Dear Reader,

This is the 19th issue of the ECN Brief, which is a publication of the European Competition Network (ECN). The ECN is a network of the Member States’ competition authorities (NCAs) and the European Commission (DG Competition). The ECN Brief aims to inform you about the activities of the ECN and its members and to reflect the richness of enforcement actions and advocacy in the Network. It focuses on news of major interest about EU competition law and policy. This issue covers news from April to July 2013.

The ECN welcomes the Croatian Competition Agency (CCA), the ‘Agencija za zaštitu tržišnog natjecanja’ (AZTN), which became a member on 1 July 2013. With the accession of Croatia to the EU, the CCA is competent to apply the EU competition rules. Along with the other ECN members, the CCA will now take full part in the efforts of the ECN to ensure consistent and effective competition enforcement throughout the EU. In this issue, the CCA introduces itself and its achievements; we will continue informing you about its activities in the future.

More news about the activities of the ECN and its members will be published mid-October 2013. In the meantime, we wish you interesting reading!

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On 12 June 2013, Deutz AG and Diesel Motor Nordic were found to have infringed the Danish and European competition rules. According to the investigation, Deutz prevented the supply of train spare parts outside of its exclusive dealership network and prevented parallel imports of spare parts in an agreement with its distributor in Denmark Diesel Motor Nordic.

France: Autorité de la concurrence fines Cartel among major Distributors of Commodity Chemicals operating in France

On 29 May 2013, the Autorité de la concurrence imposed a total of € 79 000 000 in fines on a cartel between Brenntag, Caldic Est, Univar and Solvadis. Between 1998 and mid-2005, representatives of the companies allocated customers, entered into a non-aggression pact and agreed jointly on the prices offered to their customers.

Italy: ICA fines Telecom Italia for Unilateral Practices in Wholesale Broadband Markets

On 9 May 2013, the Italian Competition Authority fined Telecom Italia - the incumbent in telecommunications markets in Italy - € 103 794 000 for its abusive conduct on the wholesale markets for network infrastructure access and broadband access. Telecom Italia was found to have refused to give access to its network to competitors and to have charged, in contracts with medium and large business customers, discounted prices not replicable by an equally efficient competitor.

Slovakia: Supreme Court upholds Authority’s Decision in Banking Cartel Case

On 21 and 22 May 2013, the Supreme Court of the Slovak Republic upheld a decision of the Antimonopoly Office in a case concerning a banking cartel. This followed the confirmation by the ECJ in a preliminary ruling, that it does not make any difference for the application of Article 101(1) and Article 101(3) TFEU whether a competitor adversely affected by a cartel agreement held the appropriate licence required for business activity under national law, at the time when the cartel agreement was concluded.
LEGISLATION & POLICY

Germany: Bundeskartellamt publishes new Fining Guidelines

On 25 June 2013, the Bundeskartellamt (BkartA) released revised fining guidelines following a judgment of the German Federal Court of April 2013. These new guidelines introduce a new methodology that will allow the BKartA to set the fines in accordance with this judgment. The new fining guidelines will be applicable from 25 June to all cases pending before the BkartA.

Malta: Draft Leniency Regulations published for Public Consultation

The Office for Competition has published on 14 June 2013 the draft leniency regulations for public consultation. The draft regulations take into account the revised MLP adopted in 2012 as well as the Commission’s 2006 Leniency Notice. The public consultation will be closed on 9 August 2013.

Spain: Creation of the new National Markets and Competition Commission, the CNMC

On 4 June 2013, the Spanish Parliament adopted Act 3/2013 creating a new authority in charge of both competition and regulatory matters: the Comisión Nacional de los Mercados y la Competencia (CNMC). The new authority merges the current competition authority, the CNC, with several sectoral regulators responsible for Telecom, Energy, Railway, Postal, Audiovisual and Airports.

European Commission Proposal on Antitrust Damages Actions adopted

On 11 June 2013, the Commission adopted a proposal for a Directive on antitrust damages actions. Its objective is to ensure the effective exercise of the EU right to compensation for harm suffered as a result of a competition law infringement. As part of this effort, a Communication on quantification of antitrust harm has also been adopted. In parallel, the Commission adopted a Recommendation encouraging Member States to set up collective redress mechanisms in order to improve access to justice for victims of violations of EU law in general, including competition rules.
Croatia becomes 28th EU Member State and Croatian Competition Authority joins ECN

On 1 July 2013, Croatia adhered to the European Union. The Croatian Competition Agency (CCA) has joined the ECN as its newest member. The CCA which celebrated its 15th anniversary in 2012 has already been participating in the work of the ECN since the closure of the negotiations on the Chapter on Competition of the Accession Treaty in 2011. Being a member will bring new challenges along with the benefits of cooperating actively with the European Commission and NCAs within the ECN.

Read more

ECN members’ websites

Number of envisaged decisions by national competition authority; types of envisaged decisions etc.: http://ec.europa.eu/competition/ecn/statistics.html

Case search

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ENFORCEMENT & CASES

AUTHORITIES

- Denmark: The Competition Council finds Refusal to Supply and Restrictions to Parallel Trade in Railway Spare Parts Sector

On 12 June 2013, the Danish Competition Council (DCC) ruled that Deutz AG (Deutz) and Diesel Motor Nordic A/S (Diesel Motor Nordic) have infringed the Danish and European competition rules (Articles 101 and 102 TFEU).

According to the decision, Deutz abused its dominant position by preventing the supply of spare parts for the IC3-trains, owned by the Danish State Railways, DSB, outside of its exclusive dealership network. The spare parts were to be used in the renovation of 404 Deutz engines.

The DCC also found that Deutz prevented parallel imports of spare parts for the IC3-trains in an agreement with its distributor in Denmark, Diesel Motor Nordic. The latter, a Danish-Swedish company, was also found to have infringed the competition rules by participating in the anticompetitive agreement with Deutz.

In 2010, DSB attempted to reach an agreement regarding renovation of the 404 Deutz engines with Deutz and Diesel Motor Nordic, but could not accept the price and conditions offered. Instead, DSB entered into an agreement with a consortium of four smaller companies. However, the consortium could not meet the terms of the agreement with DSB, because Deutz had blocked the delivery of spare parts, which could only be sourced through Deutz. Only in a few cases, the consortium managed to obtain spare parts for DSB; partly by ordering a few parts at a time and partly by withholding information about where the spare parts would be used.

Consequently, DSB could not use the competitive benefits of parallel trade in Europe and had to buy the spare parts at a higher price – some of these from the Danish Deutz distributor, Diesel Motor Nordic. DSB has stated that the process has contributed to the breakdown of some of the engines in the IC3 trains, because they were not serviced in time.

In this case, the DCC has benefited from good cooperation with the competition authorities in Germany, Sweden and the Netherlands. As a part of this cooperation, the DCC took part in inspections carried out in those countries and the evidence found contributed to establishing the infringement.

The DCC has ordered Deutz and Diesel Motor Nordic to stop the anticompetitive behaviour and to refrain from behaviour, which has the same or similar anticompetitive effect. In addition that the DCC has ordered Deutz to inform its network of independent dealers of the decision.

See decision in Danish and the English summary.

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- France: The Autorité de la concurrence fines Cartel among major Distributors of Commodity Chemicals in France

On 29 May 2013, the Autorité de la concurrence (the Autorité) issued a decision imposing a total of € 79 000 000 in fines on a cartel between Brenntag, Caldic Est, Univar and Solvadis. The Autorité was informed of the existence of this cartel by Solvadis, which applied to benefit from the leniency procedure. Brenntag and Univar then successively applied for leniency.

The market is the distribution of chemical products, and, more specifically the distribution of commodity chemicals, which are basic raw materials used in a large number of sectors (chemical, agro-food, automobile industry, etc.). The undertakings concerned represent more than 80% of the commodity chemicals distribution market in France.
The cartel arrangements were put in place between 1998 and mid-2005 in the four geographic areas where the storage sites of the commodity chemical distributors concerned were generating the lowest profits (Bourgogne, Rhône-Alpes, West and North). During this period, representatives of the four companies met secretly or communicated on a regular basis in order to allocate customers who regularly issued calls for tenders, and agreed to refrain from actively poaching other customers by entering into a non-aggression pact. Furthermore, the cartel participants agreed jointly on the prices offered to their customers.

The Autorité found that these practices constituted two single and continuous infringements, as each of the two infringements was part of a global and single strategy of which the participants were aware, and as they affected the same categories of products.

Many undertakings on the downstream side of the market (industrial companies, SMEs) have been harmed by these practices and the majority of French industrial areas have been affected.

The Autorité has set the amount of the fines taking into account in particular, the arrival order of the leniency applications as well as the evidence submitted by the leniency applicants.

On this basis, it granted immunity to Solvadis, the first undertaking to reveal the existence of the cartel and its own involvement (it would otherwise have been liable for a penalty of € 13 000 000). Brenntag and Univar, the second and third leniency applicants, saw their penalties reduced respectively by 25% and 20%. As regards Brenntag, the Autorité took into consideration its central role as the ringleader of the cartel when fixing the amount of the fine.

GEA Group and DBML, the parent companies of Solvadis and Brenntag at the time of the infringement, benefitted neither from the immunity nor from the leniency of their subsidiaries, since they did not apply for leniency and did not belong to a common economic entity respectively with Solvadis and Brenntag. While imposing the fines jointly and severally respectively to these two parent companies together with their subsidiaries at the time of the infringement, the Autorité relied on the European Commission’s practice and General Court’s case law (see notably the General Court decision dated 30 September 2009, Hoechst/Commission, T-161/05).

Finally, GEA Group and Caldic Est both benefited from an additional fine reduction in the context of a settlement procedure. This is the second time, after the detergents case (see ECN Brief 1/2012), that the Autorité has granted such a reduction. In both cases, the scope of the settlement (which implies that the firms waive their right to challenge the objections) was wider than that of the leniency application and therefore constitutes additional cooperation on the part of the concerned firm.

See Decision (in French) and the press release (in English)

• Italy: The Competition Authority fines Telecom Italia for Unilateral Practices in Wholesale Broadband Markets

On 9 May 2013, following complaints lodged by two Italian telecommunications providers (OAO - other authorized operators), the Italian Competition Authority (ICA) fined Telecom Italia (Telecom), the incumbent in telecommunications markets in Italy, € 103 794 000 for its abusive conduct on the wholesale markets for network infrastructure access (Local Loop Unbundling - LLU) and broadband access (bitstream) between 2009 and 2011.

The first abuse consisted of a constructive refusal to supply access to Telecom’s network, implemented by rejecting a large proportion of competitors’ wholesale orders to access its network (so-called ‘KO’) during the delivery process.

It appeared from the investigation that Telecom’s internal retail divisions did not face such a high proportion of KOs. The evidence suggested that the exceptionally high levels of KOs for OAOs could be attributed to the delivery process (organisation and management) used by Telecom to provide wholesale services to OAOs, which was indeed different from the systems and processes used internally to serve Telecom. Although the process was subject to sectoral regulation, the ICA found that Telecom had sufficient scope to adjust its delivery process to reduce the level of KOs received by OAOs.
As for the second abuse, it appeared that Telecom charged – in contracts with medium/large business customers – discounted prices not replicable by an equally efficient competitor. Specifically, Telecom adopted a margin squeeze strategy in the provision of narrowband access to medium/large business customers. In LLU areas, Telecom sold narrowband access to large business customers at a discounted price compared to its standard list prices. In particular, Telecom pre-determined a table of percentage discounts that could be freely applied by its sales force to the different types of access lines supplied to those customers.

The economic analysis showed that the difference between the discounted prices set by Telecom and the wholesale prices charged to OAOs for the essential inputs was not sufficient to cover the incremental (network and commercial) costs incurred by an equally efficient competitor in the provision of narrowband access services.

As a result of Telecom’s conduct, OAOs incurred additional costs and delays in accessing wholesale services provided by Telecom, and were unable to satisfy efficiently their customers’ requests. Their ability to compete effectively against the incumbent was thus severely reduced. The ICA concluded that by implementing this abusive strategy infringing Article 102 TFEU, Telecom was able to reduce the ‘natural’ erosion of its market share.

See press release (in Italian)

• Belgium: No Interim Measures in Case regarding Cooperation between Prisons and Sheltered Workshops

On 23 March 2013, the President of the Competition Council rejected a request for interim measures in a case regarding an agreement fixing the terms of cooperation between prison workshops employing individuals detained in prisons and associations of sheltered workshops employing low-skilled workers outside prisons.

In Belgium, prison workshops are not subject to minimum wage and labor regulations, whereas sheltered workshops are, and as a result, charge higher fees for their workers’ services. In the disputed agreement, the public body in charge of prisons committed to increasing gradually the fees of the prison workshops towards the level of the sheltered workshops’ fees. Furthermore, it appeared that, a few months before the disputed agreement was signed, the public body in charge of prisons took steps unilaterally to be able to bypass the role of intermediaries who hire detainees’ services with a view to subcontracting them to end customers (private companies or public authorities), and that the public body indeed started contacting directly and systematically the plaintiff’s end customers.

The request for interim measures was introduced by an intermediary who claimed that, by reducing the role of intermediaries, the public body in charge of prisons behaved in an exclusionary way, as it aimed to reduce his capacity to offer detainees’ services to his end customers. This plaintiff requested suspension of the disputed agreement until the Competition Council’s decision on its merits.

The President of the Competition Council first ruled that as the disputed agreement ended at the beginning of 2013, interim measures would not be effective. Secondly, he found that it did not appear clearly that the damage allegedly incurred by the plaintiff, i.e. the reduction of his capacity to offer detainees’ services to his end customers, resulted from a policy of the public body in charge of prisons to reduce the role of intermediaries. The President therefore considered that it was not certain that the plaintiff’s interests would be served by suspension of the disputed agreement and there was no clear causality between the alleged restrictive practices (the disputed agreement) and the damage allegedly suffered by the plaintiff.

This case raises two questions with respect to the application of Article 101 TFEU and the equivalent provision in Belgian law. First, there is the question as to whether the public body in charge of Belgian prisons, which is part of the Ministry of Justice, can be considered as an undertaking pursuant to Article 101 TFEU, i.e. an entity whose conduct is subject to competition rules.

Secondly, the question arises whether the disputed agreement can constitute an infringement of competition rules insofar as one of its clauses promotes convergence between the fees of the prison workshops and the sheltered workshops. This convergence aims to create a level playing field between
the two types of workshops in a situation where prison workshops are not subject to minimum wage and labor regulation, and therefore is beneficial to the sheltered workshops.

The decision of the President of the Competition Council did not follow the opinion of the Competition Prosecutor, who had found that the disputed agreement was prima facie an infringement of Article 101 TFEU and the equivalent provision in Belgian law.

This decision has been appealed and the proceedings are pending before the Brussels Court of Appeal. Simultaneously, the complaint on the substance (based on Article 101 TFEU) is being investigated by the Competition Prosecutor of the Competition Council.

See decision (in French)

• France: The Autorité de la Concurrence market tests Visa and MasterCard’s Commitments to reduce Multilateral Interchange Fees for Domestic Card Transactions

On 6 May 2013, the Autorité de la concurrence (the Autorité) published Visa and MasterCard’s commitments to reduce the multilateral interchange fees (MIFs) applicable to domestic payments and withdrawals made, respectively, with Visa and MasterCard ‘only’ cards (i.e. excluding transactions made with cards bearing MasterCard or Visa logos together with the ‘home-grown’ CB scheme logo, to which the CB fees generally apply). The market test ended on 6 June and the Autorité is reviewing the comments received.

The published commitments were proposed in response to the competition concerns expressed by the Autorité’s investigative services. MasterCard has proposed to reduce its MIFs on card payments and withdrawals respectively by 38% (to a maximum of 0.34 % of the amount paid) and 8% (to € 0.55 per withdrawal). Visa has proposed to reduce its MIFs on card payments by 34% to a maximum of 0.33% of the amount paid. 0.34% and 0.33% of the value of the transactions are weighted averages calculated on an annual basis.

These commitments cover the fees applicable to domestic transactions, as opposed to those covered by the pending and closed cases investigated by the European Commission, which deal with fees which apply mainly to cross-border transactions. Moreover, over 95% of domestic card transactions in France are already covered by the previous Decision 11-D-11 regarding the MIFs set within the ‘CB’ scheme (see press release in English and ECN Brief 4/2011).

This market test is part of the Autorité’s broader investigation into payment means, which has already led to the significant reduction or elimination of MIFs applicable to cheques (see Decision 10-D-28 in English and ECN Brief 4/2010), payment cards operating under the CB scheme (see above) and other non-cash means of payment, especially direct debit (see press release in English and ECN Brief 3/2012).

MIFs are paid by the merchant’s bank to the card-holder’s bank each time a payment is made. Withdrawal fees, however, are paid each time there is a withdrawal, by the card-holder’s bank to the bank managing the ATM machine. In the case of both MasterCard and Visa, the amounts of the fees are set collectively by each payment scheme and its respective members. This joint setting of the rate, unless justified by objective factors, is liable to be viewed as a restriction of competition, since each payment scheme sets, in agreement with its respective members, uniform fee rates, which increase the costs of the banks paying them and are thus liable to drive up the rates paid by bank customers (see, in this regard, the ECJ’s ruling in the MasterCard case, 24 May 2012, T-111/08)

See press release in French and English. The market test is available in French.

• France: The Autorité de la Concurrence fines Sanofi-Aventis € 40 600 000 for denigrating Generic Versions of branded Drug Plavix

On 14 May 2013, following a complaint from the generics manufacturer Teva Santé, the Autorité de la concurrence (the Autorité) imposed a fine of € 40 600 000 on Sanofi-Aventis for having implemented a strategy of denigrating the generic versions of its branded drug, Plavix, vis-à-vis pharmacists and doctors,
with the goal of limiting their entry on the market and favoring Sanofi-Aventis’ Plavix as well as its own
generic version Clopidogrel Winthrop. It found that Sanofi–Aventis had abused its dominant position,
thereby infringing Article 102 TFEU as well as the corresponding French provision.

A prior decision was handed down by the Autorité in 2010, dismissing Teva Santé’s request for interim
measures while deciding to proceed with the investigation on the merits of the case. This is the first time
that a competition authority fines this particular type of originator practice aimed at generics.

Plavix is a ‘blockbuster’ prescribed to prevent complications from atherothrombosis. It is the fourth
best-selling drug worldwide and was the first drug in France in 2008 in terms of reimbursement costs for
the public health care system (€ 625 000 000).

Even though the patent protecting the drug, in particular its active ingredient, clopidogrel, expired in
Europe in July 2008, Sanofi-Aventis filed complementary patents in order to extend the initial protection
(i) to the salt used in Plavix (hydrogen sulfate) until February 2013 and (ii) to the indication for the
treatment of acute coronary syndrome (ACS) in dual therapy until February 2017. These complementary
patents do not however call into question the bioequivalence of the clopidogrel generics, which allowed
them to be listed in the directory of generic medicines. Pharmacies could thus dispense generics for
all prescriptions of clopidogrel, including of Plavix, (generic substitution), unless the prescribers, the
doctors, explicitly excluded this possibility.

The investigation showed that, from September 2009 to January 2010, the time of independent generic
launch, Sanofi-Aventis put in place a global and structured communication strategy vis-à-vis health
professionals. The core of this strategy was to emphasise the above patent-related differences, however
irrelevant for generic substitution, to deter doctors and pharmacists from the generic substitution
process. Sanofi-Aventis’ medical visitors and pharmaceutical representatives insinuated that these
differences could lead to the health professionals’ liability should medical problems arise from the use
of the competitors’ generics. At the prescription level, Sanofi-Aventis thus convinced doctors to avoid
generic substitution by inserting the indication ‘non substitutable’ in their Plavix prescriptions. In case
prescriptions nonetheless allowed generic substitution, Sanofi-Aventis also discouraged pharmacists
from substituting Plavix with generics other than its own generic medicine, Clopidogrel Winthrop.

Sanofi-Aventis did not match its health hazard claims, aired in its communication campaign, with any
regulatory action, for example by contesting the market authorization granted to these generics or
otherwise alerting health officials on claimed risks of safety or efficiency.

Overall, the Autorité established that this conduct fell outside the scope of competition on the merits
(see, e.g., AstraZeneca e.a./Commission, C-457/10, paragraph 129) and constituted an abuse of Sanofi-
Aventis’ dominant position on the market for clopidogrel prescribed in the context of ambulatory care.
The Autorité found that the impugned behaviour met the relevant standard for a finding of abuse, as
the commercial discourse of the pharmaceutical company relied on unsubstantiated assertions rather
than objective considerations and that it was liable to restrict (and had in fact restricted) competition.
In addition, the causal link between Sanofi-Aventis’ dominance and the abuse was clear by virtue, in
particular, of the brand-name recognition and the confidence placed by health professionals in the
pharmaceutical company’s assertions.

Finally, the evidence in the file showed the existence of economic harm. Sanofi-Aventis’ abusive conduct
led to an atypical generification process (sharp rise followed by a steady decline rather than stabilization
of the share of generics), falling short of the health care system’s target of a 75% generic penetration
rate by end 2010 (it stood instead at 64.6%), which corresponds to a shortfall in savings for the public
health insurance system that it estimates at € 38 000 000. Even within the generics segment, Sanofi-
Aventis’ practices allowed it to obtain a 34% market share with its own generic of Plavix, four times the
average market share enjoyed by its other generic drugs.

See press release [in French] and [in English]

• Greece: The Competition Commission imposes Fine on Gas Transmission Operator DESFA for
Abuse of Dominant Position in Primary Market of Natural Gas Transmission

On 30 April 2013, the Hellenic Competition Commission (HCC) published its decision No 555/VII/2012
regarding the market of natural gas transmission in Greece.

By virtue of the above decision, the HCC fined the ‘Hellenic Gas Transmission System Operator SA’ (DESFA) a total of € 4 299 163 for violation of Articles 2 of competition law 703/1977 (replaced by law 3959/2011) and 102 TFEU. DESFA, a wholly owned subsidiary of DEPA, the incumbent supplier of natural gas in Greece, was found to have abused its dominant position in the primary market of natural gas transmission, by way of denying access to the gas transmission network (an essential facility) to the complainant (ALUMINIUM S.A), an aluminium manufacturer and electricity producer, which is a customer and potential competitor of DEPA.

According to the decision, DESFA's abusive conduct took place from November 2009 until May 2010, when DESFA initially denied the complainant access to the pipeline entry point dedicated to its facilities (Aluminium de Greece - AdG) and subsequently to the liquefied natural gas (LNG) terminal in Revithousa, the sole entry point of LNG into the Greek transmission grid. As a result of DESFA’s practices, the complainant was effectively denied access to the national natural gas transmission network and, consequently, the opportunity to source natural gas from an alternative supplier competing with DEPA and to compete with DEPA on the market of natural gas supply.

The above decision is the second issued by the HCC regarding the markets of natural gas transmission and supply. The HCC, by virtue of its decision of 12 November 2012, had previously accepted and made binding on DEPA an extensive set of commitments, which notably involved the unbundling of gas supply from gas transportation services, the provision of a higher degree of customer mobility, the increase of liquidity in the market of natural gas, as well as the gradual opening up of reserved capacity at points of entry into the gas transmission network, in order to ensure sufficient access by suppliers competing with DEPA (see ECN Brief 5/2012).

Italy: The Competition Authority finds Antitrust Infringement in National Market for Legal Services

On 23 April 2013, the Italian Competition Authority (ICA) decided that five Bar Associations (Civitavecchia, Latina, Tempio Pausania, Tivoli e Velletri) had infringed Article 101 TFEU. The Bar associations were found to have engaged in anti-competitive practices in order to exclude non-Italian professionals from practicing law in Italy.

The investigation revealed that the Bar Associations had adopted regulations and deliberations introducing additional requirements for non-Italian lawyers to register themselves in the ‘Special Section of Established Lawyers’, thereby creating obstacles to non-Italian professionals from practicing law in Italy.

The ICA found that such provisions, set by the Bar associations, constituted competition-restricting agreements designed to foreclose/restrict the entry on the market of professionals admitted to the bar elsewhere in the EU, affecting the establishment and integration process pursued by the Directive on the Legal Profession and the ruling on case C-506/04 - Wilson (Court of Justice of the European Union).

In accordance with the European Legislation a mutual recognition principle must apply, so that the ‘hosting'-Member State cannot refuse access to a profession which requires a specific professional title, if applicants have all the qualifications that allowing them to exercise this profession in their country of origin. A professional qualification issued by a Member State is sufficient to allow a lawyer to be established in another member State and to practise his/her profession under the professional title used in his/her home country. Under the Law-Decree 96/2001, transposing European Directive 98/5/EC on the Legal Profession, the only condition to practice the legal profession in Italy is that the non-Italian professional should also be enrolled with the competent bar association in the country of origin. In other words, the Law-Decree 96/2001 allows EU citizens having a title obtained in their home Member State - and equivalent to that of ‘avvocato’ in Italy - to access and exercise the legal profession on a permanent basis in Italy. To do so, EU lawyers must register in the so-called ‘Special Section of Established Lawyers’ of an Italian bar. In order to be registered in this Special Section, EU lawyers must prove (by means of a certificate) that they are already registered in another professional bar in their home Member State.

The ICA initiated an investigation in December 2011, following complaints filed by lawyers qualified in Spain as ‘Abogado’ and the ‘Associazione Italiana Avvocati Stabiliti’ (AIAS), which represents the holders
of law degrees and those who are qualified to practice law in other EU Member States. According to the complainants, the practices of the five Bar Associations prevented lawyers who were admitted to the bar on other EU Member states from entering the Italian market for legal services.

See press release in Italian.

• Spain: The Comisión Nacional de la Competencia fines Correos for Abuse of Dominant Position in Postal Sector

On 22 April 2013, the Comisión Nacional de la Competencia (CNC) Council adopted a decision finding that Sociedad Estatal Correos y Telegrafos, S.A. (Correos) abused its dominant position in the wholesale market for access services to the public postal network and in the retail services market for administrative notifications. In particular, the CNC Council deemed unjustified Correos’ refusal to continue to provide wholesale access services to the public postal network for administrative notifications on the conditions laid down by Article 59.2 of Act 30/1992 (Regulations on Public Administrations and Common Administrative Procedure). The CNC Council found that Correos had thereby infringed Article 2 of the Spanish Competition Act 15/2007 of 3 July 2007 and Article 102 TFEU.

The CNC Council concluded that it is clear that Correos enjoys a dominant position, both in the wholesale market for access to the public postal network, in which it has a 100 % market share, and in the retail market for the provision of postal services for administrative notifications, given its market share in the area of traditional postal services and in the segment of administrative notifications, as well as the privileges from which it benefits (traditionally, as legal monopolist in a large part of the market and currently, as the designated operator of the Universal Postal Service (UPS)).

Given these conditions, the CNC Council considered that access to Correos’ wholesale services (considering the delivery conditions imposed by Act 30/1992) is essential for the delivery of administrative notifications, for which the presumption of veracity and authenticity is required, since that cannot be replicated by their competitors, who do not benefit from that legal presumption in relation to administrative notifications through their own resources. As a result, the refusal of Correos to provide access to wholesale administrative notification services would represent an insurmountable barrier to the entry of other operators into the market for the provision of administrative notification services to the public authorities, who require such a presumption when contracting their postal services.

In addition, the CNC Council found that Correos’ conduct may also have significant exclusionary effects on its competitors when it comes to providing services to public administrations that do not demand the aforementioned presumption of veracity and authenticity.

For these reasons, the CNC Council imposed a fine of € 3 319 607 on Correos and ordered it to cease the conduct within a period of two months.

The Investigations Division of the CNC opened formal proceedings against CORREOS on 9 May 2011 based on an alleged anti-competitive practice of refusal to allow administrative notifications deposited by other operators to have access to its postal network. This followed a complaint lodged by the Professional Association of Correspondence Distribution and Handling Businesses (Asociación Profesional de Empresas de Reparto y de Manipulado de Correspondencia - ASEMPRE) to the National Postal Sector Commission. The Commission transferred the complaint to the CNC for investigation under the competition rules.

See further information in Spanish.

• United Kingdom: The OFT issues Statement of Objections in Case involving Pharmaceutical Companies

On 19 April 2013, the Office of Fair Trading (OFT) issued a Statement of Objections to certain pharmaceutical companies alleging they acted to delay effective competition in the UK supply of paroxetine, a prominent antidepressant medicine.

The OFT alleges GlaxoSmithKline (GSK) concluded agreements which infringed competition law with each
of Alpharma Limited (Alpharma), Generics (UK) Limited (GUK) and Norton Healthcare Limited (IVAX) (‘the generic companies’), over the supply of paroxetine in the UK. The OFT also alleges GSK’s conduct amounted to an abuse of a dominant position in the same market.

The generic companies were each attempting to supply a generic paroxetine product in competition with GSK’s branded paroxetine product, Seroxat. However, in each case, GSK challenged the generic companies with allegations that their products would infringe GSK’s patents. To resolve these disputes, each of the generic companies concluded one or more agreements with GSK.

The OFT’s provisional view is that these agreements included substantial payments from GSK to the generic companies in return for their commitment to delay their plans to supply paroxetine independently.

The OFT considers that if companies act to delay the potential emergence of generic competition the National Health Service may be denied significant cost savings.

More details about this case on the [OFT website](#).

- European Commission: Lundbeck and other Pharmaceutical Companies fined for delaying Market Entry of Generic Medicines through pay-for-delay Agreements

On 19 June 2013, the European Commission (the Commission) imposed a fine on the Danish pharmaceutical company Lundbeck and a number of generic companies (notably Merck KGaA/Generics UK (Generics UK is now part of Mylan), Arrow (now part of Actavis), Alpharma (now part of Zoetis), and Ranbaxy) for delaying the market entry of generic citalopram medicines through pay-for-delay agreements. The Commission fined Lundbeck € 93 800 000 and the other generic companies in total € 52 200 000.

This is the first time that the Commission has sanctioned pay-for-delay agreements in the pharmaceutical sector.

The Commission established that in 2002, Lundbeck agreed with each of the generic companies to delay the market entry of cheaper generic versions of Lundbeck’s branded citalopram, a blockbuster antidepressant. After Lundbeck’s basic patent for the citalopram molecule had expired, it only held a number of related process patents which provided more limited protection. Producers of cheaper, generic versions of citalopram therefore had the possibility to enter the market. Indeed, one of them had actually started selling its own generic version of citalopram and several other producers had made serious preparations to do so.

However, instead of competing, the generic producers agreed with Lundbeck in 2002 not to enter the market in return for substantial payments and other inducements from Lundbeck, amounting to tens of millions of euros. Lundbeck paid significant lump sums, purchased generics’ stock for the sole purpose of destroying it, and offered guaranteed profits in a distribution agreement. The agreements gave Lundbeck the certainty that the generics producers would stay out of the market for the duration of the agreements without giving the generic producers any guarantee of market entry thereafter. These agreements are very different from other settlements of patent disputes where generic companies are not simply paid off to stay out of the market.

Absent the agreements, Lundbeck would have faced generic competition. Effective generic competition generally drives prices down significantly, reducing dramatically the profits of the producer of the branded product and bringing large benefits to patients. For example, prices of generic citalopram dropped on average by 90% in the UK compared to Lundbeck’s previous price level once wide-spread generic market entry took place following the discontinuation of the agreements.

The Commission based the fines on its 2006 Guidelines on fines. In setting the level of the fines, the Commission took into account the duration of each infringement and its gravity. The length of the investigation was taken into account as a mitigating factor.

More information on the case is available on the website of [DG Competition](#), in the Commission’s public case register under case number 39226.
Slovakia: The Supreme Court upholds Authority’s Decision in Banking Cartel Case

On 21 and 22 May 2013, the Supreme Court of the Slovak Republic (Supreme Court) upheld a decision of the Antimonopoly Office of the Slovak Republic (the Office) in a case concerning a banking cartel, vis-à-vis two of the banks involved – Slovenská sporiteľňa, a. s. (SLSP) and Všeobecná úverová banka, a. s. (VUB). In doing so, the Supreme Court following a preliminary ruling of the Court of Justice of the European Union (ECJ), annuls the decision of the Regional Court Bratislava (RC BA). As to the proceedings concerning the third bank (CSOB), they are pending before the Office following the annulation of its decision by the Supreme Court.

In its preliminary ruling of 7 February 2013 (C-68/12), the ECJ confirmed that it does not make any difference for the application of Article 101(1) and Article 101(3) TFEU whether a competitor adversely affected by a cartel agreement held the appropriate licence required for business activity under national law, at the time when the cartel agreement was concluded. Where an agreement has as its object the prevention, restriction or distortion of competition, there is no longer any need to take account of the concrete effects of the agreement in order to establish its unlawful nature. The ECJ further explained that competition rules protect not only the interests of competitors or consumers but also the structure of the market and thus competition as such, and that ‘it is for public authorities and not private undertakings or associations of undertakings to ensure compliance with the statutory requirements’. In addition, the ECJ held that to find that an agreement restrictive of competition under Article 101(1) TFEU, it is not necessary to demonstrate personal conduct on the part of a representative or personal assent, in the form of a mandate, to the conduct of an employee who participated in an anti-competitive meeting. This opinion was in line with the Office’s cartel decision.

On 17 December 2009, the Office fined three banks in Slovakia (SLSP, VUB and CSOB) for having taking part in a cartel, the aim of which was to exclude a competitor, the Czech company AKCENTA CZ, a. s. (AKCENTA) from the market for cashless foreign-exchange operations, to take over its clients, and/or keep their own clients. The Office qualified the conduct of the banks as a very serious infringement of competition rules, as it allocated markets (clients), and imposed fines of € 3 197 912 on SLSP, € 3 810 461 on VUB and € 3 183 427 on CSOB (See ECN Brief 2/2012). All three banks appealed the first and second instance decisions before the RC BA, which annulled the Office’s decision concerning the three banks in three separate judgments in September 2010 (See ECN Brief 5/2010).

The Office appealed the judgments to the Supreme Court, arguing that AKCENTA was a competitor of the banks on the Slovak market for cashless foreign exchange operations and that the fact, whether it held the licence legally required to conduct its activities or not, was not relevant for assessing the banks’ conduct from the point of view of competition rules. In the Office’s view, what was decisive was that the competition rules were infringed.

On 10 February 2012, the Supreme Court decided to submit four questions for a preliminary ruling to the ECJ. Three questions concerned the legality of Akcenta’s activities. The core question was whether it is of legal relevance for the assessment of a restrictive agreement under Article 101(1) TFEU that a company concerned by the cartel agreement is allegedly acting “illegally” (without the licence legally required) on the relevant market at the time of conclusion of the cartel agreement, and/or whether Article 101(3) TFEU could be applicable to such an agreement. The fourth question related to the issue of liability of one of the banks for the conduct of its employee, who was participating in a cartel meeting and in related e-mail exchanges between the banks. (See ECN Brief 2/2012)

See press release (in English)

Austria: The Cartel Court imposes Fine in Food Retail Case

On 13 May 2013, the Cartel Court (the Court) imposed a € 20 800 000 fine on the REWE Group (REWE) for vertical agreements between REWE and a number of suppliers (Court reference number 25 Kt 29/13). The
Court held that REWE agreed with a number of suppliers on end-consumer prices (RPM), on promotion prices and on exclusive timeframes for promotions as well as on a higher level of purchase prices based on the condition that all retailers maintain a particular level of resale prices. The practices continued between 2007 and 2012 for a variety of products (mainly beer and dairy products) and thereby infringed Article 101 TFEU and § 1 of the Austrian Cartel Act 2005. The Court’s decision follows the Federal Competition Authority’s (FCA) application.

The fine follows an ex-officio investigation and unannounced inspections conducted by the FCA at REWE and several producers’ premises in 2012. After the inspections, REWE cooperated with the FCA in bringing the infringement to an end. The proceedings were ended via a settlement procedure. In light of this cooperation and as part of the settlement, the FCA applied for a fine of € 20 800 000 to the Court.

The FCA has now developed detailed guidelines, currently at the stage of public consultation, which seek to provide legal certainty to industry when dealing with suppliers (see ECN Brief 3/2013). REWE has committed to respect key elements of these guidelines in its future conduct.

See press release (in German)

Slovakia: The Supreme Court upholds Authority’s Decision on Prohibition of Abuse in ‘Green Dot’ Licencing Case

On 23 May 2013, the Supreme Court of the Slovak Republic (Supreme Court) confirmed the decision of the Antimonopoly Office of the Slovak Republic (the Office) imposing a fine of € 18 394 on ENVI-PAK, a. s. (ENVI-PAK) for having abused its dominant position on the market of granting permission to use the trademark ‘Green Dot’ in the territory of the Slovak Republic. The conduct was found to be an infringement of Article 8 of the Slovak Act on Protection of Competition as well as Article 82 of the EC Treaty (now Article 102 TFEU).

ENVI-PAK was the sole undertaking entitled to provide ‘Green Dot’ trade mark sub-licences in Slovakia and at the same time it acted on the market for the provision of packaging waste collection, recovery and waste recycling through authorized organizations.

According to the Office’s decisions of 2009 (See ECN Brief 1/2010) and 2010, the abuse of dominance consisted of setting the sub-licence fee for the use of the ‘Green Dot’ trade mark in such way that companies using the packaging waste collection, recovery and recycling services of ENVI-PAK did not have to pay a licence fee, while companies using the services of its competitors, which were interested only in the ‘Green Dot’ sub-licence, had to pay a separate licence fee, even for packages without the ‘Green Dot’. ENVI-PAK’s pricing policy was set in such a way that the final price paid by an undertaking applying only for the ‘Green Dot’ sub-licence was almost always higher than the price the undertaking would have paid if it had been a service client of ENVI-PAK. By this conduct ENVI-PAK indirectly forced undertakings using the ‘Green Dot’ trade mark to use also its packaging waste collection, recovery and recycling services and thus created barriers to growth and entry for competitors on this market.

Pursuant to Article 15 (3) of Regulation 1/2003, the European Commission submitted a written observation to the Supreme Court. In its amicus intervention, the Commission expressed its opinion on the parallel application of EU and national competition rules and the possibility to impose fines for the abuse of a dominant position. The Commission’s statement is consistent with the line of argument in the Office’s appeal to the Supreme Court.

The decision is final.
• Germany: The Bundeskartellamt publishes new Fining Guidelines

On 25 June 2013, the Bundeskartellamt (B KartA) released revised fining guidelines following a judgment of the German Federal Court of Justice, (the highest German Cartel court (Bundesgerichtshof) of February 2013 regarding cartel proceedings in the cement sector. Starting 25 June, the new guidelines apply to all cases pending before the BKartA.

In its judgment, the Bundesgerichtshof ruled on the constitutionality of the German fining provisions and the method of calculating fines.

The judgment confirmed the constitutionality of the statutory 10% limit, according to which fines in antitrust cases can amount up to 10% of the total annual turnover of the fined economic unit. However the Bundesgerichtshof decided that the 10% limit could not be interpreted as a ‘cap’ to cut at that level a fine imposed. Such an understanding would not provide undertakings with sufficient orientation on the possible level of fines. Rather the 10% of the total annual turnover should be considered as the upper limit of a sanctioning frame (See ECN Brief 2/2013).

Since the BKartA had interpreted the 10% limit as a capping rule in line with EU practice, it had to revise its fining guidelines.

The new fining guidelines set the method for the calculation of fines as follows:

• The fine is to be set below the statutory upper limit of 10% of the turnover achieved by the economic entity which infringed antitrust rules. Competitive gains achieved (or achievable) by the infringement and the harm caused to third parties or the national economy as a whole (the so-called ‘gain and harm potential’) shall further be taken into account. A proxy to define the gain and harm potential is the domestic value of sales to which the infringement relates during the entire period of the antitrust infringement. Generally the BKartA will assume a gain and harm potential of 10%.

• This amount is to be multiplied by a factor between 2 and 6. The factor depends on the group-wide annual turnover of the company (the factor is higher for companies with higher turnover).

  - The amount calculated on this basis is not the actual fine but determines a level above which a fine would generally no longer be appropriate. This constitutes the main difference compared to the former fines calculation methodology.

  - This second limit is only applicable if it sets an upper amount which is below 10% of the annual turnover of the infringing unit.

  - However, if the second limit defines a threshold above 10% of the annual turnover of that unit, it shall not be considered. In this case the legal framework delineates the highest possible fine.

• Within the framework the actual calculation of the fine is done by assessing all the circumstances relating to the infringement (in particular the type of agreement, importance of the market affected etc.) and the offender (role in the cartel, individual involvement etc.). Hard-core cartels are categorized as belonging to the upper range of fines within the framework.

As a result, small companies which mainly sell only one product will generally be fined more mildly under the new guidelines, whereas large multi-product companies will potentially face higher fines.

See the new fining guidelines
See the Bundeskartellamts’ press release
**Malta: Draft Leniency Regulations published for Public Consultation**

The Office for Competition (the Office), which is part of the Malta Competition and Consumer Affairs Authority, published on 14 June 2013 draft leniency regulations for public consultation. The public consultation will be closed on 9 August.

These regulations take into account the revised ECN Model Leniency Programme (MLP) adopted in November 2012 (see ECN Brief 5/2012) as well as the 2006 Commission Leniency Notice.

The draft leniency regulations apply to secret cartels, although this does not imply that all aspects of the conduct must be secret for the regulations to apply. The regulations also provide that a cartel may include vertical elements involving undertakings operating at different levels of the market. Fixing of purchase or selling prices, allocation of production or sales quotas and sharing of markets, in particular bid-rigging between competitors, are some examples of cartel activity covered by the proposed regulations.

The Office took concrete steps towards increasing detection and enforcement action by giving cartel participants who facilitate cartels (so-called cartel facilitators) the possibility to apply for leniency and to benefit from full immunity if they are the first to apply. Indeed, the draft regulations provide that an applicant 'includes participants in a cartel, whether or not active on the same market, contributing to the implementation of the cartel even if only in a subsidiary, accessory or passive role' thereby reflecting the wording in the AC Treuhand judgment (Case T-99/04 - AC Treuhand AG v Commission, July 8 2008).

The core elements of the draft leniency regulations mirror those of the MLP:

- full immunity should be available for the first undertaking coming forward when it provides evidence that either enables targeted inspections to be carried out or leads to the finding of an infringement;
- a reduction of fines should be available to undertakings that do not meet the conditions for full immunity but provide significant added value to an investigation;
- possibility to submit summary applications for an alleged cartel in breach of Article 101 TFEU, in respect of which the European Commission is particularly well placed to act under paragraph 14 of the Network Notice;
- an applicant wishing to apply for immunity but who is not in possession of evidence that would enable him to submit a complete application may nonetheless apply for a marker to secure a position in the leniency queue for a given period of time; and
- the Office can accept oral statements unless the applicant has already disclosed the content of the oral statements to third parties.

Initially, an applicant wishing to protect his anonymity may submit a hypothetical application through a contact person.

See draft regulations in Maltese and in English.

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**Spain: Creation of the new National Markets and Competition Commission, CNMC**

On 4 June 2013, the Spanish Parliament adopted Act 3/2013 creating a new authority in charge of both competition and regulatory matters: the Comisión Nacional de los Mercados y la Competencia, CNMC (National Markets and Competition Commission). The new authority merges the current competition authority, the CNC, with several sectoral regulators responsible for Telecom, Energy, Railway, Postal, Audiovisual and Airports. It will thus have hybrid functions: enforcing competition rules and regulating economic sectors.

The CNMC has a Council consisting of ten members (Chairman, Deputy Chairman and eight members) and four Directorates.
The Council will operate as the decision-making body, with two Chambers: the Competition Chamber devoted solely to competition enforcement, and the Regulatory Chamber, devoted to regulatory files (each Chamber may issue an opinion on the files decided on by the other). The Council can sit in plenary, attended by the members of both the Competition Chamber and the Regulatory Chamber, to decide on organisational issues of the CNMC and whenever there is a divergence between the Chambers. Likewise, when a given number of members of the Council so decide, a matter may be subject to the Council Plenary’s approval.

Four Directorates will have investigation powers: a Competition Directorate (in charge of competition enforcement in all sectors), and three Regulatory Directorates (Telecoms, Energy and Transport). The structure and functioning of these Directorates will be decided by Government regulation through the CNMC Statute (still at a preliminary stage of discussion).

The CNMC structure guarantees a functional separation between the competition enforcement and regulatory activities of the four Directorates and the decision-making body, the Council, as required by the Spanish Constitution.

The Government will appoint the members of the Council (including the Chairman and the Deputy Chairman) for a six-year non-renewable term. The Ministry of Economy and Competitiveness will designate its members from a pool of renowned professionals in the field. After proposal, candidates will be called to a public hearing before the Economy and Finance Committee of the Lower House of the Parliament prior to appointment. At these hearings, members of the Parliament can veto any of the candidates proposed. Once constituted, the CNMC’s Council will appoint the Directors of the Directorates for a four-year renewable term. The Competition Directorate of the CNMC will retain all the powers established in the 2007 Competition Act.

After the entry into force of the new Act 3/2013 on 6 of June 2013, a 4-month transitional period allows for appointment of the posts and adoption of the Act’s implementing regulations. During this period the CNC and the existing sectoral regulators and the new National Markets and Competition Commission will co-exist. All previous authorities, including the CNC, will cease to exist when the CNMC Statute is adopted by the Government through Royal Decree (they co-exist from the entry into force of Act 3/2013 until the Decree enters into force).

In order to avoid statute of limitation issues during the transitional period, Act 3/2013 provides for exceptional time limit extension for the resolution of current pending proceedings.

More information on the CNC website.

• European Commission adopts Proposal on Antitrust Damages Actions

On 11 June 2013, the European Commission (Commission) adopted a proposal for a Directive on antitrust damages actions. The proposal’s objective is to ensure the effective exercise of the EU right to compensation for harm suffered as a result of competition law infringement. It will ensure that victims can effectively bring damages actions before national courts. Victims of EU competition law infringements theoretically have a right under EU law to obtain compensation for the harm suffered. However, procedural obstacles under national law and legal uncertainty mean that victims rarely achieve civil justice.

The proposal sets out a number of measures to facilitate damages actions, including:

• Parties in antitrust damages actions will have easier access to the evidence they need to prove their claim. Power is given to national courts to order companies to disclose evidence when victims claim compensation;

• Decisions of national competition authorities finding an infringement of competition law will constitute evidence of the infringement in subsequent civil claims, as already happens for the Commission’s antitrust decisions;
• Clear limitation period rules are established, so that parties have sufficient time to bring an action, especially after a decision by a competition authority;

• In order to make it easier for indirect customers to obtain compensation from infringers for the increase in price they have suffered, the proposal provides for a rebuttable presumption of passing-on of the overcharge. Conversely, infringers may use the passing-on as a defence, to reduce the compensation they have to pay to their customers by the amount these customers ‘passed-on’ to their own customers through price increases;

• For faster and less costly resolution of disputes, consensual settlements between the parties are facilitated;

• A rebuttable presumption that cartels cause harm is established.

Since private damages actions and public enforcement by the Commission and national competition authorities are complementary in achieving effective application of the EU competition rules, the directive also aims to optimise their interplay. Particular attention is paid in this context to protecting the effectiveness of leniency and settlement programmes, which are essential to discover and punish the most serious infringements of competition law. Under the proposal, leniency corporate statements and settlement submissions will never be made accessible in the context of disclosure of evidence before national courts. The proposal also limits the disclosure of documents from the file during on-going investigations of competition authorities. As regard the civil liability of immunity recipients in subsequent damages claims, the proposal clarifies that they can in principle only be sued for damages by their own customers.

To facilitate the quantification of harm by national courts and parties, the Commission is also providing non-binding guidance on this topic through a Communication on quantification of harm and a Practical Guide. Determining the exact amount of harm suffered is one of the major obstacles to compensation of injured parties. According to the Communication, the quantification needs to be based on a comparison of the actual position of claimants with the position they would find themselves in had the infringement of the competition rules not occurred. The Practical Guide provides insights into various forms of harm typically caused by anti-competitive practices and information on methods and techniques available to quantify such harm.

In parallel, the Commission has adopted a recommendation encouraging Member States to set up collective redress mechanisms to improve access to justice for victims of violations of EU law in general, including competition rules.

The proposal for a Directive will now be discussed by the European Parliament and the Council under the ordinary legislative procedure. Once it has been adopted by these institutions, Member States will have two years to implement the provisions in their legal systems.

The text of the proposal for a Directive adopted by the Commission and all other relevant documents are available on the website of DG Competition.

• Austria: The Federal Competition Authority (FCA) launches Public Consultation on Draft Guidelines regarding Vertical Price Fixing

In the course of recent enforcement activities by the FCA, it has appeared that vertical price fixing practices combined with horizontal coordination are widespread in the retail sectors. In 2012 and 2013 fines amounting to €26,000,000 have been imposed for such infringements in three industries: food retail (see ECN Brief 2/2013 and the ECN Brief 3/2013), electronic devices (see ECN Brief 2/2013) and insulating material (see ECN Brief 2/2013 and 5/2012). Several proceedings are still pending before the FCA.

For the purpose of competition advocacy and prevention of future infringements, the FCA has prepared a short paper clarifying its assessment of the practices involved. The paper was presented to the public
on 13 June 2013. All interested parties are invited to comment by 1 August 2013.

The first part of the paper outlines by way of introduction the legal framework: Horizontal and vertical price fixing is qualified as hard core restriction under EU as well as national competition law. Vertical price fixing combined with horizontal coordination is addressed as a special concern. Those practices can facilitate horizontal collusion between retailers. Conversely, non binding recommendations of resale prices by suppliers are compatible with competition law.

The paper then draws a list and discusses conducts that are usually considered to infringe competition rules as well as conducts which are normally not seen as problematic.

Examples for the first category are:

- All direct forms of coordination or fixing of resale prices/minimum prices (Resale Price Maintenance - RPM) between retailers and suppliers.
- Indirect forms of coordination such as rebate schemes or penalties designed to maintain a particular price level.
- Cooperation between retailers and their suppliers with the aim of horizontally coordinating prices on the level of retailers (e.g. by surveillance activities or by transfer of information about contractual relations of suppliers with other retailers or about their pricing policies).
- Agreements between suppliers and retailers having the effect of harmonizing price level at wholesale and/or retail level (e.g. best price or most favoured customer clauses).

Examples for the second category are:

- Recommendation of resale prices to a retailer provided the recommendation is in fact and legally non binding.
- Independent, individual price monitoring by retailers and suppliers on their respective markets.
- Exchange of information between retailer and supplier regarding the market strategy for a product as far as necessary for the contractual relationship (e.g. planning of capacities) and unless direct or indirect horizontal coordination with other retailers is facilitated.

See press release (in German)

**Bulgaria: The Legal Framework on Central Heating distorts Competition and may harm Consumers’ Welfare**

By Decision No 623/30.05.2013, the Bulgarian Commission on Protection of Competition (CPC) adopted a competition advocacy opinion in ex officio proceedings concerning compliance with the competition rules of the two legal acts regulating the supply of central heating: the Energy Act (Chapter Ten-Central Heating Supply) and the Ordinance on Central Heating Supply.

In its opinion, the CPC identified a number of provisions that restrict and/or distort competition in the Bulgarian market for the supply of central heating and in the related market for the allocation of central heating cost to individual consumers. Most of those provisions, directly or indirectly, affect consumers’ welfare negatively as well. In particular, the problems relate to:

- The allocation of central heating energy between individual consumers in apartment buildings in Bulgaria is not done transparently and is not based on market principles. According to the legal provisions, the three types of energy for which consumers pay – energy for water heating, energy for the building’s common heating installation and for heating individual apartments -, are mostly calculated and allocated using formulae set in the Ordinance, instead of using exact metering. The CPC considers that the elements of those formulae are not transparent and some of the variables may not
reflect correctly the specific characteristics of particular buildings. The Commission also found that apartment owners are deprived of the right to decide themselves what method to use for allocating the energy for the common parts of the heating installation. The CPC recommended that all technically possible options be included in the law and that the apartment owners be allowed to decide which of them to use.

- The CPC established that the existing legal prohibition on removing heaters in individual apartments compels consumers to pay for the allocation of heat from those heaters, even though they are turned off. The CPC expressed its opinion that this prohibition should be lifted.

- The companies that are performing heat cost allocation service among consumers are subcontractors of the central heating supplier, which is also performing this service. The heating supplier sets the prices for the services provided by its competitors. In the CPC’s opinion, this removes price competition between those companies, facilitates exchange of sensitive information between competitors and allows for possible abuse of a dominant position by the heating supplier. The CPC recommended revoking the corresponding legal provisions and allowing the allocation companies to negotiate directly with consumers.

- The legal provisions do not encourage entry into the market of alternative suppliers of central heating. At the moment, there are only local vertically integrated undertakings, which enjoy a 100% dominant position in those local markets. The CPC recommended discussing and adopting a strategy for opening those markets to competition.

The CPC’s opinion, together with recommendations for legislative amendments, has been addressed to the National Assembly and the Ministry of Economy and Energy.

Further information available on the Bulgarian Authority’s website

- Bulgaria: The National Health Insurance Fund Acts impose Quota Limitations on Pharmacies and foreclose the Market for Medical Devices

In May 2013, the Bulgarian Commission on Protection of Competition (CPC), as part of its competition advocacy powers, adopted two opinions on Acts of the National Health Insurance Fund (NHIF), which could negatively affect competition and harm consumer welfare.

The first case concerns the Sample Contract entered into between the NHIF and pharmacies selling reimbursable drugs. The Sample Contract for 2013 includes provisions setting an average time to serve clients presenting prescriptions for reimbursable drugs as well as a formula to calculate the maximum number of prescriptions served depending on the number of pharmacists in a particular pharmacy. Prescriptions served above the established limit are not reimbursed by the NHIF according to these provisions. In its Decision No 507/08.05.2013, the CPC established that these provisions could amount to a quota limitation on the retail trade of reimbursable drugs in Bulgaria. According to the CPC, this limitation could negatively affect competition on the national retail market for reimbursable drugs and harm consumers (patients).

The second case concerns the NHIF’s Methodology for negotiating the prices of medical devices (heart valves, insulin pens and test strips, artificial joints, etc.). In its Decision No. 540/15.05.2013, the CPC established that the provisions of the Methodology impose discriminatory access and evaluation criteria that may negatively affect the market for reimbursable medical devices and patients’ interests. The CPC also concluded that the Methodology forecloses the market, lacks criteria for objective evaluation of the offers, increases price transparency and may prompt prohibited vertical and horizontal agreements. Some provisions of the Methodology which may have these anti-competitive effects include:

- Requirement for the medical device manufacturers/wholesalers to produce evidence that their product is reimbursed in at least three other EU Member States (for devices manufactured outside Bulgaria), to be able to participate in the negotiation procedure;

- Reimbursement by the NHIF of only the least expensive devices whose price it has negotiated and this without any possibilities for the patients to co-pay for a more expensive product;
• Participation of medical device manufacturers in the negotiation procedure for the price of devices (which may potentially limit the wholesalers/retailers' commercial freedom);

• Publication by the NHIF after the negotiation procedure of a publicly available list with the names of the products, their negotiated price and the names of the producers/distributors that have agreed to sell at this price.

In its opinions, the CPC proposed to the NHIF to amend or remove the anti-competitive provisions in accordance with the position taken in the opinions.

Further information on the first opinion (Model Standard Contract) and on the second opinion (negotiation of prices of medical devices) are available in Bulgarian.

• France: The Autorité de la concurrence issues negative Opinion on Government Proposal establishing ‘Good Practices’ for Online Delivery of Medicinal Products

On 10 April 2013, the Autorité de la concurrence (the Autorité) issued an opinion on a draft ministerial order establishing ‘good practices’ for online delivery of medicinal products. This draft order follows the adoption of an executive order (ordonnance) of 19 December 2012 transposing into the French Public Health Code the provisions of Directive 2011/62/EU of 8 June 2011, which requires in particular that Member States allow the online sales of non-prescription medicinal products to the public. The Autorité had already voiced concerns on the compatibility of the executive order with the EU directive, on the grounds that it unduly restricted the scope initially planned for the online sale of medicinal products (see Opinion 12-A-23 in French only). This opinion subsequently was vindicated by the French administrative judge, who ordered the interim suspension of the impugned provisions on 14 February 2013.

The Autorité found fault with the draft ‘Good Practices’ on several accounts, in view of the significant restrictions on competition which they impose without a credible public health justification. Overall, these restrictions would limit the development of online sales of medicinal products by French pharmacists, while their competitors established in other Member States would be able to address French demand without being subject to the same restrictions. The undesirable outcome of these ‘good practices’ would thus be the reverse discrimination of French pharmacists.

The following recommendations and observations were made by the Autorité as regards the ‘good practices’:

• As already underlined in Opinion 12-A-23, online sales should not be restricted to those medicinal products available at self-service counters, but should be expanded to cover all medicinal products that are not subject to prescription (e.g., aspirin or cough medicine);

• Pharmacists should be able to offer medicinal products and para-pharmaceutical products on the same Internet site, something the current drafting of the ‘good practices’ prohibits but which is allowed for instance in Belgium, from where such sites already supply French customers;

• The contemplated obligatory alignment of Internet sales prices with prices applied in the pharmacy would be contrary to operators’ freedom to establish their own commercial strategy. The effects of such an obligation are aggravated by the compulsory invoicing of delivery costs ‘at cost price’. Together, these measures would make the online purchase of medicinal products particularly unattractive to customers;

• The obligation to use the same storage premises for medicinal products sold in the pharmacy store and those sold on the Internet would constitute an artificial obstacle that would limit the development of online sales;

• The obligation, for a customer to fill out a health questionnaire each time he/she places an order appears excessive and liable to further deter online purchases of medicinal products.

See press release on the opinion in French and in English.
Lithuania: The Competition Council publishes Memo: “Associations’ Activities: How to respect Competition rules”

On 15 April 2013, the Competition Council of the Republic of Lithuania (Konkurencijos taryba, KT) published on its website a Memo entitled “Associations’ Activities: How to respect competition rules”. This Memo is designed to help trade associations avoid actions which restrict competition.

The Memo provides information on the main competition-related issues that trade associations may face in carrying out their activities. It also explains the size of the fine that could be imposed in case of infringement and how fines can be avoided.

The main issues addressed are:

- Description of what is prohibited
- Myths about liability issues
- Risks linked to information exchange
- Recommendations for trade associations
- Examples of KT cases
- Sanctions
- Advice on what to do if you are a party to an anti-competitive agreement
- List of relevant legal acts

Once the KT had gained some experience on the conduct of trade associations in coordinating prices or pricing policy between competitors, it became clear that such a Memo was required. This initiative follows the first preventive measure taken by the KT, which was to hold a series of seminars targeting trade associations.

The Netherlands: The Netherlands Authority for Consumers and Markets issues Market Analysis on Brewery Contracts

On 6 June 2013, the Netherlands Authority for Consumers & Markets (ACM) issued a market analysis on the impact of arrangements between brewing companies and bar owners. ACM examined whether such arrangements are a reason for ACM to take enforcement action under the Dutch Competition Act. As part of its analysis, ACM identified the impact of these arrangements on critical antitrust parameters such as purchasing prices, market dynamics (switching behavior) and market entry, using studies of EIM (EIM, “Rendement en Relatie, Een onderzoek naar rendementsverklarende factoren voor drankversterkende bedrijven in de horeca”, 25 October 2011 and EIM, “Overstapgedrag in de horecabiermarkt en motieven om dat wel of niet te doen, Onderzoek naar feitelijk overstapgedrag door cafés met kelder- of fustbier en de verschillende brouwerijen in de periode 2006-2012”, 26 June 2012) and SEO (SEO Economisch Onderzoek, “Naar concurrentie op de tap, Mededingingseconomische analyse van verticale afspraken in de tapbiermarkt”, January 2013). Brewing companies, distributors, and many other stakeholders were consulted by ACM.

Market analysis

Brewing companies and bar owners enter into various arrangements concerning the supply of beer and/or other beverages and additional services such as making equipment available for loan, financial arrangements or lease contracts. It is common practice to accept an exclusivity contract in return for such additional services. More than half of all bar owners (57%) loan equipment from the brewery,
making this the most common arrangement. These can usually be cancelled on short notice, and are therefore not seen as an obstacle to switching distributors.

The share of bar owners that have entered into some kind of financial arrangement is limited (approximately 10%). Breweries are furthermore scaling down their role as financial backers of bar owners and the analysis has not revealed that such financial backing negatively affects purchasing prices or bar owners’ switching behavior.

Bar owners who lease space from the brewing companies tell a different story. These bar owners are obviously not able to switch brewing companies, and therefore say they have less room to negotiate. As a result, they pay relatively high purchasing prices. However, it is not plausible that such lease contracts have a major impact on the entire market, since the number of businesses with such lease contracts is relatively small (16.9%).

In short, ACM’s analysis has revealed that the beer market is sufficiently dynamic, with breweries competing for outlets and bar owners competing for customers.

**Relation to the Block Exemption Regulation**

In 2002, the Netherlands Competition Authority already ruled that market leader Heineken’s contracts on guarantees, financial loans, and loaning of basement equipment were not anti-competitive by nature. As Heineken currently uses the same standard contracts as in 2002, and figures on switching behavior indicate that competition for outlets is fierce, there is no reason to re-examine these contracts.

The other main competitors Grolsch, Bavaria and Inbev all have market shares of less than 30%, and consequently benefit from the block exemption regulation on vertical agreements. In its analysis ACM has found no reasons for withdrawal of the block exemption as had been suggested by some, as these contracts do not appear to have a negative effect on competition.

ACM does however see possibilities to enhance market dynamics. For example, if bar owners further improved their entrepreneurial skills, their room to negotiate vis-à-vis the brewing companies could be increased. To that end, it is important that bar owners are have a clear understanding of the short- and long-term implications of their brewery contracts. In order to facilitate this, these contracts could be clearer, especially regarding early contract cancellation options and conditions for purchasing equipment on loan from the brewery when the contract runs out. This can be achieved by adjusting and publishing the Model for Purchasing Equipment on Loan, which several brewing companies use.

See full ACM’s document in Dutch.

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**• The Netherlands: The Netherlands Authority for Consumers and Markets looks into Relationship between Behavioural Economics and Competition Enforcement**

The Authority for Consumers and Markets (ACM) has researched what behavioural economics can mean for competition policy. The research report was published on the ACM website on 13 June 2013. Behavioural economics studies the impact of psychological factors on economic decision-making, and as such, it contributes significantly to our understanding of how individuals make choices in practice. Behavioural economics, and its potential policy implications, is a hot topic among policymakers, regulators and economists.

ACM found that behavioural economics does not imply a reconsideration of the beneficial impact of competition on consumers as an underlying premise of competition law. In other words, competition is generally good for consumer welfare. Also, the ‘standard’ economic models guiding competition analysis remain valid – even though behavioural economics provides evidence of individuals not always acting fully ‘rationally’. Because of that, the existing analytical framework (i.e. market definition) suffices to take into account any underlying consumer biases when estimating demand. Thinking in terms of demand-and supply-side substitution, for example, remains relevant. Nevertheless, behavioural economics
highlights that the demand might be more or less elastic than one might a priori expect and underscores the importance of empirical research in concrete cases.

An interesting policy issue highlighted by the research concerns situations in which firms may use consumer biases to extract more profits, in so-called ‘pockets of market power’. In these situations, (biased) consumers do not/no longer actively switch between suppliers, even in the absence of switching costs. When learning effects are limited, and such firm behaviour is persistent, policymakers or regulators may choose to intervene. ACM believes that such situations are better addressed by consumer protection and policy aimed at empowering consumers rather than competition law enforcement. As ACM has regulatory powers in both areas, it can view potential market problems caused by behavioural biases from a broad perspective, and can determine which policy regime, or instrument, is best suited to solve particular problems.

ACM’s conclusions are based on our own research and draw upon a study commissioned to Oxera.

See Press release
Press spokesperson: Ms. Barbara van der Rest-Roest at +31 70 722 599 or +31 6 2279 3063 (outside office hours). Alternatively, you can send an email to ACM press office at pers@acm.nl

• Romania: Report on Inquiry into Multilateral Interchange Fees in Payment Cards Sector

On 22 February 2011, the Romanian Competition Council (RCC) opened an inquiry into the card payment services sector. The findings of this inquiry were presented in a final Report published on 30 May 2013.

The inquiry covered the determination of the method of setting the multilateral interchange fees (MIFs) for payment cards and payment systems sectors; the level of fees paid by retailers making the transactions to the acquiring banks for the services rendered; the profitability of the payment card sector and the structure, degree of concentration and integration of the payment cards and payment systems sectors.

The target group consisted of 28 banks that were members of Visa or MasterCard, 22 undertakings active in different sectors (hypermarkets, supermarkets, tour operators, restaurants, etc.) and Visa and MasterCard schemes.

Since 2012, the level of MIFs applicable to transactions made in Romania with MasterCard cards has been set by MasterCard and applied by the member banks. According to the Final Report, MasterCard increased the level of MIFs to 1.2%, a level similar to that applicable in Greece, but higher than that applicable in Belgium, France, Italy, Sweden, The Netherlands, Hungary, Latvia and the UK. In Poland, the level of the MIFs is set at 1.4%.

For VISA, the Report shows that the level of the MIFs applicable in Romania is still set by the Romanian member banks and remains at 1%.

The findings on profitability rates for the issuing activity indicate that this activity would still remain profitable for a significant number of issuers even in the absence of MIFs.

The Report was published on the institutional website for public consultation until the end of June 2013. Following the closure of the consultation, based on the replies received, the Competition Council will open discussions with representatives of the Government and the National Bank to identify possible steps to be taken to reduce the costs of card transactions.

More information on the Romanian Authority website.

• Spain: The Comisión Nacional de la Competencia publishes Report on Rail Transportation of Goods

As part of its competition advocacy activities, the Comisión Nacional de la Competencia (CNC) has published a report analysing the sector for rail transport of goods in Spain, which has been approved by its Council on 8 May 2013.
In March 2012, the CNC publicly announced its intention to conduct a study on competition in this sector. Numerous consultations were held with operators involved in railway transport of goods in Spain, including the Ministry of Development and the Railway Regulation Committee.

The provision of transportation services in the General Interest Railway Network (Red Ferroviaria de Interés General or RFIG) was opened up to competition in 2005, using a model based on the separation of infrastructure management from service provision. The infrastructure management (except port networks) was exclusively entrusted to the Rail Infrastructure Manager (Administrador de Infraestructuras Ferroviarias or ADIF), while companies other than RENFE-Operadora – which inherited the former State monopoly – were permitted to enter the market for the provision of rail transport services. Eight years after liberalisation, the CNC concludes that the market situation is unsatisfactory: rail transport has lost ground to other modes of goods transport in Spain and new entrants, railway companies other than RENFE-Operadora, have a very small market share and a limited portfolio of services. The introduction of competition has been less successful in Spain than in the other major economies of the EU.

The incumbent RENFE-Operadora has clearly maintained its leadership on the market for the provision of rail transport services, with a market share of almost 85%. This strong position is reinforced by the operator’s position in the related markets for the provision, maintenance and repair of rolling stock. ADIF, for its part, administers almost the entire infrastructure and directly provides logistical services at RFIG’s terminals, where alternative service providers have a very limited presence.

The report identifies five factors contributing to the limited competition in the market for rail transport of goods in Spain:

- Railway infrastructure in Spain has certain specific characteristics that isolate it from other European countries, reduce inter-modality with other methods of transport and may discourage entry by new companies.

- Specific aspects of infrastructure administration and management, including lack of flexibility in giving access to goods terminals by ADIF and in providing services at these terminals, factors that help maintain the provision of those services by ADIF alone, and the lack of importance attached to economic criteria when allocating infrastructure use capacity.

- The rules on licensing and certification of railway undertakings and roll stock: a number of permits must be obtained which can be expensive and time-consuming for new entrants.

- Certain exclusive advantages enjoyed by RENFE-Operadora, including: a) more favourable treatment as regards access to infrastructure, such as capacity allocation criteria; b) the surplus rolling stock available to it, while other operators find it difficult to secure access to material that can be used in Spain; c) its leading position in the market for the maintenance and repair of such rolling stock; and d) institutional advantages linked to the public financing it receives and its connections with the Ministry of Development and the infrastructure manager (ADIF).

- The underdevelopment of the Spanish railway regulator, the Railway Regulation Committee, whose role might nevertheless be strengthened by the creation of the National Commission for Markets and Competition.

The report contains a total of 26 recommendations. Those recommendations are directed at the Spanish Government, with a view to overcoming or easing the difficulties identified and bringing about more effective competition in the market for rail transport of goods in Spain.

See study in Spanish

Spain: Communication on Leniency Programme published

On 21 June 2013, the Comisión Nacional de la Competencia (CNC) has published a Communication on its Leniency Programme. With this Communication, the CNC seeks to enhance the transparency and predictability of its actions in proceedings where leniency applications are filed. It will serve as practical
The Communication takes into account the experience gained in Spain since the entry into force of the Spanish Leniency program in February 2008, as well as the revised 2012 ECN MLP (Model Leniency Program). All concepts and requirements of the Communication should be understood along the lines of the CNC and EU practice as well as case-law.

The Draft Communication has been published for public consultation and the comments from interested parties have been published on the CNC Website.

Articles 65 and 66 of the Competition Act (Ley de Defensa de la Competencia or LDC) —as developed and implemented by articles 46 to 53 of Royal Decree 261/2008 of 22 February 2008— allow the CNC to grant immunity from fine or a reduction of its amount to companies or individuals who inform the CNC of the existence of a cartel and of their involvement or liability in the cartel and provide it with the substantive evidence in their possession or which may be obtained through an internal investigation.

For further information, see the CNC website.

**Sweden: The Competition Authority publishes Interactive Guide for Small Companies wanting to collaborate in Procurements**

The Swedish Competition Authority (SCA) wants to make it as simple as possible for companies to know when and under what conditions they can cooperate and submit joint bids in procurements without infringing competition rules.

It has therefore developed an interactive guide with which companies planning on cooperating can easily and anonymously test whether they may do so without violating the Swedish Competition Act. The new guide was published on the SCA’s website on 26 April 2013.

The guide focuses on collusive tendering and raises several questions that lead the user through a number of scenarios that demonstrate how competition rules are applied in practice. Throughout the guide, ‘pop-ups’ appear where the user can get more detailed information about a specific question or examples based on real cases. The user can choose from different levels of information; from short answers to more extended information and up to full versions of court cases for those that are interested. Finally, the user will get an indicative answer on whether the situation in question is permitted or not.

Furthermore, the guide includes a quiz by which the user can test his or her level of knowledge after having used the guide.

The guide is not intended to be exhaustive or replace legal advice and is primarily addressed to users who have little knowledge of competition rules but can also be used by legal counsels, lawyers and other interested parties.

The new guide is available in Swedish.

**United Kingdom: The OFT announces Market Study on SME Banking**

On 19 June 2013, the Office of Fair Trading (OFT) announced a market study on competition in banking for small and medium-sized businesses (SMEs) and is seeking views on its scope.

The study is part of the OFT’s continuing planned programme of work in retail banking, of which the first stage was a review of personal current accounts, concluded this January. The OFT is now bringing forward its review of banking for SMEs. It also coincides with the final report of the Parliamentary Commission on Banking Standards and continuing public interest in this area.

The SME banking study will cover England, Northern Ireland, Scotland and Wales. The OFT is seeking views on its proposed scope, in particular on:
• competition in the supply of banking services to SMEs - whether SMEs have access to services that meet their needs and represent good value;

• competition in the supply of lending or other finance to SMEs - such as whether any lack of competition between banks is holding back SME lending or other finance to SMEs;

• whether there are types of SME (for example, start-ups or small financial firms) that face particular difficulties, and if so why.

The OFT will work closely with the Financial Conduct Authority, the Bank of England and the Prudential Regulation Authority on this review, and will contact the industry and SME representatives.

See this study on the OFT website.

• United Kingdom: The OFT refers Payday Lending Market to the Competition Commission

On 27 June 2013, the Office of Fair Trading (OFT) referred the market for payday lending in the UK to the Competition Commission because of concerns the OFT has about deep-rooted problems with the way competition works.

The OFT announced its provisional decision to refer the market in March and carried out a public consultation. Having considered responses submitted during this consultation, the OFT continues to suspect that features of the payday lending market prevent, restrict or distort competition. It considers that these issues go deeper than can be addressed through existing laws and guidance.

Features of the market of concern include:

• Practices that make it difficult for consumers to identify or compare the full cost of payday loans, undermining competition over price for loans;

• Barriers to switching between lenders when loans are rolled over that prevent other lenders competing for this business;

• Variable levels of compliance with relevant laws and guidance leading to firms that do invest time and effort complying being at a competitive disadvantage to firms that do not;

• A significant proportion of borrowers have poor credit histories, limited access to other forms of credit and/or a pressing need to borrow. The cost of the loan may therefore be a less significant factor for borrowers, which may weaken competition on price between lenders.

In addition, the OFT is concerned that lenders are competing primarily on the availability and speed of loan approval, rather than price. The competitive pressure to approve loans quickly may give firms an incentive to skimp on the affordability assessment which is designed to prevent irresponsible lending and protect consumers. The OFT is also concerned about business models that appear predicated on making loans which are unaffordable, leading to borrowers paying far more than expected through rollovers, additional interest and other charges. Lenders appear to derive up to 50% of their revenue from such practices.

The OFT considers that the Competition Commission is best placed to investigate and help resolve the fundamental problems the OFT has identified with this market. By referring the market now, the work of the Commission will be able to provide the Financial Conduct Authority (FCA) with a sound evidential basis on which to develop its rules and apply its new powers after it takes over responsibility for regulating the payday market from April 2014. The FCA’s powers will include the ability to place a possible cap on interest rates and a ban or limit on the number of rollovers lenders may offer. The Commission can also impose remedies itself, including banning or limiting particular features of a product or market.

More information on the OFT website.
OTHER ISSUES OF INTEREST

• Croatia becomes 28th EU Member State and Croatian Competition Authority joins ECN

On 1 July 2013, Croatia joined the European Union and the Croatian Competition Agency (CCA) became a member of the ECN. The accession was celebrated with an event in Zagreb which gathered the highest EU officials and MS heads of states and national parliaments. With the accession, the CCA is competent to apply EU competition rules and joins the other ECN members in their efforts to ensure consistent and effective competition enforcement throughout the EU.

Since 1997, the CCA, an independent public authority, has enforced the Croatian competition rules autonomously. Since 2003 until the Republic of Croatia joined the EU, the CCA was also in charge of State aid control. The CCA answers to the Croatian Parliament.

Under the Competition Act, adopted in 1995 and subsequently amended in 2003, 2009 and 2013, the competences of the CCA cover agreements which are restrictive of competition, abuses of dominance and merger control. In the area of State aid, the CCA was in charge of the authorisation, monitoring and recovery of State aid, and its contribution to the negotiations for the accession of Croatia to the EU in the area of state aid was indispensable.

The CCA includes a five-member Competition Council which is the decision-making body as well as a team of 40 competition experts, which carries out investigations and proposes the decisions for final adoption. The president and the members of the Competition Council are elected by the Croatian Parliament for a five-year term with the possibility of reappointment.

The CCA is well prepared to join the EU, taking into account the current legislative framework, its administrative capacity and its enforcement record, which will contribute to ensuring better functioning of the market for undertakings, consumers and the economy as a whole.

Interview with Ms Olgica Spevec, president of the Competition Council

How long have you been president of the Competition Council?

Since 2003; this is my second term which expires in October 2013. Before that I worked in the Ministry of the Economy where I was in charge of international trade and negotiations with the WTO. Since 2005 until the end of the EU accession negotiations in June 2011, I was a chief negotiator in the chapters for competition policy and industrial policy.

What are the main achievements of the CCA?

Looking back at the last 15 years since the CCA was established, I can definitely say that we now have a solid, publically recognized and visible, but most important of all, an independent competition authority. Throughout this period, Croatia has put into place a legislative framework of competition rules comparable to that of any other Member State. Despite limited budgetary resources, we have strengthened the CCA’s administrative capacity as well as its enforcement record. This has not always been an easy task. What was needed was to change the mind-set of undertakings, public authorities and most of all consumers, who needed to learn about the benefits of competition and a well-functioning State aid regime.

With respect to the CCA’s enforcement practice, we have addressed abuses of dominance in the tobacco market, telecoms, fuel and gas sector and press distribution. Cartels have been detected and fined in the sectors of the press, bus transport, office supply, driving schools, property managers, and bakers. Merger control has covered undertakings from the media to food retail.

An effects-based approach and consumer-oriented decisions have also been visible in our competition advocacy activities. In this respect, I would highlight our opinions on the liberal professions - audit, architects’ services and the like. We are also particularly proud of proactively contributing to the liberalization of taxi services. It has been most rewarding to see how the market - in which monopolies
existed for decades -, has opened up, services have improved and prices have fallen.

We have also developed our international cooperation, including with the European Commission. In the process of the EU accession negotiations, almost a quarter of the CCA’s staff was engaged in different chapters of the negotiations and the CCA actively participated in ECN meetings since the closure of the Chapter on Competition of the Accession negotiations in 2011. I could also mention the EU assistance projects, good bilateral cooperation with EU, the neighbouring countries as well as the active involvement of the CCA in the International Competition Network.

What are the CCA’s priorities at the moment?

Further strengthening of its enforcement record in the area of combating cartels and abuses of dominance, setting up a fining policy based on the Regulation on the method of setting fines and, above all, raising further awareness of competition in Croatia through our advocacy activities.

What challenges will EU accession bring for the competition regime in Croatia and for the CCA?

The main challenge for the CCA will be the new competences linked to the enforcement of Articles 101 and 102 TFEU and of Regulation 1/2003, such as, for example, providing assistance in investigation of cases to other European competition authorities. This will also involve cooperation with the Croatian court that issues warrants for unannounced inspections. Although this means some additional workload, it will be counter-balanced by the benefits which come from cooperating actively with the European Commission and NCAs within the ECN.

Head of NCA: Ms Olgica Spevec
NCA website: [www.aztn.hr](http://www.aztn.hr)
Organisational chart: [http://www.aztn.hr/o-nama/34/cca-structure/](http://www.aztn.hr/o-nama/34/cca-structure/)
Decisions of the CCA: [http://www.aztn.hr/rezultati-odluke/](http://www.aztn.hr/rezultati-odluke/)
Annual Reports of the CCA: [http://www.aztn.hr/o-nama/23/annual-report/](http://www.aztn.hr/o-nama/23/annual-report/)

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Bulgaria: Report on Second Workshop of Sofia Competition Forum

On 28 May 2013, the Bulgarian Commission on Protection of Competition (CPC) organized the second workshop in the framework of the Sofia Competition Forum (SCF), jointly with the United Nations Conference on Trade and Development (UNCTAD).

The topics discussed during the workshop in May were competition advocacy and cooperation with the government, the courts and the media, as well as competition issues in the network industries. The workshop was attended by more than 60 representatives of the Balkan competition authorities, DG Competition of the European Commission, the Court of Justice of the European Union, UNCTAD,
as well as from some EU national competition authorities, the business community and the academia. The participants reached important conclusions on the common challenges faced by the competition authorities in the Balkan region, particularly related to the effective competition enforcement in the newly liberalized network industries, such as telecoms and energy. They were also able to draw valuable recommendations on how to enhance the efficiency and performance of their agencies, especially with regard to the competition impact assessment of legislation and the promotion of competition culture within the society. The competition authorities of the SCF recognized the need for further deepening of their cooperation by using the recently established SCF’s web site and its on-line forum for distant consultations on competition matters.

The next workshop in the framework of the SCF is scheduled for early November.

In November 2012, the CPC and UNCTAD had joined efforts to establish an active platform for technical assistance, exchange of experience and consultations in the field of competition policy and enforcement. The initiative aims to assist Balkan countries in adopting and enforcing competition law and to maximize the benefits of well-functioning markets for these countries.

See press release
• Estonia: Report on 10th Regional Competition Conference
The annual meeting among competition authorities from the three Baltic States, Finland and Poland took place in Tartu, on 4-5 June 2013. As usual, the two working days proved to be highly beneficial for the 39 participants from the Estonian, Latvian, Lithuanian, Finnish and Polish competition authorities.

Day one was dedicated to general developments in EU and national competition legislation and in the respective competition agencies. The second day focused on more specific issues such as pharmaceuticals and health care, banking and rights for the use of musical composition, and on cases presented in three working groups: antitrust, cartels and mergers.

The main value of the conference is the exchange of practical experience.

The next meeting in 2014 will be organised by the Competition Council of the Republic of Lithuania.

The three competition authorities of the Baltic States have met annually since 2003, with special guests from neighbouring countries Finland and Poland. This tradition was created to enhance cooperation mostly on the case-handler level for the exchange of experiences and knowledge of different markets.

• Ireland: Report on European Competition and Consumer Day
The Irish Competition Authority and the National Consumer Agency co-hosted the 2013 European Competition and Consumer Day conference in Dublin on 24 May. The theme of the conference was Competition Policy and Consumer Protection: Challenges and Choices.

The opening address was given by Ireland’s Minister for Jobs, Enterprise & Innovation, Mr Richard Bruton TD. This was followed by two keynote speeches from EU Commissioner for Health and Consumer Policy, Dr Tonio Borg, and Director-General for Competition, Dr Alexander Italianer, who identified critical issues for consumer protection and competition policy.

European Commissioner, Dr Tonio Borg presented recent developments in a number of areas including agreement on legislation for Alternative Dispute Resolution (ADR) and Online Dispute Resolution (ODR), cooperation within the network of consumer authorities under the Consumer Protection Cooperation Regulation, and the development of redress mechanisms through the European Consumer Centres as well as a forthcoming legislative initiative on Antitrust Damages Actions.

Dr Italianer reviewed the benefits that competition policy brings to consumers and businesses, and stressed the close links between competition policy and the broader priorities of the EU. He also suggested that
these benefits should be better explained to the media, to consumers’ associations and, more generally, to European citizens. The first panel discussion focused on the interaction between competition policy and consumer protection. The panel included heads of the Office of Fair Trading (UK), the Authority for Consumers and Markets (the Netherlands), the Federal Trade Commission (US) and the Director General of the Danish Competition and Consumer Authority.

The afternoon session saw a lively debate on the policy options available to facilitate consumer redress for breaches of competition law or consumer law. The final session involved contributions on behavioural economics and how this discipline helps us better understand consumer behaviour.

The speeches and the afternoon presentations are available via the Competition Authority’s website.

**Slovakia : Report on International Conference on Current Trends in Competition Law**

On 15 May 2013, the Antimonopoly Office of the Slovak Republic (AMO) in cooperation with the Faculty of Law of Comenius University in Bratislava organized a conference on ‘Current Trends in Competition Law’. More than two hundred participants from five countries met in the great Hall of Comenius University. The conference aspires to establish a tradition of regular professional events and thus contribute to increased awareness of the importance of competition law.

The conference was opened by Ms Mária Patakyová, professor and vice-rector for legislation at Comenius University, and Mr Tibor Menyhart, chairman of the Antimonopoly Office of the Slovak Republic. Ms Patakyová stressed the importance of cooperation between AMO and the University and Mr Menyhart expressed a desire to create a forum for the exchange of information and knowledge of experts and raise the level of competition in Slovakia.

Fourteen speakers, including Ján Mazák, former Advocate-General of the Court of Justice of the European Union, representatives from the Directorate-General for Competition of the European Commission, the Supreme Court of the Slovak Republic, the Czech Office for Protection of Competition, undertakings, attorneys, judges and academics on four panels presented their views on current issues of competition law.

The first panel gave an overview of competition law news in the European Union, the Slovak Republic and Czech Republic. It included information on decisions of competition authorities, courts and legislation.

The second panel on ‘Material and Formal Concept of the Fundamental Right to a Fair Trial in Competition Cases: Seeking Justice or Procedural Errors?’ included discussion on, how the European Court of Justice in its recent case law following the adoption of the Charter of Fundamental Rights applies the concept of fundamental right to fair trade; the reverse effect of the jurisdiction of the European Court of Human Rights in competition cases; and the right to a fair trial in competition cases from the perspective of the European Court of Human Rights.

In the third panel, devoted to the application of a more economic approach in vertical restraints, speakers compared the theoretical approach of the competition authorities with its application in practice as well as approaches to vertical restraints in Europe and the U.S.

In the last panel on ‘Liability of Companies’ Statutory Bodies for Antitrust Infringements’, representatives of academic, public and private institutions focused their presentations on actions for damages, the importance of preventing violations of competition law, and major components of law enforcement such as sanctions, individual sanctions, private enforcement, leniency and settlement procedures.

See press release in English

**European Commission: European Union and Switzerland sign Cooperation Agreement in Competition Matters**

On 17 May 2013, the European Union (EU) and the Swiss Confederation have signed an agreement that will strengthen cooperation between their respective competition authorities, the European Commission
and the Swiss Competition Commission. The signature took place subject to ratification: the agreement will only enter into force once it has been approved by the European Parliament and the Swiss Parliament.

This is the fifth such agreement signed by the EU after agreements concluded with the United States, Canada, Japan and Korea. An innovative feature of the agreement with Switzerland is that it will enable the two competition agencies to exchange information they have obtained in their investigations. The Agreement provides a framework for coordination and cooperation of enforcement activities. It enhances cooperation for an effective implementation of competition rules and provides for regular contacts in order to discuss policy issues and enforcement efforts and priorities. It also provides for the mutual notification of enforcement activities affecting each other’s important interests. Under the agreement the EU and Switzerland may request the other party to start enforcement actions against anti-competitive behaviour carried out in the territory of the other party and both sides have to take into account the important interests of the other party.

Unlike other cooperation agreements the agreement with Switzerland also includes provisions on the exchange of evidence obtained by the competition authorities when they investigate the same case. The exchange of information is subject to strict conditions protecting business secrets and personal data. Such an advanced form of cooperation between competition authorities is an innovation in a bilateral cooperation agreement. The information can only be used by the receiving authority for the enforcement of its competition rules in relation to the same case and for the purpose of the initial request. In addition, no evidence can be used to impose sanctions on natural persons.

See Cooperation Agreement

PERSONALIA

• Cyprus: The Council of Ministers reappoints Chairperson and appoints new Members to Commission for the Protection of Competition

On 16 April 2013, the Council of Ministers of the Republic of Cyprus re-appointed Mrs Loukia Christodoulou as Chairperson of the Commission for the Protection of Competition (CPC) for another term, until 17 April 2018.

On 24 May 2013, the Council of Ministers appointed Mrs Eleni Karaoli, Mr Charis Pastellis, Mr Christos Tsingis and Mr Andreas Karides as Members of the CPC, until 23 May 2018.

Mrs Loukia Christodoulou holds a degree in B.A. Law (Hons) and an LLM in International Commercial Law from the University of Kent, Canterbury. She is a member of the Cypriot Bar. She practiced law in a number of established law firms in Limassol for eight years. From 2000 to 2007, she was a member of the Tax Council of the Republic of Cyprus. On 14 May 2008, she was appointed as a Member of the CPC by the Council of Ministers. In May 2010, when the Chairman’s office became vacant, she was appointed Acting Chairperson by the Members of the CPC and, in December 2011, Chairperson of the CPC by the Council of Ministers, until 17 April 2013.

Mrs Eleni Karaoli holds a degree in Law from the University of Athens as well as an LLM in European, Commercial and International Law from the University of Sheffield. She is a member of the Cypriot Bar Association. Before joining the CPC she worked for the Office of the Commissioner for Electronic Communication from 2003 to 2008. Mrs Karaoli was also a Member of the CPC from 2008 to 2013.

Mr Pastellis holds a degree in B.A. Economics and Government from the University of Essex and an MA in Mass Communications from the University of Leicester. For the past 12 years, Mr Pastellis served as a Business Development Manager in a number of large corporations in Nicosia.

Mr Tsingis holds a BA degree in Marketing with Retail Management (Hons) from the University of North London and Certificates in Principles of Stock Exchange Investments and in Foreign Policy Analysis. Over the past 11 years she has held various managerial positions in companies active in the field of retail and electricity generation industry from renewable energy sources (RES) and especially in the construction
and operation of wind power plants.

Mr Karides holds a degree in Economics from the Aristotle University of Thessaloniki and a degree in Journalism from the Centre of Free Social Philosophical Studies. Mr Karides was editor for economic affairs for a number of local and foreign print and electronic media. Mr Karides was also a substitute member of the CPC from 2008 to 2013.

**Hungary: Competition Council appoints new Member**

As of 1 July 2013, Mr János Áder, the President of the Republic, appointed Dr Dorina Juhász dr Ruszthiné as the newest member of the Competition Council of the Hungarian Competition Authority (Gazdasági Versenyhivatal – GVH). The appointment is for a period of six years.

Dorina Juhász Ruszthiné graduated from the Faculty of Law and Political Sciences at the Pázmány Péter Catholic University in 2004. After graduation, she began working for the GVH as a case handler in the Industry and Food Section, in June 2004. Over the past nine years she has worked for several sections of the GVH in different positions, while also earning the degree of Lawyer Specialised in EU Law, in 2006. Since 2008, she has been teaching competition law for post-graduate students, and does research on the sanctioning of cartels. She is a member of the Competition Law Research Centre, and writes extensively on competition law. From 2008 until her appointment as a member of the Competition Council, she worked as a lawyer for the Court Representation Section. She speaks English and German.

The Competition Council is a separate and independent decision-making body within the GVH, but its decisions are subject to judicial review. Therefore, a decision on the substance of a case may only be made by the Competition Council. If the parties challenge the decision in court, the Competition Council is also allowed to defend this decision with the assistance of GVH legal experts. The Competition Council is also responsible for reviewing the orders of the case handlers during the procedure.

The Chair of the Competition Council – who is also one of the Vice Presidents of the GVH – organises and supervises the activities of the Competition Council, while in competition proceedings, the decisions are taken by the Competition Council in a panel of three or five members.

The Members of the Competition Council also participate in the competition advocacy activities of the GVH and contribute to efforts to disseminate competition culture in Hungary.

**United Kingdom: Office of Fair Trading appoints new Directors**

On 21 May 2013, the Office of Fair Trading (OFT) announced that it has appointed four new directors as part of its continued focus on delivery and enforcement.

Juliette Enser has been appointed Director of the OFT’s Cartels Group, on temporary promotion. Juliette, an experienced competition lawyer, joined the OFT in 2010 as an Assistant Director in the Cartels and Criminal Enforcement Group where she has taken a leading role in a range of investigations under the Competition Act and has been central to developing and implementing cartels policy. Prior to joining the OFT, Juliette worked in private practice. She qualified as a barrister in 1993 and as a solicitor in 2005.

Nelson Jung has been appointed Director of Mergers. Nelson joined the OFT in April 2010 and has led a number of Competition Act investigations, including the ongoing investigation in the hotel online booking sector in his previous role as Director of Competition Enforcement. Before this, Nelson worked as a senior associate at Clifford Chance, where he advised clients across a range of industries, in relation to merger control. As part of his previous career in politics, he was an elected member of the City Council in Frankfurt.

Nenad Njegovan has been appointed Economics Director in the Office of the Chief Economist, on temporary promotion. Nenad joined the OFT in August 2012 as an Assistant Director where he led on competition and consumer protection cases. Prior to joining the OFT, Nenad held various positions at different regulators, including Ofgem, where he was head of economic analysis in the enforcement and competition policy team. He also worked at the Competition Commission as an economic advisor, providing advice and analysis to the members of the mergers, market inquiries and regulatory appeals teams.
• Germany: The Bundeskartellamt publishes its Activity Report

On 26 June 2013, the Bundeskartellamt (BKartA) published its activity report for 2011/2012.

In the past two years the BKartA has further enhanced its cartel prosecution activities which resulted in fines in 34 cartel proceedings amounting to € 505 800 000. Organization changes have helped to make cartel prosecution more efficient, with now three specialised decision divisions, and the Special Unit for Combating Cartels, as well as new and improved investigative tools such as the anonymous whistleblower system (see ECN Brief 03/2012).

In the areas of merger control and abuse of dominance, the BKartA prevented critical concentrations in the Video/TV Sector, for example, and remedied abusive conduct by dominant companies in the area of general public services such as district heating and water providers.

The BKartA also conducted several sector inquiries to analyse critical markets and draw conclusions for future proceedings. In particular, the BKartA investigated the energy sector and more particularly fuels and wholesale electricity. A sector inquiry in the food retail sector is still on-going (see press releases (in English) on the launch of the sector enquiry and on the second investigative phase).

The BKartA is also working intensively to set up the Market Transparency Unit for Fuels. Cooperation with the Federal Highway Research Institute will make further implementation easier. In the future, consumers will be informed in real time of price changes at petrol stations.

See the activity report (in German)
See also Bundeskartellamt press release (in English)

• Italy: The Italian Competition Authority publishes its Annual Report 2012

On 18 June 2013, the Italian Competition Authority (ICA) published its Annual Report.

As regards the application of antitrust rules, four proceedings on anti-competitive agreements and 10 proceedings on abuse of dominant position were closed in 2012. Taking into account the seriousness of the infringements, a total of over € 170 000 000 in fines was imposed. In three cases, the proceedings led to decisions with commitments. The antitrust proceedings concerned the following industries: energy, retail distribution, telecommunication, pharmaceutical, transport, postal services and waste management.

In the period in question, the ICA initiated 11 new investigatory proceedings.

In 2012, the ICA also examined 459 mergers: 446 were authorized without 2nd phase investigation and another five mergers were conditionally authorized with remedies. Finally, eight cases were closed due
to the fact that the concentrations did not fulfill the new turnover thresholds adopted pursuant to a 2012 amendment to the Italian Competition Act.

As for its advocacy activity, the ICA published 110 reports and opinions with regard to restrictions on competition that were detected in existing laws and/or upcoming legislation concerning a wide variety of economic sectors. The ICA's attention mainly focused on sectors where greater competition might foster growth by reducing input costs for business (energy, transport, local public services, liberal professions).

Moreover, pursuant to Article 21-bis of the national antitrust law, at the end of 2011, the ICA was empowered to lodge an appeal for annulment of general administrative acts, regulations and provisions of any public body that restrict competition. In 2012, the ICA exercised this new power in 27 cases. In 10 cases, the measure was amended or repealed within the prescribed deadline. In the remaining cases the ICA decided to bring actions before the competent Administrative Court.

A copy of the report is available on the ICA website (in Italian)