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Antitrust & Competition Insight

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Foreword

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

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

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

It has been a busy few months for M&A and other antitrust regulation with some critical new situations and developments emerging in recent weeks.

One situation to watch is the approach of Italian bank UniCredit for HVB's BPH in Poland, which will be noteworthy as the first major test case of EU regulation in an accession state. Already national Polish regulators appear to be on a collision course with the European Commission. Otherwise, grabbing the headlines at the time of writing is the bid by Mittal Steel for Arcelor. This situation has already encountered significant political opposition and press coverage, but the case for the opposition on antitrust grounds remains to be established.

In the chemical gas sector, Linde's approach to BOC Group if fruitful will have antitrust implications to be resolved. Meanwhile, regulators blocked Axel Springer's bid for TV channel ProSiebenSat1 in January. However, a more successful outcome occurred for Adidas-Salomon's acquisition of Reebok, which after a lengthy notification process gained clearance from the European Commission and in the same month, the deadline for U.S. antitrust authorities to raise any objections to the takeover expired.

Dominating the recent headlines though, is Gas Natural's €42.5bn bid for Endesa in Spain, which was rumbling through various antitrust hurdles, until the incursion of Germany player E.On opened the whole situation up again. All the latest developments in this intriguing situation are covered by Sandra Pointel, dealReporter's regulatory correspondent in Brussels, in her feature on page three.

Also in this edition of the newsletter are features by Hogan & Hartson partners: **Joseph Krauss** and **Sharis Pozen** write on the FTC Merger Review Process Reforms in the US, and **George Metaxas** writes on the new antitrust regime in China.

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

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The Struggle for Endesa

A regulatory analysis of the ongoing merger debate surrounding the Spanish energy giant

In light of the wave of mergers in the European energy markets and the European Commission inquiry into the sector, the hostile bid by Gas Natural for Endesa provides a good insight into the competition hurdles a merger can face, and the uncertainties these can bring to a deal. Both the authorities competent for the deal, national or European, and remedies to address competition concerns, will play a major part not only in the fate of the transaction but also its timing and its impact on the structure of the businesses involved.

At one stage thought a done deal, at least in terms of competition, the acquisition of Endesa has made the headlines again, both in Spain and the rest of Europe, since German energy giant E.On launched a counter offer for the company at 24% more than its Spanish rival. Although, Endesa rejected both offers and uncertainties remain as to who the final winner will be, both deals have shed light on competition issues in the energy sector, and the political climate surrounding such large-scale mergers.

When Spanish utility Gas Natural launched its hostile bid for electricity company Endesa in September 2005, little did it expect that the deal would raise so much interest from the European Commission. As in any merger case, the first step was to assess under the so-called 'two-thirds rule', whether the Spanish authorities or the European Commission had jurisdiction over the deal. According to competition lawyers, this first assessment is usually a black and white exercise since the national authority would look at a deal if all of the companies concerned achieved more than 66.6% of their turnover in its market.

Based on Endesa's 2004 figures, the deal had been deemed a Spanish deal, and notified to the Servicio de Defensa de la Competencia (SDC), the Spanish competition authority of first instance. The jurisdictional assessment became something of a grey area however, after Endesa submitted a new set of accounts with a new way of looking at sales into the electricity pool which the company claimed showed European Commission jurisdiction. Both the Gas Natural and the Spanish energy regulator, La Commission Nacional de la Energia (CNE), contested the validity of the new numbers.

Interestingly, it is understood that Endesa had hoped the European Commission's assessment would be tougher and result in the deal being blocked, especially as the Portuguese deal EDP/GDP had previously been prohibited. However, in Spain the authorities were thought to want to clear the deal for political reasons. Both the Portuguese and Italian authorities had also called for the European Commission to look at the deal on the grounds that the merger would affect competition in their markets, but their requests were rejected.

After several months of discussions, the European Commission reluctantly had to hand over the antitrust review of the proposed merger to the Spanish competition authorities. Neelie Kroes, the competition Commissioner, acknowledged at the time that the controversial Spanish merger would create one of Europe's largest energy companies, but the deal fell outside her competence because of the two-thirds rule. The issue prompted the Commissioner to call for a change of the two-thirds rule, which was introduced in 1989. According to Kroes, this has led to inconsistencies because some cases are looked at by the national authorities, while similar deals in the same sector are reviewed by the European Commission.

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The Commissioner also criticised the creation of national champions at a time when Pan-European champions are needed. Competition lawyers have agreed on the necessity to change the rule as markets are increasingly integrated and liberalised. They remain sceptical that such change will be imminent however, not only because the Commission only amended its merger regulation in 2004, but also because it would need the approval of all member states.

As discussions on jurisdiction were taking place in Brussels, the Spanish authorities had been carrying out their own investigation into the takeover. The debate over the jurisdiction had drawn attention to the transaction and showed that the Spanish government could have a political interest in clearing the merger, and could interfere in the analysis of the transaction by the Spanish competition authorities. After an initial review, the SDC referred the case to the Tribunal for the Defence of Competition (TDC) for an in-depth investigation. The Spanish energy regulator (CNE) also reviewed the deal and approved it under certain conditions, including a series of divestments of part of Endesa's assets to Iberdrola. CNE said that the transaction did not raise "regulatory or financial risks and the divestments it proposed were very much in line with the commitments already offered by Gas Natural. However, in a non-binding report published in January 2006, TDC recommended the deal should be blocked, going further than its previous recommendations to allow it under certain conditions.

Based on these reports, the Spanish government approved the deal in early February with 20 conditions, 13 of which were substantive and another seven procedural. Among the main conditions, Gas Natural had to sell 4.3 MW of generating capacity; reduce its 15.5% stake in Enagas to 1% and leave its board. Finance Minister Pedro Solbes said at the time that the government decided that approving the deal with conditions would be the "best option" after an arduous and complicated process and that its decision would lead to more competition in the energy sector.

Despite several appeals by Endesa to both national and European courts, none of the authorities' decisions have been overturned yet. The company notably appealed the Spanish government's approval of Gas Natural's hostile takeover, saying that it went against TDC's recommendation to block the deal. But the Supreme Court rejected the appeal, although it still needs to look at the cautionary measures requested by Endesa against the government's decision to approve the bid.

The transaction, has however taken a new turn, since E.On joined the game with a counter-offer at €27.50 per share in February. The deal is expected to be reviewed by the Commission, and if assessed purely on competition grounds, should be far much easier than the one with Gas Natural, because the two companies have few overlaps. E.On is not present in Spain and Endesa does not have operations in Germany. Even though both companies have operations in France and Italy, any concerns are likely to be easily remedied.

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The move by E.On, however, has infuriated the Spanish authorities, not least because the German energy giant was itself created as a national champion and only after a ministerial approval overturned a decision by the German competition authority to block the deal. Since then, all kinds of arguments such as the use of the reciprocity principles and E.On's strong position in long-term gas contracts have been suggested as possible reasons why the European Commission should block the deal. But competition lawyers and the Commission are adamant that these arguments do not come under the scope of a review of the merger and that the deal would be reviewed under purely on competition grounds.

In its most recent move, the Spanish government has passed emergency laws with new regulatory policies giving the CNE power to block the deal. It is still unclear what decision the energy regulator will take, but a block which would clear the way for Gas Natural to takeover for Endesa, would certainly be carefully looked at by the Commission. The European Commission has already warned that it could "take action" against the Spanish government if it acted in a way that was contrary to European law governing mergers. On 6 March the European Commission asked the Spanish government to clarify its new rules within 10 days, after which it will analyse the response, and if unsatisfied by the Spanish reply could start legal proceedings against the country. If the Endesa/E.On deal was notified, the Commission would have exclusive competence for the transaction and would also be able to act quickly against a move from Spain that breached EU law.

At this stage, some uncertainties remain as to who will finally join forces with Endesa. But as highlighted in this case, the jurisdictional aspect of a merger can play a major role in a deal and give scope to animated debate between Brussels and members states. While Kroes recently criticised the predominance of national markets in the European energy sector, several member states have been accused of protectionism in the context of cross-border mergers.

The recent deal between utility Gaz de France and French energy and water company Suez has also drawn a lot of attention from the European authorities, who have promised to look at the deal "vigorously". With the consolidation of European energy markets ahead of their liberalisation in 2007, it will be interesting to see if, as José Manuel Barroso, the President of the European Commission, said when presenting its green paper on energy, EU countries can "refuse any form of economic nationalism in Europe and have a single voice to get away from 25 micro-markets and protectionism from one member state against another."

Sandra Pointel,
dealReporter Regulatory Correspondent

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FTC Merger Review Process Reforms: A Step in the Right Direction

On 16 February, U.S. Federal Trade Commission ("FTC") Chairman Deborah Majoras, announced a number of reforms to the merger review process at the FTC[1]. These reforms are directed at easing the burden of companies when complying with a Request for Additional Information (also known as a "Second Request"). In her announcement, Chairman Majoras stressed that "95% of mergers are 'cleared' during the initial 30-day waiting period..." However, for those 5% that receive Second Requests, Chairman Majoras indicated that: "Parties today advise that complying with a Second Request in a significant transaction routinely costs millions of dollars and requires months to respond."

Each year, mergers and acquisitions that may raise competitive concerns in the U.S. undergo a significant investigation by the FTC or the Antitrust Division of the Department of Justice (DOJ). The principal tool used by the agencies in their investigation is the Second Request, which typically involves broad document and data requests as well as detailed interrogatories.

By any measure, Second Requests are burdensome. At a time when senior executives are already consumed with due diligence, closing requirements, and managing investor relations, in addition to running the business, a wide-ranging investigation into the company's products, marketing and competitive position puts a significant strain on management's time. A large Second Request can require searching seventy to one-hundred or more employees for a broad range of documents, submitting batches of competitively sensitive data, and answering a variety of detailed interrogatories. The expenses involved can also be significant. In fact, a recent report estimated that Second Requests typically last six months and costs the parties $5m, with complex cases taking an additional year and costing up to $20m.[2] Thus, a Second Request can result in significant additional costs and significant time delays in closing the deal.

While many antitrust attorneys and their clients have long believed the Second Request process was unduly burdensome, the last several years have seen an explosion in the volume of documents and data that are required to comply with a Second Request. As the burden has grown, so too has the call for reform. The need for reform has been apparent for several years. Earlier attempts at change focused on the margins and made relatively minor adjustments.[3] These most recent set of reforms, however, may significantly improve the process.

The most significant of the reforms announced will limit the number of employees that the FTC staff will demand be searched for responsive documents – the reforms set a "presumption" that staff will seek documents from no more than 35 employees. In exchange for this, however, companies are required to make a number of concessions:

[1] see http://www.ftc.gov/opa/2006/02/merger_process.htm
[2] Cecile Kohrs Lindell, *Majoras Hopes to Streamline Reviews*, The Deal (May 10, 2005) *available at* http://www.thedeal.com.
[3] For example, in 2002, the FTC's Bureau of Competition released "Guidelines for Merger Investigation" *available at* http://www.ftc.gov/os/2002/12/bcguidelines021211.htm. In 2000, the American Bar Association published Guidelines for Mergers, *available at* http://www.abanet.org/antitrust/comments/2000/mergerguidelines.html. Neither of these efforts stopped the spiraling costs and delays created by Second Requests.

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- Provide the FTC with organization charts so the FTC can identify relevant employees;
- Make employees available to meet with the FTC to discuss employee responsibilities and how the company maintains data;
- Provide written job description of various employees, if requested by the FTC;
- Produce material responsive to the Second Request 30 days before declaring substantial compliance with the request (thus delaying the start of the government's 30-day clock to review the material) or agree with staff about the timing of the production; and
- Agree to propose jointly with the FTC a scheduling order that contains a 60-day discovery period, if the FTC challenges the transaction.

Many of these trade-offs already occur through negotiations between experienced counsel and staff. In particular, it is common to assist the FTC in identifying relevant employees and discuss how data is stored at the company to avoid a shot-gun approach to document requests. Similarly, parties often produce documents on a rolling basis in exchange for concessions on the part of the agency.

While these steps create small upfront delays, they often shorten the overall length of time of the government investigation by reducing the volume of the Second Request response and thus allowing companies to comply with the Second Request much faster. Of course, if a transaction is challenged in court, the mandatory discovery period provided for in these reforms will likely lengthen any litigation. In deciding whether the upfront savings in time and effort are warranted in exchange for the risk of greater delays during litigation, parties should be aware that only a small handful of cases are challenged in court.[4]

[4] In a recent two-year period, the DOJ reported it challenged only four of the 180 transaction that received Second Requests. See Cecile Kohrs Lindell, *Kinder, Gentler Regulators*, March 2, 2006, *available* at www.thedeal.com.

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The FTC reforms also include a two-year limitation on the relevant time period covered by the Second Request, meaning that in most cases parties will only have to search for documents created during the two years previous to the issuance of the Second Request. Previously the relevant time period could go back as much as 5-6 years in some Second Requests. In addition, in response to Second Request specifications that require data, the reforms emphasize using mutually agreed upon techniques, such as sampling, as a way of easing the parties' burdens. The reforms also will allow the parties to preserve far fewer backup tapes and produce documents on those tapes only when responsive documents are not available through more accessible sources, and reduce the amount of information parties must submit regarding documents they consider to be privileged. These are the first of what the FTC says will be more merger process and procedural reforms.

The DOJ has announced that they are also reviewing their Second Request process and are expected to announce their own set of reforms in the coming weeks. Although DOJ has not indicated what reforms they are considering, it is hoped that they resemble those of the FTC, so there will be consistency in the Second Request process between the two agencies.

For merging parties, these reforms certainly represent a step in the right direction, although it is difficult to predict what if any real impact they will have on Second Request production size and burden. As Chairman Majoras acknowledged, many of these reforms are already accepted "best practices" among many antitrust practitioners, so clients of those practitioners have already been realising the benefits of many of these reforms. Interestingly, as part of developing these reforms, the FTC reviewed why previous Second Request productions resulted in such huge volumes of document and data. The FTC found that most often the "human element" played a significant role – an atmosphere of distrust and unreasonableness on the part of the parties or FTC had worked to disrupt and prolong the merger review process. Therefore, working cooperatively with the FTC staff on issues related to Second Requests, and having realistic expectations of the time and costs necessary to comply with the Second Request, will still be the best way to achieve merger clearance efficiently and effectively.

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Regional Round Ups

Europe: **Netherlands / Luxembourg / France**

Mittal's €18.6bn initial bid for Arcelor encounters resistance and regulatory scrutiny

Regulators are currently scrutinising the feasibility of a €18.6bn bid by Mittal Steel of the Netherlands for its European competitor Arcelor. At this stage it is believed the geographic footprints of the two companies are unlikely to present extensive obstacles from a regulatory standpoint. However, it is understood that the merger would result in a market leader in five out of nine major markets, Opposition from both Arcelor management and protectionist elements within national governments across its main territories remains strong. Furthermore, in addition to European regulators, the antitrust division of the US Department of Justice is to investigate the bid. In particular, it appears that Arcelor's pending acquisition of Dofasco of Canada, announced late 2005, will be a required disposal if Mittal is to buy Arcelor.

Europe: **Italy / Poland / Germany**

UniCredit faces local resistance to takeover of HVB's Polish unit, despite EU backing

On 2 February 2006, Poland tried to block the merger of UniCredit's Polish subsidiary, Pekao, with BPH, the Polish local affiliate of German bank HVB. The two groups are currently Poland's second and third largest banks and the merger would create the biggest lender in the East European country by assets. The merger, as part of the larger acquisition involving Italian UniCredit's takeover of HVB, has already been approved by the European Commission. The Polish authorities, nevertheless, stated a deadline for UniCredit to sell BPH and warned that it might seek to annul the 1999 sale of Pekao to UniCredit if the Italian investor failed to comply. Following this move, the Commission threatened the Polish government with legal action if Warsaw continued to oppose the merger. Both the Internal Market and the Competition Commissioner are preparing infringement procedures against Poland before the European Court of Justice for breaching EU rules on free movement of capital and competition. DG Competition has given the Polish Treasury up to 29 March to explain its move.

If the EC could also pursue an accelerated infringement procedure against Poland under the EC Merger Regulation (as it did against the Portuguese government in the 1999 Banco Santander/Champalimaud deal), such procedures would have very short deadlines and take only a few weeks. Proceedings by DG Internal Market would be lengthier because they have to follow specific procedures, which take about four months, before lodging a complaint to the European Court of Justice (ECJ). Infringement proceedings against a member state take almost two years on average. If there is a decision against the Poles, UniCredit could take the government to the national court to seek damages. Meanwhile, the Polish Government has appealed the EU decision clearing the merger to the Court. This case highlights the Commission's fears concerning the increasing threats posed to the single market by protectionist national policies.

Europe: **France / Italy**

Gaz de France merger with Suez shuts door on Enel and angers Italian authorities

Despite causing a political furore, the merger between French utility Gaz de France and Suez remains unlikely to be blocked. The deal could however undergo a phase two investigation by the European Commission (EC), and if approved the combined group will have revenues of €65bn. The EC is expected to look at horizontal overlaps between the two companies to determine whether they have presence in the same markets. France is less likely to raise concerns in this area because Suez has little energy activity in the country. However, Belgium will probably be trickier where Gaz de France has joint-venture with UK utility Centrica, called Societe de Production d'Electricite (SPE), and Electrabel, which was acquired by Suez six months ago, dominates the Belgian market. The EC is also likely to look at vertical integration issues based on Gaz de France's strong position throughout areas of the energy market. Meanwhile, in response to objections from Italian company Enel, the EC has asked the French government to clarify its role (by 17 March) in an aborted joint-bid for Suez by Enel and French company Veolia Environment.

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Europe: **UK / Germany**

Linde makes offer for BOC Group

Linde of Germany announced its planned takeover of British industrial gases company BOC. Commentators close to deal indicate that substantial competition concerns are not expected. However, other sources feel competition should not be underestimated, as reported overlaps in Germany, Poland, the UK, US and other jurisdictions undergo regulatory scrutiny. The acquisition by the German chemicals group would require the approval of both the European Commission and the US Federal Trade Commission (FTC). The industrial gas sector comprises only a small number of players and previous deals in the industry have often had to face lengthy investigations from competition authorities. A merger between BOC and Linde would combine number two and three in Europe in an industry where there are only five major players. Competition authorities are likely to look at the merger on a gas-by-gas basis, focusing on gases that both BOC and Linde supply and may, as such, warrant a phase two investigation in the EU and/or a second request in the US if suitable divestments are not made.

Europe: **Germany**

Axel Springer forced to abandon $3.5bn ProSiebenSat1 bid by German regulator

January saw German publisher Axel Springer blocked in its attempted acquisition of ProSiebenSat1 by the Bundeskartellamt, the German competition authority. Before this decision Springer had offered an undertaking to divest TV station ProSieben following completion of the merger. However, many questioned whether this would have still made the deal economically feasible for Springer. Axel Springer had offered €3.5bn for an 88% stake in the company it did not already own.

In a new development, Axel Springer announced on 23 February that it would take the competition authorities to court over their decision to block the acquisition of ProSiebenSat1.

Europe: **UK**

Boots and Alliance Unichem merger receives approval from UK regulator

In February, the UK's Office of Fair Trading (OFT) announced it would approve the £8.1bn merger of pharmaceutical companies Boots and Alliance Unichem. The OFT said it would not refer the proposed acquisition by Boots of Alliance Unichem to the Competition Commission on the condition that Boots agreed to sell around 100 stores. The announcement came as a surprise to observers close to the deal as they feared it would be referred to the Competition Commission, chiefly because the merged entity would hold an estimated 40% share of the UK drug wholesale market.

Europe: **Austria / Germany**

T-Mobile seeks to defuse antitrust concern over €1.3bn offer for tele.ring

T-Mobile is optimistic that the European Commission's concerns about its acquisition of Austrian mobile operator tele.ring will be addressed and the deal finalised, according to a T-Mobile spokesperson. It has been reported that the Commission sent an interim report to the German mobile operator because it was not satisfied with concessions suggested by the company and feared the planned deal would hinder effective competition in a major part of the joint market.

T-Mobile has already offered concessions to address competition concerns, including the sale of frequencies to competitors. The Commission has set a 28 March deadline for its final decision on the case.

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Europe: **Portugal**

Sonae mounts €10.7bn hostile approach for Portugal Telecom

Portuguese telecommunications and Internet company SonaeCom has officially notified its €10.7bn bid for Portugal Telecom and its cable television unit PT Multimedia to the Portuguese competition authorities. The major concern for the national regulator is that the merger would create a duopoly in the mobile telephony market with SonaeCom's Optimus and PT's TMN holding a combined 63% market share.

Europe / Middle East / North America: **UK / UAE / USA**

Dubai Ports beats PSA to secure P&O, but US opposition forces planned disposal of US assets

Dubai Ports World's £3.9bn takeover of P&O will be modified after a number of US lawmakers raised the issue of security concerns. Initiially, Dubai Ports had received all the necessary regulatory approvals regarding the acquisition of P&O. This included approval from the Committee on Foreign Investment in the United States which reviewed the proposed transaction and concluded they had no objection (all DP World ports are ISPS certified as are the P&O terminals in the US). However, because of ongoing political opposition, Dubai Ports said it is looking to sell the US assets. P&O operates shipping terminals in New York, New Jersey, Baltimore, New Orleans, Miami and Philadelphia.

Asia Pacific: **Australia**

ACCC blocks Toll Holdings' A$4.6bn takeover of Patrick Corporation

The Australian Competition and Consumer Commission (ACCC) blocked Toll Holdings' A$4.6bn hostile takeover bid for domestic rival Patrick Corporation on grounds that it would be likely to substantially lessen competition in several markets in the transport sector. According to the FT, the move would have created the world's fourth largest transport and logistics company. The combined group would have boasted annual revenues of A$7bn. Last month Toll announced it would provide a new set of undertakings to the ACCC in order to gain approval.

North America: **USA**

Whirlpool's takeover of Maytag will face regulatory scrutiny

Whirlpool, the Michigan appliance maker which is acquiring its Iowa rival Maytag for $2.7bn, continues to encounter stiff regulatory scrutiny. A merged company would account for half the national market in dishwashers and 70% of the washing appliances market. The DOJ has been investigating the deal since October 2006 and are rumoured to have been soliciting sworn statements from witnesses in recent weeks. The legal advisers of competitors are expected to have been lobbying regulators to block the deal or require asset sales. The US authorities may well challenge the deal if they receive complaints from large retailers.

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North America: **USA**

Disney buy of Pixar might draw antitrust attention

The announced $7.4bn buy of Pixar Animation Studios by Disney will be reviewed by US federal regulators but is not expected to be subject to serious antitrust scrutiny. If accepted by Pixar shareholders, the deal will combine Pixar's creative and technological resources with Disney's portfolio of family entertainment, characters, theme parks and other franchises.

North America: **USA**

Boston Scientific and Guidant merger subject to antitrust clearance

The merger of Boston Scientific Corporation and Guidant Corporation is subject to customary closing conditions, including clearances under the Hart-Scott-Rodino Antitrust Improvements Act and the European Union merger control regulation, as well as approval of Boston Scientific and Guidant shareholders. Boston Scientific has announced publicly that necessary regulatory filings have been made in the US and with the EC and expects to complete the transaction by early April 2006. Boston Scientific has entered into an agreement with Abbott, a competitor, under which Boston Scientific has agreed to divest Guidant's vascular intervention and endovascular businesses while agreeing to share rights to Guidant's drug-eluting stent program. It is believed that Boston Scientific's agreement with Abbott has been vetted with US and EC regulators and will enable Boston Scientific and Guidant to secure antitrust approvals for the proposed transaction much more rapidly.

North America: **USA**

Intelsat's buy of PanAmSat clears initial regulatory hurdles, and awaits antitrust approval

Intelsat's US$3.2bn buy of PanAmSat is still under US antitrust and regulatory review. The transaction is being reviewed by both the US Federal Communications Commission and the Department of Justice. Some customers of both firms recently received document requests from the Department of Justice, indicating that DOJ's review is continuing. The FCC's review is expected to be completed in April 2006, and the DOJ decision should follow shortly thereafter.

North America / Europe: **Canada**

Inco acquisition of Falconbridge faces investigation by EU and US antitrust authorities

The European Commission and US regulators are investigating Inco's acquisition of Falconbridge. Both companies are Canadian and are involved in the mining, processing and refining of various metals. Regulatory attention is based on concerns that the proposed deal might adversely impact competition in the market for nickel and cobalt. The EC announced in February 2006 that it has initiated a Phase II investigation of the transaction and the parties had previously announced that the DoJ issued a Second Request on the deal in November 2005.

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The Future Chinese Antitrust Regime

Background

The Chinese authorities have been working for more than ten years on the adoption of an antitrust regime that will replace or complement the existing, fragmented and minimal Chinese laws in this field. Legislative preparations accelerated significantly in 2005, with a succession of drafts and several rounds of exchanges between the authorities and foreign regulators, academics and practitioners.

At the time of writing this article, the latest draft "Anti-Monopoly Law of the People's Republic of China" (中华人民共和国反垄断法) circulated for comments (albeit to a limited number of addressees) is dated 11 November 2005 ("the Draft"). The text is an improvement on previous drafts as regards clarity and overall drafting quality. However, certain amendments have been introduced that could seriously impact the effectiveness of the law.

The Antitrust Authority

Under the previous drafts, a single Antitrust Authority would have combined enforcement and some regulatory powers, reporting directly to the State Council – the equivalent of a Council of Ministers. Under the Draft, however, regulatory and enforcement powers in antitrust matters would be scattered among four different bodies:

- the State Council (the ultimate regulatory authority);
- the "Anti-Monopoly Law Enforcement Authority" entrusted, as its name suggests, with day-to-day enforcement;
- a yet to be defined "department" that would be responsible for the function of the Anti-Monopoly Law Enforcement Authority – a new addition that confirms reports of a continuing inter-ministerial rivalry for future powers in the antitrust area; and
- an Anti-Monopoly Committee with supervisory and broader rulemaking powers – some of which would overlap with those of the Anti-Monopoly Law Enforcement Authority.

Whatever the reasons behind this fragmentation of powers, the results are more likely to be negative, at least during the future regime's initial years. A weak enforcement authority, overlapping competence and administrative bodies with competing powers will be, in all likelihood, a recipe for legal uncertainty, diffusion of responsibility and multiple sources of influence (and hence potential corruption). Concerns about a potentially excessive (from a Chinese perspective), independence of the Antitrust Authority could be addressed by subjecting its more important decisions to approval by a single authority – preferably the State Council or a single Ministry – or by vesting this single supervisory authority with a transparently defined veto power against the Antitrust Authority's decisions or rule-making. In contrast, a break-up of regulatory powers among four bodies is more likely to generate disarray than order.

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Prohibition of Monopoly Agreements

The Draft has maintained most of the earlier drafts' provisions on the prohibition of horizontal and vertical agreements that eliminate or restrict competition. The list of prohibited agreements is indicative and largely familiar, from other jurisdictions, but raises concerns in at least two respects:

- Prohibited agreements include, *inter alia*, those that "limit the purchase of new technology [or] new facilities". This broadly defined prohibition could be potentially relied upon to impose compulsory licenses on new technology and/or render field-of-use and similar restrictions in technology licences void and unenforceable.
- Among other grounds for the exemption of a potentially anti-competitive agreement, the Draft includes (i) the enhancement of "the competitiveness of export products in the global market"; and (ii) the moderation of "serious decreases in sales volumes or distinct production surpluses … during the period of economic depression". The first of these grounds could lead to conflicts with foreign antitrust jurisdictions. The second is even more problematic, as it effectively endorses cartel-like conduct. Such allowed exceptions are bound to be used as the first line of defence in future disputes and would seriously dilute the credibility, impartiality and effect of the law.

However, the most problematic aspect in this chapter, as revised in the Draft of 11 November, is the removal of any possibility of a voluntary notification to the Antitrust Authority. Under the previous draft, the parties to potentially anti-competitive agreements were given a choice of exemption through either self-assessment or voluntary notification. This was a wise compromise. It would allow parties to secure regulatory approval of their more important and potentially problematic contractual arrangements in China if they so wished; it would allow Chinese antitrust authorities to gain better access to market data and practical experience with commercial arrangements; it would provide the market at large with regulatory guidance through the antitrust authorities' published case-law; and it would allow private parties to avoid notification of obviously unproblematic, run-of-the-mill agreements by relying on self-assessment and case-law.

Instead of this reasonable compromise, the Draft has retreated to a system of pure self-assessment. Such a regime can only work if self-assessment may benefit from a rich body of legal precedents, past regulatory guidance and a mature antitrust environment – factors that are absent in China today. Moreover, under the proposed solution, the private parties concerned would have to self-assess, among other, the existence of some particularly problematic and discretionary grounds for exemption – such as the allowed "crisis cartels" mentioned above. Absent any means of obtaining approval from the Antitrust Authority, private party disputes on the potentially anti-competitive nature of a certain agreement or clause would likely have to be resolved before Chinese courts with no experience in antitrust matters. This will cast a question mark over the enforceability in China of any provision that could potentially raise antitrust issues. For example, potential licensors might as well forget about relying on any restrictive clauses in their licence agreements.

It is therefore all the more surprising that this recent change has been described as a positive development by some foreign commentators, arguing that it would obviate the need for potentially burdensome filing requirements. While the downside of such requirements should not be ignored, it is hard to see how complete legal uncertainty, in a new and untested antitrust regime, can be a preferable alternative.

Abuse of a Dominant Position

The Draft has maintained a rebuttable presumption of dominance based on market thresholds: 50% for sole dominance; and a combined 66% (or 75%) market share for joint dominance by two (or, respectively, three) undertakings. The approach has been generally criticised by foreign commentators as being too rough and unreliable. This is certainly true with regard to joint dominance, a finding of which must be based on a set of factors far more complex and qualitative than a market share figure – and for which a market-share-based presumption can lead to patently absurd results. The criticism is also warranted as regards the proposed market share threshold for sole dominance, even if, as a practical matter, a market share of more than 50% would normally send strong alarm signals in any antitrust jurisdiction, with or without formal presumptions of dominance.

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If the intention behind this "crude but simple" rebuttable presumption is to simplify the regulator's life by reversing the burden of proof against companies with a high market share, the provision will probably serve its purpose. However, foreign investors and commentators have expressed concerns that these market share thresholds will be used primarily against major foreign investors controlling key technology. If this is the main policy purpose behind the market share thresholds, it is rather ironic that the market threshold presumptions might, in some cases, be more damaging to major Chinese companies than to their foreign competitors.

The Chinese domestic market is fragmented to a greater extent than most foreigners tend to appreciate. Conditions of competition are certainly not uniform throughout China and local "barriers to trade" may arguably give rise to narrowly defined geographic markets (at least under a proper antitrust analysis) in which regional or local champions would be found dominant based on a market-share test, despite their limited market power in the rest of China. Furthermore, foreign companies' market power (if any) in China will be typically based on more qualitative criteria, such as their technological sophistication, access to capital or a worldwide distribution network. Companies whose market power is based on such qualitative criteria are more likely to escape the net of a market-share-based dominance criterion than, for example, a Chinese state-controlled enterprise with a very high market share but limited technological sophistication and international links.

Merger Review

The Draft has shortened the review period for notifiable transactions to 20 (from 30) working days for the first review phase, and to 90 (from 120) working days for the second phase. This is a welcome change.

The jurisdictional criteria for merger notification in China remain somewhat difficult to apply, as they are based on a combination of turnover, value of transaction and value of assets thresholds. Nevertheless, they are an improvement over the previously proposed, even more complex and uncertain, rules.

Abuse of Administrative Powers

An ambitious, but politically controversial, chapter of the previous drafts has been deleted from the version of 11 November. It was replaced by a short and general clause (Article 6), whose practical value is up to anybody's guess.

The deleted chapter would have allowed the Antitrust Authority to stop local and regional authorities from distorting competition through abusive administrative measures, such as restrictions on the free movement of goods within China, discriminatory charges or technical standards, local monopolies, discriminatory local licences and bidding procedures, etc.

From a Chinese perspective, the need to address such regional and local restrictions on competition within China may represent an even higher policy priority and challenge than the introduction of a modern antitrust regime, whose effects are likely to be felt only gradually. Over the last years, regional administrative authorities and local champions in China have formed formidable symbiotic relationships which will be difficult to unfold, under any circumstances. The idea of entrusting this task to the future Antitrust Authority may have been too good to be true. Dropping it altogether may not be much worse than seeing it falter in practice.

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The implications of the future antitrust regime for key technology controlled by foreign investors in China are a hotly debated issue. The Draft of 11 November simply states that the law will be also applicable to the conduct of undertakings eliminating or restricting competition through the abuse of rights defined in intellectual property laws or administrative regulations. By itself, this provision is neither unreasonable nor particularly helpful: but like so much else in the draft law, its real effects will depend on its interpretation and enforcement in practice.

Next Steps

The next major legislative step should be a first reading of the antitrust bill by the National People's Congress ("NPC"), reportedly scheduled for June 2006. Bills normally go through three such readings before being voted upon by the NPC. The NPC cannot amend the text of the bill, but it can raise objections or make proposals that will have to be incorporated in subsequent drafts. The debate on China's future antitrust regime is not over yet.

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Other Antitrust Issues

EUROPE

European Commission scrutiny of energy sector continues

The European Commission is currently targeting the EU energy sector which has been found to harbour significant distortions to competition. There will also be a period of more intensive antitrust enforcement directed at individual companies with long-term contracts for the importation of gas, and agreements that grant incumbents control over key infrastructure such as pipelines and storage facilities. Observers expect the big energy conglomerates of the larger member states to come under particular scrutiny. If successful, Commission investigation can result in severe fines of up to 10% of the revenues of the companies found to be in breach of the competition rules.

Commission launches inquiry into business insurance sector

The European commission has launched an inquiry into the EU's business insurance sector. The Commission believes that excessive cooperation between existing players may be limiting cross-border access for new players. Insurers associations and committees are believed to jointly set standard policy conditions in some areas of business insurance. There are also suspicions that excessively close cooperation might also occur in the area of co-insurance agreements among insurers. As part of its inquiry, the Commission has sent out a questionnaire to several hundred companies and intermediaries offering business insurance. At this stage, response is voluntary, although a legal obligation to respond might be imposed on those companies who do not co-operate. The Commission can use the responses to these questionnaires as a basis for subsequent investigations against companies suspected of obstructing competition.

NORTH AMERICA

U.S. Supreme Court Overturns Two Competition Decisions

The U.S. Supreme Court continued its review of several antitrust cases this term by reversing two lower court decisions in the last two weeks. This follows the Court's decision in January reversing a finding that Volvo Trucks North America had violated the Robinson-Patman Act.

Texaco Inc. v. Dagher

On 28 February, 2006, the Supreme Court issued a decision which confirms that the *per se* rule generally does not apply to pricing decisions made by a *bona fide* joint venture. Texaco Inc. and Shell Oil Co. had created a joint venture – named Equilon – and contributed their gasoline refining and marketing businesses in the western United States to the venture. The companies had obtained clearance for the transaction after entering into consent decrees (and agreeing to divestitures) with the FTC and several states. The plaintiffs in *Dagher* – a group of Texaco and Shell service station owners – alleged that Equilon's practice of marketing its gasoline under both the Texaco and Shell brand names at a single price constituted *per se* unlawful "price fixing" between Texaco and Shell. The Ninth Circuit agreed.

In an 8-0 decision written by Justice Thomas, the Supreme Court reversed. The Court observed that Texaco and Shell had not "fixed" any prices – the joint venture had. Noting that the complainants had not challenged the lawfulness of the joint venture itself (which would be judged under the rule of reason), the Court explained that the case did not involve the fixing of the prices of competing products. Rather, the case challenged the pricing decisions of a single entity concerning multiple products that had been combined under its control. Under such circumstances, it made no sense to apply the *per se* rule to Equilon's unilateral decision to set the prices of both brands of gasoline equally.

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Illinois Tool Works Inc., v. Independent Ink, Inc

On 1 March, the Court issued its third antitrust opinion of the current term, unanimously holding (in an 8-0 decision) that for purposes of an antitrust tying analysis, a patent does not create a presumption that the patentee has market power The Court's conclusion had been advocated by a number of lower courts, the federal competition authorities, and most competition academics and practitioners; however, until now, the legal standard remained unclear. In addition to resolving inconsistent lower Court decisions, *Independent Ink* harmonizes the antitrust analysis of tying and the tying analysis in a patent misuse case.

Independent Ink alleged that Trident, a unit of Illinois Tool Works had impermissibly tied the sale of ink refills to the purchase of the patented components of its printer system. Tying – or conditioning the purchase of one product or service on the purchase of a separate "tied" product or service – is only impermissible if the seller has sufficient economic power of the "tying" product to coerce the sale of the tied product. Independent Ink alleged that because Trident's systems were patented, there was a presumption of market power. The Supreme Court, however, held that the "the mere fact that a tying product is patented does not support such a presumption" of market power. The Court recognized that while some patented inventions may confer economic power, many do not. Whether or not market power exists depends on a number of market facts – whether a product is patented or not should not be determinative.

For additional information on the Federal Circuit's decision finding that Supreme Court precedent obligated it to presume market power is conferred by a patent, see *"Antitrust Update: Antitrust Law: "Independent Ink," Antitrust Update, Hogan & Hartson, L.L.P.*

GLOBAL

US and EU officials mounted probe into leading airlines over allegations of price fixing

In mid February, more than a dozen leading airlines were raided by US and EU officials investigating allegations of collusion in the air cargo industry to fix prices on surcharges for fuel, security and insurance. Representatives for the European Commission and the US Department of Justice have refrained from divulging more details about the probe. Under EU law, the commission can fine companies accused of operating a cartel as much as 10% of their annual sales. Similarly, in the US, evidence of price fixing is likely to involve both financial and non-financial penalties.

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Live Deals – Europe

Deal	Terms	Ann. Date	Est. Comp	Sett. Date	Target Country	Target Mkt Cap (m)	Net Sprd	Change	Ann. Return
Alain Afflelou . / Bridgepoint Cap.	1 AAF = EUR33.00	24 Feb 2006	25 May 2006		France	EUR 499m	-0.40%	0.00%	-2.00%
Alliance Uniche. / Boots Group plc	1 AUM = 1.332 BTS	03 Oct 2005	16 Jun 2006		United Kingdom	GBP 3,315m	6.00%	-0.63%	23.60%
AMB Generali Ho. / Assicurazioni G.	1 AMB = EUR98.00	06 Mar 2006	15 May 2006		Germany	EUR 5,499m	-4.30%	0.60%	-25.90%
Arcelor S.A. / Mittal Steel Co.	1 LOR = 1.06 MIT	27 Jan 2006	15 May 2006		Luxembourg	EUR 20,057m	-0.10%	0.32%	-0.40%
Autoroutes du S. / Vinci SA	1 ASF = EUR51.00	10 Mar 2006	26 Apr 2006		France	EUR 18,051m	-34.70%	0.25%	-301.90%
Azienda Mediter. / Azienda Energet.	1 AMG = 0.85 AEM	25 Jan 2006	30 Jun 2006		Italy	EUR 631m	2.70%	0.49%	9.30%
Banca Antonvene. / ABN AMRO	1 BNT = EUR26.50	15 Sep 2005	31 Mar 2006	07 Apr 2006	Italy	EUR 8,176m	0.10%	0.04%	1.70%
Banca Nazionale. / BNP Paribas SA	1 BNL = EUR2.925	04 Feb 2006	30 Jun 2006		Italy	EUR 9,025m	0.00%	0.17%	0.00%
Banco BPI SA / Millennium BCP .	1 BPI = EUR5.70	13 Mar 2006	20 Jun 2006		Portugal	EUR 4,400m	0.50%	1.20%	1.10%
Bank Przemyslow. / UniCredito Ital.	1 BPH = 33.13 UNI	12 Jun 2005	26 May 2006		Poland	EUR 5,522m	5.10%	-2.08%	25.80%
BOC Group plc / Linde AG	1 BOC = GBP16.00	06 Mar 2006	01 Sep 2006		United Kingdom	GBP 7,784m	3.30%	0.00%	7.10%
Chiron Corp / Novartis AG	1 CHI = USD45.00	31 Oct 2005	14 Apr 2006		USA	USD 8,556m	-1.20%	0.00%	-14.40%
DIS AG / Adecco SA	1 DIS = EUR58.50	09 Jan 2006	27 Mar 2006	04 Apr 2006	Germany	EUR 738m	-2.50%	-1.23%	-76.00%
Endesa SA / Gas Natural SDG.	1 END = 0.569 GNT + EUR7.34	05 Sep 2005	19 Apr 2006	03 May 2006	Spain	EUR 29,518m	-23.10%	-0.18%	-240.50%
Endesa SA / E.ON AG	1 END = EUR27.50	21 Feb 2006	30 Jul 2006		Spain	EUR 29,518m	-1.40%	0.04%	-3.60%
Engelhard Corpo. / BASF AG	1 ENG = USD37.00	03 Jan 2006	17 Mar 2006		USA	USD 4,696m	-5.30%	0.02%	-975.80%
First Technolog. / Honeywell Inter.	1 FST = GBP3.85	19 Dec 2005	24 Mar 2006		United Kingdom	GBP 289m	0.50%	0.00%	21.20%
freenet.de AG / Mobilcom AG	1 FRE = 1.15 MOB	08 Jul 2005	14 Apr 2006		Germany	EUR 1,390m	6.50%	0.13%	78.70%
Gaz de France S. / Suez (formerly .	1 GAZ = 1.00 SEZ	27 Feb 2006	30 Sep 2006		France	EUR 28,778m	15.70%	-2.66%	28.80%
Gemplus Interna. / Axalto NV	1 GML = 0.08 AXL	07 Dec 2005	31 Aug 2006		Luxembourg	EUR 1,389m	-2.00%	0.15%	-4.40%
GTECH Corporati. / Lottomatica SpA	1 GTC = USD35.00	10 Jan 2006	30 Jun 2006		USA	USD 4,439m	4.60%	-0.03%	15.80%
Hyatt Regency . / BC Partners	1 HYR = EUR11.00	10 Jan 2006	15 May 2006		Greece	EUR 939m	-1.60%	0.35%	-9.60%
Intentia Intern. / Lawson Software.	1 INI = 0.4519 LAW	02 Jun 2005	30 Apr 2006		Sweden	EUR 442m	7.80%	0.03%	61.80%
KeySpan Corp / National Grid p.	1 KEY = USD42.00	27 Feb 2006	31 Jan 2007		USA	USD 7,124m	2.80%	0.00%	3.20%
Lafarge North A. / Lafarge SA	1 LNA = USD75.00	06 Feb 2006	20 Mar 2006		USA	USD 5,886m	-9.80%	-1.10%	-718.70%
Lifeline System. / Koninklijke Phi.	1 LIF = USD47.75	19 Jan 2006	31 Mar 2006		USA	USD 678m	0.20%	0.00%	4.80%
Lookers plc / Pendragon plc	1 LOK = 1.15 PEN	09 Mar 2006	27 Apr 2006		United Kingdom	GBP 255m	0.50%	-4.75%	4.00%

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Deal	Terms	Ann. Date	Est. Comp	Sett. Date	Target Country	Target Mkt Cap (m)	Net Sprd	Change	Ann. Return
MatrixOne, Inc. / Dassault System.	1 MTX = USD7.25	02 Mar 2006	30 Jun 2006		USA	USD 371m	2.00%	0.00%	6.70%
Metrovacesa SA / Sacresa	1 MET = EUR78.10	01 Mar 2006	16 May 2006		Spain	EUR 7,263m	9.50%	-0.46%	55.70%
New Skies Satel. / SES Global SA	1 NSS = USD22.52	14 Dec 2005	30 Jun 2006		Bermuda	USD 714m	1.90%	0.00%	6.30%
P&O (Peninsular. / Dubai Ports Wor.	1 POP = GBP5.20	29 Nov 2005	08 Mar 2006	16 Mar 2006	United Kingdom	GBP 3,902m	0.00%	0.00%	N/A
Pilkington plc / Nippon Sheet Gl.	1 PLK = GBP1.65	27 Feb 2006	15 May 2006		United Kingdom	GBP 2,113m	2.00%	0.00%	12.00%
Portugal Teleco. / Sonae SGPS SA	1 PTL = EUR9.50	06 Feb 2006	26 May 2006		Portugal	EUR 11,345m	-0.70%	-0.20%	-3.80%
PT Multimedia-S. / Sonaecom-SGPS, .	1 PMM = EUR9.03	07 Feb 2006	26 May 2006		Portugal	EUR 3,212m	-10.40%	0.43%	-52.90%
Reg Vardy plc / Pendragon plc	1 VDY = GBP9.00	05 Dec 2005	19 Apr 2006	15 Mar 2006	United Kingdom	GBP 505m	0.20%	0.00%	1.70%
Renal Care Grou. / Fresenius Medic.	1 REN = USD48.00	04 May 2005	31 Mar 2006		USA	USD 3,243m	0.40%	0.00%	8.60%
Riunione Adriat. / Allianz AG	1 RAS = 0.1578 ALZ	12 Sep 2005	28 Apr 2006		Italy	EUR 14,715m	-2.00%	-0.05%	-16.20%
Schering AG / Merck KGaA	1 SRG = EUR77.00	13 Mar 2006	15 Jun 2006		Germany	EUR 16,032m	-6.80%	0.79%	-27.10%
Skandia AB / Old Mutual plc	1 SKD = 1.372 OMT + EUR1.7705	02 Sep 2005	26 Jan 2006	24 Mar 2006	Sweden	EUR 5,538m	0.10%	-0.35%	N/A
Smedvig ASA / SeaDrill Limite.	1 SME = EUR25.62	09 Jan 2006	05 Apr 2006		Norway	EUR 1,385m	-0.50%	0.01%	-9.30%
Societe des Aut. / Holding d'Infra.	1 SAN = EUR58.00	07 Feb 2006	20 Mar 2006		France	EUR 5,324m	0.00%	0.09%	0.00%
Sogecable SA / Promotora de In.	1 SOG = EUR37.00	02 Nov 2005	09 Mar 2006	23 Mar 2006	Spain	EUR 4,337m	14.00%	0.11%	N/A
Telepizza SA / Foodco Pastries.	1 TPZ = EUR2.15	28 Feb 2006	15 May 2006		Spain	EUR 583m	-2.30%	0.88%	-13.60%
T-Online Intern. / Deutsche Teleko.	1 TOI = 0.52 DET	09 Oct 2004	04 May 2006		Germany	EUR 9,485m	-5.90%	-0.78%	-43.30%
Turkiye Garanti. / GE Consumer Fin.	1 GRT = USD2.9058	25 Aug 2005	28 Apr 2006		Turkey	USD 8,276m	-26.30%	0.00%	-217.90%
VNU NV / Valcon Acquisit.	1 VN = EUR28.75	08 Mar 2006	15 May 2006		Netherlands	EUR 7,020m	5.30%	0.04%	31.60%

Source: dealReporter, as of 14/03/06

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Live Deals – Asia

Deal	Terms	Ann. Date	Est. Comp	Sett. Date	Target Country	Target Mkt Cap (m)	Net Sprd	Change	Ann. Return
Advanced Info S. / Temasek Holding.	1 AIS = USD1.85	23-Jan-06	21-Mar-06	24-Mar-06	Thailand	USD 7,472m	-26.90%	-2.78%	-1638.60%
Alinta Ltd / The Australian .	1 ALN = 0.564 AGL	13-Mar-06	11-May-06		Australia	AUD 2,635m	-2.10%	0.01%	-13.10%
Arab Malaysian . / Azman Hashim	1 AMC = USD0.374	17-Jan-06	30-Sep-06		Malaysia	USD 361m	8.20%	-2.01%	15.10%
Banpresto. Co.,. / Bandai Namco Ho.	1 BPS = JPY3450.00	23-Feb-06	16-Mar-06	17-Mar-06	Japan	JPY 36,612m	1.80%	1.48%	646.00%
Contact Energy . / Origin Energy L.	1 CEN = 1.041 ORG	20-Feb-06	30-Sep-06		New Zealand	USD 2,785m	-0.30%	-3.01%	-0.50%
Dentsu Tec Inc / Dentsu Inc	1 DENT = 0.0132 DEN	15-Nov-05	1-Apr-06	1-Apr-06	Japan	JPY 53,664m	0.20%	-0.77%	3.30%
Farmers Bank of. / Taiwan Cooperat.	1 FBC = 0.4019 TCB	8-Nov-05	1-May-06		Taiwan	USD 489m	-7.90%	0.50%	-61.30%
Gujarat Ambuja . / Holcim Ltd (for.	1 GAC = INR90.64	30-Jan-06	13-Apr-06		India	INR 132,223m	-7.30%	0.14%	-91.50%
IOI Oleochemica. / IOI Corporation.	1 IOL = 0.50 IOI + USD1.501	2-Aug-05	9-Feb-06	24-Mar-06	Malaysia	USD 644m	6.00%	0.73%	N/A
Johor Port Berh. / MMC Corporation.	1 JPB = USD0.6711	7-Dec-05	31-Mar-06		Malaysia	USD 218m	1.50%	-1.49%	33.50%
Kinki Coca-Cola. / Coca-Cola West .	1 KCCB = 0.451 CCWJ	22-Feb-06	1-Jul-06		Japan	JPY 78,614m	1.30%	0.40%	4.50%
Kochi Refinerie. / Bharat Petroleu.	1 KCH = 0.444 BRP	17-Jan-05	1-May-06		India	INR 23,588m	7.30%	0.41%	56.70%
NEC Infrontia C. / NEC Corporation	1 NIF = 0.774 NEC	24-Nov-05	1-May-06	2-May-06	Japan	JPY 69,191m	1.80%	1.42%	13.70%
Origin Toshu Co. / Aeon Co Ltd	1 ORT = JPY3100.00	30-Jan-06	13-Mar-06	20-Mar-06	Japan	JPY 52,946m	4.20%	1.21%	N/A
P&O (Peninsular. / Dubai Ports Wor.	1 POP = GBP5.20	29-Nov-05	8-Mar-06	16-Mar-06	United Kingdom	GBP 3,902m	0.00%	0.00%	N/A
Patrick Corpora. / Toll Holdings P.	1 PTR = 0.40 TOL + AUD0.898	22-Aug-05	13-Apr-06		Australia	AUD 5,467m	-21.00%	-1.78%	-264.20%
Pilkington plc / Nippon Sheet Gl.	1 PLK = GBP1.65	27-Feb-06	15-May-06		United Kingdom	GBP 2,113m	2.00%	0.00%	12.00%
SembCorp Logist. / Toll Holdings P.	1 SCL = USD1.111	6-Mar-06	26-May-06		Singapore	USD 793m	2.90%	-0.31%	14.80%
Sinopec Qilu Co. / China Petroleum.	1 QLU = CNY10.18	16-Feb-06	6-Apr-06		China	CNY 19,695m	0.80%	0.00%	13.10%
Sinopec Shengli. / China Petroleum.	1 SGO = CNY10.30	16-Feb-06	6-Apr-06		China	CNY 3,720m	0.80%	0.00%	13.00%
Sinopec Yangzi . / China Petroleum.	1 YZP = CNY13.95	16-Feb-06	6-Apr-06		China	CNY 32,247m	0.80%	0.07%	13.20%

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Deal	Terms	Ann. Date	Est. Comp	Sett. Date	Target Country	Target Mkt Cap (m)	Net Sprd	Change	Ann. Return
Sinopec Zhenhai. / China Petroleum.	1 ZRCC = HKD10.60	12-Nov-05	24-Mar-06	3-Apr-06	China	HKD 7,636m	0.50%	-0.48%	19.20%
Sinopec Zhongyu. / China Petroleum.	1 ZYP = CNY12.12	16-Feb-06	6-Apr-06		China	CNY 10,513m	0.80%	0.08%	13.80%
Southern Bank B. / Bumiputra-Comme.	1 SSB = USD1.1579	13-Feb-06	5-May-06		Malaysia	USD 1,703m	2.10%	-0.24%	15.10%
Teikoku Oil Co.. / Inpex Corp.	1 TKO = 0.0014 INP	5-Nov-05	3-Apr-06		Japan	JPY 452,766m	-2.80%	-1.16%	-54.20%
The Australian . / Alinta Ltd	1 AGL = 1.773 ALN	3-Mar-06	31-Mar-06		Australia	AUD 8,493m	2.10%	-0.01%	47.70%
United Broadcas. / K.I.N. (Thailan.	1 UBC = USD0.6779	7-Nov-05	16-Mar-06		Thailand	USD 373m	37.30%	-0.17%	13628.30%
Wattyl Limited / AEP Financial I.	1 WAT = AUD3.25	22-Dec-05	27-Mar-06		Australia	AUD 306m	-7.20%	-0.26%	-220.30%
Wattyl Limited / Barloworld Limi.	1 WAT = AUD3.80	13-Feb-06	6-Jun-06		Australia	AUD 306m	8.10%	-0.30%	35.50%
Wattyl Limited / AEP Financial I.	1 WAT = AUD3.25	22 Dec 2005	27 Mar 2006		Australia	AUD305m	-6.98%	0.26%	-196.07%
Wattyl Limited / Barloworld Limi.	1 WAT = AUD3.80	13 Feb 2006	06 Jun 2006		Australia	AUD305m	8.38%	0.30%	36.41%

Source: dealReporter, as of 14/03/06

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With more than 1,000 lawyers practicing in 23 offices worldwide, Hogan & Hartson works seamlessly across multiple practices and offices to provide our clients with exceptional service and creative advice. Our in-depth experience in handling the most complex matters is highly acclaimed by clients and peers alike. From corporate boardrooms to government agencies, from courtrooms to legislatures, we offer unparalleled proficiency on competition law. Our range of experience extends to all sectors of the economy, from manufacturing to media and entertainment, from health care to technology.

Many of our lawyers have held key leadership positions in government and the private sector, including senior alumni of the Federal Trade Commission, U.S. Department of Justice, and the European Commission, as well as leaders of the Antitrust Section of the ABA and the IBA. We have been involved at the cutting edge of every major area of antitrust, competition, and consumer protection law, including the most significant multinational mergers and joint ventures, "bet the company" investigations and litigation, intellectual property and high tech issues, policy issues and legislation, and ongoing advice to help clients avoid pitfalls.

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