Merger Control: Main developments between 1st May 2002 and 31th August 2002

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Recent cases — Introductory remark

Between 1 May and 31 August 2002, 96 cases were notified to the Commission. This is more than in the previous four-month period (79) but it marks a significant decline compared to the same period in 2001 (118). The Commission took 92 final decisions, 3 of which followed in depth investigations (no prohibitions, 1 clearance and 2 conditional clearances) and 4 of which were conditional clearances at the end of an initial investigation (‘Phase 1’). In total the Commission cleared 80 cases in Phase 1. In this period, 34% of the clearance decisions taken by the Commission were taken in accordance to the simplified procedures introduced in September 2000. In addition, the Commission took two referral decisions pursuant to Article 9 of the Merger Regulation. No new in-depth investigation was opened (Art. 6(1)(c) decision) during May to August 2002.

During this period the Court of First Instance made an important judgment in the Airtours case.

CFI Judgment on Airtours vs. Commission

On 6 June 2002 the European Court of First Instance (CFI) annulled the Commission’s decision to prohibit a merger between Airtours and First Choice, two UK based holiday tour operators (1). Though the Commission had previously lost cases in antitrust matters, this was the first time in the 12 years of EU merger regulation that the CFI had overruled a prohibition of a merger.

The Commission had received the notification of Airtours bid to take over First Choice on 29 April 1999. After the merger there would have been three major tour operators left in the market: the merged entity (with 19.4 + 15.0 = 34.4% market share), Thomas Cook (20.4%) and Thomson (30.7%). All other players would have less than 3%. After an in-depth (phase II) investigation, the Commission decided on 22 September 1999 to prohibit the merger based on the assessment that it would create a situation of collective dominance in the market for short-haul foreign package holidays in the UK (2). The Commission’s view was that the three remaining operators would be able to coordinate behaviour by restricting capacity put on sale, and thereby raising prices for British consumers. The decision was appealed by Airtours on 2 December 1999.

The CFI did not disagree with the market definition applied by the Commission, nor with the analytical framework used to evaluate whether the transaction would lead to a collective dominant position with co-ordinated behaviour. But the CFI found that the Commission had not proven that:

1) the three remaining operators would have an incentive to cease competing with each other;
2) there were adequate deterrents to secure unity within the alleged dominant oligopoly; and
3) the smaller tour operators, potential competitors and consumers would not be in a position to destabilise the alleged dominant oligopoly.

The CFI concluded that the Commission had prohibited the transaction without having proved to the requisite legal standard that the concentration would give rise to a collective dominant position of the three major tour operators, of such a kind as to significantly impede effective competition in the relevant market.

A – Summaries of decisions taken under Article 8 of Council Regulation (EEC) No 4064/89

1. Summaries of cases declared compatible with the common market under Article 8(2) of the ECMR without commitments

Carnival/ P&O Princess

The European Commission granted clearance under the European Union’s Merger Regulation to

(2) Case No IV/M.1524-Airtours/First Choice.
the proposed acquisition of British cruise operator P&O Princess Plc by US-based cruise operator Carnival Corp. The Commission was initially concerned about the parties’ strong position in the cruise market in the UK and in Germany. But after an in-depth analysis it concluded that the strong growth enjoyed in the market, the absence of substantial barriers to entry and the ability for rivals in the market to shift capacity, for example from the US to the UK, would exert a sufficient competitive pressure on Carnival.

On 16 December 2001, Carnival announced a unilateral pre-conditional offer to acquire all the shares of P&O Princess, a UK-based worldwide cruise company which operates the brands Princess Cruises, P&O Cruises, Swan Hellenic, Aida Cruises, Seetours, and A’Rosa. Carnival is also a cruise company active worldwide. Its brands include Carnival Cruise Lines, Holland America Line, Costa Cruises, Cunard Line, Seabourn Cruise Lines and Windstar Cruises.

The takeover bid was notified to the Commission for regulatory clearance in February 2002. The UK competition authorities had requested referral of the case pursuant to Article 9 of the Merger Regulation citing their own concerns about the deal’s impact in the United Kingdom’s cruise market. However, the Commission decided to continue with the review as the deal originally raised concerns also in other Member States, particularly in Germany.

Together, Carnival and P&O Princess accounted for around a third of cruise passengers in 2000 in the European Economic Area the 15 EU states plus Norway, Iceland and Liechtenstein with the main overlap being felt in the UK and Germany. Market shares are also high in Italy and Spain, but in this case the addition of P&O’s cruise operations was minimal.

In the course of its investigation of the Carnival bid, the Commission had fruitful contacts with the UK’s Competition Commission, which was assessing and has now cleared a rival bid by Royal Caribbean, as well as with the Federal Trade Commission of the United States, which is still examining both bids for P&O Princess.

The Commission’s in-depth investigation of the Carnival bid revealed, in the meantime, that the initial concerns were unjustified.

Although by acquiring P&O Princess, the UK’s largest player, Carnival would have had around a third of the UK cruise market in terms of passengers, barriers to entry are not significant as illustrated by the rapid and successful arrival of tour operators in the last five years who now carry around one third of all UK cruise passengers. Existing operators have also experienced significant growth.

Moreover, Carnival’s position in the UK market is expected to come under pressure from international competitors capable of modifying the proportion of British customers on their ships, for example by increasing the proportion of British passengers on cruises organised primarily for the US market, which have a significant presence in UK. The Commission found that, while cruises carrying mainly UK passengers are preferred by a section of UK customers, a bigger proportion is not sensitive to this distinction. Moreover, ships can be and indeed are re-allocated on an ongoing basis between different geographic markets, from the US to the UK for example.

As regards the German market, the acquisition resulted in a 25% market share by Carnival in terms of passenger cruise days. But Mediterranean companies, such as MSC and Festival, have successfully entered the market in last five to ten years.

It was also concluded that the merger would not have any significant impact on the cruise markets in Spain, Italy, France or other European countries, all countries which so far have had a lesser cruise tradition than the UK and Germany, but which present a significant potential for growth and market entry.

Finally, it was concluded that the high recent and projected growth rate in cruise markets would, in itself, constitute a significant competitive constraint on the incumbent cruise operators as high growth rates provide an incentive for new operators to enter the market.

Moreover, the additional cruise ship capacity which will come on-stream for Carnival and P&O in the next two or three years may lead to some increase in the parties’ market shares but it will also constrain their ability to raise prices as they will need to continue to persuade a sufficient number of holidaymakers to take up cruising to ensure high utilisation rates of this new capacity.

2. Summaries of cases declared compatible with the common market under Article 8(2) of the ECMR with commitments

**Haniel /Cementbouw/ JV**

The European Commission granted retroactive clearance to the 1999 acquisition of the Dutch sand-lime joint venture CVK by the Haniel group
of Germany and Dutch firm Cementbouw after the companies undertook to terminate their joint venture agreement. The agreement, which came to the Commission’s knowledge only this year, brought about a dominant position in the Dutch market for wall building materials for load bearing walls, which is against the consumer interest. Earlier this year, the Commission cleared Haniel’s consecutive purchases of Fels and Ytong. In the course of these proceedings the Commission found out about the CVK deal.

Haniel is a German conglomerate which includes Haniel Bau-Industrie GmbH, a producer of wall-building materials such as sand-lime wall building products, aerated concrete products and ready-mixed concrete which operates mainly in Germany. In the Netherlands, Haniel is primarily active in the building materials sector through its indirect 50% stake in CVK, a Dutch co-operative which groups together all the Dutch sand-lime producers, including Van Herwaarden, Anker and Vogelenzang. The other members of CVK are owned either by Haniel or by Cementbouw.

Cementbouw Handel & Industrie B.V. is a Dutch producer of building materials, which is also active in the building materials trade. It owns the other 50% stake in CVK.

Haniel and Cementbouw took control of CVK and its members in 1999 through a series of agreements (see background below), but did not notify it to the Commission. The Commission became aware of this during its review of Haniel’s acquisition of Fels-Werke GmbH and Haniel’s purchase of Ytong Holding AG, two other deals in the building materials sector. Both acquisitions received regulatory approval by the Commission insofar as the Dutch market is concerned (see IP/02/288 and IP/02/530). The impact in Germany was assessed by the German cartel office.

After a careful analysis of the 1999 CVK deal, notified to the Commission in January this year, the Commission has come to the conclusion that in taking control over CVK and its members, Haniel and Cementbouw obtained a dominant position on the Dutch market for wall building materials for load-bearing walls, with a market share in excess of 50%.

Haniel and Cementbouw are, through CVK, the only suppliers of sand-lime products, the wall building materials most demanded by construction companies in the Netherlands. This put building materials traders and construction companies, an important sector for the economy, under a dependence vis-à-vis CVK, a situation which is not in the consumer’s interest.

The Commission believed that the consolidation of the sand-lime industry under the single control of CVK and its parent companies constituted a structural change in the market, which should have been notified for clearance. Whereas before CVK was a joint sales organisation, after 1999 it acquired control over its members and became a fully-fledged company with a strategic business plan and the ability to decide on production capacity levels, R&D and marketing. In addition, as the 1999 operation conferred control over CVK to Haniel and Cementbouw, it effectively constituted a link-up between the second largest player in the industry, Cementbouw, and the largest player, CVK.

Commitments given

In order to meet the Commission’s competition concerns, Haniel and Cementbouw undertook to terminate their joint control over CVK and its members. Furthermore, the joint sales and marketing activities through CVK will be terminated.

This will create two strong and competing groups of sand-lime companies in the Dutch building materials sector each owned separately by Haniel and Cementbouw. This will result in price competition in the market to the benefit of house buyers in the Netherlands.

The Commission recognised that the companies involved will need time to comply with the commitment given, with a view in particular to safeguarding the interests of the affected CVK staff, and agreed to grant an appropriate deadline.

Since the proposed dissolution of CVK in the Netherlands removed all competition concerns, the Commission was able to approve the 1999 acquisition retroactively.

Background

Haniel and Cementbouw jointly control CVK and its members since 1999. This control was brought about through a set of agreements that were entered into and implemented in 1999. At the time, Haniel and Cementbouw acquired joint control over CVK through their 50/50% indirect shareholdings, following their purchase of three sand-lime producers (Van Herwaarden, Anker and Vogelenzang) from a third shareholder. At the same time, CVK acquired control over its members, the combined sand-lime producers in the Netherlands, thereby transforming CVK into one single, fully-fledged company. Before 1999, the sand-lime producers were independent companies.
with joint sales and marketing activities carried out by the co-operative CVK.

**Promatech/ Sulzer Textil**

Following referral of the case by a group of member states according to Article 22 (3) of the Merger Regulation, the European Commission cleared the acquisition of Sulzer Textil, the textile machinery division of Swiss company Sulzer Ltd, by Italy’s Promatech SpA, another maker of weaving machinery. An in-depth investigation showed that the deal would have led to a dominant position on the Western European market for rapier weaving machines. But Promatech addressed this concern by offering the divestiture of the rapier weaving machines operations in Verona (Italy) and Solothurn (Switzerland).

Promatech is a subsidiary of the Italian group Radici, which is the leading European manufacturer of rapier weaving machines. Last year, it agreed to buy Sulzer Textil from Swiss industrial group Sulzer, a deal which did not meet the turnover thresholds (1) set in the European Union’s Merger Regulation and, therefore, did not qualify for regulatory review by the Commission. Instead, it was to be reviewed by the competition authorities of seven EU countries.

The competition authorities of Austria, France, Germany, Italy, Portugal, Spain and the United Kingdom had referred the examination of the case to the Commission in application of Article 22 (3) of the Merger Regulation.

The Commission launched an-depth investigation into the acquisition in April over concerns that the deal would significantly reduce competition in the market for rapier weaving machines given the leading position of Promatech which was reinforced by the addition of Sulzer Textil, also a manufacturer of weaving machinery and particularly of rapier weaving machines.

Weaving machines make fabrics for the clothing industry but also for technical and industrial applications, such as coated fabrics, airbags, as well as home products and decoration (sheeting, curtains, towels).

A careful analysis indicated that Promatech would have dominated the Western European market for rapier weaving machines with a very high market share. The other competitors in the European Union, Picanol of Belgium and Dornier of Germany, would have had very small market shares in comparison.

To address the Commission’s concerns, Promatech offered to divest Sulzer Textil’s rapier weaving machine business in Schio, near Verona (Italy), and Zuchwil, near Solothurn (Switzerland). These commitments eliminated the overlap created by the acquisition and fully removed the Commission’s objections to the deal.

**First joint referral**

This was the first time a group of Member States decided to refer a merger case jointly to the Commission since the Merger Regulation came into force on 21 September 1990. It shows how the Commission and the national competition authorities can co-operate successfully to the benefit of European companies.

For the companies involved, it meant that instead of going through seven different national merger review procedures they only had to obtain clearance from the European Commission.

Following the Promatech/Sulzer case, another transaction, involving General Electric and Unison of the United, was referred jointly by Member States and granted unconditional approval by the Commission in April.

**B – Summaries of decisions taken under Article 6**

**Summaries of decisions taken under Article 6(1)(b) and 6(2) where undertakings have been given by the firms involved**

**Imperial Tobacco/ Reemtsma Cigarettenfabriken**

The European Commission gave conditional approval to the proposed acquisition of German cigarette manufacturer Reemtsma Cigarettenfabriken GmbH by Imperial Tobacco Group Plc of the United Kingdom. The acquisition, which propelled Imperial Tobacco to the fifth place in the world cigarette market and third in the European Union, raised competition concerns in the UK market for low priced cigarettes, but the undertakings offered fully addressed these concerns.

Imperial Tobacco is the world’s ninth biggest cigarette manufacturer with a leading position in Britain. Imperial Tobacco manufactures and sells a range of tobacco products, including Superkings, Lambert and Butler, Embassy, John Player Special, Regal and Richmond cigarette brands, Drum ‘roll-your-own’ tobacco and Rizla cigarette...
papers. Reemtsma is currently the world’s fifth largest cigarette manufacturer and a leading supplier in Germany and in several Eastern European countries. It supplies the leading West and Davidoff cigarette brands.

Whilst the acquisition will result in substantial additions of market shares in several product markets in Germany, Italy and the United Kingdom, the activities of the parties are mostly complementary and the investigation did not reveal any substantial competition concerns, with the exception of the UK cigarette market.

The competition analysis showed that Imperial Tobacco and Gallaher are the clear leaders in the UK cigarette market with Gallaher being particularly strong in the premium brand segment whereas Imperial Tobacco’s strength is more in the low priced sector. Competitors Philip Morris, BAT and Reemtsma have comparatively small market shares despite the first two being world leaders in the sector.

However, Reemtsma’s UK business occupies an interesting place in the market, as it is mostly focused on the supply of own-label cigarettes to the UK supermarket and cash-and-carry chains, for which it is the only significant supplier at present.

Own-labels are usually exclusive trademarks of the distributor who owns them. Contrary to this usual situation, Reemtsma owns many of the own-label cigarette trademarks, such as Red Band, in the United Kingdom. This is because supermarkets, although willing to sell cigarettes, are reluctant to see their name associated with the product.

Imperial Tobacco’s acquisition of Reemtsma would have put these distributors in a weak negotiating position vis-à-vis Imperial Tobacco, as changing to another supplier could be difficult without the ownership of the trademark. The acquisition of Reemtsma would have therefore given Imperial Tobacco not only a strong position in the low priced cigarette sector but would also have established it as the only supplier of own-label cigarettes. As “own-label” cigarettes are a significant source of competition in the UK market and particularly in the lower priced sector, this situation would have given rise to serious competition concerns.

To alleviate these concerns Imperial Tobacco has undertaken not to develop the trademarks in question for its own account and to maintain the exclusivity distributors currently enjoy. It also undertook that in the event that ‘own-label’ distributors were to find alternative suppliers in the future, Imperial Tobacco would assign the relevant trade-marks for a nominal sum at the request of the distributor. These undertakings eliminate any dependency on Imperial Tobacco by allowing the distributors to change supplier easily and ensure that ‘own-label’ cigarettes continue to be an effective source of competition in the UK market.

Barilla/ BPL/ Kamps

The European Commission approved, subject to conditions, the proposed take-over bid by Barilla Group of Italy for German bakeries group Kamps AG. The Commission feared that the deal might reinforce Barilla’s leading position in Germany for crispbread. Barilla already owns the Wasa brand, the uncontested market leader in Germany, and the addition of Kamps’ Lieken Urkorn would have strengthened this position. To address the Commission’s concerns, Barilla undertook to divest Lieken Urkorn’s crispbread business to a viable competitor with experience in the food sector.

Barilla and Italian bank Banca Popolare di Lodi S.c.a.r.l. (BPL) launched a public take-over offer for all Kamps’ listed shares. After the acquisition, Barilla and BPL will have joint control over Kamps.

Barilla is active in the production and sale of pasta and pasta sauce products, bakery products (bread, bread substitutes and cakes) and ice cream. While most of the company’s bakery operations are centred in Italy, Barilla’s Wasa subsidiary is a leading crispbread manufacturer in several European countries, including Germany. Barilla acquired the Wasa brand in 1999, a deal which was examined by the German cartel office.

Kamps makes bakery products (bread, bread substitutes and cakes) in a number of European countries, including Germany, the Netherlands and France. Among the brands it owns are Lieken Urkorn and Golden Toast. The Lieken Urkorn brand comprises a range of bread, bread substitute and cake products, including a number of crispbreads.

The Commission’s market investigation showed that the activities of Barilla and Kamps are largely complementary. However, competition concerns arose in the German market for crispbread, where Lieken Urkorn is one of a few challengers to the market-leading Wasa brand. The only other significant competitor with branded products is Brandt’s ‘Burger’ division, a leading former East German crispbread brand which is, however, virtually unknown in western Germany.
The Commission considered that the divestiture of Kamps’ crispbread business, which accounts for only a small fraction of Kamps’ total turnover, removed the overlap between the parties’ activities in the German bread substitutes market and thus resolved the competition concerns.

BP/ Veba Oel

The European Commission authorised BP Plc’s proposed acquisition of the whole of German oil and petrochemicals producer Veba Oel, currently a joint venture between BP and E.ON. The Commission concluded that the change from joint to sole control does not give rise to competition concerns.

Veba Oel AG was a 100-percent subsidiary of German energy group E.ON until 2001 when BP bought a 51-percent stake therefore acquiring joint control with E.ON in the oil and petrochemicals company active mainly in Germany through the Veba and Aral brands. Under the joint venture agreement, E.ON had a put option to sell the remaining shares to BP at a later stage.

The creation of the Veba Oel joint venture was cleared with conditions by the Commission in December 2001 (see IP/01/1893) and by the German Cartel Office. The latter examined the deal’s impact in the fuels markets after a referral request whereas the Commission examined the petrochemicals sector.

The Commission examined whether the acquisition by BP of full control of Veba Oel would give rise to competition problems, but considered that it would not alter the competitive situation in the market since the put option was already contained in the 2001 agreement, that BP already had joint control and that the JV was no longer acting as an independent competitor of BP.

However, in view that some of the deadlines for complying with the conditions imposed in the BP/ E.ON joint venture by both the Commission and the Bundeskartellamt were still running, the Commission considered that the competition concerns resulting from the combination of BP’s and Veba Oel’s petroleum activities were not yet fully eliminated. To address these concerns, BP committed to fully comply, also with regard to the present transaction, with the undertakings submitted to the Commission and to the Bundeskartellamt in the BP/E.ON case. The Commission cleared the present transaction subject to full compliance with this commitment.

Telia/ Sonera

The European Commission gave the go ahead to the proposed acquisition of Finnish-based telecommunications group Sonera Corp. by Sweden’s Telia AB, another telecoms firm. The Commission feared that the deal — the first between two incumbent telecoms companies in Europe which moreover are neighbours — could act against consumers’ interests by reducing competition in Finland and in Sweden. But the companies addressed these concerns by offering to sell Telia’s mobile operations in Finland, Telia’s cable TV network in Sweden and by creating a legal separation between their fixed and mobile networks and services businesses in Finland and Sweden.

‘The regulatory clearance of the proposed merger between Telia and Sonera provides a good example of how the Commission’s overriding concern to ensure sufficient choice, vibrant innovation and competitive prices can be resolved successfully and speedily. Today’s decision will enable the new entity which will arise from the merger of Telia and Sonera to be more competitive on the European scene and, at the same time, takes care to guarantee that business customers and households in Finland and Sweden will not lose out as a result’, said Competition Commissioner Mario Monti.

According to the terms of the deal notified to the Commission on 28 May 2002, the Swedish incumbent telecoms company Telia will merge with the Finnish telecoms company Sonera by way of an exchange offer by Telia to Sonera’s shareholders. On completion, current Telia shareholders will account for 64% of the combined company and Sonera shareholders for 36%.

Both Telia and Sonera are partly state-owned and are the leading telecommunications operators in their respective countries.

Telia provides a wide range of retail communications services to residential and corporate customers, primarily in Sweden. It is also a significant provider of international carrier services and domestic wholesale services in the Nordic and Baltic region.

Sonera is the leading provider of mobile communications services, data communications services and international voice services in Finland. Its main activities outside Finland are in the Baltic States.
**Horizontal overlaps**

The Commission’s investigation showed that the proposed transaction would lead to direct overlaps in the parties’ activities in Finland for mobile communications services to retail customers, wholesale international roaming and wireless local area network (WLAN) services. The concerns raised by these overlaps were, however, remedied by the parties’ commitment to divest Telia’s mobile communications business in Finland, including its WLAN business.

**Potential competition**

The analysis of the merger also showed that the loss of competitive pressure brought about by the merger would be higher than the market shares of Telia in Finland might indicate. The loss of Telia as an actual and potential powerful competitor for a wide range of telecommunications services in Finland would strengthen the dominant position of Sonera in its home market, in particular as regards fixed and mobile communications services.

**Likelihood of foreclosure due to strong vertical links**

In addition to this, the Commission was concerned by the strong vertical links between, on the one hand, the parties’ strong position in certain retail markets such as mobile communications services and corporate communications services in Sweden and Finland and, on the other hand, the parties’ monopoly positions for wholesale call termination on their fixed and mobile telephony networks and leading positions for the provision of wholesale international roaming in Sweden and Finland.

This vertical integration of powerful positions would give the merged entity the incentive and ability to foreclose competitors from the retail services markets in both countries. This would probably result in the strengthening of already strong positions for mobile communications services and bundled voice and data communications solutions (corporate communications services), in particular for services directed to corporate customers with pan-Nordic needs.

In order to remedy to the foreclosure concerns, the companies offered to create a legal separation between their fixed and mobile networks as well as services in Finland and in Sweden. They also undertook to grant non-discriminatory access to their networks.

Finally, the parties offered to divest Telia’s nationwide cable TV business in Sweden. Cable TV networks, when they exist and especially when they have a wide coverage, are considered to be the most credible substitute to the infrastructure of incumbent telecoms firms in that they can be used, if sufficiently upgraded, to provide broadband Internet services, data transmission and voice telephony.

The package of undertakings fully resolved the Commission’s concerns. Therefore regulatory clearance was possible after only an extended first-phase (six weeks) review.

**C – Summaries of referral decisions taken under Article 9 of the ECMR**

Article 9 of the Merger Regulation is intended to fine-tune the effects of the turnover-based system of thresholds for establishing jurisdiction. This instrument allows the Commission, if certain conditions are fulfilled, to refer the transaction to the competent competition authority of the Member State in question. If for instance the transaction threatens to create a dominant position restricting competition in distinct markets within a specific Member State the Merger Regulation allows the Commission to refer cases to national authorities in such circumstances if they request a referral. This arrangement allows the best placed authority to deal with the case in line with the subsidiarity principle.

**Nehlsen/ Rethmann/ SWB/ Bremerhavener Entsorgungsgesellschaft**

The European Commission referred the proposed acquisition of joint control of the Bremerhavener Entsorgungsgesellschaft mbH (BEG) by Karl Nehlsen GmbH & Co KG (Nehlsen), Rethmann Entsorgungswirtschaft GmbH & Co KG (Rethmann) and swb AG (swb) to the German competition authority (Federal Cartel Office). The Federal Cartel Office requested this referral as the merger threatened to create dominant positions on the regional markets for the incineration of municipal and commercial wastes in Lower Saxony, Bremen and Hamburg.

Nehlsen is part of a group with the same name that operates in the German waste disposal industry.

Rethmann is majority-owned by the international Rethmann Group, whose core business is waste disposal. Its other activities include the removal and processing of slaughterhouse wastes and animal carcasses, and logistical services.
Swb is controlled by Dutch company Essent N.V., a multi-utility corporation that supplies gas and electricity, and telecommunications and waste disposal services.

BEG is active in waste and sewage disposal, including the construction and operation of the necessary plant and installations. It operates a refuse incineration plant, a central waste water treatment plant and a second water treatment plant in Bremerhaven. It is currently under the sole control of the City of Bremerhaven.

The Federal Cartel Office asked for the case to be referred over concerns about the parties’ large combined share of the markets for the thermal processing of municipal and commercial wastes in the Lower Saxony/Bremen/Hamburg area.

The Commission believed that the conditions for a referral were met and that the Federal Cartel Office were in a better position to examine the effects of the merger on the regional markets concerned.

**Sogecable/ Canalsatélite Digital/ Vía Digital**

The Commission decided to grant the referral requested by the Spanish Competition Authorities with regard to the integration of the two satellite digital television platforms operating in Spain. The operation, which threatens to bring about anti-competitive effects in a number of markets within Spain, will therefore be assessed by the Spanish authorities according to this State’s national competition law.

On July 3, the Commission received a notification under the Merger Regulation requesting clearance for the integration of DTS Distribuidora de Televisión Digital S.A. (Vía Digital), the second pay TV operator in Spain, in Sogecable S.A., the dominant pay TV operator in Spain, by way of exchange of shares. The former is controlled by the Spanish undertaking Grupo Admira Media S.A., belonging to the Telefónica group. The latter is controlled jointly by the Spanish media group Promotora de Informaciones S.A. (Prisa) and Groupe Canal + S.A., belonging to Vivendi Universal. According to the notification, after the merger Sogecable will continue to be controlled by Prisa and Canal+, while Telefónica will hold a significant participation in the merged entity.

On 12 July, the Spanish government requested the Commission, according to article 9.2 (a) of the Merger Regulation, to refer the case to its competition authorities on the basis that the merger threatened to create a dominant position impeding competition in distinct markets within Spain.

The Commission’s review of the case confirmed that the concentration would threaten to create or strengthen a dominant position in the following markets geographically limited to Spain: pay TV, where the two parties are currently the two largest competitors and have combined market shares of around 80% (in terms of number of subscribers) and 80-95% in terms of sales; acquisition of exclusive rights for premium films and acquisition and exploitation of football matches in which Spanish teams participate (these TV contents are the main drivers for customers that decide to subscribe to a pay TV), other sports and sale of TV channels.

The Commission also investigated the effects of the transaction on several telecommunication markets, such as the provision of services of Internet access, services of fixed telephony or provision of infrastructures, and took also into consideration Telefónica’s developing activities in pay TV (in particular, its project Imagenio, which will provide pay TV services, Internet access and fixed telephony through ADSL). The investigation showed that the creation of a structural link between the dominant operators in pay TV (and audio-visual content) and telecommunications in Spain risked to strengthen Telefónica’s dominant position in a number of telecommunication markets.

The Commission came to the conclusion that in this case, given the national scope of the markets affected by the transaction, the Spanish Authorities are particularly well placed to carry out a thorough investigation of the operation, and that it was therefore appropriate to refer the case to Spain. The Spanish authorities will assess the transaction under their national competition law. According to the Merger Regulation, the publication of any report or the announcement of the findings of the examination of the concentration by the Spanish Authorities shall take place not more than four months after the Commission’s referral.

**Sogecable** is a Spanish company whose principal areas of business are the operation of terrestrial television (Canal+ analogue) and direct-to-home satellite pay television services (Canal Satélite Digital), the production and distribution of films, the acquisition and sale of sports rights and the provision of technology services. Sogecable is controlled by Prisa (Promotor de Informaciones S.A., the Spanish media group that publishes ‘El País’ and ‘Cinco Días’), and by Canal + S.A.

**Vía Digital** offers pay TV via satellite in Spain and is controlled by Telefónica through Admira Media. The remaining capital is divided among institutional shareholders, mainly TV operators (Televisa, Canal 9, Direct TV, TVG, TVC, Telemadrid).