

Antitrust & Competition Insight

In association with Hogan & Hartson LLP

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Foreword

Welcome to the ninth 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 Sharis Pozen, Catriona Hatton and Leigh Oliver summarise how to avoid infringements of US and EC antitrust rules in due diligence and transition planning. On page 7, dealReporter's regulatory correspondent Ben Bschor looks at what steps the European Commission are taking to address the increasing influence of Sovereign Wealth Funds. The usual round up of the most significant antitrust situations across the globe can be found on page 9. Also in this edition of the newsletter Michele Harrington discusses how company executives should consider Hart-Scott-Rodino issues before acquiring shares of their company's voting

securities, this can be found on page 12. In the final article on page 14, Joseph Krauss, Michele Harrington and Michaelynne Ware look at the new jurisdictional thresholds for premerger notification filings pursuant to Hart-Scott-Rodino that became effective last month.

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

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M&A - Avoiding infringements of US and EC antitrust rules in due diligence and transition planning

Both the United States enforcement agencies and the European Commission (EC) recognize that due diligence and transition planning are necessary for companies in order to determine the proper valuation for any proposed transaction and to take the steps necessary to operate the new business upon closing. However, these agencies also take the position that the antitrust laws prevent parties to a prospective transaction from acting together and coordinating their activities as one entity, either directly or indirectly, before their transaction closes. There are two sets of antitrust rules at issue in both the US and the European Union (EU)¹.

“Gun-jumping” – Implementing a deal before antitrust approval

Section 7A of the US Clayton Act prohibits parties meeting the Hart-Scott-Rodino (HSR) statutory threshold for pre-merger notification, regardless of whether they are competitors, from exercising control over the to-be-acquired entity or assets prior to HSR approval. In the context of mergers and acquisitions, violations of Section 7A are often referred to as “gun-jumping”. In the EU, Article 7(1) of the EC Merger Regulation prohibits parties to a transaction which meets the EC Merger Regulation thresholds, from implementing the transaction prior to a EC decision approving the merger.² Parties can seek a derogation from the EC allowing them to close a transaction prior to approval but these derogations are available only in exceptional circumstances as outlined in Article 7(3) of the EC Merger.

Coordination of companies’ competitive behavior before closing

In the US, Section 1 of the Sherman Act prohibits contracts, combinations and conspiracies that restrain trade. In the EU, Article 81(1) of the European Community Treaty prohibits anti-competitive agreements between independent companies. In the M&A context, these rules can be violated if the merging companies coordinate their activities prior to closing and reach agreements or understandings on such things as the prices either will charge third parties, the customers or territories either will serve, the services either will offer third parties, or the bids in which either will participate during the pre-closing period.

Enforcement

In the US, both the Department of Justice (DOJ) and Federal Trade Commission (FTC) have brought actions against merging companies for alleged violations of either one or both of the applicable statutes. There has been little enforcement activity on the EU side, although a recent investigation (discussed below), suggests the European Commission may becoming more vigilant in the future monitoring behavior of merging companies in the period prior to closing of a transaction.

The two most recent examples of US enforcement were brought by DOJ.

In 2003, DOJ brought an action against Gemstar and TV Guide International, Inc. (TV Guide) for their alleged conduct prior to closing of their transaction.³ Gemstar and TV Guide were competing producers of interactive programming guides for television. DOJ’s complaint in the matter alleged that the parties agreed on marketing targets, allocated customers for exclusive dealing during the course of their pending transaction, and shared competitively sensitive customer information in order to determine the prices to offer their cable service provider customers. It also alleged combined pre-closing decision-making and exertion of control by Gemstar over TV Guide. As a result of their conduct, the parties were required to pay fines of over \$5.5m and enter into a consent order that required, among other things, that certain contracts negotiated pre-closing be rescinded.

¹ This article focuses on the US and European Community laws and enforcement actions. However, it should be noted that other antitrust authorities, including the EU member states, have analogous prohibitions on certain pre-closing activities.

² In the case of a public bid, the acquirer can acquire shares following notification of the bid to the European Commission but they can not exercise the voting rights attached to those shares prior to Commission approval of the transaction.

³ United States v. Gemstar-TV Guide International, Inc., No. 03-0198, 2003 WL 21799949 (D.D.C. July 3, 2003).

M&A - Avoiding infringements of US and EC antitrust rules in due diligence and transition planning

In 2006, DOJ filed an action against Qualcomm Incorporated (Qualcomm) and Flarion Technologies, Inc. (Flarion) for pre-merger activities that violated Section 7A of the Clayton Act.⁴ The complaint alleged that prior to receiving clearance from the antitrust authorities for their proposed merger, Qualcomm obtained operational control of Flarion under the terms of the merger agreement. The agreement called for Flarion to seek Qualcomm's approval for basic business decisions including making customer proposals. In addition, although not required by the agreement, Flarion sought Qualcomm's guidance in making decisions on hiring of consultants. The DOJ claimed that this conduct amounted to the transfer of beneficial ownership prior to expiration of the HSR waiting period. The parties entered into a consent decree under which they agreed to pay \$1.8m in civil penalties.

In both Gemstar/TV Guide and Qualcomm/Flarion, the parties were allowed to merge. However, the investigation of the pre-closing activity was continued well after the transaction was cleared. Additionally, as indicated above, both investigations ended with significant fines and consent orders.

In the EU, the European Commission has found a gun-jumping violation in only one case, namely the joint venture between Bertelsmann, Kirch and Premiere⁵. Violations in other cases may have been dealt with informally but in Bertelsmann/Kirch, the EC publicly announced that it considered the parties conduct amounted to a breach of the EC Merger Regulation and threatened to impose fines. Reportedly, Premiere had started to market Kirch's digital decoder prior to EC approval of the joint venture which the EC considered as a partial implementation of the merger. In the end, the EC did not impose fines but accepted an undertaking from the parties to cease these activities until EC approval of the joint venture.

More recently, the EC investigated alleged improper information sharing between Ineos and Norsk Hydro prior to the EC approval of the Ineos' acquisition of the polymer business of Norsk Hydro. As mentioned above, Article 7(1) of the EC Merger Regulation prohibits any form of "gun jumping." Based on concerns that there may have been a violation of Article 7(1) of the EC Merger Regulation, the EC in December 2007, the EC reportedly conducted a so-called 'dawn raid' (unannounced inspection) pursuant to its powers of inspection in Article 13 of the Merger Regulation at the premises of the merging parties. Moreover, the EC was concerned that the information sharing between the merging parties might also be contrary to Article 81(1) of the European Community Treaty.

The EC ultimately found no wrongdoing on the part of Ineos and Norsk Hydro with respect to the conduct that occurred prior to the approval of the merger. The concentration itself was cleared by the EC during a second phase. The investigation signals an increased willingness on the part of the EC to enforce the antitrust rules against merging companies engaged in gun jumping or illegal co-ordination of competitive behavior prior to approval or closing.

Guidance to avoid antitrust infringements pre-closing

Due diligence

There are several practices that can be employed in order to strike a balance between sharing the information necessary for the parties to make an informed and reasoned evaluation of the value of the proposed transaction, while at the same time avoiding antitrust violations. In the course of due diligence, competing parties must continue to compete vigorously and, to the greatest extent practicable, limit the information they discuss and disclose to each other accordingly. Ideally, the parties should avoid disclosure of competitively sensitive information, specifically with regard to any products or services in the area of competitive overlap, that is not publicly available. Information that is competitively sensitive can vary depending on the competitive overlapping industry. However,

⁴ United States v. QUALCOMM Incorporated and Flarion Technologies, Inc., No.1CV00672 (D.D.C. filed April 13, 2006).

⁵ Bertelsmann/Kirch/Premiere [1999] OJ L.53/1

some general categories of competitive information are: pricing plans, strategic plans, marketing plans, costs, customer bids, and profit margins. Historical information on these topics are somewhat less sensitive than information as to the future, especially if presented in aggregate or other form, which does not permit a prediction of future conduct. In the context of a business transaction, it will often be necessary to disclose certain sensitive competitive information. In such cases, there are ways to share information while minimizing the risk that such a disclosure will reduce competition and thereby violate antitrust rules. For example, parties can limit the collection, exchange and dissemination of competitive information to those employees on due diligence “clean teams”. A clean team is comprised of individuals that are not in a position to use competitive information to affect competitive decision making (for example, because they work for the acquiring company in a different geographic region than the target company and where the target company does not or could not compete). Parties can also use a third party (such as a consulting firm) to collect, screen, and assess competitively-sensitive information such as evaluation of pricing terms, prospective bids or contract rates. A third party may be able to aggregate the competitively sensitive terms and provide a high-level assessment of the value of a target without disclosing specifics of the target’s business. Parties can also have outside counsel review competitively sensitive contracts and redact out competitive terms (price, term of contract, etc.).

Transition Planning

After two companies have reached an agreement on the terms of the merger, but before they receive antitrust approvals from the antitrust agencies or close the transaction, they will likely want to begin the process of transitioning from two separate entities to one unified company. Appropriate transition planning in this phase of a transaction can allow the combined entity to hit the ground running in order to achieve the merger efficiencies and valuable cost savings that contributed to the overall rationale for the transaction. However, failure to adhere to the antitrust laws during this stage of a transaction can lead to enforcement action by the authorities, resulting in substantial delay or blocking of the transaction and issuance of fines.

Before the companies have received HSR and EC Merger Regulation approvals, the risks are the greatest and parties must not transfer or exercise control over the assets or the entity to be acquired. After a transaction has received antitrust clearance, but before companies have closed the transaction, competitors must still be conscious of avoiding collusion and improper information sharing that could be perceived as a violation of the US and EU provisions on agreements between independent companies. In instances in which a closing date is set, regulatory hurdles are cleared, and consummation of the merger is certain, concerns of likely antitrust law violations can ease.

However, until the merger receives clearance, and in the case of competitors, until the transaction closes, the parties must continue to run their businesses separately, to make independent business decisions and to avoid steps conduct that would make it difficult to unscramble the egg if the deal does not go through. Companies should be cautious during this transition time not to release joint statements about predictions on market shares, competitive strategy, customer/supplier relationships, or pricing policies of the combined entity unless legal counsel has been consulted. It is important to ensure that public statements do not imply that the companies are coordinating prior to receiving antitrust clearances or, in the case of competitors, prior to consummating the transaction.

In the course of transition planning, the transition teams for each company should avoid the following:

- Discussing agreements, reaching understandings, or exchanging information that would eliminate or reduce competition between the parties before the acquisition is completed
- disclosing of non-public information received by a transition team to others within the companies who could use it for marketing or any other competitive purpose
- sharing information that is not reasonably necessary for legitimate integration planning purposes

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- becoming involved in the day-to-day operational decisions of each other's operations or otherwise seek to manage the other's business decisions, or take possession or control of any assets or businesses of the other firm, or hold out the employees of the target as employees of the buyer to customers. Do not relocate employees (with the exception of the transition "clean team") and do not have employees of one firm report to employees of the other
- discussing or exchanging information regarding customers, pricing policies, pricing formulas (such as digital download models), prices or other terms of sale, business or marketing plans, bidding activities, costs or cost structures, profit margins, proprietary technologies, pending or planned R&D or product development efforts (except in accordance with the due diligence guidelines outlined above)
- agreeing on: prices or terms of sale, prices paid for inputs (including terms of supplier or customer contracts), wages, allocation of customers, territories or products in any way (such as by refraining from bidding on a supplier or customer contract they otherwise would have sought), halting a marketing campaign or other competitive initiative, altering plans for competitive bidding, alter technology or other research programs
- basing individual business decisions on any sensitive information received from the other party during the transition planning process.

The transition teams can take the following steps to enhance their chances of achieving the merger efficiencies and greatest value from the merged company. Note that for parts of the companies' businesses that do not overlap, more flexibility and broader information exchanges for purposes of integration planning may be permissible.

- Form transition teams that will enable the parties to integrate their operations after the acquisition has closed (including information systems, human resources, and systems operations)
- develop plans and procedures for the integration of operations that will take place following the closing of the acquisition, including the potential organizational structure and staffing plans, and pro forma strategic plans, provided all aspects of plans are protected from disclosure to employees with on-going responsibility for the conduct of independent business operations, and provided they are collected and treated in a manner that is sensitive to the guidelines for exchange of information
- engage in independent communications with any customer or potential customer, or supplier or customer or potential supplier or customer, about what the individual party plans to do and what it will offer after the transaction is complete, but neither party should report to the other about the communication or consult with each other before-hand. It is not permissible to make joint calls to sell products or discuss future contracts or terms of supply until late in the process, absent a specific request by the customer or supplier or customer (but the discussion must remain focused and general).

**By Sharis Pozen, Catriona Hatton & Leigh Oliver,
Hogan & Hartson**

The European Commission and Sovereign Wealth Funds

In recent times the European Commission (EC) has indicated it would like to take a tougher approach towards Sovereign Wealth Funds (SWFs). The issue was first raised by EC president Barroso in October last year in a speech addressing Europe's response to globalisation. "Sovereign Wealth Funds," he said at the time, "need a common European approach."

Since then, the EC has made SWFs their *ceterum censeo*, rarely missing an opportunity to mention the issue whenever appropriate. Trade Commissioner Peter Mandelson, Internal Markets Commissioner Charlie McCreevy, Competition Commissioner Neelie Kroes and Joaquín Almunia, the Commissioner for Economic Policy, have all mentioned concerns regarding SWFs in public speeches within the past five months.

While the EC never got tired of stressing the importance of financial investments, which includes investment by SWFs, concerns arose regarding their investment and management policy. "Cutting off access to these important sources of liquidity would be like cutting off our noses to spite our faces," said McCreevy, reassuring the community there was no new protectionist style approach in the making. Despite this, he noted only minutes later in the same speech that "we need to explain to our citizens that investments which have the potential to compromise national security can be blocked today already under existing regulation."

So what kicked off the debate? At first glance it seems to be no coincidence that the recent global credit crunch has brought about renewed interest in SWFs. After all even major banks like Barclays in Europe and Citibank in the US had to rely on investments by SWFs as the credit crunch was hitting hardest in the second half of 2007.

Furthermore, a person familiar with the debate within the EC has argued that recent investments by SWFs proved how vital these funds were to keep the economy going in difficult times.

Conversely, the insider suggests that it was the increasing number and size of Chinese and Russian funds that raised concerns within certain member states. Some of the member states, especially in Eastern Europe, were worried that a number of SWFs were principally driven by a political agenda rather than the financial returns of their investments. "There are certain worries that this will end up in a power play," the insider describes the situation. Or, as EC President José Manuel Barroso puts it, the EC aims at "avoid[ing] some funds being run ... for non-economic objectives."

In fact, Europe has a legal framework in place already, based on the principle of free movement of capital. And there are also provisions that allow for restrictions to be put in place in certain situations. Member states can restrict investors, including SWFs, if overriding objectives of public interest are concerned, such as national security or public order.

At the end of February the EC took the debate to a new level, when a communication on a common European approach to SWFs was issued. The paper outlines several key concerns which can best be summarised as a call for more transparency. While the communication again stresses the commitment to an open investment environment provided by the European Union, it also spells out a concern which is articulated in the document as: "the opaque way in which some SWFs function and their possible use as an instrument to gain strategic control". Investments by SWFs "may reflect a desire to obtain technology and expertise to benefit national strategic interests, rather than being driven by normal commercial interests in expansion to new products and markets." The unease, although ambiguously referred to, is the prospect the investments by SWFs may be politically motivated. Although the EC does not like pinpointing suspects officially in that context, Russian state controlled Gazprom is a name that can be heard off the record in Brussels. Not that Gazprom itself would fall within the definition of a SWF, but its profits may feed the Russian funds.

To dispel doubts of the SWF's investment intentions, the EC calls for transparency. "Who controls them? What is their investment strategy? are legitimate questions," says Charlie McCreevy. While there have been calls for an international code of conduct, for the time being the EC clearly hopes to avoid legislation. However, if the SWF community is not willing to agree on a code of conduct, then the EC would also be prepared to go down the route of formal legislation and regulation. "I have already made clear that we may propose European legislation if we cannot achieve results by voluntary means," said Barroso recently.

The European Commission and Sovereign Wealth Funds

And it seems that Barroso has a vast majority of EU member states – if not even every single state – behind him. When Ecofin, the council comprising all economic and finance ministers of the member states, met in the first week of March, there was great support for the EC's SWF communication. An observer who was present throughout the meeting described the atmosphere as one of great unity when the ministers discussed the issue.

This great unity includes the assessment that until now there is no obvious case in which a SWF abused its financial power to reach political goals in an EU member state. Apparently, the minister of one of the member states went as far as saying at the Ecofin meeting he would have difficulties seeing a big difference between a non-European SWF and a French state controlled company investing outside France.

However, the EC is putting the pressure on and wants to see a solution by the end of 2008. When the European Council, the main decision-making body of the European Union, met earlier this March, SWFs were on the European agenda once more. The outcome of discussions was unknown when this publication went to print. But with the expected backing of the Council the discussions should now move on to a global level. Ideally, a solution should be implemented in a multilateral, global agreement, says the EC. The OECD and the IMF are already working on the topic, too, and the EC says that discussions with these bodies are being held.

By Ben Bschor, dealReporter

mergermarket's regional round-ups

North America: **United States**

The EC clears the Google/DoubleClick deal, decision likely to impact any prospective ruling between Microsoft and Yahoo

The European Commission (EC) has cleared Google's US\$3.1bn acquisition of DoubleClick, the online advertising technology company. The EC's investigation, which opened in November 2007, concluded that the transaction would be unlikely to have harmful effects on consumers either in ad serving or online advertising. The EC found that the two companies were not exerting major competitive constraints on each other's activities. Even if DoubleClick could become an effective competitor in online intermediation, it is likely that other competitor's would continue to exert sufficient competitive pressure.

This ruling will undoubtedly be an important factor for the assessment of a potential takeover of Yahoo by Microsoft. A Washington based antitrust lawyer noted that all important market definitions in any Microsoft/Yahoo investigation will likely be similar to the Google/DoubleClick investigation. Moreover, an industry insider asserted that Microsoft has thus far tried to frame any antitrust discussions around search based advertising where Google is the dominant player. The Google/DoubleClick investigation lasted 11 months at the EC and a complicated merger between Microsoft and Yahoo could see an antitrust review in excess of this.

Europe: **Austria/Germany**

Proposed REWE/Adeg transaction not yet filed with EC; rival set to challenge deal

The proposed takeover of private Austrian supermarket chain Adeg by REWE, the German retailer, has not yet been filed with the EC. REWE's plan to increase its stake in Adeg to 75% from 24.9% has triggered criticism from politicians while REWE's main Austrian rival, Spar Oesterreich, has threatened to file a complaint as soon as the deal is filed at the EC.

North America: **Canada/United States**

Agrium re-files with the FTC in bid to clear UAP buy

Agrium has re-filed with the FTC in order to give the regulator more time to review its acquisition of UAP Holdings. The combined entity would have a nationwide market share of 15% although the FTC will examine each local market where both Agrium and UAP compete. It is unusual for a company to file on more than occasion and it is thought that Agrium is hoping that by giving the FTC additional time to review the deal, they may avoid a second request. If the FTC does make a second request then Agrium has said that the deal may not close until the middle of the year. Agrium has more than 500 retail centres in the United States, Argentina and Chile.

North America: **United States**

DOJ require remedies in buyout of Clear Channel

The United States Department of Justice (DOJ) has announced that they require Clear Channel, the largest operator of radio stations in the United States, to divest radio stations in four cities in order for a consortium of private equity investors to acquire a controlling stake in the company. The DOJ claimed that the proposed transaction would have resulted in higher prices for purchasers of radio advertising in Cincinnati, Houston and Las Vegas as two of the private equity firms, Bain Capital and Thomas H. Lee Partners, already have substantial ownership in two firms that compete with Clear Channel in those cities.

The divestitures required by the DOJ are aimed to assure continued competition in markets where the transaction would otherwise result in a significant loss of competition. Thomas Barnett, Assistant Attorney General in charge of the DOJ's Antitrust Division, added "Without the divestitures obtained by the Department, advertisers that rely on radio advertising in the affected cities likely would have faced higher prices."

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

Thomson to dispose of assets to get DOJ clearance over Reuters acquisition

The DOJ has recently announced that it requires Thomson to sell financial data assets in order to proceed with their proposed US\$17bn acquisition of Reuters. The DOJ noted that the proposed transaction would have resulted in higher prices and reduced innovation for fundamentals data, earnings, estimates data and aftermarket research reports. Under terms of the proposed settlement, Thomson and Reuters must sell copies of the data contained in Thomson's WorldScope, a global fundamentals product; Reuters Estimates, an earnings estimates product; and Reuters Aftermarket Research Database, an analysis research distribution product. Moreover, the DOJ's Antitrust Division must approve the buyer of each asset.

The DOJ cooperated extensively with other antitrust bodies throughout the course of the investigations and a DOJ spokesman added, "This resolution by the antitrust division, the European Commission, and the Canadian Competition Bureau is an example of effective cooperation in global competition enforcement." Thomson now has 60 days to dispose of the three financial data assets.

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

Reed's acquisition of ChoicePoint only requires clearance in the US

Reed Elsevier's proposed US\$4.2bn acquisition of ChoicePoint, the listed US based data broker, will require antitrust approval only in the United States according to a source close to the deal. This is due to the fact that ChoicePoint does not operate outside of the US and half of Reed Elsevier's £4.5bn revenue comes from there. Antitrust clearance is likely to take some months because of Reed's significant US revenues and due to the fact that the deal involves public records data.

North America: **United States**

XM/Sirius investigation rumbles with outcome still unpredictable

The DOJ's investigation into the proposed US\$5.6bn buy of XM Satellite Radio by Sirius is still ongoing after more than a year. An industry lawyer claimed that it can not be a good sign that the deal has been dragged out for a year, although the DOJ is reportedly at gridlock after a member of staff leaked information to the media that the deal should not go through. Nevertheless, it will be the Federal Communications Commission (FCC) that will ultimately rule on the deal and regulate the merged entity on an ongoing basis.

A source close to the FCC said that an a la carte offering of services is being considered as a possible condition on the transaction. Although Democratic Commissioners are not generally in favour of media consolidation it is thought that an a la carte could achieve a majority vote. However, Steve Axinn, a former DOJ attorney, has recently labelled an XM/Sirius tie up as an "outrage" while Mel Karmazin, CEO of Sirius Satellite, has said that the company is ready to continue as an independent entity if the deal fails.

Europe: **United Kingdom**

BSkyB to challenge Competition Commission's ruling on ITV stake acquisition

BSkyB, the listed UK based satellite and cable broadcasting company, has announced that it is to challenge the Competition Commission's ruling that it should dispose of the majority of its 17.9% shareholding in ITV, the listed UK based commercial TV broadcaster. BSkyB has lodged its complaint with the Competition Appeal Tribunal which has the power to overturn part or all of the previous findings and send the case back to the Competition Commission.

Europe: **Austria/Hungary**

EC begins Phase II probe into OMV's acquisition of MOL

The EC has opened a Phase II investigation into the acquisition of the Hungarian oil and gas company MOL by OMV, the Austrian oil and gas group. The EC's initial investigation found that the proposed acquisition may raise competition concerns in a number of markets and the EC now has until July 22 to make a final judgement on the deal.

OMV is active on the wholesale and retail markets in Austria, the Czech Republic, Germany, Hungary, Slovakia and Slovenia and is also active in the exploration of natural oil and gas. Similarly, MOL is an established player in the wholesale and retail supply of refined oil products in a number of the same territories. Consequently, competition issues could be problematic as the deal would bring together two oil and gas companies that are both active in a number of Central and Eastern European territories.

OMV has welcomed the investigation by the EC and has said that it is not an unusual procedure. Meanwhile, MOL has issued a statement saying it believes the examination is a good opportunity to analyse all competition troubles that could arise as a result of the deal. A combination of MOL/OMV would create a company with a market capitalisation of approximately €27bn.

Europe: **United Kingdom**

Cookson's buy of Foseca cleared under conditions by EC

The EC has cleared under conditions the £592m acquisition of Foseco, the UK based supplier of metallurgical chemicals, by Cookson Group, the UK materials technology firm. The clearance of the deal is subject to a remedy package that requires the disposal of Foseco's Carbon Bonded Ceramics (CBC) business and of Cookson's Hi-Tech Filters business. Earlier this year, Cookson had announced that it had agreed to sell CBC to RHI, a rival company. The acquisition is also subject to antitrust clearance from the DOJ in the United States which is expected imminently.

Executives should consider HSR issues before acquiring any shares of their company's voting securities

Executives commonly acquire shares of their company's voting securities, especially given the growth and popularity of equity-based compensation systems. However, executives and their companies may not always appreciate that such acquisitions could be subject to reporting and waiting period requirements in the US under the Hart-Scott-Rodino Act (the "HSR Act"). This is true regardless of whether the executive is a citizen of the US and regardless of whether the company is a US company.

Thus, executives and their companies need to be mindful of HSR requirements before they acquire any shares of their company's voting securities. This applies to all methods, including open market purchases, the exercise of options or warrants, the conversion of one class of shares into another class, and the vesting of stock grant awards made by boards of directors.

The purpose of the HSR Act is to permit the US antitrust agencies to review, and possibly challenge, reportable acquisitions before they are consummated. If an executive's acquisition of company voting securities is reportable under the HSR Act, the executive and the company would each be required to submit a separate HSR notification to the US antitrust agencies and observe a 30-day post-notification waiting period (which could be shortened by the US antitrust agencies) before the executive could actually acquire the company shares at issue.

Violators of the HSR Act are subject to civil penalties of up to \$11,000 a day for each day that they are in violation of the Act. In practice, the US agencies give parties "one bite of the apple" and typically do not fine a party who inadvertently missed a HSR filing obligation if it is the party's first HSR violation and the party submits a corrective HSR filing when it discovers its mistake.

The HSR Threshold Tests

There are three HSR tests to determine whether legislation applies: the commerce test, the size-of-transaction test, and the size-of-person test. The commerce test would be satisfied, for example, if either the executive or the company is engaged in interstate commerce (among the US states or between any of the US states and a foreign nation). The size-of-transaction and the size-of-person tests are tied to dollar values that are adjusted by the Federal Trade Commission annually. The current dollar thresholds are described below.

The size-of-transaction test would be satisfied if the executive would directly and indirectly (through entities and persons under his or her HSR "control") hold in excess of \$63.1m worth of company voting securities. To make this determination, it is necessary to aggregate the company voting securities already held, directly and indirectly, by the executive with the company voting securities to be acquired by the executive in the upcoming acquisition. For example, if an executive were to acquire \$100 worth of company voting securities, he or she would satisfy the HSR size-of-transaction test, and could possibly have an HSR filing obligation, if he or she already held directly and indirectly company voting securities valued at \$63.1m and if no exemption applied.

Executives should consider HSR issues before acquiring any shares of their company's voting securities

The size-of-person test only applies to transactions valued, under HSR rules, at \$252.3m or less. If a transaction has an HSR value in excess of \$252.3m, there is no size-of-person test and the transaction is HSR reportable unless exempt. If the size-of-person test is applicable, it would generally be satisfied if (1) one party to the transaction (such as the company and all entities under common control with the company under HSR control tests) had at least \$126.2m in total assets or annual net sales and (2) the other party to the transaction (such as the executive and the entities and persons under common control with the executive under HSR control tests) had at least \$12.6m in total assets or annual net sales.

As noted above, for purposes of determining whether any of the HSR threshold tests would be satisfied, it is necessary to aggregate the holdings of persons and entities that are under common control with each other under the HSR control tests. The HSR control tests are unique and differ significantly from control tests in the EU and even in the US under securities laws. Under HSR rules, it is necessary to aggregate the holdings of spouses and their minor children. In addition, a corporation is controlled for HSR purposes by the person or entity that holds at least 50% of its voting securities or has the contractual right to appoint at least 50% of its directors. A partnership or limited liability company is controlled for HSR purposes by the person or entity who is entitled to at least 50% of its profits or assets taking preferential distributions (if any) into account.

There are a few exemptions to the HSR Act that could apply when an executive acquires shares of his or her company, including an exemption that applies to acquisitions of voting securities of certain non-US companies. However, there is no exemption based solely on the fact the executive would hold only a minority or even a small percentage of a US company's voting securities.

Given the complexity of the HSR exemptions and the valuation and aggregation rules, executives and companies are well-advised to consult with HSR counsel before concluding that HSR filing requirements would or would not apply to an executive's specific acquisition of shares of his or her company's stock. Companies should also consider implementing a process to ensure that HSR issues are considered in advance of the vesting of restricted stock units. Perhaps consideration could also be given to conditioning the vesting of the same on the recipient's confirmation, 30-60 days before the scheduled vesting, to ensure such vesting does not cause an HSR reporting obligation.

By Michele S. Harrington, Hogan & Hartson LLP

Executives Changes to HSR jurisdictional thresholds

On February 28 2008, new jurisdictional thresholds for premerger notification filings pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (“HSR Act”) became effective.

Under the HSR Act, certain acquisitions of assets, voting securities, and/or interests in non-corporate entities are subject to premerger notification filing and waiting period requirements. This applies if the jurisdictional thresholds are satisfied and no exemption applies.

The recent changes to the jurisdictional thresholds were prompted by a 2000 amendment to the HSR Act, which requires the Federal Trade Commission (FTC) to adjust on an annual basis the \$50m and \$200m size-of-transaction

threshold tests, and the \$10m and \$100m size-of-person threshold tests. The alteration is based on changes to the US gross national product for each fiscal year compared to the gross national product for the fiscal year ending September 30 2003. The threshold changes do not affect the amount of the applicable HSR filing fees to be paid, but do affect the threshold levels applicable to each of the filing fees.

The principal changes to the jurisdictional thresholds are as follows:

	Old Threshold	New Threshold Effective February 28
Size-of-Transaction Threshold Test	Notification may be required if acquiring person will acquire and hold certain assets, voting securities, or interests in non-corporate entities valued at more than \$59.8m .	\$63.1m
Size-of-Person Threshold Test	Generally one “person” to the transaction must have at least \$119.6m in total assets or annual net sales, and the other must have at least \$12.0m in total assets or annual net sales.	At least \$126.2m and \$12.6m in total assets or annual net sales
	Transactions valued at more than \$239.2m are not subject to the size-of-person threshold test and are therefore reportable unless exempt.	\$252.3m
Filing Fee Threshold Levels	HSR filing fee of \$45,000 for transactions where the acquiring person will hold an aggregate total amount of assets, voting securities, and/or controlling non-corporate interests valued at more than \$59.8m but less than \$119.6m .	More than \$63.1m but less than \$126.2m HSR filing fees remains unchanged.
	HSR filing fee of \$125,000 for transactions where the acquiring person will hold an aggregate total amount of assets, voting securities, and/or controlling non-corporate interests valued at \$119.6m or more but less than \$597.9m .	At \$126.2m or more but less than \$630.8m HSR filing fees remains unchanged.
	HSR filing fee of \$280,000 for transactions where the acquiring person will hold an aggregate total amount of assets, voting securities, and/or controlling non-corporate interests valued at \$597.9m or more.	At \$630.8m or more HSR filing fees remains unchanged.
	When completing an HSR filing, the acquiring person in a voting securities acquisition must indicate which notification threshold it will cross – \$59.8m, \$119.6m, \$597.9m, 25% (if the value of the voting securities to be held is greater than \$1.196bn) or 50%. These notification thresholds are also relevant to a certain HSR exemption.	The new notification thresholds are \$63.1m, \$126.2m, \$630.8m, 25% (if the value of the voting securities to be held is greater than \$1,261.5m), or 50%

Transactions which meet these jurisdictional thresholds may be exempt from a HSR filing obligation under one of the many exemptions available under the HSR Act.

By Joseph G. Krauss, Michele Harrington, and Michaelynne Ware, Hogan & Hartson LLP

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
Abbot Group plc / Turbo Alpha Lim.	1 ABT = GBP3.90	19 Dec 2007	07 Mar 2008	Completed	21 Mar 2008	United Kingdom	GBP-911m	-0.51%	0.00%	N/A
AGR Group AS / Altor Oil Servi.	1 AGR = EUR5.0787	26 Feb 2008	03 Apr 2008	27	17 Apr 2008	Norway	EUR-357m	-1.66%	0.24%	-21.68%
AWD Holding AG / Swiss Life Hold.	1 AWD = EUR30.00	03 Dec 2007	13 Mar 2008	6	01 Apr 2008	Germany	EUR-1,159m	0.03%	-0.44%	2.03%
Bank Austria Cr. / UniCredit Group	1 BAU = EUR129.40	26 Mar 2007	30 Apr 2008	54		Austria	EUR-27,840m	-6.10%	0.00%	-41.20%
Biffa Plc (form. / WasteAcquisitio.	1 BIF = GBP3.50	08 Feb 2008	07 Apr 2008	31		United Kingdom	GBP-1,212m	1.01%	0.00%	11.89%
Cassa di Rispar. / Intesa Sanpaolo.	1 BFR = EUR6.73	26 Jul 2007	01 Apr 2008	25		Italy	EUR-5,554m	0.37%	-0.08%	5.44%
Compania de Dis. / Imperial Tobacc.	1 LOG = EUR52.50	25 Jan 2008	30 Apr 2008	54		Spain	EUR-2,326m	0.00%	0.00%	0.00%
Cumerio SA (For. / Norddeutsche Af.	1 CUR = EUR30.00	24 Jun 2007	15 Feb 2008	Completed	19 Mar 2008	Belgium	EUR-779m	-0.30%	0.10%	N/A
Ducati Motor Ho. / Investindustria.	1 DCT = EUR1.70	19 Feb 2008	31 May 2008	85		Italy	EUR-549m	2.16%	-0.12%	9.08%
Eiffage SA / Sacyr Valleherm.	1 EIF = 2.40 SAC	19 Apr 2007	31 Mar 2008	24		France	EUR-5,505m	-28.77%	-1.97%	-437.57%
Emap plc / Eden Bidco	1 EMP = GBP4.70	21 Dec 2007	20 Mar 2008	13	03 Apr 2008	United Kingdom	GBP-1,010m	0.47%	-0.16%	13.14%
FAST Search & T. / Microsoft Corpo.	1 FST = EUR2.4115	08 Jan 2008	30 Apr 2008	54		Norway	EUR-763m	6.43%	1.54%	43.46%
Foseco Plc / Cookson Group p.	1 FOS = GBP2.95	11 Oct 2007	04 Apr 2008	28	18 Apr 2008	United Kingdom	GBP-485m	1.20%	0.00%	15.65%
Hagemeyer NV / Rexel SA	1 HAG = EUR4.85	25 Oct 2007	04 Mar 2008	Completed	01 Apr 2008	Netherlands	EUR-3,094m	0.62%	0.21%	N/A
Implenia AG / Laxey Partners .	1 IMP = EUR19.845	02 Nov 2007	14 Mar 2008	7	17 Apr 2008	Switzerland	EUR-375m	-2.30%	0.29%	-120.03%
Kiln plc / Tokio Marine & .	1 KLN = GBP1.50	14 Dec 2007	31 Mar 2008	24		United Kingdom	GBP-436m	0.50%	0.00%	7.64%
Metrovacesa S.A. / Undertake Optio.	1 MVC = EUR83.21	07 Jan 2008	30 Apr 2008	54		Spain	EUR-5,767m	0.50%	0.06%	3.35%
Northgate Infor. / Kohlberg Kravis.	1 NIS = GBP0.95	21 Dec 2007	05 Mar 2008	Completed	29 Mar 2008	United Kingdom	GBP-555m	-0.26%	-0.53%	N/A
OMX AB / Borse Dubai	1 OMX = EUR28.8103	17 Aug 2007	12 Feb 2008	Completed	13 Mar 2008	Sweden	EUR-3,397m	2.31%	-1.08%	N/A
POLYNT SpA (for. / Polimeri Specia.	1 PLY = EUR3.67	12 Feb 2008	30 Apr 2008	54		Italy	EUR-373m	1.45%	-0.07%	9.81%
Resolution Plc / Pearl Group Lim.	1 RES = GBP7.20	19 Oct 2007	14 Mar 2008	7	28 Mar 2008	United Kingdom	GBP-4,760m	3.82%	-0.08%	199.25%
Reuters Group p. / The Thomson Cor.	1 RTR = 0.16 TMS + GBP3.525	15 May 2007	17 Apr 2008	41	01 May 2008	United Kingdom	GBP-7,419m	6.45%	0.23%	57.43%
Rio Tinto plc / BHP Billiton pl.	1 RIO = 2.72 BHP + GBP11.4473	06 Feb 2008	31 Dec 2008	299		United Kingdom	GBP-56,062m	-1.87%	-0.03%	-2.28%

Deal	Terms	Ann. Date	Est. Comp	Days to comp	Sett. Date	Target Country	Target Mkt Cap (m)	Net Sprd	Change	Ann. Return
Scorpion Offsho. / Fortune Super E.	1 SCORE = EUR9.9929	14 Feb 2008	31 May 2008	85		Bermuda	EUR-523m	3.35%	0.00%	14.38%
Scottish & Newc. / Sunrise Acquisi.	1 SCN = GBP8.00	25 Jan 2008	30 Jun 2008	115		United Kingdom	GBP-7,395m	2.50%	0.20%	7.93%
Securitas Direc. / ESML Intressent.	1 SDR = EUR2.9201	13 Nov 2007	14 Mar 2008	7	20 Mar 2008	Sweden	EUR-973m	4.38%	0.00%	228.13%
Sogecable SA / Promotora de In.	1 SGC = EUR28.00	20 Dec 2007	31 Mar 2008	24		Spain	EUR-3,833m	1.12%	-0.04%	17.03%
Suez SA (former. / Gaz de France S.	1 SEZ = 0.9545 GAZ + EUR5.4996	27 Feb 2006	31 Mar 2008	24		France	EUR-51,733m	-0.44%	0.10%	-6.73%
Tele Atlas NV / TomTom N.V.	1 TELA = EUR30.00	23 Jul 2007	05 May 2008	59	10 Apr 2008	Netherlands	EUR-2,404m	11.77%	1.11%	72.84%
Telelogic AB / IBM Corporation	1 TEL = EUR2.2514	11 Jun 2007	19 Mar 2008	12	26 Mar 2008	Sweden	EUR-547m	1.68%	0.48%	51.24%
Tradus plc (for. / Naspers Limited	1 TRD = GBP18.00	18 Dec 2007	07 Mar 2008	Completed	21 Mar 2008	United Kingdom	GBP-822m	1.18%	0.00%	N/A
Umbro Plc / NIKE Inc.	1 UMB = GBP1.9306	23 Oct 2007	03 Mar 2008	Completed	17 Mar 2008	United Kingdom	GBP-280m	0.57%	0.00%	N/A
Vedior NV / Randstad Holdin.	1 VED = 0.3276 RAN + EUR9.50	03 Dec 2007	30 Apr 2008	54		Netherlands	EUR-2,917m	4.79%	0.73%	32.35%
Wavefield Insei. / TGS-NOPEC Geoph.	1 WAV = 0.505 TGS	30 Jul 2007	31 Mar 2008	24		Norway	EUR-606m	-2.52%	8.22%	-38.33%
Whatman plc / GE Healthcare L.	1 WTM = GBP2.70	04 Feb 2008	25 Apr 2008	49	09 May 2008	United Kingdom	GBP-353m	1.03%	0.09%	7.36%

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
Advance Agro PC. / Bidco for Advan.	1 ADA = USD1.236	08 Nov 2007	26 Mar 2008	19	31 Mar 2008	Thailand	USD-650m	1.42%	1.35%	23.55%
Allegiance Mini. / Zinifex Ltd	1 AGM = AUD1.10	17 Dec 2007	17 Jan 2008	Completed	27 Mar 2008	Australia	AUD-852m	0.00%	0.45%	N/A
AmInvestment Ba. / AMMB Holdings B.	1 AMIP = USD1.888	19 Jun 2007	24 Dec 2007	Completed	31 Mar 2008	Malaysia	USD-1,491m	67.15%	-0.56%	N/A
Anzon Australia. / Nexus Energy Li.	1 AZA = 0.638 NXE + AUD0.71	23 Jan 2008	01 May 2008	55		Australia	AUD-656m	0.48%	-2.16%	3.19%
Asiapharm Group. / LuYe Pharmaceut.	1 A61 = USD0.512	05 Feb 2008	24 Mar 2008	17	08 May 2008	Singapore	USD-249m	1.82%	-0.20%	33.13%
Auckland Intern. / Canada Pension .	1 AIAL = USD2.993	07 Nov 2007	13 Mar 2008	6	18 Apr 2008	New Zealand	USD-2,223m	70.88%	19.77%	2874.66%
Biofermin Pharm. / Taisho Pharmace.	1 BPC = JPY3388.20	12 Feb 2008	11 Mar 2008	4	19 Mar 2008	Japan	JPY-36,948m	11.45%	8.78%	1045.17%
Centurion Bank . / HDFC Bank Ltd	1 CBP = 0.0345 HDFC	29 Feb 2008	29 Apr 2008	53		India	INR-78,290m	3.56%	-0.78%	24.05%
Chongqing Titan. / Panzhuhua New S.	1 CTI = 1.78 PNV	05 Nov 2007	30 Apr 2008	54		China	CNY-3,546m	16.72%	-0.53%	113.04%
E-TEN Informati. / Acer Incorporat.	1 ETEN = 0.9345 ACER	03 Mar 2008	05 Aug 2008	151		Taiwan	USD-277m	6.33%	-15.56%	15.11%
Herald Resource. / Bumi Resources .	1 HER = AUD2.25	12 Dec 2007	04 Apr 2008	28	25 Apr 2008	Australia	AUD-536m	-16.97%	-0.31%	-221.27%
Herald Resource. / Consortium for .	1 HER = AUD2.50	30 Jan 2008	31 Mar 2008	24		Australia	AUD-536m	-8.09%	-0.68%	-109.34%
Intec Holdings . / TIS Inc.	1 INT = 0.79 TIS	13 Dec 2007	01 Apr 2008	25	31 May 2008	Japan	JPY-80,552m	1.16%	0.02%	16.89%
Kyowa Hakko Kog. / Kirin Pharma Co.	1 KYO = JPY1121.51	22 Oct 2007	01 Apr 2008	25	31 May 2008	Japan	JPY-455,537m	16.10%	5.71%	209.85%
Magnum Corporat. / Multi-Purpose H.	1 MGN = USD1.0714	20 Nov 2007	31 Mar 2008	24		Malaysia	USD-1,527m	1.60%	-0.14%	24.37%
Mineral Securit. / CopperCo Ltd. (.)	1 MIS = 2.20 COP	29 Jan 2008	30 Apr 2008	54		Australia	AUD-187m	8.10%	-0.03%	54.77%
Mitsukoshi Ltd / Isetan Company .	1 MTKS = 0.34 ISTN	23 Aug 2007	01 Apr 2008	25	31 May 2008	Japan	JPY-196,224m	0.75%	0.07%	10.96%
Nippei Toyama C. / Komatsu Ltd	1 NPT = JPY1250.00	16 Jan 2008	17 Mar 2008	10	25 Mar 2008	Japan	JPY-62,911m	0.48%	0.16%	17.60%
Pacific Century. / Picville Invest.	1 PCP = HKD2.85	14 Feb 2008	15 May 2008	69		Hong Kong	HKD-6,933m	0.35%	-0.71%	1.79%
Pan Gang Group . / Panzhuhua New S.	1 PGS = 0.82 PNV	05 Nov 2007	30 Apr 2008	54		China	CNY-6,532m	17.60%	-1.16%	118.98%
Resource Pacifi. / Xstrata Coal Pt.	1 RSPH = AUD3.20	05 Dec 2007	10 Mar 2008	3	17 Mar 2008	Australia	AUD-1,077m	0.00%	0.31%	0.00%
Rio Tinto Limit. / BHP Billiton Lt.	1 RIO = 3.40 BHP	06 Feb 2008	31 Dec 2008	299		Australia	AUD-59,934m	0.39%	1.27%	0.48%

Deal	Terms	Ann. Date	Est. Comp	Days to comp	Sett. Date	Target Country	Target Mkt Cap (m)	Net Sprd	Change	Ann. Return
Robinson and Co. / ALF Global Priv.	1 RSC = USD4.414	20 Jan 2008	03 Apr 2008	27	13 Apr 2008	Singapore	USD-397m	-2.53%	-0.65%	-30.84%
SBI E*Trade Sec. / SBI Holdings In.	1 SBIE = 3.55 SBI	15 Jan 2008	01 Aug 2008	147		Japan	JPY-259,200m	3.74%	2.32%	9.28%
Shanghai Power . / Shanghai Electr.	1 SPT = 7.32 SEG	30 Aug 2007	15 Mar 2008	8		China	CNY-33,150m	-48.32%	-4.45%	-2204.64%
Southern Iron & / JSW Steel	1 SIS = 0.0455 JSW	25 Oct 2007	31 Mar 2008	24		India	INR-12,452m	1.91%	0.33%	29.01%
Sumco Techxiv C. / Sumco Corporati.	1 SUMT = 1.20 SUMC	06 Mar 2008	30 May 2008	84		Japan	JPY-69,460m	20.78%	-3.23%	89.24%
Symbion Health . / Primary Health .	1 SYB = AUD4.10	08 Nov 2007	13 Feb 2008	Completed	13 Mar 2008	Australia	AUD-2,647m	0.24%	-0.25%	N/A
The Straits Tra. / The Cairns Pte..	1 S20 = USD4.7316	06 Jan 2008	04 Mar 2008	Completed	14 Mar 2008	Singapore	USD-1,563m	-1.32%	-0.61%	N/A
The Tokyo Star . / Consortium for .	1 TSB = JPY360000.00	21 Dec 2007	06 Mar 2008	Completed	14 Mar 2008	Japan	JPY-248,500m	1.98%	1.70%	N/A
Toyama Chemical. / FUJIFILM Holdin.	1 TYC = JPY880.00	13 Feb 2008	18 Mar 2008	11	25 Mar 2008	Japan	JPY-211,432m	0.34%	0.00%	11.35%
UTV Software Co. / The Walt Disney.	1 UTVSOF = INR838.0379	18 Feb 2008	30 Apr 2008	54	15 May 2008	India	INR-18,164m	5.63%	3.26%	38.07%
Zinifex Ltd / Oxiana Limited	1 ZFX = 3.1931 OXR	03 Mar 2008	16 Jun 2008	101		Australia	AUD-5,478m	4.28%	0.04%	15.47%

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
3Com Corporatio. / Bain Capital LL.	1 3Com = USD5.30	28 Sep 2007	30 Apr 2008	54		USA	USD-1,226m	72.64%	9.06%	482.05%
Activision Inc / Vivendi SA	1 ATV = USD27.50	02 Dec 2007	30 Jun 2008	115		USA	USD-7,996m	0.18%	-0.40%	0.57%
Alfa Corporatio. / Alfa Mutual	1 ALFC = USD22.00	05 Nov 2007	18 Apr 2008	42		USA	USD-1,757m	1.01%	0.00%	8.57%
Alliance Data S. / Blackstone Capi.	1 ADSC = USD81.75	17 May 2007	31 Mar 2008	24		USA	USD-3,560m	80.74%	10.32%	1178.85%
American Financ. / Gramercy Capita.	1 AFRT = 0.121 GRAM + USD5.50	05 Nov 2007	30 Mar 2008	23		USA	USD-898m	7.47%	4.63%	113.67%
AMIS Holdings, . / ON Semiconducto.	1 AMS = 1.15 ONS	13 Dec 2007	14 Mar 2008	7	20 Mar 2008	USA	USD-570m	0.76%	-0.36%	34.68%
Aquila Inc (for. / Great Plains En.	1 AQI = 0.0856 GPE + USD1.80	07 Feb 2007	30 Apr 2008	54	06 May 2008	USA	USD-1,206m	21.67%	-0.52%	143.79%
BCE Inc / BCE Consortium	1 BCEI = USD43.8484	30 Jun 2007	25 Apr 2008	49		Canada	USD-29,527m	19.94%	1.94%	145.53%
BEA Systems Inc / Oracle Corporat.	1 BEA = USD19.375	16 Jan 2008	30 Jun 2008	115		USA	USD-7,730m	1.60%	0.21%	5.03%
Bright Horizons. / Bain Capital LL.	1 BHF = USD48.25	14 Jan 2008	15 May 2008	69		USA	USD-1,177m	7.68%	0.24%	40.03%
CHC Helicopter . / First Reserve C.	1 CHC = USD33.5197	22 Feb 2008	30 Jun 2008	115		Canada	USD-1,424m	7.88%	0.45%	24.81%
ChoicePoint, In. / Reed Elsevier G.	1 CHP = USD50.00	21 Feb 2008	21 Aug 2008	167		USA	USD-3,455m	3.52%	0.32%	7.65%
Clear Channel C. / Clear Channel A.	1 CLEAR = USD39.20	16 Nov 2006	17 Mar 2008	10	24 Mar 2008	USA	USD-17,171m	14.89%	-1.50%	494.03%
Commerce Bancor. / TD Bank Financi.	1 COM = 0.4142 TDB + USD10.50	02 Oct 2007	30 Mar 2008	23		USA	USD-6,916m	1.82%	0.30%	27.64%
Countrywide Fin. / Bank of America.	1 CFCN = 0.1822 BOA	11 Jan 2008	30 Sep 2008	207		USA	USD-3,021m	27.51%	7.48%	48.27%
Energy East Cor. / Iberdrola SA	1 EAC = USD28.50	25 Jun 2007	25 Jun 2008	110		USA	USD-4,226m	6.74%	-0.20%	22.17%
First Charter C. / Fifth Third Ban.	1 FIRST = 0.9023 FIFTH + USD9.30	16 Aug 2007	02 May 2008	56		USA	USD-848m	18.14%	-2.31%	116.18%
Gemstar-TV Guid. / Macrovision Cor.	1 GMTV = 0.1121 MAC + USD3.613	07 Dec 2007	30 Apr 2008	54		USA	USD-1,995m	11.62%	2.05%	77.10%
Getty Images In. / Hellman & Fried.	1 GII = USD34.00	25 Feb 2008	30 Jun 2008	115		USA	USD-1,907m	6.15%	0.56%	19.35%

Deal	Terms	Ann. Date	Est. Comp	Days to comp	Sett. Date	Target Country	Target Mkt Cap (m)	Net Sprd	Change	Ann. Return
Grant Prideco I. / National Oilwel.	1 GRNT = 0.4498 NOLV + USD23.20	17 Dec 2007	17 Apr 2008	41		USA	USD-6,456m	0.85%	-0.23%	7.40%
HLTH Corporatio. / WebMD Health Co.	1 HTH = 0.1979 WMD + USD6.89	21 Feb 2008	30 Jun 2008	115		USA	USD-2,027m	7.00%	1.05%	22.03%
Huntsman Corpor. / Hexion Specialt.	1 HUNT = USD28.00	12 Jul 2007	30 Jun 2008	115	04 Jul 2008	USA	USD-5,368m	15.75%	1.46%	49.56%
Matria Healthca. / Inverness Medic.	1 MHI = USD39.00	28 Jan 2008	27 Jun 2008	112		USA	USD-485m	72.41%	2.48%	233.90%
Metal Managemen. / Sims Group Limi.	1 METM = 2.05 SIMS	24 Sep 2007	18 Mar 2008	11	21 Mar 2008	USA	USD-1,499m	1.44%	0.04%	43.79%
Myers Industrie. / GS Capital Part.	1 MYRS = USD22.50	24 Apr 2007	30 Apr 2008	54		USA	USD-422m	87.34%	3.07%	579.65%
NAVTEQ Corporat. / Nokia Oyj	1 NAV = USD78.00	01 Oct 2007	31 Mar 2008	24		USA	USD-7,268m	5.35%	0.86%	78.09%
Northern Peru C. / Northern Peru A.	1 NPRU = USD14.1033	06 Dec 2007	28 Mar 2008	21		Canada	USD-431m	1.78%	0.07%	29.45%
NuCo2 Inc. / Aurora Capital .	1 NCO2 = USD30.00	30 Jan 2008	13 Jun 2008	98		USA	USD-407m	8.70%	0.24%	32.06%
Penn National G. / Penn National A.	1 PNG = USD67.00	15 Jun 2007	13 Jun 2008	98		USA	USD-3,557m	61.17%	5.90%	225.54%
Performance Foo. / Vistar Corporat.	1 PER = USD34.50	18 Jan 2008	30 Jun 2008	115		USA	USD-1,159m	5.63%	0.13%	17.73%
Pharmion Corpor. / Celgene Corpora.	1 PHA = 0.8175 CEL + USD25.00	18 Nov 2007	06 Mar 2008	Completed	06 Mar 2008	USA	USD-2,650m	-1.75%	-0.71%	N/A
Puget Energy In. / Puget Acquisiti.	1 PUGT = USD30.00	26 Oct 2007	31 Oct 2008	238		USA	USD-3,093m	13.64%	0.85%	20.83%
Quanex Corporat. / Gerdau SA	1 QUA = USD57.20	19 Nov 2007	31 Mar 2008	24		USA	USD-1,921m	11.32%	0.79%	165.25%
Quintana Mariti. / Excel Maritime .	1 QUM = 0.4084 EMC + USD13.00	29 Jan 2008	25 Apr 2008	49		Greece	USD-1,318m	9.70%	0.30%	70.82%
Respironics, In. / Koninklijke Phi.	1 RSPI = USD66.00	21 Dec 2007	31 Mar 2008	24		USA	USD-4,884m	0.08%	0.05%	1.11%
Reuters Group p. / The Thomson Cor.	1 RTR = 0.16 TMS + GBP3.525	15 May 2007	17 Apr 2008	41	01 May 2008	United Kingdom	GBP-7,419m	6.23%	0.26%	54.11%

Deal	Terms	Ann. Date	Est. Comp	Days to comp	Sett. Date	Target Country	Target Mkt Cap (m)	Net Sprd	Change	Ann. Return
Rural Cellular . / Verizon Wireles.	1 RCC = USD45.00	30 Jul 2007	30 Jun 2008	115		USA	USD-684m	2.39%	0.19%	7.52%
The Commerce Gr. / Mapfre SA (Form.	1 COMC = USD36.70	30 Oct 2007	30 Apr 2008	54		USA	USD-2,279m	1.63%	0.39%	10.84%
The Midland Com. / Munich Re Ameri.	1 MIDL = USD65.00	17 Oct 2007	30 Jun 2008	115		USA	USD-1,248m	0.84%	0.05%	2.64%
The Montreal Ex. / TSX Group Inc	1 MON = 0.50 TSX + USD14.3084	10 Dec 2007	30 Apr 2008	54		Canada	USD-998m	1.06%	-0.26%	7.06%
TierOne Corpora. / CapitalSource F.	1 TIER = 1.08 CSF + USD6.80	17 May 2007	29 May 2008	83		USA	USD-208m	88.44%	10.12%	384.31%
Trane Inc. (for. / Ingersoll-Rand .	1 TRA = 0.23 IRC + USD36.50	17 Dec 2007	31 Mar 2008	24		USA	USD-8,765m	1.76%	-0.04%	25.72%
United Agri Pro. / Agrium Inc.	1 UAP = USD39.00	03 Dec 2007	15 Mar 2008	8	20 Mar 2008	USA	USD-2,022m	1.17%	0.13%	47.34%
US BioEnergy Co. / VeraSun Energy .	1 USE = 0.81 VEC	29 Nov 2007	01 Apr 2008	25		USA	USD-459m	1.78%	-0.21%	24.96%
XM Satellite Ra. / Sirius Satellit.	1 XMR = 4.60 SSR	19 Feb 2007	31 Mar 2008	24		USA	USD-2,986m	13.35%	-1.55%	194.84%

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
ATF Bank AO / Bank Austria Cr.	1 ATF = USD85.8203	13 Nov 2007	31 Mar 2008	24		Kazakhstan	USD-1,489m	18.72%	0.00%	262.74%
House of Busby / Ethos Private E.	1 HOB = USD3.1125	23 Nov 2007	25 Mar 2008	18		South Africa	USD-158m	20.17%	1.30%	408.98%
iFour Propertie. / Pangbourne Prop.	1 I4P = 0.7941 PBP	25 Feb 2008	08 May 2008	62		South Africa	USD-222m	0.58%	1.86%	3.32%
Lamps Hotel Co. / Venture Ability.	1 LHC = EUR17.18	28 Dec 2007	28 Mar 2008	21		Greece	EUR-342m	1.53%	0.00%	24.27%
Migros Tuerk Ti. / Bidco for Migro.	1 MTT = EUR12.3728	14 Feb 2008	02 Jun 2008	87		Turkey	EUR-1,822m	20.92%	3.35%	87.75%
OJSC Power Mach. / Highstat Ltd	1 PRM = USD0.223	28 Nov 2007	28 Apr 2008	52		Russia	USD-1,785m	8.78%	0.00%	59.35%
Opoczno SA / Cersanit Krasny.	1 OPO = 1.33 CRS	17 Dec 2007	01 May 2008	55		Poland	EUR-170m	2.10%	6.03%	13.47%
Pivovarna Lasko / BIDCO for Pivov.	1 LSK = EUR88.00	12 Feb 2008	11 Mar 2008	4		Slovenia	EUR-751m	0.57%	0.00%	41.71%
Prokom Software. / Asseco Poland S.	1 PRK = 1.82 ASP	30 Sep 2007	31 Mar 2008	24		Poland	EUR-468m	1.25%	1.55%	19.07%
Quintana Mariti. / Excel Maritime .	1 QUM = 0.4084 EMC + USD13.00	29 Jan 2008	25 Apr 2008	49		Greece	USD-1,318m	9.70%	0.30%	70.82%
Rosbank JSCB / Societe General.	1 ROS = USD8.0834	03 Mar 2008	04 Jun 2008	89		Russia	USD-5,621m	3.80%	0.00%	15.25%
Siyathenga Prop. / Pangbourne Prop.	1 SIY = 0.5588 PBP	25 Feb 2008	05 Jun 2008	90		South Africa	USD-152m	1.17%	-2.08%	4.66%
TGK-10 (Territo. / Fortum Oyj	1 T10 = USD4.6319	29 Feb 2008	15 Jun 2008	100		Russia	USD-3,170m	7.72%	0.00%	27.62%
TGK-8 (OAO Terr. / Financial Group.	1 TG8 = USD0.0014	18 Oct 2007	25 Jan 2008	Completed	30 Mar 2008	Russia	USD-1,926m			N/A
TGK-8 (OAO Terr. / Lukoil Oil Comp.	1 TG8 = USD0.0015	11 Feb 2008	01 Jun 2008	86		Russia	USD-1,926m	0.00%	0.00%	0.00%
TGK-9 (Territor. / Integrated Ener.	1 TG9 = USD0.0003	05 Oct 2007	26 Feb 2008	Completed	21 Mar 2008	Russia	USD-1,709m			N/A
Tiger Automotiv. / Ethos Private E.	1 TIA = USD2.6194	12 Dec 2007	03 Mar 2008	Completed	10 Mar 2008	South Africa	USD-132m	18.23%	-0.89%	N/A

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