Introduction

Merger and acquisition activity continued at high levels during the four months from September to December with numbers reaching record levels at year end. The Commission received a total of 120 notifications and adopted 132 final decisions during the period. This compares with 125 notifications and 115 decisions adopted in the previous trimester.

The Commission adopted a total of 124 decisions after a Phase I investigation in this trimester with 84 of these qualifying for treatment under the simplified procedure. The Commission also adopted 4 decisions subject to conditions and obligations pursuant to Article 6 (2) ECMR during this period.

The Commission adopted 3 decisions pursuant to Article 8 after in-depth investigation. Two cases were cleared subject to substantial commitments being made (Gaz de France/Suez and Metso/Aker). The remaining case — Glatfelter/Crompton — was cleared without conditions as the Commission was satisfied that there was sufficient competitive pressure coming from other competitors in the market. The Commission also opened 6 Phase II investigations (Article 6(1) (c) ECMR) during this period. One case was withdrawn during Phase II.

The new streamlined referral mechanism introduced in 2004 for cases without Community dimension continues to generate a large number of referrals with the total number of requests for the trimester reaching some 16 cases. There were also two post-notification referrals — one case was referred to the Commission pursuant to Art. 22 and one case was referred by the Commission to a Member State pursuant to Art. 9 (Foster Yeoman /Aggregate Industries — see below for further details).

A — Summaries of decisions taken under Article 6

Nokia/Siemens

On 13 November, after an intensive Phase I investigation, the Commission gave its unconditional go-ahead to the proposed merger between the Finnish company Nokia and the network equipment business of the German company Siemens AG.

Nokia is mainly active in mobile telecommunications, i.e. handsets and equipment to run mobile telephony networks. Siemens has activities in the telecommunications sector and is active in a number of other business areas such as automation and control, power and transportation. Both Nokia and Siemens supply telecommunications equipment and related services to operators of communications networks worldwide. Communications networks enable operators to transmit all types of content (voice, data or multimedia) to customers on a global scale. By the proposed concentration Nokia would acquire control of the newly created company, Nokia Siemens Networks, to which Nokia and Siemens would contribute their mobile and fixed-line telecommunications network equipment business.

The main competitive impact of the proposed transaction was in the mobile network equipment sector, since Nokia has few activities in fixed-line telecommunications. The Commission’s market investigation revealed that, despite the considerable market shares the merged entity would have in the mobile network equipment sector, the market structure would remain competitive. A sufficient number of credible competitors would remain in the market, inter alia market leader Ericsson and Alcatel-Lucent. Customers (mostly network operators) would still have alternative suppliers.

The Commission’s investigation did not reveal any cause for concern with respect to any of the other activities of the parties namely those relating to fixed-line telecommunications network equipment and associated mobile and fixed-line services.
**Toshiba/Westinghouse /BNFL**

In September the Commission cleared a proposed acquisition by the Japanese conglomerate Toshiba of Westinghouse Electric UK and the BNFL USA Group, both active in the nuclear sector.

As well as being a worldwide supplier of equipment in a number of other sectors, Toshiba supplies nuclear power plants, including instrumentation and control systems and post-installation services, to utilities that operate such plants, mainly in Asia. Toshiba also holds a minority share in the nuclear fuel assembly supplier Global Nuclear Fuels ("GNF"), controlled by the US company General Electric ("GE"), with Hitachi of Japan also holding a minority stake.

Westinghouse Electric UK and the BNFL USA Group (hereafter "Westinghouse"), currently part of British Nuclear Fuels plc, are active worldwide in all aspects of nuclear power plants.

The Commission found that the proposed transaction would combine two suppliers of nuclear power plants and related products whose activities are to a significant extent complementary, both technologically and geographically. Toshiba is focussed on nuclear power plants based on so-called boiling water reactors, mainly in Asia, whilst Westinghouse is active principally in pressurised water reactors. The merged entity would still face competition from a number of suppliers of nuclear products and services after the merger. In particular GE, and the French company Areva would continue to be strong competitors to Westinghouse, since they are active in the nuclear power industry on a world-wide scale, GE being particularly strong in nuclear power plants, and Areva as a market leader in control systems and nuclear post-installation services in Europe.

The Commission investigated in particular the effects of the transaction in the nuclear fuel assemblies markets, in which Westinghouse, Areva, and GNF are the largest suppliers worldwide. During the Commission's investigation, concerns materialised as to possible effects on potential competition in the fuel assembly markets of the combination of Toshiba's stake in GNF with its control of Westinghouse. To allay these concerns Toshiba has submitted to the Commission a commitment to modify its contractual arrangements with its partners in GNF, General Electric and Hitachi, in order to eliminate the risk that Toshiba could impede competition through the joint venture.

The Commission concluded that, subject to full compliance by Toshiba with the commitment submitted, the proposed operation would not raise competition concerns and would not have any negative impact on European customers or on the safety of energy supply in Europe.

**Veolia /Cleanaway**

A conditional clearance was granted to the proposed acquisition of the UK waste management service company Cleanaway by Veolia ES Holdings plc. on 21 September. Veolia, the acquirer, is also in the waste management business.

Veolia ES provides waste management services in the UK, in particular the collection and disposal of municipal, industrial and commercial waste. It is an indirect subsidiary of Veolia Environnement, a global provider of environmental management services. Cleanaway is a provider of waste management services in the UK, including the collection, disposal and treatment of municipal, commercial and industrial waste, as well as a range of related services such as street cleansing.

The Commission’s investigation showed that in most segments of the UK waste management sector (collection and disposal of waste) the proposed transaction would not raise competition concerns because the new entity would face competition from several strong waste management service providers.

However, the Commission’s market investigation revealed that there could have been an adverse effect on competition in relation to the thermal treatment/incineration of hazardous industrial and commercial (I&C) waste. This is a particular type of service in which both parties were active. The service involves the use of high temperature incinerators ("HTIs") designed principally to incinerate hazardous waste at high temperatures (typically greater than 1000°C). The Commission's investigation indicated that for certain types of hazardous waste, HTI incineration was the only viable alternative. It was likely therefore that there was a separate market for incineration of hazardous waste in HTIs only. Furthermore, in particular due to regulatory barriers to the export of hazardous waste for incineration in HTIs outside the UK, the geographical scope of the market was considered to be national.

In the UK there were at the time of notification only two HTI facilities for large scale hazardous waste treatment — one belonging to Veolia and the other to Cleanaway. Therefore, the proposed transaction as originally notified would have led to a 100% market share on the merchant market for incineration of I&C hazardous waste in HTIs in the UK.

To address the Commission’s concerns in the HTI market, Veolia undertook to divest its HTI facility
at Fawley in Hampshire. This would allow a second service provider and thus restore the competitive structure existing before the proposed transaction. This would ensure that the merged company will continue to have at least one commercial viable competitor on the market for the thermal treatment/incineration of hazardous industrial and commercial (I&C) waste by HTI.

**Fisher/Thermo Electron**

On 9 November the Commission approved the proposed acquisition of Fisher Scientific International Inc. by Thermo Electron Corporation. Both Thermo and Fisher are US companies active in the field of manufacturing and supplying a wide variety of analytical instruments, scientific equipment, consumables and services to the scientific community, including clinical, pharmaceutical, environmental and industrial laboratories. Fisher is also active as a distributor of laboratory and life science products.

The Commission examined the competitive effects of the merger in the markets where both companies are active as suppliers. The Commission’s investigation showed that the new entity would continue to face strong, effective competitors in the manufacturing of the products involved, with the exception of centrifugal evaporators. Centrifugal evaporators are pieces of equipment that use heat, vacuum and centrifugal force to concentrate laboratory samples by separating the solvent from samples suspended in solutions. However as Thermo undertook to divest all of Fisher’s assets related to the production of centrifugal evaporators, the competition concerns that could result from the proposed transaction were entirely removed.

Given that Fisher is active as a distributor, the Commission also scrutinised the market characteristics and the competitive structure at both manufacturing and distribution level and concluded that a significant share of distribution would still be available to other suppliers and likewise that distributors would not have problems in finding alternative sources of supply. Therefore the Commission came to the conclusion that the merged entity would lack the ability to restrict distributors’ access to input or to drive competing manufacturers out of the market.

**Johnson and Johnson / Pfizer**

On 11 December the Commission cleared Johnson & Johnson’s ("J&J") proposed acquisition of Pfizer’s consumer healthcare business ("PCH") subject to conditions.

J&J is a leading healthcare group active worldwide in three business segments: pharmaceuticals, consumer products and medical devices and diagnostics. PCH is Pfizer’s worldwide business division active in over-the-counter ("OTC") pharmaceuticals and personal care products.

The Commission’s investigation focused on the few product areas where the activities of J&J and PCH overlap. The investigation revealed that the proposed transaction would not significantly modify the structure of most of the concerned markets and that 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 for topical dermatological antifungals in Italy and daily-use mouthwash in Greece. In Italy, the combination of the topical dermatological antifungals of J&J (with the brands **Daktarin**, **Pevaryl** and **Nizoral**) and PCH (with the brand **Trosyd**) would have reduced the number of players on the market from three to two. In Greece, J&J (with the brand **ACT**) and PCH (with the brand **Listerine**) are the two leading suppliers of daily-use mouthwash.

To resolve these competitive concerns, J&J proposed to divest the OTC topical dermatological antifungal formulations supplied by PCH in Italy under the trademark **Trosyd** and its **ACT** daily-use mouthwash business EEA-wide. The divestitures consist of the sale of the relevant assets for the manufacture and sale of the products. These assets include goods and inventory, marketing authorisations, the trademarks, intellectual property rights and know-how.

The Commission further identified competition concerns in the field of “Nicotine Replacement Therapy” products ("NRT"), due to the vertical relationship between J&J’s subsidiary, ALZA, and GlaxoSmithKline ("GSK"), for which ALZA manufactures nicotine patches. Through the proposed transaction, J&J would acquire PCH’s **Nicorette** NRT business, which directly competes with GSK’s **NiQuitin** NRT business. Post-merger, the combined entity could thus have the ability and the incentive to engage in input foreclosure strategies vis-à-vis GSK and would have access to confidential information from one of its main competitors.

J&J offered to divest ALZA’s international nicotine patch business (the global business, excluding the US, Canada and South Korea). In the event that such divestiture has not taken place within a given time, J&J would divest ALZA’s global nicotine patch business (including sales in the...
US, Canada and South Korea). The main assets to be transferred are the relevant supply agreements, trademarks, technology and, as an option for the purchaser, ALZA’s nicotine patch production lines. In addition, J&J undertook to provide manufacturing capacities and technical assistance to the purchaser until the latter had become fully operational. Following the divestiture of ALZA’s nicotine patch business, the purchaser would thus be in a position to supply GSK’s requirements in the EEA independently from J&J.

These remedies remove all overlaps between J&J and PCH for topical dermatological antifungals and daily-use mouthwash, as well as the vertical relationship between J&J’s nicotine patch manufacturing activities and PCH’s NRT business.

B — Summaries of decisions taken under Article 8

Glatfelter/Crompton

On 20 December the Commission gave its unconditional approval to the proposed takeover of Crompton’s Lydney paper mill by Glatfelter of the US. This approval followed an in-depth Phase II investigation.

Glatfelter is a US manufacturer of specialty papers with production sites in the US, Germany, France and the Philippines. The company manufactures, in particular, wetlaid fibre materials such as tea-bag paper, paper for coffee-filters and coffee-pads, as well as overlay papers for laminates which are used to produce flooring, furniture and work surfaces. The target company Crompton had been a leading manufacturer of specialty papers for the tea-bag and coffee-filter industry with three paper mills in the UK and worldwide sales. It had been placed in court-ordered administration earlier in the year.

The case had been referred to the Commission by the German Bundeskartellamt pursuant to Art. 22 (3) of the Merger Regulation. The Commission’s market investigation found that although Glatfelter, together with the Lydney mill, would control a substantial share of both sales and capacity in the European Economic Area (EEA), this would not constitute a significant impediment to effective competition. The new entity would remain constrained by its competitors, such as Ahlstrom and Purico. These companies, along with other potential competitors, would be able to expand their capacity in response to an increase in the price of wetlaid fibre for tea and coffee filtration. Purico’s Chinese manufacturing facility had recently become operational and provides the market with new capacity. Purico also acquired two additional plants formerly owned by Crompton, Devon Valley and Simpson Clough, as well as the Crompton brand. These assets, together with the newly opened mill in Shanghai, established Purico as a significant competitor in the wetlaid fibre market.

Gaz de France/Suez

For a more extensive treatment of this case please see the article on page 83 of this Newsletter

On 14 November the Commission gave its conditional approval to the merger of Gaz de France (GDF) and the Suez group. After an in-depth investigation, the Commission initially found that the deal would have anticompetitive effects in the gas and electricity wholesale and retail markets in Belgium and in the gas markets in France. The Commission’s concerns related mainly to the removal of the increasing competitive pressure that GDF and Suez had so far exerted (and would have exerted in the foreseeable future) on each other in both Belgium and France. Given the conditions on the markets, including the very high barriers to entry, their respective dominant positions would have been considerably strengthened by the merger. In response to these concerns, the parties offered extensive remedies including the divestiture of Distrigaz and SPE and Suez relinquishing its control of Belgian network operator Fluxys.

Gaz de France is active in the gas sector at all levels, in electricity generation, electricity retail, and in energy services. It operates throughout Europe, but mainly in France and Belgium. In Belgium, Gaz de France, along with Centrica, has joint control over SPE, the second biggest player in the Belgian electricity and gas markets.

The Suez group is active in the gas and electricity sectors, in energy services and in water and environmental services, and operates mainly in Belgium and France. Suez’s main energy subsidiaries are Electrabel (electricity and gas), Distrigaz (gas) Fluxys (gas infrastructures), and (in the energy services sector) Suez Energy Services (former Elyo), Fabricom, GTI, Axima and Tractebel Engineering.

The Commission analysed the impact of the proposed operation on the gas and electricity markets in Belgium and France and concluded that, in the absence of the proposed remedies, the transaction would significantly impede effective competition. Conversely, no negative impact would arise in the other countries concerned, i.e. the UK, Luxembourg, the Netherlands and Hungary.

The Commission found that the merger, as originally planned, would have led to very high com-
combined market shares in Belgium and would have removed GDF as the strongest competitor to the incumbents Distrigaz (gas) and Electrabel (electricity and to a lesser extent gas). The removal of GDF’s competitive pressure would also have raised competition concerns with regard to the supply of gas to gas-fired power generators competing with Electrabel. Moreover, in view of its specific assets and strengths, no other company would have been able to reproduce the same level of competitive pressure as GDF.

The Commission also found that high barriers to entry would have further strengthened the parties’ dominant position in the gas markets. *Inter alia*, the merging parties would have had access to most of the gas imported to Belgium and would have held almost all long-term import contracts. In addition, due to the parties’ control over Fluxys, the network operator, they would have had privileged access to supply infrastructure and storage.

The Commission found that the merger would have strengthened GDF’s dominant position in France by removing the competitive pressure exerted by Distrigaz, one of its best placed competitors. In France too, barriers to entry, relating to access to gas and infrastructures, would have increased the horizontal effects of the merger.

Finally, competition concerns would also have arisen in the market for district heating in France, where the merger would have combined the largest player (Suez) with its second largest competitor (GDF), thus leading to a further concentration of this market.

To address these concerns Gaz de France and Suez offered a comprehensive and far-reaching package of remedies. Most notably Suez agreed to divest Distrigaz (including its French activities) and to relinquish control over Fluxys. GDF will in turn divest its shareholding in SPE and, to address the concerns in the district heating market, divest its subsidiary Cofatelec Coriance. Furthermore, a series of investment projects will be carried out both in Belgium and in France with a view to increasing infrastructure capacities, thereby facilitating the entry of new competitors onto the market and fostering competition. Most notably, the functioning of the Zeebrugge hub will be enhanced through the creation of a single entry point linking all networks converging on Zeebrugge and through the operation of the hub by an independent operator, Fluxys, which will no longer be controlled by Suez.

The Commission carefully assessed the revised remedies in the light of the response by market operators to an initial package of remedies and concluded that the final package would be sufficient to remove all competition concerns in a clear-cut manner. The remedies are consistent with the preliminary findings of the ongoing energy sector inquiry (2) which emphasise the need for structural solutions, such as ownership unbundling and severing the link between supply and infrastructure to create pro-competitive conditions for the sustainable development of energy markets.

**Metso/Aker**

On 12 December the Commission gave conditional approval to a proposed acquisition by Metso Corporation Oy (“Metso”) of Finland of the pulp and power business of the Norwegian group Aker Kvaerner ASA.

Both Metso and Aker Kvaerner are active worldwide in the development and production of equipment for pulp mills. The Commission's market investigation showed that the proposed transaction could have substantially reduced competition in those markets for pulp mill equipment in which both companies are active, namely equipment for the cooking, brown-stock washing, oxygen delignification and bleaching stages of pulp production.

The Commission’s investigation showed that many customers would welcome a partner like the merged entity, capable of supplying all elements of a modern pulp mill, thereby providing customers with a broader product portfolio and a better knowledge of the overall process of pulp production. At present, only the current market leader, the Austrian-based company Andritz, is able to supply equipment for a complete pulp mill.

However, there are currently only three large suppliers that dominate the supply of pulping machinery: Metso, Aker Kvaerner and Andritz. A fourth player, the Canadian-based GL&V, is only active in supplying certain parts of a pulp mill. Due to the high degree of specific know-how required to produce modern pulp mill machinery, as well as the need to have a strong reputation with customers based on past supplies (the so-called “installed base”), there are significant barriers to entry in the markets concerned.

In order to address these competition concerns, Metso offered to divest its business for the cooking stage (including the “SuperBatch” brand) as well as Kvaerner’s businesses for brown-stock washing, oxygen delignification and bleaching equipment (including the “CompactPress” wash

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(2) See also the articles on page 23 and page 65 of this Newsletter.
press technology) to GL&V. This will eliminate all overlaps between Metso’s and Kvaerner’s activities in the supply of pulp mill equipment.

The Commission ensured that the divested businesses comprised all assets, such as know-how, intellectual property rights and key personnel that are currently part of the parties’ activities in the relevant fields. Moreover, the Commission verified that after acquiring the divested businesses of Metso and Kvaerner, GL&V would have the capability and incentive to become a credible new third player in the pulping equipment industry.

Whilst Metso gave a commitment to entirely divest all assets related to its batch cooking business, it will retain a licence to continue to use the divested “SuperBatch” technology in competition with GL&V. This was necessary, because some customers of cooking equipment rely exclusively on the so-called “batch” cooking process (currently only offered by Metso and GL&V) and cannot purchase cooking equipment based on the so-called “continuous” cooking technology (supplied by Andritz and Kvaerner). For these customers, the licence prevents a market configuration where they are left with only one supplier of batch cooking technology.

Based on this analysis, the Commission concluded that the commitments provided by Metso would remove all competition concerns raised by the proposed transaction.

C — Summaries of decisions taken in accordance with Article 9

Foster Yeoman / Aggregate Industries

In September clearance was given of the proposed take-over of UK company Foster Yeoman by Aggregate Industries. The clearance related only to markets outside the UK. At the same time, at the request of the UK’s Office of Fair Trading (OFT), the Commission referred the examination of the impact of the proposed acquisition on the UK aggregates, asphalt and road surfacing market to the OFT.

Aggregate Industries is a subsidiary of the Holcim Group (Switzerland), which is active in aggregates, asphalt and road surfacing, as well as in cement and concrete. Foster Yeoman is a privately-owned heavy building materials group. Both Aggregate Industries and Foster Yeoman are active in the markets for aggregates (mostly sand, gravel and crushed rock), asphalt production and road surfacing, but almost exclusively within the UK.

On 11 August 2006 the United Kingdom requested the referral of that part of the proposed concentration relating to UK markets with a view to carrying out its own assessment under UK competition law, pursuant to Article 9 of the EU Merger Regulation. In the request the UK’s Office of Fair Trading (“OFT”) submitted that the notified transaction affected competition in a number of separate product markets: the production and supply of aggregates and of asphalt and the supply of surfacing services and related activities. The OFT considered that these markets presented all the characteristics of distinct markets where competition is affected. Moreover, according to the OFT, some of these markets did not constitute a substantial part of the Common Market.

The Commission’s findings concurred with the submission of the OFT. Given that an examination of the case would require the investigation of local (sub-)markets and supply relations it agreed that the OFT was best placed to assess the impact of the case on the heavy building materials markets in the UK. In addition, the OFT had recently investigated this sector in the UK and thus it had expertise of the sector. The Commission therefore decided to refer the investigation to the UK Competition Authority for further in-depth analysis of the proposed transaction’s effects on a number of local UK markets concerning aggregates, asphalt and road surfacing services.

Aggregate Industries and Foster Yeoman also import aggregates into European ports (including Germany, where they use the port of Rostock), where these aggregates are used as an input for local ready-mixed cement production. Holcim has a local ready-mixed cement production of some importance in Rostock. However, the market position of the combined entity in aggregates would be modest and the Commission concluded that the proposed acquisition would not create any risk of aggregate supply problems for other local ready-mixed concrete producers.