DechertOnPoint

January 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 December 2005. It also takes a prospective look at the events in the month of January 2006.

Table of Contents

INSTITUTIONAL ACTIVITIES

COMPETITION

CFI dismisses appeal by GE and Honeywell

On 14 December 2005, the Court of First Instance ("CFI") upheld the decision of the European Commission to prohibit the acquisition by General Electric Company ("GE") of Honeywell International Inc ("Honeywell") under Article 8(3) of the old EC Merger Regulation (Regulation 4064/89). The CFI upheld the Commission's conclusions that the merger would create or strengthen a dominant position in the markets for jet engines for large aircraft, engines for corporate jet aircraft and for small gas turbines. These findings were sufficient for the merger to be held to be incompatible with the common market, despite the fact that the Commission had made a number of errors in its assessment of the impact of certain vertical overlaps between the parties and the conglomerate effects of the merger.

Both GE and Honeywell are US companies which are active in a range of industries. In October 2000, GE and Honeywell entered into a merger agreement whereby GE would acquire Honeywell's entire share capital. The acquisition was first notified to the Commission in February 2001.

After a 5 month in-depth investigation, the Commission declared the merger incompatible with the common market and it was prohibited. The Commission considered that dominance would have been created or strengthened as a result of the following findings:

1) The merger would strengthen GE's existing dominant positions in large commercial jet aircraft engines resulting from the vertical integration between GE's engine manufacturing business and Honeywell's production of engine starters (a key component of jet engines) as well as the bundling of engines with avionic products.

2) The merger would create dominant positions on the various global markets for avionics and non-avionics products as a result of two conglomerate effects (i) financial strength: as GE group's financial power would be extended in all of those markets and the commercial advantages deriving from the aircraft leasing and purchasing activities of another group company, GE Capital Aviation Services; and (ii) bundling: as the merged entity could link the sale of GE aircraft engines with Honeywell avionics products.

3) The merger would strengthen GE's existing dominance in the global market for large regional jet engines as a result of the horizontal overlaps between the parties.

4) The merger would create a dominant position in the global market for corporate jet aircraft engines due to the horizontal overlaps between the parties.

5) The merger would create a dominant position on the global market for small marine gas turbines due to the horizontal overlaps between the parties.

GE did propose remedies during the proceedings but those remedies were considered insufficient to solve the competition concerns raised by the transaction.

On 12 September 2001, GE and Honeywell brought actions before the CFI seeking to annul the Commission's decision. Oral hearings took place in May 2004.

On 14 December 2005, the CFI upheld the Commission's decision and confirmed the Commission's finding that the merger would have resulted in the creation of a monopoly on the worldwide market for jet engines for large regional aircraft, engines for corporate jet aircraft and for small marine gas turbines, as mentioned in points 3-5 above. The court found that these findings were sufficient for the merger to be held to be incompatible with the common market, despite the fact that the Commission had made a number of errors in its assessment, in particular, in relation to vertical and conglomerate effects, where there were no direct overlaps between the parties' activities (see points 1 and 2 above).

In relation to the vertical integration issue, the CFI had found that the Commission had based its decision on the fact that the merged entity would have had an incentive to delay or disrupt the supply of Honeywell engine starters to its engine competitors and to increase their price. However, whilst the CFI found this a convincing argument, it considered that the Commission had erred by not taking into account the deterrent effect of the obligation to which the merged entity would be subject under Article 82 of the EC Treaty. The CFI stated that *"It follows that the Commission must, as a rule, take into account the potentially unlawful, and thus the sanctionable, nature of certain conduct as a factor which might diminish, or even eliminate, incentives for an undertaking to engage in a particular activity"*. Given that the Commission had available all the evidence that it required to assess to the extent to which conduct disrupting supplies of engine starters could constitute a breach of Article 82 it made an error in law in failing to take into account the deterrent effect which that factor might have had on the merged entity. The CFI were of the view that this could have materially influenced the Commission's appraisal of how likely it was that the conduct in question would be adopted.

In relation to the conglomerate effects of the merger, the CFI found that the Commission was not only required to establish that the merged entity had the ability to transfer GE's practice of using the commercial strength of its subsidiaries to increase its strength in the large commercial jet aircraft engines market to the markets for avionics and non-avionics products, but also to show on the basis of convincing evidence, that it was likely that the merged entity would do this and that these practices would have created, in the relatively near future, a dominant position on some of the markets for the avionics and non-avionics products concerned. However, the CFI found that the Commission had not established these two factors to the relevant standard. The CFI therefore concluded that the Commission had made a manifest error in holding that the financial strength and vertical integration of the merged entity would bring about the creation or strengthening of dominant positions on the markets for avionics or non-avionics products.

In relation to the conglomerate affects of the merger, the Commission had also concluded that the merged entity could adversely affect competition in the avionics market by bundling their products. However, the CFI noted that the practice of bundling, while not impossible in these markets, was made more difficult due to the workings of the market: the final customer for engines and avionics products is not always the same and the products are purchased at different stages in the manufacturing process. Therefore, an undertaking which wishes to impose bundling would have to make an additional commercial effort and the practical difficulties in bundling make it less likely to occur. The CFI therefore concluded that the Commission had not sufficiently established that the merged entity would have engaged in bundling and the CFI viewed that the mere fact that the merged entity would have a wider range of products than its competitors was not sufficient to justify the conclusion that dominant positions would have been created or strengthened on the different markets.

The 2001 Commission decision was controversial due both to the fact that the Commission prohibited an all-US merger that had been approved by the US anti-trust authorities and also due to the Commission's reliance on a conglomerate effects theory of harm to find the creation or strengthening of dominance in areas where there were no direct overlaps between the parties' activities.

The Commission noted in its press release on the CFI's judgement that it will be closely reviewing the aspects of the CFI's judgment, as mentioned above, in relation to vertical overlaps and conglomerate effects in which the sufficiency of its evidence and assessment was criticised. Since the overhaul of the Commission's merger control procedures and the revision of the EC Merger Regulation in 2004, it has been anticipated that the Commission will prepare further guidance on the assessment of vertical and conglomerate mergers. Such guidance would complement the Horizontal Merger Guidance issued in 2004.

Commission publishes Green Paper on damages actions

On 20 December 2005, the European Commission published for consultation a Green Paper and accompanying staff working paper on damages actions for breach of EC anti-trust rules. The Green Paper identifies the main obstacles to the development of a more efficient system for bringing damages claims in EU national courts, such as access to evidence and the quantification of damages, and seeks views on a range of options for addressing these problems. The options set out in the Green Paper seek to ensure that companies and consumers are compensated for their losses, whilst avoiding vexatious claims. The staff working paper contains a more detailed analysis of the issues and options discussed in the Green Paper.

The aim of the Green Paper and the accompanying working paper is to examine the ways in which damages actions for breaches of Articles 81 and 82 of the EC Treaty may be better facilitated before national courts. The Commission considers that private enforcement (in particular, private damages actions) has an important and complementary role in the public enforcement of EC competition law. The Commission also considers that encouraging private enforcement is in keeping with wider objectives of fostering competition with a view to ensuring open and competitive markets.

The Green Paper identifies the following main issues relating to private damages claims and sets out a range of options for consultation.

Access to evidence

The working paper discusses two aspects of this issue separately (i) disclosure; and (ii) production of documentary evidence. The difficulties facing a claimant in obtaining evidence of an alleged anti-trust infringement is one of the major obstacles to damages actions, particularly in stand-alone cases where there has been no prior competition authority infringement decision.

The Green Paper sets out ten policy options in relation to the introduction of special rules or procedures to facilitate access to evidence held both by the defendants to an action for private damages and third parties:

1) After the claimant has set out in detail the relevant facts of the case and has presented reasonably available evidence of its allegations, the court should order the disclosure of evidence that is relevant and reasonably identified.

2) The introduction of mandatory disclosure requirements for classes of documents, under supervision of a court order.

3) An obligation to provide parties with a list of accessible documents.

4) Provision for monetary or criminal sanctions or procedural consequences (such as strike out) for destruction of evidence.

5) Empowering courts to order prompt and effective provisional measures to preserve relevant evidence of the alleged infringement.

6) Giving the litigant the right to request other parties to the procedure to provide copies of all documents handed over to the Commission.

7) Relaxing the current grounds on which the Commission can refuse to transmit documents to national courts.

8) To make either decisions of NCAs binding on national courts or reverse the burden of proof where such decisions exist.

9) In cases of information asymmetry, lowering or shifting the burden of proof between the claimant and defendant. The uncertainty of the outcome in many cases means that the potentially high costs are not necessarily balanced by correspondingly good prospects of recovery, lowering the burden of proof will therefore have the aim of redressing that asymmetry.

10) Reversing the burden of proof where the defendant unjustifiably refuses to disclose evidence.

Fault requirement

The working paper explains that Member States take diverse approaches in relation to the question of fault. The Green Paper sets out three policy options for consultation:

1) That evidence of illegality (violation of competition rules) should suffice in order to give rise to liability for damages.

2) That proof of infringement should only be sufficient in the most serious/hard core anti-trust law infringements. In other cases proof of intention or negligence would also be required.

3) That there should be a presumption of fault where a violation is shown, but a defendant could raise a defence of excusable error of law or fact.

Damages

The Commission considers that pure compensation of the loss caused by an anti-trust infringement does not always seem to provide a sufficient incentive for claimants to bring a damages action. Therefore, it is necessary to consider other possibilities. The Green Paper seeks views on seven possible policy options:

1) Defining damages by reference only to the loss suffered (compensation).

2) Defining damages with reference to the illegal gain made by the infringer (recovery of illegal gain).

3) Imposing double damages for horizontal cartels, either on an automatic basis or at the discretion of the court.

4) Imposing prejudgment interest from the date of the infringement or the injury.

5) Deciding whether the various methods of quantifying damages, including the more complex ones, provide additional value, in terms of accuracy, over the simpler ones.

6) The publication of Commission guidelines on the quantification of damages.

7) The introduction of split proceedings whereby the issue of liability is assessed before damages.

The passing-on defence and indirect purchaser standing

Where a company purchases products at prices above the competitive level from a member of a cartel or a dominant company, that direct purchaser may be able to pass the price increase on further down the supply chain.

In relation to this issue the Green Paper therefore seeks views on the following four policy options:

1) Allowing the passing-on defence and ensuring that both direct and indirect purchasers can sue the infringer.

2) Excluding the passing-on defence and only allowing direct purchasers to bring actions for damages.

3) Excluding the passing-on defence but allowing both direct and indirect purchasers to bring actions.

4) Introducing a two-step procedure whereby the passing-on defence is excluded, the infringer can be sued by any victim and the overcharge resulting from the infringement is then distributed between all the parties who have suffered loss.

Defending consumer interests

The Commission considers that individual consumers who have suffered relatively minor economic loss may be deterred from seeking damages due to the costs, delays and administrative burdens of court proceedings. However, the Commission considers that there is merit in encouraging claims by final consumers in terms of compensation, deterrence and the development of the competition culture. Therefore, the Commission considers that some facilitating instruments may be required to encourage consumer actions.

The Commission is therefore seeking views on the following two options:

1) Developing a special procedure providing a cause of action for consumer associations, without depriving individual consumers of rights.

2) Developing a special procedure for collective action by groups of purchasers other than final consumers.

Costs of actions

The Commission states that the costs of bringing damages actions can act as a deterrent. The Green Paper therefore seeks views on whether special rules should be introduced

to reduce the cost risk for the claimant in anti-trust damages cases.

Co-ordination of public and private enforcement

A key issue for the Commission in the interrelationship between private and public enforcement is the impact on leniency programmes. The Green Paper therefore consults on the following options relating to the optimum co-ordination of private and public enforcement:

- Exclusion of discoverability of the leniency applications. If the threat of discoverability of the confession submissions is significant under national law, the Commission would consider excluding such evidence from discovery in damages litigation. However, a general shield of protection in relation to all pre-existing documents submitted with a leniency application would not be justified and should be avoided, provided that the leniency applicant is not placed in a worse position in relation to potential claimants by virtue of its leniency application.

- Rebate on damages claims. The Commission is considering whether a successful leniency applicant should be given the option to claim a rebate on any damages claim facing him in return for helping claimants to bring damages claims against all cartel members.

- Removal of joint liability for the leniency applicant such that the liability of a leniency applicant would be limited to its share of damages corresponding to its share of the cartelised market.

Other issues

Other issues discussed in the working paper and set out in the Green Paper include jurisdiction, experts, limitation periods and causation.

The Commission has invited comments on the Green Paper by 21 April 2006.

The full texts of the Green paper and the Staff Working Paper are available at http://europa.eu.int/comm/competition/antitrust/other/actions_for_damages/index_en.html

Commission issues statement of objections to Microsoft in relation to non-implementation of remedial action

On 22 December 2005, the European Commission announced that it has issued a statement of objections to Microsoft alleging its failure to comply with some of its obligations in the March 2004 decision finding that Microsoft had infringed Article 82 of the EC Treaty. The Commission considers that Microsoft has not yet complied with the remedial obligation requiring it to provide complete and accurate specifications for interoperability information needed to allow non-Microsoft work group services to achieve full interoperability with Windows PCs and servers.

The Commission considers that the remedial actions provided so far by Microsoft are incomplete and inaccurate. The Monitoring Trustee, which was appointed in October 2005 (see November EU update) has reported to the Commission that some of the information *"is totally unfit at this stage for its intended purpose"* and *"is fundamentally flawed in its conception, and in its level of explanation and detail"*. The Monitoring Trustee concluded that *"the documentation needs quite drastic overhaul before it could be considered workable"*.

On this basis, the Commission has now issued Microsoft with a statement of objections setting out the Commission's preliminary view that it has failed to supply complete and accurate interoperability information. The Commission has given Microsoft five weeks to respond to the statement of objections and will give it the opportunity to present its case at an oral hearing.

CFI dismisses appeal by Brouwerij Haacht in Belgian brewers cartel case

On 6 December 2005, the Court of First Instance (CFI) dismissed an appeal by Brouwerij Haacht NV against the level of the fine imposed on it by the European Commission for participation in an illegal cartel in the Belgian brewery market.

In December 2001, the Commission fined four Belgian brewers for participating in two different cartels in the Belgian brewery market. The first cartel involved Interbrew and Alken-Maes. The second cartel, involving Interbrew, Alken-Maes, Brouwerij Haacht (Haacht) and Martens and related to the private label beer market in Belgium.

The first cartel involved the fixing of prices and the sharing of customers in relation to sales in the hotel, restaurant and café sector and was found to be a very serious infringement of Article 81(1). The second cartel involved concerted pricing practices, customer sharing and information exchange contrary to Article 81(1) of the EC Treaty by means of meetings which were held during

1997-1998 to discuss ways of avoiding a 'price war' and to 'consolidate' existing customers. This cartel was found to be a serious infringement as it was limited to a small segment of the beer market and the Commission found no proof that the parties' market behaviour had altered as a result of the concerted practices.

Haacht was fined a total of €270,000, including a 10% reduction for co-operation under the Commission's 1996 Leniency Notice. Subsequently, Haacht appealed the level of the fine imposed for its participation in the private-label cartel on the basis that the Commission had (i) failed to define the private –label beer segment as the relevant market and therefore had breached its obligation to state reasons for the fine imposed; (ii) erred in assessing its effective economic capacity to cause significant damage to other operators on that market; (iii) not given it credit for its essentially passive role in the cartel; (iv) breached the Leniency notice and principle of equal treatment by only giving it a 10% reduction while granting Interbrew a 50% reduction.

The CFI dismissed each of the pleas raised by Haacht. The CFI concluded that, as Haacht did not dispute the infringement and the infringement related exclusively to the private-label beer sector, there could be no doubt that the Commission evaluated the fine in the context of an infringement in that sector and therefore had defined the market. The CFI also found that the Commission had increased the other companies' fine significantly for deterrence purposes and to reflect the fact that, as larger companies, they had easier access to legal advice on the consequences of their actions thereby taking account of their greater economic capacity. The CFI also found that the fact that Haacht did not deny having taken part in all cartel meetings nor that it discussed prices and customer sharing at those meetings demonstrated a degree of active participation in the cartel which was incompatible with its claim that its role was passive.

In relation to Haacht's fourth claim that the Commission breached the Leniency Notice and principle of equal treatment, the CFI noted that a reduction is not justified under the Leniency Notice where the co-operation goes no further than required under the general obligations to provide requested information as Haacht had done. In contrast, Interbrew had produced information that it was not required to produce. Haacht could not therefore claim a reduction in its fine equivalent to that granted to Interbrew.

Commission fines members of rubber chemicals cartel

On 21 December 2005, the European Commission announced that it has fined four companies a total of €75.86 million for infringing Article 81(1) of the EC Treaty by participating in a cartel in the rubber chemicals market.

Following receipt of an application for immunity under the Commission's Leniency Notice from one of the cartel participants, Flexsys NV, the Commission began its investigation into the possible cartel in 2002. The Commission found that Flexsys, Bayer AG and Crompton (now Chemura and including Crompton Europe and Uniroyal Chemical Company) had been involved in a cartel in which they had exchanged pricing information and/or agreed to raise prices for certain rubber chemicals from 1996 to 2001 in the EEA rubber chemicals market. The fourth company, General Quimica, participated in the cartel in 1999 and 2000.

The Commission concluded that the cartel activities amounted to a very serious infringement of Article 81(1). With regard to the gravity of the infringement, the size of the market, the duration of the cartel and the relative weight of the companies and their global dimension, the Commission decided to impose fines ranging from €58.88 million (Bayer AG) to €3.38 million (General Quimica).

Flexys received complete immunity under the Leniency Notice therefore no fine was imposed. Bayer's fine was reduced by 20%, Crompton's by 50% and General Quimica's by 10% for co-operation, in accordance with the Leniency Notice.

Commission publishes discussion paper on application of Article 82 to exclusionary abuses

On 19 December 2005, the European Commission published a staff discussion paper on the application of Article 82 of the EC Treaty to exclusionary abuses by dominant companies. The paper proposes methodologies for the assessment of exclusionary abuses such as predatory pricing, rebates, tying and refusal to supply which could assist in identifying those cases where competition would be most likely to be affected.

The paper notes that the aim of applying Article 82 to exclusionary abuses is *"the protection of competition on the market as a means of enhancing consumer welfare and of ensuring an efficient allocation of resources"*. The Commission defines exclusionary abuses as *"behaviours by dominant firms which are likely to have a foreclosure effect on the market"*. The discussion paper sets out possible principles relating to the application of Article 82 to exclusionary abuses and in doing so sets out the Commission's intention to adopt an approach which is

based on the likely effects of exclusionary abuses on the market.

Market definition

In the paper the main focus on the subject of market definition is in relation to the problem of applying the "small but significant and non-transitory increase in prices" test ("SSNIP test") to Article 82 cases. The paper explains that market definition in Article 82 cases need to be examined particularly carefully. It also states that use of only one market definition methodology is likely to be inadequate. The paper views that whilst the SSNIP test may provide an indication of substitution patterns at prevailing prices, other market definition tools are also needed, including examining the characteristics and intended use of the products concerned, assessing their interchangeability from a customer perspective and comparing prices across regions.

Dominance

Within the discussion paper the Commission reiterates that it is not a condition of dominance for the purposes of Article 82 that competition **has** been eliminated. The paper explains that higher than normal profits may be an indication of a lack of competitive constraints, as may the way in which the undertaking behaves on the market. However, the Commission does stress that economic strength cannot be measured by an undertaking's profitability at any specific point in time. The paper also sets out the factors that the Commission is likely to take into account in assessing both single firm dominance and collective dominance.

Framework for the analysis of exclusionary abuses

The paper describes a general framework for analysing abusive exclusionary conduct by a dominant company. It examines three possible defences:

1) Objective necessity;

2) Meeting competition;

3) Efficiencies, for which the paper sets several conclusions.

The abuses analysed in detail by the paper are: predatory pricing, "single branding" i.e. exclusivity and tying, refusal to supply (including IP licensing) and behaviour in after markets (spare parts, consumables).

Consultation

The Commission is consulting widely on the discussion paper. It has already discussed the paper with representatives of Member States and is now opening the consultation to the public. As part of this consultation process the Commission will hold a public hearing in Spring 2006 on abuse of dominance, and in particular the suggested framework set out in the discussion paper.

Interested parties are invited to submit comments on the discussion paper before 31 March 2006. The DG Competition Discussion Paper is available at:

http://europa.eu.int/comm/competition/antitrust/others/article_82_review.html

Commission announces that it has revised its notice on access to the file in competition cases

On 22 December 2005, the new Commission Notice on the rules for access to the Commission file in cases under Article 81 and 82 of the EC Treaty and under the EC Merger Regulation was published. The revision is by way of an update to the existing Commission notice on the rules of procedure for access to the file in competition cases and is intended to increase the transparency of competition procedures, to clarify the extent and the exercise of the right to access and to increase procedural efficiency.

Access to the file applies to parties to whom the Commission has sent a statement of objections and so allows the parties to understand, assess and respond to the Commission's reasoning and the evidence on which it is relying. Access to the file is one of the essential procedural guarantees intended to protect the rights of the defence under EC law.

The main provisions of the new notice include:

- Clarification that access to the file is granted only to addressees of a statement of objections.

- A separate more limited right of access to specific documents on the Commission's file is granted to complainants in Article 81/82 cases and other interested parties in merger cases.

- Clarification of what documents are included in the "Commission file". This covers all documents that relate to the procedure on which the statement of objections has been based.

- Clarification that only "internal documents" and "business secrets and other confidential information" will not be accessible.

- An explanation of the procedures for the treatment of confidential information and for dealing with implementing access to the file.

- The provision of a more detailed procedure than in the 1997 notice for the resolution of disagreements on confidentiality claims and an explanation of how confidentiality claims will be balanced against rights of defence.

- Confirmation that access may be granted in electronic form or by the provision of paper copies.

Commission publishes report on the application of EC competition rules in the Member States during 2004

On 20 December 2005, a report by the European Commission on the application of EC competition rules in the Member States was published on the Commission's website. The report, which is not yet available in English, includes details of legislative changes introduced in the 25 Member States during 2004, together with brief summaries of how competition law has been applied by national authorities in seven Member States (Denmark, France, Germany, Ireland, the Netherlands, Spain and Sweden) and by the national courts in eight Member States (Belgium, Denmark, France, Germany, the Netherlands, Spain, Sweden and the UK).

http://europa.eu.int/comm/competition/annual_report/aeccr_fr.pdf

UK Competition Commission publishes administrative timetable for negotiation of LSE undertakings

On 1 December 2005, the UK Competition Commission published an administrative timetable for negotiation of undertakings with Deutsche Borse AG and Euronext NV in relation to their bids for the London Stock Exchange plc.

On 1 November 2005, the Competition Commission published its final report confirming its provisional findings that the anticipated acquisition by either Deutsche Borse AG (DBAG) or Euronext NV of the London Stock Exchange plc (LSE) might be expected to result in a substantial lessening of competition (See last months EU update for details).

The Competition Commission concluded that it would allow each merger on the condition that each party gave undertakings to implement a package of structural and behavioural remedies to ensure the independence of LSE's clearing provider.

The Competition Commission is working with DBAG and Euronext to agree the precise terms of these undertakings, and, on 1 December 2005, published an administrative timetable that envisages:

- revised draft undertakings being sent to parties for comments in December;

- publication of the draft undertakings for a 15-day consultation during January 2006; and

- publication of acceptance of the undertakings, or publication of revised draft undertakings for a seven-day consultation, during February 2006.

The Competition Commission envisages publication of final acceptance by the end of February 2006.

The Competition Commission notes that there is no statutory basis for this indicative timetable, but both DBAG and Euronext have approved it.

OFT publishes note explaining that it is no longer providing confidential guidance for mergers

The Office of Fair Trading ("OFT") has published a note explaining that it will not be able to meet future requests for confidential guidance in merger cases until further notice and that it will only provide informal advice on planned mergers in exceptional cases.

Under the Enterprise Act 2002, it remained possible for parties to a prospective, and unannounced, merger to seek informal advice about the likely competition issues raised by the merger or "formal" confidential guidance about the possibility of the merger.

However, the OFT has now decided that it will not be able to meet future requests for confidential guidance. It will also not be able to meet future requests for informal advice, although it is still willing to consider pro bono cases (involving public bodies or private enterprises unable to afford external competition law advice) and other exceptional cases, as and when resources permit.

The reasons for this decision are twofold. Firstly, the duty to make a reference under the Enterprise Act has resulted in a greater change to the OFT's assessment of cases than initially anticipated when the Enterprise Act came into force. The level of review and analysis that the OFT is required to conduct means that it does not consider that initial advice about the issues raised by a merger, given without the benefit of consultation with third parties, is as useful or reliable as it was previously.

Secondly, as a result of the level of analysis required by the Enterprise Act, the OFT's workload per case is higher than expected. Further, the overall case load is increasing as are the number of complex cases which are resource intensive. This means that the OFT cannot afford to provide the resources to the provision of informal advice and guidance as it has done in the past.

However, the OFT notes that this decision is only an interim measure. It intends to consult on this issue and the long-term provision of confidential guidance and informal advice as soon as practicable in 2006-7. It also intends to review its Procedural Guidance more generally as a result of its practical experience under the Enterprise Act. In the meantime, it welcomes "constructive suggestions" as to its procedures.

Ofcom consults on review of cross-promotion rules

On 6 December 2005, the UK Office of Communications ("Ofcom") published a consultation on the current rules that regulate the cross-promotional activities of all television Broadcasting Act licensees. The consultation document contains an analysis of the competition issues that arise in relation to such cross-promotion and how these should be addressed by regulation.

Cross-promotion by television broadcasters involves the promotion on one television channel of another channel or service (for example, when ITV1 promotes programmes on ITV3 or Channel 4 promotes E4). Such cross-promotion by commercial broadcasters is controlled both by advertising rules (which cap the maximum time that can be spent on advertising and promotion per hour) and the cross-promotion rules which include both competition rules and rules as to content.

Given the developments in this sector, in particular the emergence of Freeview, Ofcom has decided that it is appropriate to conduct a review of the current cross-promotion rules. It should be noted that Ofcom is not responsible for regulating cross-promotion by the BBC. However, it considers that its analysis in this consultation paper is equally applicable to the BBC and it has communicated this to the Department of Culture, Media and Sport, which is currently in the process of reviewing the BBC's Charter. Ofcom considers that it is important that the BBC should be bound by the same rules as commercial terrestrial broadcasters.

Ofcom's consultation paper discusses various issues in relation to whether it is appropriate to continue to regulate cross-promotion on both a content and a competition basis.

Ofcom invites views on the consultation document and the issues raised within it by 17 February 2005.

The consultation paper can be found at: http://www.ofcom.org.uk/consult/condocs/promotion/promotion.pdf

STATE AID

Commission adopts new regional aid guidelines

On 21 December 2005, the European Commission announced that it has adopted new guidelines for regional aid, which will apply from 2007-2013.

The regional aid guidelines set out the rules for allowing state aid that promotes the development of poorer regions within the EU. They cover aid such as direct investment grants and tax reductions for companies. The guidelines set out the rules for the selection of regions which are eligible for regional aid, and define the maximum permitted levels of this aid.

http://www.europa.eu.int/comm/competition/state_aid/regional/rag_en.pdf

ECJ overturns CFI judgment on admissibility of challenge to a state aid decision

On 13 December 2005, the European Court of Justice ("ECJ") ruled that the Court of First Instance ("CFI") erred in finding that an appeal by a third party against a Commission state aid decision was admissible. The ECJ has found that the application brought before the CFI was inadmissible due to the fact that the applicant was not individually concerned by the Commission's decision.

Following the reunification of Germany in 1990, large amounts of agricultural and forestry land were transferred from the state assets of the German Democratic Republic to those of the Federal Republic of Germany. Under a German Compensation Act, rights were given to various categories of people such as residents, farmers and former owners, to acquire land at below market value or on a preferential basis. Following a number of complaints the Commission opened an in-depth state aid investigation into the scheme.

In January 1999, the Commission issued a decision finding that aid provided under the Act over the maximum aid intensity limit of 35% was illegal. The Commission

therefore ordered Germany to cancel such aid and to recover any aid granted.

Germany subsequently amended its Compensation Act in accordance with the Commission's decision. The Commission then adopted a decision finding the revised law to be compatible with the common market.

In relation to this second decision, Aktionsgemeinschaft Recht und Eigentum eV ("ARE"), an association of groups concerned with issues relating to property ownership and expropriation of rights in the former Soviet zone of occupation or the former German Democratic Republic brought an action before the CFI seeking the decision's annulment.

The Commission claimed that ARE's appeal was inadmissible. The CFI rejected that claim and found that ARE was entitled to bring the action for annulment on the basis that (i) ARE was claiming that the Commission had failed to initiate the formal review procedure under Article 88(2) and therefore it was seeking to enforce the procedural rights to which it was entitled under that provision; and (ii) as ARE had been directly involved in the review process leading to the January 1999 decision, it was individually concerned with that decision and as that decision was directly connected to the second decision ARE's individual concern was extended to the second decision.

However, on 13 December 2005, the ECJ overturned this decision. The ECJ concluded that:

- In its action before the CFI, ARE was not seeking to contest the failure to initiate the Article 88(2) procedure and so safeguard its procedural rights.

- ARE had not demonstrated that it had a particular status which was affected by the decision. ARE is an association established to promote the collective interests of a category of persons. As such, it can only be regarded as being individually concerned to the extent to which the position of its members in the market is substantially affected by the aid scheme. While some of ARE's members may be direct competitors of the beneficiaries of the aid, their position in the market was not substantially affected by the grant of the aid as all farmers in the EU may be regarded as competitors of the beneficiaries. They were not therefore individually concerned by the decision.

The ECJ concluded that the CFI had erred in finding that the conditions necessary to show that ARE was individually concerned with the decision had been fulfilled. The ECJ therefore concluded that the CFI judgment must be set aside. ARE subsequently cannot be regarded as being individually concerned by the contested decision.

Commission orders recovery of unlawful aid granted in France, Ireland and Italy for alumina production

On 7 December 2005, the European Commission announced that aid granted by France, Ireland and Italy in the form of exemptions from excise duty on mineral oils used as fuel for alumina production between 3 February 2002 and 30 December 2003 constituted unlawful state aid, and must be repaid. An investigation into the exemptions remains open.

EC Council Directive 92/82 on the approximation of the rates of excise duties on mineral oils established a minimum rate of excise duty on heavy oil. Successive Council Decisions authorised France, Ireland and Italy to derogate from Directive 92/82 by totally exempting them from excise duty on mineral oils used as fuel for alumina production.

The Commission found that the aid granted by France, Ireland and Italy for alumina production was given without its prior approval. The exemptions conferred an advantage on the beneficiary companies, were financed through state resources and were selective as they only applied to a given production and in given regions without being justified by the nature and the logic of the tax systems. The measures also distorted competition and trade within the EU as there is alumina production in Greece, Spain, Hungary and Germany. The Commission considered that the exemptions were not justified on regional development grounds because they were not aimed at tackling handicaps of a regional character.

The Commission concluded that the exemptions, up to the level of €13 per 1000kg (the EC minimum rate set by Directive 92/82), constituted unlawful state aid.

Normally such aid would be fully repayable. However, given the fact that the exemptions had been authorised under EC rules on excise duties, the Commission considered that until publication of its decision to launch a formal investigation procedure the beneficiaries might have had grounds to believe that the measures in question did not infringe EC state aid rules. The Commission has therefore ordered the beneficiaries to repay only that part of the incompatible aid received from 3 February 2002.

Commission publishes autumn 2005 update to state aid Scoreboard

On 9 December 2005, the European Commission published the autumn 2005 update of its state aid Scoreboard. This assesses the state aid situation in each of the Member States and their progress towards achieving the Lisbon objectives relating to state aid.

The main conclusions from the autumn 2005 update report were that:

- there has been a slight decline in the level of state aid in relation to GDP in some Member States, but the Lisbon objective of less aid has not yet been met. For the 15 Member States prior to 1 May 2004, the level of state aid in 2004 was significantly lower than that in the early and mid-1990s, but there has been an increase in the total amount of aid granted compared to that in 2003. The most aid in absolute terms continues to have been granted by Germany, France and Italy.

- there is a clear shift in emphasis from supporting individual sectors or companies towards tackling horizontal objectives. In 2004, 76% of aid granted by the 25 Member States was in relation to horizontal objectives.

- in terms of aid awarded for environmental objectives, the level of aid has increased significantly from €1.3 billion in 1994 to €11.4 billion in 2004.

- of the €9.4 billion of aid to be recovered under Commission decisions adopted since 2000, only €5.9 billion (plus almost €2 billion interest) had been effectively recovered by the end of June 2005.

The spring 2006 update of the Scoreboard will include an overview of the state aid situation of future Member States, Bulgaria and Romania.

ECJ upholds Commission decision finding that aid to Italian banking sector was illegal

On 15 December 2005, the European Court of Justice (ECJ) dismissed an appeal brought by the Italian Republic and upheld a decision of the European Commission finding that aid benefiting the Italian banking sector was illegal state aid under Article 87 of the EC Treaty.

During the 1990's the Italian banking system was privatised in accordance with certain Italian statutes. Under one such law, which was designed to encourage the restructuring and consolidation of the banking sector, tax advantages were granted for certain restructuring operations.

In December 2000, the Commission decided that the tax advantages under the relevant Italian legislation amounted to state aid which was incompatible with the common market under Article 87(1) of the EC Treaty. The Commission ordered the recovery of the aid from the beneficiary banks, which amounted to the tax not paid under the legislative scheme.

Italy brought an appeal against the Commission's decision before the ECJ.

The ECJ dismissed Italy's appeal as it found that the measures were intended to improve the competitiveness of Italian operators in order to strengthen their position solely in the internal market. The ECJ found that a process of privatisation initiated by one Member State cannot be considered to be a project of common European interest.

Further, as the aid was intended to improve the position of the beneficiaries in relation to their competitors (who did not benefit from the aid), it was not intended to further the development of the banking sector in general.

The ECJ found no evidence to support Italy's claims that the Commission's decision lacked reasoning or breached Italy's rights of defence by failing to give it proper opportunity to comment.

FINANCIAL SERVICES

EU financial services policy for the next five years

On 5 December 2005, the European Commission presented its new financial services strategy for the next five years. Although progress has been made through the successful completion of the Financial Services Action Plan ("FSAP"), the Commission concludes that the EU financial services industry still has strong untapped economic and employment growth potential.

The Commission's new strategy explores the best ways to effectively deliver further benefits of financial integration to industry and consumers alike. The Commission's main objectives are:

1. to dynamically consolidate progress and ensure sound implementation and enforcement of existing rules;

2. to drive through the better regulation principles into all policy making;

3. to enhance supervisory convergence;

4. to create more competition between service providers, especially those active in retail markets; and

5. to expand EU's external influence in globalizing capital markets.

The new strategy for 2005-2010 does not introduce much in terms of new legislation underscoring that over the next 5 years there will probably only be a limited number of well-targeted new initiatives. Whilst the FSAP focused mainly on the wholesale market, retail integration will become more important over the next period. Barriers associated with the use of bank accounts will be examined, with a view to enabling consumers to shop around all over Europe for the best savings plans, mortgages, insurance and pensions, with clear information so that products can be compared.

Internal Market Commissioner Charlie McCreevy said: *"European financial integration has really moved forward in the last five years. The challenge now is to consolidate progress and work together on applying the better regulatory disciplines. Our aim should be to create the best financial framework in the world. It means creating real, tangible benefits for the citizens and businesses of Europe through lower capital costs, better pensions, and cheaper, safer retail financial products. Our new strategy is practical, economics driven and citizen focused. Only in a few, targeted areas are new initiatives foreseen."*

The full text of the Commission's new strategy can be found at :

http://europa.eu.int/comm/internal_market/finances/policy/index_en.htm

Single payments proposals

On 1 December 2005, the European Commission published a draft directive in which it suggested a way of dismantling existing legal barriers with a view to creating a Single Payments Area by 2010 across all 25 Member states that could save the EU economy €50-€100 billion annually.

Currently each Member State has its own rules on payments, and the annual cost of making payments between these fragmented systems is 2-3% of GDP. Moreover, costs may vary dramatically: a credit transfer can be free of charge in one country and cost more than €10 in another.

The proposal seeks to boost competition and cut costs in the sector, from which businesses, consumers and the payments industry itself clearly stand to benefit, as well as provide a set of rules regarding information requirements and the rights and obligations linked to the provision and use of payment services.

Scope of the proposal

The proposal focuses on electronic payments - by credit card, debit card, bank transfer, direct debit or other means - *"as an alternative to expensive cash"*, with a view to stimulating consumer spending and economic growth.

The new rules also will apply to payments made in any currency, where either (or both) the payer's payment service provider or the payee's payment services provider is located in the EU.

D+1 provision .

A key proposal of the draft directive is a mandatory execution time of one day, plus a second day if necessary, for electronic payments under the so-called 'D+1' provision. This minimum standard rule will apply to all credit transfers without any currency conversion and as a default for all other payments. It also applies when both the payer and payment provider are located in the EU, when no third country is involved in the transaction.

The European Payments Council (EPC), which aims to set up a Single European Payments Area (SEPA) by 2008, has however been backing a more lenient 'D+3' approach, meaning one day, plus three additional days if necessary. Banks are concerned that D+1 would cost them more than D+3.

Minimum standard rules.

Besides D+1, the proposal puts forward a set of rules payment providers must follow. In terms of liability in case of non-execution or defective execution of a payment transaction, strict liability of providers is limited to the EU - outside the EU only successful delivery to other payment service providers is required by the proposal.

Another rule stipulates that a payment service user is liable in the case of a misuse of a payment instrument for transactions up to €150. However, this rule does not apply to corporate users. The proposal also introduces the 'full amount principle' according to which the full amount specified in a payment order shall be credited without any deduction to the beneficiary. Moreover, it sets out conditions for refunding when a payment transaction has

been authorised, as well as conditions of revocability, i.e. the ability of the payment service user to reject a payment wrongly made on his or her behalf.

Industry Reaction

The EPC, issued a statement welcoming the publication of the draft Directive. At the same time, the European Association of Public Banks (EAPB) said it welcomed in principle the creation of a legal framework for payment services, but warned against *"over-regulation of the payments sector"*. It however, slammed the D+1 proposal as *"not acceptable for the EAPB"* as it *"interferes with competitive market structures"*. The Federation Bancaire Française also epressed concern over the one-day transaction time set by D+1, calling it *"not really realistic"*.

BEUC, the European Consumer Organisation, begged to differ on D+1, but warned that national consumer protection legislation should not be called into question. *"Mandatory execution time of maximum one day for payments besides being in the interest of consumers will also act as a powerful incentive for the banks and payment industry to deliver on a Single Payment Area"*. BEUC Director Jim Murray said: *"The proposal is a bold move in the right direction and should push banks to improve the situation to the benefit of consumers".*

CONCENTRATIONS UNDER MERGER REGULATION FOR DECEMBER 2005

Name of Parties	Business Sector	JV or Merger	Stage of Procedure	Reference
ABN Amro Capital France/L Capital/Sanutri	Dietary food products.	JV	Prior notification of a concentration	OJ [2005] C 331/18
Adidas/Reebok	Manufacture of sport footwear, apparel and equipment	Merger	Prior notification of a concentration	OJ [2005] C 322/04
Amer/Salomon	Sport footwear, apparel and equipment	Merger	Non-opposition to a notified concentration	OJ [2005] C 318/08
Aviva/Ark Life	Life insurance	Merger	Prior notification of a concentration	OJ [2005] C 321/13
BAM/AM	Development of residential property, land, retail centres and offices	Merger	Prior notification of a concentration	OJ [2005] C 320/07
Belgacom/Telindus	Telecommunications and networks	Merger	Non-opposition to a notified concentration	OJ [2005] C 322/05
Blackstone/Lion Capital/CSEB	Production, marketing and distribution of soft drinks.	JV	Prior notification of a concentration	OJ [2005] C 334/11
BS Investimenti/MCC Sofipa/IP Cleaning	Production and distribution of cleaning machines	JV	Prior notification of a concentration	OJ [2005] C 325/04

Canon/Canon España	Office and consumer products	Merger	Non-opposition to a notified concentration	OJ [2005] C 321/015
Charterhouse/Nocibé	Retail of luxury perfumes, beauty products, cosmetics and parapharmacy products.	Merger	Prior notification of a concentration	OJ [2005] C 329/07
Cinven/Frans Bonhomme	Wholesale of construction materials and sanitary equipment	Merger	Non-opposition to a notified concentration	OJ [2005] C 318/07
CVC/Ruhrgas Industries	Gas and water meters	Merger	Non-opposition to a notified concentration	OJ [2005] C 308/04
Endesa Europa/Zedo	Polish state owned company active in the electricity and district heat markets	Merger	Prior notification of a concentration	OJ [2005] C 310/07
FIMAG/Züblin	Building construction & civil engineering construction and related services	Merger	Non-opposition to a notified concentration	OJ [2005] C 304/08
Flaga/Progas/JV	Wholesale and retail sales and distribution of liquefied petroleum gas	JV	Prior notification of a concentration	OJ [2005] C 325/03
GLB/Luminar/JV	Casinos	JV	Prior notification of a concentration	OJ [2005] C 323/07
Goldman Sachs/Cinven/Ahlsell	Distribution of installation products.	JV	Prior notification of a concentration	OJ [2005] C 307/04
Goldman Sachs/Ihr Platz	Drug store chain	Merger	Non-opposition to a notified concentration	OJ [2005] C 311/03
Gilde/Heiploeg	Sourcing, processing, distributing and selling of shrimps	Merger	Prior notification of a concentration	OJ [2005] C 334/05
Industri Kapital/GUS Holland Holding	Retail home shopping in the Netherlands and consumer credit and debt collection	Merger	Non-opposition to a notified concentration	OJ [2005] C 318/05
Johnson Controls/York	Heating, ventilation and air conditioning	Merger	Non-opposition to a notified concentration	OJ [2005] C 309/05
Kalyani Brakes/Brembo/JV	Manufacture of braking systems for two wheel vehicles.	JV	Prior notification of a concentration	OJ [2005] C 314/06
Koch Industries/Georgia-Pacific	Production and marketing of tissue paper products, building products, packaging and paper.	Merger	Prior notification of a concentration	OJ [2005] C 304/05
Macquarie Airports Copenhagen/Copenhagen Airports	Operation of airports	Merger	Non-opposition to a notified concentration	OJ [2005] C 318/06
Magna/CTS	Design and manufacture of convertible roof systems for the automotive industry.	Merger	Prior notification of a concentration	OJ [2005] C 334/04

Mobilkom Austria/ONE/Paybox	Non-cash payment systems via mobile devices	JV	Non-opposition to a notified concentration	OJ [2005] C 308/06
Morgan Stanley/AM Development	Office and retail development	Merger	Prior notification of a concentration	OJ [2005] C 318/04
Philips/Lumileds	Development, manufacture and sale of lighting products and LEDs	Merger	Non-opposition to a notified concentration	OJ [2005] C 321/14
Polestar/Prisa/Ibersuizas/Iberian Capital/Dedalo	Graphic arts	JV	Non-opposition to a notified concentration	OJ [2005] C 310/10
Providence/Carlyle/Com Hem	Provision of cable TV, telephony and broadband services	JV	Prior notification of a concentration	OJ [2005] C 325/05
Reckitt Benckiser/Boots Healthcare International	Manufacture and sale of over-the-counter pharmaceuticals	Merger	Prior notification of a concentration	OJ [2005] C 304/07
RBC/Dexia/JV	Asset management	JV	Non-opposition to a notified concentration	OJ [2005] C 318/10
Saint-Gobain/BPB	Production, distribution and sale of building materials	Merger	Non-opposition to a notified concentration	OJ [2005] C 320/04
SCF/SAG GEST/JV	Full fleet management services	JV	Prior notification of a concentration	OJ [2005] C 324/10
Shell/ERG/Ionio Gas/JV	Gas	JV	Non-opposition to a notified concentration	OJ [2005] C 308/05
Société Générale/Ford Lease-Business Partner	Fleet leasing and management services	Merger	Non-opposition to a notified concentration	OJ [2005] C 320/03
Sun Capital/Sara Lee	Branded apparel products	Merger	Non-opposition to a notified concentration	OJ [2005] C 318/09
Tietoenator/Tietoenator Government/SAAB/Elesco/Tietosaab Systems JV	Command and Control information systems (C2i) and underwater warfare	JV	Prior notification of a concentration	OJ [2005] C 334/03
TPG IV/Apax/Q-Telecommunications	Retail mobile telephony services	JV	Prior notification of a concentration	OJ [2005] C 310/06
Verizon/MCI	Telecommunications and internet services	Merger	Non-opposition to a notified concentration	OJ [2005] C 309/06

STATE AID ACTIVITY FOR DECEMBER 2005

Country	Stage of Procedure	Company/Region	Business Sector	Amount of Aid	Reference
Austria	Authorisation of state aid	Steiermark	Irrigation	€900,000	OJ [2005] C 308/07
Austria	Authorisation of state aid	Not specified	BSE related aid	€17.7m	OJ [2005] C 316/10
Austria	Authorisation of state aid	Vorarlberg	Biomass energy	€1.2m	OJ [2005] C 323/05
Austria	Authorisation of state aid	Karten	Broadband	Not specified	OJ [2005] C 329/02
Belgium	Authorisation of state aid	Not specified	Sectorial funds	Not specified	OJ [2005] C 316/03
Czech Republic	Authorisation of state aid	Not specified	Bio fuels	€11.6m in 2005 €23.3m in 2006	OJ [2005] C 324/07
Czech Republic	Authorisation of state aid	Not specified	Research and development	CZK 7067m	OJ [2005] C 327/11
Denmark	Authorisation of state aid	Not specified	Environment	€12.6m	OJ [2005] C 305/04
Denmark	Authorisation of state aid	Mons	Heritage	DKK 23.6m	OJ [2005] C 307/03
Denmark	Authorisation of state aid	Not specified	Electricity/Energy	DKK 0.34/kWh	OJ [2005] C 307/03
Denmark	Authorisation of state aid	Not specified	Technological research and development	Not specified	OJ [2005] C 316/02
France	Authorisation of state aid	Champagne-Ardenne region	Livestock	€900,000	OJ [2005] C 308/03
France	Authorisation of state aid	Not specified	Environment	€150,000	OJ [2005] C 308/07
France	Invitation to submit comments	Not specified	Business restructuring	Not specified	OJ [2005] C 324/06
France	Authorisation of state aid	Not specified	Meat	€33m	OJ [2005] C 316/10
France	Authorisation of state aid	Cean – Basse-Normandie	Research and development into Micro electronics	€1.6m pa	OJ [2005] C 324/07
France	Authorisation of state aid	Not specified	Research and development for an individual business	€92.8m	OJ [2005] C 324/07
France	Authorisation of state aid	Martinique	Individual aid for training	€4.3m	OJ [2005] C 324/07
Germany	Authorisation of state aid	Saarland	Environment	€0.81m	OJ [2005] C 305/04

Germany	Authorisation of state aid	Not specified	Equity funding	€20m	OJ [2005] C 307/03
Germany	Authorisation of state aid	Land Schleswig-Holstein	Regional development and environment	€541,170	OJ [2005] C 316/02
Germany	Authorisation of state aid	Not specified	Biodegradable lubricants	€7m in 2005 €5m in 2006	OJ [2005] C 316/10
Germany	Authorisation of state aid	Schleswig-Holstein	Risk Capital	€500,00 – €750,000	OJ [2005] C 325/07
Germany	Authorisation of state aid	Bremen	Environment	€45.6m	OJ [2005] C 327/11
Germany	Authorisation of state aid	Saxony	Regional development	€28.13m	OJ [2005] C 333/03
Greece	Authorisation of state aid	Not specified	FROST aid programme	€280m	OJ [2005] C 310/09
Greece	Authorisation of state aid	Not specified	Regional map aid	Not specified	OJ [2005] C 323/05
Hungary	Invitation to submit comments	Not specified	Business restructuring	Not specified	OJ [2005] C 324/07
Italy	Authorisation of state aid	Friuli-Venezia Giulia	Environment	€1.4m	OJ [2005] C 307/03
Italy	Authorisation of state aid	Sardinia	Agriculture	Up to 100% of the cost of damage caused by natural disasters further to approved scheme (NN 54/A/04	OJ [2005] C 308/03
Italy	Authorisation of state aid	Not specified	Agriculture	€30m	OJ [2005] C 308/03
Italy	Authorisation of state aid	Umbria	Livestock	€105,000 pa	OJ [2005] C 308/03
Italy	Authorisation of state aid	Veneto	Dairy products	€1.5m	OJ [2005] C 308/03
Italy	Authorisation of state aid	Liguria	Meteorology	The amount of aid , which has still to be fixed, will be financed from the overall budget of €200m allocated to the approved scheme (NN 54/A/04)	OJ [2005] C 308/03
Italy	Authorisation of state aid	Basilicata	Agriculture	Up to 100% of the cost of damage caused by natural disasters further to approved scheme (NN 54/A/04	OJ [2005] C 308/03
Italy	Authorisation of state aid	Liguria	Agriculture	Up to 100% of the cost of damage caused by natural disasters further to approved scheme (NN 54/A/04	OJ [2005] C 308/03
Italy	Authorisation of state aid	Tuscany	Agriculture	Up to 100% of the cost of damage caused by	OJ [2005]

				natural disasters further to approved scheme (NN 54/A/04	C 308/03
Italy	Authorisation of state aid	Veneto	Agriculture	Up to 100% of the cost of damage caused by natural disasters further to approved scheme (NN 54/A/04	OJ [2005] C 308/07
Italy	Authorisation of state aid	Toscana	Agriculture	€12m	OJ [2005] C 308/07
Italy	Authorisation of state aid	Sicily	Agriculture	Up to 100% of the cost of damage caused by natural disasters further to approved scheme (NN 54/A/04	OJ [2005] C 308/07
Italy	Authorisation of state aid	Veneto	Agriculture	€15m	OJ [2005] C 308/07
Italy	Authorisation of state aid	Sicily	Agriculture	Up to 100% of the cost of damage caused by natural disasters further to approved scheme (NN 54/A/04	OJ [2005] C 308/07
Italy	Authorisation of state aid	Not specified	Agriculture	€154m	OJ [2005] C 308/07
Italy	Authorisation of state aid	Marche	Agriculture	Up to 100% of the cost of damage caused by natural disasters further to approved scheme (NN 54/A/04	OJ [2005] C 310/09
Italy	Authorisation of state aid	Abruzzi	Agriculture	Up to 80% of the cost of damage caused by natural disasters further to approved scheme (NN 54/A/04	OJ [2005] C 310/09
Italy	Authorisation of state aid	Emilia Romagna	Agriculture	€28.6m	OJ [2005] C 310/09
Italy	Authorisation of state aid	Lombardy	Agriculture	Up to 100% of the cost of damage caused by natural disasters further to approved scheme (NN 54/A/04	OJ [2005] C 310/09
Italy	Authorisation of state aid	Marche	Equity financing	€10m	OJ [2005] C 316/02
Italy	Authorisation of state aid	Abruzzi	Agriculture	€900,000	OJ [2005] C 316/10
Italy	Authorisation of state aid	Trento	Agriculture	€10m	OJ [2005] C 316/10
Italy	Authorisation of state aid	Not specified	Agriculture	€1.5m	OJ [2005] C 316/10
Italy	Authorisation of state aid	Calabria	Agriculture (fruit)	€1.6m	OJ [2005] C 316/10
Italy	Authorisation of state aid	Not specified	Employment	€1.6m	OJ [2005] C 323/05

Italy	Authorisation of state aid	Piemonte	Research into hydrogen and fuel cells	€2.9m	OJ [2005] C 323/05
Italy	Authorisation of state aid	Trento	Business	€6m	OJ [2005] C 323/05
Italy	Authorisation of state aid	Campania	Research and development for large businesses	€40m	OJ [2005] C 323/05
Latvia	Authorisation of state aid	Not specified	Biology	€166,000	OJ [2005] C 308/07
Latvia	Authorisation of state aid	Not specified	Agriculture	€1.7m	OJ [2005] C 310/09
Lithuania	Authorisation of state aid	Not specified	Environment	€72m	OJ [2005] C 329/02
Norway	Authorisation of state aid	Not specified	Shipping	NOK 500m for loans NOK 75m for interest subsidies	OJ [2005] C 304/09
Poland	Authorisation of state aid	Kujawsko-Pomorshie	Regional investment	€167,000	OJ [2005] C 323/05
Poland	Authorisation of state aid	Not specified	Regional development	€50m	OJ [2005] C 324/07
Poland	Authorisation of state aid	Dolnoslaskie	Regional development	PLN 1.5m	OJ [2005] C 325/08
Portugal	Authorisation of state aid	Not specified	Agriculture	€1.35m	OJ [2005] C 308/03
Slovenia	Invitation to submit comments	Not specified	Business restructuring	Not specified	OJ [2005] C 323/09
Slovak Republic	Authorisation of state aid	Not specified	Film production	SKK 8m	OJ [2005] C 333/03
Spain	Authorisation of state aid	Madrid	Information technology	€8m	OJ [2005] C 305/04
Spain	Authorisation of state aid	Not specified	Energy	€60m pa	OJ [2005] C 307/03
Spain	Authorisation of state aid	Not specified	Thermal solar energy	€6m	OJ [2005] C 307/03
Spain	Authorisation of state aid	Not specified	Photovoltaic solar energy	€6m pa	OJ [2005] C 307/03
Spain	Authorisation of state aid	Not specified	Agriculture	€5.2m	OJ [2005] C 308/07
Spain	Authorisation of state aid	Cataluna	Research, development and technological innovation in the area	€1.2m	OJ [2005] C 324/07
Spain	Authorisation of state aid	Cataluna	Research, development and technological innovation and incentives for enterprises to join	€48m	OJ [2005] C 324/07

			the projects		
Spain	Authorisation of state aid	Madrid	Biotechnology	€12m	OJ [2005] C 327/11
Spain	Authorisation of state aid	Extremadura	Cinematographic and audiovisual production	€408,304 pa	OJ [2005] C 333/03
Sweden	Authorisation of state aid	Not specified	Regional development	€38m pa	OJ [2005] C 323/05
The Netherlands	Authorisation of state aid	Not specified	Health care insurance	€16.3bn	OJ [2005] C 324/07
The Netherlands	Authorisation of state aid	Not specified	Research and development	€750m	OJ [2005] C 327/11
The Netherlands	Authorisation of state aid	Not specified	Sports	Not specified	OJ [2005] C 333/03
The Netherlands	Invitation to submit comments	Not specified	Business	Not specified	OJ [2005] C 333/03
United Kingdom	Authorisation of state aid	Not specified	Organic farming	€1.4m	OJ [2005] C 310/09
United Kingdom	Authorisation of state aid	Scotland	Business advise and skills	€11m	OJ [2005] C 310/09
United Kingdom	Authorisation of state aid	Not specified	Beef	€112,656 over 5 years	OJ [2005] C 310/09
United Kingdom	Authorisation of state aid	Scotland	Property	£20-23m pa	OJ [2005] C 310/09
United Kingdom	Authorisation of state aid	England	Woodland regeneration	£1.5m pa	OJ [2005] C 316/10
United Kingdom	Authorisation of state aid	Not specified	Bio-energy infrastructure	£3.5m	OJ [2005] C 316/10
United Kingdom	Authorisation of state aid	Not specified	Agriculture (Cereals)	£1.4m	OJ [2005] C 316/10
United Kingdom	Authorisation of state aid	Not specified	Rural Broadband access	Not specified	OJ [2005] C 323/05
United Kingdom	Authorisation of state aid	Carlile, North-west region of England	Disaster recovery for United Biscuits	£1m	OJ [2005] C 324/07

BRUSSELS AGENDA FOR JANUARY 2006

1 Jan - 30 Jun 06	Austrian Presidency of the EU
2006	The European Year of Workers' mobility
10 Jan 06	Possible meeting of the Agriculture and Fisheries Council (Brussels)
12 - 14 Jan 06	JHA (informal) (Vienna)
16 - 19 Jan 06	EP Plenary (Strasbourg)
19 - 23 Jan 06	Employment & Social Policy Ministers (informal) (Villach)
23 - 24 Jan 06	Agriculture and Fisheries Council (Brussels)
29 Jan 06	Trade Ministers (informal) (Brussels)
30 - 31 Jan 06	General Affairs and External Relations Council (Brussels)

Dechert contacts

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.

Visit our website at www.dechert.com

Isabelle Rahman
Brussels
+32.2.535.5445
isabelle.rahman@dechert.com

Kathleen Dierckx
Brussels
+32.2.535.5435
kathleen.dierckx@dechert.com

Peter Crockford
London
+44.20.7184.7506
peter.crockford@dechert.com

Pierre Louis
Brussels
+32.2.535.5479
pierre.louis@dechert.com

www.dechert.com

UK/Europe

Brussels
Frankfurt
London
Luxembourg
Munich
Paris

U.S.

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