

Client Alert

European Antitrust Developments - April - July 2013

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Mergers

1) European Commission, *EU Merger Regulation reform (20 June 2013)* – the Commission is consulting on various proposed changes to the EU Merger Regulation (EUMR). The key changes concern: (i) extending jurisdiction under the EUMR to acquisitions of non-controlling minority shareholdings, (ii) reforming rules on the transfer of cases between national authorities and the Commission, and (iii) excluding joint ventures located and operating outside the European Economic Area (EEA) from the scope of the EUMR. [Press release](#).

2) Germany, *REWE/Wasgau Food (29 April 2013)* – the Bundeskartellamt cleared the acquisition of a 51 percent stake in Wasgau Food by the German supermarket group REWE under its merger control procedures, while at the same time opening an investigation into coordination concerns arising from the transaction. The coordination concerns arose because REWE's competitor, EDEKA Südwest, also holds a 25 percent stake in Wasgau. In the future, the SIEC test which has just been introduced to German merger controls ([see our previous client alert](#)) will allow the assessment of coordination concerns within the merger procedure.

3) Lithuania, *CEPD (25 April 2013)* – the Lithuanian courts have upheld a €32,000 fine for jumping the gun imposed on the Corporation of European Pharmaceutical Distributors N.V. (CEPD) by the Lithuanian Competition Council (CC). In June 2010, CEPD acquired the outstanding 50.01 percent shares in UAB Nacionalinė Farmacijos Grupė without obtaining prior clearance for the merger from the CC.

Abuse of Dominance

4) France, *Sanofi-Aventis (n° 13-D-11, 14 May 2013)* – the French Competition Authority fined the pharmaceutical company Sanofi-Aventis €40.6 million for implementing a misleading communications strategy. The strategy, which targeted doctors and pharmacists among others, cast doubt on the effectiveness and safety of the generic version of Sanofi-Aventis' blockbuster cardiovascular drug Plavix. [Press release \(English\)](#); [Full text \(French\)](#).

5) Latvia, *AKKA/LAA (2 April 2013)* – the Latvia Competition Council (CC) fined the copyright management association AKKA/LAA €64,948 for excessive pricing. The CC's finding was based on a comparison of royalty rates in Latvia with those in various other countries, including neighboring countries and other EU Member States with similar GDPs.

Cartels and Other Antitrust

6) Court of Justice of the European Union (CJEU), *Schenker (C-681/11, 18 June 2013)* – The CJEU ruled that obtaining legal advice from external counsel that behavior (in this case formation of a cartel) does not infringe EU antitrust rules cannot prevent the imposition of a fine under EU law. [Judgment](#).

7) European Commission, *Lundbeck et al. (AT.39226, 19 June 2013)* – the Commission fined the pharmaceutical company Lundbeck €93.8 million and four generic drugmakers a total of €52.2 million for entering into "pay for delay" agreements. Lundbeck agreed with each of the generic producers that they would not enter the market with generic versions of Lundbeck's branded blockbuster antidepressant in return for substantial payments and other inducements. [Press release](#).

8) European Commission, *Continental/United/Lufthansa/Air Canada (AT.39595, 23 May 2013)* – the Commission accepted formal commitments to address concerns regarding the airlines' revenue-sharing joint venture on the Frankfurt-New York route. In its analysis, the Commission extended its approach to efficiencies beyond its existing Guidelines by taking account of "out of market" efficiencies on other routes (such as Prague-Frankfurt-New York) involving connecting passengers. [Press Release](#); [Full Decision](#).

9) Germany, *New Fining Guidelines (25 June 2013)* – following a judgment of the German Federal Supreme Court ([see our previous update](#)), the Bundeskartellamt published new guidelines for fines in antitrust cases. Under those guidelines, fines for small, one-product undertakings are expected to decrease.

Damages actions

10) European Commission, *Proposed Directive Facilitating Damages Claims (11 June 2013)* – the Commission issued a draft Directive aimed at facilitating damages claims in relation to violations of EU antitrust law. Key proposals include: (i) placing the burden of proof on defendants to pass on extending discovery-type rights of access to documents to all EU jurisdictions, and (ii) making infringement decisions by national competition authorities binding in all EU jurisdictions. The draft is accompanied by guidance on the quantifications of damages in antitrust cases and a recommendation on collective redress mechanisms for violations of EU law. [Press release](#); [Crowell & Moring client alert](#).

11) Netherlands, *CDC/Shell e.a. (C/09/414499, 1 May 2013)* – in a procedural ruling concerning claims relating to the European paraffin wax cartel (COMP/C.39181), the District Court of The Hague held that: (i) a damages claim need not be stayed pending appeals before the EU Courts, and (ii) all members of a cartel can be sued in the Dutch courts if at least one cartel member is based in the Netherlands. [Decision](#) (Dutch).

12) Netherlands, *Vereniging van Eigenaars Woningen "Het Schip" e.a./Otis (C/16/324968, 13 March 2013)* – the Court of Midden-Nederland rejected a follow-on damages claim against Otis relating to the European elevator and escalator cartel (COMP/E-1/38.823) on the grounds that the claimants had not shown that the cartel caused their losses. The Court held that even if it could be established that the prices Otis charged to the claimants at the time of the cartel were "inexplicably high" this would not be sufficient to establish a causal link to the cartel. [Decision](#) (Dutch).

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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