	AUD-853m	-0.84%	-1.09%	N/A
E-TEN Informati. / Acer Incorporat.	1 2432 = 0.9345 2353	03 Mar 2008	05 Aug 2008	57		Taiwan	USD-326m	12.77%	-1.12%	77.69%

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Deal	Terms	Ann. Date	Est. Comp	Days to comp	Sett. Date	Target Country	Target Mkt Cap (m)	Net Sprd	Change	Ann. Return
Herald Resource. / Bumi Resources .	1 HER = AUD2.55	12 Dec 2007	20 Jun 2008	11	11 Jul 2008	Australia	AUD-554m	-8.93%	0.00%	-232.78%
Herald Resource. / Consortium for .	1 HER = AUD2.65	30 Jan 2008	19 Jun 2008	10	10 Jul 2008	Australia	AUD-554m	-5.36%	-0.34%	-139.67%
Hindustan Oil E. / ENI s.p.a.	1 500816 = INR133.247	24 Apr 2008	30 Jun 2008	21		India	INR-17,139m	4.22%	4.30%	61.63%
Indophil Resour. / Xstrata Plc (fo.	1 IRN = AUD1.00	15 May 2008	15 Jul 2008	36		Australia	AUD-452m	-8.26%	0.83%	-77.28%
Just Group Limi. / Premier Investm.	1 JST = 0.25 PMV + AUD2.095	31 Mar 2008	20 Jun 2008	11		Australia	AUD-747m	9.59%	0.27%	233.47%
Kibun Food Chem. / Kikkoman Co., L.	1 4065 = 0.851 2801	19 Mar 2008	01 Aug 2008	53	19 Sep 2008	Japan	JPY-30,912m	1.68%	2.34%	10.98%
Lion Selection . / Indophil Resour.	1 LST = 2.70 IRN	19 Mar 2008	07 Jul 2008	28		Australia	AUD-347m	62.15%	1.61%	731.75%
Magnum Corporat. / Multi-Purpose H.	1 3735 = USD1.0714	20 Nov 2007	30 Jun 2008	21		Malaysia	USD-1,521m	2.07%	0.07%	31.44%
Midwest Corpora. / Sinosteel Corpo.	1 MIS = AUD6.38	14 Mar 2008	13 Jun 2008	4	04 Jul 2008	Australia	AUD-1,381m	-5.90%	-1.12%	-239.27%
Mineral Securit. / CopperCo Ltd. (.	1 MXX = 2.20 CUO	29 Jan 2008	31 Jul 2008	52		Australia	AUD-197m	4.26%	-5.74%	27.77%
Mitsubishi UFJ . / Mitsubishi UFJ .	1 8583 = 0.37 8306	28 May 2008	01 Aug 2008	53	19 Sep 2008	Japan	JPY-434,743m	-0.40%	-0.48%	-2.64%
Pan Gang Group . / Panzhihua New S.	1 000569 = 0.82 000629	05 Nov 2007	30 Jul 2008	51		China	CNY-5,242m	15.51%	1.13%	104.82%
Programmed Main. / Spotless Group .	1 PRG = 0.825 SPT + AUD3.00	27 Mar 2008	13 Jun 2008	4	04 Jul 2008	Australia	AUD-374m	35.51%	15.49%	1851.38%
Ranhill Utiliti. / Consortium for .	1 5050 = USD1.074	06 Jun 2008	18 Jul 2008	39		Malaysia	USD-282m	14.76%	-0.73%	92.86%
Ricoh Elemex C. / Ricoh Company, .	1 7765 = 0.50 7752	15 May 2008	01 Aug 2008	53	30 Sep 2008	Japan	JPY-23,779m	0.73%	0.41%	4.75%
Ridley Corporat. / GrainCorp Ltd.	1 RIC = 0.1111 GNC	16 May 2008	05 Aug 2008	57		Australia	AUD-423m	-11.51%	-0.87%	-70.03%
Rio Tinto Limit. / BHP Billiton Lt.	1 RIO = 3.40 BHP	06 Feb 2008	31 Dec 2008	205		Australia	AUD-63,178m	7.97%	1.25%	13.99%
SBI E*Trade Sec. / SBI Holdings In.	1 8701 = 3.55 8473	15 Jan 2008	01 Aug 2008	53	30 Sep 2008	Japan	JPY-355,200m	0.90%	-0.37%	5.89%
Shanghai Power . / Shanghai Electr.	1 600627 = 7.32 2727	30 Aug 2007	15 Jun 2008	6		China	CNY-21,755m	-32.07%	0.50%	-1300.49%

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Deal	Terms	Ann. Date	Est. Comp	Days to comp	Sett. Date	Target Country	Target Mkt Cap (m)	Net Sprd	Change	Ann. Return
St George Bank . / Westpac Banking.	1 SGB = 1.31 WBC	13 May 2008	29 Nov 2008	173		Australia	AUD-17,012m	-3.76%	0.92%	-7.79%
Sumco Techxiv C. / Sumco Corporati.	1 5977 = 1.20 3436	06 Mar 2008	30 May 2008	Completed	18 Jul 2008	Japan	JPY-94,224m	1.54%	-0.58%	N/A
Thomas Cook (In. / Thomas Cook Gro.	1 THOMASCOOK = INR100.886	10 Mar 2008	13 Jun 2008	4		India	INR-15,138m	7.15%	0.68%	373.06%
Tokyu Store Cha. / Tokyu Corporati.	1 8197 = 1.00 9005	27 Mar 2008	01 Jul 2008	22	30 Aug 2008	Japan	JPY-40,484m	0.52%	-0.01%	7.59%
Toys R Us Japan / Toys 'R Us	1 7645 = JPY729.00	13 May 2008	10 Jun 2008	1	17 Jun 2008	Japan	JPY-24,871m	0.55%	-0.14%	40.27%
Unisteel Techno. / Kohlberg Kravis.	1 U24 = USD1.4286	07 Jun 2008	29 Aug 2008	81		Singapore	USD-519m	10.74%	4.13%	46.69%
U-Store Co Ltd / Uny Co., Ltd.	1 9859 = 0.83 8270	10 Apr 2008	21 Aug 2008	73	17 Oct 2008	Japan	JPY-36,928m	-31.43%	-0.48%	-150.95%
UTV Software Co. / The Walt Disney.	1 UTVSOF = INR812.638	18 Feb 2008	31 Jul 2008	52	15 Aug 2008	India	INR-17,816m	4.43%	-0.42%	29.41%
Victor Company . / Kenwood Corpora.	1 6792 = 2.00 6765	12 May 2008	01 Oct 2008	114	30 Nov 2008	Japan	JPY-89,395m	2.02%	0.00%	6.32%
Wing Lung Bank . / China Merchants.	1 96 = HKD156.50	02 Jun 2008	21 Jan 2009	226		Hong Kong	HKD-35,688m	2.02%	-0.40%	3.21%
Zinifex Ltd / Oxiana Limited	1 ZFX = 3.1931 OXR	03 Mar 2008	20 Jun 2008	11	04 Jul 2008	Australia	AUD-4,592m	1.58%	-0.76%	41.28%

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Deal	Terms	Ann. Date	Est. Comp	Days to comp	Sett. Date	Target Country	Target Mkt Cap (m)	Net Sprd	Change	Ann. Return
Activision Inc / Vivendi SA	1 ATVI = USD27.50	02 Dec 2007	30 Jun 2008	21		USA	USD-9,910m	-19.17%	1.12%	-291.47%
Ansoft Corporat. / Ansys Inc	1 ANST = 0.4319 ANSS + USD16.25	31 Mar 2008	30 Sep 2008	113		USA	USD-836m	0.89%	0.29%	2.80%
Aquila Inc (for. / Great Plains En.	1 ILA = 0.0856 GXP + USD1.80	07 Feb 2007	15 Jul 2008	36		USA	USD-1,404m	6.75%	1.73%	63.22%
Basic Energy Se. / Grey Wolf, Inc.	1 BAS = 3.678 GW	21 Apr 2008	18 Aug 2008	70		USA	USD-1,228m	0.52%	-0.05%	2.60%
BCE Inc / BCE Consortium	1 BCE = USD41.9378	30 Jun 2007	30 Jun 2008	21		Canada	USD-27,468m	23.31%	0.18%	354.51%
Bentley Pharmac. / Teva Pharmaceut.	1 BNT = USD16.02	31 Mar 2008	30 Sep 2008	113		USA	USD-355m	1.26%	0.83%	3.98%
Bois d' Arc Ene. / Stone Energy Co.	1 BDE = 0.165 SGY + USD13.65	30 Apr 2008	29 Aug 2008	81		USA	USD-1,617m	1.37%	0.14%	5.96%
CHC Helicopter . / First Reserve C.	1 FLY.A = USD32.0591	22 Feb 2008	30 Jun 2008	21		Canada	USD-1,448m	1.45%	0.26%	22.09%
ChoicePoint, In. / Reed Elsevier p.	1 CPS = USD50.00	21 Feb 2008	21 Aug 2008	73		USA	USD-3,487m	2.56%	0.19%	12.31%
Clear Channel C. / Clear Channel A.	1 CCU = USD36.00	16 Nov 2006	30 Sep 2008	113		USA	USD-17,619m	2.83%	0.26%	8.90%
CNET Networks I. / CBS Corporation.	1 CNET = USD11.50	15 May 2008	15 Jul 2008	36		USA	USD-1,741m	0.61%	-0.18%	5.73%
Countrywide Fin. / Bank of America.	1 CFC = 0.1822 BAC	11 Jan 2008	30 Sep 2008	113		USA	USD-2,911m	10.48%	2.47%	32.97%
CSK Auto Corpor. / O'Reilly Automo.	1 CAO = 0.4285 ORLY + USD1.00	01 Apr 2008	30 Jul 2008	51		USA	USD-500m	4.02%	-3.26%	27.20%
DRS Technologie. / Finmeccanica Sp.	1 DRS = USD81.00	12 May 2008	15 Dec 2008	189		USA	USD-3,251m	2.79%	-0.03%	5.31%
Electronic Data. / Hewlett-Packard.	1 EDS = USD25.00	13 May 2008	15 Sep 2008	98		USA	USD-12,289m	2.08%	0.00%	7.53%
Energy East Cor. / Iberdrola SA	1 EAS = USD28.50	25 Jun 2007	25 Jun 2008	16		USA	USD-4,247m	6.22%	0.47%	119.57%
Esmark Inc / Essar Steel Hol.	1 ESMK = USD17.00	30 Apr 2008	31 Aug 2008	83		USA	USD-730m	-7.96%	-2.98%	-33.78%
Esmark Inc / Severstal OAO	1 ESMK = USD17.00	30 May 2008	31 Aug 2008	83		USA	USD-730m	-7.96%	-2.98%	-33.78%
First Charter C. / Fifth Third Ban.	1 FCTR = 1.2963 FITB + USD9.30	16 Aug 2007	06 Jun 2008	Completed	11 Jun 2008	USA	USD-1,041m	3.26%	-1.11%	N/A
FTD Group Inc. / United Online, .	1 FTD = 0.4087 UNTD + USD10.65	30 Apr 2008	29 Aug 2008	81		USA	USD-432m	6.41%	0.09%	27.87%

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Deal	Terms	Ann. Date	Est. Comp	Days to comp	Sett. Date	Target Country	Target Mkt Cap (m)	Net Sprd	Change	Ann. Return
Getty Images In. / Hellman & Fried.	1 GYI = USD34.00	25 Feb 2008	30 Jun 2008	21		USA	USD-1,988m	1.83%	0.33%	27.78%
HLTH Corporatio. / WebMD Corporati.	1 HLTH = 0.1979 WBMD + USD6.89	21 Feb 2008	31 Oct 2008	144		USA	USD-2,283m	8.20%	-0.89%	20.36%
Huntsman Corpor. / Hexion Specialt.	1 HUN = USD28.00	12 Jul 2007	30 Jun 2008	21	04 Jul 2008	USA	USD-4,678m	32.83%	3.32%	499.25%
NAVTEQ Corporat. / Nokia Oyj	1 NVT = USD78.00	01 Oct 2007	15 Aug 2008	67		USA	USD-7,606m	1.15%	0.16%	6.02%
Northwest Airli. / Delta Air Lines.	1 NWA = 1.25 DAL	14 Apr 2008	31 Mar 2009	295		USA	USD-1,735m	7.29%	0.86%	8.93%
NYMEX Holdings,. / CME Group	1 NMX = 0.1323 CME + USD36.00	17 Mar 2008	31 Dec 2008	205		USA	USD-7,846m	4.54%	-0.06%	7.96%
Penn National G. / Penn National A.	1 PENN = USD67.00	15 Jun 2007	15 Jul 2008	36		USA	USD-3,915m	46.42%	1.21%	434.41%
Puget Energy In. / Puget Acquisiti.	1 PSD = USD30.00	26 Oct 2007	25 Oct 2008	138		USA	USD-3,586m	9.40%	0.36%	24.34%
Rural Cellular . / Verizon Wireles.	1 RCCC = USD45.00	30 Jul 2007	30 Jun 2008	21		USA	USD-695m	0.67%	0.11%	10.21%
SAFECO Corporat. / Liberty Mutual .	1 SAF = USD68.25	23 Apr 2008	30 Sep 2008	113		USA	USD-6,022m	1.50%	0.00%	4.73%
Saxon Energy Se. / Saxon Energy Co.	1 SES = USD6.867	05 May 2008	31 Jul 2008	52		Canada	USD-578m	0.43%	0.34%	2.85%
Sirtris Pharmac. / GlaxoSmithKline.	1 SIRT = USD22.50	22 Apr 2008	05 Jun 2008	Completed	11 Jun 2008	USA	USD-658m	0.00%	0.00%	N/A
Synenco Energy . / Total SA (form.	1 SYN = USD8.829	28 Apr 2008	15 Jul 2008	36		Canada	USD-444m	0.33%	0.30%	3.13%
Take Two Intera. / Electronic Arts.	1 TTWO = USD25.74	13 Mar 2008	20 Jun 2008	11		USA	USD-2,034m	-5.92%	0.99%	-154.37%
The Wm. Wrigley. / Mars Incorporat.	1 WWY = USD80.00	28 Apr 2008	28 Jan 2009	233		USA	USD-21,134m	3.83%	0.24%	5.92%
Trane Inc. (for. / Ingersoll-Rand .	1 TT = 0.23 IR + USD36.50	17 Dec 2007	05 Jun 2008	Completed	11 Jun 2008	USA	USD-8,954m	0.10%	0.22%	N/A
TriZetto Group . / Apax Partners	1 TZIX = USD22.00	11 Apr 2008	08 Oct 2008	121		USA	USD-924m	1.99%	0.14%	5.87%
Wendy's Interna. / Triarc Companie.	1 WEN = 4.25 TRY	24 Apr 2008	30 Sep 2008	113		USA	USD-2,344m	1.58%	-0.01%	4.96%
W-H Energy Serv. / Smith Internati.	1 WHQ = 0.48 SII + USD56.10	03 Jun 2008	15 Sep 2008	98		USA	USD-2,944m	-0.09%	0.61%	-0.32%
XM Satellite Ra. / Sirius Satellit.	1 XMSR = 4.60 SIRI	19 Feb 2007	27 Jun 2008	18		USA	USD-2,983m	6.41%	-0.57%	111.39%

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Live deals – Emerging Europe, Middle East and Africa

Deal	Terms	Ann. Date	Est. Comp	Days to comp	Sett. Date	Target Country	Target Mkt Cap (m)	Net Sprd	Change	Ann. Return
ABG SA / Asseco Poland S.	1 ABG = 0.099 ACP	29 May 2008	01 Oct 2008	114		Poland	EUR-178m	1.02%	0.31%	3.18%
ATF Bank AO / Bank Austria Cr.	1 ATFB = USD85.8203	13 Nov 2007	20 Jun 2008	11		Kazakhstan	USD-1,588m	11.34%	-0.02%	295.78%
Bank VTB North-. / JSC VTB Bank	1 VTBS = USD1.9171	14 Apr 2008	23 Jun 2008	14		Russia	USD-2,363m	2.32%	-0.42%	49.73%
Diversified Pro. / Resilient Prope.	1 DIV = 0.4375 RES	02 Apr 2008	30 Jun 2008	21	07 Jul 2008	South Africa	USD-177m	5.22%	1.25%	79.44%
Everest SA (Gr. / Vivartia S.A. (.	1 EVER = EUR3.50	12 Mar 2008	10 Jun 2008	1	16 Jun 2008	Greece	EUR-93m	8.70%	3.91%	793.48%
Gilat Satellite. / Bidco for Gilat.	1 GILT = USD11.40	31 Mar 2008	01 Sep 2008	84		Israel	USD-428m	4.68%	0.10%	19.65%
iFour Propertie. / Pangbourne Prop.	1 IFR = 0.7941 PAP	25 Feb 2008	06 Jun 2008	Completed	13 Jun 2008	South Africa	USD-196m	-3.08%	-0.01%	N/A
Irkut Scientifi. / United Aircraft.	1 IRKT = USD0.9364	24 Mar 2008	11 Jun 2008	2	06 Jul 2008	Russia	USD-905m	1.23%	0.00%	89.97%
JGC TGK-4 (The . / Onexim Group	1 TGKD = USD0.0011	07 Apr 2008	01 Sep 2008	84	26 Sep 2007	Russia	USD-1,453m	0.00%	0.00%	0.00%
Lebedyansky JSC / Bidco for Lebed.	1 LEKZ = USD88.02	20 Mar 2008	06 Oct 2008	119	03 Nov 2008	Russia	USD-1,664m	8.00%	0.00%	23.93%
Liberty Holding. / Standard Bank G.	1 LBH = USD28.535	28 May 2008	25 Jul 2008	46	01 Aug 2008	South Africa	USD-1,356m	3.29%	-0.14%	24.50%
Migros Turk Tic. / Bidco for Migro.	1 MIGRS = EUR12.3728	14 Feb 2008	04 Jun 2008	Completed		Turkey	EUR-1,893m	16.37%	0.82%	N/A
Neochimiki L.V.. / The Carlyle Gro.	1 NEOCHI = EUR19.00	09 May 2008	06 Jun 2008	Completed	12 Jun 2008	Greece	EUR-684m	0.00%	0.00%	N/A
OJSC Power Mach. / Highstat Ltd	1 SILM = USD0.223	28 Nov 2007	10 Jun 2008	1		Russia	USD-1,807m	7.47%	0.00%	681.63%

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Live deals – Emerging Europe, Middle East and Africa

Deal	Terms	Ann. Date	Est. Comp	Days to comp	Sett. Date	Target Country	Target Mkt Cap (m)	Net Sprd	Change	Ann. Return
OJSC Samaraener. / ZAO Financial B.	1 SAGO = USD0.0444	24 Apr 2008	01 Sep 2008	84	26 Sep 2008	Russia	USD-128m	22.31%	-0.68%	93.62%
Rosbank JSCB / Societe General.	1 ROSB = USD8.0834	03 Mar 2008	26 May 2008	Completed	10 Jun 2008	Russia	USD-5,758m	1.04%	0.00%	N/A
Siyathenga Prop. / Pangbourne Prop.	1 SIY = 0.5588 PAP	25 Feb 2008	06 Jun 2008	Completed	13 Jun 2008	South Africa	USD-136m	-3.37%	0.00%	N/A
Terna S.A. / GEK S.A. (aka G.	1 TERR = 0.95 GEK	07 Apr 2008	10 Jul 2008	31		Greece	EUR-370m	9.14%	5.42%	98.16%
TGK-10 (Territo. / Fortum Oyj	1 TGKJ = USD4.6319	29 Feb 2008	19 Jul 2008	40	13 Aug 2008	Russia	USD-3,330m	1.35%	0.00%	11.50%
TGK-2 (The Seco. / Kores Invest	1 TGKB = USD0.0011	14 Mar 2008	19 Sep 2008	102		Russia	USD-1,096m	10.00%	-12.22%	34.76%
TGK-8 (Territor. / OAO Lukoil	1 TGKH = USD0.0015	11 Feb 2008	15 Aug 2008	67	09 Sep 2008	Russia	USD-2,201m	-6.25%	0.00%	-32.59%
TGK-9 (Territor. / Integrated Ener.	1 TGKI = USD0.0003	05 Oct 2007	07 Jul 2008	28	01 Aug 2008	Russia	USD-1,709m			
Tourism Investm. / Bidco for Touri.	1 TRT = USD0.269	24 Apr 2008	15 Aug 2008	67		South Africa	USD-204m	9.48%	1.10%	49.45%
Volzhskaya TGK . / Berezville Inve.	1 TGKG = USD0.1198	15 May 2008	03 Sep 2008	86		Russia	USD-2,587m	38.82%	0.00%	159.20%
W.Kruk SA / Vistula & Wolcz.	1 KRK = EUR7.215	05 May 2008	14 Jul 2008	35		Poland	EUR-89m	49.22%	-7.84%	472.81%
Zentiva NV / Anthiarose Limi.	1 ZEN = EUR37.6706	02 May 2008	11 Aug 2008	63		Czech Republic	EUR-1,602m	-10.34%	-0.57%	-57.17%

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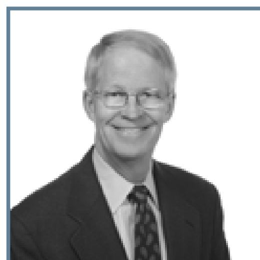
Catriona Hatton
Co-Chair, European Antitrust Practice
Brussels

chatton@hhlaw.com
Tel: +32.2.505.0911
Fax: +32.2.505.0996



Philip C. Larson
Chair, Antitrust & Competition Group
Washington D.C.

pclarson@hhlaw.com
Tel: +1.202.637.5738
Fax: +1.202.637.5910

John Pheasant
Co-Chair European Antitrust Practice
London/Brussels

jpheasant@hhlaw.com
Tel: +44.20.7367.0214
Fax: +44.20.7367.0220

Sharis Arnold Pozen
Practice Group Director Antitrust & Competition Group
Washington D.C.

sapozen@hhlaw.com
Tel: +1.202.637.6948
Fax: +1.202.637.5910

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Notes & Contacts

Simon Anam
Managing Director, Remark
sa@mergermarket.com

Erik Wickman
Remark, North America
erik.wickman@mergermarket.com

Ed Lucas
Editor, Remark
ed.lucas@mergermarket.com

Ben Bschor
Regulatory Correspondent, dealReporter
ben.bschor@dealreporter.com

Tom Coughlan
Research Analyst, Remark
tom.coughlan@mergermarket.com

Number One Southwark Bridge
London SE1 9HL
United Kingdom

t: +44 (0)20 7059 6100
f: +44 (0)20 7059 6101
sales@mergermarket.com
crm@mergermarket.com

895 Broadway
4th Floor
New York
NY 10003, USA

t: +1 212 686-5606
f: +1 212 686-2664
sales.us@mergermarket.com

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