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Merger remedies and competition law: An overview of EU and national case law

Mergers, Tying, Long term contract, Prices increase, Barriers to entry, Excessive prices, Prices, Dominant position, Trustee, Judicial review, Prohibition (mergers), Remedies (mergers), Joint-venture, All business sectors

Note from the Editors: although the e-Competitions editors are doing their best to build a comprehensive set of the leading EU and national antitrust cases, the completeness of the database cannot be guaranteed. The present foreword seeks to provide readers with a view of the existing trends based primarily on cases reported in e-Competitions. Readers are welcome to bring any other relevant cases to the attention of the editors.

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NB: This special issue of the e-Competitions Bulletin carries out more than 800 cases summaries. Readers are welcome to browse theses cases reports on the dedicated website of the Merger Remedies Matrix.

Remedies are an important tool for competition authorities in merger control. In most jurisdictions, prohibitions can be avoided by crafting remedies able to resolve competition law concerns. The design and implementation of merger remedies have evolved during the last two decades.

Merger remedies aim to remove competition law concerns raised by a merger. Remedies are designed on a case by case basis. In order to guide companies, competition authorities have established mainstream principles in the form of notices on remedies accepted that serve as a framework for a case by case approach [1].

The objective of this foreword is to present the highlights of more than 700 articles of *e-Competitions* that address specifically, or more generally, merger remedies undertaken and accepted, or imposed, by competition authorities, an exercise that allows us to point out any differences or convergent practices between EU and national competition law regimes. We will also report a number of merger remedies adopted by competition authorities abroad.

Structural versus behavioral remedies

Merger control is heavily influenced by the "Structure-conduct-performance" paradigm, and remedies aiming at removing competition concerns are naturally of a structural nature, such as divestiture of a stand-alone business [2]. Merger control and related remedies aim at preserving the market structure prevailing before the merger. It is believed that if the competitive structure of the market is preserved, there will be less need for an *ex post* intervention against abusive conduct. The latter intervention is more costly and entails higher risks in term of over or under-intervention. In addition, divestitures resolve the concerns "once and for all" and do not require long-term supervision. Thus, the preference for structural remedies has practical and policy driven foundations. We will present below the approach toward structural and behavioral remedies such as presented in a number of guidelines and in the decision-making practice of competition authorities. We will see in this review that while the majority of competition authorities prefer structural remedies, such as in the European Union, Germany, United Kingdom, Netherlands, Italy, many national competition authorities are quite open to the use of behavioral remedies.

In the USA, the Department of Justice published this year an updated Policy Guide to Merger Remedies [3]. The Department of Justice continues to prefer divestitures of an existing business, although the guidelines show that it will be receptive to conduct or behavioral remedies (such as firewalls, non-discrimination, mandatory licensing, transparency and anti-retaliation provisions) if divestiture risks eliminating efficiency gains to be attained from the transaction [4].

The Commission of the European Union (hereafter referred to as "the European Commission") updated its guidelines on merger remedies in 2008 (hereafter referred to as "EU notice on merger remedies") [5]. The update was based on an *ex post* study of merger remedies published in 2005 [6]. The Commission clearly favors structural remedies: "Divestiture commitments are the best way to eliminate competition concerns resulting from horizontal overlaps, and may also be the best means of resolving problems resulting from vertical or conglomerate concerns. Other structural commitments may be suitable to resolve all types of concerns if those remedies are equivalent to divestitures in their effects […]. Commitments relating to the future behavior of the merged entity may be acceptable only exceptionally in very specific circumstances. In particular, commitments in the form of undertakings not to raise prices, to reduce product ranges or to remove brands, etc., will generally not eliminate competition concerns resulting from horizontal overlaps. In any case, those types of remedies can only exceptionally be accepted if their workability is fully ensured by effective implementation and monitoring […], and if they do not risk leading to distorting effects on competition" [7]. In presence of horizontal overlap, the Commission is unlikely to accept behavioral commitments, in particular remedies related to price and quantity. European Commission is ready however to consider behavioral remedies in (purely) conglomerate mergers, but subject to an effective monitoring system put in place by the parties [8].

The Competition Commission in the UK (hereafter referred to as "CC") shows also a clear preference for divestiture remedies [9], even though UK is one of the countries where conduct remedies has had a role to play in merger control. Such preference is justified by the fact that structural remedies are more likely to restore rivalry, whereas behavioral remedies may not be effective in eliminating adverse effects, and may create distortions in market outcomes. The CC may choose behavioral remedies if: i) divestiture and/or prohibition is not feasible or proportionate, ii) the adverse effects on competition are expected to have a relatively short duration (*e.g.* two to three years), and iii) the customer benefits are likely to be substantial compared with the adverse effects of the merger [10]. Contrary to EU notice on merger remedies, the CC's guidelines highlight the role of behavioral remedies in safeguarding efficiency gains that may be achieved by the contemplated merger, an objective also present in the DoJ's Policy Guide to Merger Remedies.

In France, the *Autorite de la concurrence* (hereafter referred to as "the French Competition Authority") gives priority to structural remedies; behavioral measures may be adopted on a stand-alone basis, for example when no adequate buyer can be found [11], or in case of conglomerate mergers [12].

Divestiture remedies

Divestitures constitute the large majority of remedies adopted by any competition authority in Europe. A review of such remedies shows that divestiture remedies adopted by national competition authorities are similar and consistent to divestiture remedies adopted by the European Commission. Due to the number of articles referring to divestiture remedies, their similarity and the lack of details on their content and implementation, we decided to present the main principles guiding divestitures and to refrain from summarizing these articles.

First, the divested business should be viable, preferably a stand-alone business. The scope of the business should be carefully and exhaustively defined in commitments submitted to competition authorities. Second, the divested business should be transferred to a suitable purchaser, independent form the merging parties, and able to make the divested business a competitive force in the market. Third, the implementation of the divestiture should be monitored by a trustee, who will be responsible to maintain the business separate from the merging parties until the final spin-off, and if necessary, sell the business if the parties fail to divest the activities within a deadline.

Divestitures are used to remove horizontal overlaps created by mergers, to reduce the incentives for collusion in coordinated effects' cases [13], as well as to impede the creation of market power in one of the vertical or related market of a merger affecting different levels of markets. Divestitures transfer a market position from one of the merging parties to another competitor or a new entrant, but may also transfer it to an independent body able to offer access to the divested assets (*e.g.* IP rights) in a non-discriminatory manner [14].

Price caps, output and capacity remedies

As explained above, the foundation of the merger control is to be found in the "Structure-conduct-performance" paradigm: by maintaining a competitive market structure, through prohibition or structural remedies, competition authorities reduce the risk of non-competitive prices (performance) or non-competitive behavior in the market. But another approach would be to intervene directly on prices and/or output. Such measures are not only difficult to monitor, but raise other concerns. For instance, should the authorities fix a price cap, it may be too low for competitors – while consumers will benefit from the low (or not increased) prices, barriers to entry may be raised for competitors who may be kept away from this market, reducing therefore diversity, or the quantity. The risk related to this type of remedies is similar to the intervention against excessive pricing.

Price and output related measures are an exception in the EU, such was the remedy adopted in the merger *Friesland Foods/Campina*, who created the largest entity supplying row milk in Netherlands. Based on a novel theory of harm, the European Commission obtained commitment from parties to create a new (centralized) entity to which the new entity would supply substantial volumes of row milk, which would then be sold to its rivals, allowing the latter to expand their production and put pressure on the new entity in the event it would increase milk prices to supermarkets [15]. It was commented however that the remedies were based on “shaky grounds”, which might explain the leniency of the European Commission [16]. We will present below a number of behavioural remedies adopted by national competition authority which, although marginal in number, reveal a certain trend, but highlight also the risks related to their use. It is submitted in this foreword that such remedies may resolve competition law concerns, but that on the other hand behavioural remedies increase the risk of under- or over-intervention, and might also chill competition.

In 2004, the Competition Commission (UK) adopted product line and price maintenance remedies to dissipate concerns raised by a merger in the healthcare sector; the CC held that the entity would be able to raise prices selectively to a significant number of hospitals and that the loss of an independent competitor would lead to a reduction in choice for customers. The acquirer was required to maintain in the UK its current ranges of products and accessories as well as not to increase the prices and to maintain discounts of certain line of products beyond the list prices prevailing before the merger [17]. OFT (UK) opted for price caps in another merger in the health sector [18]. In 2009, the Dutch Competition Authorities took a similar view by clearing the merger of two hospitals by imposing price caps and quality controls [19]. The Dutch Competition Authority investigated in depth the alleged efficiency gains, and the investigation revealed difficulties in assessing the passing-on of such efficiencies to consumers. The remedies were used precisely to ensure that efficiency gains, if any, would be passed to consumers after the merger. This highlights the potential of behavioral remedies in coping with efficiency gains.

Behavioral remedies are used in regulated sectors, and often mimic regulatory measures provided for in sector regulation.

The Competition Commission (UK) imposed a price reduction remedy on the merging water companies despite the preference of the regulators for the partial divestiture of one of the companies [20]. The CC held that it expects the merger to generate customer benefits able to mitigate the adverse effects of the merger. Interestingly, CC relied on the supervision of the regulator (Ofwat) and required that it takes into account the annual savings in operating expenditure that are expected to result from the merger in future price control reviews. This case confirms that merger remedies, in particular behavioral ones, can be used to take into account efficacy gains to be realized by the merger. We note that competition law intervention offer additional remedies - such as divestitures or the termination of agreements - which can be used in conjunction with other regulatory measures, showing the complementary nature of competition law and sector specific regulation [21].

Price cap remedies, in particular non-discrimination commitments, are used to resolve competition concerns in vertical mergers. The Norwegian Competition Authority cleared a vertical merger of a producer and distributor of its own frozen products with another distributor of frozen products. To ensure access of other producers of frozen products to the distributor network of the new entity, the latter committed to maintain the existing contract with its competitor under the previous terms and to increase its prices only if its production costs rise as well. In addition, the new entity undertook to continue to distribute frozen vegetables to grocery retail chains and to apply a price increase only in the event of a cost increase [22]. In Italy, the Competition Authority (AGCM) cleared the acquisition of additional transmission capacity by *Mediaset* under the condition that *Mediaset* grants non-discriminatory access to its network to any telecommunication operator and third-party suppliers [23]. The Austrian Cartel Court imposed pricing remedies to resolve horizontal and vertical concerns raised by a merger in the market for the production and distribution of fruit preparations by linking the prices applicable to small demand customers to the average prices for larger delivery quantities in order to avoid price discriminatory practices [24]. The European Commission accepted similar remedies in vertical mergers. In *Apollo/Bakelit*e [25], the merger would have strengthened the market position of the parties on the upstream market for an essential input (*Cardura*), which would have allowed it to leverage its market power downstream. The parties offered to enter into long-term supply agreements with any existing customer of *Cardura* to secure supply and pricing conditions. The remedies ensure: i) the maintenance of the previous output with a possibility to adapt by 5%, and ii) a price cap and a price calculation which takes into account the evolution of input costs.

Price caps and other quantity remedies were also used in conventional market such as baby milk products [26]. The Italian Competition Authority, while investigating an alleged cartel in the baby milk sector, had to examine the merger of one of the five competitors in the market with another competitor considered as a "maverick" in the sector: the latter focused in the distribution of baby milk products in retail stores, while the other four favored distribution in pharmacies applying higher prices. A number of measures were imposed to the new entity, in particular the reduction of wholesale prices to retail chains and specialized stores as well as the commitment to increase the presence of its products in retail chains. Although such measures might seem as soft remedies, they aim at preserving the situation prevailing before the merger where one of the competitors seems to have resisted to the collusive behavior; without this remedy, the merger would have facilitated tacit (or express) collusion by increasing concentration of an (already) oligopolistic market.

Remedies related to output or capacities vary according to the objective of the intervention. Increase of the output (or the capacities) available in the market aim at mitigating the risk of output or capacities reduction post-merger, and in some cases may go beyond the maintenance of the status quo by improving the competitive conditions of the market. Restrictions on the output or capacity expansion of the new entity have ambiguous effects, in that they are used to reduce the risk of predatory-like behavior of the new entity towards the new acquirers of assets to be divested or towards the other existing competitors, but they can also limit the development of the new entity independently of the before-mentioned concerns. In the latter case it is doubtful whether such remedies safeguard effective competition on the market.

The price and output remedies in the *CCIP/Unibail* case, a joint-venture between the two largest companies controlling trade exhibitions in Paris, show that behavioral remedies may be superior to divestment [27]. Divestiture would have maintained an independent offer, but the duopoly would not have resolved the concern related to insufficient space exhibitions in Paris. The French Competition Authority accepted a commitment to: i) increase the Parisian superficies dedicated to exhibitions by 25%, ii) to maintain the rental tariff to the level of the annual rate of the construction index, and iii) to limit the percentage of their own (*i.e. CCIP/Unibail*) exhibitions to 50 % of the total space exhibitions [28]. The quasi-monopoly in the exhibition market in Paris region required remedies lasting up to 25 years. The capacity increase was also used by the European Commission to reduce barriers to entry in the Spanish electricity market: *EDF* undertook to increase the interconnection capacity between France and Spain to remedy the risk of the creation of a collective dominance in Spain [29].

The maintaining of previous output or supply levels, and the commitments to increase capacity and therefore the quantity available on the market, is regularly used by some competition authorities, such as the Czech Competition Office [30]. To ensure the effectiveness of this type of remedies, output measures are combined with price caps: the Austrian Competition Office accepted commitments related to a price cap on infrastructure services provided by Vienna Airport in conjunction with the commitment not to reduce infrastructure capacities and to execute existing plans for an enlargement of Bratislava airport [31]. Behavioral remedies were adopted also in the defense sector, where the merger entities were ordered to inform the Ministry of defense in advance of any plans to dispose of, dissolve or materially run down *Smiths Aerospace* or any of its UK subsidiary companies, this to ensure that these capabilities are retained within the UK.

The divestment of supermarket outlets is usually accompanied with a restriction to open new outlets in the areas concerned by the divestiture. Such measures aim at enabling competitors and/or the new acquirer to enter the market and maintain the level of competition which prevailed before the merger. Indeed, if following the divestiture of outlets the new entity opens new outlets or increases its capacity in the surrounding area, the divestment would not achieve its objective. In Portugal, the competition authority goes even further by accepting the reduction of the sales areas without imposing divestiture of the assets to a new competitor (*e.g.* the new entity is authorized to close stores or to decrease its food retail sales space) [32]. However, as rightly pointed out by a number of authors [33], this limitation might also have as effect to reduce output and the level of competition on the market. These limitations remind us that merger control has, as objective, the maintenance of the degree of competition prevailing before the merger, and not to improve the conditions of competition and, in any case, not to reduce consumer welfare (for instance by reducing output or production capacity).

In few cases, output restrictions were used to limit the market share of the new entity. To mitigate the negative effect of horizontal overlaps in vertically related markets for the refinery, wholesale and the retail of petrol products in which the parties were present, the Slovak Competition Authority imposed the obligation on the new entity to keep the number of petrol stations in Slovakia equal to the number of stations owned or controlled by the parties before the merger, and if the new entity were to open a new petrol station, it was obliged to sell or close the other petrol station it owned or controlled [34]. The remedy aimed at diminishing the market share of the parties, but it is unclear to what extent such remedies would reduce barriers to entry for new competitors: if barriers to entry are not reduced, new entries remain unlikely and the current dominant player would also be unable to increase output due to the remedies. The Estonian Competition Authority imposed a quantity cap increase of cider drink production for two years following the transaction, even though no competition concern was identified [35]. In Turkey, the Competition Commission cleared the privatization of a state-owned producer of phosphate and its acquisition by a company active in the downstream level of composed fertilizers market [36]. To mitigate the effect of creating a dominant position in the composed fertilizers market, the acquirer was obliged to limit the phosphate production to the previous annual quantity. However, according to the report of the case, no access remedy was imposed on the new entity to ensure access of third parties to such essential input. In China, the Competition Commission imposed the withdrawal of the product of one of the parties from the market, even though the merger created an increase in market shares of about 1%. It is doubtful whether the merger raised any horizontal competitive concerns and it remain unclear to us what was the objective of the remedy [37]. Similarly, the Bulgarian Competition Commission made binding a commitment of one of the parties to withdraw from the glass packaging market, holding that this would create a niche to be filled by other small glass manufacturers. However, the author of the article rightly highlights the counterproductive effect of such "remedies": it appears that the wine bottling industry in Bulgaria expressed complaints over shortage of glass while the merging parties referred to the remedy imposed on them to justify the shortage and their inability to meet excess demand [38]. In these latter cases, competition authorities supported the merging parties' intent to reduce output available on the market, reducing therefore consumer welfare at least in the short-run.

The restriction on the expansion of the new entity may also aim at limiting the acquisition of scarce inputs or facilities: in the market for car parking, the parties undertook not to bid for new concessions or not to renew current ones [39]. In a market governed by public licenses, the divestiture may be replaced by the obligation to return the public licenses [40], which can subsequently be awarded to new competitors. This reminds similar remedies accepted by the European Commission, for instance the divestment of spectrum bands and the return of all licenses to the UK telecommunication authority by *France Telecom* and *Deutsche Teleko*m [41]. Also, the Polish competition authority imposed to the parties not to apply for the operation of a new movie theatre in a shopping mall as long as they operate movie theatres in other shopping malls in the same city, which aim at limiting the market share of the new entity to the share the parties had before the merger (around 52%) [42].

Other behavioral remedies

As mentioned before, European Commission is ready to accept behavioural commitments in conglomerate mergers. The French Competition Authority has experience in using behavioral remedies to resolve concerns of conglomerate mergers. In *Somfy/Zurfluh-Feller* merger, the entities had large market shares in respective markets, the customers preferred buying from firms offering the full range of accessories. Moreover, barriers to entry were evaluated as important. Hence, the ability and incentive to foreclose rivals through bundling would have been very high [43]. The first group of remedies prohibited bundled rebates granted upon the purchase of several distinct components and tied sales, as well as any volume rebates based upon the total purchases of components produced by both parties [44]. In addition, the merging entities undertook to produce components which are compatible with those of competitors. In another merger, the French Competition Authority combined structural and behavioral remedies to resolve conglomerate effects of a merger of two publishers [45]. The decision is interesting since the bundling remedies are positive and negative. To reduce the horizontal overlap in the market for business dailies, the Authority ordered the divestiture of one of the newspapers, and to ensure the competitiveness of the business to be divested, it ordered that the latter would continue to offer bundled products with the new entity as before the merger: the new entity had therefore a duty to supply advertising space to the divested business. In order to facilitate such bundled offers, the acquirer engaged to maintain the market positioning and the periodicity of its newspaper. On the other hand, the Authority prohibited the new entity to bundle the advertising space of its own magazines and asked to implement firewalls between these two activities to avoid exchange of commercially sensitive information. By and large, the remedy aims at reducing the bundling possibilities of the new entity, and at enlarging the "product line" of the competitor, enhancing therefore its capacity to compete with an equivalent bundle of products. The prohibition of bundling was accompanied with firewalls in another newspaper merger [46]. Conglomerate concerns were resolved with similar behavioral remedies in another media merger in which the new entity would have acquired a complete range of advertising media, hence raising barriers to entry, since potential competitors would not be have been able to provide a similar offer. The remedies included non-discriminatory prices in advertising sales, the prohibition of bundling newspaper advertising space with other media (*e.g.* radio), and the separation of its advertising division specialized in classifieds advertising [47].

Icelandic Competition Authority adopted similar remedies to resolve conglomerate effects concerns. In *Dagsbrun/Securitas*, the new entity was prohibited from tying the products and services of the merging parties and, in the event it offered bundled products, it had the obligation to indicate the price of each component [48]. In another merger concerning agricultural products, the new entity was prohibited to bundle the sales of fertilizer and animal feeds, as well as with any other product commercialized by the parties, and to adopt conduct which would have the same effect as bundling, such as the provision of special discounts or special offers to customers that purchased both fertilizers and feeds [49]. The Hungarian Competition Authority used the prohibition of the bundling of advertisement of merging entities for a period of one year after the clearance [50]. This measure was imposed even though the metropolitan Court had quashed a previous prohibition decision of the Competition Authority. Similarly, the Belgian Competition Authority used the prohibition of bundling of newspapers and the bundling of advertising space sale to mitigate negative conglomerate effects [51].

Remedies having an impact on agreements

The termination of current (exclusive) agreements or the commitment not to enter into new ones renders the market contestable for competitors: the main objective is therefore to reduce barriers to entry. In *Fenaco/Steffen-Ris*, the Swiss Competition Commission cleared the merger subject to the obligation not to impose purchase or supply exclusivity clauses on their contractual partners [52]. The Belgian Competition Authority imposed on the merging parties controlling the telecommunication cable networks in Belgium that they refrain from imposing exclusivity obligations on owners of free-to-air TV channels [53]. Transfer of contract rights has similar effect to divestitures, since it allows the transfer of a market position [54]. Other contract related remedies are the limitation of non-compete obligations (or ancillary restraints), a remedy regularly used by the Turkish Competition Authority [55].

Enforcement of merger remedies

Competition authorities invest substantial resources in monitoring the implementation of merger remedies. It is outside the scope of this foreword to discuss implementing measures. It is useful however to touch the other side of the coin - sanctions for not implementing merger remedies. In a landmark decision, the French Competition Authority withdrew [56] its previous decision authorizing the acquisition of *TPS* and *CanalSat* by *Canal+* and *Vivendi Universal* in 2006 under numerous behavioural obligations [57]. Moreover, *Canal Plus Group* was fined with 30 million euros and the parties were required to re-notify the transaction. The decision shows that while competition authorities are increasingly receptive to behavioural remedies, the sanctions for non-compliance will be significantly higher in the future [58].

Conclusion

The review of merger remedies reported in *e-Competitions* confirms the trend towards a clear preference for structural remedies in the form of divestitures. The large majority of national competition authorities use divestitures to resolve competition law concerns. Such preference for divestment remedies is consistent with EU practice.

National competition authorities are more open to behavioral remedies than the European Commission. A possible explanation may be the difficulty to find a suitable buyer at the national level, which reduces the effectiveness of divestment remedies. In our view the use of behavioural remedies may reveal two other weakness of merger control enforcement at national level: the risk of over and under-enforcement. Indeed, the adoption of behavioural remedies may be unnecessary in some cases, or insufficient to resolve competition concerns in other scenarios. Over-intervention raises the question of inefficiencies that may result: behavioural remedies may chill competition instead of safeguarding it. This is particularly the case of remedies related to output restrictions. On the other hand, under-intervention bears the risk of allowing market concentration that would favor either tacit collusion, or the use of increased market power to distort competition.

[1] EU, USA and other jurisdictions such as UK, and Turkey has opted for specific guidelines, and France deals with merger remedies in the guidelines for merger control.

[2] See Kellezi, Pranvera, *Les mesures correctives dans les cas de concentrations d'entreprises et d'abus de position dominante*, Stampfli, LGDJ, Bruylant, 2010.

[3] US Department of Justice, Antitrust Division, Antitrust division policy guide to merger remedies, June 2011, available at http://www.justice.gov/atr/public/guidelines/272350.pdf.

[4] See David S. Turetsky, Roxann E. Henry, Steven Levitsky, *The US DoJ issues the new policy guide to merger remedies*, 17 June 2011, e-Competitions, n 37371 .

[5] See Commission Notice on remedies acceptable under Council Regulation (EC) n 139/2004 and under Commission Regulation (EC) n 802/2004 ; (*OJ C 267, 22.10.2008, p. 1-27*).

[6] DG Competition, Merger Remedies Study, October 2005, available at http://ec.europa.eu/competition/mergers/studies_reports/remedies_study.pdf.

[7] EU notice on merger remedies, para. 17.

[8] EU notice on merger remedies, para. 69.

[9] Competition Commission, Merger Remedies: Competition Commission Guidelines, November 2008, para. 2.14, available at http://www.competition-commission.org.uk/assets/bispartners/competitioncommission/docs/pdf/non-inquiry/rep_pub/rules_and_guide/pdf/CC8.

[10] Competition Commission, Merger Remedies: Competition Commission Guidelines, November 2008, para. 2.16.

[11] French Competition Authority (*Autorite de la Concurrence*), *Merger Control Guidelines*, 2009, available at http://www.autoritedelaconcurrence.fr/user/standard.php?id_rub=325, paras 528 and 551.

[12] French Competition Authority (*Autorite de la Concurrence*), *Merger Control Guidelines*, 2009, para. 553.

[13] See Andrea Amelio, Pablo Asbo, Ruben Maximiano, Viktor Porubsky, Miguel de la Mano, *The European Commission conditionnally approves merger in the baking industry after analysis of possible coordinated effects (ABF,GBI)*, 23 September 2008, e-Competitions, n 35092 .

[14] See John Gatti, *The European Commission clears, subject to divestment, the acquisition of a vendor of videoconferencing products with dual headquarters in Norway and in the US by US company (Cisco/Tandberg)*, 29 March 2010, e-Competitions n 37503 : *Cisco* divested the rights attached to its proprietary protocol TIP to an independent industry body, will develop an industry-based proposal for a standard protocol.

[15] See John Thanassoulis, *The EC Commission approves a merger to nearly monopoly with a questionable theory of harm and novel behavioural remedy (Friesland Foods / Campina)*, 17 December 2008, e-Competitions, n 38048 .

[16] See John Thanassoulis, *The EC Commission approves a merger to nearly monopoly with a questionable theory of harm and novel behavioural remedy (Friesland Foods / Campina)*, 17 December 2008, e-Competitions, n 38048 .

[17] See Suzanne Rab, *The UK Competition Commission cleared a merger in the healthcare sector with remedies, including behavioral undertakings to maintain current products and services and price control (Drager Medical/Air-Shields)*

, 19 May 2004, e-Competitions, n 20814 .

[18] See Suzanne Rab, *The UK Competition Commission cleared a merger in the healthcare sector with remedies, including behavioral undertakings to maintain current products and services and price control (Drager Medical/Air-Shields)*, 19 May 2004, e-Competitions, n 20814 .

[19] See An Renckens, *The Dutch NCA conditionally clears a hospital merger based on efficiency arguments, issuing one of the first horizontal merger cases in Europe where efficiency gains are the main argument motivating a merger clearance (Ziekenhuis Walcheren/Oosterscheldeziekenhuizen)*, 25 March 2009, e-Competitions, n 26354 .

[20] See Rachael Mooney, *The OFT refered for the first time a water merger to the Competition Commission which imposed a price reduction remedy (Mid-Kent Water/South-East Water)*, 1 May 2007, e-Competitions, n 13791 ; Suzanne Rab, *The UK Competition Commission cleared a merger in the water sector, subject to a one-off price reduction to customers (Mid Kent Water/South East Water)*, 1 May 2007, e-Competitions, n 20836 .

[21] See Tom Hoehn, *The Austrian Federal Competition Authority cleared in phase II a merger in the Austrian telecommunications sector subject to conditions, including the divestiture of infrastructure, additional wholesale offers and price reductions (Telekom Austria/eTel Austria)*, 11 April 2007, e-Competitions, n 22173 .

[22] See Espen Traedal, *The Norwegian Competition Authority approved a merger in the frozen food sector subject to behavioural remedies, principally price restraints and non-discrimination (Findus/Gro Industrier)*, 30 October 2006, e-Competitions, n 22209 .

[23] See Eleonora Granata, Alessandra Prastaro, *The Italian NCA cleared a merger in the media and telecommunications sectors subject to behavioural remedies, including granting of non discriminatory access to the broadcasting network (Reti Televisive Italiane/Ramo Di Azienda di Europa TV)*, 10 April 2006, e-Competitions, n 21204 .

[24] See Cora-Marie Pinter, *The Austrian Cartel Court cleared an acquisition in the national market for industrial sugar and fruit preparations, subject to behavioural remedies including the obligation to link prices charged to smaller customers to the average prices for larger delivery quantities (Agrana/Atys)*, May 2004, e-Competitions, n 22952 .

[25] See John Gatti, Mary Loughran, *The European Commission clears, subject to conditions, a merger in the chemical products industry used in variety of end-applications (Bakelite/Appollo)*, 11 April 2005, e-Competitions, n 38294 .

[26] See Denis Fosselard, Vito Auricchio, Benedetto Brancoli Busdraghi, *The Italian Competition Authority clears in phase II the merger between the two main baby milk producers subject to remedies, including wholesale prices reduction (Koninklijke Numico / Mellin)*, 15 June 2005, e-Competitions n 21364 .

[27] See Francois Blanc, *The French Minister of Economy cleared a merger in phase II in the markets of exhibition site management and organisation of trade exhibitions with remedies, including assets increase and price regulation remedies (CCIP/Unibail)*, 13 November 2007, e-Competitions, n 19724 .

[28] See also Charlotte Beauchataud, *The French Minister of Economy authorizes the creation of a quasi-monopoly on the markets of exhibition site management and organisation of trade exhibitions following 25 years duration remedies concerning, inter alia, increase of services (Unibail Holding/CCIP)*, 13 November 2007, e-Competitions, n 15519 , and Didier Theophile, Natasha A. Moskvina, *The French Minister of Economy approves a concentration in the sector for organization of fairs and shows subject to phase II undertakings (Unibail Holding/CCIP)*, 13 November 2007, e-Competitions n 15719 .

[29] European Commission, 26 September 2001, Case COMP/M.2434, *Grupo Villar Mir/EnBW/Hidroelectrica del Cantábrico* .

[30] See for instance Petr Zakoucky, *The Czech NCA cleared in phase II a merger in the press sector, subject to production investment and maintenance of current conditions of supplies(HKM/Novotisk)*, 15 September 2006, e-Competitions, n 20922 ; Eva Valentova, *The Czech Competiton Office cleared in phase II a merger in the market of products used for manufacture of ceramics subject to remedies aimed at maintaining supplies for small and mid-sized producers (Torrecid/Glazura)*, 27 May 2003, e-Competitions, n 20908 .

[31] See Silja Baller, *The Austrian Federal Competition Authority cleared the acquisition of 66% of an airport by a consortium of investors, subject to remedies including a price cap and capacity and hold-separate commitments (Vienna Airport/Bratislava Airport)*, 6 March 2006, e-Competitions, n 22176 .

[32] See Ricardo Oliveira, *The Portuguese NCA cleared a merger in the food and fuel retail distribution markets with remedies, including limitation and reduction of sale areas and not to apply for new licences (Sonae/Carrefour)*, December 2007, e-Competitions, n 21053 .

[33] See Stanislas Martin, *The French Minister of Economics cleared with remedies a merger in the retail sector subject to outlets divestment and commitment not to expand or open new outlets (Vivarte/Super Sport)*, 30 April 2008, e-Competitions, n 21094 . See also William Simpson, *The French Minister of Economic Affairs cleared a merger in the of Do-It-Yourself products market conditional to structural and behavioural remedies (Leroy Merlin)*, 10 February 2003, e-Competitions, n 21119 .

[34] See Tomas Maretta, *The Antimonopoly Office of the Slovak Republic approved the acquisition of a refinery by its local competitor with remedies aimed on limitation of number of gas station (MOL - Slovnaft)*, 20 September 2000, e-Competitions, n 21987 .

[35] See Kaarli Eichhorn, *The Estonian Competition Authority cleared a merger in the cider market with a commitment not to increase production above specified levels (A. Le Coq/Finelin)*, 11 November 2003, e-Competitions, n 20956 .

[36] See Zumrut Esin, *The Turkish Competition Authority cleared a privatisation in the phosphate rock market subject to limitation of production (Toros)*, 21 February 2008, e-Competitions, n 21903 .

[37] See Peter J. Wang, Sebastien J. Evrard, Yizhe Zhang, H. Stephen Harris, *The Chinese Ministry of Commerce imposes conditions on merger in pharmaceutical industry (Novartis, Alcon)*, 13 August 2010, e-Competitions, n 33660 .

[38] See Peter Petrov, *The Bulgarian Commission for the Protection of Competition cleared a merger in the glass packaging and manufacturing markets subject to exit of the acquired undertaking from the market segment in which the acquirer is dominant (Yalos Holdings/Ivaglass Manufacturers)*, 26 January 2006, e-Competitions, n 21666 .

[39] See Stanislas Martin, *The French Minister of Ecomics cleared in phase II a merger in the sector of construction while imposing to parties restriction of activities (Vinci/GTM)*, 22 June 2001, e-Competitions, n 21084 .

[40] See Eleonora Granata, Alessandra Prastaro, *The Italian Competition Authority cleared an acquisition on the cash and valuable transportation market with remedies including returning public licences (Investimenti /Securcontrol - Metropol)*, 18 April 2007, e-Competitions, n 21675 .

[41] See Jocelyn Guitton, Boryana Hristova, Vera Pozzato, *The European Commission conditionally approves*

joint-venture between two UK mobile network operators (T-Mobile, Orange), 1 March 2010, e-Competitions, n 34854 .

[42] See Marcin Bartnicki, *The Polish NCA cleared a takeover in the sector of operation of movie theatres subject to refraining from opening a new theatre (Multikino/Silver Screen)*, 20 June 2008, e-Competitions, n 21047 . See for a similar remedy, Marcin Bartnicki, *The Polish NCA cleared a merger in the ready-mix concrete and construction elements markets subject to a prohibition to increase market share (Cementownia Ozarow/Faelbud)*, 5 February 2003, e-Competitions, n 21049.

[43] See An Renckens, *The French National Competition Authority clears in Phase II with behavioural remedies a merger in the rolling shutters sector and gives its assessment of conglomerate effects (Somfy/Zurfluh-Feller)*, 12 June 2008, e-Competitions, n 22133 .

[44] See Stanislas Martin, *The French Minister of Economics cleared with behavioural remedies a conglomerate merger in the sector of component for rolling shutters aimed at preventing "mixed" bundling and technical tying (Somfy/Zurfluh-Feller)*, 12 June 2008, e-Competitions, n 21092 .

[45] See Francesco Rosati, *The French Minister of Economy requires in Phase I important remedies to address concerns of bundling in a merger of newspapers and magazines publishers (LVMH / Les Echos)*, 19 December 2007, e-Competitions, n 16045 .

[46] See Francois Blanc, *The French Minister of Economics cleared a merger in the sector of regional press with remedies, including bundling prohibition (GHM/Lagardere)*, 7 December 2007, e-Competitions, n 22674 .

[47] See Francois Blanc, *The French Minister of Economics clears a merger in the sector of daily and weekly regional press with remedies, including bundling prohibition, editorial autonomy and commitments to exclude conglomerate effects (OuestFrance/Socpresse)*, 28 October 2005, e-Competitions, n 22743 .

[48] See Bryndis Gunnlaugsdottir, *The Icelandic Competition Authority cleared a merger in the security market subject to remedies to prohibit the bundling and tying of the two companies' products and services (Dagsbrun/Securitas)*, 24 July 2006, e-Competitions, n 22949 .

[49] See Bryndis Gunnlaugsdottir, *The Icelandic Competition Authority clears a merger in the agricultural products market subject to remedies, mostly concerning restrictions on marketing and sales activities (Fodurblandan/KS/ABV/BS)*, 1 September 2007, e-Competitions, n 22948 .

[50] See Adam Mattyus, Eszter Ritter, *The Hungarian Competition Office clears a merger in the daily newspapers market subject to remedies including tying prohibition and price control, the transaction having been previously prohibited by the NCA and then subject to a new assessment following Court's judgment (Tabora/Nepszabadsag)*, 26 April 2005, e-Competitions, n 25325 .

[51] See Ninette Dodoo, *The Belgian Competition Council approves the acquisition of a financial newspaper subject to conditions, including a prohibition on tied offers of newspapers or of advertising space and a prohibition on applying discriminatory conditions to the supply of financial information to the written press in Belgium (Editeco - Les Echos)*, 20 December 2005, e-Competitions, n 21703 .

[52] See Cora-Marie Pinter, *The Swiss Competition Commission approved a merger in the agricultural products sector subject to remedies prohibiting the imposition of purchase or exclusivity terms on any undertaking active in the agricultural sector in Switzerland (Fenaco/Steffen-Ris)*, 10 March 2008, e-Competitions, n 22238 .

[53] See Ninette Dodoo, *The Belgian Competition Council cleared in phase II a concentration between several owners of cable networks for telecommunications services in Wallonia, subject to refraining imposing exclusivity obligations and granting third parties access (Tecteo/Brutele - Cable Wallon)*, 25 April 2008, e-Competitions, n 21075 .

[54] See Jonas S. Brueckner, *The German Bundeskartellamt cleared a merger in the market for waste disposal subject to remedies including the transfer of contractual rights (Remondis/SAS Schwerin)*, 22 December 2006, e-Competitions, n 20777, in which the transfer of the contracts to an independent third party reduced the increase in market share of the new entity.

[55] See for instance Zumrut Esin, *The Turkish Competition Authority cleared a merger in the wholesale of commodity polymers market subject to limitation of the non-competition clause (NTC - Itochu Holland)*, 31 January 2008, e-Competitions, n 21801 , where the competition authority reduced the scope of non-compete obligation to the acquired business.

[56] French Competition Authority (*Autorite de la concurrence*), 20 September 2011, *concerning the fulfillment of obligations attached to the decision authorizing the acquisition of TPS and CanalSatellite by Vivendi Universal and Groupe Canal Plus*, available at http://www.autoritedelaconcurrence.fr/user/standard.php?id_rub=389&id_article=1697.

[57] See Stephanie Yon, Olivier Freget, *The French Minister of Economics clears the merger between the two pay-TV operators with 59 commitments after consultation of both the audiovisual regulator and the NCA (TPS/Canal Sat)*, 30 August 2006, e-Competitions, n 12542 .

[58] The first sanction in France for breach of remedies was taken in 2007. See Aude Guyon, *The French Minister for Economics sanctions for the first time for a breach of merger remedies (Carrefour-ED/Treff)*, 21 August 2007, e-Competitions, n 14291 .

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