

April 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 March 2006. It also takes a prospective look at the events taking place in Brussels institutions.

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## INSTITUTIONAL ACTIVITIES

### COMPETITION

#### Microsoft Update

On 30 and 31 March 2006, the Commission hosted an internal hearing with Microsoft regarding, what the Commission alleges, Microsoft's non-compliance with the decision of March 2004 (see last month's EU Update for further details). These hearings are being held behind closed doors, as an effort by the Commission to encourage 'open and frank discussion'. These hearings were also attended by interested third parties, including Microsoft's five main rival software companies, and representatives from Member States presently on the competition advisory committee.

In a related issue, Microsoft has failed in its attempt in America to obtain documents from

rival software companies, such as Oracle Corp. and Sun Microsystems, relating to the proceedings against it by the Commission. The Commission had refused Microsoft access to the relevant documents, stating that business secrets of rival firms were not available for inspection by Microsoft.

#### Competition Commissioner Champions Green Paper on Damages

On 9 March 2006, Competition Commissioner Neelie Kroes gave a speech promoting the Green Paper on damages actions. The Green Paper was launched in December 2005.

Kroes stated that the Commission was not alone in investigating a system to allow private enforcement of anti-competitive actions. Some Member States had already taken legislative steps towards achieving this; others remain in the investigatory stage.

Kroes acknowledged previous comments highlighting that a difficulty exists with respect to an individual bringing an action who is unable to access evidence which is in the hands of the defendant. Neelie Kroes states she believes there are ways to bring such evidence to the attention of the relevant court. Previous decisions from public enforcement decisions can be used by the individual as proof of infringement, but private actions should not be reliant on such decisions. "Victims need appropriate procedural tools to put them in a position to pursue and prove cases in their own right."

Kroes stated it was important for the success of the private enforcement programme that the benefits (in the form of damages to be awarded by the court) to the individual in bringing the claim must exceed the risk and

costs they face in bringing the action, such as paying the legal costs. If this is not the case, individuals would not be encouraged to bring private claims. Kroes also spoke in relation to doubts which had arisen about the compatibility between a “well functioning leniency programme and enhanced private enforcement of the European competition rules”. She stated that the leniency programme must remain, because it is through the leniency programme that many cartels have been uncovered. Kroes stated “[d]amages actions for victims of a cartel will remain largely theoretical” if the leniency programme did not remain to “destabilise and uncover” these cartels. Kroes believes that private actions and leniency are compatible and indeed complimentary, and thought that the leniency programme would be aided by effective private actions.

Kroes accepted some lessons have been learnt from the American antitrust rules, but the EU should not adopt a ‘cut and paste’ of the US system. Kroes is confident Europeans will be able to find their own way.

### **BASF and Daiichi Have Vitamin Cartel Fines Reduced**

On 15 March 2006 the European Court of First Instance (‘CFI’) handed down judgments on the appeals of German company BASF AG (‘BASF’) and Japanese company Daiichi Pharmaceutical Co. Limited (‘Daiichi’) against the European Commission’s (‘the Commission’) decision almost five years ago.

On 21 November 2001, the Commission imposed fines totalling €855.2 million (\$755.2 million) on eight companies for infringements of Article 81(1), which is Europe’s largest cartel fine to date. According to the Commission the companies had agreed to implement market sharing and price fixing cartels in twelve distinct vitamin product markets. Mario Monti, the Competition Commissioner at the time, stated these were “the most damaging series of cartels the Commission has ever investigated”.

BASF was fined €296.2 million (\$261.6 million) for its part in eight different vitamin cartels, and Daiichi was fined €23.4 million (\$20.7 million) for actions in a single vitamin cartel. In February 2002 BASF and Daiichi submitted appeals against the Commission’s calculation of fines imposed to the CFI, which held hearings in January 2005.

BASF illustrated to the CFI that the Commission had failed to demonstrate that BASF was either an instigator or a leader of the vitamin C cartel, and therefore the 35% increase in BASF’s fine for its actions in this cartel was set aside. The CFI held the

Commission had failed to adduce evidence proving BASF had either persuaded or encouraged other undertakings to establish or enter into this cartel. Similarly, the CFI set aside the increases imposed by the Commission to BASF’s fine for its actions in the vitamin D3 cartel and the fine for the beta-carotene and carotinoids cartel, because the Commission had failed to adequately explain its reasons for increasing the fine. The CFI held the Commission’s decision was based on general findings, and not specific evidence. Accordingly, BASF’s overall fine total was reduced to €236.8 million (\$283.6 million).

Daiichi’s appeal centred on the Commission’s application of the Leniency Notice. The CFI held Daiichi had provided decisive evidence of the existence of the cartel to the Commission, had cooperated fully and voluntarily, and had not substantially contested the facts set out in the Statement of Objections served on it. The CFI held the Commission should have granted a 50% reduction to Daiichi’s fine under the Leniency Notice. Accordingly, the CFI reduced Daiichi’s fine to €18 million.

## MERGERS

### **Commission Demands Compliance from Poland Concerning Bank Takeover**

On 8 March 2006, the European Commission launched a procedure against Poland for preventing a merger between Italian Unicredito Italiano SpA’s (‘Unicredit’), which owns Polish bank Bank Pekao SA (‘Pekao’), and Bayerische Hypo und Vereinsbank (‘HVB’), which owns Polish bank BPH SA (‘BPH’). Poland’s Banking Supervisory Commission refused to approve the merger, alleging that it constituted a breach of a term of the agreement made when Unicredito purchased Pekao, Poland’s second largest bank.

When Pekao was privatised in 1999, Unicredit bought it from the Polish State Treasury. Unicredit signed a privatisation agreement with the Treasury which contained a ‘non-compete clause’, preventing Unicredit from acquiring control of banks active in Poland or making capital investment in companies active in the Polish banking sector, for a period of ten years. The Polish government has described this ‘non-compete clause’ as necessary to ensure the “protection of competition on the Polish market of financial and banking services” at the time of privatisation.

In correspondence to the Polish treasury, the Commission set out relevant ECJ case law rulings against agreements

preventing companies from buying out competitors. Non-compete clauses can be justified only if they are:

- not related to economic policy defined in advance;
- applied fairly;
- limited in time for specific purposes; and
- not open to interpretation.

The Commission argued this 'non-compete clause' in the privatisation agreement does not have a specific policy objective, has a post-accession period which extends beyond the time which is necessary, and allows a margin for discretion.

The Commission already approved the merger between Unicredit and HVB on 18 October 2005. It was accepted the merger would create a large banking group in Poland, which would be a market leader in some areas, but the Commission stated there would remain a number of viable competitors in all areas of the Polish banking sector.

On 20 December 2005, the Polish Treasury instructed Unicredit to sell its shares in BPH, so that the merger would be in compliance with the 'non-compete clause'. The Polish Treasury continued its course of action by warning Unicredit on 1 February 2006 that it had three months to comply with the original instruction, otherwise the Polish Treasury would revoke the Pekao privatisation agreement.

On 9 February 2006 Polish authorities lodged an appeal against the approval for the merger granted by the Commission in October 2005. Polish Prime Minister Kazimierz Marcinkiewicz stated the European Court of Justice would be needed to settle this dispute over the merger.

The Commission alleged Poland has breached Article 21 of the EC Merger regulations. Under Article 21(2), the European Commission has exclusive competence to assess the competitive impact of concentrations with a Community dimension. The Polish government's decision to invoke and intend to enforce the 'non-compete clause' in the Pekao privatisation agreement constitutes an infringement of the EU competition rules, because that clause can *de facto* seriously prejudice the merger, and so could unduly prevent competition.

On 5 April 2006, the Polish government approved the merger between Unicredit and HVB, through accepting proposed divestment commitments offered by Unicredit. Unicredit will combine the Pekao and BPH banks, but will auction off 200 of BPH's 480

branches, and also dispose of a segment of the investment fund business of BPH.

The Commission had also begun infringement proceedings against Poland on the grounds the "non-compete clause" sought to be enforced by Poland is incompatible with EC law and the EC rules on the freedom of establishment (Article 43 of the EC Treaty) and free movement of capital (Article 56 of the EC Treaty).

### **Commission Accepts Undertakings Offered by Deutsche Borse**

On 15 March 2006, the European Commission accepted a number of undertakings offered by Deutsche Börse AG (Deutsche Börse). These undertakings relate to the possible takeover of London Stock Exchange plc (LSE) by Deutsche Börse. The Commission is now satisfied there would be no lessening of competition if Deutsche Börse succeeded in acquiring more than 50% of LSE's issued share capital, to gain a controlling interest in that company.

The Commission had previously raised concerns that there would be a substantial lessening of competition in the market for the provision of on-book trading services within the UK if the takeover went ahead, due to the fact that Deutsche Börse owns the Eurex Clearing AG (Eurex) clearing house. The Commission believed following such a takeover, Deutsche Börse would introduce Eurex as the clearing provider for LSE. If this occurred, Deutsche Börse would have the ability, and an incentive, to control provision of clearance services for shares traded on LSE, and so could foreclose entry or expansion of other trading service providers. This would result in a substantial lessening of competition, an increase in trading prices, and a decrease in the quality of the service.

To address this concern, Deutsche Börse proposed a number of structural and behavioural undertakings, to ensure that the independence of LSE's clearance provider would remain. Deutsche Börse undertook that no member of the Deutsche Börse AG group could possess more than 2% of shares in LSE's clearing provider, without first obtaining the express written permission of the Commission. When the Commission is contemplating whether to grant consent to a group entity to make such an acquisition, the Commission must consider whether the independence of LSE's clearing house would remain, a lessening of competition would result, and a conflict of interests would arise.

Deutsche also undertook to cooperate with both the Commission and the Office of Fair Trading in their monitoring and enforcement of Deutsche Börse's compliance with these undertakings.

## COMPANY LAW

### **Commission's Proposed Amendments to Company Law Directive Approved by European Parliament**

On 14 March 2006, the European Parliament formally backed the Commission's proposed amendments to the Second Company Law Directive. This directive establishes the conditions required to ensure that the capital of public limited companies (PLCs) is maintained. This benefits the interests of creditors, but also protects the rights of minority shareholders.

The Commission had previously proposed these amendments to relax requirements concerning a PLC acquiring its own shares, by making PLCs subject to fewer regulations. If such changes are implemented, it will be easier for PLCs to pass measures relating to the size, structure and ownership of their capital. The amendments also taper requirements relating to the valuation of non-cash consideration for shares and reduce information requirements.

The Commission forwarded these proposals following the recommendations of the Simpler Legislation for the Internal Market group, in 1999, and the Group of High Level Company Law Experts, in 2002. They form part of the Commission's wider drive to increase the competitiveness of European companies, but maintaining shareholders' rights.

The European Parliament's decision will be passed onto the European Council and the Commission, which will progress this under the co-decision procedure.

## TELECOMMUNICATIONS

### **Commission Promotes Broadband For All**

The European Commission published a Communication on 21 March 2006 setting out how broadband access can be increased. The Commission hopes to develop broadband access to all areas of the EU, especially rural and less developed areas where broadband infrastructure is lagging. "Broadband access for all Europeans is certainly not out of reach by 2010" says Viviane Reding, Commissioner for Information, Society and Media.

Access to broadband is encouraged by the Commission because it fosters economic growth and jobs, and is important in the development of the

'information society'. Viviane Reding, Commissioner for Information, Society and Media sees broadband access as a "prerequisite for e-business, growth and jobs throughout the economy".

A number of problems which exist with the current broadband infrastructure of the EU. A 'broadband gap' currently exists between urban and less developed areas. In rural areas, less than 10% of households subscribe to broadband. There is a risk that this gap restricts economic growth and employment opportunities in these less developed areas. The second problem is that rural broadband speeds are often slower than urban ones. This is problematic because it makes it difficult for large amounts of data to be transferred, which is necessary for e-business, e-government, e-health and multimedia concept applications to operate effectively.

In urban areas there has been a rapid uptake of broadband services, due to competing infrastructures and effective telecommunications regulation. In rural areas, however, weak demand exists for broadband services. Population scarcity and distance leads to private investor concerns of lower return on any investments made. Installing broadband infrastructure is often viewed as not being economically viable, and so does not take place.

In its communication, the Commission outlined a number of approaches which could be used by Member States to increase broadband access across the EU.

The Commission highlighted that broadband infrastructure develops optimally in liberalised markets. It views enhancing competition as the best approach to take to develop broadband infrastructure. The Commission is encouraging Member States to fully develop their regulatory framework concerning this area.

Strengthening and updating national broadband strategies, such as setting clear targets, is viewed by the Commission as an effective way to increase broadband access. National broadband strategies should reflect local needs. Regional governments are usually better placed than national ones to assess local demand for broadband, and take account of local needs and technological requirements.

The Commission aims to encourage an exchange of best practices by local authorities and key industry players. The Commission has set up a website specifically to be used as a medium for these entities to exchange information and gathering experience. The website can also be used by entities in very sparsely populated areas, to coordinate efforts to attain the 'critical mass' required for technological solutions providing large coverage, such as satellites, to be utilised.

The Commission views subsidies as an appropriate mechanism to promote broadband uptake. Neelie Kroes, Competition Commissioner, has stated that “well targeted state aid may...be appropriate” as a method to solve the broadband gap. State aid funding has already been used to assist broadband projects in rural and remote areas of Austria, France, Ireland, Spain and the UK.

Danuta Hübner, Commissioner for Regional Policy stated that “[w]here there are genuine market failures...EU Structural Funds play a vital role in stimulating investments in broadband infrastructure and services”.

Mariann Fischer Boel, Commissioner for Agriculture and Rural Development, stated that funding by the Rural Development Policy has become “increasingly focused on creating new business opportunities in the countryside. There is a particularly strong connection on broadband and information and communication techniques”. It is important that State Aid funding neither acts to discourage private initiative nor distort competition to the detriment of the EU.

The Commission also views public funding as having its part to play. The Commission hopes increased public support may increase the uptake of broadband in less profitable areas. This approach would also preserve competition. The Commission encourages Member States to consider financial incentives for subscribers, although this must remain in compliance with competition rules.

The Commission considers fostering the creation of public services. The development of modern online public services will drive broadband uptake. This is because it creates a critical mass of users, which makes it economically viable for private investors to develop infrastructure.

### **Commission Proposes Regulation Governing International Mobile Roaming Charges**

On 28 March 2006 the European Commission proposed a Regulation to decrease the cost of international roaming charges for mobile phones.

Mobile phone network operators buy international roaming services from each other, allowing consumers to make and receive calls on their mobile phone via a host network whilst travelling abroad. This is ‘international roaming’. Alliances of network operators have emerged, with the goal of improving international roaming services.

The Commission received a large number of complaints concerning the excessive cost of roaming charges, and so opened a general sector inquiry into roaming in February 2000. In December 2000, the Commission published its initial findings of this inquiry in a working document.

The Commission previously sent a Statement of Objections to German mobile network operators T-Mobile and Vodafone (on 10 February 2005) and UK operators O2 and Vodafone (on 26 July 2004). The Commission stated that the roaming charges which these companies charged their mobile customers was unfair and excessive, and amounted to an abuse of a dominant position. The Commission had obtained evidence which illustrated these companies had generated profits from the international roaming charges which were significantly greater than other comparable services offered by them. The Commission identified significant differences between charges for domestic and international services which it believed were not justified, because of the similarity between those services.

In December 2004, the European Regulators Group (ERG), a forum for national telecommunications regulators within the EU, distributed a questionnaire to mobile telephone operators across the EU as part of its investigation into wholesale prices of international roaming of mobile phones. The ERG’s questionnaire forms part of a coordinated analysis of the market in conjunction with the Commission.

In July 2005 the Commission issued a statement of preliminary analysis of its assessment of significant market power for the national market of wholesale international roaming. The Commission was not satisfied with the prices mobile phone network operators were charging for international roaming services, and did not believe the prices reflected the result of international competition. The Commission also stated it would establish a website to make it easier for consumers to find out details on this matter. The website was launched in October 2005. The website contains the status of roaming prices of the all EU network operators, and also direct links to the webpages of these operators. The operation of this website was assisted by twenty-five national telecommunications operators. On 28 March, the Commission stated that since the launch of the website, charges for international roaming have not decreased; instead, some have actually increased.

The Regulation proposed by the Commission aims to bring about a decrease in international mobile roaming tariffs based on internal market principles. The Commission has outlined a number of possible approaches this measure could take, including:

1. 'home pricing', whereby a local tariff is charged for local calls, or a normal international tariff applies to calls to EU destinations, regardless of the location within the EU from where the call originates;
2. prohibiting all roaming charges for receiving a call abroad in the EU;
3. operating savings realised by network operators are passed onto consumers; or
4. ensuring the tariff charged by network operators relates to inter-operator tariffs, so that operators do not charge excessively more than the cost which they incur.

On 28 March 2006, the ERG published its response to the Commission's plans for the Regulation governing the international mobile roaming tariffs. The ERG announced a number of principles which it believes should be considered during the drafting of this Regulation:

- implementation must be easy, and contain no legal uncertainties;
- implementation must be consistent and simultaneous across the EU;
- it must rapidly and substantially reduce international roaming tariffs;
- it must have little impact on those mobile phone markets which are already sufficiently competitive; and
- it must be subject to review, so that if market forces are deemed to operate efficiently to retain prices at a sufficiently low level, the Regulation can be withdrawn.

The ERG suggests that the Regulation could either impose a cap on international mobile roaming charges across Europe at double the domestic mobile rate, which would, ERG predicts, lead to a 60% reduction in the tariff level, or establish an index of international roaming charges to track changes in the charges.

The Commission has already carried out the first phase of consultations in relation to this Regulation. Results of the consultations were published in the Commission's Report on Electronic Communications Regulation and Markets on 20 February 2006. The report recognises that, up until the end of 2005, Finland was the only national regulatory authority which had carried out an investigation into this sector. However, the analysis of the relevant market found no dominance. The second phase is due to take place in April this year, and the Commission hopes to be in a position to formally present its proposal to the European Parliament in June 2006.

## STATE AID

### State Aid Minimum Threshold to be Increased

On 9 March 2006, the European Commission proposed to increase the threshold of the *de minimis* exemption to €150,000 of aid received over a three year period. Aid recipients coming under this exemption do not need to make prior notifications to the Commission, as they would otherwise be required to by Article 88 (3) of the EC Treaty.

This *de minimis* threshold exists because the Commission previously decided that such a small amount of aid could only have the effect of distorting competition or trade between Member States to a negligible level.

This exemption only applies to 'transparent aid' where it is possible to calculate the exact amount of gross aid the entity is due to receive, in advance of receipt, without the need for a risk assessment. Member States must obtain a written declaration from the aid recipient of any aid it has received during the current and previous two fiscal years, to ensure the threshold has not been reached.

The Commission will discuss this proposal with Member States in the next stage for implementation of this proposal. The proposal will be published in the Official Journal, inviting interested parties to submit opinions. The Commission hopes this proposal, if widely accepted, will be implemented at the beginning of 2007.

This proposal is part of the Commission's implementation of the State Aid Action plan, launched in June 2005. The plan is a comprehensive reform of the state aid rules, to simplify and refine economic analysis of subsidies. The Commission hopes the State Aid reform will encourage Member States to contribute towards the strategy for growth and jobs by decreasing aid levels.

## CONCENTRATIONS UNDER MERGER REGULATION FOR MARCH 2006

Name of Parties	Business Sector	JV Merger or	Stage of Procedure	Reference
AACF/ASTORG/OFIC	Production and distribution of roof materials and packaging for eggs	JV	Non-opposition to a notified concentration	OJ [2006] C 63/6
Abbott/Guidant	Design, development and supply of cardiovascular medical devices	Merger	Prior notification of concentration	OJ [2006] C 55/14
Adidas/Reebok	Manufacture of sport footwear, apparel and equipment	Merger	Non-opposition to a notified concentration	OJ [2006] C 67/14
Adecco/Deutscher Industrie Service	Provision of employment services, including temporary employment to companies in Germany and Austria	Merger	Non-opposition to a notified concentration	OJ [2006] C 62/4
Aegon/Caja Navarra/Seguros Navarra	Life insurance and pension plans in Spain	JV	Prior notification of concentration	OJ [2006] C 67/11
Allianz/Sofinim/United Broadcast Facilities	Full service broadcast facility provision	JV	Prior notification of concentration	OJ [2006] C 53/4
Andritz/Küsters	Supply of paper, non-woven and textile calendars	Merger	Prior notification of concentration	OJ [2006] C 68/8
Apax/Tommy Hilfiger Corporation	Design and sales of men's, women's and children's apparel	Merger	Non-opposition to a notified concentration	OJ [2006] C 56/10
Areva/Urenco/ETC	Uranium supply	JV	Opinion of the Advisory Committee and Final report of the Hearing Officer in case	OJ [2006] C 52/4 and 52/5
ATEL/EOSH	Generation and wholesale supply of electricity	Merger	Non-opposition to a notified concentration	OJ [2006] C 63/4
Autostrade/SIAS/Costanera	Management of urban motorways in Chile	JV	Prior notification of concentration	OJ [2006] C 75/7
Banca Intesa/NH Hoteles/NH Italia	Development and operation of hotels	JV	Non-opposition to a notified concentration	OJ [2006] C 55/25
Barclays/Tuya	Holding of TUJA group which is engaged in temporary employment services in Austria, Germany and Switzerland	Merger	Prior notification of concentration	OJ [2006] C 53/5
BASF/Engelhard	Specialty chemicals including catalysts	Merger	Non-opposition to a notified concentration	OJ [2006] C 63/5
BC Partners/Hyatt Regency Hotels & Tourism Hellas	Leisure and resort services	JV	Non-opposition to a notified concentration	OJ [2006] C 54/6
Bertelsmann/Springer	Printing	JV	Opinion of the Advisory Committee and Final report of the Hearing Officer in case	OJ [2006] C 52/2 and 52/3

Blackstone/Center Parcs (UK) Group	Operates four residential holiday villages in the UK and one spa in the UK	Merger	Prior notification of concentration	OJ [2006] C 67/10
Bosch/Mann + Hummel/ArvinMeritor Purolator	Development, manufacturing and sale of oil, air and fuel filters for the automotive industry and industrial applications	JV	Prior notification of concentration	OJ [2006] C 54/5
Boston Scientific/Guidant	Design and development of cardiovascular medical devices	Merger	Prior notification of concentration	OJ [2006] C 55/15
BNP Paribas/BNL	Banking and financial services and insurance activities, mainly in Italy	Merger	Prior notification of concentration	OJ [2006] C 54/4
BPI/Euler Hermes/COSEC	Credit insurance business.	JV	Prior notification of concentration	OJ [2006] C 51/4
Burda/Hachette	Publishing of magazines in Poland	JV	Prior notification of concentration	OJ [2006] C 58/4
Burda/Hachette	Publishing of magazines in Poland	JV	Prior notification of concentration	OJ [2006] C 68/10
Cargill/Pagnan II	Grain	Merger	Non-opposition to a notified concentration	OJ [2006] C 62/6
Cerberus/Goldman Sachs/Wittur	Manufacturing of elevator components	JV	Non-opposition to a notified concentration	OJ [2006] C 67/18
The Coca-Cola Company/Coca-Cola Hellenic Bottling Company/ Fonti del Vulture S.r.l. Traficante	Bottling and marketing mineral waters in principal in southern Italy	JV	Prior notification of concentration	OJ [2006] C 67/7
Costa Crociere/Royal Caribbean/Marinvest/RCT	Building and operation of a cruise terminal in the port of Civitavecchia	JV	Prior notification of concentration	OJ [2006] C 78/7
CVC/KKR/AVR	Collection, processing and management of hazardous and non-hazardous waste	Merger	Non-opposition to a notified concentration	OJ [2006] C 55/21
Deutsche Post/Exel	Logistics and freight forwarding services	Merger	Non-opposition to a notified concentration	OJ [2006] C 55/27
DSV/Frans Maas	Freight forwarding and logistics services	Merger	Non-opposition to a notified concentration	OJ [2006] C 55/23
E.ON/Endesa	Spanish electricity operator also active in the gas sector	Merger	Prior notification of concentration	OJ [2006] C 68/9
EADS/BAES/FNM/NLTK	Guided weapons and guided weapons systems, in particular tactical missiles	Merger	Non-opposition to a notified concentration	OJ [2006] C 62/5
EnBW/SWD	Power generation and distribution and utilities services	Merger	Non-opposition to a notified concentration	OJ [2006] C 77/4
ENI/Grupo Amorim/CGD/Galp	Exploration, production, refining, marketing and storage and transportation of crude oil, natural gas, petroleum products and petrochemicals, power co-generation	JV	Prior notification of concentration	OJ [2006] C 51/5
EQT Group/Carl Zeiss/Sola	Manufacture and distribution of eyeglass, lenses and operation of ophthalmic	JV	Non-opposition to a notified concentration	OJ [2006] C 55/28

EQT IV/DC Off-Highway	Automobile services	JV	Non-opposition to a notified concentration	OJ [2006] C 62/3
Foodco Pastries/Tele Pizza	Network of branded fast food restaurants operated directly through proprietary stores or through third party's franchised stores	JV	Prior notification of concentration	OJ [2006] C 76/3
Fujitsu Siemens Computer Holding/Siemens Business Services	Information and communication solutions and services	JV	Non-opposition to a notified concentration	OJ [2006] C 62/8
GIB/Groupe FLO	Commercial restoration	JV	Non-opposition to a notified concentration	OJ [2006] C 55/22
Gilde/Heiploeg/Nautica Nova	Rropical shrimp fishing and freezing in South America	Merger	Prior notification of concentration	OJ [2006] C 78/8
Goldman Sachs/Daiwa/SMBC/Sanyo	Manufacture of electric and electronic products (home appliances, audiovisual, cameras, air conditioning products, batteries, etc)	JV	Non-opposition to a notified concentration	OJ [2006] C 67/17
Heinemann/HDS Retail	Aiport services	JV	Non-opposition to a notified concentration	OJ [2006] C 58/5
Imperial Holdings/Lex Commercial/Lex Multipart	Distribution of commercial vehicles and spare parts, logistics	Merger	Prior notification of concentration	OJ [2006] C 56/8
Ineos/BP Dormagen	Manufacturing of ethylene, ethylene oxide and ethylene glycols	Merger	Initiation of proceedings	OJ [2006] C 55/17
Investcor/Autodistribution Group	Autodistribution	JV	Non-opposition to a notified concentration	OJ [2006] C 53/7
Isola/Polyclad	Development, production and sale of copper-clad glass fibre laminates	Merger	Prior notification of concentration	OJ [2006] C 64/2
Jacobs Holding/Adecco	Global provider of human resource and staffing services, including temporary employment services	Merger	Prior notification of concentration	OJ [2006] C 62/2
Körber/Winkler + Dünnebier	Production and marketing of tissue and envelopes production machines	Merger	Non-opposition to a notified concentration	OJ [2006] C 55/26
Lactalis/Galbani	Dairy products including cheeses	Merger	Prior notification of concentration	OJ [2006] C 71/6
LBO/Wheelabrator Allevard	Metallic abrasives and diamond tools	Merger	Non-opposition to a notified concentration	OJ [2006] C 55/24
LBO France/Cegelec Holdings	Electrical & mechanical contracting services, project management, servicing & maintenance	Merger	Non-opposition to a notified concentration	OJ [2006] C 75/10
Lehman Brothers/Heinz European Seafood	Fishing, processing & distributing of seafood products	Merger	Non-opposition to a notified concentration	OJ [2006] C 62/7
Magna/CTS	Design and manufacture of convertible roof systems for automobiles	Merger	Non-opposition to a notified concentration	OJ [2006] C 53/6
Matlin Patterson/Deutsche Bank/Michel Thierry	Publication papers	Merger	Non-opposition to a notified concentration	OJ [2006] C 51/6

Mellon/West LB	Asset management	JV	Prior notification of concentration	OJ [2006] C 54/3
Merck/Schering	Global research-based pharmaceutical	Merger	Prior notification of concentration	OJ [2006] C 72/4
Mitsui/Evraz/Deniskovskaya Coal Mine	Holding company for a new coking coal mining project which will exploit the Deniskovskaya coal field in East Siberia	JV	Non-opposition to a notified concentration	OJ [2006] C 68/12
NEC/Philips Business Communications	Distribution and sale of telecommunication solutions	Merger	Non-opposition to a notified concentration	OJ [2006] C 68/14
Nouveaux Constructeurs/Goldman Sachs Group/Deutsche Bank/Lone Star/Zapf	Development of real estate, pre-assembled garages, wholesale of construction materials and water storage and sewage systems	JV	Prior notification of concentration	OJ [2006] C 57/5
Plastal/Dynamit Nobel Kunststoff	Manufacturing of thermoplastic and thermoset components for the automotive, electrical and general industries	Merger	Non-opposition to a notified concentration	OJ [2006] C 67/16
Seagate/Maxtor	Hard disk drives	Merger	Prior notification of concentration	OJ [2006] C 75/8
Sea-Invest/EMO-EKOM	Stevedoring services for coal and iron ore	JV	Prior notification of concentration	OJ [2006] C 55/19
SEI/VWBN	Wire harnesses for the automotive industry	Merger	Prior notification of concentration	OJ [2006] C 55/18
Sony/NEC/JV	Optical disk drives for computers	JV	Prior notification of concentration	OJ [2006] C 54/2
Swiss Re/GE Insurance Solutions	The worldwide supply of traditional reinsurance services, both life and non-life, as well as direct non-life insurance services	Merger	Prior notification of concentration	OJ [2006] C 70/3
TCCC/CCHBC/FRESH	Producing and selling of fruit juices in Serbia and Montenegro	JV	Non-opposition to a notified concentration	OJ [2006] C 63/7
Telenor/Vodafone Sverige	Swedish mobile telecommunications	Merger	Non-opposition to a notified concentration	OJ [2006] C 71/7
Tesco/Carrefour (Czech Republic and Slovakia))	Food and non-food retailing	Merger	Non-opposition to a notified concentration	OJ [2006] C 52/6
Time Warner/CBS/JV	Owner and operator of a free-to-air broadcast network in the US	JV	Prior notification of concentration	OJ [2006] C 55/20
Time Warner/CBS/JV	Owner and operator of a free-to-air broadcast network in the US	JV	Non-opposition to a notified concentration	OJ [2006] C 77/3
Toepfer/Invivo/Soulès	Distribution of non-grain feed mechanisms	JV	Non-opposition to a notified concentration	OJ [2006] C 68/13
TowerBrook Investors/GSE	Real estate	Merger	Prior notification of concentration	OJ [2006] C 75/3
Toyota Tsusho/Tomen	General trading company of products, chemicals, textiles, electronics produce and foodstuffs, with limited activities in the automotive sector	Merger	Non-opposition to a notified concentration	OJ [2006] C 67/15

TPG IV/Apax/Q-Telecom	Retail mobile telephony services	JV	Non-opposition to a notified concentration	OJ [2006] C 56/9
Virgin/CPW/JV	Provision of mobile telephony services as an MVNO in France	JV	Prior notification of concentration	OJ [2006] C 55/15
WEST LB/Odewald/ASH	Development, manufacturing and distribution of tow bars and related products (electrical systems) for cars	JV	Non-opposition to a notified concentration	OJ [2006] C 75/9
Wiener Städtische/TBIH	Insurance services, pension funds and lending/leasing/asset management in central and eastern European states	JV	Prior notification of concentration	OJ [2006] C 59/5
Wingas/ZGHG/JV	The construction and the operation of the storage facility in Saltfleetby	JV	Prior notification of concentration	OJ [2006] C 71/5

### STATE AID ACTIVITY FOR MARCH 2006

Country	Stage of Procedure	Company/Region	Business Sector	Amount of Aid	Reference
Austria	Information communicated by Member States	Carinthia	Promoting small firms in trade and industry	€2,500,000	OJ [2006] C 58/3
Austria	Authorisation for state aid	Niederosterreich	Research and Development	€70,000 per year	OJ [2006] C 57/5
Austria	Information communicated by Member States	Vienna	Business development	€300,000	OJ [2006] C 67/4
Cyprus	Information communicated by Member States	Not specified	Access to research infrastructure abroad	€460,000	OJ [2006] C 58/2
Denmark	Authorisation for state aid	Not specified	Monitoring TSE	€1,000,000	OJ [2006] C 56/5
Denmark	Authorisation for state aid	Not specified	Compensation for crop loss	€40,540	OJ [2006] C 57/4
Estonia	Authorisation for state aid	Not specified	Regional development	€12,000,000	OJ [2006] C 75/14
Finland	Information communicated by Member States	Kainuu	Agricultural assistance	€300,000	OJ [2006] C 75/10
France	Authorisation for state aid	Not specified	Compensation for floods	€30,000,000	OJ [2006] C 57/7
France	Information communicated by Member States	Not specified	Agriculture investment	€1,000,000	OJ [2006] C 75/2
France	Information communicated by Member States	Alpes Cote d'Azur	Agricultural aid	€200,000	OJ [2006] C 73/9

France	Authorisation for state aid	Cher	Not specified	€15,000 per year	OJ [2006] C 57/4
France	Information communicated by Member States	Loire	Agricultural assistance	€400,000 per year	OJ [2006] C 75/10
Germany	Authorisation for state aid	Not specified	Compensation for flood damage	€30,000,000	OJ [2006] C 57/7
Germany	Authorisation for state aid	Not specified	Tax on mineral oils for greenhouses	Not specified	OJ [2006] C 67/23
Germany	Authorisation for state aid	Not specified	SME funding	€15,000,000	OJ [2006] C 72/2
Germany	Information communicated by Member States	Not specified	Agricultural aid	Not specified	OJ [2006] C 73/7
Germany	Information communicated by Member States	Not specified	Changeover of agricultural and forestry machines to plant oil	€5,000 per machine	OJ [2006] C 75/2
Germany	Authorisation for state aid	Not specified	Assistance to use raw materials to produce energy	€8,000,000	OJ [2006] C 75/14
Germany	Authorisation for state aid	Not specified	Assistance for film production	€1,167,500 per year	OJ [2006] C 75/14
Germany	Authorisation for state aid	Baden-Wuttemberg	Compensation	€1,080,000	OJ [2006] C 56/4
Germany	Information communicated by Member States	Bavaria	Recruitment for new jobs	€600,000	OJ [2006] C 71/2
Germany	Information communicated by Member States	Brandenburg	Research and development	€18,000,000	OJ [2006] C 67/4
Germany	Authorisation for state aid	Lower Saxony	Fishing	€2,800,000	OJ [2006] C 59/8
Germany	Information communicated by Member States	Lower Saxony (Visselhovede)	Investment to individual firms	€300,000	OJ [2006] C 67/11
Germany	Information communicated by Member States	Saxony	Agricultural investment	€300,000	OJ [2006] C 67/11
Greece	Invitation to submit comments	Not specified	Not specified	Not specified	OJ [2006] C 63/2
Ireland	Authorisation for state aid	Not specified	Development of the potato sector	€5,500,000	OJ [2006] C 57/4
Ireland	Authorisation for state aid	Not specified	Assistance for film production	€26,000,000 per year	OJ [2006] C 75/14
Ireland	Authorisation for state aid	Dublin – Bell Laboratories	Research and development	€21,660,000	OJ [2006] C 72/2
Italy	Authorisation for state aid	Abruzzo	Assistance for agricultural areas affected by natural disasters	Not specified	OJ [2006] C 57/7

Italy	Information communicated by Member States	Abruzzo	Regional assistance	€500,000	OJ [2006] C 75/10
Italy	Authorisation for state aid	Bolzano	Assistance for agricultural areas affected by natural disasters	Not specified	OJ [2006] C 57/7
Italy	Authorisation for state aid	Calabria	Assistance for agricultural areas affected by natural disasters	Not specified	OJ [2006] C 57/7
Italy	Information communicated by Member States	Campania	Agricultural investment	€2,000,000	OJ [2006] C 67/11
Italy	Information communicated by Member States	Campania	SME assistance	€1,990,941 per year	OJ [2006] C 73/7
Italy	Authorisation for state aid	Emilia Romagna	Regional industrial research	€30,000,000	OJ [2006] C 59/8
Italy	Authorisation for state aid	Friuli Venezia Giulia	Compensation for natural disasters	Not specified	OJ [2006] C 57/4
Italy	Information communicated by Member States	Lazio	Not specified	€3,200,000	OJ [2006] C 58/2
Italy	Authorisation for state aid	Liguria	Provision of meteorological information	Not specified	OJ [2006] C 56/4
Italy	Authorisation for state aid	Lombardy	Assistance for agricultural areas affected by natural disasters	Not specified	OJ [2006] C 56/4
Italy	Information communicated by Member States	Lombardy	Business development	€45,000,000	OJ [2006] C 67/4
Italy	Information communicated by Member States	Lombardy	SME investment	€3,000,000	OJ [2006] C 67/8
Italy	Information communicated by Member States	Lombardy	Agricultural holdings assistance	€1,000,000 per year	OJ [2006] C 73/7
Italy	Authorisation for state aid	Marche	Regional livestock aid	€4,000,000 per year	OJ [2006] C 56/4
Italy	Information communicated by Member States	Molise	Not specified	€3,500,000	OJ [2006] C 75/10
Italy	Information communicated by Member States	Piedmont	Technological innovation	€25,000,000	OJ [2006] C 73/9
Italy	Information communicated by Member States	Sardinia	Purchase / lease of production machines and tools	€1,500,000	OJ [2006] C 58/3
Italy	Information communicated by Member States	Sicily	Agricultural assistance	Not specified	OJ [2006] C 75/2
Italy	Authorisation for state aid	Tuscany	Job creation	€3,530,000	OJ [2006] C 59/8

Italy	Information communicated by Member States	Umbria	Assistance in areas affected by natural disasters	Not specified	OJ [2006] C 75/2
Italy	Authorisation for state aid	Valle d'Aosta	Production and marketing of agricultural products	€2,125,000	OJ [2006] C 57/7
Italy	Information communicated by Member States	Valle d'Aosta	Agricultural investment	€35,373	OJ [2006] C 67/11
Italy	Information communicated by Member States	Veneto	Local development plan	€40,000	OJ [2006] C 58/3
Italy	Information communicated by Member States	Veneto	Agricultural assistance	€220,000	OJ [2006] C 75/10
Latvia	Authorisation for state aid	Not specified	Regional development	€50,000,000	OJ [2006] C 72/2
Latvia	Information communicated by Member States	Not specified	Agricultural assistance	Not specified	OJ [2006] C 73/7
Latvia	Information communicated by Member States	Not specified	Agricultural assistance	Not specified	OJ [2006] C 73/7
Latvia	Information communicated by Member States	Not specified	Assistance for land drainage systems	€500,000	OJ [2006] C 73/7
Latvia	Information communicated by Member States	Not specified	Agricultural assistance	Not specified	OJ [2006] C 75/10
Luxembourg	Invitation to submit comments	Not specified	Tax exemption scheme	Not specified	OJ [2006] C 78/2
The Netherlands	Authorisation for state aid	Not specified	Compensation for crop loss	€3,800,000	OJ [2006] C 57/4
The Netherlands	Authorisation for state aid	Not specified	Increase of levies	Not specified	OJ [2006] C 57/7
The Netherlands	Authorisation for state aid	Not specified	Horticulture enterprises	€10,000,000	OJ [2006] C 57/7
The Netherlands	Information communicated by Member States	Not specified	Food trade association	€100,000	OJ [2006] C 73/9
The Netherlands	Information communicated by Member States	Not specified	Agricultural assistance	Not specified	OJ [2006] C 75/2
The Netherlands	Authorisation for state aid	Not specified	Assistance for film production	€29,480,000 per year	OJ [2006] C 75/14
The Netherlands	Information communicated by Member States	Gelderland	Not specified	€29,000	OJ [2006] C 58/2

The Netherlands	Information communicated by Member States	Gelderland	Agricultural assistance	€30,000	OJ [2006] C 75/10
The Netherlands	Information communicated by Member States	Overijssel	Agricultural assistance	€721,000 per year	OJ [2006] C 73/7
The Netherlands	Authorisation for state aid	Schleswig-Holstein	Assistance for audiovisual production	€4,000,000 per year	OJ [2006] C 75/14
The Netherlands	Authorisation for state aid	South Holland	Development of knowledge economy	€5,800,000	OJ [2006] C 67/4
The Netherlands	Information communicated by Member States	Zeeland	Flax processing	€33,525	OJ [2006] C 73/9
The Netherlands	Information communicated by Member States	Zeeland	Flax processing	€27,000	OJ [2006] C 73/9
Poland	Invitation to submit comments	Not specified	Electricity power generators	Not specified	OJ [2006] C 52/8
Poland	Information communicated by Member States	Not specified	SME investment	€359,030,000	OJ [2006] C 67/8
Poland	Information communicated by Member States	Not specified	Consultancy aid for SME	€33,070,000	OJ [2006] C 67/8
Poland	Information communicated by Member States	Not specified	Exemption from tax	€20,000	OJ [2006] C 71/2
Poland	Information communicated by Member States	Not specified	Job creation for agricultural persons	€21,075,000	OJ [2006] C 71/2
Poland	Authorisation for state aid	Not specified	Not specified	€5,000,000	OJ [2006] C 75/14
Slovak Republic	Authorisation for state aid	Not specified	Not specified	€1,500,000	OJ [2006] C 75/14
Slovak Republic	Authorisation for state aid	Not specified	Assistance for audiovisual production	€13,000,000 per year	OJ [2006] C 75/14
Slovak Republic	Information communicated by Member States	Bratislava	Not specified	€13,272,000	OJ [2006] C 58/2
Slovak Republic	Authorisation for state aid	Bratislava	Minority language assistance	€1,080,000	OJ [2006] C 75/14
Spain	Authorisation for state aid	Not specified	Exploitation of solar energy	€2,940,000	OJ [2006] C 59/8
Spain	Authorisation for state aid	Not specified	Technological research	€3,184,000,000	OJ [2006] C 59/8
Spain	Authorisation for state aid	Not specified	Textile research	€90,950,000	OJ [2006] C 72/2

Spain	Information communicated by Member States	Asturias	Innovation projects	€3,000,100	OJ [2006] C 73/9
Spain	Information communicated by Member States	Cantabria	Formation of agricultural cooperatives	€50,000	OJ [2006] C 71/2
Spain	Authorisation for state aid	Castile-Leon	Assistance for the potato market	€2,000,000	OJ [2006] C 57/4
Spain	Information communicated by Member States	Castile-Leon	SME investment	€600,000	OJ [2006] C 67/8
Spain	Information communicated by Member States	Castile-Leon	Agri-food investment	€1,150,000	OJ [2006] C 75/2
Spain	Information communicated by Member States	Extremadura	Employment in the emerging social economy	€1,200,000	OJ [2006] C 71/2
Spain	Commission communication to Member States and other interested parties	Ibermatica	Not specified	Not specified	OJ [2006] C 71/8
Spain	Information communicated by Member States	Madrid	Renewal of regional tractor fleet	€500,000	OJ [2006] C 75/2
Spain	Authorisation for state aid	Murcia	SMEs processing and marketing agricultural products	€1,400,000	OJ [2006] C 57/7
Spain	Information communicated by Member States	Murcia	Projects on energy saving, efficiency and diversification	€485,000	OJ [2006] C 73/7
Sweden	Authorisation for state aid	Not specified	Energy taxes on fossil fuels	€574,000,000	OJ [2006] C 72/2
Sweden	Authorisation for state aid	Not specified	Competitiveness of CHP's	€177,000,000	OJ [2006] C 72/2
Sweden	Authorisation for state aid	Not specified	Competitiveness of manufacturing energy-intensive business	€17,000,000	OJ [2006] C 72/2
Sweden	Authorisation for state aid	Not specified	Manufacturing industry's tax reliefs	€1,029,000	OJ [2006] C 72/2
UK	Authorisation for state aid	Not specified	Renewable energy	Not specified	OJ [2006] C 59/8
UK	Information communicated by Member States	Not specified	Climate change levy rebate	€36,400,000	OJ [2006] C 75/2
UK	Information communicated by Member States	Not specified	Agriculture assistance	€253,000	OJ [2006] C 75/2
UK	Authorisation for state aid	England and Northern Ireland	Beef Marketing Restoration Programme	€11,080,000	OJ [2006] C 57/7

UK	Information communicated by Member States	North East of England	Exchange for Manufacturing Resources	€55,000	OJ [2006] C 58/3
UK	Information communicated by Member States	North West England	Collaborative advisory service	Not specified	OJ [2006] C 73/7
UK	Authorisation for state aid	Wales	Extension to Meat Generic Advertising Scheme	€3,320,000	OJ [2006] C 57/4
UK	Authorisation for state aid	Wales	Extension to Meat Generic Advertising Scheme	€3,320,000	OJ [2006] C 57/4
UK	Information communicated by Member States	Wales	Infrastructure support	€110,000	OJ [2006] C 67/4
UK	Information communicated by Member States	Wales	Enterprise grant scheme for SMEs	€1,000,000	OJ [2006] C 67/11

## BRUSSELS AGENDA FOR MAY 2006

5 May 06	Ecofin Council (Brussels)
11 - 12 May 06	EU-LAC Summit (Vienna)
15 - 16 May 06	General Affairs and External Relations Council + Defence (Brussels)
15 - 18 May 06	EP Plenary (Strasbourg)
18 - 19 May 06	Education, Youth and Culture Council (Brussels)
19 - 21 May 06	Environment (informal) (Eisenstadt/Rust)
22 - 23 May 06	Agriculture and Fisheries Council (Brussels)
28 - 30 May 06	Agriculture (informal) (Krems)
29 - 30 May 06	Competitiveness: Single Market, Industry and Research (Brussels)

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If you have any questions regarding the information in the briefing, please approach the Dechert lawyer with whom you regularly work, or one of the contacts listed here.

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