

Antitrust & Competition Insight

In association with Hogan & Hartson LLP

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Foreword

Welcome to this eighth 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. Furthermore, there is for the first time a list of live deals in Emerging Europe, Middle East and Africa (EEMEA). This coincides with **dealReporter** recently launching its coverage of all aspects of M&A, private equity, special situations, pre IPO and rumours across these jurisdictions.

In the first article Joseph Krauss and Michaelynn Ware summarise the major antitrust enforcement activities with respect to M&A in the United States. On page 11, there is a mergermarket round up of several pertinent antitrust situations in Europe, North America and Asia. Also in this edition of the newsletter Marceline Tournier

gives a comprehensive round up of European M&A antitrust developments, this can be found on page 14. In the final article on page 22, **dealReporters's** regulatory correspondents Sandra Pointel and Ben Bschor look at the European Commission and vertical integration in the portable navigation industry,

We hope you find this latest edition of interest. We would like to exhort and welcome any feedback you might have for the forthcoming newsletter in September please email Katie Hart.

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United States M&A Antitrust: A Round-up of 2007

The U.S. antitrust authorities have had an active year with respect to merger enforcement and policy. Below is a summary of the principal merger actions by both the Department of Justice (the “Department”) and the Federal Trade Commission (“FTC”).



Mergers and Acquisitions

FTC Approves Final Consent Order in SCI's Acquisition of Alderwoods Group, Inc.

The FTC announced on January 5, 2007 that it had approved the final consent order requiring Service Corporation International (“SCI”) to sell 40 funeral homes in 29 markets and 15 cemeteries in 12 markets to acquirers approved by the FTC. In six other markets, SCI must sell certain funeral homes that it plans to acquire or end its licensing agreements with third-party funeral homes affiliated with SCI. The FTC first announced its decision to challenge this transaction on November 22, 2006. The proposed acquisition combines the two largest sellers and providers of funeral and cemetery service facilities in the United States.

FTC Challenges Hospira Inc.'s Acquisition of Mayne Pharma Ltd.

The FTC announced on January 18, 2007 that it would require Hospira Inc. and Mayne Pharma Ltd. (“Mayne”) to divest assets used to manufacture and supply five generic injectable pharmaceuticals to proceed with the Hospira's proposed acquisition of Mayne. The FTC stated that the acquisition, as originally proposed, would harm competition in these five markets and result in higher prices to consumers. The companies agreed to divest Mayne's rights and assets to five generic injectable pharmaceuticals to Barr Pharmaceuticals, Inc.

FTC Approves Final Consent Order in Johnson & Johnson's Acquisition of Pfizer's Consumer Healthcare Business

The FTC announced on January 19, 2007 that it had approved the final consent order requiring Johnson & Johnson and Pfizer's Consumer Healthcare Business (“Pfizer”) to divest (1) Pfizer's Zantac H-2 blocker business to Boehringer Ingelheim Pharmaceuticals Inc., and (2) Pfizer's Cortizone hydrocortisone anti-itch business, Unisome sleep aids, and Balmex diaper rash treatment products to Chatterm. The FTC first announced its decision to challenge this transaction on December 12, 2006. The FTC said that the acquisition, as originally proposed, would reduce competition in each of the product markets addressed by the consent order.

FTC Challenges The Acquisition of Interests in Kinder Morgan, Inc. by The Carlyle Group and Riverstone Holdings

The FTC announced on January 25, 2007 that it had reached a settlement that would allow KMI Management (“KMI”) and a group of investment firms, including private equity funds managed and controlled by The Carlyle Group (“Carlyle”) and Riverstone Holdings LLC (“Riverstone”), to proceed with the US\$22 billion deal to take Kinder Morgan, Inc. private. The FTC complaint alleged that Carlyle and Riverstone already held significant positions in Magellan Midstream (“Magellan”), a major competitor of KMI in the terminaling of gasoline and other light petroleum products in the southeastern United States. The FTC said that the proposed transaction would threaten competition between KMI and Magellan in eleven metropolitan areas in the Southeast, likely resulting in higher prices for gasoline and other light petroleum products. Under the consent decree, Carlyle and Riverstone would be required to: (1) remove all of their representatives from the Magellan Board of Managers and its board of directors, (2) cede control of Magellan to its other principal investor, Madison Dearborn Partners, and (3) not influence or attempt to influence the management or operation of Magellan.

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Department of Justice Requires Mittal Steel to Divest Sparrows Point Steel Mill

The Department of Justice announced on February 20, 2007 that it would require Mittal Steel Company N.V. ("Mittal") to divest its Sparrows Point facility located near Baltimore, Maryland, to remedy the competitive harm arising from Mittal's recent US\$33 billion acquisition of Arcelor S.A. This followed an earlier proposed consent decree, filed with the court in August 2006, that required Mittal to divest a steel mill that supplied tin mill products to the United States. Under the consent decree, Mittal's first obligation was to attempt to divest Dofasco Inc., a Canadian company owned by Arcelor. Dofasco, however, had been placed in a Dutch foundation in an attempt to defeat Mittal's hostile takeover bid. Due to this, the consent decree gave the Department the right to select an alternative divestiture of either Mittal Steel's Sparrow Point mill or its Weirton mill, located in Weirton, West Virginia. The Department determined that the divestiture of the Sparrows Point facility would most reliably remedy the anticompetitive effects of the acquisition. On August 6, 2007, the Department announced that it asked a federal judge in Washington, D.C., to appoint a trustee to sell Sparrows Point in light of Mittal's failure to complete such a sale prior to the August 6, 2007 deadline imposed by the consent decree.

FTC Unsuccessfully Challenges Acquisition of The Peoples Natural Gas Company from Dominion Resources

The FTC announced on March 15, 2007 that it had approved a complaint challenging Equitable Resources, Inc.'s ("Equitable's") acquisition of The People's Natural Gas Company ("Dominion Peoples"), a subsidiary of Dominion Resources, Inc. The FTC stated that the transaction, valued at US\$970 million, would result in a monopoly in the distribution of natural gas to nonresidential customers in certain areas of Allegheny County, Pennsylvania, which includes Pittsburgh. On April 13, 2007, the FTC filed its complaint and motion for temporary restraining order in the Western District of Pennsylvania. The court dismissed the complaint on state action grounds. The FTC filed an emergency motion for injunction pending appeal. On June 1, 2007, the Third Circuit enjoined the transaction pending appeal.



Department of Justice Requires Divestitures in Cemex's Acquisition of Rinker Group

The Department of Justice announced on April 4, 2007 that it would require Mexico-based Cemex S.A.B. de C.V. to divest 39 ready mix concrete, concrete block, and aggregate facilities in Arizona and Florida in the event that Cemex succeeded in its US\$12 billion hostile takeover of Australia-based Rinker Group. The Department said that without the divestitures the proposed acquisition would substantially lessen competition for ready mix concrete in certain metropolitan areas in Arizona and Florida, as well as result in increased prices for ready mix concrete, concrete block, and aggregate sold to customers handling state Department of Transportation and large building projects. The Department subsequently announced on May 2, 2007, following the approval of the cash tender offer by Rinker's Board of Directors, that it would also require Rinker to become a party to the hold separate order.

FTC Unsuccessfully Challenges Western Refining's Acquisition of Giant Industries, Inc.

The FTC announced on April 12, 2007 that it was filing a complaint in federal district court seeking a temporary restraining order and preliminary injunction to stop Western Refining, Inc.'s ("Western") proposed US\$1.4 billion acquisition of Giant Industries, Inc. ("Giant"). The FTC alleged that the acquisition would lead to reduced competition and higher prices for the bulk supply of light petroleum products to northern New Mexico. On May 29, 2007, the U.S. District Court for the District of New Mexico denied the FTC's request

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for a preliminary injunction. On May 31, 2007, the Court of Appeals for the Tenth Circuit also refused to grant the FTC's emergency motion for an injunction pending appeal. That same day, the parties consummated the proposed transaction. The FTC withdrew the case from administrative litigation on June 7, 2007 to determine whether it was in the public interest to continue proceedings. On October 3, 2007, the FTC announced that continuing the administrative litigation would not be in the public interest.

FTC Requires Divestiture in continuing the administrative litigation Actavis Group's Proposed Acquisition of Abrika

The FTC announced on April 16, 2007 that it would require Actavis Group ("Actavis") and Abrika Pharmaceuticals ("Abrika") to divest their rights to the generic isradipine capsules to Cobalt Laboratories, Inc., in order to proceed with Actavis' US\$235 million acquisition of Abrika. The FTC stated that the transaction, as originally proposed, would create a monopoly in the U.S. market for generic isradipine capsules, a drug that is typically prescribed to patients to lower their blood pressure and also is used to treat hypertension, ischemia, and depression.



Department of Justice Requires Divestitures in Amsted Industries Inc.'s Acquisition of FM Industries

The Department of Justice announced on April 18, 2007 that it would require Amsted Industries to divest certain assets to remedy harm to competition arising from its December 2005 acquisition of FM Industries. This transaction was not subject to the reporting and waiting period requirements of the Hart-Scott-Rodino ("HSR") Antitrust Improvements Act. The Department opened an investigation into the transaction after receiving customer complaints. The Department found that the acquisition removed Amsted's only competitor in new end-of-car cushioning units ("EOCCs") used in the railroad industry, resulted in higher prices, and substantially lessened competition in the market for EOCCs. EOCCs are hydraulic devices that protect sensitive cargos by mitigating the forces experienced by railcars during transit and coupling.

Department of Justice Closes Its Investigation of Smithfield Inc.'s Acquisition of Premium Standard Farms Inc. Without Action

The Department of Justice announced on May 4, 2007 that it would close its investigation into Smithfield Foods Inc.'s ("Smithfield's") proposed acquisition of Premium Standard Farms ("Premium") without action. The Department's investigation focused on fresh and processed pork, the purchase of hogs from farmers, and the purchase of services from farmers who raised hogs owned by the merging parties. Based on the evidence obtained during its investigation, the Department found that the merged firm is not likely to harm competition, consumers, or farmers.

Department of Justice Files Antitrust Lawsuit To Undo Daily Gazette Company's Acquisition of Daily Mail Newspaper from MediaNews

The Department of Justice announced on May 22, 2007 that it filed a civil antitrust lawsuit in U.S. District Court in Charleston, West Virginia, alleging that the Daily Gazette Company and MediaNews Group Inc. violated the antitrust laws when they entered a series of transactions in May 2004 that resulted in Daily Gazette acquiring the Daily Mail newspaper from MediaNews. The Department alleged that the Daily Gazette bought the Daily Mail with the goal of shutting it down and began taking steps to do so until the Department initiated

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its investigation in December 2004. The Department's lawsuit sought an order requiring the parties to undo their transactions.

Department of Justice Requires Divestitures in Merger of Monsanto and Delta and Pine Land

The Department of Justice announced on May 31, 2007 that it would require Monsanto Company ("Monsanto") and Delta & Pine Land Company ("DPL") to divest Monsanto's Stoneville Pedigree Seed Company, twenty proprietary cottonseed lines, and other assets in order to proceed with their proposed US\$1.5 billion merger. The Department also required Monsanto to provide the divested Stoneville company a license as favorable as DPL's current Monsanto license. The Department said that the transaction, as originally proposed, would have caused higher prices to U.S. farmers for traited cottonseed (i.e., genetically modified cottonseed to include highly desirable characteristics) and would have blocked or delayed development of traits for cottonseed that would compete with Monsanto.

FTC Challenges Rite Aid's Acquisition of Brooks and Eckerd Pharmacies from Canada's Jean Coutu Group, Inc.

The FTC announced on June 4, 2007 that it would require Rite Aid Corporation and Jean Coutu Group, Inc. to agree to divest 23 pharmacies to Commission-approved buyers in order to proceed with Rite Aid's proposed US\$3.5 billion acquisition of Brooks and Eckerd Pharmacies. These pharmacies are located in local markets that the FTC determined to be highly concentrated with respect to retail sale of pharmacy services to cash customers. In each of these markets, the FTC alleged that Rite Aid and Eckerd/Brooks were two of a small number of pharmacies offering cash services, and combined for between 50 and 100 percent of the pharmacies in those markets. The FTC also alleged that customers in these markets viewed Rite Aid and Eckerd/Brooks pharmacies as their first and second choices based on location, service, and convenience. The FTC required the 23 pharmacies be sold to one of five up-front buyers: (1) Kinney Drugs; (2) Medicine Shoppe International, Inc.; (3) Walgreen Co.; (4) Big Y; and (5) Weis Markets.

FTC Unsuccessfully Challenges Whole Foods Market Acquisition of Wild Oats Market

The FTC announced on June 5, 2007 that it had approved a complaint challenging Whole Foods Market, Inc.'s approximately US\$670 million acquisition of Wild Oats Markets, Inc., and authorized the staff to seek a temporary restraining order and preliminary injunction in federal district court. The FTC's complaint alleged that the transaction would eliminate substantial competition between two "uniquely close competitors" in several markets nationwide in the operation of "premium natural and organic supermarkets." On June 7, 2007, the U.S. District Court for the District of Columbia issued a temporary restraining order under which the parties could not consummate the deal until after a preliminary injunction hearing. The preliminary injunction hearing occurred on July 31 and August 1, 2007. On August 16, 2007, the court denied the parties motion for a preliminary injunction pending an administrative hearing. The court rejected the FTC's narrow market definition and concluded that the relevant product market also included traditional grocery stores. The U.S. Circuit Court of Appeals for the District of Columbia subsequently denied the FTC's request to stay the case pending appeal of the district court's decision.

Department of Justice Closes its Investigation of Chicago Mercantile Exchange Holdings Inc.'s Acquisition of CBOT Holdings Inc. Without Action

The Department of Justice announced on June 11, 2007 that it would close its investigation into CBOT Holdings Inc. by Chicago Mercantile Exchange Holdings, Inc. without action. After an investigation of both the Chicago Mercantile Exchange's ("CME's") proposed acquisition of CBOT and the 2003 agreement under which CME provides clearing services to CBOT, the Department determined that neither the transaction nor the clearing agreement was likely to reduce competition substantially. During the course of this investigation, the Department related on the Commodities Future Trading Commission as a resource concerning the nature and regulation of futures markets.

Department of Justice Requires Divestitures in Merger of First Busey Corporation and Main Street Trust Inc.

The Department of Justice announced on June 12, 2007 that it would require First Busey Corporation and Main Street Trust, Inc. to sell five branch offices with approximately US\$110 million in deposits in Champaign County, Illinois, in order to resolve antitrust concerns about the companies' proposed merger. The proposed merger would combine two major local banks in Central Illinois with approximately US\$3.6 billion in assets and US\$2.7 billion in total deposits.

Commission Rules that Evanston Northwestern Healthcare Corp.'s Acquisition of Highland Park Hospital Was Anticompetitive

On August 6, 2007, the FTC announced an administrative opinion and order ruling that Evanston Northwestern Healthcare Corp.'s acquisition of Highland Park Hospital in 2000 was anticompetitive and violated Section 7 of the Clayton Act. The Commission opinion, written by Chairman Deborah Platt Majoras, affirmed an October 2005 ruling by an Administrative Law Judge ("ALJ"), with some modifications. It also ordered an alternative remedy that required Evanston to establish separate and independent contract negotiating teams – one for Evanston and Glenbrook Hospitals, and another for Highland Park – that would allow managed care organizations to negotiate separately for the competing hospitals. This remedy differed from that ordered by the ALJ, who ruled that Evanston should be required to divest Highland Park altogether.

FTC Requires Divestiture in Jarden Corp.'s Proposed Acquisition of K2 Incorporated

The FTC announced on August 9, 2007 that it would require sporting equipment manufacturers Jarden Corp. and K2 Incorporated to divest the assets related to four popular types of monofilament fishing lines, all of which are owned by K2: Cajun Line, Omniflex, Outcast, and Supreme. Monofilament fishing line is the most widely-used and least expensive type of fishing line. The FTC stated that the transaction, as originally proposed, would be anticompetitive and detrimental to consumers of monofilament fishing line.

FTC Requires Divestiture in Mylan's Proposed Acquisition of Merck's Generic Subsidiary

The FTC announced on September 27, 2007 that it would require Mylan Laboratories ("Mylan") and Germany's E. Merck oHG ("Merck") to divest all assets related to five generic drugs in order to proceed with Mylan's proposed US\$6.6 billion acquisition of Merck. These generic drugs include: (1) acebutolol hydrochloride capsules, (2) flecainide acetate tablets, (3) guanfacine hydrochloride tablets, (4) nicardipine hydrochloride capsules, and (5) sotalol hydrochloride AF tablets. The FTC stated that the transaction, as originally proposed, would result in reduced competition and higher prices for U.S. consumers of these generic drugs.

FTC Requires Divestiture in Kyphon's Acquisition of Disc-O-Tech

The FTC announced on October 9, 2007 that it would require Kyphon, Inc., Disc-O-Tech Medical Technologies, Ltd., and Disc-O-Tech Orthopedic Technologies, Inc. (collectively "Disc-O-Tech") to divest Disc-O-Tech's Confidence product lines – a brand of minimally invasive vertebral compression fracture ("MIVCF") treatment products – in order to proceed with Kyphon's proposed US\$220 million acquisition of Disc-O-Tech's spinal assets. The FTC alleged in its complaint that Confidence is Kyphon's main competitive threat and, absent the acquisition, would make significant inroads into Kyphon's near-monopoly position in the market for MIVCF treatment products.

Department of Justice Requires Divestiture in Abitibi/Bowater Merger

The Department of Justice announced on October 23, 2007 that it would require Abitibi-Consolidated Inc. ("Abitibi") and Bowater Inc., two of the nation's largest newsprint manufacturers, to divest a newsprint mill in Snowflake, Arizona in order to proceed with their proposed US\$1.6 billion transaction. In addition, the merged company would be required to notify the Department before acquiring an additional interest in any mill or machine that is currently jointly-owned by either Abitibi or Bowater with any third party, if the value of the acquisition exceeds US\$2 million. The Department said that the merger, as originally proposed, would have substantially lessened competition in the production and sale of newsprint in North America.

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Department of Justice Closes Its Investigation of Hearst Corporation's Proposed Acquisition of Tracking Stock in MediaNews Group Inc. Without Divestiture

The Department of Justice announced on October 25, 2007 that it closed its investigation of The Hearst Corporation's ("Hearst's") proposed acquisition of a newly created "tracking stock" of MediaNews Group Inc. ("MNG"). Both MNG, through its controlling interest in the California Newspapers Partnership, and Hearst own and publish daily newspapers in the San Francisco Bay Area. These newspapers account for most of the readership of and advertising in daily newspapers in the Bay Area. The Department's investigation focused on whether the proposed investment would give one party an incentive to compete less vigorously in the Bay Area or would provide sources of influence by Hearst or MNG over the other's Bay Area activities. During the investigation, the parties modified the proposed transaction in an effort to mitigate antitrust concerns raised by the Department. The transaction would give Hearst approximately a 30 percent equity stake in MNG's newspaper businesses outside the Bay Area.

FTC Requires Divestiture in Owens Corning's Acquisition of Saint Gobain Assets

The FTC announced on October 26, 2007 that it would require Owens Corning to divest its North American continuous filament mat ("CFM") business, along with related licenses and intellectual property in order to proceed with its acquisition of the glass fiber reinforcements and composite fabric assets of Compagnie de Saint Gobain ("Saint Gobain"). The FTC stated that the transaction, as originally proposed, would lead to reduced competition in the North American market for CFM products. CFM is an input in the production of non-electrical laminate, marine parts and accessories, and other products where its strength and durability make it the most cost-effective material to use.

Department of Justice Requires Divestitures in AT&T's Acquisition of Dobson Communications

The Department of Justice announced on October 30, 2007 that it would require AT&T Inc. to divest assets to address competition concerns in seven markets in Kentucky, Oklahoma, Missouri, Pennsylvania, and Texas, including rights to the "Cellular One" brand, in order to proceed with its proposed US\$2.8 billion acquisition of Dobson Communications Corporation. The Department said that the transaction, as originally proposed, would have resulted in higher prices, lower quality, and diminished investment in network improvements, and would have substantially lessened competition to the detriment of consumers of mobile wireless telecommunications services.

Department of Justice Requires Divestitures in Vulcan's Acquisition of Florida Rock

The Department of Justice announced on November 13, 2007 that it would require Vulcan Materials Company and Florida Rock Industries Inc. to divest eight quarries that produce coarse aggregate in Georgia, Tennessee, and Virginia and one distribution yard in Virginia in order to proceed with their proposed US\$4.6 billion merger. The Department said that the transaction, as originally proposed, likely would result in higher prices for purchasers of coarse aggregate in the following areas: (1) parts of the Atlanta, Georgia, metropolitan area, (2) Columbus, Georgia, (3) Chattanooga, Tennessee, and (4) South Hampton Roads, Virginia. Coarse aggregate, a type of construction aggregates, is crush stone produced at quarries or mines.

FTC Requires Divestitures in Schering-Plough's Acquisition of Organon BioSciences N.V.

The FTC announced on November 16, 2007 that it would require Schering-Plough Corporation ("Schering-Plough") and Organon BioSciences N.V. ("Organon") to divest the rights and assets needed to develop, manufacture and market three poultry vaccines in order to proceed with Schering-Plough's proposed acquisition of Organon from Akzo Nobel. The FTC stated that the transaction, as originally proposed, would harm competition in the U.S. markets for the manufacture and development of the three poultry vaccines to be divested under the terms of the consent order.

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Department of Justice Settles Civil Contempt Claim Against Cal Dive International, Inc and Helix Energy Solutions Group Inc.

The Department announced on November 26, 2007 that Cal Dive International and its parent company Helix Energy Solutions (collectively "Cal Dive") agreed to pay US\$2 million as part of a civil settlement with the Department related to alleged violations of a 2005 consent decree. The Department alleged that Cal Dive violated the provisions of the consent decree that required the sale of certain saturation diving assets, including the Seaway Defender, in connection with Cal Dive's acquisition of assets from Stolt Offshore Inc. and S&H Diving LLC. According to the Department, Cal Dive delayed the sale of the assets during a period of high demand for saturation diving vessels due to clean up from Hurricane Katrina and Hurricane Rita. The US\$2 million payment represents disgorgement of profits gained through Cal Dive's alleged violations and reimbursement to the Department for the cost of its investigation.

FTC Requires Divestiture in A&P's Acquisition of Pathmark Supermarkets

The FTC announced on November 27, 2007 that it would require The Great Atlantic & Pacific Tea Company, Inc. ("A&P") and Pathmark Stores, Inc. ("Pathmark") to divest six supermarkets in New York State in order to proceed with A&P's proposed US\$1.3 billion acquisition of Pathmark. Specifically, the FTC would require the sale of four of A&P's Waldbaum's supermarkets and one Pathmark supermarket in Staten Island, as well as one Waldbaum's supermarket in Shirley, Long Island. The FTC's complaint alleged that the acquisition, as originally proposed, would result in higher prices and lower levels of services for consumers in these two highly-concentrated areas.

Department of Justice Settles Civil Contempt Claim Against ALLTELL Corporation

The Department announced on December 3, 2007 that ALLTELL Corporation agreed to pay US\$1.325 million as part of a civil settlement with the Department and the State of Minnesota that resolves ALLTELL's alleged violations of the 2007 consent decree and related court order issued in connection with ALLTELL's acquisition of Midwest Wireless LLC. Under the consent decree, ALLTELL was required to divest mobile wireless telecommunications businesses in four rural service areas in southern Minnesota. The consent



decree and a related court order required ALLTELL to preserve the assets to be divested in a manner that would maintain their competitive viability; provide a management trustee with detailed timely reports describing ALLTELL's plans for capital expenditures in the divestiture markets and the status of those plans; and adhere to all existing plans for maintenance and capital improvements. According to the Department of Justice and the State of Minnesota, ALLTELL failed to comply with these obligations.

Hart-Scott-Rodino Violations

Hedge Fund Parent Pays US\$250,000 Civil Penalty for Pre-Merger Filing Violations

The FTC announced on May 21, 2007 that the Department of Justice, at the FTC's request, filed a complaint and settlement that would require James D. Dondero, the ultimate parent entity of Highland Capital Management, L.P. ("Highland"), to pay US\$250,000 to settle charges that he violated the reporting requirements of the HSR Act. Highland is a hedge fund that specializes in senior bank loans. The charges against Dondero stem from two separate incidents. The first violation occurred in August 2003 when Dondero failed to submit an HSR filing to report the acquisition of shares in Neighborcare, Inc. The FTC took no enforcement action following this first violation, based on representations that Dondero would put procedures in place to ensure similar violations did not occur. The second violation occurred in late February 2005 when Dondero failed to submit an HSR filing to report the exercise of an option to acquire shares of stock in Motient Corporation.

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Iconix Brand Group Pays US\$550,000 Civil Penalty for Violating Antitrust Pre-Merger Notification Requirements

The Department of Justice announced on October 15, 2007 the filing of a complaint and settlement that would require Iconix Brand Group ("Iconix") to pay US\$550,000 to settle charges that it failed to submit to the antitrust enforcement agencies certain company documents with its pre-merger notification to report its acquisition of Rocawear. Specifically, Iconix failed to submit a formal presentation made to its Board of Directors about the transaction and a less formal e-mail among officers and directors. When initially asked to review whether such documents existed, the company falsely reaffirmed that no such documents existed.

Policy Reviews

Department of Justice and Federal Trade Commission Issue Report on Antitrust and Intellectual Property

On April 17, 2007, the Department of Justice and FTC issued a joint report entitled "Antitrust Enforcement and Intellectual Property Rights: Promoting Innovation and Competition," to inform consumers, businesses, and intellectual property rights holders about the agencies' views with respect to various intellectual property issues. The report discussed refusals to license patents, collaborative standard setting, patent pooling, intellectual property licensing, the tying and bundling of intellectual property rights, and methods of extending market power conferred by a patent beyond the patent's expiration. The report followed a series of hearings jointly conducted by the agencies in 2002.

Department of Justice and Federal Trade Commission Conclude Hearings On Single-Firm Conduct

Beginning in June 2006, the Department and the FTC held 18 days of hearings on the topic of single-firm conduct under the antitrust laws. The agencies concluded these hearings on May 8, 2007. The goal of the hearings was to explore how best to identify anticompetitive exclusionary conduct, examine whether and when specific types of single-firm conduct are procompetitive or benign, and when they may harm competition and consumer welfare. The agencies anticipate that the hearings will result in a comprehensive joint report.

Department of Justice and Federal Trade Commission Issue Report on Competition in the Real Estate Brokerage Industry

On May 8, 2007, the Department and FTC announced the issuance of a report entitled "Competition in the Real Estate Brokerage Industry." The report follows a workshop conducted by the agencies in October 2005. The agencies stated that the purpose of the report is to inform consumers and others involved in the industry about important competition issues involving residential real estate, including the impact of the Internet, the competitive structure of the real estate brokerage industry, and obstacles to a more competitive environment. The agencies recommended specific steps to help maintain competition and protect consumers in the industry.

**By Joseph G. Krauss
and Michaelynn R. Ware, Hogan & Hartson LLP,
Washington, DC**

mergermarket's regional round-ups

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

Owens Corning forced to dispose its North American CFM business after Saint Gobain buy

The Federal Trade Commission (FTC) announced a complaint challenging Owens Corning's proposed US\$640m acquisition of the glass fibre reinforcements and composite fabric assets of Compagnie de Saint Gobain. It was charged that the deal would lead to reduced competition in the North American market for continuous filament mat (CFM) products. As a result, Owens Corning was forced to divest its North American CFM business, along with related licenses and intellectual property, to AGY Holdings. Jeffrey Schmidt, Director of the FTC's Bureau of Competition, commented "Owens Corning and Saint Gobain are direct and significant competitors in the North American market for continuous filament mat products. In the absence of any relief provided by the Commission's consent order, the combined entity would have control of more than 90% of the CFM market in the United States."

Owens Corning and Saint Gobain originally planned to combine their respective glass fibre reinforcement businesses in a new entity called Owens Corning Vetrotex Reinforcements. However, due to antitrust issues the companies were forced to restructure the deal and enter into an agreement whereby Owen Corning will acquire Saint Gobain's glass fiber reinforcement and composite fabric business assets worldwide, excluding certain assets in North America and Europe.

Europe: **United Kingdom/Norway**

INEOS/Kerling tie up raises competition issues; EC to investigate

The European Commission ("Commission") has opened an investigation under the EU Merger Regulation into the planned acquisition of Kerling, the Norway based manufacturer of polymers, by INEOS, the UK based specialty and intermediate chemical business. The EC's preliminary market investigation found that the proposed deal raises serious concerns as to its compatibility with the Single Market and the European Economic Area (EEA). This is due to the fact that INEOS would achieve a very strong market position in the European Suspension PVC market, especially in the UK. The EC has until the 25 January 2008 to decide whether the takeover would significantly impede effective competition within the EEA.

North America: **United States**

Celgene/Pharmion merger likely to receive second request from FTC

The proposed US\$2.9bn merger between Celgene Corporation and Pharmion Corporation could receive a second request from the FTC. Divestitures in some minor markets are seen as a possibility although Celgene and Pharmion have carried out extensive due diligence on antitrust issues and say they are "manageable". However, the timeline for the completion of the deal would be "very hard to predict", according to Celgene's Chairman and CEO Sol Barer. The two companies have expressed their intentions to close the deal by the end of the second quarter and have apparently already factored in, as a matter of caution, the possibility of a second request from the FTC. It is thought that US regulators are concerned that both companies market drugs for Myelodysplastic Syndromes (MDS), a form of pre-leukemia. Likewise, European regulators are reportedly wary of the overlap between Thalomid and Revlimid, two leukemia related drugs.

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

Huntsman/Hexion deal raises concerns over epoxy businesses

The proposed acquisition of Huntsman by Hexion Specialty Chemicals, a portfolio company of Apollo Management, continues to move forward despite regulatory concerns. Hexion and Huntsman received a second request from the FTC regarding their proposed merger in October. From an antitrust perspective, it is believed that there are concerns in Hexon's epoxies business and the advanced materials business of Huntsman, which is also epoxy-based.

An industry banker added that Hexion's Resolution Performance Products (RPP), which was acquired from Shell Oil in 2000, and Huntsman's Advanced Materials business, Vantico, have always competed and supplied to one another. It was also said that apart from the Huntsman and Hexion, Dow is the only other producer of specialised resins. Meanwhile, according to Huntsman's 10K issued in March, the company considers Hexion a competitor in numerous product lines, namely formulated polymer systems and complex chemicals and additives used in coatings systems, basic epoxy resins used in industrial protective coatings, electrical insulating materials, and structural composites.

North America: **United States**

XM by Sirius ruling likely to be decided by DOJ's market definition

It is unclear when the US Department of Justice (DOJ) will rule on the proposed US\$5.6bn buy of XM Satellite Radio by Sirius. The coming days are seen as key if the companies are to gain approval before the Christmas break. Thomas Barnett, Assistant Attorney General of the Antitrust Division for the DOJ, and FCC Chairman Kevin Martin are both being viewed as deciding figures for each body's respective clearance. According to an industry lawyer, it is unclear what route the decision will take as the younger audience appears to understand that there are alternatives to satellite radio, whereas the older audience tend to think of satellite radio as its own market.

Europe: **France/Switzerland**

Swiss antitrust body to probe Coop's acquisition of 12 supermarkets

The acquisition of 12 supermarkets by Swiss retailer Coop will undergo a detailed examination by Weko, the Swiss competition commission. Carrefour, the listed France retail giant, and Maus Freres, the Swiss department store chain, have jointly entered into an agreement with Coop to divest their respective stakes in Distributis, which operates from the 12 supermarkets, for €504m. Weko have announced that their initial examination revealed a potentially market dominating position. A Coop spokesperson expressed confidence that the examination would not endanger the deal while Weko have until 27 March 2008 to complete their review.

North America/Europe: **Canada/UK**

Reuters and Thomson reportedly offer remedies to EC

According to reports, Reuters and Thomson, the financial data and media groups who plan to merge, have offered remedies to the EC. Exact details of the remedies were not available although a person close to the situation claims they include selling copies of certain databases of the business.

The merger was referred for a Phase II investigation in early October and the deadline for this is 10 March. This follows a 30 October request by the parties for a two week extension in order to give the EC more time to assimilate information about the market. The EC can extend a Phase II investigation if remedies are offered after day 55 (December 24) of the review period. Tom Glocer, Reuters chief executive, recently remarked, "Customer feedback to the proposed transaction has been overwhelmingly positive, and we are hopeful that we can work with the regulators to expedite the process and complete the transaction in or around the first quarter of 2008." The proposed deal is valued at €13.4bn.

Asia: **Japan**

Sokkia/Topcon transaction being reviewed; new JFTC guidelines could be beneficial

The Japan Fair Trade Commission (JFTC) is still examining the acquisition of Sokkia by Topcon. Topcon, Japan's largest manufacturer of surveying instruments with around a 44% share of the market, and its largest rival Sokkia, announced the deal in March. Approval was originally expected at the end of June, 90 days after Topcon had started talks with the regulator.

While Topcon is Japan's largest manufacturer of surveying instruments, in global terms, the company is the third largest with a market share of around 23%. Conversely, Sokkia has almost no international presence with a market share of 2%-3%. The JFTC introduced new guidelines in April this year for firms in industries facing overseas competition with one official commenting, "Even if merging companies hold a monopolistic grip on the domestic market, the transaction may be approved if they do not exceed the JFTC's market share thresholds in global markets".

The JFTC will employ the Herfindahl-Hirschman index (HHI), which takes the squares of the companies' market shares and adds them together to represent an industry's concentration. In the case of Topcon and Sokkia, the two companies will have a domestic market share of 84% although this figure plummets to 26% on the global market and a HHI of around 538. This is well below the HHI 1,500 cut off for no review transactions.

Europe: **Netherlands**

Commission to decide in Q2 2008 on TomTom's buy of Tele Atlas

The Commission has opened an investigation into TomTom's proposed acquisition of TeleAtlas. TomTom produces portable navigation devices (PND) while Tele Atlas is one of two producers of navigable digital maps, a crucial input for PND manufacturers.

The Commission's initial market investigation has indicated that the proposed transaction raises serious doubts with regards to vertical competition concerns. Indeed the deal could, in light of the duopoly market for navigable maps and TomTom's strong position in the market for PND's, lead to a significant impediment of effective competition in Europe. As a result, the Commission will assess whether the deal will increase the costs of other PND manufacturers for navigable digital maps or limit their access to them. The Commission has until 17 April 2008 to make a final decision.

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MERGER DECISIONS

In 2007, the European Commission (“Commission”) faced a number of novel legal and market structure issues during the course of conducting merger reviews pursuant to the EC Merger Regulation (139/2004) (“ECMR”).

Ryanair/Aer Lingus

Commission Decision

The Commission prevented a takeover for the second time since Commissioner Neelie Kroes took office in November 2004.

The Commission prohibited Ryanair’s proposed takeover of Aer Lingus on 27 June 2007, holding that remedies offered up by Ryanair would be insufficient to address the anticipated negative impact of the takeover on the yearly 14 million EU passengers using routes to and from Ireland who benefited from the existing vigorous competition between Ryanair and Aer Lingus.

Both carriers operate out of Dublin, Ireland and account for 80% of intra-European passenger air traffic at Dublin airport.

Ryanair originally notified the proposed transaction to the Commission on 30 October 2006 and offered two sets of remedies during the course of the Commission’s Phase I review of the proposed transaction. After market testing, the Commission determined that the first set of proposed remedies was insufficient to remove competition concerns. Ryanair subsequently offered a revised package which the Commission described as “a substantial improved remedy proposal”; however Ryanair’s late submission of its proposal did not leave the Commission sufficient time for testing. The Commission opened its Phase II investigation on 20 December 2006.

The Commission reported that the combination of the two carriers would lead to a monopoly on 22 routes (out of 35 routes where the parties compete directly); and market shares of over 60% on the remaining 13 overlapping routes.

The Commission held that Ryanair’s remedies package offered during the course of the Phase II investigation, which included slot divestments and a short term pricing commitment, was insufficient.

The Commission determined that the number of offered slots would be unlikely to encourage sufficient market entry; and noted that new entry against the merged entity would be unlikely, given Ryanair’s reputation for aggressive retaliation against entry attempts by competitors, and airport peak-time congestion on overlapping routes.

Ryanair offered a one year commitment to reduce the prices of Aer Lingus’s short haul flights. The Commission noted that Ryanair’s own prices were outside the scope of the proposed commitment, along with Aer Lingus’s prices after the expiry of the one year period. Generally, the Commission is reticent to accept pricing remedies, which require ongoing Commission monitoring, when other alternative remedies may be available, such as divestments.

Ryanair Appeal

Ryanair lodged an appeal to the Court of First Instance (“CFI”) on 10 September 2007, seeking annulment of the Commission’s decision and costs from the Commission for bringing the appeal.

Aer Lingus Appeal

In October 2007, Aer Lingus confirmed that it would appeal to the CFI to force Ryanair to sell its current shareholding in Aer Lingus. Ryanair was able to acquire a shareholding in Aer Lingus just short of 30%. The Commission has explained that the ECMR does not give it legal authority to force a sale of Ryanair’s stake acquired before the Commission’s prohibition decision. The legal question is likely to turn on whether Ryanair’s current shareholding confers upon it decisive influence (i.e. effective control) over Aer Lingus.

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Sony BMG

For the first time the Commission was forced to re-examine a concentration which it had previously cleared, after a successful appeal to the CFI by a third party complainant.

Original Commission Clearance

The Commission originally unconditionally approved the Sony BMG joint venture, which combined Bertelsmann Music Group ("BMG") (the recorded music business of Bertelsmann AG ("Bertelsmann")) and the recorded music business of Sony Corporation, on the basis that the Sony BMG joint venture would not (a) create or reinforce a dominant position for Sony BMG, or (b) create or reinforce a collective dominant position between Sony BMG, Universal, Warner and EMI (the other music majors).

Impala Appeal and CFI Annulment

The clearance decision was challenged in December 2004 by Impala, a trade association representing independent music companies. On 13 July 2006, the CFI annulled the Commission's 2004 decision on the basis that the Commission had made manifest errors of assessment and used insufficient evidence to support its clearance.

Appeal of CFI Decision

Sony Corporation of America ("Sony") and Bertelsmann appealed the CFI's annulment decision to the European Court of Justice ("ECJ") in October 2006.

Second Commission Clearance

As a result of the CFI's annulment, the Commission was forced to re-examine the Sony BMG joint venture three years after the integration of the two businesses. The joint venture was re-notified on 31 January 2007, and on 1 March 2007, the Commission initiated a Phase II investigation. An in-depth investigation seemed inevitable, given the Commission's need to ensure that any second clearance decision would withstand a second appeal by Impala or any other party. The Commission reviewed the joint venture pursuant to the test under the old ECMR (4064/89), which was in force at the time of the original notification, but took into account current market conditions.

At the time there was substantial legal debate as to what would happen if the Commission issued a prohibition decision the second time around, and whether it would be possible to unscramble the business after such a long period of integration.

In the end, these discussions remained hypothetical. The Commission unconditionally cleared Sony BMG for a second time on 3 October 2007.

ECJ Appeal

Bertelsmann's and Sony's appeal to the ECJ against the CFI is pending. In addition to seeking annulment of the CFI's judgment and rejection of Impala's application for annulment of the Commission's 2004 decision (or alternatively a reference of the appeal back to the CFI), the parties are seeking costs from Impala for bringing the appeal to the ECJ. On 13 December 2007, Advocate General Kokott issued her opinion on the appeal. The Advocate General stated that the CFI was correct to annul the Commission's 2004 decision, and recommended that the ECJ dismiss the appeal.

SFR/Télé 2

The Commission cleared the French mobile telephony operator SFR's acquisition of the Télé 2 France ("Télé 2") fixed telephony and Internet access businesses on 18 July 2007, after agreeing an extensive behavioural remedies package. The Commission generally resists behavioural remedies if structural remedies (such as divestment) can equally address competition concerns. In this case, competitors' access to premium media content could not be equally remedied with divestments.

SFR is jointly controlled by Vivendi and Vodafone. Vivendi, via its subsidiary Canal+, has a strong position in the French TV-sector. Télé 2 is active in pay-TV distribution by DSL.

The Commission characterised DSL operators as the main potential competitive constraint on pay-TV operators and was concerned that Vivendi would supply a combined SFR/Télé 2 subsidiary with preferential access to its Canal+ television content, conferring upon SFR/Télé 2 a substantially advantageous position over rival DSL operators and potentially resulting in the substantial weakening of competitor DSL operators in both markets for the upstream acquisition of content and the downstream distribution of content.

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The Commission cleared the transaction pursuant to a Phase II investigation (initiated on 20 March 2007), after Vivendi and SFR offered a number of behavioural commitments, including:

- Access for DSL operators to channels produced for Vivendi or for which Vivendi holds exclusive rights, on at least equal market terms as for SFR/Télé 2;
- Prohibition on Vivendi to grant SFR/Télé 2 subscribers more favourable terms for accessing its channel packages distributed through DSL networks (e.g. CanalSat and Canal+ Le Bouquet) or its pay-per-view services, than on those terms granted to subscribers of competing DSL operators;
- Prohibition on SFR/Télé 2 acquiring exclusive DSL distribution rights to third party channels for which Vivendi does not own the rights; and
- Prohibition on Vivendi and SFR acquiring exclusive video on demand rights to recent French and American films.

The prohibition commitments should be relatively straightforward for the Commission to monitor, whilst the equality of terms commitment may be more likely to lead to complaints and require Commission intervention. The remedies package provides a useful example of the types of behavioural remedies which the Commission may find acceptable where content and access issues arise.

Reuters/Thomson

On 3 September 2007, Thomson notified to the Commission its proposed acquisition of Reuters. The Canadian Thomson and the UK Reuters are leading financial information providers active in the sourcing, aggregation and dissemination of market data content to financial institutions. Thomson is also active in legal, fiscal, accounting and scientific research sectors, and Reuters is one of the largest international news agencies.

The Commission initiated a Phase II investigation on 8 October 2007 after identifying potential competition concerns in respect of:

- the supply of financial information including data-feeds;
- access to financial information databases commercialised by Thomson and Reuters;
- access to real-time reports and broker reports; and
- the supply of news services.

Given that the parties supply similar content, this transaction may be a candidate for access commitments if competition concerns cannot otherwise be addressed.

Universal/BMG

Following a Phase II investigation, on 22 May 2007 the Commission cleared Universal's proposed acquisition of the Bertelsmann Music Group ("BMG") music publishing business, after Universal agreed to divest a number of Anglo-American music catalogues. (The BMG music publishing business did not form part of the Sony BMG joint venture.)

Universal is a US based company owned by Vivendi and is a leading player in the music recording and publishing businesses, along with BMG, EMI, Warner and Sony, who together hold most of the sector. Universal is the strongest player for music recording and, following the acquisition of BMG's publishing business, would also be the largest EEA music publisher.

Music publishers exploit song writer copyrights by granting licenses to music users. Music publishing rights cover recorded music (i.e. mechanical rights), concert, TV and radio broadcasting (i.e. performance rights) and music used in advertisements and films (i.e. synchronisation rights).

Traditionally, national collecting societies carry out licensing on behalf of song writers and their publishers for mechanical and performance rights, including online rights, in their respective countries and operate on a reciprocity system with collecting societies in other countries. Under this arrangement, national collecting societies do not directly compete against national collecting societies in other countries. Collecting societies are normally viewed as dominant and therefore are generally subject to national rules imposing non-discrimination obligations and prohibitions on refusal to supply. Under this arrangement, music publishers can only influence pricing by representation on collecting societies' boards and their representation on these is limited. In turn, collecting societies are generally constrained by national rules when exercising pricing decisions.



The Commission has promoted the EEA-wide administration of online rights to encourage the development of online music businesses and to foster direct competition between collecting societies operating across the EEA. As a result, certain publishers have clawed back the exploitation of online rights for Anglo-American song repertoires from the traditional collecting societies, by withdrawing online rights from national collecting societies and appointing selected collecting societies as agents across the EEA. The Commission noted that the withdrawal of online rights has led to transferring pricing power from the collecting societies to the publishers.

The Commission was concerned that as a consequence of its acquisition, Universal would be able to exert control over a large segment of Anglo-American music titles, resulting in potential adverse effects on competition in the market for online music publishing rights. In certain countries Universal would control over half of chart-hits thereby attaining “must-have” online product status with the potential ability and incentive to increase prices. Online and mobile music providers wishing to offer a large catalogue would require access to Universal/BMG’s rights.

As a condition of clearance, Universal agreed to divest a number of key Anglo-American music publishing catalogues. Whilst the competition concerns related to online rights, the remedy included the whole gambit of copyrights, not just online rights.

SECTOR INQUIRIES

Energy Sector Inquiry

The Commission issued the final report on its Energy Sector Inquiry in January 2007, which confirmed the Commission’s preliminary views on the presence of “serious competition problems”. The Commission takes issue with high levels of market concentration; vertical integration of supply, operation and infrastructure leading to potential discriminatory access problems for third parties; lack of sufficient investment in infrastructure, possibly due to the incentives of vertically integrated energy companies; potential market sharing between incumbent operators; low levels of cross-border trade; and, lack of competition in wholesale energy prices.

The Commission’s Inquiry has led to individual competition law enforcement initiatives, a greater scrutiny of mergers between energy companies within the scope of the ECMR, and legislative reform.

The Commission initiated proceedings against the RWE Group in Germany and the Italian energy group ENI, in May 2007, in respect of suspected foreclosure of their national gas supply markets.

In July 2007, the Commission initiated proceedings against: E.ON AG and Gaz de France SA for a suspected breach of Article 81 EC Treaty by restricting supplies to natural gas transported through the MEGAL pipeline; and, Suez SA and EDF SA for suspected breaches of Article 82 EC Treaty in respect of long term contracts between the respective groups and electricity consumers (including large industrial consumers) in Belgium and France respectively, which the Commission suspects may prevent customers from switching, which in turn may foreclose the relevant markets.

On 11 October 2007, the Commission secured commitments from Distrigas to open up the Belgian gas market. The commitments address Commission concerns in respect of long term gas supply agreements between Distrigas and gas customers, by reducing the quantity of gas tied up in long term contracts, with the aim of facilitating new entry to enable competitors’ potential access to more customers.

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In September 2007, the Commission adopted a third package of legislative proposals. The cornerstone to the package, and the most controversial aspect, is the proposed separation of production and supply from transmission networks, i.e. unbundling. The Commission prefers ownership unbundling, as instituted in the UK where transmission systems are owned by companies who are not active in production or supply. However, in the face of strong opposition from particular Member States, the Commission has proposed an alternate option, whereby an "independent system operator" or "ISO" would allow existing vertically integrated companies to retain ownership of transmission systems, so long as the transmission assets are independently operated by a separate company.

A number of Member States, notably Germany and France, remain opposed to energy unbundling. In the meantime, the Commission will continue to seek opportunities to break up vertically integrated energy companies and end or restrict long term supply arrangements, including by using its powers when reviewing mergers under the ECMR and by initiating individual investigations. The energy industry can expect little let up from Commission scrutiny and pressure in the next years.

Retail Banking Inquiry

The Commission published its final report to the Retail Banking Inquiry in January 2007. The Commission identified competition concerns in respect of payment cards, payment systems and retail banking products. The Commission particularly noted large variations between payment card merchant and interchange fees, barriers to entry for credit registers and payment systems, barriers to customers' ability to switch and tying of products. The Commission has expressed its intent to use competition law to tackle serious abuses and to work with national competition authorities.

Unlike the flurry of enforcement activity in the energy sector following the final report to the Energy Sector Inquiry, the Commission's actions into individual cases in the banking sector has been more limited. This may be due to a Commission decision to prioritise reform in the energy market above all else.

Since the final report, the Commission addressed a decision to Groupement des Cartes Bancaires in France on 17 October 2007, for infringing Article 81 by adopting pricing practices which hindered particular member banks from issuing cards at a competitive rate. On 3 October 2007, the Commission fined Visa €10.2 million for refusing Morgan Stanley as a member between March 2000 and September 2006, on the basis that Morgan Stanley owned the Discover card network in the US. The Commission held this refusal to be without objective justification, as Discover was not present in the EU market.

POLICY REVIEWS

Proposed Settlement Procedure

The success of the Commission's leniency procedure for undertakings involved in cartels has led to the Commission handling, arguably, an overwhelming number of cartel cases. Each suspected cartel case which is investigated by the Commission requires substantial Commission manpower and time. Years are generally required to fulfil all of the procedural steps from the initiation of the investigation to the issuing of the decision.

The main steps are: initial investigation (including dawn raids), gathering and reviewing information and evidence from leniency applicants and other parties, preparation of non-confidential versions of the Commission's files for inspection by entitled parties, issuing Statements of Objections ("SOs") (i.e. the Commission's case evidencing the undertakings' alleged breach of EC competition law), providing access to the Commission's file, reviewing undertakings' responses to the SOs, holding an oral hearing (if requested) and issuing its decision.

The procedure is likely to be prolonged if a number of parties challenge the Commission's assessment of the scope and duration of their involvement in the alleged cartel, as this requires the Commission to respond to contested facts in significant detail in the SO and final decision in order to withstand potential appeals to the CFI in respect of: facts set out in the decision, procedural steps taken and level of fines.

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On 26 October 2007, the Commission launched a public consultation on a legislative package to introduce the possibility of settlement procedures for cartels. The aim is to give parties the option of a simplified and quicker cartel investigation procedure.

The Commission proposes to give parties the option to request settlement by written request before the Commission issues the SOs. Where the Commission views the case as appropriate for settlement (based on its assessment on the likelihood of agreeing facts, the scope of cartel activity and the likelihood of attaining procedural efficiencies), the Commission may enter into bilateral discussions with settlement applicants. The Commission would inform the undertaking of the alleged facts, the type, gravity and duration of the infringement and the level of participation of the undertaking in the infringement. Where appropriate, the Commission would disclose the evidence supporting the Commission's case against the undertaking (i.e. the objections), as well as the Commission's likely fine range.

The proposed settlement procedure would be different from the US plea bargaining procedure. US plea bargaining is used to gather evidence from undertakings and involves negotiations between the relevant US Antitrust Division of the Department of Justice authority and the undertaking under investigation as to the scope of (criminal) liability.

Commissioner Neelie Kroes has emphasised that the settlement procedure will not involve any bargaining or negotiating, between the Commission and the undertaking seeking settlement, on the Commission's evidence or the objections, i.e. the Commission's case against the undertaking.

Where the settlement discussions lead to a common view between the Commission and the undertaking regarding the objections and the estimated likely fine range, the undertaking would provide a written settlement submission ("WSS") covering:

- unequivocal admission of liability concerning facts, legal infringement and duration;
- the maximum fine which the undertaking would be willing to accept as part of the settlement procedure;
- confirmation that the undertaking has been sufficiently informed of the Commission's objections and had sufficient opportunity to submit views to the Commission;

- confirmation that, going forward, the undertaking does not envision requiring access to the Commission's file or requesting an oral hearing unless the Commission does not accept the WSS; and
- an agreement to receiving the SO in an official language of the European Community.

The main benefit of the settlement procedure would be to gain early knowledge of the Commission's case as well as likely fine range. However this knowledge cannot be transmitted further. Undertakings seeking settlement will be subject to strict confidentiality obligations.

This procedure is distinct from the Commission's leniency procedure whereby parties can supply incriminating evidence in order to apply for immunity from or a reduction of fines, where such evidence uncovers a cartel or significantly furthers a Commission investigation. The possible reduction of fines in the leniency procedure will be greater than the settlement procedure. Undertakings would be able to make use of both procedures to maximise fine reductions.

Once implemented, undertakings subject to a Commission investigation will need to employ a cost-benefit analysis to determine whether early knowledge of the Commission's case, likely fine range and a shortened procedure with limited access to Commission documents, is likely to outweigh the ability to respond to a detailed SO with full access to the Commission's file.

The Commission's deadline for comment on the settlement package is 21 December 2007. The final Regulation and accompanying Notice should be adopted in 2008.

LEGISLATIVE DEVELOPMENTS

Commission Consolidated Jurisdictional Notice

On 10 July 2007, the Commission adopted new guidelines for assessing jurisdictional issues which may arise when notifying mergers to the Commission pursuant to the ECMR.

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The new guidelines consolidate four separate jurisdictional notices published in 1998 (under the ECMR then in force), and cover: what constitutes a concentration which may be notifiable under the ECMR; when a joint venture may be considered to be full function and therefore notifiable under the ECMR; which undertakings to take into account for assessment under the ECMR; and how to calculate turnover for purposes of applying the ECMR.

The new Guidelines also reflect changes to the new ECMR which has been in force since 1 May 2004, and recent case law concerning the interpretation of jurisdictional issues by the CFI and ECJ. When considering jurisdictional issues, parties should also consider the Commission Notice on case referrals, published in 2005. This deals with the circumstances in which mergers, which fall within the scope of the ECMR, may be referred down to individual Member States, and conversely, the circumstances in which mergers notifiable under Member State merger regimes may be referred up to the Commission for assessment under the ECMR.

New Commission Guidelines on Vertical and Conglomerate Mergers

On 28 November 2007, the Commission adopted new Guidelines for the assessment of vertical and conglomerate mergers. A vertical merger describes the merger of two undertakings at different levels of the supply chain. A conglomerate merger describes the merger of two companies which produce distinct products and/or supply distinct services, but whose activities are somehow complementary. These may also be described as non-horizontal mergers, as they do not involve undertakings who supply the same product or service.

Neelie Kroes, the Commissioner for Competition Policy, announced that the Commission was the first competition authority to adopt comprehensive guidance on the assessment of non-horizontal mergers.



Unlike horizontal mergers, which reduce the number of competitors on a specific market, vertical and conglomerate mergers do not immediately lead to a change in the number of competitors on a specific market, and are therefore less likely to raise competition concerns. Insofar as they do raise competition concerns, they will be different from competition concerns which may surface in horizontal mergers. The Guidelines provide examples of where vertical and conglomerate mergers may significantly impede effective competition.

In respect of vertical mergers, the Guidelines cite the possible competition issues arising out of acquiring an upstream or downstream undertaking where this leads to the merged undertaking restricting competitors' access to particular supplies (input foreclosure) or to a sufficient customer base (customer foreclosure), or the merged undertaking being able to access commercially sensitive information about competitors' upstream or downstream activities and use this information in an anti-competitive manner.

In respect of conglomerate mergers, the Guidelines comment on the potential competition issues arising out of the merged undertaking's ability to leverage market power from one market to a related market, by tying or bundling products/services together.

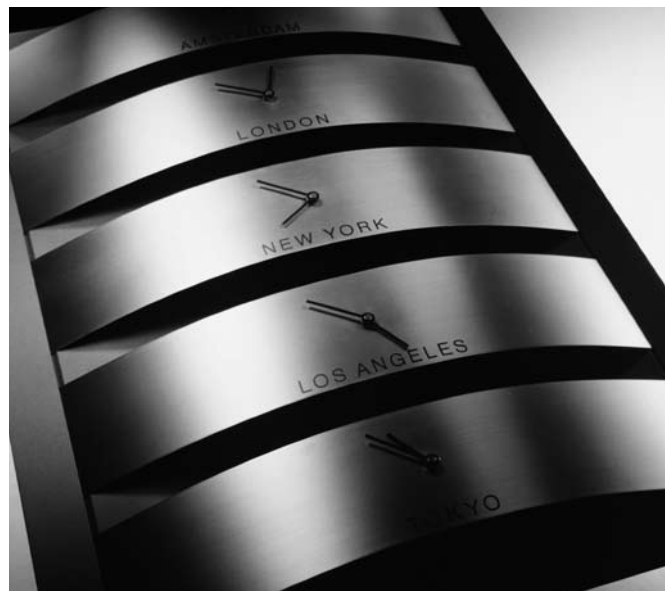
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The Guidelines also note the possibility of both types of mergers increasing the ability of competitors to coordinate behaviour, possibly because of the reduction of relevant players and/or increased ability for competitors to align their behaviour without reaching explicit agreement. This is known as “coordinated effects”. In comparison to the other non-horizontal merger competition risks, the explanation of the coordinated effects risk arising out of non-horizontal mergers is brief, arguably reflecting the Commission’s uncertainty as to how and when coordinated effects are likely to arise.

Draft Merger Remedies Notice

The Commission launched a public consultation on 24 April 2007 to elicit views on draft Guidelines to clarify the Commission’s policy when considering remedies to address competition concerns raised by mergers notified to it under the ECMR. The current guidelines date back to 2001 and required amending to reflect: a comprehensive study conducted by the Commission on the implementation and effectiveness of remedies, recent European Court judgements, changes to the new ECMR since its adoption on 1 May 2004 and lessons learned from the Commission’s recent practices in respect of remedies.

Third party responses have been published on the Commission’s website, and final Remedies Guidelines should be adopted shortly. The Remedies Guidelines are increasingly important as more and more merging parties are offering remedies to the Commission, particularly in the Commission’s Phase I review, to avoid a lengthy and costly Phase II investigation, e.g. Ryanair/Aer Lingus and Universal/BMG.



It is important that remedies submitted to the Commission are in the appropriate format and submitted in a timely fashion to allow the Commission to assess and test the remedies and clear the transaction in the Phase I procedure. Where remedies are insufficient or submitted too late in the Phase I procedure for the Commission to undertake a proper assessment, the risk of the Commission opening a Phase II inquiry will be increased. In order to avoid dealing with significant Commission concerns late in the Phase I timetable, it is advisable to explore with the Commission potential competition concerns, and possibly suitable remedies, at the pre-notification stage, i.e. before the Phase I 30 to 40 working days timetable starts.

By Marceline Tournier, Hogan and Hartson LLP, London

Plotting the paths of the Tele Atlas/ TomTom and Navteq/Nokia mergers

The European Commission and vertical integration in the portable navigation industry

In the past few years, the market for navigation devices for a broad consumer market, so called PNDs (personal navigation devices), exploded. In the second quarter of 2007 alone, 7.4m devices have been shipped globally, according to figures published by research company Canalys. Compared to Q2 2006 this is an increase of 116%.

The devices market is dominated by Dutch based TomTom and US counterpart Garmin – each of them with a global market share of just below 30% -, and a number of smaller players around, such as Mio Technology, Magellan, and Navman. But the devices market is just one side of the coin, with the other side, the developers of digital maps which run on the devices, being pretty much a duopoly of Dutch Tele Atlas and US Navteq.

On 23 July TomTom had made a €1.8bn offer for Tele Atlas which was trumped at the end of October when Garmin made an offer worth €2.3bn. TomTom subsequently increased its original offer significantly to €30.00 per ordinary share, valuing Tele Atlas at approximately €2.9bn. This prompted Garmin to withdraw its own offer in mid November, saying at the same time it signed an agreement with Navteq, extending their business relationship for another six years.



Meanwhile, on 1 October Nokia, the Finnish mobile phone manufacturer, said it would acquire Navteq for US\$78 in cash for each share of Navteq including outstanding options for an aggregate purchase price of approximately €5.7bn.

While Tele Atlas/TomTom has been notified with the European Commission, and is now facing a Phase II investigation, it remains unclear, even though likely, whether the Navteq/Nokia deal will also require approval at EU level or be scrutinised by national competition authorities.

Competition authorities face tricky decisions. On the one hand it will be hard to examine one deal without taking into account that another transaction is happening at the same time. On the other hand competition problems are not necessarily obvious because both deals are cases of vertical integration. The number of digital mapping companies will not be reduced by the takeovers in question, and both acquirers said they have no intention to restrict access to Tele Atlas or Navteq customers which are also their competitors. The fact that PNDs and digital maps are relatively young markets does not make it easier for competition authorities, as there is no precedent for such a deal in the sector.

So far, competition experts have been divided about the outlook for the takeovers competition investigations. Some believe that the takeover of both mapping companies at the same time could make it easier to receive approval. It was argued that if for some reason the combined Tele Atlas/TomTom did not want to sell maps to competitors, Navteq/Nokia would, and vice versa. Others have their doubts, questioning whether this would leave room for other hardware manufacturers, to which access to digital maps is vital.

The facts, however, have somehow proven that the Commission has no intention to simply wave the deals through. At the end of November the EC launched a Phase II investigation of the Tele Atlas/TomTom deal, saying it had "serious doubts with regards to vertical competition concerns."

Plotting the paths of the Tele Atlas/TomTom and Navteq/Nokia mergers

While TomTom remains confident to receive approval, competition experts have pointed out that finding remedies could be hard. As so often in vertical takeovers, it comes down to behavioural remedies. The merged entity will probably have to guarantee access to Tele Atlas maps for competitors in the hardware market in the future. But – as one expert puts it, “to shape non-discriminatory access in a sufficient way will be extremely difficult.”

The problem lies in the nature of the product. Digital maps are still evolving with new features being added and quality being improved constantly. Therefore the terms of access to improved Tele Atlas maps is likely to be a major point of concern. While TomTom would be able to provide access to updates in real-time, access for competitors might still be delayed. Even if new features for Tele Atlas maps are available at the same time to TomTom and its competitors, the Dutch company will be able to know about them in advance and develop its hardware products accordingly, while rivals will not have had the time to think things through, it was suggested.

However, even if all these concerns exist for Tele Atlas/TomTom, the same may not necessarily hold in the Navteq/Nokia case. The reason lies in the slightly different nature of the acquirers: while TomTom is a true PND manufacturer, Nokia is first and foremost a mobile phone company.

The EC’s investigation will seek to identify whether acquirers have incentives to use the digital maps exclusively and to cut off access for competitors. In economic terms this only makes sense if the buyer can win more in the devices market than it would lose in the mapping market by restricting competitor access. The answer is more likely to be positive if the manufacturer has a significant size in the PND market already. In this case the merged entity might be able to fully absorb the digital maps output of the target company internally. But if the merged entity is a small player in the PND world, it would obviously lose significant amounts of money if it kept the digital maps exclusively for itself. Following this logic it can be argued that Nokia’s Navteq takeover is less likely to face serious doubts by the EC than TomTom’s move for Tele Atlas.



The European Commission has now until mid April 2008 to decide on Tele Atlas/TomTom. Navteq/Nokia is still not notified, and, as it was suggested, the latter companies might have decided to sit back for the time being and to wait for the outcome of the Tele Atlas investigation. Naturally, being the only serious competitor, Navteq will have the opportunity to comment on the competitor’s takeover and they might want to prepare the ground for clearance of their own takeover by Nokia by arguing that there will be sufficient competition among integrated companies if both deals are agreed.

Nokia itself has no intention to reveal its strategy to the market and, when asked, only referred to earlier statements that closure of the deal was expected in Q1/ 2008.

By Ben Bschor and Sandra Pointel, dealReporter

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 |
|-------------------------------------|-------------------------------|-------------|-------------|--------------|-------------|----------------|--------------------|----------|--------|-------------|
| Alfred McAlpine. / Carillion plc | 1 MCA = 1.08 CAR + GBP1.654 | 10 Dec 2007 | 29 Feb 2008 | 80 | | United Kingdom | GBP-538m | 3.45% | -9.59% | 15.56% |
| Altadis SA / Imperial Tobacc. | 1 ALT = EUR50.00 | 18 Jul 2007 | 11 Jan 2008 | 31 | 21 Jan 2008 | Spain | EUR-12,719m | 0.68% | 0.04% | 7.81% |
| Attica Group SA / Marfin Investme. | 1 ATT = EUR5.50 | 03 Oct 2007 | 15 Dec 2007 | 4 | | Greece | EUR-567m | 1.10% | -0.37% | 80.51% |
| AWD Holding AG / Swiss Life Hold. | 1 AWD = EUR30.00 | 03 Dec 2007 | 04 Feb 2008 | 55 | | Germany | EUR-1,134m | 2.21% | 0.17% | 14.44% |
| Bank Austria Cr. / UniCredit Group | 1 BAU = EUR129.40 | 26 Mar 2007 | 31 Jan 2008 | 51 | | Austria | EUR-28,284m | -7.57% | 0.00% | -53.15% |
| Burren Energy P. / ENI SpA | 1 BRN = GBP12.30 | 30 Nov 2007 | 25 Feb 2008 | 76 | | United Kingdom | GBP-1,751m | -0.89% | -0.08% | -4.20% |
| Business Object. / SAP AG | 1 OBJ = EUR42.00 | 07 Oct 2007 | 10 Jan 2008 | 30 | 23 Jan 2008 | France | EUR-4,003m | 0.77% | -0.12% | 9.04% |
| Cassa di Rispar. / Intesa Sanpaolo. | 1 BFR = EUR6.73 | 26 Jul 2007 | 18 Jan 2008 | 38 | | Italy | EUR-5,463m | 2.03% | 0.06% | 19.01% |
| Christian Salve. / Groupe Norbert . | 1 CSL = GBP0.92 | 02 Oct 2007 | 14 Dec 2007 | 3 | 28 Dec 2007 | United Kingdom | GBP-253m | 0.55% | -0.55% | 49.86% |
| Cosmote-Mobile . / OTE (Hellenic T. | 1 CMT = EUR26.25 | 09 Nov 2007 | 29 Jan 2008 | 49 | | Greece | EUR-8,644m | 1.67% | -0.08% | 12.16% |
| Cumerio SA (For. / Norddeutsche Af. | 1 CUR = EUR30.00 | 25 Jun 2007 | 28 Feb 2008 | 79 | | Belgium | EUR-738m | 5.26% | -1.61% | 24.01% |
| Eiffage SA / Sacyr Valleherm. | 1 EIF = 2.40 SAC | 19 Apr 2007 | 31 Mar 2008 | 111 | | France | EUR-7,188m | -5.74% | -2.11% | -18.69% |
| Foseco Plc / Cookson Group p. | 1 FOS = GBP2.95 | 11 Oct 2007 | 04 Apr 2008 | 115 | 18 Apr 2008 | United Kingdom | GBP-456m | 7.66% | 0.39% | 24.12% |
| Gant Company AB / Maus Freres S.A | Terms undisclosed | 11 Dec 2007 | | | | Sweden | | | | |
| Grupo Agbar / Hisusa | 1 AGB = EUR27.65 | 10 Apr 2007 | 31 Jan 2008 | 51 | | Spain | EUR-4,121m | 0.62% | 0.26% | 4.34% |
| Gyrus Group plc / Olympus Corpora. | 1 GYR = GBP6.30 | 19 Nov 2007 | 30 Jun 2008 | 202 | | United Kingdom | GBP-879m | 6.42% | 0.71% | 11.54% |
| Hagemeyer NV / Rexel SA | 1 HAG = EUR4.85 | 25 Oct 2007 | 31 Jan 2008 | 51 | | Netherlands | EUR-2,984m | 4.30% | 0.00% | 30.19% |
| Imperial Chemic. / Akzo Nobel NV | 1 ICI = GBP6.70 | 13 Aug 2007 | 02 Jan 2008 | 22 | 16 Jan 2008 | United Kingdom | GBP-7,984m | 1.05% | 0.00% | 16.63% |
| Implenia AG / Laxey Partners . | 1 IMP = EUR19.845 | 02 Nov 2007 | 31 Jan 2008 | 51 | | Switzerland | EUR-413m | -11.32% | -0.51% | -79.44% |
| Kelda Group Plc / Saltaire Water | 1 KLD = GBP10.90 | 26 Nov 2007 | 15 Feb 2008 | 66 | | United Kingdom | GBP-2,954m | 1.77% | 0.19% | 9.66% |
| Monsoon Plc / Drillgreat | 1 MON = GBP4.24 | 28 Sep 2007 | 12 Dec 2007 | 1 | 26 Dec 2007 | United Kingdom | GBP-750m | 0.59% | 0.12% | 108.24% |
| Nikanor Plc / Katanga Mining . | 1 NIK = 0.613 KAT + GBP1.034 | 06 Nov 2007 | 11 Jan 2008 | 31 | 25 Jan 2008 | Isle of Man | GBP-1,245m | 3.96% | 0.98% | 45.15% |
| OMX AB / Nasdaq Stock Ma. | 1 OMX = 0.502 NDAQ + EUR10.22 | 25 May 2007 | 31 Dec 2007 | 20 | | Sweden | EUR-3,324m | -4.30% | 4.27% | -74.80% |
| OMX AB / Borse Dubai | 1 OMX = EUR28.8103 | 17 Aug 2007 | 31 Jan 2008 | 51 | | Sweden | EUR-3,324m | 4.56% | 0.67% | 32.03% |

| Deal | Terms | Ann. Date | Est. Comp | Days to comp | Sett. Date | Target Country | Target Mkt Cap (m) | Net Sprd | Change | Ann. Return |
|--------------------------------------|--------------------------------|-------------|-------------|--------------|-------------|----------------|--------------------|----------|--------|-------------|
| Resolution Plc / Pearl Group Lim. | 1 RES = GBP7.20 | 19 Oct 2007 | 12 Feb 2008 | 63 | | United Kingdom | GBP-4,852m | 1.84% | -0.14% | 10.49% |
| Reuters Group p. / The Thomson Cor. | 1 RTR = 0.16 TMS + GBP3.525 | 15 May 2007 | 31 May 2008 | 172 | | United Kingdom | GBP-7,488m | 10.73% | 0.11% | 22.64% |
| Royal Grolsch N. / SABMiller Plc (.) | 1 GRL = EUR48.25 | 19 Nov 2007 | 31 Jan 2008 | 51 | | Netherlands | EUR-808m | 1.00% | -0.15% | 7.05% |
| Securitas Direc. / ESML Intressent. | 1 SDR = EUR2.8104 | 13 Nov 2007 | 04 Jan 2008 | 24 | | Sweden | EUR-988m | -1.06% | 1.36% | -15.42% |
| Sirti S.p.A. / Euraleo | 1 SRT = EUR2.65 | 27 Jul 2007 | 31 Jan 2008 | 51 | | Italy | EUR-582m | 1.03% | -0.12% | 7.23% |
| Star Energy Gro. / Petroliam Nasio. | 1 STE = GBP3.65 | 14 Nov 2007 | 11 Feb 2008 | 62 | | United Kingdom | GBP-352m | -3.44% | -2.09% | -19.93% |
| Stork NV / London Acquisit. | 1 STK = EUR48.40 | 28 Nov 2007 | 31 Jan 2008 | 51 | | Netherlands | EUR-1,580m | 1.17% | 0.08% | 8.22% |
| Suez SA (former. / Gaz de France S. | 1 SEZ = 0.9545 GAZ + EUR5.4996 | 27 Feb 2006 | 31 Mar 2008 | 111 | | France | EUR-58,493m | -5.21% | 0.56% | -16.98% |
| Techem AG / MEIF II Energie. | 1 TEC = EUR60.00 | 22 Oct 2007 | 03 Dec 2007 | Completed | 01 Jan 2008 | Germany | EUR-1,503m | -1.38% | -0.39% | N/A |
| Tele Atlas NV / TomTom N.V. | 1 TELA = EUR30.00 | 23 Jul 2007 | 31 Mar 2008 | 111 | 10 Apr 2008 | Netherlands | EUR-2,522m | 6.57% | 0.08% | 21.42% |
| Telelogic AB / IBM Corporation. | 1 TEL = EUR2.2514 | 11 Jun 2007 | 19 Mar 2008 | 99 | 26 Mar 2008 | Sweden | EUR-500m | 11.38% | 1.02% | 41.55% |
| Umbro Plc / NIKE, Inc. | 1 UMB = GBP1.9306 | 23 Oct 2007 | 03 Mar 2008 | 83 | 17 Mar 2008 | United Kingdom | GBP-209m | 35.01% | 10.45% | 152.11% |
| Vedior NV / Randstad Holdin. | 1 VED = 0.3276 RAN + EUR9.50 | 03 Dec 2007 | 31 Mar 2008 | 111 | | Netherlands | EUR-3,148m | 5.49% | 1.44% | 17.88% |
| Von Roll Holdin. / von Finck famil. | 1 VRL = EUR5.2727 | 15 Nov 2007 | 28 Feb 2008 | 79 | | Switzerland | EUR-960m | 1.49% | -0.89% | 6.81% |
| Wavefield Insei. / TGS-NOPEC Geoph. | 1 WAV = 0.505 TGS | 30 Jul 2007 | 31 Mar 2008 | 111 | | Norway | EUR-641m | 27.15% | 3.66% | 88.47% |

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 = USD1.238 | 08 Nov 2007 | 01 Mar 2008 | 81 | | Thailand | USD-664m | -0.59% | -0.12% | -2.52% |
| Ambuja Cements / Holcim Limited . | 1 GAC = INR151.176 | 23 Aug 2007 | 03 Dec 2007 | Completed | 18 Dec 2007 | India | INR-233,840m | -1.67% | 0.16% | N/A |
| AmInvestment Ba. / AMMB Holdings B. | 1 AMIP = USD1.1024 | 19 Jun 2007 | 31 Jan 2008 | 51 | 31 Mar 2008 | Malaysia | USD-1,458m | -0.17% | 0.43% | -1.23% |
| Anzon Australia. / ARC Energy Limi. | 1 AZA = 1.175 ARC | 24 Oct 2007 | 05 Feb 2008 | 56 | | Australia | AUD-604m | 1.64% | 2.80% | 10.72% |
| Asahi Soft Drin. / Asahi Breweries. | 1 ASD = JPY2120.00 | 25 Oct 2007 | 06 Dec 2007 | Completed | 13 Dec 2007 | Japan | JPY-109,377m | 1.92% | -0.25% | N/A |
| Auckland Intern. / Canada Pension . | 1 AIAL = USD2.4713 | 07 Nov 2007 | 01 Mar 2008 | 81 | 20 Mar 2008 | New Zealand | USD-2,669m | 10.03% | -3.75% | 43.05% |
| Bandai Visual C. / Namco Bandai Ho. | 1 BVC = JPY287000.00 | 08 Nov 2007 | 10 Dec 2007 | Completed | 18 Dec 2007 | Japan | JPY-39,168m | 5.51% | 1.15% | N/A |
| Baotou Aluminum. / Aluminum Corpor. | 1 BTA = 1.48 CHALCO | 02 Jul 2007 | 15 Dec 2007 | 4 | 29 Nov 2007 | China | CNY-23,645m | 7.32% | -3.86% | 667.72% |
| Bolnisi Gold NL / Coeur d'Alene M. | 1 BGN = 0.682 CDM + AUD0.004 | 03 May 2007 | 17 Dec 2007 | 6 | 17 Dec 2007 | Australia | AUD-934m | 4.95% | -2.60% | 258.15% |
| China Oriental . / ArcelorMittal (.) | 1 COG = HKD6.12 | 06 Dec 2007 | 09 Jan 2008 | 29 | | Hong Kong | HKD-15,805m | 13.33% | 0.00% | 167.82% |
| Chongqing Titan. / Panzhihua New S. | 1 CTI = 1.78 PNV | 05 Nov 2007 | 28 Feb 2008 | 79 | | China | CNY-3,576m | 12.11% | 1.89% | 55.96% |
| CJ Cheiljedang . / CJ Corp (Former. | 1 CJJ = 1.3821 CJC + USD188.6332 | 09 Nov 2007 | 26 Dec 2007 | 15 | 22 Jan 2008 | South Korea | USD-3,451m | -0.52% | 0.82% | -12.59% |
| Coates Hire Lim. / Consortium for . | 1 COH = AUD6.06 | 02 Oct 2007 | 21 Dec 2007 | 10 | 09 Jan 2008 | Australia | AUD-1,645m | 0.92% | 0.00% | 23.95% |
| Consolidated Mi. / Palmary Enterpr. | 1 CSM = AUD5.00 | 31 Aug 2007 | 20 Dec 2007 | 9 | 10 Jan 2008 | Australia | AUD-1,160m | 0.20% | 0.40% | 5.63% |
| Flight Centre L. / Pacific Equity . | 1 FCN = AUD16.50 | 21 Jun 2007 | 30 Dec 2007 | 19 | | Australia | AUD-2,742m | -41.78% | 2.19% | -663.01% |
| Home Building S. / Bank of Queensl. | 1 HBS = 0.844 BOQ | 31 Aug 2007 | 06 Dec 2007 | Completed | 18 Dec 2007 | Australia | AUD-575m | -13.92% | 0.91% | N/A |
| Jubilee Mines N. / Xstrata Plc (fo. | 1 JBM = AUD23.00 | 29 Oct 2007 | 31 Jan 2008 | 51 | 24 Dec 2007 | Australia | AUD-2,960m | 1.46% | -0.31% | 10.42% |
| kabu.com Securi. / The Bank of Tok. | 1 KSC = JPY167745.00 | 14 Nov 2007 | 19 Dec 2007 | 8 | 27 Dec 2007 | Japan | JPY-160,015m | 2.91% | 0.00% | 88.54% |
| Katokichi Compa. / Japan Tobacco I. | 1 KCL = JPY710.00 | 22 Nov 2007 | 26 Dec 2007 | 15 | 08 Jan 2008 | Japan | JPY-116,070m | 0.57% | -0.14% | 13.79% |
| Kentucky Fried . / Mitsubishi Corp. | 1 KFCJ = JPY1947.00 | 31 Oct 2007 | 13 Dec 2007 | 2 | 14 Dec 2007 | Japan | JPY-45,047m | -0.66% | -2.07% | -40.35% |

| Deal | Terms | Ann. Date | Est. Comp | Days to comp | Sett. Date | Target Country | Target Mkt Cap (m) | Net Sprd | Change | Ann. Return |
|-------------------------------------|-------------------------------|-------------|-------------|--------------|-------------|----------------|--------------------|----------|--------|-------------|
| Kimberley Diamo. / Gem Diamonds Li. | 1 KIM = AUD0.70 | 19 Jul 2007 | 23 Nov 2007 | Completed | 24 Dec 2007 | Australia | AUD-300m | 0.00% | -0.72% | N/A |
| Kyowa Hakko Kog. / Kirin Pharma Co. | 1 KYO = JPY1318.832 | 22 Oct 2007 | 01 Apr 2008 | 112 | | Japan | JPY-489,073m | 6.19% | 3.15% | 19.47% |
| Labroy Marine L. / Dubai Drydocks . | 1 LML = USD1.9658 | 29 Oct 2007 | 06 Dec 2007 | Completed | 16 Dec 2007 | Singapore | USD-1,629m | 0.30% | -0.29% | N/A |
| Magnum Corporat. / Multi-Purpose H. | 1 MGN = USD1.022 | 20 Nov 2007 | 30 Jun 2008 | 202 | | Malaysia | USD-1,425m | 3.33% | -1.33% | 6.01% |
| Midwest Corpora. / Murchison Metal. | 1 MCL = 0.9259 MML | 10 Oct 2007 | 20 Dec 2007 | 9 | 03 Jan 2008 | Australia | AUD-1,077m | -26.04% | 0.60% | -1055.97% |
| Mitsukoshi Ltd / Isetan Company | 1 MTKS = 0.34 ISTN | 23 Aug 2007 | 01 Apr 2008 | 112 | 31 May 2008 | Japan | JPY-287,898m | 1.33% | 0.24% | 4.34% |
| Nikko Cordial C. / Citigroup Inc | 1 NIK = 0.4446 CTI | 02 Oct 2007 | 29 Jan 2008 | 49 | 30 Jan 2008 | Japan | JPY-1,634,745m | 2.85% | 1.54% | 21.25% |
| Nissin Electric. / Sumitomo Electr. | 1 NIS = JPY691.975 | 05 Nov 2007 | 05 Dec 2007 | Completed | 13 Dec 2007 | Japan | JPY-70,199m | 6.29% | -1.49% | N/A |
| Pan Gang Group / Panzhuhua New S. | 1 PGS = 0.82 PNV | 05 Nov 2007 | 28 Feb 2008 | 79 | | China | CNY-6,472m | 14.97% | 3.13% | 69.17% |
| PCH Group Limit. / Cape PLC | 1 PCH Group = AUD1.40 | 13 Sep 2007 | 20 Dec 2007 | 9 | 04 Jan 2008 | Australia | AUD-242m | 0.72% | 0.72% | 26.26% |
| PT Perusahaan P. / Indofood Agri R. | 1 LSIP = USD0.7324 | 26 May 2007 | 05 Dec 2007 | Completed | 14 Dec 2007 | Indonesia | USD-1,204m | -33.40% | 0.46% | N/A |
| Rayong Refinery. / Aromatics Thail. | 1 RRC = 0.339 ATC | 23 Jul 2007 | 31 Dec 2007 | 20 | | Thailand | USD-2,263m | -0.46% | 3.04% | -8.32% |
| Resource Pacifi. / Xstrata Coal Pt. | 1 RSPH = AUD2.85 | 05 Dec 2007 | 10 Apr 2008 | 121 | | Australia | AUD-1,020m | -6.56% | -0.62% | -19.15% |
| Shanghai Power / Shanghai Electr. | 1 SPT = 7.32 SEG | 30 Aug 2007 | 31 Dec 2007 | 20 | | China | CNY-32,699m | -28.52% | 1.81% | -520.44% |
| Shinsei Bank Li. / J.C. Flowers & . | 1 SBL = JPY410.0664 | 20 Nov 2007 | 10 Jan 2008 | 30 | 17 Jan 2008 | Japan | JPY-682,817m | 0.75% | -2.02% | 8.09% |
| Sincere Watch L. / Peace Mark (Hol. | 1 SWL = 0.228 PML + USD1.4237 | 07 Dec 2007 | 02 May 2008 | 143 | | Singapore | USD-347m | 6.60% | 0.79% | 16.84% |
| Southern Iron & / JSW Steel | 1 SIS = 0.0455 JSW | 25 Oct 2007 | 31 Mar 2008 | 111 | | India | INR-14,398m | 11.76% | -0.49% | 38.68% |
| Symbion Health . / Primary Health . | 1 SYB = AUD4.10 | 08 Nov 2007 | 07 Jan 2008 | 27 | 21 Jan 2008 | Australia | AUD-2,621m | 1.23% | 0.74% | 16.69% |
| Taiwan Polyprop. / Lee Chang Yung . | 1 TPP = 0.6936 LCY | 10 Aug 2007 | 31 Dec 2007 | 20 | | Taiwan | USD-213m | 2.20% | 0.67% | 40.10% |
| Tradewinds Corp. / Perspective Lan. | 1 TWC = USD0.4052 | 09 Oct 2007 | 31 Dec 2007 | 20 | | Malaysia | USD-450m | -0.20% | 0.12% | -3.00% |
| Zhejiang Supor . / SEB Internation. | 1 ZJSC = CNY44.293 | 16 Aug 2006 | 20 Dec 2007 | 9 | | China | CNY-8,044m | -3.08% | -1.18% | -124.86% |

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 | 31 Mar 2008 | 111 | | USA | USD-1,794m | 18.04% | 0.52% | 58.79% |
| Activision Inc / Vivendi SA | 1 ATV = USD27.50 | 02 Dec 2007 | 30 Jun 2008 | 202 | | USA | USD-7,862m | 1.89% | -0.76% | 3.40% |
| Adams Respirato. / Reckitt Benckis. | 1 ADA = USD60.00 | 10 Dec 2007 | 01 Feb 2008 | 52 | | USA | USD-2,134m | 1.18% | -36.18% | 8.13% |
| Alabama Nationa. / Royal Bank of C. | 1 ANB = 0.7679 ROB + USD40.00 | 06 Sep 2007 | 31 Jan 2008 | 51 | | USA | USD-1,589m | 3.21% | 0.60% | 22.54% |
| Alfa Corporatio. / Alfa Mutual | 1 ALFC = USD22.00 | 05 Nov 2007 | 07 Apr 2008 | 118 | | USA | USD-1,743m | 1.85% | 0.14% | 5.68% |
| Alliance Data S. / Blackstone Capi. | 1 ADSC = USD81.75 | 17 May 2007 | 18 Jan 2008 | 38 | 23 Jan 2008 | USA | USD-6,127m | 5.01% | 0.42% | 46.88% |
| American Financ. / Gramercy Capita. | 1 AFRT = 0.121 GRAM + USD5.50 | 05 Nov 2007 | 05 Mar 2008 | 85 | | USA | USD-1,103m | 2.80% | -1.23% | 11.88% |
| Andrew Corporat. / CommScope Inc | 1 AND = USD15.00 | 27 Jun 2007 | 27 Dec 2007 | 16 | | USA | USD-2,306m | 1.28% | 0.27% | 27.54% |
| Aquila Inc (for. / Great Plains En. | 1 AQI = 0.0856 GPE + USD1.80 | 07 Feb 2007 | 30 Apr 2008 | 141 | 06 May 2008 | USA | USD-1,453m | 13.41% | -4.26% | 34.48% |
| Arizona Star Re. / Barrick Gold Co. | 1 AZST = USD17.8509 | 29 Oct 2007 | 18 Dec 2007 | 7 | | Canada | USD-753m | 0.40% | 0.09% | 18.42% |
| Aspreva Pharmac. / Galenica Ltd. | 1 ASP = USD26.00 | 18 Oct 2007 | 03 Jan 2008 | 23 | 03 Jan 2008 | Canada | USD-906m | 0.97% | 0.00% | 14.77% |
| Axcan Pharma In. / TPG LLP | 1 AXPB = USD23.35 | 29 Nov 2007 | 31 Mar 2008 | 111 | | Canada | USD-1,266m | 2.03% | 0.29% | 6.62% |
| BCE Inc / BCE Consortium | 1 BCEI = USD42.396 | 30 Jun 2007 | 30 Jan 2008 | 50 | | Canada | USD-31,845m | 8.44% | 0.03% | 60.41% |
| Bolnisi Gold NL / Coeur d'Alene M. | 1 BGN = 0.682 CDM + AUD0.004 | 03 May 2007 | 17 Dec 2007 | 6 | 17 Dec 2007 | Australia | AUD-934m | 4.95% | -2.60% | 258.15% |
| Bradley Pharmac. / Nycomed US Inc. | 1 BPI = USD20.00 | 30 Oct 2007 | 29 Feb 2008 | 80 | | USA | USD-334m | 1.57% | 0.26% | 7.09% |
| Canetic Resourc. / Penn West Energ. | 1 CRT = 0.515 PWT + USD0.09 | 31 Oct 2007 | 09 Jan 2008 | 29 | 09 Jan 2008 | Canada | USD-3,150m | 0.04% | -0.99% | 0.47% |
| C-Cor Inc (form. / Arris Group Inc | 1 CCR = 0.5251 ARG + USD7.01 | 23 Sep 2007 | 17 Dec 2007 | 6 | | USA | USD-628m | -0.16% | -0.91% | -8.15% |
| Chittenden Corp. / People's United. | 1 CHC = 0.8775 PPU + USD20.35 | 27 Jun 2007 | 01 Jan 2008 | 21 | | USA | USD-1,574m | 1.10% | 0.34% | 18.33% |
| Claymont Steel. / Evraz Group SA | 1 CSH = USD23.50 | 10 Dec 2007 | 30 Jan 2008 | 50 | | USA | USD-409m | 0.90% | -5.92% | 6.45% |
| Clear Channel C. / Clear Channel A. | 1 CLEAR = USD39.00 | 16 Nov 2006 | 08 Feb 2008 | 59 | 15 Feb 2008 | USA | USD-17,770m | 10.98% | 1.76% | 66.80% |
| Cognos Incorpor. / IBM Corporation. | 1 CGNS = USD58.00 | 12 Nov 2007 | 12 Feb 2008 | 63 | | Canada | USD-4,785m | 0.97% | 0.04% | 5.56% |

| Deal | Terms | Ann. Date | Est. Comp | Days to comp | Sett. Date | Target Country | Target Mkt Cap (m) | Net Sprd | Change | Ann. Return |
|-------------------------------------|----------------------------------|-------------|-------------|--------------|-------------|----------------|--------------------|----------|---------|-------------|
| Commerce Bancor. / TD Bank Financi. | 1 COM = 0.4142 TDB + USD10.50 | 02 Oct 2007 | 30 Apr 2008 | 141 | | USA | USD-7,626m | 2.87% | 0.03% | 7.38% |
| Dow Jones & Com. / News Corporatio. | 1 DOWJ = USD60.00 | 01 Aug 2007 | 17 Dec 2007 | 6 | 21 Dec 2007 | USA | USD-4,967m | 0.02% | -0.08% | 0.87% |
| EDO Corporation / ITT Corporation. | 1 EDC = USD56.00 | 17 Sep 2007 | 31 Dec 2007 | 20 | | USA | USD-1,179m | 0.99% | 0.74% | 17.24% |
| Emergis Inc. (f. / Telus Corporati. | 1 EMR = USD8.1817 | 29 Nov 2007 | 30 Jan 2008 | 50 | | Canada | USD-747m | 0.14% | 0.00% | 1.02% |
| Energy East Cor. / Iberdrola SA | 1 EAC = USD28.50 | 25 Jun 2007 | 25 Jun 2008 | 197 | | USA | USD-4,314m | 4.40% | -0.04% | 8.10% |
| First Charter C. / Fifth Third Ban. | 1 FIRST = 0.7236 FIFTH + USD9.30 | 16 Aug 2007 | 31 Mar 2008 | 111 | | USA | USD-1,036m | 6.29% | 3.08% | 20.51% |
| Focus Energy Tr. / Enerplus Resour. | 1 FET = 0.425 ENR | 03 Dec 2007 | 29 Feb 2008 | 80 | | Canada | USD-1,128m | 1.95% | 0.72% | 8.77% |
| Gemstar-TV Guid. / Macrovision Cor. | 1 GMTV = 0.1053 MAC + USD3.613 | 07 Dec 2007 | 30 Apr 2008 | 141 | | USA | USD-2,004m | 20.93% | 4.61% | 53.80% |
| Genesco Inc / The Finish Line. | 1 GEN = USD54.50 | 18 Jun 2007 | 18 Dec 2007 | 7 | 22 Dec 2007 | USA | USD-717m | 73.02% | 6.35% | 3331.35% |
| Genlyte Group I. / Koninklijke Phi. | 1 GGI = USD95.50 | 26 Nov 2007 | 31 Mar 2008 | 111 | | USA | USD-2,673m | 1.08% | 0.21% | 3.52% |
| Goodman Global . / Hellman & Fried. | 1 GGI = USD25.60 | 22 Oct 2007 | 28 Feb 2008 | 79 | | USA | USD-1,664m | 6.05% | -0.62% | 27.59% |
| Harrah's Entert. / Hamlet Holdings. | 1 HAR = USD90.00 | 19 Dec 2006 | 30 Jan 2008 | 50 | | USA | USD-16,327m | 2.58% | 0.34% | 18.43% |
| Horizon Offshor. / Cal Dive Intern. | 1 HORF = 0.625 CDI + USD9.25 | 11 Jun 2007 | 12 Dec 2007 | 1 | 18 Dec 2007 | USA | USD-553m | 0.88% | 0.22% | 160.49% |
| Huntsman Corpor. / Hexion Specialt. | 1 HUNT = USD28.00 | 12 Jul 2007 | 31 Mar 2008 | 111 | | USA | USD-5,501m | 12.95% | -0.32% | 42.20% |
| James River Gro. / D E Shaw & Co | 1 JRIV = USD34.50 | 11 Jun 2007 | 11 Dec 2007 | Completed | 17 Dec 2007 | USA | USD-521m | 0.29% | -0.09% | N/A |
| Lyondell Chemic. / Basell Holdings. | 1 LND = USD48.00 | 17 Jul 2007 | 20 Dec 2007 | 9 | 27 Dec 2007 | USA | USD-12,016m | 1.24% | 0.26% | 45.42% |
| Manor Care Inc. / The Carlyle Gro. | 1 MCI = USD67.00 | 02 Jul 2007 | 15 Dec 2007 | 4 | 20 Dec 2007 | USA | USD-4,637m | 5.73% | 1.22% | 418.17% |
| Meridian Gold. / Yamana Gold Inc | 1 MDG = 2.235 YMG + USD6.942 | 19 Jul 2007 | 31 Dec 2007 | 20 | 31 Dec 2007 | Canada | USD-3,769m | 0.38% | 0.14% | 6.66% |
| Metal Managemen. / Sims Group Limi. | 1 METM = 2.05 SIMS | 24 Sep 2007 | 24 Jan 2008 | 44 | | USA | USD-1,299m | -3.11% | -3.10% | -25.22% |
| MGI Pharma Inc. / Eisai Co Ltd | 1 MGIP = USD41.00 | 10 Dec 2007 | 30 Jan 2008 | 50 | | USA | USD-3,225m | 2.50% | -20.62% | 17.89% |
| Midwest Air Gro. / Midwest Airline. | 1 MAG = USD17.00 | 17 Aug 2007 | 31 Dec 2007 | 20 | | USA | USD-388m | 10.46% | 0.07% | 181.83% |

| Deal | Terms | Ann. Date | Est. Comp | Days to comp | Sett. Date | Target Country | Target Mkt Cap (m) | Net Sprd | Change | Ann. Return |
|-------------------------------------|-------------------------------|-------------|-------------|--------------|-------------|----------------|--------------------|----------|---------|-------------|
| Miramar Mining . / Newmont Mining . | 1 MMC = USD6.3313 | 09 Oct 2007 | 24 Dec 2007 | 13 | 07 Dec 2007 | Canada | USD-1,349m | 2.15% | 0.32% | 56.11% |
| Myers Industrie. / GS Capital Part. | 1 MYRS = USD22.50 | 24 Apr 2007 | 30 Apr 2008 | 141 | 19 Dec 2007 | USA | USD-526m | 50.20% | 45.70% | 129.04% |
| NAVTEQ Corporat. / Nokia Oyj | 1 NAV = USD78.00 | 01 Oct 2007 | 31 Mar 2008 | 111 | | USA | USD-7,362m | 4.01% | 0.01% | 13.08% |
| Palmarejo Silve. / Coeur d'Alene M. | 1 PSG = 2.715 CDM + USD0.003 | 03 May 2007 | 17 Dec 2007 | 6 | 17 Dec 2007 | Canada | USD-1,066m | 1.72% | -2.84% | 89.78% |
| Penn National G. / Penn National A. | 1 PNG = USD67.00 | 15 Jun 2007 | 15 Aug 2008 | 248 | | USA | USD-5,090m | 12.62% | 0.09% | 18.51% |
| Pharmion Corpor. / Celgene Corpora. | 1 PHA = 0.782 CEL + USD25.00 | 18 Nov 2007 | 30 Jun 2008 | 202 | | USA | USD-2,247m | 5.20% | -4.76% | 9.36% |
| PHH Corporation. / GE Capital (Gen. | 1 PHC = USD31.50 | 15 Mar 2007 | 31 Dec 2007 | 20 | | USA | USD-1,177m | 43.25% | -0.07% | 751.67% |
| PrimeWest Energ. / Abu Dhabi Natio. | 1 PWE = USD26.75 | 24 Sep 2007 | 16 Jan 2008 | 36 | | Canada | USD-2,410m | 1.06% | 0.08% | 10.44% |
| Puget Energy In. / Puget Acquisiti. | 1 PUGT = USD30.00 | 26 Oct 2007 | 26 Aug 2008 | 259 | | USA | USD-3,277m | 7.14% | -0.19% | 10.03% |
| Quanex Corporat. / Gerdau SA | Terms undisclosed | 19 Nov 2007 | 31 Mar 2008 | 111 | | USA | USD-1,952m | | | |
| Radiation Thera. / Vestar Capital . | 1 RAD = USD32.50 | 19 Oct 2007 | 30 Jan 2008 | 50 | | USA | USD-729m | 4.80% | -0.03% | 34.39% |
| Reddy Ice Holdi. / GSO Capital Par. | 1 RDI = USD31.25 | 02 Jul 2007 | 31 Jan 2008 | 51 | 06 Feb 2008 | USA | USD-567m | 20.28% | 4.54% | 142.38% |
| Reuters Group p. / The Thomson Cor. | 1 RTR = 0.16 TMS + GBP3.525 | 15 May 2007 | 31 May 2008 | 172 | | United Kingdom | GBP-7,488m | 10.73% | 0.11% | 22.64% |
| Rural Cellular . / Verizon Wireles. | 1 RCC = USD45.00 | 30 Jul 2007 | 30 Jun 2008 | 202 | | USA | USD-686m | 1.97% | -0.16% | 3.54% |
| Sierra Health S. / UnitedHealth Gr. | 1 SHS = USD43.50 | 12 Mar 2007 | 31 Dec 2007 | 20 | | USA | USD-2,376m | 2.47% | 0.36% | 42.99% |
| SLM Corporation. / SLM Acquisition. | 1 SLMC = USD60.00 | 16 Apr 2007 | 15 Feb 2008 | 66 | | USA | USD-14,345m | 71.92% | 5.58% | 391.80% |
| Suncom Wireless. / Deutsche Teleko. | 1 SCW = USD27.00 | 17 Sep 2007 | 21 Apr 2008 | 132 | 25 Apr 2008 | USA | USD-1,565m | 2.20% | 0.50% | 6.02% |
| The Commerce Gr. / Mapfre SA (Form. | 1 COMC = USD36.70 | 30 Oct 2007 | 30 Mar 2008 | 110 | | USA | USD-2,273m | 1.92% | 0.17% | 6.30% |
| The Midland Com. / Munich American. | 1 MIDL = USD65.00 | 17 Oct 2007 | 30 Jun 2008 | 202 | | USA | USD-1,236m | 1.80% | -0.16% | 3.24% |
| The Montreal Ex. / TSX Group Inc | 1 MON = 0.50 TSX + USD13.7588 | 10 Dec 2007 | 30 Jan 2008 | 50 | | Canada | USD-1,145m | 1.52% | -12.74% | 10.91% |

| Deal | Terms | Ann. Date | Est. Comp | Days to comp | Sett. Date | Target Country | Target Mkt Cap (m) | Net Sprd | Change | Ann. Return |
|-------------------------------------|-----------------------------|-------------|-------------|--------------|------------|----------------|--------------------|----------|--------|-------------|
| TierOne Corpora. / CapitalSource F. | 1 TIER = 1.08 CSF + USD6.80 | 17 May 2007 | 17 Dec 2007 | 6 | | USA | USD-447m | 12.26% | 0.62% | 639.28% |
| Tribune Company / Tribune Acquisi. | 1 TRBC = USD34.00 | 02 Apr 2007 | 31 Dec 2007 | 20 | | USA | USD-7,513m | 8.11% | 1.53% | 140.93% |
| UAP Holding Cor. / Agrium Inc. | 1 UAP = USD39.00 | 03 Dec 2007 | 31 Jan 2008 | 51 | | USA | USD-2,006m | 1.99% | 0.13% | 13.95% |
| United Industri. / Textron Inc | 1 UIND = USD81.00 | 08 Oct 2007 | 31 Dec 2007 | 20 | | USA | USD-808m | -0.21% | -0.21% | -3.64% |
| US BioEnergy Co. / VeraSun Energy . | 1 USE = 0.81 VEC | 29 Nov 2007 | 28 Mar 2008 | 108 | | USA | USD-839m | 7.59% | 0.78% | 25.42% |
| Ventana Medical. / Roche Holding A. | 1 VMS = USD75.00 | 25 Jun 2007 | 17 Jan 2008 | 37 | | USA | USD-3,080m | -15.60% | 0.15% | -149.82% |
| XM Satellite Ra. / Sirius Satellit. | 1 XMR = 4.60 SSR | 19 Feb 2007 | 19 Feb 2008 | 70 | | USA | USD-4,007m | 10.38% | 1.40% | 53.34% |

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| Deal | Terms | Ann. Date | Est. Comp | Days to comp | Sett. Date | Target Country | Target Mkt Cap (m) | Net Sprd | Change | Ann. Return |
|-------------------------------------|--------------------|-------------|-------------|--------------|-------------|----------------|--------------------|----------|--------|-------------|
| Attica Group SA / Marfin Investme. | 1 ATT = EUR5.50 | 03 Oct 2007 | 15 Dec 2007 | 4 | | Greece | EUR-567m | 1.10% | -0.37% | 80.51% |
| Bank VTB North- / JSC VTB Bank | 1 VNW = 361.00 VTB | 15 Nov 2007 | 14 Dec 2007 | 3 | | Russia | USD-2,175m | 4.67% | 9.40% | 425.96% |
| Blue Star Marit. / Marfin Investme. | 1 BLU = EUR3.83 | 24 Oct 2007 | 11 Jan 2008 | 31 | | Greece | EUR-399m | 0.79% | 0.00% | 9.01% |
| Cosmote-Mobile . / OTE (Hellenic T. | 1 CMT = EUR26.25 | 09 Nov 2007 | 29 Jan 2008 | 49 | | Greece | EUR-8,644m | 1.67% | -0.08% | 12.16% |
| Elektrim SA / PAI Media SA (f. | 1 ELE = EUR1.715 | 01 Dec 2007 | 01 Mar 2008 | 81 | | Poland | EUR-144m | -0.13% | -2.22% | -0.60% |
| Ellerine Holdin. / African Bank In. | 1 ELL = 2.55 ABI | 20 Aug 2007 | 18 Dec 2007 | 7 | | South Africa | USD-1,547m | 0.69% | 1.78% | 31.62% |
| Elmec Sport SA / Hellenic Duty F. | 1 ELS = EUR4.00 | 05 Oct 2007 | 21 Dec 2007 | 10 | | Greece | EUR-219m | 1.01% | 0.51% | 33.52% |
| Gold Reef Casin. / Ethos Private E. | 1 GRC = USD4.72 | 03 Sep 2007 | 31 Dec 2007 | 20 | 07 Jan 2008 | South Africa | USD-1,459m | -5.55% | -1.68% | -96.45% |
| JSC OGK-4 / E.ON AG | 1 OG4 = USD0.136 | 15 Sep 2007 | 05 Feb 2008 | 56 | | Russia | USD-8,362m | 2.49% | -2.13% | 15.92% |
| Merkur / BIDCO for Merku. | 1 MER = EUR405.00 | 02 Nov 2007 | 20 Jan 2008 | 40 | | Slovenia | EUR-518m | 2.53% | -5.47% | 22.54% |
| OGK-5 (OJSC The. / Enel SpA | 1 OG5 = USD0.178 | 25 Oct 2007 | 05 Feb 2008 | 56 | | Russia | USD-6,208m | 1.42% | -3.28% | 9.12% |
| OJSC Power Mach. / Highstat Ltd | 1 PRM = USD0.223 | 28 Nov 2007 | 28 Feb 2008 | 79 | | Russia | USD-1,750m | 10.95% | -0.56% | 49.94% |
| Prokom Software. / Asseco Poland S. | 1 PRK = 1.82 ASP | 30 Sep 2007 | 31 Dec 2007 | 20 | | Poland | EUR-537m | 2.65% | -2.30% | 46.00% |
| TGK-8 (OAO Terr. / Financial Group. | 1 TG8 = USD0.0014 | 18 Oct 2007 | 28 Dec 2007 | 17 | | Russia | USD-1,789m | | | |
| TGK-9 (Territor. / Integrated Ener. | 1 TG9 = USD0.0003 | 05 Oct 2007 | 31 Jan 2008 | 51 | | Russia | USD-1,709m | | | |
| The Arab Pharma. / Hikma Pharmaceu. | 1 APM = USD8.1346 | 07 Oct 2007 | 31 Jan 2008 | 51 | | Jordan | USD-127m | 27.73% | 0.03% | 194.63% |

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