Merger control: Main developments between 1 May and 31 August 2007

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Introduction

The number of notifications continued to reach record levels with a total of 170 transactions being notified between 1 May and 31 August 2007. The number of decisions adopted also reached record levels with 140 decisions being taken during the trimester. Of these some 130 transactions were approved without conditions pursuant to Article 6 (1) (b) (of which 92 decisions were adopted via the simplified procedure) and 3 proposed acquisitions were approved subject to conditions and obligations pursuant to Article 6 (2). The Commission cleared one case unconditionally after a second phase investigation and cleared three others subject to conditions. There was also 1 prohibition decision taken in June. One case was withdrawn during the Phase II investigation. The Commission also opened 5 Phase II investigations (Article 6 (1) (c)) during the period.

A — Summaries of decisions taken under Article 6 (2)

Luvata/Eco

On 3 August the Commission approved the proposed acquisition of the Italian company Eco by the Finnish group Luvata. The Commission’s decision was conditional upon the divestiture of one of Luvata’s plants in Europe.

Luvata is a company active in metal fabrication, component manufacturing and related engineering and design services with a focus on copper and copper alloy products used for heat transfer, electrical and electronic conductivity, signal transmission and corrosion resistance. Eco is an Italian manufacturer of heat exchange products such as coils. It was the property of the private equity fund Compass.

The Commission examined the competitive effects of the proposed merger in the coil markets, where both companies are active as suppliers. Coils are systems which enable the transfer of heat from one liquid or gas to another without the two mixings. They are particularly used in air-conditioning (HVAC) and refrigeration systems and represent up to 40% of the total cost of these systems.

The Commission’s market investigation showed that the proposed acquisition, as initially notified, could significantly reduce competition as regards the supply of coils to manufacturers of condensing units, a component of refrigeration systems. The Commission found that Eco was the largest and Luvata the second largest suppliers in Europe. In addition the market investigation pointed toward possible competition concerns on the market for coils used in HVAC.

To address the Commission’s serious doubts as to the compatibility of the proposed transaction with the Single Market, Luvata undertook to divest the plant where coils for condensing units and most coils for HVAC are manufactured. After checking these undertakings with other market participants the Commission concluded that they were suitable to remedy the serious doubts.

TUI/First Choice

In June the Commission gave its approval to the proposed acquisition of First Choice, a UK travel services company, by TUI, parent of the German TUI group, active in tourism and shipping services. The Commission’s decision was conditional upon the divestiture by TUI of its Irish business operating under the ‘Budget Travel’ brand.

TUI is the parent company of TUI Group, offering package tours, travel agency services, flights, hotel accommodation, car rental and cruises. First Choice is also active in tourism and supplies package tours, flights, travel agency services, car rental and cruises to customers in a number of Member States. The proposed takeover thus involved two important suppliers of package holidays, inter alia in the UK and Ireland. The UK and Irish markets have vertically integrated tour operators (Thomas Cook/MyTravel, TUI and First Choice), a large number of smaller independent tour operators for short-haul holidays and a few medium-size operators like Virgin Holidays and Kuoni for long-haul package holidays.

The Commission found that the proposed transaction as initially notified raised serious competition concerns in Ireland, where the parties would have been by far the leading tour operator

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for short-haul package holidays, controlling more than 50% of the market, and would have had the largest, nationwide network of travel agencies. Package holidays and their distribution through high street travel agents are still popular in Ireland, where broadband access to the Internet and the range of independent travel options are less developed than in the UK.

To address the Commission’s concerns, TUI offered to divest its Irish business, ‘Budget Travel’. In view of this commitment, the Commission found that the transaction would no longer raise serious competition doubts in Ireland.

As regards the UK, the Commission’s recent market investigations concerning both this transaction and the merger between Thomas Cook and MyTravel cleared by the Commission on 4th May 2007 showed that the industry had changed substantially since the in-depth analysis, carried out in 1999 in the context of the Airtours/First Choice case. This decision was subsequently annulled by the Court of First Instance on 6th June 2002. The development of the Internet gives consumers access to a wide range of travel sites so that they can choose and book their holidays independently of a travel agent. In 2005, Internet bookings accounted for more than 35% of all UK overseas holidays compared to 31% via travel agents. In parallel, the rise of low cost airlines has opened up many new holiday destinations and encouraged independent travelling. In the UK, independent holidays have increased by over 100% since 1996 and have accounted for the majority of trips abroad since 2003 (58% in 2005).

The Commission’s investigation found that in view of the combined market shares of TUI and First Choice on the markets for the supply of short-haul and long-haul package holidays in the UK, the proposed concentration would not enable the parties to independently raise prices. The parties would in particular continue to experience competition from Thomas Cook/MyTravel, as well as from numerous smaller package holiday operators.

The Commission found that the proposed operation would not significantly increase the risk of coordination of prices or capacity between the remaining major tour operators in the UK, taking into account not only the transaction between Thomas Cook and MyTravel but also the recent developments in the travel industry.

The Commission also concluded that the proposed transaction would not adversely affect access to airlines and accommodation capacity for other tour operators, given that the combined market position of TUI and First Choice in these whole-sale markets would not be large enough to seriously affect the ability of smaller tour operators to compete on the market in the UK. In relation to travel agency services, the parties account for a relatively small number of retail outlets whereas a large majority of travel agents would remain independent from the parties.

In view of the above, the Commission considered that the proposed takeover would not harm UK consumers, who would continue to have access to package tours at competitive prices.

The Commission also assessed the impact of the proposed transaction on tour operating and/or travel agency services markets in France, The Netherlands, Austria and Germany and on the cruise markets in the UK and Ireland. The Commission concluded however that the proposed acquisition would not give rise to a significant impediment of competition in light of the parties’ position on these markets and the presence of effective competitors.

**Nestlé/Novartis**

In June the Commission approved the proposed acquisition of Novartis’ Medical Nutrition business by Nestlé. The approval was granted subject to the fulfilment of certain conditions.

Nestlé is active in the production, marketing and sale of a large variety of food and beverage products, including healthcare nutrition products. Novartis’ Medical Nutrition business (NMN) is part of the consumer health division of the Swiss company Novartis and is active in the development, manufacture, marketing, distribution and sale of healthcare nutrition products.

The Commission examined the competitive effects of the proposed merger in the healthcare nutrition markets, in particular in the enteral nutrition market, where both companies are active as suppliers. Enteral nutrition products are delivered to patients via the intestinal tract, either orally, if the patient is able to drink (sip-feeding), or directly into the gastric tract through the stomach via tubes and pumps (tube-feeding). These products are sold through two different distribution channels, the hospital channel and the outpatient channel (mainly through pharmacies). The products sold in the outpatient channel are reimbursed by national health care systems.

The Commission’s investigation revealed that the proposed transaction would not significantly weaken competition in most of the national markets concerned because a number of credible alternative competitors would continue to exercise a competitive constraint on the merged
entity. However, the Commission found that the proposed transaction could significantly impede effective competition in two national markets, namely France, where the transaction would bring together two of the main suppliers and create a clear market leader, and Spain, where it would strengthen the current leading position of Novartis.

The Commission found significant barriers to entry and expansion linked to the importance of established brands and concluded that the proposed transaction as initially notified would be likely to weaken competition and therefore raised serious doubts as to its compatibility with the common market in France and Spain.

To address the Commission’s serious doubts and remove the competition concerns, the parties agreed to divest the entire healthcare nutrition business of Novartis in France and the entire healthcare nutrition business of Nestlé in Spain, thereby removing entirely the overlaps brought about by the proposed transaction. After market testing these remedies the Commission concluded that they would be sufficient to address the competition concerns.

B — Summaries of decisions taken under Article 8 (1)

Travelport/Worldspan

On 21 August the Commission cleared Travelport’s proposed acquisition of sole control of Worldspan. Both companies provide electronic travel distribution services through a Global Distribution System (GDS). There were initial concerns that the proposed transaction would give rise to competition problems on the market for the provision of GDS services to travel service providers (airlines, car rental companies, hotels, etc) in the European Economic Area (EEA) and to travel agents in several Member States (Belgium, Hungary, Ireland, Italy, The Netherlands and the UK). A second phase investigation was therefore undertaken. This investigation showed that the acquisition was unlikely to result in unilateral price increases by the merged firm. It also found that the reduction of the number of GDSs operating in the EEA from four to three would be unlikely to result in coordinated behaviour between the remaining GDSs.

A GDS allows travel service providers to distribute their content to travel agencies and consumers and enables travel agencies to access and book travel content such as flights, rental cars and hotel accommodation. There are four GDSs operating on a global basis. Travelport owns and operates Galileo, which is the second largest GDS in the EU. Worldspan is the fourth largest in the EU. The remaining two are Amadeus (the largest GDS in the EU) and Sabre (the third largest).

Through the proposed transaction, Travelport would acquire sole control of Worldspan. On the market for the provision of GDS services to travel service providers, the merged entity would remain the second largest GDS (behind Amadeus).

GDSs operate in a two-sided market in which travel service providers seek the broadest possible distribution of their travel services. Since GDSs have different networks of travel agencies, which only partially overlap, travel service providers usually conclude agreements with all GDSs. Because GDSs provide similar travel content, travel agencies normally only need one GDS to obtain access to the travel content they need for their operations.

The Commission’s in-depth investigation revealed that the market positions of travel service providers and travel agencies would remain sufficiently strong to exclude the likelihood of unilateral price increases by the merged entity. In fact, travel service providers would always have the possibility to withdraw part of their travel content from a given GDS and to distribute it solely via other GDSs and/or their own web-site.

On the market for travel agents, the in-depth investigation has confirmed that in those Member States where the merged entity would obtain high combined market shares, it seems unlikely that the merged entity would be able to increase prices because of the strong degree of competition between the remaining GDSs. Incentive payments from GDSs to travel agents have increased over the last five years and switching costs do not prevent travel agents from switching GDSs.

The in-depth market investigation also confirmed that the reduction of the number of GDSs operating in the EEA from four to three would be unlikely to result in the coordination of competitive behaviour between the remaining GDS providers. In particular the complexity of the pricing structure and product offerings of the GDSs limit the transparency of the market and thus the possibility of successful monitoring of coordinated behaviour.

C — Summaries of decisions taken under Article 8 (2)

SFR/Télé 2 France

In July the Commission approved the purchase of the fixed telephony and Internet access businesses of Télé 2 France by the French mobile telephony
operator SFR. As originally notified, the planned operation raised serious competition concerns in pay-TV markets in France and the Commission launched an in-depth investigation. These concerns have been addressed by commitments guaranteeing DSL operators equal treatment with the new entity as regards access to television content owned by the Vivendi group, of which SFR forms part.

SFR is a French company active mainly in the mobile telephony sector. It is jointly controlled by Vivendi and Vodafone. Vivendi is a French conglomerate active mainly in the media and telecommunications sectors. Vodafone is a British telecommunications company. Télé 2 France, a subsidiary of Télé 2 Europe, is active in France in the areas of fixed telephony, mobile telephony, Internet access provision and pay-TV distribution by DSL. Télé 2 France's mobile telephony business is not affected by the operation.

It was considered that the proposed merger would have an impact on the pay-TV sector in France. Vivendi, through its subsidiary Groupe Canal+, occupies a very strong position throughout the pay-TV sector in France. In the light of the pay-TV distribution activities carried on by Télé 2 France, the Commission examined whether the operation was likely to give rise to competition concerns in that sector.

The market survey carried out by the Commission revealed that DSL operators are collectively the main players capable of bringing competitive pressure to bear on the Vivendi group in the relevant markets. Nevertheless, despite being on the increase, the competitive pressure exerted by DSL operators is still fairly limited given the restrictions on access by such operators to attractive television content (TV programmes and channels) which is largely controlled by Vivendi.

In view of the strong vertical integration of the Vivendi group, the planned operation, as originally notified, would have provided Vivendi with the perfect opportunity to grant its SFR/Télé 2 subsidiary preferential access to the television content it owns. Such preferential access would have given Télé 2 a substantial advantage over other DSL operators. Such a strategy of discrimination on the part of Vivendi would therefore have had the effect of substantially weakening DSL operators competing with SFR/Télé 2 both in the downstream distribution market and in the upstream markets for the acquisition of television content.

In order to remove these competition concerns, Vivendi and SFR proposed commitments aimed at ensuring that Vivendi would not discriminate against DSL operators in favour of SFR/Télé 2. The commitments concern, first, access to the channels produced by Vivendi or for which Vivendi holds exclusive DSL distribution rights. Vivendi will allow DSL operators to distribute all the channels to which it gives SFR/Télé 2 access on normal market terms, which may not be less advantageous than those granted to SFR. Secondly they concern the channel packages distributed by Vivendi through DSL networks (such as CanalSat and Canal+ Le Bouquet) and the PPV services provided by Vivendi. Vivendi will not be able to grant SFR/Télé 2 subscribers more favourable terms than those granted to subscribers of other DSL operators. Thirdly, they prohibit SFR/Télé 2 from acquiring exclusive DSL distribution rights to channels produced by third parties for which Vivendi does not hold such rights. Lastly, they prohibit Vivendi and SFR from acquiring exclusive VoD rights to recent American and French films.

Universal/BMG

In May the Commission approved the proposed acquisition of the music publishing business of Bertelsmann Music Group (BMG) of Germany by the US-based company Universal. The Commission found that the proposed merger, as initially notified, raised serious doubts as regards adverse effects on competition in the market for music publishing rights for online applications. However, the Commission's investigation found that these concerns would be removed by the remedies package proposed by the parties concerning the divestiture of a number of publishing catalogues.

Universal, a US-based company owned by the French company Vivendi, is a leading player in the music recording and music publishing business. Universal proposed to acquire the worldwide music publishing activities of BMG, a subsidiary of the German media company Bertelsmann. Whereas music recording concerns the rights of the record company and the singer in the song performance, music publishing relates to the rights of song writers (authors), i.e. of composers and lyricists.

Music publishers exploit the copyrights of authors by granting licences to the various operators in the music business. The most common music publishing rights are mechanical rights (e.g. for recorded music), performance rights (e.g. for concerts and TV and radio broadcasting), online rights (e.g. for online music downloading, mobile video streaming and mastertones (clips of songs used in place of ringtones on mobile phones) and synchronisation rights (e.g. for advertisements and film music). For mechanical and performance rights, including rights for the online exploitation of
music, collecting societies have traditionally carried out the licensing on behalf of the songwriters and their publishers.

The Commission’s in-depth market investigation has shown that no competition concerns would arise from the merger where the copyrights are still administered by the collecting societies, who usually charge uniform tariffs for the complete administered repertoire.

However, in the field of online rights, publishers have recently started to withdraw their respective rights for Anglo-American song repertoires from the traditional collecting societies system. They have started to transfer their rights to selected collecting societies acting as agents for individual publishers and granting EEA-wide licences — a possibility which has been reaffirmed by a Commission Recommendation issued in 2005.

The market investigation showed that, following these withdrawals, pricing power had shifted from the collecting societies to the publishers. The Commission’s concern was that in this new environment, Universal would after the merger be able to exert control over a large percentage of titles either via its (fully or partly owned) copyrights based on the song-writers’ works or via its rights based on the individual recordings. In a number of countries, Universal would even control more than half of the chart hits and thereby become a “must-have” product for all online and mobile music services, whose possibilities to circumvent Universal would be significantly reduced by the merger.

The Commission therefore had concerns that the merger would give Universal the ability and the incentive to increase prices for online rights as regards Anglo-American repertoires. In order to remove the Commission’s concerns, Universal committed to divest a number of important catalogues, covering Anglo-American copyrights and contracts with authors. These catalogues include the EEA-activities of Zomba UK, 19 Music, 19 Songs, BBC music publishing, Rondor UK as well as an EEA licence for the catalogue of Zomba US. These catalogues contain many bestselling titles and several successful authors such as The Kaiser Chiefs, Justin Timberlake and R. Kelly. Although the competition concerns only relate to online rights, for reasons of viability the commitments cover the complete range of copyrights (i.e. also mechanical, performance, synchronisation and print rights). In the light of the quality of the divested catalogues, the Commission concluded that the commitments would remove the competition concerns and therefore was able to clear the transaction.

For a more extensive treatment of this case see the article in the main section of this Newsletter.

**VB Autobatterie GmbH/Italian FIAMM**

In May the Commission approved the acquisition by VB Autobatterie GmbH of Germany of the automotive battery business of the Italian FIAMM group. The approval decision was made subject to the implementation of certain conditions that remedy the competition concerns. The Commission’s in-depth market investigation confirmed initial concerns that the proposed acquisition, as originally notified, would significantly impede competition in the markets for car and truck batteries by making VB the dominant player.

VB Autobatterie GmbH notified its planned acquisition of the automotive battery business of FIAMM on 26 October 2006. Both VB and FIAMM are active in the production and sale of car and truck batteries. They supply batteries to car and truck manufacturers in the original equipment manufacturing and service markets (“OE markets”) as well as sales as replacement parts to independent providers of repair services, wholesalers for automotive parts, supermarkets and other retail outlets in the so-called ‘independent aftermarket’ (IAM). VB is the automotive starter battery joint venture of Johnson Controls Inc. (US) and the German Robert Bosch GmbH and is the leading supplier of automotive starter batteries in the EEA.

In the OE market for batteries supplied to car and truck manufacturers, the Commission’s in-depth investigation confirmed that the transaction, in the form originally notified, would make VB the dominant player (or strengthen its dominance in the case of truck batteries) and would seriously limit the ability of car and truck manufacturers to switch to alternative suppliers. Neither competitors nor customers would be in a position to exercise sufficient constraints on VB’s behaviour.

Due to the strong market position of the FIAMM group in Italy, Austria, the Czech Republic and Slovakia prior to the merger, the main concerns about the impact of the planned transaction would be on the IAM in these countries. The Commission found that the planned acquisition would combine in each of these countries VB’s strong brands with FIAMM’s strong national brands and would give VB a very strong position on the market unmatched by any other supplier. The Commission took into account, in the assessment of the transaction, the likely effects on the market stemming from FIAMM’s financial difficulties.
VB offered remedies to address the concerns both in the EEA-wide original equipment car and truck markets and the respective national replacement part (IAM) markets. These included the diversification of certain manufacturing capacity and of some key FIAMM brands relevant to the replacement part (IAM) markets of Italy, Austria, the Czech Republic and Slovakia. The Commission carefully assessed the remedies and concluded that the remedy package would be sufficient to remove competition concerns in a clear-cut manner.

The Commission concluded that the implementation of the planned merger as modified by the remedies offered would not significantly impede competition in the European Economic Area (EEA) or any substantial part of it. The Commission's decision concluded the assessment of the transaction notified in October 2006, without prejudice to the respective positions of the parties regarding the current contractual status of the transaction.

D — Summaries of decisions taken under Article 8 (3)

Ryanair/Aer Lingus

On 27 June the Commission took the decision to prohibit the proposed takeover by Ryanair of Aer Lingus. Ryanair is an Irish-based “low-cost” airline, offering point-to-point scheduled air transport services on more than 400 routes across Europe. With more than 40 million passengers carried in 2006, Ryanair is one of the largest airlines in the world. Aer Lingus is the former Irish “flag”-carrier, which has changed its business model in recent years to offer mainly “low-cost” point-to-point short-haul flights. Aer Lingus operates more than 80 routes and carried more than 8.6 million passengers in 2006. Aer Lingus’ activities are limited to routes to and from Ireland, operating from Dublin, Shannon and Cork.

Both Ryanair and Aer Lingus are currently by far the largest airlines offering short-haul flights to and from Ireland and constitute the main competitive constraints on each other on these routes. Their position is particularly strong to and from Dublin, where the merged entity would have accounted for around 80% of all intra-European traffic. In line with its approach in previous airline merger cases, the Commission analysed the effects of the merger on the individual routes on which both companies’ activities overlap. The Commission’s extensive in-depth investigation of the case (involving contacts with dozens of airlines, other third parties, a consumer survey at Dublin airport and various quantitative analyses) showed that Aer Lingus and Ryanair currently compete directly with each other on 35 routes to and from Ireland. On 22 of these routes, the merger would have left customers with a monopoly. On the remaining routes, Aer Lingus and Ryanair are each other’s closest competitors, and the merger would have significantly reduced consumer choice, with the merged entity holding market shares of over 60%.

The market investigation also revealed that most airlines were unlikely to enter into direct competition against a merged Ryanair/Aer Lingus in Ireland. This is not only because the merged entity would be able to operate from the very large bases of Ryanair and Aer Lingus in Ireland, having access to customers through their two well-established brands, but also because Ryanair has a reputation of aggressive retaliation against any entry attempt by competitors. A merged Ryanair/Aer Lingus would have had even greater flexibility to engage in selective short-term price reductions and capacity increases if competitors entered routes to/from Ireland, in order to protect its powerful market position. The likelihood of entry is further reduced by peak-time congestion at Dublin airport and other airports on overlap routes.

Ryanair offered various remedies to solve the competition issues identified. However, the scope of these remedies was insufficient to ensure that customers would not be harmed by the transaction. In particular, the limited number of “slots” offered was unlikely to stimulate market entry of a size necessary to replace the competitive pressure currently exercised by Aer Lingus. This was confirmed by the results of the extensive market tests of the proposed remedies.

The facts of this case differ from previous airline mergers. This was the first time the Commission had to assess a proposed merger of the two main airlines in a single country, with both operating from the same “home” airport — Dublin. It was also the first time the Commission had to assess a merger of two “low-cost” airlines, operating on a “point-to-point” basis. Finally, the number of overlapping routes is unprecedented compared with previous airline cases. The acquisition would have combined the two leading airlines operating from Ireland which currently compete vigorously against each other. The Commission concluded that the merger would have harmed consumers by removing this competition and creating a monopoly or a dominant position on 35 routes operated by both parties. This would have reduced choice and, most likely, led to higher prices for more than 14 million EU passengers using these routes to and from Ireland each year. The Commission’s investigation and market test of remedies offered
by Ryanair demonstrated that these remedies were inadequate to remove the competition concerns. In particular the limited number of airport “slots” offered was not likely to lead to competition sufficient to replace the competitive pressure currently exercised by each airline on the other.

For a more extensive treatment of this case see the article in the main section of this Newsletter.

E — Summaries of decisions taken under Article 9

AIG Capital Partners/Bulgarian Telecommunications Company

In July the Commission received a request for the referral of this case under Article 9(2) (a) and 9(2) (b) of the EU Merger Regulation from the Bulgarian Competition Authority, but decided to deal with the case itself. The reasons for this were that the request did not meet the criteria set out in Article 9. As regards Art. 9 (2) (a) the parties were not active in the same markets. AIG Capital Partners provides investment advice and market asset management products and services on an international basis. Its parent company AIG offers a wide range of insurance products. Bulgarian Telecommunications Company (BTC) operates a fixed and mobile data and other telecommunication networks and data systems in Bulgaria. The operation did not therefore meet the second criterion of Article 9 (2) (a) which requires that the proposed concentration should ‘threaten to affect significantly competition within a market in a Member State’. With regard to the request for a referral under Article 9 (2) (b) the operation concerned telecommunications for which the markets are national, i.e. the whole of Bulgaria in this case. Bulgaria is a substantial part of the common market. Therefore this second criteria for referral was not fulfilled either.

The Commission informed the Bulgarian Competition Authority of its conclusions in a decision dated July 25 and later in the month cleared the operation.

F — Summaries of decisions taken under Article 22

Apax Partners /Telenor Satellite

In May the UK Office of Fair Trading (OFT) formally requested the Commission, pursuant to Article 22 of the Merger Regulation, to examine the proposed acquisition of Norwegian Telenor Satellite Services, a company providing satellite-based communication services, by Apax Partners, a French management company of investment funds. Apax Partners manages investment funds which hold interests in companies active in different sectors.

The procedural condition for a referral request to be made by a Member State, pursuant to Article 22(1) of the EC Merger Regulation is that ‘the referral shall be made at most within 15 working days of the date on which the concentration was notified, or if no notification is required, otherwise made known to the Member State concerned’. As the operation had not been notified in the UK, which has a voluntary notification system, the question arose as to when the Member State became aware of the operation. It was considered that the notion of “made known”, derived from the wording of Article 22, should in this context be interpreted as implying sufficient information to make a preliminary assessment as to the existence of the criteria for the making of a referral request pursuant to Article 22. In this case such an assessment could only be made on the basis of the information contained in the “satisfactory submission of the parties” of 13 April 2007, made in response to the initial information request of the OFT. As the request was made 4 May 2007 it was considered that this condition was fulfilled.

In addition Art. 22 requires that the operation should: i) affect trade between Member States; and (ii) threaten to significantly affect competition within the territory of the Member State(s) making the request. The OFT argued that the relevant geographic market for two-way telecommunications services is likely to be at least EEA wide and that therefore the first condition was met. The OFT pointed out that the combined entity would have a substantial market share of the global market for satellite communications services and that in some narrower segments it would be even higher depending on customer type. In particular it identified concerns relating to the parties activities in relation to Inmarsat where the number of distributors would be reduced from three to two.

As regards the second condition on the basis of the prima facie analysis submitted by the United Kingdom, the Commission concluded, without prejudice to the outcome of its investigation, that the concentration threatened to significantly affect competition within the territory of the United Kingdom and therefore accepted the referral.

After carrying out its own investigation the Commission cleared the operation in August.
**G — Summaries of abandoned cases**

**HgCapital/Denton**

On 14 June the European Commission acknowledged the abandonment of the proposed acquisition of Denton (US) by the UK-based financial investment group HgCapital, owner of FTSS, and closed its investigation following the parties' agreement to terminate their sale and purchase agreement and to withdraw their notification of the proposed deal to the Commission.

The Commission had opened an in-depth investigation into the proposed acquisition on 30th May 2007, expressing its serious concerns that the transaction would significantly impede effective competition in the common market. The proposed transaction would essentially have resulted in a worldwide quasi-monopoly for the supply of “crash test dummies” — a key product for the launch of new car models and for improving the safety of existing models.

In addition to this horizontal issue, the Commission was concerned that the operation could have allowed the combined entity to deny their competitors' access to inputs and to information on the market for virtual dummies, which are computer simulated representations of dummies. Similar so-called 'foreclosure' concerns had also been raised by market participants in the field of data acquisition systems, which are used to collect data on the behaviour of dummies during crash tests.

The proposed concentration should have been notified in several Member States (Germany, Spain and the UK). However, Hg Capital asked for the case to be referred to the Commission under Article 4 (5) of the Merger Regulation. In the absence of objections from Member States the case was reviewed by the Commission.

In the light of the fact that the parties had demonstrated that they had effectively abandoned the proposed deal the Commission announced that it would close its investigation and that it would not take any further action in the case. The notification was consequently withdrawn.