1. Introduction

The number of notifications rose significantly during the previous four-month period, from 75 to 109 — an increase of more than 45%. That figure itself was 10% up on the comparable period in 2008, when 98 notifications were received. The Commission adopted a total of 96 first phase decisions, of which 91 were unconditional clearances (55 of these decisions – i.e. some 60% – were adopted under the simplified procedure). Five first phase decisions were cleared conditionally. No decisions were adopted after second phase investigations, although one case was abandoned during the second phase investigation. One decision was adopted under Article 4(4) of Council Regulation 139/2004 which refers a case with a Community dimension to the Member States. The Member States accepted eleven requests for referrals to the Commission under Article 4(5) of the same Regulation. Member States made two requests for cases to be referred to the national competition authorities; one request was accepted, the other was refused.

2. Summaries of decisions taken under Article 6(2)

2.1 Sanyo/Panasonic

On 29 September 2009 the European Commission cleared the acquisition of Sanyo Electric Co., Ltd. by Panasonic Corporation, both of Japan. The approval was conditional upon the divestment of certain battery production facilities in markets where the Commission had identified competition concerns.

Both Sanyo and Panasonic are diversified industrial groups. Panasonic is primarily active worldwide in the development, manufacture and sale of a wide range of audiovisual and communication products, home appliances, electronic components and devices, including batteries and industrial products. Sanyo is primarily active worldwide in the development, manufacture and sale of consumer products, commercial equipment, electronic components, including batteries, and industrial logistics and maintenance equipment.

The Commission’s investigation identified competition concerns in a number of battery markets where the merged entity would have a significant market share. These are the markets for primary cylindrical lithium batteries, portable rechargeable nickel-metal hydride batteries and rechargeable coin-shaped batteries based on lithium.

Primary cylindrical lithium batteries are particularly well-suited to applications that require strong bursts of power and where the battery is used for long periods without being replaced (e.g. alarms, utility meters). Portable nickel-metal hydride rechargeable batteries are used in a wide range of products, such as power tools, personal care products (e.g. shavers, toothbrushes and epilators), toys, portable scanners and two-way radios. Rechargeable coin-shaped batteries based on lithium are used principally as a back-up power supply for real-time clocks in mobile phones and digital still cameras, as well as in certain other applications such as watches, laptops and keyless entry systems for cars.

To allay the concerns raised by the Commission relating to cylindrical lithium and rechargeable coin-shaped batteries, the parties undertook to divest a production plant that currently produces both these types of batteries. The proposed transaction, as modified by this commitment, would not result in any increase in market share for cylindrical lithium and rechargeable coin-shaped batteries. The parties also agreed to divest the portable rechargeable nickel-metal hydride businesses of one of the parties, thereby eliminating any increase in this product’s market share.

After market testing of the proposed commitments, the Commission concluded that these would alleviate its serious doubts and therefore ensure that the proposed transaction would not impede effective competition as a result.

The Commission worked on this case in close cooperation with the US Federal Trade Commission and the Japanese Fair Trade Commission in the context of the bilateral cooperation agreements between the respective authorities.

2.2 EDF/Segebel

On 12 November 2009, the European Commission cleared the proposed acquisition by EDF (France) of exclusive control of Segebel (Belgium), a holding company whose only asset is a 51% stake in SPE.
S.A., which is the second largest electricity operator in Belgium. Both companies are active in the energy sector. To allay competition concerns on the part of the Commission in relation to the reduced incentives for EDF to continue with its plans to build additional electricity generation capacity in Belgium after the proposed acquisition, EDF has committed to immediately divest the assets of a subsidiary in charge of one of EDF’s planned power station projects. In addition, if EDF were not to invest in a second planned power station by a given date, or if no decision to invest had been taken by then, EDF has undertaken to divest the assets of the subsidiary developing that project. In the light of the remedies proposed, the Commission concluded that the operation would not significantly impede effective competition in the European Economic Area (EEA) or any substantial part of it. As a result, the Commission has decided that there is no need for the matter to be examined by the Belgian competition authority (Conseil de la Concurrence), which had asked for a partial referral of the case under Article 9.

EDF and its subsidiaries are active, both in France and elsewhere, in the generation and wholesale trading of electricity and the transmission, distribution and retail supply of electricity, as well as the provision of other electricity-related services. EDF is also active, although to a lesser extent, in the natural gas retail and wholesale markets. Its presence in Belgium has been relatively limited, despite the fact that it was the third largest electricity operator.

Segebel’s only asset is a 51% equity interest in SPE S.A., which is a Belgian company active in the production of electricity and in the trading and supply of electricity and gas in Belgium. SPE produces electricity through a portfolio of power plants in Flanders and Wallonia. It is the second largest electricity operator in Belgium after the incumbent operator, GDF SUEZ (Electrabel). It is present in the market under the Luminus brand.

The Commission’s investigation revealed that the proposed transaction would not significantly affect competition on most relevant markets, as there were few, if any, horizontal overlaps between the parties’ various activities.

Nevertheless, the Commission identified competition concerns in various Belgian electricity markets, in particular with regard to the Belgian wholesale electricity market. These concerns arose from the fact that the proposed transaction eliminated EDF as a potential significant entrant in these markets, because the incentives for the merged entity to develop new generation capacity in Belgium were likely to have been significantly reduced in comparison to the incentives that EDF had enjoyed before the takeover. EDF has been developing two sites which would add 10% to Belgium’s capacity. This additional capacity would allow EDF to further develop its business in the downstream markets for supplies to end consumers.

The Commission took the view that, in the absence of development on the part of EDF, the remedy package would provide another operator with sufficient incentives to develop the sites, equivalent to EDF’s incentives to do so prior to the takeover.

2.3 Towers Perrin/Watson Wyatt

On 4 December 2009, the European Commission approved a merger between US-based consultancy companies Towers Perrin and Watson Wyatt. The approval was conditional upon the parties’ divestment of Watson Wyatt’s life actuarial software business, VIPitech. The Commission had concerns that the transaction, as originally notified, would have given rise to competition issues in the field of actuarial software for life insurance in the European Economic Area (EEA).

Towers, Perrin, Forster & Crosby, Inc. (Towers Perrin) and Watson Wyatt Worldwide, Inc. (Watson Wyatt) are global consulting firms providing consulting services in human capital and financial management. Both Towers Perrin and Watson Wyatt provide services in the fields of retirement benefits consulting, pension administration, investment consulting, human capital services, insurance and financial services consulting. They also offer a number of software solutions related to their consulting services.

The Commission investigated a number of national and EEA-wide markets, where the activities of the parties overlap to an appreciable extent, namely in the areas of retirement benefits consulting, pension administration, financial valuation and capital adequacy consulting, general insurance consulting and actuarial software for life insurance. The Commission found that competition concerns could be excluded in all markets except one, because – even in those markets where the shares of the combined firm would be significant post-transaction – a sufficient number of credible competitors would remain and would be able to expand their capacity after the proposed transaction.

However, the Commission found that the transaction gave rise to competition concerns in the market for the supply of actuarial software for life insurance in the EEA, where the number of actual established competitors post-transaction would be reduced from three to two. To address the Commission’s competition concerns, the parties proposed to divest Watson Wyatt’s VIPitech business.

In view of the proposed commitments, the Commission concluded that the proposed transaction would no longer raise any competition concerns.
2.4 Bilfinger Berger/MCE

On 18 December 2009, the European Commission cleared the acquisition of the Austrian company MCE AG by German-based Bilfinger Berger AG. Both companies are active in industrial services. In its investigation, the Commission identified competition concerns in the market for the installation of high pressure pipes. Therefore, its clearance decision is conditional upon the divestiture of a major part of MCE’s business in the installation of high pressure pipes.

The Commission’s investigation of the proposed transaction identified competition concerns in the German/Austrian market for the installation of high pressure pipes. High pressure pipes are mainly installed in power plants and represent up to 10% of the entire cost of a new plant. As a result of the proposed concentration, Bilfinger Berger - the market leader in this area - would have acquired the third largest player, MCE, which had grown rapidly into a significant competitive force.

In order to address the competition concerns identified by the Commission, Bilfinger Berger offered to divest its subsidiary, MCE Energietechnik GmbH, which is specialised in the installation of high pressure pipes but also offers complementary services. In addition, a large MCE high pressure pipe project will be transferred from another MCE subsidiary to the Divestment Business.

Following a satisfactory market test, the Commission concluded that the commitments offered by Bilfinger Berger would remove its competition concerns.

3. Summaries of decisions taken under Article 9

3.1 SNCF-P/CDPQ/Keolis/Effia

In response to a request by France’s Competition Authority, the European Commission decided, on 30 October 2009, to refer to that authority the matter of examining the acquisition of joint control of the French companies Keolis et EFFIA by France’s Société Nationale des Chemins de fer français (SNCF) and the Caisse de Dépôt et de Placement du Québec (CDPQ) of Quebec, Canada. The Commission took the decision to refer the matter to the Competition Authority, because a merger would risk having a significant effect on competition in the public passenger transport markets only in France.

The operation in question was the acquisition of joint control by SNCF and CDPQ of Keolis, which specialises in public passenger transport by bus and coach, and EFFIA, which is currently an SNCF subsidiary specialising in services connected with public passenger transport.

SNCF operates passenger rail transport services on France’s rail network and other rail transport services, including international services. It also manages the infrastructure of the French rail network (‘Réseau ferré’).

CDPQ is an institutional fund manager, which basically administers the pension and insurance scheme funds of public and private bodies, mainly in Quebec.

In its request for referral of 8 October 2009, the French Competition Authority stated that the proposed operation would be likely to significantly affect competition in the French public passenger transport markets through potential conglomerate effects, that is to say anti-competitive effects connected with the presence of the new group throughout the whole transport chain. Moreover, the markets in France in which competition would be affected by the operation are national or regional in scope.

Following an inquiry conducted among customers and competitors of the companies concerned, the Commission agreed to France’s request.