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In association with Hogan & Hartson LLP

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Contents

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Foreword

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

This report aims to supply an update on 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 Marceline Tournier of Hogan & Hartson gives a round up of the key European M&A antitrust issues in 2006 in terms of deals and legislative changes. Likewise, on page 12 Joseph Krauss, Hogan & Hartson partner, sums up the major North American antitrust issues from this year. Meanwhile Sandra Pointel, dealReporter's regulatory correspondent, profiles Ryanair's hostile bid for Aer Lingus and the subsequent antitrust issues that have arisen at EU level. Also in this edition of the newsletter are mergermarket regional round ups of various antitrust issues across the globe, which can be found on page 18.

In the final article of this edition on page 22, Hogan & Hartson Antitrust Chair, Philip Larson, examines the Department of Justice's probe and related private litigation regarding private equity firm "club deals" and other "going private" transactions.

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

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European M&A Antitrust: A Round-up of 2006

Merger Decisions

Increased merger and acquisition activity in Europe led to a number of interesting European Commission (Commission) merger decisions reviewed pursuant to the EC Merger Regulation (ECMR).

O2/Telefónica

On 10 January 2006, the Commission cleared the proposed acquisition by the UK mobile telecommunications operator O2, of the Spanish fixed and mobile telecommunications operator Telefónica, after a first phase (Phase I) investigation. The clearance was subject to behavioural remedies in respect of international roaming services.

Telefónica was a member of the international roaming services alliance, FreeMove, along with three other of the largest EEA incumbents France Télécom (Orange), Telecom Italia (TIM) and Deutsche Telekom (T-Mobile).

O2 was a member of the Starmap alliance, along with smaller network operators.

The Commission was concerned that the acquisition would result in O2 moving to FreeMove or aligning its behaviour with FreeMove, resulting in reduced opportunities for Starmap members and independent network operators to exchange roaming traffic in Germany and the UK, which could lead to increased prices.

Telefónica committed to leave the FreeMove alliance, and undertook to not rejoin FreeMove without the Commission's prior consent.

The Commission's focus on roaming alliances was surprising to some industry commentators, particularly as the future of these alliances and their role in the marketplace may be difficult to predict.

Adidas/Reebok

The Commission approved the acquisition of the US Reebok by the German Adidas–Salomon on 24 January 2006, after a Phase I investigation.

The two parties are global suppliers of sports and leisure equipment, footwear and clothing. The Commission was not concerned by the creation of a leading European and worldwide group because the parties would face significant competitors with strong brands and market shares.

E.ON/Endesa

The Commission cleared E.ON's public takeover bid for Endesa in a Phase I decision on 25 April 2006.

E.ON, headquartered in Germany, was active in the generation, transmission and supply of electricity and gas in Europe (but not Spain) and the United States. The Spanish electricity operator Endesa, was active in Portugal, France, Italy, Germany, South America and North Africa. Endesa was also active in the Spanish gas sector.

The Commission's market investigation indicated that relevant energy markets remained predominately national.

The Commission did not identify any competition concerns on the basis that E.ON was not a likely entrant in Spain, and any increases in overlapping electricity market shares were minor.

The Commission's relatively straightforward clearance of this takeover was in stark contrast to the controversial involvement and role of the Spanish authorities in their attempts to frustrate and complicate the takeover.

T-Mobile Austria/tele.ring

The Commission cleared T-Mobile Austria's proposed acquisition of the Austrian mobile telephone operator tele.ring on 26 April 2006 after an in-depth (Phase II) investigation, on the condition that the combined entity would divest certain tele.ring UMTS frequencies and mobile telephony sites.

The Commission found that the proposed acquisition would lead to the significant impediment of competition in the Austrian market for the provision of mobile telephony services to final consumers.

T-Mobile and tele.ring were the number two and four players out of a total of five Austrian mobile network operators. The leading player was Mobilkom.

The Commission noted that tele.ring was a particularly active competitor in respect of price, and exerted considerable pressure on T-Mobile and Mobilkom. This decision is an interesting example of the Commission identifying a "maverick", whose impact on competition may be substantially more significant than its market position. The Commission also noted that the removal of tele.ring from the market would lead to two remaining large comparably sized network operators (T-Mobile and Mobilkom).

T-Mobile agreed to divest UMTS frequencies and mobile telephone sites to smaller competitors, including two UMTS frequencies to the new entrant, H3G (a subsidiary of Hutchinson). The divestiture to H3G as aimed at enabling it to compete in Austria without relying on a national roaming agreement with Mobilkom.

Inco/Falconbridge

Following a Phase II investigation and an agreed divestiture package, the Commission approved Inco's proposed acquisition of Falconbridge on 4 July 2006.

Inco and Falconbridge are Canadian companies active in the mining, processing, refining and sale of various metals, including nickel and cobalt.

The Commission identified concerns in respect of the supply of nickel in the EEA to the plating and electroforming industry, and the supply of high purity nickel used in super alloys and high purity cobalt for super alloys used in safety critical parts (e.g. for aircraft engines) on the global markets. The Commission concluded that the elimination of a main alternative supplier in the relevant sectors would decrease customer choice and could lead to increased prices.

The Commission noted that claimed upstream market efficiencies were unlikely to be passed downstream to customers.

The parties agreed to sell Falconbridge's Nikkelverk refinery in Norway with related assets to LionOre, an international mining company already active in the nickel sector. The Commission approved LionOre as a purchaser, on the basis that it would become an independent and viable competitor in the nickel and cobalt sectors.

Alcatel/Lucent

The Commission cleared the proposed merger of the French company Alcatel and the US firm Lucent Technologies pursuant to a Phase I decision on 24 July 2006. No commitments were required.

Both undertakings were active in the supply of telecommunications equipment and services to worldwide communications network operators.

In particular, the Commission reviewed the impact of the potential merger on the supply of optical networking products which are used for long distance transmission, and broadband access solutions.

The Commission determined that despite the significant combined market shares post merger, these product areas would remain competitive due to the presence of the remaining effective competitors, and the countervailing buyer power of the network operator customers. The presence of countervailing buyer power is typical of bidding markets.

Gas de France/Suez

Pursuant to a Phase II investigation and a substantial remedies package, the Commission cleared the merger of Gaz de France (GDF) with Suez on 14 November 2006. The agreed remedies were consistent with the aims of the Commission's ongoing energy sector inquiry (see below), which has highlighted the need for ownership unbundling, and separation of supply and infrastructure in the electricity and gas sectors.

GDF is the incumbent gas operator in France, and had joint control of SPE, the second largest player in the Belgian gas and electricity market. In Belgium Suez was the incumbent gas operator (Distrigaz) and electricity operator (Electrabel), and controlled gas infrastructure (Fluxys). In France, Suez was a new entrant in the gas and electricity sectors.

The Commission initiated a Phase II investigation in June 2006, as it had identified significant competition concerns. The merged entity would combine the supply activities of the two main Belgian gas and electricity operators, combine two out of the three main French gas operators, control the majority of French and Belgian gas imports, and control essential infrastructure.

The Commission identified a number of concerns in France and Belgium, including the removal of the competitive force which the parties had increasingly exerted upon each other, and the structure and integration of the gas and electricity sectors.

The remedies package included Suez's divesture of Distrigaz to a third party to be approved by the Commission, GDF's divesture of its 50% shareholding in SPE, the reorganisation of Fluxys and relinquished control over the Fluxys regulated activities. It also included a number of other commitments including investment projects.

Sector Inquiries

The Commission launched a number of sector inquiries in 2005, pursuant to Article 17 of Regulation 1/2003, and these inquiries have progressed in 2006.

Energy Sector Inquiry Update

The Commission launched its inquiry into competition in the gas and electricity sectors in 2005.

A preliminary report was published on 16 February 2006 identifying market concentration at the wholesale levels, vertical foreclosure preventing new entry, limited cross-border trade and lack of information transparency.

The final report with potential legislative, structural and enforcement recommendations is expected in early 2007.

Financial Services Sector Inquiry

The Commission opened inquiries in 2005 into the retail banking sector, focusing on market fragmentation and barriers to competition, and the business insurance sector, focusing on characteristics of the sector, the behaviour of market players including the nature of horizontal and vertical relationships and barriers to market entry.

The Commission split out the retail banking sector inquiry into (1) current accounts and related services, and (2) payment cards, and published interim reports on 17 July 2006 and 12 April 2006, respectively.

The interim reports set out the results of the Commission's factual findings and understanding of the industries and invited comments thereon. The interim report on payment cards focused comparatively more on profitability and revenues.

In 2006 the Commission conducted its fact finding exercise into business insurance.

Policy Reviews

During the course of 2006, the Commission progressed its reform of state aid and Article 82 of the EC Treaty.

State Aid Review

State aid refers to benefits provided directly or indirectly by a national, regional or local government to companies. In certain circumstances state aid is viewed as anti-competitive as it may give a company an unfair competitive advantage. State aid can take a number of forms including direct grants, tax breaks and loan guarantees.

In February 2006, the Commission published the results of its consultation on the State Aid Action Plan (launched in June 2005), which aims to reform state aid rules in order to improve administration and procedures, and introduce a more economic based approach.

On 19 July, the Commission adopted Risk Capital Guidelines which provide guidance on when state aid for risk capital investment in small and medium sized enterprises (SMEs) will be compatible with state aid rules. The guidelines capture joint funding by the state and private investors in SMEs who are at an early stage of development. These guidelines form part of a wave of measures intended to reflect a more refined economic balance, and simplify the application of state aid rules.

On 24 October 2006 the Commission adopted a new "block exemption regulation" on regional investment state aid, which will apply from 1 January 2007. The Commission considers block exemption regulations useful tools for reducing administrative burden on Member States and the Commission. The regional investment block exemption seeks to simplify notification procedures and exempt a greater number of regional investment aid schemes.

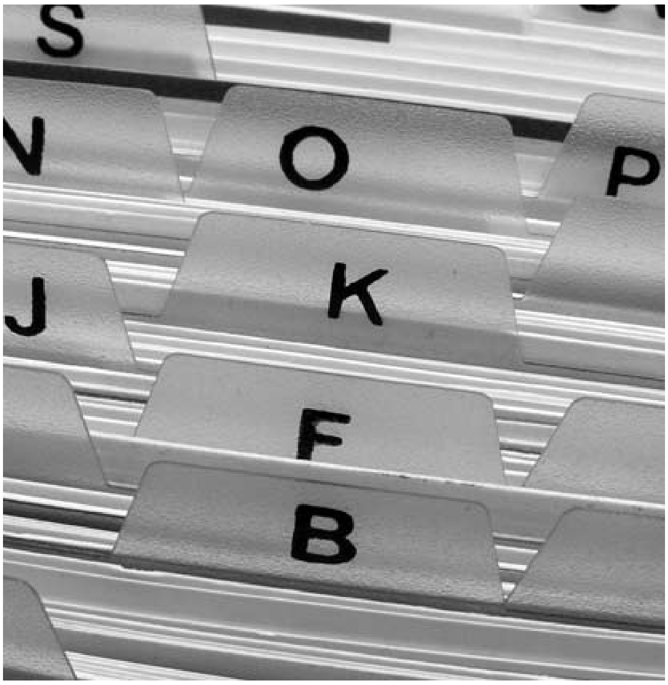
On 22 November 2006, the Commission adopted a new framework to clarify how Member States may provide aid to research, development and innovation projects without infringing state aid rules.

Other legislation is also being reviewed, such as the de minimis regulation which exempts state aid below a defined threshold.

Article 82 Review

In 2005, the Commission began a review of Article 82, the EC Treaty provision dealing with abuses by dominant companies resulting in the exclusion of competition. The Commission's review focuses on abusive conduct that aims to exclude competitors from the market (exclusionary conduct) and does not yet cover so-called "exploitative" or discriminatory abuses.

The Commission progressed its review in 2006, including holding a public hearing in June 2006. The Commission aims to introduce a more economics based approach to Article 82 enforcement but its proposed approach as regards certain types of potentially exclusionary conduct, such as fidelity rebates, remains controversial. Furthermore, the Commission can only review the application of Article 82, but it cannot revise its normative content. Therefore, the results of the Commission's review remain subject to the European Courts' own interpretation of Article 82 in future, and this will not necessarily coincide with that of the Commission.



Legislative Developments

Draft Jurisdictional Merger Control Guidance

On 28 September 2006, the Commission launched a public consultation on draft guidelines (notice) clarifying the Commission's current practices when dealing with merger control jurisdictional issues.

Where concentrations (mergers) meet defined financial thresholds and other criteria, these must be notified to the Commission pursuant to the ECMR.

Once adopted, the new notice will replace the four individual 1998 notices on what constitutes a notifiable concentration, what constitutes a notifiable full function joint venture, which undertakings to consider when assessing a notifiable concentration, and the calculation of turnover for determining whether a concentration meets the ECMR financial thresholds.

The draft notice aims to be more user-friendly, and to reflect case law development on jurisdictional issues and changes resulting from the revision of the ECMR in 2004.

The Commission aims to finalise and adopt the notice towards the beginning of 2007.

New Leniency Notice

On 7 December 2006, the Commission adopted a revised notice on immunity from and reduction of fines in cartel cases. The leniency notice came into force on 8 December 2006.

The new notice introduces a number of changes including clarity on the information and evidence required for leniency applications, clarification on the level of continuous cooperation required and the preservation of information, the introduction of a discretionary marker system whereby an applicant's place for leniency may be preserved whilst it searches for the requisite evidence (the level of immunity is usually determined by the order of applications with a competition authority), and procedures for protecting the disclosure of corporate statements given by companies under the leniency notice from claimants pursuing civil damages.

The leniency notice does not clarify the overlapping roles of the Commission and the national competition authorities in pursuing cartels and accepting leniency applications. Companies need to consider all applicable competition authorities when contemplating a leniency application.

New Guidelines for Fines for Cartel Activities

The Commission adopted new guidelines for setting fines for companies found guilty of participating in cartel activities contrary to Article 81 EC Treaty (Article 81), on 28 June 2006.

The new guidelines replace the 1998 guidelines and aim to increase the deterrent effect of fines.

Pursuant to Regulation 1/2003, companies infringing Article 81 may be fined up to 10% of their total preceding year's turnover. Within this limit, the new guidelines allow for fines up to 30% of a company's annual sales to which the cartel activity relates to, multiplied by the number of years the infringement took place.

The Commission may also add a so-called "entry fee", based on 15–25% of relevant yearly sales, for "entering" the cartel in the first place.

The guidelines also provide for increased fines up to 100% for "repeat offenders", taking into account past Commission infringement decisions, as well as Member State infringement decisions. While the effect of the new guidelines will vary on the facts of each cartel, they are generally expected to lead to a significant increase of fines in EU cartel cases.

By Marceline Tournier, Hogan & Hartson, London

Aer Lingus/Ryanair: A Tumultuous Irish Affair

The hostile bid by Irish low-cost airline Ryanair for incumbent Aer Lingus has sparked an outcry in Ireland. Since the launch of the €2.80 per share, the Irish government, which has 25.1% stake in Aer Lingus, has strongly opposed the deal, saying a combination of the two would impede competition since the companies would have around 70% of the UK/Ireland market between them. The European Commission is currently looking at the deal and, although the Irish Competition Authority (ICA), did not ask for a referral, the government raised its concerns at EU level.

Ryanair's offer now runs until 22 December but, as it stands, the deal is very unlikely to be successful. The company disclosed on 6 December it had received acceptances from less than 1% of Aer Lingus' shareholders and indicated that it would neither grant further extension nor increase its offer. Ryanair chief executive Michael O'Leary previously said that if its offer does fail, the company would keep its 20% stake and exert whatever power it can. Despite opposition from major shareholders, including the government and the Employee Share Ownership Trust (ESOT), which owns 12.58% of Aer Lingus, it has been suggested that Ryanair would not let its offer lapse to wait for the outcome of the EC review. The postponement of the offer period followed the Commission's decision to push back its own deadline to 20 December after Ryanair offered remedies. It has been suggested that an approval by the EC could be key if the low-cost company wanted to re-bid after a 12 month waiting period. Indeed, Ryanair held an EGM for its shareholders on 14 December to approve its bid for Aer Lingus and received the green light to launch a new offer for Aer Lingus.

Despite claims by politicians, competition experts familiar with the industry have suggested the deal could be cleared at phase one if Ryanair offer the right concessions upfront. So far, merger transactions in the airlines sector have tended to be cleared at phase one – even Air France/KLM, which was not an easy deal. Furthermore, the Aer Lingus/Ryanair tie-up is unlikely to raise as many significant issues as other mergers in the same sector, as long haul slots are not an issue, and problems with short hauls can be solved with remedies. These would likely focus on surrenders of slots, a widely-used remedy in airlines mergers, where remedies are mainly behavioural because structural ones are not readily available in the sector.

One key element in the Commission's competition analysis of an airlines merger is that the focus is on worldwide routes rather than market shares. Such an approach relates to the nature of the business, which depends very much on the traffic and, as a result, high market shares do not necessarily mean leverage. The EC looks at the market in terms of origin and destination for city pairs rather than the sizes of the airline. Previous assessments have also shown that although market shares are important, some deals have been cleared in the past even when they had high market shares.

One option would be for the Commission to allow the merger on condition that the parties agree to divestiture of slots if a competitor wanted to start a new route or increase its services in those markets where the deal leads to concerns. In the alliance between Lufthansa and Austrian Airlines, for example, the Commission had found that, on some of the routes, the parties would have 100% of the market. While the EC accepted that part of these routes were too small for an extra carrier to come in, it imposed a pricing remedy. This saw the companies committed to reduce fares on certain routes where they did not face any competition to an extent similar to the fare reduction on city pairs where rivals started operations.

Aer Lingus/Ryanair: A Tumultuous Irish Affair

The Commission looks at the airline market on a point-of-origin to point-of-destination basis. Overlaps are likely to be found at airports to and from Ireland since both companies fly from Shannon and Dublin where there is only one airport and the focus will be on European routes since Ryanair does not cover transatlantic journeys. Once the Commission has identified overlapping routes, it sets its market definition and analyses other services that compete with that route to impose remedies. The Commission would look at competition between airports and see whether they are close enough to compete. Ryanair tends to fly to airports for cheap airlines and sometimes organises bus transfers where other transportation is not available. The Commission will look at the regional airports that Ryanair flies to and assess how easy it is to access the main city from them.

Traditionally, the Commission has been differentiating between time-sensitive passengers, such as business passengers, who are ready to pay higher prices, and those who are willing to accept longer routes if the prices are lower. However, this differentiation is less the case now as the two categories have moved together and all passengers are more price-sensitive. In the Lufthansa/Eurowings merger, the Commission has accepted that even for business passengers, low cost operators can be an alternative.

Additionally, following 9/11 and the subsequent downturn in the industry, traditional airlines have moved towards offering low cost services. Aer Lingus, which has moved to low cost operations, provides a good example of such trend. As a result, Aer Lingus and Ryanair's business models have become much closer and it will be difficult for the low-cost company to argue differences in services.

Although, remedies offered by Ryanair have not been disclosed yet, the London to Dublin routes where Ryanair flies to Luton, Gatwick and Stansted while Aer Lingus goes only to Heathrow, have come up as an issue. Aer Lingus disclosed that Ryanair had offered concessions based on the surrender of slots to prospective new entrants, including slots at London Heathrow Airport and elsewhere controlled by Aer Lingus.

However, the Irish government could well be in position to limit Ryanair's room to manoeuvre in its negotiations with the EC. Indeed, the government, which in the past stated it considered that the slots at Heathrow were vital for Ireland's access to the outside world, has the means to oppose any divestment on these or any other slots by Aer Lingus. According to Aer Lingus articles of association, any shareholders which hold more than 20% of the company can convene an EGM to consider proposed disposals. The Irish government with its 25% stake has sufficient shares to request a vote on the divestment of slots at Heathrow and veto any changes to Aer Lingus' articles of association. The Irish Minister of Finance, which is advised by the Ministry of Transport, clearly indicated on 2 October that it "would unlikely support a proposed disposal of any 'slot pair' relating to services between London Heathrow and Dublin that would result in the interval between air services operated using slots on this route exceeding 90 minutes. Moreover, it is likely to request an EGM to consider such proposal. The Ministry of Finance would only need 5% more than its own holding to block the motion to sell the slots at an EGM.

Aer Lingus/Ryanair: A Tumultuous Irish Affair

Aer Lingus, which argued that the remedies offered by Ryanair did not address the issues of dominance at Dublin airport and the elimination of competition between the two companies, believes "the Irish legal and regulatory restrictions prevent Ryanair from offering any remedies affecting Aer Lingus without the support of minority shareholders." In addition, there are restrictions on disposing of the Heathrow slots in Aer Lingus' articles of association. This means Ryanair cannot offer Heathrow slots as remedies if the Minister of Finance and the ESOT do not support the proposals, it added. It has been suggested that the Commission could then require disposals on Ryanair's Dublin to London routes, which could be unprofitable for Ryanair.

Another blow to Ryanair could be for the Commission to rule that it does not have jurisdiction for the deal although this appears unlikely at this stage. A review by national authorities, including the ICA, may not play in favour of Ryanair and could help Aer Lingus to escape the acquisition. The jurisdictional uncertainty, which the EC has up to 20 December to rule on, came up after Aer Lingus provided data claiming that national competition authorities should be looking at the deal. According to competition experts, turnover calculations for the jurisdictional assessment are usually a black and white exercise but disputes can arise in hostile takeovers as the target will often try to find ways to fend off the unwanted approach. An argument about jurisdiction will be seen as particularly worthwhile when one competition authority is seen more likely to be stricter on the deal than another.

A previous dispute on whether the Spanish competition authority or the EC had jurisdiction over the deal between energy companies Endesa and Gas Natural provides a good example of this. While the deal had been notified in Spain, the target Endesa, which expected the Commission to be tougher on the deal, had submitted new figures, alleging the transaction should be considered at EU level. The Commission eventually had to recognise it could not use these new accounts, no matter how much it would have liked to look at the deal.

As for the Aer Lingus/Ryanair deal, observers are adamant there will be no room for discretion in the Commission's decision on the jurisdiction, even if the authority is in favour of consolidation in the airlines sector. Moreover, the EC will be well aware that whatever decision it takes on the matter, its ruling could be appealed at the European Court of Justice as happened with Endesa/Gas Natural situation.

By Sandra Pointel, additional reporting by Alex Cain

United States M&A Antitrust: A Round-up of 2006

The US antitrust authorities have had an active year with respect to merger enforcement and policy. Although the number of enforcement actions was lower than in previous years, the agencies addressed several significant mergers by requiring divestitures or other affirmative relief. However, the agencies also cleared several significant deals without any relief. Filings in the US have increased in the last few weeks and so 2007 may be considerably more active. Below is a summary of the principal merger actions by both the Department of Justice and the Federal Trade Commission.

Key Mergers

FTC Required Divestitures to Allow Teva's $7.4bn Acquisition of IVAX

Under a consent agreement announced January 23, 2006, the Federal Trade Commission allowed Teva Pharmaceutical Industries Ltd.'s (Teva) acquisition of IVAX Corporation (IVAX), provided the companies sold the rights and assets needed to manufacture and/or market 15 generic pharmaceutical products. The order required that the products be divested to two firms, Par Pharmaceutical Companies, Inc. (Par) and Barr Pharmaceuticals, Inc. (Barr). Among the drugs sold are several forms of generic amoxicillin and amoxicillin clavulanate potassium that are widely used in the United States.

FTC Allows Fresenius' $3.5bn Deal to Buy Rival Dialysis Provider Renal Care Group

Fresenius AG agreed to sell 91 outpatient kidney dialysis clinics and financial interests in 12 more to settle Federal Trade Commission charges that Fresenius' purchase of rival dialysis provider Renal Care Group, Inc. would violate federal antitrust laws. Upon completion of the deal, Fresenius became the largest provider of outpatient dialysis services in the United States.

Department of Justice Closed its Investigation of Whirlpool's Acquisition of Maytag and Cleared the Deal Without Conditions

On March 29, 2006, the Department of Justice's Antitrust Division issued a statement announcing the closing of its investigation of the proposed acquisition by Whirlpool Corporation (Whirlpool) of Maytag Corporation (Maytag). The DOJ stated that the Division determined that the proposed transaction was not likely to reduce competition substantially, citing strong rival suppliers with the ability to expand sales significantly and large cost savings and other efficiencies that Whirlpool appeared likely to achieve from the transaction.

FTC Required Asset Divestitures Before Allowing Boston Scientific's $27bn Acquisition of Guidant Corporation

The battle between Boston Scientific and Johnson & Johnson for Guidant ended as the FTC approved Boston Scientific's acquisition of Guidant, subject to certain divestitures. Under the terms of a consent order approving the transaction, Boston Scientific and Guidant were required 1) to divest all assets – including intellectual property – related to Guidant's vascular business to a third party, enabling that third party to sell drug eluting stents (DES) with the rapid exchange (RX) delivery system, percutaneous transluminal coronary angioplasty (PTCA) balloon catheters, and coronary guidewires; and 2) to reform certain contractual rights between Boston Scientific and Cameron Health, Inc. (Cameron) to limit Boston Scientific's control over certain Cameron actions and the sharing of nonpublic information about Cameron's Implantable Cardioverter Defibrillator (ICD) product.

The FTC's action ended a sixteen-month long battle for Guidant. J&J's first proposed to acquire Guidant in December of 2004. That deal was approved by the FTC in November of 2005. Shortly thereafter, Boston Scientific announced its bid for Guidant. In an unusual procedure, the FTC issued its consent order approving the Boston Scientific bid having never issued a second request – Boston Scientific withdrew and re-filed its HSR filing twice, giving the FTC more time to review the deal and the offered divestitures without resorting to a second request.

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Justice Department Allows Mittal Steel's Acquisition of Arcelor

The Department of Justice announced on August 1, 2006, a settlement requiring Mittal Steel Company N.V. to divest one of three North American tin mills in order to proceed with its $33bn acquisition of Arcelor S.A. The Department said the acquisition would have substantially lessened competition in the market for tin mill products in the eastern United States. In an unusual preliminary agreement, the Department agreed in May 2006 with Mittal to continue its investigation on the condition that Mittal would agree to divest Dofasco Inc., owned at the time by Arcelor, to ThyssenKrupp AG, in the event the Department later determined that the combination of Mittal and Arcelor was likely to result in a substantial lessening of competition. The agreement also provided that, if Mittal was unable to divest Dofasco, Mittal had to divest certain alternative assets to a buyer acceptable to the Department. After completing its investigation, the Department concluded that the proposed transaction would be anticompetitive and that divestiture was necessary to remedy the likely harm to competition.

FTC Challenges Hologic/Fischer Imaging Deal – Requires Divestiture

The Federal Trade Commission announced on July 7, 2006, its decision to challenge Hologic Inc.'s 2005 purchase of the breast cancer screening and diagnosis business of Fischer Imaging Corporation. In its complaint, the FTC alleged that Hologic's 2005 acquisition of Fischer's prone stereotactic breast biopsy systems (SBBSs) business harmed American consumers by eliminating its only significant competitor for the sale of SBBSs in the United States. In settling the Commission's charges, Hologic was required to sell the Fischer prone SBBS assets to Siemens AG, a leader in the business of medical imaging. The transaction was announced in September of 2005 – at the announced acquisition price of $32m, the transaction fell below the HSR thresholds, so no filing was required.

Justice Department Requires Divestiture in the Acquisition of Knight Ridder Inc. by the McClatchy Company

The Department of Justice announced on June 27, 2006, that it would require The McClatchy Company and Knight Ridder Inc. to divest the St. Paul Pioneer Press in order to proceed with their proposed multi-billion dollar newspaper merger. The Department said that the transaction, as originally proposed, would have eliminated head-to-head competition between McClatchy and Knight Ridder and likely would have resulted in higher prices for advertisers and readers in the Minneapolis/St. Paul metropolitan area. According to the complaint, McClatchy's Star Tribune competes aggressively for advertisers and readers with Knight Ridder's St. Paul Pioneer Press. The Department said that competition between the two newspapers has resulted in lower prices and better quality news coverage for readers and lower advertising rates and better service for local advertisers. Ownership of both the Star Tribune and St. Paul Pioneer Press would have given McClatchy control of the only two daily newspapers serving the cities of Minneapolis and St. Paul in Minnesota and the surrounding area, the Department said.

FTC Challenges Linde AG's Proposed Acquisition of the BOC Group

The Federal Trade Commission announced on July 18, 2006, its decision to challenge Linde AG's proposed acquisition of The BOC Group plc. The FTC's complaint alleged that the acquisition would have increased the likelihood that customers would be forced to pay higher prices for liquid oxygen, liquid nitrogen, and bulk refined helium in certain markets. The FTC also announced the acceptance of a settlement to resolve these concerns whereby Linde was required to sell air separation units (ASUs) and other assets related to the production of liquid oxygen and nitrogen in eight locations across the United States. Linde was also required to sell bulk refined helium assets, including helium source contracts, distribution assets, and customer contracts to Taiyo Nippon Sanso Corporation (Nippon Sanso).

The Department of Justice Antitrust Division Closes its Investigation of Medianews Group Inc.'s Acquisition of The Contra Costa Times and San Jose Mercury News

The Department of Justice's Antitrust Division announced on July 31, 2006, that it decided to close its investigation into the proposed acquisition of the Contra Costa Times and the Mercury News by MediaNews Group Inc., determining that the transaction was not likely to reduce competition substantially. The DOJ said its investigation found that only a relatively small number of readers and advertisers view MediaNews' papers, on the one hand, and the Contra Costa Times and Mercury News, on the other hand, as substitutes. The DOJ also stated that it concluded that, following the acquisition, MediaNews will continue to face competition for the sale of newspapers and newspaper advertising in the East Bay from the San Francisco Chronicle, and, in addition, that the transaction would enable MediaNews to achieve large cost savings by combining the production and delivery systems of the Contra Costa Times and Mercury News with those used by the papers it already owns in the East Bay. The Division found that these savings would benefit consumers and allow MediaNews' East Bay papers to compete more effectively against the San Francisco Chronicle for readers and advertisers.

FTC Accepts Agreement in Deal Between Enterprise Products Partners and TEPPCO

The Federal Trade Commission announced on August 18, 2006, a complaint and consent order settling charges that the 2005 acquisition that combined the natural gas liquids (NGL) storage businesses of Enterprise Product Partners, L.P. and TEPPCO Partners, L.P. under common ownership, violated the antitrust laws. The FTC's complaint alleged that the transaction would have resulted in higher prices and service degradations by reducing the number of commercial salt dome NGL storage providers in Mont Belvieu, Texas, from four to three. In settling the Commission's charges, TEPPCO was required to sell its interest in an NGL storage facility and associated assets to a Commission-approved buyer no later than December 31, 2006.

Justice Department Requires Divestitures in Alltel's Acquisition of Midwest Wireless

The DOJ announced on September 8, 2006, that ALLTEL Corporation agreed to divest assets in rural areas of Minnesota in order to proceed with its $1.075bn acquisition of Midwest Wireless Holdings LLC. The DOJ said that the deal would have resulted in higher prices, lower quality, and diminished investment in network improvements for consumers of mobile wireless telecommunications services in four areas where both ALLTEL and Midwest Wireless currently operate.

FTC Allows Joint Venture by Boeing and Lockheed Martin in Launch Services: Orders Parties to Adopt Non-Discriminatory Terms in Order to Proceed with Launch Vehicle Joint Venture

The Federal Trade Commission announced on October 3rd its decision to allow the formation of United Launch Alliance, L.L.C. (ULA), a proposed joint venture between The Boeing Company and Lockheed Martin Corporation, subject to certain conduct conditions. The FTC's expressed concern that, by combining the only two suppliers of U.S. government medium to heavy (MTH) launch services, the joint venture as originally structured would have reduced competition in the markets for MTH launch services and space vehicles. However, in settling the Commission's charges, the parties agreed to take the following actions:

(1) ULA must cooperate on equivalent terms with all providers of government space vehicles;

(2) Boeing and Lockheed's space vehicle businesses must provide equal consideration and support to all launch services providers when seeking any U.S. government delivery in orbit contract; and

(3) Boeing, Lockheed, and ULA must safeguard competitively sensitive information obtained from other space vehicle and launch services providers.

The FTC acknowledged that it worked closely with the US Department of Defense (DoD) during its 16 month investigation. The FTC's press release stated that the "proposed consent order does not attempt to remedy the loss of direct competition between Boeing and Lockheed Martin in...launch services because DoD has concluded that ULA would improve national security and that the unique national security benefits from the joint venture would exceed any anticompetitive harm. Therefore, the proposed consent order addresses the ancillary competitive harms that DoD has identified as not inextricably tied to the national security benefits of ULA." In an unusual move, the FTC released letters exchanged between the FTC staff and Department of Defense officials explaining their competitive concerns.

Justice Department Obtains Dairy Processor Divestiture in Settlement With Dairy Farmers of America

The Department of Justice announced October 2 a settlement of its lawsuit challenging the Dairy Farmers of America Inc. (DFA) acquisition of a minority stake in Southern Belle Dairy Co. LLC. The settlement required DFA and its partner, the Allen Family Limited Partnership (AFLP), to sell their respective interests in Southern Belle. The Department said that the divestitures restored the benefits of competition--lower prices and better quality services--to schoolchildren and their families in Kentucky and Tennessee. The Department's Antitrust Division and the Commonwealth of Kentucky filed a lawsuit in April 2003 challenging DFA's acquisition of its interest in the Southern Belle dairy. The federal district court initially dismissed the case, granting summary judgment for DFA. The Department successfully appealed the dismissal to the U.S. Court of Appeals for the Sixth Circuit, which reversed the district court and sent the case back for trial.

FTC Charges that Thermo Electron's Acquisition of Fisher Scientific Would Lessen Competition in U.S. Market for Centrifugal Vacuum Evaporators

The Federal Trade Commission on October 17, 2006 announced a settlement of charges that Thermo Electron Corporation's proposed $12.8bn acquisition of Fisher Scientific International, Inc. would harm competition in the U.S. market for high-performance centrifugal vacuum evaporators (CVEs) thus clearing the deal to be completed. To settle the Commission's charges, Thermo agreed to divest Fisher's Genevac division, which includes Fisher's entire CVE business, within five months of the date the consent agreement was signed.

FTC Challenged Barr's Proposed Acquisition of Pliva: Required Divestitures in Generic Drug and Organ Preservation Solution Markets

The Federal Trade Commission announced on October 20, 2006, an agreement to allow Barr Pharmaceutical, Inc. to proceed with its proposed acquisition of Pliva for approximately $2.5bn. The FTC charged that the acquisition would have eliminated current or future competition between Barr and Pliva in certain markets for generic pharmaceuticals treating depression, high blood pressure and ruptured blood vessels, and in the market for organ preservation solutions, thereby increasing the likelihood that consumers would pay more for these vital products. In order to obtain the FTC's clearance, Barr agreed to sell its generic antidepressant trazodone and its generic blood pressure medication triamterene/HCTZ, either Pliva's or Barr's generic nimodipine for use in treating ruptured blood vessels in the brain, and Pliva's branded organ preservation solution Custodial.

United States M&A Antitrust: A Round-up of 2006

Justice Department Requires Divestitures in Merger of Regions Financial Corp. and Amsouth Bancorporation

The Department of Justice announced on October 19, 2006 that Regions Financial Corporation and AmSouth Bancorporation have agreed to sell 52 AmSouth branch offices with approximately $2.7bn in deposits in Alabama, Mississippi and Tennessee in order to resolve competitive concerns raised by the companies' proposed merger. The Department said that without the divestitures the merger would adversely affect competition in local markets in the three states for small business lending, resulting in fewer choices for small business customers. The combination of Regions and AmSouth would have created the largest bank in Alabama and Mississippi, the second largest bank in Tennessee, and the15th largest bank in the United States.

DOJ Closes the Investigation of AT&T's Acquisition of Bellsouth Without Action, Allowing the Merger to Proceed

The DOJ announced on October 11, 2006, that it was closing the investigation into the proposed acquisition of BellSouth Corporation by AT&T Inc. Thomas O. Barnett, Assistant Attorney General in charge of the Department of Justice's Antitrust Division, issued a statement saying that "After thoroughly investigating AT&T's proposed acquisition of BellSouth, the Antitrust Division determined that the proposed transaction is not likely to reduce competition substantially." Barnett cited the presence of other competitors, changing regulatory requirements, and the emergence of new technologies in markets for residential local, long distance service as reasons why the transaction is not likely to harm consumers, and likely cost savings and other efficiencies that should benefit consumers.

Hart-Scott-Rodino Violations

Qualcomm and Flarion Charged with Illegal Premerger Coordination: Required to Pay $1.8m Civil Penalty

The Department of Justice announced on April 13, 2006, the filing of a complaint and settlement with QUALCOMM Incorporated and Flarion Technologies Inc. that requireed the companies to pay a total of $1.8m in civil penalties for violating premerger waiting period requirements. According to the complaint, after QUALCOMM and Flarion announced their July 2005 proposed merger, QUALCOMM obtained operational control over Flarion without observing the premerger waiting period requirement in violation of the Hart-Scott-Rodino (HSR) Act. The companies' merger agreement required Flarion to seek QUALCOMM's consent before undertaking certain basic business activities, such as making new proposals to customers. In addition, although not required by the agreement, Flarion sought and followed QUALCOMM's guidance before undertaking routine activities, such as hiring consultants and employees. The Department said that such conduct constituted "gun jumping" in violation of the HSR Act. The amount of the penalty was reduced from the statutory maximum because the companies voluntarily reported the existence of gun jumping problems to the Department and took some measures to change their contract and their conduct. The Department's complaint did not challenge the underlying merger, which the companies announced they had consummated on January 19, 2006.

Policy Reviews

FTC Chairman Announces Merger Review Process Reforms

Federal Trade Commission Chairman Deborah Platt Majoras announced on February 16, 2006, a series of reforms to the agency's merger review process. The reforms are designed to reduce the costs and time required to complete merger investigations in which "second requests" have been issued under the Hart-Scott-Rodino (HSR) Premerger Notification Act. The primary reforms to the merger review process establish presumptions that the FTC will:

(1) limit the number of employees required to provide information in response to a second request, provided the party complies with specified conditions

(2) reduce the time period for which a party must provide documents in response to the second request

(3) allow a party to preserve far fewer backup tapes and produce documents on those tapes only when responsive documents are not available through more accessible sources

(4) significantly reduce the amount of information parties must submit regarding documents they consider to be privileged.

FTC and DOJ Issue Joint Commentary on the Horizontal Merger Guidelines

On March 27, the Federal Trade Commission and the U.S. Department of Justice jointly released a "Commentary on the Horizontal Merger Guidelines", another effort by the agencies to increase the transparency of their decision-making processes – in this case, with regard to federal antitrust review of "horizontal" mergers between competing firms. The analytical framework and standards used to scrutinize the likely competitive effects of such mergers are embodied in the Horizontal Merger Guidelines, which the agencies jointly issued in 1992, and revised, in part, in 1997. The Commentary, which is available now on both agencies' Web sites, explains how the FTC and DOJ have applied particular Guidelines' principles, in the context of actual merger investigations.

Tunney Act Proceedings Continue to Review DOJ's Consent Agreements with Verizon Communications Inc. and SBC Communications Inc.

The Department of Justice continued to defend its settlement with Verizon and SBC to divest portions of certain local fiber-optic network facilities in order to proceed with their respective acquisitions of MCI Inc. and AT&T Corporation. The consent agreements were first announced in October of 2005, at which time the DOJ initiated proceedings in the U.S. District Court in Washington DC to approve the settlement and issue the proposed order. The parties were then free to complete their respective acquisitions. These proceedings are generally non-controversial and the Court routinely approves the settlement proposed by the DOJ. Here, however, third-parties filed objections to the settlement with the Court, arguing that the DOJ's remedy did not go far enough. Then the Court decided to hear evidence on the objections to the settlement. As a consequence, although Verizon and SBC completed their acquisitions in 2005, the agreed divestitures have still not taken place while the court proceedings have continued. The Court heard argument on the various objections in late November and a decision is expected soon.

By Joseph Krauss, Hogan & Hartson, Washington D.C.

Regional Round Ups

Europe: **UK**

OFT investigates BSkyB's stakebuilding in ITV

The UK Office for Fair Trading (OFT) and media regulator Ofcom have started investigating BSkyB's stake increase to 17.9% in ITV. The acquisition has sparked an outcry from NTL and its biggest shareholder Virgin Group which have urged regulators to examine the transaction on the basis that it could distort the market. NTL, which prior to BSkyB's move was preparing a bid for ITV, has now dropped its plan. The OFT's investigation will focus on whether the stake increase would give the company material influence on ITV's policy and therefore should be looked at as a merger. Competition experts believe the ability to influence remains an open question because BSkyB will have no director on ITV's board and no special rights in the company. Meanwhile Ofcom is investigating whether the operation has lead to a change of control in licences.

Europe: **Ireland**

Aer Lingus/ Ryanair situation

The European Commission (EC) has extended its deadline for the phase one investigation of Ryanair's acquisition of Aer Lingus after the bidder offered remedies. As it stands, the deal appears very unlikely to succeed because Ryanair has failed to get enough support from the targets shareholders. Remedies offered include disposals on the Dublin-London routes but the Irish government 25.1% stake in Aer Lingus could well limit Ryanair's scope to manoeuvre in its negotiations with the Commission (see feature p 9 for more details)

Europe: **France**

Commission launches investigation into Thales stake buy

The European Commission has launched a phase two investigation into Thales' acquisition of Alcatel's stake in the two space joint-ventures with Finmeccanica. The new deadline is set to 17 April 2007 but parties are confident the deal will go through. The EC launched its in-depth investigation into Thales's acquisition of Alcatel's 67% and 33% stakes in Alcatel Alenia Space (AAS) and 33% in Telespazio, respectively, after it found the deal could give rise to competition issues. More specifically, these issues relate to the combination of Thales dominant position for Traveling Wave Tubes (TWTs), a critical component for telecommunications satellites, and AAS's activities as a manufacturer of satellite subsystems and components, and as a satellite prime contractor. The parties are currently considering various options but it is too early to say what remedies will be necessary, or whether disposals will be needed.

Europe: **Belgium/France**

EC clears GDF/Suez with conditions

The European Commission (EC) has approved the merger of Gaz de France (GDF) and the Suez. The EC initially found that the merger would have anti-competitive effects in the gas and electricity wholesale and retail markets in Belgium, and in the gas markets in France. In response to these concerns, GDF and Suez have offered a package of remedies. Most notably Suez will divest Distrigaz and relinquish control over Fluxys while GDF will divest SPE and Cofathec Coriance. Additionally, in order to assist the entry of new competitors and foster competition, a number of investment projects will be carried out in Belgium and France as a means of increasing infrastructure capabilities. The EC will announce early in 2007 a number of concrete conditions that will be implemented to address existing shortcomings as mentioned above.

Asia: **China**

Supor/SEB: MOC to launch antitrust investigation

The antitrust hearing to be held by the Ministry of Commerce (MOC) on the acquisition of a 61% stake in Supor, the Chinese listed cookware products maker, by SEB, the French cookware maker, will principally focus on Supor's market shares. The proposed deal has been met with fierce opposition from other Chinese cookware makers on the basis of a possible market monopoly. Guangdong based ASD, Liaoning based Double Happiness and Henan based Tangyin have all submitted written files against the deal.

Europe/North America: **Germany/ USA**

Merck makes EC antitrust filing regarding Serono acquisition

Merck, the German pharmaceutical group has made an antitrust filing to the European Commission (EC) regarding its €16.1bn acquisition of Swiss rival Serono. Merck was granted takeover permission by the Federal Trade Commission in the United States and reportedly no questions have been raised thus far regarding the EC filing. Serono's biggest product is its Rebif treatment for multiple sclerosis, which accounted for 49% of its sales in 2005. Its other main franchise is infertility treatments, with its Gonal F drug generating 21% of sales. Merck's products include cancer therapies and treatments for cardiovascular diseases and diabetes. Merck has argued that there is very little product overlap and the EC is expected to take its initial decision on the case by 18 December.

North America: **USA**

Extensive review of CME/CBOT merger likely

The $8bn merger between the Chicago Mercantile Exchange (CME) and the Chicago Board of Trade (CBOT) could give rise to one of the most extensive regulatory processes ever. With reports that it could last into 2008. The merged entity would comprise around 90% of futures trading in the United States but the international trading concentration would be considerably less. The Federal Trade Commission (FTC) and the Department of Jusctice (DOJ) are likely to employ a segment by segment analysis of futures contracts traded by the exchanges in order to determine whether sufficient competition would exist after the merger. CME and CBOT received a second request for additional information from the DOJ on 2 December and this will extend the initial waiting period under HSR. Despite the likely lengthy regulatory process, CME claims a second DOJ request was anticipated and Craig Donohue, CME's CEO, is confident that the deal will ultimately gain regulatory approval and expect the transaction to close by mid 2007.

Europe/North America: **France / Canada**

Schneider Electric/APC: Schneider to make filings

Schneider Electric, the listed French power and control specialist, has filed its preliminary proxy statement following the company's $5.5bn acquisition of American Power Conversion (APC). Schneider Electric has already made its HSR filing but is yet to make filings with the European Commission as well as 11 other jurisdictions including Canada, China and Japan. The board of directors of APC has already approved the transaction while the supervisory board of Schneider Electric fully supports the management board in pursuing the transaction.

North America/Australasia: **Mexico/Australia**

Cemex focusing on antitrust issues surrounding Rinker bid

Rinker, the listed Australian building materials group, have received a request from the US Department of Justice (DOJ) for additional information regarding the unsolicited offer they have received from Cemex, the listed Mexican cement maker, under HSR. The two main areas for concern are reportedly Florida and Arizona but the DOJ could look at other areas. The DOJ request came just days after Rinker's board recommended shareholders reject Cemex's $13 per share unsolicited offer in its target statement. It is reported that Cemex would have to offer Rinker's major shareholders around $16 per share in order to win control.

Europe: **Germany**

Sony/BMG: Bertelsmann and Sony file complaint against European Court

Bertelsmann and Sony have filed a complaint following the European Court of First Instance (CFI)'s decision to overturn the European Commission (EC)'s 2004 clearance of the Sony BMG joint-venture. The two parties still need to provide the EC with new data on the music recording market as of today for a new investigation of the deal to start. Given the complexity of this assessment, it is expected that The Commission will launch a phase two investigation into the deal.

Meanwhile, the EC is to end its phase one investigation into the acquisition of BMG Music Publishing by Universal by December 2006. The notification relates to this deal exclusively and does not concern the Sony BMG joint-venture mentioned above.

North America: **USA**

Hospira/Mayne Pharma: Mayne Pharma may divest certain assets to satisfy FTC

Hospira, the US listed hospital products company, is looking at divesting certain assets to satisfy the Federal Trade Commission following its proposed $3.21 per share takeover of Mayne Pharma, the listed Australian pharmaceutical company. It is reported that the effected assets are rights to molecules specific to the United States, however, these account for less than 5% of Hospira's revenues and are thus unlikely to be potential deal breakers. Meanwhile, Mayne Pharma's scheme meeting to vote on the takeover bid has been delayed until December 20.

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Asia: **Japan**

Nissin launch white knight bid for Myojo Foods: JFTC notified

Nissin Food Products, the listed Japanese instant noodle maker, has already started dialogue with the Japan Fair Trade Commission (JFTC) regarding its bid for Myojo Foods. The JFTC may examine various categories, such as the overall food industry or the smaller processed food sector instead of just the instant noodle industry, according to Nissin's president Hiroki Ando. The market share of the combined entity in the Japanese instant noodle market would be around 50% according to industry sources. However, Ando argued the combined market share in the overall Japanese noodle market would be considerably less - around 22% - which would render them unable to set monopolistic prices.

Nissin Food's white night bid for Myojo was launched as a riposte to Steel Partners Japan Strategic Fund's bid. Nissin is looking to acquire a minimum stake of 33.4% in Myojo but will acquire all shares tendered. Steel Partners Japan holds a 23.1% stake in Myojo and has apparently not yet decided whether or not to tender its shares to Nissin. Intriguingly, Steel Partners Japan increased the stake that it owns in Nissin from 6.32% to 7.37% on November 29.

Europe/North America: **Netherlands/Canada/USA**

Mittal/Arcelor: DOJ extend deadline for divestment, Dofasco sale blocked

Mittal Steel has reportedly been given until 28 January 2007 by the DOJ to divest one of its North American tin holdings in order to gain antitrust approval for its €31.3bn acquisition of Arcelor. Mittal had previously planned to divest Dofasco, a Canadian subsidiary, to ThyssenKrupp but this was reportedly blocked by an independent trust which controls Dofasco. Consequently, Mittal now have to decide which North American subsidiaries to divest out of West Virginia based Weirton and Sparrows Point which is based in Maryland. The sale of Weirton is considered more likely if Mittal fails to divest Dofasco.

By Tom Coughlan, Remark

Private Equity Firms and the DOJ

Private equity firms face DOJ investigation and private antitrust litigation in the US

In early Autumn 2006, the Antitrust Division of the U.S. Department of Justice (DOJ) sent informal information requests to five private equity firms: Carlyle Group, Clayton, Dubilier, & Rice, Kohlberg Kravis Roberts & Co., Silver Lake Partners, and Merrill Lynch & Co. The DOJ investigation reportedly relates to "club deals" in which two or more private equity firms join together (rather than bidding separately) in making an acquisition. The investigation is at an early stage, and little more information about it is publicly available at this point.

In reviewing the information the private equity firms provide, the DOJ can be expected to apply the type of analysis that it normally uses in evaluating any joint venture between competitors. That analysis recognizes that many such joint ventures are pro-competitive (or competitively neutral) and present no antitrust concerns. For example, a "club deal" that permits private equity firms to spread the commercial risk and cost of a particular acquisition and thereby make an acquisition that they might not otherwise engage in (or to offer a better price than they might otherwise offer), should not raise antitrust concerns. Similarly, even if two private equity firms might have bid individually but submitted a "club bid" together to spread their capital and permit them to participate in more acquisitions, the "club bid" may present no antitrust concerns, particularly if there are ample competing bidders. By contrast, if two private equity firms were the only two potential bidders for a particular company and were to decide to bid jointly solely to eliminate the only competition that would otherwise have existed, more serious issues could arise. The DOJ therefore will be seeking to evaluate what the circumstances were in the transactions it reviews and to determine whether the "club bids" had any anticompetitive effects.

No resolution of the investigation is likely for many months. If the information submitted to the DOJ presents possible antitrust concerns, the DOJ may seek to widen the scope of its investigation by seeking additional information more formally from these and other private equity firms. Conversely, if the response to the DOJ's informal inquiries suggests no basis for antitrust concern, the investigation may end quietly without further action.

The situation grew somewhat more complicated in mid-November 2006, when three shareholders of several formerly publicly held companies that were "taken private" in acquisitions by private equity firms filed a purported antitrust treble damages class action against 13 private equity firms and unnamed coconspirators. The defendants include the five private equity firms that are the subjects of the DOJ investigation, as well as Texas Pacific Group Ventures, Inc., the Blackstone Group, Bain Capital, Apollo Management, Thomas H. Lee Partners, Madison Dearborn Partners, Warburg Pincus, and Providence Equity Partners.

The named plaintiff shareholders seek to represent a class of shareholders consisting of "[a]ll persons whose . . . securities [in a publicly held corporation] were purchased, or are in the process of being purchased, by any of the Private Equity Defendants in a going private transaction effective or starting July 1, 2003 or thereafter." Thus, the complaint is not limited to acquisitions that were the subject of "club deals" between private equity firms but appears to extend to all acquisitions by defendants in which a publicly held company was taken private during the period in question. Plaintiffs allege that the named private equity defendants and others conspired to depress the price paid for the shares of the companies acquired in these acquisitions not only through "club deals" but also through exchanging information on bids and potential bids, agreeing who would and not bid on a particular acquisition, submitting bids at "agreed upon prices," and "entering into banking arrangements to deprive competitive bidders of financing." Thus, even private equity firms who are not named as defendants in the complaint and did not participate in "club bids" could conceivably be affected by the allegations.

It is too early in the litigation to know how defendants will respond or what the outcome may be. The defendant private equity firms can be expected to consider motions to dismiss the complaint and to oppose certification of the proposed shareholder class.

By Philip C. Larson
Hogan & Hartson, Washington D.C.

Live Deals – Europe

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Deal	Terms	Ann. Date	Est. Comp	Days to comp	Sett. Date	Target Country	Target Mkt Cap (m)	Net Sprd	Change	Ann. Return
Aer Lingus Plc / Ryanair Holding.	1 AER = EUR2.80	05 Oct 2006	22 Dec 2006	11		Ireland (Republic)	EUR-1,455m	1.82%	0.00%	60.33%
AfriOre Ltd / Lonmin Plc	1 AFR = USD7.71	15 Nov 2006	31 Jan 2007	51		Canada	USD-382m	3.19%	0.20%	21.57%
American Power . / Schneider Elect.	1 APC = USD31.00	30 Oct 2006	30 Mar 2007	109		USA	USD-5,802m	1.77%	-0.03%	5.94%
Banca Lombarda . / Banche Popolari.	1 BLA = 0.83 BPU	14 Nov 2006	01 Apr 2007	111		Italy	EUR-5,892m	1.33%	-0.28%	4.39%
Banca Popolare . / Veneto Banca s..	1 BPI = EUR15.00	10 Nov 2006	15 Mar 2007	94		Italy	EUR-2,012m	8.38%	0.00%	32.55%
Banco BPI SA / Millennium BCP .	1 BPI = EUR5.70	13 Mar 2006	31 Mar 2007	110		Portugal	EUR-4,499m	-3.72%	0.00%	-12.33%
Bank BPH SA / UniCredito Ital.	1 BPH = 33.13 UNI	12 Jun 2005	30 Apr 2007	140		Poland	EUR-6,729m	-6.83%	0.35%	-17.81%
BorsodChem Rt. / First Chemical .	1 BCH = EUR11.6063	07 Nov 2006	15 Dec 2006	4		Hungary	EUR-882m	0.26%	-0.05%	23.96%
BPI (Banca Popo. / Banco Popolare .	1 BPI = 0.43 BPVN	16 Oct 2006	31 Mar 2007	110		Italy	EUR-7,199m	5.16%	0.00%	17.13%
Caffe Nero Grou. / Rome Bidco Limi.	1 CFN = GBP2.70	07 Dec 2006	05 Mar 2007	84		United Kingdom	GBP-229m	0.19%	-1.70%	0.77%
CNS Inc. / GlaxoSmithKline.	1 CNS = USD37.50	09 Oct 2006	21 Dec 2006	10	28 Dec 2006	USA	USD-524m	0.19%	-0.11%	6.83%
Corus Group plc / Tata Iron and S.	1 CRS = GBP5.00	20 Oct 2006	16 Jan 2007	36		United Kingdom	GBP-4,709m	-4.67%	-4.67%	-47.36%
Corus Group plc / Companhia Sider.	1 CRS = GBP5.15	11 Dec 2006	11 Mar 2007	90		United Kingdom	GBP-4,976m	-2.04%	-5.05%	-8.29%
Countrywide Plc. / Rightmove Plc	1 CWD = 0.1652 RGT + GBP4.90	12 Dec 2006	31 Mar 2007	108		United Kingdom	GBP-914m	2.2%	-2.38%	7.5%
Denizbank AS / Dexia Group	1 DZN = EUR8.66	31 May 2006	22 Dec 2006	11		Turkey	EUR-2,523m	8.51%	-1.55%	282.30%
Egnatia Bank / Laiki Group (Cy.	1 EGN = 1.209 LAI	20 Sep 2006	12 Jan 2007	32		Greece	EUR-821m	1.39%	0.00%	15.87%
Endesa SA / Gas Natural SDG.	1 END = 0.569 GNT + EUR7.34	05 Sep 2005	15 Jan 2007	35		Spain	EUR-37,692m	-26.83%	-0.18%	-279.81%
Endesa SA / E.ON AG	1 END = EUR35.00	21 Feb 2006	15 Mar 2007	94		Spain	EUR-37,692m	-0.28%	-0.34%	-1.09%
Euronext NV / NYSE Group Inc	1 NXT = 0.98 NYS + EUR21.32	02 Jun 2006	01 Feb 2007	52		Netherlands	EUR-9,826m	4.41%	-0.90%	30.93%
Fadesa Inmobili. / Grupo Martinsa .	1 FAD = EUR35.70	28 Sep 2006	28 Dec 2006	17		Spain	EUR-4,007m	0.96%	0.00%	20.64%
Finansbank A.S. / National Bank o.	1 FIN = EUR3.863	03 Apr 2006	31 Dec 2006	20		Turkey	EUR-2,862m	28.22%	-1.83%	515.09%
freenet.de AG / mobilcom AG	1 FRE = 1.15 MOB	08 Jul 2005	15 Dec 2006	4		Germany	EUR-1,324m	4.81%	1.11%	438.99%
GERMANOS S.A. (. / Cosmote-Mobile .	1 GIC = EUR19.00	09 May 2006	20 Dec 2006	9		Greece	EUR-1,550m	0.00%	0.00%	0.00%
Gondola Holding. / Paternoster Acq.	1 GND = GBP4.15	06 Oct 2006	22 Dec 2006	11	05 Jan 2007	United Kingdom	GBP-557m	0.42%	0.00%	14.05%
Grupo Media Cap. / Promotora de In.	1 GMS = EUR7.40	26 Oct 2006	15 Jan 2007	35		Portugal	EUR-702m	-10.84%	0.00%	-84.21%
Huntleigh Techn. / Getinge AB	1 HUN = GBP4.80	08 Dec 2006	11 Feb 2007	62		United Kingdom	GBP-411m	1.05%	-26.95%	5.91%
Inmobiliaria Ur. / Construcciones .	1 IUB = EUR26.00	28 Jul 2006	13 Dec 2006	2	22 Dec 2006	Spain	EUR-3,311m	0.19%	0.04%	35.17%
John Laing plc / Henderson Infra.	1 LNG = GBP4.05	19 Sep 2006	22 Dec 2006	11	05 Jan 2007	United Kingdom	GBP-942m	0.50%	0.00%	16.47%
Kanbay Internat. / Capgemini SA (f.	1 KNB = USD29.00	26 Oct 2006	31 Jan 2007	51		USA	USD-1,124m	0.94%	0.04%	6.73%
KeySpan Corp / National Grid p.	1 KEY = USD42.00	27 Feb 2006	31 May 2007	171		USA	USD-7,147m	2.46%	-0.05%	5.26%

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
Locindus SA / Credit Foncier .	1 LOC = EUR37.00	23 Nov 2006	05 Mar 2007	84		France	EUR-299m	0.14%	-11.65%	0.48%
London Merchant. / Derwent Valley .	1 LMS = 0.1493 DERV	14 Nov 2006	28 Feb 2007	79		United Kingdom	GBP-957m	1.11%	-0.12%	5.15%
London Stock Ex. / Nasdaq Stock Ma.	1 LSE = GBP12.43	20 Nov 2006	16 Feb 2007	67		United Kingdom	GBP-2,817m	-5.48%	0.00%	-28.55%
Marfin Financia. / Laiki Group (Cy.	1 MFG = 5.757 LAI	20 Sep 2006	12 Jan 2007	32		Greece	EUR-2,137m	1.40%	0.00%	15.97%
Matalan PLC / Missouri Bidco .	1 MTN = GBP2.00	11 Oct 2006	21 Dec 2006	10		United Kingdom	GBP-813m	0.50%	-0.13%	18.34%
Parquesol S.A. / Grupo San Jose	1 PAR = EUR23.10	28 Jul 2006	08 Jan 2007	28		Spain	EUR-953m	-3.75%	-0.61%	-48.88%
Portugal Teleco. / Sonaecom-SGPS, .	1 PTL = EUR9.50	06 Feb 2006	23 Feb 2007	74		Portugal	EUR-11,029m	-2.76%	-0.10%	-13.63%
Protect Data AB / Check Point Sof.	1 PTDT = EUR19.836	20 Nov 2006	22 Dec 2006	11		Sweden	EUR-463m	-1.49%	1.17%	-34.01%
PT Multimedia S. / Sonaecom-SGPS, .	1 PMM = EUR9.03	07 Feb 2006	23 Feb 2007	74		Portugal	EUR-2,986m	-6.52%	0.00%	-32.17%
Quick Restauran. / Caisse des Depo.	1 QRT = EUR38.70	26 Oct 2006	29 Jan 2007	49		Belgium	EUR-725m	3.39%	0.00%	20.30%
RHM Plc / Premier Foods P.	1 RHM = 1.00 PFD + GBP0.832	04 Dec 2006	31 Mar 2007	110		United Kingdom	GBP-1,304m	28.01%	0.00%	87.40%
Sanpaolo IMI Sp. / Banca Intesa Sp.	1 IMI = 3.115 INT	26 Aug 2006	31 Jan 2007	51		Italy	EUR-31,123m	0.02%	0.07%	0.13%
Saurer AG / Oerlikon (forme.	1 SAU = EUR84.7809	06 Sep 2006	01 Dec 2006	Completed	10 Jan 2007	Switzerland	EUR-1,230m	0.25%	-0.05%	N/A
Scania AB / MAN AG	1 SCN = 0.151 MAN + EUR41.12	18 Sep 2006	31 Jan 2007	51	31 Dec 2006	Sweden	EUR-10,318m	7.82%	0.12%	55.94%
Schwarz Pharma . / UCB SA	1 SWZ = 0.8735 UCB + EUR50.00	25 Sep 2006	22 Dec 2006	11		Germany	EUR-4,425m	0.05%	0.42%	1.49%
ScottishPower p. / Iberdrola SA	1 SPW = 0.1646 IBR + GBP4.00	28 Nov 2006	23 Apr 2007	133		United Kingdom	GBP-11,199m	3.28%	0.17%	8.62%
Serono Internat. / Merck KGaA	1 SRO = EUR692.42	21 Sep 2006	26 Jan 2007	46		Switzerland	EUR-10,026m	1.16%	0.20%	9.21%
SIG Holding AG / Ferd Industrial.	1 SIG = EUR204.6264	25 Sep 2006	12 Jan 2007	32		Switzerland	EUR-1,481m	-10.20%	-0.02%	-116.39%
State National . / Banco Bilbao Vi.	1 SNB = USD38.50	12 Jun 2006	03 Jan 2007	23	24 Nov 2006	USA	USD-455m	0.52%	-1.03%	8.29%
Suez SA (former. / Gaz de France S.	1 SEZ = 1.00 GAZ	27 Feb 2006	23 Feb 2007	74		France	EUR-48,747m	-7.46%	0.20%	-36.77%
Techem AG / MEIF II Energie.	1 TCM = EUR44.00	23 Oct 2006	21 Dec 2006	10		Germany	EUR-1,355m	-18.59%	0.02%	-424.17%
Techem AG / Heat Beteiligun.	1 TCM = EUR52.00	22 Nov 2006	19 Mar 2007	98		Germany	EUR-1,355m	-3.79%	0.02%	-13.31%
Toro Assicurazi. / Assicurazioni G.	1 TRA = EUR21.20	26 Jun 2006	13 Dec 2006	2	19 Dec 2006	Italy	EUR-3,848m	0.19%	0.00%	34.49%
Veritas DGC Inc. / Compagnie Gener.	1 VER = 0.2237 CGG + USD36.83	05 Sep 2006	31 Jan 2007	51		USA	USD-2,941m	3.30%	0.52%	23.64%
Wellington Unde. / Catlin Group (f.	1 WLG = 0.17 CAT + GBP0.35	30 Oct 2006	18 Dec 2006	7		United Kingdom	GBP-587m	0.43%	0.14%	8.29%

Source: dealReporter, as of 11/12/2006

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Deal	Terms	Ann. Date	Est. Comp	Days to comp	Sett. Date	Target Country	Target Mkt Cap (m)	Net Sprd	Change	Ann. Return
Adsteam Marine . / SvitzerWijsmull.	1 AML = AUD2.54	03 Jul 2006	14 Feb 2007	65	14 Mar 2007	Australia	AUD-676m	2.42%	0.00%	13.59%
Alinta Infrastr. / Alinta Ltd	1 AIH = AUD1.98	15 Nov 2006	15 Jan 2007	35	05 Feb 2007	Australia	AUD-604m	0.00%	0.00%	0.00%
Ballarat Goldfi. / Lihir Gold Limi.	1 BGF = 0.0926 LHG	17 Oct 2006	31 Jan 2007	51		Australia	AUD-324m	3.93%	0.43%	28.10%
China National . / Air China Limit.	1 CNAC = HKD2.80	23 Aug 2006	10 Jan 2007	30	20 Jan 2007	Hong Kong	HKD-9,209m	0.72%	-0.36%	8.75%
Corus Group plc / Tata Iron and S.	1 CRS = GBP5.00	20 Oct 2006	16 Jan 2007	36		United Kingdom	GBP-4,709m	-4.67%	-4.67%	-47.36%
DCA Group Limit. / CVC Capital Par.	1 DVC = AUD3.35	25 Sep 2006	12 Dec 2006	1		Australia	AUD-1,634m	1.45%	-0.30%	528.99%
Epitech Technol. / Epistar Corpora.	1 EPT = 0.3247 EPS	28 Sep 2006	01 Mar 2007	80		Taiwan	USD-316m	-0.37%	-0.23%	-1.70%
Flight Centre L. / BidCo (Flight C.	1 FCN = AUD17.00	25 Oct 2006	19 Feb 2007	70		Australia	AUD-1,586m	2.93%	0.00%	14.66%
GES Internation. / Venture Corpora.	1 GES = USD0.7883	26 Jul 2006	23 Nov 2006	Completed	15 Dec 2006	Singapore	USD-588m	-0.22%	0.00%	N/A
Golden Hope Pla. / Synergy Drive S.	1 GHP = USD1.522	27 Nov 2006	15 Nov 2007	339		Malaysia	USD-2,443m	-7.85%	0.89%	-8.45%
Grand Hotel Gro. / Tuan Sing Holdi.	1 GHG = AUD1.30	02 Nov 2006	15 Feb 2007	66		Australia	AUD-349m	-1.81%	0.00%	-10.04%
Hardman Resourc. / Tullow Oil Plc	1 HDR = 0.0895 TLW + AUD1.2082	25 Sep 2006	20 Dec 2006	9	10 Jan 2007	Australia	AUD-1,518m	1.02%	0.24%	41.33%
Highlands & Low. / Synergy Drive S.	1 HLD = USD1.419	27 Nov 2006	15 Nov 2007	339		Malaysia	USD-954m	-2.36%	-1.98%	-2.51%
I-Flex Solution. / Oracle Corporat.	1 IFLEX = INR2084.00	13 Sep 2006	23 Dec 2006	12	08 Jan 2007	India	INR-155,889m	2.32%	0.60%	70.49%
Internet Resear. / SBI Holdings In.	1 IRI = 1.95 SBI	28 Nov 2006	01 May 2007	141		Japan	JPY-38,102m	1.36%	0.05%	3.51%
Jaya Holdings L. / Nautical Offsho.	1 JAYA = USD0.9422	23 Oct 2006	05 Dec 2006	Completed	30 Jan 2007	Singapore	USD-727m	-1.36%	-2.12%	N/A
JSAT Corporatio. / SKY Perfect Com.	1 JSAT = 4.00 SKYP	26 Oct 2006	02 Apr 2007	112		Japan	JPY-108,702m	2.30%	-0.26%	7.48%
KFC Holdings (M. / QSR Brands Bhd.	1 KFCM = USD1.377	12 Sep 2006	16 Mar 2007	95		Malaysia	USD-294m	-6.99%	-0.76%	-26.86%
Kumpulan Guthri. / Synergy Drive S.	1 GUT = USD1.1902	27 Nov 2006	15 Nov 2007	339		Malaysia	USD-1,327m	-6.73%	0.13%	-7.25%
Magnum Corporat. / Multi-Purpose H.	1 MAG = USD0.6411	27 Nov 2006	05 Jan 2007	25		Malaysia	USD-1,005m	-7.58%	1.61%	-110.70%
Malakoff Berhad. / Nucleus Avenue .	1 MLK = USD2.837	03 Jul 2006	30 Jun 2007	201		Malaysia	USD-2,523m	4.03%	0.14%	7.33%
Matrix Laborato. / Mylan Laborator.	1 MTX = INR306.00	28 Aug 2006	11 Dec 2006	Completed	26 Dec 2006	India	INR-39,159m	20.07%	2.65%	N/A
Mayne Pharma Li. / Hospira Inc	1 MYP = AUD4.10	21 Sep 2006	24 Jan 2007	44	20 Dec 2006	Australia	AUD-2,633m	-0.24%	0.00%	-2.02%
Mercian Corpora. / Kirin Brewery C.	1 MRC = JPY370.00	16 Nov 2006	18 Dec 2006	7	26 Dec 2006	Japan	JPY-46,734m	4.23%	0.58%	220.32%
Myojo Foods Co.. / Nissin Food Pro.	1 MYF = JPY870.00	15 Nov 2006	14 Dec 2006	3		Japan	JPY-36,929m	0.35%	0.00%	42.10%
NEOMAX Co., Ltd. / Hitachi Metals .	1 NMAX = JPY2500.00	06 Nov 2006	11 Dec 2006	Completed		Japan	JPY-217,814m	0.60%	0.20%	N/A
Pacifica Group . / Robert Bosch Gm.	1 PBB = AUD2.20	18 Oct 2006	25 Jan 2007	45	15 Feb 2007	Australia	AUD-293m	1.85%	0.00%	15.02%
Pantai Holdings. / Pantai Irama Ve.	1 PAN = USD0.7263	06 Oct 2006	27 Nov 2006	Completed	16 Jan 2007	Malaysia	USD-356m	-3.97%	-3.54%	N/A
Promina Group L. / Suncorp Metway	1 PMN = 0.2618 SUN + AUD1.80	23 Oct 2006	30 Apr 2007	140		Australia	AUD-7,006m	4.57%	-0.08%	11.91%
Queensland Gas . / Santos Ltd	1 QGC = AUD1.26	05 Oct 2006	31 Jan 2007	51	09 Jan 2007	Australia	AUD-666m	-9.03%	0.97%	-64.59%

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Deal	Terms	Ann. Date	Est. Comp	Days to comp	Sett. Date	Target Country	Target Mkt Cap (m)	Net Sprd	Change	Ann. Return
Rex Holdings Co. / AP8 Company Lim.	1 REX = JPY230000.00	10 Nov 2006	12 Dec 2006	1	19 Dec 2006	Japan	JPY-57,084m	4.07%	0.00%	1486.43%
Rinker Group Li. / Cemex SA de CV	1 RNK = USD13.00	27 Oct 2006	31 Jan 2007	51		Australia	USD-12,738m	-8.66%	0.85%	-61.95%
Road Builder (M. / IJM Corporation.	1 RBH = 0.50 IJM	18 Oct 2006	30 Jun 2007	201		Malaysia	USD-509m	8.09%	-0.19%	14.68%
Rural Press Lim. / John Fairfax Ho.	1 RUP = 2.30 FXJ + AUD1.80	06 Dec 2006	30 Apr 2007	140		Australia	AUD-1,595m	2.51%	0.91%	6.55%
S8 Limited / McLaughlins Fin.	1 SEL = 1.00 MFS + AUD0.70	04 Sep 2006	11 Dec 2006	Completed	11 Jan 2007	Australia	AUD-716m	-0.59%	-1.80%	N/A
Sime Darby Berh. / Synergy Drive S.	1 SIM = USD1.801	27 Nov 2006	15 Sep 2007	278		Malaysia	USD-5,093m	-9.27%	0.74%	-12.17%
Smorgon Steel G. / OneSteel Limite.	1 SSG = 0.4091 OST + AUD0.062	26 Jun 2006	30 Mar 2007	109		Australia	AUD-1,609m	9.21%	-0.54%	30.83%
Sumisho Lease C. / Sumitomo Corpor.	1 SML = JPY7000.00	13 Oct 2006	07 Dec 2006	Completed	14 Dec 2006	Japan	JPY-312,876m	-3.18%	-3.32%	N/A
Systex Corporat. / Sysware Corpora.	1 SSX = 0.3117 SWR	15 Feb 2006	01 Jan 2007	21		Taiwan	USD-332m	-6.98%	-0.14%	-121.27%
Taiwan Green Po. / Jabil Circuit, .	1 TGPE = USD3.316	22 Nov 2006	12 Jan 2007	32		Taiwan	USD-882m	-0.57%	0.00%	-6.53%
Torch Automobil. / Weichai Power C.	1 TORAUTO = 0.2833 WCPC	04 Sep 2006	28 Feb 2007	79		China	CNY-7,500m	-19.80%	-4.51%	-91.47%
UFJ Central Lea. / Diamond Lease C.	1 CLC = 1.00 DIL	19 Oct 2006	01 Apr 2007	111		Japan	JPY-137,036m	2.04%	0.55%	6.72%
Vision Systems . / Danaher Corpora.	1 VSL = AUD3.75	09 Oct 2006	04 Jan 2007	24		Australia	AUD-691m	0.27%	0.80%	4.07%
Yuanta Core Pac. / Fuhwa Financial.	1 YCP = 1.615 FFH	10 Nov 2006	02 Apr 2007	112		Taiwan	USD-2,694m	-2.87%	-0.34%	-9.34%
Zhejiang Supor . / SEB Internation.	1 ZJSC = CNY18.00	16 Aug 2006	31 Jan 2007	51		China	CNY-3,080m	2.86%	-2.90%	20.45%

Source: dealReporter, as of 11/12/2006

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Deal	Terms	Ann. Date	Est. Comp	Days to comp	Sett. Date	Target Country	Target Mkt Cap (m)	Net Sprd	Change	Ann. Return
ADVO Inc. / Valassis Commun.	1 ADV = USD37.00	06 Jul 2006	31 Dec 2006	20		USA	USD-949m	23.95%	-0.92%	380.13%
AfriOre Ltd / Lonmin Plc	1 AFR = USD7.71	15 Nov 2006	31 Jan 2007	51		Canada	USD-382m	3.19%	0.20%	21.57%
Agere Systems I. / LSI Logic Corpo.	1 AGS = 2.16 LSI	04 Dec 2006	31 Mar 2007	110		USA	USD-3,347m	1.60%	0.58%	5.11%
Aleris Internat. / Texas Pacific G.	1 ALR = USD52.50	08 Aug 2006	08 Feb 2007	59		USA	USD-1,628m	0.44%	0.00%	2.59%
American Power . / Schneider Elect.	1 APC = USD31.00	30 Oct 2006	30 Mar 2007	109		USA	USD-5,802m	1.77%	-0.03%	5.94%
Aramark Corpora. / RMK Acquisition.	1 ARK = USD33.80	08 Aug 2006	31 Jan 2007	51		USA	USD-6,030m	1.23%	0.03%	8.30%
Aztar Corporati. / Columbia Sussex.	1 AZT = USD54.00	10 May 2006	10 Jan 2007	30		USA	USD-1,930m	0.02%	0.02%	0.20%
Bandag Inc. / Bridgestone Ame.	1 BNDG = USD50.75	05 Dec 2006	15 Apr 2007	125		USA	USD-989m	0.51%	-12.92%	1.43%
Banta Corporati. / R R Donnelley &.	1 BNT = USD36.50	31 Oct 2006	28 Feb 2007	79		USA	USD-874m	1.19%	-0.03%	5.28%
BellSouth Corpo. / AT&T Inc (forme.	1 BSC = 1.325 ATT	05 Mar 2006	31 Dec 2006	20		USA	USD-82,852m	0.93%	-0.11%	16.93%
Bema Gold Corpo. / Kinross Gold Co.	1 BGD = 0.441 KRG	06 Nov 2006	01 Feb 2007	52		Canada	USD-2,466m	1.96%	-0.13%	13.01%
Broadwing Corp. / Level 3 Communi.	1 BDWG = 1.3411 LVLC + USD8.18	17 Oct 2006	17 Jan 2007	37		USA	USD-1,409m	1.10%	-0.01%	10.85%
Caremark Rx Inc / CVS Corporation	1 CARE = 1.67 CVSC	01 Nov 2006	30 Jun 2007	201		USA	USD-21,153m	1.25%	0.03%	2.24%
Cascade Natural. / MDU Resources G.	1 CNG = USD26.50	08 Jul 2006	01 Jun 2007	172		USA	USD-296m	2.83%	0.16%	5.91%
Centurion Energ. / Dana Gas	1 CEN = USD10.5168	12 Nov 2006	15 Jan 2007	35		Canada	USD-943m	0.67%	0.30%	6.48%
Chicago Board o. / Chicago Mercant.	1 CBTH = 0.3006 CMEI	17 Oct 2006	30 Jun 2007	201		USA	USD-8,606m	1.28%	-0.15%	2.32%
Clear Channel C. / Clear Channel A.	1 CLEAR = USD37.60	16 Nov 2006	31 Dec 2007	385		USA	USD-17,765m	7.05%	0.09%	6.68%
CNS Inc. / GlaxoSmithKline.	1 CNS = USD37.50	09 Oct 2006	21 Dec 2006	10	28 Dec 2006	USA	USD-524m	0.19%	-0.11%	6.83%
Commonwealth Te. / Citizens Commun.	1 CTE = 0.768 CCC + USD31.31	18 Sep 2006	31 May 2007	171		USA	USD-889m	0.05%	-0.02%	0.11%
Connetics Corpo. / Stiefel Laborat.	1 CON = USD17.50	23 Oct 2006	31 Dec 2006	20		USA	USD-598m	0.69%	-0.17%	12.60%
Conor Medsystem. / Johnson & Johns.	1 CNR = USD33.50	16 Nov 2006	17 Feb 2007	68		USA	USD-1,218m	3.55%	-0.13%	18.02%
Delta & Pine La. / Monsanto Compan.	1 DPL = USD42.00	15 Aug 2006	15 Jan 2007	35		USA	USD-1,453m	3.73%	0.38%	38.89%
Digital Insight. / Intuit, Inc	1 DIG = USD39.00	30 Nov 2006	31 Mar 2007	110		USA	USD-1,243m	1.67%	0.03%	5.34%
Duquesne Light . / Macquarie Conso.	1 DLH = USD20.00	05 Jul 2006	05 Mar 2007	84		USA	USD-1,581m	0.70%	0.20%	2.96%
Equity Office P. / Blackstone Real.	1 EOP = USD48.50	20 Nov 2006	31 Jan 2007	51		USA	USD-16,949m	0.66%	-0.15%	4.33%
Essex Corporati. / Northrop Grumma.	1 ESS = USD24.00	08 Nov 2006	28 Feb 2007	79		USA	USD-523m	0.50%	-0.25%	2.24%
Euronext NV / NYSE Group Inc	1 NXT = 0.98 NYS + EUR21.32	02 Jun 2006	01 Feb 2007	52		Netherlands	EUR-9,826m	4.41%	-0.90%	30.93%

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Deal	Terms	Ann. Date	Est. Comp	Days to comp	Sett. Date	Target Country	Target Mkt Cap (m)	Net Sprd	Change	Ann. Return
Fidelity Banksh. / National City C.	1 FBI = 0.5489 NAC + USD19.75	27 Jul 2006	27 Mar 2007	106		USA	USD-996m	0.32%	0.00%	1.09%
Giant Industrie. / Western Refinin.	1 GII = USD77.00	28 Aug 2006	31 Mar 2007	110		USA	USD-1,120m	0.65%	0.26%	2.17%
Global Signal I. / Crown Castle In.	1 GSI = 1.3847 CCC + USD7.833	06 Oct 2006	12 Jan 2007	32		USA	USD-3,888m	-0.03%	0.01%	-0.29%
Gold Kist Inc. / Pilgrim's Pride.	1 GOLD = USD21.00	28 Sep 2006	27 Dec 2007	381		USA	USD-1,064m	0.62%	-0.05%	0.60%
ICOS Corporatio. / Eli Lilly and C.	1 ICO = USD32.00	17 Oct 2006	31 Dec 2007	385		USA	USD-2,158m	-2.82%	0.18%	-2.68%
Interchange Fin. / TD Banknorth In.	1 IFC = USD23.00	13 Apr 2006	05 Jan 2007	25		USA	USD-466m	0.52%	0.00%	6.84%
Jacuzzi Brands . / Apollo Manageme.	1 JZ = USD12.50	11 Oct 2006	01 Feb 2007	52		USA	USD-8,112m	0.97%	0.16%	6.43%
Kanbay Internat. / Capgemini SA (f.	1 KNB = USD29.00	26 Oct 2006	31 Jan 2007	51		USA	USD-1,124m	0.94%	0.04%	6.73%
KeySpan Corp / National Grid p.	1 KEY = USD42.00	27 Feb 2006	31 May 2007	171		USA	USD-7,147m	2.46%	-0.05%	5.26%
Kinder Morgan, . / Kinder Morgan (.	1 KM = USD107.50	28 Aug 2006	28 Feb 2007	79		USA	USD-14,118m	2.14%	0.15%	9.52%
Kos Pharmaceuti. / Abbott Laborato.	1 KOS = USD78.00	06 Nov 2006	31 Dec 2006	20		USA	USD-3,702m	-0.56%	0.00%	-8.90%
La Senza / Limited Brands,.	1 LS = USD42.2863	15 Nov 2006	15 Jan 2007	35		Canada	USD-578m	1.66%	0.16%	15.51%
London Stock Ex. / Nasdaq Stock Ma.	1 LSE = GBP12.43	20 Nov 2006	16 Feb 2007	67		United Kingdom	GBP-2,817m	-5.48%	0.00%	-28.55%
Lone Star Steak. / Lone Star Funds	1 LSS = USD27.35	18 Aug 2006	31 Dec 2006	20		USA	USD-566m	0.07%	1.12%	1.34%
Matrix Laborato. / Mylan Laborator.	1 MTX = INR306.00	28 Aug 2006	11 Dec 2006	Completed	26 Dec 2006	India	INR-39,159m	20.07%	2.65%	N/A
McDATA Corporat. / Brocade Communi.	1 MCD = 0.75 BCS	08 Aug 2006	07 Feb 2007	58		USA	USD-921m	13.20%	1.20%	78.96%
Mellon Financia. / The Bank of New.	1 MFC = 1.06 BoNY	04 Dec 2006	01 Jul 2007	202		USA	USD-17,302m	-1.50%	0.00%	-2.64%
Mercantile Bank. / PNC Financial S.	1 MBC = 0.4184 PNCF + USD16.45	09 Oct 2006	09 Feb 2007	60		USA	USD-5,795m	0.72%	0.11%	4.36%
Mid-State Bancs. / Rabobank	1 MIDS = USD37.00	02 Nov 2006	30 Jun 2007	201		USA	USD-803m	1.56%	-0.03%	2.80%
Mission Oil & G. / Crescent Point .	1 MOG = 0.695 CPE	11 Sep 2006	31 Dec 2006	20		Canada	USD-416m	0.22%	0.92%	3.96%
NorthWestern Co. / Babcock & Brown.	1 NWC = USD37.00	25 Apr 2006	01 Feb 2007	52		USA	USD-1,266m	3.93%	0.06%	26.10%
Open Solutions . / Open Solutions .	1 OSI = USD38.00	16 Oct 2006	31 Mar 2007	110		USA	USD-742m	1.66%	-0.16%	5.50%
Oregon Steel Mi. / Evraz Group SA	1 ORS = USD63.25	20 Nov 2006	27 Jan 2007	47		USA	USD-2,233m	0.76%	0.08%	5.37%
OSI Restaurant . / Kangaroo Holdin.	1 OSIRP = USD40.00	06 Nov 2006	30 Apr 2007	140		USA	USD-2,948m	1.70%	0.51%	4.35%
Peoples Energy . / WPS Resources C.	1 PEC = 0.825 WRC	10 Jul 2006	10 Jan 2007	30		USA	USD-1,677m	0.32%	0.38%	3.56%
Per-Se Technolo. / McKesson Corpor.	1 PST = USD28.00	06 Nov 2006	06 Feb 2007	57		USA	USD-1,141m	1.27%	-0.11%	8.11%
Phelps Dodge Co. / Freeport-McMoRa.	1 PDC = 0.67 FMC + USD88.00	19 Nov 2006	31 Mar 2007	110		USA	USD-25,216m	4.84%	-0.12%	15.50%

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Deal	Terms	Ann. Date	Est. Comp	Days to comp	Sett. Date	Target Country	Target Mkt Cap (m)	Net Sprd	Change	Ann. Return
Premium Standar. / Smithfield Food.	1 PSF = 0.678 SMF + USD1.25	18 Sep 2006	18 Mar 2007	97		USA	USD-606m	1.47%	0.11%	5.55%
Protect Data AB / Check Point Sof.	1 PTDT = EUR19.836	20 Nov 2006	22 Dec 2006	11		Sweden	EUR-463m	-1.49%	1.17%	-34.01%
RailAmerica Inc. / Fortress Invest.	1 RAIL = USD16.35	15 Nov 2006	15 Feb 2007	66		USA	USD-628m	2.44%	0.13%	12.74%
Reckson Associa. / SL Green Realty.	1 RAR = 0.1039 SLGR + USD31.68	03 Aug 2006	31 Jan 2007	51		USA	USD-3,818m	-1.03%	-0.82%	-6.98%
Republic Bancor. / Citizens Bankin.	1 RBI = 0.4378 CBC + USD2.08	27 Jun 2006	31 Dec 2006	20		USA	USD-1,025m	0.11%	-0.50%	1.80%
Rinker Group Li. / Cemex SA de CV	1 RNK = USD13.00	27 Oct 2006	31 Jan 2007	51		Australia	USD-12,738m	-8.66%	0.85%	-61.95%
Seitel Incorpor. / ValueAct Capita.	1 SEIT = USD3.70	01 Nov 2006	15 Jan 2007	35		USA	USD-555m	3.35%	0.00%	34.96%
Sirna Therapeut. / Merck & Co Inc	1 SRN = USD13.00	30 Oct 2006	28 Feb 2007	79		USA	USD-942m	0.62%	-0.08%	2.86%
Solexa, Inc. / Illumina Inc.	1 SOL = 0.3296 ILM	13 Nov 2006	31 Mar 2007	110		USA	USD-474m	4.20%	0.43%	13.56%
State National . / Banco Bilbao Vi.	1 SNB = USD38.50	12 Jun 2006	03 Jan 2007	23	24 Nov 2006	USA	USD-455m	0.52%	-1.03%	8.29%
Symbol Technolo. / Motorola Inc	1 STI = USD15.00	19 Sep 2006	15 Jan 2007	35		USA	USD-3,782m	0.81%	0.00%	8.41%
Taiwan Green Po. / Jabil Circuit, .	1 TGPE = USD3.316	22 Nov 2006	12 Jan 2007	32		Taiwan	USD-882m	-0.57%	0.00%	-6.53%
Talk America Ho. / Cavalier Teleph.	1 TAH = USD8.10	22 Sep 2006	31 Dec 2006	20		USA	USD-245m	0.72%	-0.03%	13.07%
Tanox, Inc. / Genentech Inc	1 TAN = USD20.00	09 Nov 2006	31 Mar 2007	110		USA	USD-898m	0.96%	-0.20%	3.10%
TD Banknorth In. / TD Bank Financi.	1 TDB = USD32.33	20 Nov 2006	20 Mar 2007	99		USA	USD-7,364m	0.40%	-0.06%	1.42%
Texas United Ba. / Prosperity Banc.	1 TUB = 1.00 PBI	19 Jul 2006	19 Feb 2007	70		USA	USD-361m	0.65%	-0.12%	3.24%
The Reader's Di. / Reader's Digest.	1 RD = USD17.00	16 Nov 2006	16 Feb 2007	67		USA	USD-1,600m	1.37%	0.00%	7.05%
Trammell Crow C. / CB Richard Elli.	1 TRAM = USD49.51	31 Oct 2006	20 Dec 2006	9		USA	USD-1,781m	0.28%	-0.02%	11.50%
TriPath Imaging. / Becton, Dickins.	1 TPI = USD9.25	08 Sep 2006	22 Dec 2006	11		USA	USD-354m	0.43%	0.11%	14.41%
Univision Commu. / Univision Acqui.	1 UVC = USD36.25	27 Jun 2006	31 May 2007	171		USA	USD-10,839m	2.34%	-0.09%	5.00%
Veritas DGC Inc. / Compagnie Gener.	1 VER = 0.2237 CGG + USD36.83	05 Sep 2006	31 Jan 2007	51		USA	USD-2,941m	3.30%	0.52%	23.64%
Yankee Candle C. / Madison Dearbor.	1 YKC = USD34.75	25 Oct 2006	31 Mar 2007	110		USA	USD-1,356m	1.91%	-0.15%	6.16%

Source: dealReporter, as of 11/12/2006

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