June 2006

Antitrust & Competition Insight

In association with Hogan & Hartson LLP

Issue 2

In association with:

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Foreword

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

The report 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. Furthermore the report provides features and case studies that explore and help resolve many of the problems faced by corporations and bankers when conducting M&A and avoiding unnecessary antitrust and competition complications in their daily operations.

In the past few months M&A and antitrust headlines in both Europe and North America have featured accusations and debate over protectionism in several ongoing major deal situations. This thorny issue, and the very particular and varied manifestations of it on either side of the Atlantic is something Phil Larson and John Pheasant explore in their comparative feature on Protectionism on page xx. Meanwhile, Sandra Pointel, dealReporter's regulatory correspondent in Brussels, analyses in detail one situation in particular: the proposed merger of Gaz de France and Suez. Her article is on page xx.

Also in this edition of the newsletter are features by Hogan & Hartson partner, George Metaxas, who writes on State Aid Issues in European M&A on page xx. Meanwhile, both George and David Sieradzki write on Network Neutrality, again comparing the legislative situation on either side of the Atlantic.

We hope you find this second edition of interest, and welcome any feedback you might have for forthcoming newsletters in September and December.

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Protectionism: A Comparative Overview of the EU and US

"Economic Patriotism" in the European Union

The European Union ("EU") has for many years encouraged Member State governments to sacrifice some of their own narrow national interests in order to create a larger, more integrated common market. However, after the French government intervened last year to discourage US food company PepsiCo's potential bid for France's Danone, it became clear that protectionist policies were still a major issue in the EU. Protectionist national policies (or "economic patriotism") have since raised legal and political concerns but are being countered by the European Commission ("Commission").

The Protectionist Approach

Following the Danone matter, there have been other examples of "economic patriotism" in Europe. Other EU Member States, such as Spain and Poland, have also been accused of promoting "national champions." The following are examples of a protectionist trend within the EU:

- Spain has actively promoted a merger between the Spanish energy company Endesa and its domestic counterpart Gas Natural in preference to the German utility E.ON's competing bid for Endesa;
- Luxembourg, with the support of France, is currently trying to block the sale of the steel company Arcelor to the Mittal Group;
- Italy, which was very critical of the French government's role in Suez-GDF, recently tried to prevent foreign interests from buying two medium-sized Italian banks;
- Poland tried to block the merger of UniCredit's Polish subsidiary with BPH, the Polish local affiliate of German bank HVB. The merger, as part of the larger acquisition involving Italian UniCredit's takeover of HVB, has already been approved by the Commission. Nevertheless, the Polish authorities want UniCredit to sell BPH as they oppose the implementation of the merger on the Polish market. The Commission initiated proceedings against the Polish government for continued opposition to the merger.

Critics of "Economic Patriotism"

The UK government has publicly disagreed with such a protectionist approach and, along with the Commission, has become a key critic of such economic patriotism. The UK has pointed to the current state of the energy markets in the EU as an example of what happens when such protectionist policies are pursued. UK officials claim that the badly-functioning EU gas markets result in British consumers paying £10bn more per year than they should. The UK, for its part, has maintained a liberal and permissive attitude towards foreign takeovers believing that they bring much needed investment and expertise into the UK. In the past few years, the UK's Abbey National has been bought by Spain's Santander Group, Nippon Glass has taken over the glassmaker Pilkington, Spain's Telefonica has acquired UK mobile operator O2 and German gas group Linde has recently bought BOC. The consortium led by Spain's Ferrovial has very recently been successful in its bid for BAA's significant UK airport assets, a transaction cleared by the European Commission.

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The Commission's Position

Competition Commissioner Neelie Kroes has argued that there must be a focus on global competition and on competition both inside the EU and within the domestic markets and that any protectionist national policies should be challenged by all available means. As such, European industries should not, she believes, be sheltered from global competition by, for example, illegal state subsidies or national legislation which protect national industries from competition or from being acquired by foreign corporations. She further asserts that such economic patriotism will not allow Europe to compete globally and, furthermore, will likely produce retaliatory responses within the EU.

The Commission's strategy for dealing with protectionism includes securing more exclusive powers of scrutiny over large-scale European mergers. The Commission recognizes that consolidation is necessary in certain sectors but that such consolidation should not happen in a way that undermines Single Market objectives. The Commission believes there needs to be a change in the rules under which competition authorities review merger deals. Certain important mergers are not subject to the Commission's review due the application of the "2/3rd rule". Under this rule, if the parties to a transaction generate 2/3rds of their revenues in one and the same Member State, they are not required to notify the deal (no matter how large) to the Commission. As a result, important decisions with a pan-European impact are not made in Brussels. Instead, they are made in national capitals where, the Commission suspects, domestic political considerations may be more important/influential than broader Single Market principles.

Overall the dynamic driving economic patriotism is different from that which influenced the US approach to the recent P&O matter (i.e. security). In the EU, it seems that fears about the more immediate effects of globalization and greater economic integration within the EU are shaping national policy in some Member States. The Commission is vigilantly taking action to counter such tendencies.

US Ports Controversy and Subsequent Developments

Freedom of foreign investment is very much the norm in the United States. With limited exceptions, prior authorisation (other than Hart-Scott-Rodino clearance where it applies) generally is not required before foreign investment can proceed. However, the furore over the recent proposed acquisition of P&O by DP World ("DPW") has drawn public attention to the little-known Exon-Florio Amendment to the Defense Production Act and has set in motion legislative action that continues today, even after the immediate controversy over DPW's proposed acquisition of P&O's US ports business has ended.

Exon-Florio's National Security Exception

Exon-Florio empowers the US Government to review and, if necessary, suspend, restrict or block foreign acquisitions of US entities that threaten to undermine US national security. Exon-Florio authorizes the US President to investigate the effect on US national security of "mergers, acquisitions, and takeovers... which could result in foreign control of persons engaged in interstate commerce in the United States." The standard for "foreign control" is an intentionally nebulous one in order to give the President the greatest latitude in protecting national security.

Exon-Florio can apply to any sector. It therefore looks broadly across the economy and draws on the traditional US concern that government contracts with defense-related agencies, as well as reliable sources of state-of-the-art products, services, and technology necessary for national defense, not be compromised. Since the terrorist attacks of 11 September 2001, the US Government has taken an increasingly broad and inclusive view of the types of transactions that raise national security concerns and thus are subject to review under Exon-Florio.

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The Committee on Foreign Investment in the United States

The President has delegated authority to investigate under Exon-Florio to the Committee on Foreign Investment in the United States (CFIUS). CFIUS consists of twelve members of the Executive branch of the US Government, including the Secretaries of Commerce, Defense, Homeland Security, State and Treasury, as well as the Attorney General, the US Trade Representative and other senior administration officials.

National Security Reviews by CFIUS of Foreign Acquisitions of Control

If after an initial review CFIUS concludes that the transaction does not threaten the national security, the Exon-Florio review is terminated without referral to the President. Alternatively, if CFIUS decides that further consideration of the transaction is warranted, it conducts a more extended investigation and makes a recommendation as to whether the President should block the transaction. A 1992 amendment to Exon-Florio makes such an investigation (and referral to the President) mandatory if a foreign government controls the acquirer and the transaction could affect national security. CFIUS has not, to date, interpreted this language as mandating investigations in every case involving government control, and did not apply it to DPW (a point that drew Congressional attention).

At the end of the investigation, the President must make a final determination as to whether the transaction poses a threat to national security and, if so, whether to prohibit the transaction or, in the case of a closed transaction, impose conditions on the going-forward business or require divestiture.

The Exon-Florio "Safe Harbour"

A decision that the transaction does not raise national security concerns is final. It provides the foreign acquirer with a safe harbour under Exon-Florio. DPW's proposed acquisition of P&O received CFIUS approval, and the President also supported the transaction. However, as DPW learned, the safe harbour does not, in itself, preclude Congress from exercising its legislative authority to pass other laws that would limit foreign ownership of companies such as those running US ports.

The Controversy over the Proposed DPW Acquisition and Subsequent Legislation

When the proposed DPW acquisition became publicly known, it soon became the object of intense political opposition from both Republicans and Democrats and the subject of a variety of legislative efforts, including some to ban the transaction. DPW eventually resolved the immediate controversy by agreeing to divest P&O's US port operations to an independent third party. Nevertheless, the momentum created by the initial controversy has led to an increasing and continuing variety of legislative proposals. For example, various proposed legislation would modify the composition of CFIUS to give the defense and intelligence communities a greater role, require CFIUS to accord greater weight to arms control and non-proliferation concerns, move CFIUS under the jurisdiction of the Homeland Security Committee (rather than the Banking Committee) in Congress, rank various foreign nations according to their perceived degrees of hostility to US interests and a variety of other revisions. Support in Congress for one or more of these bills is widespread, as Congress seeks to address public concern for security enhancement in an election year. Business interests, by contrast, generally want to ensure that security is not enhanced by measures that unnecessarily restrict the potential for foreign investment in the US.

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Wider Implications

It appears unlikely that any of the proposed legislation, if adopted, will result in significant substantive change in Exon-Florio, CFIUS, or the standards by which foreign investment in the US are evaluated. There is also substantial question whether the pending legislation and public pressure will significantly affect the outcome of the CFIUS review process. It is quite possible, however, that the CFIUS review process will become longer and more complicated, that CFIUS' deliberations will be made more transparent to Congress, and that politically sophisticated US interests seeking to defeat a foreign investment will be able to use the CFIUS review process to achieve their commercial objectives. The potentially wide scope of application of Exon-Florio means that deals in a number of industries could be susceptible to scrutiny and intervention. Thus, understanding the complexities of the US review process has become all the more important for foreign investors.

By John Pheasant and Phil Larson
Hogan & Hartson LLP

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Protectionism: Gaz de France/Suez

Did France invent economic patriotism? Or is economic patriotism just another version of protectionism? One point that remains certain is that France is often cited as an example of a country where "economic patriotism" is used to justify the government's intervention in takeovers as demonstrated in the Danone/Pepsico and Arcelor/Mittal, and, more recently, Gaz de France (GDF)/Suez deals.

The French government's announcement of the merger between state-owned utility GDF and French energy and water company Suez on Saturday 25 February sparked outrage in Italy. In the aftermath of the announcement, Italian energy company Enel, which had been eyeing an acquisition of Suez's Belgian subsidiary Electrabel, loudly criticised France's protectionism against an EU partner. Backed up by many national politicians, it denounced the French government's interventionism which, it claimed, was engineered to fend off a move by the Italian company. But French Prime Minister Dominique de Villepin was adamant that the GDF/ Suez merger had been planned for a long time, defending the industrial dimension of the project.

Soon after, Italian treasury minister Giulio Tremonti met with the European Commission (EC) competition commissioner, Neelie Kroes, and her internal market counterpart, Charlie McCreevy, to raise his concerns over protectionism in the situation surrounding Suez and Enel's plans to bid for the company. At the outcome of the meetings Kroes said she would "thoroughly and impartially analyze any takeover bid involving Suez" while Mc Creevy insisted he would monitor and examine the situation.

Only few days later, the EC launched an investigation into the role of the French government into the merger after Enel had filed a complaint. The Italian company claimed the French government had been aware of its negotiations with French company Veolia Environment over a joint-takeover of Suez, which would have seen the company's assets split between the two. The French government had allegedly dissuaded Veolia to pursue the project.

As tensions rose between France and Italy, Kroes also met, the same week, Gerard Mestrallet and Jean-Francois Cirelli, CEOs of Suez and GDF, respectively, and Enel CEO Fulvio Conti, but issues remained unaddressed.

The EU Council Spring summit at the end of March gathered the 25 EU leaders in Brussels and could have provided an arena for member states, in general, and France and Italy, in particular, to solve growing issues about protectionism in Europe. Ahead of the meeting, Jose Manuel Barroso, the EC president had urged EU heads of states to refrain from protectionism and adopt a common energy policy at the spring summit. "We can't accept economic nationalism. We can't build barriers between member states: that's absurd!" he said at the time, without referring to any specific deal or country. "Let's see what the EU heads of states say. Do they think the best way to guarantee energy supply is to be protectionist?"

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Protectionism:
Gaz de France/Suez

Ahead of the meeting, Tremonti had also tried to convince its EU partners to adopt measures banning the creation of a national champion in Europe but the project was abandoned. Some observers described the move as "ironic", as Italy has often been accused of protectionism, notably in the takeovers of national banks.

Meanwhile, the French parliament approved the new takeover law. This includes a possibility for companies to issue equity warrants in the event of a hostile bid, enabling them to shore up their capital and making it more costly for the bidder. But Conti said France's new anti-hostile takeover law would not prevent Enel from making a move for Suez.

Months later, Enel still has not launched a rival bid but is reported to be closely monitoring political developments in France over the GDF/Suez merger. The Commission has, however, ended its investigation into the role of the French government in the deal and so far has not found any wrong-doing. Mestrallet trumpeted at the company's AGM on 5 May that not only had the Commission not taken action against France but it had singled out the Italian government for failure to comply with EC internal market rules. In a letter disclosed to the press, McCreevy said the Commission "had taken action" to change the situation in the Italian energy sector which "does not comply with the rules of the internal market." He indicated in particular that the Commission had decided to ask Italy to modify its legislation regarding limitation of voting rights in companies operating in the energy sector. McCreevy also said the Commission had asked Italy since October 2005 to abolish the powers that Italian Finance Ministers have in energy companies. His letter came as a reply to concerns sent by Mestrallet to the EC, where he pointed out that Italy was criticising French protectionism when Enel was protected by the Italian government. Enel is 31% owned by the Italian government.

Contrary to the provisions governing the freedom of circulation of capital in the single market, the Italian state disposes of exorbitant rights over Enel, intended to forestall any change in the controlling interest in Enel's share capital, notably by limiting to 3% the percentage of capital and voting rights which any other shareholder may hold. Mestrallet used this letter as one of the main arguments to request a vote for a "poison pill" against Enel, which was adopted by shareholders. Previously, Suez had also complained to the French financial regulator AMF that ongoing speculation about Enel's launching a bid seriously impacted the company's share price while Enel's own shares were protected.

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Protectionism: Gaz de France/Suez

One interesting feature in the GDF/Suez deal, in particular, and in European energy mergers, in general, are the different levels of liberalisation member states have achieved so far. In France, the main providers are the two incumbents GDF and Electricite de France (EDF), where the government remains the largest shareholder. As a result of the merger, a new law is needed for the French government to reduce its stake in the merged entity to below 70%. The UK, on the other hand, is portrayed as a much liberalised market. Taking this into account, the UK Major Energy Users Council (MEUC), which seeks to secure lower electricity, gas, water and telecoms prices for UK large businesses, said it would file a complaint against the GDF/Suez deal. It argued that the UK had completely opened its energy markets and that such liberalisation should apply right across Europe.

But even a country as liberalised as the UK has been accused of protectionism in its recent comments over a possible move for UK energy company Centrica by Russian group Gazprom. Chancellor of the Exchequer Gordon Brown, who openly criticised economic patriot policies and called for a body of experts to tackle protectionism in Europe, said that there were "political" issues over a potential takeover of Centrica by Gazprom.

Ahead of the liberalisation of European energy markets in July 2007, it will be interesting to see how these issues and the wider area of strategic assets develop. Already several EU governments have raised the "strategic assets" card to justify measures to protect national companies against a move by a bidder from another EU country. When announcing the merger, Villepin said that "given the strategic importance of energy, the fusion of Gaz de France and Suez seemed to be the most appropriate path."

As for the GDF/Suez merger, the EC is currently investigating the competition impact of the deal. It will take its initial decision on 19 June but is already expected to launch a phase two investigation, given the sector in which the companies operate and competition issues in Belgium. Centrica and Enel have also raised concerns about the impact of the merger but observers say the EC will be particularly careful in assessing the motives behind competitors' complaints.

Although remedies have not yet been discussed, Enel, Endesa and EDF have already expressed their interests for Belgian assets that could be disposed. More recently, Enel has been reported as preferring negotiations over Electrabel and the Belgian assets to a hostile takeover. However, Suez remains adamant that "Electrabel is not for sale".

Another issue that could arise between the EC and France relates to the government's plan to keep a golden share in the merged entity. Finance Minister Thierry Breton has confirmed the government would keep a 34.5% stake in the future group and have a specific share to protect strategic sites. Immediately after, Oliver Drewes, the spokesman for the EC DG Internal market emphasised that the EC had launched several infraction proceedings in light of golden shares in Europe. "Golden shares have no place in the internal market," he said. "We would monitor this with great and precise interest."

Sandra Pointel, dealReporter competition & regulatory correspondent
mergermarket, Brussels

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Regional Round Ups

Europe: **Portugal**

Portugal Telecom and Sonae merger, The Commission will not intervene

The European Commission (EC) is not going to intervene in the merger between Portugal Telecom and Sonae, as Portugal has jurisdiction over the deal under the two-thirds rule. Last month the national regulator told the concerned parties the merger would be subject to a Phase Two investigation. The major concern for the national competition authority is that the merger would create a duopoly in the mobile telephony market with SonaeCom's Optimus and PT's TMN holding a combined 63% market.

Europe: **France / Italy**

The Commission thought likely to launch a Phase Two investigation of Gaz de France/Suez merger; UK's Centrica voices concerns

The European Commission (EC) is thought likely to launch a Phase Two investigation for the merger between Gaz de France (GDF) and Suez, according to close observers of the situation. The EC will make its initial decision about the deal by 19 June, but may need more time to take a final decision on the merger. The launch of an in-depth investigation would hardly come as a surprise, given competition issues in Belgium, and the Commission's current scrutiny of the European energy sector. Since the parties have notified their deal, the EC has also sent a statement of objections to Distrigas, Suez's Belgian subsidiary, regarding its long-term gas contracts. The UK energy company Centrica has also reportedly submitted a written complaint to the EC about the deal, claiming that the proposed merger would threaten UK gas supplies would lead to a likely increase in prices.

Europe: **Slovakia / Austria**

Antitrust investigation delays takeover of Slovak airports

The Slovak antitrust authority has deferred a decision on the takeover of Slovakia's two largest airports by two months. The Slovak government had approved the sale of 66% stakes in Bratislava and Kosice airports to the TwoOne consortium for SKK 19.7bn (€522m). The TwoOne consortium, comprising Austria's Flughafen Wien, Slovak-Czech group Penta and Austria's Raiffeisen Zentralbank, beat a rival consortium led by Abertis of Spain. In a statement, the anti-monopoly office said it was delaying a decision on the takeover until 14 August, as the case was complicated.

Europe: **Italy / Spain**

Italian regulator pressures Autostrade to reconsider merger with Abertis

Italy's highways regulator ANAS said it could cancel the contract of Autostrade, the Italian toll roads operator to operate tolls on motorways. That is unless Autostrade alters or reconsiders its €25bn cross-border deal with Abertis, the Spanish private transport and communications infrastructure management corporation. Prime minister Romano Prodi and his new government view Autostrade as an important national asset. Although termed a merger of equals, the merged entity is going to be based at Abertis' headquarters in Spain and led by Abertis' current CEO Salvador Alemany. In an attempt to soften political opposition Abertis has offered to divest an indirect share in Autostrade by selling its 13.3% stake in Schemaventotto, an investment group controlled by the Benetton family.

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Europe: **Italy**

Air One hopes anti trust ruling will block Alitalia in approach to Volare

Air One, the privately held Italian airline, still hopes that it can take over Italy's low cost airline Volare, a source close to the matter said. The source said that Air One hopes Italy's antitrust authority will overrule Alitalia's €39m bid for the airline in favour of Air One. On 24 May 2006, Italy's top administrative court suspended Alitalia's acquisition of Volare's assets, supporting an appeal by Air One on antitrust grounds.

Europe: **France**

Emap France enters exclusive negotiations with Arnoldo Mondadori Editore

Emap plc has entered into exclusive negotiations with Arnoldo Mondadori Editore, the Italian media group, in relation to the sale of Emap France, its French consumer magazines business. Until this news a trade buyer for Emap's French business had been deemed unlikely by banking sources involved in the deal. Instead it was private equity funds who had been expected to buy Emap France.

North America / Europe: **Canada / Switzerland**

Inco / Falconbridge merger threatened by counterbids

The Canadian nickel refiners Inco and Falconbridge may soon be reaching the conclusion of the antitrust review of their merger. Any approval of the deal is likely to be conditional on significant divestments. Back in October 2005, when the acquisition was announced, Inco offered to divest Falconbridge's Norwegian refinery Nikkelverk in order to assuage any antitrust concerns[1]. Meanwhile, a decision by EU antitrust authorities is still pending. The US DOJ issued requests for additional information from the parties shortly after the deal was announced, indicating potential serious concerns with the deal. The European Commission's initial market investigation found that the proposed transaction gives rise to competition concerns on certain nickel and cobalt markets leading to a review of recent market studies. Substantial increases in Falconbridge's profits in the first quarter of 2006 has caused speculations whether the management of Falconbridge might try to continue an independent operation and convince stockholders to walk away from the deal despite a break-up fee of $320m. Meanwhile, in May, Xstrata, the Swiss-UK-listed diversified miner launched a counter-bid for Falconbridge, while Inco is trying to fend off a hostile offer by Canada based Cominco Teck, that hinges on Inco dropping its friendly takeover deal with Falconbridge.

[1] In mid June, Canadian mining company LionOre agreed to buy Nikkelverk.

Middle East / Asia: **Dubai India**

Following acquisition of P&O Ports, DP World faces criticism about dominant market position in India

After being forced to divest their port facilities in the US due to alleged security concerns, Dubai's DP World is now facing criticism by Indian maritime authorities who say the dominant market position deriving from the combined DP World and P&O Ports portfolio violates P&O concession agreements. DP World has denied this charge. Following its acquisition of P&O Ports earlier this year, DP World now controls around 52% of domestic Indian container traffic.

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Europe: **Austria / Germany**

EU gives conditional clearance for Deutsche Telekom's takeover of Telering GmbH

The planned acquisition by Deutsche Telekom of its Austrian rival Telering GmbH has received conditional approval by the EU. The Commission requires Deutsche Telekom's mobile phone operator T-Mobile to sell two frequency blocks to rivals with smaller market shares.

Europe: **Austria**

Political pressure aborts Verbund / OMV merger

May saw Austria call off the merger of domestic oil and gas group ÖMV with state-controlled electricity utility Verbund following demands from the country's federal provinces that the public sector keep a majority stake in the merged company.

Europe: **Netherlands / Luxembourg / France / Russia**

Arcelor sweeps aside higher bid from Mittal by agreeing on a white-knight bid by Russia's Severstal

EU antitrust regulators have approved Mittal Steel's hostile takeover approach for rival Arcelor on condition the merged entity sells some of its facilities if the bid succeeds. The US government also cleared the deal provided the company sells off key assets such as Canadian steelmaker Dofasco. Despite these developments however, Luxembourg steelmaker Arcelor has turned the tables on Lakshmi Mittal's sweetened bid by agreeing to a mega-merger deal with Severstal, the largest steel company in Russia.

Europe: **Germany / France / Italy**

Euronext rebuffs Deutsche Börse interest; accepts offer from NYSE

The NYSE could lose its advantage in its bidding for Euronext if its share price falls, the Wall Street Journal reported. The report cited a source close to Euronext who said that as things stand accepting the NYSE cash and share offer is a "no-brainer," as it is valued at €9.61 per share more than the rival €58.73 offer by Deutsche Börse. However, the report noted that the difference between the two offers could evaporate if NYSE stock falls and Euronext maintains its present high share price. The report said that this was because of the formula imposed on Deutsche Börse by German law, which it used to calculate its offer. The report said that this had led some NYSE shareholders to call on NYSE management to be more outspoken about the merits of a merger between the NYSE and Euronext. The report added that even if Deutsche Börse were to improve its offer, the NYSE could still triumph because Euronext would prefer to link up with a US exchange. The report also noted that Euronext believes that a deal with NYSE would meet fewer competition issues. John Thain, CEO of the New York Stock Exchange, said he did not expect there to be any regulatory issues. A spokeswoman for Euronext said the deal would probably need to be notified in the Netherlands, France, Portugal, London and the US

Meanwhile, outgoing French President Jacques Chirac pleaded for a Franco-German solution, saying he would 'regret' a merger of Euronext with NYSE. However, observers have said that a merger between Euronext and Deutsche Börse would raise competition issues due to the stock exchanges' current integration into trading, clearing and settlement. Competition authorities would likely use the in-depth investigation carried out by the UK Competition Commission (CC) on LSE/Euronext and LSE/Deutsche Börse. The CC cleared both deals but imposed strong conditions on clearing and settlement.

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Europe: **Italy / Poland / Germany**

Polish authorities reach agreement with Unicredit over BPH

Poland signed a deal with Italy's banking group UniCredit to end the dispute over the merger of two Polish banks now owned by the Italian giant. Under the deal UniCredit will sell 200 of the 483 branches of Poland's BPH bank, which it acquired last year when the Italian banking group bought Germany's HypoVereinsbank. Meanwhile, the European Commission has still not clarified its stance on whether it would carry out infringement proceedings against Poland following the agreement between Unicredit and the Polish Treasury.

Asia Pacific: **Australia**

Alinta/AGL merger: regulator may force Alinto to dispose of Australian Pipeline Trust to Babcock & Brown

Alinta may sell Australian Pipeline Trust to Babcock & Brown if the ACCC forces it to sell the business as part of its merger with AGL according to local business press. The unsourced report said AGL, the Australian-listed energy company, currently owned a 30% stake in APT, which would be transferred to Alinta under the merger proposal. However, as Alinta already owned the Eastern gas pipeline, it was possible the ACCC would force it to sell the business due to anti-competition issues. Babcock & Brown, the Australian-listed investment bank, has appeared on the Alinta register, and there is speculation about what its intentions were. The report said Babcock might also be a buyer of other asset sales resulting from the AGL/Alinta merger, such as wind farms and gas-powered energy projects.

Other EU Antitrust Issues

Energy companies raided by regulators

May 2006 saw both EU and member state competition authorities take widespread action against companies in the utilities sector. On 16 May 2006, the European Commission raided the premises of a number of gas companies in Germany, Italy, France, Belgium and Austria, and the premises of electricity companies in Hungary. The targeted companies included German company RWE; E.ON, the parent of Germany's largest gas supplier, Ruhrgas; French companies Gaz de France and Suez; Austria's OMV; Italy's ENI; and Hungary's MVM. The inspectors were seeking evidence to determine whether the companies have breached both articles 81 and 82 of the EC Treaty by controlling access to pipelines and storage facilities, and sharing markets.

On the same day as the dawn raids, the Commission announced that it had sent a statement of objections to the Belgian energy company Distrigas, alleging that it has breached article 82 by locking in industrial customers through long-term gas supply contracts that prevent new suppliers from entering the market. Distrigas is a subsidiary of French gas supplier Suez.

Finally, on 17 May 2006, the UK energy regulator Ofgem issued a statement of objections against National Grid giving notice of a proposed infringement decision under the Competition Act 1998. The proposed findings are that National Grid has entered into long-term exclusive contracts for the provision of domestic gas meters with energy suppliers, in breach of the Chapter II prohibition of the Competition Act 1998 and Article 82 of the EC Treaty. Ofgem considers that the contracts lock suppliers into National Grid for a significant share of their gas meter requirements and therefore restrict the development of competition.

These developments follow, but are not necessarily related to, the Commission's preliminary report into the energy sector, published on 16 February 2006, in which it declared its intention to pursue investigations into certain market practices, having found serious malfunctions in the gas and electricity markets.

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State Aid Issues in M&A

EU rules on state aid are little known and understood outside the circle of EU practitioners, even though the European Commission's action against illegal state aid has become more systematic, assertive and publicized in recent years. High-profile state aid cases are often the result of a government's controversial attempt to save a national champion from financial collapse. In other cases, state aid may provide a legitimate means of support to EU-approved goals, such as regional development, R&D, environmental protection, etc. State aid may be also implicit in national tax rules, and the European Commission's intervention or litigation by private parties may target the hidden "selectivity" of such, supposedly neutral, measures.

Despite the frequency of illegal state aid in the EU and the variety of open or hidden forms that this can take, state aid-related questions do not figure prominently in a typical M&A due diligence process. Nevertheless, while state aid may play no, or hardly any, role in a typical commercial transaction, the contracting parties' risk exposure can grow exponentially in deals involving former or present national champions, privatizations and/or companies in economically less developed countries or regions that have tended to benefit more frequently from various forms of state aid – which is often not even perceived as such by the authorities and beneficiaries involved.

What is the EU definition of state aid?

Briefly, the EU concept of state aid includes any aid granted by an EU Member State or through its resources, in any form whatsoever, which distorts or threatens to distort competition by favoring certain companies or the production of certain goods, insofar as it affects trade between EU Member States. It is essential to remember that the EU ban on state aid is very comprehensive. It is not limited to obvious cases of direct grants and capital injections, but can encompass a wide range of direct or indirect economic assistance by national, local or other public authorities. This assistance can be in the form of tax schemes, preferential loans, the lease or sale of land or other assets at below-market rates, bank guarantees, waiver or deferral of social security requirements, targeted infrastructure projects such as industrial parks, etc.

As a general principle, any state aid must be authorized by the European Commission or fall under one of the many existing schemes and exemptions. If this is not the case, it must be terminated and aid granted already must be repaid to the state in question, with interest.

It is well established in EU law that such a responsibility for the repayment of unlawful state aid can be passed on to a buyer, if certain conditions are met. In such situations, state aid can all of a sudden take center stage and undermine the whole business case of an M&A transaction. Regrettably, this may happen too late for the buyer.

The case for a buyer's liability for earlier state aid received by the target is not very obvious, and the relevant EU case-law has evolved in a pragmatic and not always clear manner. In any case, this case-law offers a good basis for assessing a buyer's exposure to liability if there is any reason to believe that the targeted asset or company may have benefited from some form of state aid.

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Under the approach reflected, in particular, in the European Court of Justice's decision of April 29, 2004, in the SMI case, the key criterion for the allocation of state aid liability between buyer and seller is the determination of the ultimate beneficiary of the state aid. If the buyer has purchased the target (and state aid beneficiary) at a "market price" that factors in the benefit of the state aid, then the seller remains solely responsible for the repayment of the state aid. If, on the other hand, the parties decide to ignore, partly or wholly, the extra benefits of the state aid in the determination of the sale price[1], then liability for repaying the state aid is passed on to the buyer.

This is a fair principle, but it works better in theory than in practice. The nature and, in particular, the amount of state aid received over a period of time may be open to different credible interpretations, even by good faith and knowledgeable parties. While defining the existence and amount, if any, of the state aid involved may be difficult, defining the "market price" of the acquired assets or companies may be an equally impossible – or at least commercially counterintuitive – exercise. According to the European Court of Justice, the "market price" is the highest price that a private market buyer would be prepared to pay under normal conditions of competition. Surely, this is not a message that the buyer's CEO would be keen to bring back and announce to his or her board and shareholders! On the contrary, a typical acquirer will be inclined to argue that the price paid for the acquisition "was a bargain." The commercial logic of this response is obvious, but it can conceivably work against a later need to defend the acquirer against an obligation to repay state aid received earlier by the buyer.

Moreover, both the seller and the buyer may be inclined to "let sleeping dogs lie" as far as state aid is concerned – unless the latter is too obvious to hide or is already the subject of an investigation. As mentioned already, identifying and quantifying state aid can be a very speculative exercise, even in a good faith environment. Airing the issue, even in the relative confidentiality of commercial negotiations, is unlikely to lead to an agreement on the amount of the state aid involved but could, on the other hand, lead to a leak that would trigger the regulators' or the competitors' interest in a problem that might otherwise go unnoticed.

By virtue of the uncertainties involved in this process, there is no one-size-fit-all solution to the problem. The best approach will depend on the fact-specific, and normally opposed, interests of each side of the deal, and will require both a careful calculation of the level of state aid involved, and a commercial risk assessment. Once the risk has been assessed and quantified to the maximum possible extent, the parties will be at least in a better position to respond in a timely and informed way both during their negotiations and afterwards. For example, if a buyer "inherits" a hidden but continuing state aid and associated liabilities, it will need to take an informed decision as to whether and how it should at least minimize its exposure to a disproportionately high retroactive reimbursement. It could do this, for example, by making sure that the state aid is discretely phased out or adjusted to market circumstances. This will both put a limit to potential future liability and, hopefully, make it less likely that regulators or competitors ever try to revive a "dead and buried" state aid matter.

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[1] A situation that can arise e.g. in non-transparent privatizations if potential buyers are scarce and need to be enticed through various negotiated benefits.

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Internet Neutrality

The regulatory debate and implications for vertical competition policy

Legislators, antitrust enforcers, and telecommunications regulators in the US and Europe are actively considering "Internet neutrality" or "net neutrality" issues. The term "net neutrality" is used to refer to a number of different public policy approaches. At the most basic level, a policy of net neutrality would preclude broadband Internet access network operators (such as telephone companies and cable TV operators) from blocking or impairing consumers' ability to access lawful Internet sites or services. A broader approach would require network operators to offer non-discriminatory pricing and service quality to all providers of Internet content, applications, and services. These proposals, discussed in detail below, raise important questions of competition policy with broader implications for potential vertical combinations and contractual arrangements.

Advances in Internet transmission speeds and technologies are making it possible to deliver higher-value services over broadband Internet networks, including streaming video content and advanced interactive applications. Developers and distributors of Internet-based content and applications are eager to begin providing such services to consumers. Under the currently prevailing technological and business model, consumers can use any form of Internet access transmission facilities to access virtually all information and services available on the Internet, limited only by transmission speeds and the capabilities of the consumer's equipment.

At the same time, telephone companies, cable operators, wireless carriers, and others are accelerating their deployment of high-speed network facilities to enable transmission of these services. These network providers anticipate opportunities to recover their investments in these networks and derive additional revenues from the provision of these new high-value services by offering "prioritized" data delivery or other forms of enhanced service quality to themselves or parties with whom they joint venture or enter into contracts with favorable terms.

Arguments in favor of net neutrality rules

Internet content and service providers, including leading companies such as Google, Yahoo!, Microsoft, and eBay, as well as consumer advocates and members of the Internet community, make the following arguments in favor of net neutrality requirements:

- Network operators in a duopoly environment (telephone companies and cable operators) have the incentive and ability to leverage their market power over transmission facilities to restrict competition for content and services delivered over their broadband Internet facilities.
- The Internet's rapid development to date has been facilitated by its "open" architecture – i.e., the TCP/IP transmission protocol, which enables any type of device (computers using divergent operating systems, mobile devices, and others) to interconnect with any type of content or service. Discriminatory access would wreck the Internet.
- A net neutrality rule for Internet transmission networks would continue to facilitate development of a diverse, competitive, and technologically advancing array of content, applications, and services over those networks.
- Such a "neutrality" rule would be comparable not only to the historically open "common carrier" telephone networks, but also to the "neutral" electrical distribution network (which allows a vast array of electric devices to operate using the same power system).
- Net neutrality is needed to safeguard freedom of speech and the existing diversity of Internet content.
- Network operators cannot legitimately obtain payments from both end-users and providers of Internet content, applications, and services for use of the same network facilities.

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Arguments against net neutrality regulation

On the other hand, incumbent telephone companies, cable operators, wireless carriers, and other operators investing in and deploying network facilities, as well as allies such as equipment manufacturers, make the following arguments for a deregulatory approach with no "net neutrality" mandates:

- Existing competition among network operators, as well as possible future entry, are sufficient to ensure competition at all levels in the marketplace.
- Market forces are likely to produce a "net neutral" outcome without intrusive regulation.
- There is no evidence to date of anti-competitive Internet restrictions or discrimination, and anticipatory regulation of this non-existent problem is unnecessary and could be harmful.
- Net neutrality mandates could thwart the deployment of beneficial technologies and services, ranging from enhanced protections from computer viruses and spam e-mail, to networking software and protocols that would transmit video services more effectively.
- To stimulate investment in broadband transmission facilities, network owners should be allowed opportunities to obtain a share of the economic welfare gains from the profitable, high-value services to be provided over those newly deployed facilities.
- Rapid technological changes and market convergence are likely to upset the economic assumptions on which net neutrality arguments are based.

Proposals before the US Congress

The US Congress is actively struggling over divergent "net neutrality" proposals. While it is unclear whether the full Congress will enact any of these proposals into law during 2006, the debate itself could be broadly influential with the Federal Communications Commission (FCC), federal and state antitrust enforcement agencies, and general public opinion.

Members of the Republican leadership of the House of Representatives – spearheaded by Rep. Joe Barton (R.-Tex.), Chairman of the House Energy and Commerce Committee – are advocating for a bill (H.R. 5252) that would preclude courts from considering antitrust challenges to "net neutrality" related issues and would prohibit the FCC from adopting specific rules, although leaving open the possibility of limited FCC enforcement actions. A number of Republicans in the Senate favor a similarly deregulatory approach.

By contrast, Democrats in both the Senate and the House of Representatives – joined by influential Republicans such as Rep. James Sensenbrenner (R.-Wis.), Chairman of the House Judiciary Committee (with responsibilities for the antitrust laws) – are pressing the case for strict nondiscrimination and interconnection mandates on broadband network providers. A number of bills have been circulated. These proposals would not only prohibit broadband network providers from blocking or interfering with any person's ability to access, offer, or receive lawful content, applications, or services, but also would compel broadband network providers to offer interconnection and transmission services on nondiscriminatory terms and conditions, to enable other parties to provide Internet content, applications and services. Unaffiliated entities would be entitled to network service at terms that are "at least equal" to those on which the provider offers the service to its affiliates or to parties with whom it has contractual relationships. Broadband network providers that prioritize or offer enhanced quality of service to data of a particular type would be obligated to do so for all parties without imposing a surcharge.

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Federal Communications Commission (FCC)

The US legislative debate is set against the background of FCC decisions that have largely deregulated broadband Internet access networks and services. In a series of orders from 2002 through this year, the FCC has ruled that neither cable operators nor wireline telephone companies are obligated to provide access to their broadband Internet access networks on a nondiscriminatory, "common carrier" basis. Instead, the FCC treats these network operators as unregulated "information service" providers, free of any nondiscrimination obligations, in part based on a determination that the Internet access facilities marketplace is increasingly competitive. The US Supreme Court has largely affirmed the FCC's approach. *See National Cable & Tel. Ass'n v. Brand X Internet Serv.*, 125 S.Ct. 2688 (2005). The FCC and the federal courts also have substantially narrowed the incumbent telephone companies' obligations to offer unbundled access to network elements to competitive entrants.

The FCC, however, adopted a general "policy statement" in August 2005 that generally endorsed the proposition that consumers ought to be able to access and use lawful Internet content and applications of their choice, and ought to be able to select from among competitive providers of Internet networks, applications, and content. FCC Chairman Kevin Martin expressed his view that the competitive marketplace would effectuate these principles and that no specific regulatory actions would be necessary. The FCC's general policy statement is non-binding, although the two largest US telephone companies made commitments to comply with these principles as conditions for their mergers in 2005 (SBC/AT&T and Verizon/MCI), but only for a limited period of time. In one case, the FCC compelled a small telephone company (Madison River) to stop blocking its broadband customers' ability to access Voice over Internet Protocol ("VoIP") services from Vonage – but that appears to have been the only instance. The FCC's policy statement is vague and leaves unanswered a wide variety of questions about what conduct is permissible, and it is unclear whether it is unenforceable.

"Net Neutrality" in Europe

In Europe, "net neutrality" is not yet the subject of an equally heated public debate. The incumbent telecoms operators have been cautious in their comments thus far, with the exception of Deutsche Telekom, whose CEO has openly (and controversially) insisted that Internet giants like Google should contribute to the cost of the high-speed data highways necessary for the delivery of their services. By contrast, BT and Telecom Italia have responded in more neutral terms, and France Telecom has described the debate on "net neutrality" as "an American debate."

To be sure, the question of "net neutrality" in the EU is set against a very different regulatory and market background than the one driving the issue in the US. The regulatory environment in the EU is defined by a set of Directives and related measures adopted in 2002 and still referred to as the "New" Regulatory Framework ("NRF"). Under the NRF, the EU Member States' national regulatory authorities ("NRAs") must analyze the conditions of competition in a number of electronic communications markets, defined on the basis of EU competition law principles. Based on this analysis, NRAs must impose *ex ante* regulatory remedies if the markets in question are found to be insufficiently competitive and certain other conditions are met. The European Commission has proposed a list of 18 relevant product and services markets that are susceptible to *ex ante* regulation by the NRAs. The list is not legally binding, but the European Commission can veto the NRAs' relevant market definition or market analysis, although NRAs are free to choose the appropriate remedies.

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A potential shortcoming of the NRF is that it cannot be relied upon to regulate in advance networks and services that do not yet exist: its competition-based approach can be easily applied to existing networks and services, but it is not clear how such a regulatory tool would be implemented in the context of emerging or future networks and services. As a result, the future access regime for high-speed optical fiber networks (also referred to as FTTx) in Europe remains subject to speculation and cannot be clarified in advance by the NRF. This is a factor that may arguably affect investors' willingness to commit themselves to such a major project.

The German government has been particularly open about its preference for a "regulatory holiday" that would shield the incumbent's FTTx rollout from third party access. This position has been strongly opposed by the European Commission and (predictably) alternative operators across Europe, but the debate is still ongoing. The question of "net neutrality" addresses a seemingly separate issue, but is part of the same broader debate, ***i.e.*** the extent to which the operators of high-speed broadband networks in Europe can control the conditions of access to these networks.

Some of the 18 markets listed by the Commission relate, directly or indirectly, to fixed broadband markets. This is the case, in particular, with market 11 (wholesale unbundled access to the local loop for the provision of broadband and voice) and 12 (wholesale broadband access). Typically, the NRAs have found that the incumbent telecommunications operators are still dominant on these two markets. As a result, these incumbents are subject to obligations of non-discrimination, transparency and cost-orientation. While this applies to their wholesale customers (and competitors) it is clear that it also limits, indirectly, any margin for discrimination or similar abusive conduct on the downstream retail markets.

Contrary to the US, European incumbent telecommunications operators tend to have a stronger market position vis-à-vis cable TV operators, although the situation varies strongly across Europe, depending on the local cable TV operators' network coverage and penetration. In some European countries, the market seems to evolve rapidly toward a US-style duopoly; in some others, it is still very much dominated by the local incumbent telecommunications operator.

From a regulatory perspective, a key difference between xDSL and cable broadband in Europe is that while the former tends to be highly regulated, as mentioned already, access to cable broadband remains essentially unregulated. Wholesale broadband access to cable broadband is not part of the European Commission's list, and it therefore remains largely beyond the limits of the NRAs' intervention, at least as regards *ex ante* measures (the NRF does not limit the regulatory authorities' powers to intervene on an *ex post* basis, e.g. against abuses of a dominant position).

Therefore, under the current regime in place in the EU, cable operators do not seem to be bound by an obligation of net neutrality – even though such a general statement may well be open to challenge on a case-by-case basis. On the contrary, telecommunications incumbents are generally bound by obligations of non-discrimination, transparency and cost-orientation, a factor that suggests a strict obligation of "net neutrality".

This conclusion must be qualified in two respects. First, it is clear that *ex ante* obligations of "net neutrality" will not extend to networks or services that fall outside the scope of the markets regulated by NRAs in Europe under the NRF. These could well include, now and especially in the future, parts of the public network or new technological platforms run by the incumbents, to the extent these are or become part of a distinct and competitive market. Second, the *ex ante* "non-discrimination" regime now in place for xDSL does not exclude different prices and other conditions for different quality of service. It does, however, subject these conditions to the prior approval by the NRA – typically, as part of its review of the incumbent's broadband interconnection and other offerings. Such a differentiation of prices and conditions may be found legitimate under the NRF and EU competition rules, if it reflects objectively different cost structures (e.g. higher bandwidth requirements for higher quality services) corresponding to different market needs.

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Implications of the "Net Neutrality" debate

The vertical competition issues presented in the "net neutrality" debate are closely analogous to other cases in which a provider has market power over an "upstream" product or service that is a necessary input for "downstream" products or services. Competition policy concerns arise when the dominant "upstream" provider seeks to enter the "downstream" industry sector, or to enter contractual arrangements with companies in the "downstream" sector. For example, instructive parallels can be drawn from the remedies adopted in the US and Europe, respectively, to Microsoft's alleged anticompetitive efforts to extend its dominance over the Windows operating systems into software and equipment manufacturing markets.

The same "net neutrality" issues under discussion by legislators and regulators are likely to arise in the course of consideration of mergers, joint ventures, or contractual arrangements among network operators and content providers. Thus, the policy debate may have far-reaching implications for parties contemplating various business transactions, and for competitors and consumers.

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Live Deals – Europe

Deal	Terms	Ann. Date	Est. Comp	Sett. Date	Target Country	Target Mkt Cap (m)	Net Sprd	Change	Ann. Return
Alliance Uniche. / Boots Group plc	1 AUM = 1.332 BTS	03 Oct 2005	28 Jul 2006	11 Aug 2006	United Kingdom	GBP3,483m	0.62%	-0.93%	4.91%
Arcelor SA / Mittal Steel Co.	1 LOR = 1.00 MIT + EUR10.05	27 Jan 2006	29 Jun 2006		Luxembourg	EUR21,304m	1.02%	-0.73%	21.92%
Athlon Group N. / De Lage Landen .	1 ALG = EUR30.25	29 May 2006	23 Jun 2006		Netherlands	EUR520m	0.73%	0.00%	24.31%
Autostrade - Co. / Abertis Infraes.	1 AUT = 1.05 AIS	24 Apr 2006	30 Nov 2006		Italy	EUR12,240m	5.30%	1.54%	11.32%
Azienda Mediter. / Azienda Energet.	1 AMG = 0.85 AEM	25 Jan 2006	15 Jul 2006		Italy	EUR588m	-0.66%	-0.34%	-7.33%
BAA plc / Grupo Ferrovial.	1 BAA = GBP9.35	07 Apr 2006	26 Jun 2006	10 Jul 2006	United Kingdom	GBP9,985m	0.75%	0.05%	19.67%
Banco BPI SA / Millennium BCP.	1 BPI = EUR5.70	13 Mar 2006	07 Jul 2006		Portugal	EUR4,408m	-1.72%	-0.86%	-25.17%
Bank Przemyslow. / UniCredito Ital.	1 BPH = 33.13 UNI	12 Jun 2005	28 Jul 2006		Poland	EUR4,531m	20.84%	2.42%	165.34%
BOC Group plc / Linde AG	1 BOC = GBP16.00	06 Mar 2006	01 Sep 2006		United Kingdom	GBP7,879m	2.04%	0.07%	9.20%
Cambridge Antib. / AstraZeneca Plc	1 CAT = GBP13.20	15 May 2006	23 Jul 2006	07 Aug 2006	United Kingdom	GBP695m	1.03%	0.12%	9.20%
Consafe Offshor. / ProSafe ASA	1 CON = 0.354 PRO	04 May 2006	31 Aug 2006		Sweden	EUR399m	0.51%	-2.21%	2.33%
Denizbank AS / Dexia Group	1 DZN = EUR8.08	31 May 2006	15 Feb 2007		Turkey	EUR2,269m	12.55%	0.13%	18.47%
Deutz AG / Same Deutz-Fahr.	1 DEZ = EUR6.12	10 May 2006	03 Jul 2006		Germany	EUR594m	-2.08%	0.00%	-36.15%
Diagnostic Prod. / Siemens AG	1 DPC = USD58.50	27 Apr 2006	15 Jul 2006		USA		1.30%	0.11%	14.36%
Eircom Group Pl. / BCMIH	1 EIR = EUR2.20	23 May 2006	30 Sep 2006		Ireland (Republic)	EUR2,328m	1.38%	0.00%	4.59%
Endesa SA / Gas Natural SDG.	1 END = 0.569 GNT + EUR7.34	05 Sep 2005	29 Sep 2006		Spain	EUR27,369m	-17.69%	0.83%	-59.24%
Endesa SA / E.ON AG	1 END = EUR27.50	21 Feb 2006	27 Oct 2006		Spain	EUR27,369m	11.26%	1.44%	29.99%
"Euronext NV / NYSE Group, Inc"	1 NXT = 0.98 NYSE + EUR21.32	02 Jun 2006	01 Feb 2007		Netherlands		-6.45%	-4.36%	-10.05%
Falconbridge Lt. / Xstrata Plc (fo.	1 FALC = USD47.72	17 May 2006	07 Jul 2006		Canada		-4.86%	0.43%	-71.02%
Finansbank A.S. / National Bank o.	1 FIN = EUR3.65	03 Apr 2006	30 Sep 2006		Turkey	EUR3,676m	-5.68%	1.39%	-18.84%
freenet.de AG / Mobilcom AG	1 FRE = 1.15 MOB	08 Jul 2005	30 Sep 2006		Germany	EUR968m	13.11%	1.30%	43.50%
Gaz de France S. / Suez (formerly .	1 GAZ = 1.00 SEZ	27 Feb 2006	30 Sep 2006		France	EUR25,659m	12.65%	-1.87%	41.99%
Gemplus Interna. / Axalto NV	1 GML = 0.08 AXL	07 Dec 2005	09 Aug 2006		Luxembourg	EUR1,081m	-3.49%	-0.48%	-21.95%
GERMANOS S.A. (. / Cosmote-Mobile .	1 GIC = EUR19.00	09 May 2006	12 Dec 2006		Greece	EUR1,509m	4.11%	0.00%	8.19%
GTECH Corporati. / Lottomatica SpA	1 GTC = USD35.00	10 Jan 2006	30 Jun 2006	30 Jun 2006	USA		1.07%	-0.03%	21.66%

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Deal	Terms	Ann. Date	Est. Comp	Sett. Date	Target Country	Target Mkt Cap (m)	Net Sprd	Change	Ann. Return
Inmobiliaria Co. / Grupo Inmocaral.	1 COL = EUR63.00	06 Jun 2006	21 Aug 2006		Spain	EUR3,689m	1.94%	-0.25%	10.12%
KeySpan Corp / National Grid p.	1 KEY = USD42.00	27 Feb 2006	31 Jan 2007		USA		3.93%	-0.41%	6.16%
Lucent Technolo. / Alcatel SA	1 LUC = 0.1952 ALC	02 Apr 2006	03 Jan 2007		USA		-2.66%	0.47%	-4.74%
Metrovacesa SA / Sacresa	1 MET = EUR78.10	01 Mar 2006	16 Jun 2006		Spain	EUR7,588m	4.76%	0.77%	434.52%
Metrovacesa SA / Alteco Gestion .	1 MET = EUR80.00	05 May 2006	24 Jul 2006		Spain	EUR7,588m	7.31%	0.79%	63.53%
NeuTec Pharma P. / Novartis AG	1 NTP = GBP10.50	07 Jun 2006	07 Aug 2006		United Kingdom	GBP310m	-1.66%	-0.25%	-10.84%
Pilkington plc / Nippon Sheet Gl.	1 PLK = GBP1.65	27 Feb 2006	16 Jun 2006		United Kingdom		0.30%	0.00%	36.99%
Portugal Teleco. / Sonae SGPS SA	1 PTL = EUR9.50	06 Feb 2006	13 Nov 2006		Portugal	EUR10,814m	-0.84%	0.10%	-1.98%
"PT Multimedia S. / Sonaecom-SGPS, . "	1 PMM = EUR9.03	07 Feb 2006	13 Nov 2006		Portugal	EUR2,763m	1.01%	0.67%	2.39%
Riunione Adriat. / Allianz AG	1 RAS = 0.1578 ALZ	12 Sep 2005	30 Jul 2006		Italy	EUR11,999m	0.96%	0.84%	7.28%
Schering AG / Bayer AG	1 SCH = EUR86.00	24 Mar 2006	14 Jun 2006	03 Jul 2006	Germany	EUR16,707m	-0.14%	-0.10%	-25.42%
Systems Union G. / Sugar Acquisiti.	1 SUG = GBP2.15	27 Apr 2006	31 Jul 2006	03 Aug 2006	United Kingdom	GBP232m	2.02%	-0.61%	15.02%
Telefonica Movi. / Telefonica SA	1 MOV = 0.80 TEF	29 Mar 2006	10 Aug 2006		Spain	EUR47,290m	1.47%	0.37%	9.06%
Telefonica Publ. / Yell Group plc .	1 TPI = EUR8.50	28 Apr 2006	31 Jul 2006		Spain	EUR3,051m	0.59%	0.12%	4.41%
Telepizza SA / Foodco Pastries.	1 TPZ = EUR2.15	28 Feb 2006	13 Jul 2006		Spain	EUR694m	-17.94%	0.31%	-211.22%
Telepizza SA / Food Service Pr.	1 TPZ = EUR2.40	20 Apr 2006	13 Jul 2006		Spain	EUR694m	-8.40%	0.35%	-98.87%
Telepizza SA / Ibersol SGPS SA	1 TPZ = EUR2.41	24 Apr 2006	13 Jul 2006		Spain	EUR694m	-8.02%	0.35%	-94.37%
T-Online Intern. / Deutsche Teleko.	1 TOI = 0.52 DET	09 Oct 2004	15 Jun 2006		Germany	EUR8,616m	-4.57%	0.71%	-555.80%
Valkyries Petro. / Lundin Petroleu.	1 VKP = 1.00 LDP	29 May 2006	31 Jul 2006		Canada		5.20%	3.58%	38.72%
Virgin Mobile H. / NTL Incorporate.	1 VMH = GBP3.72	04 Apr 2006	04 Jul 2006	18 Jul 2006	United Kingdom	GBP933m	0.88%	0.20%	14.62%
Wyevale Garden . / West Coast Capi.	1 WGC = GBP5.55	21 Apr 2006	19 Jun 2006		United Kingdom	GBP308m	1.09%	0.64%	56.99%

Source: dealReporter, as of 14/03/06

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Live Deals – Asia

Deal	Terms	Ann. Date	Est. Comp	Sett. Date	Target Country	Target Mkt Cap (m)	Net Sprd	Change	Ann. Return
Alinta Ltd / The Australian .	1 ALN = 0.564 AGL	13 Mar 2006	01 Aug 2006	22 Aug 2006	Australia	AUD2,574m	-3.21%	1.68%	-23.94%
Arab Malaysian . / Azman Hashim	1 AMC = USD0.382	17 Jan 2006	30 Sep 2006		Malaysia	USD355m	12.29%	0.30%	41.14%
Contact Energy . / Origin Energy L.	1 CEN = 1.041 ORG	20 Feb 2006	30 Sep 2006		New Zealand	USD2,808m	-3.14%	0.55%	-10.52%
"Daiki Co., Ltd. / Kahma Company"	1 DAK = 0.4545 KAH	06 Jan 2006	01 Sep 2006	20 Oct 2006	Japan	JPY35,021m	2.84%	-0.56%	12.97%
Daiwa Kosho Lea. / Daiwa House Ind.	1 DKL = 0.421 DHI	13 Mar 2006	01 Aug 2006	02 Aug 2006	Japan	JPY106,534m	0.13%	-0.09%	0.95%
Hanshin Electri. / Hankyu Holdings.	1 HER = JPY930.00	29 May 2006	01 Oct 2006	01 Oct 2006	Japan	JPY320,485m	0.98%	0.76%	3.24%
Homac Corporati. / Kahma Company	1 HOM = 0.636 KAH	06 Jan 2006	01 Sep 2006	20 Oct 2006	Japan	JPY80,747m	2.16%	-0.07%	9.83%
Integrated Tree. / Futuris Corpora.	1 ITC = AUD1.35	11 May 2006	30 Jun 2006	21 Jul 2006	Australia	AUD278m	0.36%	-2.96%	7.70%
Kinki Coca-Cola. / Coca-Cola West .	1 KCCB = 0.451 CCWJ	22 Feb 2006	01 Jul 2006	01 Jul 2006	Japan	JPY67,348m	0.66%	0.44%	13.43%
Kirin Beverage . / Kirin Brewery C.	1 KBE = JPY3350.00	11 May 2006	15 Jun 2006	22 Jun 2006	Japan	JPY183,707m	0.30%	0.00%	54.64%
Kochi Refinerie. / Bharat Petroleu.	1 KCH = 0.444 BRP	17 Jan 2005	28 Jun 2006		India	INR17,530m	6.49%	0.00%	158.01%
Nisshin Fire an. / Millea Holdings.	1 NSK = 0.126 MIL	19 May 2006	30 Sep 2006	20 Nov 2006	Japan	JPY89,665m	1.01%	0.84%	3.39%
Overseas Union . / OUE Realty Pte .	1 OUE = USD6.39	27 May 2006	15 Aug 2006	05 Sep 2006	Singapore	USD1,117m	0.88%	0.07%	5.09%
OYL Industries . / Daikin Industri.	1 OYL = USD1.5634	18 May 2006	15 Sep 2006	30 Sep 2006	Malaysia	USD1,988m	4.44%	0.26%	17.22%
Pilkington plc / Nippon Sheet Gl.	1 PLK = GBP1.65	27 Feb 2006	16 Jun 2006		United Kingdom	GBP4,297m	0.30%	0.00%	36.99%
Quanta Display . / AU Optronics Co.	1 QTD = 0.2857 AUOC	07 Apr 2006	01 Oct 2006		Taiwan	USD1,722m	6.51%	-0.71%	21.59%
SFE Corporation. / Australian Stoc.	1 SFE = 0.51 ASX	27 Mar 2006	11 Jul 2006	01 Oct 2006	Australia	AUD2,136m	-3.07%	-1.34%	-40.07%
Shanghai Port C. / Shanghai Intern.	1 SPC = CNY16.50	06 Jun 2006	01 Aug 2007	01 Sep 2007	China	CNY30,152m	-1.26%	0.65%	-1.11%
"Skylark Co., Lt. / SNC Investment . "	1 SKL = JPY2500.00	07 Jun 2006	10 Jul 2006	28 Jul 2006	Japan	JPY292,640m	0.81%	-4.90%	10.90%
Southern Bank B. / Bumiputra-Comme.	1 SSB = USD1.1733	13 Feb 2006	21 Jun 2006		Malaysia	USD1,742m	1.19%	0.72%	54.30%
Systex Corporat. / Sysware Corpora.	1 SSX = 0.3117 SWR	15 Feb 2006	01 Nov 2006		Taiwan	USD227m	10.13%	-0.20%	26.22%
The Australian . / Alinta Ltd	1 AGL = 1.6767 ALN	03 Mar 2006	31 Oct 2006	01 Sep 2006	Australia	AUD8,196m	-2.29%	-1.73%	-5.98%

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Deal	Terms	Ann. Date	Est. Comp	Sett. Date	Target Country	Target Mkt Cap (m)	Net Sprd	Change	Ann. Return
UNiTAB Limited / Tattersall's Li.	1 UTB = 3.1176 TTSL + AUD3.92	27 Mar 2006	17 Jul 2006	02 Aug 2006	Australia	AUD1,993m	-14.88%	-0.77%	-159.72%
UNiTAB Limited / TABCorp Holding.	1 UTB = 0.38 TAH + AUD8.25	01 Jun 2006	04 Aug 2006	17 Aug 2006	Australia	AUD1,993m	-6.66%	-1.43%	-46.76%
Waste Managemen. / Transpacific In.	1 WMZ = USD5.1673	27 Mar 2006	03 Jul 2006	10 Jul 2006	New Zealand	USD544m	1.94%	0.85%	35.43%
Wattyl Limited / Barloworld Limi.	1 WAT = AUD3.80	13 Feb 2006	26 Jun 2006	17 Jul 2006	Australia	AUD285m	13.43%	0.00%	377.15%
York Benimaru C. / Seven & I Holdi.	1 YBN = 0.88 SIHC	11 Apr 2006	01 Sep 2006		Japan	JPY159,500m	1.73%	-0.29%	7.91%

Source: dealReporter, as of 14/03/06

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Live Deals – Americas

Deal	Terms	Ann. Date	Est. Comp	Sett. Date	Target Country	Target Mkt Cap (m)	Net Sprd	Change	Ann. Return
ACE Cash Expres. / JLL Partners In.	1 ACE = USD30.00	07 Jun 2006			USA	USD409m	2.77%	1.29%	
ADE Corporation / KLA-Tencor Corp.	1 ACN = USD32.50	23 Feb 2006	01 Jul 2006		USA	USD467m	0.78%	-0.03%	14.89%
Advanced Digita. / Quantum Corpora.	1 ADI = USD12.25	02 May 2006	02 Oct 2006		USA	USD731m	3.73%	-0.09%	12.14%
Alderwoods Grou. / Service Corpora.	1 ALD = USD20.00	03 Apr 2006	31 Dec 2006		USA	USD774m	3.31%	-0.05%	5.97%
American Retire. / Brookdale Senio.	1 AMR = USD33.00	12 May 2006	12 Sep 2006		USA	USD1,155m	0.86%	-0.19%	3.39%
AmSouth Bancorp. / Regions Financi.	1 AMB = 0.7974 RFC	25 May 2006	25 Dec 2006		USA	USD9,455m	0.40%	-0.16%	0.74%
Andrew Corporat. / ADC Telecommuni.	Terms undisclosed	31 May 2006			USA	USD1,495m			
Andrx Corporati. / Watson Pharmace.	1 AND = USD25.00	13 Mar 2006	13 Sep 2006		USA	USD1,725m	7.25%	0.00%	28.45%
Applied Films C. / Applied Materia.	1 APF = USD28.50	04 May 2006	04 Sep 2006		USA	USD445m	0.53%	-0.04%	2.30%
Aviall Inc. / Boeing Company .	1 AVI = USD48.00	01 May 2006	30 Sep 2006		USA	USD1,603m	1.78%	0.28%	5.91%
Aztar Corporati. / Columbia Sussex.	1 AZT = USD54.00	10 May 2006	28 Oct 2006		USA	USD1,857m	3.97%	-0.38%	10.49%
BellSouth Corpo. / AT&T Inc (forme.	1 BSC = 1.325 ATT	05 Mar 2006	05 Mar 2007		USA	USD62,211m	2.94%	0.94%	4.03%
BlackRock Ventu. / Shell Canada Lt.	1 BRV = USD21.82	08 May 2006	08 Nov 2006		Canada	USD2,077m	0.11%	-0.56%	0.27%
Capital Title G. / LandAmerica Fin.	1 CTG = 0.0247 LAF + USD6.20	29 Mar 2006	29 Sep 2006		USA	USD225m	1.42%	-0.84%	4.74%
Ceres Group Inc / Great American .	1 CER = USD6.13	01 May 2006	01 Sep 2006		USA	USD200m	2.00%	0.00%	9.00%
Commercial Capi. / Washington Mutu.	1 CCB = USD16.00	23 Apr 2006	23 Aug 2006		USA	USD898m	1.52%	0.00%	7.72%
Community Banco. / First Community.	1 CBI = 0.735 FCB	16 May 2006	16 Dec 2006		USA	USD264m	1.16%	-0.27%	2.27%
Constellation E. / Florida Power &.	1 CEG = 1.444 FPL	19 Dec 2005	19 Jun 2006		USA	USD9,372m	14.64%	0.00%	763.50%
Diagnostic Prod. / Siemens AG	1 DPC = USD58.50	27 Apr 2006	15 Jul 2006		USA	USD3,410m	1.30%	0.11%	14.36%
"Euronext NV / NYSE Group, Inc"	1 NXT = 0.98 NYSE + EUR21.32	02 Jun 2006	01 Feb 2007		Netherlands	EUR15,713m	-6.45%	-4.36%	-10.05%
Excel Technolog. / Coherent Inc	1 EXC = USD30.00	21 Feb 2006	21 Sep 2006		USA	USD360m	0.54%	-0.07%	1.94%
Falconbridge Lt. / Inco Ltd	1 FALC = 0.524 INC + USD11.2938	11 Oct 2005	15 Aug 2006		Canada	USD18,660m	-15.35%	-2.83%	-87.53%
Falconbridge Lt. / Xstrata Plc (fo.	1 FALC = USD47.72	17 May 2006	07 Jul 2006		Canada	USD37,319m	-4.86%	0.43%	-71.02%
Fargo Electroni. / HID Corporation	1 FAR = USD25.50	23 May 2006	23 Sep 2006		USA	USD322m	2.91%	0.08%	10.30%
First Oak Brook. / MBFI Acquisitio.	1 FOB = 0.8304 MBFI + USD7.36	02 May 2006	02 Dec 2006		USA	USD359m	1.29%	0.01%	2.72%
Fisher Scientif. / Thermo Electron.	1 FISH = 2.00 THER	08 May 2006	08 Dec 2006		USA	USD8,883m	-0.64%	0.09%	-1.31%

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Deal	Terms	Ann. Date	Est. Comp	Sett. Date	Target Country	Target Mkt Cap (m)	Net Sprd	Change	Ann. Return
Golden West Fin. / Wachovia Corpor.	1 GWFC = 1.051 WC + USD18.65	07 May 2006	07 Dec 2006		USA	USD22,580m	2.39%	0.03%	4.90%
GTECH Corporati. / Lottomatica SpA	1 GTC = USD35.00	10 Jan 2006	30 Jun 2006	30 Jun 2006	USA	USD9,170m	1.07%	-0.03%	21.66%
Hummingbird Ltd / Linden Acquisit.	1 HUM = USD26.75	26 May 2006	26 Jul 2006		Canada	USD475m	-1.94%	-0.11%	-16.12%
Inco Ltd / Teck Cominco Li.	1 INCO = 0.6293 TC + USD25.42	08 May 2006	08 Nov 2006		Canada	USD11,526m	0.05%	1.62%	0.13%
Interchange Fin. / TD Banknorth In.	1 IFC = USD23.00	13 Apr 2006	13 Jan 2007		USA	USD455m	2.86%	0.00%	4.86%
KCS Energy Inc. / Petrohawk Energ.	1 KCE = 1.65 PETH + USD9.00	21 Apr 2006	12 Aug 2006		USA	USD1,352m	0.89%	0.31%	5.32%
Kerzner Interna. / K-Two Holdco Li.	1 KER = USD81.00	20 Mar 2006	20 Sep 2006		Bahamas	USD2,853m	2.21%	-0.04%	8.06%
KeySpan Corp / National Grid p.	1 KEY = USD42.00	27 Feb 2006	31 Jan 2007		USA	USD14,092m	3.93%	-0.41%	6.16%
"Knight Ridder, . / The McClatchy C. "	1 KRD = 0.5118 MCC + USD40.00	13 Mar 2006	13 Sep 2006		USA	USD4,133m	1.26%	-0.14%	4.95%
Laserscope / American Medica.	1 LAS = USD31.00	05 Jun 2006	05 Sep 2006		USA	USD683m	1.11%	-0.07%	4.76%
"Lexar Media, In. / Micron Technolo. "	1 LXM = 0.5925 MCT	08 Mar 2006	02 Jul 2006		USA	USD5,451m	1.71%	-0.19%	31.14%
Lucent Technolo. / Alcatel SA	1 LUC = 0.1952 ALC	02 Apr 2006	03 Jan 2007		USA	USD21,487m	-2.66%	0.47%	-4.74%
Manugistics Gro. / JDA Software Gr.	1 MAN = USD2.50	24 Apr 2006	24 Aug 2006		USA	USD209m	0.81%	0.40%	4.03%
Navigant Intern. / Carlson Wagonli.	1 NAV = USD16.50	27 Apr 2006	27 Sep 2006		USA	USD271m	1.91%	0.06%	6.53%
NES Rentals Hol. / Diamond Castle .	1 NESR = USD18.75	24 May 2006	23 Jul 2006		USA	USD382m	3.88%	1.42%	34.52%
NetIQ Corporati. / AttachmateWRQ I.	1 NIQ = USD12.20	27 Apr 2006	27 Jul 2006		USA	USD482m	0.49%	-0.08%	4.01%
Nextel Partners. / Sprint Nextel C.	1 NXP = USD28.50	20 Dec 2005	20 Jun 2006		USA	USD7,688	0.46%	0.07%	20.91%
North Fork Banc. / Capital One Fin.	1 NOF = 0.2216 CONE + USD11.25	12 Mar 2006	12 Dec 2006		USA	USD13,675m	0.21%	-0.06%	0.42%
NorthWestern Co. / Babcock & Brown.	1 NWC = USD37.00	25 Apr 2006	01 Feb 2007		USA	USD1,234m	6.66%	-0.05%	10.39%
Pacific Energy . / Plains All Amer.	1 PAC = 0.77 PLAIN	12 Jun 2006	12 Dec 2006		USA	USD1,252m	10.62%	-1.11%	20.83%
Packaging Dynam. / Thilmany LLC	1 PDY = USD14.00	24 Feb 2006	24 Jun 2006		USA	USD150m	0.29%	0.00%	8.71%
PanAmSat Corpor. / Intelsat Limite.	1 PAN = USD25.00	29 Aug 2005	29 Aug 2006		USA	USD3,103m	-0.91%	0.04%	-4.27%
Petrofund Energ. / Penn West Energ.	1 PET = 0.60 PENN + USD0.9035	17 Apr 2006	17 Jul 2006		Canada	USD2,818m	-1.87%	-0.32%	-19.52%
Portal Software. / Oracle Corporat.	1 POS = USD4.90	12 Apr 2006	30 Jun 2006		USA	USD209m	0.41%	0.21%	8.31%
PSEG (Public Se. / Exelon Corporat.	1 PSE = 1.225 ELC	20 Dec 2004	20 Jun 2006		USA	USD16,749m	7.37%	0.23%	336.40%

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Remington Oil a. / Helix Energy So.	1 ROGS = 0.436 HES + USD27.00	23 Jan 2006	23 Jun 2006		USA	USD1,226m	0.31%	-0.12%	10.21%
Riviera Holding. / Riv Acquisition.	1 RHC = USD17.00	06 Apr 2006	06 Feb 2007		USA	USD246m	-14.05%	2.20%	-21.46%
Royal Group Tec. / Georgia Gulf Co.	1 RGT = USD11.82	09 Jun 2006			Canada	USD1,045m	5.68%	1.19%	
Russell Corpora. / Berkshire Hatha.	1 RUSS = USD18.00	17 Apr 2006	30 Sep 2006		USA	USD596m	-0.33%	0.38%	-1.10%
SBS Technologie. / GE Fanuc Embedd.	1 SBS = USD16.50	20 Mar 2006	20 Jun 2006		USA	USD258m	0.12%	0.00%	5.54%
Sears Canada In. / Sears Holdings .	1 SCD = USD16.263	05 Dec 2005	01 Aug 2006		Canada	USD1,814m	-4.07%	-1.37%	-29.72%
Serologicals Co. / Millipore Corpo.	1 SEL = USD31.55	25 Apr 2006	30 Jun 2006		USA	USD1,069m	0.67%	-0.42%	13.59%
Sound Federal B. / Hudson City Ban.	1 SFI = USD20.75	09 Feb 2006	09 Jul 2006		USA	USD256m	0.39%	-0.10%	5.23%
SOURCECORP Inco. / CorpSource Hold.	1 SCORP = USD25.00	08 Mar 2006	08 Sep 2006		USA	USD395m	1.21%	0.16%	5.04%
SSA Global Tech. / Infor Global So.	1 SSA = USD19.50	15 May 2006	15 Sep 2006		USA	USD1,345m	0.88%	-0.10%	3.38%
Stone Energy Co. / Plains Explorat.	1 SEC = 1.25 PEP	24 Apr 2006	24 Dec 2006		USA	USD1,249m	-10.81%	-2.35%	-20.24%
Stone Energy Co. / Energy Partners.	1 SEC = 1.287 ENP + USD26.00	25 May 2006			USA	USD1,246m	9.03%	-0.01%	
The Sportsman's. / VLP Corporation	1 SG = USD31.00	04 May 2006	30 Sep 2006		USA	USD223m	1.64%	0.00%	5.44%
"Thomas Nelson, . / InterMedia Part. "	1 TNI = USD29.85	21 Feb 2006	30 Jun 2006		USA	USD448m	0.00%	-0.07%	0.00%
"TransMontaigne,. / SemGroup, LP"	1 TSM = USD11.25	27 Mar 2006	27 Sep 2006		USA	USD560m	-0.35%	0.18%	-1.21%
"TransMontaigne,. / Morgan Stanley . "	1 TSM = USD11.00	27 Apr 2006	27 Oct 2006		USA	USD565m	-2.57%	0.17%	-6.84%
UbiquiTel Inc. / Sprint Nextel C.	1 UBT = USD10.35	20 Apr 2006	20 Oct 2006		USA	USD972m	0.10%	0.19%	0.27%
Valkyries Petro. / Lundin Petroleu.	1 VKP = 1.00 LDP	29 May 2006	31 Jul 2006		Canada	USD1,136m	5.20%	3.58%	38.72%
West Corporatio. / MergerCo	1 WC = USD48.75	31 May 2006			USA	USD3,364m	2.18%	0.11%	

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