

Autumn 2006

A legal update from Dechert's EU & Competition Group

EU Briefing

The following briefing sheet contains an overview of the activities of the various European Union institutions for the autumn of 2006. It also takes a prospective look at the events in the month of November 2006.

Table of Contents

Institutional Activities.....	p. 1
Mergers	p. 5
State Aid.....	p. 5
Policy.....	p. 5
The Coming Month	p. 11

INSTITUTIONAL ACTIVITIES

European Commission ("Commission") Fines Dutch Road Bitumen Cartel EUR 266.7 Million

On 13 September the Commission announced that eight suppliers and six purchasers of road bitumen were fined a total of EUR 266.7 million for their participation in an illegal price-fixing cartel in the Netherlands.

The Commission found that the eight suppliers (BP, Esha, Lockner Bitumen, Kuwait Petroleum, Nynas, Shell, Total and Wintershall) and the six biggest road construction companies in the Netherlands (Ballast Nedam, Dura Vermeer, Heijmans, Hollandsche Beton Groep—now part of Koninklijke BAM Groep—Koninklijke BAM Group, and Koninklijke Volker Wessels Stevin (KWS)) met in a series of meetings which dated from at least 1994 to 2002 during which they fixed prices of bitumen in the Netherlands and ensured minimum discounts for the six purchasers involved.

Due to the cartel, the price of bitumen in the Netherlands rose beyond that in neighbouring

countries, benefiting all participants in the cartel. The Commission decided that the actions of the cartel constituted a very serious infringement of Article 81(1) of the EC Treaty, and took into account the length of the cartel, the size of the firms involved, and the limited size of the market when setting the fines, totalling EUR 266.7 million.

Shell received the biggest fine of EUR 108 million, which included a 50% increase for being a repeat cartel offender, and a further 50% increase for instigating and leading the cartel. KWS also received a 50% increase in its fines for instigating and leading the cartel, plus a further 10% increase for twice refusing the Commission access to its premises during the investigation and a further 50% increase for instigating and leading the cartel. BP was granted full immunity from a fine which would have been EUR 30.78 million because they cooperated with the Commission and also provided important information about the cartel.

European Court of Justice ("ECJ") Partially Annuls Court of First Instance ("CFI") Judgment in Dutch Trade Association Case

On 21 September the ECJ handed down its judgment partially setting aside a ruling of the CFI on the grounds that the CFI had erred in its appraisal of whether the Commission's administrative proceedings were excessively long.

Following a complaint made in 1991, the Commission in 1999 fined Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied (FEG), a Dutch trade association for industrial electrical wholesalers, for entering into collective exclusive dealing arrangements with two other trade associations and for price fixing with its members. Technische Unie BV (TU), FEG's largest member, was found to have participated in these infringements because it participated in

meetings where unlawful conduct was agreed upon without raising any objections to that conduct. FEG was fined EUR 4.4 million and TU EUR 2.15 million.

On appeal, the CFI rejected claims that the Commission had made legal and factual errors in its application of Article 81, that it had made various procedural errors, and that since its investigation had taken eight years it had infringed the principle that decisions must be given within a reasonable period.

FEG and TU both appealed to the ECJ, particularly focusing on whether the excessive duration of administrative proceedings breached their rights of defence and so could justify an annulment of the Commission decision or a reduction in their fines. Opinions of the Advocate General in 2005 recommended that the CFI judgment be set aside due to errors in law.

The ECJ noted that the CFI had correctly considered that all proceedings have two phases in their administrative proceedings, the first being the investigation phase preceding the statement of objections, and the second being the remainder of the administrative procedure. However, where the CFI had considered that only the second phase could affect rights of defence, since it was only in this phase that FEG and TU were officially informed of the infringements, the ECJ held that the assessment of the effectiveness of the rights of defence must extend to the entire procedure and not just to the second phase. In order to show that its rights of defence had been breached, FEG had to establish that on the date of the statement of objections it had less opportunity to refute the Commission's objections for reasons arising from the fact that the first phase of the administrative procedure had taken an unreasonably long time. FEG failed to show this and its appeal was dismissed. The same analysis was applied to TU.

ECJ Dismisses JCB Appeal

On 21 September the ECJ dismissed an appeal brought by JCB Service against the CFI, which had upheld the decision of the Commission to fine JCB for its breach of Article 81(1) of the EC Treaty.

In 1973, the British construction machinery company JCB notified the Commission of a number of distribution agreements seeking negative clearance or individual exemption. Following the raising of concerns by the Commission that the agreements contained several restrictions in breach of Article 81, JCB sent it revised agreements in 1975. In 1976, the Commission informed JCB that certain problems previously raised had been resolved but that others remained. JCB provided the Commission with detailed information relating to the remaining issues. JCB sent further versions of the

agreements in 1980 and 1995, but the Commission did not respond.

In 1996, the Commission began an investigation of JCB's distribution practices following a complaint, issuing a first statement of objections in 1998 and a second one in 1999. In 2000, the Commission decided that JCB's distributorships had the object of restricting competition in the common market, partitioning national markets and providing absolute territorial protection to exclusive distribution territories because of a combination of, *inter alia*:

- banning official distributors from selling to unauthorised resellers;
- imposing fees on sales made by official distributors outside their allotted territories;
- fixing resale prices or discounts;
- preventing official distributors from purchasing machines or spare parts from distributors in other Member States by imposing an obligation on them to purchase only from JCB.

JCB was fined EUR 39,614,000 for its infringement of Article 81(1) of the EC Treaty.

JCB appealed to the ECJ on both administrative and substantive grounds. In relation to the procedure, JCB claimed that because such a long time had elapsed between the notification in 1973 and the decision in 2000 the Commission had infringed JCB's rights of defence. The ECJ held however that the CFI was correct to find that JCB had not shown this to be the case. The ECJ clarified that just because a decision is not adopted within a reasonable time following a notification does not make that decision unlawful.

JCB also tried to argue that the Commission had breached the presumption of innocence by showing bias, chiefly by issuing two successive statements of objections. The ECJ rejected this argument, holding that the fact the Commission draws up a statement of objections cannot be considered to be evidence of a presumption of the culpability of the undertaking concerned. Moreover, the second statement was issued to correct the first following JCB pointing out that there were omissions in the first.

On the substantive front, JCB claimed that the CFI had infringed both Article 81(1) and Article 81(3). The Article 81(1) appeal by JCB centred on the argument that the CFI had been wrong to find that the distribution agreements in question expressly prohibited passive sales, but the appeal was dismissed by the ECJ as inadmissible because it related to issues of fact rather than of law—JCB had not raised serious arguments to show that the CFI's

consideration of the facts amounted to a distortion of the evidence or amounted to an error of law.

In relation to Article 81(3), JCB tried to argue that the CFI was wrong to have found that the Commission was entitled to reject JCB's application for individual exemption on the basis that not all relevant agreements had been considered. The ECJ rejected JCB's appeal, holding that the Commission and the CFI had considered all the relevant agreements, notified or not, and assessed their ability to be exempted. JCB also tried to argue that there was a contradiction between the CFI's conclusion that three of the infringements had not been established, and the conclusion that the Commission validly rejected the application for exemption. The ECJ rejected this argument, holding that the CFI was correct to uphold the Commission's decision that the conditions of Article 81(3) were not satisfied because the effect of the practices noted above outweighed any consumer benefit, and the exclusive distribution system could not be regarded as indispensable to the improvement of distribution.

The ECJ fixed the fine imposed on JCB at EUR 30,864,000.

Repeal of Block Exemption for Liner Shipping Conferences

On 25 September the Competitiveness Council agreed to repeal Regulation 4056/86, which established the block exemption allowing liner carriers to meet in conferences, fix prices, and regulate capacities. The repeal takes effect in October 2008.

The decision comes after a three-year, in-depth investigation by the Commission into the competition-restricting effects of liner conferences which are agreements between liner shipping companies on prices and other conditions of carriage. Liner shipping is of much importance to the EU economy because 40% by value of EU external trade by sea is transported by liner carriers.

The block exemption in Regulation 4056/86 was originally granted on the assumption that it was necessary to ensure the provision of reliable services and allows shipping companies to set common freight rates, to take joint decisions on the limitation of supply, and to coordinate timetables. However price-fixing among conference members distorts the market, reducing competition and creating artificially high prices for users. Internal Market and Services Commissioner Charlie McCreevy stated that he was "delighted" at the abolition of the block exemption because "the EU economy as a whole stands to benefit from lower transport prices and more competitive exports".

Existing liner conferences will be able to continue operating on routes to and from the EU until October 2008, after which date the conference activities, and in particular price fixing and capacity regulation, will be prohibited.

CFI Partially Annuls Commission Decision in GlaxoSmithKline Case

On 27 September the CFI handed down its judgment annulling in part the decision of the Commission against GlaxoSmithKline ("GSK"), ruling that the Commission erred in finding that the object of the relevant pricing system was to restrict competition and that the Commission failed to conduct an adequate examination of GSK's notification for exemption of its sales conditions under Article 81(3).

In 1998, GSK adopted new conditions of sale which constituted a dual pricing scheme, where Spanish wholesalers were paying a higher price for products to be exported than for products to be resold in Spain. GSK notified the Commission and requested an exemption under Article 81(3). In 2001, the Commission prohibited the conditions of sale, stating that they constituted an agreement which restricted trade from Spain to other Member States and that they were therefore considered anti-competitive.

On appeal, the CFI found that while the conditions of sale did indeed constitute an agreement which could have the effect of restricting competition, it was wrong of the Commission to conclude that just because there was a dual pricing scheme in operation it meant that the object of the scheme was to restrict competition.

The Commission ought to have taken into account the specific characteristics of the pharmaceutical sector which make prices unable to be determined by normal supply and demand as in other sectors, in particular due to the intervention in this respect by national health authorities.

GSK's attempt to claim exemption under Article 81(3) was supported by much factual argument and economic evidence, which the CFI found the Commission to have examined with insufficient thoroughness. The special nature of the pharmaceutical sector required a more rigorous assessment by the Commission taking into account not only the fact that the market is affected by the setting of prices by national authorities but also by the investment needed to fund research and development.

As a result, the CFI has ruled that the Commission will have to re-examine the request of GSK for exemption as originally submitted.

Commission and Other European Competition Network (“ECN”) Members Cooperate in Use of Leniency to Fight Cross-Border Cartels

On 29 September 2006, the Commission issued for consultation a draft Leniency Notice to replace the existing 2002 Leniency notice. At the same time, the ECN published a leniency programme to which the ECN members have committed to align their national programmes.

The proposed changes to the Commission’s Leniency Notice aim at providing more guidance and clarity for the companies applying for leniency and at addressing concerns about the risk of discovery in civil damage proceedings of corporate statements made to the Commission under the Leniency Notice. They can be summarised as follows:

- the information and evidence that must be provided in order to get full immunity are now explicitly specified, in particular the required content of a corporate statement;
- immediately following its application for immunity the applicant must end its own infringement, except for where the Commission requests that its participation is continued so as to avoid arousing the suspicion of other cartel members;
- an applicant seeking full immunity can now either make a full application to the Commission at once or can apply initially for a “marker”, protecting the applicant’s place in the queue for leniency (granted at the discretion of the Commission);
- it is now explicitly stated that if at the end of the Commission’s investigation the applicant has not met its continuing obligations to cooperate fully with the Commission, it will not benefit from any favourable treatment under the Notice;
- it is now explicitly stated that the obligation on continuous cooperation concerns also applications for a reduction of fines; and
- a new concept of “compelling evidence” has been introduced for evidence which does not require corroboration. Greater value will be attributed to such evidence.

The Model Leniency Programme which has now been introduced by the Network aims to improve the handling of parallel leniency applications in the ECN. It is not legally binding but it is expected that each member jurisdiction will ensure their respective leniency programmes to reflect the provisions of the Model Programme. The Model Programme contains the same framework as the draft Notice but also adds a summary application model which works at the national level for

immunity cases where an applicant has or is in the process of making an immunity application with the Commission.

Commission Threatens to Take France to Court Over Takeover Law

On 12 October the Commission announced that it was considering instituting proceedings against France to force it to change its new corporate takeover law.

The controversial law took effect in December 2005, and lets the French government have the final word in foreign takeovers of French firms in certain “strategic sectors” such as computer security, gambling, and private security in order to protect the country’s national defence and public policy.

According to the Commission, this law is “incompatible with the free movement of capital and the freedom of establishment”, since it could discourage investment from other Member States. The Commission sent France a formal request for information in April 2006 asking France to justify the objectives of this takeover law, and it has now issued its reasoned opinion asking France to modify the law. France has two months within which to make a satisfactory reply, and if no adequate response is received within that time the Commission may refer the matter to the ECJ.

Commission Statement on Microsoft Vista

On 13 October the Commission issued a press release to say that it has been informed of Microsoft’s intention to deliver its Vista operating system worldwide, with no delay in Europe. The Commission’s reaction has been to highlight Microsoft’s obligation to ensure that Vista is fully compliant not only with EC competition law in general but also with the precise principles laid down in the March 2004 Commission decision. In this context, the Commission will be very closely monitoring the effects of Vista in the market, examining particularly any complaints concerning Vista.

Commission Opens Infringement Procedure Against Spain

On 18 October, the Commission announced that it has sent Spain a letter of formal notice requesting explanation as to why it has not yet complied with the Commission decision under Article 21 of the EC Merger Regulation requiring Spain to remove the conditions imposed by the Comisión de Nacional de Energía (CNE) on E.ON’s bid for Endesa.

On 25 April 2006, the Commission approved the acquisition of the Spanish energy company Endesa by the German energy company E.ON, but on 27 July 2006, the

CNE (the Spanish gas and electricity regulator) imposed various conditions on the same merger under national law.

On 26 September 2006, the imposition of such conditions was held by the Commission to be a breach of Article 21 of the EC Treaty because the CNE adopted its decision without prior communication to and approval by the Commission. The Commission held that the conditions imposed on the acquisition are contrary to Articles 56 (free movement of capital) and 43 (freedom of establishment) of the EC Treaty.

The 26 September decision required Spain to withdraw the conditions imposed by the CNE's decision which were declared incompatible with EC law, without delay. The Commission has not had any response from Spain, which is why it has now sent a letter of formal notice. If Spain does not provide a satisfactory response the Commission may issue a formal request (a reasoned opinion) requiring the withdrawal of the conditions, and continued non-compliance could result in referral to the ECJ.

Commission Fines Copper Fittings Cartel EUR 314.7 Million

On 20 September the Commission announced that 30 companies (within 11 corporate groups) were fined a total of EUR 314.7 million for their participation in an illegal price-fixing cartel in the EEA. The total fines are the fifth highest imposed on a cartel.

Thirty companies active across the EEA were found to have fixed prices, discounts, and rebates, agreed on mechanisms to coordinate price increases, allocated customers, and exchanged commercially sensitive information in relation to copper fittings used to connect water gas and air tubes between 1998 and 2004. (The 11 groups to which these companies belong are Aalberts, IMI, Delta, Advanced Fluid Connections, Legris, Frabo, Mueller, Tomkins, Flowflex, Viegenger, and Sanha Kaimer).

The Commission's investigation was initially prompted by an application for leniency lodged by Mueller, an American company, in January 2001, following which unannounced inspections were carried out by the Commission. A number of the companies continued the illegal practices after the inspections and consequently had their fines increased by up to 60%. Similarly, companies which cooperated with the Commission and provided important information about the cartel were granted reductions in fines. Mueller, as the company that alerted the Commission to the existence of the cartel, was granted full immunity from a fine which would otherwise have been EUR 10.4 million.

MERGERS

Commission Receives Proposed Remedies in Gaz De France/Suez Merger

On 21 September, the Commission confirmed that it has received proposed remedies from Gaz de France and Suez in order to address concerns identified by the Commission during its Phase II investigation into their proposed merger. Since the merger involves the two main gas and electricity operators in Belgium and two out of the three main operators in France, the Commission was concerned that serious competition issues could arise as a result.

The Commission is now in the process of assessing the proposed remedies after which it will issue a formal decision on the merger. The deadline for the Commission's decision has been extended from 25 October 2006 to 17 November 2006.

STATE AID

Commission Adopts Block Exemption Simplifying Procedures for Approving Regional Aid

On 24 October the Commission adopted a new block exemption Regulation for regional investment aid.

The new block exemption is to be considered alongside the new Guidelines for Regional Aid 2007-2013 adopted in December 2005, which set out the rules for the selection of regions which are eligible for regional aid, and define the maximum levels of the aid permitted.

The block exemption only exempts "transparent regional investment aid", which means schemes where it is possible to precisely calculate the aid levels as a percentage of the investment costs without the need for a risk assessment. Therefore, among schemes excluded from exemption are regional aid schemes involving public shareholdings, risk capital, and state guarantees, which all remain subject to prior notification to the Commission.

POLICY

Neelie Kroes Speaks on EU Energy Policy

On 30 October Neelie Kroes gave a speech on the EU energy strategy.

Commissioner Kroes believes that a new European energy policy is needed due to growth in demand, the continually rising prices, and the increasing dependency on external suppliers. In this context, she stressed the importance of the development of a proper European single market for

energy. This is, inter alia, why the Commission launched a proactive sector enquiry into competitive conditions in the gas and electricity sectors, of which the preliminary findings showed significant problems including:

- a very concentrated market with the potential for too high prices;
- lack of liquidity and too much tying of infrastructure preventing new entry;
- minimal cross-border integration;
- lack of transparency; and
- price determination which is not based on effective competition.

The Commission hopes to produce its final report in early 2007. However, Commissioner Kroes believes that competition law alone will not be sufficient to reduce the above mentioned problems. She states that there must be a better regulatory framework to add to competition law enforcement. In particular, she regarded transparency in the market, the structural ownership separation, the availability of a reasonable amount of gas on the market each year, and improved regulatory cross-border coordination as necessary to improve the functioning of the energy market in Europe.

CONCENTRATIONS UNDER MERGER REGULATION FOR SEPTEMBER AND OCTOBER 2006

Name of Parties	Business Sector	JV or Merger	Stage of Procedure	Reference
Abbott/Guidant	Cardiovascular medical devices	Merger	Non-opposition to a notified concentration	OJ [2006] C 256/09
AIG/GIP/Stratfield	Air transport activities	JV	Prior notification of a concentration	OJ [2006] C 257/05
ALSO/GNT	Wholesale of computer, computer peripheral equipment, and software	Merger	Prior notification of a concentration	OJ [2006] C 241/10
AOHL/L&R/NETCARE/General Healthcare Group	Regulation of the activities of agencies that provide health care, education, cultural services, and other social services, excluding social security	JV	Non-opposition to a notified concentration	OJ [2006] C 226/06
APHL/Permira/Clessidra/Sisal	Betting and gambling	Merger	Prior notification of a concentration	OJ [2006] C 221/03
Apollo Group/TNT Logistics	Contract logistics services	Merger	Prior notification of a concentration	OJ [2006] C 231/03
Arcelor/Bamesa/Bamesa Otel	Steel processing and distribution	JV	Non-opposition to a notified concentration	OJ [2006] C 243/06
Arcelor/SNCFL/CFL Cargo	Transport via railways	JV	Non-opposition to a notified concentration	OJ [2006] C 258/10
Atel Energia/Azienda Energetica – Etschwerke/ENERG.IT	Electricity generation, wholesale, and retail supply	JV	Non-opposition to a notified concentration	OJ [2006] C 243/07
Atos Origin/Banksys/BCC	IT services; transaction processing services; commercial acquiring services for debit and credit cards	Merger	Prior notification of a concentration	OJ [2006] C 213/04
Atos Origin/Banksys/BCC	IT services; transaction processing services; commercial acquiring services for debit and credit cards	Merger	Non-opposition to a notified concentration	OJ [2006] C 251/09

CONCENTRATIONS UNDER MERGER REGULATION FOR SEPTEMBER AND OCTOBER 2006

Name of Parties	Business Sector	JV or Merger	Stage of Procedure	Reference
Aviva/De Agostini/Sopaf/Bipielle Net	Central banking	JV	Non-opposition to a notified concentration	OJ [2006] C 248/13
AXA IMD/Investkredit/Europolis	Office properties	JV	Prior notification of a concentration	OJ [2006] C 248/10
AXA/Gerflor	PVC floor coverings	Merger	Prior notification of a concentration	OJ [2006] C 254/08
AXA/Winterthur	Insurance and pension funding, except compulsory social security	Merger	Non-opposition to a notified concentration	OJ [2006] C 239/08
BASF/Degussa	Manufacture of chemicals and chemical products	Merger	Non-opposition to a notified concentration	OJ [2006] C 242/09
BC Partners/Brenntag	Manufacture of chemicals and chemical products	Merger	Non-opposition to a notified concentration	OJ [2006] C 242/08
BC Partners/Buziol/Fashion Box Group	Real estate; manufacture and retail of clothing	JV	Non-opposition to a notified concentration	OJ [2006] C 244/13
Blackstone/Travelport	Activities of travel agencies and tour operators; tourist assistance activities	Merger	Non-opposition to a notified concentration	OJ [2006] C 210/11
Boeing/Aviall	Aerospace spare parts	Merger	Non-opposition to a notified concentration	OJ [2006] C 244/17
Boston Scientific/Guidant	Cardiovascular medical devices	Merger	Non-opposition to a notified concentration	OJ [2006] C 251/07
Bridgepoint/Dorna	Commercial rights relating to motorcycle race series	Merger	Prior notification of a concentration	OJ [2006] C 226/04
Bridgepoint/Dorna	Commercial rights relating to motorcycle race series	Merger	Non-opposition to a notified concentration	OJ [2006] C 248/16
Carlson/One Equity Partners/Carlson Wagonlit	Travel services	JV	Non-opposition to a notified concentration	OJ [2006] C 246/21
CELSA/FUNDIA	Steel reinforcing products	Merger	Non-opposition to a notified concentration	OJ [2006] C 256/09
Cerberus/GMAC	Investment in real and personal property; motor related activities	Merger	Prior notification of a concentration	OJ [2006] C 228/09
Cinven Limited/Aero Invest	Aerospace and defence industry	Merger	Prior notification of a concentration	OJ [2006] C 217/06
Cinven/Aero Invest	Aerospace and defence	Merger	Non-opposition to a notified concentration	OJ [2006] C 248/17
Cinven-Warburg Pincus/Casema-Multikabel	Radio and television activities	JV	Non-opposition to a notified concentration	OJ [2006] C 243/03
CVRD/INCO	Mining of ferrous and non-ferrous metals	Merger	Non-opposition to a notified concentration	OJ [2006] C 246/17
Daikin/OYL	Air conditioners	Merger	Prior notification of a concentration	OJ [2006] C 213/03

CONCENTRATIONS UNDER MERGER REGULATION FOR SEPTEMBER AND OCTOBER 2006

Name of Parties	Business Sector	JV or Merger	Stage of Procedure	Reference
Deutsche Bank/AIG/Pokrovsky Hills	Residential property	JV	Prior notification of a concentration	OJ [2006] C 244/08
Diehl/Thales/JV	Production and sales of fuses and safety and arming devices	JV	Prior notification of a concentration	OJ [2006] C 246/13
E.ON/Prazska Plynarenska	Electricity, gas, steam, and hot water supply	JV	Non-opposition to a notified concentration	OJ [2006] C 242/07
Edison/EDF Energia Italia	Generation, transmission, and supply of electricity	Merger	Non-opposition to a notified concentration	OJ [2006] C 254/09
Edison/Eneco Energia	Electricity supply	Merger	Prior notification of a concentration	OJ [2006] C 228/06
ENB/Cogas Energy	Management of public utilities; supply of electricity and natural gas	JV	Prior notification of a concentration	OJ [2006] C 211/02
EST/Dalmine	Supply of gas and electricity	Merger	Prior notification of a concentration	OJ [2006] C 210/07
EST/Dalmine	Gas and electricity supply	Merger	Non-opposition to a notified concentration	OJ [2006] C 244/14
FCC/Alpine	Construction	Merger	Prior notification of a concentration	OJ [2006] C 226/05
FCC/Alpine	Construction	Merger	Non-opposition to a notified concentration	OJ [2006] C 256/11
FCC/WRG	Waste disposal and recycling	Merger	Non-opposition to a notified concentration	OJ [2006] C 246/23
Goldman Sachs/MatlinPatterson/SecurLog	Cash services and secure courier services	JV	Prior notification of a concentration	OJ [2006] C 222/07
Hewlett Packard/Mercury Interactive	Provision of application testing software	Merger	Prior notification of a concentration	OJ [2006] C 228/07
Hombergh – de Punder – PIB/Ovako	Steel	JV	Prior notification of a concentration	OJ [2006] C 246/15
Hormann/MN/ACP JV	Vehicle parts, engineering	JV	Non-opposition to a notified concentration	OJ [2006] C 244/12
HSBC/Lamda/Olympia Village	Real estate investment and management; real estate development	JV	Prior notification of a concentration	OJ [2006] C 234/03
Istithmar/Mubadala/SR Technics	Commercial aircraft maintenance repair and overhaul	JV	Prior notification of a concentration	OJ [2006] C 256/06
Johnson & Johnson/Pfizer Consumer Healthcare	Pharmaceuticals	Merger	Prior notification of a concentration	OJ [2006] C 258/08
KKR/Pages Jaunes	Publishing telephone directories, advertising space in directories and on internet	Merger	Non-opposition to a notified concentration	OJ [2006] C 244/11

CONCENTRATIONS UNDER MERGER REGULATION FOR SEPTEMBER AND OCTOBER 2006

Name of Parties	Business Sector	JV or Merger	Stage of Procedure	Reference
LBO France/Vinci Airport Services	Airport services	Merger	Prior notification of a concentration	OJ [2006] C 225/04
Linde/Spectra	Production and distribution of specialty gases	Merger	Non-opposition to a notified concentration	OJ [2006] C 246/19
Lottomatica/GTECH	Gambling and betting activities	Merger	Non-opposition to a notified concentration	OJ [2006] C 228/08
Macquarie/Corona	Supply of natural gas	Merger	Non-opposition to a notified concentration	OJ [2006] C 244/09
Macquarie/South East London & Kent Bus Company/East London Bus & Coach Company	Scheduled passenger land transport	Merger	Non-opposition to a notified concentration	OJ [2006] C 210/12
MEAS/DSPL/Sadoport	Supporting water transport activities	JV	Non-opposition to a notified concentration	OJ [2006] C 253/06
Modni/Schleipen & Erkens	Production of metals and industrial minerals; production of release liners	Merger	Prior notification of a concentration	OJ [2006] C 231/02
Morgan Stanley/IHG/Portfolio Hotels	Hotel ownership, management, and franchising	JV	Non-opposition to a notified concentration	OJ [2006] C 246/22
NIBC/NPM/DELI UNIVERSAL	Manufacture of food products and beverages	Merger	Non-opposition to a notified concentration	OJ [2006] C 227/06
Nippon Sheet Glas/Pilkington	Manufacture of flat glass	Merger	Non-opposition to a notified concentration	OJ [2006] C 210/10
Nokia/Siemens	Mobile and fixed-line telecommunications	Merger	Prior notification of a concentration	OJ [2006] C 246/14
Oerlikon/Saurer	Textile machinery, automotive transmission systems	Merger	Prior notification of a concentration	OJ [2006] C 256/07
OJSC Novolipetsk Steel/Duferco/JV	Carbon steel semi-finished and finished flat and long products	JV	Prior notification of a concentration	OJ [2006] C 256/05
Onex Corporation	Non-life insurance products	Merger	Prior notification of a concentration	OJ [2006] C 254/07
Otto/Cdiscount/JV	Sale of non-food products via the internet	JV	Prior notification of a concentration	OJ [2006] C 241/08
Permira Holdings Ltd/BorsodChem	Production of plastics and plastics ingredients	Merger	Prior notification of a concentration	OJ [2006] C 251/03
Permira/ALL3Media Group	Independent production and distribution of television programmes	Merger	Prior notification of a concentration	OJ [2006] C 251/03
Permira/ALL3Media Group	Independent production and distribution of television programmes	Merger	Non-opposition to a notified concentration	OJ [2006] C 244/16
Phelps Dodge/INCO	Mining of non-ferrous metal ores, except uranium and thorium ores	Merger	Non-opposition to a notified concentration	OJ [2006] C 243/04

CONCENTRATIONS UNDER MERGER REGULATION FOR SEPTEMBER AND OCTOBER 2006

Name of Parties	Business Sector	JV or Merger	Stage of Procedure	Reference
Philips/Intermagnetics	Development, manufacture, and marketing of superconducting materials	Merger	Prior notification of a concentration	OJ [2006] C 242/06
PKN/Mazeikiu	Crude oil processing, manufacture, and sale of petroleum	Merger	Prior notification of a concentration	OJ [2006] C 241/07
Plastic Omnium/Inopart	Automobile components	Merger	Prior notification of a concentration	OJ [2006] C 240/07
REOF/Borletti/Printemps	Non-food retail	JV	Prior notification of a concentration	OJ [2006] C 210/08
REOF/Borletti/Printemps	Non food retail	JV	Non-opposition to a notified concentration	OJ [2006] C 244/15
SAAB/EMW	Defence electronics and avionics	Merger	Non-opposition to a notified concentration	OJ [2006] C 251/08
SCOR/Revios	Reinsurance	Merger	Non-opposition to a notified concentration	OJ [2006] C 248/15
Shell/Saint-Gobain/Avancis JV	Solar photovoltaic modules; raw float glass	JV	Non-opposition to a notified concentration	OJ [2006] C 244/10
Siemens/Bayer Diagnostics	Development, manufacture, and sales of in-vitro diagnostics	Merger	Prior notification of a concentration	OJ [2006] C 240/05
TGP/Aleris	Manufacture of aluminium alloys and flat rolled products	JV	Non-opposition to a notified concentration	OJ [2006] C 248/12
Thales/Alcatel Divisions Transport et Systemes	Integration of critical information systems for defence, aeronautics and transport; integration of critical information systems for rail, airports, oil, and gas	Merger	Prior notification of a concentration	OJ [2006] C 242/05
Thales/Finmeccanica/AAS and Telespazio	Design, manufacture, and supply of satellites; satellite solutions	JV	Prior notification of a concentration	OJ [2006] C 248/11
Thule/Chaas Holdings/Advance Accessory Systems/Valley	Load carrying and towing systems for cars	JV	Non-opposition to a notified concentration	OJ [2006] C 246/18
Total/Cespa	Production of petrol and gas	Merger	Prior notification of a concentration	OJ [2006] C 222/05
Toyota Tsuho/T.T Holding JV	Logistic services; passenger cars and parts	JV	Non-opposition to a notified concentration	OJ [2006] C 243/05
TPG/Algeris	Manufacture of aluminium alloys and flat-rolled products	JV	Prior notification of a concentration	OJ [2006] C 218/06
UCB/Schwarzpharma	Research and development of pharmaceuticals	Merger	Prior notification of a concentration	OJ [2006] C 255/05
Veolia Cargo/Rail Link/JV	Goods transport	JV	Prior notification of a concentration	OJ [2006] C 246/16
Veolia/Cleanaway	Waste management services	Merger	Non-opposition to a notified concentration	OJ [2006] C 246/20

CONCENTRATIONS UNDER MERGER REGULATION FOR SEPTEMBER AND OCTOBER 2006

Name of Parties	Business Sector	JV or Merger	Stage of Procedure	Reference
Voestalpine/Profilafroid/SAP	Steel	Merger	Non-opposition to a notified concentration	OJ [2006] C 253/04
Walter Frey Holding/Mitsubishi Motors Europe	Import, wholesale, and retail of cars	JV	Prior notification of a concentration	OJ [2006] C 230/03
Walter Frey Holdings/Mitsubishi Motors Europe	Import, wholesale, and retail of cars	JV	Non-opposition to a notified concentration	OJ [2006] C 258/09
Xstrata/Falconbridge	Mining metals	Merger	Non-opposition to a notified concentration	OJ [2006] C 253/05
Yum/Pizza Hut	Informal restaurants	Merger	Non-opposition to a notified concentration	OJ [2006] C 248/14

BRUSSELS AGENDA FOR NOVEMBER 2006

7 November	Economic and Financial Affairs Council (ECOFIN) – Brussels
13–14 November	General Affairs and External Relations Council (GAERC) + Defence – Brussels
13–14 November	Education, Youth, and Culture Council – Brussels
13–14 November	EP Plenary (Strasbourg)
20–21 November	Agriculture and Fisheries Council – Brussels
21 November	ECOFIN (Budget) – Brussels
21 November	Informal ministerial meeting: Regional Affairs – Brussels
23 November	TTE (Energy) Council – Brussels
28 November	Economic and Financial Affairs Council (ECOFIN) – Brussels
30 November–1 December	Employment, Social Policy, Health, and Consumer Affairs Council – Brussels

Practice group contacts

For more information, please contact one of the lawyers listed or the Dechert lawyer with whom you regularly work. Visit us at www.dechert.com/financialservices.

Peter R. Crockford
London
+44 20 7184 7506
peter.crockford@dechert.com

Pierre-M. Louis
Brussels
+32 2 535 54 79
pierre.louis@dechert.com

Kathleen Dierckx
Brussels
+32 2 535 5435
kathleen.dierckx@dechert.com

Isabelle M. Rahman
Brussels
+32 2 535 5445
isabelle.rahman@dechert.com

Dechert
LLP
www.dechert.com

UK/Europe

Brussels
London
Luxembourg
Munich
Paris

US

Austin	Newport Beach
Boston	Palo Alto
Charlotte	Philadelphia
Harrisburg	Princeton
Hartford	San Francisco
New York	Washington, D.C.

Dechert is a combination of two limited liability partnerships (each named Dechert LLP, one established in Pennsylvania, US and one incorporated in England) and offices in Luxembourg and Paris which are registered with the Law Society of England and Wales as multinational partnerships. Dechert has over 1,000 qualified lawyers and a total complement of more than 1800 staff in Belgium, France, Germany, Luxembourg, the UK, and the US.

Dechert LLP is a limited liability partnership, registered in England (Registered No. OC 306029) and is regulated by the Law Society. The registered address is 160 Queen Victoria Street, London EC4V 4QQ.

A list of names of the members of Dechert LLP (who are referred to as "partners") is available for inspection at the above office. The partners are solicitors or registered foreign lawyers. The use of the term "partner" should not be construed as indicating that the member of Dechert LLP are carrying on business in partnership for the purpose of the Partnership Act 1890.

This document is a basic summary of legal issues. It should not be relied upon as an authoritative statement of the law. You should obtain detailed legal advice before taking action.

© 2006 Dechert LLP. Reproduction of items from this document is permitted provided you clearly acknowledge Dechert LLP as the source.