



ECN Brief

ECN Brief 01/2010

Welcome to the first edition of the ECN Brief

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Dear Reader,

This is the first edition of the European Competition Network (ECN) Brief. The ECN is a network of the Member States' national competition authorities (NCAs) and the European Commission (DG Competition). The network operates on the basis of Council Regulation 1/2003 which created enhanced cooperation mechanisms between the NCAs and the Commission for the enforcement of the EU competition rules on anti-competitive agreements and abuses of dominant position.

This Brief – which is intended to be published five times a year – will inform you about activities of the ECN and its members. It strives to reflect the richness of enforcement actions and advocacy by the network members and, at the same time, to focus on news that are of major interest to readers concerned with EU competition law and policy throughout the EU. It complements the extensive communications policies of the individual ECN members which are accessible via Internet (see page 4 – Contacts).

This first issue covers news from September 2009 to mid January 2010. During this period, following the entry into force of the Lisbon Treaty on 1 December 2009, Articles 81 and 82 EC have been renumbered as Articles 101 and 102 of the Treaty on the Functioning of the European Union, respectively. In this issue, this new numbering will be used for news items from that date.

Any reactions, comments, ideas, suggestions for the improvement of this Brief are welcome. They should be sent to the following address: comp-ecn-brief@ec.europa.eu

DISCLAIMER:

This publication is a compilation of contributions from national competition authorities of the European Union and the Competition Directorate General of the European Commission ("the Authorities"). Information provided in this publication is for information purposes only and does not constitute professional or legal advice. The content of this publication is not binding and does not reflect the official position of any Authority. Neither any Authority nor any person acting on its behalf is responsible for the use which might be made of information contained in this publication.

ENFORCEMENT & CASES

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Spain: La Comisión Nacional de La Competencia (CNC) imposes € 120 728 000 in Fines on Insurance Companies' Cartel

The CNC Council fined, on 12 November 2009, several insurance companies for a cartel agreement to set minimum prices for decennial insurance in Spain from 2002 to 2007. Several leading insurers as well as top reinsurance companies were involved. [Read more](#)

Portugal: Competition Authority (PCA) imposes largest Fine ever in Margin Squeeze Case

On 2 September 2009, the PCA announced that it had imposed a total fine of € 53 062 000 in a case in the wholesale and retail access to broadband markets. The infringement, covering a period of over one year, led to the effective exclusion of one competitor from the market, to a significant decrease in the market shares of competitors and to a very significant growth rate of new customers of the dominant undertakings. [Read more](#)

Finland: Supreme Administrative Court increases Fines to € 82 550 000 in Asphalt Cartel Case

The Supreme Administrative Court handed down, on 29 September 2009, its final judgment imposing the highest competition fine in Finland to date on a nationwide asphalt cartel operating from 1994 to 2002 and involving all major players on the market. [Read more](#)

France: Paris Court of Appeal confirms the first ever Implementation of Article 22(1) of Regulation 1/2003 by the Autorité de la concurrence

On 24 October 2009, the Paris Court of Appeal entirely upheld a decision by the Autorité de la concurrence fining four oil companies for colluding in a tender process organized by Air France for refuelling its aircrafts on the island of La Réunion. The court notably confirmed that the French NCA had correctly implemented Art. 22(1) when it sought the assistance of another ECN member, namely the Office of Fair Trading, to perform inspections of business premises on its behalf. [Read more](#)

Germany: Access to the File for Claimants vs. Leniency - Local Court of Bonn asks ECJ for Clarification

In a cartel case against several producers of wallpaper, a customer applied for access to the file, in particular access to the leniency applications and all documents the leniency applicants had handed over to the Bundeskartellamt, under the German Criminal Procedural Code. [Read more](#)

LEGISLATION & POLICY

- **Austria:** Monthly Newsletter on Fuel Prices
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- **Czech Republic:** New Competence of the Czech Competition Authority
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- **Lithuania:** Amendment to the Law on Competition
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- **Portugal:** Monthly Bulletin on Liquid Fuel Statistics
- **Sweden:** Research Report on Collective Instalment of Broadband Internet or Cable-TV
- **United Kingdom:** Office of Fair Trading publishes:
 - [Assessment](#) of Discretionary Penalties Regime
 - [Guide](#) on Competition as an Essential Consideration for Successful Government Policy

Sector inquiries

- **Italy:** Authority closes Sector Inquiry on Editorial Distribution
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Annual reports of all ECN members

http://ec.europa.eu/competition/ecn/annual_reports.html

ECN Convergence Report on Model Leniency Programme

On 13 October 2009, the heads of the ECN authorities endorsed a report which reviews the state of convergence of the ECN members' leniency programmes with regard to the provisions of the ECN Model Leniency Programme. The report concludes that the work within the ECN was a major catalyst in encouraging Member States to introduce leniency programmes and in promoting convergence between them. [Read more](#)

Slovenia: Leniency Programme functioning from 1 January 2010

On 1 January 2010, a Government Decree on the procedure for granting immunity from fines and reduction of fines in cartel cases came into force. This Decree sets the rules for leniency applications as well as the rules for handling such applications. The aim of those rules is to increase transparency and legal certainty in the handling of leniency applications. Largely based on the ECN Model Leniency Programme, the Slovenian framework also foresees the use of standard forms for applications as well as for the list of evidence provided by the applicant. [Read more](#)

Greece: New Notice on Enforcement Priorities and Adoption of new Forms

On 12 January 2010, the Hellenic Competition Commission (HCC) issued a Notice on Enforcement Priorities, with a view to improving the efficiency of its enforcement action while also increasing the transparency of its activities. In general, prioritization of cases will be based on the criterion of public interest. In addition revised forms have been adopted in November 2009 for several purposes.

[Read more](#)

European Commission: Best Practices improve Transparency and Predictability of Proceedings

On 6 January 2010, DG Competition and the Hearing Officers published detailed explanations concerning how European Commission antitrust procedures work in practice in order to further enhance the transparency and the predictability of Commission antitrust proceedings. The explanations are outlined in three documents, namely Best Practices for antitrust proceedings, Best Practices for the submission of economic evidence (both in antitrust and merger proceedings) and Guidance on the role of the Hearing Officers in the context of antitrust proceedings. They are applied by the Commission provisionally as from 6 January 2010, but stakeholders are invited to submit comments within 8 weeks from that date.

[Read more](#)

OTHER ISSUES OF INTEREST

EVENTS

- **Austria:** Bilateral Contacts of the FCA with Representatives of European and non-European Competition Authorities
- **Czech Republic:** Report on St. Martin Conference
- **Hungary:** Visit of Competition Commissioner Kroes to the Competition Authority
- **Slovakia:**
 - [International Seminar on Competition Enforcement](#)
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Personalia

- **Germany:** New President of the Bundeskartellamt
- **Hungary:** Authority has new Vice Presidents
- **Lithuania:** New Chairman of the Competition Council
- **The Netherlands:** Two new Board Members of the NMa
- **United Kingdom:** Re-appointment of John Fingleton at the Office of Fair Trading

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TRAINING of NATIONAL JUDGES in EU COMPETITION LAW

20th Anniversary of the Italian and the Polish Competition Authorities in 2010

The Italian Competition Authority (ICA) and the Polish Office of Competition and Consumer Protection (UOKiK) will both celebrate their 20th anniversary in 2010. Both occasions will be marked with a series of events and conferences promoting competition as well as consumer protection.

- **Poland:** the culmination point of the celebrations will be the Jubilee Conference on Current Issues in Competition Law on 27 May 2010 in Warsaw. [Read more](#)

- **Italy:** the final conference will be held on 11 October 2010 and will deal with free competition and protectionism in the framework of the financial and economic crisis. [Read more](#)

Spain: European Competition Day – Madrid

The Spanish Presidency of the Council (first semester of 2010) is planning to hold its European Competition Day on 12 May 2010 in Madrid.

<http://www.eu2010.es/en/agenda/grupostrabajoycomites/evento12.html?idioma=en>

Portugal: Competition Authority hosted III Lisbon Conference

On 14 and 15 January 2010, the PCA hosted the III Lisbon Conference on Competition law and Economics which took place in Lisbon, Portugal. Several topics such as two-sided markets, reconciliation between competition policy, security of energy supply and environmental protection, competition policy in times of crisis, as well as intellectual property and single firm conduct were discussed.

[Read more](#)

[ECN members' websites](#)

Number of envisaged decisions by national competition authority; types of envisaged decisions etc.: <http://ec.europa.eu/competition/ecn/statistics.html>

Call for Proposals on training projects for national judges in EU Competition Law and Judicial Cooperation published in 2009: <http://ec.europa.eu/dgs/competition/proposals2/>
[Read more](#)

List of grant beneficiaries who will provide training programmes in 2010:

http://ec.europa.eu/dgs/competition/proposals2/call_2008_results.pdf

ENFORCEMENT & CASES

AUTHORITIES

- **Spain: La Comisión Nacional de La Competencia (CNC) imposes € 120 728 000 in Fines on Insurance Companies' Cartel**

On 12 November 2009, the CNC Council has fined ASEFA, MAPFRE EMPRESAS/MAPFRE RE, CASER, SWITZERLAND/SWISS RE, SCOR and MÜNCHENER for a cartel agreement to set minimum prices for decennial insurance in Spain from 2002 to 2007: the companies involved were found to infringe the Spanish Competition Act and Article 81 of the EC Treaty (now Article 101 of the Treaty on the Functioning of the European Union).

In 2002 the Spanish Building Regulatory Act introduced an obligation on developers of new residential buildings to take out insurance for latent defects to cover damage caused to buildings by flaws or defects originating in their structural elements that undermine their stability and resistance for a period of ten years after construction is completed ("decennial insurance"). The construction boom resulted in a considerable expansion and high growth rates in the decennial insurance market, accompanied by intense price competition. In order to diversify their risk portfolios, insurers active in the decennial insurance market enter into reinsurance agreements with international companies, allowing them to transfer a large percentage of the risks underwritten and the premiums contracted to the reinsurers.

In this environment of growing demand, in order to avoid a decline in decennial insurance prices spurred by competition between direct insurance companies, the leading insurers (Asefa and Mapfre Empresas) and the three top reinsurers (Scor, Switzerland and Münchener) in the decennial insurance market in Spain met for the first time during the second half of 2001 and exchanged information with the aim of reaching a minimum pricing arrangement. The agreement entered into by these parties was set out in a document dated 5 December 2001 which fixed their policy for pricing decennial insurance. The aim of the parties involved was that this minimum price agreement would be applied not just by these parties but in the entire decennial insurance market. To this end, the reinsurers undertook to work the minimum price agreement into the compulsory pricing guidelines they annex to reinsurance contracts. The result was complete uniformity in the premiums proposed by the different underwriters present in the Spanish decennial insurance market and the elimination of competition thereon.

This cartel pricing arrangement remained in force during the years 2002 to 2007. Furthermore, the evidence indicates that from 2006 CASER also participated in the agreement. During the duration of the cartel, the companies involved made sure the minimum price agreement was observed by themselves and by the insurers and reinsurers that operated on the decennial insurance and reinsurance market. Instances of non-compliance with the agreement were reported to the other cartel members, who would then exert coordinated pressure on the insurer, bank, insurance broker or reinsurer company that had agreed or displayed a willingness to reinsure decennial insurance at prices below the minimums fixed by the cartel. There is evidence that certain members of the cartel pressurised and boycotted those companies that had shown a willingness to stray from the cartel's minimum price discipline, in some cases going so far as to break off commercial operations that had already been agreed.

See further:

http://www.cncompetencia.es/Administracion/GestionDocumental/tabid/76/Default.aspx?EntropyId=33204&Command=Core_Download&Method=attachment

- **Portugal: Competition Authority (PCA) imposes largest Fine ever in Margin Squeeze Case**

On 2 September 2009, the Portuguese Competition Authority announced that it had imposed its largest fine since its creation in 2004 in a case regarding abuse of dominant position (margin squeeze) in the wholesale and retail access to broadband markets. Portugal Telecom Group (PT Group) and ZON Group were fined for infringing both national and European competition law (Article 82 of the EC Treaty – now article 102 of the Treaty on the Functioning of the European Union). The companies were fined € 45 016 000 and € 8 046 000 respectively, for a total of € 53 062 000.

The abuse began in 22 May 2002 and ended in 30 June 2003, period during which the abusive tariffs for wholesale and retail broadband access were fixed and applied. The infringement was terminated following a decision of the sector regulator (ICP–ANACOM), which was taken into account when setting the fine.

At the time of the infringement, the PT Group, which then included the ZON Group, held a dominant position both in the wholesale and retail markets of broad band access. At the retail level, the PT Group had a market share above 70%, whereas at the wholesale level PT was the sole provider of broad band access. Therefore, there was no alternative to the wholesale offer of the PT Group on the market.

The undertakings' behaviour consisted in a margin squeeze. By artificially inducing a raise in wholesale prices (when comparing to the retail prices) and a drop in retail prices (when comparing to wholesale prices), the undertakings prevented an alternative operator, even if equally efficient as PT, from competing profitably. Moreover, PT applied discriminatory conditions to equivalent transactions, favouring the Group's undertakings to the detriment of its competitors.

The abuse led to the effective exclusion of one undertaking from the market and to a significant decrease in the joint market share of PT's competitors from 36% to 19%. At the same time, PT Group experienced a growth rate of new costumers of 193% during the time of the abuse.

The conduct of the PT Group (including the Zon Group) therefore restricted competition, delaying the development of broadband in Portugal.

The proceedings were initiated on the basis of complaints of players in the market. The investigation allowed the PCA to conclude that the undertakings abused their dominant position through unfair pricing in the form of a margin squeeze, applying discriminatory conditions to equivalent transactions, as well as limiting production, distribution, technical development and investment.

PCA decision has been appealed to the Lisbon Commercial Court.

See further: <http://www.concorrencia.pt/en/Content.asp?ID=1738>

- **Austria: FCA files Application under Article 82 EC (collective dominance) at the Austrian Cartel Court in the Field of Domestic Tank Liquefied Petroleum Gas ("LPG")**

In August 2009, the Austrian Federal Competition Authority ("FCA") filed an application under Article 82 EC (now Article 102 of the Treaty on the Functioning of the European Union) to the Cartel Court. This follows a series of complaints filed to the FCA since 2007 by customers of liquefied petroleum gas. The Cartel Court is currently examining the case with the view of taking a decision on whether or not there is an infringement.

The FCA started its investigation with questionnaires to the undertakings concerned and interviews of managers. According to the findings of the FCA, the following features prevent, restrict or distort competition for the supply of LPG in Austria:

- The widespread practice, when a customer switches supplier, of the outgoing supplier who removes its tank from the site and of the incoming supplier or customer who replaces it with an essentially similar tank, with the consequential costs of removing and installing tanks.
- The practice of imposing contractual restrictions on the possibility to switch supplier, including the introduction of fixed lengthy minimum terms in exclusive supply contracts and the limited ability of suppliers to identify and target their marketing efforts on each other's customers.

It appears from the investigation that due to market entries of three firms between 2003 and 2006 the price for the supply of tank LPG dropped significantly up to 44% for the market segment of customers who owned the tank (i.e. benchmark for the competitive level) while the price for the majority of customers in the market segment with tanks owned by suppliers (74% of whole market) stayed at a high level (up to 78% above the competitive level) over the last 5 years (this is based on the examination of the answers from the quantitative questionnaires by the FCA).

Whilst the FCA acknowledges the overriding need to ensure safety of supply of LPG, and after considering a wide range of evidence — including a report by technical consultants as well as hearings with, and submissions from, the parties to the investigation — the FCA has found that none of the adverse effects of exclusionary conduct which results in an abusive price discrimination of the supply of LPG between tank ownership are justified by safety requirements or investment cost of the tanks.

• **Belgium: Follow-up Civil Actions announced in Margin Squeeze Case**

In its decision of 26 May 2009, the Belgian Competition Council condemned Proximus for an abuse of a dominant position on the Belgian market for mobile telecommunications based on Article 82 of the EC Treaty (now Article 102 of the Treaty on the Functioning of the European Union) and on Article 3 of the Belgian Competition Act. The Council imposed on Proximus a fine of € 66 300 000. In October 2009, the complainant Base has announced with a reference to the Council decision that it has initiated damages proceedings before the Brussels Commercial Court.

The investigation, which covered the period of 2002-2005, was triggered by a complaint of Base, one of the two most important competitors of Proximus on the Belgian market. Proximus is a subsidiary of the incumbent Belgacom. Base is now part of the Dutch group KPN.

Having established the existence of a dominant position on the mobile market, the Council found that the commercial strategy adopted by Proximus for professional clients with particular requirements (including large companies and public authorities) was characterized by a so-called margin squeeze in 2004 and 2005.

The Council considered that for 2004 and 2005 it was proven that the margin between the on-net prices of Proximus (between two customers on its own network) and the mobile termination rates (MTR) charged to the competitors (for terminating a call from their network on the network of Proximus) was clearly negative. Since the MTR charges of Proximus were higher than the charges for its own on-net communications, its competitors were unable to propose prices to their clients for communications towards the Proximus network that were more interesting or even similar to the prices that Proximus could offer to its clients. The decision qualifies this practice as an abuse of dominant position on the basis of both the Belgian Competition Act as well as Article 82 EC.

For the calculation of the fine, account was taken of the nature of the infringement, the market share of Proximus, the economic impact of the infringement and the fact that it took place in a sector where liberalisation and more competition are a priority.

Proximus and Base appealed the decision and the proceedings are currently pending before the Brussels Court of Appeal.

See further: http://economie.fgov.be/fr/binaries/D%C3%A9cision%20n%C2%B0%202009-P_K-10%20du%2026%20mai%202009_tcm326-67436.pdf

- **Denmark: Authority prohibits Viasat's Business Terms Regarding Distribution of TV 3 and TV 3**

The Danish Competition Council (DCC) adopted on 30 September 2009 a decision finding that Viasat's business terms, regarding distribution of the TV-channels TV 3 and TV 3+ in cable networks infringe Article 81 of the EC Treaty (now Article 101 of the Treaty on the Functioning of the European Union) and the corresponding Danish provision. As a consequence, the DCC decided that Viasat must cease preconditioning package placements in all business terms as well as preconditioning other terms such as minimum carriage requirements that have similar anti-competitive objectives.

Viasat (a company in the Modern Times Group) is vertically integrated and operates both as pay-tv broadcaster (with some of the most popular TV-channels – TV 3 and TV 3+) and as satellite distributor (covering more than half the Danish satellite market). Viasat's business terms examined by the DCC stipulated that TV 3 and TV 3+ must be placed in the most advantageous programme package for commercial TV-channels offered by cable-networks. The business terms were adopted in all distribution agreements between Viasat and the cable distributors/local cable networks, resulting in a TV market with a parallel network of vertical agreements.

The DCC had previously adopted a decision in the same case concluding that Viasat's business terms did not infringe either EU competition law or the corresponding Danish competition legislation. However, the Danish Competition Appeal Tribunal annulled this first Council's decision and remitted it for reconsideration by the DCC. The Tribunal found that the Council's decision was unfounded and based on insufficient grounds regarding the definition of the relevant market. Moreover, the Tribunal declared that the business terms had the objective of distorting competition.

Under those circumstances and taking into account the instructions from the Tribunal, the DCC reconsidered the case on the basis of a new market survey. It concluded that the business terms in question have as their object and effect to restrict competition. The decision also found that Viasat's business terms do not fall within the scope of the block exemption for vertical agreements, firstly because Viasat has a market share above 30% and secondly as the business terms primarily constitute the licensing of copyrights. Finally, according to the decision the conditions for exemption of Art. 81 (3) of the EC Treaty and the corresponding Danish provision were held not to be fulfilled.

Originally, the case was initiated by a complaint from the Danish Cable Television Association, claiming that Viasat's business terms restricted competition by reducing the options of local cable networks to decide which TV-channels to place in which packages.

Recently, the Council's decision has been appealed.

See further:

<http://www.konkurrencestyrelsen.dk/konkurrenceomraadet/afgoerelser/afgoerelser-1998-2009/afgoerelser-2009/konkurrenceraadets-moede-den-30-september-2009/viasats-vilkaar-om-placering-af-tv3-og-tv3/> (only in Danish)

Description of the Viasat-case in English:

<http://www.konkurrencestyrelsen.dk/en/competition/decisions/decisions-2008-and-earlier/national-decisions-2009/konkurrenceraadets-moede-den-30-september-2009/viasats-business-terms-regarding-the-distribution-of-tv-3-and-tv-3/>

- **France: The Autorité fines Incumbant Telecom Operator in the Overseas Territories and applies EU Case-Law on Presumption of Liability of Parent Companies for the first Time**

On 9 December 2009, the Autorité de la concurrence imposed on Orange Caribbean, the incumbent and leading telecom operator in the overseas territories and France Telecom, its mother-company and incumbent telecom operator in Metropolitan France a fine of € 63 000 000, for engaging in anti-competitive practices in French West Indies.

Orange Caribbean hindered market entry and intensification of competition in the telecom market by four kinds of practices. First, it foreclosed the distribution network via exclusivity contracts with independent distributors, which raised its rivals' cost of entry. Second, it imposed an exclusivity clause on the sole manufacturer-approved maintenance operator in the Caribbean islands, which prevented access to its competitor, Bouygues Telecom Caribbean, and impaired Bouygues' brand image. Third, it deterred consumer switching at the only moment when it could be contemplated. It indeed limited the use of customer loyalty points to the purchase of new handsets, and conditioned this gift to a new subscription for 24 months. Last, it introduced artificial tariff differentials between on net (calls within its network) and off net calls (calls made by an Orange subscriber to a Bouygues subscriber) in order to enhance the "club effect" and to affect the brand image and revenues of its competitor.

As these practices had an effect on trade between Member States, the Autorité applied Articles 101 and 102 TFEU (Treaty on the Functioning of the European Union), and consequently the EU case law on liability of parent companies. France Telecom held 99% or 100% of "Orange Caribbean" shares during most of the time when the latter company engaged in anti-competitive practices and was not able to submit convincing proof in order to rebut the presumption of its liability as a parent company. It has therefore been found jointly liable for the infringement committed by its subsidiary and jointly fined with "Orange Caribbean" for the amount of € 52 500 000.

Besides, between 2000 and 2002, France Telecom offered free options to professionals allowing them to benefit from rebates on calls made from landline phones to the Orange Caribbean network. The effects of this practice were protracted, up to the beginning of 2006, although the option ended in May 2002. France Telecom also engaged in margin squeeze when it marketed "landline to mobile phones" packages for professional customers in 2004. As few customers subscribed these two offers, the fine was set at € 10 500 000.

France Telecom's fines include a 50% increase due to recidivism. The decision of 9 December 2009 on the merits follows interim measures, which had been ordered in 2004 and upheld by the Court of Appeal in 2005. In the wake of this first decision, France Telecom had changed its commercial policy.

See further: <http://www.autoritedelaconcurrence.fr/user/avisdec.php?numero=09-D-36>

- **Hungary: Uniform Multilateral Interchange Fees in Transactions by Payment Cards are anti-competitive**

On 24 September 2009, the Gazdasági Versenyhivatal (Hungarian Competition Authority – GVH) found that Hungarian banks set uniform interchange fees in transactions by payment cards of Visa and MasterCard which distorted competition on the market. The practice of the payment card schemes, Visa and MasterCard, was also considered to infringe competition law since it enabled the banks to conclude agreements that hindered competition. Seven Hungarian banks and the two payment card schemes Visa and MasterCard were fined for infringing Article 81 EC (now Article 101 of the Treaty on the Functioning of the European Union) and Section 11 of the Hungarian Competition Act. A total fine of HUF 968 000 000 (approx. € 3 570 000) was imposed on the seven banks, while the two payment card schemes Visa and MasterCard were fined HUF 477 000 000 each (approx. € 1 760 000 per company).

The GVH initiated proceedings on 31 January 2008 against 23 card issuing banks and MasterCard Europe and Visa Europe. The investigation focused on the multilateral interchange fees (MIFs) concerning payment card transactions which were fixed by the agreement between the Hungarian card issuing banks for domestic transactions. One concern was that the fee restricted competition among card acquiring banks and functioned as a threshold for the merchant service fee (MSC).

The investigation revealed that the Hungarian banks had already agreed in 1996 that they would introduce the same interchange fees both for Visa and MasterCard. Following the agreement, competition between the two payment card schemes and the card-acquiring banks was distorted. The agreement concluded between the banks indirectly uniformized the commissions paid by retailers accepting payments via payment cards. Normally such fee serves as one of the most important factors in competition between operating banks and card acquiring banks (operating terminals).

When calculating the fines, the GVH took into account the total amount of domestic interchange fees between 2004-2007. The GVH also took into consideration the market shares in 1996 as well as the current market shares of the banks concerned. In relation to some other financial institutions, which entered the agreement afterwards, the GVH also found an infringement: however no fines were imposed on them considering their limited involvement in the infringement and their cooperation with the GVH during the investigation.

The undertakings concerned may appeal the decision at the Metropolitan Court of Budapest within thirty days of the notification of the written decision.

See further: http://www.gvh.hu/gvh/alpha?do=2&st=2&pg=133&m5_doc=6071

- **Italy: Antitrust Authority launched an Investigation into possible Agreements restricting Competition involving the Fedespedi Trade Association and 20 international Freight Forwarders**

On 18 November 2009, the Italian Competition Authority launched an investigation to ascertain the existence of possible anticompetitive agreements among 20 international freight forwarders (Agility, Albin & Pitigliani, Brigl, Cargo Nord, DHL, Ferrari, Francesco Parisi, Gefco, Geodis, I-Dika, Italmondo, Italsempione, Itk, ITX Cargo, Rhenus, Saima, Schenker, Sittam, Transervice and Villanova) reached within the context of their trade association FEDESPEDI.

The decision to launch an investigation was taken on the basis of information suggesting that the above mentioned 20 companies engaged in the reciprocal exchange of sensitive information (e.g. about fuel costs, highway tolls and administrative fees) in order to coordinate commercial strategies and in particular price increases. This behaviour appears to have lasted at least from the end of 2002 until September 2007.

Furthermore, it seems that Fedespedi encouraged these companies to implement the agreed price increases by means of press releases and memorandums addressed to associated members.

The Italian Competition Authority is currently investigating the case.

See further:

http://www.agcm.it/AGCM_ITA/DSAP/DSAP_287.NSF/6393dfc338215725c1256a41002b6228/12f2b77838585a5bc1257687003c9cc2?OpenDocument

- **Latvia: Competition Council detects Prohibited Concerted Practices among Distributors of Samsung Home Appliances**

On 30 October 2009, the Latvian Competition Council (CC) adopted a decision in which it found that concerted practices among five distributors of Samsung appliances infringed Article 81 of

the EC Treaty (now Art. 101 of the Treaty on the Functioning of the European Union) and the Competition Law of Latvia. The total fine imposed on the five companies amounted to € 9 423 161. The CC also imposed a legal obligation on each undertaking to develop and implement corporate competition compliance programmes.

The CC found that in 2007 and 2008 Samsung Electronics Baltics Ltd. (a daughter company of Samsung Electronics Co. Ltd) and the biggest distributors of these goods in Latvia (wholesalers and retailers RD Elektroniks Ltd., ELKOR TRADE Ltd., ROTA un K Ltd. and wholesaler PROKS Ltd.) engaged in concerted practices having as their objective resale price maintenance, the allocation of markets and the restriction of free trade for Samsung goods.

The above mentioned companies fixed prices for Samsung goods and imposed fixed minimal retail prices on internet shops. Internet shops that did not obey were threatened with sanctions (for example – refusal to give access to free after sales guarantee service) or were actually sanctioned by means of refusal to supply Samsung products.

The CC also established that in the sales agreements concluded with various wholesalers in Estonia, Lithuania and Latvia (including Latvian wholesalers – parties to the case), Samsung Electronics Baltics Ltd. had included territorial trading restrictions forbidding the sale of specific appliances outside of the prescribed territory without Samsung Electronics Baltics Ltd's consent. The CC further found that the product guarantee system, which for the Samsung brand is based on the territorial principle, facilitated partitioning of markets. Indeed, although the Samsung producer itself guaranteed all its products, the after sales guarantee service was in fact only available on the territory of the distributor who had sold the respective product.

The concerted practices existed both at a vertical level between Samsung Electronics Baltics Ltd. and the wholesalers and at a horizontal level among the wholesalers (cartel).

The fines were set as follows: € 5 833 692 for Samsung Electronics Baltics Ltd. (as the initiator of the infringement), € 2 052 527 for RD Elektroniks Ltd., € 380 659 for PROKS Ltd., € 771 083 for ELKOR TRADE Ltd. and € 385 197 for ROTA un K Ltd.

The decision of the CC has been appealed to the Administrative Regional Court by all five fined companies.

Decision of the CC in Latvian: http://www.kp.gov.lv/uploaded_files/2009/VE02-40_3010.pdf

• **The Netherlands: Authority fines Dutch Swimming Pool Chemicals Distributors more than € 3 000 000**

On 12 November 2009, the Netherlands Competition Authority (NMa) imposed total fines of € 3 107 000 on five Dutch swimming pool chemicals distributors for infringing both national competition law and Article 81 of the EC Treaty (now Article 101 of the Treaty on the Functioning of the European Union).

After an investigation initiated as a result of a leniency application, the NMa found that the cartel engaged in illegal activities for more than 7 years (between January 1998 and April 2005 – Vivochem until October 2003) in connection with the sale of chlorine (sodium hypochlorite) to swimming pools, which use sodium hypochlorite to disinfect pool water. The cartel had a market share of 90 %. The cartel started long before 1998, when the Dutch Competition Act came into effect.

The cartel's objective was to 'keep the market calm' by maintaining a customer (the swimming pools) sharing system. The cartel participants used a so-called 'swimming pool list' as a tool. Moreover, they convened bi-annual meetings and also contacted each other outside these 'formal' meetings in order to maintain the customer division.

The following cartel participants have been fined (all private limited companies under Dutch law): H.Fr.H. Breustedt Chemie (€ 1 440 000), Caldic Nederland (€ 1 034 000), Solvadis Nederland/Molen Chemie, after acquisition in July 2005: Quaron Wormerveer (€ 463 000), Vivochem (€ 119 000) and Internatio, currently: IMCD Benelux (€ 51 000). The NMa did not impose a fine on Chemproha Chemiepartner – currently Brenntag Nederland – because it was

the first to reveal the cartel to the NMa before the NMa launched the investigation. In return, Brenntag Nederland benefited from immunity from fines. Vivochem also applied for immunity, but did so after Brenntag's application. Vivochem was thus granted a fine reduction of 25 %.

See further: http://www.nmanet.nl/Images/6091BLD_tcm16-133005.pdf (only in Dutch)

Press spokesperson: Ms. Barbara van der Rest-Roest at +31-70-330-3362 or +31 622793063 (outside office hours), or Mr. Paul Trienekens at +31-70-330-5068 or +31 643004971 (outside office hours). Alternatively, you can send an email to the NMa press office at pers@nmanet.nl

• Poland: Cement Cartel smashed

On 8 December 2009, maximum fines amounting to PLN 411 million (€ 100 000 000) have been imposed by the President of the Polish Office of Competition and Consumer Protection (UOKiK) on the biggest producers of cement in Poland. As a result of the UOKiK's investigation, its President established that seven companies engaged in the market sharing and price fixing practices for over 11 years. Two companies decided to blow the whistle on the cartel. The legal basis of the proceedings were both national and European law.

Following multiple signals from the market, and the results of the investigation conducted by the UOKiK, on 28 December 2006 the President of the Office instituted antimonopoly proceedings and examined the alleged anticompetitive agreement concluded by the producers of grey cement - Lafarge Cement, Góraźdże Cement, Grupa Ożarów, Cemex, Dyckerhoff, Cementownia Warta and Cementownia Odra – the combined market share of which amounted to almost 100 % of the Polish market.

As a result of the 3-year long investigation, as well as the biggest dawn-raid in the history of the UOKiK, robust evidence was collected, which was subsequently completed by information furnished by the undertakings involved in the agreement. On the basis of this evidence, the President of the Office concluded that at least from 1998 the undertakings shared the national market for grey cement, by agreeing to freeze the market shares of each company, as well as fixing minimum prices for the cement, the timetables, the amounts and the order of applying the increases in prices for cement. To this end, during numerous multilateral and bilateral meetings the producers exchanged confidential commercial information, inter alia on sales volumes. The investigation showed that the cartelists realized that the practices they were engaged in were illegal. They selected a limited number of persons directly taking part in the information exchange, as well as a coordinator of the information exchange (an employee of one of the producers). The coordinator was responsible for passing on the data to the cement producers and contacting selected employees of the cement mills via a pre-paid telephone.

According to the provisions of the Polish antimonopoly law, the maximum fine that can be imposed on the undertaking amounts to 10 % of the revenue earned in the accounting year preceeding the year within which the penalty is imposed. Since two leniency applications were filed in the case, the President of the UOKiK refrained from imposing a fine on Lafarge Cement and imposed a fine amounting to only 5 % of the revenue earned in 2008 on Góraźdże Cement. The remaining cartelists – Grupa Ożarów, Cemex, Dyckerhoff, Cementownia Warta and Cementownia Odra – were each fined the maximum penalty possible, totaling PLN 411 586 477. This is the highest fine ever imposed in the 20 years history of the UOKiK.

Góraźdże Cement, Grupa Ożarów, Cemex, Dyckerhoff, Cementownia Warta and Cementownia Odra have appealed the decision to the Court of Competition and Consumer Protection.

See further: http://www.uokik.gov.pl/en/press_office/press_releases/art172.html

Press spokesperson: Sonia Jóźwiak, sonia.jozwiak@uokik.gov.pl

- **Slovakia: Council of the Antimonopoly Office to decide on Prohibition of Abuse in "Green Dot" Licensing Case by ENVI-PAK**

On 16 September 2009, ENVI-PAK appealed the decision of the Antimonopoly Office of 28 August 2009 before the Council of the Office. The Office found that ENVI-PAK had abused its dominant position and, therefore, infringed both the Slovak Act on Protection of Competition as well as Article 82 of the EC Treaty (now Article 102 of the Treaty on the Functioning of the European Union).

ENVI-PAK is an undertaking active on the market for the provision of packaging waste collection, recovery and waste recycling through authorized organizations and the sole undertaking entitled to provide "Green dot" trade mark sub-licences in Slovakia. According to the decision of the Office of 28 August 2009, the abuse of its dominant position consisted in setting the sub-licence fee for the use of the "Green Dot" trade mark in such manner, that on the one hand companies using the packaging waste collection, recovery and recycling services of ENVI-PAK do not have to pay such a licence fee, while on the other hand companies that use the services of its competitors have to pay a separate licence fee even for packages without the "Green Dot".

Moreover, ENVI-PAK's pricing policy was set in such manner that the final price, including the Green Dot licence fee, was almost always higher for undertakings which use its competitor's packaging waste services than the price charged to service clients of ENVI-PAK. Therefore, it was economically unattractive for undertakings interested in the "Green Dot" to become a client of ENVI-PAK's competitors and they were forced to accept the conditions set by ENVI-PAK.

During the administrative proceedings ENVI-PAK proposed commitments pursuant to the Article 8a of the Slovak Act to try to address the competition concerns identified by the Office. However, the Office refused the proposed commitments because ENVI-PAK's commitment concerning the amount of the sub-licence fee for the "Green Dot" trade mark did not sufficiently resolve the identified competition problem.

The appeal before the Council of the Antimonopoly Office is pending.

See further:

<http://www.antimon.gov.sk/135/3568/the-antimonopoly-office-of-the-sr-imposed-the-fine-in-amount-of-18-394-on-company-envipak-as-for.axd>

COURTS

- **Finland: Supreme Administrative Court increases Fines to € 82 550 000 in Asphalt Cartel Case**

On 29 September 2009, the Supreme Administrative Court in Finland handed down its final judgment in the asphalt cartel case. A total fine of € 82 550 000 was imposed on all major players on the market, which makes it the highest competition infringement fine imposed in Finland to date.

The court upheld the view of the Finnish Competition Authority (FCA) that a nationwide asphalt cartel had operated in Finland from 1994 to 2002 with the participation of all the major players on the market. The companies hampered competition by price and bidding cooperation and the allocation of markets. The cartel was particularly harmful because it also affected public procurement by the state and the municipalities.

The Market Court's 2007 decision which had originally imposed a fine of € 19 415 000, was appealed by the FCA and six asphalt companies. The FCA's appeal to increase the infringement fine was almost entirely upheld, while the appeals made by the asphalt companies were dismissed by the Supreme Administrative Court. As for the amount of fines imposed, the court largely sided with the FCA's appeal. The cartel ringleader and coordinator Lemminkäinen Oyj was given a fine of € 68 000 000, the amount originally requested by the FCA. Additionally, the following fines were imposed:

- VLT Trading (former Valtatie Oy): € 4 800 000;
- NCC Roads Oy: € 4 600 000;
- Skanska Asfaltti Oy: € 4 500 000;
- SA-Capital Oy: € 500 000;
- Rudus Asfaltti Oy: € 100 000 and
- Super Asfaltti Oy: € 50 000.

The court upheld the FCA's view that in addition to the national competition legislation, Article 81 EC (now Article 101 of the Treaty on the Functioning of the European Union) was also violated. The largest participants of the cartel had nationwide operations and retained control over the asphalt market throughout Finland. They had a particular objective of preventing foreign companies from entering the Finnish market.

See further: <http://www.kilpailuvirasto.fi/cgi-bin/english.cgi?luku=news-archive&sivu=news/n-2009-09-29>

• **France: Paris Court of Appeal confirms the first ever Implementation of Article 22(1) of Regulation 1/2003 by the French Competition Authority**

On 4 December 2008, the French Competition Authority fined four oil companies € 41 000 000 for colluding in a tender process organized by Air France for refuelling its aircrafts on the island of La Réunion. For the first time, the French Competition Authority sought the assistance of another ECN member, namely the OFT, under Article 22(1) of Regulation 1/2003, in order to perform inspections of business premises on its behalf. The OFT inspected three out of four of the undertakings involved, which had their headquarters in the United Kingdom. The evidence found in the UK proved critical for proving the existence of an infringement of Article 81 EC (now Article 101 of the Treaty on the Functioning of the European Union).

On 24 October 2009, the Paris Court of Appeal entirely upheld this decision.

It first ruled that the agreement at stake affected trade between the Member States, thus entitling the French Competition Authority to request the OFT's assistance under Article 22(1) of Regulation N° 1/2003. Second, the Court detailed its scope of review which encompasses both the legality of the request for assistance in itself and the way the information obtained was exchanged and subsequently used by the French Competition Authority. This scope of review does however not extend to the authorization for inspections and the way in which inspections are conducted, which could only be reviewed by UK courts.

Regarding the request for assistance, the Court concluded that the French Competition Authority had correctly implemented Article 22(1), which does not impose formal requirements for making requests for assistance.

As to the search itself, the Court deferred to the assessment of the UK courts, while noting that the French case handlers only assisted the OFT's officers and did not perform any investigatory tasks.

Finally, it ruled that Article 12(3) of Regulation 1/2003 does not apply to the exchange of the collected information between the OFT and the French Competition Authority, as no evidence was liable to be used to impose sanctions on individuals.

See further: http://www.autoritedelaconurrence.fr/doc/ca08d30_carbureacteurs_nov09.pdf

- **Germany: Access to the File for Claimants vs. Leniency - Local Court of Bonn asks ECJ for Clarification**

In a cartel case which was based inter alia on Article 81 of the EC Treaty (now Article 101 of the Treaty on the Functioning of the European Union), a customer applied for access to the file under the German Criminal Procedural Code in order to prepare a claim for damages. In particular, he requested access to the leniency applications and all documents the leniency applicants had handed over to the Bundeskartellamt. The Bundeskartellamt denied access to these leniency documents. The customer appealed against the decision to the Local Court of Bonn which has to adopt a final decision on this question.

On 9 September 2009 the Court decided to stay the proceedings and to refer the question to the Court of Justice whether Articles 11 and 12 of Regulation 1/2003 exclude access to leniency documents (Case C-360/09). The Local Court is of the opinion that according to national law the victim of an illicit cartel has to be granted access to the leniency documents in the Bundeskartellamt's file. However, the Court could not exclude that the above mentioned European provisions which provide for close cooperation between the European Commission and the national competition authorities and for the exchange of sensitive information for the purpose of applying Article 81 EC amongst them could exclude access of third parties to leniency documents. Granting access to leniency documents could lead to a lower standard of protection vis-à-vis the Commission and the other national competition authorities. As a consequence, leniency based information would no longer be transferred to the Bundeskartellamt, thus hampering cooperation and case allocation within the European Competition Network.

See further:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:297:0018:0018:EN:PDF>

- **Ireland: BIDS Case: Supreme Court holds Infringement of Article 81(1) – Lower Court to assess possible Exemption**

Following the judgment of the Court of Justice of 20 November 2008 in case C-209/07, on 3 November 2009, the Irish Supreme Court gave its judgment by which it held that the BIDS agreement had infringed Article 81 (1) EC (now Article 101 of the Treaty on the Functioning of the European Union). The Supreme Court remitted the case to the High Court to decide on whether the conditions of Article 101 (3) TFEU (previously Article 81(3) EC) are satisfied.

The case Competition Authority -v- Beef Industry Development Society & Anor (2006) IEHC 294 was a civil action brought by the Competition Authority, alleging that the Beef Industry Development Society ("BIDS") had infringed Article 81 of the EC Treaty by the plans it adopted for the rationalisation of the Irish beef industry. These plans involved the major players in the industry agreeing to pay those players ("the goers") who would voluntarily leave the industry. In return for that payment, the goers would agree to decommission their plants, refrain from using the associated lands for processing for a period of five years and sign a two-year non-compete clause with regard to processing anywhere in Ireland. The defendant relied on Article 81(3). It claimed that having found that the agreement had neither the object nor the effect of restricting competition, the High Court did not strictly speaking need to examine the impact of Article 81(3) upon the agreement. Nevertheless, the judge decided to give his views on this issue, as follows:

The first condition of Article 81(3) was satisfied, as economic gains had been shown to exist.

The evidence was not sufficient to show that the second condition - consumer benefit - would be satisfied.

The third condition - that the restrictions were indispensable to the attainment of the objectives - was satisfied.

The fourth condition, that the undertakings involved would not be afforded the possibility of eliminating competition - was also satisfied.

This judgment was appealed to the Supreme Court by the Competition Authority. The appeal hearing began on 7 March 2007 and was suspended on 8 March 2007 after the Supreme Court decided to make an Article 234 reference (now Article 267 of the Treaty on the Functioning of the European Union) to the Court of Justice for a preliminary ruling.

On 20 November 2008, the Court of Justice found that the BIDS agreement has as its object the restriction of competition and thus is incompatible with Article 81(1). The Court states that "An agreement with features such as those of the standard form of contract concluded between the ten principal beef and veal processors in Ireland, who are members of Beef Industry Development Society Ltd, and requiring among other things, a reduction of the order of 25% in processing capacity has as its object the prevention, restriction or distortion of competition within the meaning of Article 81(1) EC".

On 3 November 2009, the Irish Supreme Court held that the BIDS agreement had infringed Article 81(1).

The Supreme Court has remitted the case to the High Court to decide on whether the conditions of Article 81(3) are satisfied. The hearing of the case is pending, but no date has yet been fixed for the decision.

See *The Competition Authority v Beef Industry Development Society* (Supreme Court) 3 November 2009, at <http://www.courts.ie/Judgments.nsf/597645521f07ac9a80256ef30048ca52/31F1360097AB4F6080257663003A6AF0?opendocument>

- **Latvia: Court dismisses Legal Proceeding in Case on Unfair Discounts applied by Riga International Airport**

On 29 September 2009, following an administrative agreement signed between the state owned company Riga International Airport and the Competition Council, the Administrative Regional Court dismissed the legal proceedings concerning the decision of 22 November 2006 of the Competition Council in which an infringement of Article 82 of the EC Treaty (now Art. 102 of the Treaty on the Functioning of the European Union) by the Riga International Airport was found.

The Competition Council agreed to sign an administrative agreement after the amendment of 5 May 2009 to Cabinet Regulation No 911 of 5 December 2006 ("Procedures for Specifying Charges for the Services of Air Navigation and the State Joint Stock Company Riga International Airport and their Distribution") had modified the discount system applied by Riga International Airport. Henceforth Riga International Airport will apply charges at one fixed rate for all airlines.

The case was initiated in 2006 further to a complaint lodged by six airlines companies: "Austrian Airlines", "Czech Airlines", "Finnair", "British Airways", "Deutsche Lufthansa AG" and "KLM Royal Dutch Airlines". After investigating the Competition Council found that only two airlines companies benefited from the discounts applied by the airport and that all other airlines either benefited from discounts several times lower or did not benefit from any discount at all. The Competition Council concluded that these discounts were unfair and that they were discriminatory charges for equivalent services which caused discriminatory competition conditions as the airline companies receiving the maximum discounts paid less than the actual cost of the services while the remaining unpaid proportion of costs was covered by the other airlines.

Since 16 April 2008, the Latvian Competition Law foresees the possibility to conclude an administrative agreement in order to settle a legal dispute pending before the courts. When concluding such an administrative agreement, the Competition Council can decide to decrease the amount of the fine imposed for the infringement or to change the legal obligations imposed in its decision. Previous experience shows that the Competition Council has signed such agreements in cases when the distortion of competition has been eliminated and the

infringement has been acknowledged. Administrative agreements serve as a means of reducing the length of proceedings and fostering the payment of fines.

Decision of the Competition Council in English:

http://www.kp.gov.lv/uploaded_files/ENG/KP%20Lemums%20X134_2211%20Eng%20.pdf

• **Lithuania: Supreme Court partly upholds Authority Decision in Paper Case**

On 16 October 2009, the Lithuanian Supreme Administrative Court partly upheld a decision of the Competition Council of 26 October 2006 finding an infringement of Article 5 of the Lithuanian Law on Competition and of Article 81 EC (now Article 101 of the Treaty on the Functioning of the European Union). The Court annulled the part of the decision in so far that it applied Article 81 EC.

The appealed decision concerned an anticompetitive exchange of information on the Lithuanian paper wholesale market between the following companies: UAB Antalis Lietuva, UAB Libra Vitalis, UAB Lukas, UAB MAP Lietuva, UAB Papyrus Distribution and UAB Schneidersöhne Baltija. The Supreme Court ruled on an appeal brought by UAB Schneidersöhne Baltija and UB Libra Vitalis against the decision.

The Court confirmed that the agreement to exchange information of confidential nature, in particular information on market shares, between all six companies could affect their behaviour on the market and as a result competition could be restricted, therefore infringing Article 5 of the Lithuanian Law on Competition.

As regards the Competition Council's decision finding an infringement of Article 81 EC, the Court held that trade between Member States was not significantly affected. The finding of infringement of Article 81 was therefore overruled and fines were reduced for the appellants UAB Schneidersöhne Baltija and UB Libra Vitalis.

In this case, the Court had earlier asked for an opinion from the European Commission according to Article 15 of Regulation 1/2003. The request concerned notably the economic criteria (the market structure and other economic parameters) relevant for the purpose of assessing whether an exchange of information constitutes an infringement of Article 81 EC. The Commission provided its opinion on 20 July 2009.

The decision is final and cannot be appealed.

See further: Decision of the Lithuanian Supreme Court (in Lithuanian only): http://www.konkuren.lt/index.php?show=teismai_view&t_id=170

Opinion of the Commission: http://ec.europa.eu/competition/court/antitrust_requests.html

• **European Commission: Amicus Curiae in the French Pierre Fabre Case – Referral to the ECJ by the French Court**

On 29 October 2009, the Paris Court of Appeal referred to the Court of Justice a request for preliminary ruling in the case Pierre Fabre Dermo Cosmétique S.A.S (Case C-439/09). This case concerns on-line sales in selective distribution agreements and addresses the issue of the compatibility of some restraints with Article 81 of the EC Treaty (now Article 101 of the Treaty on the Functioning of the European Union). The question referred to the Court of Justice by the Court is whether a total and absolute prohibition on selling contract products on the internet, imposed on selected distributors within the framework of a selective distribution network, constitutes an infringement of Article 81(1) of the EC Treaty which is not exempted under Regulation No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices, but which could however possibly benefit from an individual exemption under Article 81 (3) of the EC Treaty.

In its decision of 29 October 2008, the French Competition Authority found that Pierre Fabre infringed Article 81 of the EC Treaty by prohibiting on-line sales to its selected distributors of cosmetic products. It decided that the prohibition to sell online could neither be exempted under Regulation No 2790/1999, nor on an individual basis, under Article 81(3) of the EC Treaty. Pierre Fabre appealed this decision.

On 11 June 2009, the Commission submitted written observations ("amicus curiae") to the Paris Court of Appeal under Article 15(3) of Regulation 1/2003. The Commission observed that a general prohibition on on-line sales imposed by the supplier on its selected distributors is an infringement by object under Article 81(1). Such restriction is not block-exempted under Regulation 2790/1999. However, if the supplier proves that the conditions of Article 81(3) are fulfilled, the agreement may be individually exempted pursuant to this provision. Moreover, the Commission observed that the notion of "objective justification", mentioned in point 51 of the Guidelines on Vertical Restraints, shall be interpreted strictly and shall not replace the analysis of efficiencies under Article 81(3). The Commission underlined that, in general, only exceptional circumstances, external to the parties, may be considered as an objective justification for a restriction by object. The Paris Court of Appeal subsequently decided to submit the above issue to the Court of Justice.

See further:

Referral to the Court of Justice: [C-439/09](#)

Decision of the Autorité de la concurrence:

<http://www.autoritedelaconcurrence.fr/pdf/avis/08d25.pdf>

LEGISLATION & POLICY

• ECN Convergence Report on Model Leniency Programme

On 13 October 2009, the heads of the ECN authorities endorsed a report which reviews the state of convergence of the ECN members' leniency programmes with regard to the provisions of the ECN Model Leniency Programme. The report concludes that the work within the ECN was a major catalyst in encouraging Member States to introduce leniency programmes and in promoting convergence between them.

At the date of the report, twenty five Member States (all except Malta and Slovenia) and the European Commission operated leniency programmes. The first Slovenian leniency programme started functioning on 1 January 2010. The Maltese competition authority is considering introducing a leniency programme in the near future. Reforms of existing leniency programmes were pending in five Member States.

The assessment of convergence was done in the course of 2009. The report is based on information from the ECN competition authorities and covers developments up to 1 October 2009. An annex to the report lists the applicable leniency programmes.

Just three years after its endorsement, most Member States have revised their existing programmes or adopted new ones to align with the Model Programme. In the revision process, the ECN members essentially followed the key features of the Model Programme. The report, on the other hand, finds that full convergence has not yet occurred in all areas. However, the convergence process is still on-going.

The report reviews in detail textual convergence in areas such as the scope of leniency programmes, the types of applicants excluded from immunity, the marker system, the possibility of summary applications and of oral submissions, and the conditions for leniency. The report finds that twenty three Member States accept summary applications alongside an

application to the Commission (the list of these authorities is published together with the report). Seventeen of them accept oral summary applications.

The report raises awareness within the ECN about the achievements in the field of leniency convergence and should serve as a basis for reflection as to whether further convergence is needed.

The report is available at <http://ec.europa.eu/competition/ecn/documents.html>

• **Slovenia: Leniency Programme starts functioning from 1 January 2010**

On 1 January 2010, the Government Decree on the procedure for granting immunity from fines and reduction of fines in cartel cases came into force. This Decree sets the rules for leniency applications as well as the rules for handling such applications. The aim of those rules is to increase transparency and legal certainty in the handling of leniency applications.

This Decree follows the amendment of 30 April 2009 of the Slovenian Competition Act (Prevention of the Restriction of Competition Act – ZPOMK-1) which introduced the possibility for cartel participants to apply for a reduction of fines in case where they cooperate with the Competition Protection Office (CPO). This new possibility complements the possibility to apply for immunity from fines which was provided in Slovenian law since 2008. The amendment of the Slovenian Competition Act provided that a detailed procedure for leniency was to be adopted in the form of a Government Decree. At the entry into force of this Decree, the leniency programme started functioning in Slovenia.

The framework of the Slovenian Competition Authority's leniency policy is largely based on the ECN Model Leniency Programme. It allows for:

- hypothetical applications (only for immunity),
- summary applications (only for immunity),
- request for a marker (only for immunity), and
- oral applications.

Applications have to be made to the CPO using one of the forms attached to the Decree. With the application, the applicant has to provide the CPO with all the evidence in its possession and list them in the form foreseen by the Decree ("List of evidence").

The decision of the CPO to adopt a standard form for leniency applications is justified by the objective to make handling of the applications easier for the CPO, but also to clarify what kind of information the applicant needs to provide to the CPO in order to benefit from the leniency. The "list of evidence" form enables both the CPO and the applicant to keep track of the evidence and information provided with the application.

Further characteristics of the Slovenian leniency framework are:

- only applications submitted in Slovene are accepted,
- application materials have to be provided in triplicate,
- applications can be made via mail, in person, at the time of the inspection or by fax (not yet available),
- the immunity or reduction of fines can be applied in minor offences decision,
- application and all of the evidence and information provided to the CPO is considered to constitute business secrets.

The text of the Decree is available at <http://www.uvk.gov.si/si/zakonodaja/> (only in Slovene, English translation coming soon).

Further information and contacts are available at:
http://www.uvk.gov.si/si/program_prizanesljivosti/ (in Slovene)
or at <http://www.uvk.gov.si/en/leniency/> (in English).

• Greece: New Notice on Enforcement Priorities and Adoption of new Forms

On 12 January 2010, the Hellenic Competition Commission (HCC) issued a Notice on Enforcement Priorities, with a view to improving the efficiency of its enforcement action while also increasing transparency and accountability.

According to the Notice, the prioritization of cases will generally be based on the criterion of public interest. In particular, the HCC will be assessing the public interest considerations which arise from a particular case in the light of the estimated impact of the practice on effective competition, and especially on consumers. In this context, priority will be given to ex officio investigations or complaints pertaining to:

- Hard core restrictions (price-fixing, market sharing and sales or production restrictions) of national scope, especially in cases of horizontal agreements (cartels), taking particularly into account the market position of the undertakings involved, the structure of the relevant market and the estimated number of the affected consumers.
- Products and services of major importance to the Greek consumer, where the anticompetitive practice under examination may have a significant impact on prices increases and/or the quality of the products/services supplied (especially as compared to other Member States of the European Union).
- Anticompetitive practices with cumulative effect (i.e. practices applied by a large number of companies that are able to pass on the increased prices to intermediate undertakings or final consumers).

The HCC will be also examining whether a particular case falls under its strategic goals with respect to enforcement action in specific markets, industries or possible anticompetitive practices (as defined by the HCC in the exercise of its discretionary power). Priority will also be given to compliance with the rulings of the Courts of Appeal and the Council of State concerning prior HCC decisions. Finally, the HCC will be assessing the necessity of adopting exceptional measures of a regulatory nature in certain sectors of the economy, in accordance with the strict terms and conditions of article 5 of Law 703/77, provided that such measures are absolutely necessary, suitable and proportionate for the creation of conditions of effective competition.

The prioritization of a particular case will also depend on the available resources of the Authority, the possibility of establishing proof of an infringement, the necessity of providing guidance on novel issues of interest, as well as the assessment of whether the HCC is the best-placed authority to act (particularly as compared to the jurisdiction of national courts to deal with cases of private interest).

On 27 November 2009, the HCC also adopted revised Forms for (a) post-merger notification and (b) the registration of agreements, both for purposes of mapping the market (as defined in articles 4a and 21 of Law 703/77 respectively).

In particular, the HCC adopted Decisions 468/VI/2009, 469/VI/2009 and 470/VI/2009, in which:

- It defined the content and the formalities for the post-merger notification of concentrations for the purposes of mapping the market. The relevant Decision replaced HCC Decision 306/V/2006, thereby clarifying that the acquisition of foreign undertakings with no activities in Greece is not subject to notification pursuant to article 4a of Law 703/77.
- It adopted a separate notification form for the post-merger notification of concentrations in the media sector, taking also into account the specific provisions of Law 3592/2007 regarding the authorisation of concentrations in the area concerned.
- Finally, it defined the formalities for the notification of agreements pursuant to Art. 21 of Law 703/77 for the purposes of mapping the market.

The revised notification forms are posted on the HCC website: <http://www.epant.gr>

• **European Commission: Best practices improve Transparency and Predictability of Proceedings**

In order to further enhance the transparency and the predictability of Commission antitrust proceedings, detailed explanations concerning how European Commission antitrust procedures work in practice have been published by the Commission's Directorate General for Competition (DG Competition) and the Hearing Officers on the Europa website on 6 January 2010. The explanations are outlined in three documents, namely Best Practices for antitrust proceedings, Best Practices for the submission of economic evidence (both in antitrust and merger proceedings) and Guidance on the role of the Hearing Officers in the context of antitrust proceedings. The documents will make it easier for companies under investigation to understand how the investigation will proceed, what they can expect from the Commission and what the Commission will expect from them. The three documents are applied by the Commission provisionally as from 6 January 2010, but stakeholders are invited to submit comments on the documents within 8 weeks from that date with a view to adjusting them in the light of comments from interested parties.

Best Practices in antitrust proceedings

The Best Practices in antitrust proceedings takes the reader through the A-Z of antitrust proceedings, starting with how the Commission decides whether to give priority to a certain case and ending with potential adoption of a decision.

The aim of the Best Practices is to further improve procedures by enhancing transparency, while at the same time ensuring the efficiency of the Commission's investigations. Important areas where the Commission will be amending its procedures include:

- earlier opening of formal proceedings, as soon as the initial assessment phase has been concluded;
- offering state of play meetings to the parties at key points of the proceedings;
- disclosing key submissions, including giving early access to the complaint, so that parties can already express their views in the investigative phase;
- publicly announcing the opening and closure of procedures, as well as when Statement of Objections have been sent; and
- providing guidance on how the new instrument of commitment procedures is used in practice.

Hearing Officers' Guidance Paper

Hearing Officers are the independent guardians of the rights of defence and other procedural rights of companies involved in competition proceedings. The aim of the Guidance is to make their role more transparent. The Paper not only sets out the various tasks of the Hearing Officers as established in their mandates but also outlines how they are usually carried out. It furthermore explains how companies can make best use of an Oral Hearing. Additionally, it provides companies subject to investigations, complainants and other third parties with a manual of when they can turn to the Hearing Officers to ensure due process is respected. Finally, the Paper explains the reporting obligations and the advisory role of Hearing Officers towards the Competition Commissioner, the College of Commissioners and the addressees of Commission decisions.

Best Practices on submission of economic evidence

Considering the increasing importance of economics in complex cases, the Commission's competition department often makes requests for information asking for substantial economic

data (for example used in econometric analysis) during its investigations. Parties also often submit arguments based on complex economic theories on their own initiative. In order to streamline the submission of such economic evidence, the Best Practices on economic evidence outline the criteria which these submissions should fulfil. It also explains the practice of the competition department's case teams and the Chief Economist when interacting with parties which submit economic evidence.

All documents are available at:

http://ec.europa.eu/competition/consultations/2010_best_practices/index.html

• **Austria: Monthly Newsletter regarding the Fuel Market**

The Austrian Federal Competition Authority is creating a monthly newsletter regarding the fuel market in general and the prices in particular. The target is the provision of a monthly brief containing an updated market overview for interested parties. The first issue has been published in November 2009.

The following key subjects will be covered in every new issue:

- the development of fuel prices in Austria
- a price comparison with all other EU Member States
- crude oil prices and their changes over time

The newsletter is published on the 10th day of each month on the homepage of the Austrian Federal Competition Authority, focusing on the current developments within the previous month. To view the first issues, please follow this link:

<http://www.bwb.gv.at/BWB/treibstoffnews/default.htm>

• **Bulgaria: CPC adopts Guidelines on Competition Impact Assessment**

On 15 October 2009, the Bulgarian Commission on Protection of Competition (CPC) adopted Guidelines for the assessment of compliance of legislative and general administrative acts with competition rules. The document forms part of the CPC's continuing efforts to strengthen its role in competition advocacy as part of the CPC priorities for 2009 – 2010. Its aim is to foster competition culture, to enhance knowledge of the competition rules and to encourage protection of competition.

The Guidelines aim to assist policy makers to incorporate a preliminary competition impact assessment in the preparation of draft acts. The Guidelines provide criteria by which, without having extensive knowledge of competition, one can easily determine whether the proposed draft act contains provisions that could harm competition. The document contains a check list which encompasses possible restrictions of competition. It also gives suggestions for feasible alternatives on how to achieve the regulatory aims in compliance with competition rules.

If the state or local authority is not sure whether the draft act could have a negative impact on competition, it may request an in-depth assessment from the CPC. The Commission will then issue a non-binding opinion.

The Guidelines underline the benefits of having draft legislation reviewed in advance. Preliminary impact assessments will ensure accurate drafting of competition-relevant provisions and the avoidance of potential distortions of competition.

See further:

<http://www.cpc.bg/storage/file/%D0%9D%D0%B0%D1%81%D0%BE%D0%BA%D0%B8.doc>

- **Czech Republic: New Competence of the Czech Competition Authority**

On 3 November 2009, the Czech Parliament approved the Act on Significant Market Power, which grants new competences to the Czech Competition Authority (“the Czech NCA”). The Act will come into force on 1 February 2010.

The aim of the Act is to define the concept of significant market power and its abuse for the purpose of the protection of competition in cases concerning the sale of agricultural products and to set up tools for the assessment and avoidance of such behaviour. Significant market power is defined by the Act as the position of the buyer towards the supplier, enabling the buyer to impose unilaterally beneficial trade conditions on the supplier, because he is not able to deliver its goods to the consumers by other means than via the buyer. There is a rebuttable presumption of significant market power if the net turnover of the buyer in the Czech Republic for the last financial year exceeds CZK 5 000 000 000 (€ 200 000 000). It is prohibited to abuse such significant market power to the detriment of suppliers; the abuse is to be understood as a systematic conduct which has as its object or effect the significant distortion of competition on the relevant market. There is a list of conduct considered to be abusive in six annexes to the Act. Fines for breaching the law can be imposed up to CZK 10 000 000 (€ 400 000) with a maximum of 10% of the net turnover of the undertaking. The issue of significant market power will be dealt with by a newly established department of the Czech NCA within the section headed by the new first vice-chairman Mr. Hynek Brom.

- **Estonia: The Estonian Competition Authority proposes to amend Medicines Market Regulation**

On 18 September 2009, the Estonian Competition Authority has made a final proposal to the Ministry of Economic Affairs and Communications with the view to improve the competitive situation in the distribution of non prescription drugs to end users.

Pursuant to the Competition Act the Authority has the power to analyse the competitive situation, to propose measures with the view to promote competition, to make recommendations to improve the competitive situation and to make proposals for legislation to be adopted or amended.

According to the Authority the current restrictions on the distribution of non prescription medicines are too strict and prevent free competition. The Authority therefore proposes to abolish the restrictions which prevent the sale of certain non prescription medicines elsewhere than in pharmacies.

Following the analysis undertaken, the Estonian Competition Authority is of the opinion that fewer restrictions on the distribution of non prescription medicines would have a positive effect on the price, availability and choice of such medicines. The proposal has given rise to active public discussions and has met strong support from the Ministry of Economic Affairs and Communications. The proposal is expected to be processed by the Estonian Government in the near future.

- **France: Autorité de la concurrence issues its first ex-officio Opinion on Competition in the Railway Sector and an Opinion on the Dairy Sector**

First ex officio Opinion dedicated to Competition in the Railway Sector

Pursuant to the 2009 competition law reform, the Autorité de la concurrence was entrusted with the power to issue *ex officio* opinions on any competition related matter. This includes the power to carry out market studies sector inquiries. This power was used for the first time in May 2009 with the initiation of a study in the railway sector, making competition assessments

of railway stations and intermodality. The Autorité anticipated the full opening to competition of railway transportation which will occur in the coming years. On 4 November 2009, the Autorité issued its opinion.

The Autorité concluded first that railway stations, which are keystones in the terrestrial transportation chain, are likely to be essential facilities to which access is necessary for newcomers in the railway transportation business in order to effectively compete with the national incumbent operator, the SNCF. Therefore, charges to access stations, as well as certain basic services rendered in stations, have to be closely monitored, as they will condition the ability of newcomers to exert competitive pressure on the SNCF.

The Autorité also found that intermodality – i.e. the capacity to ensure the continuity of service between different means of transportation for passengers or goods – has become essential to effectively bid for local transportation public tenders. Moreover, the Autorité noted that the SNCF is present all along the transportation chain, on most terrestrial transportation means, a position which gives it a significant competitive advantage over its competitors in terms of access to infrastructure or intermodality information.

Pursuant to these findings and to foster future competition in this sector, the Autorité made the following public recommendations:

- railway station management should be effectively separated from other business activities of the SNCF.
- the forthcoming agency in charge of regulating the railway sector should be entrusted with the *ex ante* power to monitor access charges to railway stations and related services.
- The business model of the SNCF, being a vertically integrated operator should be closely monitored, especially to prevent leverage effect strategies, predatory pricing and to guarantee fair access to intermodality information.

The Autorité also invited public adjudicating bodies to split their future public transportation tenders into separated lots to spur competition.

See further: <http://www.autoritedelaconurrence.fr/pdf/avis/09a55.pdf>

Opinion on the Dairy Sector

The Autorité de la concurrence was asked by the French Senate (Economic Affairs Committee) to issue an opinion on the competition aspects of the milk sector last June.

In its opinion, delivered to the Senate on 2 October 2009, the Autorité comes back to the origins of the on-going crises and issues recommendations. It notes that the demand for milk is not price-sensitive and that the offer is rigid in the short term, which leads to price instability for processed products (butter and milk powder), and, in turn, to fluctuating production costs for food processors and farmers, eventually discouraging investment. Moreover, supplies are extremely dispersed. Joint-selling organisations owned by farmers stand only for 35% of the turn-over of processed products. Another telling example is that Danone buys raw milk from over 3900 producers.

The Autorité stresses that price recommendations, whether at regional or national level, are not effective and do not comply, in principle, with EU competition rules. It suggests however a more promising solution, which would be to foster contractual relations between producers and the industry on the medium term, so as to give both parties more foresight on prices, volumes and quality standards. Negotiations could be held between cooperatives owned by farmers and food processors, and not through a national collective bargaining, which would be at odds with competition rules.

See further: http://www.autoritedelaconurrence.fr/doc/avis_lait_anglais_09a48.pdf

- **Lithuania: Recent Amendment to the Law on Competition**

On 24 September 2009, Article 3(11) (which sets out the definition of a dominant position) of the Law on Competition of the Republic of Lithuania was modified: the amendment came into force as of 1 January 2010.

Following this change, the thresholds of a dominant position which are expressed as a percentage of market shares of a relevant market have been lowered for undertakings engaged in retail trade, thus excluding them from the general rule.

According to the amendment any undertaking engaged in retail trade with a market share of no less than 30 % shall be considered as enjoying a dominant position within the relevant market, unless proved otherwise. Where three (or less) undertakings with the largest shares of the relevant market jointly hold a market share of 55 % or more on the retail trade market, each of them is considered as dominant, unless proved otherwise.

See further: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=358114

- **The Nordic Competition Authorities: Joint Report on the Financial Crisis – Regional Cooperation works: the Nordic Experience**

On 10 September 2009, the Nordic Competition Authorities published their joint report “Competition Policy and Financial Crisis – Lessons Learned and the Way Forward.” At their semi-annual meeting in Helsinki in March 2009, the Directors General of the Nordic competition authorities had discussed the financial crisis and had unanimously agreed on and stressed the importance of not weakening competition policy in times of crisis.

The Nordic competition authorities have been cooperating closely on competition issues for many years. The authorities from Sweden, Denmark, Finland, Iceland, Greenland, the Faroe Islands and Norway meet on a regular basis each year. An important part of the collaboration between the Nordic competition authorities are sector inquiries and joint reports on competition issues of common interest. The first joint report issued by the Nordic competition authorities was published in 1998. The reports from the last eight years are: Competitive Airlines (2002); A Powerful Competition Policy: on the Nordic market for electric power (2003); Telecompetition (2004); Nordic Food Markets (2005); Competition in Nordic Retail Banking (2006); Capacity for competition: on the Nordic Electricity Market (2007); Competition Challenges in the pharmacy and pharmaceutical sector (2008); and in 2009: Competition Policy and Financial Crisis - Lessons Learned and the Way Forward. All the reports listed above are, with one exception, published in English and are available either electronically at the websites of the respective competition authority, e.g.

<http://www.konkurransetilsynet.no/en/publications/Reports/> or in hardcopy on request.

- **Portugal: Monthly Bulletin on Liquid Fuel Statistics - Competition Authority closely monitors the Liquid Fuel Market**

The Portuguese Competition Authority (PCA) has initiated the publication of the Monthly Bulletin of Liquid Fuel Statistics, in the context of PCA's on-going monitoring of the liquid fuel market, which has already led to the publication of the Report on the In-depth Analysis of the Liquid Fuel and Bottled Gas Sectors in March 2009. So far, four Bulletins have been issued, covering August to November 2009.

The Monthly Bulletin provides information on liquid fuel prices and domestic quantities and is divided into three parts. The first part analyses price movements, using charts and brief comments. The price statistics published in the Monthly Bulletin are as follows:

- Monthly average of one-month futures prices of crude oil (Brent), in dollars per barrel (USD/bbl);

- Monthly average of international spot prices (Platts, Rotterdam, FOB NWE) of 95 unleaded gasoline and road diesel fuel, in Euros per litre (€/lt);
- Monthly average of pre-tax prices (AFTP) and retail prices (ARP) of 95 unleaded gasoline and road diesel fuel, in mainland Portugal, in Euros per litre (€/lt).

The second part analyses the evolution of quantities, also using charts and brief comments. The statistics on quantities published in the Monthly Bulletin are as follows:

- Domestic demand for gasoline and road diesel fuel, in millions of litres (or thousands of m3);
- Domestic gasoline and road diesel fuel imports, in millions of litres (or thousands of m3).

Finally, the third part, which takes the form of a statistical appendix, includes tables with the monthly statistics on average prices and on demand and import volumes.

The Monthly Bulletin complements the quarterly Newsletter on liquid fuels and bottled gas that the PCA has been publishing since 2004. In this way, the PCA seeks to further contribute to a better understanding of the market: this will allow debate on the matter to be based on comparative data from regular monthly statistical series which reflect a shorter time-lag than the one of the quarterly Newsletters.

The Monthly Bulletin is published at PCA's website at the end of the month following which the latest price statistics are made available.

- Report on the In-depth Analysis of the Liquid Fuel and Bottled Gas Sectors:
http://www.concorrenca.pt/download/AdC_Relatorio_Combustiveis_Liquidos_Gas_Engarrafado_em_Portugal_Marco2009.pdf
- Monthly Bulletin 1-2009 Liquid Fuel Statistics:
http://www.concorrenca.pt/download/Boletim_Mensal_Combustiveis_200908.pdf
Statistical Annex:
http://www.concorrenca.pt/download/Estatisticas_Combustiveis_200908.xls
- Monthly Bulletin 2-2009 Liquid Fuel Statistics:
http://www.concorrenca.pt/download/Boletim_Mensal_Combustiveis_200909.pdf
- Monthly Bulletin 3-2009 Liquid Fuel Statistics:
http://www.concorrenca.pt/download/Boletim_Mensal_Combustiveis_200910.pdf
- Monthly Bulletin 4-2009 Liquid Fuel Statistics:
http://www.concorrenca.pt/download/Boletim_Mensal_Combustiveis_200911.pdf.pdf

• **Sweden: Research Report on Collective Instalment of Broadband Internet or Cable-TV**

In October 2009, the Swedish Competition Authority published a report in which an economic analysis of the effects on competition from collective instalment of broadband internet or cable TV was carried out. Ph.D. Thomas Tangerås was commissioned by the Authority to draft this report. The main result from his analysis is that such collective instalment promotes price competition.

Under collective instalment, i.e. when housing cooperatives and landlords negotiate the joint instalment of broadband Internet or cable-TV on behalf of their residents, every resident effectively delegates the purchasing decision to a third party who would put more emphasis on price differences relative to quality differences.

According to the author, the downside of a stronger focus on price is a weaker focus on quality, which could stem from a possible "principal-agent problem" between the tenants (the

principals) and the landlord (the agent). The solution to quality problems is not a ban on collective instalment but to address this specific demand-side incentive problem.

Collective instalment may also pose a barrier to entry whereby established suppliers can commit to competing aggressively against new entrants. The author concludes that in their approach to collective instalment competition authorities have to assess whether competition is best promoted by fiercer competition among established firms or by entry on the market.

Full report available in Swedish at:

http://www.kkv.se/upload/Filer/Trycksaker/Rapporter/uppdragsforskning/forsk_rap_2009-6_Tvbredband.pdf

- **United Kingdom: Office of Fair Trading publishes Assessment of Discretionary Penalties Regime and Guide on Competition as an Essential Consideration for Successful Government Policy**

Assessment of Discretionary Penalties Regime

The OFT published on 21 October 2009 a final report assessing the deterrent power of the UK penalties regime against the background of the current literature and the practice observed in five other regimes. It looks at how an overall penalty regime compares with an 'optimal' regime.

The research sheds light on two interesting questions: whether the OFT's fines are too high and whether firms are disproportionately penalized due to their size. It suggests that the OFT's fines are relatively low and that generally fines are not biased by firm size.

In looking at economic literature, the report suggests that complementary means of achieving deterrence should be used alongside fines including sanctions on individuals, leniency, settlements and private actions.

See further: http://www.offt.gov.uk/advice_and_resources/resource_base/economic-research/

Competition an Essential Consideration for Successful Government Policy

On 8 September 2009, the OFT published a guide for national policy makers on how they can identify and minimize unintended long term impacts on competitive markets when fulfilling other policy objectives. It provides a framework for analyzing how Government intervention can affect markets for the good as well as the bad, examining reasons for intervention, types of intervention and key points for policy makers.

John Fingleton, the OFT's CEO, said at the launch of the paper: "We hope this work will help build an appreciation of the importance of maintaining open, competitive markets as well as how wider policy initiatives might inadvertently act as a long term 'dead hand' on effective markets."

See further: <http://www.offt.gov.uk/news/press/2009/109-09>

SECTOR INQUIRIES

- **Italy: Antitrust Authority has closed its Sector Inquiry on Editorial Distribution**

On 23 September 2009, the Italian Competition Authority concluded a sector inquiry into the editorial distribution sector. In particular, the inquiry showed that this sector is marked by competition-related constraints and restrictions. The modernization of the distribution sector would be necessary to improve the efficiency of distribution in order to face the new challenges from the Internet and the free press.

The sector inquiry has identified two major areas for intervention: (i) the opening of news-points of sale (also called news-stands) should be liberalized in order to facilitate the entry of newcomers throughout the supply chain; (ii) the compensation criteria for distributors and retailers need to be revised to ensure supplies to individual news-stands and the economic equilibrium of independent distributors.

As for the first point, experience elsewhere in Europe suggests that the full liberalization of points of sale is the key element for competition. Competitive dynamics tend to be suffocated by existing regulations which have typically been left to municipal policies and authorization procedures. Full liberalization of points of sales is also foreseen by the Services Directive (the deadline for the national transposition of the Directive was the end of December 2009). As for compensation in the supply chain, the economic links in the editor-distributor-retail distribution supply chain need to be revised. In particular: the specification of economic terms and conditions, from publishers all the way down to retailers, needs to be based on more flexible principles (i.e. remuneration proportioned to the degree of specialization of the retailer or to the quality of the service; the introduction of the requirement of a minimum turnover from the retailer with a corresponding obligation from the distributors to supply all the retailers that reach this requirement; the remuneration to the local distributor must refer to the “distributed” products rather than the “sold” products). Relationships between local distributors and news-stands also need to be reviewed. To reduce the tension between authorized retailers and reluctant distributors, a minimum turnover requirement could be applied to retailers while distributors could assume a corresponding commitment to re-supply all retailers that satisfy these minimum requirements. Retailers with lower sales should be free to acquire newspapers through alternative channels, such as distributors from neighbouring areas or through direct pick-up from distribution centres.

http://www.agcm.it/agcm_ita/DSAP/DSAP_IC.NSF/bcf0799f25d242c6c12564ac004bf2a5/eb59de14947f6753c125731c00581b99?OpenDocument

- **Romania: Competition Council publishes the Final Report of the Sector Inquiry into the Retail Food Sector**

The Romanian Competition Council published in September 2009 the final report of the sector inquiry into the retail food sector. The sector inquiry focused on eight categories of food products having as a common characteristic a price inelastic demand such as: bread, milk, poultry, pork, eggs, wine, processed meat and oil. The information presented in the report focused mainly on the market analysis, slotting allowances, category management agreements, bargaining power, price structure and “the most favoured customer” clause. The report took into account the replies received from over 250 companies and professional associations. The sector inquiry raised concerns about possible anticompetitive practices and resulted into the initiation of four investigations in the sector.

http://www.consiliulconcurrentei.ro/documente/Raport_18431ro.pdf

ANNUAL REPORTS OF ALL ECN MEMBERS:

http://ec.europa.eu/competition/ecn/annual_reports.html

OTHER ISSUES OF INTEREST

EVENTS

- **20th Anniversary of the Italian and the Polish Competition Authorities in 2010**

Poland: 20th Anniversary of the Competition Authority in 2010

In 2010 the Polish Office of Competition and Consumer Protection (UOKiK) celebrates its 20th anniversary. To mark this important occasion, the UOKiK is planning to organise a series of events and conferences promoting both competition and consumer protection.

The first event that was held as part of the celebrations was an international Seminar on Current Issues in Merger Control which took place in Warsaw on 29 October 2009. The seminar was organised under the umbrella of the Central European Competition Initiative (CECI), a forum for co-operation formed by the NCAs from the Czech Republic, Hungary, Poland, Slovakia, Slovenia and Austria. The UOKiK is also planning to publish a jubilee collection of essays from renowned authors entitled 'Changes in Competition Policy over the Last Two Decades', consisting of four parts devoted to unlawful agreements, merger control, State aid and competition policy challenges. In March, September and November 2010, conferences organised by the UOKiK's branch offices will take place in Gdansk, Krakow and Poznan respectively. The culmination of the celebrations will be the Jubilee Conference on Current Issues in Competition Law, to be held on 27 May 2010 in Warsaw, to which we would like to invite the readers of the ECN Brief.

The anniversary marks a significant date in the history of Polish competition protection but also a milestone in Poland's history as such. When the agency was in the process of being established in 1990, Poland was in the midst of political and economic transformation. Poland was the first country of the former communist block to adopt a competition law and to set up an agency responsible for its enforcement. The anniversary constitutes a unique opportunity to look forward to the future and consider the most cutting-edge issues in competition law and policy with the view to the new challenges lying ahead of the NCAs.

See further: <http://www.20lat.uokik.gov.pl/>

Press spokesperson: Sonia Jóźwiak, sonia.jozwiak@uokik.gov.pl



Italy: 20th Anniversary of the Italian Competition Authority in 2010

To promote its 20th anniversary, the Italian Competition Authority (ICA) has organized a series of workshops and conferences on competition issues and consumer protection. The start of 2010 was heralded by a conference held on 21 January 2010 on “Convergence in the Electronic Communication sector. The competitive background on networks, services and contents: competition issues in an international perspective”. Then, on 29 January, together with the third University of Rome and LUISS University, the ICA organised a conference on “The Application of Consumer Law during a crisis period”. In February a second conference is foreseen on “The legal and economic aspects of private enforcement”.

In spring, a workshop on “Liberalization and competition” will focus, among other issues, on the national transposition of the EU Services Directive. In addition, together with the Think Tank Innovation and Competition (INTERTIC) and the Institute for Studies in Competition and policy (IMEDIPA) the ICA will organize a conference in April on “Progress in Competition Policy analysis”.

The final conference, to be held on 11 October 2010, will deal with the relationship between free competition and protectionism in the framework of the current financial and economic crisis.

See further: <http://www.agcm.it/ventennale.htm>



• **Portugal: PCA hosted III Lisbon Conference on Competition Law and Economics on 14-15 January 2010**

The Portuguese Competition Authority (PCA) hosted the III Lisbon Conference, which took place on 14-15 January 2010, in Lisbon, Portugal. The III Lisbon Conference gathered world-renowned experts in competition law and economics.

The agenda included discussions on several topics such as: two-sided markets;; reconciliation between competition policy, security of energy supply and environmental protection; competition policy in times of crisis, as well as intellectual property and single firm conduct. Furthermore, Mr. Peter Freeman, Chairman of the UK Competition Commission, spoke about “Robust Competition Decisions - the Quest for the Holy Grail” and Mr. Phillip Lowe, Director General for Competition of the European Commission, delivered a speech on “Competition policy – past and present challenges”. During the Opening Ceremony, a Protocol of Technical Cooperation between the Brazilian Competition Policy System (BCPS) and the PCA was signed. Moreover, the new *Competition and Regulation Journal* was pre-launched at the Closing Ceremony.

The discussions were led by over two dozen experts from competition agencies and sectoral regulators, the judiciary, international organizations, multinational companies and other organisations as well as lawyers and academics. The presence of internationally recognised experts from Europe, the United States and Brazil provided an opportunity to reinforce transatlantic debate on how to apply and reconcile legislation from those jurisdictions.

This Conference was attended by over three hundred participants from public and private practice, members of the judiciary, academics and students from over twenty different countries and international organisations.

The III Lisbon Conference served as a platform for the exchange of ideas and experiences on various aspects of the protection and promotion of competition. The quality of the speakers and moderators, along with the topics chosen for debate, made the III Lisbon Conference an excellent international conference, attracting highly qualified participants from a wide range of fields.

See further: <http://www.concorrenca.pt/en/IIILisbonConference/default.asp>

• **Austria: Bilateral Contacts of FCA with Representatives of European and Non-European Competition Authorities**

Over the last months the Federal Competition Authority (FCA), represented by its Director General Mr Theodor Thanner, had many bilateral contacts with representatives of European and Non-European Competition Authorities. The last contacts are as follows:

- On 17 November 2009 DG Thanner reported on "Competition and State Aid Law and Policy" in Chisinau, Moldova.
- On 11 November 2009 Anatoly Golomolzin, Deputy Head of the Federal Antimonopoly Service of the Russian Federation, visited the FCA for an exchange of experiences in the telecommunications sector as well as in the fuel sector.
- On 22 October 2009 DG Thanner invited Olexandr Melynchenko, Acting Chairman of the Ukrainian competition Authority, to intensify cooperation between Austria and Ukraine.
- On 22 October 2009 DG Thanner invited Bruno Lasserre, the President of the French Competition Authority, for bilateral talks.
- On 6 to 8 October 2009 DG Thanner attended the 30th Jubilee Meeting of the Interstate Council for Antimonopoly Policy (ICAP) in Erevan, Republic of Armenia.
- A Serbian Delegation paid a study visit to the FCA from 24 - 25 September 2009.
- DG Thanner attended the inaugural BRIC International Competition Conference on 1-3 September 2009 in Kazan, Russia (BRIC - group of nations comprising Brasilia, Russia, India and China).

• **Czech Republic: Report on the St. Martin Conference in Brno**

On 11 and 12 November 2009 the Czech competition authority held an international conference in its premises in Brno. This traditional event is called St. Martin conference and it focuses on new trends and developments in competition law and policy.

The topics dealt with in discussion panels included recent decision-making and advocacy practices of the Czech NCA, recent rulings of the Czech courts, new legislation, the relationship between intellectual property rights and competition, possible anticompetitive aspects of the exchange of information, experience and obstacles regarding the implementation of leniency programmes, abuse of buyer power by retail chains and interventions against anti-competitive conduct by governmental and regional authorities.

The conference was attended by more than 150 participants, mostly competition experts from the Czech business community, law firms, academics and governmental authorities, but also from abroad. Nine European Competition Authorities (NCAs), the European Commission and other foreign institutions were represented among the speakers and in the audience.

Documents from the conference and profiles of speakers are available at:

<http://www.compet.cz/en/competition/news-competition/st-martin-conference-2009-recent-trends-and-developments-in-competition-law-and-policy>

• Hungary: Visit of Commissioner Kroes at the Hungarian Competition Authority

On 25 November 2009, the Gazdasági Versenyhivatal (Hungarian Competition Authority – GVH) organised a conference on the "Balance of five years of competition policy – what the period since the EU accession brought to Hungary and this region".

On this occasion Neelie Kroes, European Commissioner for Competition Policy gave a speech. The EU is a family and families stick together both in good and bad times – said Commissioner Kroes during the Conference. Later, in an interview given to an economic daily newspaper and analysing the law approximation tendencies in the new Member States, Commissioner Kroes underlined that every new Member State has undertaken particular efforts to comply with the EU competition rules: national competition authorities, including in the new Member States, have become active enforcers and active contributors to the ECN.

As regards the five years performance of the GVH, Commissioner Kroes highlighted that since Hungary's accession to the European Union, the GVH has been widely recognised as a highly dedicated and pro-active national competition authority. She mentioned a few recent decisions of the GVH (e.g. on international payment cards and domestic banks concerning Multilateral Interchange Fees) and sector inquiries which have been carried out by the GVH during the last years into the mobile telecommunications, electric energy and retail banking sectors.

In conclusion, Commissioner Kroes recognized that in the past five years good progress has been made by Hungary and the GVH regarding the embedment of principles of EU competition law, but she also emphasized that the work is not yet done. As regards the tasks for the future, she identified abuse of dominant position as an area where greater enforcement could be achieved.

In his closing speech, Mr. Zoltán Nagy, the President of the GVH summarised the GVH five years of activity since the EU accession of Hungary. Questions concerning the world economic crisis were also touched upon. According to him, competition and competition policy are not part of the problem, but part of the solution. In his closing words Mr. Nagy said: "Competition policy for me and for the GVH is a service. It is for the Hungarian and European consumers, for the Hungarian and European economy."

See further:

http://www.gvh.hu/gvh/alpha?do=2&st=2&pg=133&m5_doc=6209

<http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/09/552&format=HTML&aged=0&language=EN&guiLanguage=en>

• Slovakia

International Seminar on Competition Enforcement

The Antimonopoly Office of Slovak Republic (AMO) hosted an international seminar devoted to Competition Enforcement on 23-25 November 2009. This seminar was organized in cooperation with the OECD. The main topics of the seminar were:

- Application of substantive tests and efficiency assessments
- Consumer harm/Theory of harm
- Ex-officio cartel investigations

Presentations were given by:

Mr. Daniel Donath, Economist, Chief Economist team DG COMP,
Mr. Alberto Heimler, Chairman of the Working Party on Competition and Regulation of the OECD,

Mrs. Caroline Wolberink, expert from the Netherlands Competition Authority
Mrs. Tineke Serlie, expert from the Netherlands Competition Authority,
Mr. Gyorgy Antalocy, expert from the Hungarian Competition Authority,
Mr. Zoltan Ay, expert from the Hungarian Competition Authority,
Mr. Antonio Capobianco, OECD expert

Representatives from the Czech Republic, Austria, Hungary and AMO participated in this event.

Seminar on Agreements restricting Competition

On 20 October 2009, the Antimonopoly Office of the Slovak Republic held the Agreements Restricting Competition Seminar, which was open to entrepreneurs, experts and professionals operating in the Slovak Republic. This event was devoted to discuss different subjects such as the types of agreements restricting competition, leniency programmes, block exemptions regulations and potential vertical restraints on the market.

PERSONALIA

• **Germany: New President appointed at the Bundeskartellamt**

On 5 November 2009, President Dr. Bernhard Heitzer left the Bundeskartellamt to become State Secretary at the Federal Ministry of Economics and Technology. Dr. Heitzer had been President of the Bundeskartellamt for the previous two and a half years. In his new position Dr. Heitzer will be supervising inter alia the Ministry's unit for general economic policy.

On 22 December 2009, Andreas Mundt was instated as the new President of the Bundeskartellamt. Mr. Mundt started his professional career in the Federal Ministry of Economics in 1991. Before joining the Bundeskartellamt in 2000 he was responsible for labour and social law in the parliamentary group of the Free Democratic Party (FDP).

After having served as a rapporteur in two Decision Divisions, Mr. Mundt became Head of the International Competition Matters Unit of the Bundeskartellamt. In 2005 he advanced to the office of Director of the General Policy Division.

Mr. Mundt is a lawyer and married with three children. Further information is available at: http://www.bundeskartellamt.de/wEnglisch/GeneralInformation/Lebenslauf_eW3DnavidW263.php

Press article (in German) available at:

<http://www.faz.net/s/Rub0E9EEF84AC1E4A389A8DC6C23161FE44/Doc~ED71A9A72B7814EFFF7FA7C21591351DD~ATpl~Ecommon~Scontent.html>

• **Hungary: The GVH has new Vice-Presidents**

On 26 September 2009, two new Vice Presidents of the Gazdasági Versenyhivatal (Hungarian Competition Authority – GVH) were appointed by the President of the Republic of Hungary.

Mr. Lajos Wallacher (Head of Legal Section of the GVH before the appointment) and Mr. Gábor Gadó (former Special State Secretary of the Ministry of Justice and Law Enforcement) have been functioning since the end of September 2009 as Vice Presidents. They were proposed by the President of the GVH to the Prime Minister who, in agreement with the proposal, submitted the nomination to the President of the Republic. In parallel with the appointment,

the President of the Republic charged Mr. Gadó with the responsibilities of the Chair of the Competition Council (which is the decision-making body of the GVH). Prior to the nomination by the Prime Minister, the candidates attended a public hearing at the competent committee of Parliament.

The appointment of Vice President is for a term of six years. Both persons may be reappointed. However, the Chair of the Competition Council may be reappointed only once.

- **Lithuania: Mr. Jonas Rasimas has been appointed to the Office as Chairman of the Competition Council**

As the Press Office of the President of the Republic of Lithuania announced, the President Dalia Grybauskaitė signed a Decree by which Jonas Rasimas, Ph.D, the current Member of the Competition Council has been appointed as Chairman of the Competition Council of the Republic of Lithuania. The President has commissioned the new Chairman to strengthen and reform the Competition Council in a way it will be able to fight against cartel agreements and monopolies and to ensure conditions for fair competition in all economy sectors.

- **The Netherlands: Two new Board Members**

On 1 October 2009 the NMa welcomed Henk Don and Jaap de Keijzer as new Board members.

Mr. Don and Mr. De Keijzer succeeded former Board members René Jansen and Gert Zijl. Mr. Jansen and Mr. Zijl officially completed their terms of office on that date. Pieter Kalbfleisch will remain in his position as Chairman of the Board.

Press spokesperson: Ms. Barbara van der Rest-Roest at +31 70 3303362 or +31 622793063 (outside office hours) or Mr. Paul Trienekens at +31 70 3305068 or +31 643004971 (outside office hours). Alternatively, you can send an email to the NMa press office at pers@nmanet.nl

- **United Kingdom: Re-appointment of John Fingleton at the Office of Fair Trading (OFT)**

On 17 November 2009, Kevin Brennan, Consumer Minister at the Department for Business, Innovation & Skills, announced the re-appointment of John Fingleton as Chief Executive at the OFT.

John Fingleton was first appointed on 30 September 2005. The re-appointment is for a further term of five years until 30 September 2015.

In his role as Chief Executive, Dr Fingleton has overseen a range of competition and consumer activity including actions on price-fixing in various sectors and bank overdraft charges. He is also Chair of the Steering Group of the International Competition Network.

TRAINING OF NATIONAL JUDGES IN EU COMPETITION LAW

- **Training of National Judges in EU Competition Law and Judicial Cooperation between National Judges**

The Commission is currently evaluating the proposals which have been submitted further to the call for proposals for the 2009 European Commission's grant programme "Training of National Judges in EC Competition Law and Judicial Cooperation between National Judges". The call for proposals had been published with a deadline for applications on 27 November 2009. <http://ec.europa.eu/dgs/competition/proposals2/>

This call is based on the [Decision No 1149/2007/EC](#) of the European Parliament and the Council adopted September 2007 establishing for the period 2007-2013 the Specific Grant Programme Civil Justice as part of the General Programme Fundamental Rights and Justice. One of the actions provided for by this Decision concerns training of national judges in European competition law, including state aid rules and private enforcement training. Grants may be awarded to support measures taken by bodies which foster judicial cooperation and other measures aimed at promoting training in European competition law for national judges and cooperation between them.

This grant programme represents one of several tools aiming at increasing the knowledge of national judges of EC competition rules including state aid and private enforcement claims. In 2010, ten beneficiaries will cover more than ten countries' jurisdictions (Portugal, Italy, Sweden, Bulgaria, Romania, Latvia, Lithuania, Malta, Hungary etc.). Nevertheless, the Commission receives an increasing number of demands for judicial training in competition law.

In order to find the most adequate training solution, any suggestions with regard to training needs are welcome at the following address: comp-training-judges@ec.europa.eu