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Foreword

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

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

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

In the first article Eckhard Bremer, in Berlin, addresses the timely issue of media cross-ownership and looks at the potential impacts of the Axel Springer/ProSiebenSat.1 ruling. Meanwhile, strategic decisions concerning M&A antitrust litigation on both sides of the Atlantic are profiled in the second article by John Pheasant, David J. Saylor and Héctor Armengod. Also in this edition of the newsletter are

regional round ups of various antitrust issues across the globe, which can be found on page 12. Meanwhile, in Paris, Michel Debroux explores the interesting and topical matter of golden shares and asks whether they are compatible with EU law. In the final article of this edition on page 17, Hogan & Hartson partners, George Metaxas and Jun Wei examine the new regulations on the acquisition of Chinese enterprises by foreign investors.

We hope you find this third edition of interest, and welcome any feedback you might have for the forthcoming newsletter in December.

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Diversification in the Media: The impacts of the Axel Springer/ ProSiebenSat.1 Ruling

Introduction

With the emergence of new media, the traditional divisions between print, TV and radio have been getting more and more blurred. Media companies, which had focused on only one medium so far, are increasingly tending to diversify and position themselves on different media platforms. This holds especially true for companies in the print media, which are now finding their way into the TV and digital media markets. The reasons behind this trend to diversify media interests are manifold.

Some undertakings, such as Axel Springer, the German publisher, are simply looking to build up a second, equally important business pillar. Others aim to increase synergy effects by optimizing the value-added chain from first obtaining information to its final commercialization. In short: once a story has been investigated, it can easily be brought to the attention of the reader or viewer via newspaper, TV or the Internet alike at little or no additional cost. Moreover, diversified media companies often seek to benefit from the multiple possibilities of cross-promotion – be it through cross-promotion for group titles, editorial promotion or cross-media campaigns at a lower rate.

The ability of a media company to diversify its holdings is limited, however. If the expansion into different media is not based on internal but rather on external growth, the companies wishing to merge not only have to comply with existing cross-ownership rules imposed by media law but also with the requirements of merger control law. The recent rulings of the German Federal Cartel Office (FCO) and the German Commission on Concentration in the Media (KEK) in the case of the prohibited merger between Axel Springer and ProSiebenSat.1 demonstrate just how strict the legal constraints may be.



The Axel Springer/ProSiebenSat.1 ruling

Last year, Axel Springer, one of Germany's largest publishers and the editor of different newspapers including Germany's most popular tabloid ("BILD") attempted to acquire ProSiebenSat.1, one of the two main private TV groups in the German market. In January 2006, the merger was prohibited by both competent authorities.

The media authority KEK alleged that the attempted acquisition would lead to prevailing power of opinion in TV. In its assessment, KEK introduced a new conversion factor between reader's shares and viewer's shares, and thereby also took into account the rate of circulation of the newspapers published by Axel Springer. KEK did so, although German media law does not provide for explicit cross-ownership rules and, in terms of media law, KEK itself is only competent to assess the existence of prevailing power of opinion in TV.

Diversification in the Media: The impacts of the Axel Springer/ ProSiebenSat.1 Ruling

The FCO ruled that the merger would strengthen the already existing dominant position of the merging companies in different markets. Although the respective business areas of Axel Springer and ProSiebenSat.1 did not overlap and, therefore, the merger did not result in any market share addition, the FCO held the merger would lead to strengthening cross-media effects in the TV advertising market as well as the readers' market for tabloids and the advertising market for daily newspapers:

With regard to the TV advertising market, the FCO mainly claimed that the merger would strengthen the collective dominance between ProSiebenSat.1 and its main competitor (RTL Group) due to the assimilation of the companies' structure and respective business areas.

In addition, the FCO alleged there would be cross-media effects with respect to the readers' market for tabloids, where Axel Springer enjoys a dominant position with its newspaper BILD. The authority pointed out that the merger would strengthen Axel Springer's market position due to leverage effects caused by cross-media promotional and editorial measures. In this context, the FCO differentiated between cross-media advertising for group-products, such as by favoring BILD in ProSiebenSat.1's channels (and vice versa) on the one hand and editorial cross-promotion on the other hand, whereby the newspaper BILD could be promoted during a program, e.g. via the introduction of "BILD TV".

Finally, the FCO argued that there would be cross-media effects with regard to the existing dominant position of Axel Springer in the German advertising market for newspapers. In this respect, the authority referred to the possibility of the merging entity offering bundled cross-media advertising campaigns.



Comments

In their respective findings, the FCO as well as KEK demonstrated a very strict view with regard to mergers between media companies, even though they do not compete with each other directly in any media market. Both authorities claimed there would be strengthening effects on the basis of the mere possibility that the merged entities could engage in cross-media, that is to say, cross-promotional activities.

This strict point of view contradicts existing tendencies in other jurisdictions. It is, indeed, commonly accepted that conglomerate mergers – meaning mergers that bring together companies which do not compete with each other in any product market and which do not entail vertical integration - might result in strengthening effects following from the mere increase of financial power, the creation of portfolio power or from leveraging practices. However, these "conglomerate" effects are generally difficult to predict. Therefore, whether and on which grounds conglomerate mergers should be controlled is still a subject of controversy.

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European law, for instance, has recently seen a virtual wave of merger decisions based on conglomerate effects. It was only in December 2005 that the Court of First Instance (CFI) rendered its long-awaited decision in the merger case GE/Honeywell, which had previously been prohibited by the Commission. In line with former decisions rendered by the CFI and the European Court of Justice, the CFI reveals its demanding and skeptical approach therein with regard to the possible anti-competitive effects of conglomerate mergers. Generally speaking, the effects conglomerate mergers have on competition are judged as relatively harmless. Therefore, the Court imposes a heavy burden of proof upon the competition authority aiming to prohibit a merger, the latter having to provide "convincing evidence" to support a predicted anti-competitive behavior of the merged entity.

In addition, the European approach towards conglomerate mergers is more liberal in another respect: Contrary to the FCO, the European Court held that the competition authority, assessing whether a merger would lead to strengthening effects, had to take any commitments related to the future conduct of the merged entity offered by the merging parties into account. The FCO, however, by mainly accusing Axel Springer and ProSiebenSat.1 of certain cross-promotional measures, did not accept any of the commitments offered by the parties, comprising, for example the commitment not to introduce a boulevard-program "BILD TV". In doing so, the FCO argued that these commitments would qualify as behavioral commitments which were not acceptable in terms of German merger control law. This strict view with regard to behavioral commitments also differs from UK competition law, where commitments on future conduct are largely accepted in order to outweigh any anti-competitive effects resulting from a merger.

Finally, the fact that other jurisdictions are more lenient in applying rules with respect to mergers between companies which are active in different markets, especially when it comes to media companies which do business in diverse media markets, can be illustrated with regard to media law. For example, in U.S. law, the Federal Communications Commission is currently attempting to ease cross-media ownership restrictions, thereby facilitating mergers between media companies (for more detail see Hogan & Hartson FCC Update of July 27, 2006).

Conclusion

The ruling of the FCO in Axel Springer/ProSiebenSat.1 has demonstrated that, apart from the limits set by national media law and its possible cross-ownership rules, merger control law is of major importance with respect to horizontal as well as conglomerate media mergers.

Moreover, the decisions rendered by the FCO and KEK demonstrate that German media companies willing to merge are subject to very tight controls. This contradicts the existing tendencies in other jurisdictions, where cross-ownership rules are mitigated and merger control is softened, on one hand, by the significant burden of proof imposed upon the competition authorities and, on the other hand, by the possibility to outweigh alleged strengthening effects caused by cross-media promotion by means of behavioral commitments. However, even in German law, the last word has not yet been spoken, as the two decisions rendered in case of Axel Springer/ProSiebenSat.1 are currently under judicial review.

Eckhard Bremer
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M&A Antitrust Litigation: Surprising New Twists in the EU and US

Is litigation a realistic risk worth assessing?

To hear some people tell it, antitrust litigation being used as a tool for private parties to defend or challenge a merger or an acquisition is so rare and impractical that it is not worth even considering the possibility. Don't believe it.

Consider these recent developments in the United States:

In 2004, Oracle forced the US Department of Justice (DOJ) to litigate against Oracle's proposed acquisition of People Soft, Oracle won, and DOJ gave up.

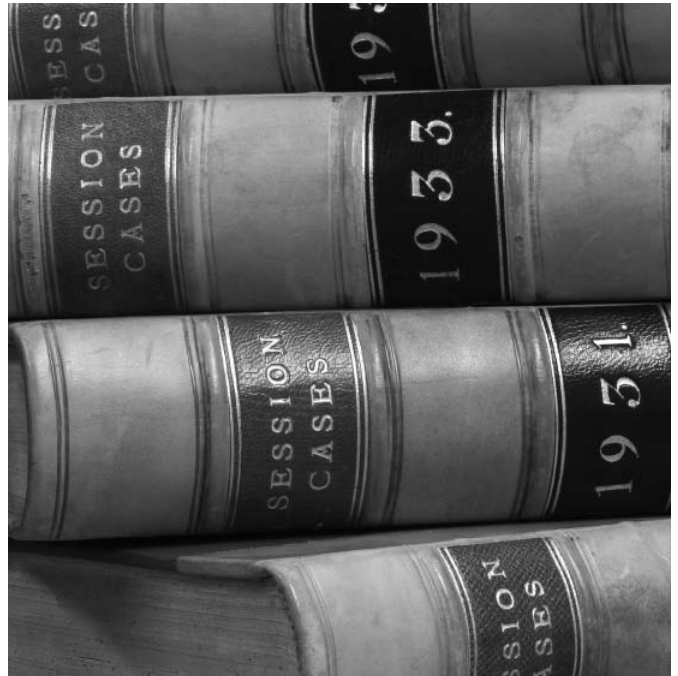
That same year, the Federal Trade Commission ("FTC") went to court to prevent Arch Coal from buying Triton Coal, Arch Coal prevailed in the litigation, and in 2005 the FTC dropped its administrative proceeding against the transaction.

Or consider what is happening in Europe:

In 2002, European Commission ("Commission") decisions striking down several different proposed transactions, such as the proposed merger between Airtours and First Choice, were overturned by the European Court of First Instance ("CFI").

Although the appeal process in those matters was so slow that the deals in question could not be reconstituted, European authorities took steps to expedite the appeal process in future cases.

And in 2006, third party rivals opposed to the Sony/BMG joint venture convinced the CFI to overturn the Commission's decision approving the venture.



Can litigation undo consummated transactions?

As the last-mentioned item well illustrates, litigation can sometimes even affect the finality of closed and previously cleared transactions. So it would be a mistake to assume that a transaction once consummated will never be unraveled through later antitrust litigation. Consider in that connection:

- In 2005, after a full administrative trial, an FTC law judge ordered divestitures with respect to a hospital merger that was consummated four years before the FTC's complaint was even filed.
- Also in 2005, the FTC ordered Chicago Bridge & Iron to divest assets acquired over four years earlier and prior to the FTC's complaint.

Indeed, the US Supreme Court at DOJ's urging once ordered divestiture of stock acquired 30 years prior to DOJ's complaint.

M&A Antitrust Litigation: Surprising New Twists in the EU and US

In the US, private parties opposed to a transaction have always had the option of bringing their own antitrust suit if DOJ and FTC decline to prosecute, but that has always been and remains an expensive, difficult, and generally unattractive option. But consider this:

During the summer of 2006, third parties opposed to the already consummated SBC/AT&T and Verizon/MCI mergers have had some procedural success in using the Tunney Act consent decree review process to discover evidence gathered by DOJ in its companion investigations and to litigate the adequacy of DOJ's and the merging parties' proposed settlements. At time of writing, it remains to be seen whether the presiding judge will reject the settlements and, if he does, what DOJ will do then.

In the EU, the ultimate outcome of the CFI's ruling overturning the Commission's Decision in Sony/BMG remains uncertain, and to date the parties to this transaction do not appear to have re-submitted their merger application to the Commission for re-examination under present market conditions.

How significant are the risks? Never say never.

The foregoing points are food for thought. We do not mean to imply that in most M&A situations antitrust litigation is probable – it is not. But rather the important point is only that such litigation is sometimes possible – and that certain recent precedents need to be considered in the overall calculus of risks and probabilities. Whether one is a proponent or opponent of an M&A transaction, or an antitrust enforcement official investigating a transaction, the cautionary phrase “never say never” applies.

The proponent should never just assume it will lose if it forces the government to litigate for injunctive relief (in the US) or if it appeals an adverse decision (in the EU). The parties to the transaction should never blindly assume that a consummated transaction will not be challenged post hoc by the enforcement agencies and undone (in the US), or a clearance approval reversed through third party litigation in court (in the EU). The opponent should never flatly assume that an appeal of a clearance decision is a waste of time (in the EU) or that a challenge to a government settlement will yield no fruit (in the US). Enforcement authorities should never just assume that their approval or disapproval of a transaction is essentially immune from being overturned in court (in the EU) or that consent settlements and agreed remedial measures will never be found inadequate by a court (in the US).



Always assess the litigation possibilities and risks based on the specific circumstances

Prudent business executives, M&A lawyers, and competition law specialists should always strive to understand how antitrust-based litigation may (i) affect the amount of time it will take to obtain a clearance decision, (ii) change or affirm that outcome, and (iii) even affect the finality of the transaction once consummated. Each case is always somewhat different from others. The facts surrounding the transaction and the particular product and geographic markets are critical, as are entry conditions, market shares, and the like, in assessing whether litigation is likely or not. The records of the agencies and the courts in similar situations are very important. The resources and track records of the known or likely opponents are also very relevant in the overall calculus. Even personalities and egos have a bearing on the probabilities and prospects of antitrust litigation with respect to M&A transactions.

Below are summaries of the US and EU clearance and litigation processes. It is in these procedural contexts that litigation possibilities and risks would have to be assessed for any given M&A transaction subject to clearance in those two jurisdictions.

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The U.S. clearance and litigation process summarized

The vast majority of notified transactions are quickly cleared by DOJ and FTC. In only a small percentage of notified transactions is the Hart-Scott-Rodino (“HSR”) waiting period extended so that the authorities can receive additional documents and other information in response to a “second request.” A significant fraction of even these second-stage investigations are closed without need for remedies.

Fix-it-first

If the investigating agency decides the deal is anti-competitive, the parties may just abandon the transaction (they cannot proactively initiate litigation at that point or earlier to have a court declare their transaction legal, limit the agency’s substantive analysis, or determine the agency lacks jurisdiction). Alternatively, the parties may propose to “fix” the identified antitrust problems in advance of closing, e.g., by selling off certain assets or agreeing to license technology to third parties. Historically, DOJ has been more willing than FTC to rely upon a “fix-it-first” solution that avoids the formality of a complaint, settlement stipulation, and remedial order.

Consent settlements

If a “fix-it-first” solution is not acceptable, some form of litigation will be initiated. The FTC’s standard settlement procedure is to issue an administrative complaint, stipulate with the parties to a proposed consent order, and publish the order and an accompanying analysis for 30 days’ public comment. DOJ has no comparable quasi-judicial intra-agency procedure for settlements, so it will file a complaint in federal district court along with (i) the parties’ stipulation agreeing to comply with a proposed consent decree, (ii) the decree itself, and (iii) DOJ’s competitive impact analysis. Under the Tunney Act, the public has 60 days to submit comments to DOJ. Thereafter DOJ will file the comments and its formal response, after which the judge normally holds a brief hearing and signs the order. Typically, DOJ and FTC allow parties to consummate their transaction while the consent decree or order is subject to public comment and further review, provided the parties commit to abide by the consent arrangement in the interim.

Since the Tunney Act was passed in 1974, judges have rarely questioned the adequacy of DOJ’s proposed settlements and even more rarely required the parties and DOJ to negotiate additional or broader relief and then return to court with a revised consent decree. In 2004, the Tunney Act was amended to make clearer that judges are not to simply “rubber stamp” proposed consent decrees. Even with the amendments, DOJ maintains that it has full discretion to identify in its complaint the relevant market(s) adversely affected by the subject transaction and that the court may not second guess the market definition(s) or require DOJ to allege additional markets and other violations. DOJ also contends the court may not disapprove the negotiated remedy unless there is evidence of corruption or the agreed remedies are clearly inadequate to remedy the alleged violation(s) and outside the broad public interest reaches of reasonable alternatives.

As mentioned, in mid-2006, a court considering proposed decrees in the SBC/AT&T and Verizon/MCI mergers (which had closed months earlier) required DOJ to submit substantial underlying investigative evidence produced by the parties and third party customers and competitors. Third parties opposing the decrees then were allowed to comment to the court on that evidence and also offer evidence of their own.

The court even indicated it may conduct an evidentiary hearing or invite expert testimony. Whether this development is an aberration or sets a precedent remains to be seen.

If the court disapproves a consent decree (and is affirmed on appeal), DOJ must decide whether to litigate its complaint or seek to dismiss. In the interim, the parties may or may not have completed any required divestitures. Even if divestitures were already consummated, DOJ could still litigate on the merits and, if successful, seek additional divestitures and other remedies.

Government litigation

Where the investigating agency has continuing competition concerns and a settlement is not possible, the agency will file suit in federal district court seeking a temporary restraining order and preliminary injunction to block the transaction. In court, the government has the burden of proof, and defendants have the right to discover evidence from the government and third parties. DOJ and FTC injunction suits

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typically consume three months or more, and at least as many additional months on appeal (with a stay of the transaction likely until the appellate court rules). Although the standards for preliminary relief skew in the government's favor (in contrast to when a private party seeks preliminary relief against a merger), the government does sometimes lose at the trial level and/or on appeal.

In a DOJ suit, the preliminary injunction matter and the trial on the merits of the complaint are often combined into one proceeding. An FTC district court injunction proceeding, however, is distinct from a trial on the merits – which would occur later (if needed) before an agency administrative law judge subject to appeal to the Commissioners en banc. If the FTC does not go to court in the first instance to stop the merger, it may opt to litigate its complaint administratively even though the deal has been consummated. In that event, if a violation is later found, the FTC can order divestiture – or conceivably rescission, if the seller is a named respondent in the complaint – and/or other relief, subject to appeal (but not a de novo trial) in a federal appeals court.

Third parties' options

State attorneys general, and rival bidders, customers, suppliers, and even competitors who satisfy antitrust standing requirements, may bring their own federal court (or conceivably even state court) litigation to challenge M&A transactions and may obtain divestitures and other structural and behavioral relief. State AGs usually coordinate with DOJ or FTC on litigation and consent decree strategy, but they may go their separate way, i.e., filing suit even though DOJ/FTC do not, or insisting on broader relief than DOJ/FTC require.

Non-governmental parties with standing are entitled to litigate and even obtain divestitures, injunctions, or damages against mergers that government enforcers decline to prevent. Given the expense involved and the high hurdles for obtaining equitable and/or monetary relief when government enforcers have permitted transactions to go forward despite objections, private suits are rare.

Third parties' best option remains that of influencing the government enforcer's prosecutorial and remedial decisions. Although private parties are rarely allowed to intervene as parties (with discovery and appeal rights) in DOJ/FTC suits and Tunney Act proceedings, their participation as

commenters and "friends of the court" in DOJ Tunney Act or FTC proceedings can sometimes make a difference. If the 2004 Tunney Act amendments (as discussed above) ultimately lead to evidentiary hearings and expert testimony, third parties will have increased opportunity to influence the outcome of DOJ litigation and settlements.

The EU clearance and litigation process summarized

Under EU Council Regulation (EEC) 139/2004 ("ECMR"), mergers and acquisitions having "a Community dimension" must be notified to and approved by the Commission. The Commission has exclusive power to decide on mergers that have the requisite Community dimension. The Commission, however, may refer a case to competition authorities in one or more Member States, if these States are better placed to examine the issues.

Once a transaction is notified, the Commission has 25 working days (plus 10 more, if the parties submit commitments) to either (i) decide the transaction falls outside the ECMR, (ii) approve the transaction with or without conditions, or (iii) open a second phase investigation.

The second phase extends the waiting period 90 working days, subject to limited further extension. A second phase investigation concludes with a Commission decision either prohibiting the transaction, clearing it unconditionally, or clearing it subject to conditions and the parties' commitments to the Commission. A Commission decision prohibiting or conditioning the transaction requires no court involvement to take effect.

Judicial Review

Commission acts that are intended to have legal force and are taken during a merger investigation are reviewable by the Community courts, namely the European Court of First Instance ("CFI") and, above it, the European Court of Justice ("ECJ"). The universe of reviewable Commission acts includes, among others, decisions approving, conditioning, or rejecting a transaction, referring cases to Member State competition authorities, and requesting information from the parties or ordering an inspection at a company's premises.

M&A Antitrust Litigation: Surprising New Twists in the EU and US

Generally, parties to a transaction prohibited or cleared subject to conditions by the Commission can institute a court challenge. However, parties to a merger approved by the Commission without conditions have been denied standing to question a non-“operative” part of the Commission’s decision.

Third parties also have standing to challenge a Commission decision if they are “directly and individually concerned” by it. In the past, the CFI has granted standing to competitors and customers of the merged entities and to bodies representing the merging parties’ employees, while minority shareholders of the merging companies have been denied this right.

The CFI can decide whether the Commission correctly applied the Community dimension jurisdictional thresholds as well as the substantive test for infringement. Additionally, the CFI can rule on procedural points, such as the Commission’s failure to grant parties access to the file or sufficient time and information to provide their views on a statement of objections preceding a formal decision.

In theory, the CFI is not supposed to rehear the merits *de novo* or substitute its findings for those of the Commission. Nonetheless, on occasion, the CFI has conducted its own in-depth economic analysis and factual interpretation in considering Commission rulings disallowing transactions and recently used its own economic analysis to overturn the Commission decision clearing the Sony/BMG joint venture.

CFI judgments can be appealed to the ECJ on points of law only, within two months of the notification of judgment. To date, only three judgments of the CFI in merger control cases have been appealed to the ECJ.

Expedited procedure instituted in 2001

The average time for a court challenge before the CFI rules is about 20 months – too long in most merger cases to be of any practical benefit to a party whose transaction was blocked by the Commission. In 2001 a special procedure was created whereby a challenger may apply for priority review, based on the particular urgency and circumstances of the case. Under this expedited procedure, the CFI is able to reach judgment in less than a year.

Interim relief still very rare

Applicants challenging a Commission decision can file an action for interim relief with the CFI. Actions for interim measures can only be requested after or at the same time as the main action is brought before the court. An applicant for interim measures needs to (i) establish the existence of a *prima facie* case for infringement; (ii) substantiate the risk of serious and irreparable harm to individuals or to the public which implies the urgent need for interim measures; and (iii) show that the granting of the interim measures will not prejudice the final decision in the main action.

This EU test has proven extremely hard to meet in merger cases. To date, applications to suspend a Commission decision approving a merger (thereby stopping the parties from executing their transaction) have never succeeded. The economic harm to the parties in delaying their transaction has proven too significant to warrant granting interim relief on the balance of convenience. There is precedent, however, for the court suspending in the interim a condition the Commission imposed in clearing a transaction.

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Referral back to the Commission

If the CFI annuls a Commission decision in whole or in part, the merger must be re-examined by the Commission in the light of current conditions. The parties would need to submit promptly a new or supplemental notification to address changes in market conditions and critical issues identified in the court's ruling.

In today's business world, where markets are in constant change and time is of the essence, the commercial rationale for a transaction (or for opposition to a transaction) may have changed during the pendency of a lengthy appeal and remand proceeding. Deals that the Commission has prohibited might no longer make business sense. And, the passage of time may make a complete review of already consummated transactions and possible new conditions unsatisfactory even to the challenger.

Conclusions

The EU's slow-paced court review procedure is less than satisfactory and seems ripe for reform. It contrasts unfavorably with aspects of the generally faster-moving US preliminary injunction and Tunney Act consent decree review processes. Both EU and US systems have the potential for the unnerving possibility of consummated transactions being reversed through subsequent government decisions, although examples are still quite rare.

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Regional Round Ups

Europe: Portugal

Portugal Telecom / Sonaecom: Merger process likely to run into 2007

According to press reports, the merger of Portugal Telecom and Sonaecom, announced in February 2006, will probably not be resolved until 2007. There are also reports that a decision by competition regulator AdC regarding Sonaecom's bid for Portugal Telecom is only expected by the end of September. Meanwhile, the European Commission (EC) has yet to take its decision on the Portuguese government's golden share in Portugal Telecom. According to an EC spokesperson, the golden share process has been ongoing for some time and has nothing to do with the takeover bid launched by listed Portuguese telecommunications company Sonaecom. The Portuguese government only owns around 500 shares in Portugal Telecom but has special privileges via its golden share such as the ability to veto decisions. Sonaecom has stated a desire to negotiate over the special powers that the government has in Portugal Telecom.

Europe / Asia Pacific: France / China

SEB and Supor Cookware confident of approval for merger despite competitors' opposition

Supor Cookware, the Zhejiang-based listed cookware producer, is confident of gaining approval for its deal with France's SEB, said Supor board secretary Ye Jide. Despite a vivid opposition from Chinese trade rival ASD, Ye does not think the announced merger plan with SEB is in conflict with the newly-issued cross-border takeover regulations. So far, Ye claimed, there is no data to demonstrate that Supor could monopolise the market after being taken over by SEB. The Supor brand would stay on the market after the acquisition. The CNY3.9bn (US\$486m) deal will require regulatory approval from the China Securities Regulatory Commission (CSRC) and the Ministry of Commerce (MOC). A source close to the deal said Supor had signed the deal with French giant SEB after the new cross-border takeover regulation was issued.

Europe: France / Italy

Suez GDF merger process rolls on despite objections

In late September the European Commission (EC) confirmed that it had received proposals for remedies from Suez and Gaz de France (GDF) in relation to the merger bid currently under investigation by the Commission. In view of the receipt of remedies, the deadline for the Commission's decision has been extended by 15 working days from 25 October to 17 November 2006. One of the remedies involves the creation of a new competitor in Belgium and in France. This company will be set up, and subsequently sold to a third party, to which the following assets will be transferred. Meanwhile the French Parliament is set to take a stance on the merger between Suez and Gaz de France on 3 October. In mid-September Jean-François Cirelli, chairman of GDF, said the parity for the projected merger with Suez "is and will be fair" the day of the merger. He did not want to comment on the widespread belief that Suez will increase the €1 exceptional dividend to satisfy shareholders. Cirelli said he regretted though that GDF's share price "does not reflect the intrinsic value of the company." GDF reported record profits for the first half. GDF's share price is still more than €4 lower than that of Suez. Cirelli also reaffirmed that the French utility group could envisage selling Belgium's SPE. He maintained, though, that it was out of the question to divest the group's transport networks.

Europe: Spain / Portugal / Germany

Commission rules that CNE in breach over handling of Endesa / E.On

The European Commission (EC) has ruled that Spanish energy regulator CNE breached article 21 of the EU Merger Regulations when imposing a number of conditions on the Endesa/E.On deal. The EC's decision is based on two points: the adoption of the CNE's decision without prior approval by the EC and the nature of the conditions themselves, which are contrary to EC Treaty rules on free movement of capital and

Regional Round Ups

freedom of establishment. As a result the Commission has required Spain to withdraw the conditions, a decision that is legally binding, and could be invoked before a national court or public authority in Spain. The commission also said it would take a further step in its infringement procedure against Spain related to the new supervisory powers given to CNE in the aftermath of the Endesa/E.On deal announcement. The EC intends to send Spain a reasoned opinion urging the country to cancel these powers which, it believes, breach the free movement of capital and the right of establishment principles. In the absence of a satisfactory reply from Spain within two months of receiving the reasoned opinion, the commission may decide to refer the matter to the European Court of Justice. According to press reports, Gas Natural has verbally approached the Spanish market regulator CNMV about the conditions of withdrawing its offer for Endesa. As previously reported, the listed German energy group E.On has presented a €27bn bid for the listed electricity company Endesa, which trumped the previous bid from Gas Natural.

Europe: Italy / Spain

Autostrade Abertis merger cleared. EU Commission might censure Italy.

The EU Competition directorate cleared the planned merger between Italian Autostrade and Spanish Abertis on 22 September. Additionally, the Commission could make a decision on whether Italy has breached article 21 of the EC Merger Regulation by the end of September. The Italian authorities previously blocked the deal in light of the transfer of Autostrade's highway concessions to the merged entity. Meanwhile, reports claim that Italian Prime Minister Romano Prodi and Spanish counterpart Jose Luis Zapatero II will discuss the merger in mid-October when Prodi visits Spain. Prodi is purportedly keen to pursue other "options" with Zapatero because he fears intervention by the EU. The merged entity of Autostrade and Abertis would have a capitalisation of €25 bn.

Europe / North America: Germany / USA

Sony BMG: EC decision expected spring 2007, Bertelsmann CFO says

The new decision by the European Commission (EC) on the joint-venture between Bertelsmann and Sony recording business is not expected before spring 2007, according to Bertelsmann's chief financial officer Dr Tomas Rabe. "We are in the process of updating our 2003 notification and plan to submit it early autumn," he told analysts in a conference call earlier this month. "We then expect a phase one and a phase two investigation which should take us up to at least spring next year." Rabe also took the opportunity of presenting the company's half-year results to say that the sale of BMG Publishing to Vivendi would be notified to the competition authorities "as soon as possible."

North America: USA / Canada

Inco/Phelps Dodge merger falls apart, Inco looks to new suitor CVRD

In early September, the sale of Inco to Phelps Dodge, an Arizona-based miner, fell apart due to a lack of shareholder support. Inco has subsequently received a bid from Brazilian miner CVRD (Companhia do Vale Rio Doce) worth a CAD 17.5bn (US\$15.8bn). According to reports CVRD has so far received regulatory clearances from the Canadian Competition Bureau and Hart Scott Rodino. The two pending regulatory approvals include both the Investment Canada Act as well as the European Commission, with the latter expected by 5 October.

Regional Round Ups

Asia Pacific: Japan

Konaka to focus on FTC filing for its Futata acquisition

Konaka, the Japanese listed menswear retailer, is now focusing on its antitrust filing for its acquisition of smaller rival, Futata. Mergers in Japan have to be cleared on antitrust grounds by the Fair Trade Commission (FTC). Konaka's general manager, Takashi Numata, asserted that the company does not expect the issue of competition to be problematic as the new entity will not have a large market share across Japan. This is attributable to the fact that Konaka's main business is in the Kanto and the metropolitan area in Greater Tokyo, whereas Futata has operations in the seven prefectures of Kyushu. However, a sector lawyer said that the FTC's decision would be dependent on how the market is defined, despite this a Tokyo based analyst does not envisage any competition issues regarding market share. The deal will have to be approved by both companies' shareholders at EGMs on 15 November, according to a spokesman. Konaka will purchase any stock from Futata's shareholders who vote against the merger plan.

North America: USA

Rambus/Hynix antitrust case stayed: Companies likely to settle

An antitrust case brought by Rambus Inc against Hynix Semiconductor Inc has been suspended by a US District Judge, following a decision by the Federal Trade Commission (FTC) against Rambus in a separate antitrust case. The court case will now resume in February 2007 at the earliest. Rambus has brought lawsuits against Hynix for alleged patent infringement and it is thought the delay could prompt the companies to settle. The FTC has already ruled that Rambus unlawfully monopolised the markets for four computer memory technologies but has yet to determine the remedy.



Other EU Antitrust Issues

European Airlines claim oil companies are fixing jet fuel prices

The 31 members of the Association of European Airlines have urged the European Commission (EC) to investigate "unfair commercial practices and monopolies in the jet fuel market". Jet fuel costs account for up to a quarter of airlines' operating costs and have risen by 37% over the past year, an increase which is larger than that of crude oil prices. This latest accusation follows a €315.4m fine for six major oil companies in Italy for market sharing arrangements in relation to airport fuel supplies.

Are Golden Shares compatible with EU law?

Golden Shares are back. The question whether golden shares are compatible with EU law erupted in the mid-nineties and has long been highly disputed between the European Commission (“Commission”) and some member states, with – unsurprisingly – diverging views. Member states are eager to protect what they claim to be their legitimate national interest in some key strategic sectors, while the Commission wants to shield the principle of free movement of capital from what it often depicts as a revamped trend towards protectionism.

In 2002-2003, the European Court of Justice (“Court”) clarified the applicable principles in five judgments and set the strict framework within which a golden share mechanism may be compatible with EU law. Contrary to wide-spread belief, golden share mechanisms are not automatically prohibited by EU law, but they must nevertheless fulfill a number of strict conditions in order to be compatible. Nowadays, the debate may well be set to start again, as the Commission scrutinizes some recent French and Italian projects.

This paper discusses (a) the scope and nature of golden share mechanisms, (b) the reasons why golden shares’ compatibility with EU law may be questioned and (c) the compatibility criteria set by the Court.

What are Golden Shares?

The concept of “Golden Share” can cover several mechanisms whose design may differ significantly but whose objective is substantially the same. Typically through a combination of statutory or regulatory provisions and the possession of a – sometimes symbolic – share in a company, golden share regimes all aim at preserving the ability of a public authority to influence strategic decisions of certain companies and/or to oppose change in control. Historically, most golden share mechanisms were put in place to accompany privatization processes in sectors such as energy, telecommunications, air transport, etc. For instance, the British government created a special “One Pound Share” in the capital of the British Airport Authority (“BAA”) in 1987. Special rights were attached to this share, including the right to give its prior consent to any disposal of substantial assets or any modification to the scope of BAA’s activity. In France, an “action spécifique” was created in 1993 alongside the privatisation of the oil company Elf Aquitaine, which rendered any significant acquisition of shares in the company’s capital subject to the French government prior express approval. However, not all golden share regimes target one specific company. In Portugal for instance, a 1994 decree was implemented to limit to 25% the share capital that



non-Portuguese could own in several Portuguese companies, which were “re-privatized” in the nineties after the wave of nationalizations that followed the Portuguese 1974 “Carnation Revolution”.

The Commission’s criticism on golden share mechanisms

Concerned by the multiplication of golden share mechanisms in many member states, the Commission published in 1997 a non binding “communication on certain legal aspects concerning intra-EU investment”. The Commission emphasizes that restrictions liable to hinder or make less attractive the exercise of fundamental freedoms guaranteed by the Treaty (such as the free movement of capital, art. 73B of the EC Treaty) must fulfill four conditions: they must be applied in a non-discriminatory manner, they must be justified by imperative requirements in the general interest, they must be suitable for securing the attainment of the objective which they pursue and they must meet the proportionality test, i.e. they must not go beyond what is necessary in order to attain this objective.

In parallel, the Commission challenged a number of national golden share mechanisms implemented in Portugal, Spain, France, United Kingdom and Belgium. The Commission’s main argument was that such mechanism, even though most of them applied without discrimination to both nationals and non nationals, infringed the Treaty provisions on the free movement of capital and did not meet the criteria for justification.

Are Golden Shares compatible with EU law?



The compatibility criteria

Out of the five regimes brought to the European Court of Justice by the Commission, only the Belgian system survived the Court's close scrutiny. In a 1994 Royal Decree, Belgium had secured a right to veto any sale of strategic assets in the sector of gas distribution, if it would adversely affect the country's "national interests". In addition, the Decree entitled the Minister in charge of energy to appoint two members to sit on the company's management board.

In June 2002, the Court ruled that the underlying justification (securing energy supplies) was a genuine issue of national interest. No valid justification could be accepted, the Court said, on the basis of mere administrative or economic considerations. Furthermore, the Court ruled that the mechanism at stake was non discriminatory, transparent, proportionate, not discretionary and subject to effective judicial review. In particular, the veto mechanism was analysed by the Court as less restrictive than that of an authorisation mechanism, because the veto right is necessarily exercised "ex post", i.e. once a specific decision is contemplated and only with respect to said decision, by contrast to an authorisation system which applies "ex ante", i.e. prior to any decision, and may apply to a broad range of possible decisions.

The Court also found that the measure was proportionate and that the Commission failed to conclusively show that alternative options, such as long term planning or a global system of licenses, would have been less restrictive. Lastly, the Court ruled that the veto right was to be exercised only in a limited number of circumstances and ought to be backed by a detailed motivation, subject to adequate judicial review. The Court therefore dismissed the Commission's claim. In all other cases, the Court endorsed the Commission's views. But the Court did so on the basis of a careful analysis on the technicalities of the measures at stake, rather than on their justification. The Court indeed found in most cases that the member states had a legitimate right to seek to protect their national interests in strategic sectors, but that the specific measures at stake were either too far-reaching or too discretionary to attain that objective. In other words, the Court mainly challenged the lack of proportionality of the measures at stake, rather than their intrinsic motivation.

Nowadays, the debate may start anew. As part of the planned Gaz de France (GDF)/Suez merger, which would imply GDF's controversial privatization, France has announced its intention to implement an apparently similar mechanism to monitor potential disposal of some strategic assets. The details of the proposed French system are not publicly known, but it is reported to have been designed along the lines of the Court's ruling in 2002. This would explain why the Commission, whose hostility towards Golden Share remains intact, has reluctantly conceded that the French project would not appear illegal. Italy has also been reported to consider implementing a golden share mechanism in Telecom Italia, but apparently with less success so far. This may mean that the debate over golden share is far from over.

Michel Debroux,
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New Regulations on the Acquisition of Chinese Enterprises by Foreign Investors

While the proposed new Antimonopoly Law of China is still moving towards the hopefully final stages of its legislative adoption, the Chinese authorities have restated and strengthened a set of fairly detailed rules and regulations (the "Regulations") regarding the regulatory approval of certain acquisitions.

The Regulations' official title is Provisions governing Acquisition of Domestic Chinese Enterprises by Foreign Investors. They entered into force on 8 September 2006, superseding the "Temporary Regulations on Mergers and Acquisitions of Domestic Enterprises by Foreign Investors" of 2003 (the "2003 M&A Regulations"). Their provisions cover a number of compliance issues, going well beyond typical merger review. Significantly, the Regulations were adopted jointly by several authorities, including the Ministry of Commerce (MOFCOM), the State Assets Supervision and Administration of Commerce, the State Administration of Taxation, the State Administration of Industry and Commerce (SAIC), the China Securities Regulatory Commission, and the State Administration of Foreign Exchange (SAFE). Several of these authorities will also be involved in the complex approval and enforcement procedures defined in the Regulations.

In one sense, the scope of the Regulations is narrower than those of the proposed Antimonopoly Law, as they only relate to the merger and acquisition of Chinese enterprises by foreign entities and have no direct implications for the merger review of other types of M&A transactions.

Briefly, the Regulations provide that a foreign investor must acquire at least 25% of a domestic enterprise's capital in order for this to qualify as a foreign-invested-enterprise (FIE), and thus enjoy preferential treatment. The main authority for the various approvals required under the Regulations will be MOFCOM, but related tasks are also allocated to the provincial commercial authorities, the SAIC (and its local branches) and the SAFE.

A substantial part of the Regulations focuses on corporate and commercial law questions relating to, for example, the legal vehicles allowed for various types of acquisitions, special rules for state assets, limits to the total amount of investment, the agreements and documentation required for equity and asset deals, etc. A discussion of these, fairly detailed, provisions falls outside the scope of this article. For present purposes, the



most important set of rules in the Regulations can be found in Chapter V, which deals specifically with antitrust review. These provisions largely replicate those already in place under the 2003 M&A Regulations, with some changes.

Article 51 of the Regulations lays down four alternative tests triggering a requirement to notify a foreign investor's acquisition of a Chinese domestic enterprise:

- (a) Annual Chinese turnover of at least 1.5bn RMB (i.e. about US\$190m), by any of the parties to the acquisition;
- (b) Acquisition, by the foreign investor, of more than ten Chinese enterprises in related industries in one year;
- (c) An existing Chinese market share of at least 20%, by any of the parties involved (i.e. not requiring an overlap); or
- (d) A combined, post-transaction, Chinese market share of at least 25%.

New Regulations on the Acquisition of Chinese Enterprises by Foreign Investors

In addition, the MOFCOM or the SAIC have the power to require, on a case-by-case basis, that a foreign investor submit a notification even if none of the above four tests is met. These two authorities must decide, within 90 days from complete notification, whether the reported transaction “may result in over-concentration, thereby harming legitimate competition and damaging the interests of consumers”. If such is the case, the authorities will not approve the transaction.

Article 53 of the Regulations lists five alternative tests triggering a filing requirement for foreign acquisitions (i.e. those concluded outside the PRC). These include:

- (a) Assets in China, by any of the parties, in excess of 3bn RMB (i.e. about US\$380m);
- (b) Annual Chinese turnover, by any of the parties, during the current year, of at least 1.5 bn RMB (i.e. about US\$190m USD);
- (c) Chinese market share of at least 20% by any one of the parties to the transaction and its affiliates;
- (d) Chinese market share post-transaction of at least 25% by any one of the parties to the transaction and its affiliates; and
- (e) the foreign acquisition will increase the number of FIEs in related industries in China, in which any one of the parties to the acquisition has a direct or indirect equity interest to at least 15.

Article 54 lists a number of conditions that the parties can rely on to apply to MOFCOM and the SAIC for an exemption from examination. Admittedly, this will not necessarily simplify the situation. The list consists of discretionary criteria, some of which would normally justify, by themselves, a separate notification process in order to be assessed in any meaningful way. Thus, the practical benefits, if any, of such a “pre-notification notification” are not obvious. Specifically, in order to be exempted from examination the parties would need to demonstrate that the transaction:

- (a) Can improve the conditions for fair market competition;
- (b) Will restructure a loss-making enterprise and secure employment;
- (c) Will introduce advanced technology, bring in management talent and enhance the international competitiveness of the enterprise; or
- (d) Will bring environmental benefits.

The above provisions, far from defining a clear and transparent framework for the assessment of mergers that would align the Chinese regime with international standards, still largely reflect a mix of different policy priorities that should have been preferably addressed through separate measures. Moreover, the confusion can only be exacerbated by certain overlaps between the provisions of Chapter V and those found in other parts of the Regulations. Thus Article 12 of the Regulations requires that “any party involved” in the acquisition of a domestic enterprise by a foreign investor must apply to MOFCOM for examination and approval, if the transaction involves the acquisition of control over the domestic enterprise and if “it involves any major industry, has or may have an impact on the state economy security or may result of the actual controlling right of the domestic enterprise owning any famous trademarks or traditional Chinese brands.” If the party concerned fails to apply to MOFCOM, the latter can block and reverse the acquisition. It is clear that if such totally open and discretionary provisions are enforced aggressively, they can be relied upon to block any major M&A acquisition by foreign enterprises in China, rendering the already weak remaining safeguards in the Regulations’ antitrust-related provisions effectively meaningless.

All in all, the Regulations’ provisions bear the hallmarks of parallel attempts by different authorities to promote different policy priorities, ranging from the business-friendly to the protectionist and discretionary. At least from an antitrust perspective, the result cannot be hailed as a material improvement. On the contrary, it serves as a reminder that the adoption of a modern and comprehensive antitrust and merger review regime in China, preferably involving as few enforcement authorities as possible, is long overdue.

**George Metaxas (Brussels) and Jun Wei (Beijing),
Hogan & Hartson**

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
AmerUS Group Co / Aviva plc (form.	1 AME = USD69.00	13 Jul 2006	31 Dec 2006	97		USA	USD-2,638m	1.52%	0.00%	5.70%
Autostrade - Co. / Abertis Infraes.	1 AUT = 1.05 AIS	24 Apr 2006	30 Nov 2006	66		Italy	EUR-13,510m	6.56%	-0.78%	36.29%
Azienda Mediter. / Azienda Energet.	1 AMG = 0.85 AEM	25 Jan 2006	13 Oct 2006	18		Italy	EUR-629m	0.72%	-1.14%	14.69%
Banca Fideuram . / Sanpaolo IMI Sp.	1 BFI = EUR5.00	05 Jul 2006	25 Oct 2006	30		Italy	EUR-4,911m	-0.20%	-0.10%	-2.43%
Banco BPI SA / Millennium BCP .	1 BPI = EUR5.70	13 Mar 2006	01 Feb 2007	129		Portugal	EUR-4,446m	-2.56%	0.17%	-7.26%
Bank Przemyslow. / UniCredito Ital.	1 BPH = 33.13 UNI	12 Jun 2005	30 Apr 2007	217		Poland	EUR-5,805m	6.36%	0.17%	10.69%
Capio AB / Opica AB	1 CAP = EUR16.5314	01 Sep 2006	04 Oct 2006	9		Sweden	EUR-1,862m	-9.66%	-0.43%	-391.87%
Denizbank AS / Dexia Group	1 DZN = EUR8.601	31 May 2006	15 Feb 2007	143		Turkey	EUR-2,447m	11.12%	3.61%	28.39%
Egnatia Bank / Laiki Group (Cy.	1 EGN = 1.209 LAI	20 Sep 2006	20 Dec 2006	86		Greece	EUR-584m	-2.92%	-3.18%	-11.96%
Elais-Unilever . / Unilever Group	1 ELU = EUR24.50	04 Sep 2006	30 Nov 2006	66		Greece	EUR-332m	-0.08%	0.00%	-0.45%
Endesa SA / Gas Natural SDG.	1 END = 0.569 GNT + EUR7.34	05 Sep 2005	27 Oct 2006	32		Spain	EUR-30,968m	-21.60%	0.50%	-246.43%
Endesa SA / E.ON AG	1 END = EUR25.405	21 Feb 2006	24 Nov 2006	60		Spain	EUR-30,968m	-13.15%	0.21%	-79.97%
Euronext NV / NYSE Group Inc	1 NXT = 0.98 NYS + EUR21.32	02 Jun 2006	01 Feb 2007	129		Netherlands	EUR-8,571m	0.42%	-1.74%	1.19%
Europistas Conc. / Isolux Corsan C.	1 EUR = EUR5.13	22 Jun 2006	04 Nov 2006	40		Spain	EUR-887m	-22.15%	0.00%	-202.16%
Europistas Conc. / Sacyr Valleherm.	1 EUR = EUR6.13	04 Aug 2006	04 Nov 2006	40		Spain	EUR-887m	-6.98%	0.00%	-63.70%
EuroZinc Mining. / Lundin Mining C.	1 EZM = 0.0952 LUN	21 Aug 2006	31 Oct 2006	36		Canada	USD-1,348m	3.27%	0.12%	33.14%
Finansbank A.S. / National Bank o.	1 FIN = EUR3.863	03 Apr 2006	31 Dec 2006	97		Turkey	EUR-2,946m	24.57%	4.05%	92.45%
freenet.de AG / mobilcom AG	1 FRE = 1.15 MOB	08 Jul 2005	23 Oct 2006	28		Germany	EUR-1,218m	3.32%	-0.97%	43.23%
Gaz de France S. / Suez SA (former.	1 GAZ = 1.00 SEZ	27 Feb 2006	23 Feb 2007	151		France	EUR-30,628m	10.50%	0.24%	25.39%
GERMANOS S.A. (. / Cosmote-Mobile .	1 GIC = EUR19.00	09 May 2006	06 Oct 2006	11		Greece	EUR-1,530m	1.28%	0.00%	42.45%
House of Fraser. / Highland Acquis.	1 HOF = GBP1.48	24 Aug 2006	08 Nov 2006	44		United Kingdom	GBP-349m	0.68%	-0.34%	5.64%
Inmobiliaria Co. / Grupo Inmocaral.	1 COL = EUR63.00	06 Jun 2006	26 Sep 2006	1	26 Sep 2006	Spain	EUR-3,758m	0.08%	0.00%	28.98%
Inmobiliaria Ur. / Construcciones .	1 IUB = EUR26.00	28 Jul 2006	27 Oct 2006	32		Spain	EUR-3,293m	0.74%	0.47%	8.40%
Intermagnetics. / Koninklijke Phi.	1 IMG = USD27.50	15 Jun 2006	28 Sep 2006	3		USA	USD-1,156m	0.84%	0.00%	102.61%
John Laing plc / Henderson Infra.	1 LNG = GBP3.55	19 Sep 2006	30 Nov 2006	66		United Kingdom	GBP-851m	-2.41%	-0.47%	-13.30%
KeySpan Corp / National Grid p.	1 KEY = USD42.00	27 Feb 2006	31 Jan 2007	128		USA	USD-7,166m	2.19%	0.00%	6.24%
London Clubs In. / Harrah's Entert.	1 LCI = GBP1.25	31 Aug 2006	04 Nov 2006	40		United Kingdom	GBP-297m	-6.02%	-0.53%	-54.89%

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
Lucent Technolo. / Alcatel SA	1 LUC = 0.1952 ALC	02 Apr 2006	31 Dec 2006	97		USA	USD-10,209m	1.62%	1.09%	6.08%
Marfin Financia. / Laiki Group (Cy.	1 MFG = 5.757 LAI	20 Sep 2006	20 Dec 2006	86		Greece	EUR-1,622m	-8.99%	-6.73%	-36.89%
Maverick Tube C. / Tenaris SA	Terms undisclosed	13 Jun 2006	05 Oct 2006	10		USA	USD-2,385m	0.63%	0.00%	23.17%
McCarthy & Ston. / Mother Bidco Li.	1 MCS = GBP10.75	01 Aug 2006	04 Oct 2006	9		United Kingdom	GBP-1,103m	0.19%	-0.19%	7.56%
Metal Bulletin . / Euromoney Insti.	1 MBU = GBP4.00	04 Aug 2006	30 Oct 2006	35		United Kingdom	GBP-226m	-2.20%	0.00%	-22.95%
Metrovacesa SA / Sacresa	1 MET = EUR78.10	01 Mar 2006	20 Sep 2006	Completed	26 Sep 2006	Spain	EUR-9,629m	-18.94%	-5.58%	N/A
Metrovacesa SA / Alteco Gestion .	1 MET = EUR80.00	05 May 2006	20 Sep 2006	Completed	26 Sep 2006	Spain	EUR-9,604m	-15.21%	-3.95%	N/A
Parquesol S.A. / Grupo San Jose	1 PAR = EUR23.10	28 Jul 2006	27 Nov 2006	63		Spain	EUR-913m	0.52%	0.04%	3.03%
Petrojarl ASA / Teekay Shipping.	1 PTR = EUR8.3819	01 Sep 2006	18 Oct 2006	23		Norway	EUR-626m	0.38%	1.41%	6.04%
PLIVA dd / Barr Pharmaceut.	1 PLV = USD142.381	10 Aug 2006	11 Oct 2006	16		Croatia	USD-2,584m	2.43%	0.00%	55.49%
Portugal Teleco. / Sonae SGPS SA	1 PTL = EUR9.50	06 Feb 2006	31 Jan 2007	128		Portugal	EUR-11,119m	-3.55%	0.20%	-10.13%
PT Multimedia S. / Sonaeocom-SGPS, .	1 PMM = EUR9.03	07 Feb 2006	31 Jan 2007	128		Portugal	EUR-2,936m	-4.95%	0.20%	-14.11%
Riunione Adriat. / Allianz AG	1 RAS = 0.1578 ALZ	12 Sep 2005	27 Oct 2006	32		Italy	EUR-14,325m	0.03%	0.30%	0.39%
Sanpaolo IMI Sp. / Banca Intesa Sp.	1 IMI = 3.115 INT	26 Aug 2006	31 Jan 2007	128		Italy	EUR-31,160m	-4.41%	1.12%	-12.59%
Scania AB / MAN AG	1 SCN = 0.151 MAN + EUR38.35	18 Sep 2006	15 Dec 2006	81		Sweden	EUR-9,846m	-2.99%	-0.83%	-13.49%
Serono Internat. / Merck KGaA	1 SRO = EUR692.42	21 Sep 2006	26 Jan 2007	123		Switzerland	EUR-9,975m	2.15%	-0.03%	6.23%
Stanley Leisure. / Genting Interna.	1 STL = GBP8.60	10 Sep 2006	07 Dec 2006	73		United Kingdom	GBP-610m	-0.58%	0.00%	-2.89%
State National . / Banco Bilbao Vi.	1 SNB = USD38.50	12 Jun 2006	03 Jan 2007	100		USA	USD-454m	1.82%	0.27%	6.66%
Texas Regional . / Banco Bilbao Vi.	1 TRB = USD38.90	12 Jun 2006	30 Nov 2006	66		USA	USD-2,107m	1.12%	0.00%	6.18%
Toro Assicurazi. / Assicurazioni G.	1 TRA = EUR21.20	26 Jun 2006	31 Oct 2006	36		Italy	EUR-3,813m	1.10%	0.29%	11.12%
Veritas DGC Inc. / Compagnie Gener.	1 VER = 0.2237 CGG + USD36.83	05 Sep 2006	29 Dec 2006	95		USA	USD-2,325m	9.13%	0.13%	35.09%
WM-Data AB / LogicaCMG PLC	1 WMD = 0.95 LOG + EURO.6069	21 Aug 2006	19 Oct 2006	24		Sweden	EUR-1,091m	1.52%	0.78%	23.06%

Source: dealReporter, as of 25/09/06

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
Adsteam Marine . / SvitzerWijismull.	1 AML = AUD2.54	03 Jul 2006	14 Feb 2007	142		Australia	AUD-627m	12.22%	0.00%	31.40%
Alinta Ltd / The Australian .	1 ALN = 0.564 AGL	13 Mar 2006	31 Oct 2006	36	21 Nov 2006	Australia	AUD-2,744m	7.08%	-0.57%	71.83%
Arab Malaysian . / Clear Goal Sdn .	1 AMC = USD0.381	17 Jan 2006	19 Dec 2006	85	14 Jan 2007	Malaysia	USD-381m	4.47%	0.11%	19.19%
Asia Financial . / Givemore Invest.	1 AFH = HKD3.50	10 Aug 2006	11 Sep 2006	Completed	21 Sep 2006	Hong Kong	HKD-4,528m	-17.71%	-1.77%	N/A
Burns, Philp & . / Rank Group Limi.	1 BPC = AUD1.10	28 Aug 2006	09 Oct 2006	14	16 Nov 2006	Australia	AUD-3,070m	1.38%	0.00%	36.04%
China National . / Air China Limit.	1 CNAC = HKD2.80	23 Aug 2006	31 Oct 2006	36	21 Nov 2006	Hong Kong	HKD-9,044m	2.56%	0.37%	26.00%
China Paradise . / GOME Electrical.	1 CNP = 0.3247 GOME + HKD0.1736	26 Jul 2006	18 Nov 2006	54	29 Nov 2006	China	HKD-5,043m	5.75%	1.50%	38.87%
Colorado Group . / ARH Investments.	1 CLG = AUD4.18	18 Jul 2006	29 Sep 2006	4	13 Oct 2006	Australia	AUD-454m	-1.05%	-1.70%	-48.02%
Daiki Co., Ltd. / Kahma Company	1 DAK = 0.4545 KAH	06 Jan 2006	01 Sep 2006	Completed	20 Oct 2006	Japan	JPY-32,797m	-0.81%	0.00%	N/A
DCA Group Limit. / CVC Capital Par.	1 DVC = AUD3.31	25 Sep 2006	31 Dec 2006	97		Australia	AUD-1,619m	2.34%	-7.04%	8.80%
Energy Partners. / Woodside Petrol.	1 EP = USD23.00	28 Aug 2006	28 Sep 2006	3		USA	USD-919m	-4.37%	0.00%	-531.18%
Equitable PCI B. / SM Investments .	1 EQUIPCI = USD1.831	29 Aug 2006	28 Sep 2006	3	02 Oct 2006	Philippines	USD-1,084m	22.76%	0.47%	2769.41%
Excel Coal Limi. / Peabody Energy .	1 EXCL = AUD9.50	06 Jul 2006	11 Oct 2006	16	25 Oct 2006	Australia	AUD-2,056m	-0.52%	-0.31%	-11.94%
Gasnet Australi. / Australian Pipe.	1 GASAG = AUD2.99	22 Aug 2006	18 Oct 2006	23	25 Oct 2006	Australia	AUD-435m	0.00%	0.00%	0.00%
GES Internation. / Venture Corpora.	1 GES = USD0.797	26 Jul 2006	31 Oct 2006	36	21 Nov 2006	Singapore	USD-569m	4.35%	0.31%	44.07%
Golden Resorts . / Sure Expert Lim.	1 GDRG = HKD1.94	26 Jul 2006	25 Sep 2006	Completed	29 Sep 2006	Hong Kong	HKD-2,340m	0.52%	-0.52%	N/A
Hana Securities. / Hana Financial .	1 HSC = 0.2445 HFG	28 Jul 2006	13 Oct 2006	18	27 Oct 2006	South Korea	USD-243m	-0.39%	-0.37%	-7.98%
Hanshin Electri. / Hankyu Holdings.	1 HER = 1.40 HHD	29 May 2006	01 Oct 2006	6	01 Oct 2006	Japan	JPY-345,539m	0.10%	0.08%	6.13%
Hardman Resourc. / Tullow Oil plc	1 HDR = AUD2.02	25 Sep 2006	20 Dec 2006	86	08 Jan 2007	Australia	AUD-1,474m	-0.49%	-54.69%	-2.09%
Homac Corporati. / Kahma Company	1 HOM = 0.636 KAH	06 Jan 2006	01 Sep 2006	Completed	20 Oct 2006	Japan	JPY-73,928m	0.78%	0.00%	N/A
I-Flex Solution. / Oracle Corporat.	1 IFLEX = INR1475.00	13 Sep 2006	25 Nov 2006	61	09 Dec 2006	India	INR-109,454m	3.14%	0.77%	18.79%
KFC Holdings (M. / QSR Brands Bhd.	1 KFCM = USD1.346	12 Sep 2006	16 Dec 2006	82		Malaysia	USD-267m	1.32%	0.11%	5.89%
Kochi Refinerie. / Bharat Petroleu.	1 KCH = 0.444 BRP	17 Jan 2005	06 Oct 2006	11		India	INR-22,626m	0.69%	-1.02%	22.83%
Komatsu Electro. / Sumco Corp (for.	1 KEM = JPY2400.00	14 Jun 2006	11 Oct 2006	16	18 Oct 2006	Japan	JPY-135,296m	-46.43%	-0.12%	-1059.15%
Malakoff Berhad. / Nucleus Avenue .	1 MLK = USD2.818	03 Jul 2006	30 Jun 2007	278		Malaysia	USD-2,362m	10.40%	0.12%	13.65%
Matrix Laborato. / Mylan Laborator.	1 MTX = INR306.00	28 Aug 2006	08 Nov 2006	44		India	INR-41,333m	13.75%	-0.02%	114.10%
Mayne Pharma Li. / Hospira Inc	1 MYP = AUD4.10	21 Sep 2006	31 Dec 2006	97		Australia	AUD-2,716m	-3.30%	-0.46%	-12.42%

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
Nisshin Fire an. / Millea Holdings.	1 NSK = 0.126 MIL	19 May 2006	30 Sep 2006	5	20 Nov 2006	Japan	JPY-97,610m	0.60%	-0.59%	44.14%
OAMPS Ltd / Wesfarmers Limi.	1 OMP = AUD4.39	05 Sep 2006	27 Oct 2006	32	17 Nov 2006	Australia	AUD-664m	0.45%	0.22%	5.09%
OYL Industries . / Daikin Industri.	1 OYL = USD1.56	18 May 2006	30 Dec 2006	96		Malaysia	USD-2,024m	2.35%	0.11%	8.93%
Premier Image T. / Hon Hai Precisi.	1 PITC = 0.2934 HHIC	20 Jun 2006	31 Dec 2006	97		Taiwan	USD-1,043m	1.67%	0.37%	6.29%
PT Energi Mega . / PT Bumi Resourc.	1 ENGM = 1.00 BUMI	15 Jun 2006	21 Dec 2006	87		Indonesia	USD-863m	29.05%	4.95%	121.87%
Quanta Display . / AU Optronics Co.	1 QTD = 0.2857 AUOC	07 Apr 2006	01 Oct 2006	6		Taiwan	USD-2,132m	1.26%	2.52%	76.61%
S8 Limited / McLaughlins Fin.	1 SEL = 1.00 MFS + AUD0.70	04 Sep 2006	15 Nov 2006	51		Australia	AUD-586m	16.46%	-2.21%	117.84%
Shanghai Port C. / Shanghai Intern.	1 SPC = CNY16.50	06 Jun 2006	29 Sep 2006	4		China	CNY-29,592m	0.61%	-0.12%	55.64%
Skylark Co., Lt. / SNC Investment .	1 SKL = JPY2500.00	07 Jun 2006	29 Sep 2006	4	06 Dec 2006	Japan	JPY-294,410m	0.20%	0.00%	18.29%
Sleeman Breweri. / Sapporo Holding.	1 SLE = USD15.7815	11 Aug 2006	02 Oct 2006	7	12 Oct 2006	Canada	USD-261m	1.34%	-0.12%	69.71%
Smorgon Steel G. / OneSteel Limite.	1 SSG = 0.4091 OST + AUD0.1236	26 Jun 2006	15 Nov 2006	51	30 Nov 2006	Australia	AUD-1,505m	8.65%	-0.57%	61.94%
Stanley Leisure. / Genting Interna.	1 STL = GBP8.60	10 Sep 2006	07 Dec 2006	73		United Kingdom	GBP-610m	-0.58%	0.00%	-2.89%
System Corporat. / Sysware Corpora.	1 SSX = 0.3117 SWR	15 Feb 2006	01 Nov 2006	37		Taiwan	USD-240m	-4.54%	0.19%	-44.82%
The Australian . / Alinta Ltd	1 AGL = 0.5771 ALN + AUD13.00	03 Mar 2006	11 Oct 2006	16	25 Oct 2006	Australia	AUD-9,652m	-7.39%	-0.02%	-168.61%
Torch Automobil. / Weichai Power C.	1 TORAUTO = 0.2833 WPCP	04 Sep 2006	31 Dec 2006	97		China	CNY-5,056m	6.53%	0.37%	24.58%
UNiTAB Limited / Tattersall's Li.	1 UTB = 4.33 TTSL	27 Mar 2006	29 Sep 2006	4		Australia	AUD-1,960m	0.90%	0.54%	81.77%
Vision Systems . / Cytoc Corporati.	1 VSL = AUD2.35	14 Sep 2006	03 Dec 2006	69		Australia	AUD-4,687m	-6.00%	0.00%	-31.74%
York Benimaru C. / Seven & I Holdi.	1 YBN = 0.88 SIHC	11 Apr 2006	01 Sep 2006	Completed	31 Oct 2006	Japan	JPY-183,299m	-9.57%	-2.43%	N/A
Zhejiang Supor . / SEB Internation.	1 ZJSC = CNY18.00	16 Aug 2006	11 Dec 2006	77		China	CNY-2,792m	13.49%	0.14%	63.96%

Source: dealReporter, as of 25/09/06

Live Deals – Americas



Deal	Terms	Ann. Date	Est. Comp	Days to comp	Sett. Date	Target Country	Target Mkt Cap (m)	Net Sprd	Change	Ann. Return
ACE Cash Expres. / JLL Partners In.	1 ACE = USD30.00	07 Jun 2006	22 Oct 2006	27		USA	USD-418m	0.64%	-0.14%	7.76%
ADE Corporation / KLA-Tencor Corp.	1 ACN = USD32.50	23 Feb 2006	30 Sep 2006	5		USA	USD-464m	1.47%	0.19%	66.95%
ADVO Inc. / Valassis Commun.	1 ADV = USD37.00	06 Jul 2006	06 Nov 2006	42		USA	USD-934m	26.76%	0.17%	217.02%
Alderwoods Grou. / Service Corpora.	1 ALD = USD20.00	03 Apr 2006	31 Dec 2006	97		USA	USD-795m	0.65%	-0.10%	2.39%
Aleris Internat. / Texas Pacific G.	1 ALR = USD52.50	08 Aug 2006	08 Feb 2007	136		USA	USD-1,567m	4.27%	0.47%	11.21%
AmerUS Group Co / Aviva plc (form.	1 AME = USD69.00	13 Jul 2006	31 Dec 2006	97		USA	USD-2,638m	1.52%	0.02%	5.53%
AmSouth Bancorp. / Regions Financi.	1 AMB = 0.7974 RFC	25 May 2006	25 Dec 2006	91		USA	USD-9,948m	1.03%	0.06%	3.98%
Andrx Corporati. / Watson Pharmace.	1 AND = USD25.00	13 Mar 2006	13 Nov 2006	49		USA	USD-1,812m	2.08%	-0.04%	14.62%
Aramark Corpora. / RMK Acquisition.	1 ARK = USD33.80	08 Aug 2006	31 Jan 2007	128		USA	USD-5,935m	2.86%	-0.06%	7.97%
ATI Technologie. / Advanced Micro .	1 ATIT = 0.2229 AMDI + USD16.40	24 Jul 2006	24 Nov 2006	60		Canada	USD-5,459m	2.26%	0.06%	13.11%
Aztar Corporati. / Columbia Sussex.	1 AZT = USD54.00	10 May 2006	28 Oct 2006	33		USA	USD-1,892m	2.00%	-0.27%	20.30%
BellSouth Corpo. / AT&T Inc (forme.	1 BSC = 1.325 ATT	05 Mar 2006	31 Jan 2007	128		USA	USD-77,728m	0.84%	0.03%	2.34%
Cambior Inc. / IAMGOLD Corpora.	1 CBR = 0.42 IDC	14 Sep 2006	31 Dec 2006	97		Canada	USD-982m	1.93%	0.15%	7.05%
Cascade Natural. / MDU Resources G.	1 CNG = USD26.50	08 Jul 2006	01 Jun 2007	249		USA	USD-298m	2.30%	-0.35%	3.32%
Commercial Capi. / Washington Mutu.	1 CCB = USD16.00	23 Apr 2006	23 Sep 2006	Completed		USA	USD-909m	0.31%	-0.13%	N/A
Commonwealth Te. / Citizens Commun.	1 CTE = 0.768 CCC + USD31.31	18 Sep 2006	31 May 2007	248		USA	USD-866m	2.09%	0.15%	3.03%
Constellation E. / Florida Power &.	1 CEG = 1.444 FPL	19 Dec 2005	02 Feb 2007	130		USA	USD-10,555m	8.26%	0.13%	22.68%
Delta & Pine La. / Monsanto Compan.	1 DPL = USD42.00	15 Aug 2006	15 Jan 2007	112		USA	USD-1,455m	3.58%	0.46%	11.35%
Duquesne Light . / Macquarie Conso.	1 DLH = USD20.00	05 Jul 2006	05 Mar 2007	161		USA	USD-1,553m	2.51%	0.26%	5.59%
Energy Partners. / Woodside Petrol.	1 EP = USD23.00	28 Aug 2006	28 Sep 2006	3		USA	USD-919m	-4.37%	0.00%	-531.18%
Esprit Energy T. / Pengrowth Energ.	1 EET = 0.53 PGET	24 Jul 2006	28 Sep 2006	3		Canada	USD-706m	-1.17%	0.37%	-71.40%
Euronext NV / NYSE Group Inc	1 NXT = 0.98 NYS + EUR21.32	02 Jun 2006	01 Feb 2007	129		Netherlands	EUR-8,425m	2.17%	2.15%	5.99%
EuroZinc Mining. / Lundin Mining C.	1 EZM = 0.0952 LUN	21 Aug 2006	31 Oct 2006	36		Canada	USD-1,349m	3.15%	-0.11%	29.51%
Excel Technolog. / Coherent Inc	1 EXC = USD30.00	21 Feb 2006	21 Oct 2006	26		USA	USD-354m	2.11%	0.66%	26.56%

Live Deals – Americas



Deal	Terms	Ann. Date	Est. Comp	Days to comp	Sett. Date	Target Country	Target Mkt Cap (m)	Net Sprd	Change	Ann. Return
Fidelity Banksh. / National City C.	1 FBI = 0.5489 NAC + USD19.75	27 Jul 2006	27 Mar 2007	183		USA	USD-985m	2.40%	0.02%	4.71%
Filenet Corpora. / IBM Corporation.	1 FIL = USD35.00	10 Aug 2006	31 Oct 2006	36		USA	USD-1,449m	0.63%	0.03%	5.92%
Fisher Scientif. / Thermo Electron.	1 FISH = 2.00 THER	08 May 2006	08 Dec 2006	74		USA	USD-9,740m	0.34%	0.07%	1.63%
Flag Financial . / Royal Bank of C.	1 FFC = USD25.50	09 Aug 2006	31 Dec 2006	97		USA	USD-423m	1.84%	0.20%	6.71%
Freescale Semic. / Freescale Acqui.	1 FSS = USD40.00	15 Sep 2006	28 Dec 2006	94		USA	USD-15,444m	5.07%	-0.06%	19.08%
Giant Industrie. / Western Refinin.	1 GII = USD83.00	28 Aug 2006	31 Dec 2006	97		USA	USD-1,185m	2.53%	0.00%	9.24%
Glamis Gold Ltd. / Goldcorp Inc	1 GLA = 1.69 GOL	31 Aug 2006	30 Nov 2006	66		USA	USD-6,299m	1.09%	0.31%	5.75%
Golden West Fin. / Wachovia Corpor.	1 GWFC = 1.0511 WC + USD18.6461	07 May 2006	07 Dec 2006	73		USA	USD-23,316m	0.79%	0.13%	3.80%
Harbor Florida . / National City C.	1 HFB = USD45.00	11 Jul 2006	11 Nov 2006	47		USA	USD-1,065m	1.44%	0.02%	10.53%
HCA Inc (forme. / HCA Acquisition	1 HCAI = USD51.00	24 Jul 2006	31 Dec 2006	97		USA	USD-20,318m	2.41%	0.00%	8.80%
Hummingbird Ltd / Open Text Corpo.	1 HUM = USD27.85	05 Jul 2006	02 Oct 2006	7		Canada	USD-483m	0.43%	0.00%	15.79%
Inco Limited / Teck Cominco Li.	1 INCO = 0.5821 TC + USD35.86	08 May 2006	08 Nov 2006	44		Canada	USD-17,329m	-6.63%	0.43%	-51.52%
Inco Limited / Cia. Vale do Ri.	1 INC = USD76.798	11 Aug 2006	11 Nov 2006	47		Canada	USD-17,312m	0.83%	-0.13%	6.07%
Interchange Fin. / TD Banknorth In.	1 IFC = USD23.00	13 Apr 2006	13 Jan 2007	110		USA	USD-460m	1.55%	-0.14%	4.99%
Intergraph Corp. / Intergraph Acqui.	1 IGC = USD44.00	31 Aug 2006	31 Dec 2006	97		USA	USD-1,260m	2.68%	-0.05%	9.80%
Intermagnetics . / Koninklijke Phi.	1 IMG = USD27.50	15 Jun 2006	28 Sep 2006	3		USA	USD-1,156m	0.84%	-0.15%	51.31%
Internet Securi. / IBM Corporation.	1 ISI = USD28.00	23 Aug 2006	31 Dec 2006	97		USA	USD-1,217m	0.79%	-0.11%	2.89%
IntraWest Corpo. / Fortress Invest.	1 IWC = USD35.00	11 Aug 2006	11 Oct 2006	16		Canada	USD-1,668m	1.36%	0.06%	26.15%
KeySpan Corp / National Grid p.	1 KEY = USD42.00	27 Feb 2006	31 Jan 2007	128		USA	USD-7,166m	2.19%	0.12%	6.10%
Kinder Morgan, . / Kinder Morgan (.)	1 KM = USD107.50	28 Aug 2006	28 Feb 2007	156		USA	USD-14,003m	2.87%	0.01%	6.59%
Lipman Electron. / VeriFone Holdin.	1 LEE = 0.50 VHI + USD14.304	10 Apr 2006	31 Oct 2006	36		Israel	USD-798m	1.41%	0.05%	13.24%
Lone Star Steak. / Lone Star Funds	1 LSS = USD27.10	18 Aug 2006	31 Dec 2006	97		USA	USD-575m	-2.52%	-1.64%	-9.19%
Lucent Technolo. / Alcatel SA	1 LUC = 0.1952 ALC	02 Apr 2006	31 Dec 2006	97		USA	USD-10,209m	0.52%	-0.65%	1.91%
Matrix Laborato. / Mylan Laborator.	1 MTX = INR306.00	28 Aug 2006	08 Nov 2006	44		India	INR-41,333m	13.75%	-0.02%	114.10%

Live Deals – Americas



Deal	Terms	Ann. Date	Est. Comp	Days to comp	Sett. Date	Target Country	Target Mkt Cap (m)	Net Sprd	Change	Ann. Return
Maverick Tube C. / Tenaris SA	1 MAV = USD65.00	13 Jun 2006	05 Oct 2006	10		USA	USD-2,385m	0.63%	0.03%	17.82%
McDATA Corporat. / Brocade Communi.	1 MCD = 0.75 BCS	08 Aug 2006	07 Feb 2007	135		USA	USD-744m	4.88%	0.21%	12.90%
Mercury Interac. / Hewlett-Packard.	1 MIC = USD52.00	25 Jul 2006	31 Oct 2006	36		USA	USD-4,373m	2.97%	0.30%	27.80%
Michaels Stores. / Michaels Stores.	1 MS = USD44.00	30 Jun 2006	31 Dec 2006	97		USA	USD-5,835m	1.80%	0.02%	6.59%
Mission Oil & G. / Crescent Point .	1 MOG = 0.695 CPE	11 Sep 2006	01 Dec 2006	67		Canada	USD-428m	5.30%	-0.66%	27.62%
MRO Software, I. / IBM Corporation.	1 MRO = USD25.80	03 Aug 2006	15 Oct 2006	20		USA	USD-659m	0.51%	-0.08%	8.04%
M-Systems Flash. / SanDisk Corpora.	1 MSF = 0.7637 SDC	31 Jul 2006	31 Dec 2006	97		Israel	USD-1,587m	1.50%	0.10%	5.46%
NCO Group Inc / Collect Holding.	1 NCO = USD27.50	24 Jul 2006	24 Nov 2006	60		USA	USD-848m	4.48%	-0.08%	25.97%
North Fork Banc. / Capital One Fin.	1 NOF = 0.2216 CONE + USD11.25	12 Mar 2006	12 Dec 2006	78		USA	USD-13,038m	0.29%	-0.07%	1.31%
NorthWestern Co. / Babcock & Brown.	1 NWC = USD37.00	25 Apr 2006	01 Feb 2007	129		USA	USD-1,245m	5.74%	0.11%	15.88%
NovaGold Resour. / Barrick Gold Co.	1 NOVA = USD14.50	24 Jul 2006	24 Oct 2006	29		Canada	USD-1,143m	-7.41%	-0.42%	-84.49%
NS Group Inc. / Ipsco Inc.	1 NSG = USD66.00	11 Sep 2006	31 Dec 2006	97		USA	USD-1,448m	2.47%	-0.03%	9.01%
Pacific Energy . / Plains All Amer.	1 PAC = 0.77 PLAIN	12 Jun 2006	12 Dec 2006	78		USA	USD-1,083m	0.83%	0.04%	3.76%
Peach Holdings / Orchard Acquisi.	1 PEACH = GBP3.85	12 Sep 2006	31 Dec 2006	97		USA	GBP-391m	2.67%	0.00%	9.73%
Peoples Energy . / WPS Resources C.	1 PEC = 0.825 WRC	10 Jul 2006	10 Mar 2007	166		USA	USD-1,526m	0.57%	0.00%	1.23%
PETCO Animal Su. / Petco Acquisiti.	1 PET = USD29.00	14 Jul 2006	14 Dec 2006	80		USA	USD-1,634m	1.47%	0.00%	6.46%
Petrojarl ASA / Teekay Shipping.	1 PTR = EUR8.3819	01 Sep 2006	18 Oct 2006	23		Norway	EUR-635m	-1.03%	-1.00%	-14.42%
PLIVA dd / Barr Pharmaceut.	1 PLV = USD142.381	10 Aug 2006	11 Oct 2006	16		Croatia	USD-2,584m	2.43%	-0.37%	46.73%
Premium Standar. / Smithfield Food.	1 PSF = 0.678 SMF + USD1.25	18 Sep 2006	18 Mar 2007	174		USA	USD-617m	2.42%	0.16%	4.98%
Reckson Associa. / SL Green Realty.	1 RAR = 0.1039 SLGR + USD31.68	03 Aug 2006	31 Jan 2007	128		USA	USD-3,572m	0.61%	0.00%	1.71%
Republic Bancor. / Citizens Bankin.	1 RBI = 0.4378 CBC + USD2.08	27 Jun 2006	31 Dec 2006	97		USA	USD-1,002m	1.77%	-0.10%	6.46%
Reynolds and Re. / Universal Compu.	1 RRC = USD40.00	08 Aug 2006	08 Dec 2006	74		USA	USD-2,502m	1.21%	0.05%	5.76%
Royal Group Tec. / Georgia Gulf Co.	1 RGT = USD11.609	09 Jun 2006	30 Sep 2006	5		Canada	USD-1,075m	0.94%	-0.23%	42.92%
Ryan's Family S. / Buffets Inc.	1 RYAN = USD16.25	25 Jul 2006	25 Nov 2006	61		USA	USD-670m	1.82%	0.13%	10.36%

Live Deals – Americas



Deal	Terms	Ann. Date	Est. Comp	Days to comp	Sett. Date	Target Country	Target Mkt Cap (m)	Net Sprd	Change	Ann. Return
Sears Canada In. / Sears Holdings .	1 SCD = USD16.074	05 Dec 2005	31 Dec 2006	97		Canada	USD-1,915m	-10.18%	0.93%	-37.16%
Sizeler Propert. / Revenue Propert.	1 SPI = USD15.10	18 Aug 2006	08 Nov 2006	44		USA	USD-329m	-1.88%	-0.06%	-14.63%
Sizeler Propert. / Compson Holding.	1 SPI = USD16.10	05 Sep 2006	08 Nov 2006	44		USA	USD-329m	4.61%	-0.07%	35.83%
State National . / Banco Bilbao Vi.	1 SNB = USD38.50	12 Jun 2006	03 Jan 2007	100		USA	USD-455m	1.56%	0.00%	5.52%
Stone Energy Co. / Energy Partners.	1 SEC = 1.0087 ENP + USD26.101	25 May 2006	25 Sep 2006	Completed		USA	USD-1,114m	21.76%	0.31%	N/A
Summit Bancshar. / Cullen/Frost Ba.	1 SBI = 0.2933 CFBI + USD11.50	03 Jul 2006	18 Nov 2006	54		USA	USD-352m	1.52%	0.10%	9.70%
Symbol Technolo. / Motorola, Inc	1 STI = USD15.00	19 Sep 2006	15 Jan 2007	112		USA	USD-3,721m	2.46%	0.00%	7.80%
Texas Regional . / Banco Bilbao Vi.	1 TRB = USD38.90	12 Jun 2006	30 Nov 2006	66		USA	USD-2,107m	1.12%	0.24%	5.91%
Texas United Ba. / Prosperity Banc.	1 TUB = 1.00 PBI	19 Jul 2006	19 Feb 2007	147		USA	USD-352m	2.80%	-1.22%	6.82%
TriPath Imaging. / Becton, Dickins.	1 TPI = USD9.25	08 Sep 2006	08 Dec 2006	74		USA	USD-348m	2.21%	-0.11%	10.48%
Univision Commu. / Univision Acqui.	1 UVC = USD36.25	27 Jun 2006	31 May 2007	248		USA	USD-10,514m	5.50%	0.03%	8.00%
Veritas DGC Inc. / Compagnie Gener.	1 VER = 0.2237 CGG + USD36.83	05 Sep 2006	29 Dec 2006	95		USA	USD-2,325m	9.00%	-0.33%	33.52%
Viceroy Explora. / Yamana Gold Inc	1 VICE = 0.97 YAM	17 Aug 2006	13 Oct 2006	18		Canada	USD-465m	0.25%	-0.47%	4.42%
West Corporatio. / Omaha Acquisiti.	1 WC = USD48.75	31 May 2006	15 Nov 2006	51		USA	USD-3,407m	0.87%	0.00%	5.87%

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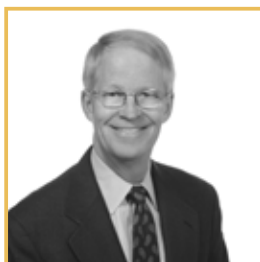
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