Mergers: main developments between 1 September and 31 December 2008

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Introduction

The level of notifications declined during the last three months of 2008, to 98, reflecting the impact of the worldwide financial crisis. Despite this slight decrease, the number of merger notifications for the year as a whole (347) was close to the second highest on record. As regards the numbers of decisions adopted there were no noticeable changes in overall levels, with the total number of decisions adopted running at 117, total first-phase decisions at 106 and total simplified procedures at 65. There was, however, a relatively high number (7) of conditional clearances in Phase I (under Article 6(2)). As regards Phase II cases the Commission cleared one case unconditionally under Article 8(1) after an investigation and three transactions subject to conditions (Article 8(2)). Two cases were abandoned in the second phase.

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

Manitowoc/Enodis

On 19 September the Commission cleared the proposed acquisition of Enodis of the UK by Manitowoc of the US. The Commission's decision is conditional upon the commitment by Manitowoc to divest Enodis' entire ice-making machines business in the EEA, where the Commission identified competition concerns, including three production facilities in Italy.

Manitowoc is active in several sectors including the manufacture of lifting equipment in the shipbuilding sector and the production of cold-focused equipment in the foodservice industry (including ice-making machines, beverage dispensers and refrigeration equipment). Enodis was, at the time of the notification, a global food and beverage equipment manufacturer. In the EEA it sells a wide range of equipment, including ice-making machines, beverage dispensers, cooking equipment, coolers and refrigeration equipment.

The parties' activities overlapped in relation to ice-making machines and beverage dispensing systems.

EDF/British Energy

On 22 December conditional clearance was granted to the proposed acquisition of British Energy (BE) by Electricité de France (EdF). The Commission's decision was conditional upon EdF's commitment to divest the power generation plants at Sutton Bridge in the UK (owned by EdF) and at Eggborough (owned by BE), to sell certain minimum volumes of electricity in the British wholesale market, to unconditionally divest a site potentially suitable for building a new nuclear power station located at either Dungeness or Heysham in the UK, at the purchaser's choice, and to end one of the merged entity's three grid connection agreements with National Grid at Hinkley Point in the UK.

Electricité de France S.A. (EdF) is a company incorporated under the laws of France active in the generation and wholesale trading of electricity and in the transmission, distribution and retail supply of electricity to all groups of customers. In the UK, it is active mainly in coal and gas-fired power generation and the wholesale, supply and distribution of electricity. British Energy (BE) is a UK-based company active in the markets for the generation and wholesale of electricity and supply to industrial and commercial customers. BE has a predominantly nuclear power generation portfolio.

The activities of EdF and BE overlap at the level of generation and wholesale as well as the supply of electricity to industrial and commercial customers. Although the combined entity would not have had extremely high market shares, the Commission found during its investigation that the transaction,

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as initially notified, would have been likely to raise serious competition concerns in four main areas.

First, due to the combination of the flexible generation portfolio of EdF and the baseload generation portfolio of BE’s nuclear power plants, the Commission was concerned that the proposed transaction could have made it easier for the merged entity to withdraw electricity supplies from the market in order to increase the price.

Secondly, the Commission was concerned that the combination of the short generation position of EdF and the long generation position of BE was likely to lead to increased internal use of electricity that would otherwise have been sold to the market. This would have led to a reduction of liquidity which could have had negative effects in both the wholesale and the retail supply markets.

Thirdly, the Commission was concerned that there were a limited number of sites likely to be suitable for the construction of a first wave of new nuclear reactors in the framework of the UK policy on building new nuclear power stations. BE owned many of the sites most likely to be suitable for new nuclear build, while EdF owned key land at two such locations. The transaction, as originally notified, would therefore have led to a high concentration in the ownership of sites most likely to be suitable for new nuclear build.

Finally, the combination of EdF’s and BE’s current rights to connections to the electricity transport network would have enabled the merged entity to hold connection rights beyond its combined capacity expansion plans, with the risk of unduly delaying the power generation projects of its competitors.

To address these concerns, the parties submitted remedies. Further to the results of the market test of these remedies and in its own assessment, the Commission found that the remedies proposed were not sufficient to remove the competition concerns with respect to the first two areas of concern. However, subsequently, the parties submitted an improved remedy package comprising commitments to divest EdF’s power generation plant at Sutton Bridge and BE’s generation plant at Eggborough, to sell certain minimum volumes of electricity in the wholesale market for a certain period of time when the combined entity would have had the ability to internalise the use of electricity that it produces, to divest a site potentially suitable for building a new nuclear power station located at either Dungeness or Heysham, and to end one grid connection agreement with National Grid at Hinkley Point.

The Commission concluded that the revised remedy package was sufficient to remove all identified competition concerns.

WPP/TNS
On 23 September the Commission gave its conditional approval to the proposed acquisition of TNS by WPP, both UK-based groups globally active in the information and communications services sectors. The Commission’s decision is conditional upon WPP’s commitment to divest television audience measurement services in the EEA and TNS’ market research services business in Ireland.

WPP is an international marketing communications services group. It provides services such as advertising, marketing data services (including media management and market research services), insight and consultancy, public relations and public affairs. TNS is a global insight, information and consultancy firm which provides a full range of market research and information services. The activities of WPP and TNS overlap in the provision of market research services and media measurement services and the transaction would result in a number of markets being horizontally and vertically affected.

Following consultation of a wide range of customers, intermediaries and competitors in all the affected markets, the Commission identified serious competition concerns with respect to market research services in Ireland and television audience measurement services at EEA level. In Ireland, the Commission was particularly concerned by the new entity’s post-merger strength in the provision of market research services which would enable it to increase prices and lower the quality of the service provided.

Regarding television audience measurement services at EEA level, the new entity would have a combined market share of above sixty percent. The current transaction as notified would have been a merger from three to two between the closest competitors, and would lead to the elimination of an important competitive force.

To remove the Commission’s concerns in Ireland, WPP offered to divest TNS’ market research services in Ireland and, to allay concerns for television audience measurement services at EEA level, to divest either WPP’s shares in its joint venture AGB Nielsen or TNS’ television audience measurement services business. After market testing the proposed remedies, the Commission concluded that they were suitable and viable to address the competition concerns identified in its market investigation and, on this basis, decided to authorise the transaction, as modified by the commitment.

Teva/Barr Pharmaceuticals
On 19 December the Commission gave conditional approval to the proposed acquisition of Barr Pharmaceuticals of the US by Teva Pharmaceutical In-
Teva is a global pharmaceutical company mainly specialising in the development, production and marketing of generic medicines. Teva is the largest generics producer in the world. Barr is a global pharmaceutical company primarily engaged also in the development, production and marketing of generic medicines. Generic medicines are chemically equivalent to original medicines and sold once the patent for the latter has expired.

The merger was found to be complementary to a large extent. Where overlaps between Teva's and Barr's activities occurred, the Commission investigated a number of national pharmaceuticals markets in Central and Eastern Europe, Germany and the United Kingdom. The Commission found that competition concerns could be excluded in these markets, because Teva's and Barr's joint market shares were moderate and a sufficient number of competitors would remain after the merger.

However, the Commission found that the proposed transaction — as originally notified — would have raised competition concerns for 17 pharmaceuticals in the Czech Republic, Hungary, Poland, Slovakia and Slovenia. The Commission's concerns related primarily to the field of cancer drugs, where both Teva and Barr had overlapping product portfolios in these countries. The Commission was concerned about the removal of Barr as a competitor to Teva for the generic versions of these drugs and for two prescription vitamin products in Poland. There was a risk that the lack of competition in these markets would lead to higher prices for hospitals and patients.

To address the Commission's concerns, Teva offered to divest the carboplatin and cisplatin businesses in the Czech Republic, Hungary and Slovenia, the fluorouracil business in the Czech Republic, the methotrexate businesses in the Czech Republic and Hungary, the paclitaxel businesses in the Czech Republic and Poland, the calcium folinate business in Poland, the tamoxifen business in Slovakia and Barr's calcium folinate business in the Czech Republic. In addition, Teva offered to divest its pyridoxine and riboflavin businesses in Poland.

In view of these commitments, the Commission concluded that the transaction would no longer raise competition concerns.

**Galp Energia /ExxonMobil Iberia**

On 31 October the Commission cleared, subject to conditions, the proposed acquisition by Galp Energia of Portugal of Esso Portuguesa, Esso Española and part of ExxonMobil Petroleum & Chemical. The Commission found that the proposed transaction as initially notified would have given rise to competition concerns in certain refined oil product markets in Portugal. To address the Commission's concerns, Galp offered to divest certain assets and shareholdings.

Galp is a vertically integrated energy company exploring for, producing and marketing oil and petroleum products mainly in the Iberian Peninsula. Esso Portuguesa and Esso Spain supply petroleum products in Portugal and Spain (including retail and non-retail motor fuels, LPG and aviation fuels). The acquired part of ExxonMobil Petroleum & Chemical BVBA operates in lubricants and specialties businesses in the Iberian Peninsula. All three businesses to be acquired are subsidiaries of the ExxonMobil Corporation of the US.

The Commission's investigation revealed that the proposed transaction would not significantly modify the structure of the relevant markets in Spain as a number of credible and more significant competitors would continue to exercise competitive constraint on the merged entity.

As regards Portugal, the Commission found that the proposed transaction, as initially notified, could have raised competition concerns in a number of markets in Portugal. These markets were: non-retail sales of diesel, LPG in bottles, LPG in bulk, into-plane aviation fuel and lubricants. In all these markets Galp held significant market shares even before the transaction and the merger would have led to a further strengthening of its dominant position.

To resolve these competitive concerns, Galp proposed to divest a sea terminal, which also serves as an LPG bottling plant, a storage facility for liquid fuels and LPG and a blending plant for lubricants. Galp also undertook to divest certain Esso shareholdings in airport joint ventures and other assets for into-plane operations in Portuguese airports.

The divestitures also include staff, customers and supply contracts. After testing these commitments with stakeholders, the Commission concluded that the businesses to be divested would be viable and that the divestitures would resolve all identified competition concerns.

**Rail Cargo Austria/MÁV Cargo**

On 25 November the Commission cleared the proposed acquisition of MÁV Cargo of Hungary by the Austrian company Rail Cargo Austria (RCA),...
both active in the provision of rail freight transport and freight forwarding services. The Commission’s decision was conditional upon RCA’s commitment to remove structural links and review contractual links with GySEV (Raaberbahn).

RCA is a subsidiary of the state-owned Austrian ÖBB Holding AG railway company. RCA is engaged in rail freight transport and freight forwarding in Austria, Germany, Slovenia, Hungary and Slovakia. MÁV Cargo is a subsidiary of the Hungarian state-owned MÁV railway company. MÁV Cargo is active in rail passenger and freight transport in Austria and Hungary with a focus on rail freight cross-border transport.

Notwithstanding the full liberalisation of the markets for rail freight transport in 2007, these markets are still characterised by limited competition and strong incumbents cooperating for cross-border rail freight transport.

The Commission identified serious competition concerns that would have arisen from the implementation of the proposed transaction, as initially notified, because it would have resulted in removing the closest potential competitor for RCA on the Hungarian rail freight transport market and for MÁV Cargo on the Austrian market.

To remedy these concerns, RCA gave the commitment to cut its entire structural links and review its contractual links with GySEV, thereby strengthening GySEV as an independent player and a competitor of the new entity created by the merger. The Austrian and Hungarian Governments, as the main shareholders of GySEV, will ensure that the structural links with the merged entity are cut and the influence of Austria over GySEV’s rail freight activities is limited.

After market testing the proposed commitments, the Commission concluded that they were viable measures, suitable to address the competition concerns identified in its investigation.

**BNP Paribas/Fortis**

On 3 December the Commission gave its approval to the proposed acquisition of the Belgian and Luxembourg subsidiaries of Fortis Holding, namely Fortis Bank Belgium, Fortis Banque Luxembourg, and Fortis Insurance Belgium, by BNP Paribas, a bank with retail operations primarily in France. This clearance is subject to the full divestment of BNP Paribas Personal Finance Belgium SA/NV (“PFB”), formerly Cetelem Belgium, including its stake in Fidexis and in the credit processing venture Cetelem Services (an EEIG), to which, inter alia, KBC Bank is also a party. The Commission’s concerns related to the issuing of credit cards in Belgium and partly in Luxembourg, where the merged entity would have become by far the largest player, thereby reducing clients’ choice for credit cards. To address the Commission’s concerns, BNP offered to divest entirely its Belgian credit card arm, PFB.

BNP Paribas is present in Belgium and Luxembourg in credit cards through its subsidiary PFB, which issues cards under the Mastercard label and Aurora brand. It is also present through Fidexis, a Belgian joint venture with the retail chain Carrefour; Fidexis, a 100% owned subsidiary of PFB; and KBC Pinto Systems, a joint venture with the Belgian bank KBC. All of these activities rely on Cetelem Services EEIG for certain support needs. This is a European Economic Interest Grouping in which PFB itself, Fidexis, KBC Pinto Systems, and UCB Hypotheken n.v. (also a subsidiary of BNP Paribas) are members.

The Commission’s concerns centred on credit cards as a payment instrument as well as on the provision by the parties of credit to consumers through the cards. The Commission’s concerns did not relate to the acquiring side of the market.

BNP Paribas’ Belgian consumer finance business is by a long way the largest player in card-based credit, while Fortis is active in the same area, in particular through its Alpha Credit subsidiary. Fortis is at the same time a major issuer of cards in Belgium and a major supplier of card and general banking services to both private and corporate clients.

The Commission’s investigation indicated that in Belgium the merged entity would have become by far the largest player in card issuing and the related provision of credit, and that the transaction, as initially notified, would have reduced choice in the market, both from the standpoint of commercial partners involved in distribution and co-branding arrangements with card issuers and from the viewpoint of the final cardholder. Debit cards linked to a personal account were considered separately. In this area, the parties’ activities did not overlap to any significant extent.

In Luxembourg, the Commission came to the conclusion that the transaction would not lead to competitive concerns as regards credit, but that such concerns could not be ruled out for credit cards.
BNPP's commitment to divest PFB would substantially offset the increase in market share due to the merger on the problematic markets, and would maintain robust competition for the benefit of consumers. The Commission also analysed a number of other markets in which the overlap of the parties was limited and concluded that these markets did not raise competition concerns.

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

KLM/Martinair

On 17 December the Commission gave unconditional clearance to the proposed acquisition of Martinair by KLM, both Dutch airlines active in the transport of passengers and cargo. In September, the Commission opened an in-depth investigation because of concerns regarding the potential impact of the proposed transaction on passenger transport, in particular between Amsterdam and Curacao and Aruba (in the Netherlands Antilles). The in-depth investigation, including a consumer survey at Amsterdam airport, showed that the transaction would have only limited market impact.

KLM is a full-service air carrier with its home base at Amsterdam's Schiphol airport. KLM is part of the Air France-KLM group. Martinair is also based at Schiphol and is currently owned 50/50 by KLM and the sea and land transport company Maersk. Both parties are active in air transport of cargo and passengers between Amsterdam and various destinations worldwide. Martinair's passenger fleet only serves intercontinental destinations. The parties' passenger operations overlap mainly on routes connecting Amsterdam to various long-haul destinations, namely Vancouver, Toronto, Miami, Havana, Punta Cana, Cancun, Curacao and Aruba.

On 8 September, the Commission opened an in-depth inquiry because of concerns related in particular to the impact that the transaction could have on passenger transport between Amsterdam and Curacao and Aruba.

The Commission's in-depth investigation showed that the effects of the proposed transaction would be limited, not only because KLM already jointly controls Martinair, but also because Martinair's competitive strength has been constantly decreasing and, to regain its strength, Martinair depends on KLM's agreement to a renewal of its long-haul passenger fleet. The investigation included a consumer survey carried out at Schiphol airport (Amsterdam). The survey indicated that a significant proportion of passengers would either not travel at all or travel elsewhere if there were a sustained price increase for flights to these two destinations, which limits the potential for price increases. The investigation also revealed that the merged entity would be constrained by its competitor ArkeFly on these two routes. As a result, any price increases on the part of the merged entity would be likely to be unprofitable.

As regards the wholesale supply of airline seats to tour operators for these two routes, any potential price increases by the merged entity would lead to TUI, the tour operator vertically integrated with competitor ArkeFly, selling more package holidays to the detriment of its competitors, who largely depend on KLM and Martinair for the supply of airline seats for package holidays to Aruba and Curacao. The parties would therefore stand to lose significant sales, making price increases unprofitable.

The Commission also assessed the possible effects of the proposed merger on other routes where the parties' passenger operations overlap and in the cargo air transport sector. However, the Commission concluded that the proposed transaction was not likely to give rise to any competition concerns in these areas.

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

Associated British Foods/GBI

On 23 September the Commission cleared the proposed acquisition of certain parts of GBI of the Netherlands by the UK-based company Associated British Foods (ABF), subject to conditions. Both companies produce dry, compressed and liquid baker's yeast. The Commission's in-depth market investigation, opened in April 2008, had indicated that the transaction, as originally notified, would have raised competition concerns in the markets for compressed baker's yeast in Spain and Portugal. To remedy the Commission's concerns, ABF offered to divest the GBI businesses in Spain and Portugal, while ensuring that these businesses will be linked to sufficient production capacity.

ABF is an international food, ingredients and retail group. Its activities include the production and sale of yeast, managed through the AB Mauri division, which has production plants worldwide, including four plants in the EU (UK, Ireland, Spain and Portugal). ABF also owns two bakery ingredients plants in the UK (Cereform) and distributes yeast from its plants across the EU and elsewhere in the world.

The core activity of the GBI assets being acquired was the production and sale of various types of yeast. The business comprises several European subsidiaries and assets of the GBI Group in Europe, except in the UK. The acquisition of GBI's business in the UK by Lesaffre was approved sub-
ject to conditions by the Commission in July 2008. GBI is ultimately controlled by the Dutch private equity house Gilde Buy-Out Partners.

Yeast is an essential ingredient in the production of bread and other bakery products, pizza, dough bases, beer, wine and other foodstuffs. The proposed transaction concerns liquid, compressed and dry yeast for the bakery sector only.

In its initial analysis, the Commission had serious concerns that the transaction, as originally notified, would have significantly impeded effective competition in the markets for compressed baker’s yeast in Spain, Portugal and France. In these markets, the proposed transaction would have reduced the number of major competitors from three to two, with Lesaffre being the only remaining major competitor besides the merged entity. An in-depth analysis of market structures and conditions in Spain and Portugal led to the conclusion that the merger would have resulted in coordinated market behaviour between the remaining competitors in these two markets. As regards the compressed yeast market in France, no competition concerns were confirmed, essentially given the different market structure in place there.

With a view to removing the Commission’s concerns, ABF committed to divest GBI’s business in Portugal and Spain to a suitable buyer with sufficient production capacities to supply those businesses. To ensure that the acquirer will have the required production capacities, ABF committed to one of two alternative remedies: either the acquirer will have previously acquired GBI’s former production plant in the UK or the parties will divest ABF’s production plant in Portugal.

The Commission concluded that these commitments were sufficient to remedy its initial concerns.

Statoil Hydro/Jet Scandinavia

On 21 October the Commission gave its approval to the proposed acquisition of ConocoPhillips’ network of Jet fuel stations in Scandinavia by StatoilHydro of Norway following an in-depth investigation opened in May 2008. To gain approval, StatoilHydro undertook to divest all 40 Jet fuel stations in Norway and a network of 158 fuel stations in Sweden operating under the Jet, Hydro and Uno-X brands. StatoilHydro is an integrated oil and gas company active in exploration for and production of crude oil and natural gas. The company also refines and sells motor fuels and other oil derivatives. StatoilHydro operates fuel station networks in Scandinavia under the Statoil, Hydro and Uno-X brands. Jet Scandinavia operates fuel station networks in Scandinavia under the Jet brand.

The Commission found that the proposed transaction — as originally notified — would have raised serious competition concerns in Norway and Sweden. In Norway, the proposed transaction would have reinforced the oligopolistic structure of the Norwegian market. StatoilHydro’s position as the largest provider of motor fuels in Norway would have been strengthened. In Sweden, StatoilHydro is already the market’s largest supplier and, by acquiring one of its main competitors, the company would have obtained a market share more than double the share of the second largest competitor. The Commission had further concerns with regard to Jet’s disappearance as the most efficient low-cost operator in both Norway and Sweden with a strong brand and a proven track record of undercutting competitors’ prices in markets with high entry barriers.

To address the Commission’s concerns, StatoilHydro offered to divest the entire Jet network in Norway and a 158-station network in Sweden, entirely made up of automated fuel stations. In view of this commitment, the Commission concluded that the transaction would no longer raise serious competition concerns in Norway and Sweden. Independently of the competition assessment, StatoilHydro decided to close a number of less efficient fuel stations in Sweden.

Arsenal Capital Partners/DSM Special Products

On 9 January the Commission cleared the proposed acquisition of chemical company DSM Special Products (DSP) of the Netherlands by Arsenal Capital Partners (Arsenal), a US private equity firm. Arsenal owns Velsicol, a chemical company active in the EEA through its Estonian plant. DSP is a chemical company with a single production plant, in Rotterdam. Both parties produce benzoic acid, a raw material used in the production of a variety of goods, including as an antimicrobial preservative in food and drinks, in plasticisers, pharmaceutical products and pet food. In August 2008, the Commission opened an in-depth investigation because of competition concerns. Arsenal made the commitment to divest the whole of its liquid and solid benzoic acid production, as well as sodium benzoate production in the European Economic Area (EEA). The Commission found that the proposed transaction would have raised serious competition concerns in the EEA market for solid benzoic acid, where the merged entity would have run the only two production plants in the EEA. The Commission also found that imports of benzoic acid into the EEA are very low and would not be capable of constraining the merged entity.
To address the Commission’s concerns, Arsenal offered to divest the Velcicol production plant in Estonia and therefore its entire solid and liquid benzoic acid production. The proposed divestment also includes the production of sodium benzoate, a product derived from benzoic acid and used primarily as a preservative in food and soft drinks, to ensure the full viability of the divested business. In view of this commitment, the Commission concluded that the transaction would no longer raise serious competition concerns.

**Campina/Friesland Foods**

On 17 December the Commission cleared the proposed merger between Campina and Friesland Foods, both Dutch companies active in a range of dairy product markets, subject to conditions. The Commission’s in-depth investigation, opened in July 2008, indicated that the transaction, as originally notified, would have raised competition concerns in the markets for the procurement of raw milk, fresh dairy products and cheese in the Netherlands and for long-life dairy drinks in the Netherlands, Belgium and Germany. To remedy the Commission’s concerns, the merging parties offered to divest Friesland Foods’ fresh dairy product business and part of Campina’s cheese business and two Campina brands for long-life dairy drinks. They also offered remedies to ensure access to raw milk in the Netherlands.

Both Campina and Friesland Foods are dairy cooperatives active primarily in the Netherlands and other EU Member States. Their activities involve several markets along the dairy food product chain, from the procurement and processing of raw milk to the production of a variety of dairy and non-dairy products.

The Commission’s investigation showed that the merger, as initially notified, would have resulted in a significant impediment to effective competition in the Dutch markets for the procurement of raw milk, fresh basic dairy products, value-added yoghurt and quark, fresh flavoured dairy drinks, fresh custard and porridge and cheese as well as in the market for long-life dairy drinks in the Netherlands, Belgium and Germany.

With a view to removing the Commission’s concerns, the merging parties made the commitment to divest Friesland Foods’ fresh dairy product business (including the transfer/licensing of brands and a plant in Nijkerk) and one of Campina’s cheese plants, located in Bleskensgraaf. They also committed to divest two Campina brands for long-life dairy drinks.

Additionally, they offered remedies to ensure access to raw milk for the fresh dairy and cheese businesses to be divested by the parties as well as for their competitors in the fresh dairy and cheese markets in the Netherlands. These commitments include three elements. Both divested businesses would initially be able to source raw milk from the merged entity under a transitional supply agreement. Subsequently, a foundation (Dutch Milk Fund) would be set up to ensure access to a maximum yearly volume of 1.2 billion kg of raw milk for the divested businesses and other competitors. This Milk Fund would remain in place until more structural changes in the market for raw milk were achieved. The merged entity, FrieslandCampina, would reduce exit barriers for dairy farmers who might wish to leave the new cooperative. This third measure would aim to create a source of Dutch raw milk that was independent from FrieslandCampina and would thus provide a long-term structural solution. The Commission concluded that the commitments were sufficient to remedy its initial concerns.

**D — Abandoned cases**

**BHP Billiton/Rio Tinto**

On 26 November the Commission announced that it intended to close its investigation into BHP Billiton’s proposed acquisition of Rio Tinto following BHP Billiton’s announcement that it had abandoned the deal and had withdrawn its notification. The Commission is satisfied that the planned transaction has effectively been abandoned and will not proceed.

In a press release dated 25 November BHP Billiton announced that even if the Commission were to clear the proposed transaction unconditionally, BHP Billiton’s directors intended to recommend that its shareholders vote against approving the transaction. The press release explained that given the continued deterioration of near-term global economic conditions the company’s management believed that the acquisition of Rio Tinto was no longer in the best interests of BHP Billiton shareholders. On 26 November BHP Billiton decided to formally abandon their pre-conditional offer on Rio Tinto and withdrew their notification.

The Commission had opened an in-depth investigation of BHP Billiton’s proposed acquisition of Rio Tinto on 4 July because the Commission’s initial market investigation had indicated that the proposed takeover raised serious doubts as to its compatibility with the single market and could have resulted in higher prices and reduced choice for these companies’ customers.