Mergers: Main developments between 1 May and 31 August 2008

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Introduction

The number of notifications received rose again in this four month period reaching a total of 135, considerably higher than the total for the previous four month period of 114. A total of 119 decisions were adopted. Of these 105 were decisions adopted after a first phase investigation and 69 were decisions according to the simplified procedure. The Commission also adopted 9 conditional clearances in phase I (under Article 6(2)). Four cases were cleared unconditionally under Article 8(1) after a Phase II investigation and one other was cleared subject to conditions (Article 8(2)). In a further case the notification was withdrawn in Phase II. The Commission initiated 5 second phase proceedings the period (Article 6(1) (c)). Finally two decisions were adopted referring cases to the appropriate Member States under Article 4 (4) and one referral was made pursuant to Article 9.

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

Vienna Insurance Group/Erste Bank

On 17 June the Commission decided to approve, subject to conditions, the proposed acquisition by Vienna Insurance Group (VIG) of the insurance subsidiaries of Austria’s Erste Bank.

Vienna Insurance Group is an international insurance group based in Austria providing both life and non-life insurance in Austria as well as in Central and Eastern Europe. Erste Bank is Austria’s second largest bank. It provides insurance through its subsidiaries s-Versicherung (Austria), BCR Life and BCR Non-Life (Romania), and others in the Czech Republic, Slovakia and Hungary.

Following consultation of a wide range of customers, intermediaries and competitors in all the affected markets, the Commission identified serious competition concerns in relation to life insurance products for pension and investment purposes in Austria, and non life insurance, particularly car insurance, in Romania.

In Austria, the proposed transaction would have given VIG around 40% market share, almost double the size of its nearest competitor, Unita. The Commission was particularly concerned by its post-merger strength in the key banking distribution channel, where two out of the three big Austrian retail banks would have distributed VIG’s life insurance products almost exclusively. In order to address these concerns VIG undertook to divest Bank Austria Creditanstalt Versicherung AG (BACAV) in Austria and Unita in Romania. The sale of BACAV to competitor Ergo, which until then had only a limited presence on the market, also included the continued distribution relationship to Bank Austria, thereby ensuring that a competitive force would remain on the market.

In Romania, the post-merger position of VIG would have been even more significant, reaching market shares of over 50% for motor liability insurance, over four times that of its nearest competitor. The Commission concluded that its strength across all distribution channels — in-house, agent, broker and bank — would have raised formidable obstacles to competitors. However the divestiture of Unita would fully eliminate the overlap in all the key segments of non-life insurance and would ensure that the rapidly growing Romanian market would continue to benefit from competition, service quality and innovation.

The Commission also looked carefully into the Romanian markets for credit and warranty insurances, but came to the conclusion that the parties would not have any particular market strength after the merger. Aside from the commitments in relation to pharmaceutical product liability insurance received during the examination in 2006 of the acquisition by Talanx of Gerling Versicherungsgruppe, this was the first general insurance case under the EU Merger Regulation to be the subject of remedies.

Rewe Group/ADEG

In June the Commission approved the proposed takeover of ADEG of Austria by the German REWE Group, subject to conditions. Both parties were active on the Austrian retail and wholesale markets for everyday consumer goods. The Commission was concerned that the strength of the combined company in certain Austrian regions could lead to higher prices for everyday consumer goods. 

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goods in Austria. During the Commission’s preliminary investigation REWE proposed to divest outlets in the relevant regions.

AEG was jointly owned by AEG independent merchants’ organisation AÖGen, Edeka Chiemgau and by REWE which has a minority shareholding of 24.9%. REWE is active on the Austrian retail market for everyday consumer goods through the retail chains Billa, Penny and Merkur. REWE is the market leader, closely followed by its competitor SPAR Austria. AEG is a relatively small competitor.

In April 2008, REWE notified its intention to acquire control over AEG to the Commission. Following the transaction, REWE would own 75% of AEG, giving it sole control, while AÖGen would retain a minority interest of 25%.

The Commission’s initial investigation found that the market shares in Austria would remain moderate following the transaction and that AEG was not a strong competitive force on the Austrian market. However, during its preliminary investigation, the Commission was not able to exclude serious doubts that the combined strength of REWE and AEG at the level of several Austrian districts would not result in increased price levels on the national retail market.

In response to the Commission’s preliminary findings, REWE offered to sell all AEG-owned shops in the relevant districts and to encourage AEG merchants to leave the AEG network. In the event that too few merchants left the AEG network, REWE made a commitment to sell certain REWE outlets. This would reduce the presence of the combined entity in the affected regions and therefore remove the Commission’s competition concerns.

For a more extensive treatment of this case see the article on page 75 of this Newsletter.

**News Corp/Premiere**

In June a conditional approval was granted to the proposed acquisition of Germany’s pay-TV operator Premiere AG by News Corporation (News Corp) of the US. The approval was granted subject to commitments which would ensure third party access to Premiere’s satellite platform.

News Corp is a media company primarily active in the production and distribution of TV programming, TV satellite and cable broadcasting, the development of digital broadcasting, the development of conditional access and subscriber management systems and the creation and distribution of on-line programming worldwide. Premiere operates pay-TV channels to viewers in Germany and Austria. Premiere offers its channels to final customers via its satellite platform and via cable and IP-TV. To encrypt its programmes, Premiere had announced that it would exchange its current conditional access (CA) technology for that of News Corp’s subsidiary NDS.

Under current contractual arrangements between Premiere and its third party technical service provider, other pay-TV operators in Germany have access to Premiere’s satellite set-top boxes so that consumers owning such set-top boxes can receive not only Premiere’s programmes, but also those of Premiere’s competitors. In allowing third-party access, the technical service provider is performing a neutral role between Premiere and its pay-TV competitors. The relevant contractual arrangements include, in particular, a sub-licence granted by Premiere to its technical services provider for the encryption of third-party pay-TV operators’ programmes with its current CA technology.

Following consultation of a wide range of market players in Germany and Austria, the Commission found that Premiere’s switch to the NDS CA system would most likely impede third-party access to Premiere’s satellite platform via its technical services provider, thereby strengthening Premiere’s dominant position in the German pay-TV market. The Commission’s investigation also revealed that the management of the smartcards gives the provider of CA technology the possibility of impeding access by other pay-TV operators.

To address these competition concerns News Corp submitted commitments confirming that the technical services provider would continue to be in a position to grant third party access to Premiere’s satellite platform in the same way as before the merger. Specifically, a sublicensing agreement between Premiere and its technical services provider was concluded with regard to NDS’ CA technology, and all other rights necessary to give third-party pay-TV operators access to Premiere’s satellite platform in Germany would be given to the technical service provider, as well as the necessary hardware to implement the NDS CA system at the head-end of Premiere’s satellite platform. In addition the commitments provide for the direct delivery of smartcards by NDS to the technical service provider, sanctioned by appropriate penalties should they fail to comply.

The Commission concluded that the commitments submitted by News Corp were suitable to restore the pre-merger level of third-party access to Premiere’s satellite platform and to eliminate the competition concerns identified.

The Commission also carefully looked into possible vertical concerns arising from the combi-
nation of News Corp’s activities as a provider of audiovisual content and Premiere’s activities as an acquirer of such content, but came to the conclusion that the proposed acquisition would be unlikely to deny access to audiovisual content for competitors of the merged entity, mainly because Premiere’s competitors would retain several alternative suppliers.

**British American Tobacco/Skandinavisk Tobakskompagni**

In June conditional approval was given to British American Tobacco’s (BAT) proposed acquisition of the cigarette business together with certain roll-your-own tobacco and ‘snus’ (a type of oral tobacco) interests of the Danish company Skandinavisk Tobakskompagni (STK). The approval was granted subject to the divestment of a number of tobacco brands, primarily in Norway.

BAT manufactures, markets and sells primarily cigarettes and, to a lesser extent, other tobacco products, including cigars, pipe and roll-your-own tobacco throughout the world. The company’s range of cigarette brands includes *Dunhill, Lucky Strike, Kent* and *Pall Mall*.

STK is among Denmark’s largest international companies. It is the parent company of a number of subsidiaries engaged in the production and sale of tobacco products and pipes and it holds a share in the Tivoli amusement park in Copenhagen. The company’s cigarette brands include *Prince, Rockets, Slim Agenda, Camelia, Corner* and *Main*.

BAT proposed to acquire the following STK subsidiaries: House of Prince A/S in Denmark and its subsidiaries in Sweden, Estonia, Latvia, Lithuania, Poland, Czech Republic, Hungary and Greece, J.L. Tiedemanns Tobaksfabrik AS in Norway and Fiedler & Lundgren AB in Sweden.

The target STK would retain activities in roll-your-own tobacco, pipes and pipe tobacco and cigars via a number of other group companies. STK’s ownership of the Danish convenience goods company Dagrofa and its shareholding in the Tivoli amusement park were unaffected by the proposed transaction.

The Commission’s investigation found competition concerns in the market for cigarettes in Norway, where the merged entity would have a significant market share. The merged entity would also have a dominant position in the relatively large market for roll-your-own tobacco, although the proposed transaction would not lead to any increase in market share given that BAT does not currently sell any tobacco of this type in Norway. The Commission’s investigation found that the commercial negotiations for the supply of tobacco in Norway cover all types of tobacco products, such as cigarettes, roll-your-own tobacco and ‘snus’. The combination of the merged entity’s leading market positions in both cigarettes and roll-your-own tobacco would therefore give it a strong position in sales negotiations with customers.

In order to address the competition concerns identified by the Commission, BAT offered to divest a number of tobacco brands, primarily in Norway. The divestment of these brands, which include Petterøe’s and Tiedemanns Rød, would remove the major part of the market share increase that would have resulted from the proposed transaction as initially notified in the market for cigarettes. The divestment of these brands would also reduce the merged entity’s share of the roll-your-own tobacco market as some of the brands to be divested are also sold as roll-your-own tobacco products.

The Commission analysed the commitments submitted by BAT and concluded that they would remedy its serious doubts and therefore ensure that effective competition would not be impeded as a result of the proposed transaction.

**Hexion/Huntsman**

In July the proposed acquisition of Huntsman Corporation by Hexion Specialty Chemicals Inc. was approved subject to conditions.

Both parties to the transaction are US-based chemical manufacturers Hexion, which is owned by the US-based private investment company Apollo Group, produces a range of chemicals and in particular epoxy resins. It manufactures a range of resins that are used primarily in binding, bonding and coating applications, including acrylic, alkyd, amino, epoxy, phenolic and polyester resins.

Huntsman produces a wider range of chemicals, including inter alia epoxy resins. It also produces a diverse range of specialty and intermediate chemicals including polyurethanes, performance products, pigments, epoxy resins and formulated systems, textile dyes and textile chemicals.

The activities of Hexion and Huntsman overlap at all three levels of the epoxy value chain (production of inputs, components and formulated systems) and lead to a number of horizontally and vertically affected markets.

Although the parties would enjoy a high share with respect to the component Bis-F liquid epoxy resins (Bis F-LER), the Commission’s market investigation showed that the proposed transaction would not raise horizontal competition con-
cerns. Indeed, the parties would be facing competition from blends containing Bis-F LER and from the substitution of Bis-F LER by other technical alternatives. Furthermore, the market investigation revealed the existence of significant Bis-F LER spare capacity from players already having merchant sales and potential market entry from new players. This is likely to prevent any attempts of the merged entity to increase the price for Bis-F LER. The market investigation concluded for the same reasons that no related concern would arise from the vertical relationships between Bis-F LER and formulated systems for composites used in wind energy applications and electronic applications.

However, the Commission’s market investigation showed that the proposed transaction, as initially notified, raised horizontal competition concerns with respect to a number of specialty resins and formulated systems in which the merged entity would hold very high market shares both worldwide and in the EEA.

The Commission also identified vertical concerns for the supply chains (i) from the production of polyetheramines (input) to polyetheramine-based curing agents (component) and further downstream to formulated systems for adhesives and composites used in wind energy applications and composites used in aerospace applications, as well as (ii) for the supply chain from the production of the specialty resins TGMDA and TGPAP to formulated systems used in aerospace applications.

To remove the Commission’s concerns, Hexion offered to divest all facilities belonging to its own epoxy resin business at Duisburg (Germany), its facility at Stuttgart (Germany), its facility at Argo (US), its High Performance Resin Unit at Norco (US), as well as R&D assets in Duisburg, Stuttgart and Houston (US), including tangible and intangible assets, such as IPRs, licenses, permits, contracts, brands and personnel. 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.

**Lesaffre/GBI UK**

In July the Commission gave a conditional go-ahead to the proposed acquisition of GBI UK — GBI Ingredients Ltd and BFP Wholesale Ltd engaged in the yeast business and owned by Gilde B.V, by the French yeast manufacturer Compagnie des Levures Lesaffre. The approval was granted subject to the fulfilment of Lesaffre’s commitment to divest GBI’s yeast production facility in Felixstowe, UK.

Lesaffre is a privately-owned family company, which focuses on three main business areas: yeast, yeast extracts and bakery ingredients. Lesaffre has manufacturing facilities in 26 countries, including France and Belgium.

GBI UK consists of a yeast manufacturing business (GBI) and a wholesale distribution of yeast and bakery ingredients business (BFP) in the UK. Prior to its acquisition by Lesaffre, GBI UK was controlled by GBI Holding International, ultimately controlled by Gilde, a Dutch private equity investor.

The transaction was initially notified to the Office of Fair Trading (OFT), the UK competition authority, as it did not meet the turnover thresholds of the EC Merger Regulation. However, the OFT requested the Commission to examine this concentration pursuant to Article 22 of the Merger Regulation.

The Commission’s initial market investigation found that the notified transaction raised competition concerns in the UK market for liquid and compressed yeast. The transaction would have reduced the number of competitors from three down to two in the UK with respect to both liquid and compressed yeast. Lesaffre and ABF would remain the only suppliers of yeast in the UK and it is unlikely that other suppliers would have the ability and incentive to enter the market. To remove the Commission’s concerns, Lesaffre offered to divest GBI’s yeast production facility in Felixstowe, UK. The Commission concluded that such a divestment was suitable to address the competition concerns initially identified in the market investigation.

**Nordic Capital/ConvaTec**

In July the Commission cleared the proposed acquisition of ConvaTec of the US by Nordic Capital of Jersey, the Channel Islands. The Commission’s decision was conditional upon the commitment by Nordic Capital to divest its entire wound care business as well as its ophthalmic needles business both located at the Redditch site.

Nordic Capital is a private equity company which controls *inter alia* Unomedical, which is active in advanced wound care products, urinary incontinence products and other hospital care products. ConvaTec, a wholly owned business unit of Bristol-Myers Squibb, is a producer of advanced wound care products, ostomy products and products for acute faecal incontinence.
The parties’ were both producers of advanced wound care products, in particular for alginates (seaweed-based moisture-absorbing wound care products). The Commission’s initial investigation showed that this would raise competition concerns in the United Kingdom, where the proposed transaction would combine the two largest players in the alginates market resulting in very high combined market shares. All other competitors had small or very small market shares.

To remove the Commission’s concerns, Nordic Capital offered to divest Unomedical’s entire wound care business and also its ophthalmic needles business, both located at the Redditch site. After market testing the proposed remedies the Commission concluded that they would adequately address the competition concerns initially identified in its market investigation.

**Pernod Ricard/V&S Vin & Sprit**

In July clearance was granted to Pernod Ricard’s proposed acquisition of the Swedish state-owned company V&S Vin & Sprit (V&S).

Pernod Ricard is a publicly quoted French company active in the production and distribution of alcoholic beverages on a worldwide basis. Its main brands include Chivas Regal, Ballantine’s and The Glenlivet Scotch whiskies, Jameson Irish whiskey, Beefeater gin, Havana Club rum, Martell cognac, Jacob’s Creek and Montana wines and Mumm champagne.

Pernod Ricard currently distributes the vodka brands Stolichnaya and Moskovskaya which are owned by the SPI Group. Pernod Ricard has announced that its proposed acquisition of V&S would result in the termination of the Stolichnaya and Moskovskaya distribution agreements although Pernod Ricard would continue to distribute the brands during a short transitional period until SPI identified a new distributor.

V&S is also active in the production and distribution of alcoholic beverages. Its most famous international brand is Absolut vodka but it also distributes a range of other spirits, such as Aalborg Aquavit and Gammel Dansk bitter, as well as wines primarily in northern Europe.

The Commission’s investigation identified competition concerns in a number of national markets where the merged entity would have a strong market position. These concerns related to the market for aniseed flavoured spirits in Finland, vodka in Greece, gin in Poland and Sweden and cognac, port and Canadian whisky also in Sweden.

In order to address the competition concerns identified by the Commission, Pernod Ricard offered to divest its businesses conducted under the following brands: Dry Anis in Finland, Serkova vodka in Greece, Lubuski gin in Poland and Star Gin, Red Port and Grönstedt’s cognac in Sweden. In the case of Canadian whisky in Sweden, Pernod Ricard also undertook to discontinue the distribution of a third party’s brand, Royal Canadian. As a result of these commitments, the proposed transaction would not lead to any increment in the market share of the merged entity in any of the markets concerned.

The Commission analysed the commitments submitted by Pernod Ricard and concluded that they would remedy its serious doubts and therefore ensure that effective competition would not be impeded as a result of the proposed transaction.

The Commission also examined the potential effects on competition arising from the combination of Pernod Ricard and V&S’ broad portfolios of alcoholic beverages. The Commission concluded that as there were other companies in the drinks sector, often with one or more strong brands of their own, the merged entity would not be able to restrict its competitors’ access to the market or engage in other practices likely to harm consumers.

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

**STX/Aker Yards**

In May the Commission approved the proposed acquisition of control of the Norwegian shipbuilder Aker Yards by STX of South Korea. After an in-depth investigation, launched in December 2007 the Commission concluded that effective competition on the shipbuilding markets would not be significantly impeded as a result of the proposed transaction.

Aker Yards is active in the construction of cruise ships and ferries, and also builds merchant vessels and offshore vessels. It is one of the three main players on the global market for the construction of cruise ships, together with Fincantieri (Italy) and Meyer Werft (Germany).

STX is a Korean shipbuilder mostly active in building various types of cargo vessels, such as container ships or gas tankers.

On 20 December 2007, the Commission opened an in-depth investigation because of concerns that the proposed merger might, in particular, remove STX as a potential new market entrant into a concentrated cruise ship manufacturing market.
The Commission's in-depth investigation of the proposed transaction has however dispelled the initial doubts. The Commission found that by itself STX was still far from close to becoming an effective competitive constraint on the existing cruise ship construction market. The in-depth investigation also showed that STX was not the only possible market entrant and that post-merger a number of other Far-East shipbuilders would be as equally well placed as STX to enter the market.

The Commission also examined a concern brought forward by a third party related to subsidies, that South Korea might have granted or might grant in the future to the merged entity and that might enable the latter to undercut prices and monopolise the cruise ship market.

The Commission found that, regardless of whether any of the financial instruments granted to STX in the past were subsidies, the current financial position of STX would not give the merged entity a dominant position.

In addition, the Commission found no evidence indicating that STX was likely to receive subsidies in the future which could significantly strengthen its financial position and enable it to impede competition in the markets concerned.

In particular, the Commission found that even if the type of future hypothetical subsidies identified by the third party (subsidised loans and guarantees) were granted, the advantage would not be such as to enable the merged entity to acquire a dominant position on the cruise ship market. This was because:

(i) the current financial position of STX would not give the merged entity a dominant position

(ii) Aker Yards was also not currently dominant, as it competes with the market leader Fincantieri and with Meyer Werft

(iii) there were a number of structural features of the market such as the buyer power of a few large customers, that would make very unlikely any attempt by STX to monopolise the cruise ship construction market based on the alleged subsidised pricing in the current market structure.

The Commission therefore concluded that competition on the market for cruise ships would not be reduced as a result of the transaction. The Commission also analysed the ferries market, where similar concerns were raised, and came to the same conclusion.

The in-depth investigation also confirmed that there were no competition concerns arising from minor overlaps of the merging companies' activities in the area of certain types of cargo ships or from the vertical integration of STX into engine production or shipping services.

**TomTom/Tele Atlas**

In May the Commission approved the proposed acquisition of Tele Atlas by TomTom, both of the Netherlands. Tele Atlas is a provider of navigable digital maps and TomTom produces portable navigation devices (PNDs — often known as satellite navigation devices or SatNavs).

Tom Tom provides navigation software and PNDs, where it is the market leader in the EEA. Tele Atlas is one of two providers of navigable digital maps offering a complete coverage of Europe and North America. Navigable digital maps are essential inputs for PNDs.

On 2 October 2007, TomTom launched a public bid to purchase all shares in Tele Atlas. The proposed transaction was notified to the Commission on 22 October 2007. On 28 November 2007 the Commission opened an in-depth investigation.

The Commission's in-depth investigation assessed whether the vertical integration of Tele Atlas into TomTom would lead to a significant impediment of competition within the EEA, in particular in the light of the duopoly market for navigable digital maps (Tele Atlas and Navteq) and TomTom's strong position on the market for PNDs.

The Commission conducted its analysis in line with its recently adopted guidelines on the assessment of non-horizontal mergers. It focused on the ability and incentives of the merged company to increase the costs of other PND manufacturers for navigable digital maps or to limit their access to these maps, and on the impact any of these strategies might have on PND consumers.

On the basis of its in-depth investigation, the Commission found that the merged company would be unlikely to pursue these strategies because its ability to restrict access to digital maps for other PND manufacturers would be limited by the presence of an upstream competitor, Navteq. In addition, the merged company would have no incentive to restrict access to digital maps because the sales of digital maps lost by Tele Atlas would not be compensated by additional sales of PNDs. The Commission's analysis also took into account the efficiencies that are likely to be generated by the proposed transaction. As a result, the Commission concluded that the proposed concentration would not raise competition concerns.
For a more extensive treatment of this case and the Nokia/NAVTEQ case see the article on page 70 of this Newsletter.

**Nokia/NAVTEQ**

In July the Commission approved the proposed acquisition of NAVTEQ of the US by Nokia of Finland. NAVTEQ is a provider of navigable digital map databases and Nokia mainly produces mobile telephones.

Nokia is the largest manufacturer of mobile telephones in the world. NAVTEQ is one of two providers of navigable digital map databases offering a complete coverage of Europe and North America. Navigable digital map databases are essential inputs for navigation applications on mobile telephones.

On 1 October 2007, Nokia announced the acquisition of all shares and outstanding options in NAVTEQ. The proposed transaction was notified to the Commission on 19 February 2008. On 28 March 2008, the Commission opened an in-depth investigation to assess whether the vertical integration of NAVTEQ into Nokia could lead to a significant restriction of competition within the EEA, in particular with regard to the duopoly market for navigable digital map databases (NAVTEQ and Tele Atlas being the only suppliers) and Nokia's strong position on the market for mobile telephones.

The Commission's analysis was in line with its Guidelines on the assessment of non-horizontal mergers and its recent decision concerning the merger between TomTom and Tele Atlas, the other supplier of navigable digital map databases. The Commission focused on the merged firm's ability and incentives to raise competitors' costs by increasing the price of navigable digital map databases. Moreover, the Commission analysed the merged company's incentives to limit competitors' access to such databases. Finally, the possible impact of such a restrictive strategy on competitors and end-consumers was carefully assessed.

On the basis of the in-depth economic analysis carried out during its investigation, the Commission concluded that the merged company would be unlikely to pursue a strategy of closing off competitors. The merged firm's ability to deny competitors access to map databases is limited by the presence of the other competitor, Tele Atlas. In addition, the merged company would lack incentives to close off supplies of digital map databases to its competitors because a loss in sales of maps would not be compensated by increased sales of mobile telephones. Other mobile phone manufacturers could still compete with Nokia by working together with independent developers of navigation applications or by developing other features of their handsets. As a result, the Commission concluded that the proposed concentration would not raise any competition concerns.

For a more extensive treatment of this case and the TomTom/Tele Atlas case see the article on page 70 of this Newsletter.

**Itema/BarcoVision**

In August the Commission approved the proposed acquisition of BarcoVision of Belgium by the Italian company Itema. Itema produces textile machinery while BarcoVision manufactures sensors and other inputs for the textiles industry.

Itema is active in the production and sale of machinery for textile manufacturing. Itema is one of the three main companies supplying textile mill owners with winders, which are machines used to stock yarn before it is woven or knitted.

BarcoVision focuses on the production and sale of sensors for textile machinery as well as software systems specifically designed for the textile industry. BarcoVision is one of the two main companies currently producing sensors for winders, an essential component of the winder to ensure yarn and textile quality.

On 14 April 2008, the Commission opened an in-depth investigation to assess whether the new entity would be likely to stop supplying competing winder manufacturers with sensors, thereby raising the prices of winders for textile mills.

The Commission's analysis is in line with its Guidelines on the assessment of non-horizontal mergers. It mainly focused on the merged company's incentives to stop selling sensors to competitors — effectively withdrawing from the sensor market in order to raise its competitors' costs. The Commission concluded that such a strategy would not be profitable for the merged company: the additional profits made on the winder market would not compensate the losses incurred on the sensor market by refusing to sell to competitors. The Commission also assessed the incentives of the other main supplier of sensor to increase sensor prices following the merger and concluded that the merged firm's ability to raise competitors' costs will be limited. In addition, competitors on the winder market are able to start in-house production of sensors in the medium term and this would further constrain the sensor suppliers' behaviour. As a result, the Commission concluded that the proposed concentration did not raise any competition concerns.
C — Summaries of decisions taken under Article 8(2)

Arjowiggins/M-Real Zanders’ Reflex paper mill

In June the Commission approved the proposed takeover of the Reflex paper production mill in Germany that currently belongs to the Finnish paper manufacturer M-Real, by the French paper manufacturer Arjowiggins, subject to conditions. In December 2007 the Commission opened an in-depth investigation into the proposed takeover because of competition concerns, particularly on the market for carbonless paper. In the light of the Commission’s concerns, Arjowiggins offered to divest M-Real’s carbonless paper business.

Arjowiggins, a subsidiary of Sequana Capital (formerly known as Worms & Cie), is one of the world’s largest manufacturers of specialty paper, mainly graphic or creative paper, communication paper, including carbonless copy paper, and security and technology paper (for example, paper used to print banknotes).

Reflex is a paper production mill located in Düren, Germany. It is owned by M-Real Zanders GmbH of Germany, which is controlled by M-Real, a subsidiary of the Finnish forest industry group Metsäliitto. The Reflex paper mill manufactures a range of specialty papers including carbonless (auto copy) paper, digital imaging paper, tracing paper used for industrial and graphic purposes, and premium fine paper.

In October 2007, Arjowiggins notified its intention to acquire the Reflex paper mill to the Commission. During its initial investigation, the Commission identified serious concerns with regard to competition on the market for carbonless paper.

During its in-depth investigation, the Commission received market information from numerous customers and competitors of Arjowiggins and analysed extensive quantitative transaction data. An analysis of this information led the Commission to conclude that there was a serious risk that the proposed transaction, as originally notified, would significantly harm competition in the market for carbonless paper in the EEA. The Commission was concerned that Arjowiggins would have obtained a very high market share in this already concentrated market, which would have enabled it to restrict the quantity of paper available in the market and thereby raise prices.

In response to the Commission’s findings, Arjowiggins offered to divest the carbonless paper businesses at the Reflex paper mill, which accounts for the bulk of the plant’s production. The assets and trademarks relating to tracing paper and premium fine paper, where the Commission found that competition would not be harmed, are not concerned by the commitment. Arjowiggins may finalise the transaction only after the divestiture commitments have been fulfilled. The Commission found these commitments suitable to remedy its initial concerns.

D — Summaries of decisions taken under Article 9

REWE/Plus Discount

In July, following a request of the Czech Competition Authority under the EC Merger Regulation, the Commission decided to refer the acquisition of Plus Discount (Czech Republic) by REWE (Germany) to the Czech Competition Authority for examination. The Commission decided to refer the case in its entirety as it considered the proposed concentration would affect competition only in the Czech Republic.

REWE is active in food and non-food wholesale and retail, travel and tourism in a number of European countries. In the Czech Republic, REWE operates under the brand names ‘Penny’ (171 discount shops) and ‘Billa’ (181 stores in the full-range supermarket segment). Plus Discount is active in the Czech Republic in the retail of daily consumer goods and operates 146 discount shops under the brand name ‘Plus’. The main horizontal overlaps between REWE and Plus Discount relate to the retail market for daily consumer goods through modern distribution channels (hypermarts, supermarkets and discounters) in the Czech Republic.

The Czech Competition Authority requested the Commission both under Article 9(2) (b) and under Article 9(2) (a) of the EC Merger Regulation to refer the notified transaction to it. It considered that the transaction would affect competition in a number of local retail markets within the Czech Republic, which present all the characteristics of distinct markets and which do not constitute substantial parts of the common market (9(2)(b)). In addition, the Czech Competition Authority submitted that the transaction would threaten to significantly affect competition within distinct markets in the Czech Republic (9(2) (a)).

The Commission found that the conditions for referral under Article 9(2) (a) were met and left open whether conditions for referral under Article 9(2) (b) are fulfilled. When the conditions under Article 9(2) (a) are met, according to Article 9(3),
the Commission has discretion to refer the part of the case relating to the affected distinct markets concerned. The Commission considered that due to the local character of the retail markets in the Czech Republic, the Czech Competition Authority was better placed to investigate the impact of the concentration.

For efficiency reasons and in order not to split the proposed transaction, the Commission decided to refer the case in its entirety to the Czech Republic. This included the remaining local retail markets and procurement markets for daily consumer goods.