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CC formally clears football pools merger

The Competition Commission (CC) has formally cleared the anticipated acquisition by Sportech plc (Sportech) of the Vernons football pools business of Ladbrokes plc. Sportech already operates two football pools, Littlewoods and Zetters and has a market share of more than 70%.

In its final report published on 11 October 2007 at www.competition-commission.org.uk, the CC has concluded that the acquisition by Sportech of the Vernons football pools business of Ladbrokes plc may not be expected to result in a substantial lessening of competition within any market or markets in the UK for goods or services. This confirms the CC’s provisional findings, which were published in August.

The merger was referred by the Office of Fair Trading (OFT) on 3 May 2007.

Press Release

CC provisionally finds BSKYB/ITV acquisition restricts competition

The Competition Commission (CC) has provisionally found that the acquisition by British Sky Broadcasting plc (BSkyB) of a 17.9 per cent share in ITV plc restricts competition and therefore operates against the public interest.

In its provisional findings report published on 2 October 2007 at www.competition-commission.org.uk, the CC has concluded that BSkyB’s shareholding in ITV would be likely to lead to a substantial lessening of competition (SLC) by giving it the ability to influence ITV’s strategy. The CC has also concluded that the acquisition will have no adverse effect on the sufficiency of plurality.

The CC will now consult on possible remedies to address the adverse public interest finding, including possible divestment of the shareholding.

Press Release

The CC has now published BSkyB’s proposals for remedies including non-exercise of voting rights.

Response to Remedies
Ofcom decision not appealable: IMS/Channel 4/Red Bee Media

The CAT has ruled on 31 October that a case closure decision is not appealable under the Competition Act. Independent Media Support Limited (IMS) brought appeals against the rejection of its complaints by Ofcom: the complaints had alleged that agreements concluded by BBC Broadcast (now Red Bee Media) with Channel 4 and with the BBC infringed Chapters 1 and 2 of the Competition Act. Ofcom adopted a formal decision rejecting the complaint in relation to Channel 4 and closed its file on the BBC Case. Only the formal decision was held to be appealable.

Read more.

Judgment on the preliminary issue

OFT issues explanatory note on interim arrangements for informal advice in merger cases

The Office of Fair Trading (OFT) has announced that, in light of experience gained under the Enterprise Act 2002, it is currently reviewing its merger enforcement procedure, including the arrangements for informal advice and pre-notification contacts in merger cases. The OFT confirmed that, until new guidance is published, it will continue to deal with informal advice in accordance with its interim April 2006 guidance on the issue (see Legal update, OFT announces new interim arrangements for informal advice in merger cases). The 2007 Pre-Budget Report and Comprehensive Spending Review, presented on 9 October 2007, included a statement of the government's intention to consult by the end of 2007 on measures to further enhance the speed and simplicity of the UK merger regime (see Legal update, Competition in the 2007 Pre-Budget Report).

High Court judgment on award of damages for breach of EC competition law:
Devenish Nutrition Ltd & others – v – Sanofi-Aventis SA (France) & others - [2007] EWHC 2394 (Ch)

The High Court has ruled that claimants, who are seeking damages from members of the vitamins cartel for losses suffered as a result of a breach of Article 81 of the EC Treaty (which had been established by a decision of the European Commission) are only entitled to compensatory damages. The High Court concluded that exemplary damages were not available as this would infringe the Community principle of double jeopardy (due to the fines imposed by the Commission) and could undermine the leniency system. Further, the Court is bound by the Commission's decision and cannot therefore make a finding to the effect that the Commission's fines were insufficient to punish and deter the cartel participants. The Court also held that exemplary and restitutionary damages would not be available under English law.
EU

Commission Opens In-Depth Investigation into Thomson’s Take Over of Reuters

The EC Commission has decided to open an in-depth investigation under the EU Merger Regulation into the proposed combination of Thomson of Canada and Reuters of the UK. The Commission’s initial market investigation indicates that the proposed merger would raise serious doubts as regards adverse effects on competition in several markets of the financial information sector. The decision to open an in-depth inquiry does not prejudge the final result of the investigation. The Commission now has 90 working days (until 25 February 2008) to take a final decision on whether the proposed transaction would significantly impede effective competition within the European Economic Area (EEA) or any substantial part of it.

Press Release

Commission Opens In-Depth Investigation into Proposed Take-Over of Telelogic by IBM

The European Commission has opened a detailed investigation under the EU Merger Regulation into the planned acquisition of Telelogic of Sweden by IBM of the US. Both IBM and Telelogic are active in the market for software development tools, that is software used to develop software. The Commission’s preliminary market investigation found that the proposed transaction raises serious doubts as to its compatibility with the Single Market and the European Economic Area (EEA) agreement given the strong market position that IBM would achieve for certain types of software development tools, in particular so-called "software modelling and requirements management" tools. The Commission now has 90 working days (until 20 February 2008) to decide whether the takeover would significantly impede effective competition within the EEA or any substantial part of it. A decision to open an in-depth inquiry does not prejudge the final result of the investigation.

Press Release

Anti-trust: Groupement des Cartes Bancaires restricts competition by hindering the issuance of cards at competitive prices

The Commission has addressed a decision to Groupement des Cartes Bancaires "CB" (France) in which it concludes that the latter has infringed the EC Treaty
rules prohibiting practices which restrict competition (Article 81). The Groupement has adopted price measures which hinder the issuing of cards in France at competitive rates by certain member banks, thereby keeping the price of payment cards artificially high to the benefit of the major French banks. Consumers are the victims of this illegal practice, which deprives them of cheaper cards and a more diversified product offering. The decision orders the Groupement to annul the measures concerned with immediate effect and in future to avoid taking any measures with a similar purpose or effect.

Press Release

Commission carries out inspections in the international freight forwarding sector

On 10th October 2007 Commission officials carried out unannounced inspections at the premises of various providers of international freight forwarding services. Freight forwarding is the organisation of transportation of items along with related activities such as customs clearance, warehousing and ground services. The Commission has reason to believe that the companies concerned may have violated EC Treaty rules that outlaw restrictive business practices (Article 81).

The Commission officials were accompanied by their counterparts from the relevant national competition authorities.

Surprise inspections are a preliminary step in investigations into suspected cartels. The fact that the European Commission carries out such inspections does not mean that the companies are guilty of anti-competitive behaviour; nor does it prejudge the outcome of the investigation itself. The European Commission respects the rights of defence, in particular the right of companies to be heard in antitrust proceedings.

There is no strict deadline to complete cartel inquiries. Their duration depends on a number of factors, including the complexity of each case, the extent to which the undertakings concerned co-operate and the exercise of the rights of defence.

Press Release

Commission Market Tests Commitments from Eight Members of Skyteam Concerning Their Alliance Cooperation

The European Commission has invited comments from interested parties on commitments proposed by eight members of the SkyTeam airline alliance, namely Aeromexico, Alitalia, CSA Czech Airlines, Delta Air Lines, KLM, Korean Air, Northwest Airlines and Air France. These commitments are designed to meet concerns under the EC Treaty's ban on restrictive business practices (Article 81), raised in the Commission's Statement of Objections of 15 June 2006 (see

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MEMO/06/243). The Commission is concerned that the cooperation in passenger air transport services between these SkyTeam members may have negative effects for passengers on routes where they enjoy a strong market position and where barriers to entry are significant. To address these concerns, the parties have offered commitments designed to facilitate new entry on the routes in question. The parties mainly offer to make slots available at appropriate EU airports to allow competitors to operate new or additional services and to share their frequent flyer programs. A notice summarising the commitments and requesting comments from interested parties within one month, has been published in the EU Official Journal C245 of 19.10.2007.

Press Release

Commission Threatens Malta with Court Action over Import Monopoly for Petroleum Products

The European Commission has decided to refer Malta to the European Court of Justice if within three months the adjustment of its monopoly for the importation, storage and wholesale of petroleum products is not completed. Under the Accession Treaty, Malta was required to adjust its legislation by 31 December 2005, but, despite some progress following the Commission's reasoned opinion in June of this year, Malta has still not completed the adjustment process. In particular the process of putting in place an open and non-discriminatory licensing regime does not yet appear to be complete.

Press Release

Antitrust: Commission calls for comments on a draft legislative package to introduce settlement procedure for cartels

Antitrust: Commission calls for comments on a draft legislative package to introduce settlement procedure for cartels. The European Commission has launched a public consultation on a package designed to allow for settlements of cartel cases where the parties not only acknowledge their involvement in the cartel and their liability for it but also agree to a faster and simplified procedure. The package consists of a draft Commission Notice and a draft Commission Regulation amending Regulation (EC) Nº 773/2004. Settlements would aim to simplify the administrative proceedings and could reduce litigation in cartel cases, thereby freeing resources to pursue more cases.

The draft proposal would allow the Commission to impose a lower fine on parties who agreed to the settlement procedure. This initiative complements the recent review of the Leniency Notice (see IP/06/1705) and the revised fines Guidelines (see IP/06/857). Comments on the package of documents should be made by
21st December 2007). Following these comments a revised proposal will be prepared, in consultation with Member State competition authorities, for final adoption in 2008.

**Press Release**

**State aid: Commission issues guidance to speed up implementation of state aid recovery decisions**

The European Commission has adopted a Notice on the implementation of decisions ordering Member States to recover unlawful and incompatible state aid. The notice provides guidance to Member States as to how to achieve a more immediate and effective execution of recovery decisions. Effective and prompt recovery is essential to ensure that distortions of competition resulting from illegal and incompatible aid are put to an end. The Notice emphasises that improving the enforcement of state aid decisions is a shared responsibility between the Commission and the Member States. It recalls the principles applying to the recovery of state aid as confirmed by the Community Courts’ case law and defines the respective roles of the Commission and of the Member States in the recovery procedures.

**Press Release**

**Microsoft withdraws appeals and confirms that it will not appeal CFI judgment**

Following the European Commission's announcement on 22 October 2007 that Microsoft is now in compliance with the interoperability remedy imposed in the 2004 Article 82 infringement decision, Microsoft has confirmed that it will not appeal the judgment of the Court of First Instance, which substantively upheld the Commission's decision (see Legal update, CFI essentially upholds Microsoft decision). In addition, Microsoft has announced that it has applied to withdraw two other outstanding appeals: one relating to the scope of the obligations in the interoperability remedy with respect to open source licences (Case T-313/05) (see Microsoft (II)) and the other relating to the periodic penalty of EUR 280,500,000 imposed by the Commission in July 2006 for non-compliance with its remedial obligations (Case T-271/06) (see Microsoft (penalty payments)). Microsoft states that it will now focus on "complying with legal obligations and strengthening constructive relationship with European Commission".

**Antitrust: Summary of industrial bags cartel decision published**

On 26 October 2007, the European Commission published an official summary (OJ 2007 L282/41) of its decision imposing fines totaling EUR 290,71 million on
16 companies for infringing article 81(1) of the EC Treaty by fixing prices, agreeing sales quotas, sharing customers, exchanging confidential information and rigging bids in the plastic bags market. Price fixing had occurred in a number of countries including Germany, France and Spain and the cartel had been in operation for over 20 years. Most of the companies fined have lodged appeals against the Commission decision with the Court of First Instance. (See legal update)

Summary of decision in copper fittings cartel published

On 27 October 2007, an official summary was published in the Official Journal (OJ 2007 L283/63) of the European Commission's 2006 decision imposing fines totalling EUR314.7 million on 30 companies, within 11 corporate groups, for infringing Article 81(1) of the EC Treaty by participating in an illegal cartel in relation to copper fittings. The Commission found that, between 1998 and 2004, the companies had fixed prices, discounts and rebates, agreed on mechanisms to co-ordinate price increases, allocated customers and exchanged commercially sensitive information (see Legal update, Commission fines members of copper fittings price-fixing cartel). The Opinions of the Advisory Committee, the View of the representatives of the EFTA States and the Report of the Hearing Officer have also been published (OJ 2007 C255/34-36). A number of the companies involved have lodged appeals with the Court of First Instance in relation to both aspects of the finding of infringement and, particularly, the fines imposed (see Copper fittings cartel).

US

US freight forwarder pleads guilty to criminal charges involving the military’s program for shipment of household goods

An Oregon-based freight forwarder pleaded guilty to rigging bids and allocating shipments for its role in a conspiracy involving its participation in the U.S. Department of Defense (DOD) program for shipping the household goods of military and civilian DOD personnel between the United States and foreign countries, the U.S. Department of Justice announced today.

Criminal charges were filed on 17 October 2007 in U.S. District Court in Alexandria, Va. against Lift Forwarders Inc. (Lift). Under the terms of a plea agreement, Lift pleaded guilty to participating in a conspiracy to restrain trade, in violation of the Sherman Antitrust Act, and agreed to pay a $140,000 criminal fine.

Lift is the eighth company to be charged in the Department’s investigation into anticompetitive and fraudulent conduct related to the DOD International Through Government Bill of Lading (ITGBL) program. Criminal fines in excess of $12 million have thus far been imposed on seven companies.
According to the felony charge, Lift and another U.S. freight forwarder conspired from May 2000 until September 2001 to file rates with DOD at collusively determined levels. As part of the scheme, Lift also agreed to allow its co-conspirator to handle the shipments awarded to Lift by DOD, in exchange for a commission of $1 per hundredweight shipped by its co-conspirator.

Lift is charged with violating Section One of the Sherman Antitrust Act, which, at the time of the offense, carried a maximum penalty of a $10 million fine for corporations. The maximum fine level for this offense may be increased to twice the gain derived from the crime or twice the loss suffered by the victims of the crime, if either of those amounts is greater than the statutory maximum fine.

Press Release

Iconix Brand Group to pay $550,000 Civil Penalty for Violating Antitrust Pre-merger notification requirements

Iconix Brand Group has agreed to pay $550,000 to settle charges that the company failed to produce certain documents before buying Rocawear, an acquisition requiring pre-merger review. On 15 October 2007 the Department of Justice’s Antitrust Division filed a civil lawsuit in U.S. District Court in Washington, D.C., against Iconix for violating the Hart-Scott-Rodino Act of 1976. At the same time, the Department filed a proposed settlement that, if approved by the court, will settle the charges.

According to the complaint, Iconix violated pre-merger notification requirements when it acquired the Rocawear brand by failing to submit to the antitrust enforcement agencies certain company documents with its pre-merger notification.

The Hart-Scott-Rodino (HSR) Act imposes notification and waiting period requirements on individuals and companies over a certain size before they can consummate acquisitions of stock or assets over a certain value. For transactions that must be reported, the Act further requires the parties to supply certain documents prepared or reviewed by the company's officers and directors in connection with their evaluation or analysis of the proposed transaction. Iconix submitted no such documents, despite the fact that such documents existed, including a formal presentation made to its Board of Directors about the transaction and a less formal e-mail among officers and directors. In addition, when initially asked to review whether such documents existed, the company falsely reaffirmed that no such documents existed.

By law, a party is subject to a maximum civil penalty of $11,000 for each day it has been found to be in violation of the HSR Act.

Press Release
Justice Department’s Antitrust Division to host Symposium on telecommunications competition issues

The Department of Justice's Antitrust Division today announced that it will host a symposium entitled, "Voice, Video and Broadband: The Changing Competitive Landscape and Its Impact on Consumers." The symposium, which will be held on Nov. 29, 2007, will address the current state of competition and likely future developments in providing voice, video and broadband services to consumers. It will cover topics such as:

- The introduction of new facilities-based competition providing a bundle of voice, video and broadband services to consumers;
- The effects of such competition on price and the quality and diversity of services; and
- The existence of regulatory and other potential barriers to entry.

For further information about the symposium, including a detailed agenda and instructions for making written submissions, please visit:


Press Release

SAVE THE DATE

London Competition Forum 2007

We are delighted to let you know that our speaker for the annual Reed Smith Richards Butler Competition Forum will be Lowri Evans, the European Commission’s newly appointed Deputy Director General Operations at DG Competition.

Lowri is responsible for the Commission’s competition / antitrust policy and strategy; as such she uniquely placed to talk to us about the Commission’s future enforcement priorities and the way in which these will be implemented. Previous to her new post Lowri has been responsible for merger control and state-aid at the Commission.

The talk will be held on Wednesday 28 November at 12.30, followed by lunch, concluding at 14.30. The Forum will be held in London at Beaufort House.
Invitations were sent out in October.

The information in this newsletter is intended to be a general guide only and not to be comprehensive nor to provide legal advice. For further information on any topic in this newsletter, please contact competition@reedsmith.com or one of your regular contacts at Reed Smith Richards Butler.