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Who is Blindfolded?

An analysis regarding the consistency of the decision-making practice of the European Commission concerning media mergers since regulation 139/2004

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Abstract

Using a case-by-case comparison method this deliverable examined the consistency of the decision-making practice of the European Commission regarding media mergers after Regulation 139/2004. The conceptualisation of 'consistency' led to the division of the concept into 'logical consistency' and 'factual consideration'. For the decision-making practices of the Commission to be considered truly and utterly consistent, one is ought to consider both sides of 'consistency'. Due to limitations in time and resources, conclusions in this deliverable shall only address the 'logical consistency'-side of the notion of consistency, i.e. the use of the same conceptual framework resulting in similar conclusions.

The consistency of the decision-making practice of the EC was observed for three areas. First and foremost, a closer look was taken at the question whether the relevant product market definition and geographical scope are consistent or not (RQ1). Although nuances are in order, one can say that a consistent approach imposes itself. Secondly, the consistency of references made to non-economic considerations was scrutinized (RQ2). Even though, by law, the EC is obliged to take non-economic consideration into account when performing a market investigation, this deliverable confirms literature stating that the EC continuously disregards this obligation. As it is clear from literature that the EC holds an economic *ratio*, a third research goal was pursued in this area. As the parent company is not always the notifying party that requests the EC's approval of an acquisition, the question was raised whether in the case that a subsidiary leads the acquisition, the EC whether or not will involve the parent company - and all its assets - into the market investigation (RQ3). Despite the fact that the decision-making process of the EC is known for its economic point of view, this deliverable shows that it fails to consistently consider the acquiring parent company into its market investigation.

Keywords: Media mergers, Pluralism, Non-economic consideration, Consistency, Product market, Geographical scope, Parent Company.

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Introduction

The title of this deliverable

The title of this deliverable “Who is Blindfolded?” is derived from the question as to what exactly the meaning is of the concept ‘consistency’. With regard to the notion of ‘consistency’, two questions can be postulated. First and foremost, one can wonder whether or not the decision maker, in every case, wears the same blindfold. Secondly, it is worth considering if there are differences in the standard used for considering different cases. The question regarding the metaphorical ‘use of the same blindfold’ refers to the systematic use of a conceptual framework by which similar conclusions can be achieved, i.e. logical consistency. With regard to the question whether or not the decision maker uses different standards, an analysis needs to be conducted that examines whether the decision maker considers the same relevant facts for each case, i.e. factual consideration. For the decision-making practices of the Commission to be considered truly and utterly consistent, one is ought to consider both sides of ‘consistency’ (cf. *infra*).

As this deliverable shall only address the ‘logical consistency’-side of the concept of consistency, this is where the focus of the title is to be found. Therefore, “Who is Blindfolded?” refers to the question whether the European Commission wears a blindfold - whereby it would use on a systematic way the same conceptual framework by which similar conclusions can be achieved. Or, are the notifying parties being blindfolded, i.e. deceived by a seemingly fair, but in reality inconsistent decision-making practice?

Literature

As this deliverable continues on the ‘preparation for master thesis’, the main focus in what follows will be the conducted research. As a literature overview is not the aim of this dissertation and, more importantly, this has been conducted last year, interested readers are invited to read the former written paper or consult appendix 1 for the literature study behind this deliverable. As academic papers are released on an almost daily basis, new relevant literature was added to this deliverable.

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Defining the problem

Jean Monnet, the father of what was later to become the EU, started the collaboration between European nations from an economic integration point of view.¹ As economic cooperation progressed, more and more economic and political decision-making powers were ceded to the European level. Media and cultural matters were never part of considerations in the early years.² Monnet is later reported to have said: “*If we were beginning the European Community all over again, we should begin with culture*”.³

If the attention is narrowed down to the EU media policy, many authors state that this was motivated, on the one hand, by the interventionists, and on the other hand by a liberal policy. It can be concluded that the latter was clearly victorious over the former, as any EU attempts to develop policy on media concentration has come to nothing.⁴ The liberalization process in the '80s led to the rise of a media market, dominated by only a couple of media conglomerates. Actions of the European Parliament in the '90s to counter this phenomenon led to no result.⁵

There is no binding European media law to be found, nor any specific instruments are given to the European Commission to ensure that pluralism and diversity are maintained.⁶ Nevertheless, it must not be forgotten that the *sentential* ‘business as usual’ is not applicable to the media, as they are the carriers of cultural values and the foundation of our democracy.⁷ Because of this lack of sector-specific rules, media mergers fall under the general provisions of art. 101 and 102 of the TFEU. In this context Regulation 1/2003, regarding the implementation of these articles and Regulation 139/2004, concerning the control of concentrations between undertakings are essential.

This deliverable will focus on the decision-making practice of the EC as it is for notifying parties the gatekeeper for acquiring approval concerning media mergers. The aim is to investigate whether the decision-making practice of the European Commission is consistent or not. Therefore, the central question that needs to be addressed is: Is the decision-making practice of the European Commission consistent?

To answer this question, three areas will be scrutinized. As ‘consistency’ as a whole cannot be examined, subdivisions needed to be made. First, an analysis will be conducted of the consistency of the EC’s decision-making practice concerning the relevant product market definition and geographical scope. This can be seen as an investigation of the ‘basic-level’. Furthermore it shall be determined whether decisions taken by the EC take non-economic considerations into account. In conclusion, it will be examined whether the EC consistently considers the parent companies in its market investigations. Therefore, aside from the ‘basic-level’ examination; the analysis in this study includes both non-economic and economic areas of the decision-making practice of the European Commission.

¹ Williams, K., 2010, p. 116.

² Williams, K., 2010.

³ Quoted in: Collins, R., 2002, p. 25.

⁴ Valcke, P., 2011. p.1217.; Williams, K, 2010.

⁵ Williams, K., 2010; Verhulst and Goldberg, 1998, p. 17 - 49.

⁶ Cf. Williams, K., 2010

⁷ McQuail, 2005.

Hypotheses

As stated above, three research questions will be examined. This subdivision will shed more light on the expected results that will result out of this scrutiny.

RQ1: With regard to the first analysis of the consistency of the EC's decision-making practice concerning the relevant product market definition and geographical scope it must be stated that no literature regarding this research area was to be found. As thus, even though the general definition of consistency that is used in this deliverable is the one constituted by Ten Teije et al.,⁸ the further conceptualisation of consistency – with the addition of an additional axis ('decisive' and 'indecisive') and the separation into 'logical consistency' and 'factual consideration' – together with the identification of eight possible positions the EC can take regarding the relevant market definition and geographical scope, was for the first time constituted in this deliverable. Because no literature was to be found on the consistency of the decision-making practice regarding the relevant market definition and geographical scope concerning media mergers, no hypothesis was formulated on RQ1.

RQ2: For the second research question – concerning whether decisions taken by the EC take non-economic considerations into account – based on literature it was expected that even though the European Commission is obliged to integrate a concern regarding culture in its decisions, this would not be the case.⁹

RQ3: To conclude, for the third research question – whether the EC consistently considers the parent company in its market investigations – it was expected that this would indeed be the practice of the EC. This hypothesis was based on the same literature of RQ2 that stated that the EC hold and *economic ratio* and therefor does not consider non-economic considerations in its decisions. The aim of RQ3 was to investigate the depths of this *economic ratio*, i.e. 'when the EC only considers economic measurable arguments, does it consider all the assets that the notifying parent company possesses?'.⁹

⁸ Cf. Computer-based Medical Guidelines and Protocols: A Primer and Current Trends 283 A. Ten Teije et al. (Eds.) IOS Press, 2008, the authors and IOS Press.

⁹ Many authors claim that the EC fails to incorporate a cultural concern in its decisions regarding media. For consulting very recent publications regarding this subject the interested reader is advised to consult the policy report – European Union competencies in respect of media pluralism and media freedom & the doctoral work of Ben van Rompuy. Cf. Centre for media pluralism and media freedom (CMPF). (2013). *Policy Report – European Union competencies in respect of media pluralism and media freedom*, <https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/CMPFPolicyReport2013.pdf>; Van Rompuy, B. (2012). *Economic efficiency: The sole concern of modern antitrust policy? Non-efficiency considerations under article 101 TFEU*. The Netherlands: Wolter Kluwers Law & Business.

Method

The applied method used in this deliverable is a case-by-case comparison analysis of merger cases with a decision date between 1 May 2004 and 31 December 2011. The decision to start the analysis on 1 May 2004 is based on the fact that since this date, the new legislative framework with regulation 139/2004 came into force.

The first and foremost question that needs to be addressed is how one is ought to define a “media company”, i.e. who is referred to when applying the concept ‘media company’? Furthermore, it is necessary for the purpose of this investigation to determine what objective criteria outline whether or not one is dealing with a media company.

The definition used to differentiate between a media and a non-media-company is found in ‘The Council of Europe - Committee of Ministers, Recommendation CM/Rec(2007)15 on measures concerning media coverage of election campaigns’. As the ‘Resolution – Towards a new notion of media’ highlights certain interesting aspects which are not covered by the former Recommendation, this was also included into the delineation of the notion ‘media company’.¹⁰

Secondly, as the inquiry is performed by extracting the appropriate cases from the database of the European Commission¹¹, an objective set of criteria needed to be established, as without this, the operationalization of the research would be of great difficulty. To do this, three different search-keys were used to optimize the outcome.¹² This approach results in a clear overview of all cases that need to be investigated. In total the investigation will cover 291 cases. Out of these 291 cases, 8 were withdrawn by the notifying parties and 140 fell within the scope of Council Regulation 139/2004 and paragraphs 5(a) and (b) of the Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) 139/2004.¹³ This leaves a total of 143 cases on which analyses can be conducted.¹⁴

To conclude, a conceptualisation of ‘consistency’ was made. What follows are the results of the conducted analysis and the progression of delineating the concept of ‘consistency’.

¹⁰ Council of Europe – Ministers responsible for Media and new Communications Services, Political Declaration and Resolution – A New Notion of Media? For the whole definition, see appendix 3: Definition of the notion of media companies.

¹¹ <http://ec.europa.eu/competition/elojade/isef/index.cfm>

¹² Appendix 4: Search keys

¹³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2005:056:0032:0035:EN:PDF>

¹⁴ For an overview, see appendix 5: Analysed cases

Consistency and the decision-making practice of the EC

Broad definition

The term ‘consistency’, as it is used in this deliverable, is “an attribute of a logical system that is so constituted that none of the propositions deducible from the axioms contradict one another”.¹⁵ Applied in this deliverable one could say that decisions given in the present, should not contradict the foregoing. Consistency can be seen as a vital element, without it, legal uncertainty would prevail.

Subdivisions

In this analysis, consistency of the decision-making practice of the EC will be tested in three domains: the relevant product market and geographical scope; the use of cultural criteria, i.e. non-economic considerations, in the analysis of the EC; and the reference to parent companies.

1. The relevant product market and geographical scope

This subdivision gives answer to the question: is the decision-making practice of the EC consistent regarding the relevant product market en geographical scope?

Obviously, when the EC refers to and confirms a previous given definition, this is considered to be consistent. *Visa versa*, when the EC refers to a former given definition but alters this, it is considered to be deciding inconsistent. As the analysis showed, the situation regarding the consistency of the decision-making practice is more complicated than this.¹⁶ Practice reveals that more than two situations arise in the decision-making practice of the EC. The options that the EC chooses from are: (A) It can repeat a former given definition; (A2) It can deduct a definition from previous given Recommendations; (B) It can decide that: “*For the purpose of the present case the exact product market definition may be left open*”; (C) It can be that there is no definition at hand, but the Commission does not make one, as it is asserted not to be relevant; (D) The EC can reject a previous given definition in order to create a new one; (E) It can be that in the present case a definition is given where in previous cases the EC considered this unnecessary.¹⁷ Subsequent framework sheds more lights upon this distinction. (FIGURE 1):

	Consistency	Inconsistency
Decisive	(A) (A2)	(D) (E)
Indecisive¹⁸	(B) (C)	

¹⁵ Computer-based Medical Guidelines and Protocols: A Primer and Current Trends 283 A. Ten Teije et al. (Eds.) IOS Press, 2008, the authors and IOS Press.

¹⁶ Cf. Appendix 6: Orientation regarding the decision-making practice of the EC.

¹⁷ Furthermore, in order to address all possibilities, category F & G where developed. (F) A definition is given for the first time (G) A delineation problem poses itself for the first time, but the EC decides it unnecessary to create a definition. As in both situations the EC is confronted with the problem of delineating the market for the first time, with no Recommendation whatsoever at hand, these two categories can not be implemented in the framework, as for the determination if a decision is to be considered consistent or not, at least on foregoing decision needs to be made (or at least one Recommendation needs to address the relevant market).

¹⁸ The distinction between decisive and indecisive is made to respond to the situation where the EC decides it appropriate to neither deviate from her former given definition, nor accept a new one, and thus stay indecisive or when the EC does not have a former definition but asserts that in the present case it is not relevant to make one.

However, referring to point B, the question arises whether stating that: “*For the purpose of the present case the exact product market definition may be left open*”, holds a form of inconsistency.

“*For the purpose of the present case the exact product market definition may be left open*”

After the analysis, the conclusion can be made that the Commission in a high amount of cases comes to the conclusion that: “*For the purpose of the present case the exact product market definition may be left open, since in all alternative market definitions, the operation does not raise competition concerns*”.¹⁹ To know what this means is of major importance for this dissertation as it is the keystone for determining if the decision-making practice of the EC is consistent or not – in the area of the relevant market definition and geographical scope.

The formulated statement of the Commission comes down to the fact that first of all, there is a definition given regarding the relevant product market or geographical scope in previous cases. Nevertheless, in the context of the given quotation, three options remain possible. First of all, it is possible that the involving parties argue that a redefinition is in order. This can be for various reasons, e.g. technical evolution, different market structure. Second, third parties could arise, proposing arguments to alter the definition. Thirdly, even if the involving or third parties are pleased with the definition stated in (a) previous case(s), the EC could consider revision due to various reasons.

After the given remarks by the involved/third parties or the EC, follows the phrase: “*For the purpose of the present case the exact product market definition may be left open, since in all alternative market definitions, the operation does not raise competition concerns*”. This implies that the EC does not deviate from her former given definition, nor does she accept the given arguments for reformulating it. It merely states that in this present case, is does not matter which definition is used, since the outcome of the decision would be the same.²⁰

Logical consistency and factual consideration

If the question is raised whether or not this is a consistent decision, one should first ask the question what consistency exactly means. Referring to the broad definition used in this dissertation, consistency means that decisions should not contradict the foregoing. Even though this remains true, this does not provide us with enough details to truly state if decisions of the EC are consistent or not. By making a distinction between ‘logical consistency’ and ‘factual consideration’, a more accurate position can be taken. Logical consistency refers to the use of the same conceptual framework resulting in similar conclusions. Factual consideration refers to the evaluation of the facts in any given case. For the decision-making practice of the EC to be truly and utterly consistent, one needs to

¹⁹ E.g: See Commission Decision in case No COMP/M.4036 – TPG IV/APAX/Q-Telecom, SG-Greffe(2006) D/200119, 13.01.2006, par. 12; Commission Decision in case No COMP/M.5121 - News Corp/Premiere, SG-Greffe(2008) D/204111, 25.05.2008, par 36 - 37 & 39; Commission Decision in case No COMP/M.5533 – Bertelsmann/KKR/JV, SG-Greffe(2009) D/5318/5319, 08.09.2009, par 41 – 42; Commission Decision in case No COMP/M.5584 – Belgacom/BICS/MTN, SG-Greffe(2009) D/7777, 26.10.2009, par 32; Commission Decision in case No COMP/M.6095 – Ericsson/Nortel Group(MSS & Global Service), C(2011) 1538 final, 02.03.2011, par 18, 22 & 24.

²⁰ The possibility that the given quotation is used when there is no definition at hand is also to be mentioned. In this case, the market delineation is not to be placed under category ‘B’, but category ‘C’. In practice, it is not always clear under which category the market delineation is to be placed (B or C). This ambiguity is explained further in this deliverable.

consider that both sides of ‘consistency’ need to be taken into account.

If the EC would consider, in every case, all the relevant facts, and in order of those facts use the same approach in every case, i.e. using the same conceptual framework resulting in similar conclusions, one could say that the decision-making practise of the EC is consistent. Unfortunately, due to limitations in time and resources, it is only possible to shed more light on the ‘logical consistency – side’ of the notion of consistency.²¹ It is of the utmost importance to remember that when stated in this area that something is consistent, merely a reference is made that the used conceptual framework results in similar conclusions and is as thus: logically consistent.

Authors that would argue, in the context of the relevant market definition and geographical scope, that the decision-making practice of the EC is inconsistent are thus not necessarily wrong, if they base this acquisition upon factual basis, e.g. stating that the Commission in a case at hand, given the fact that the conditions were the same, ignored various factors whereby it came to a different conclusion – this different conclusion is thus based on a different appreciation of the facts (factual consideration), not of the logical processing by the EC.

Position

To return to the question if the statement is consistent or not, the position is taken that by stating: “*For the purpose of the present case the exact product market definition may be left open, since in all alternative market definitions, the operation does not raise competition concerns*”, the EC does not contradict itself - since it does not change the existing definition. Furthermore, this practice does not hold a treat to legal certainty, nor does it hold a disadvantage for the parties or the customer. Therefore, one could say that this does not hold a form of inconsistency. To conclude, as there are political and economic structural differences in different member states, one cannot expect that every given product market and/or geographical market definition holds ground in every case.²²

²¹ Factual consideration, i.e. the evaluation of the facts in a given case, can only be achieved if it would be possible to re-evaluate and qualify all the relevant facts in every case. Only if this evaluation is included, it would be possible to state that the decision-making practice of the EC is consistent. However, as an outsider with neither access to case materials, nor the time to evaluate all the relevant facts even if access was permitted, only logical consistency shall be investigated based on the published decisions.

²² Cf. M. 3817 where the EC refers to previous decisions regarding the separation of the readers market. “*In the Newspaper Publishing case, it was stated that, as far as the UK is concerned, there are three segments identified within the national newspaper market: popular tabloids, mid-market titles and the quality segment. In the Gruner + Jahr/Financial Times case, the Commission indicated that national daily newspapers can be further divided into different categories on the basis of content, editorial line or quality of the publication. However, due to possible overlaps between certain information contained in the newspapers, the distinction between different types of newspapers can to some extent be blurred. In the Recoletos/Unedisa case, the Commission considered that daily press in Spain could be divided, according to content, into three main categories: general information, sports and financial daily newspapers. Furthermore, the editorial line of the newspaper or the quality of the publication*”. Commission Decision in case No COMP/M.3817 – Wegener/PCM/JV, SG-Greffe(2005) D/202967/202968, 07.07.2005, par 10.

Results from the analysis

As described above, eight positions²³ can be taken by the EC when presented with the question of delineating the market. The analysis was performed on 143 merger cases (Cf. supra) leading to 337 product definitions and 301 geographical definitions.²⁴ The purpose of the investigation was to place every given market and geographical definition of the Commission in one of the eight possible options. Practice revealed that the problem of ambivalence presented itself. One could for example refer to case M.4477 – SES Astra / Eutelsat / JV - paragraph 31 where, with regard to delineating the geographic market the following can be read: *“According to the notifying parties, the geographic scope of the product market would be of a global nature since many of the present satellite operators offer such services world-wide. While many respondents to the market investigation shared the notifying parties' opinion, only a few replies favoured a narrower scope at EEA-level. In any event, the precise definition can be left open, since the proposed operation would raise no competition concerns under any geographic definition”*.

As it is unclear what the previous decision-making practice of the EC was and as this cannot be deduced from this paragraph - which is the only one regarding the geographical scope in this case - the question remains if this is either situation: (B) there is a former definition, but the EC states that in the present case the definition can be left open; (C) there is no definition at hand - even though this is not the first time the problem of delineating the market arises - and the EC asserts that none must be made; or (G) never has the problem of delineating the relevant geographical scope presented itself in previous cases and the EC decides for the first time that the precise definition can be left open.

More general, the conducted research showed that the problem with choosing what practice the EC is applying occurs mostly between options A & B and B & C.²⁵ For this reason the absolute value of the numbers in category A, B and C that resulted from the analysis must be treated with great care. Referring back to figure 1, one can see that the problem of ambivalent separation only occurs within the column of ‘consistency’. For this reason, statements about whether or not the decision-making practice of the EC is consistent or not, can still be made.

²³ A: It can repeat a former given definition; A2: It can deduct a definition from previous given recommendations; B: It can decide that: “For the purpose of the present case the exact product market definition may be left open”; C: It can be that there is no definition at hand, but the Commission does not make one, as it is not relevant; D: The EC can reject a previous given definition in order of creating a new one; E: It can be that in the present case a definition is given where in previous cases the EC decided this unnecessary; F: The EC gives a definition for the very first time; G: The problem of delineating the market arises for the very first time and the EC does not make a definition.

²⁴ The numbers of the delineated markets exceed those of the amount of cases, as in the majority of cases, more than one relevant product market and geographical scope are considered.

²⁵ To report completely, it must be stated that the problem of ambivalence between category A & F and C & G sporadically occurred. As thus, the given numbers of category F & G must also be treated with care. Because the problem of ambivalence between category A & F and C & G was so minimal, the numbers will be noted in this deliverable (cf. infra).

The relevant product market

Out of the 337 market delineations spread over 143 cases, averagely 85,50% of all decision-making practice, is either A, B or C and thus consistent.²⁶ The cases classified under category F and G are either cases where a definition is given for the first time, or where the problem of delineating the market arises for the first time but where the EC refuses to give a definition, as it is regarded to be unnecessary. Because in both cases, there are no references made to either other cases, or Recommendations, these cases are neither consistent nor inconsistent as to measure consistency at least one reference to past decisions need to be made. For the relevant product market, 10,5% of the delineated markets can be placed within these categories.

As no significant differences can be noted throughout all different years, no year-by-year analysis imposes itself. Keeping in mind the commentary on the ambivalence separation between them, no specific numbers will be given for category A, B and C, as this would not be an accurate description. Nevertheless, it can be inferred that the decision-making practice of the EC is logically consistent. Only two cases can be considered as being not consistent as to the area of product market definition. This is where the EC deviate from a former given definition. It concerns cases M.3916 ‘T-mobile Austria / Tele.Ring’ and M.5532 ‘Carphone Warehouse / Tiscali UK’.

M. 3916 - T-Mobile Austria / Tele.Ring

As regards the wholesale market for international roaming, the EC reached in previous decisions the conclusion that: “*each network constituted a separate market for the provision of wholesale international roaming services*”.²⁷ In this case however, the EC states: “*The former market definition to the effect that each individual network constitutes a separate market is consequently no longer appropriate. Instead, the networks largely compete with one another at national level*”.²⁸

M.5532 – Carphone Warehouse / Tiscali UK

The EC stated: “*In previous decisions in early cases dealing with Internet access services, the Commission further segmented the markets for narrowband and broadband between residential and business customers*”.²⁹ She continues: “*In its more recent decisions, the Commission has indeed taken the view that, because of the increased availability of broadband, it is no longer appropriate to differentiate between residential customers and small business customers as their requirements are substantially the same*”.³⁰

²⁶ The remaining 14,50% are either: (A2) definitions deducted from previous given recommendations (2%); (D) Rejections of a previous definition in order to create a new one (1,12%); (E) A new definition where the EC in previous cases decided this unnecessary (0,99%); (F) A definition given for the first time (5,7%) or (G) A delineation problem that poses itself for the first time, but where the EC decides it unnecessary to create a definition (4,8%).

²⁷ See Commission Decision in case No COMP/M.3916 – T-Mobile Austria/Tele.Ring, C (2006) 1695 final, 26.04.2006, par 25. References are made to IP/05/161 “Commission challenges international roaming rates for mobile phones in Germany” and IP/04/994 “Commission challenges UK international roaming rates”.

²⁸ See Commission Decision in case No COMP/M.3916 – T-Mobile Austria/Tele.Ring, C (2006) 1695 final, 26.04.2006, par 27.

²⁹ See Commission Decision in case No COMP/M.5532 – Carphone Warehouse/Tiscali UK, SG-Greffe(2009) D/3871, 29.06.2009, par 22.

³⁰ Ibid., par 24.

The geographical scope

Out of the 301 market delineations spread over 143 cases, averagely 83,38% of all decision-making practice is either A, B or C and thus consistent.³¹ For the relevant geographical scope, 11,7% of the delineated markets can be place within categories F and G. Again, as no significant differences can be noted throughout all different years, no year-by-year analysis imposes itself. As for the geographical scope, the same notification must be made that due to methodological reasons, as stated above, no specific numbers will be given for category A, B and C, as this would not be an accurate overview. Again, the ambivalence is only within the column of ‘consistency’. This makes it possible to still constitute the statement that the decision-making practice of the EC regarding the relevant geographical scope is logically consistent.

Conclusion

It can thus be concluded that there is overwhelming evidence that the decision-making practice of the EC regarding the geographical scope and relevant product market is consistent, at least on a logical basis. The reading of this conclusion comes down to the statement that the decision-making practise of the EC is either to place within category A, A2, B or C.³²

Furthermore, considering footnote 24, it must be emphasised that the given numbers merely are an indication of the European Commission’s practice. The analysis of a decision-making practice is not an exact science, as therefore, next to offering numbers that would imply an exact scientific approach, this deliverable additionally highlights prudence with interpreting these results.

³¹ The remaining 16,62% are either: (A2) definitions deducted from previous given recommendations (3,8%); (D) Rejections of a previous definition in order to create a new one (0%); (E) A new definition where the EC in previous cases decided this unnecessary (0,96%); (F) A definition given for the first time (5,9%) or (G) A delineation problem that poses itself for the first time, but where the EC decides it unnecessary to create a definition (5,8%).

³² It must not be forgotten that the practice of leaving open a market definition, after in former decisions a delineation of this market was (not) made, is regarded to be a consistent approach (cf. supra).

2. The use of cultural arguments in the decision-making practice of the EC

This subdivision gives answer to the question if the EC consistently considers non-economic considerations in the market investigation.

Introduction

Following Ben van Rompuy, a distinction can be made between economic- and non-economic efficiencies.³³ Van Rompuy states that in recent years, the EC promotes the view that EU antitrust policy should focus on enhancing economic efficiency, which it believes will promote consumer welfare.³⁴ Van Rompuy comments that:

*“even when one accepts that the enhancement of economic efficiency is or should be (one of the) the core objective(s) of antitrust law, the issue is not entirely settled. The economic efficiency objective can only be met if it is defined how one ought to measure market performance”.*³⁵

For many reasons, it is suggested that non-efficiency objectives should be excluded from antitrust analysis.³⁶ Van Rompuy states that all arguments given:

*“rest on the assumption that economic theory provides a scientific and objective framework for antitrust analysis. This assumption is flawed. The decision to make the enhancement of efficiency and the promotion of welfare the exclusive objective of antitrust policy is not value neutral”.*³⁷

*“Neoclassical economic theory provides no determinate conclusion as regards variety of choice, innovation, quality, and other forms of non-price competition. At best, static economic models attempt to consider non-price benefits indirectly, by folding them into a static price analysis in the form of quality adjusted prices or by assuming that price competitive markets will also be competitive for non-price preferences”.*³⁸

The fundamental message that Van Rompuy introduces is that when one states that non-efficiency objectives (e.g. enhancing cultural diversity) are too abstract and difficult to operationalize, simultaneously, the precision and objectivity of an exclusive efficiency (i.e. economic approach) and welfare approach must not be exaggerated.³⁹

³³ Van Rompuy, B., 2012.

³⁴ Ibid., p. 2.

³⁵ Ibid., p. 43.

³⁶ Ibid., p. 62 – 63.

³⁷ Ibid., p. 63.

³⁸ Ibid., p. 64.

³⁹ Ibid., p. 66 – 68.

Political situation

The origin for involving non-efficiency objectives, i.e. a cultural argument, in media merger cases stems from a concern about media pluralism.⁴⁰ It has been stated in many political and juridical documents that there cannot be a free society without a free media.⁴¹ In general the argument that a free media⁴² is a precondition for a well functioning democracy is widely acknowledged.⁴³ It namely ensures that: (I) the public is informed about public events; (II) the government and politicians function under the watching eye of the public; (III) Citizens are informed in times of elections; and (IV) it provides the means for citizens to engage in the political process.⁴⁴ Continuing on the latter, one could say that media freedom is of the utmost importance, since the media provides a social and political orientation. Citizens cannot directly experience the political process and therefore must rely on information given by the media.⁴⁵

To understand the decision-making practice of the EC today, one is ought to include the political background and view the EC has on media pluralism, i.e. the cultural argument or the non-efficiency consideration. The European Parliament has since the '90s frequently initiated legislative documents for harmonising the policy regarding media mergers.⁴⁶ Because of the limited power the EP has, no successes were made in this field.⁴⁷ The EC has taken the view that the protection of cultural values is a national concern and that the only obligation the EC has is investigating if the proposed transaction is not in conflict with the principles of the internal market.

The EC wants, on the one hand, strong European media companies (in order to compete with non-European competitors) and on the other hand, a free and pluralistic media system. As regards the first objective, measures are taken on a European level. With regard to the second objective, i.e. ensuring a free and pluralistic media, the opinion of the EC is that this is a national concern. However, the member states have similar objectives as the EC. On the one hand, they want strong national media corporations (to compete with non-national media corporations), and on the other hand they desire a free and pluralistic media landscape. Practice demonstrates that Member-States give priority to enhance the market power of their national media companies, rather than ensuring media pluralism and freedom.⁴⁸

⁴⁰ Van Rompuy, B., 2012.

⁴¹ Cf. Déclaration des droits de l'homme et du citoyen, art 11: "*La libre communication des pensées et des opinions est un des droits les plus précieux de l'Homme : tout Citoyen peut donc parler, écrire, imprimer librement, sauf à répondre de l'abus de cette liberté, dans les cas déterminés par la Loi*".; The first amendment to the constitution of the United States of America; Chapter 2 of John Stuart Mill's *On liberty*.

⁴² Literature makes a distinction between media freedom and media pluralism, whereby the former refers to the independent functioning of media towards the government and the later refers to the independence of the media with regard to private groups and disproportionate influence of only one or a small number of economic, social and/or political interest. Inevitably, media freedom is an indispensable pre-condition for the functioning of a pluralistic media system. Cf. Price, M., 2004.; Valcke, P., 2011a.; Centre for media pluralism and media freedom, 2013, <https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/CMPFPolicyReport2013.pdf>, p. 19 – 26.

⁴³ Moufe, C., 2009, p. 549 – 561.; Karpinnen, K., 2007.; McConnel P.J. & Becker, L.B., 2002.

⁴⁴ McQuail, 2000. ; Cf. Czepek, A., Hellwig, M. & Nowake, E., 2009; McConnel, P.J. & Becker, L.B., 2002.

⁴⁵ Ivengar, S., Peters, M.D. & Kinder, D.R., 1982.

⁴⁶ Verhulst and Goldberg, 1998, p. 17 - 49. ; Initiatives of the E.P were e.g.: Resolution on Media Takeovers and Mergers, 1990, OJ C 68, 19.3.1990, p. 137; Resolution on media concentration and diversity of opinions, 1992, OJ C 284, 2.11.1992, p. 44; Resolution on the Commission Green Paper 'Pluralism and media concentration in the internal market', 1994, OJ C 44/177, 14.2.1994. cf. Valcke, P., 2011b, p. 1217.

⁴⁷ Valcke, P., 2011b.

⁴⁸ Klimkiewicz, 2005, p. 8.

Legal provisions regarding non-economic considerations

According to literature, the most important instrument by which the EC, until today, attempts to protect media pluralism, is with the European Competition law. According to art. 101 & 102 of the TFEU, the EC will move towards action when incompatibility with the internal market is suspected, i.e. a European intervention is based on an economic ground.⁴⁹ Nevertheless, there are several legal provisions the EC should take into consideration regarding the cultural aspect.⁵⁰

First and foremost, there is art. 21(4) of Regulation 139/2004⁵¹ that states:

Notwithstanding paragraphs 2 and 3, Member States may take appropriate measures to protect legitimate interests other than those taken into consideration by this Regulation and compatible with the general principles and other provisions of Community law.

Public security, plurality of the media and prudential rules shall be regarded as legitimate interests within the meaning of the first subparagraph.

[...]

This in mind, it could be argued that Member States, under Article 21(4) of the merger Regulation, have the power to themselves to take appropriate action in the event that the concentration threatens media pluralism. Be that as it may, the EC would still be obliged to take cultural aspects into account based on art 167(4) of the TFEU.⁵² Furthermore, the EC should consider art. 2(1)(b) of the merger Regulation, which states that the EC shall take the alternatives available to suppliers and users into account.

Additionally, the Treaty of the European Union (TEU) provides legal grounds that should be taken into account. Article 2 of the TEU provides values on which the Union is founded, e.g. freedom and democracy. In relation to this it must be noted that these values need to be respected according to article 7 TEU and that when given *a reasoned proposal* the Council may “*decide to suspend certain of the rights deriving from the application of the Treaties to the Member State in question*”.

To conclude it must be noted that article 11 of the Charter of fundamental right of the European Union specifically refers to freedom of expression and information.⁵³ This right is likewise protected by article 10 of the European Convention on Human Rights.

⁴⁹ Cf. Van Rompuy, B., 2012; Contra. Arino, M., 2004. ; Cf. Centre for media pluralism and media freedom (CMPF), 2013, <https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/CMPFPolicyReport2013.pdf>, p. 74.

⁵⁰ For more information regarding this subdivision I invite the interested reader to consult the CMPF policy report regarding media pluralism and media freedom. Cf. Centre for media pluralism and media freedom (CMPF), 2013, <https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/CMPFPolicyReport2013.pdf>

⁵¹ Hereafter referred to as the ‘merger regulation’.

⁵² “*The Union shall take cultural aspects into account in its action under other provisions of the Treaties, in particular in order to respect and to promote the diversity of its cultures*”.

⁵³ “*Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers*”. “*The freedom and pluralism of the media shall be respected*”.

Results from the analysis

In contrast to the former subdivision, the division of consistency in ‘logical consistency’ and ‘factual consideration’ is unnecessary. Referring to the broad definition used in this despatch, consistency means that decisions should not contradict the foregoing. In other words, does the EC continuously consider the impact the transaction may have on cultural and democratic values – as it is obliged to given the above articles - or not? Furthermore is it useful to give a year-by-year overview as certain trends can be detected. In the end, a general overview will be given coupled with the conclusions that can be drawn from this inquiry.

2004

In 2004, three cases regarding the cultural aspect are to be noted. The first one is merely mentioned, not to exemplify the EC’s respect of non-economic considerations, but quite frankly because of the opposite reason. It can firmly be stated that the first case that will be described illustrates the economic reasoning that characterizes the decision-making practice of the European Commission. The remaining two cases illustrate a consideration of culture values.

1. In case M.3561 - DT/Eurotel - Deutsche Telekom, thru its subsidiary Slovak Telekom, acquires sole control over Eurotel. The most interesting part of this case was that a third party raised competition concerns regarding the acquisition. The third party drew attention to the fact that Eurotel’s position, after the transaction, will be strengthened by its parent company (Deutsche Telekom). In order to make calls from the competitor’s network to Slovak Telekom’s fixed lines, the competitor needs interconnection with Slovak Telekom’s network.⁵⁴ The Commission replied that: “*the proposed operation as such - a change from joint to sole control - does not give rise to a significant change in the ability or incentives of ST [Slovak Telekom] to engage in discriminatory behaviour in the wholesale access markets (e.g. the provision of call termination, transit and leased lines services)*”.⁵⁵ The Commission continues: “*Moreover, the third party itself has confirmed that already today it encounters discriminatory behaviour consisting in a delay in the provision of interconnection and leased lines. Therefore, any incentive the incumbent network operator may have to raise rivals’ costs exists irrespective of the proposed transaction*”.⁵⁶

If not misread, this comes down to the fact that the EC acknowledged the fact that discriminatory behaviour exists, but nevertheless approves the acquisition because the *incentive* to discriminate does not change in a decisive way because of the acquisition. What the European Court of Justice would have to say about this remains a question, as no appeal was made.

2. In case M.2978 Lagardère acquired the sole control of the assets of Vivendi Universal Publishing. The publishing of books – via Hachette Livre - is one of the areas Lagardère has its main activities and the acquisition of VUP would further strengthen its position in this market. Regarding this book market, the EC does make a reference to the cultural aspect. It states:

⁵⁴ Commission Decision in case No COMP/M.3561 - DT / EUROTEL, par 20.

⁵⁵ Ibid., par 20.

⁵⁶ Ibid., par 20. Cf. Ibid., par 25.

*“Contrary to what the notifying party seeks to imply, the concept of supply in the publishing industry embraces more than just the number of titles offered for sale in a year. It has a qualitative dimension that is a great deal subtler than the number of books sold. A diversified supply will not include products that are physically different but whose content is the same. In the book trade, especially in general literature, there has been a proliferation of uniform and similar books. This clearly does not mean that there are fewer and fewer books being published. As the notifying party says, the number of new titles has never been bigger. But what the notifying party omits to point out is that the growing number of titles is not necessarily an indication of greater diversity, but rather of a proliferation of books that resemble one another and which are sold in just the same way as mass consumption products”.*⁵⁷ It concludes with summarising that: *“The positive link between concentration and supply that the notifying party hopes to establish appears very doubtful when it is observed that an expansion in the number of titles is not the same as a diversification of supply”.*⁵⁸

3. The final case in 2004 where a reference was made to the cultural aspect was M.3333 Sony/BMG. Both companies are active in the music industry. As regards the artists *“the Commission received information from an independent market observer that the merger of Sony and BMG has had a negative impact on cultural diversity, in the sense that the merger furthered the strategy of the majors recording companies of reducing their catalogues and local language repertoire, as well as concentrating on 'promoting commoditised Anglo-American products through increasingly narrow retail channels', which affected consumer choice”.*⁵⁹

After considering the process of signing artists, the evolution of computer technology and the importance of the Internet, the EC concluded that: *“the competition for securing the best artists remains intense among all record companies -majors and independents. Artists can, and do, move from majors to / from/ and between other majors and independents. The share of local artists has also significantly increased in the past few years in the majority of Contracting Parties to the EEA Agreement. It can therefore be concluded that the merger of Sony and BMG has no negative impact on cultural diversity at the level of creation and recording”.*⁶⁰

As literature and *inter alia* the first case showed, the decision-making practice of the EC generally has an economic *ratio*. Out of the 13 cases that were investigated in 2004 only in two cases (M.2978 & M.3333) a reference is there to be noted regarding the impact on culture the transaction may have. In 2005 and 2006, not one reference was made to the cultural aspect. 26 cases were investigated in 2005, 16 cases in 2006.

2007

In 2007, after two years of silence, again a reference was made to the cultural aspect. Case M.4519 ‘Lagardère / Sportfive’ referred to cultural factors when delineating the geographical scope of TV Broadcasting. The EC stated: *“With regard to the geographical scope of the market for TV broadcasting, the Parties submit that it is national or confined to linguistic*

⁵⁷ Commission Decision in case No COMP/M.2978 - LAGARDERE / NATEXIS / VUP, par 676.

⁵⁸ Ibid.

⁵⁹ Commission Decision in case No COMP/M.3333 - SONY / BMG (4064), par 415.

⁶⁰ Commission Decision in case No COMP/M.3333 - SONY / BMG (4064), par 426.

*regions. This is in line with the Commission's view in a number of Decisions, according to which television broadcasting is generally organised on a national basis and the markets for organisation of television are national in nature or relate to linguistically homogeneous areas. This is primarily due to differences in regulatory regimes, language barriers, cultural factors and other different conditions of competition prevailing in the individual Member States. Therefore, the boundaries of the product market for the present transaction are limited to the territories of the Member States”.*⁶¹

The ‘number of Decisions’ referred to in this paragraph are decision Comp/JV 37, M.993 and M.2873.⁶² Based on the Case numbers, these cases date before 2004. In other words, in order to remain consistent, references were made, but no new input regarding cultural values are there to be noted. In the remaining 24 cases analysed in 2007, no references were made regarding the cultural aspect.

2008

In 2008, out of the 22 cases analysed, two cases are there to be noted with a reference to the cultural aspect.

1. The acquisition of Premier by News Corp⁶³ in case M.5121 was approved with conditions and obligations. The EC stated: *“the implementation of the last set of commitments relating to sub-license agreement between News Corp and SES Astra, as described above, would therefore solve the competition concerns identified by the Commission and would replicate the pre-merger level of access to Premiere's STB base for third-party pay-TV operators, hence restoring the pre-merger consumer choice and cultural diversity ranges”.*⁶⁴ Even though this is the only paragraph of a 33-page document, the cultural aspect has been taken into regard.

2. In case M.5272 the EC concludes the judgement with enouncing: *“On the basis of its examination of the likely impact of the passage from joint to sole control by Sony over Sony BMG, the Commission concludes that the concentration is unlikely to significantly impede effective competition in the common market or in a substantial part of it. The transaction does not have any negative impact on consumer choice and cultural diversity”.*⁶⁵ In both cases it can be noted that the Commission refers to the cultural aspect solely in the conclusion, but leaves out the investigation that has been done to support such statements.

2009

This ‘practice’ continues in 2009 were out of the 9 investigated cases, one reference was made to the cultural diversity. The EC stated in M.5533 ‘Bertelsmann - KKR – JV’: *“In light of the above, coordination between the parent companies appears unlikely. Therefore it can be concluded that the JV does not have as its object or effect the coordination of the competitive behaviour of the parent companies. Moreover, it can be concluded from the competitive*

⁶¹ Commission Decision in case No COMP/M.4519 - LAGARDERE / SPORTFIVE, par 13.

⁶² Comp/JV 37 BskyB/Kirch Oay TV; Case No IV/M.993 - Bertelsmann/Kirch/Premiere; Case No COMP/M.2873 - Newscorp/Telepiu', paragraph 48.

⁶³ Commission Decision in case No COMP/M.5121 - NEWS CORP / PREMIERE.

⁶⁴ Ibid., par 130.

⁶⁵ Commission Decision in case No COMP/M.5272 - SONY / SONYBMG, par 108.

assessment that the transaction is unlikely to have a negative impact on cultural diversity”.⁶⁶ On what grounds the last sentence is based is unclear as this is the only cultural reference made in the entire document.

2010

In 2010, two prominent cases are notable. For the first time, a reference is made to article 167(4) of the TFEU. In case M.5838 ‘Bertelsmann / Planeta / Circulo’ the EC stated: *“According to Article 167 (4) of the TFEU, “the Union shall take cultural aspects into account in its action under other provisions of the Treaties, in particular in order to respect and to promote the diversity of its cultures”. As shown below, Círculo has a small presence in the various markets analysed. The notified operation will not have any significant impact on the diversity of books made available to consumers and is therefore unlikely to threaten consumer choice and cultural diversity”*.⁶⁷

The same reference to article 167(4) was made in case M.5779 ‘Comcast / NBC Universal’. To conclude the competitive assessment of the licensing of TV content, the EC stated: *“Since the parties have a small presence on the different markets which have been analysed, the notified operation will not have any significant impact as regards the availability of TV content for licensing and is therefore unlikely to harm consumer choice and cultural diversity in the EEA”*.⁶⁸ Furthermore to support this claim, the EC again refers to art. 167(4).⁶⁹ Another reference to cultural diversity was made in the competitive assessment regarding the production of motion pictures for theatrical distribution.

2011

In 2011, out of the 10 cases that were analysed only one made a reference to cultural diversity. The last paragraph regarding the horizontal aspect of case M.6369 ‘HBO / Ziggo / HBO Nederland’ stated: *“In light of the above, it can therefore be concluded that the transaction will not give rise to any horizontal competition concerns and is therefore unlikely to harm consumer choice and cultural diversity in the EEA”*.⁷⁰ Furthermore, the last paragraph of the vertical assessment stated: *“[...] The transaction is equally unlikely to harm consumer choice and cultural diversity in the EEA”*.⁷¹ To conclude, paragraph 70 again states the conviction of the EC that the merger will unlikely harm the consumer choice and cultural diversity in the EEA.

⁶⁶ Commission Decision in case No COMP/M.5533 –BERTELSMANN / KKR / JV, par 79

⁶⁷ Commission Decision in case No COMP/M.5838 - BERTELSMANN / PLANETA / CIRCULO, par 16.

⁶⁸ Commission Decision in case No COMP/M.5779 - COMCAST / NBC UNIVERSAL, par 44.

⁶⁹ Ibid., footnote 27.

⁷⁰ Commission Decision in case No COMP/M.6369 - HBO / ZIGGO / HBO NEDERLAND, par 53.

⁷¹ Ibid., par 61

Conclusion

The conclusions that can be deduced from these analyses are in line with what was to be expected after the confrontation with the historical background regarding the view that the EC has on the application of cultural aspects in its decision-making practice. Out of the 143 cases that were analysed, only 9 cases are there to be noted where references were made to non-economic considerations, i.e. cultural diversity. This heavily confirms literature that argues that the decision-making practice of the EC is dominated by an economic *ratio*.

In 2004 only 3 cases made references to cultural diversity. Nevertheless, it must be emphasised that in case M.2978 ‘Lagardère / Natexis / VUP’ the references made by the EC are substantiated by research.⁷² For the Sony/BMG-case, although the substantiation does not involve a research, at least the considerations that the EC made are mentioned on the judgement. After the radio silence⁷³ from 2005 – 2007, where in three years, only one case can be mentioned with a reference to cultural diversity, the EC started making conclusions with no substantiation at all. The EC, in 2008 and 2009 started asserting that the transaction did not have any negative impact on consumer choice and cultural diversity, without any further explanation regarding this conclusion. This being said, it is inaccurate to state that this was the general practice of the EC, as only 3 out of the 31 cases from 2008 – 2009 made a reference to cultural diversity. Having only access to published decisions, at most it can be stated that in the exceptional case a reference was made, this was not supported by any investigation at all.

In 2010 out of the 20 analysed cases, in only two the EC used a non-economic consideration. Remarkable is the fact that for the first time article 167(4) was cited. ‘This practice’ disappeared in 2011 where only one out of the 10 cases referred to cultural diversity, with no mentioning of art. 167(4). The point that must be emphasised is that only the general conclusion - that the decision-making practice of the EC regarding media mergers is dominated by an economic *ratio* - can be made. As the number of cases where the EC mentioned cultural diversity is so low, no conclusions can be drawn on the practice the EC holds in the exceptional situation where it does make a non-economic consideration.

As for the question if the decision-making practice of the EC is consistent regarding references made to non-economic consideration, one can fairly say that indeed the practice is consistent in a way that the EC consistently ignores its obligation to conclude the impact the transaction may have on cultural and democratic values in its market investigation.

⁷² E.g. Commission Decision in case No COMP/M.2978 - LAGARDERE / NATEXIS / VUP, footnote 525.

⁷³ In these 3 years only in the Lagardère – Sportfive case a reference was made to cultural diversity. Cf. Commission Decision in case No COMP/M.4519 - LAGARDERE / SPORTFIVE.

3. The consideration of the parent company

This subdivision gives answer to the question if the EC consistently involves the parent company of the acquiring party in the market investigation.

As it appears that research question two confirmed literature stating that the European Commission holds an economic point of view when considering the approval of acquisitions, attention was drawn to the question if it makes a consistent consideration of the parent company of the acquiring party. When the EC analyses matters such as ‘synergetic effects’ and ‘vertical and/or horizontal integration’, conclusions will obviously differ if the parent companies of two merging subsidiaries are (not) taken into conclusion. For obvious reasons it is in the consumers interest that in every case, all the assets of the acquiring party are concluded in the market investigation. Analysis revealed that in most of the cases, the parent companies lead the acquisition (113 out of the 143 cases). In this situation, the EC *de facto* considers the acquiring parent company in the market investigation. In the remaining 30 cases the EC can either consider, or ignore the assets of the inquiring parent company.

Results from the analyses

2004

From the 13 cases that were analysed in 2004, two are there to be noted where the EC did not consider the parent companies.⁷⁴ Furthermore there is the Newscorp – Telepiu case where the EC failed to consider the shareholders of News Corporation.⁷⁵ In 4 cases, the EC referred to the parent companies of the merging entities. In the remaining 6 cases the company that acquires control over the other is itself a parent company, as thus is the question of consistency in these cases redundant.

In case M.3381 ‘Alba / Beko / Grundig’ the EC approves the joint control acquisition of the Home Intermedia System Division of Grundig, by Alba and Beko Electronics. As Beko is a part of Koç, a multinational conglomerate, it could be important to consider the assets it has in the analyses. In this case, the EC failed to do so.⁷⁶ In case M.3411 ‘UGC / Noos’ the EC approves the sole control acquisition of Noos, by UGC. The EC mentions that UGC is a subsidiary of ‘Liberty’, an international media, entertainment, technology and communications company. No further mentioning besides the introduction of the Company is made.⁷⁷

Attention must be drawn to case M.2876 ‘Newscorp / Telepiu’ were the EC approved the proposed acquisition by Newscorp of Telepiu.⁷⁸ Telepiu will be merged with Stream, the other pay-tv company of Italy. Stream is currently a joint venture owned by Newscorp and Telecom Italia (50/50). Newscorp will control the new merger since Telecom Italia will only have a 19,9% share.⁷⁹ The EC has authorized this merger, even though this will result in a

⁷⁴ Cf. Commission Decision in case No COMP/M.3381 - ALBA / BEKO / GRUNDIG. And Commission Decision in case No COMP/M.3411 - UGC / NOOS (4064).

⁷⁵ Cf. Commission Decision in case No COMP/M.2876 - NEWSCORP / TELEPIU.

⁷⁶ Cf. Commission Decision in case No COMP/M.3381 - ALBA / BEKO / GRUNDIG.

⁷⁷ Cf. Commission Decision in case No COMP/M.3411 - UGC / NOOS (4064).

⁷⁸ http://europa.eu/rapid/press-release_IP-03-478_en.htm

⁷⁹ Cf. Commission Decision in case No COMP/M.2876 - NEWSCORP / TELEPIU, par 1.

near monopoly situation on the pay-TV market⁸⁰, because in its view this is more beneficial to the consumer than the disruption that would have been caused by the likely closure of Stream.⁸¹ The deal creates a near monopoly situation since 2/3 of the Italian pay-TV market is already at hands of Telepiu. With the merger with Stream, this will only strengthen the position. It must be noted in this case, even though News Corporation is a parent company itself, the main shareholder of this corporation is Rupert Murdoch, who has many other interests in media companies. As thus, to make a fully detailed analysis, all assets of his other companies should have been taken into regard when considering synergetic effects and horizontal and/or vertical integration. Even though the Commission decided to initiate proceedings in accordance with article 6(1)(C) of the merger regulation, i.e. an in-depth investigation, it was not considered involving the assets of the shareholders of News Corporation. Hence, not all synergetic, horizontal and vertical effects have been taken into account.

2005

Out of the 26 cases that were investigated. Three of them did not consider the parent companies. In four cases, the EC referred to the parent companies and in the remaining amount of cases, the question of consistent consideration was irrelevant as the merging or acquiring entities were parent companies themselves.

In case M.3836 references are made to Goldman Sachs & Co, but the parent company is Goldman Sachs group.⁸² In case M.3817 'Wegener / PCM / JV' were PCM and Wegener acquire joint control over a newly created venture; the EC did not include the fact that the British investment group Apax, which is ultimately owned by the Hirzell Trust - an independent trust organised under the laws of Guernsey - controls PCM. Both companies are only mentioned in the party description.⁸³ In case M.3803 'EADS / Nokia', no further attention is given to the fact that EADS is jointly controlled by DaimlerChrysler, Lagardère and the French State.⁸⁴

2006

Out of the 16 cases that were analysed, in two the EC did not consider the parent companies, in one it specifically referred to the parent companies and in the remaining amount of cases (13) the notifying parties were parent companies and thus *de facto* considered by the EC.

In case M.4217 'Providence / Carlyle / UPC Sweden', the EC fails to consider the assets that Providence and Carlyle have, other than 'Com Hem'. Providence and Carlyle jointly control 'Com Hem', which is a big player on the Swedish market. Considering the effects when they would acquire UPC, they left out to analyse all possible horizontal and vertical interactions that could arise when all the assets of the two parent companies are brought in the analysis.⁸⁵

⁸⁰ Ibid., par 114.

⁸¹ http://europa.eu/rapid/press-release_IP-03-478_en.htm; Cf. Ibid., par 221.

⁸² Cf. Commission Decision in case No COMP/M.3836 - GOLDMAN SACHS / PIRELLI CAVI E SISTEMI ENERGIA / PIRELLI CAVI E SISTEMI TELECOM.

⁸³ Cf. Commission Decision in case No COMP/M.3817 - WEGENER / PCM / JV.

⁸⁴ Cf. Commission Decision in case No COMP/M.3803 - EADS / NOKIA.

⁸⁵ Cf. Commission Decision in case No COMP/M.4217 - PROVIDENCE / CARLYLE / UPC SWEDEN.

In case M.4204 'Cinven / UPC France', 'Cinven group limited', who is the parent company of "Cinven", is only mentioned once and was not a subject of investigation.⁸⁶

2007

Out of the 25 cases that were analysed in 2007, in two cases the EC failed to consider the parent companies, in one it specifically referred to the parent company and in the remaining amount of cases, the notifying parties were already parent companies. Additionally, two remarkable cases are there to be noted where the EC regards other assets that could potentially harm consumer's interests.

In case M.4721 'AIG Capital Partners / Bulgarian Telecommunications Company', AIG Capital partners is a subsidiary of AIG Inc. Nevertheless is the parent company not involved in the analysis.⁸⁷ In case M.4748 'T-Mobile / Orange Netherlands', Deutsche Telekom is the parent company of T-Mobile and is not mentioned in the investigation.⁸⁸

Pertained to the remarkable case mentioned before, case M.4547 'KKR / Permira / ProSiebenSat 1' and M.4696 'KKR / Harman' are there to be notified. Regarding the first the EC approved the joint control acquisition of ProSiebenSat. 1, by KKR and Permira. However, KKR and Permira both have other interests in the media sector. Together they jointly control SBS. Furthermore, Permira solely controls All3Media group Ltd. It must be noted that both SBS and All3Media group Ltd. are not ignored regarding the vertical and horizontal effect that could arise with the acquisition of P7S1 of ProSiebenSat.1.⁸⁹ In the second case, a similar conclusion can be made regarding the sole control acquisition of Harman by KKR. KKR has joint control with Silver Lake Partners over AVAGO technologies (who owns POF). Additionally, KKR holds a leading interest in ATU. Both AVAGO and ATU are considered in the competitive assessment.⁹⁰

2008

In 2008, 22 cases were analysed. The EC only failed to take the parent company into account in case M.4726 'Thomson Corporation / Reuters group'.⁹¹ In the remaining 21 cases, it was always the parent company that would directly, i.e. not thru a subsidiary, acquire shares, thus *de facto* the parent company has been taken into account by the EC.

2009

Out of the 9 cases from 2009, only one did not include the parent company in the acquisition analysis. In case M.5607 'Avaya / Nortel enterprise solutions', it is of importance to notice that Avaya is jointly controlled by TPG Partners V, L.P. and Silver Lake Partners III, L.P. No

⁸⁶ Cf. Commission Decision in case No COMP/M.4204 - CINVEN / UPC FRANCE.

⁸⁷ Cf. Commission Decision in case No COMP/M.4721 - AIG CAPITAL PARTNERS / BULGARIAN TELECOMMUNICATIONS COMPANY.

⁸⁸ Cf. Commission Decision in case No COMP/M.4748 - T-MOBILE / ORANGE NETHERLANDS.

⁸⁹ Cf. Commission Decision in case No COMP/M.4547 - KKR / PERMIRA / PROSIEBENSAT.1.

⁹⁰ Cf. Commission Decision in case No COMP/M.4696 - KKR / HARMAN.

⁹¹ Woodbridge, who has the control over Thomson, is not taken into consideration by the EC.; Cf. Commission Decision in case No COMP/M.4726 - THOMSON CORPORATION / REUTERS GROUP.

further references are made the both parties.⁹² In the remaining 8 cases, it was always the parent company that would directly, i.e. not thru a subsidiary, acquire shares, as thus *de facto* the parent company has been taken into regard by the EC.

2010

Three times the EC failed to consider the parent companies; twice it specifically concluded the parent companies in the analysis. In the remaining 15 cases, the parent companies directly acquired holding shares.

In case M.5776 ‘Telecinco / Cuatro’, footnote 2 explains the shareholder construction. Fininvest – whose majority shareholder is Silvio Berlusconi - has 38,6% of the shares of Mediaset, according to the parties leading to exclusive control.⁹³ Telecinco is a subsidiary of Mediaset. As thus, all the assets of Fininvest should be taken into regard when controlling horizontal and vertical effect. This has not been done.⁹⁴ Furthermore, in case M.5748 ‘Prisa / Telefonica - Telecinco - digital+’, were Telecinco is again in the position of acquiring company shares, the assets of Fininvest are once more, not considered.⁹⁵ To conclude, in case M.5734 ‘Liberty Global Europe / Unitymedia’, LGI is the parent company of LGE, nevertheless, the focus of investigation lies on LGE, with no attention for the parent company LGI.⁹⁶

2011

Out of the ten cases that were analysed in 2011, only in one the EC failed to conclude the parent company in its analysis.⁹⁷ In three cases it did determine that the parent companies should be taken into regard. In the remaining cases, the parent companies directly acquired shareholdings.

⁹² Cf. Commission Decision in case No COMP/M.5607 - AVAYA / NORTEL ENTERPRISE SOLUTIONS.

⁹³ Attention must go to the following. The main shareholder of Fininvest – Silvio Berlusconi – is mentioned in this case, where in case M.2876 ‘Telepiu / Newscorp’ not once the main shareholder of News Corporation – Rupert Murdoch – was mentioned. This comparison can be made, as both companies are parent companies.

⁹⁴ Cf. Commission Decision in case No COMP/M.5776 - TELECINCO / CUATRO.

⁹⁵ Cf. Commission Decision in case No COMP/M.5748 - PRISA / TELEFONICA / TELECINCO / DIGITAL+.

⁹⁶ Cf. Commission Decision in case No COMP/M.5734 - LIBERTY GLOBAL EUROPE / UNITYMEDIA.

⁹⁷ M.6196 Lenovo – Medion, LGL is the parent company of Lenovo and is not taken into consideration in this case.

Conclusion

In conclusion, it can be stated that in 15 cases (10,5%) the EC failed to consider the parent company in the analysis. In 15 cases (10,5%) it specifically referred to the parent company in the analysis even if it was a subsidiary that conducted the acquisition. In the remaining 113 cases (79,0%), it was the parent company that conducted the acquisition, in which case the European Commission *de facto* considers the parent company in the analysis.

As was the practice in subdivision one, a distinction shall be made between ‘logical consistency’ and ‘factual consideration’ to take a more accurate position.⁹⁸ As argued before, this deliverable only exclusively observes the ‘logical consistency-side’ of the consistency-concept. This in mind, to answer the question whether the decision-making practice of the EC is consistent in considering the parent company in its market investigation, indications have been found that this is not the case. Considering the fact that in the 30 cases in which a subsidiary - or at least not a parent company - performs the acquisition the EC in 50% of these cases ignores the assets of the parent company and in 50% of these cases the EC chooses to take the assets of the parent company into account, does not point in the direction of a very consistent system.

⁹⁸ Cf. Logical consistency refers to the use of the same conceptual framework resulting in similar conclusions. Factual consideration refers to the evaluation of the facts in any given case.

General conclusion

The analysis in this deliverable investigated whether or not the decision-making practice of the European Commission is consistent or not. Because ‘consistency’ as a whole is too broad and unspecified to examine, three areas were taken and examined.

First and foremost, attention was given to the question whether or not the decision-making practice of the EC was consistent regarding the relevant product market and geographical scope (RQ1). Results point in the direction that this is indeed the case. Regarding the relevant product market definition, the European Commission in 87,5%⁹⁹ of the cases made a consistent reference to previous cases. This does not mean that 12,5% of the decisions made were inconsistent as 10,5% of the relevant market definitions fall within category F or G (cf. supra). As regards the relevant geographical scope 87,18%¹⁰⁰ of the cases made a consistent reference to previous cases. Again, a large amount (11,7 %) of the remaining cases fall within category of F or G. Therefore, it can be stated that the decision-making practice of the EC regarding the relevant product market and geographical scope is consistent in a way that the decision-making practise of the EC is either to be placed within category A, A2, B or C. It must not be forgotten, however, that the practice of leaving open a market definition, after in a former decisions a delineation of this market was made (B) or was also left open (C), is regarded as a consistent approach (cf. supra).

Second, the study showed that the EC consistently ignored its obligation to consider non-economic considerations in the decision-making practice (cf. RQ2). Out of the 143 cases that were analysed, only 9 cases contained references to non-economic considerations, i.e. matters of cultural diversity. This heavily confirms the stated hypothesis (cf. supra) that the decision-making practice of the EC is dominated by an economic *ratio*.

Finally, the analyses conducted on the research question if the EC consistently includes the parent company in the market investigation (RQ3) shed some light on the matter. First of all, in most of the cases (79,0%) the parent companies run the acquisition. This leads inevitably to the situation where the EC considers the parent companies in the market investigation. In the remaining 30 cases the EC can either consider, or ignore the assets of the inquiring parent company. In conclusion it can be stated that in 15 cases (10,5%) the EC failed to consider the parent company in the analysis. In 15 cases (10,5%) it specifically referred to the parent company in the analysis even if it was a subsidiary that conducted the acquisition. This practice does not seem to validate the theorem that the decision-making practice of the EC is consistent regarding this topic. This result does not subscribe the third hypothesis that expected a consistent approach (cf. supra).

However, considering the fact that the analyses performed in this deliverable did not include case materials, only the argument that the decision-making practice does not show a ‘logical consistency’, can be defended (cf. supra). Furthermore, it must not be forgotten that these 143 cases are only a part of the merger cases. In total, there are 291 cases to be found regarding media mergers between 01/01/2004 – 31/12/2011. The fact that the remaining 148 cases were processed with a simplified procedure prevents outside observers from analysing the decision-making practice of the European Commission for these cases.

⁹⁹ 85,5% of the cases fall within category A, B or C; 2% fall within category A2.

¹⁰⁰ 83,38% of the cases fall within category A, B or C; 3,8 fall within category A2.

Further research

First and foremost, an interesting path of research would be to include case materials in a future study. This would make it possible to: (I) Determine whether the decision-making practice of the EC is consistent on a ‘factual consideration’-level; (II) determine if the EC, in practice, holds any discretionary powers regarding the application of the simplified procedure; (III) Investigate the three subdivisions within the internal process the EC holds before applying the simplified procedure.

Secondly, as the decision of the EC is only final if the European Court of Justice does not reject the decision, it would be interesting to investigate what the practice of the European Court of Justice is regarding media mergers and what the influence of its judgements is on the decision-making practice of the EC. To encourage further research in this area, an overview of all the media merger cases between 01/01/04 – 31/12/11 that went to court is given in appendix 7.

Appendix

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Appendix 2:

Nederlandstalige samenvatting

Conform art 60 (1) 3° van het OER-reglement 2012 – 2013 dient een masterproef die in een andere taal dan het Nederlands is geschreven voorzien te zijn van een Nederlandstalige samenvatting.¹⁰¹

Inleiding

Met de introductie van richtlijn 1/2003 betreffende de uitvoering van de mededingingsregels van de artikelen 81 en 82 van het Verdrag en richtlijn 139/2004 betreffende de controle op concentraties van ondernemingen, wijzigde de Europese Commissie de handhaving en controle op de toepassing van artikel 101 VWEU (art. 81 EG) en 102 VWEU (art. 82 EG). Conform artikel 4 van richtlijn 139/2004 dienen geplande concentraties zich vooraf aan te melden bij de Europese Commissie. Deze paper strekt er zich toe de consistentie van de beslissingspraktijk die de EC hanteert bij de goedkeuring van een concentratie aangaande mediabedrijven, te onderzoeken.

Methode

In deze masterthesis zal aan de hand van een vergelijkende casus-analyse de consistentie van de beslissingspraktijk van de Europese Commissie (EC) worden bestudeerd. Wat betreft de methode werd eerst en vooral het begrip ‘mediabedrijven’ geconceptualiseerd a.d.h.v. drie zoekleutels.¹⁰² Vervolgens werd aan de hand van dit resultaat een overzicht gemaakt van de te bestuderen cases die uit de database van de Europese Commissie naar boven kwamen. Van 1 mei 2004 tot 31 december 2011 zijn er 291 ‘media merger’ zaken te vinden. Van deze 291 zaken zijn er 140 afgehandeld met een vereenvoudigde procedure en 8 zaken werden ingetrokken door de kennisgevende partij. Dit laat 143 zaken over waar onderzoek kan op worden uitgevoerd.

Naast het begrip ‘mediabedrijven’ dient een operationalisering te worden gemaakt van het begrip ‘consistentie’. Dit werd gedaan door eerst en vooral een algemene definitie te hanteren (cf. infra: een uitspraak is consistent indien zij voorgaande beslissingen niet tegensprekt). Toen naderhand bleek dat een specifiekere aanpak zich nodig achtte werd het onderscheid gemaakt tussen ‘logische consistentie’ (logical consistency) en ‘feitelijke appreciatie’ (factual consideration). Omwille van het feit dat voorliggend onderzoek enkel toegang had tot publicaties en niet al het materiaal – daarbij rekening houdende met de beperkte middelen en gebrek aan tijd -, werd besloten de focus te leggen op de vraag of de beslissingspraktijk van de EC getuigt van een logische consistentie.

Onderzoek en resultaat

Drie deelvragen werden vervolgens onderzocht. Eerst en vooral werd een analyse uitgevoerd op de door de Commissie gehanteerde relevante product en geografische markt definitie. Vertrekkende vanuit de vraag of de beslissingspraktijk van de EC getuigt van een logische consistentie op dit domein wierp het antwoord zich op dat dit inderdaad het geval bleek te

¹⁰¹ Deze samenvatting wordt niet meegeteld in het maximaal aantal toegelaten woorden.

¹⁰² Zie ‘appendix 4’.

zijn. Rekening dient wel worden gehouden met figuur 1 (cf. infra) waarin duidelijk blijkt dat de door de EC gegeven definitie in de praktijk een ruimer aantal opties leek te bedekken dan in eerste instantie werd voorzien (cf. infra).

Als tweede deelvraag werd onderzocht of de beslissingspraktijk van de EC op een consistente manier niet-economische criteria overweegt in haar beslissingen – zoals zij verplicht is te doen, e.g. art 167(4) VWEU. Na analyse bleek dat de EC op consistente wijze nalaat culturele argumentatie in haar beslissingspraktijk te verwerken. Deze conclusie werd opgesteld nadat bleek dat uit de 143 geanalyseerde arresten er slechts 9 waren die een niet-economische consideraties bevatten.

Vorig resultaat was, rekening houdende met de literatuur – daarbij in het bijzonder het doctoraatswerk van Ben van Rompuy – vrij voorspelbaar. Omwille van de te verwachte economische *ratio* van de EC werd een derde onderzoeksvraag opgesteld die naging of de EC op een consistente wijze rekening hield met de moederondernemingen van de kennisgevende partij. Na analyse bleek dat uit de 143 zaken er slechts 30 zaken waren waar de kennisgevende partij niet het moederbedrijf zelf was. In deze 30 zaken werd door de Commissie in 15 zaken geen rekening gehouden met de moedermaatschappij van de kennisgevende dochteronderneming, doch in 15 zaken werd door de EC wel verwezen naar de parentholding. Gebaseerd op deze resultaten werd de conclusie geformuleerd dat in de meerderheid van de gevallen de moedermaatschappij de kennisgevende onderneming is én in het geval de dochtermaatschappij de acquisitie leidt, de EC op inconsistentie basis rekening houdt met diens moederbedrijf.

Verdere nuancering, onderbouwing en illustratie van bovenstaande samenvatting is te vinden in de Engelstalige masterthesis.

The definition of 'media' used in this deliverable is to be found in 'The Council of Europe - Committee of Ministers, Recommendation CM/Rec(2007)15 on measures concerning media coverage of election campaigns'.

- **“The term "media" refers to** those responsible for the periodic creation of information and content and its dissemination over which there is editorial responsibility, irrespective of the means and technology used for delivery, which are intended for reception by, and which could have a clear impact on, a significant proportion of the general public. This could, *inter alia*, include print media (newspapers, periodicals) and media disseminated over electronic communication networks, such as broadcast media (radio, television and other linear audiovisual media services), online news-services (such as online editions of newspapers and newsletters) and non-linear audiovisual media services (such as on-demand television).”

Furthermore, in 'Resolution – Towards a new notion of media'¹⁰³ one can find more interesting paragraphs who will also be included in our notion of 'media' in order to provide a broad point of view.

- **1. The purpose of media¹⁰⁴ or comparable medialike mass communication services remains on the whole unchanged, namely the provision or dissemination of information, analysis, comment, opinion and entertainment to a broad public. The underlying objectives also remain comparable: to provide news, information or access to information; to set the public agenda; to animate public debate or shape public opinion; to contribute to development or to promote specific values; to entertain; or to generate an income or, most frequently, a combination of the above.**
- **2. However,** the content itself is evolving due to the way in which information is gathered and content is created, disseminated or distributed, sought, selected and received. This is due both to technical reasons, related to the communication platforms used, and to the presentation of content, which offers a perception of enhanced choice and interaction. In terms of income, new business models have been developed for associating revenue-generating activities to the dissemination of content through the means of mass communication.
- **3. These developments call for an in-depth analysis of our understanding of media,** including the criteria and assumptions that underlie this understanding. It would therefore be desirable to explore the notion of media and, if necessary, **review the concept** itself. This would permit the establishment of criteria for

¹⁰³ Council of Europe – Ministers responsible for Media and new Communications Services, Political Declaration and Resolution – A New Notion of Media?

¹⁰⁴ For more information regarding “the purpose of media” cf.: Recommendation CM/REC (2011)7 of the Committee of Ministers to member states on a new notion of media. (Adopted by the Committee of Ministers on 21 September 2011 at the 1121st meeting of the Ministers’ Deputies). However, this expansion is for the conducted research unnecessary and will therefore not be included in the definition.

distinguishing media or media-like services from new forms of personal communication that are not media-like masscommunication or related business activities.

- 4. Fundamental rights and freedoms and other Council of Europe **values and standards**, in particular the right to freedom of expression and information and its corollary freedom of the new media, **have to be promoted and protected, regardless of changes in the media and media-like landscape**. The freedom of expression and information also carries with it certain duties, responsibilities and, in certain cases, can be subject to restrictions which are prescribed by law and necessary in a democratic society. Consequently, all media and media-like service providers have to respect certain benchmarks, and they should be adequately informed of their responsibilities.
- 5. Within an intergovernmental co-operation framework, the Council of Europe should consider the extent to which requirements of media or journalistic professionalism, editorial independence and editorial responsibility apply or should apply to new services or to media-like service providers. If appropriate, it should also provide guidance on the modalities of application of those standards to the operators of new services and business activities. More generally, **it should explore whether and how Council of Europe standards** that were developed with traditional forms of mass communication in mind **apply to the new services or service providers**. Those standards may have to be adapted, or new ones will have to be elaborated, for the new media-like service providers.
- 6. As for traditional media, **self-regulation should be a key element** for ensuring compliance with standards while respecting editorial independence; where necessary, self-regulation can be supported or underpinned by co-regulation. As a form of interference, regulation should be subject to the limits and conditions established by the European Convention on Human Rights and the relevant case law of the European Court of Human Rights and meet the tests elaborated by the latter. **Media or medialike regulatory or accountability mechanisms, whether self- or co-regulatory or, if necessary, state driven, must be effective, transparent, independent and accountable. The Council of Europe should explore how to improve the functioning of those mechanisms, in particular how to improve the access to those mechanisms for persons or groups who consider that their rights have been breached by media or media-like service providers.**
- 7. A **people-centred approach** also requires that individuals are allowed to exercise their right to free expression and information and use new communication services to participate in social, political, cultural and economic life and to do so without infringing the human dignity or the rights of others. The Council of Europe, in consultation and co-operation with relevant stakeholders, should provide member states with guidance, benchmarks and tools for the media and media-like mass communication service providers that allow individuals to seek, create and distribute information without fearing breaches to their own human dignity or rights. The question of how rights and responsibilities should be apportioned in appropriate cases between the content creator and the distributor or service provider should also be explored.

- 8. In this context, media literacy should be considered essential. It should be recognised as part of the **education** for democratic citizenship. It is a particularly important tool in optimising children's and young people's comprehension, critical thinking, citizenship, creativity and critical awareness of the media. Their sense of responsibility when they create, use and distribute content is of key importance. Member states will also have to address other threats to children's dignity, security and privacy, in particular the question of the removal of content that children and young people create or place on the Internet and that challenges their dignity, security and privacy or otherwise renders them vulnerable now or at a later stage in their lives.
- 9. It is also necessary to explore whether and to what extent data retention, the processing of personal data and profiling techniques or practices challenge unrestricted participation and people's rights to freedom of expression and information and other fundamental rights. Appropriate guidance should be provided to protect users' rights.
- 10. **The plurality of sources of information and media and media-like services has to be ensured. Individuals' right to receive information can be challenged and democracy can be threatened by negative and significant market distortion as a result of media concentration;** lack of diversity and pluralism; manipulative messages; new forms of content aggregation; the management and prioritisation of flow of content and of access and limited connectivity, or lack of access, to broadband services. **Measures have to be proposed to address these risks¹⁰⁵.** Part of the answer lies in the recognition of the public service value of the Internet and the resulting responsibilities for states.
- 11. Another important element for ensuring access to trustworthy sources of information is genuine, independent and adequately resourced **public service media**. At present, not all Council of Europe member states offer public service media that are able to attract and to serve all segments of society and contribute to people's full participation in political, social and cultural life. Developing the role of public service media may well involve public expenditure on cutting-edge media and media-like services and technologies. The modalities of expenditure on public media or information services may also need to be reviewed. The Council of Europe could provide a forum for discussion and, where appropriate, propose guidance on the manner in which public service media can discharge its duties, including by exploring innovative governance approaches.

¹⁰⁵ Cf. Recommendation CM/REC (2011)7 of the Committee of Ministers to memberstates on a new notion of media. (Adopted by the Committee of Ministers on 21 September 2011 at the 1121st meeting of the Ministers' Deputies): "Given their importance for democracy, media have been the subject of extensive Council of Europe standard-setting activity. The purpose has been to ensure the highest protection of media freedom and to provide guidance on duties and responsibilities. As a form of interference, any regulation should itself comply with the requirements set out in Article 10 of the European Convention on Human Rights and the standards that stem from the relevant case law of the European Court of Human Rights".

Appendix 4: Search keys for finding decisions of the European Commission

Search key - C

Economic activities

- C.26 - Manufacture of computer, electronic and optical products
- C.26.1 - Manufacture of electronic components and boards
- C.26.11 - Manufacture of electronic components
- C.26.12 - Manufacture of loaded electronic boards
- C.26.2 - Manufacture of computers and peripheral equipment
- C.26.20 - Manufacture of computers and peripheral equipment
- C.26.3 - Manufacture of communication equipment
- C.26.30 - Manufacture of communication equipment
- C.26.4 - Manufacture of consumer electronics
- C.26.40 - Manufacture of consumer electronics
- C.26.5 - Manufacture of instruments and appliances for measuring, testing and navigation; watches and clocks
- C.26.51 - Manufacture of instruments and appliances for measuring, testing and navigation
- C.26.7 - Manufacture of optical instruments and photographic equipment
- C.26.70 - Manufacture of optical instruments and photographic equipment
- C.26.8 - Manufacture of magnetic and optical media
- C.26.80 - Manufacture of magnetic and optical media

Date decisions

01/01/2004 - 31/12/2011

Search key - R

Economic activities

- R.90.0 - Creative, arts and entertainment activities
- R.90.01 - Performing arts
- R.90.02 - Support activities to performing arts
- R.90.03 - Artistic creation
- R.90.04 - Operation of arts facilities
- R.91 - Libraries, archives, museums and other cultural activities
- R.91.0 - Libraries, archives, museums and other cultural activities
- R.91.01 - Library and archives activities
- R.91.02 - Museums activities
- R.91.03 - Operation of historical sites and buildings and similar visitor attractions
- R.93.29 - Other amusement and recreation activities

Date decisions

01/01/2004 - 31/12/2011

Search key - J

Economic activities

- J - Information and communication
- J.58 - Publishing activities
- J.58.1 - Publishing of books, periodicals and other publishing activities
- J.58.11 - Book publishing

J.58.12 - Publishing of directories and mailing lists
J.58.13 - Publishing of newspapers
J.58.14 - Publishing of journals and periodicals
J.58.19 - Other publishing activities
J.58.2 - Software publishing
J.58.21 - Publishing of computer games
J.58.29 - Other software publishing
J.59 - Motion picture, video and television programme production, sound recording and music publishing activities
J.59.1 - Motion picture, video and television programme activities
J.59.11 - Motion picture, video and television programme production activities
J.59.12 - Motion picture, video and television programme post-production activities
J.59.13 - Motion picture, video and television programme distribution activities
J.59.14 - Motion picture projection activities
J.59.2 - Sound recording and music publishing activities
J.59.20 - Sound recording and music publishing activities
J.60 - Programming and broadcasting activities
J.60.1 - Radio broadcasting
J.60.10 - Radio broadcasting
J.60.2 - Television programming and broadcasting activities
J.60.20 - Television programming and broadcasting activities
J.61 - Telecommunications
J.61.1 - Wired telecommunications activities
J.61.10 - Wired telecommunications activities
J.61.2 - Wireless telecommunications activities
J.61.20 - Wireless telecommunications activities
J.61.3 - Satellite telecommunications activities
J.61.30 - Satellite telecommunications activities
J.61.9 - Other telecommunications activities
J.61.90 - Other telecommunications activities
J.62 - Computer programming, consultancy and related activities
J.62.0 - Computer programming, consultancy and related activities
J.62.01 - Computer programming activities
J.62.02 - Computer consultancy activities
J.62.03 - Computer facilities management activities
J.62.09 - Other information technology and computer service activities
J.63 - Information service activities
J.63.1 - Data processing, hosting and related activities; web portals
J.63.11 - Data processing, hosting and related activities
J.63.12 - Web portals
J.63.9 - Other information service activities
J.63.91 - News agency activities
J.63.99 - Other information service activities n.e.c.

Date decisions

01/01/2004 - 31/12/2011

Appendix 5: Overview of the analysed cases

2004

Thema	Zaak nr	Partijen
Merger	M.3271 C(2004) 2077	KABEL DEUTSCHLAND / ISH (4064)
Merger	M.3216 C(2004) 4217 final SG-Greffe (2004)	ORACLE / PEOPLESOFT (4064)
Merger	M.3381 D/201760/201761	ALBA / BEKO / GRUNDIG
Merger	M.3355 SG-Greffe (2004)D/202365 SG-Greffe(2004)	APOLLO / JP MORGAN / PRIMACOM
Merger	M.3330 SG-Greffe(2004) D/200966	RTL / M6
Merger	M.3411 SG-Greffe(2004) D/202122	UGC / NOOS (4064)
Merger	M.3420 SG-Greffe(2004) D/202379	GIMD / SOCPRESSE (4064)
Merger	M.3530 SG-Greffe(2004) D/204268	TELIASONERA / ORANGE DK
Merger	M.3542 SG-Greffe(2004) D/205183	SONY PICTURES / WALT DISNEY / ODG / MOVIECO
Merger	M.3561 SG-Greffe(2004) D/205843	DT / EUROTEL
Merger	M.2978 C(2003) 5277 final	LAGARDERE / NATEXIS / VUP
Merger	M.2876 C (2003) 1082 final	NEWSCORP / TELEPIU
Merger	M.3333 C(2007) 4507	SONY / BMG (4064)

2005

Thema	Zaak nr	Partijen
Merger	M.3653 C (2005) 2676 final	SIEMENS / VA TECH
Merger	M.3674 C(2005)390	IESY REPOSITORY / ISH
Merger	M.3684 SG-Greffe (2005) D/200912	BC PARTNERS / ISH
Merger	M.3697 SG-Greffe (2005) D/201119	SYMANTEC / VERITAS
Merger	M.3978 SG-Greffe (2005) D/207685	ORACLE / SIEBEL
Merger	M.3641 SG-Greffe(2005) D/200326 SG-Greffe(2005)	BT / INFONET
Merger	M.3657 D/200350/1	AIRBUS / SITA
Merger	M.3609 SG-Greffe(2005) D/200972	CINVEN / FRANCE TELECOM CABLE - NC NUMERICABLE
Merger	M.3720 SG-Greffe(2005) D/201098 SG-Greffe(2005)	BAES / AMS
Merger	M.3595 D/201529/30/31/22	SONY / MGM
Merger	M.3648 SG-Greffe(2005) D/201691	GRUNER + JAHR / MPS
Merger	M.3695 SG-Greffe(2005) D/201903	BT / RADIANZ
Merger	M.3764 SG-Greffe(2005) D/202179	BELGACOM / SWISSCOM / JV
Merger	M.3776 SG-Greffe(2005) D/202267	VODAFONE / OSKAR MOBILE GOLDMAN SACHS / PIRELLI CAVI E SISTEMI ENERGIA / PIRELLI CAVI E SISTEMI TELECOM
Merger	M.3836 SG-Greffe(2005) D/202900 SG-Greffe(2005)	
Merger	M.3817 D/202967/202968	WEGENER / PCM / JV
Merger	M.3803 SG-Greffe(2005) D/204089	EADS / NOKIA
Merger	M.3693 SG-Greffe(2005) D/204299	TPV / PHILIPS (MONITORS)
Merger	M.3866 SG-Greffe(2005) D/204643	SUN / STORAGETEK
Merger	M.3911 SG-Greffe(2005) D/204914	BENQ / SIEMENS MOBILE
Merger	M.3914 SG-Greffe(2005) D/204915	TELE2 / VERSATEL
Merger	M.3752 SG-Greffe(2005) D/205408	VERIZON / MCI
Merger	M.3953 SG-Greffe(2005) D/205568	APOLLO / BC PARTNERS / IESY - ISH - TELECOLUMBUS
Merger	M.3920 SG-Greffe(2005) D/205898	FRANCE TELECOM / AMENA
Merger	M.3995 SG-Greffe(2005) D/206503	BELGACOM / TELINDUS
Merger	M.4003 SG-Greffe(2005) D/207513	ERICSSON / MARCONI
Merger	M.4034 SG-Greffe(2005) D/207637	TELENOR / VODAFONE SVERIGE
Merger	M.3806 SG-Greffe(2005)202585	TELEFONICA / CESKY TELECOM

2006

Thema	Zaak nr	Partijen
Merger	M.4217 SG-Greffe (2006) D/202924	PROVIDENCE / CARLYLE / UPC SWEDEN
Merger	M.4035 SG-Greffe(2006) D/200059	TELEFÓNICA / O2
Merger	M.4036 SG-Greffe(2006) D/200119	TPG IV / APAX / Q-TELECOM
Merger	M.4395 SG-Greffe(2006) D/200156	BOEING / C-MAP
Merger	M.4063 SG-Greffe(2006) D/200788	CISCO / SCIENTIFIC ATLANTA
Merger	M.4108 SG-Greffe(2006) D/200867	T-SYSTEMS / GEDAS
Merger	M.4100 SG-Greffe(2006) D/202242	SEAGATE / MAXTOR
Merger	M.3998 SG-Greffe(2006) D/202682	AXALTO / GEMPLUS
Merger	M.4204 SG-Greffe(2006) D/203991	CINVEN / UPC FRANCE
Merger	M.4214 SG-Greffe(2006) D/204190	ALCATEL / LUCENT TECHNOLOGIES
Merger	M.4353 SG-Greffe(2006) D/205357	PERMIRA / ALL3MEDIA GROUP
Merger	M.4242 SG-Greffe(2006) D/206717	THERMO ELECTRON / FISHER SCIENTIFIC
Merger	M.4297 SG-Greffe(2006) D/206841	NOKIA / SIEMENS
Merger	M.4417 SG-Greffe(2006) D/207192	TELECOM ITALIA / AOL GERMAN ACCESS BUSINESS
Merger	M.4442 SG-Greffe(2006) D/207508	CARPHONE WAREHOUSE / AOL UK
Merger	M.3916 C (2006) 1695 final	T-MOBILE AUSTRIA / TELE.RING
Merger	M.2803 SG (2002) D/230597	TELIA / SONERA

2007

Thema	Zaak nr	Partijen
Merger	M.4504 C(2007) 3443	SFR / TELE 2 AIG CAPITAL PARTNERS / BULGARIAN TELECOMMUNICATIONS COMPANY
Merger	M.4721 C(2007) 3447	SYNIVERSE / BSG (wireless business)
Merger	M.4662 C(2007) 5984	MOTOROLA / SYMBOL
Merger	M.4415 SG-Greffe (2007) D/200078	SIEMENS / UGS CORPORATION
Merger	M.4608 SG-Greffe (2007) D/202574	T-MOBILE / ORANGE NETHERLANDS
Merger	M.4748 SG-Greffe (2007) D/205101	EGMONT / BONNIER (BOOKS)
Merger	M.4611 SG-Greffe (2007) D/206141	LAGARDERE / SPORTFIVE
Merger	M.4519 SG-Greffe (2007)D/200209	PBDS / PHILIPS APM
Merger	M.4503 SG-Greffe(2007) 200715	VODAFONE / TELE2 ITALY / TELE2 SPAIN
Merger	M.4947 SG-Greffe(2007) D/ 207195	SAP / BUSINESS OBJECTS
Merger	M.4944 SG-Greffe(2007) D/ 20728	MOTOROLA / VERTEX
Merger	M.4910 SG-Greffe(2007) D/ 208249	LITE-ON / PBDS
Merger	M.4502 SG-Greffe(2007) D/200717 SG-Greffe(2007)	KKR / PERMIRA / PROSIEBENSAT.1
Merger	M.4547 D/200851/200852	LGI / TELENET
Merger	M.4521 SG-Greffe(2007) D/200899	THRANE & THRANE / NERA
Merger	M.4465 SG-Greffe(2007) D/201304	WEATHER INVESTMENTS / HELLAS TELECOMMUNICATIONS
Merger	M.4591 SG-Greffe(2007) D/202130 SG-Greffe(2007)	SES ASTRA / EUTELSAT / JV
Merger	M.4477 D/204694/204695	KKR / HARMAN
Merger	M.4696 SG-Greffe(2007) D/205533 SG-Greffe(2007) D/205613,	FRANCE TELECOM / MID EUROPA PARTNERS / ONE
Merger	M.4809 D/205614	KPN / GETRONICS
Merger	M.4871 SG-Greffe(2007) D/205986	EMERSON ELECTRIC CO / MOTOROLA ECC
Merger	M.4933 SG-Greffe(2007) D/207071	INFINEON / SIEMENS / JV
Merger	M.4892 SG-Greffe(2007) D/207336	APAX PARTNERS / TELENOR SATELLITE SERVICES
Merger	M.4709 SG-Greffe(2007)D 205105	UNIVERSAL MUSIC GROUP / BMG MUSIC PUBLISHING
Merger	M.4404 C(2007) 2160	

2008

Thema	Zaak nr	Partijen
Merger	M.4942 C (2008) 3328	NOKIA / NAVTEQ
Merger	M.4854 C(2008) 1859	TOMTOM / TELE ATLAS

Merger	M.5094	C(2008) 2591	NOKIA / TROLLTECH
Merger	M.5197	C(2008) 4072	HP / EDS
Merger	M.5221	C(2008) 4585	KENWOOD / JVC / HOLDCO
Merger	M.5255	C(2008) 5205	TDK / EPCOS
Merger	M.5300	C(2008) 5391	GORES GROUP LLC/SIEMENS ENTERPRISE COMMUNICATIONS
Merger	M.5301	C(2008) 6041	CAP GEMINI / BAS
Merger	M.4726	C(2008) 654 final	THOMSON CORPORATION / REUTERS GROUP
Merger	M.5317	C(2008) 6877	IBM / ILOG
Merger	M.5332	C(2008) 7596	ERICSSON / STM / JV
Merger	M.4747	C(2008) 823 final	IBM / TELELOGIC
Merger	M.5148	C(2008)5713	DEUTSCHE TELEKOM / OTE
Merger	M.5140	C(2008) 3256	FOXCONN / SANMINA SCI
Merger	M.5051	SG-Greffe(2008) 201015	APW / GMG / EMAP
Merger	M.4979	SG-Greffe(2008) D/200805	ACER / PACKARD BELL
Merger	M.4979	SG-Greffe(2008) D/200805	ACER / PACKARD BELL
Merger	M.5080	SG-Greffe(2008) D/202023	ORACLE / BEA
Merger	M.5128	SG-Greffe(2008) D/203022	NORDIC CAPITAL / TIETOENATOR
Merger	M.5121	SG-Greffe(2008) D/204111	NEWS CORP / PREMIERE
Merger	M.5105	SG-Greffe(2008) D/204129	ABERTIS / SEPI / CDTI / INTA / HISPASAT
Merger	M.5303	SG-Greffe(2008) D6205784	ARQUES / SHC
Merger	M.5272	C(2008) 5211	SONY / SONYBMG

2009

Thema	Zaak nr	Partijen	
Merger	M.5455	C(2009) 2378	TPV / PHILIPS BRANDED MONITORS
Merger	M.5414	C(2009) 502	SAMSUNG SDI / SAMSUNG ELECTRONICS / SMD
Merger	M.5532	C(2009) 5323	CARPHONE WAREHOUSE / TISCALI UK
Merger	M.5590	C(2009) 6094	3i GROUP / H.I.G. CAPITAL / VOLNAY B.V.
Merger	M.5730	C(2009) 687	TELEFONICA / HANSENET TELEKOMMUNIKATION
Merger	M.5533	C(2009) 6933	BERTELSMANN / KKR / JV
Merger	M.5589	C(2009) 7441	SONY / SEIKO EPSON
Merger	M.5584	C(2009) 8451	BELGACOM / BICS / MTN
Merger	M.5607	C(2009) 9229	AVAYA / NORTEL ENTERPRISE SOLUTIONS
Merger	M.5483	C(2009)3894	TOSHIBA / FUJITSU HDD BUSINESS
Merger	M.5421	C (209) 7572	PANASONIC / SANYO

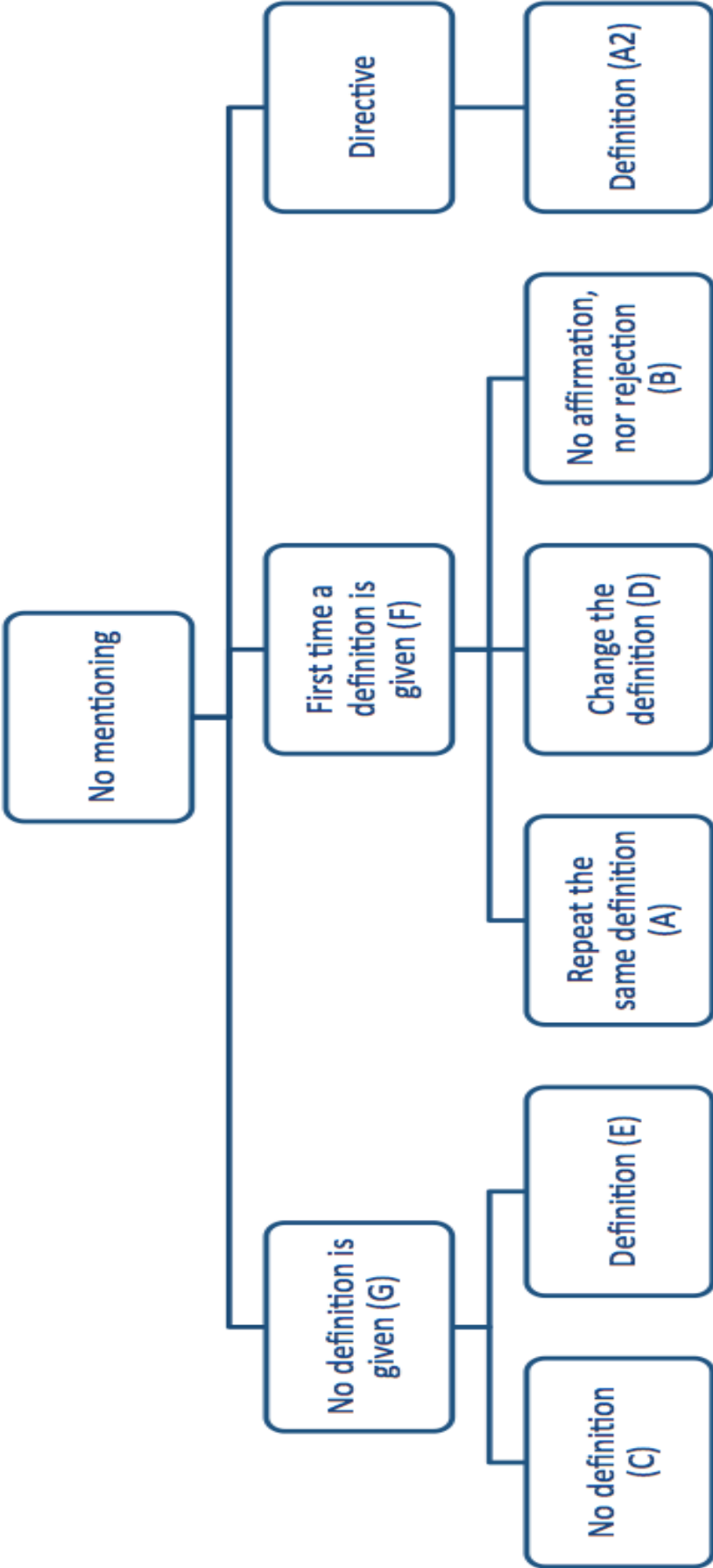
2010

Thema	Zaak nr	Partijen	
Merger	M.5611	C (2010) 390	AGILENT / VARIAN
Merger	M.5732	C(2010) 1001	HEWLETT-PACKARD / 3COM
Merger	M.5727	C(2010) 1077	MICROSOFT / YAHOO! SEARCH BUSINESS
Merger	M.5762	C(2010) 1204	INNOLUX / CHI MEI / TPO
Merger	M.5650	C(2010) 1274	T-MOBILE / ORANGE
Merger	M.5529	C(2010) 142	ORACLE / SUN MICROSYSTEMS
Merger	M.5776	C(2010) 1686	TELECINCO / CUATRO
Merger	M.5748	C(2010) 2098	PRISA / TELEFONICA / TELE CINCO / DIGITAL+
Merger	M.5763	C(2010) 2193	DASSAULT SYSTEMES / IBM DS PLM Software business
Merger	M.5669	C(2010) 2217	CISCO / TANDBERG
Merger	M.5804	C(2010) 2224	SAMSUNG ELECTRONICS CO / SAMSUNG DIGITAL IMAGING CO
Merger	M.5666	C(2010) 347	XEROX / AFFILIATED COMPUTER SERVICES
Merger	M.5870	C(2010) 4498	FOXCONN / SONY LCD TV MANUFACTURING COMPANY IN SLOVAKIA
Merger	M.5838	C(2010) 4794	BERTELSMANN / PLANETA / CIRCULO

Merger	M.5779	C(2010) 4988	COMCAST / NBC UNIVERSAL
Merger	M.5734	C(2010) 503	LIBERTY GLOBAL EUROPE / UNITYMEDIA
Merger	M.5904	C(2010) 5157	SAP / SYBASE
Merger	M.5765	C(2010) 6820	FOXCONN / DELL (PRODUCTS) POLAND
Merger	M.5964	C(2010) 7873	TPV / PHILIPS BRANDED MONITORS AND COLOUR TVS
Merger	M.5932	C(2010) 9684	NEWS CORP / BSKYB
Merger	M.5881	C(2010)6731 SG-Greffe(2010)	PROSIEBENSAT.1 MEDIA / RTL INTERACTIVE / JV
Merger	M.5998	D/18455/18456	BDMI / FCPI / BLUE LION MOBILE

2011

Thema	Zaak nr	Partijen	
Merger	M.6369	C(2011) 10049	HBO / ZIGGO / HBO NEDERLAND
Merger	M.6137	C(2011) 1534 final	CITIGROUP / MALTBY ACQUISITIONS LIMITED
Merger	M.6095	C(2011) 1538 final	ERICSSON / NORTEL GROUP (MSS & GLOBAL SERVICES)
Merger	M.6127	C(2011) 2109 final	ATOS ORIGIN / SIEMENS IT SOLUTIONS & SERVICES
Merger	M.6237	C(2011) 4515 final	COMPUTER SCIENCES CORPORATION / iSOFT GROUP
Merger	M.5984	C(2011) 529 final	INTEL / MCAFEE
Merger	M.6196	C(2011) 5493 final	LENOVO / MEDION SEAGATE TECHNOLOGY / THE HDD BUSINESS OF SAMSUNG ELECTRONICS
Merger	M.6214	C(2011) 7592 final	ASTRIUM HOLDING / VIZADA GROUP
Merger	M.6393	C(2011) 9020	THERMO FISHER / DIONEX CORPORATION
Merger	M.6126	C(2011)3465	DANAHER / BECKMAN COULTER
Merger	M.6175	C(2011)4423	MICROSOFT / SKYPE
Merger	M.6281	C(2011)7279	LGI / KBW
Merger	M.5900	K(2011) 4428 endgültig	WESTERN DIGITAL IRELAND / VIVITI TECHNOLOGIES
Merger	M.6203	none	



Appendix 7: Judgments of the European general Court and the European Court of Justice

2004	FAPL+Sky	T-415/08
	T-199/08	T-416/08
	MICROSOFT	T-417/08
	C-53/03	T-418/08
	T-201/04	T-419/08
	T-313/05	T-420/08
	T-271/06	T-421/08
	T-167/08	T-422/08
	LAGARDERE / NATEXIS / VUP	T-425/08
	T-279/04	T-428/08
	T-452/04	T-432/08
	T-464/04	T-433/08
	T-237/05	T-434/08
	C-404/10 P	T-442/08
	C-551/10 P	T-451/08
	C-553/10 P	C-32/09P
	C-554/10 P	C-112/09 P
	T-471/11	SONY / SONYBMG
	NEWSCORP / TELEPIU	T-464/04
	T-346/02	2009 Intel
	T-347/02	T-457/08
	T-443/03	T-286/09
	C-380/05	C-549/10 P
	T-501/10	2010 Rambus
	T-504/10	T-148/10
	T-506/10	T-149/10
2005	SONY / BMG (4064)	Vivendi, Iliad / France Telecom
	T-464/04	T-432/10
	C-413/06 P	Omnis / Microsoft
2007	Telefonica S.A. (broadband)	T-74/11
	T-336/07	LCD
	T-398/07	T-91/11
	T-458/09	T-94/11
	C-52/09	T-128/11
	C-295/12 P	ORACLE / SUN MICROSYSTEMS
	Professional videotape	T-292/10
	T-77/08	2011 Si.mobil / Mobitel
2008	CISAC Agreement	T-201/11
	T-392/08	MICROSOFT / SKYPE
	T-398/08	T-79/12
	T-401/08	WESTERN DIGITAL IRELAND /
	T-410/08	VIVITI TECHNOLOGIES
	T-411/08	T-452/11
	T-413/08	T-60/12
	T-414/08	

Appendix 8: An overview of the analysed cases with relevant paragraphs

2004

Thema	Zaak nr	Partijen
Merger	M.3271 C(2004) 2077	KABEL DEUTSCHLAND / ISH (4064)
Merger	M.3216 C(2004) 4217 final SG-Greffe (2004)	ORACLE / PEOPLESOFT (4064)
Merger	M.3381 D/201760/201761	ALBA / BEKO / GRUNDIG
Merger	M.3355 SG-Greffe (2004)D/202365 SG-Greffe(2004)	APOLLO / JP MORGAN / PRIMACOM
Merger	M.3330 SG-Greffe(2004) D/200966	RTL / M6
Merger	M.3411 SG-Greffe(2004) D/202122	UGC / NOOS (4064)
Merger	M.3420 SG-Greffe(2004) D/202379	GIMD / SOCPRESSE (4064)
Merger	M.3530 SG-Greffe(2004) D/204268	TELIASONERA / ORANGE DK
Merger	M.3542 SG-Greffe(2004) D/205183	SONY PICTURES / WALT DISNEY / ODG / MOVIECO
Merger	M.3561 SG-Greffe(2004) D/205843	DT / EUROTEL
Merger	M.2978 C(2003) 5277 final	LAGARDERE / NATEXIS / VUP
Merger	M.2876 C (2003) 1082 final	NEWSCORP / TELEPIU
Merger	M.333 C(2007) 4507	SONY / BMG (4064)

M 3271 Kabel Deutschland/ ISH

The European Commission has decided in this case to refer the examination of the planned acquisition to the German competition authority¹⁰⁶.

The KDG operates a broadband cable network in all of Germany, except in Bundesländer Hessen, Baden-Wuerttemberg and North Rhine-Westphalia. These latter regions are provided with cable services by 'Bundesland ish'. The KDG notified the Commission about his intends to acquire 100% of the shares of 'Bundesland ish'. Regarding the fact that similar questions were raised by two other acquisitions planned by the KDG, the EC believes that the Federal Cartel Office is best places to analyze the competition concerns that are inextricably attached with the KGD request.¹⁰⁷

M 3216 Oracle / Peoplesoft

The EC published on 17 November 2003 that it has started a detailed investigation – in accordance with article 6(1)(c) of the Merger Regulation - into the proposed acquisition¹⁰⁸ of PeopleSoft Inc. (US software company) by Oracle Corp¹⁰⁹.

Oracle Corp is known for its relational database management system offerings and also sells business applications software. In this last compartment, it competes with PeopleSoft and SAP (a German enterprise). Allowing this acquisition would mean reducing the amount of players in the market of these certain software applications from three to two players (Oracle and SAP).

The Commission – who cooperates in this case with the antitrust division of the US Department of Justice – decided to open an in-depth inquiry, which stretches the investigation from one to two mounts, to make a final decision.

After a detailed probe, the EC has concluded that there are other suppliers to serve software regarding automate financial management systems beside Oracle, PeopleSoft and SAP. Therefor the EC has granted approval for Oracle Corp's proposed acquisition of PeopleSoft Inc even though this decision reduces the number of big players from three to two¹¹⁰.

After research the EC concluded that enterprise application software (EAS) - both Financial managing software (FMS) and Human resources (HR) software - is typically sold by customers who invite various vendors to join a bid process¹¹¹. After analyzing hundreds of HR and FMS bids launched by large and complex enterprises over the last couple of years the EC concluded that other vendors such as Lawson, IFS, Intenia, QAD and Microsoft have won bids in competition with Oracle, PeopleSoft and SAP. Furthermore, after extensive investigation regarding the market definition in this case, *"the Commission reached the*

¹⁰⁶ http://europa.eu/rapid/press-release_IP-04-717_en.htm

¹⁰⁷ Commission Decision in case No COMP/M.3271 - KABEL DEUTSCHLAND / ISH (4064).

¹⁰⁸ Art 3(1)(b) of the Merger Regulation

¹⁰⁹ http://europa.eu/rapid/press-release_IP-03-1556_en.htm

¹¹⁰ http://europa.eu/rapid/press-release_IP-04-1312_en.htm

¹¹¹ *"This takes the form of a Request for Information or a Request for Proposal (RFP), which is then possibly followed by an Invitation to Tender (ITT)".* Commission Decision in case No COMP/M.3216 - ORACLE / PEOPLESOFT (4064), par 26.

*opinion that separate markets exist as far as HR and FMS high-function solutions for large organizations with complex functional needs are concerned*¹¹².

As regards the geographical market: *“In past decisions, the Commission considered that the market for EAS was at least EEA- wide, but left the exact definition of the geographic scope of the market open”*.¹¹³ The Commission states in this case that: *“The relevant markets for the assessment of the transaction are the markets for high- function FMS and HR solutions to serve the needs of large enterprises with complex functional needs. The main players in these markets are SAP, Oracle and PeopleSoft. However, several other vendors cannot be excluded as vendors from the markets for high-function HR and FMS applications. For the purposes of the assessment of the proposed transaction, Lawson, Intentia, IFS and Microsoft are to be treated as vendors of HR and FMS high-function applications and QAD is to be treated only as a vendor for FMS high-function solutions. The geographic scope for both product markets is world- wide. Further relevant markets for the assessment of the transaction are the markets for mid- market FMS and HR solutions. The geographic scope of these markets can be left open”*.¹¹⁴

¹¹² Ibid., par 55. Cf. par 171 – 172.

¹¹³ Ibid., par 21, 174.

¹¹⁴ Ibid., par 179 – 180.

M 3381 Alba / Beko / Grundig HIS JV

The EC clears the joint acquisition of Grundig's development and marketing operations (HIS – Business) by Turkish television maker Beko Elektronik A.S.¹¹⁵ and Britain's Alba Plc.

Beko is a manufacturer and sellers of mainly non-branded color television sets. Alba does not produce consumer electronics products, but sources and supplies them for sales in Europe. Grundig's HIS business develops and sells consumer electronics products, including color television sets, video recorders, DVD players, audio/hi-fi, camcorders and satellite receivers¹¹⁶.

Alba and Beko, who will both have equal shareholdings in the joint venture and representation in the Board, will control the joint venture. Both parties have decisive influence, since no decision can be taken without a majority.

Regarding the relevant product markets only CTV's transactions were investigated. "[...] Since only for CTVs the transaction will lead to appreciable market shares, the other consumer electronics products will not be further addressed".¹¹⁷ After subdividing the market according to the underlying technology used (CRT, LCD, Plasma screens) and screen sizes, the EC deducted that Alba and Beko mainly target the low-end CTV markets.

Without digressing on the technological criteria, this comes down to the fact that the investigation should only focus further on the impact of the transaction for CRT based CTV's. The EC concluded that: "In any event, for the present case it is not necessary to further define the relevant product market for CRT-based CTVs or any other CTVs, because in all alternative market definitions effective competition would not be significantly impeded in the EEA or any substantial part of it".¹¹⁸

Regarding the Geographical market was the EC of opinion that: "it is not necessary to conclude whether the CRT CTVs or any other CTV markets are narrower than EEA-wide in scope, because in all alternative market definitions effective competition would not be significantly impeded in the EEA or any substantial part of it".¹¹⁹

The EC thus clears the joint acquisition stating that: "the proposed operations would not, in any of the markets considered, create or strengthen a dominant position". "The concentration will possibly lead to a new viable player".¹²⁰

¹¹⁵ Beko is a subsidiary of the Turkish industrial group Koç, a multinational conglomeration with activities including automotive industry, household appliances, food, retailing and energy.

¹¹⁶ http://europa.eu/rapid/press-release_IP-04-565_en.htm

¹¹⁷ Commission Decision in case No COMP/M.3381 - ALBA / BEKO / GRUNDIG, par 8.

¹¹⁸ Ibid., par 15.

¹¹⁹ Ibid., par 17.

¹²⁰ Ibid., par 22.

M 3355 Apollo / JP Morgan / PrimaCom

The EC has cleared the acquisition of broadband cable operator PrimaCom AG by Apollo and JP Morgan¹²¹. This case is certainly notable since this is the first merger cleared in the EU at 25 states, even though the Commission considers its effect only assessed in Germany.

PrimaCom, a company that owns a modern cable ‘head-end’¹²² in Leipzig provides services on the German market as well as to a minor extent in the Netherlands. United pan-Europe Communications (UPC) is the most important minority shareholder of PrimaCom, but does not control it.

Apollo is a private equity investment group and holds together with JP Morgan - a global financial service firm - substantial parts of the debt of PrimaCom. The notified operation involves the acquirement of PrimaCom’s assets and operating subsidiaries in exchange of the elimination of the debts as well as a cash payment¹²³.

Regarding the relevant markets, the EC found no competition concerns. On the subject of the Transmission market, the EC had the following to say:

10. “ [...] In previous decisions, the Commission has taken the view that, at least in Germany, the transmission via cable constitutes a separate market¹²⁴. In more recent decisions¹²⁵, the question has been left open. The question of the correct definition of the product market does not need to be decided in the present case, given that the concentration does not raise competition concerns even if the market is restricted to the transmission via cable. [...]”.

13. “On the assumption of a narrow market definition that restricts the relevant market to the respective network, iesy would enjoy a dominant position already before the merger. The market share would be 100% by definition, corresponding to [...] households in Hessen. [...]”.

14. “The concentration can only lead to overlaps if a nation-wide market is defined. Under the assumption of such a national transmission market, in line with the parties' position, there would be an overlap between iesy's activities in Hessen and PrimaCom's activities (primarily) in Eastern Germany. However, under such an assumption, other network operators, including Kabel Deutschland GmbH (“KDG”), which operates cable networks in 13 German Bundesländer, would have to be considered as competitors, and a dominant position after the merger (or any other form of significant impediment to effective competition) would have to be excluded; [...]”. So,

¹²¹ http://europa.eu/rapid/press-release_IP-04-752_en.htm

¹²² A cable head-end is a facility where broadcast signals are received from satellites and fed into the cable network and where the equipment for the provision of broadband Internet access is located.

¹²³ Information from the Press release, not from the public version of the case. In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information.

¹²⁴ See in particular Decision of 27/05/1998 in the Case M.1027 – Deutsche Telekom Beta Research, par. 20.

¹²⁵ Cf. Referral decision in the Case M.3271 – KDG/ish, par. 14.

although Apollo holds a majority stake in iesy, the overlaps are minimal and do not raise competition concerns.

No other competitive concerns were made regarding the other markets. The EC concluded not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement.

M 3330 RTL/M6

The Commission has cleared RTL's passive acquisition of sole control over M6¹²⁶. Regarding the fact that RTL¹²⁷ and M6 are relatively small players in the French TV market and that M6 was already jointly controlled by RTL together with Suez, the Commission allowed the acquisition to take place¹²⁸.

M6 was jointly controlled by RTL (48.4%) and Suez (37.6%). After Suez sold 29.2% of its shares to a large number of investors, remaining less than 5%, it was expected that Suez would withdraw from the Supervisory Board of M6. RTL did not acquire any additional shares in M6, nevertheless would the divestment of Suez's shares lead inevitably to the passive acquisition of sole control by RTL.

"According to paragraph 14 of the Commission's notice on the concept of a concentration¹²⁹, a minority shareholder may be deemed to have sole control on a de facto basis"¹³⁰. Given the fact that the remaining shares are widely dispersed, is it highly likely that RTL will achieve a majority at the shareholder's meeting¹³¹.

Researches of the EC from 2001 until 2003 found that only a limited proportion of the small shareholders were represented. Taking into consideration that they are widely dispersed, the making of any coalition seems to be extremely difficult to form.

The Commission states that: *"Since M6 is only active in France, and since the relevant markets are at least national, the assessment of the transaction should focus on the French markets"¹³². After investigating the relevant product market¹³³, the EC concluded that:*

For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

¹²⁶ http://europa.eu/rapid/press-release_IP-04-337_en.htm

¹²⁷ RTL is a part of Bertelsmann AG. Bertelsmann AG's current principal shareholders are (i) the Bertelsmann Foundation (55.4%); (ii) Group Bruxelles Lambert (24.2%); (iii) the Mohn Family (+/- 16.6%).

¹²⁸ http://ec.europa.eu/competition/mergers/cases/decisions/m3330_en.pdf

¹²⁹ EEC No 4064/89 on the control of concentrations between undertakings (OJ C 66, 2.3.1998, p. 5).

¹³⁰ Commission Decision in case No COMP/M.3330 - RTL / M6, par 8.

¹³¹ The French CSA limited RTL's voting rights to 34%.

¹³² Commission Decision in case No COMP/M.3330 - RTL / M6, par 18.

¹³³ free-tv; pay-tv; commercialisation and exploitation of special interest TV channels; home-shopping on the market for retail activities; acquisition of TV content; independent television programme production; sale of advertising space; publishing of magazines; video rental and distribution of films to theatres; internet services and music recording.

M 3411 UGC / Noos

The EC has cleared the merger between the two cable operators UPC and Noos.¹³⁴ UPC – a cable company that is a part of UnitedGlobalCom (UGC¹³⁵), ultimately owned by Liberty Media – will buy Noos from the French group Suez.¹³⁶

Both UPC and Noos are active in France on a number of markets.¹³⁷ In France, the cable market is largely underdeveloped due to heavy competition with other technologies, like satellite, terrestrial and ADSL transmission modes for the provision of television, Internet and telephony. The Commission stated that the combination of UPC and Noos might offer opportunities for cable TV penetration to expand in France.¹³⁸ Before the merger, four cable operators were there to be spotted on national level.¹³⁹

After commenting the proposed market definition of the parties, as regards to the retail distribution of pay-TV channels, the EC stated that:

“However, it is not necessary for the Commission to conclude on the exact market definition, since the proposed concentration will not lead to any competition problem, whatever the market definition would be. The investigation confirmed that the relevant geographic market was most likely national, but the exact market definition can also be left open for the purpose of the present decision, since the proposed concentration will not lead to any competition problem, whatever the geographic market definition would be.”

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As regards the other markets, no serious doubts to its compatibility with the common market were awakened. The operation will give UPC the number one lead regarding France cable pay-TV. On the overall pay-TV market it will remain modest compared with Canal+. As regards the Internet and telephone services, France Telecom will remain the market leader.¹⁴¹

¹³⁴ http://europa.eu/rapid/press-release_IP-04-652_en.htm

¹³⁵ UGC operates in 15 countries outside the US.

¹³⁶ Suez – a French industrial group – is in the process of selling its interests in the communication sector. In this context see also merger case M.3330 RTL / M6.

¹³⁷ (i) retail distribution of pay-TV channels; (ii) TV distribution/communications infrastructure; (iii) acquisition of audiovisual content; (iv) voice telephony; (v) digital interactive television services; (vi) Internet services; (vii) triple play.

¹³⁸ http://europa.eu/rapid/press-release_IP-04-652_en.htm

¹³⁹ (i) Noos, (ii) UPC, (iii) France Telecom Cable and (iv) NC Numéricable (part of Vivendi Group).

¹⁴⁰ Commission Decision in case No COMP/M.3411 - UGC / NOOS (4064), par 20.

¹⁴¹ http://europa.eu/rapid/press-release_IP-04-652_en.htm

Furthermore, the EC took into account the sufficient competition from NC Numéricable and France Telecom Cable. Both are noticeable present in the cable pay-TV market and have a strong presence in neighboring markets.

M 3420 GIMD / Socpress

The EC has given conditional approval to the acquisition of Socpresse by the Marcel Dassault Industrial Group (GIMD).¹⁴² In order to acquire Socpresse, GIMD has to dispose La Vie Financière, a financial magazine.

GIMD is a French group that is mainly active in the aeronautics sector, computer science, wine growing and magazines. Titles published by GIMD include Valeurs Actuelles, Le Journal des Finances, Finances Magazine and Le Spectacle du Monde.¹⁴³

Socpresse is likewise a French undertaking that is mainly active in the daily national and regional press alongside press that is specialized in immobile.¹⁴⁴ It holds control of Figaro Holding, which publishes “Le Figaro” and “Le Figaro Magazine”. The “L’express – L’expansion holding”, who publishes “L’expansion”, “La vie Financière” and “Mieux vivre votre Argent” are also under control of Socpress.¹⁴⁵

As Regards the product market, the EC affirmed that, as stated before, the market for press and other media (TV, radio, etc.) are not the same, as the latter doesn’t provide information that goes into the same depth as press publications.¹⁴⁶ In addition, the Commission also considers that in the print media, daily newspapers and magazines belong to separate markets, partly because their treatment is different and with regard to the fact that the price of magazines is significantly higher than daily press.¹⁴⁷ The EC comes to the conclusion that three markets can be defined: (i) readership, (ii) advertising sales and (iii) small announcements (des petites annonces).¹⁴⁸

As regards the market of readership, the EC follows, in accordance with previous decisions, the market definition as proposed by the notifying parties.¹⁴⁹ As regards the market for the selling of advertisement, the EC leaves open the exact market definition, for the reason that whatever the market definition would be, the result would be the same.¹⁵⁰ The geographic market definition of readership and advertising space is left open in this case.¹⁵¹

¹⁴² http://europa.eu/rapid/press-release_IP-04-765_en.htm

¹⁴³ Commission Decision in case No COMP/M.3420 - GIMD / SOCPRESSE (4064), par 2.

¹⁴⁴ Ibid., par 3.

¹⁴⁵ Ibid., par 3.

¹⁴⁶ “Dans des décisions précédentes, la Commission a estimé que la presse écrite constitue un marché distinct des autres médias (TV, radio, etc.), en particulier parce que ces derniers n’offrent pas une analyse de l’information aussi large et aussi approfondie que la presse écrite.” Ibid., par 10.

¹⁴⁷ “En outre, la Commission a également estimé qu’au sein de la presse écrite, la presse quotidienne et la presse magazine appartiennent à des marchés séparés, notamment parce que leur façon de traiter l’actualité est différente et que le prix des magazines est sensiblement supérieur à celui des quotidiens.” Ibid. par 10.

¹⁴⁸ “Pour chaque type de presse ainsi défini, trois marchés sont traditionnellement distingués: le lectorat, la vente d’espaces publicitaires et celui des petites annonces”. Ibid., par 11.

¹⁴⁹ Ibid., par 16

¹⁵⁰ “Cependant la définition exacte des marchés de la vente d’espaces publicitaires peut être laissée ouverte aux fins de la présente affaire dans la mesure où quelle que soit la définition retenue, les résultats de l’analyse concurrentielle sont identiques”. Ibid., par 26.

¹⁵¹ “[...] la définition géographique des marchés du lectorat et de la vente d’espaces publicitaires dans la presse magazine peut être laissée ouverte”. Ibid., par 30.

The results of the EC inquiries indicated that the GMD/Socpresse group would control a significantly larger number of economic and financial magazines than its competitors.¹⁵² The acquisition of Socpresse would lead to the ability to dominate the market. That competition concerns were awakened by this proposal is in relation to what is mentioned above no surprise.

Nevertheless, competition concerns were dispelled and an in-depth investigation avoided by the offer of GIMD to dispose the economic and financial magazine “La Vie Financière”.

¹⁵² http://europa.eu/rapid/press-release_IP-04-765_en.htm

M 3530 TeliaSonera / Orange DK

The EC has cleared the acquisition of Orange's Danish mobile telephony business by TeliaSonera A.B.¹⁵³ TeliaSonera – a telecommunications company based in Sweden – is the fourth largest mobile telecommunications company in Denmark. Furthermore, the company also operates within the area of fixed telephony, Internet broadband, cable TV and data communications. Orange¹⁵⁴ - who in addition to its mobile telecommunications business has very limited business in fixed network and data communications – is the third largest mobile telecommunications company in Denmark.¹⁵⁵

Since this acquisition will reduce the number of second-generation networks in Denmark from four to three, the EC investigated the competitive effects of the proposed transaction on the markets for mobile telecommunications.

As regards to the relevant market, the EC concluded – in conformity with previous cases and supported by the results from the investigation – that the widest possible relevant market is the market for mobile telecommunications services.¹⁵⁶ Regarding the geographical market definition, the EC agrees with the parties and the Nordic competition authorities, stating that this is national.¹⁵⁷

Regarding the fact that this transaction will reduce the amount of players in the market, the EC stated that:

“[...] the proposed transaction will create the third largest mobile network operator in Denmark after TDC and Sonofon. Based on the relative market shares of the merged entity the Commission has not identified any concerns in relation to a single or collective dominant position on the market for mobile telephony in Denmark or on any other submarkets considered. The Commission's market investigation confirmed this view. In general, the proposed transaction is not expected to significantly change the Danish market for mobile telephony, which is also expected to be competitive in the future “.¹⁵⁸

Because TeleSonera is also present in Sweden and Finland, the EC considered possible vertical effects for the market of mobile communications. The EC concluded that: “ the proposed transaction is not likely to create any vertical competition concerns”.¹⁵⁹

¹⁵³ http://europa.eu/rapid/press-release_IP-04-1140_en.htm

¹⁵⁴ Ultimately owned by France Telecom.

¹⁵⁵ After TDC and Sonofon.

¹⁵⁶ Commission Decision in case No COMP/M.3530 - TELIASONERA / ORANGE DK, par 13.

¹⁵⁷ Ibid., par 15.

¹⁵⁸ Ibid., par 25.

¹⁵⁹ Ibid., par 30.

M 3542 Sony Pictures / Walt Disney / ODG / Movieco

The EC has cleared the VOD JV¹⁶⁰ – called MovieCo – between Walt Disney, Columbia Pictures¹⁶¹ and the ON Demand Group (ODG) in the UK and Ireland. This joint venture will benefit the cable costumers in the two countries, since it will create competition to the current dominant provider of Pay-tv.¹⁶² The JV will provide an open platform to which movie content providers will have access. This will enable them to make films available by way of VOD directly to customers within the two big UK cable networks Telewest and ntl.¹⁶³

As regards the product and geographical market, the commission states that:

“In the present case, the concentration might have effects on the market for wholesale distribution of Pay-TV and PPV/NVOD film channels, where cable operators procure video content to be fed into their networks (presently mainly from BSkyB), but also on the retail level on the markets for video content. In vertical respect, also the markets for the supply of content may be affected. The exact market definition can be left open in this case, since the outcome of the competitive analysis would remain unchanged.”¹⁶⁴

“The geographic market definition can also be left open, since the result of the competitive analysis does not depend on the exact market definition.”¹⁶⁵

On the retail level, the parties will deliver resources¹⁶⁶ required to make VOD motion picture services widely available to UK and Irish consumers. At the wholesale level, the JV will give the cable network operators new possibilities to procure video content. This will undermine the dominant position of BSkyB, which has a very strong position in the Pay-TV market.¹⁶⁷ As regards the vertical aspect in this case, the EC stated that: “*there is no risk of the transaction leading to a dominant position of the joint venture*”.¹⁶⁸

With regard to the provision stated in art. 2(4) of the MR¹⁶⁹ the commission substantiated that:

“ Only a very limited part of the motion picture output of Sony Pictures and Disney will be distributed through the JV. It concerns only the UK and Ireland, only the distribution via the cable networks of ntl and Telewest, and only the Video on Demand segment of the market. Furthermore, the joint venture only forms an open platform for the distribution of film content. It is, therefore, reasonable to assume that the creation of the JV will not change the

¹⁶⁰ Video-on-demand joint venture.

¹⁶¹ Columbia Pictures corporation belongs to the Japanese Sony group.

¹⁶² http://europa.eu/rapid/press-release_IP-04-1354_en.htm

¹⁶³ http://europa.eu/rapid/press-release_IP-04-1354_en.htm

¹⁶⁴ Commission Decision in case No COMP/M.3542 - SONY PICTURES / WALT DISNEY / ODG / MOVIECO, par 11.

¹⁶⁵ Ibid., par 12.

¹⁶⁶ Including content.

¹⁶⁷ Ibid., par 13 – 15.

¹⁶⁸ Ibid., par 16.

¹⁶⁹ EC Merger Regulation

incentives of the content providers to compete against each other, including competition within MovieCo platform itself.”¹⁷⁰

“Given the above, the proposed transaction will not lead to coordination of Sony Pictures í and Disney’s competitive behaviour in the market for the supply of pay-TV and PPV/NVOD content in the meaning of Article 2 (4) of the Merger Regulation. “¹⁷¹

¹⁷⁰ Ibid., par 18.

¹⁷¹ Ibid., par 19.

M 3561 Deutsche Telekom / Eurotel

The EC clears Telekom's acquisition over Eurotel, they will acquire total control over the Slovak Telekom¹⁷². The Commission considers that the operation will not significantly impede effective competition since Telekom was already the majority shareholder¹⁷³ and determined to a considerable extent Eurotel's competitive behavior.¹⁷⁴

With the acquisition, Slovak Telekom acquires the remaining 49% of shares that it's joint venture partner, American West, possets.¹⁷⁵

As regards the relevant market; the notifying party refers to previous decisions that confirm the existence of a distinct market for mobile telecommunication and argues why a subdivision of this market is not necessary. However, for this case, the EC states that: "*it can be left open whether there are distinct product markets for private and business customers, for pre-paid and post-paid services, for data and voice services*".¹⁷⁶ As regards fixed and mobile communication the Commission states that: "*it is not necessary to define a broader market covering both fixed and mobile voice communications for the purpose of the present case, as it does not alter the competitive assessment*".¹⁷⁷ As for the business data communication services, the notifying party considers this a distinct market, referring to the case *France Telecom/ Equant*. The EC states that: "*However, as the competitive assessment does not depend on the exact market definition, this may be left open for the purpose of this decision*".¹⁷⁸

As regards the geographical market, the notifying party submits, with reference to the Commission's decision in the case *Telia/Sonera*, that the relevant geographic market for mobile communication services is national. In past decisions the EC has defined this market as being national in scope.¹⁷⁹ As to the geographic scope of the market for business data communication services, the notifying party refers to the case *France Telecom / Equant*. Again, the EC states that: "[...]the precise scope of the relevant geographic market may be left open for the purpose of this case, as it does not alter assessment".¹⁸⁰

Although a third party has raised competition concerns regarding the fact that Eurotel (i) is dominant on the mobile telecommunication market due to its aggressive

¹⁷² Deutsche Telekom AG controls Slovak Telekom.

¹⁷³ Before approval of the acquisition Eurotel Slovakia already jointly controlled Slovak Telekom with Atlantic West B.V. Atlantic West B.V. also is a joint venture controlled by Verizon Communications and AT&T Wireless Services. (AT&T Wireless services recently merged with Cingular Wireless LLC and has been renamed 'New Cingular Wireless LLC'. See Commission Decision in case No COMP/M.3561 - DT / EUROTEL, par 1.

¹⁷⁴ http://europa.eu/rapid/press-release_IP-04-1492_en.htm & Commission Decision in case No COMP/M.3561 - DT / EUROTEL, par 13.

¹⁷⁵ http://europa.eu/rapid/press-release_IP-04-1492_en.htm

¹⁷⁶ Commission Decision in case No COMP/M.3561 - DT / EUROTEL, par 8.

¹⁷⁷ Ibid., par 9.

¹⁷⁸ Ibid., par 10.

¹⁷⁹ Ibid., par 11.

¹⁸⁰ Ibid., par 12.

customer acquisition strategy, (ii) is the owner of the country's second largest data network, (iii) is the leading NMT prover and (iv) having been assigned a license to use the 450 MHz frequencies for CDMA data service, the EC excludes that Eurotel has a single dominant position at present or will become dominant as a result of concentration, since there is no horizontal overlap - and still some distance - with the number one in the market – Orange.¹⁸¹

The same third party drew attention to the fact that Eurotel's position is strengthened by its parent company. In order to make calls from the competitor's network to ST's fixed lines, the competitor needs interconnection with ST's network.¹⁸² The Commission replies that: "*the proposed operation as such - a change from joint to sole control - does not give rise to a significant change in the ability or incentives of ST to engage in discriminatory behaviour in the wholesale access markets (e.g. the provision of call termination, transit and leased lines services)*".¹⁸³ The Commission continues: "*Moreover, the third party itself has confirmed that already today it encounters discriminatory behaviour consisting in a delay in the provision of interconnection and leased lines. Therefore, any incentive the incumbent network operator may have to raise rivals' costs exists irrespective of the proposed transaction*".¹⁸⁴

¹⁸¹ Ibid., par 16 – 17.

¹⁸² Ibid., par 20.

¹⁸³ Ibid., par 20.

¹⁸⁴ Ibid., par 20. Cf. par 25.

M 2978 Lagardere / Natexis / VUP

The EC clears Lagardère's acquisition over a part of the publishing business of Editis (former Vivendi Universal Publishing or VUB).¹⁸⁵ Initially Editis was to be taken over in its entirety, but the EC stated that this would create or strengthened the dominant position on many of the markets making up the French-language book chain.¹⁸⁶ More specifically, the turnover would be seven times that of its nearest rival. However, retaining only a part of Editis satisfied the objections.

Editis is currently the leader in the publishing, marketing and distribution of French books. Lagardère is entitled the second position in this market.¹⁸⁷

Investigation revealed that control would be gained by the new entity regarding access, both to the 'raw material' as well as to sales outlets. In addition, a so called 'two-speed industry' would have resulted: on the one hand, publishers left on the sidelines, with the only option to engage in riskier business, on the other hand, an industrial giant who owns the entire book chain, capable of retaining the best-selling authors and monopolizing most of bookshop shelves.¹⁸⁸

As regards the product market definition, the EC makes a distinction various markets. In light of the subject of this desertion, it is not necessary to discuss all aspects of the in-depth investigation. In general it can be stated that the EC sometimes states that 'a precise definition [...] is left open, as none of them is affected by the transaction, no matter how they are defined'¹⁸⁹; or that "[...] there is indeed a market [...]"¹⁹⁰; or "[...] that there is no market [...]"¹⁹¹ Furthermore it is important to notice that the notifying parties refer to previous decisions of the EC. Nevertheless the EC these are not relevant.¹⁹²

As regards the geographical market definition: "*The notifying party stresses that all the markets concerned by this transaction are national or smaller markets (in particular the French-speaking part of Belgium). The Commission's investigation, on the other hand, indicates that the relevant geographic market is a single market covering the French-speaking area of the Community (France, the French-speaking part of Belgium and Luxembourg) or the French-speaking area of Europe (France, the French-speaking part of Belgium, Luxembourg and the French-speaking part of Switzerland), with the exception of the market for the sale of school textbooks and the market for the sale of law books by publishers to dealers, which have to be defined as national markets*".¹⁹³

¹⁸⁵ VUP is controlled by Investma 10, itself controlled by Natexis banques. Lagardère is controlled by the parent company: Lagardère SCA.

¹⁸⁶ http://europa.eu/rapid/press-release_IP-04-15_en.htm

¹⁸⁷ via its subsidiary *Hachette Livre*.

¹⁸⁸ http://europa.eu/rapid/press-release_IP-04-15_en.htm

¹⁸⁹ Commission Decision in case No COMP/M.2978 - LAGARDERE / NATEXIS / VUP, par 68. Cf. Par 265.

¹⁹⁰ *Ibid.*, par 80.

¹⁹¹ *Ibid.*, par 171.

¹⁹² Cf. *Ibid.*, par 168 – 169.

¹⁹³ *Ibid.*, par 296.; Cf. Par 367.

In reply to the concerns expressed by the EC and various other entities, ex: French author associations, booksellers, readers and independent publishers; Lagardère notified that they wouldn't acquire editis in his integrity. A list of assets, worth of 40% of the total turnover of the company, will not be sold to Lagardère.¹⁹⁴ This proposal seemed expectable by the EC who has given approval to the transaction.

Notes: Cultural aspect has been taken into regard by the EC.

The EC states that regarding the market for sales of books by publishers to dealers:

“The merged entity’s dominant position might also be reflected in an ability to reduce supply, in terms of numbers of new titles and reprints, or in terms of the originality of new publications, or both; this would impoverish creativity, quality and diversity in publishing. According to one author, artistic quality has never been the result of monopoly; it springs from the diversity of choice [...]”.¹⁹⁵

“Contrary to what the notifying party seeks to imply, the concept of supply in the publishing industry embraces more than just the number of titles offered for sale in a year. It has a qualitative dimension that is a great deal subtler than the number of books sold. A diversified supply will not include products that are physically different but whose content is the same. In the book trade, especially in general literature, there has been a proliferation of uniform and similar books. This clearly does not mean that there are fewer and fewer books being published. As the notifying party says, the number of new titles has never been bigger. But what the notifying party omits to point out is that the growing number of titles is not necessarily an indication of greater diversity, but rather of a proliferation of books that resemble one another and which are sold in just the same way as mass consumption products. The positive link between concentration and supply that the notifying party hopes to establish appears very doubtful when it is observed that an expansion in the number of titles is not the same as a diversification of supply”.¹⁹⁶

Even though these are the only two reference made to the diversity of content, and thus pluralism aspect, it makes clear that the EC at least considered a non-economic aspect in there evaluation.

¹⁹⁴ http://europa.eu/rapid/press-release_IP-04-15_en.htm

¹⁹⁵ Ibid., par 670.

¹⁹⁶ Ibid., par 676.

M 2876 Newscorp / Telepiu

The EC has approved the proposed acquisition by Newscorp of Telepiu.¹⁹⁷ Telepiu will be merged with Stream, the other pay-tv company of Italy. Stream is currently a joint venture owned by Newscorp and Telecom Italia (50/50). Newscorp will control the new merger since Telecom Italia will only have a 19,9% share.¹⁹⁸ The EC has authorized this merger, even though this will result in a near monopoly situation on the pay-TV market¹⁹⁹, because in its view this is more beneficial to the consumer than the disruption that would have been caused by the likely closure of Stream.²⁰⁰

The deal creates a near monopoly situation since 2/3 of the Italian pay-TV market is already at hands of Telepiu. With the merger with Stream, this will only strengthen the position. Pay-tv has never been profitable in Italy, due to the strong presence of 12 national free-to-air broadcasters in Italy.

Regarding the product market, the EC states that: *“In the light of the above, it can be concluded that the market investigation has shown that in Italy, although there exists a dynamic interplay between free-to-air-TV and pay-TV, which has an influence on the penetration and the success of pay-TV, these are two separate markets at this point in time, similarly to the findings of previous Commission’s investigations in the same sector”*.²⁰¹

As regards the geographical market: *“Despite the fact that in certain niche markets channels are broadcast throughout Europe, television broadcasting is still generally organised on a national basis. As the Commission has already stated in a number of decisions, the markets for organisation of television are national in nature or relate to linguistically homogeneous areas”*.²⁰²

The EC concludes that *“Newscorp will have the monopoly as a pay-TV supplier in Italy”*; *“Newscorp will have access to the most attractive and most comprehensive content”*; *“No other undertaking will have the essential content to establish an alternative pay-TV”*; *“Newscorp will be the “gatekeeper” of a tool (Videoguard CAS) that may facilitate entry for any alternative pay DTH operator and of an infrastructure (the platform) that may ease the conditions for the broadcasting of pay and free TV satellite channels”*.²⁰³

Nevertheless is states that: “The Commission considers, therefore, that Newscorp has not been able to demonstrate that there is no causal link between the concentration and the effect on competition, because conditions of competition can be expected to deteriorate to a similar or identical extent even without the concentration in question. However, the risk of Stream exiting the market, if it were to materialise, would be a factor to take into account when assessing the present merger. The Commission further considers that an authorisation of the merger

¹⁹⁷ http://europa.eu/rapid/press-release_IP-03-478_en.htm

¹⁹⁸ Commission Decision in case No COMP/M.2876 - NEWSCORP / TELEPIU, par 1.

¹⁹⁹ Ibid., par 114

²⁰⁰ http://europa.eu/rapid/press-release_IP-03-478_en.htm; Cf. Ibid. par 221.

²⁰¹ Commission Decision in case No COMP/M.2876 - NEWSCORP / TELEPIU, par 47

²⁰² Ibid., par 48.

²⁰³ Ibid., par 179 - 203

*subject to appropriate conditions will be more beneficial to consumers than a disruption caused by a potential closure of Stream”.*²⁰⁴

²⁰⁴ Ibid., par 221.

M.3333 Sony / BMG

The EC confirms the joint venture between Sony and Bertelsmann. This venture will combine the recorded music businesses of Sony and Bertelsmann. The merger has been approved by the EC in 2004, but the Court of First Instance annulled the decision in 2006. The renewed approval is now based on an in-depth investigation by the EC.²⁰⁵

Sony Corp of America belongs to the Japanese Sony group, who have a variety of activities besides the music industry. BMG (Bertelsmann Music Group) was, before the approval of the JV, part of Bertelsmann AG, a German-based international media company.²⁰⁶

The EC was in 2004 of the opinion that the JV would not create or reinforce a dominant position for Sony and BMG or Universal, Warner and EMI. In case T-464/04 the CFI however decided differently. The evidence provided by the EC was regarded insufficient to justify the clearance decision. On 31 January 2007, the case was re-notified to the EC.²⁰⁷ The Commission was in this case able to evaluate the actual impact of the merger on the market since 2004 and was not limited, as is usually the case, to an analysis of likely effects on the market in the future. In particular, the Commission performed one of its largest and most complex econometric analysis so far in the context of a merger investigation, analysing all net prices, discounts and wholesale prices for all CD chart albums sold by all major record companies to all of their customers in the European Economic Area between 2002 and 2006 (equivalent to millions of data points) in order to find evidence of any possible collusion between record companies.²⁰⁸ The in-depth investigation has provided no evidence of coordinated behaviour prior to the merger or as a result of it.

Culture

"The Commission received information from an independent market observer that the merger of Sony and BMG has had a negative impact on cultural diversity, in the sense that the merger furthered the strategy of the majors recording companies of reducing their catalogues and local language repertoire, as well as concentrating on 'promoting commoditised Anglo-American products through increasingly narrow retail channels', which affected consumer choice.²⁰⁹

"The Commission's analysis did not find that the merger between Sony and BMG led to the creation or strengthening of a dominant position in any affected market and the above facts further underline that cultural diversity was not negatively affected by any creation or strengthening of a dominant position".²¹⁰

²⁰⁵ http://europa.eu/rapid/press-release_IP-07-1437_en.htm

²⁰⁶ Commission Decision in case No COMP/M.3333 - SONY / BMG (4064), par 7

²⁰⁷ Ibid., par 1 – 7.

²⁰⁸ http://europa.eu/rapid/press-release_IP-07-1437_en.htm

²⁰⁹ Commission Decision in case No COMP/M.3333 - SONY / BMG (4064), par 415

²¹⁰ Ibid., par 428.

2005

Thema	Zaak nr	Partijen
Merger	M.3653 C (2005) 2676 final	SIEMENS / VA TECH
Merger	M.3674 C(2005)390	IESY REPOSITORY / ISH
Merger	M.3684 SG-Greffe (2005) D/200912	BC PARTNERS / ISH
Merger	M.3697 SG-Greffe (2005) D/201119	SYMANTEC / VERITAS
Merger	M.3978 SG-Greffe (2005) D/207685	ORACLE / SIEBEL
Merger	M.3641 SG-Greffe(2005) D/200326	BT / INFONET
Merger	M.3657 SG-Greffe(2005) D/200350/1	AIRBUS / SITA
Merger	M.3609 SG-Greffe(2005) D/200972	CINVEN / FRANCE TELECOM CABLE - NC NUMERICABLE
Merger	M.3720 SG-Greffe(2005) D/201098 SG-Greffe(2005)	BAES / AMS
Merger	M.3595 D/201529/30/31/22	SONY / MGM
Merger	M.3648 SG-Greffe(2005) D/201691	GRUNER + JAHR / MPS
Merger	M.3695 SG-Greffe(2005) D/201903	BT / RADIANTZ
Merger	M.3764 SG-Greffe(2005) D/202179	BELGACOM / SWISSCOM / JV
Merger	M.3776 SG-Greffe(2005) D/202267	VODAFONE / OSKAR MOBILE
Merger	M.3836 SG-Greffe(2005) D/202900 SG-Greffe(2005)	GOLDMAN SACHS / PIRELLI CAVI E SISTEMI ENERGIA / PIRELLI CAVI E SISTEMI TELECOM
Merger	M.3817 D/202967/202968	WEGENER / PCM / JV
Merger	M.3803 SG-Greffe(2005) D/204089	EADS / NOKIA
Merger	M.3693 SG-Greffe(2005) D/204299	TPV / PHILIPS (MONITORS)
Merger	M.3866 SG-Greffe(2005) D/204643	SUN / STORAGETEK
Merger	M.3911 SG-Greffe(2005) D/204914	BENQ / SIEMENS MOBILE
Merger	M.3911 SG-Greffe(2005) D/204914	BENQ / SIEMENS MOBILE
Merger	M.3914 SG-Greffe(2005) D/204915	TELE2 / VERSATEL
Merger	M.3752 SG-Greffe(2005) D/205408	VERIZON / MCI
Merger	M.3953 SG-Greffe(2005) D/205568	APOLLO / BC PARTNERS / IESY - ISH - TELECOLUMBUS
Merger	M.3920 SG-Greffe(2005) D/205898	FRANCE TELECOM / AMENA
Merger	M.3995 SG-Greffe(2005) D/206503	BELGACOM / TELINDUS
Merger	M.4003 SG-Greffe(2005) D/207513	ERICSSON / MARCONI
Merger	M.4034 SG-Greffe(2005) D/207637	TELENOR / VODAFONE SVERIGE
Merger	M.3806 SG-Greffe(2005)202585	TELEFONICA / CESKY TELECOM

M.3653 Siemens – VA Tech

The EC has approved the takeover of VA Tech by Siemens (under conditions). After an in-depth investigation the EC decided that Siemens does not have to divest itself of VA Tech's hydropower business SMS Demag.

Siemens supplies products and services worldwide in various areas of industry and electrical engineering.²¹¹ VA Tech is active in the areas of power generation, power transmission and distribution, metallurgy engineering & infrastructure.²¹² Both companies operate throughout the world in a number of similar sectors and are both market leaders in some of the relevant products.²¹³

As regards the relevant market, the EC agrees with Siemens that this covers the equipping of hydroelectric power stations.

²¹¹ Commission Decision in case No COMP/M.3653 - SIEMENS / VA TECH, par 6.

²¹² Ibid., par 8.

²¹³ http://europa.eu/rapid/press-release_IP-05-919_en.htm

M. 3674 Iesy Repository / ISH

In accordance to art 9(2) of the merger regulation, the EC has referred the merger of two German cable network operators to the German competition authority. The merger involved the sole control acquisition of 'Ish' by 'Iesy'. Both operate a former cable network of the German Telekom AG.²¹⁴ Because the effects of the merger are limited to Germany and the competition authority believes that the merger might affect competition for the cable market, the Bundeskartellamt requested that the case be referred to it.

As regards the product market, both the notifying parties and the German Federal commission assume that tree market can be distinguished (the input market, the signal delivery market & the retail market).²¹⁵ This division corresponds to the previous practice of the Commission in considering the market for cable television. As for the geographical scope, the EC states that this is national.²¹⁶

The EC concludes with stating the Bundeskartellamt at least has shown that there is a risk of restriction of competition - baring in mind Art 9(2) letter a).²¹⁷ Furthermore, the EC states that the German Authorities also seem to be appropriate for this case as the Federal Cartel Office already investigated intensively previous cases. The EC considers that the German Authority is better placed to do the entire process.²¹⁸

M. 3684 BC Partners / ISH

The EC has referred the merger of two German cable network operators to the German competition authority. Accordance with art 4(4) the parties notified the EC since the merger projects one or possibly more horizontal and vertically effects. The German authority agrees with the referral.

As regards the product market, again tree market can be distinguished (the input market, the signal delivery market & the retail market).²¹⁹ This division corresponds to the previous practice of the Commission in considering the market for cable television. As regards the geographical market, even with the widest possible market definition, the territory would be exclusively that of Germany.²²⁰ Furthermore, the EC states that the German Authorities also seem to be appropriate for this case as the Federal Cartel Office already investigated intensively previous cases.²²¹

²¹⁴ Commission Decision in case No COMP/M.3674 - IESY REPOSITORY / ISH, par 4.

²¹⁵ Ibid., par 11 – 14.

²¹⁶ Nach Auffassung der Kommission betrifft keiner der hier betrachteten Märkte einen grenz überschreitenden Markt, der mehrere Mitgliedstaaten umfasst. Ibid., par 32.

²¹⁷ Ibid., par 45.

²¹⁸ Ibid., par 46 – 47.

²¹⁹ Commission Decision in case No COMP/M.3684 - BC PARTNERS / ISH, par 10.

²²⁰ Ibid., par 15.

²²¹ Ibid. par 17.

M 3697 Symantec - Veritas

The EC approves the sole control acquisition of Veritas software Corp (US) by Symantec Corp (US).

Symantec is a software company that provides security software. It focuses on the provision of security software, inter alia data security, anti-virus protection, fire walls.²²² Basically it is a provider of security software.²²³ Veritas manufactures software for storage and data protection purposes.²²⁴ The focus with them lies on storage software.²²⁵

As regards the product market, the EC concludes that :*”it is not necessary to distinguish the market of backup and archive software according to the OS on which software may run, and according to customer category.”*²²⁶

As regards the geographical market, the EC states that: *“In previous decisions, the Commission left open the question of the geographic scope of software markets”*.²²⁷ Again in this case the EC concludes that: *“the definition of the relevant geographic markets can be left open since under all alternative geographic market definitions, the transaction will not raise competition concerns”*.²²⁸ Even though in both cases, no definition is given, it cannot be stated that this is a consequent decision, as the reason given in the present case for not defining the geographic market is not the same as the former cases.²²⁹

²²² Commission Decision in case No COMP/M.3697 - SYMANTEC / VERITAS, par 3.

²²³ Ibid. par 8.

²²⁴ Ibid. par 3.

²²⁵ Ibid. par 9.

²²⁶ Ibid. par 16.

²²⁷ Ibid. par 18

²²⁸ Ibid. par 21.

²²⁹ Cf. Ibid. par 18 – 21.

M 3978 Oracle / Siebel

The EC approves the sole control acquisition of Siebel Systems Inc by Oracle Corporation.

Oracle develops, manufactures, markets and distributes enterprise application software and related services, including inter alia customer relationship management (CRM) software.²³⁰ Siebel has its focus on CRM software and business intelligence software (BI) and related services.²³¹

As regards the product market, the EC concludes that: *“it can be concluded that for the purpose of the present case, the relevant product market to consider is the market for CRM solutions. It can be left open whether further segmentations (including CRM sub-segments, industry-specific software, various deployment modes, as well as “high-function” CRM software, etc.) yield separate product markets, since the proposed operation would give rise to no competition concerns under all definitions”*.²³²

As regards the geographical market: *“It can be left open whether geographic scope is worldwide or at least EEA-wide, since the proposed operation would give rise to no competition concerns under all definitions”*.²³³

The EC also investigated the degree of horizontal overlap as regards CRM software. Results showed that no competition concerns would arise, since the combined entity would continue to face several strong competitors.²³⁴

²³⁰ Commission Decision in case No COMP/M.3978 - ORACLE / SIEBEL, par 3.

²³¹ Ibid., par 4.

²³² Ibid., par 16.

²³³ Ibid., par 19.

²³⁴ Ibid., par 20 – 34. Cf. http://europa.eu/rapid/press-release_IP-05-1700_en.htm

M 3641 BT / Infonet

The EC has cleared the sole control acquisition of Telecom Infonet (US) by BT (British Telecommunications). A Delaware corporation wholly owned by BT will merge with Telecom Infonet. As a result, the merged entity will survive as a wholly owned subsidiary of BT.²³⁵ As Infonet brings only a minimal incremental market share to BT, the EC did think that the transaction would change significantly the market conditions on either a global or European scale.²³⁶

BT, who operates under the laws of England and Wales, is a telecom operator with services worldwide. Infonet is a Delaware company and its shares are listed on the New York Stock Exchange.²³⁷ Important to say is that, unlike BT, it has a comparatively strong presence in the Americas and in the Asia Pacific region.²³⁸

As regards the relevant product market, the EC states that this is the GTS market and that *“although there are some views suggesting that the GTS market could be segmented by product or by industry sector, they would not appear to rebut the presumption based upon the Commission’s position in previous cases, that there is one, overall, global market for GTS services”*.²³⁹

As regards the geographical market, the EC is of opinion that: *“as the competitive assessment does not depend on the exact geographic market definition, this may be left open for the purpose of this decision”*.²⁴⁰

²³⁵ Commission Decision in case No COMP/M.3641 - BT / INFONET, par 4.

²³⁶ http://europa.eu/rapid/press-release_IP-05-88_en.htm

²³⁷ Commission Decision in case No COMP/M.3641 - BT / INFONET, par 3.

²³⁸ Ibid., par 3.

²³⁹ Ibid., par 9.

²⁴⁰ Ibid., par 11.

M 3657 Airbus / Sita

The EC has approved the existence of a Joint Venture ‘OnAir N.V.’. This new JV will be owned by Airbus and Sita. Sita will have a substantial majority amount of market shares; Airbus a substantial minority amount. Tenzing Communications (US) will hold the remaining shares.

Airbus designs, manufactures and sells aircraft on a worldwide basis. SITA is a provider of applications, communications and IT infrastructure to the air transport and related industries. It provides a range of in-flight communications services. OnAir will develop, market and sell an integrated portfolio of aircraft cabin connectivity services such as: In-seat telephony, SMS messaging, E-mail and Instant Messaging, access to the Internet and to Virtual Private Networks and GSM onboard.²⁴¹ Tenzing is a US corporation which supplies e-mail and Web content software, hardware systems and services for in-flight passengers on board commercial and general aviation aircrafts.²⁴²

As regards the product market, the EC states that: *“for the purpose of the present assessment, it is not necessary to take a final position as regards product markets, since, irrespective of the exact definition, the present transaction does not raise competition concerns”*.²⁴³

As regards the geographical market, the EC states that: *“it is not necessary to finally decide on the exact geographic scope of the markets, as irrespective of this delineation, the transaction does not raise competition concerns”*.²⁴⁴

²⁴¹ Commission Decision in case No COMP/M.3657 - AIRBUS / SITA, par 2-4.

²⁴² Ibid., par 5.

²⁴³ Ibid., par 11.

²⁴⁴ Ibid., par 17.

M 3609 Cinven – France telecom cable – NC numericable

The EC has cleared the sole control acquisition of France Telecom cable and NC numericable by Cinven. The UK investment fund ‘Cinven’ will now hold two Pay-tv’s in France.²⁴⁵

Cinven is known to be a risk-capital investment group.²⁴⁶ FTC is a subsidiary of France Télécom SA and NCN is a subsidiary of Canal +.²⁴⁷

Both the up- and downstream market were investigated. As regards the first, no market power over pay-TV channels would be possible as the total sales of distribution rights is relatively small. As regards the later, each cable operator already holds a *de facto* monopoly position over the geographical area it covers with its cables. The EC states that the reduction of market players would not reduce the choices consumers have.

As regards the product market, the EC “*distingue les marchés de la télévision gratuite, financée par la publicité et/ou par des fonds publics, et les marchés de la télévision payante financée principalement par les abonnements*”. I.e. two markets are distinguished, free-Tv and Pay-Tv.

As regards the geographical scope, the EC states that “*l’analyse de l’impact de l’opération se limitera au territoire français*”.²⁴⁸

²⁴⁵ http://europa.eu/rapid/press-release_IP-05-262_en.htm ; Cf. Commission Decision in case No COMP/M.3609 - CINVEN / FRANCE TELECOM CABLE - NC NUMERICABLE, par 5.

²⁴⁶ Ibid., par 2.

²⁴⁷ Ibid., par 3 – 4.

²⁴⁸ Ibid., par 17 ; Cf. Ibid., par 23.

M. 3595 Sony - MGM

The European Commission approves the acquisition of MGM (Metro-Goldwyn-Mayer Inc.) by Sony, Comcast and an investors group (Providence and TPG).

Providence is a private investment fund. Current and previous areas of investment include cable TV content and distribution, wireless and wireline telephony, publishing, radio and TV broadcasting and other media and communications sectors.

²⁴⁹ Sony known for its audio, video, communication and information technology products is also involved in the production, acquisition and licensing of films, TV programmes (including films) and Home Entertainment products. ²⁵⁰ Comcast is a large television operation in the US. MGM produces, acquires and distributes films. TPG is a group of parallel funds.

As regards the relevant product market the EC distinguishes:

‘Theatrical release’. The parties refer to earlier decisions of the Commission where they decided that *“the distribution of films to theatres is the last stage of the cinema chain and can be regarded as a distinct product market”*. ²⁵¹ However, in this present case, *“it is not necessary to take a definitive position [...], since the assessment of the impact of the transaction would not change”*. ²⁵²

“Home entertainment”. The EC states that: *“The issue of whether motion picture content supplied via the Home Entertainment segment can be subdivided based on genre, content type or format can be left open, as the assessment of the impact of the transaction would not change depending on the exact product market definition”*. ²⁵³

“Tv-licensing”, The Commission refers to previous cases where it has made a distinction between pay-TV and free-TV. In line with previous decisions the Commission *“has identified distinct markets for the following exhibition windows: (i) Pay Per View (iPPV); (ii) the first pay-TV window; and (iii) the second pay-TV window. The Commission has also considered distinguishing between U.S.-produced versus other motion pictures. Finally, in several cases, the Commission has identified a market for the wholesale supply of TV channels for retail pay-TV. The Commission has also considered distinguishing between U.S.-produced versus other motion pictures. Finally, in several cases, the Commission has identified a market for the wholesale supply of TV channels for retail pay-TV.”* ²⁵⁴

Paragraph 14 does make some clear product market distinctions. Nevertheless as regards the distinguishment between U.S- products vs other motion pictures, the EC has decided that: *“it is not necessary to take a definitive conclusion on the above issue, since the assessment of the impact of the transaction would not change even assuming that US-produced motion pictures would represent a separate product*

²⁴⁹ Commission Decision in case No COMP/M.3595 - SONY / MGM, par 2.

²⁵⁰ http://europa.eu/rapid/press-release_IP-05-369_en.htm

²⁵¹ Commission Decision in case No COMP/M.3595 - SONY / MGM, par 10.

²⁵² Ibid., par 11.

²⁵³ Ibid., par 13.

²⁵⁴ Ibid., par 14; Cf. Ibid., par 15.

market”.²⁵⁵ Furthermore the EC concluded that: “*The question whether TV channels can be distinguished based on their genre (generic, thematic, motion pictures, documentaries, other type of channels) can be left open as the assessment of the impact of the transaction would not change regardless of the exact product market definition*”.²⁵⁶

²⁵⁵ Ibid., par 17.

²⁵⁶ Ibid., par 19.

M. 3648 Gruner und Jahr - MPS

The European Commission approves the acquisition of Motorpresse by Gruner und Jahr.

Gruner und Jahr is subsidiary from the German Bertelsmann Group and is mainly active in the publishing of magazines in several EU member states. Motorpresse is a publisher of special-interest magazines, in particular covering cars, hi-fi, videos, photography, computers and sports as well as fashion and lifestyle magazines for men.²⁵⁷

As regards the product market the EC refers to previous decisions where it has found in the area of the Print media a distinction between the so-called 'reader market' and 'advertising market'.²⁵⁸ In the 'reader market' it further makes a distinction between various types and holds 'special-interest magazines' as a different submarket.²⁵⁹ Regarding the 'advertising market' it holds the same logic.²⁶⁰ Nevertheless, the EC states that in this present case, the precise definition of the product market can be left open, since even the most narrow definition of the market does not raise serious competition concerns.²⁶¹

As regards the geographical market, no definition is given since it is not relevant in this case.²⁶²

²⁵⁷ http://europa.eu/rapid/press-release_IP-05-407_en.htm

²⁵⁸ Commission Decision in case No COMP/M.3648 - GRUNER + JAHR / MPS, par 9.

²⁵⁹ Ibid., par 10.

²⁶⁰ Ibid., par 11 – 12.

²⁶¹ Ibid., par 15.

²⁶² Ibid., par 22.

M. 3695 BT - Radianz

The European Commission approves the sole control acquisition of Radianz²⁶³(US) by BT.²⁶⁴

Radianz is a financial services extranet provider. BT provides telecommunications services on a world-wide basis.

As regards the relevant product market, the discussion exists if extranet services should be regarded as a separated market, or as a substitute for VPN services. In the Reuters/Equant decision *“the Commission considered the possibility to define a separate market for the “the provision of IP-based extranet services to the financial community”.* However the precise definition of the relevant market was left open, since even on the narrowest market definition (IP based extranet services to the financial community) the concentration did not lead to the creation or the strengthening of a dominant position”.²⁶⁵

Even though the EC seems to hold favour in the view that extranet service are to be regarded as a separated market, it states that: *“for the purpose of the analysis of the present transaction the precise definition of this relevant market may be left open since it does not affect the outcome of the assessment”.*

As regards the geographical market, the EC noted in the Reuters/Equant decision that: *“the provision of extranet services to the financial community could be considered international in scope”.*²⁶⁶ However, no definition regarding the geographical scope was given. Again in this case the EC leaves open a precise geographical definition.²⁶⁷

The geographical market definition for Global telecommunication services (GTS), were BT has its main activities, was in the BT/Infonet case left open. Again in the present case, no geographical market definition is given, as it is not relevant.²⁶⁸

²⁶³ Radianz was formed in 2000 as a joint venture between Reuters and Equant. In 2004 Reuters has bought the shares of Equant, leaving him 100% of the voting rights.

²⁶⁴ http://europa.eu/rapid/press-release_IP-05-474_en.htm

²⁶⁵ Commission Decision in case No COMP/M.3695 - BT / RADIANTZ, par 13.

²⁶⁶ Ibid., par 17

²⁶⁷ Ibid., par 20.

²⁶⁸ Ibid., par 22.

M. 3764 Belgacom – Swisscom - JV

The European Commission approves the joint venture between Belgacom and Swisscom.

Belgacom is a telecom operator active in Belgium where it provides a full range of telecom services. The Belgium state owns 50% of its share capital. Swisscom is a telecom operator active in Switzerland where it provides a full range of telecom services. The Swiss Confederation owns 62,7% of its share capital.

The in 2005 Belgian created joint venture (“BICS”) provides international telecommunications carrier services. In the pre-merger situation BICS is a wholly owned subsidiary of Belgacom. The proposed transaction foresees that Swisscom contributes and obtains shares of BICS.²⁶⁹ In the end, Belgacom (72%) and Swisscom (28%) will have joint control over the joint venture.

As regards the relevant product market, the scope of activities will be limited to the provision of international wholesale carrier telecommunications services.²⁷⁰ The parties note that in earlier decisions, the EC concluded that this is one single relevant market.²⁷¹ The EC replies that: *“However, in previous decisions, the Commission left open the possibility to breakdown the broad carriers’ carrier services market into several relevant product markets on the basis of each type of services provided. In particular, the Commission has identified a separate product market consisting in the provision of international voice carrier services on a country pair route, namely the UK/US route”*.²⁷² It concludes with stating that: *“In any event, for the purposes of the present case, the question of whether it exists within the broad carriers’ carrier services market a distinct sub-market for the provision of wholesale voice carrier services on any country pair route can be left open as, under any conceivable market definitions, the proposed transaction does not raise any competition concerns”*.²⁷³

As regards the relevant geographical market, the EC decided in previous cases that the market for international wholesale telecommunication carrier services is at least European-wide.²⁷⁴ In the present case, it concludes that a definition is not necessary.²⁷⁵

²⁶⁹ http://europa.eu/rapid/press-release_IP-05-582_en.htm

²⁷⁰ Commission Decision in case No COMP/M.3764 - BELGACOM / SWISSCOM / JV, par 10.

²⁷¹ Ibid., par 12.

²⁷² Ibid., par 14.

²⁷³ Ibid., par 17.

²⁷⁴ Ibid., par 19.

²⁷⁵ Ibid., par 21.

M. 3776 Vodafone – Oskar mobile

The European Commission approves the acquisition of Clearwave by Vodafone International Holdings B.V., a wholly owned subsidiary of Vodafone. Thru this acquisition Vodafone will control Oskar Mobil and Mobifon who are two subsidiaries of Clearwave.

Vodafone is a holding company of a group of companies, which are involved in the operation of the mobile telecommunications networks and the provision of mobile telecommunications services.²⁷⁶ Clearwave is a holding company for two operating subsidiaries, Oskar Mobil a.s. (Czech Republic) and MobiFon (Romania). Oskar Mobil and MobiFon are active in the provision of mobile telecommunication services.²⁷⁷

As regards the relevant product market the parties propose 3 subdivisions based upon the EU telecommunications regulatory framework.²⁷⁸ The Conclusion of the market investigation is that both Vodafone as well as the two strategic alliances are currently offering pan-European services for Multi National Corporations (MNC's).²⁷⁹ In previous Commission decisions, it was suggested that there is an emerging market for pan-European mobile telecommunication services.²⁸⁰ The EC however states that in the present case it is unnecessary to take a position on the possible existence of a seamless pan-European mobile communication services market and on its geographical scope.

²⁷⁶ Commission Decision in case No COMP/M.3776 - VODAFONE / OSKAR MOBILE, par 2.

²⁷⁷ Ibid., par 3.

²⁷⁸ Ibid., par 8.

²⁷⁹ Ibid., par 17.

²⁸⁰ Ibid., par 12.

M. 3836 Goldman Sachs / Pirelli cavi e sistemi energia / Pirelli cavi e sistemi telecom

The European Commission approves the sole control acquisition of Pirelli's energy and telecoms cable businesses by US investment bank Goldman Sachs & CO. ²⁸¹

Because no company controlled by Goldman Sachs is engaged in the EU in the same markets as those in which the business acquisition takes place, no competition concerns are made by the EC. ²⁸²

Goldman Sachs is an US based, global investment banking, securities and investment management firm that provides a wide range of banking, securities and investment services worldwide. ²⁸³ Pirelli Cavi e Sistemi Energia SpA (PCS Energia) and Pirelli Cavi e Sistemi Telecom SpA (PCS Telecom) are two separate divisions of the Pirelli Group, established under Italian law, which are active in the global production and sale of cable systems. ²⁸⁴

As regards the product market, two main product categories can be made: (I) Energy cables and (II) Telecom cables. Regarding the first, the EC states that in the present case no exact market definition needs to be made, as even the narrowest market definition does not raise any competitive concerns. Important is that the EC in previous cases already did make a market definition. Regarding the later, the EC, in previous cases, made a distinction between optical fibre cables and copper cables. Even though the parties suggest that this distinction still holds, the EC notes that in the present case, it is not necessary to make an exact market definition, as it is not relevant. ²⁸⁵

As regards the geographical market definition the EC decided in previous cases that the market for energy cables are at least EEA-wide. In the present case, no exact geographical definition is needed. The same conclusion can be drawn for the telecom cables market.

²⁸¹ http://europa.eu/rapid/press-release_IP-05-851_en.htm ; Goldman Sachs & Co (Goldman Sachs), is a part of the Goldman Sachs group.

²⁸² http://europa.eu/rapid/press-release_IP-05-851_en.htm ; Cf. Commission Decision in case No COMP/M.3836 - GOLDMAN SACHS / PIRELLI CAVI E SISTEMI ENERGIA / PIRELLI CAVI E SISTEMI TELECOM, par 21 – 23.

²⁸³ Commission Decision in case No COMP/M.3836 - GOLDMAN SACHS / PIRELLI CAVI E SISTEMI ENERGIA / PIRELLI CAVI E SISTEMI TELECOM, par 3.

²⁸⁴ Ibid., par 4.

²⁸⁵ Ibid., par 10 – 16.

M. 3817 Wegener / PCM / JV

The European Commission approves the JV between PCM and Wegener, subject to conditions. The joint venture will publish a new national daily with local editions. The conditions involve that Wegener does not sell national advertisement space jointly with the JV or with PCM.²⁸⁶ PCM will hold an estimate share of 63% in the new entity, Wegener will have the remaining 37%.²⁸⁷ Nevertheless will they have an equal voting power.²⁸⁸

PCM is active in the publishing of regional and national daily newspapers, free sheets, books and the development and sale of educational and professional software in The Netherlands.²⁸⁹ British investment group Apax, which is ultimately owned by the Hirzell Trust, an independent trust organised under the laws of Guernsey, controls PCM.²⁹⁰

Wegener is active in the publishing of regional daily newspapers, free sheets and special interest magazines as well as the development and sale of Internet products and of graphical products and services in The Netherlands. In the direct marketing sector, Wegener subsidiaries are also active in Belgium, France, the UK and Scandinavia.²⁹¹

The JV will bring together one national daily and all the regional newspapers of PCM and two regional newspapers of Wegener. Furthermore it will launch a new daily newspaper with local editions.²⁹²

Reader market

As regards the relevant product market, the EC makes a distinction between the reader market and the advertising market. As regards the first, the EC, based on previous decisions, states that the national daily newspaper market is to be separated from the regional newspapers and magazines. Furthermore: *“In the Newspaper Publishing case, it was stated that, as far as the UK is concerned, there are three segments identified within the national newspaper market: popular tabloids, mid-market titles and the quality segment. In the Gruner + Jahr/Financial Times case, the Commission indicated that national daily newspapers can be further divided into different categories on the basis of content, editorial line or quality of the publication. However, due to possible overlaps between certain information contained in the newspapers, the distinction between different types of newspapers can to some extent be blurred. In the Recoletos/Unedisa case, the Commission considered that daily press in Spain could be divided, according to content, into three main categories: general information, sports and financial daily newspapers. Furthermore, the editorial line of the newspaper or the quality of the publication”.*²⁹³

²⁸⁶ http://europa.eu/rapid/press-release_IP-05-871_en.htm

²⁸⁷ Commission Decision in case No COMP/M.3817 - WEGENER / PCM / JV, par 5.

²⁸⁸ Commission Decision in case No COMP/M.3817 - WEGENER / PCM / JV, par 7.

²⁸⁹ http://europa.eu/rapid/press-release_IP-05-871_en.htm

²⁹⁰ Commission Decision in case No COMP/M.3817 - WEGENER / PCM / JV, par 3.

²⁹¹ http://europa.eu/rapid/press-release_IP-05-871_en.htm

²⁹² Commission Decision in case No COMP/M.3817 - WEGENER / PCM / JV, par 6.

²⁹³ Ibid., par 10.

*“As regards The Netherlands, in two decisions adopted in 2008 the Dutch Competition Authority (DCA) stated that there are indications of a separate market for regional daily newspapers, as well as a market for regional and national daily newspapers together. In regions where regional daily newspapers overlap, a regional daily newspaper is the closest substitute for another regional daily newspaper and they can constitute a separate segment. However, the DCA concluded also that all national and regional daily newspapers published in The Netherlands compete and that a further market segmentation based on the editorial line of the newspaper or the quality of the publication was not required”.*²⁹⁴

*“However, for the purpose of this decision it is not necessary to decide on the exact product market definition given that in any case the concentration will not significantly impede effective competition in the common market or in a substantial part of it”.*²⁹⁵

As regards the geographical scope, the Commission always stated in the past that the relevant geographic market for daily newspapers is national in scope. In the DCA case *Wegener Arcade – VNU dagbladen* and *De Telegraaf – De Limburger*, the relevant geographical market was considered to be regional.²⁹⁶ In the present case the EC stated that: *“it is not necessary to decide whether the Randstad region constitutes a relevant geographic market given that the concentration will not significantly impede competition in the common market or in a substantial part of it under any possible geographic market definition”.*²⁹⁷

The Market for advertising space

As regards the second relevant product market – the market for advertising space. The EC stated in the past *“that the sale of advertisement space in national daily newspapers constitutes a separate market. In particular, the Commission considered that there are factors that could suggest that the sale of advertisement space in the written press can be considered a distinct market”.*²⁹⁸ The DCA stated in previous cases that: *“there is a relevant product market for advertisement space for regional and local advertisements in regional and local papers”.*²⁹⁹ The Parties submit a definition, constituted by a leading research company, considering five points to check if an advertisement is to be considered national or regional. The EC follows the view of the parties.³⁰⁰

As regards the geographical scope for the advertising market, the EC considers this to be national.³⁰¹

The market for printing daily newspapers

²⁹⁴ Ibid., par 11.

²⁹⁵ Ibid., par 20.

²⁹⁶ Ibid., par 22.

²⁹⁷ Ibid., par 26.

²⁹⁸ Ibid., par 27.

²⁹⁹ Ibid., par 28.

³⁰⁰ Ibid., par 29.

³⁰¹ Ibid., par 31.

“The Commission has stated in the past that rotogravure printing constitutes a product market different from offset printing”.³⁰² “In the present case it is not necessary to take a position on the relevant product and geographic markets given that the transaction will not significantly impede effective competition in the common market or in a substantial part of it”.³⁰³

Distribution of newspapers

“In the present case it is not necessary to take a position on the relevant product and geographic market definitions, given that the transaction will not significantly impede effective competition in the common market or in a substantial part of it”.³⁰⁴

³⁰² Ibid., par 35.

³⁰³ Ibid., par 37.

³⁰⁴ Ibid., par 40.

M. 3803 AEDS - Nokia

The European Commission approves the sole control acquisition of Nokia's Professional Mobile Radio (PMR) business by European Aeronautic Defence and Space (AEDS) Company.³⁰⁵

EADS is active in the commercial and military aircraft business where telecommunication equipment is one of its focuses.³⁰⁶ DaimlerChrysler, Lagardère and the French State jointly control the company.³⁰⁷ The Nokia PMR³⁰⁸ Business consists of the development, sales, operation and maintenance of public safety and security communication network, terminals, systems applications and services based on the TETRA standard.³⁰⁹

As regards the relevant product market, it is important to notice that both EADS and Nokia are active in the RMS sector, but different standard exist. TETRAPOL is a digital standard developed and supported by EADS. Nokia does not support this standard. TETRA is a set of open standards and is supported by several vendors (among which is Nokia). EADS is not present in the TETRA system.³¹⁰ The question raised if a distinction should be made between the different standard (TETRAPOL / TETRA) and technology used (analogue / digital). The EC decided that the following markets can be considered as relevant: (I) the market for the provision of PMR infrastructure (including TETRA and TETRAPOL standards), (II) the market for the provision of PMR terminals based on the TETRA standard, (III) the market for the provision of PMR terminals based on the TETRAPOL standard, (IV) the market for the provision of PMR specific services.³¹¹ No references to previous cases were made.

As regards the geographical scope, the parties refer to case M.496 where the commission found that there were strong indications that the PMR market was EEA-wide, even though the precise geographic market definition was left open.³¹² In the present case, the EC states that there is no need to define the exact geographical scope, as the parties do not significantly overlap at a national level or outside the EEA.³¹³

³⁰⁵ http://europa.eu/rapid/press-release_IP-05-1019_en.htm

³⁰⁶ http://europa.eu/rapid/press-release_IP-05-1019_en.htm

³⁰⁷ Commission Decision in case No COMP/M.3803 - EADS / NOKIA, par 2.

³⁰⁸ PMR systems are closed wireless radio communication systems Cf. 8

³⁰⁹ Commission Decision in case No COMP/M.3803 - EADS / NOKIA, par 3.

³¹⁰ Ibid., par 11.

³¹¹ Ibid., par 21.

³¹² Ibid., par 23.

³¹³ Ibid., par 25.

M. 3693 TPV – Philips (Monitors)

The European Commission approves the sole control acquisition of Philips Monitor's Business by TPV.³¹⁴

TPV is a provider of monitor display technology. The company designs and manufactures cathode ray tube ("CRT") and liquid crystal display ("LCD") monitors. Moreover, TPV has recently entered in the design and manufacture of LCD and plasma display panel ("PDP") flat screen televisions.³¹⁵ Philips Monitors is active in the field of computer monitors, both CRT and LCD, and flat screen televisions and related OEM sales.³¹⁶

As regards the relevant product market

CRT vs. LCD monitors

The Commission stated that: *"In its previous decision on this market, the Commission noted certain differences between CRT and LCD monitors, without reaching a firm conclusion on the precise scope of the product market. The differences identified referred to the physical differences in shape between the two types of monitors and differences in price".*³¹⁷ *"The market investigation broadly endorsed the parties' view that CRT monitors and LCD monitors could be considered as being part of the same product market, [...]"*.³¹⁸ However, the EC states that even though the prices have eroded, the LCD monitors are still more expensive than CRT monitors. This speaks in favour of the view that separated markets still exist. However, a concrete definition regarding the product market for this area can be left open, since it is irrelevant for the present case.

OEM sales vs. branded sales

*"Monitor manufacturers sell monitors with their own brand label or on an OEM basis. [...] Some monitor manufacturers have a larger part of their output sold on an OEM basis rather than under their own brand label. Moreover, distribution of monitors at OEM level is largely through bi-lateral sales agreements of short term duration while branded sales require the setting up of own distribution channels to reach end consumers. It can, therefore, be concluded that OEM sales of monitors constitute a separate product market as opposed to the market for branded monitors which is downstream in respect of OEM sales".*³¹⁹ Referring to the question whether this definition is consistent or not, it must be noted that no references were made to previous cases and therefore this definition can be regarded as being new.

Different monitor sizes

"In its earlier decision COMP/M.1883 NEC/Mitsubishi, the Commission has not

³¹⁴ http://europa.eu/rapid/press-release_IP-05-1045_en.htm

³¹⁵ Commission Decision in case No COMP/M.3693 - TPV / PHILIPS (MONITORS), par 2.

³¹⁶ Ibid., par 3.

³¹⁷ Ibid., par 9.

³¹⁸ Ibid., par 11.

³¹⁹ Ibid., par 13.

*distinguished between different sizes. [...], the issue whether different screen sizes yield separate markets as regards computer monitors need not be decided upon, as the assessment of the effect of the transaction would not change regardless of the exact delineation of the product market”.*³²⁰

As regards the geographical market

*“The parties submit that the relevant geographic scope for the OEM computer monitor market is at least EEA-wide and is likely to be worldwide”.*³²¹ *“The investigation in this case has confirmed this view”.*³²² *“In any event [...] the issue needs not be decided upon, as the effects of the merger in the branded market do not raise any competition concerns”.*³²³

³²⁰ Ibid., par 15.

³²¹ Ibid., par 16.

³²² Ibid., par 17.

³²³ Ibid., par 18.

M.3866 SUN – StorageTek

The EC has approved the sole control acquisition of StorageTek (US) by Sun Microsystems.³²⁴

SUN focuses on providing network computing products and services, i.e. hardware and software for network computing infrastructures, namely computer systems and network storage systems, and support and professional services.³²⁵ StorageTek provides a range of data storage solutions for the management, retrieval and protection of business critical information.³²⁶

As regards the relevant product market, the parties submit that “storage solutions” can be seen as a relevant product market, referring to earlier cases. Furthermore, they presented different segments, based on a market and data analysis from IDC. Given the fact that the EC ended with a mixed picture after the investigation whether the various segments would form each a separated market. It concluded that: *“it can be left open for the purpose of the present case whether a further delineation of the market for storage solutions would be necessary”*.³²⁷

As regards the relevant geographical scope: *“The Commission had taken the view in its previous HP/Compaq decision that the geographic scope of the storage solutions market(s) is at least EEA-wide.”*³²⁸ However, for the purpose of the present case, it is not necessary to decide on the geographic scope since even at the narrower EEA-wide level the proposed transaction would not lead to competition concern”.³²⁹

³²⁴ http://europa.eu/rapid/press-release_IP-05-1070_en.htm

³²⁵ Commission Decision in case No COMP/M.3866 - SUN / STORAGETEK, par 3.

³²⁶ Ibid., par 4.

³²⁷ Ibid., par 10.

³²⁸ Ibid., par 12.

³²⁹ Ibid., par 13.

M. 3911 Benq – Siemens Mobile

The European Commission approves the sole control acquisition of Siemens mobile device business by BenQ's.

BenQ is active in the communication and multimedia device business, including mobile telephones.³³⁰ Siemens mobile device business is a part of the Siemens group and comprises the activities of several Siemens companies active in research, development, production and sale of mobile devices incorporating cellular communication technology including mobile telephones, accessories, related services and spare parts.³³¹

As regards the relevant product market following subdivision was made:

Branded mobile telephones

As regards the communication standards, the European and the North American standard can be distinguished. In previous decisions, the EC left open if a further subdivision of the market is necessary. Taken into consideration that these standards have become increasingly interchangeable, the question may be left open.³³²

Original Design Manufacturing of mobile telephones

*“In a previous decision, the Commission has taken the view that although traditionally EMS and ODM were two separate markets; they are currently converging due to the blurring borders between these two fields. However, even under the smallest market definition (ODM for mobile telephones) the merger does not give rise to competition concerns”.*³³³

Accessories, related services and spare parts

*“In this case, accessories, related services and spare parts could be regarded as parts of the branded mobile telephones market and the ODM mobile telephones market respectively or as separate markets. As the present case does not exhibit competition concerns when examined either according to a broad definition of the entire market, or more narrowly defined, subdivided markets, the precise delineation can be left open”.*³³⁴

As regards the Geographical market

Regarding the Branded mobile telephones market, no definition was given. *“In previous decisions, the Commission has considered, confirmed by market investigations, the at least EEA-wide scope of the EMS market which is related to the*

³³⁰ http://europa.eu/rapid/press-release_IP-05-1107_en.htm; Cf. Commission Decision in case No COMP/M.3911 - BENQ / SIEMENS MOBILE, par 2.

³³¹ http://europa.eu/rapid/press-release_IP-05-1107_en.htm; Cf. Commission Decision in case No COMP/M.3911 - BENQ / SIEMENS MOBILE, par 3.

³³² Commission Decision in case No COMP/M.3911 - BENQ / SIEMENS MOBILE, par 8.

³³³ Ibid., par 10.

³³⁴ Ibid., par 11.

ODM market. However, the market definition can be left open since the concentration does not lead to differing results irrespective of whether a global or an EEA-wide market is assumed".³³⁵ Considering the last product market, no definition was given.

³³⁵ Ibid., par 15.

M. 3914 Tele2 - Versatel

The European Commission approves the sole control acquisition of Versatel by Tele2. Tele 2 will acquire the Dutch and Belgian parts of Versatel.³³⁶

Tele2, a Swedish-based company, offers products and services in fixed and mobile telephony, internet, data network and cable TV in twenty five European countries.³³⁷ Versatel is a telecommunications network owner which provides business and residential customers with voice, data and internet services.³³⁸

As regards the relevant product market:

Fixed line telephony services: Retail level

The EC states that: *“the Recommendation on relevant markets distinguishes the following markets (i) local/national and (ii) international services. Each of them can be further divided into services to (a) residential and (b) business customers. Moreover, Local/national services can be further divided into local and national including and/or excluding calls to mobile phones”*.³³⁹

Fixed line telephony services: Wholesale level: call termination services

Conform previous decisions the EC states that: *“There cannot be a substitute for call termination on each individual fixed network since the operator can only reach the relevant end-customers by terminating the call on that specific network. Each fixed termination access network would constitute a relevant market and the network operator has by definition a 100% market share”*.³⁴⁰

Leased lines

“The Recommendation on relevant markets states that a distinction between the terminating segments of a leased circuit (so called local tails or local segments) and the trunk segments may be possible”.³⁴¹

Internet access

“Whereas the Commission in earlier decisions considered separate markets for residential and business customers, it later has taken the view that the demands of residential customers and business customers without any significant needs are converging since the introduction of broadband internet access technologies”.

“In the present case it is not necessary to take a position on the relevant market definition as outlined above given that the transaction will not impede effective

³³⁶ http://europa.eu/rapid/press-release_IP-05-1108_en.htm

³³⁷ http://europa.eu/rapid/press-release_IP-05-1108_en.htm ; Cf. Commission Decision in case No COMP/M.3914 - TELE2 / VERSATEL, par 2.

³³⁸ http://europa.eu/rapid/press-release_IP-05-1108_en.htm

³³⁹ Commission Decision in case No COMP/M.3914 - TELE2 / VERSATEL, par 10.

³⁴⁰ Ibid., par 11.

³⁴¹ Ibid., par 12.

competition ”. ³⁴²

Mobile telephony services: Retail level

“At retail, level the Commission has previously considered whether a distinction between business customers and private individuals or between pre-pay and post-pay customers should be made. The exact market definition was however left open. In the present case it is not necessary either to further delineate the market given that the transaction will give no raise to competition concerns ”. ³⁴³

Mobile telephony services: Wholesale level: call termination services

“The Recommendation on relevant markets distinguishes voice call termination on individual mobile networks as a separate market. The definition provided in paragraph 11 for fixed networks can be applied mutatis mutandi for mobile networks ”. ³⁴⁴

As regards the geographical scope:

“All these product markets have been defined in previous Commission decisions⁹ as to be national in scope in particular taking into account the existing regulatory barriers in the telecommunications sector. This geographic market delineation can be confirmed in the present case ”. ³⁴⁵

³⁴² Ibid., par 14.

³⁴³ Ibid., par 15.

³⁴⁴ Ibid., par 17.

³⁴⁵ Ibid., par 18.

M. 3752 Verizon - MCI

The European Commission approves the sole control acquisition of MCI by Verizon. Both Companies are US based.

Verizon provides telecommunication services to residential, small business and some large corporate and government customers in various regions of the US.³⁴⁶

MCI (formerly WorldCom) is a global provider of advanced communication services (business data, Internet and voice services) to businesses and governments. It also sells telecommunication services to consumers in the United States.³⁴⁷

As regards the product definition:

Internet connectivity

*“The market investigation’s results generally confirm that the Commission’s previous market definition remains accurate”.*³⁴⁸ “[...] The changes that have occurred for the last years do not seem to have led to a significant modification of the hierarchical nature of the Internet; the previous Commission’s conclusions relating to the existence of a global top-level Internet connectivity separate market appear to be still valid. However, this question can be left open as it will have no impact on the competitive analysis of the transaction”.³⁴⁹

Global Telecommunication Services (GTS)

*“The Commission has in the past examined the GTS sector in several decisions. In its MCI WorldCom/Sprint, the Commission defined GTS as: [...]. In the most recent Commission decision dealing with this sector - M.3641-BT/Infonet - this definition was confirmed”.*³⁵⁰ The EC states that: *“a single market for all GTS is assumed which has to be distinguished from merely national telecommunication services”.*³⁵¹

Special access

In this case, a separated market for special access is considered.³⁵²

International Voice Telephony Services (IVTS)

“The Commission has consequently distinguished between the market for retail end-to-end IVTS and a separate underlying wholesale market for different international

³⁴⁶ http://europa.eu/rapid/press-release_IP-05-1234_en.htm; Cf. Commission Decision in case No COMP/M.3752 - VERIZON / MCI, par 2.

³⁴⁷ http://europa.eu/rapid/press-release_IP-05-1234_en.htm; Cf. Commission Decision in case No COMP/M.3752 - VERIZON / MCI, par 3.

³⁴⁸ Commission Decision in case No COMP/M.3752 - VERIZON / MCI, par 17.

³⁴⁹ Ibid., par 24.

³⁵⁰ Ibid., par 48.

³⁵¹ Ibid., par 52.

³⁵² Ibid., par 63.

carrier services”.³⁵³ “In the decision M.2803 Telia/Sonera⁴², the Commission looked at the wholesale call termination input required to provide retail IVTS. The Commission concluded that there are separate markets for call termination on each party’s fixed network, because the operator seeking to terminate a call can only do so on the network to which the called party is connected”.³⁵⁴ “In light of the above, this decision will consider the markets for: call termination; end- to-end retail IVTS and end-to-end wholesale IVTS”.³⁵⁵

As regards the geographical scope:

Internet connectivity

“With respect to the geographic market, the Commission has taken the view that the market for the provision of top-level Internet connectivity is worldwide”.³⁵⁶ In former cases, the definition was left open.³⁵⁷

GTS

“In past decisions, the Commission has mostly considered a global market, although, there has never been the need to define the geographical scope”.³⁵⁸ In this case, again, no exact definition is given, as it is irrelevant.³⁵⁹

Special access

The exact definition is left open.³⁶⁰

International Voice Telephony Services (IVTS)

“For both product markets - retail and wholesale end-to-end IVTS - this question may be left open since even under the narrowest market definitions according to country pairs no competition concerns arise”.³⁶¹

³⁵³ Ibid., par 112.

³⁵⁴ Ibid., par 113.

³⁵⁵ Ibid., par 114.

³⁵⁶ Ibid., par 11.

³⁵⁷ Ibid., par 11.

³⁵⁸ Ibid., par 54.

³⁵⁹ Cf. Ibid., par 55.

³⁶⁰ Ibid., par 67.

³⁶¹ Ibid., par 119.

M.3953 Apollo – BC Partners – Iesy-Ish-Telecolumbus

The EC has approved the joint control acquisition of West Chester, and thus Iesy-Ish-Telecolumbus, by Apollo and BC Partners.³⁶²

Apollo management LP (US), controlled indirectly West Chester, Iesy and Ish. Iesy is a German operator of broadband cables. Ish operates the former broadband cable network of Deutsche Telecom AG (DTAG). BC partners consist out of a CIE Management II Ltd and a subsidiary of BC partners holding limited and. BC partners controls Tele Columbus (operator of a German broadband cable network).³⁶³

Furthermore the EC decided to refer the case to the German authorities in relation to the fact that the economic focus of the proposed merger is in Germany. Moreover, the Bundeskartellmat already has gained expertise in this area and is thus competent of handling this case.³⁶⁴

³⁶² Commission Decision in case No COMP/M.3953 - APOLLO / BC PARTNERS / IESY - ISH - TELECOLUMBUS, par 8.

³⁶³ Ibid., par 4 – 7.

³⁶⁴ Ibid., par 19.

M.3920 France Télécom - Amena

The EC has approved the acquisition of the Spanish Amena by France Télécom.³⁶⁵

France Telecom is a global telecommunications operator. Through its wholly owned subsidiary Orange S.A., France Télécom provides mobile telecommunication services in several European countries, but not in Spain. Amena is a mobile telecommunication service, active in Spain.³⁶⁶ More specifically, Amena is the brand used by Retevisi3n M3vil SA, a subsidiary of the Spanish Telecom operator ‘Auna operadores de Telecomunicaciones’. Endesa, Uni3n Fenosa and Banco de Santander Central Hispano control Auna.³⁶⁷

As regards the relevant product market and the geographical scope

Mobile telephony services

Wholesale level - Call termination services:

Referring to previous cases, the EC decided that: “*there cannot be a substitute for call termination on each individual mobile network since the operator can only reach the relevant end-customers by terminating the call on that specific network*”.³⁶⁸ The geographical scope is to be considered national.³⁶⁹

Access to international roaming

“*[...] The Commission concluded on a preliminary basis that the provision of wholesale international roaming services in certain operator’s networks constituted separate markets at least in the past. The Commission has not taken any stance as concerns the present situation in those Member States and the question can also remain open for the present case given that the transaction will not impede effective competition*”.³⁷⁰

“*In previous decisions the Commission has considered that these markets are national in scope given that authorisations to provide mobile telephony services are only granted for national territories by national authorities and wholesale contracts can only be subscribed with companies that have an authorisation to operate in a given country*”.³⁷¹

³⁶⁵ http://europa.eu/rapid/press-release_IP-05-1340_en.htm

³⁶⁶ http://europa.eu/rapid/press-release_IP-05-1340_en.htm; Cf. Commission Decision in case No COMP/M.3920 - FRANCE TELECOM / AMENA, par 2 – 3.

³⁶⁷ Cf. Commission Decision in case No COMP/M.3920 - FRANCE TELECOM / AMENA, Footnote 2.

³⁶⁸ Commission Decision in case No COMP/M.3920 - FRANCE TELECOM / AMENA, par 10.

³⁶⁹ Ibid., par 11.

³⁷⁰ Ibid., par 14.

³⁷¹ Ibid., par 15.

Provision of mobile communication services

*“they should not be considered as a separate product market. Concerning [...] .In any case, it is not necessary to further delineate the market in the present case given that the transaction will not lead to competition concerns.”*³⁷²

*“Taking into account the existing regulatory barriers, the product market concerned is national in scope”.*³⁷³

Pan-European mobile telecommunication services

*“In previous decisions the Commission has discussed the existence of a possible market for pan-European mobile telecommunication services to international mobile customers, in particular multi-national corporations (MNCs)”.³⁷⁴ In the present case the market investigation has shown there cannot be drawn any definite conclusion whether the separate market for provision of pan European mobile telecommunication services exists or not”.*³⁷⁵

*“However, for the purpose of the present case it is not necessary to take a position on the product and geographical market definition as regards pan-European mobile telecommunication services given that the transaction would not significantly impede competition in the common market or in a substantial part of it”.*³⁷⁶

Call termination services

*“The definition provided in paragraph 10 for fixed networks can be applied mutatis mutandi for fixed networks”.*³⁷⁷

International call services from a fixed network

*“The Recommendation on relevant markets distinguishes for fixed call services the following markets“.*³⁷⁸ *“The Commission has always considered that the geographic market for retail services in a fixed network is national in scope”.*³⁷⁹

³⁷² Ibid., par 18 – 19.

³⁷³ Ibid., par 20.

³⁷⁴ Ibid., par 21.

³⁷⁵ Ibid., par 23.

³⁷⁶ Ibid., par 28.

³⁷⁷ Ibid., par 29.

³⁷⁸ Ibid., par 31.

³⁷⁹ Ibid., par 32.

M. 3995 Belgacom - Telindus

The European Commission approves the sole control acquisition of Telindus (and indirectly its subsidiaries) by Belgacom.

The Belgium authorities asked a partial referral “*as far as it threatens to affect significantly competition on a Belgian market for integrated network solutions as well as certain vertically related telecommunication markets*”.³⁸⁰ Later, this request was withdrawn.

Belgacom is a telecommunications company, active in a full range of telecommunication services, and is based in Belgium.³⁸¹ Telindus is an international provider of network-based solutions, meeting business and public sector needs.³⁸²

As regards the product and geographical market

IT services

The parties refer to previous cases where the EC has acknowledged a growing tendency towards ‘end-to-end IT solutions’. As regards the geographical scope, the parties remind the EC that in former decisions she had already observed a growing trend toward internationalisation of the IT-service market and its segments.³⁸³

Nevertheless, the EC states that: “*The exact product market and geographic market definitions may, however, be left open, since in all alternative market definitions the operation does not raise competition concerns*”.³⁸⁴

Networking equipment and Private Branch Exchanges (PBXs)

“*In its decisional practice, the Commission has identified the provision of data networking equipment as a separate product market, with a possible distinction between WAN and LAN products. In addition, in a previous decision (EADS), the Commission considered the possibility that, within networking equipment, also Private Branch Exchanges (PBXs) may represent a distinct product market*”.³⁸⁵

“*The notifying party submits that the geographic scope of the networking equipment market is at least EEA-wide and may even be worldwide, as was suggested by earlier Commission decisions. As regards PBX equipment, the Commission has previously concluded that the geographic scope of the market could be national*”.³⁸⁶

“*For the purpose of this case the exact product market and geographic market definitions may be left open, since in all alternative market definitions the operation does not raise competition concerns*”.³⁸⁷

³⁸⁰ Commission Decision in case No COMP/M.3995 - BELGACOM / TELINDUS, par 3.

³⁸¹ Ibid., par 4.

³⁸² Ibid., par 5.

³⁸³ Ibid., par 10 – 11.

³⁸⁴ Ibid., par 12.

³⁸⁵ Ibid., par 18.

³⁸⁶ Ibid., par 19.

³⁸⁷ Ibid., par 20.

National telecommunication markets

“Belgacom, as the Belgian incumbent, is active in various national telecommunication markets, namely fixed telephony services (access and retail provision), mobile telecommunications and broadband access markets. According to an established practice of the Commission in respect of the electronic communication sector, these markets are considered national in scope”.

M. 4003 Ericsson - Marconi

The European Commission approves the sole control acquisition of most of Marconi's businesses by Ericsson.³⁸⁸

Ericsson provides telecommunications equipment and related services to mobile and fixed network operators.³⁸⁹ Marconi, is a provider of equipment and services to telecommunications services providers and other telecommunications network operators.³⁹⁰

As regards the relevant product market

Point-to-Point microwave radio transmission equipment (PTP)

"[...] There is no need in the present case to delineate the relevant product market as the proposed concentration will not result in any adverse effect on competition irrespective of which of the possible market definition is retained".³⁹¹

Point-to-Multipoint microwave radio transmission equipment (PMP)

The exact market definition, so far, has been left open and the EC decided that, for the present case, it can be left open.³⁹²

Digital subscriber loop access multiplexers (DSLAMs)

"For the purposes of the competitive assessment of the present case, it is not necessary to decide whether the market for DSLAMs should be further segmented on the basis of the technology used (ATM vs. IP/Ethernet), as under any product market definition the transaction would not give rise to competition concerns".³⁹³

Softswitches

For the purposes of the competitive assessment of the present case, there is no need to decide whether the relevant product market includes softswitches and TDM switches as under any definition the proposed concentration will not significantly impede effective competition.³⁹⁴

Optical networks products

"Optical networks products can be divided by network function into three segments

³⁸⁸ Under the proposed transaction, Ericsson is to acquire the Marconi optical network business, most of the access network business, the data network equipment and services based predominantly in North America, the international services business including the non-UK telecommunication services activities, the value added services activities in the Middle East, and the wireless software services business. Cf. http://europa.eu/rapid/press-release_IP-05-1650_en.htm

³⁸⁹ Commission Decision in case No COMP/M.4003 - ERICSSON / MARCONI, par 2.

³⁹⁰ http://europa.eu/rapid/press-release_IP-05-1650_en.htm; Cf. Commission Decision in case No COMP/M.4003 - ERICSSON / MARCONI, par 3.

³⁹¹ Commission Decision in case No COMP/M.4003 - ERICSSON / MARCONI, par 8.

³⁹² Ibid., par 9 – 10.

³⁹³ Ibid., par 11.

³⁹⁴ Ibid., par 12.

[...]. For the purposes of the competitive assessment of the present case, there is no need to decide whether the market for optical networks products should be further segmented on the basis of the network function “. ³⁹⁵

Wireless network planning software WNPS

“For the purposes of the competitive assessment of the present case, there is no need to delineate the relevant product market as under any product market definition the transaction would not give rise to competition concern”. ³⁹⁶

As regards the geographical scope

“In a previous decision, the Commission found the markets for telecommunications equipment to be at least EEA-wide, but noted that it was not necessary in that case to determine whether the markets were wider than the EEA. The Commission also noted that its practice in defining geographic markets in this area had shown a successive widening of their geographic scope. In the present case it is not necessary to decide whether the telecommunication equipment markets identified above are larger than EEA-wide as the conclusions of the competitive analysis would remain unchanged”. ³⁹⁷

³⁹⁵ Ibid., par 13.

³⁹⁶ Ibid., par 14.

³⁹⁷ Ibid., par 15 – 16.

M. 4034 Telenor – Vodafone Sverige

The European Commission approves the sole control acquisition of European Vodafone AB, which includes Vodafone Sverige by Telenor. ³⁹⁸

Telenor is the Norwegian incumbent telecommunications operator. It is the largest fixed and mobile telecommunications provider in Norway. Telenor also provides mobile telecommunications services in Denmark (via its local subsidiary Sonofon), Sweden (via its local subsidiary Dj Juice), Hungary (via its local subsidiary Panafon) and in other non-EEA countries. Telenor is controlled by the Norwegian State. ³⁹⁹ Vodafone Sverige is the third largest mobile operator in Sweden. It does not have operations outside Sweden. Vodafone Sverige is an indirect wholly owned subsidiary of Vodafone Group plc. ⁴⁰⁰

As regards the relevant product market and geographical scope

Retail mobile telecommunications market

“The Commission case-law has, up to date, left the question of sub-segmentation open. It is not necessary in the present case to precisely define the markets involved as the competitive assessment would remain unchanged whatever the delineation under consideration”. ⁴⁰¹

“From a geographic point of view, the parties define a national market (each Member State having its own licensing and frequency allocation regime; and specifically for Sweden, 97% of calls in Sweden on GSM and UMTS phones are national). The Commission agrees with this delineation which is in line with previous decisions”.

Pan-Nordic mobile telecommunications services

“For the purposes of the present case, the question whether it already exists a distinct market for the provision of pan-Nordic mobile telecommunications services to large corporate customers can be left open as the proposed transaction does not raise competitive concerns on such a market”.

Wholesale international roaming

“In a number of cases, the Commission identified a relevant market for the provision of wholesale international roaming to foreign network operators. In the present case, the provision of wholesale international roaming services is to be considered as a relevant market. The geographic market is considered to be essentially national because of regulatory barriers according to which authorisations to operate a mobile network are only granted for territories which are not wider than national. Mobile networks normally provide national coverage and the scope of the wholesale offer for

³⁹⁸ http://europa.eu/rapid/press-release_IP-05-1692_en.htm; Cf. Commission Decision in case No COMP/M.4034 - TELENOR / VODAFONE SVERIGE, par 1.

³⁹⁹ Commission Decision in case No COMP/M.4034 - TELENOR / VODAFONE SVERIGE, par 2.

⁴⁰⁰ Ibid., par 3.

⁴⁰¹ Ibid., par 7.

international roaming is thus national”. ⁴⁰²

Call termination

“The Commission has identified a relevant market for the provision of wholesale call termination services on public fixed and mobile networks [...]. The geographic market is considered to be essentially national.” ⁴⁰³

⁴⁰² Ibid., par 13.

⁴⁰³ Ibid., par 14 – 15.

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Thema	Zaak nr	Partijen
Merger	M.4217 SG-Greffe (2006) D/202924	PROVIDENCE / CARLYLE / UPC SWEDEN
Merger	M.4035 SG-Greffe(2006) D/200059	TELEFÓNICA / O2
Merger	M.4036 SG-Greffe(2006) D/200119	TPG IV / APAX / Q-TELECOM
Merger	M.4395 SG-Greffe(2006) D/200156	BOEING / C-MAP
Merger	M.4063 SG-Greffe(2006) D/200788	CISCO / SCIENTIFIC ATLANTA
Merger	M.4108 SG-Greffe(2006) D/200867	T-SYSTEMS / GEDAS
Merger	M.4100 SG-Greffe(2006) D/202242	SEAGATE / MAXTOR
Merger	M.3998 SG-Greffe(2006) D/202682	AXALTO / GEMPLUS
Merger	M.4204 SG-Greffe(2006) D/203991	CINVEN / UPC FRANCE
Merger	M.4214 SG-Greffe(2006) D/204190	ALCATEL / LUCENT TECHNOLOGIES
Merger	M.4353 SG-Greffe(2006) D/205357	PERMIRA / ALL3MEDIA GROUP
Merger	M.4242 SG-Greffe(2006) D/206717	THERMO ELECTRON / FISHER SCIENTIFIC
Merger	M.4297 SG-Greffe(2006) D/206841	NOKIA / SIEMENS
Merger	M.4417 SG-Greffe(2006) D/207192	TELECOM ITALIA / AOL GERMAN ACCESS BUSINESS
Merger	M.4442 SG-Greffe(2006) D/207508	CARPHONE WAREHOUSE / AOL UK
Merger	M.3916 C (2006) 1695 final	T-MOBILE AUSTRIA / TELE.RING
Merger	M.2803 SG (2002) D/230597	TELIA / SONERA

M. 4217 Providence – Carlyle – UPC Sweden

The European Commission clears the joint control acquisition of UPC Sweden by Providence/Carlyle.⁴⁰⁴

Carlyle is one of the European investment funds of the Carlyle Group, a US-based private investment group, which makes private equity investments through various funds.⁴⁰⁵ Providence is one of the investment funds of the Providence Equity Partners group, a US-based global private investment firm specializing in equity investments in media and communication companies.⁴⁰⁶ Furthermore, Providence controls the Hollywood film studio MGM and Crown Media.⁴⁰⁷

NBS Nordic Broadband Services AB and its two subsidiaries hold control over UPC Sweden. UPC Sweden is a provider of cable television and Internet services and in the near future plans to offer also telephony services to its subscribers.⁴⁰⁸ This is not the first joint operation of Providence and Carlyle, recently the acquired joint control over the largest cable TV operator (Com Hem). Further investigation logically focused on the possible negative effects of controlling both Com Hem – UPC.

As regards the relevant product market and geographical scope

Retail market for cable TV

*“There are indications from the market investigation that there are certain specific features of the Swedish market which would tend to show that the market for cable TV may constitute a separate market from other platforms [...]”.*⁴⁰⁹ *“For the purpose of the present transaction, the exact product market definition can however be left open, since even on the basis of this narrowest possible market definition the concentration does not raise serious doubts”.*⁴¹⁰

“The Commission held in a recent decision that if a separate market for the transmission via cable is distinguished, this market should be defined geographically in such a way that each cable network constitutes a separate geographic market, given that those customers who are connected to a specific network can only be reached through that network. If the market is defined as the distribution of TV signals via cable networks only, the geographic market is limited to the individual networks of UPC Sweden and Com Hem”. *“For the purpose of the present transaction, the exact geographic retail market definition can however be left open, since even on the basis of this narrowest possible market [...] the concentration does not raise serious doubts”.*⁴¹¹

Wholesale market for cable TV

⁴⁰⁴ http://europa.eu/rapid/press-release_IP-06-728_en.htm

⁴⁰⁵ Commission Decision in case No COMP/M.4217 - PROVIDENCE / CARLYLE / UPC SWEDEN, par 2.

⁴⁰⁶ Ibid., par 3.

⁴⁰⁷ Ibid., par 5.

⁴⁰⁸ Ibid., par 4.

⁴⁰⁹ Ibid., par 9.

⁴¹⁰ Ibid., par 12.

⁴¹¹ Ibid., par 19.

*“The Commission’s market investigation in the present case provided however indications that it would be appropriate for the Swedish market to define separate markets based on the respective transmission platforms i.e. distribution via cable network, terrestrial network and satellite each constitute separate product markets to a significant extent”.*⁴¹²

*“In relation to the wholesale market the geographic scope has always been defined by the Commission as national or along linguistic homogeneous areas. The market investigation has not shown that there would be any reason to taken a different view in this case”.*⁴¹³

⁴¹² Ibid., par 16.

⁴¹³ Ibid., par 18.

M. 4035 Telefonica – O2

The European Commission clears the sole control acquisition of O2 by Telefonica, subject to conditions.⁴¹⁴ To remove the concerns of the EC in this case, Telefonica has left the FreeMove alliance.

Telefonica is a telecommunication network operator active in the fixed and mobile business. It provides services in Spain and in the Czech Republic.⁴¹⁵

O2 is likewise a telecommunication network operator, but only active in the mobile telephony sector. It provides services in the UK, Germany, the Isle of Man and in Ireland.⁴¹⁶

As regards the relevant product market and geographical scope

Wholesale call termination services on fixed and mobile networks

*“As was confirmed in several previous Commission decisions, there cannot be a substitute for call termination on each individual network since the operator can only reach the relevant end-customers by terminating the call on that specific network. Each individual network therefore constitutes a separate relevant call termination market.”*⁴¹⁷

“Mobile as well as fixed networks normally provide national coverage and the scope of the wholesale offer is thus national”.

Wholesale international roaming services

*“The Commission concluded recently on a preliminary basis that in the past the provision of wholesale international roaming services in certain operator’s networks constituted separate markets”.*⁴¹⁸

*“In previous decisions the Commission has considered that this market is national in scope [...]. This conclusion can also be drawn in the present case”.*⁴¹⁹

Retail fixed line communication services

*“The Recommendation on relevant markets distinguishes between local/national and international services, both for residential and business customers”.*⁴²⁰ *“For the purposes of this case the exact market definition may be left open, since the merger does not raise any competition concerns in this respect regardless of the market*

⁴¹⁴ http://europa.eu/rapid/press-release_IP-06-16_en.htm

⁴¹⁵ http://europa.eu/rapid/press-release_IP-06-16_en.htm; Cf. Commission Decision in case No COMP/M.4035 - TELEFÓNICA / O2, par 3.

⁴¹⁶ http://europa.eu/rapid/press-release_IP-06-16_en.htm; Cf. Commission Decision in case No COMP/M.4035 - TELEFÓNICA / O2, par 4.

⁴¹⁷ Commission Decision in case No COMP/M.4035 - TELEFÓNICA / O2, par 10.

⁴¹⁸ Ibid., par 14.

⁴¹⁹ Ibid., par 18.

⁴²⁰ Ibid., par 19.

definition in the provision of retail fixed line communication services”. ⁴²¹

“[...] the Commission has always considered that the geographic market for retail services in a fixed network is national in scope”. ⁴²²

Retail mobile telecommunication services

“The Commission has in previous decisions delineated a market for the operation of mobile telecommunication networks and therefore the provision of mobile telecommunication services irrespective of the technical standards used (analogue, digital GSM900/1800)”. ⁴²³ Furthermore it describes some separations that were considered in previous cases, but concludes with stating that non of them are relevant in this case.

“Taking into account the existing regulatory barriers, the market for the provision of mobile retail telecommunication services is, therefore, national in scope”. ⁴²⁴

Advanced seamless pan-European mobile telecommunication services for MNCs

“In previous decisions the Commission has discussed the existence of an emerging market for advanced seamless pan-European mobile telecommunication services to international mobile customers, in particular MNCs”. ⁴²⁵ *This market is still at an emerging stage [...]”.* ⁴²⁶

“[...] the geographic market would have a national component as far as patchwork services are regarded. All truly pan-European offers, however, would point towards a European scope of the market, since MNCs issue pan-European bids with the main providers being alliances and groups with a wide-spread presence all over Europe”. ⁴²⁷

“It is, however, for the purposes of this case not necessary to clearly define the product and the geographic market, since it will not change the outcome of the analysis”. ⁴²⁸

⁴²¹ Ibid., par 20.

⁴²² Ibid., par 21.

⁴²³ Ibid., par 22.

⁴²⁴ Ibid., par 25.

⁴²⁵ Ibid., par 26.

⁴²⁶ Ibid., par 28.

⁴²⁷ Ibid., par 31.

⁴²⁸ Ibid., par 31.

M. 4036 TPG IV - Apax - Q-Telecom

The European Commission clears the joint control acquisition of Q-Telecommunications by TPG IV and Apax.⁴²⁹

TPG IV is a US-based private equity fund, which invests in a variety of companies through acquisitions and corporate restructurings.⁴³⁰

Apax is the parent of a number of companies, which provide investment management and investment advisory services to private equity funds investing primarily in Europe in a range of industry sectors.⁴³¹

Q-Telecommunications is the fourth largest retail mobile telephony service provider in Greece and supplies a retail mobile telephony services.⁴³²

As regards the relevant product market and geographical scope

The market for the supply of mobile telecommunication products and services to end-users in Greece

*“In a number of decisions, the Commission has established that mobile telecommunication services cannot be regarded as a substitute to fixed line telephony services, and that the market for mobile telecommunication services is distinct from the emerging market for advanced seamless pan-European mobile telecommunication services. The Commission has not further segmented a mobile telecommunication market, but left open whether distinct product markets exist for (i) digital and analogue mobile telecommunications; (ii) private and business customers; or (iii) pre-paid and post-paid subscriptions”.*⁴³³

“For the purpose of the present case the exact product market definition may be left open, since in all alternative market definitions, the operation does not raise competition concerns”.

*“In line with the Commission’s decisional practice, the Parties submit that the most appropriate definition of the relevant geographic market for the supply of mobile telecommunication products and services to end-users is national [...]”.*⁴³⁴

Furthermore, third parties confirm this view.⁴³⁵ Nevertheless, the EC states: *“For the purpose of the present case the exact geographic market definition may be left open, since in all alternative market definitions, the operation does not raise competition concerns”.*⁴³⁶

⁴²⁹ http://europa.eu/rapid/press-release_IP-06-36_en.htm

⁴³⁰ http://europa.eu/rapid/press-release_IP-06-36_en.htm; Cf. Commission Decision in case No COMP/M.4036 - TPG IV / APAX / Q-TELECOM, par 3.

⁴³¹ Commission Decision in case No COMP/M.4036 - TPG IV / APAX / Q-TELECOM, par 4.

⁴³² Ibid., par 5

⁴³³ Ibid., par 9

⁴³⁴ Ibid., par 13

⁴³⁵ Ibid., par 14

⁴³⁶ Ibid., par 15.

M. 4395 Boeing – C-map

The European Commission clears the sole control acquisition of C-Map by Boeing.⁴³⁷

Boeing is worldwide active company active in the commercial aircraft, defence and space industries and related services.⁴³⁸ C-Maps is a producer and distributor of electronic marine charts, PC navigational software and marine hardware devices.⁴³⁹

As regards the relevant product market and geographical scope

Electronic marine charts

*“The respondents to the Commission’s market investigation have only partially confirmed the Parties’ claims regarding the relevant product market(s). [...], the Commission concludes that the overall market for marine electronic charts should be sub-divided into the two categories of heavy commercial marine electronic charts and light marine electronic charts”.*⁴⁴⁰

*“With regard to possible further sub-segments of these product markets according to the characteristics official/unofficial and sector/raster, however, the market investigation revealed no clear view from competitors and customers. [...] For the purpose of the present case, however, the precise definition as regards the product categories can be left open since even with the narrower definitions the proposed transaction would give rise to no competition concern”.*⁴⁴¹

*“[...], for the competitive assessment of the proposed transaction, the relevant markets to be considered will be the global market for heavy commercial marine electronic charts and both the global and the EEA-wide market for light marine electronic charts, but also the potential sub-markets for official and unofficial and for raster and vector charts respectively”.*⁴⁴²

PC navigational software

*“The Parties submit that the relevant market for PC navigational software covers marine software only, setting it apart from navigational software used in the aeronautical field”.*⁴⁴³ *“The market investigation confirmed the Parties’ claims regarding the relevant product market”.*⁴⁴⁴

As regards the geographical scope, the EC concluded: *“However, as the competitive assessment would not vary significantly with a change in the definition of the*

⁴³⁷ http://europa.eu/rapid/press-release_IP-07-49_en.htm

⁴³⁸ http://europa.eu/rapid/press-release_IP-07-49_en.htm; Cf. Commission Decision in case No COMP/M.4395 - BOEING / C-MAP, par 2.

⁴³⁹ http://europa.eu/rapid/press-release_IP-07-49_en.htm; Cf. Commission Decision in case No COMP/M.4395 - BOEING / C-MAP, par 3.

⁴⁴⁰ Commission Decision in case No COMP/M.4395 - BOEING / C-MAP, par 11.

⁴⁴¹ Ibid., par 12.

⁴⁴² Ibid., par 15.

⁴⁴³ Ibid., par 16.

⁴⁴⁴ Ibid., par 17.

*geographic market, it appears that the question does not have to be finally resolved in this case”.*⁴⁴⁵

Marine hardware

Regarding the relevant product market, the EC states that: “*this question does not have to be finally resolved in this case as the competitive assessment would not change significantly with a change in the definition of the relevant product market(s)*”.⁴⁴⁶

The same goes for the geographical scope were the EC states that: “*as the competitive assessment would not vary significantly with a change in the definition of the geographic market, it appears that the question does not have to be finally resolved in this case*”.⁴⁴⁷

⁴⁴⁵ Ibid., par 19.

⁴⁴⁶ Ibid., par 21.

⁴⁴⁷ Ibid., par 22.

M. 4063 Cisco – Scientific Atlanta

The European Commission clears the sole control acquisition of Scientific-Atlanta by Cisco.⁴⁴⁸

Cisco is a worldwide active company, based in the US, whose business is networking products for the Internet. In particular, Cisco manufactures routers, switches and other standards-compliant data networking products, as well as DSL and cable broadband equipment, VOIP telephony products and network management software.⁴⁴⁹ Scientific-Atlanta, based in the US, is a global provider of digital interactive set-top boxes used by cable television subscribers to receive video programming.⁴⁵⁰

As regards the relevant product market and geographical scope

The manufacturing of broadband communications equipment

*“ [...] the notifying party defines six relevant product markets under the narrowest scenario ”.*⁴⁵¹ The EC, after investigation, concludes that: *“For the purpose of the present transaction, the exact product market definition for all six proposed product markets may, however, be left open, since in all alternative market definitions, the operation does not seem to raise competition concerns ”.*⁴⁵²

*“In line with the Commission’s previous decisional practice, the notifying party proposes that all the markets in question are at least EEA-wide, if not world-wide, in scope due to the international features of the sector “.*⁴⁵³ *“All respondents to the Commission’s questionnaires supported the view of the notifying party that the relevant geographic markets are at least EEA-wide, if not worldwide, in scope for all the relevant products except for digital set-top boxes ”.*⁴⁵⁴ The EC states that: *“It can be, therefore, concluded that the geographic scope of the markets of cable modems, cable gateways, cable EMTAs, optical transmission products, wireless mesh network products is at least EEA-wide, and for digital set-top boxes is EEA-wide ”.*⁴⁵⁵

M. 4108 T-Systems - Gedas

⁴⁴⁸ http://europa.eu/rapid/press-release_IP-06-211_en.htm

⁴⁴⁹ http://europa.eu/rapid/press-release_IP-06-211_en.htm; Cf. Commission Decision in case No COMP/M.4063 - CISCO / SCIENTIFIC ATLANTA, par 4.

⁴⁵⁰ http://europa.eu/rapid/press-release_IP-06-211_en.htm; Cf. Commission Decision in case No COMP/M.4063 - CISCO / SCIENTIFIC ATLANTA, par 5.

⁴⁵¹ Commission Decision in case No COMP/M.4063 - CISCO / SCIENTIFIC ATLANTA, par 12.

⁴⁵² Ibid., par 20.

⁴⁵³ Ibid., par 21.

⁴⁵⁴ Ibid., par 22.

⁴⁵⁵ Ibid., par 23.

The European Commission clears the sole control acquisition of Gedas by T-Systems.⁴⁵⁶

T-System is a subsidiary of Deutsche Telekom and runs almost all of the IT operations. T-Systems provides a range of IT services to German and international companies and non-profit organisations.⁴⁵⁷ Gedas is a part of the Volkswagen group and provides also IT services, mainly to companies active in the automobile industry.⁴⁵⁸

As regards the relevant product market and geographical scope

*“The notifying party, DT, proposes to define the relevant market as comprising all IT services. Following the practice of previous Commission decisions, the notifying party has also provided data according to the following segments of the IT services market, as proposed by the Gartner Group: IT management services, business management services, software development and integration, IT and business consulting, software maintenance and support, hardware maintenance and support. Furthermore, the notifying party has considered a possible delineation of IT services by industry sector”.*⁴⁵⁹

*“As the notified transaction does not give rise to competition concerns irrespective of the market definition, the exact product market definition can be left open for the purpose of the present case”.*⁴⁶⁰

*“The parties take the view that the relevant geographic market for IT services is at least EEA-wide. In recent decisions the Commission has not found it necessary to define the relevant geographic market, although it noted that ‘IT services are provided on a national basis, mainly due to customized solutions according to languages and local business particularities’. Nevertheless, the Commission has also noted that the market for IT services shows a trend towards the internationalization of supply and demand”.*⁴⁶¹

*“For the purpose of the present case, it is not necessary to decide on the geographic scope since even on a narrower, national level the proposed transaction would not lead to competition concerns”.*⁴⁶²

M. 4100 Seagate - Maxtor

The European Commission clears the sole control acquisition of Maxtor by Seagate.⁴⁶³

⁴⁵⁶ http://europa.eu/rapid/press-release_IP-06-241_en.htm

⁴⁵⁷ http://europa.eu/rapid/press-release_IP-06-241_en.htm; Cf. Commission Decision in case No COMP/M.4108 - T-SYSTEMS / GEDAS, par 3.

⁴⁵⁸ http://europa.eu/rapid/press-release_IP-06-241_en.htm; Cf. Commission Decision in case No COMP/M.4108 - T-SYSTEMS / GEDAS, par 4.

⁴⁵⁹ Commission Decision in case No COMP/M.4108 - T-SYSTEMS / GEDAS, par 7.

⁴⁶⁰ Commission Decision in case No COMP/M.4108 - T-SYSTEMS / GEDAS, par 8.

⁴⁶¹ Commission Decision in case No COMP/M.4108 - T-SYSTEMS / GEDAS, par 9.

⁴⁶² Ibid., par 10.

⁴⁶³ http://europa.eu/rapid/press-release_IP-06-544_en.htm

Seagate is a US based organisation that is active in designing, manufacturing and marketing of HDDs. It also produces thin-film recording media and read/writes heads that are used in its HDDs.⁴⁶⁴ Maxtor is a supplier of HDDs and is, like Seagate, active in the production of recording media for its own produced HDDs.⁴⁶⁵

As regards the relevant product market and geographical scope

HDD

“In 2002, the Commission found in its decision Hitachi / IBM that 3.5” SCSI HDDs were mainly used in server computers in enterprise applications, 3.5” IDE/ATA HDDs mainly in desktop computers, and 2.5” IDE/ATA HDDs for mobile, i.e. notebook applications. On this basis, the Commission considered different markets for HDDs for servers in enterprise applications, for desktops and for mobile applications, ultimately leaving open the exact market definition. HDDs with form factors smaller than 2.5” were not affected in Hitachi/IBM”.⁴⁶⁶ “The market investigation has [...] broadly confirmed the Commission’s earlier product market definition. HDD producers regularly sell different HDD models for enterprise, desktop, mobile and consumer electronics applications”.⁴⁶⁷ “The ultimate market definition can, however, be left open, since the merger does not lead to competition concerns under either alternative market definition according to applications (overall HDD or enterprise HDD and desktop HDD)”.⁴⁶⁸

“[...] The market in the present case can be considered to be at least EEA-wide but the exact market definition can be left open since the analysis of this case does not differ under alternative market definitions of world-wide and EEA-wide markets”.⁴⁶⁹

⁴⁶⁴ http://europa.eu/rapid/press-release_IP-06-544_en.htm; Cf. Commission Decision in case No COMP/M.4100 - SEAGATE / MAXTOR, par 2.

⁴⁶⁵ http://europa.eu/rapid/press-release_IP-06-544_en.htm; Cf. Commission Decision in case No COMP/M.4100 - SEAGATE / MAXTOR, par 3.

⁴⁶⁶ Commission Decision in case No COMP/M.4100 - SEAGATE / MAXTOR, par 10.

⁴⁶⁷ Ibid., par 12.

⁴⁶⁸ Ibid., par 18.

⁴⁶⁹ Ibid., par 20.

M. 3998 Axalto - Gemplus

The European Commission clears the sole control acquisition of Gemplus by Axalto, subject to conditions.⁴⁷⁰

Axalto is a company active in the manufacturing of secure plastic cards and related products and services. Gemplus is active in the same sector.

As regards the relevant product market and geographical scope

Cards by application

“The Parties submit that the most appropriate product market definition is the whole market for secure plastic cards”.⁴⁷¹ “Further distinctions within the smart cards segment have to be made according to the technology used in the chip”.⁴⁷² “Finally, within the microprocessor cards segment, another distinction should be made according to the application of the card. The three major application segments are telecommunication (76%), banking (13.6%) and government & ID (3.7%)⁵, the first being by far the largest and most important one, the last being the one with the highest expected growth rate”.⁴⁷³

The EC states that: *“It seems unlikely that the relevant market may extend beyond each of the main categories such as SIM and payment cards”.⁴⁷⁴ “It therefore results from these findings that the distinction by application (and at least distinguishing between SIM cards and payment cards) is the most appropriate to assess the competition impact of the transaction”.⁴⁷⁵*

As regards the geographical scope for SIM-cards, the EC states that: *“considering a EEA-wide or a worldwide dimension (meaning in the regions where SIM cards are used) can be left open as the competitive assessment of the transaction will remain unchanged”.⁴⁷⁶*

As regards the geographical scope for payment cards, the EC is of the opinion that this market is national in scope.⁴⁷⁷

As regards the other type of cards considered, no definition is given as it is not relevant in this case.⁴⁷⁸

OTA SIM cards administration.

⁴⁷⁰ http://europa.eu/rapid/press-release_IP-06-664_en.htm

⁴⁷¹ Commission Decision in case No COMP/M.3998 - AXALTO / GEMPLUS, par 11.

⁴⁷² Ibid., par 14.

⁴⁷³ Ibid., par 16.

⁴⁷⁴ Ibid., par 22.

⁴⁷⁵ Ibid., par 24.

⁴⁷⁶ Ibid., par 32.

⁴⁷⁷ Ibid., par 34.

⁴⁷⁸ Ibid., par 35.

*“The Commission [...] considers that the provision of OTA SIM card administration and services platforms consist of a distinct product market”.*⁴⁷⁹

As regards the geographical scope, the EC states that: *“However considering a dimension narrowed to the EEA or a worldwide dimension (meaning in the regions where SIM cards are used) can be left open as the competitive assessment of the transaction will remain unchanged under any considered definition”.*⁴⁸⁰

⁴⁷⁹ Ibid., par 29.

⁴⁸⁰ Ibid., par 37.

M. 4204 Cinven – UPC France

The European Commission clears the sole control acquisition of UPC France by Cinven.⁴⁸¹

Cinven is a UK risk-capital investment group. UPC France operates a cable network and provides television, Internet and telephone services in France.⁴⁸² This transaction brings together UPC-Noos and Numéricable, the new entity will cover all the French cable subscribers.

As regards the relevant product market and geographical scope

In general, the Commission distinguishes between: (I) the traditional free TV market, financed by advertising and/or public funds, and (II) pay-TV markets mainly financed by subscriptions.⁴⁸³

Even though “The parties consider that this distinction is blurred”.⁴⁸⁴ Investigation of the EC showed that the separation still holds.⁴⁸⁵ This leads to the consideration of two relevant product markets:

The market for the acquisition of distribution rights of Pay TV channels

The EC states that, in line with previous decisions and conformed by the investigation, no segmentation needs to be made regards the mode of distribution.⁴⁸⁶ As distinction between genres is considered to be out of the question since this does not change the conclusion.⁴⁸⁷

The market for pay-TV distribution

In previous decisions the Commission had proposed to distinguish within the French market for pay-TV distribution between, the distribution of Cable and satellite bouquets of multi-channel, on the one hand, and the distribution of the terrestrial premium channel Canal +, on the other hand.⁴⁸⁸ The market investigation confirms this view.

However, the question of the inclusion of Canal+ in this case can be left open, since it does not alter the outcome.⁴⁸⁹

Referring to previous cases were the Commission left the question of separating the market by form of distribution. In this case the EC again leaves open the question, as it does not change the conclusion.⁴⁹⁰

⁴⁸¹ http://europa.eu/rapid/press-release_IP-06-990_en.htm; Cf. Commission Decision in case No COMP/M.4204 - CINVEN / UPC FRANCE, par 4.

⁴⁸² http://europa.eu/rapid/press-release_IP-06-990_en.htm

⁴⁸³ Commission Decision in case No COMP/M.4204 - CINVEN / UPC FRANCE, par 8.

⁴⁸⁴ Ibid., par 10.

⁴⁸⁵ Ibid., par 11.

⁴⁸⁶ Ibid., par 22.

⁴⁸⁷ Ibid., par 23 –24.

⁴⁸⁸ Ibid., par 26.

⁴⁸⁹ Ibid., par 27.

⁴⁹⁰ Ibid., par 31.

M. 4214 Alcatel – Lucent Technologies

The European Commission clears the merger between Alcatel and Lucent.⁴⁹¹

Alcatel is a French company active in the telecommunication sector. It supplies telecommunications equipment and related services to operators of communications networks. Lucent Technologies is active in the same sector but is US based.⁴⁹²

As regards the relevant product market

Optical network products

“As the Commission recognised in its Ericsson/Marconi case, optical network products have traditionally been segmented into three categories based on the functions performed by devices in each category”.⁴⁹³ “The parties consider it appropriate for purpose of this notification to identify a single market for optical network products, as the traditional segmentations would be blurred”.⁴⁹⁴ “The market investigation has revealed that optical network products cannot in general be considered as belonging to an overall product market”.⁴⁹⁵

“For the purpose of the present case, however, it is not necessary to delineate the precise scope of the relevant product market for optical network products, as in all alternative market definitions considered, effective competition would not be significantly impeded”.⁴⁹⁶

Broadband access solutions

“The parties argue that, based on the strong demand for ‘triple play’ services and developments, there is increasing substitutability between the different technologies discussed”.⁴⁹⁷

“For the purpose of the present case, however, it is not necessary to delineate the precise scope of the relevant product market for broadband access solutions, as in all alternative market definitions considered, effective competition would not be significantly impeded”.⁴⁹⁸

Switching and routing equipment (S/R equipment)

“The Commission has examined transactions involving suppliers of switching and routing equipment (hereinafter referred to as ‘S/R equipment’) in a number of prior decisions and, in particular, has considered to what extent the relevant product

⁴⁹¹ http://europa.eu/rapid/press-release_IP-06-1056_en.htm

⁴⁹² http://europa.eu/rapid/press-release_IP-06-1056_en.htm

⁴⁹³ Commission Decision in case No COMP/M.4214 - ALCATEL / LUCENT TECHNOLOGIES, par 11.

⁴⁹⁴ Ibid., par 12.

⁴⁹⁵ Ibid., par 13.

⁴⁹⁶ Ibid., par 15.

⁴⁹⁷ Ibid., par 18.

⁴⁹⁸ Ibid., par 23.

*markets should be segmented on a product-by-product basis or instead encompass multiple products. Although the Commission did not adopt a definitive market definition in these earlier decisions, it did recognise the growing multi-functionality and convergence between switches and routers”.*⁴⁹⁹

*“For the purpose of the present case, however, it is not necessary to delineate the precise scope of the relevant product market for S/R equipment, as in all alternative market definitions considered, effective competition would not be significantly impeded”.*⁵⁰⁰

TDM switches (narrowband switches)

*“The Commission considered in its Ericsson/Marconi case whether TDM switching and softswitch solutions for newer IP-based networks perform comparable switching functionalities”.*⁵⁰¹ *“The parties submit that TDM switches should be considered as a separate market”.*⁵⁰² *“The market investigation supports the view of the parties”.*⁵⁰³

“For the purpose of the present case, however, it is not necessary to delineate the precise scope of the relevant product market, as in all alternative market definitions considered, effective competition would not be significantly impeded”.

As regards the geographical scope

*“The parties contend that, in line with the Commission’s prior decisional practice in this industry²², the geographic market for telecommunications equipment is at least EEA- wide and possibly broader (world-wide)”.*⁵⁰⁴ *“The Commission’s market investigation has confirmed that the geographic market for all categories of networking products is at least EEA-wide, if not broader, for similar reasons”.*

*“For the purpose of this decision it is not necessary to decide on the exact geographic market definition, given that in any case the concentration will not significantly impede effective competition in the common market or in a substantial part of it”.*⁵⁰⁵

⁴⁹⁹ Ibid., par 26.

⁵⁰⁰ Ibid., par 29.

⁵⁰¹ Ibid., par 31.

⁵⁰² Ibid., par 32.

⁵⁰³ Ibid., par 33.

⁵⁰⁴ Ibid., par 36.

⁵⁰⁵ Ibid., par 38.

M. 4353 Permira – ALL3Media Group

The European Commission clears the sole control acquisition of All3Media by Permira.⁵⁰⁶

Permira is a private equity firm which has joint control over SBS Broadcasting. All3Media, mainly operating in the UK, is active in independent TV production, distribution of television programmes and talent management.⁵⁰⁷

SBS, primarily active in the Netherlands and Scandinavia, is operating in pay television, commercial free-to-air television, television advertising, radio broadcasting, radio advertising, localisation services (i.e. subtitles and dubbing), the publication of magazines containing radio and television listings and magazine advertising.⁵⁰⁸

As regards the relevant product market and geographical scope

Production of Captive and Non-captive TV programmes

*“The Commission has, in previous cases, distinguished the markets for (i) TV productions produced by broadcasters for captive use on their own channels and (ii) non-captive TV productions”.*⁵⁰⁹

*“The Commission’s market investigation confirms that the market as previously defined still operates in this way. For the purpose of the present case however, the precise definition of the market can be left open since the transaction will not give rise to competition concern”.*⁵¹⁰

*“The notifying party proposed that the geographical scope of this market is national and possibly wider. In previous cases, the Commission has taken the view that the market for Dutch TV productions was national”.*⁵¹¹

*“The market investigation confirms that TV content is made for a national market [...]. There are no indications of any need to depart from this geographic scope in the present case”.*⁵¹²

Distribution (i.e. licensing) of TV broadcasting rights

“The Commission has distinguished the distribution (licensing) of premium film rights and football rights from rights to other types of non-premium television programming⁹. It has also distinguished separate markets for the licensing of television broadcasting rights to pay TV and to free-to-air TV. [...] For the purpose of the present case, the precise market definition can be left open since the

⁵⁰⁶ http://europa.eu/rapid/press-release_IP-06-1245_en.htm

⁵⁰⁷ http://europa.eu/rapid/press-release_IP-06-1245_en.htm

⁵⁰⁸ Cf. Commission Decision in case No COMP/M.4353 - PERMIRA / ALL3MEDIA GROUP, par 8 – 9.

⁵⁰⁹ Ibid., par 11.

⁵¹⁰ Ibid., par 12.

⁵¹¹ Ibid., par 14.

⁵¹² Ibid., par 15.

*transaction will not give rise to competition concerns”.*⁵¹³

*“In previous decisions, the Commission took the view that the geographic scope of the distribution market may be national or linguistically homogenous (e.g. Germany, Austria and the German-speaking part of Switzerland; the UK and Ireland). The precise geographic scope can be left open in view of the negligible activities of A3M in this market”.*⁵¹⁴

⁵¹³ Ibid., par 13.

⁵¹⁴ Ibid., par 16.

M. 4297 Nokia - Siemens

The European Commission clears the merger between Nokia and Siemens.⁵¹⁵ Both the parties will establish a newly formed Dutch company 'NSN'. Each will own 50% of the shares, but Nokia will have the sole control.⁵¹⁶

Nokia, a Finnish company, is mainly active in the mobile telecommunications sector.⁵¹⁷ Siemens, a German company, has activities in the telecommunications sector and a number of other areas.⁵¹⁸

As regards the relevant product market and geographical scope

Mobile network equipment

*“The Parties are active in the supply of mobile network equipment, which according to the Parties has the following key components: (i) Radio Access Network ('RAN'), (ii) Core Network System ('CNS') and (iii) Network management and business management systems”.*⁵¹⁹

*“The Parties argue that for the purpose of defining a relevant market it is appropriate to include not only equipment supporting GSM/GPRS/EDGE and W-CDMA technologies of the kind supplied by the Parties, but also equipment supporting other mobile standards e.g., CDMA2000 1x EV-DO, cdmaOne and CDMA 2000 1x”.*⁵²⁰

*“With reference to Commission precedents, the Parties furthermore contend that there are strong arguments to define an overall global mobile network equipment market, encompassing RAN, CNS, and associated software (OSS/BSS) - without distinguishing between mobile and fixed-line OSS”.*⁵²¹

*“The Parties consider, however, that there is no need to determine the precise scope of the relevant product market in the area of mobile network equipment since the transaction does not raise competitive concerns, even on the basis of the narrowest market definition considered”.*⁵²²

The EC, after investigation responds that indeed: *“In any event, for the purpose of the present case it is not necessary to delineate the precise scope of the relevant product markets as in all alternative market definitions considered, the assessment would not change”.*⁵²³

“In line with the Commission's decisional practice, the Parties submit that the scope of the relevant mobile network equipment market(s) is (are) global, or at least EEA-

⁵¹⁵ http://europa.eu/rapid/press-release_IP-06-1552_en.htm

⁵¹⁶ Commission Decision in case No COMP/M.4297 - NOKIA / SIEMENS, par 5 – 6.

⁵¹⁷ http://europa.eu/rapid/press-release_IP-06-1552_en.htm; Cf. Commission Decision in case No COMP/M.4297 - NOKIA / SIEMENS, par 3.

⁵¹⁸ http://europa.eu/rapid/press-release_IP-06-1552_en.htm; Cf. Commission Decision in case No COMP/M.4297 - NOKIA / SIEMENS, par 4.

⁵¹⁹ Commission Decision in case No COMP/M.4297 - NOKIA / SIEMENS, par 10.

⁵²⁰ Ibid., par 16.

⁵²¹ Ibid., par 17.

⁵²² Ibid., par 18.

⁵²³ Ibid., par 29.

wide”.⁵²⁴

The EC states that: “For the purpose of this decision the scope of the relevant markets may be left open as the assessment would not be different whether the scope of the market is taken to be EEA-wide or world-wide”.⁵²⁵

Fixed-line network equipment

“According to the Parties, a public fixed-line telecommunication network comprises the following key infrastructure elements: (i) network access equipment for the local loop, (ii) core network equipment and applications (including public switching) and (iii) transport and IP networking equipment”.⁵²⁶

The EC stated: “In any event, for the purpose of the present case it is not necessary to delineate the precise scope of the relevant product markets as in all alternative market definitions considered, the assessment would not change”.⁵²⁷

“The Commission has confirmed in previous cases that the markets for telecommunications equipment were at least EEA-wide, if not worldwide”.⁵²⁸ “The Commission’s market investigation has evidenced that that most competitors and customers consider the market for fixed-line network equipment to be at least EEA-wide if not global”.⁵²⁹

Associated mobile and fixed-line services

“[...] the Commission has assessed the effects of the transaction under all possible alternative market definitions where the combined market share is above 15%. In particular: i) all mobile and fixed services; ii) all mobile services only. Within mobile services: iii) deployment, delivery & installation services; iv) maintenance and care services. In any event, for the purpose of the present case it is not necessary to delineate the precise scope of the relevant product markets as in all alternative market definitions considered, the assessment would not change”.⁵³⁰

“The Commission’s market investigation has evidenced that that most competitors and customers consider the market for associated mobile and fixed-line services to be at least EEA-wide if not global”.⁵³¹

“For the purpose of this decision it is not necessary to decide on the exact geographic market definition (EEA or world-wide), given that in any case the concentration will not significantly impede effective competition in the common market or in a substantial part of it”.⁵³²

⁵²⁴ Ibid., par 47.

⁵²⁵ Ibid., par 48.

⁵²⁶ Ibid., par 30.

⁵²⁷ Ibid., par 41.

⁵²⁸ Ibid., par 49.

⁵²⁹ Ibid., par 51.

⁵³⁰ Ibid., par 46.

⁵³¹ Ibid., par 53.

⁵³² Ibid., par 54.

M. 4417 Telecom Italia – AOL German Access business

The European Commission clears the sole control acquisition of OAL German Access business by Telecom Italia.⁵³³

Telecom Italia is the parent company of Telecom Italia Group. Its business lies within the telecommunications sector, particularly in voice telephony, mobile services and data transmission.⁵³⁴ AOL is a wholly owned subsidiary of Time Warner. In Germany, AOL provides Internet access and other related Internet services.⁵³⁵

As regards the relevant product market and geographical scope

*“For the purpose of the present analysis, it is proposed therefore to base the assessment on the following relevant product markets: (i) provision of internet access (both broadband and narrowband) to ‘small’ (residential and micro-business) customers; (ii) or alternatively provision of broadband internet access only to ‘small’ (residential and micro-business) customers; (ii) and the provision of narrowband internet access only to ‘small’ (residential and micro-business) customers”.*⁵³⁶

*“Whereas in earlier decisions the Commission took the view that distinct markets could be considered for residential and business customers, in recent decisions the Commission has taken the view that the demands of residential customers and business customers without any significant needs are converging as a result of the introduction of broadband internet access technologies”.*⁵³⁷

*“The Commission also took the view in that decision that high-speed internet access for residential customers must be distinguished from high-speed internet access for business customers”.*⁵³⁸

As regards the distinction between residential and business, the EC is consistent with previous decisions.

*“In its former decisions, the Commission has consistently held that the relevant geographic markets for internet access were essentially national. [...] For the purposes of the present case therefore the relevant geographic market can be defined as national”.*⁵³⁹

⁵³³ http://europa.eu/rapid/press-release_IP-06-1644_en.htm

⁵³⁴ http://europa.eu/rapid/press-release_IP-06-1644_en.htm

⁵³⁵ http://europa.eu/rapid/press-release_IP-06-1644_en.htm

⁵³⁶ Commission Decision in case No COMP/M.4417 - TELECOM ITALIA / AOL GERMAN ACCESS BUSINESS, par 24.

⁵³⁷ Ibid., par 13.

⁵³⁸ Ibid., par 15.

⁵³⁹ Ibid., par 25.

M. 4442 Carphone Warehouse – AOL UK

The European Commission clears the sole control acquisition of AOL UK by Carphone Warehouse.⁵⁴⁰

CPW is an independent retailer of mobile communications. Furthermore, CPW is active in the supply of fixed-line telecommunication services.⁵⁴¹ AOL, a subsidiary of Time Warner, is a provider of online interactive service.⁵⁴²

As regards the relevant product market and geographical scope

Internet Access Services

*“In previous decisions the Commission distinguished three common forms of internet access (a) narrowband (dial-up service), (b) broadband (higher bandwidth services) and (c) dedicated access”.*⁵⁴³

*“In earlier decisions the Commission took the view that such separate markets could be considered for residential and business customers. However in more recent decisions the Commission has taken the view that because of the increased accessibility of broadband it is no longer appropriate to differentiate between residential customers and small business customers without significant needs (hereinafter referred to as micro- business customers)”.*⁵⁴⁴

*“Both the Commission and the UK's regulatory authority, Ofcom, have indicated in previous decisions that broadband and narrowband Internet access constitute two separate markets”.*⁵⁴⁵

*“However, as the proposed concentration does not give rise to any competition concerns on either basis, the question of whether broadband and narrowband constitute distinct markets can be left open”.*⁵⁴⁶

*“The Commission has consistently held that the relevant geographic markets for internet access were essentially national. [...] For the purposes of the present case, therefore, the relevant geographic market can be defined as national, i.e. the United Kingdom”.*⁵⁴⁷

Fixed-line Telephony Services

⁵⁴⁰ http://europa.eu/rapid/press-release_IP-06-1710_en.htm

⁵⁴¹ http://europa.eu/rapid/press-release_IP-06-1710_en.htm

⁵⁴² http://europa.eu/rapid/press-release_IP-06-1710_en.htm

⁵⁴³ Commission Decision in case No COMP/M.4442 - CARPHONE WAREHOUSE / AOL UK, par 12.

⁵⁴⁴ Ibid., par 12.

⁵⁴⁵ Ibid., par 17.

⁵⁴⁶ Ibid., par 18.

⁵⁴⁷ Ibid., par 19.

*“In line with the Commission's Recommendation on relevant product and services markets within the electronic communications sector, and the results of the subsequent market reviews carried out by Ofcom, the notifying party considers that a distinction should be drawn between business calls and residential calls”.*⁵⁴⁸

The EC states that: *“However, the precise definition of the relevant market can be left open as, regardless of the frame of reference, the proposed notification will not give rise to any competition concerns in the fixed telephony sector”.*⁵⁴⁹

*“The notifying party considers that the scope of the relevant geographic market for fixed telephony services is national, reasoning that this reflects the continuing importance of the role of national regulation in the telecommunications sector, the supply of upstream wholesale services on a national basis, as well as the fact that the pricing policies of telecommunications providers is predominantly national. This in line with the Commission's Recommendation. On this basis the Commission considers that, for the purposes of the present case, the relevant geographic market can be defined as national”.*⁵⁵⁰

⁵⁴⁸ Ibid., par 20.

⁵⁴⁹ Ibid., par 21.

⁵⁵⁰ Ibid., par 22.

M. 3916 T-mobile Austria – Tele.Ring

The European Commission clears the acquisition of Tele.Ring by T-mobile, subject to conditions.⁵⁵¹

T-Mobile is a provider of mobile and fixed telephony services in Austria. Its parent company is Deutsche Telecom, a world player in the telecom industry. Tele.ring is a provider of mobile and fixed telephony services in Austria.⁵⁵² All shares of Tele.ring are controlled by EHG.

As regards the product market and the geographical scope

The provision of mobile telecommunications services to end customers

“In its previous decisions the Commission did not further subdivide the market for the provision of mobile telecommunications services to end customers”.⁵⁵³ “The market investigation confirmed that this was also appropriate in this case”.⁵⁵⁴

“In accordance with previous Commission decisions, the notifying party suggests that the geographic market should be defined in national terms, i.e. restricted to Austria. The market investigation confirmed this assessment”.⁵⁵⁵

Wholesale market for call termination

“As established in previous Commission decisions, there is no substitute for call termination on each individual network since the operator transmitting the outgoing call can reach the intended recipient only through the operator of the network to which the recipient is connected. Each individual network therefore constitutes a separate market for termination”.⁵⁵⁶

“Geographic markets for call termination in mobile and fixed networks tend to be national”.⁵⁵⁷

Wholesale market for international roaming

“The former market definition to the effect that each individual network constitutes a separate market is consequently no longer appropriate. Instead, the networks largely compete with one another at national level”.⁵⁵⁸

“In previous decisions, the Commission regarded the market as national in scope (if the market was not anyway limited to the individual network). This analysis was based on the fact that wholesale international roaming agreements can be concluded only with companies which have an operating licence in the relevant country and licences to provide mobile services are restricted to national territory.

⁵⁵¹ http://europa.eu/rapid/press-release_IP-06-535_en.htm

⁵⁵² Commission Decision in case No COMP/M.3916 - T-MOBILE AUSTRIA / TELE.RING, par 4 – 5.

⁵⁵³ Ibid., par 10.

⁵⁵⁴ Ibid., par 11.

⁵⁵⁵ Ibid., par 19.

⁵⁵⁶ Ibid., par 21.

⁵⁵⁷ Ibid., par 22.

⁵⁵⁸ Ibid., par 27.

M. 2803 Telia - Sonera

The European Commission clears the merger between Telia and Sonera, subject to conditions.⁵⁵⁹

Telia, as a parent company, is a provider of retail communications services primarily active in Sweden. Sonera is the leading provider of international carrier services and domestic wholesale services in the Nordic and Baltic region.⁵⁶⁰

As regards the relevant product market and geographical scope

Mobile telephony services

*“The Commission has in a number of decisions recognised that there exists a market for the operation of mobile communications networks that cannot be seen as substitutable to fixed line telephony services”.*⁵⁶¹

*“The parties argue that no distinction should be made between corporate and residential customers”.*⁵⁶² The EC responds that: *“However, for the purpose of the current transaction it is not necessary to conclude on this matter since irrespective of whether such a distinction is made, this does not affect the final conclusion”.*⁵⁶³

*“A number of respondents have also argued that there is a distinct market for the provision of mobile communications services to corporate customers with pan-Nordic (i.e. at least two Nordic countries) needs”.*⁵⁶⁴ The EC states that: *“For the purpose of the current transaction it is, however, not necessary to conclude on whether there is a distinct product market for pan-Nordic mobile communications services since a determination of this issue does not affect the final conclusion”.*⁵⁶⁵

*“The relevant geographic scope of the market for mobile communications services is determined among other things, by the legal and regulatory system. In e.g. the Telia/Telenor decision, the Commission found that the relevant geographic market was national due to different national licensing obligations in different Member States [...]”.*⁵⁶⁶ *“[...] for the purpose of the current transaction it is not necessary to conclude on the relevant geographic market since this will have no impact on the final conclusion. The relevant geographic market/s is therefore left open”.*⁵⁶⁷

Wholesale International Roaming

⁵⁵⁹ http://europa.eu/rapid/press-release_IP-02-1032_en.htm

⁵⁶⁰ http://europa.eu/rapid/press-release_IP-02-1032_en.htm; Cf. Commission Decision in case No COMP/M.2803 - TELIA / SONERA, par 3 – 4.

⁵⁶¹ Commission Decision in case No COMP/M.2803 - TELIA / SONERA, par 10.

⁵⁶² Ibid., par 11.

⁵⁶³ Ibid., par 12.

⁵⁶⁴ Ibid., par 13.

⁵⁶⁵ Ibid., par 14.

⁵⁶⁶ Ibid., par 46.

⁵⁶⁷ Ibid., par 48.

*“The Commission has in a number of cases identified a potential market for the provision of wholesale international roaming to foreign network operators”.*⁵⁶⁸

*“The results of the market investigation have confirmed that wholesale international roaming can and is considered by most market participants as a distinct wholesale product. This is also the view taken by many national authorities. The Commission’s assessment has therefore been made on this basis”.*⁵⁶⁹

*“The Commission has previously indicated that the relevant market for wholesale international roaming is national in scope. The parties have not contested this view and in any event that view is also overall shared by third parties. For the purpose of the current transaction, the assessment has therefore been made on the basis of a national geographic market definition”.*⁵⁷⁰

Wireless Local Area Network- services (WLAN)

*“For the purpose of the current transaction it is not necessary to conclude on whether the provision of WLAN services should be considered as a separate product market or part of a wider mobile communications services and/or corporate communications services market since irrespective of the market definition chosen, this will not change the final conclusion (see further below). The relevant product market definition is therefore left open”.*⁵⁷¹

*“According to third parties, the geographic scope of this market is essentially national in scope. This has not been challenged by the parties. For the purpose of the assessment of the current decision the Commission has therefore made its assessment on the basis of a national market”.*⁵⁷²

Operator access to networks - Interconnection and call termination

*“As described in Case COMP/M.1439 - Telia/Telenor, interconnection is broadly considered to cover the means by which two separate networks exchange traffic between each other”.*⁵⁷³

*“Call termination is a wholesale network service that can be distinguished from other wholesale network services, even though it can be provided in combination of one or more of these services”.*⁵⁷⁴

“In the course of the market investigation it has been argued that at least the following termination markets are relevant for the assessment of the proposed transaction: mobile termination on Telia Mobile’s networks, mobile termination on

⁵⁶⁸ Ibid., par 15.

⁵⁶⁹ Ibid., par 19.

⁵⁷⁰ Ibid., par 49.

⁵⁷¹ Ibid., par 22.

⁵⁷² Ibid., par 50.

⁵⁷³ Ibid., par 23.

⁵⁷⁴ Ibid., par 25.

*Sonera's networks and termination in fixed networks".*⁵⁷⁵

*"[...], it may be concluded that there is a distinct wholesale product market for the provision of call termination on each of Telia's and Sonera's mobile telephony networks".*⁵⁷⁶

*As regards fixed networks, the Commission described in Case COMP/M.1439 - Telia/Telenor different types of operator access to local, long distance and international networks. According to that decision, operators need access to networks in order to terminate calls on other networks, or to receive calls for termination. [...] As a result, it can be concluded that there may also be a distinct wholesale product market for the provision of call termination on each of Telia's and Sonera's fixed telephony networks".*⁵⁷⁷

*"The geographic market for call termination in fixed networks is similarly considered to be essentially national in scope".*⁵⁷⁸

Corporate communications services

*In Case COMP/M.1439 - Telia/Telenor, the Commission identified a distinct market for the provision of business data communications services that form a separate product market from those related to traditional switched voice services since they use different underlying network equipment and often use technologies such as Frame Relay or ATM".*⁵⁷⁹

*"The Commission has in previous decisions found that there is also a distinct market for the provision of global telecommunications services to multinational corporations (GTS)".*⁵⁸⁰

*"A number of respondents to the Commission's market investigation have argued that in addition to domestic data communications and voice services provided by Sonera in Finland and Telia in Sweden, the proposed merger affects the market for the provision of pan-Nordic and Baltic customized communications services to regionally-based large businesses or corporate customers".*⁵⁸¹

"For the purpose of the assessment of the current transaction it can be left open whether there exists today a distinct market for the provision of pan-Nordic (at least two Nordic countries) and/or pan-Nordic/Baltic (at least two Nordic countries and one Baltic State) customized voice (fixed and mobile) and data corporate communications services as opposed to pan-European and/or global communications markets, or whether this is an emerging market, since this has no impact on the final

⁵⁷⁵ Ibid., par 27.

⁵⁷⁶ Ibid., par 31.

⁵⁷⁷ Ibid., par 32.

⁵⁷⁸ Ibid., par 51.

⁵⁷⁹ Ibid., par 33.

⁵⁸⁰ Ibid., par 36.

⁵⁸¹ Ibid., par 37.

conclusion".⁵⁸²

As regards the relevant geographical scope, different views were given (the last one being in line with previous decision-making practice). The EC concluded: "*However, since it is not necessary for the purpose of the current decision to conclude on this matter, the relevant geographic market/s definition is left open*".⁵⁸³

Internet Access Services

"Previous Commission investigations have indicated that a distinction, given the significant differences in demand (standards and price) and supply (profit maximisation), could be made between corporate and household customers".⁵⁸⁴

"For the purposes of the current transaction it is not necessary to decide on the relevant market definition(s) given that irrespective of the definition(s) chosen this does not affect the final conclusion".⁵⁸⁵

"The Commission has in previous decisions found that Internet access services to retail customers, whether narrow-band or broadband are essentially national in scope due to the necessity for local loop access and availability of free-phone/local call rate number to the nearest point of presence (POP) and the existing regulatory framework. This has also been confirmed in the current investigation".⁵⁸⁶

⁵⁸² Ibid., par 42.

⁵⁸³ Ibid., par 55.

⁵⁸⁴ Ibid., par 44.

⁵⁸⁵ Ibid., par 45.

⁵⁸⁶ Ibid., par 56.

2007

Thema	Zaak nr	Partijen
Merger	M.4504 C(2007) 3443	SFR / TELE 2
Merger	M.4721 C(2007) 3447	AIG CAPITAL PARTNERS / BULGARIAN TELECOMMUNICATIONS COMPANY
Merger	M.4662 C(2007) 5984	SYNIVERSE / BSG (wireless business)
Merger	M.4415 SG-Greffe (2007) D/200078	MOTOROLA / SYMBOL
Merger	M.4608 SG-Greffe (2007) D/202574	SIEMENS / UGS CORPORATION
Merger	M.4748 SG-Greffe (2007) D/205101	T-MOBILE / ORANGE NETHERLANDS
Merger	M.4611 SG-Greffe (2007) D/206141	EGMONT / BONNIER (BOOKS)
Merger	M.4519 SG-Greffe (2007)D/200209	LAGARDERE / SPORTFIVE
Merger	M.4503 SG-Greffe(2007) 200715	PBDS / PHILIPS APM
Merger	M.4947 SG-Greffe(2007) D/ 207195	VODAFONE / TELE2 ITALY / TELE2 SPAIN
Merger	M.4944 SG-Greffe(2007) D/ 20728	SAP / BUSINESS OBJECTS
Merger	M.4910 SG-Greffe(2007) D/ 208249	MOTOROLA / VERTEX
Merger	M.4502 SG-Greffe(2007) D/200717 SG-Greffe(2007)	LITE-ON / PBDS
Merger	M.4547 D/200851/200852	KKR / PERMIRA / PROSIEBENSAT.1
Merger	M.4521 SG-Greffe(2007) D/200899	LGI / TELENET
Merger	M.4465 SG-Greffe(2007) D/201304	THRANE & THRANE / NERA
Merger	M.4591 SG-Greffe(2007) D/202130 SG-Greffe(2007)	WEATHER INVESTMENTS / HELLAS TELECOMMUNICATIONS
Merger	M.4477 D/204694/204695	SES ASTRA / EUTELSAT / JV
Merger	M.4696 SG-Greffe(2007) D/205533 SG-Greffe(2007) D/205613,	KKR / HARMAN
Merger	M.4809 D/205614	FRANCE TELECOM / MID EUROPA PARTNERS / ONE
Merger	M.4871 SG-Greffe(2007) D/205986	KPN / GETRONICS
Merger	M.4933 SG-Greffe(2007) D/207071	EMERSON ELECTRIC CO / MOTOROLA ECC
Merger	M.4892 SG-Greffe(2007) D/207336	INFINEON / SIEMENS / JV
Merger	M.4709 SG-Greffe(2007)D 205105	APAX PARTNERS / TELENOR SATELLITE SERVICES
Merger	M.4404 C(2007) 2160	UNIVERSAL MUSIC GROUP / BMG MUSIC PUBLISHING

M. 4504 SRF – Tele2

The European Commission clears the sole control acquisition of Tele2 by SFR, subject to conditions.⁵⁸⁷

SRF, jointly controlled by Vivendi and Vodafone, is mainly active in the mobile telephony sector. Vivendi is a French media conglomerate; Vodafone is a British telecommunications company.⁵⁸⁸ Tele2 France, a subsidiary of Tele2 Europe, is active in the areas of fixed telephony, mobile telephony, Internet access and pay-TV distribution.⁵⁸⁹

As regards the relevant product market

The upstream and intermediate markets for broadcasting rights

*“Commission decisions have consistently distinguished between two categories of market relating to broadcasting rights”.*⁵⁹⁰

"Upstream" markets for the acquisition of broadcasting rights

*“For the purpose of the merger, the definition of upstream markets must be based on the market(s) relating to acquisition of VoD broadcasting rights”.*⁵⁹¹

*“Furthermore, the market survey carried out for the purposes of this case showed the relevance of defining a separate market for the acquisition of VoD broadcasting rights for recent films. Differences in terms of nature and especially of price compared with other types of VoD content (series, documentaries, etc.; see below) bear out the relevance of such a breakdown”.*⁵⁹² *“For the purposes of this analysis, however, the question of this possible breakdown may be left open since the conclusions of the analysis remain the same”.*⁵⁹³

"Intermediate" markets for distribution of channels

*“Commission decisions have consistently drawn a distinction between free and pay TV channels”.*⁵⁹⁴ *“In the light of all the aspects examined in this section, a distinction must be made between free and pay-TV channels, as was also confirmed by the responses to the market survey carried out in connection with this case”.*⁵⁹⁵

⁵⁸⁷ http://europa.eu/rapid/press-release_IP-07-1120_en.htm

⁵⁸⁸ http://europa.eu/rapid/press-release_IP-07-1120_en.htm; Cf. Commission Decision in case No COMP/M.4504 - SFR / TELE 2, par 5.

⁵⁸⁹ http://europa.eu/rapid/press-release_IP-07-1120_en.htm; Cf. Commission Decision in case No COMP/M.4504 - SFR / TELE 2, par 6.

⁵⁹⁰ Commission Decision in case No COMP/M.4504 - SFR / TELE 2, par 23.

⁵⁹¹ Ibid., par 29.

⁵⁹² Ibid., par 30.

⁵⁹³ Ibid., par 32.

⁵⁹⁴ Ibid., par 37.

⁵⁹⁵ Ibid., par 40.

*“In addition, the Commission has on several occasions considered a breakdown based on the themes of the channels (in particular premium and sports channels), but has not yet reached a definite decision on this issue”.*⁵⁹⁶
The EC stated in this case that: *“Although it is not necessary to reach a definitive conclusion on this question [...]”.*⁵⁹⁷

*“In previous decisions a distinction was also envisaged between the classical or "linear" channels and the non-linear channels (VoD, PPV), as well as within the non-linear services. However, there is no need to reach a definite conclusion regarding this breakdown in this Decision, since the competition analysis remains unchanged”.*⁵⁹⁸

The downstream market for retail distribution of pay-TV services

*“The Commission's consistent practice, which was confirmed by a recent decision, has been to consider distribution of pay TV and free TV as two separate product markets”.*⁵⁹⁹

As regards the geographical scope

*“In line with the position consistently taken in its decisions, the Commission has applied a national dimension with regard to all the markets defined in this part”.*⁶⁰⁰

⁵⁹⁶ Ibid., par 41.

⁵⁹⁷ Ibid., par 42.

⁵⁹⁸ Ibid., par 43.

⁵⁹⁹ Ibid., par 45.

⁶⁰⁰ Ibid., par 48.

M. 4721 AIG Capital Partners – Bulgarian Telecommunications Company

The European Commission clears the sole control acquisition of Bulgarian Telecommunications Company by AIG Capital Partners.⁶⁰¹

AIG Capital Partners provides investment advice and market asset management products and services on an international basis. Its parent company AIG offers a wide range of insurance products. Bulgarian Telecommunications Company (BTC) operates a fixed and mobile data and other telecommunication networks and data systems in Bulgaria.

As regards the relevant product market and geographical scope

Fixed (line) phone services

*“With reference to both the European regulatory framework for telecommunication services and previous Commission decisions, they delineate the product market further and distinguish between wholesale and retail level. Furthermore, the notifying party refers to previous Commission decisions, in which it took the view to consider fixed and mobile telephony to be separate markets”.*⁶⁰²

*“With respect to the geographic dimension, the notifying party submits that the market for fixed line telephony would be national in scope and refers to a previous Commission decision⁶ in this respect”.*⁶⁰³

The EC states that: *“Since AIG CP has no activities in this market or in a vertically related market in the EEA and hence no competition concerns arise from the proposed transaction under any possible delineation of the market, the precise definition can be left open”.*⁶⁰⁴

Leased line services

*“With reference to previous Commission decisions⁸, the notifying party concurs with the Commissions' view that the market for leased line services is national in scope”.*⁶⁰⁵

*“Since AIG CP has no activities in this market or in a vertically related market in the EEA and hence no competition concerns arise from the proposed transaction under any possible delineation of the market, the precise definition can be left open”.*⁶⁰⁶

Mobile telephony services

“In previous decisions, the Commission took the view that mobile telecommunication

⁶⁰¹ http://europa.eu/rapid/press-release_IP-07-1189_en.htm

⁶⁰² Commission Decision in case No COMP/M.4721 - AIG CAPITAL PARTNERS / BULGARIAN TELECOMMUNICATIONS COMPANY, par 9.

⁶⁰³ Ibid., par 10.

⁶⁰⁴ Ibid., par 11.

⁶⁰⁵ Ibid., par 13.

⁶⁰⁶ Ibid., par 14.

*services constitute a separate product market. With respect to further delineations as to digital and analogue mobile telecommunications, residential and business customers, pre-paid and post-paid contracts, however, the Commission ultimately left open the precise market definition ”.*⁶⁰⁷

*“With respect to mobile telecommunication services, the notifying party concurs with the Commission's view expressed in a number of decisions that the geographic dimension of such market is national in scope ”.*⁶⁰⁸

*“However, the precise definition can be left open since under any market definition, the proposed transaction would have no horizontal overlaps as AIG CP has no telecommunications activities in the EEA nor does it have any sales activities world-wide with respect to telecommunications equipment ”.*⁶⁰⁹

Broadcasting of radio and TV signals

*“According to the notifying party, supplying transmission services to broadcasters for their signals was identified as a product market by the Commission. Delineation into further sub-segments was ultimately left open ”.*⁶¹⁰ *“Due to the national scope of the network coverage, the notifying party proposes the geographic market definition to be national ”.*⁶¹¹

*“However, the precise definition can be left open since under any market definition, the proposed transaction would have no horizontal overlaps as AIG CP has no such broadcasting activities in the EEA ”.*⁶¹²

Internet access

*“With reference to previous Commission decisions, the notifying party distinguishes three common forms of internet access namely dial-up service, higher bandwidth services and dedicated access ”.*⁶¹³ *According to the notifying party, which agrees with the Commission's view expressed in previous decisions, internet access is national in scope.*⁶¹⁴

*Since AIG CP has no activities in this market or in a vertically related market in the EEA and hence no competition concerns arise from the proposed transaction under any possible delineation of the market, the precise definition can be left open.*⁶¹⁵

Data transmission

“A further telecommunication market was identified by the notifying party which is

⁶⁰⁷ Ibid., par 15.

⁶⁰⁸ Ibid., par 17.

⁶⁰⁹ Ibid., par 18.

⁶¹⁰ Ibid., par 19.

⁶¹¹ Ibid., par 20.

⁶¹² Ibid., par 21.

⁶¹³ Ibid., par 23.

⁶¹⁴ Ibid., par 24.

⁶¹⁵ Ibid., par 25.

*that for business data transmissions. Again, the notifying party views the geographic dimension of this market to be national, as also viewed by the Commission¹⁴. Since AIG CP has no activities in this market or in a vertically related market in the EEA and hence no competition concerns arise from the proposed transaction under any possible delineation of the market, the precise definition can be left open”.*⁶¹⁶

Pay phones

*“While previously the Commission has no precedence in this respect, the precise market definition can be left open since AIG CP has no such activities in the EEA or in a vertically related market”.*⁶¹⁷

Call centre services

*“The exact delineation of the market can be left open as no competition concerns arise under any possible market definition. Since AIG CP has no activities in this market or in a vertically related market in the EEA and hence no competition concerns arise from the proposed transaction under any possible delineation of the market, the precise definition can be left open”.*⁶¹⁸

⁶¹⁶ Ibid., par 26.

⁶¹⁷ Ibid., par 29.

⁶¹⁸ Ibid., par 33.

M. 4662 Syniverse – BSG (wireless business)

The European Commission clears the sole control acquisition of BSG Group by Syniverse.⁶¹⁹

Syniverse, a wholly owned subsidiary of Syniverse Holdings, is a global provider of technology services to wireless telecommunications companies. The BSG Group is a global provider of payment processing, data clearing, financial settlement and risk management solutions for fixed-line and wireless communication service providers. The proposed transaction only relates to the acquisition of the BSG Group's wireless business, mainly providing data and financial clearing services to mobile network operators (MNOs). The BSG Group retains its wireline business operating in North America.⁶²⁰

As regards the relevant product market and geographical scope

*“The notifying party submits that the relevant businesses for the purposes of this transaction are part of a multi-billion dollar global billing services market for mobile network operators (“MNOs”)”.*⁶²¹

*“This proposed transaction, however, concerns only a part of this billing services market, namely the data and financial clearing services for GSM roaming”.*⁶²²

*“Within the global billing services market, the notifying party submits that a product segment can be defined as the relevant product market for the purposes of the proposed transaction as that of billing services to MNOs, and in particular the markets for GSM roaming data clearing and financial clearing services”.*⁶²³

*“To date, the Commission has not defined those markets. The notifying party proposes that it can be left open whether data clearing and financial clearing are separate markets. However, they have accordingly provided estimated market shares based upon these proposed markets both at a world-wide and at an EEA level”.*⁶²⁴

*“The market investigation clearly confirmed that there are separate markets for data clearing and financial clearing services”.*⁶²⁵ *“Considering the results of the market investigation, it may be concluded that there is a separate market for GSM roaming data clearing services”.*⁶²⁶

*“The Commission has not defined the geographic scope of the relevant geographic markets in previous cases”.*⁶²⁷

“In any case, the exact definition of the relevant geographic market may be left open

⁶¹⁹ http://europa.eu/rapid/press-release_IP-07-1852_en.htm

⁶²⁰ http://europa.eu/rapid/press-release_IP-07-1852_en.htm

⁶²¹ Commission Decision in case No COMP/M.4662 - SYNIVERSE / BSG (wireless business), par 8.

⁶²² Ibid., par 9.

⁶²³ Ibid., par 11.

⁶²⁴ Ibid., par 17.

⁶²⁵ Ibid., par 18.

⁶²⁶ Ibid., par 21.

⁶²⁷ Ibid., par 22.

*for the purposes of the present case, as the proposed transaction does not significantly impede effective competition in the common market even in the narrowest possible EEA-wide geographic market”.*⁶²⁸

⁶²⁸ Ibid., par 35.

M. 4415 – Motorola - Symbol

The European Commission clears the sole control acquisition of Symbol by Motorola.⁶²⁹

Motorola is active in wireless handsets (mobile phones), wireless network infrastructures, laptop computers, communication and network systems and broadband products.⁶³⁰ Symbol manufactures and distributes 'ruggedised' mobile computers, data capture and scanning devices, wireless local area network infrastructure and radio frequency identification technology.⁶³¹

As regards the relevant product market and geographical scope

Ruggedised mobile computers

*“The respondents to the Commission’s market investigation have largely confirmed the parties’ claims, i.e. that the overall market for ruggedised mobile computers is a distinct market from the market for general computers and that two sub-markets exist within the overall market, one for larger ruggedised mobile form factor computers and another for smaller ruggedised mobile form factor computers”.*⁶³²

*“With respect to the geographic scope, the Parties submit that the market for ruggedised mobile computers is at least EEA-wide”.*⁶³³ *“The market investigation revealed that the distinct markets for ruggedised mobile computers appear to be of world-wide scope”.*⁶³⁴

*“Thus, for the competitive assessment of the proposed transaction, the relevant markets to be considered will be both the global and the EEA-wide overall markets for larger ruggedised mobile form factor computers and for smaller ruggedised mobile form factor computers, but also the potential sub-markets for notebook computers, on-board/fixed vehicle computers, tablet computers, luggagable computers, handheld computers and wearable computers, again both world-wide and EEA-wide”.*⁶³⁵

WLAN infrastructure

“The Commission has identified the provision of data networking equipment as a separate product market in previous decisions, with a possible distinction between WLAN and local area network (‘LAN’) products as well as single components of the respective systems. However, as the competitive analysis does not vary significantly with a change in the market definition, the question does not have to be finally

⁶²⁹ http://europa.eu/rapid/press-release_IP-07-16_en.htm

⁶³⁰ http://europa.eu/rapid/press-release_IP-07-16_en.htm; Cf. Commission Decision in case No COMP/M.4415 - MOTOROLA / SYMBOL, par 2.

⁶³¹ http://europa.eu/rapid/press-release_IP-07-16_en.htm; Cf. Commission Decision in case No COMP/M.4415 - MOTOROLA / SYMBOL, par 3.

⁶³² Commission Decision in case No COMP/M.4415 - MOTOROLA / SYMBOL, par 10.

⁶³³ Ibid., par 11.

⁶³⁴ Ibid., par 12.

⁶³⁵ Ibid., par 13.

resolved at this point".⁶³⁶

Data capture and scanning devices

"The Parties acknowledge that the overall market for data capture and scanning devices could potentially be further divided into different markets for laser scanners, linear imager scanners and 2D imagers".⁶³⁷

"The Commission in its competitive assessment will not only analyse the overall market for data capture and scanning devices, but also the narrower sub-segments according to the various functions as distinguished above".⁶³⁸

"With regard to the relevant geographic market, the Parties submit that it is likely to be at least EEA-wide, given that the devices sold throughout the EEA are the same, there are no appreciable price differences within the EEA, customers purchase their supply on a pan-European, if not worldwide basis, and the devices sold in the EEA are typically sourced from one or two distribution centres within the EEA".⁶³⁹

"Due to the arguments put forward by the Parties, which have not been challenged in the course of the market investigation, it appears that the market for data capture and scanning devices is at least EEA-wide. However, as it cannot be excluded that the relevant geographic market is indeed worldwide, the following assessment will consider both geographical market data as far as possible".⁶⁴⁰

⁶³⁶ Ibid., par 14.

⁶³⁷ Ibid., par 16.

⁶³⁸ Ibid., par 17.

⁶³⁹ Ibid., par 18.

⁶⁴⁰ Ibid., par 19.

M. 4608 – Siemens – UGS Corporations

The European Commission clears the sole control acquisition of UGS by Siemens.⁶⁴¹

UGS, is a US based company, that provides product life-cycle management software. Siemens is active in various business areas comprising inter alia information and communication technology, automation and control, power generation and transmission equipment, transportation, medical solutions, lighting and financial services.⁶⁴²

As regards the relevant product market and geographical scope

PLM software and solutions

*“According to the parties, PLM software and solutions constitute a distinct product market comprising business software applications that support the end user in managing the life cycle of its products”.*⁶⁴³

*“The parties submit that while, on the one hand, the market for PLM software and solutions can be considered to be part of the overall business software category Enterprise Application Software (“EAS”), on the other hand, PLM solutions would have all the elements of a distinct market within the overall category EAS, given its specific features and functionalities”.*⁶⁴⁴

*“For the purpose of the present case, however, the precise delineation of the product market can be left open since even on the basis of a narrower definition no serious competition concern would arise from the proposed transaction”.*⁶⁴⁵

*“With respect to the relevant geographic scope, the parties submit that the market for PLM solutions is worldwide or at the very least EEA-wide in scope. On the basis of previous Commission decisions⁴ the parties’ view appears to be appropriate. Also, the market investigation largely confirmed that PLM solutions are traded homogeneously in most world regions or at least within the EEA. Furthermore, none of the competitors considered that their PLM solutions were specifically tailored for the EEA market. Since the competitive assessment would not be different under a narrower definition, i.e. EEA-wide, the precise definition of the geographic scope of the market can be left open”.*⁶⁴⁶

A&C Products

Level 1

⁶⁴¹ http://europa.eu/rapid/press-release_IP-07-588_en.htm

⁶⁴² http://europa.eu/rapid/press-release_IP-07-588_en.htm

⁶⁴³ Commission Decision in case No COMP/M.4608 - SIEMENS / UGS CORPORATION, par 8.

⁶⁴⁴ Ibid., par 9.

⁶⁴⁵ Ibid., par 10.

⁶⁴⁶ Ibid., par 11.

*“According to the parties, within level 1 automation products, PLC constitutes a separate product market and in this regard they make reference to a previous Commission decision”.*⁶⁴⁷

*“Like for PLC, the parties also consider CNC to be a distinct product market with reference to a previous Commission decision⁶. Again, the parties argue in their notification for a worldwide market, or at the very least an EEA-wide market”.*⁶⁴⁸

*“Since, as regards these level 1 automation products, PLC and CNC, no serious competition concern would arise from the proposed transaction under any alternative definition, the precise market definitions can be left open”.*⁶⁴⁹

Level 2

*“As regards level 2 automation products, while the parties consider the market for HMI software solutions (including professional services) to be the relevant product market, they also elaborate on a possibly narrower delineation which includes HMI software only (i.e. excluding associated services consisting of maintenance and professional services). They consider the geographic scope of this market to be worldwide, or at least EEA-wide”.*⁶⁵⁰

Level 3

*“Like for HMI, as regards level 3 automation products, the parties suggest the market for MES software solutions (including professional services) to be the relevant market and they also, alternatively, consider a narrower delineation involving MES software only. As regards the geographic scope, they consider the market to be worldwide or at least EEA-wide”.*⁶⁵¹

*“The market investigation has largely confirmed the parties’ delineation of the markets mentioned above. For the purpose of the assessment of the present case, the relevant markets to be considered will be both the worldwide and the EEA market for HMI software solutions and the worldwide and the EEA market for MES software solutions. In addition, the assessment would not change whether or not professional services are included in each product market at stake”.*⁶⁵²

⁶⁴⁷ Ibid., par 14.

⁶⁴⁸ Ibid., par 15.

⁶⁴⁹ Ibid., par 16.

⁶⁵⁰ Ibid., par 17.

⁶⁵¹ Ibid., par 18.

⁶⁵² Ibid., par 19.

M. 4748 T-Mobile – Orange Netherlands

The European Commission clears the sole control acquisition of Orange Netherlands by T-Mobile.⁶⁵³

T-Mobile Netherlands, ultimately controlled by Deutsche Telekom is a Dutch Mobile Network Operator ("MNO"). Its mobile arm T-Mobile International concentrates on mobile telecommunications markets in Western and Central Europe and the U.S.⁶⁵⁴

Orange Nederland N.V. ("ONL") and Orange Nederland Breedband B.V. ("ONB"), together Orange Netherlands and currently belonging to France Télécom, are Dutch telecom companies. ONL is a mobile network operator offering mobile services to retail and business customers with a national network covering 99.9% of the Dutch population. ONB provides broadband services including high-speed internet and Voice over IP.⁶⁵⁵

As regards the relevant product market and geographical scope

*“Both parties operate mobile telephony networks in the Netherlands and are active in the various retail and wholesale markets in mobile telephony. The parties propose to define the relevant product markets in line with previous Commission decisions and along the Commission’s Recommendation of 11 February 2003 on Relevant Product and Service Markets (the “Recommendation”). The relevant markets concerning mobile telecommunications services in this case (which are all national in scope) are”.*⁶⁵⁶

Retail market for the provision of mobile telecommunications services to end-consumers

*“The Commission consequently assessed the previous cases on the basis of a single market for the provision of mobile telecommunications services to end customers”.*⁶⁵⁷

*“With respect to the relevant network technology (2G/GSM or 3G/UMTS networks) the Commission found that, at least as far as voice telephony and small-bandwidth data services (e.g. SMS, MMS) are concerned, 2G and 3G networks are substitutable to each other. The Commission, however, left open whether 2G networks constitute a substitute for 3G network regarding large-bandwidth data services, e.g. multi-media services”.*⁶⁵⁸

*“However, as the present case does not raise any competition concerns with respect to mobile broadband data (and multimedia) services, the exact delineation between 2G and 3G networks can be left open for the purpose of the present case”.*⁶⁵⁹

⁶⁵³ http://europa.eu/rapid/press-release_IP-07-1238_en.htm

⁶⁵⁴ http://europa.eu/rapid/press-release_IP-07-1238_en.htm

⁶⁵⁵ http://europa.eu/rapid/press-release_IP-07-1238_en.htm

⁶⁵⁶ Commission Decision in case No COMP/M.4748 - T-MOBILE / ORANGE NETHERLANDS, par 8.

⁶⁵⁷ Ibid., par 9.

⁶⁵⁸ Ibid., par 10.

⁶⁵⁹ Ibid., par 14.

*“For the purpose of the present decision, the assessment will therefore be made on the basis of a single market for the provision of mobile telephony services to end customers, in so far as they can be provided on both a 2G and a 3G basis”.*⁶⁶⁰

*“In accordance with previous Commission decisions, the notifying party suggests that the geographic market should be defined in national terms, i.e. restricted to the Netherlands. The market investigation confirmed the Commission's decision practice”.*⁶⁶¹

Wholesale access and call origination on public mobile telephone networks

*“In any event, the assessment in the present case would not alter independent on the market definition for the wholesale access and call origination on public mobile phone networks”.*⁶⁶²

*“The geographic scope of the market for wholesale access and call origination on public mobile telephone networks is national. This is due to regulatory barriers, as the geographical scope of the licences granted to MNOs is in principle limited to areas which do not extend beyond the borders of a Member State. Moreover, the coverage of mobile networks tends to correspond to national borders, with the result that the supply of access and origination at wholesale level is national in scope, i.e. the Netherlands in the present case”.*⁶⁶³

Wholesale market for call termination on mobile telephone networks

*“As established in previous Commission decisions, there is no substitute for call termination on each individual network [...]. The Recommendation and the Commission's decision practice, accordingly, regard call termination in each different (fixed and mobile) network as constituting a separate market. The relevant product markets are thus T-Mobile's and Orange's respective mobile networks”.*⁶⁶⁴

*“Geographic markets for call termination in mobile networks are national in scope. This is essentially owing to regulatory barriers as the geographical scope of T-Mobile's and Orange's licences is limited to the Netherlands. The coverage of T-Mobile's and Orange's mobile networks corresponds to national borders, with the result that the supply of call termination at wholesale level is also national in scope, i.e. the Netherlands”.*⁶⁶⁵

Wholesale market for international roaming

*“ [...] the Commission previously reached the provisional conclusion that each network constituted a separate market for the provision of wholesale international roaming services”.*⁶⁶⁶ *“In recent decisions the Commission considered that all*

⁶⁶⁰ Ibid., par 15.

⁶⁶¹ Ibid., par 16.

⁶⁶² Ibid., par 17.

⁶⁶³ Ibid., par 18.

⁶⁶⁴ Ibid., par 20.

⁶⁶⁵ Ibid., par 21.

⁶⁶⁶ Ibid., par 24.

mobile networks in a given country compete with each other for the inbound roaming traffic in that country”. ⁶⁶⁷

“In previous decisions, the Commission regarded the market as national in scope. This analysis is based on the fact that wholesale international roaming agreements can be concluded only with companies which have an operating licence in the relevant country and licences to provide mobile services are restricted to national territory”. ⁶⁶⁸

⁶⁶⁷ Ibid., par 26.

⁶⁶⁸ Ibid., par 27.

M. 4611 Egmont – Bonnier (Books)

The European Commission clears the sole control acquisition of Bonnier book publishing business, by Egmont, subject to conditions.⁶⁶⁹

Egmont is a media group active in a variety of areas, including book publishing. The Bonnier group is active in more than twenty countries with a particular focus on Northern Europe. Its Danish subsidiary - Bonnier Forlagene A/S, comprising six publishing houses and a book club chain - is active as a book publisher in Denmark.⁶⁷⁰

As regards the relevant product market and geographical scope

*“The relevant markets in which the parties are active along the “book value chain” concern the markets for (i) the acquisition of domestic and foreign publishing rights, (ii) sale of books to dealers, and the (iii) sale of books to final consumers. Within the latter category a separate market could be constituted by the distant sale segment, which includes book clubs, mail orders and sales via Internet, as the Commission indicated in the Lagardère case. The parties are also active, as customers, in the market for book distribution services”.*⁶⁷¹ *“The market investigation confirmed that the above segmentation is appropriate, as it accurately reflects each level of the book value chain in Denmark”.*⁶⁷²

*“The notifying party also proposed to delineate a further sub-division at every level of the book value chain according to different categories of books. The proposed delineations are in line with a previous Commission decision”.*⁶⁷³

*“The investigation broadly confirmed that this further sub-division is upheld by publishers, authors and customers of the merging parties”.*⁶⁷⁴ *“It can therefore be concluded that the relevant product markets are the markets for (i) the acquisition of domestic and foreign publishing rights, (ii) the distribution of books, (iii) the sales of books to dealers and the (iv) sales of books to final consumers and, within markets (i), (iii), and (iv), the categories of general literature (large format), general literature (pocket format), children's books, factual prose (including reference works), strip cartoons and other categories”.*⁶⁷⁵

*“The market investigation confirmed that the geographic scope of the above markets can be considered national within all the book groups along the entire value chain. Therefore, for the purpose of the present case, all relevant markets are considered to be national in scope”.*⁶⁷⁶

⁶⁶⁹ http://europa.eu/rapid/press-release_IP-07-1501_en.htm

⁶⁷⁰ http://europa.eu/rapid/press-release_IP-07-1501_en.htm

⁶⁷¹ Commission Decision in case No COMP/M.4611 - EGMONT / BONNIER (BOOKS), par 12.

⁶⁷² Ibid., par 13.

⁶⁷³ Ibid., par 14.

⁶⁷⁴ Ibid., par 16.

⁶⁷⁵ Ibid., par 19.

⁶⁷⁶ Ibid., par 21.

M. 4519 Lagardère - Sportfive

The European Commission clears the sole control acquisition of Sportfive by Lagardère.⁶⁷⁷

Lagardère's two main business areas comprise media and high technologies. Its media activities include book publishing, press, distribution and retailing services and broadcasting and multimedia services. Sportfive is active in the trading of sport broadcasting rights, especially football, and marketing services for events, including sport events. With the proposed concentration, Lagardère would gain control over Sportfive, and enter the international sports rights trading market.⁶⁷⁸

As regards the relevant product market and geographical scope

*“The notifying party submits that the relevant product markets for the proposed transaction are the markets for sports TV broadcasting rights, the market for TV broadcasting and the market for marketing communication services (sports marketing)”.*⁶⁷⁹

Sport broadcasting rights

*“With regard to the Sportfive's business in sport broadcasting rights, the notifying party submits that according to previous Commission decisions⁵ the market for football broadcasting rights must be distinguished from the market for other sports broadcasting rights, due to football's pre-eminence as the singularly most popular sport across most Member States and beyond”.*⁶⁸⁰

*“Furthermore, the notifying party acknowledges that a variety of further subdivisions is possible within sport broadcasting rights, including the differentiation between the buying and the selling side and between rights for pay TV and rights for free TV. In addition, the market for football broadcasting rights could be further divided according to the type of event concerned, i.e. whether i) it is a regular event (such as the domestic leagues, the Champions League, the UEFA Cup and the like) or ii) an event that is played more intermittently (such as the World Cup, the EURO Cup, etc.). These further distinctions appear to be in line with previous Commission Decisions. It appears, however, that the concrete delineation of the relevant product markets for football broadcasting rights can be left open since on any alternative market definition the merger does not raise any competition concerns”.*⁶⁸¹

“With respect to the geographic scope, the notifying party submits that, according to a previous Commission decision, the selling-side of the market for football broadcasting rights is national, while on the buying-side it cannot be excluded that the scope might be wider, depending on the type of sports events concerned. In any case, as the rights for football events that are played regularly throughout the year are sold on a national basis, from past Commission's decisions it appears that only

⁶⁷⁷ http://europa.eu/rapid/press-release_IP-07-63_en.htm

⁶⁷⁸ http://europa.eu/rapid/press-release_IP-07-63_en.htm

⁶⁷⁹ Commission Decision in case No COMP/M.4519 - LAGARDERE / SPORTFIVE, par 8.

⁶⁸⁰ Ibid., par 9.

⁶⁸¹ Ibid., par 10.

*the potential sub-market for football broadcasting rights to events that are played more intermittently (i.e. FIFA World Cup and European Championship of Nations) might be wider than national. However, this question can be left open in this case, as the competitive analysis would not be different under any delineation, even if one considers all relevant markets to be national in scope”.*⁶⁸²

TV Broadcasting

*“The parties submit that the overall market for TV broadcasting can be further subdivided into pay TV and free TV, mainly due to differences to the conditions of competition between the two modes of broadcasting, resulting from their sources of revenue. This sub-division of the market has been recognised by a number of recent Commission Decisions and will not be questioned in this case”.*⁶⁸³

*“With regard to the geographical scope of the market for TV broadcasting, the Parties submit that it is national or confined to linguistic regions. This is in line with the Commission's view in a number of Decisions, according to which television broadcasting is generally organised on a national basis and the markets for organisation of television are national in nature or relate to linguistically homogeneous areas. This is primarily due to differences in regulatory regimes, language barriers, cultural factors and other different conditions of competition prevailing in the individual Member States. Therefore, the boundaries of the product market for the present transaction are limited to the territories of the Member States”.*⁶⁸⁴

Sports marketing

*“With regard to the market for sports marketing, the notifying party submits that there is an overall market for marketing communication services. The proposed transaction comprises Sportfive's current activities in the selling of marketing rights of sports clubs and of other rights holders to industrial and commercial clients, including sponsorship packages, shirt sponsoring, hospitality services, naming rights for stadiums, athlete marketing and other services. The parties' contention that all these activities fall within the same relevant market definition (sports marketing) appears to be in line with previous Commission decisions. The question raised by the parties, whether a possible sub-segmentation of this market is feasible, need not be further elaborated in this case, as it will not have any impact on the competitive assessment”.*⁶⁸⁵

“As regards the relevant geographic market, the parties submit that it is at least EEA-wide and more likely worldwide. While the Commission in a previous case involving the market for sports marketing also examined the competitive situation on a national level, for the purpose of the present case, the definition of the geographical market may be left open as even on the basis of national markets the proposed transaction

⁶⁸² Ibid., par 11.

⁶⁸³ Ibid., par 12.

⁶⁸⁴ Ibid., par 13.

⁶⁸⁵ Ibid., par 14.

would not lead to any affected markets”. ⁶⁸⁶

⁶⁸⁶ Ibid., par 15.

M. 4503 PBDS – Philips APM

The European Commission clears the sole control acquisition of Philips APM by PBDS.⁶⁸⁷

Lite-On is active in computers, communication products, consumer electronics and optical data storage disk drives for personal computers. PBDS is active in the development, design, marketing, and sale of optical data-storage disk drives for personal computers (“PC ODDs”). With the proposed acquisition, Lite-On would replace BenQ as the controlling shareholder in PBDS, while Philips would remain the other controlling shareholder.⁶⁸⁸

As regards the relevant product market and geographical scope

APMs

“According to the parties, the relevant product market for APMs is distinct from the market for PC ODDs because the latter are designed for PCs”.⁶⁸⁹ “Furthermore, the parties consider distinguishing APMs into four potential sub-categories: CD-Modules, DVD modules, tape decks, Car Juke boxes and DVD changers”. [...] “For the purpose of the present case, however, the precise definition as regards the product categories can be left open since even considering the narrower definitions the proposed transaction would not give rise to competition concerns”.⁶⁹⁰

“In previous decisions, when assessing the market for ODDs, the Commission took the view that this can be done on the basis of either the overall market for PC ODDs or on a narrower basis by type of PC ODD, whereby APM would be a distinct type of product as outlined in paragraph”.⁶⁹¹

“With respect to the relevant geographic market, the parties submit that the market for APMs is world-wide in scope, reasoning that no significant price differences exist among the various world regions, a large part of APMs are manufactured outside the EEA and that technical standards do not differ among Member States”.⁶⁹² “In view of the parties’ negligible increase in their combined market share, the precise market definition, however, can be left open since even on the narrowest level considered, i.e. the EEA, the proposed transaction would not give rise to competition concerns”.⁶⁹³ “Thus, for the competitive assessment of the proposed transaction, the relevant market to be considered will be both the global and the EEA-wide overall market for APMs, but also the potential sub-markets according to the type of APMs”.⁶⁹⁴

⁶⁸⁷ http://europa.eu/rapid/press-release_IP-07-201_en.htm; Cf. Commission Decision in case No COMP/M.4503 - PBDS / PHILIPS APM, par 4.

⁶⁸⁸ http://europa.eu/rapid/press-release_IP-07-201_en.htm

⁶⁸⁹ Commission Decision in case No COMP/M.4503 - PBDS / PHILIPS APM, par 8.

⁶⁹⁰ Ibid., par 9.

⁶⁹¹ Ibid., par 10.

⁶⁹² Ibid., par 11.

⁶⁹³ Ibid., par 12.

⁶⁹⁴ Ibid., par 13.

M. 4947 Vodafone – Tele2 Italy – Tele2 Spain

The European Commission clears the sole control acquisition of Tele 2 Italy and Tele2 Spain by Vodafone.⁶⁹⁵

Vodafone is the holding company of a group of companies involved in the operation of mobile telecommunications networks and the provision of related services in several EU Member States, including Italy and Spain. In both Italy and Spain, Vodafone is mainly active as a provider of mobile communications services and is the second largest mobile operator. Tele2 Italy and Tele2 Spain are alternative providers of fixed line telephony services and internet connection services including broadband services in their respective countries.

As regards the relevant product market

*“The parties propose to define the relevant product markets in line with previous Commission decisions and along the Commission’s Recommendation of 11 February 2003 on Relevant Product and Service Markets (the ‘Recommendation’)”.*⁶⁹⁶ *“The notifying party submitted that the reportable markets are:”*⁶⁹⁷

Retail market for fixed broadband internet access

*“The definition of markets a) [Internet access in Italy] and b) [Internet access in Spain] is in line with the Commission decisional practice in as much as it entails a distinction between dial-up and broadband internet access, whereas it does not consider as relevant the distinction between residential and business customers”.*⁶⁹⁸

Retail market for telephony services at a fixed location

*“For markets c) [Italy] and d) [Spain] the parties propose a definition in line with the Recommendation. The Recommendation further considers possible sub-divisions of the market in narrower segments (business and residential, national and international calls, etc.). However, for the purpose of the assessment of the concentration it is not necessary to further delineate the retail market for fixed telephony as, in any event, the competitive assessment would not change”.*⁶⁹⁹

Wholesale call termination upon a fixed or mobile network

*“The Recommendation and the Commission's decision practice, accordingly, regard call termination in each different (fixed and mobile) network as constituting a separate market”.*⁷⁰⁰

Retail mobile telephony market

⁶⁹⁵ http://europa.eu/rapid/press-release_IP-07-1776_en.htm

⁶⁹⁶ Commission Decision in case No COMP/M.4947 - VODAFONE / TELE2 ITALY / TELE2 SPAIN, par 7.

⁶⁹⁷ Ibid., par 8.

⁶⁹⁸ Ibid., par 11.

⁶⁹⁹ Ibid., par 12.

⁷⁰⁰ Ibid., par 13.

*“As for market g) [Spain and Italy], in previous decisions, the Commission did not further subdivide the retail market for the provision of mobile telecommunications services, e.g. according to business and residential customer or pre-pay and post-pay customers or according to the network used, i.e. between 2G (GSM) and 3G (UMTS) networks. For the purpose of those cases, the Commission's assessment was based on a single market for the provision of mobile telecommunications services on the retail level”.*⁷⁰¹

Wholesale market for access and call origination on public mobile telephone networks

*“This market corresponds to market n. 15 of the Recommendation [...]”.*⁷⁰²

As regards the geographical scope

*“In line with previous Commission decisions, it is considered that the geographic scope of all the markets above is national”.*⁷⁰³

⁷⁰¹ Ibid., par 14.

⁷⁰² Ibid., par 15.

⁷⁰³ Ibid., par 16.

M. 4944 SAP – Business Objects

The European Commission clears the sole control acquisition of Business Objects by SAP.⁷⁰⁴

SAP provides a wide range of enterprise application software solutions. Business Objects, headquartered in France and the US, offers business analytics software solutions and in particular business intelligence solutions which corporate customers use to analyse, report and visualise data across their organisation to gain better insight into their businesses with a view to optimising organisational performance.

As regards the relevant product market and geographical scope

*“In the present case, although the market investigation points towards the existence of a market for Business Analytics (BA), the exact delineation of the market can be left open as even with the narrowest possible definition (market for QRA within BI) the transaction does not raise serious competition concerns”.*⁷⁰⁵

*“In the present case, it can be assumed that the geographical market is at least EEA wide as the concentration does not rise any competition issues either considering that the geographical scope is EEA or worldwide”.*⁷⁰⁶

⁷⁰⁴ http://europa.eu/rapid/press-release_IP-07-1776_en.htm

⁷⁰⁵ Commission Decision in case No COMP/M.4944 - SAP / BUSINESS OBJECTS, par 16.

⁷⁰⁶ Ibid., par 18.

M. 4910 Motorola - Vertex

The European Commission clears the sole control acquisition of Vertex Standard by Motorola.⁷⁰⁷

Motorola is active in wireless and broadband communications technologies and embedded electronic products. Through its Enterprise Mobility Solutions business unit, Motorola is also active in two-way radios. Vertex Standard is active in the design, manufacture and sale of two-way radios.⁷⁰⁸

As regards the relevant product market and geographical scope

Two-way radios

*“For the purpose of this decision, the exact product market definition can be left open, since, on the basis of markets for all LMR terminals; all Professional LMR terminals, or narrower markets encompassing Professional local area LMR and Consumer LMR terminals together, or Professional local area LMR terminals, the assessment will not change”.*⁷⁰⁹

*“For the reasons explained below, the Commission found that, whatever the geographic market definition (EEA or world-wide), the concentration will not significantly impede effective competition in the common market or in a substantial part of it”.*⁷¹⁰

⁷⁰⁷ http://europa.eu/rapid/press-release_IP-07-1991_en.htm

⁷⁰⁸ http://europa.eu/rapid/press-release_IP-07-1991_en.htm

⁷⁰⁹ Commission Decision in case No COMP/M.4910 - MOTOROLA / VERTEX, par 22.

⁷¹⁰ Ibid., par 28.

M. 4502 Lite-on - BPDS

The European Commission clears the sole control acquisition of Lite-On by PBDS (Philips & BenQ Digital Storage Corporation Joint Venture).⁷¹¹

Lite-On is active in computers, communication products, consumer electronics and optical data storage disk drives for personal computers. PBDS is active in the development, design, marketing, and sale of optical data-storage disk drives for personal computers (“PC ODDs”). With the proposed acquisition, Lite-On would replace BenQ as the controlling shareholder in PBDS, while Philips would remain the other controlling shareholder.⁷¹²

As regards the relevant product market and geographical scope

Supply of PC ODDs

*“In previous decisions, the Commission left open the precise market definition. Furthermore, the parties achieve only negligible revenues from sales of ODDs used in devices other than PCs¹². Thus, the Commission concludes that the relevant market to consider is the overall market for the supply of PC ODDs with a potential segmentation according to the type of PC ODD, namely half-height PC ODDs and slim PC ODDs, however the precise delineation can be left open since under either consideration the proposed transaction would not raise serious competition concerns”.*⁷¹³

*“Previous Commission’s decisions left open the precise market definition. In the light of the before-mentioned, the Commission concludes that it can be left open whether the overall PC ODD supply market and its potential narrower sub-category by PC type are world-wide or EEA-wide in geographic scope since on either definition no serious competition concerns would arise from the proposed transaction”.*⁷¹⁴

The manufacture of PC ODDs

*“The parties concur with the Commission’s view, as expressed in the Sony/Nec/JV decision, that the manufacture of PC ODDs would be an upstream activity to the supply of PC ODDs. Such a market would however not be wider than PC ODDs. Electronic manufacturing services in general would be a description of an overall sector comprising a number of services and a wider range of products. As regards the manufacture of PC ODDs, production lines dedicated to this kind of product are not readily transferable to the manufacture of other electronic products”.*⁷¹⁵

“Since the manufacture of PC ODDs is located outside the EEA and approximately 95% of PC ODDs are manufactured in Asia from which shipments are made to all other world regions, the parties submit that the geographic scope of the market for

⁷¹¹ http://europa.eu/rapid/press-release_IP-07-201_en.htm

⁷¹² http://europa.eu/rapid/press-release_IP-07-201_en.htm

⁷¹³ Commission Decision in case No COMP/M.4502 - LITE-ON / PBDS, par 16.

⁷¹⁴ Ibid., par 17.

⁷¹⁵ Ibid., par 18.

*the manufacture of PC ODDs is world-wide, or at least EEA-wide. However, the precise definition can be left open, since no serious competition concerns would arise from the proposed transaction”.*⁷¹⁶

The supply of branded aftermarket PC ODDs

*“Since branding of PC ODDs largely means adding a casing to the device, putting an attractive wrapper on it, providing user manuals or other consumer-related services, the parties consider that branded aftermarket PC ODDs belong to the same overall product market of PC ODDs and the criteria on the market definition outlined above would equally apply. While the respondents to the market investigation rather tended to see the supply of PC ODDs to the aftermarket to be a distinct activity, this question can be left open since under either definition, the proposed transaction would not give rise to competition concerns”.*⁷¹⁷

*“With respect to the geographic scope, the parties view this market to be world-wide, or at least EEA-wide. Distribution of the product is made from centralised warehouses located in the EEA. Pricing of the product is largely at the same level in the various world regions. Also most respondents, who replied to the market investigation, see the market for the supply of branded aftermarket PC ODDs to be world-wide in scope and only few replies were in favour of a market which is at least EEA-wide. Since the competitive assessment would not alter under either geographic scope considered, the precise definition can be left open for the purpose of the present case”.*⁷¹⁸

The manufacture of PCs

*“Furthermore, the parties submit that due to Lite-On’s PC assembly activities a downstream vertical relationship exists between the market for the supply of PC ODDs and the manufacture of PCs. Since Lite-On’s activities are negligible in this respect, no further precision as to the delineation of the relevant market or its geographic scope appears necessary for the purpose of the present case”.*⁷¹⁹

The manufacture of APMs

*“Finally, the parties argue that APMs belong to a different market than PC ODDs, but present the market for the manufacture of APMs to be an upstream activity from the supply of ODDs to the automotive industry.. Since Lite-ON’s activity in the manufacture of APMs is negligible, any further precision on the definition of this market would not alter the competitive assessment in the present case”.*⁷²⁰

⁷¹⁶ Ibid., par 19.

⁷¹⁷ Ibid., par 20.

⁷¹⁸ Ibid., par 21.

⁷¹⁹ Ibid., par 22.

⁷²⁰ Ibid., par 23.

M. 4547 KKR – Permira – ProSiebenSat.1

The European Commission clears the sole control acquisition of ProSiebenSat.1 by KKR and Permira (Via the acquisition vehicle Lavena Holding 4 GmbH).⁷²¹

Both Permira and KKR are equity investment funds. With respect to the media sector, they jointly control the Dutch SBS TV group, mainly active in the Nordic countries and in the Netherlands and Belgium. Permira also controls All3Media, a UK TV production and distributor of TV rights. ProSiebenSat.1 operates five TV channels in Germany of which four are financed by advertising. With the proposed concentration, KKR and Permira would extend their footprint in national TV broadcasters into the German free TV market.⁷²²

As regards the relevant product market and geographical scope

The market for free (access) TV

*“According to the notifying parties, the present transaction mainly involves the market for free (access) TV. It constitutes a product market distinct from the market for pay TV as conditions of competition differ, as it has been established by the Commission's constant decisional practice”.*⁷²³

*“With respect to the geographic market, the parties submit that the market for free (access) TV or TV financed by advertising is national in scope or, for the purpose of this case, could be delineated along the German-language area, for instance comprising Germany, Austria and the German-speaking part of Switzerland. This would reflect the area where P7S1's programs are aired (through cable, satellite and, to a lesser extent, digital terrestrial). The market investigation has largely confirmed the parties' view”.*⁷²⁴

*“On this basis, the Commission concludes that for the purpose of the present case the geographic scope of the free (access) TV market is still national in scope or along the relevant language borders. The question to consider potentially a wider pan-European market can be left open since the proposed transaction would not raise any competition concern in such a geographic area”.*⁷²⁵

⁷²¹ http://europa.eu/rapid/press-release_IP-07-229_en.htm

⁷²² http://europa.eu/rapid/press-release_IP-07-229_en.htm

⁷²³ Commission Decision in case No COMP/M.4547 - KKR / PERMIRA / PROSIEBENSAT.1, par 8.

⁷²⁴ Ibid., par 9.

⁷²⁵ Ibid., par 10.

M. 4521 LGI - Telenet

The European Commission clears the sole control acquisition of Telenet by LGI.

LGI is an international provider of television, telephone and internet access services through cable networks services in 17 countries, including the Netherlands (UPC Netherlands) and Belgium (UPC Belgium). UPC Belgium is a cable network operator providing television and internet access services to residential customers in the areas of Leuven and Brussels. Telenet operates the largest cable network in Belgium and provides services (television, telephone and internet access) essentially in Flanders (Belgium).⁷²⁶

As regards the relevant product market and geographical scope

Retail market for TV services

*“In recent cases the Commission left open the exact delineation of the market. For the purpose of the present transaction, the exact product market definition can also be left open, since even on the basis of the narrowest possible market definition the concentration does not raise serious doubts”.*⁷²⁷

*“However the geographical scope was left open in Cinven- Warburg Pincus/Casema-Multikabel and Providence/Carlyle//UPC Sweden. The Commission also affirmed that, in relation to the retail market the geographic market may be limited to the area of each cable network. The Commission held in another recent decision that if a separate market for the transmission via cable is distinguished, this market should be defined geographically in such a way that each cable network constitutes a separate geographic market, given that those customers who are connected to a specific network can only be reached through that network. In any event, similar to the previous cases, for the purpose of the present transaction, the exact geographical market definition can also be left open, since even on the basis of the narrowest possible market definition the concentration does not raise serious doubts”.*⁷²⁸

Wholesale market for TV services

“The parties submit that the relevant wholesale market encompasses transmission modes involving all categories of infrastructures (i.e. cable networks, satellite, DSL networks). In Cinven-Warburg Pincus/Casema-Multikabel and Providence/Carlyle/UPC Sweden, the Commission concluded that the wholesale market for TV services through cable networks constituted a separate product market (compared to other transmission networks). This conclusion was based on the fact that in the concerned countries there was a very large penetration of cable (i.e. the majority of households were connected to a cable network) compared to other platforms and therefore other platforms were not substitutable from a TV content provider perspective. In Belgium, the cable penetration is very significant, while the

⁷²⁶ http://europa.eu/rapid/press-release_IP-07-248_en.htm

⁷²⁷ Commission Decision in case No COMP/M.4521 - LGI / TELENET, par 24.

⁷²⁸ Ibid., par 25.

*satellite penetration is somewhat more limited. The xDSL platform is virtually accessible from all households. Belgacom TV is adopting a significant marketing campaign in this respect”.*⁷²⁹

*“For the purpose of the present transaction, the exact product market definition can nevertheless be left open, since even on the basis of all alternative market definition the concentration does not raise serious doubts”.*⁷³⁰

*“The parties submit that the geographical scope of the market of wholesale market for TV services is national in scope. In Cinven-Warburg Pincus/Casema-Multikabel and Providence/Carlyle/UPC Sweden, the Commission left the exact geographical market definition open. More generally, the geographic scope of the wholesale market in past decisions has always been defined by the Commission as national, limited to the area covered by a single cable network or along linguistic homogeneous areas”.*⁷³¹

*“For the purpose of the present transaction, the geographic market definition can therefore be either national or limited to the area covered by a single cable network or could be delineated along the language area encompassing Flanders and The Netherlands. However since even on the basis of all alternative possible geographic definition the concentration does not raise serious doubts, the exact geographic market definition can be left open”.*⁷³²

Broadband Internet access

*“The parties submit that the market comprises access via DSL and cable. This option was taken by the Commission in Cinven/UPC France. The parties submit that the market may have to be subdivided into submarkets for residential and commercial users. In this case it is not necessary to take a position on this point since the activities of UPC Belgium are limited to broadband access for residential customers”.*⁷³³

*“For the purpose of the present transaction, it is not necessary to take a position on whether the internet access market should include access via DSL and cable or whether two distinct markets should be considered as even on the basis of all alternative market definition the concentration does not raise serious doubts”.*⁷³⁴

“The broadband internet market has been defined in previous Commission decisions as to be national in scope in particular taking into account the existing regulatory barriers in the telecommunications sector. . Conversely a local market could be defined alongside the area covered by a cable network. For the purpose of the present transaction the exact geographic scope of the market can be left open as even on the basis of all alternative market definition the concentration does not raise serious

⁷²⁹ Ibid., par 28.

⁷³⁰ Ibid., par 30.

⁷³¹ Ibid., par 31.

⁷³² Ibid., par 35.

⁷³³ Ibid., par 36.

⁷³⁴ Ibid., par 37.

doubts ”. ⁷³⁵

⁷³⁵ Ibid., par 38.

M. 4465 Thrane & Thrane – Nera

The European Commission clears the sole control acquisition of Nera by Thrane & Thrane.⁷³⁶

The purchaser, Thrane & Thrane, is active in the development, production and sale of equipment for land-based, maritime and aeronautical satellite communications, based on the Inmarsat satellite systems. It also produces and sells equipment for radio communication. It is also one of the appointed airtime distributors of Inmarsat's new generation satellites in the land communication sector. The target company, Nera is active in the development, production and sale of terminals and land earth stations for land mobile and maritime satellite communications.⁷³⁷

As regards the relevant product market and geographical scope

Maritime communication equipment

*“Based on the above, the Commission considers that there is a separate market for Inmarsat-C communication equipment as it is obligatory to have this terminal on board in order to comply with the GMDSS legal requirements. As for communication equipment used to fulfil communication needs, the market investigation has pointed at a distinction between low-end maritime communication equipments and high-end maritime communication equipments constitute, which should therefore be regarded as two separate relevant product markets for the purpose of this decision”.*⁷³⁸

*“According to the notifying party, given the very nature of the market, it is global in scope. The market investigation has clearly confirmed the proposed geographic market definition. Whereas there are only few manufacturers of terminals and land earth stations, both products are sold and serviced globally, often through quotations. Transportation costs do not play a major role. Distributors source globally independently from the location of manufacturers”.*⁷³⁹ *“Therefore the geographic market for low-end and high-end maritime communication equipments and land earth stations should be regarded for the purpose of this decision as being worldwide in scope”.*⁷⁴⁰

Land earth stations

*“However, for the purpose of this decision the question of exact market definition might be left open as the transaction does not raise competition concerns under any market definition”.*⁷⁴¹

⁷³⁶ http://europa.eu/rapid/press-release_IP-07-384_en.htm

⁷³⁷ http://europa.eu/rapid/press-release_IP-07-384_en.htm

⁷³⁸ Commission Decision in case No COMP/M.4465 - THRANE & THRANE / NERA, par 29.

⁷³⁹ Ibid., par 33.

⁷⁴⁰ Ibid., par 34.

⁷⁴¹ Ibid., par 32.

M. 4591 Weather investments – Hellas Telecommunications

The European Commission clears the sole control acquisition of Hellas Telecommunications by Weather Investments.⁷⁴²

Hellas Telecommunications is a provider of mobile communications services and fixed telecommunications services. It carries out its activities through TIM Hellas, the third largest mobile telecommunications operator in Greece. TIM Hellas, together with its subsidiary Q-Telecom, operates a range of mobile telecommunications services, and is a fixed-line telephony provider.

Weather Investments places private equity investments. It holds portfolio companies mainly active in mobile communications systems and is the holding company for Orascom Telecom and Wind. The latter is the third largest mobile telecommunications operator in Italy, also offering fixed telephony services in Italy. Through its joint venture Tellas, it is also an alternative fixed line provider in Greece.⁷⁴³

As regards the relevant product market and geographical scope

Provision of mobile communication services

*“With reference to previous cases, the parties have identified a distinct product market for mobile communication services, which must be distinguished from fixed line telephony services. The parties consider the relevant geographic market to be national, i.e. Greece, due to the fact that mobile telecommunication services are provided exclusively by nationally licensed operators. In this respect the parties also make reference to the Commission's decision regarding the merger between TIM Hellas and Q-Telecom”.*⁷⁴⁴

*“In a number of decisions, the Commission has established that mobile telecommunication services cannot be regarded as a substitute to fixed line telephony services, and that the market for mobile telecommunication services is distinct from the emerging market for advanced seamless pan-European mobile telecommunication services. The Commission has not further segmented a mobile telecommunication market, but left open whether distinct product markets exist for (i) digital and analogue mobile telecommunications; (ii) private and business customers; or (iii) pre-paid and post-paid subscriptions”.*⁷⁴⁵

*“With reference to the Commission's decisional practice, and in particular in light of the national licensing requirements and the procedure for spectrum allocation, it is concluded that the relevant product and geographic market to be assessed is the national market for mobile telecommunication services”.*⁷⁴⁶

⁷⁴² http://europa.eu/rapid/press-release_IP-07-479_en.htm

⁷⁴³ http://europa.eu/rapid/press-release_IP-07-479_en.htm

⁷⁴⁴ Commission Decision in case No COMP/M.4591 - WEATHER INVESTMENTS / HELLAS TELECOMMUNICATIONS, par 9.

⁷⁴⁵ Ibid., par 10.

⁷⁴⁶ Ibid., par 11.

Provision of fixed telephony and communication services

*“Both Weather, through its joint venture Tellas, and TIM Hellas are active in the market for the provision of fixed telephony and communication services in Greece. The parties submit, therefore, that the relevant product market is the provision of fixed telephony and communication services. This market, they submit, is also national, i.e. Greece. Reference is made to the Commission’s previous practice according to which the factors to be taken into account would be (a) the extent/coverage of the network, as well as the customers that can be reached and whose demands may be met economically; (b) the legal and regulatory framework”.*⁷⁴⁷

*“With reference to the Commission's decisional practice, and in particular in view of the national scope of the fixed telephony network, it is concluded that the relevant product and geographic market to be assessed is the national market for fixed telephony services”.*⁷⁴⁸

⁷⁴⁷ Ibid., par 12.

⁷⁴⁸ Ibid., par 13.

M. 4477 SES Astra – Eutelsat - JV

The European Commission approves the JV between SES Astra and Eutelsat (50/50).⁷⁴⁹

Astra offers satellite-based broadcasting and broadband solutions which include broadcasting of television and radio programmes, internet access and network services. Eutelsat, like Astra, is a satellite operator offering satellite-based broadcasting and broadband services. The proposed transaction would create a joint venture to provide satellite-based infrastructure for both broadcasting content to mobile devices and two-way voice and data communication services to mobile devices.⁷⁵⁰

As regards the relevant product market and geographical scope

*“The notifying parties submit that the JV's activities will be in the emerging market for the provision of infrastructure for broadcasting content to handheld devices”.*⁷⁵¹

*“[...] the relevant product market to consider in the present case would comprise both terrestrial-based infrastructures and hybrid infrastructures through which content will be broadcasted to mobile devices. Such a definition would also include 3G/UMTS and its future technological evolution with respect to broadcasting content to mobile devices”.*⁷⁵²

*“However, the precise definition of the geographic scope can be left open since even on a national definition the proposed operation would give no raise to competition concerns”.*⁷⁵³

Infrastructure for two-way voice and data communication services

*“Apart from the JV's primary business, as discussed above it may also provide satellite- based infrastructure for two-way mobile voice and data communication services for mobile (handheld) devices for maritime, aeronautical and land-based applications”.*⁷⁵⁴

“The notifying parties refer to previous Commission's decisions in which similar types of services for the provision of satellite-based communication content to handheld terminals were identified. Replies to the market investigation largely confirmed the notifying parties' view of the relevant product market. In particular, most respondents would include Very Small Aperture Terminals (“VSAT”) as part of such a market. For the purpose of the present case, however, the precise delineation of the relevant product market can be left open since no competition concern would

⁷⁴⁹ http://europa.eu/rapid/press-release_IP-07-1176_en.htm

⁷⁵⁰ http://europa.eu/rapid/press-release_IP-07-1176_en.htm

⁷⁵¹ Commission Decision in case No COMP/M.4477 - SES ASTRA / EUTELSAT / JV, par 14.

⁷⁵² Ibid., par 16.

⁷⁵³ Ibid., par 18.

⁷⁵⁴ Ibid., par 29.

*arise from the proposed concentration”.*⁷⁵⁵

“According to the notifying parties, the geographic scope of the product market would be of a global nature since many of the present satellite operators offer such services world- wide. While many respondents to the market investigation shared the notifying parties' opinion, only a few replies favoured a narrower scope at EEA-level. In any event, the precise definition can be left open, since the proposed operation would raise no competition concerns under any geographic definition”.

⁷⁵⁵ Ibid., par 30.

M. 4809 France Telecom – Mid Europa Partners - One

The European Commission clears the sole control acquisition of One by France Télécom and Mid Europa Partners.⁷⁵⁶

France Télécom is a global telecommunications operator active in various segments of the telecommunications services market. Through its wholly-owned subsidiary Orange S.A., France Télécom provides fixed and mobile telecommunication services in several European countries but not in Austria. Mid Europa Partners (MEP) is a UK-based private equity fund which focuses on Central and Eastern Europe. It controls the mobile operator Bité (active in Latvia and Lithuania), and the fixed operator Aster (active in Poland). One is the third largest provider of mobile telephony services in Austria.⁷⁵⁷

As regards the relevant product market and geographical scope

*According to previous Commission decisions and standard regulatory practice in the industry, fixed telecommunication services constitute a market distinct from mobile telecommunication services.*⁷⁵⁸

Mobile communication services

“According to the parties, mobile telecommunications services can be divided in the following markets, in line with previous Commission decisions and the Recommendation on relevant markets”.⁷⁵⁹ [...]

“In line with previous Commission's decisions, according to the notifying parties, the geographic scope of all of these markets is national, except for the market for the provision of seamless pan-European mobile telecommunications services, which is likely to be at least pan-European”.⁷⁶⁰

Fixed telecommunications services

“According to the parties, fixed telecommunications services can be divided in the following markets in line with previous Commission decisions and the Recommendation on relevant markets:”⁷⁶¹ [...]

“According to the notifying parties, the geographic scope of all of these markets is national, except for the market for the provision of enhanced global telecommunications services, which is likely to be global in scope”.⁷⁶²

⁷⁵⁶ http://europa.eu/rapid/press-release_IP-07-1378_en.htm

⁷⁵⁷ http://europa.eu/rapid/press-release_IP-07-1378_en.htm

⁷⁵⁸ Commission Decision in case No COMP/M.4809 - FRANCE TELECOM / MID EUROPA PARTNERS / ONE, par 8.

⁷⁵⁹ Ibid., par 9.

⁷⁶⁰ Ibid., par 10.

⁷⁶¹ Ibid., par 12.

⁷⁶² Ibid., par 13.

M. 4871 KPN - Getronics

The European Commission clears the sole control acquisition of Getronics by KPN.⁷⁶³

Getronics is an international provider of IT services. The company has a direct presence in 25 countries although it is principally active in The Netherlands. The core business of Getronics can be divided into workspace management services, application integration and management services and consulting and transformation services.⁷⁶⁴

KPN's main activities are the provision of fixed telephony and broadband internet access over its fixed telecommunication infrastructure in The Netherlands. KPN also provides mobile telephony to personal customers over its mobile networks in the Netherlands, Germany and Belgium. For business customers, KPN provides a range of services, from voice, internet and data services to fully-managed outsourced ICT solutions.⁷⁶⁵

As regards the relevant product market and geographical scope

The provision of IT services

*“In former decisions on the IT services sector, the Commission left open the exact delineation of the market”.*⁷⁶⁶

*“In the present case, the notifying parties submit that the exact market definition can be left open, as they consider that market shares, at any given market definition, are not deemed to give rise to a significant impediment of competition. However, for the sake of market analysis, the notifying parties submit that the market for IT services can be delineated along the following market segments (“Gartner market definition”): (i) Hardware maintenance & support; (ii) Software support; (iii) Consulting; (iv) Development & integration; (v) IT management; and (vi) Process management. All these market segments can in addition be further disaggregated (i.e. the segment (iv) Development and integration can be further subdivided into Application development, Developments, and Integration)”.*⁷⁶⁷

The EC states that: *“However the exact product market definition may be left open, since in all alternative market definitions the operation does not raise competition concerns. The supply of networking equipment for telecommunication infrastructure can be considered as a separate product market”.*⁷⁶⁸

“In former decisions on the IT services market, the Commission left open the exact

⁷⁶³ http://europa.eu/rapid/press-release_IP-07-1459_en.htm

⁷⁶⁴ http://europa.eu/rapid/press-release_IP-07-1459_en.htm

⁷⁶⁵ http://europa.eu/rapid/press-release_IP-07-1459_en.htm

⁷⁶⁶ Commission Decision in case No COMP/M.4871 - KPN / GETRONICS, par 7.

⁷⁶⁷ Ibid., par 8.

⁷⁶⁸ Ibid., par 12.

geographic definition of the market”. ⁷⁶⁹

“However the exact geographic market definition may be left open, since in all alternative market definitions the operation does not raise competition concerns”. ⁷⁷⁰

⁷⁶⁹ Ibid., par 13.

⁷⁷⁰ Ibid., par 15.

M. 4933 Emerson Electric Co – Motorola ECC

The European Commission clears the sole control acquisition of Motorola ECC by Emerson Electronic.⁷⁷¹

Emerson Electric is a diversified global technology company. It designs and supplies technology and engineering services to a wide range of industrial, commercial and consumer markets around the world. Motorola ECC provides specialised computers which are built into and control large and complex pieces of equipment in a range of applications, such as telephone networks, medical scanners, industrial imaging systems, air traffic control and radar systems, flight simulators and semiconductor wafer processing machines.⁷⁷²

As regards the relevant product market and geographical scope

*“The notifying parties have submitted that the relevant market can be defined as the global market for embedded computing solutions. This definition includes the embedded computing solutions sold on the merchant market as well as embedded computing systems designed and supplied in-house by downstream companies”.*⁷⁷³

*“In the present case the exact delineation of the market can be left open as even if in-house solutions are excluded and the market definition is limited to merchant market only the concentration is not deemed to raise competition concerns”.*⁷⁷⁴

*“Embedded computers are used in various sectors such as telecommunications, defence, transportation, medical devices and industry. The notifying parties have submitted that the relevant product market should encompass all the different business areas. [...] although the market investigation points toward the existence of a market for embedded computing solutions including all business areas, in the present case the exact delineation of the market can be left open as even at the narrowest possible definition (market for embedded computing telecommunication solutions only, as, Emerson being only active in the telecommunications sector, the transaction will not result in overlaps in other sectors) the concentration is not deemed to raise competition concerns”.*⁷⁷⁵

*“The notifying parties submit that the geographical scope of the market is global. This has been generally confirmed in the course of the market investigation, although some embedded computing merchants have significantly stronger or weaker market positions in the EEA if compared with North America. In the present case, it can however be assumed that the geographical market is at least EEA-wide as the concentration does not rise any competition issues either considering that the geographical scope is EEA or worldwide”.*⁷⁷⁶

⁷⁷¹ http://europa.eu/rapid/press-release_IP-07-1735_en.htm

⁷⁷² http://europa.eu/rapid/press-release_IP-07-1735_en.htm

⁷⁷³ Commission Decision in case No COMP/M.4933 - EMERSON ELECTRIC CO / MOTOROLA ECC, par 7.

⁷⁷⁴ Ibid., par 9.

⁷⁷⁵ Ibid., par 10.

⁷⁷⁶ Ibid., par 11.

M. 4892 Infineon – Siemens - JV

The European Commission clears the sole control acquisition of Motorola ECC by Emerson Electronic.⁷⁷⁷

Infineon is active in the manufacture of electronic semiconductor devices, chip cards, security appliances, electronics, communication and data processing.⁷⁷⁸ Siemens is active in various sectors, including energy, automation, control systems, transport, communication technologies and the construction of electricity transmission and distribution systems.⁷⁷⁹

As regards the relevant product market and geographical scope

Bipolar high power semiconductors

The EC states that the exact market definition and geographical scope can be left open.⁷⁸⁰

T&D Turnkey Projekte

Also here, the exact market definition and geographical scope is left open.⁷⁸¹

⁷⁷⁷ http://europa.eu/rapid/press-release_IP-07-1735_en.htm

⁷⁷⁸ http://europa.eu/rapid/press-release_IP-07-1817_en.htm

⁷⁷⁹ http://europa.eu/rapid/press-release_IP-07-1817_en.htm

⁷⁸⁰ Commission Decision in case No COMP/M.4892 - INFINEON / SIEMENS / JV, par 14 – 15.

⁷⁸¹ Ibid., par 19.

M. 4709 Apax Partners – Telenor Satellite Services

The European Commission clears the sole control acquisition of Telenor Satellite Services by Apax Partners.⁷⁸²

“Apax Partners manages investment funds which hold interests in companies active in different sectors. With respect to the proposed acquisition, Apax indirectly controls France Telecom Mobile Satellite Communications, a company active in satellite-based communication services. Telenor Satellite Services provides communications solutions via satellite. By the proposed acquisition, both companies would combine their activities in the wholesale and retail markets for two-way satellite communication services”.⁷⁸³

As regards the relevant product market and geographical scope

Satellite communication services industry

*“In the notifying party's view, there should be no further sub-division between the three areas of use of 2WSCS, namely land, air and maritime”.*⁷⁸⁴

*“The market investigation further indicated that according to the area of use, i.e. aeronautical, land and maritime, the conditions of competition for the supply of 2WSCS at wholesale level may differ in some respects. [...] However, it is not necessary for the purpose of the present transaction to come to a definitive conclusion as to whether each 2WSCS application constitutes a separate product market, as under any alternative market definition the proposed transaction does not raise serious doubts as to its compatibility with the common market”.*⁷⁸⁵

*“With respect to the retail market for 2WSCS, its precise delineation can be left open since even considering narrow market definitions, the proposed operation does not raise serious doubts as to its compatibility with the common market”.*⁷⁸⁶

*“The geographical scope of the wholesale market(s) is proposed by the notifying party to be worldwide”.*⁷⁸⁷ The EC states that: *“it can be concluded that the geographic scope of the wholesale market(s) for 2WSCS can be considered to be worldwide”.*⁷⁸⁸

⁷⁸² http://europa.eu/rapid/press-release_IP-07-1239_en.htm

⁷⁸³ http://europa.eu/rapid/press-release_IP-07-1239_en.htm

⁷⁸⁴ Commission Decision in case No COMP/M.4709 - APAX PARTNERS / TELENOR SATELLITE SERVICES, par 12.

⁷⁸⁵ Ibid., par 15.

⁷⁸⁶ Ibid., par 16.

⁷⁸⁷ Ibid., par 17.

⁷⁸⁸ Ibid., par 18.

M. 4404 Universal Music Group – BMG Music Publishing

The European Commission clears the sole control acquisition of BMG’s music publishing business, by Universal, subject to conditions.⁷⁸⁹

Universal, a US-based company owned by the French company Vivendi, is a leading player in the music recording and music publishing business. Universal proposes to acquire the worldwide music publishing activities of BMG, a subsidiary of the German media company Bertelsmann. Whereas music recording concerns the rights of the record company and the singer in the song performance, music publishing relates to the rights of song writers (authors), i.e. of composers and lyricists.⁷⁹⁰

As regards the relevant product market

1. Markets for the exploitation of music publishing rights

Combination of recording and publishing

Types of publishing rights

*“The parties are of the view that a segmentation of the market by categories of rights is not necessary as it would not reflect the commercial realities of the music publishing industry”.*⁷⁹¹

*‘In its decision in Sony/BMG (as in Seagram/Polygram), the Commission stated that the exploitation according to the different types of rights may lead to the definition of separate product markets for each categories of rights, although the precise market definition was left open in that regard’.*⁷⁹² *“[...] the market investigation in this case has nevertheless shown that the market conditions differ significantly as to the different rights, which points to separate markets”.*⁷⁹³

Online rights

*“Among the five right categories mentioned above, specific considerations apply to online rights. The notifying party submits that there is no separate right for the online distribution of music but that these digital rights are merely a combination of mechanical and performance rights. Although the market investigation has shown that in most national laws online rights are not defined as a distinct legal right, it also demonstrated that competitive conditions for online applications differ from the other categories of rights. Online rights therefore constitute a distinct product market”.*⁷⁹⁴

Anglo-American and Continental Europe repertoires

⁷⁸⁹ http://europa.eu/rapid/press-release_IP-07-695_en.htm

⁷⁹⁰ http://europa.eu/rapid/press-release_IP-07-695_en.htm

⁷⁹¹ Commission Decision in case No COMP/M.4404 - UNIVERSAL MUSIC GROUP / BMG MUSIC PUBLISHING, par 20.

⁷⁹² Ibid., par 21.

⁷⁹³ Ibid., par 23.

⁷⁹⁴ Ibid., par 26.

“Apart from the categories of rights, the notifying party considers as a theoretically possible product market a segmentation of national and international repertoires for music publishing. A "repertoire" is the entirety of a number of titles, i.e. songs which may also be called works. However, the notifying party submits that a distinction between separate markets for national and international repertoires would not be justified”.

The EC states that: *“It is however not necessary to assess whether Anglo-American mechanical rights for online use could in the future constitute a separate market since the competitive assessment would not change”.*⁷⁹⁵

Musical genres

*“In its previous cases the Commission also considered that the market might be delineated by different genres/categories of music. The basic segmentation generally referred to applies to pop versus classical music. However, in Seagram/Polygram and Thorn EMI/Virgin the Commission held that within pop music a large number of different categories could be identified (e.g. jazz, soul, heavy metal and techno). So far, however, the Commission has left the precise scope of the relevant product market open”.*⁷⁹⁶

*“However the question whether different genres may lead to the definition of separate product markets can be left open as the competitive analysis will remain unchanged under any envisaged definition”.*⁷⁹⁷

2. Market for music publishing services to authors

*“[...] authors do not seem to use different publishers for the different categories of rights. Therefore, in contrast to the considerations for the market for publishing rights (downstream level) no further segmentation of this market appears to be appropriate. In this Decision, a market for music publishing services for authors will be assumed”.*⁷⁹⁸

As regards the geographic scope

1. Markets for the exploitation of music publishing rights

*“The notifying party considers the geographic scope of the market for the exploitation of music publishing rights granted to right-users to be essentially national in scope and refer to the Commission's considerations concerning the geographic market in music publishing in the Sony/BMG decision”.*⁷⁹⁹

“In Thorn EMI/Virgin Music and Seagram/PolyGram, the Commission left open the question as to whether the geographical scope of the music publishing market(s) was

⁷⁹⁵ Ibid., par 40.

⁷⁹⁶ Ibid., par 41.

⁷⁹⁷ Ibid., par 43.

⁷⁹⁸ Ibid., par 49.

⁷⁹⁹ Ibid., par 50.

*national or broader, in particular EEA-wide. In Bertelsmann/Zomba19 and Sony/BMG the Commission concluded that there were indications that the markets for mechanical and performance rights were national as these rights were generally administered and collected by national collecting societies on behalf of the publishers and/or authors”.*⁸⁰⁰

*“However the exact geographic scope of the market was left open”.*⁸⁰¹

The EC states that: *“There is no need to strictly define the geographic scope of the markets for mechanical, performance, synchronisation or print rights as the competitive assessment will remain unchanged, irrespective of whether the market was considered to have a national or EEA- wide dimension”.*⁸⁰²

Online rights

*“As regards more particularly online rights, and as mentioned above, the administration of online rights has so far been done by the collecting societies which in the traditional system work on a strictly national basis granting licences only for their respective national territory to national users. Therefore, currently the market is national”.*⁸⁰³

*“A significant restructuring of online rights administration is currently taking place (this will be explained in more detail below) which may lead to an EEA-wide licensing of online rights. Where these restructuring initiatives have advanced already, they currently simply replicate the national licensing system on the basis of so-called "country of destination" tariffs. Even in this case, the market would therefore still be considered as a national market”.*⁸⁰⁴

2. Market for music publishing services to authors

*“The geographic scope of the market for publishing services provided to authors appears to be national as authors mainly seem to turn to publishers with local presence and are members of the national collecting societies. The exact geographic scope may, however, be left open since the conclusions of the analysis will be the same, irrespective of the geographic dimension of the market”.*⁸⁰⁵

2.3 Conclusion on market definitions

The competitive assessment will therefore examine the impact of the merger on the following markets:

- markets for publishing services for authors (on a national level)*
- market for synchronization rights (on national and EEA level)*

⁸⁰⁰ Ibid., par 51.

⁸⁰¹ Ibid., par 51.

⁸⁰² Ibid., par 56.

⁸⁰³ Ibid., par 57.

⁸⁰⁴ Ibid., par 58.

⁸⁰⁵ Ibid., par 61.

- *market for print rights (on national and EEA level)*
- *market for mechanical rights (on national and EEA level)*
- *market for performance rights (on national and EEA level)*
- *market for online rights (on national and EEA level)*

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Personal note:

Regarding the type of publishing rights it can be stated that there is a form of logical consistency. Regarding the events, first of all there was in 1998 the *Seagram/Polygram-case* where the commission stated: “*that the exploitation according to the different types of rights may lead to the definition of separate product markets for each categories of rights, although the precise market definition was left open in that regard*”.⁸⁰⁷ Thereafter, in 2001, the EC launched a directive regarding the ‘harmonisation of certain aspects of copyright and related rights in the information society’. In the present case of 2007 they refer to this directive to support their decision. It cannot be stated that this practice is logically inconsistent nor that it brought any legal uncertainty for the parties, as they knew this directive was to be taken into regard.

Furthermore, the EC added a new market separation that was not foreseen in the Directive of 2001, i.e. Online Rights. Nevertheless can the EC refer to Directive 2005/737/EC where online rights were mentioned. Again, neither legal uncertainty, nor a logical inconsistency is there to be noted in this case.

⁸⁰⁶ Ibid., par 62.

⁸⁰⁷ Ibid., par 21.

2008

Thema	Zaak nr	Partijen
Merger	M.4942 C (2008) 3328	NOKIA / NAVTEQ
Merger	M.4854 C(2008) 1859	TOMTOM / TELE ATLAS
Merger	M.5094 C(2008) 2591	NOKIA / TROLLTECH
Merger	M.5197 C(2008) 4072	HP / EDS
Merger	M.5221 C(2008) 4585	KENWOOD / JVC / HOLDCO
Merger	M.5255 C(2008) 5205	TDK / EPCOS GORES GROUP LLC/SIEMENS ENTERPRISE COMMUNICATIONS
Merger	M.5300 C(2008) 5391	CAP GEMINI / BAS
Merger	M.5301 C(2008) 6041	THOMSON CORPORATION / REUTERS GROUP
Merger	M.4726 C(2008) 654 final	IBM / ILOG
Merger	M.5317 C(2008) 6877	ERICSSON / STM / JV
Merger	M.5332 C(2008) 7596	IBM / TELELOGIC
Merger	M.4747 C(2008) 823 final	DEUTSCHE TELEKOM / OTE
Merger	M.5148 C(2008)5713	FOXCONN / SANMINA SCI
Merger	M.5140 C(2088) 3256	APW / GMG / EMAP
Merger	M.5051 SG-Greffe(2008) 201015	ACER / PACKARD BELL
Merger	M.4979 SG-Greffe(2008) D/200805	ACER / PACKARD BELL
Merger	M.4979 SG-Greffe(2008) D/200805	ORACLE / BEA
Merger	M.5080 SG-Greffe(2008) D/202023	NORDIC CAPITAL / TIETOENATOR
Merger	M.5128 SG-Greffe(2008) D/203022	NEWS CORP / PREMIERE
Merger	M.5121 SG-Greffe(2008) D/204111	ABERTIS / SEPI / CDTI / INTA / HISPASAT
Merger	M.5105 SG-Greffe(2008) D/204129	ARQUES / SHC
Merger	M.5303 SG-Greffe(2008) D6205784	SONY / SONYBMG
Merger	M.5272 C(2008) 5211	

M. 4942 Nokia - Navteq

The European Commission clears the sole control acquisition of Navteq, by Nokia. ⁸⁰⁸

Nokia is the largest manufacturer of mobile telephones in the world. NAVTEQ is one of two providers of navigable digital map databases offering a complete coverage of Europe and North America. Navigable digital map databases are essential inputs for navigation applications on mobile telephones. ⁸⁰⁹

As regards the relevant product market and geographical scope

1. The Upstream Markets - Non-Navigable and Navigable Digital Map Databases

Conclusion

“It must be concluded that the two relevant product markets upstream should be defined as the provision of non-navigable digital map databases and navigable digital map databases respectively. For both types of database, the geographic coverage of the licence determines the scope of the relevant product markets. However, for the purposes of this Decision the exact delineation of the relevant product markets - that is to say whether or not individual country or regional licences constitute separate product markets - may be left open, since it does not affect the Commission's assessment of the proposed transaction”. ⁸¹⁰

“It must therefore be concluded that the relevant geographic market for the provision of non-navigable digital map databases is worldwide. The market for navigable digital map databases is also worldwide in scope”. ⁸¹¹

2. The Intermediate Market - Navigation Software

“[...] For the purposes of this case, it must therefore be concluded that the relevant intermediate product market is the market for the provision of navigation software”. ⁸¹²

“It must therefore be concluded that the relevant geographic market for the provision of navigation software is worldwide in scope”. ⁸¹³

3. The Downstream Markets

Navigation applications for mobile handsets

“Navigation applications for mobile handsets are a nascent market, and as such are subject to constant change. Various business models co-exist and compete with each other. However, from the point of view of the end-customer, on-board, hybrid and off-board navigation applications delivered through various channels are very similar.

⁸⁰⁸ http://europa.eu/rapid/press-release_IP-08-1085_en.htm

⁸⁰⁹ http://europa.eu/rapid/press-release_IP-08-1085_en.htm

⁸¹⁰ Commission Decision in case No COMP/M.4942 - NOKIA / NAVTEQ, par 64.

⁸¹¹ Ibid., par 71.

⁸¹² Ibid., par 89.

⁸¹³ Ibid., par 95.

*Although further differentiation cannot be excluded in the future, for the purpose of this Decision a single relevant market for navigation applications for mobile handsets, offering turn-by-turn navigation, may be defined”.*⁸¹⁴

*“Ultimately, the Commission's assessment is not affected by the geographical scope of the downstream markets”.*⁸¹⁵

Market for mobile handsets

*“For those reasons, for the purpose of this Decision, the relevant product market encompasses all mobile phones, including handheld computers with wide area connectivity”.*⁸¹⁶

*“Ultimately, the Commission's assessment is not affected by the geographical scope of the downstream markets”.*⁸¹⁷

⁸¹⁴ Ibid., par 126.

⁸¹⁵ Ibid., par 127.

⁸¹⁶ Ibid., par 139.

⁸¹⁷ Ibid., par 140.

M. 4854 Tomtom – Tele Atlas

The European Commission clears the sole control acquisition of Tele Atlas by TomTom.⁸¹⁸

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

As regards the relevant product market and geographical scope

The Upstream Market – Navigable Digital Map Databases

*“The Commission considers that the relevant product market upstream should be defined as the provision of navigable digital map databases where the geographic coverage of the licensed database determines the scope of the relevant product markets. However, for the purposes of this Decision the exact delineation of the relevant product markets, that is to say, whether or not individual country or regional licences constitute separate product markets, may be left open, since it does not affect the Commission's assessment of the proposed transaction”.*⁸¹⁹

*“Considering the evidence presented in paragraphs 39-43, the Commission concludes that the relevant geographic market for the provision of navigable digital map databases is worldwide. The notifying party does not contest this conclusion”.*⁸²⁰

The Intermediate Market – Navigation Software

*“The Commission therefore considers it inappropriate to demarcate separate relevant product markets depending on the type of navigation device in which the software is used”.*⁸²¹

*“The Commission therefore concludes that the relevant geographic market for the provision of navigation software has a worldwide scope”.*⁸²²

The Downstream Market – PNDs

*“For the purposes of this Decision, the relevant product market downstream is the market for the provision of PNDs”.*⁸²³

*“the Commission concludes that the geographic market is at least EEA- wide”.*⁸²⁴

⁸¹⁸ http://europa.eu/rapid/press-release_IP-08-742_en.htm

⁸¹⁹ Commission Decision in case No COMP/M.4854 - TOMTOM / TELE ATLAS, par 38.

⁸²⁰ Ibid., par 44.

⁸²¹ Ibid., par 51.

⁸²² Ibid., par 53.

⁸²³ Ibid., par 70.

⁸²⁴ Ibid., par 72.

M. 5094 Nokia - TrollTech

The European Commission clears the sole control acquisition of Trolltech by Nokia.⁸²⁵

Nokia is active worldwide in the development and supply of mobile handsets, mobile and fixed telecom networks and associated services and internet-based services. Trolltech develops and supplies software development tools, which can be used for desktop computers and Linux-operated communication devices.⁸²⁶

As regards the relevant product market and geographical scope

software development tools

*“For the purpose of this case, a narrow definition of the relevant product market would comprise only software development tools designed to develop software for mobile handsets, and, the narrowest possible relevant product market appears to be the market for software development tools designed to develop software for Linux-operated mobile handsets (including Trolltech's products Qtopia Core, Qtopia Platform, Qtopia Phone Edition and comparable products). Furthermore, it should also be noted that Trolltech's Qtopia product line is mainly known in the market for its specific graphical user interface development capabilities”.*⁸²⁷

*“In previous decisions, the Commission has acknowledged that the relevant geographic market for software development tools is at least EEA-wide”.*⁸²⁸

*“In any case, however, it is not necessary for the purpose of this decision to delineate the exact scope of the relevant product or geographic market as the transaction does not raise competition concerns under any alternative market definition”.*⁸²⁹

mobile handsets

*“While these views of the notifying party are not in contradiction with the findings of the Commission in case n° COMP/M.3911 - BenQ/Siemens, in that case the question whether the mobile handsets market should be further subdivided into separate markets for the various communication standards was ultimately left open”.*⁸³⁰

“Nokia considers the market for the manufacture and supply of mobile handsets to be worldwide in scope, which is in line with the Commission's decision in case n° COMP/M.3911 BenQ/Siemens. Manufacturers distribute essentially the same products to all of their customers regardless of their geographic location; there are no appreciable price differences between the products globally at the customer level (although due to operator subsidies in some regions, there may be differences in price to the final end-consumer); transport costs do not limit cross-border trade. Products

⁸²⁵ http://europa.eu/rapid/press-release_IP-08-877_en.htm

⁸²⁶ http://europa.eu/rapid/press-release_IP-08-877_en.htm

⁸²⁷ Commission Decision in case No COMP/M.5094 - NOKIA / TROLLTECH, par 14.

⁸²⁸ Ibid., par 15.

⁸²⁹ Ibid., par 16.

⁸³⁰ Ibid., par 19.

*are manufactured globally, in particular in Asia, to be shipped to customers throughout the world”.*⁸³¹

*“In any case, it is not necessary for the purpose of this decision to delineate the exact scope of the relevant product or geographic market as the transaction does not raise competition concerns under any alternative market definition”.*⁸³²

⁸³¹ Ibid., par 20.

⁸³² Ibid., par 21.

M. 5197 HP -EDS

The European Commission clears the sole control acquisition of EDS by Hewlett-Packard.⁸³³

Hewlett-Packard ("HP") is an information technology company supplying hardware, services and software to consumers, businesses and institutions globally. EDS is an information technology services company supplying business solutions worldwide.⁸³⁴

As regards the relevant product market and geographical scope

*“According to the notifying party, the relevant product market encompasses all IT services”.*⁸³⁵

*“In previous decisions, the Commission considered the possibility of sub-dividing the market for IT services in a way similar to Gartner by identifying seven service categories: [...]. However, in each of these cases the exact definition of the market was left open”.*⁸³⁶

After investigation the EC concluded that: *“Nevertheless, the question whether IT services, for the purposes of defining the relevant market, should be sub-divided by segments (including further sub-division of ITM into AO and ITO), verticals or by customer size can be left open, because the concentration does not raise competition concerns under any possible definition of the relevant market”.*⁸³⁷

*“In previous decisions, the Commission has indicated that the IT services market has increasingly shown a strong trend towards internationalisation of supply and demand, but left the exact geographic scope open.”*⁸³⁸ *“In any case the question whether the market for IT, ITM and the other possible sub-segments are EEA wide or worldwide in scope can be left open, because the concentration does not raise any competition concern under any possible definition”.*⁸³⁹

⁸³³ http://europa.eu/rapid/press-release_IP-08-1211_en.htm

⁸³⁴ http://europa.eu/rapid/press-release_IP-08-1211_en.htm

⁸³⁵ Commission Decision in case No COMP/M.5197 - HP / EDS, par 6.

⁸³⁶ Ibid., par 8.

⁸³⁷ Ibid., par 15.

⁸³⁸ Ibid., par 16.

⁸³⁹ Ibid., par 18.

M. 5221 Kenwood – JVC - Holdco

The European Commission approves the merger between Kenwood and JVC.⁸⁴⁰

Kenwood is a global provider of electronics equipment. Its business focuses on three product categories: (i) car electronics, (ii) home electronics, and (iii) communication equipment (including handheld and mobile radios, transceivers, repeaters and base stations). JVC is active world-wide in the research, development, manufacturing and sales of electronic products and accessories for private and professional use. JVC's business includes audio, visual, computer-related electronics and software, and media products.⁸⁴¹ Holdco will be the parent company that will own Kenwood and JVC.⁸⁴²

As regards the relevant product market

*“According to the parties, the relevant product markets, for the purpose of the present transaction, are the markets for Car Electronics and Home and Mobile Electronics. According to the parties, there is no need for further sub-segmentation of these two relevant markets due to high supply side substitution among players active within any sub-segments of these markets”.*⁸⁴³

Home and Mobile Electronics

*“However, for the purpose of the present transaction the exact product market definition can be left open as the transaction would not give rise to any competition concerns under any alternative market definition”.*⁸⁴⁴

Car electronics

*“In any case, it does not have to be decided whether there is a specific market for OEM customers in relation to Car Electronics as, even if the OEM channel was considered to be a separate market, the parties' activities in such a market would be de minimis”.*⁸⁴⁵

As regards the geographical scope

*“In previous decisions related to the markets for consumer electronics and car components, the Commission has indicated that the geographic scope of such markets can be national due to national distribution systems, service organization, marketing strategies, specific customer preferences or national organization of sales”.*⁸⁴⁶

“However, for the purpose of the present transaction, the exact geographic market definition can be left open since the transaction would not give rise to any

⁸⁴⁰ http://europa.eu/rapid/press-release_IP-08-1263_en.htm

⁸⁴¹ http://europa.eu/rapid/press-release_IP-08-1263_en.htm

⁸⁴² Commission Decision in case No COMP/M.5221 - KENWOOD / JVC / HOLDCO, par 4.

⁸⁴³ Ibid., par 10.

⁸⁴⁴ Ibid., par 13.

⁸⁴⁵ Ibid., par 14.

⁸⁴⁶ Ibid., par 21.

competition concerns even under the possible narrowest market definition”. ⁸⁴⁷

⁸⁴⁷ Ibid., par 22.

M. 5255 TDK - Epcos

The European Commission clears the sole control acquisition of EPCOS by TDK.⁸⁴⁸

TDK is active in the development, production and sale of electronic materials and components as well as recording media, including videotapes, CD-Rs, minidisks and DVDs. EPCOS is active in the development, production and sale of electronic components, in particular passive and electromechanical components.⁸⁴⁹

As regards the relevant product market and geographical scope

*“According to the parties and in line with Commission precedents, electronic components can be broadly divided into three main categories that could constitute separate product markets: [...]”.*⁸⁵⁰

*“For the purpose of the current decision, the exact product market definition can however be left open as, under all alternative product market definitions considered, the proposed transaction will not raise any competition concerns”.*⁸⁵¹

*“In previous decisions dealing with electronic components, the Commission has considered the market to be at least EEA-wide, if not worldwide”.*⁸⁵²

“For the purpose of the current decision, the exact geographic market definition can however be left open as, under all alternative geographic market definitions considered, the proposed transaction will not raise any competition concerns”.

⁸⁴⁸ http://europa.eu/rapid/press-release_IP-08-1327_en.htm

⁸⁴⁹ http://europa.eu/rapid/press-release_IP-08-1327_en.htm

⁸⁵⁰ Commission Decision in case No COMP/M.5255 - TDK / EPCOS, par 8.

⁸⁵¹ Ibid., par 16.

⁸⁵² Ibid., par 18.

M. 5300 Gores group LLC – Siemens Enterprise Communications

The European Commission clears the sole control acquisition of Siemens Enterprise Communications business by the Gores Group.⁸⁵³

Gores is a private equity investor focused on acquiring controlling interests in mature and growing businesses, primarily in the technology, telecommunications, business services and industrial sectors in the US and Western Europe. SEN develops, manufactures and distributes communication products, services and solutions for companies and institutions. SEN's portfolio includes voice communications platforms, and private branch exchanges (PBXs), unified communications applications and solutions, data network components, end-user devices and associated services.⁸⁵⁴

As regards the relevant product market and geographical scope

PBXs

*“The market for PBXs was first defined by the Commission in EADS, as part of a wider market for fixed telecommunications equipment, and then applied in a number of subsequent cases”.*⁸⁵⁵ *“The Commission has considered in the past that the market for PBXs is national in scope”.*⁸⁵⁶

*“For the purposes of the present decision, the exact delineation of the PBX market can be left open, as the proposed transaction does not raise any competition concerns, under any alternative product and/or geographic market definition”.*⁸⁵⁷

Switching and routing equipment

*“The Commission has however left open the exact product market definition in these earlier decisions, although it recognised the growing multi-functionality and convergence between switches and routers”.*⁸⁵⁸ *“In the past, the Commission has left open whether the supply of switching and routing equipment has an EEA-wide or worldwide geographic scope”.*⁸⁵⁹

*“For the purposes of the present decision, the exact product and geographic market definition for switching and routing equipment can be left open, as the proposed transaction does not raise any competition concerns, under any alternative market definition”.*⁸⁶⁰

WLAN equipment

⁸⁵³ http://europa.eu/rapid/press-release_IP-08-1379_en.htm

⁸⁵⁴ http://europa.eu/rapid/press-release_IP-08-1379_en.htm

⁸⁵⁵ Commission Decision in case No COMP/M.5300 - GORES GROUP LLC/SIEMENS ENTERPRISE COMMUNICATIONS, par 10.

⁸⁵⁶ Ibid., par 11.

⁸⁵⁷ Ibid., par 12.

⁸⁵⁸ Ibid., par 14.

⁸⁵⁹ Ibid., par 15.

⁸⁶⁰ Ibid., par 16.

*“In previous cases, the Commission has identified the provision of data networking equipment as a separate product market, with a possible distinction between WLAN and local area network (“LAN”) products as well as single components of the respective systems”.*⁸⁶¹ *“In the past, the Commission has left open whether the supply of WLAN equipment has an EEA-wide or worldwide geographic dimension”.*⁸⁶²

*“For the purposes of the present decision, the exact product and geographic market definition for switching and routing equipment can be left open, as the proposed transaction does not raise any competition concerns, under any alternative market definition”.*⁸⁶³

Communications Terminal Devices / Cordless Handsets

*“In past decisions, the Commission has left open whether there is a single relevant product market for electronic consumer communications terminal devices including corded, cordless analogue and digital telephones with or without answering machines”.*⁸⁶⁴ *“The Commission has previously considered that the geographic dimension of such market could be at least EEA-wide”.*⁸⁶⁵

*“For the purposes of the present decision, the exact product and geographic market definition for cordless handsets can be left open, as the proposed transaction does not raise any competition concerns, under any alternative market definition”.*⁸⁶⁶

IT Services

*“The Commission has recently considered the scope of the relevant product market for IT services, noting that a number of segmentations of the market are possible and leaving the exact market definition open”.*⁸⁶⁷ *“The Commission has noted that the IT services markets display some characteristics of both national and EEA-wide markets, in that some competitors operate principally in one or a limited number of jurisdictions, while the larger competitors operate on an international, if not global, basis”.*⁸⁶⁸

*“For the purposes of the present decision, the exact product and geographic market definition for IT services can be left open, as the proposed transaction does not raise any competition concerns, under any alternative market definition”.*⁸⁶⁹

Call (or contact) center solutions

“There are no market definition precedents in this regard. However, in the past, the Commission has considered that the geographic scope of related products markets

⁸⁶¹ Ibid., par 18.

⁸⁶² Ibid., par 19.

⁸⁶³ Ibid., par 20.

⁸⁶⁴ Ibid., par 22.

⁸⁶⁵ Ibid., par 23.

⁸⁶⁶ Ibid., par 24.

⁸⁶⁷ Ibid., par 26.

⁸⁶⁸ Ibid., par 27.

⁸⁶⁹ Ibid., par 28.

such as those for (i) business software, and (ii) fixed communications network equipment are at least EEA-wide”.⁸⁷⁰

“For the purposes of the present decision, the exact product and geographic market definition for call (or contact) centre solutions can be left open, as the proposed transaction does not raise any competition concerns from an EEA-wide perspective”.⁸⁷¹

Stand-alone power supplies

“Lineage Power (another Gores subsidiary) develops, produces and distributes stand-alone power supplies that can be used to provide electric power to PBXs”.⁸⁷²

“The Commission has defined in the past a separate product market for stand-alone power systems which is at least EEA-wide”.⁸⁷³

“For the purposes of the present decision, the Commission takes the view that the relevant market is the market for stand-alone power systems, which is at least EEA-wide”.⁸⁷⁴

Other electronic components: PLLs and hybrid (ceramic) line protectors

“There are no market definition precedents in this regard. However, in the past, the Commission has considered that the geographic scope of related products markets such as passive and electromechanical components is at least EEA-wide”.⁸⁷⁵

“For the purposes of the present decision, the exact product and geographic market definition for PLLs and hybrid line protectors can be left open, as the proposed transaction does not raise any competition concerns at EEA level”.⁸⁷⁶

⁸⁷⁰ Ibid., par 30.

⁸⁷¹ Ibid., par 31.

⁸⁷² Ibid., par 32.

⁸⁷³ Ibid., par 33.

⁸⁷⁴ Ibid., par 34.

⁸⁷⁵ Ibid., par 36.

⁸⁷⁶ Ibid., par 37.

M. 5301 Capgemini - Bas

The European Commission clears the sole control acquisition of BAS by Capgemini.⁸⁷⁷

Capgemini is a global services company active through various subsidiaries in consulting and information services. Capgemini is organised around four core areas of activity: consulting services; technology services; outsourcing services and local professional services. BAS is active in the Netherlands. The company provides software support services and professional services, in particular IT consulting, IT development and Integration and IT management.⁸⁷⁸

As regards the relevant product market and geographical scope

IT services in the Netherlands.

*“In previous Commission decisions concerning the IT services sector, various market segmentations were analysed based on the type of services [...]”.*⁸⁷⁹

*“However, for the purpose of these cases, the Commission left the exact delineation of the market open”.*⁸⁸⁰

*“The parties submit that the relevant geographic market for IT services is at least EEA- wide. This is in line with previous Commission decisions¹¹, where the Commission left open whether IT service markets are national or EEA-wide in scope, noting that the market for IT services showed a trend towards internationalisation of supply and demand”.*⁸⁸¹

*“For the purpose of the present case, the exact geographic market definition can however be left open as the proposed transaction would not give rise to any competition concerns under any alternative market definition”.*⁸⁸²

⁸⁷⁷ http://europa.eu/rapid/press-release_IP-08-1493_en.htm

⁸⁷⁸ http://europa.eu/rapid/press-release_IP-08-1493_en.htm

⁸⁷⁹ Commission Decision in case No COMP/M.5301 - CAP GEMINI / BAS, par 9.

⁸⁸⁰ Ibid., par 9.

⁸⁸¹ Ibid., par 17.

⁸⁸² Ibid., par 21.

M. 4726 Thomson Corporation – Reuters group

The European Commission clears the sole control acquisition of Reuters by Thomas, subject to conditions.⁸⁸³

Both Thomson and Reuters are leading financial information providers. The companies source, aggregate and disseminate real-time and historical market data and other type of financial content to respond to the needs of financial professionals, such as traders and sell-side people in the on-trading floor space, of investors on the buy-side and of analysts in the off-trading floor space within banks, investment funds and corporations. In addition, Thomson is active in legal, fiscal, accounting and scientific research markets, whereas Reuters is best known as one of the largest international news agencies.⁸⁸⁴

As regards the relevant product market and geographical scope

*“In the light of the above considerations, the Commission is of the view that the product market delineation should be based on several discrete product sets since the different discrete content sets, the desktop products and the various infrastructure and/or software related services available in the marketplace cannot be considered as substitutable for one another and respond each to different and well defined needs and use”.*⁸⁸⁵

*“Therefore, for the purpose of this case, the Commission has carried out its investigation in the following areas: (i) real-time market data sold through desktop products/workstations; (ii) real-time datafeeds; (iii) market data platforms; in the context of real-time datafeeds and market data platforms, the role of (iv) Reuters Instrument Codes (RICs) among securities identifiers is analysed in connection with a claim that the merger would give rise to concerns due to these Reuters' security identifiers; (v) transaction platforms for Fixed Income securities (vi) News (vii) research - broker reports, with a distinction between (a) Real-time Research and (b) Aftermarket (embargoed) Research; (viii) earning Estimates; (ix) Fundamentals; (x) Times Series/economic data (T/S); (xi) Ownerships; (xii) Deals; (xiii) other content sets (profiles, public filings, other time series); (xiv) desktop products in research & asset management, in particular Wealth Management desktop products”.*⁸⁸⁶

“The geographic dimension of the relevant global content sets markets would appear to be at least EEA-wide and is probably worldwide in scope. At the level of desktop products in the research & asset management space (off-trading floor), the market investigation showed that in respect of Wealth Management demand and supply of products are much influenced by national tax and pension legislation which may restrict the geographic scope of this segment, unlike the other ones (Investment Banking, Investment Management, Corporates), to national and/or regional boundaries. As regards other segments it can be left open whether the geographic dimensions is EEA or world-wide, as the assessment would not change since the

⁸⁸³ http://europa.eu/rapid/press-release_IP-08-260_en.htm

⁸⁸⁴ http://europa.eu/rapid/press-release_IP-08-260_en.htm

⁸⁸⁵ Commission Decision in case No COMP/M.4726 - THOMSON CORPORATION / REUTERS GROUP, par 109.

⁸⁸⁶ Ibid., par 110

*merger would not raise competition problems”.*⁸⁸⁷

⁸⁸⁷ Ibid., par 111.

M. 5332 Ericsson – STM - JV

The European Commission approves the JV between Ericsson and STM.⁸⁸⁸

Ericsson is active in telecommunication products, ranging from networks and multimedia solutions to professional services and other communication products such as mobile phones. It is the ultimate parent company of Ericsson Mobile Platforms (EMP), a business unit which operates as a designer of wireless platforms. Wireless platforms combine the hardware components and the key software which allow a wireless handset to operate.⁸⁸⁹

STMicroelectronics is active in the supply of semiconductors, ranging from single components to complex integrated systems and complete electronic platform solutions. It is the ultimate parent company of ST-NXP, a company active in the area of semiconductors for mobile telecommunications.⁸⁹⁰

As regards the relevant product market and geographical scope

Fabrication of wafers for wireless semiconductors

*“Given that the proposed transaction does not raise competition concerns in relation to the fabrication of wafers, the exact definition of the relevant product market in relation to wafers can be left open for the purpose of the present case”.*⁸⁹¹

*“In previous decisions dealing with semiconductors in general and more specifically with wireless handset semiconductors, the Commission considered the geographic markets as worldwide although it left open the exact scope of the geographic market”.*⁸⁹² *“For the purpose of the present transaction, the exact definition of the relevant geographic market in relation to wafers, semiconductors and wireless platforms can be left open”.*⁸⁹³

Supply of semiconductors for wireless communications

*“With regard to dividing the relevant market according to sub-segments, the parties and respondents to the market investigation have indicated that it is generally difficult to exactly delineate the relevant markets due to the rapid changes in technology. They have however proposed a number of possible delineations which are examined below”.*⁸⁹⁴

“The parties submit that regardless of the exact product market definition retained in relation to semiconductors for wireless handsets, the transaction would not raise any competition concerns. In the STM/NXP/JV decision, the Commission left open the exact delineation of the product market, as the transaction was found not to raise any

⁸⁸⁸ http://europa.eu/rapid/press-release_IP-08-1770_en.htm

⁸⁸⁹ http://europa.eu/rapid/press-release_IP-08-1770_en.htm

⁸⁹⁰ http://europa.eu/rapid/press-release_IP-08-1770_en.htm

⁸⁹¹ Commission Decision in case No COMP/M.5332 - ERICSSON / STM / JV, par 26.

⁸⁹² Ibid., par 67.

⁸⁹³ Ibid., par 79.

⁸⁹⁴ Ibid., par 33.

*competition concerns. This decision was taken only four months ago and the market investigation in the present case has not pointed to major changes in the market conditions since then. The market investigation conducted in the present case confirmed the earlier findings”.*⁸⁹⁵

*“As will be shown below, given that the proposed transaction will not give rise to any competition concerns under any alternative product market definition selected, the Commission takes the view that the exact product market definition in relation to wireless platforms can be left open”.*⁸⁹⁶

Supply of wireless platforms for wireless handsets

*“As will be shown below, given that the proposed transaction will not give rise to any competition concerns under any alternative product market definition selected, the Commission takes the view that the exact product market definition in relation to wireless platforms can be left open”.*⁸⁹⁷

Supply of wireless handsets

*“In Nokia/Trolltech, the Commission considered the relevant product markets for wireless handsets, but left open the exact product market definition”.*⁸⁹⁸

*“In Nokia/NAVTEQ, the Commission defined the relevant product market as encompassing all wireless phones, including handheld computers with wide area connectivity”.*⁸⁹⁹

*“As will be shown below, given that the proposed transaction is unlikely to give rise to any competition concerns, the exact product market definition in relation to wireless handsets can be left open”.*⁹⁰⁰

*“In Nokia/Trolltech, the Commission left open the exact geographic scope for the market of wireless handsets. In that case, Nokia considered the market for the manufacture and supply of wireless handsets to be worldwide in scope. In Nokia/NAVTEQ the geographic market was defined as at least EEA-wide”.*⁹⁰¹ *“For the purpose of the present transaction, the exact definition of the relevant geographic market in relation to wireless handsets can be left open”.*⁹⁰²

⁸⁹⁵ Ibid., par 46.

⁸⁹⁶ Ibid., par 47.

⁸⁹⁷ Ibid., par 60.

⁸⁹⁸ Ibid., par 64.

⁸⁹⁹ Ibid., par 65.

⁹⁰⁰ Ibid., par 66.

⁹⁰¹ Ibid., par 71.

⁹⁰² Ibid., par 72.

M. 4747 IBM - Telelogic

The European Commission clears the sole control acquisition of Telelogic by IBM.⁹⁰³

IBM is active worldwide in the development, production and marketing of a variety of information technology ("IT") products, software and services. As part of its diverse software activities, IBM develops and sells software development tools. Telelogic is a Swedish software company.

As regard the relevant product market and geographical scope

*“The proposed transaction has an impact on the software development tools industry”.*⁹⁰⁴ *“The in-depth investigation carried out by the Commission largely confirmed that Requirements Management tools and UML-compatible Modelling tools are to be regarded as relevant product markets; it also showed, however, that for a number of reasons the definition of the relevant product markets has to be treated with great caution in the present case”.*⁹⁰⁵

*“In a previous decision, the Commission left open the question of whether an overall market for software development tools exists, or whether distinct product markets within the area of software development tools have to be defined”.*⁹⁰⁶

*“Although the identification of Requirements Management and Modelling tools as distinct product markets in the decision to initiate proceedings appears to be confirmed by the in-depth investigation, the exact boundaries of the relevant product markets (that is to say the products which are regarded as interchangeable by the consumers) are difficult to delineate. This is primarily due to the wide diversity of the Requirements Management and Modelling tools available in the market place, which in turn is a consequence of the heterogeneity of the customers' needs in relation to these tools”.*⁹⁰⁷

*“In view of the foregoing, the product market definition in the present case can only provide a broad framework for the competitive assessment of the proposed transaction. Indeed, different software products falling within one product category, although providing similar core functionality from an abstract standpoint, may not be real substitutes from a customer's standpoint. In addition, different elements that may not point to the existence of distinct product markets must be taken into account in the framework of the competitive assessment. This concerns, in particular, elements such as product heterogeneity and differences in customers' needs”.*⁹⁰⁸

“In a previous decision relating to software development tools, the Commission found

⁹⁰³ http://europa.eu/rapid/press-release_IP-08-387_en.htm

⁹⁰⁴ Commission Decision in case No COMP/M.4747 - IBM / TELELOGIC, par 11.

⁹⁰⁵ Ibid., par 13.

⁹⁰⁶ Ibid., par 59.

⁹⁰⁷ Ibid., par 122.

⁹⁰⁸ Ibid., par 123.

*that the geographic scope of the relevant markets was at least EEA- wide”.*⁹⁰⁹

*“However, the exact definition of the relevant geographic markets can be left open in the present, as the conclusion of the competitive assessment remains unchanged under a world-wide or an EU-wide definition”.*⁹¹⁰

⁹⁰⁹ Ibid., par 124.

⁹¹⁰ Ibid., par 126.

M. 5148 Deutsche Telekom - OTE

The European Commission clears the sole control acquisition of OTE by Deutsche Telekom.⁹¹¹

Deutsche Telekom AG (DTAG) is an integrated telecommunications and information technology service provider. It is active in fifty countries worldwide and provides fixed communications services in several EEA Member States. OTE provides fixed communications services in Greece and Romania and, through its subsidiary Cosmote; mobile telecommunications services in Bulgaria, Greece and Romania.⁹¹²

As regards the relevant product market and geographical scope

Fixed telecommunications services

*“The parties propose to define the product markets in line with previous Commission decisions and along the Commission’s Recommendation of 11 February 2003 on Relevant Product and Service Markets (the ‘Recommendation’). The proposed transaction concerns the following relevant markets for fixed telecommunications services: [...]”.*⁹¹³

*“According to the notifying parties and in line with Commission precedents, the geographic scope of all of these markets is national, except for the markets for the provision of international wholesale carrier services, which is at least EEA-wide, and the provision of enhanced GTS, which has been considered global or possibly regional (e.g. European) in precedent decisions”.*⁹¹⁴

The EC states that: *“However, the exact definition of the relevant market for retail fixed telephony services in Romania can be left open as the proposed transaction would not lead to any merger-specific competition concerns on the narrowest market”.*⁹¹⁵

Mobile telecommunication services

*“The parties propose to define the mobile telecommunication services product markets in line with Commission precedents and the Recommendation”.*⁹¹⁶

*“According to the notifying parties, and in line with previous Commission decisions, the geographic scope of all of these markets is national”.*⁹¹⁷

⁹¹¹ http://europa.eu/rapid/press-release_IP-08-1452_en.htm

⁹¹² http://europa.eu/rapid/press-release_IP-08-1452_en.htm

⁹¹³ Commission Decision in case No COMP/M.5148 - DEUTSCHE TELEKOM / OTE, par 14.

⁹¹⁴ Ibid., par 15.

⁹¹⁵ Ibid., par 16.

⁹¹⁶ Ibid., par 18.

⁹¹⁷ Ibid., par 19.

M. 5140 Foxconn – Sanmina SCI

The European Commission clears the sole control acquisition of Sanmina by Foxconn.⁹¹⁸

Both Foxconn and Sanmina provide electronic manufacturing services (EMS) to original equipment manufacturers (OEMs) worldwide. EMS is the design, testing, manufacturing, distribution and provision of return/repair services for electronic component and assemblies for OEMs. As a result of the transaction, Foxconn would acquire two Sanmina plants located in Szekesfehervar, Hungary and Guadalajara, Mexico.⁹¹⁹

As regards the relevant product market and geographical scope

Electronic manufacturing services (EMS)

“In previous decisions, the Commission has considered that in-house EMS production by OEMs and EMS by third parties are not part of the same product market. The Commission has also considered the existence of certain specific electronic product segments divided according to the final product/service in which EMS are incorporated (i.e. the "end use destination"), such as for instance communications, computers or consumer goods. However, the exact product market definition and whether it comprises provision of all EMS to OEMs or whether the EMS should be subdivided into narrower segments was left open”.⁹²⁰ “However, for the purpose of this case the Commission can leave the exact product market definitions open as the proposed transaction does not lead to any competitive concerns under any market definition”.⁹²¹

“In the previous decisions the Commission indicated that the geographic market for provision of EMS is worldwide or at least EEA-wide. However, the precise scope of the geographic market was left open”.⁹²² “In any event, also for the purpose of this case the exact geographic market definition can be left open as the proposed transaction does not lead to any competition concerns”.⁹²³

⁹¹⁸ http://europa.eu/rapid/press-release_IP-08-1000_en.htm

⁹¹⁹ http://europa.eu/rapid/press-release_IP-08-1000_en.htm

⁹²⁰ Commission Decision in case No COMP/M.5140 - FOXCONN / SANMINA SCI, par 11.

⁹²¹ Ibid., par 17.

⁹²² Ibid., par 18.

⁹²³ Ibid., par 20.

M. 5051 APW – GMG - EMAP

The European Commission clears the sole control acquisition of EMAP by Apax Partners.⁹²⁴

Following the recent divestment of its consumer media and radio divisions, Emap is active in the provision of business to business media services delivered through multiple platforms such as print and online publications, events organisation and online information products. APW is an adviser to private equity funds. GMG is a publisher of newspapers and magazines and a radio broadcaster.⁹²⁵

As regards the relevant product market and geographical scope

Magazines and other publications

*“APW through its portfolio companies Incisive and TMG, GMG and the target are active in the market for publication. Commission precedents in the publishing sector indicate that the written press is divided into a number of distinct national or regional product markets based on the type of publication (i.e. newspaper and magazines) and on the content of the publications involved and the identity of the target audiences⁶. Further segmentations also potentially occur due to other factors such as periodicity, style, presentation, and price⁷. The parties take the same view as the Commission's precedents described above”.*⁹²⁶

*“In relation to news press, the Commission has in previous investigations found the geographic market to be national or infra-national, in light of linguistic considerations and the relevance of the material involved to particular Member States/regions⁸. The parties are of the view that for the types of press concerned in the present transaction (business information magazines and newspapers) the relevant markets are likely to be national for the same reasons”.*⁹²⁷

*“In any event, regardless of how broadly or narrowly the product and geographic markets are defined, the transaction does not give rise to any competition concerns.”*⁹²⁸

Provision of business data through datasets and directories

*“In any event, regardless of how the relevant product and geographic markets are ultimately defined, the transaction does not give rise to any competition concerns”.*⁹²⁹

Organization and management of business events

⁹²⁴ http://europa.eu/rapid/press-release_IP-08-402_en.htm

⁹²⁵ http://europa.eu/rapid/press-release_IP-08-402_en.htm

⁹²⁶ Commission Decision in case No COMP/M.5051 - APW / GMG / EMAP, par 12.

⁹²⁷ Ibid., par 13.

⁹²⁸ Ibid., par 14.

⁹²⁹ Ibid., par 19.

*“In any event, regardless of whether the market for organization and management of events other than exhibitions is further divided, the transaction does not give rise to any competition concerns”.*⁹³⁰

Advertising

*“In the Commission's practice, advertising markets, similar to publishing markets, are divided according to the medium (newspaper, magazines, online, etc.) and commonality of content, as well as the target audience. For each type of publication, the Commission has also indicated that the sale of advertising space constitutes a separate market. The markets were found to be national in scope, due to the scope of distribution and linguistic factors”.*⁹³¹

*“In any event, there is no need to define such markets because under any product or geographic market definition, the transaction will not raise serious doubts as to its compatibility with the common market”.*⁹³²

Dealer Management Software

*“For the purpose of the proposed transaction, there is no need to define whether listing tools represent a separate market, because under any product or geographic market definition, the transaction will not raise serious doubts as to its compatibility with the common market”.*⁹³³

⁹³⁰ Ibid., par 21.

⁹³¹ Ibid., par 22.

⁹³² Ibid., par 30.

⁹³³ Ibid., par 32.

M. 4979 Acer – Packard bell

The European Commission clears the sole control acquisition of Packard bell by Acer.
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Acer is a global supplier of personal computers (PCs) and related products, including laptop and desktop personal computers, servers and storage, LCD monitors and high definition TVs. Packard Bell is a European supplier of desktops, notebooks and digital entertainment solutions.⁹³⁵

As regards the relevant product market and geographical scope

Personal computers

*“In its HP/Compaq decision, the Commission indicated that the PC market could be further subdivided between two customer segments, consumers and professionals, because these two types of customers showed different purchasing patterns and product requirements”.*⁹³⁶

*“For the purpose of the present transaction, the exact product market definition can however be left open, since, even on the basis of the narrowest possible market definition, the transaction will not raise any competition concerns”.*⁹³⁷

*“In line with the Commission’s decision in HP/Compaq, the parties submit that the relevant geographic market for PCs is at least EEA-wide, [...]”.*⁹³⁸

*“The geographic market definitions can be left open given that whatever the geographic market definition (EEA or national), the transaction will not raise any competition concerns”.*⁹³⁹

PC monitors

*“In its decision TPV/Philips (monitor), the Commission held that the market for branded monitors constitutes a separate product market as opposed to monitors manufactured by OEMs. The branded sale of monitors is downstream to that of OEM computer monitors. As cathode ray tube (CRT) monitors represent a very small portion of the overall (including the liquid crystal display LCD) monitor market in the EEA (3% of monitor sales) and none of the parties is active in this segment, the assessment will focus on the LCD segment”.*⁹⁴⁰

“In the decision TPV/Philips (monitor), the Commission held that the geographic scope of the branded PC monitor market is generally narrower than EEA and most probably national. The parties consider that the branded PC monitor market is at

⁹³⁴ http://europa.eu/rapid/press-release_IP-08-325_en.htm

⁹³⁵ http://europa.eu/rapid/press-release_IP-08-325_en.htm

⁹³⁶ Commission Decision in case No COMP/M.4979 - ACER / PACKARD BELL, par 11.

⁹³⁷ Ibid., par 18.

⁹³⁸ Ibid., par 21.

⁹³⁹ Ibid., par 23.

⁹⁴⁰ Ibid., par 19.

*least EEA-wide in scope due to low transportation costs, low trade barriers, global product standards and global active suppliers”.*⁹⁴¹

*“The geographic market definitions can be left open given that whatever the geographic market definition (EEA or national), the transaction will not raise any competition concerns”.*⁹⁴²

Portable Navigation Devices PNDs

*“Portable navigation devices are portable stand-alone units designed for use mostly in automobiles. They typically use Global Positioning System (GPS) to acquire position data to locate the user on a road in the unit's map database. Using the road database, the unit can give directions to other locations along roads also in its database”.*⁹⁴³

*“The parties submit that the relevant geographic market is at least EEA-wide and possibly worldwide given that transport costs are small relative to price, products show similar specifications, PND suppliers have activities in all Member States and PND suppliers charge similar prices across Member States”.*⁹⁴⁴

⁹⁴¹ Ibid., par 24.

⁹⁴² Ibid., par 25.

⁹⁴³ Ibid., par 20.

⁹⁴⁴ Ibid., par 26.

M. 5080 Oracle - BEA

The European Commission clears the sole control acquisition of BEA by Oracle.⁹⁴⁵

Oracle provides enterprise software solutions and related services, including "middleware", database and enterprise applications software. BEA offers middleware software. Middleware belongs to the category of infrastructure software and mediates between and among operating systems, database software and enterprise application software.⁹⁴⁶

As regards the relevant product market and geographical scope

Business software market

*“Both parties are active in the business software market (as distinguished from consumer software)”.*⁹⁴⁷

*“In any event, it is not necessary for the purpose of this decision to delineate the exact definition of the product market as the transaction does not raise serious competition concerns under any alternative market definition”.*⁹⁴⁸

*“As the market investigation has widely confirmed, customers consider offers from vendors from all parts of the world, there are no technological barriers that restrict vendors from responding to bids all over the world, and the middleware products are broadly identical across different countries, since they would not require product adaptation in order to reflect different language, legal or accounting requirements”.*⁹⁴⁹

*“For the purpose of the present decision, the transaction will therefore be assessed under the worldwide geographic scope”.*⁹⁵⁰

⁹⁴⁵ http://europa.eu/rapid/press-release_IP-08-657_en.htm

⁹⁴⁶ http://europa.eu/rapid/press-release_IP-08-657_en.htm

⁹⁴⁷ Commission Decision in case No COMP/M.5080 - ORACLE / BEA, par 7.

⁹⁴⁸ Ibid., par 12.

⁹⁴⁹ Ibid., par 14.

⁹⁵⁰ Ibid., par 15.

M. 5128 Nordic Capital - TietoEnator

The European Commission clears the sole control acquisition of TietoEnator by Nordic capital.⁹⁵¹

Nordic Capital is a private equity company which invests in large and medium-sized companies, predominantly in the Nordic region. Nordic Capital controls the Swedish company Aditro, which is active in the provision of information technology (IT) services and Enterprise Application Software (EAS). TietoEnator provides IT services and is primarily active in Finland, Sweden, Norway and Denmark.⁹⁵²

As regards the relevant product market and geographical scope

IT services

“In previous decisions, the Commission considered a segmentation of the market for IT services based on the categories proposed by the IT analyst Gartner”.⁹⁵³ “Besides a possible definition of the product market along service categories, in previous decisions⁶ the Commission also considered the possibility of sub-dividing the market for IT services by industry verticals (such as e.g. agriculture, communications, financial services, transport, process manufacturing, services, etc.) and by customer size (i.e. large corporations vs. small and medium-sized enterprises (“SMEs”)).⁹⁵⁴

“However, in all previous cases, the exact delineation of the relevant product market was left open”.⁹⁵⁵

“For the purpose of this decision, the exact definition of the market for IT services can be left open since under any possible alternative market delineation the proposed transaction does not raise competition concerns”.⁹⁵⁶

“In previous Commission decisions, the exact geographic definition of the market(s) for IT services has been left open”.⁹⁵⁷

“For the purpose of this decision, the exact geographic definition of market(s) for IT services can be left open as under any possible alternative definition (EEA-wide, regional comprising the Nordic countries or national) the proposed transaction does not raise competition concerns”.⁹⁵⁸

Enterprise Application Software

“[...] For the purpose of the present decision, the exact definition of the market for

⁹⁵¹ http://europa.eu/rapid/press-release_IP-08-710_en.htm

⁹⁵² http://europa.eu/rapid/press-release_IP-08-710_en.htm

⁹⁵³ Commission Decision in case No COMP/M.5128 - NORDIC CAPITAL / TIETOENATOR, par 9.

⁹⁵⁴ Ibid., par 10.

⁹⁵⁵ Ibid., par 11.

⁹⁵⁶ Ibid., par 14.

⁹⁵⁷ Ibid., par 18.

⁹⁵⁸ Ibid., par 20.

*EAS can be left open as the result of the competitive assessment will not change under any alternative possible market definition”.*⁹⁵⁹

*“According to the Commission precedent in Oracle/PeopleSoft, the markets for HR and FMS high-function solutions are worldwide in scope. As regards mid-market HR and FMS solutions, the geographic scope of the market was left open. However, the Commission noted that the markets for HR and FMS solutions adapted to the needs and purchased by mid-sized companies may be more restricted in geographic scope than the markets for high-function FMS and HR solutions”.*⁹⁶⁰

*“The exact geographic definition of the market(s) for EAS can be left open in the present case as under any possible alternative definition (EEA-wide, regional comprising the Nordic countries or national) the proposed transaction does not raise competition concerns”.*⁹⁶¹

⁹⁵⁹ Ibid., par 16.

⁹⁶⁰ Ibid., par 21.

⁹⁶¹ Ibid., par 23.

M. 5121 News corp - Première

The European Commission clears the sole control acquisition of Première by News corp, subject to conditions.⁹⁶²

News Corp is a media company primarily active in the production and distribution of TV programming, TV satellite and cable broadcasting, the development of digital broadcasting, the development of conditional access and subscriber management systems and the creation and distribution of on-line programming worldwide.⁹⁶³ Première is active in the provision of pay-TV channels to viewers in Germany and Austria. Première offers its channels to final customers via its satellite platform and via cable and IP-TV. To encrypt its programmes, Première recently announced that it will exchange its current conditional access (CA) technology for that of News Corp's subsidiary NDS.⁹⁶⁴

As regards the relevant product market and geographical scope

The provision of TV services to end users – pay-TV

*“This definition of the relevant product market proposed by the notifying party is not in line with the Commission's consistent practice to consider distribution of pay-TV and FTA TV as two separate product markets”.*⁹⁶⁵

*“The results of the market investigation therefore indicate that, at present, pay-TV and FTA TV are still clearly distinct markets in both Germany and Austria”.*⁹⁶⁶

*“As regards the pay-TV market, in previous decisions the Commission has also considered a further distinction between classical or "linear" channels and non-linear channels such as PPV, "near-video-on demand" (nVoD) and VoD. However, for the purpose of the decision in the present case, it is not necessary to conclude on the exact definition of the relevant product market because the result of the competitive analysis would be the same, regardless of the exact market definition”.*⁹⁶⁷

*“In the case at hand it is not necessary to reach a definite conclusion concerning the relevance of a further breakdown of markets on the basis of broadcasting platforms since the conclusions of the competitive assessment of the proposed transaction would be the same, regardless of the exact definition of the relevant product market”.*⁹⁶⁸

“In the notification, the notifying party submits that the market "for the provision of TV services to end-users" is national in scope. This approach is in line with previous Commission decisions according to which the markets for organisation of television,

⁹⁶² http://europa.eu/rapid/press-release_IP-08-1012_en.htm

⁹⁶³ http://europa.eu/rapid/press-release_IP-08-1012_en.htm

⁹⁶⁴ http://europa.eu/rapid/press-release_IP-08-1012_en.htm

⁹⁶⁵ Commission Decision in case No COMP/M.5121 - NEWS CORP / PREMIERE, par 15.

⁹⁶⁶ Ibid., par 20.

⁹⁶⁷ Ibid., par 21.

⁹⁶⁸ Ibid., par 22.

*including the retail markets for pay-TV, [...]”.*⁹⁶⁹

*“In the light of these circumstances, the Commission concludes that there are significant differences in the conditions of competition in the pay-TV markets in Germany and Austria to the extent that the pay-TV markets in these two countries are to be considered national in scope”.*⁹⁷⁰

Acquisition of broadcasting rights (audiovisual content)

*“ [...] in past decision the Commission considered (i) sports events, (ii) premium films and (iii) other TV contents (such as documentaries, youth programs, etc.) as separate markets”.*⁹⁷¹

*“News Corp proposes, for the purpose of the decision in the present case, to define markets for the acquisition/licensing of (i) feature films, (ii) other TV content and (iii) TV channels”.*⁹⁷²

*“For the purpose of this decision, it can be concluded that the market for the acquisition of TV broadcasting rights is separated between pay-TV and FTA. On the other hand, it is not necessary to conclude as to whether it must be further subdivided into markets for the acquisition/licensing of (i) feature films, (ii) other TV content and (iii) TV channels or whether, within the feature films category, it is necessary to further distinguish between the different exhibit windows or between US-produced and other films since, under any possible definition, the transaction does not raise any competition concerns”.*⁹⁷³

*“In previous decisions, the Commission considered that the markets for the acquisition of audiovisual TV content (films and other content) and for the production and acquisition of pay-TV channels are national in scope or relate to linguistically homogeneous areas. However, in the News Corp/Telepiù decision the Commission noted in relation to the acquisition of rights to premium films (mostly US films) that “nothing prevents operators from acquiring rights for more than one territory at the time”, although it found that broadcasting rights were divided and sold on a mainly national basis or, at most, by language area”.*⁹⁷⁴

*“News Corp submits that the geographic scope of the markets is generally national, although in some cases it may extend to a linguistic area, for example the German speaking parts of the Community, i.e. Germany, Austria and Italy (Alto Adige)”.*⁹⁷⁵

“In any case, for the purpose of the present decision, it is not necessary to conclude as to the geographical scope of the market for the acquisition of audiovisual TV content as, whether it is national or related to homogeneous linguistic areas, the

⁹⁶⁹ Ibid., par 23.

⁹⁷⁰ Ibid., par 27.

⁹⁷¹ Ibid., par 30.

⁹⁷² Ibid., par 31.

⁹⁷³ Ibid., par 35.

⁹⁷⁴ Ibid., par 36.

⁹⁷⁵ Ibid., par 37.

*transaction does not raise any competition concerns”.*⁹⁷⁶

Technical services: market for Conditional Access (CA) systems and for middleware

*“In Bertelsmann/Kirch/Premiere, the Commission identified a separate market for technical services for pay-TV, which would include a number of different components such as conditional access (CA) systems, middleware and application programming interface. The notifying party agrees with this market definition. Given that the Bertelsmann/Kirch/Premiere decision is already almost fifteen years old and that the pay-TV market is characterized by rapid technological change, the market investigation has aimed at clarifying whether any of the different technical services components could constitute a separate market or segment”.*⁹⁷⁷

*“ [...] the Commission considers that the provision of CA solutions is a separate product market”.*⁹⁷⁸

As regards middleware: *“it is not necessary to conclude as to the existence of a separate market for the provision of middleware for the purpose of this decision, since the competitive assessment of the concentration would not change”.*⁹⁷⁹

*“According to Bertelsmann/Kirch/Premiere, the market for technical services for pay-TV, encompasses the entire German-speaking area. News Corp agrees in its notification with this geographic scope. On the other hand, the market investigation has revealed that providers of CA systems usually offer their encryption systems on a global basis. [...] At any rate, the question can be left open as the transaction will not have substantial effects in the market for CA systems”.*⁹⁸⁰

*“When considering the middleware software segment in a different context and for different functionalities, the Commission has in a previous decision defined the scope of a market for middleware software as global”.*⁹⁸¹

*“The market investigation revealed no elements on the basis of which the geographic scope of the middleware market would not have to be defined as at least EEA-wide or even world-wide. In any case, the question can be left open as the transaction will not have substantial effects in the market for middleware software”.*⁹⁸²

⁹⁷⁶ Ibid., par 39.

⁹⁷⁷ Ibid., par 40.

⁹⁷⁸ Ibid., par 44.

⁹⁷⁹ Ibid., par 46.

⁹⁸⁰ Ibid., par 47.

⁹⁸¹ Ibid., par 48.

⁹⁸² Ibid., par 48.

M. 5105 Abertis – Sepi – CDTI – Inta - Hispasat

The European Commission clears the joint control acquisition of Hispasat by Abertis, SEPI, CDTI and INTA.⁹⁸³

Abertis is active in motorway concessions, car park concessions, logistics services and telecommunications infrastructure. Its main shareholders are Actividades de Construcción y Servicios S.A. (ACS) and Caja de Ahorros y Pensiones de Barcelona (La Caixa).⁹⁸⁴

SEPI is a state controlled entity, dependent on the Spanish Ministry of Economic and Fiscal Affairs. SEPI owns shares in companies with a very broad range of activities, none of them related to Hispasat's activities. CDTI is a public undertaking dependent on the Spanish Ministry of Industry, Tourism and Trade, with the remit of promoting innovation and technological development of Spanish companies. INTA is a public research entity dependent on the Spanish Ministry of Defence. It specialises in aerospace research and technological development.⁹⁸⁵

Hispasat is a Spanish satellite operator who is mainly active in the wholesale of satellite capacity to providers of audiovisual and telecommunications satellite services.⁹⁸⁶

As regards the relevant product market and geographical scope

Upstream market: supply of satellite capacity

*“La Comisión ha considerado en varios precedentes el mercado de suministro de capacidad satelital como un mercado de producto separado en el que los operadores de satélite gestionan el satélite y alquilan capacidad satelital (transpondedores) a los operadores de telecomunicaciones”.*⁹⁸⁷

*“No obstante, a efectos del análisis de la concentración, la cuestión de si el alquiler de capacidad satelital para la difusión de señal audiovisual DTH y para el transporte de señal audiovisual entre dos puntos constituyen mercados de producto separados puede dejarse abierta, ya que la competencia no quedaría significativamente afectada en ningún caso”.*⁹⁸⁸

*“De cualquier manera, en el presente caso el ámbito geográfico exacto del mercado se puede dejar abierto, ya que la concentración no afecta la competencia cualquiera que sea la definición geográfica del Mercado”.*⁹⁸⁹

⁹⁸³ http://europa.eu/rapid/press-release_IP-08-1042_en.htm

⁹⁸⁴ http://europa.eu/rapid/press-release_IP-08-1042_en.htm

⁹⁸⁵ http://europa.eu/rapid/press-release_IP-08-1042_en.htm

⁹⁸⁶ http://europa.eu/rapid/press-release_IP-08-1042_en.htm

⁹⁸⁷ Commission Decision in case No COMP/M.5105 - ABERTIS / SEPI / CDTI / INTA / HISPASAT, par 12.

⁹⁸⁸ Ibid., par 17.

⁹⁸⁹ Ibid., par 20.

Downstream market: audiovisual signal transport satellite

*“A efectos del análisis de la concentración, no obstante, la Comisión considera que se puede dejar abierto si la definición del mercado de transporte de la señal audiovisual incluye todas las tecnologías o si se debe considerar mercados distintos en relación con el transporte de la señal audiovisual vía satélite o vía infraestructuras terrestres. Asimismo la definición del mercado, se puede dejar también abierta en cuanto a la diferenciación entre servicios de transporte permanentes y ocasionales”.*⁹⁹⁰

*“Sin embargo, en el caso presente el ámbito geográfico exacto del mercado se puede dejar abierto, ya que independientemente de la definición geográfica del mercado la concentración no afecta la competencia”.*⁹⁹¹

Terrestrial broadcast audiovisual signal

*“En decisiones anteriores, la Comisión ha establecido que la difusión de señales de televisión vía satélite es un mercado distinto del mercado de difusión de señales de televisión por ondas terrestres debido a diferencias considerables en términos económicos y técnicos. En este caso, la difusión terrestre podría considerarse un mercado de producto separado”.*⁹⁹²

*“Si bien en el presente caso no es necesario pronunciarse al respecto, la escala geográfica de dicho mercado podría ser nacional ya que las cadenas de TV españolas operan a nivel nacional”.*⁹⁹³

⁹⁹⁰ Ibid., par 23.

⁹⁹¹ Ibid., par 26.

⁹⁹² Ibid., par 28.

⁹⁹³ Ibid., par 29.

M. 5303 Arques - SHC

The European Commission clears the sole control acquisition of Siemens' home and office communication device business (SHC) by Arques.⁹⁹⁴

SHC is active in the manufacturing of fixed-line and internet telephone equipment, broadband devices and home-media products. Arques invests in companies active in various industries including the wholesale of information technology, telecommunications and home-media equipment.

As regards the relevant product market and geographical scope

Production and distribution of fixed and Internet telephony devices

*„Die Kommission hat bisher die Definition des Produktmarktes offen gelassen⁴. In früheren Kommissionsentscheidungen wurde die Annahme erwogen, dass es, wegen unterschiedlichen Technologien, Eigenschaften und Funktionalitäten, separate relevante Märkte für schnurgebundene und schnurlose Telefone, Mobiltelefone, Anrufbeantworter und Pager geben könnte. Die Kommission hat aber auch erkannt, dass es oft keine klaren Grenzen zwischen diesen Produktsegmenten gibt. Anrufbeantworter können mit schnurgebundenden oder schnurlosen Telefonen integriert werden. Die Grenzen zwischen Mobiltelefonen, Festnetztelefonen und anderen Telekommunikationsgeräten werden voraussichtlich in der Zukunft noch kleiner sein“.*⁹⁹⁵

*„Nach Ansicht der Parteien ist der räumlich relevante Markt zumindest EWR-weit. Der Grund dafür sei, dass dieselben Standards und Technologien im gesamten EWR verwendet würden und dieselben Geräte europaweit genutzt werden könnten“.*⁹⁹⁶

*„Die Kommission hat in ihrer bisherigen Entscheidungspraxis die Annahme eines zumindest EWR-weiten Marktes erwogen. Schnurlose und schnurgebundene Telefone, sowie Mobiltelefone und Pagers können europaweit benutzt werden. Es gibt keine technischen Unterschiede, die Hersteller daran hindern, Telefone europaweit zu verkaufen. Bisher hat die Kommission die geografische Definition des relevanten Marktes jedoch offen gelassen“.*⁹⁹⁷

*„Im vorliegenden Fall kann die genaue Definition des sachlich und räumlich relevanten Marktes offen bleiben, da der Zusammenschluss unter keiner der in Betracht kommenden Definitionen zu wettbewerblichen Bedenken führt“.*⁹⁹⁸

Broadband devices for use by the end customer

⁹⁹⁴ http://europa.eu/rapid/press-release_IP-08-1410_en.htm

⁹⁹⁵ Commission Decision in case No COMP/M.5303 - ARQUES / SHC, par 14.

⁹⁹⁶ Ibid., par 15.

⁹⁹⁷ Ibid., par 16.

⁹⁹⁸ Ibid., par 17.

*„In den bisherigen Entscheidungen hat die Kommission offen gelassen, ob Router, Gateways und Modems drei jeweils eigenständige Märkte bilden“.*⁹⁹⁹

*„Nach Ansicht der Parteien, ist der räumlich relevante Markt zumindest EWR-weit. Dieselben Standards und Technologien würden im gesamten EWR verwendet und dieselben Geräte könnten europaweit genutzt werden. Diese Ansicht steht im Einklang mit der Entscheidungspraxis der Kommission“.*¹⁰⁰⁰

*„Im vorliegenden Fall kann die genaue Definition des sachlich und räumlich relevanten Marktes offen bleiben, da das Zusammenschlussvorhaben unter keiner der in Betracht kommenden Definitionen zu wettbewerblichen Bedenken führt“.*¹⁰⁰¹

Digital TV receivers (set-top boxes)

*„In der bisherigen Entscheidungspraxis hat die Kommission die Annahme eines eigenständigen Marktes für Satellitenreceiver und Set-Top-Boxen in Betracht gezogen. Für den vorliegenden Zusammenschluss kann die exakte Definition des sachlich relevanten Marktes offen bleiben, da der Zusammenschluss bei keiner der Marktabgrenzungen zu wettbewerblichen Bedenken führen wird“.*¹⁰⁰²

*„Nach Ansicht der Parteien ist der räumlich relevante Markt zumindest EWR-weit. Dieselben Standards und Technologien würden im gesamten EWR verwendet und dieselben Geräte könnten europaweit genutzt werden. Diese Ansicht steht im Einklang mit der Entscheidungspraxis der Kommission“.*¹⁰⁰³

Wholesale distribution of IT products

*„Die Parteien sind der Ansicht, dass eine weitere Unterteilung des Marktes in verschiedene Produktkategorien nicht sachgerecht sei. Alle großen IT-Großhändler büten typischerweise eine große Produktpalette an und spezialisierten sich nicht auf einzelne Produktkategorien. Wettbewerb zwischen Großhändlern bestehe nicht in einzelnen Produktkategorien, sondern aufgrund des gesamten Produktportfolios. Die Ansicht der Parteien befindet sich im Einklang mit früheren Entscheidungen der Kommission, in denen die Annahme eines Marktes für den Großhandel mit IT-Produkten erwogen wurde“.*¹⁰⁰⁴

*„Nach Auffassung der Parteien ist der räumlich relevante Markt EWR-weit. Die Kommission hat jedoch in ihrer bisherigen Entscheidungspraxis nationale Märkte in Betracht gezogen“.*¹⁰⁰⁵

„Für den vorliegenden Zusammenschluss kann die exakte Definition des sachlich und räumlich relevanten Marktes offen bleiben, da der Zusammenschluss bei keiner der

⁹⁹⁹ Ibid., par 21.

¹⁰⁰⁰ Ibid., par 22.

¹⁰⁰¹ Ibid., par 23.

¹⁰⁰² Ibid., par 26.

¹⁰⁰³ Ibid., par 27.

¹⁰⁰⁴ Ibid., par 28.

¹⁰⁰⁵ Ibid., par 29.

möglichen Marktabgrenzungen zu wettbewerblichen Bedenken führen wird“.¹⁰⁰⁶

Wholesale of telecommunications products

“Die von den Parteien vorgeschlagene Marktabgrenzung steht im Einklang mit der Entscheidungspraxis der Kommission. Im Fall COMP/JV.26 Freedom/Dangaard ging die Kommission von einem eigenständigen Markt für den Großhandel mit Telekommunikationsprodukten aus”.¹⁰⁰⁷

“Nach Auffassung der Parteien ist der räumlich relevante Markt EWR-weit. Die Kommission hat bisher die Reichweite des räumlich relevanten Marktes offen gelassen”.¹⁰⁰⁸

“Für den vorliegenden Zusammenschluss kann die exakte Marktabgrenzung dahinstehen, da der Zusammenschluss bei keiner der möglichen Marktabgrenzungen zu wettbewerblichen Bedenken führen wird”.¹⁰⁰⁹

¹⁰⁰⁶ Ibid., par 30.

¹⁰⁰⁷ Ibid., par 32.

¹⁰⁰⁸ Ibid., par 33.

¹⁰⁰⁹ Ibid., par 34.

M. 5272 Sony - SonyBMG

The European Commission clears the sole control acquisition Bertelsmann's 50% share in Sony BMG by Sony.¹⁰¹⁰

Sony Corporation of America belongs to the Japanese Sony group with activities in consumer electronics, in the entertainment industry, in music recording and music publishing. Sony BMG is a joint venture between Sony and Bertelsmann, approved by the Commission on 19th July 2004 (see IP/04/959) and 3rd October 2007 (see IP/07/1437), and active in the discovery and development of artists and the subsequent marketing and selling of recorded music in physical and digital format.¹⁰¹¹ Sony would acquire sole control of the JV.

As regards the relevant product market and geographical scope

Physical recorded music

"In its second decision of 3 October 2007 in Sony/BMG, the Commission identified a separate product market for the sale of physical recorded music that comprises "all physical CD albums, irrespective of their genre or their compilation/single status"".¹⁰¹²

"The market investigation conducted by the Commission for the purpose of this case generally confirmed the results of the extensive market investigation conducted in Sony/BMG as regards the existence of a separate product market for the sale of recorded music in physical format".¹⁰¹³

"Therefore, the Commission concludes that the sale of recorded music in physical format constitutes a relevant product market for the purpose of the present case".¹⁰¹⁴

"In its second Sony/BMG decision, the Commission found that the market for the sale of recorded music in physical format was national in scope".¹⁰¹⁵

"The market investigation conducted by the Commission for the purpose of this case confirmed the results".¹⁰¹⁶

"Therefore, for the purpose of the present case, the Commission concludes that the market for the sale of recorded music in physical format has a national scope".¹⁰¹⁷

Wholesale online music licensing

¹⁰¹⁰ http://europa.eu/rapid/press-release_IP-08-1322_en.htm

¹⁰¹¹ http://europa.eu/rapid/press-release_IP-08-1322_en.htm

¹⁰¹² Commission Decision in case No COMP/M.5272 - SONY / SONYBMG, par 9.

¹⁰¹³ Ibid., par 11.

¹⁰¹⁴ Ibid., par 12.

¹⁰¹⁵ Ibid., par 34.

¹⁰¹⁶ Ibid., par 36.

¹⁰¹⁷ Ibid., par 37.

“In its second Sony/BMG decision, the Commission identified a market for the licensing of recorded music in digital format as distinct from physical format”. ¹⁰¹⁸

“The market investigation conducted by the Commission for the purpose of this case also confirmed the results of the extensive market investigation conducted in Sony/BMG as regards the existence of a separate product market for the sale of recorded music in digital format”. ¹⁰¹⁹

“Therefore, the Commission concludes that the licensing of recorded music in digital format constitutes a relevant product market for the purpose of the present case”. ¹⁰²⁰

“In its second Sony/BMG decision, the Commission found that the market for the licensing of recorded music in digital format could develop in the future to become larger than national, but that it was still national in scope (licences are mostly granted by the record companies to music online providers for the exploitation in a certain national territory) at the time of the decision”. ¹⁰²¹

“The market investigation conducted by the Commission for the purpose of this case confirmed the results of the extensive market investigation conducted in Sony/BMG as regards the existence of separate national markets for the licensing of recorded music in digital format”. ¹⁰²²

“Therefore, for the purpose of the present case, the Commission concludes that the market for the licensing of recorded music in digital format has a national scope”. ¹⁰²³

Music publishing

“The market investigation conducted by the Commission for the purpose of this case confirmed that the market for music publishing has not changed significantly since the extensive market investigation conducted in Universal/BMG Music Publishing, and that music publishing still constitutes a separate product market from music recording”. ¹⁰²⁴

“Therefore, the Commission concludes that the five different types of licensing rights identified in paragraph 16 relating to music publishing constitute relevant product markets for the purpose of the present case”. ¹⁰²⁵

“In its second Sony/BMG decision and in its Universal/BMG Music Publishing decision, the Commission found that the markets for the five types of music publishing

¹⁰¹⁸ Ibid., par 14.

¹⁰¹⁹ Ibid., par 17.

¹⁰²⁰ Ibid., par 18.

¹⁰²¹ Ibid., par 38.

¹⁰²² Ibid., par 40.

¹⁰²³ Ibid., par 41.

¹⁰²⁴ Ibid., par 21.

¹⁰²⁵ Ibid., par 22.

*rights are national in scope [...]”.*¹⁰²⁶

*“[...] the Commission concludes that the markets for music publishing rights remains national in scope, but that for the licensing of digital music they may eventually develop into an EEA-wide scope”.*¹⁰²⁷

Other related markets: online music retailing and portable digital music devices, electronic game devices and software, and film industry

1. Online music retailing and portable digital music devices
2. Electronic game devices and software
3. Film industry

In all these markets, the EC left in previous cases the relevant product market open.¹⁰²⁸

*“In the present case the exact delineation of these related markets can be left open as the competitive assessment does not change under any alternative product market definition considered”.*¹⁰²⁹

*“The market investigation conducted by the Commission for the purpose of the second Sony/BMG decision indicated differences in the structure, demand, evolution and dynamics of the digital music market at the level of retailing that would support the finding of national markets. The market investigation conducted for the purpose of this case confirmed that online music retailers still largely acquire their publishing rights on a national basis. In addition, the majority of online retailers still sell their music to end-customers via different national web-pages, which also supports a finding of national markets. However, the question of whether the geographic scope of digital music retail is either national or wider can be left open for the purpose of the present case as the competitive assessment does not change under any alternative geographic market definition”.*¹⁰³⁰

“The second Sony/BMG decision did not address the issue of market definition as regards the sale of portable digital music devices, mobile phones and electronic game devices. As regards mobile phones, the geographic market definition (either EEA-wide or worldwide) was left open in the BENQ/Siemens Mobile case. In the Vivendi/Activision case, the Commission also left open the exact market definition as regard the sales of electronic game devices and software, although the market investigation showed a number of elements pointing to both national and wider than national markets for on- and offline games, irrespective of platform and genres. The precise geographic delineation of these markets can therefore be left open for the purpose of this case as the competitive assessment does not change under any

¹⁰²⁶ Ibid., par 42.

¹⁰²⁷ Ibid., par 45.

¹⁰²⁸ Cf. Ibid., par 28, 30, 32.

¹⁰²⁹ Ibid., par 33.

¹⁰³⁰ Ibid., par 46.

alternative geographic market definition”. ¹⁰³¹

“Similarly, as regards the film market where no competition concerns arise, the precise geographic market definition (national or wider) can be left open in the present case”. ¹⁰³²

¹⁰³¹ Ibid., par 47.

¹⁰³² Ibid., par 48.

2009

Thema	Zaak nr	Partijen
Merger	M.5455 C(2009) 2378	TPV / PHILIPS BRANDED MONITORS
Merger	M.5414 C(2009) 502	SAMSUNG SDI / SAMSUNG ELECTRONICS / SMD
Merger	M.5532 C(2009) 5323	CARPHONE WAREHOUSE / TISCALI UK
Merger	M.5590 C(2009) 6094	3i GROUP / H.I.G. CAPITAL / VOLNAY B.V.
Merger	M.5730 C(2009) 687	TELEFONICA / HANSENET TELEKOMMUNIKATION
Merger	M.5533 C(2009) 6933	BERTELSMANN / KKR / JV
Merger	M.5589 C(2009) 7441	SONY / SEIKO EPSON
Merger	M.5584 C(2009) 8451	BELGACOM / BICS / MTN
Merger	M.5607 C(2009) 9229	AVAYA / NORTEL ENTERPRISE SOLUTIONS
Merger	M.5483 C(2009)3894	TOSHIBA / FUJITSU HDD BUSINESS
Merger	M.5421 C (209) 7572	PANASONIC / SANYO

M. 5455 TPV – Philips Branded monitors

The European Commission clears the sole control acquisition of Philips branded PC monitors and electronic displays business by TPV.¹⁰³³

TPV is a solutions provider in monitor display technology. TPV designs and produces a wide range of computer monitors for distribution in Asia, Europe and the US, as well as digital public signage products at original equipment manufacturer (OEM) level.

The business to be acquired (Philips HoldCo), relates to the branding and distribution of computer monitors and digital public signage products.

As regards the relevant product market and geographical scope

PC monitors

*“The Commission, in a previous case involving the same parties, whereby TPV acquired Philips' business related to the OEM production and sales of monitors and flat screens, distinguished between the market for OEM PC monitors and the market for branded PC monitors, the latter being downstream of the former. The market investigation confirmed this broad distinction”.*¹⁰³⁴

*“The Commission in its previous decisions did not conclude as to the necessity to further distinguish PC monitors into markets according to the monitor size”.*¹⁰³⁵

*“In any event, for the purposes of the present decision, the possible further segmentation of the markets for OEM and branded PC monitors according to the display technology and/or according to the monitor size can be left open, since the proposed concentration does not raise any competition concerns under any alternative product market definition”.*¹⁰³⁶

*“The notifying party puts forward that the geographic scope of the market for OEM PC monitors is at least EEA-wide but more probably worldwide, given that large customers source their requirements from global suppliers on a global level. In the previous TPV/Philips Monitors case⁸, the Commission left open whether the geographic scope of this market was global or EEA-wide”.*¹⁰³⁷

“For the purpose of the present decision, it is not necessary to conclude as to whether the market for OEM PC monitors is EEA-wide or worldwide in scope, as the proposed concentration does not raise any competition concerns under any of the

¹⁰³³ http://europa.eu/rapid/press-release_IP-09-486_en.htm

¹⁰³⁴ Commission Decision in case No COMP/M.5455 - TPV / PHILIPS BRANDED MONITORS, par

10

¹⁰³⁵ Ibid., par 11.

¹⁰³⁶ Ibid., par 13.

¹⁰³⁷ Ibid., par 18.

*alternative geographic market definitions”.*¹⁰³⁸

Regarding Branded PC Monitors: *“The Commission, in its past decision regarding the same parties, suggested that this market was narrower than the EEA and most probably national, although it left open the exact geographic market definition”.*¹⁰³⁹

*“For the purpose of the present decision, it is not necessary to conclude as to whether the market for branded computer monitors is national or EEA-wide in scope, as the proposed concentration does not raise any competition concerns under any of the alternative geographic market definitions”.*¹⁰⁴⁰

Digital public signage products

*“There are no Commission precedents involving digital public signage products”.*¹⁰⁴¹

*“In any event, for the purposes of the present decision, the possible further segmentation of the markets for OEM and branded digital public signage products according to the display technology and/or according to customer groups and usages can be left open, [...]”.*¹⁰⁴²

*“For the purpose of the present decision, it is not necessary to conclude as to whether the market for OEM digital public signage products is EEA-wide or worldwide in scope, as the proposed concentration does not raise any competition concerns under any of the alternative geographic market definitions”.*¹⁰⁴³

*“For the purpose of the present decision, the Commission therefore considers that the market for branded digital public signage products is national in scope”.*¹⁰⁴⁴

¹⁰³⁸ Ibid., par 20.

¹⁰³⁹ Ibid., par 21.

¹⁰⁴⁰ Ibid., par 23.

¹⁰⁴¹ Ibid., par 14.

¹⁰⁴² Ibid., par 17.

¹⁰⁴³ Ibid., par 26.

¹⁰⁴⁴ Ibid., par 29.

M. 5414 Samsung SDI – Samsung Electronics - SMD

The European Commission clears the JV between Samsung Electronics and Samsung SDI.¹⁰⁴⁵

Samsung SDI is active in the development, manufacture and sale of products in the digital display and energy businesses. It consists of four business divisions: Panel Display Panel, Rechargeable Battery, Mobile Display and Cathode Ray Tube.¹⁰⁴⁶

Samsung Electronics is engaged in the development, manufacture and sale of a wide range of products in the area of electronics and information technology. Samsung Electronics is organised in four main units: Digital Media, Telecommunication Network, Semiconductors and Liquid Cristal Displays ("LCD"). The LCD business produces panels for TVs, digital information displays, notebook PCs and desktop monitors, as well as various display panels for mobile products. Samsung Electronics is Samsung SDI's largest shareholder with a non-controlling 20.4% stake.¹⁰⁴⁷

As regards the relevant product market and geographical scope

Screen sizes and technologies

*“There are no precedent Commission decisions that assessed the relevant market for the kind of displays offered by the parties”.*¹⁰⁴⁸

*“The market investigation generally confirmed the possibility to define a small and medium size displays market, regardless of the underlying technology: only one respondent suggested a narrower relevant product market definition segmented by technology (LCD/AM-OLED/PM-OLED) and most of the respondents corroborated the parties' view regarding the foreseeable increasing share of AM-OLED displays to the detriment of LCD, while PM-OLED's market share should in any case remain marginal. Moreover, although no clear size threshold emerged from the investigation, the 9 inches threshold submitted by the parties appeared appropriate to several respondents and lies in the medium range of the various sizes suggested by the respondents (ranging from 7 to 15 inches)”.*¹⁰⁴⁹

Applications

*“The definition of the relevant product market based on applications could appear as a possible alternative definition”.*¹⁰⁵⁰

¹⁰⁴⁵ http://europa.eu/rapid/press-release_IP-09-123_en.htm

¹⁰⁴⁶ http://europa.eu/rapid/press-release_IP-09-123_en.htm

¹⁰⁴⁷ http://europa.eu/rapid/press-release_IP-09-123_en.htm

¹⁰⁴⁸ Commission Decision in case No COMP/M.5414 - SAMSUNG SDI / SAMSUNG ELECTRONICS / SMD, par 17.

¹⁰⁴⁹ Ibid., par 18.

¹⁰⁵⁰ Ibid., par 19.

Conclusion

*“There are significant elements supporting the delineation of a small and medium size displays market, which can be manufactured either with LCD or OLED displays. However, (i) the precise size threshold seems more difficult to establish and (ii) alternative narrower market definitions subdivided either by application or by technology could be considered”.*¹⁰⁵¹

*“Under any alternative the proposed transaction does not raise any competition concerns. Therefore, for the purpose of the present transaction, the exact definition of the relevant product market for small and medium size displays can be left open”.*¹⁰⁵²

*“The parties submitted that the relevant geographic market for development and manufacturing of small and medium sized displays is worldwide. In addition to low transportation costs, this would notably be borne out by the fact that while manufacturers of panel displays and manufacturing are concentrated in Asia, their customers are multinational entities and notably worldwide OEMs”.*¹⁰⁵³

*“The market investigation clearly confirmed this view since none of the respondents indicated a narrower geographic market definition”.*¹⁰⁵⁴

*“In view of these elements and as confirmed by the investigation, it can be concluded that the relevant geographic market for the small and medium size displays is worldwide”.*¹⁰⁵⁵

¹⁰⁵¹ Ibid., par 23.

¹⁰⁵² Ibid., par 24.

¹⁰⁵³ Ibid., par 25.

¹⁰⁵⁴ Ibid., par 26.

¹⁰⁵⁵ Ibid., par 27.

M. 5532 Carphone Warehouse – Tiscali UK

The European Commission clears the sole control acquisition of Tiscali UK by Carphone Warehouse.¹⁰⁵⁶

Carphone Warehouse is active in the sale of mobile handsets, mobile connections and a range of associated devices, such as laptops. In the UK, it acts as a broadband and narrowband internet access provider, fixed-line and mobile telecommunication services operator and as a mobile virtual network operator (MVNO) for domestic and business customers.¹⁰⁵⁷

Tiscali UK is a telecommunications and internet service provider (ISP) supplying broadband and narrowband internet access services, fixed-line telecommunication services and digital TV services to business and domestic customers. It is only active in the UK.¹⁰⁵⁸

As regards the relevant product market and geographical scope

The provision of Internet access services to end customers

*“In previous decisions, the Commission has distinguished between three common forms of Internet access [...]”.*¹⁰⁵⁹

*“In previous cases, the Commission has defined the broadband Internet markets to be national in scope [...]”.*¹⁰⁶⁰

*“In line with previous Commission decisions, the relevant geographic market for the different retail markets for Internet access services is therefore national, namely the UK”.*¹⁰⁶¹

Narrowband / broadband/ dedicated access

*“Both the Commission and the UK regulatory authority, the Office of Communications (Ofcom), have indicated in previous decisions that broadband and narrowband Internet access constitute two separate markets”.*¹⁰⁶²

“For the purposes of the present decision, it can be left open whether broadband and narrowband constitute distinct product markets as the proposed concentration does not give rise to any competition concerns under any of the alternative product market

¹⁰⁵⁶ http://europa.eu/rapid/press-release_IP-09-1054_en.htm

¹⁰⁵⁷ http://europa.eu/rapid/press-release_IP-09-1054_en.htm

¹⁰⁵⁸ http://europa.eu/rapid/press-release_IP-09-1054_en.htm

¹⁰⁵⁹ Commission Decision in case No COMP/M.5532 - CARPHONE WAREHOUSE / TISCALI UK, par 8.

¹⁰⁶⁰ Ibid., par 41

¹⁰⁶¹ Ibid., par 47

¹⁰⁶² Ibid., par 10

definitions”.¹⁰⁶³

Broadband technology: XDSL / cable / mobile broadband (3G)

*“In its decisions in the Carphone Warehouse/AOL UK, LGI/Telenet and Wanadoo cases, the Commission found that the product market included both offerings based on ADSL technology and offerings based on cable modem technology”.*¹⁰⁶⁴

*“The market investigation was overwhelmingly in support of the demand-side substitutability of the main access technologies: cable and XDSL”.*¹⁰⁶⁵

*“For the purposes of the present decision the exact scope of the retail broadband market as to whether it comprises mobile broadband access in addition to cable and XDSL can be left open, as the proposed concentration does not raise any competition concerns under any of the alternative product market definitions”.*¹⁰⁶⁶

Customer types: – residential and small business customers/ large business customers

*“In previous decisions in early cases dealing with Internet access services, the Commission further segmented the markets for narrowband and broadband between residential and business customers”.*¹⁰⁶⁷

*“In its more recent decisions, the Commission has indeed taken the view that, because of the increased availability of broadband, it is no longer appropriate to differentiate between residential customers and small business customers as their requirements are substantially the same”.*¹⁰⁶⁸

*“The market investigation confirmed that there is no need to distinguish between residential customers and small business customers as their needs in terms of Internet access are substantially similar, while the needs of large business customers are different”.*¹⁰⁶⁹

*“Consequently, for the purposes of the present decision retail broadband internet access services for residential and small business customers will be regarded as being part of the same relevant product market. Furthermore, retail broadband internet access services for large business customers will be regarded as being a separate relevant product market”.*¹⁰⁷⁰

Wholesale provision of broadband Internet access

¹⁰⁶³ Ibid., par 14.

¹⁰⁶⁴ Ibid., par 17.

¹⁰⁶⁵ Ibid., par 18.

¹⁰⁶⁶ Ibid., par 21.

¹⁰⁶⁷ Ibid., par 22.

¹⁰⁶⁸ Ibid., par 24.

¹⁰⁶⁹ Ibid., par 26.

¹⁰⁷⁰ Ibid., par 27.

*“The Commission Recommendation, from a regulatory point of view, defines distinct markets for LLU and bitstream (respectively markets 4 and 5 of the Recommendation). Ofcom has reviewed the UK market on that basis and has concluded that the incumbent telecom operator BT which owns most of the telecommunications networks in the UK still has significant market power in the market for wholesale broadband access in those local exchanges where only a limited number of alternative broadband providers are present with LLU. Consequently BT is required to provide access in these local exchanges at regulated conditions”.*¹⁰⁷¹

*“For the purposes of the present decision, the exact product market definition for the wholesale broadband Internet access can be left open as the proposed concentration does not give rise to any competition concerns under any of the alternative product market definitions”.*¹⁰⁷²

*“For the purposes of the present decisions, the exact geographic scope of the market for wholesale broadband internet access can be left open, as the proposed transaction does not raise any competition concerns under any of the alternative market definitions”.*¹⁰⁷³

The provision of fixed-line telephony services to end customers

*“Previous merger decisions have referred to the Commission Recommendation which defines this market as access to “Publicly available telephone services provided at a fixed location for residential and non-residential customers.” Apart from a differentiation according to customer groups, fixed-line telephony services can also be subdivided into local calls, national calls, international calls, calls to mobiles and assisted calls”.*¹⁰⁷⁴

*“The notifying party however disputes the relevance of such further segmentation because call providers (including CPW and Tiscali UK) offer all call types while customers typically use each of these products”.*¹⁰⁷⁵

*“For the purposes of the present decision, the exact definition of the relevant product market for retail fixed-line telephony services can be left open as the proposed transaction does not raise any competition concerns under any of the alternative product market definitions”.*¹⁰⁷⁶

“The notifying party considers that the market for the provision of fixed-line telephony services to end customers is national, since this reflects the continuing importance of national regulation in the telecommunications sector, the supply of upstream wholesale services on a national basis, as well as the fact that the pricing

¹⁰⁷¹ Ibid., par 32.

¹⁰⁷² Ibid., par 34.

¹⁰⁷³ Ibid., par 53.

¹⁰⁷⁴ Ibid., par 35.

¹⁰⁷⁵ Ibid., par 36.

¹⁰⁷⁶ Ibid., par 39.

*policies of telecommunications providers is predominantly national”.*¹⁰⁷⁷

*“This was confirmed by the market investigation and is in line with the Commission Recommendation and prior decision-making practice”.*¹⁰⁷⁸

*“The Commission takes the view that, for the purposes of the present decision, the relevant geographic market for the provision of fixed-line telephony services to end customers can be defined as national, namely the United Kingdom”.*¹⁰⁷⁹

¹⁰⁷⁷ Ibid., par 54.

¹⁰⁷⁸ Ibid., par 55.

¹⁰⁷⁹ Ibid., par 56.

M. 5730 Telefonica – Hansenet Telekommunikation

The European Commission clears the joint control acquisition of Hansenet by Telefonica.¹⁰⁸⁰

Telefónica Deutschland belongs to the Telefónica Group, which operates fixed and mobile telephony networks in Spain, the Czech Republic, Germany, the UK, Ireland and Slovakia, as well as in a number of countries in Latin America.¹⁰⁸¹ Hansenet provides broadband internet access and various telecommunications services, including fixed and data connections in Germany.¹⁰⁸²

As regards the relevant product market and geographical scope

Markets related to internet access

*“The Commission has earlier taken the view that narrowband and broadband internet access constitute two separate markets. The Commission's market investigation in a more recent case has indicated that, as a result of the progressive migration of customers from narrowband to broadband, a separate assessment of broadband and narrowband internet access may no longer be necessary, and ultimately left open the question whether broadband and narrowband still must be considered to constitute distinct markets. It has also left open the question whether the retail broadband market comprises mobile broadband access or whether, due to the premium pricing and reduced speed of mobile broadband access compared to fixed broadband access, mobile broadband access may be part of a separate market”.*¹⁰⁸³

*“On the basis of the segments where Telefónica and Hansenet are active, the notifying party provides data for residential customers and small business customers and for large businesses, which is in line with previous Commission decisions”.*¹⁰⁸⁴

*“As the transaction would not give rise to any competition concerns even under the narrowest possible definition, the exact definition of the relevant product market for retail broadband and/or narrowband internet access can be left open”.*¹⁰⁸⁵

Markets related to telephony

All the markets indicated above have been defined as national in scope.¹⁰⁸⁶

¹⁰⁸⁰ http://europa.eu/rapid/press-release_IP-10-109_en.htm

¹⁰⁸¹ http://europa.eu/rapid/press-release_IP-10-109_en.htm

¹⁰⁸² http://europa.eu/rapid/press-release_IP-10-109_en.htm

¹⁰⁸³ Commission Decision in case No COMP/M.5730 - TELEFONICA / HANSENET TELEKOMMUNIKATION, par 8.

¹⁰⁸⁴ Ibid., par 10.

¹⁰⁸⁵ Ibid., par 11.

¹⁰⁸⁶ Ibid., par 28.

M. 5533 Bertelsmann – KKR - JV

The European Commission clears the joint venture between Bertelsmann and KKR.¹⁰⁸⁷

Bertelsmann is an international media company active in TV and radio, book publishing, media services and book and media clubs. KKR is a private equity investment firm, with funds active in a range of businesses, including TV and radio through ProSieben.¹⁰⁸⁸

As regards the relevant product market and geographical scope

1. Music publishing

*“The notifying parties, in line with the Commission's decisions in Universal/BMG Music Publishing and Sony/SonyBMG, submit that music publishing constitutes a separate product market from music recording”.*¹⁰⁸⁹

Exploitation of music publishing rights

*“The notifying parties rely on Commission precedents which identified five different types of publishing rights: (i) mechanical rights (for reproduction in sound recordings, for example on CDs); (ii) performance rights (for TV, radio, live performance exploitation); (iii) synchronisation rights (for synchronisation of music with visual image); (iv) print rights (for reproduction on music sheets); and (v) online rights (for online exploitation)”.*¹⁰⁹⁰

*“In previous cases, the Commission considered that the market might be delineated by different genres/categories of music. The notifying parties submit that the market should not be delineated by genres”.*¹⁰⁹¹

*“In Universal/BMG Music Publishing, the Commission considered a possible segmentation of the market between national and international repertoires for music publishing. The notifying parties do not consider that a separate market should be identified for international repertoire at this point in time”.*¹⁰⁹²

*“Relying on Commission precedents, the notifying parties submit that the five types of music publishing rights are all national in scope. In previous decisions, the Commission found that the markets for the five types of music publishing rights are national in scope, while there are indications that online rights could potentially develop into a multi- territorial market in the future”.*¹⁰⁹³

¹⁰⁸⁷ http://europa.eu/rapid/press-release_IP-09-1291_en.htm

¹⁰⁸⁸ http://europa.eu/rapid/press-release_IP-09-1291_en.htm

¹⁰⁸⁹ Commission Decision in case No COMP/M.5533 - BERTELSMANN / KKR / JV, par 31.

¹⁰⁹⁰ Ibid., par 32.

¹⁰⁹¹ Ibid., par 33.

¹⁰⁹² Ibid., par 34.

¹⁰⁹³ Ibid., par 35.

*“For the purposes of the present case, the exact market definition may be left open as it would not alter the competitive assessment”.*¹⁰⁹⁴

Music publishing services to authors

*“For the purposes of the present case, the exact market definition may be left open as it would not alter the competitive assessment”.*¹⁰⁹⁵

2. Recorded Music

*“In its second Sony/BMG decision and in Sony/SonyBMG, the Commission distinguished between the sale of physical recorded music and the sale of recorded music in digital form. In its second Sony/BMG decision and in Sony/SonyBMG, the Commission found that the markets for the sale of recorded music in physical form and the market for licensing of recorded music in digital format were national in scope”.*¹⁰⁹⁶

*“The notifying parties note that the International Federation of the Phonographic Industry ("IFPI") presents market data for recorded music broken down into physical sales, digital sales and revenues arising from the exploitation of performance rights. However, the notifying parties submit that the relevant market the market for all recorded music, which is national in scope”.*¹⁰⁹⁷

*“For the purposes of the present case, the exact market definition may be left open as it would not alter the competitive assessment”.*¹⁰⁹⁸

3. TV

*“The Commission's practice has been to distinguish between pay-TV and free-to-air TV ("FTA TV") in relation to the provision of TV services to end-users, both markets being national in scope or related to linguistically homogenous areas”.*¹⁰⁹⁹

*“For the purposes of the present case, the exact market definition may be left open as it would not alter the competitive assessment”.*¹¹⁰⁰

4. Radio

“The market for free access radio was considered by the Commission in

¹⁰⁹⁴ Ibid., par 36.

¹⁰⁹⁵ Ibid., par 39.

¹⁰⁹⁶ Ibid., par 41.

¹⁰⁹⁷ Ibid., par 42.

¹⁰⁹⁸ Ibid., par 43.

¹⁰⁹⁹ Ibid., par 44.

¹¹⁰⁰ Ibid., par 45.

Bertelsmann/CLT [...]". ¹¹⁰¹

"For the purposes of the present case, the exact market definition may be left open as it would not alter the competitive assessment". ¹¹⁰²

5. TV production

"The notifying parties refer to previous Commission decisions which distinguished between TV productions produced by broadcasters for captive use on their own channels and non- captive TV productions. Although it left the product market open, the Commission stated that as only the latter productions are offered on the market, the relevant product market must therefore be limited to TV productions which are not for captive use". ¹¹⁰³

"The Commission has previously stated that TV broadcasting still generally takes place on national markets and that the markets for sale of TV productions may be sometimes broader and comprise a particular language region". ¹¹⁰⁴

"For the purposes of the present case, the exact market definition may be left open as it would not alter the competitive assessment". ¹¹⁰⁵

6. Distribution (i.e. licensing of broadcast rights)

"The notifying parties made reference to a previous Commission decision which identified separate markets for the licensing of television broadcasting rights to pay-TV and to free- to-air-TV ("FTA"). The Commission has also considered (i) premium football rights (ii) premium films and (iii) other TV contents as separate markets. This Commission decision further found that these markets are national in scope or distinguished alongside linguistic borders". ¹¹⁰⁶

"For the purposes of the present case, the exact market definition may be left open as it would not alter the competitive assessment". ¹¹⁰⁷

¹¹⁰¹ Ibid., par 46.

¹¹⁰² Ibid., par 47.

¹¹⁰³ Ibid., par 48.

¹¹⁰⁴ Ibid., par 49.

¹¹⁰⁵ Ibid., par 50.

¹¹⁰⁶ Ibid., par 51.

¹¹⁰⁷ Ibid., par 52.

M. 5589 Sony – Seiko Epson

The European Commission clears the sole control acquisition of Seiko Epson by Sony.¹¹⁰⁸

Sony produces a wide range of electronic consumer products and devices such as audio and video devices, communications equipment, semiconductors, game consoles and software. It also offers entertainment products including films and programming, provides financial services and has a variety of other businesses. In the electronics field, Sony is notably active in the liquid crystal displays sector, including the production of small, medium and large thin-film-technology liquid crystal display units (TFT-LCDs). The Epson Business is active in the development, production, marketing and sale of small- and medium-sized TFT-LCDs.¹¹⁰⁹

As regards the relevant product market

*“In a previous case the Commission found that the market for the development and manufacturing of displays might have to be segmented according to the (i) screen size, (ii) technology used or (iii) the end-use applications (such as mobile phones, cameras, personal digital assistants)”.*¹¹¹⁰

Relevant product markets – screen sizes

*“The Commission in its previous decisions considered segmenting the display markets according to the size of the panel”.*¹¹¹¹

*“The market investigation generally confirmed the possibility to define a small- and medium-size displays market. Moreover, although no clear size threshold emerged from the investigation, the 10 inches submitted by the parties appeared appropriate to several respondents and lies within the range of all the various sizes suggested by the respondents (ranging from 9 to 15 inches)”.*¹¹¹²

Relevant product markets – technologies

*“In a previous decision, the Commission noted that the market might have to be further segmented according to the technology used to produce the displays”.*¹¹¹³

*“While a few of the respondents considered it possible to further segment TFT-LCDs along the technology used, the majority of the respondents to the market investigation were of the view that the market should at least include TFT-LCDs as a whole and possibly OLED as well. . .”.*¹¹¹⁴

¹¹⁰⁸ http://europa.eu/rapid/press-release_IP-09-1345_en.htm

¹¹⁰⁹ http://europa.eu/rapid/press-release_IP-09-1345_en.htm

¹¹¹⁰ Commission Decision in case No COMP/M.5589 - SONY / SEIKO EPSON, par 9.

¹¹¹¹ Ibid., par 10.

¹¹¹² Ibid., par 13.

¹¹¹³ Ibid., par 14.

¹¹¹⁴ Ibid., par 16.

Relevant product markets – end-use applications

Conclusion on the relevant product market

*“There is significant evidence supporting the delineation of a small- and medium-size displays market, encompassing LCD and OLED displays. However, (i) the precise size threshold seems more difficult to establish and (ii) alternative narrower market definitions subdivided either by technology or by application cannot be excluded”.*¹¹¹⁵

*“For the purpose of the assessment of the present transaction, the exact definition of the relevant product market for small- and medium-size displays can be left open, given that the proposed transaction does not raise any competition concerns under any alternative market definition”.*¹¹¹⁶

As regards the geographical scope

*“In its previous decisions, the Commission concluded that the relevant geographic market for small- and medium-sized LCDs was worldwide, based on low transportation costs, worldwide homogenous prices and global trading of LCDs. The notifying parties agree with the Commission's previous findings”.*¹¹¹⁷

*“The respondents to the market investigation almost unanimously supported this view”.*¹¹¹⁸

*“In view of these elements, it can be concluded that the relevant geographic market for the small- and medium-size displays is worldwide”.*¹¹¹⁹

¹¹¹⁵ Ibid., par 21.

¹¹¹⁶ Ibid., par 22.

¹¹¹⁷ Ibid., par 23.

¹¹¹⁸ Ibid., par 24.

¹¹¹⁹ Ibid., par 25.

M. 5584 Belgacom – BICS - MTN

The European Commission clears the sole control acquisition of BICS and BICS' purchase of certain assets from MTN by Belgacom.¹¹²⁰

Belgacom is the incumbent telecommunications operator in Belgium. BICS is a provider of international wholesale telecommunications services and is currently jointly controlled by Belgacom and Swisscom, Switzerland's incumbent telecommunications operator. MTN is a mobile telecommunications operator with significant activities in Africa.¹¹²¹

As regards the relevant product market and geographical scope

International wholesale telecommunications carrier services.

“The notifying party submits that the relevant product market is the market for international wholesale telecommunications services (without the need for further segmentation)”.¹¹²²

“In previous decisions, the market for international wholesale telecommunications carrier services has been defined very broadly as comprising the lease of transmission capacity and the provision of related services to third-party telecommunications carriers and other service providers, with the most relevant of such services being switched transit, traffic hubbing offerings and reseller services for service providers without their own international facilities”.¹¹²³

“However in previous decisions, including Deutsche Telekom/OTE and Belgacom/Swisscom/JV, when considering the market for international wholesale telecommunications carrier services, the Commission left open the possibility to breakdown this broad carriers' carrier services market into several relevant product markets on the basis of types of services provided. Yet, the only segments explicitly considered in the past have been (i) international voice carrier services; and (ii) wholesale top-level (or universal) Internet connectivity services”.¹¹²⁴

“In any event, the precise product market definition can be left open in the present case as the proposed transaction does not give rise to any competition concerns even on the narrowest possible segmentation of the market for international wholesale telecommunications carrier services”.¹¹²⁵

“In previous Commission decisions, including Belgacom/Swisscom/JV, the Commission left open the question whether the geographic market for international wholesale telecommunications carrier services and the other hypothetical markets listed in paragraph 17 above (with the exception of the market for international

¹¹²⁰ http://europa.eu/rapid/press-release_IP-09-1588_en.htm

¹¹²¹ http://europa.eu/rapid/press-release_IP-09-1588_en.htm

¹¹²² Commission Decision in case No COMP/M.5584 - BELGACOM / BICS / MTN, par 15.

¹¹²³ Ibid., par 16.

¹¹²⁴ Ibid., par 17.

¹¹²⁵ Ibid., par 19.

*wholesale voice services) are European-wide or wider in scope”.*¹¹²⁶

*“As the proposed transaction will not give rise to any competition concerns in relation to this possible narrower geographic market definition, the precise geographic market definition can be left open in the present case”.*¹¹²⁷

Retail fixed voice telephony services

*“As regards fixed voice telephony services, the notifying party refers to the following markets identified by the Commission in the Commission Recommendation of 11 February 2003 on Relevant Product and Service Markets²⁰: (i) publicly available local and/or national telephone services provided at a fixed location for residential customers; (ii) publicly available international telephone services provided at a fixed location for residential customers; (iii) publicly available local and/or national telephone services provided at a fixed location for non-residential customers; and (iv) publicly available international telephone services provided at a fixed location for non-residential customers”.*¹¹²⁸

*“The precise product market definition can be left open in the present case since the proposed transaction will not give rise to any competition concerns under the narrowest possible market definition”.*¹¹²⁹

*“The notifying party submits that the markets for fixed telephone are generally considered to have a national dimension but that in some instances a narrow market definition might be considered relevant. The notifying party submits that such a narrower geographic market definition is not relevant in the present case. The precise geographic market definition can be left open in the present case since the proposed transaction will not give rise to any competition concerns under the narrowest possible market definition”.*¹¹³⁰

Retail mobile telephony services

*“As regards mobile telephony services, the notifying party refers to past Commission decisions distinguishing between the markets for fixed and mobile telephony. The notifying party submits that the retail market for mobile telephony comprises all aspects of the mobile telecommunications service, including in particular access to the mobile telephony network, national, international and roaming calls, calls to value added services, SMS, MMS, and any other kind of data service. The notifying party also states that generally no distinction is made between the services provided to residential and to professional customers. These matters have been left open in several Commission decisions”.*¹¹³¹

“The precise product market definition can also be left open in the present case since

¹¹²⁶ Ibid., par 21.

¹¹²⁷ Ibid., par 26.

¹¹²⁸ Ibid., par 27.

¹¹²⁹ Ibid., par 28.

¹¹³⁰ Ibid., par 29.

¹¹³¹ Ibid., par 30.

*the proposed transaction will not give rise to any competition concerns under the narrowest possible market definition”.*¹¹³²

*“In line with previous Commission decisions, the notifying party submits that the market for mobile telephony is generally considered to be national in scope. The precise geographic market definition can be left open in the present case since the proposed transaction will not give rise to any competition concerns under the narrowest possible market definition”.*¹¹³³

Broadband internet access

*“As regards broadband internet access, referring to past Commission decisions, the notifying party states that the market for retail broadband internet access generally considered separate from narrowband Internet access and dedicated Internet access and that it that includes both offerings based on ADSL technology and offerings based on cable modem technology. The notifying party considers that a segmentation of the market according to customer type (residential, small and/or large business customers) is irrelevant in the present case”.*¹¹³⁴

*“The precise product market definition can be left open in the present case since the proposed transaction will not give rise to any competition concerns under the narrowest possible market definition”.*¹¹³⁵

*“The notifying party submits that the market for retail broadband Internet connectivity services are generally considered to have a national dimension but that in some instances a narrow market definition might be considered relevant. The notifying party submits that such a narrower geographic market definition is not relevant in the present case. The precise geographic market definition can be left open in the present case since the proposed transaction will not give rise to any competition concerns under the narrowest possible market definition”.*¹¹³⁶

¹¹³² Ibid., par 31.

¹¹³³ Ibid., par 32.

¹¹³⁴ Ibid., par 33.

¹¹³⁵ Ibid., par 34.

¹¹³⁶ Ibid., par 35.

M. 5607 Avaya – Nortel Enterprise solutions

The European Commission clears the sole control acquisition of Nortel’s Enterprise solutions by Avaya.¹¹³⁷

Avaya is active in unified communications worldwide, and provides communication systems, applications and services for enterprises, including large corporations, small businesses, government agencies and other organisations. Nortel ES provides global enterprise communications products and services to telecommunications carriers and businesses of all sizes.¹¹³⁸

As regards the relevant product market

Unified communications

*“However, the market investigation did not confirm the existence of an overall market for unified communications yet. On the contrary, it brought evidence of a narrower product market definition based on the type of communication solutions concerned, revealing limited demand-side substitutability”.*¹¹³⁹

PBXs

*“In previous decisions, the Commission left open the question of whether the market for PBXs should constitute a separate market or be part of a broader market for telecommunication equipment”.*¹¹⁴⁰

Contact centres

*“There are no Commission decisions analysing a possible market for contact centre solutions. Although the market was discussed in Gores Group LLP/Siemens Enterprise Communications, the exact product market definition was ultimately left open”.*¹¹⁴¹

*“However, most respondents to the investigation indicated that contact centres can be purchased separately from PBXs, and integrated with PBXs from other suppliers. Such integration is actually becoming easier with the rise of IP-based unified communication systems, which facilitates interoperability. In addition, a limited number of suppliers of contact centres do not supply PBXs. This suggests that PBXs and contact centres belong to two different relevant product markets”.*¹¹⁴²

¹¹³⁷ http://europa.eu/rapid/press-release_IP-09-1741_en.htm

¹¹³⁸ http://europa.eu/rapid/press-release_IP-09-1741_en.htm

¹¹³⁹ Commission Decision in case No COMP/M.5607 - AVAYA / NORTEL ENTERPRISE SOLUTIONS, par 11.

¹¹⁴⁰ Ibid., par 13.

¹¹⁴¹ Ibid., par 19.

¹¹⁴² Ibid., par 21.

Conclusion on the relevant product market

*“For the purpose of the assessment of the present transaction, the exact definition of the relevant product markets for the various unified communications applications, including PBXs and contact centres, can be left open, given that the proposed transaction does not raise any competition concerns under any alternative market definition”.*¹¹⁴³

As regards the geographical scope

PBXs and contact centres

*“In the past, the Commission has considered the market for PBXs as national in scope because distribution of the equipment was usually structured on a national basis and because the equipment had to receive national technical approval. With regard to contact centres, there are no Commission decisions analyzing the geographic scope of such markets”.*¹¹⁴⁴

*“However the exact definition of the relevant geographic market for PBXs and contact centres can be left open, given that the proposed transaction does not raise any competition concerns under any alternative geographic market definition”.*¹¹⁴⁵

¹¹⁴³ Ibid., par 22.

¹¹⁴⁴ Ibid., par 23.

¹¹⁴⁵ Ibid., par 27.

M. 5483 Toshiba – Fujitsu HDD Business

The European Commission clears the sole control acquisition of Fujitsu HDD business by Toshiba.¹¹⁴⁶

Toshiba manufactures and markets a diverse range of high technology electronic and electrical products, including hard disk drive (HDD) products, notably various types of Mobile HDDs and various electronic products that use these HDDs.¹¹⁴⁷

Fujitsu HDD Business comprises worldwide assets and subsidiaries of Fujitsu in the production, design, sales, and research and development of HDDs, notably 2.5" Mobile and 2.5" and 3.5" Enterprise HDDs, but excluding Fujitsu's HDD media, head and component development and production operations.¹¹⁴⁸

As regards the relevant product market and geographical scope

HDD

*“The Commission in its previous decisions involving HDDs has considered the sub-categories according to end use (Mobile, Desktop, Enterprise) and also others (e.g. according to form factor or interface). However, the Commission ultimately left the market definition open”.*¹¹⁴⁹

*“For the purposes of this decision, the exact definition of the relevant product market for HDDs can be left open as the proposed transaction does not raise competition concerns under any of the alternative product market definitions”.*¹¹⁵⁰

*“The notifying party submits that the market for HDDs has a worldwide scope due to the global character of manufacturing, assembly, sales and clients of HDD products while transport costs are minimal”.*¹¹⁵¹

*“The Commission's previous decisions⁴ have largely supported this view. While the Commission found the HDD markets to be at least EEA-wide, the exact definition of the relevant geographic market was left open”.*¹¹⁵²

“The market investigation overwhelmingly indicated that the HDD market, including all possible types of HDDs, is worldwide in scope. In support of this, respondents pointed out in particular that HDD purchasing was centralised for production facilities throughout the world and prices were negotiated worldwide, resulting in worldwide homogenous price levels; and that transport costs compared to the value of the HDDs were low. While some local presence of a HDD supplier was always

¹¹⁴⁶ http://europa.eu/rapid/press-release_IP-09-736_en.htm

¹¹⁴⁷ http://europa.eu/rapid/press-release_IP-09-736_en.htm

¹¹⁴⁸ http://europa.eu/rapid/press-release_IP-09-736_en.htm

¹¹⁴⁹ Commission Decision in case No COMP/M.5483 - TOSHIBA / FUJITSU HDD BUSINESS, par 12.

¹¹⁵⁰ Ibid., par 17.

¹¹⁵¹ Ibid., par 23.

¹¹⁵² Ibid., par 24.

*preferred by customers in order to receive technical support, the HDD supply market is characterised by a few large suppliers that are all able to fulfil this requirement worldwide”.*¹¹⁵³

*“The Commission therefore takes the view that the market for HDDs, including all types of HDDs, is worldwide in scope”.*¹¹⁵⁴

¹¹⁵³ Ibid., par 25.

¹¹⁵⁴ Ibid., par 26.

2010

Thema	Zaak nr	Partijen
Merger	M.5611 C (2010) 390	AGILENT / VARIAN
Merger	M.5732 C(2010) 1001	HEWLETT-PACKARD / 3COM
Merger	M.5727 C(2010) 1077	MICROSOFT / YAHOO! SEARCH BUSINESS
Merger	M.5762 C(2010) 1204	INNOLUX / CHI MEI / TPO
Merger	M.5650 C(2010) 1274	T-MOBILE / ORANGE
Merger	M.5529 C(2010) 142	ORACLE / SUN MICROSYSTEMS
Merger	M.5776 C(2010) 1686	TELECINCO / CUATRO
Merger	M.5748 C(2010) 2098	PRISA / TELEFONICA / TELECINCO / DIGITAL+
Merger	M.5763 C(2010) 2193	DASSAULT SYSTEMES / IBM DS PLM Software business
Merger	M.5669 C(2010) 2217	CISCO / TANDBERG
Merger	M.5804 C(2010) 2224	SAMSUNG ELECTRONICS CO / SAMSUNG DIGITAL IMAGING CO
Merger	M.5666 C(2010) 347	XEROX / AFFILIATED COMPUTER SERVICES
Merger	M.5870 C(2010) 4498	FOXCONN / SONY LCD TV MANUFACTURING COMPANY IN SLOVAKIA
Merger	M.5838 C(2010) 4794	BERTELSMANN / PLANETA / CIRCULO
Merger	M.5779 C(2010) 4988	COMCAST / NBC UNIVERSAL
Merger	M.5734 C(2010) 503	LIBERTY GLOBAL EUROPE / UNITYMEDIA
Merger	M.5904 C(2010) 5157	SAP / SYBASE
Merger	M.5765 C(2010) 6820	FOXCONN / DELL (PRODUCTS) POLAND
Merger	M.5964 C(2010) 7873	TPV / PHILIPS BRANDED MONITORS AND COLOUR TVS
Merger	M.5932 C(2010) 9684	NEWS CORP / BSKYB
Merger	M.5881 C(2010)6731	PROSIEBENSAT.1 MEDIA / RTL INTERACTIVE / JV
Merger	M.5998 D/18455/18456	BDMI / FCPI / BLUE LION MOBILE

M. 5732 Hewlett-Packard – 3COM

The European Commission clears the sole control acquisition of 3Com by Hewlett-Packard.¹¹⁵⁵

HP is a leading provider of products, technologies, software, solutions and services to individual customers and businesses, including the public and education sector. 3Com is active in the research and development, production and marketing of communications equipment that provide network solutions for businesses.¹¹⁵⁶

As regards the relevant product market and geographical scope

IP/Ethernet Switches

*“In previous decisions [...] the Commission has left open the exact product market definition”.*¹¹⁵⁷

*“The notifying party considers that the market for IP/Ethernet switches constitutes the relevant product market for the purpose of the present transaction, while ultimately leaving the exact product market definition open as the transaction would not give rise to any serious doubts under any alternative product market definition”.*¹¹⁵⁸

*“For the purpose of the assessment of the proposed transaction, the exact definition of the relevant product market can be left open, given that the proposed transaction does not raise any serious doubts under any alternative product market definition”.*¹¹⁵⁹

Routers

*“[...] the Commission has ultimately left open the relevant product market definition, while acknowledging the growing multi-functionality and convergence between switches and routers”.*¹¹⁶⁰

*“For the purpose of the assessment of the proposed transaction, the exact definition of the relevant product market can be left open, given that the proposed transaction does not raise any serious doubts under any alternative product market definition”.*¹¹⁶¹

WLAN Equipment

“Within the provision of networking equipment, the Commission has considered in the past a possible distinction between WLAN and LAN products as well as between

¹¹⁵⁵ http://europa.eu/rapid/press-release_IP-10-157_en.htm

¹¹⁵⁶ http://europa.eu/rapid/press-release_IP-10-157_en.htm

¹¹⁵⁷ Commission Decision in case No COMP/M.5732 - HEWLETT-PACKARD / 3COM, par 11.

¹¹⁵⁸ Ibid., par 12.

¹¹⁵⁹ Ibid., par 16.

¹¹⁶⁰ Ibid., par 18.

¹¹⁶¹ Ibid., par 21.

*single components of the respective systems, while ultimately leaving the product market definition open”.*¹¹⁶²

*“For the purpose of the assessment of the proposed transaction, the exact product market definition can be left open, given that as the proposed transaction does not raise any serious doubts under any alternative product market definition”.*¹¹⁶³

Access Security Solutions

*“For the purpose of the assessment of the proposed transaction, the exact product market definition can be left open as the transaction does not raise any serious doubts under any alternative product market definition”.*¹¹⁶⁴

Conclusion on the relevant geographic market

*“For the purpose of the assessment of the present transaction, the Commission considers the geographic scope of the markets for switches, routers, WLAN, and access security to be at least EEA-wide, if not worldwide. However the exact definition of the relevant geographic market can be left open as the proposed transaction does not give rise to any serious doubts under any alternative geographic market definition”.*¹¹⁶⁵

¹¹⁶² Ibid., par 23.

¹¹⁶³ Ibid., par 24.

¹¹⁶⁴ Ibid., par 27.

¹¹⁶⁵ Ibid., par 34.

M. 5727 Microsoft –Yahoo! Search Business

The European Commission clears the sole control acquisition of Yahoo search business by Microsoft.¹¹⁶⁶

Microsoft is active in the design, development and supply of computer software and the supply of related services on a worldwide basis.¹¹⁶⁷ The Yahoo search business subject to the transaction encompasses the internet search and the online search advertising businesses of Yahoo, including its online search advertising platform Panama.¹¹⁶⁸

As regards the relevant product market and geographical scope

Online advertising

*“In its recent Google/DoubleClick decision, the Commission established a distinction between online and offline advertising markets. In the present case, only one respondent to the market investigation submitted that online advertising and offline advertising belong to the same product market. The Commission therefore considers that online advertising is a distinct market from offline advertising”.*¹¹⁶⁹

*“[...] In Google/DoubleClick, it was therefore concluded that the markets for online advertising space are divided alongside national or linguistic borders within the EEA”.*¹¹⁷⁰

*“Therefore, the scope of the relevant geographic market for online advertising and its segments is national or linguistic”.*¹¹⁷¹

1. Search advertising and non-search advertising

*“In Google/DoubleClick, the Commission considered whether search and non-search advertising are separate markets, but did not reach a conclusion in this regard because under any alternative product market definition, the transaction did not raise any competition concerns. In the present case, the notifying party argued that search advertising is a separate product market”.*¹¹⁷²

“In any event, the exact product market definition as regards the possible distinction between search and non-search advertising can be left open since under any alternative market definition the proposed transaction would not raise serious doubts

¹¹⁶⁶ http://europa.eu/rapid/press-release_IP-10-167_en.htm

¹¹⁶⁷ http://europa.eu/rapid/press-release_IP-10-167_en.htm

¹¹⁶⁸ http://europa.eu/rapid/press-release_IP-10-167_en.htm

¹¹⁶⁹ Commission Decision in case No COMP/M.5727 - MICROSOFT / YAHOO! SEARCH BUSINESS, par 61.

¹¹⁷⁰ Ibid., par 90.

¹¹⁷¹ Ibid., par 93.

¹¹⁷² Ibid., par 62.

in the EEA".¹¹⁷³

2. Mobile search advertising

"In any event, the exact market definition can be left open because under any alternative market definition the transaction would not raise serious doubts in the EEA".¹¹⁷⁴

Intermediation in online advertising

"In Google/DoubleClick the Commission left open whether the market for intermediation in online advertising could be further sub-divided according to whether the intermediation concerns search ads or non-search ads".¹¹⁷⁵

"The exact product market definition as regards intermediation can be left open because the proposed transaction would not raise serious doubts in the EEA under any alternative market definition".¹¹⁷⁶

As regards the geographical scope the EC states that: "However, in the present case, the exact geographic market definition may be left open because the transaction would not raise serious doubts in the EEA under any alternative market definition".¹¹⁷⁷

Distribution agreements on entry points

"The question could be raised whether there is a separate market for distribution agreements on entry points to search engines. As the proposed transaction does not raise serious doubts in the EEA under any alternative market definition, this question can be left open".¹¹⁷⁸

Internet search

"A question has been raised during the investigation as to whether a separate market for internet search, i.e. the provision of search results to internet users, could be defined".¹¹⁷⁹

"However, the Commission's first phase market investigation has not assessed the question whether internet search constitutes a separate market. Moreover, even if such a separate market could be defined, the market would still have to be investigated because forms of user searches that do not require a search engine (for example online directories or even offline search formats) may also belong to the same product market. In any case, the transaction would not give raise serious doubts

¹¹⁷³ Ibid., par 75.

¹¹⁷⁴ Ibid., par 81.

¹¹⁷⁵ Ibid., par 82.

¹¹⁷⁶ Ibid., par 83.

¹¹⁷⁷ Ibid., par 94.

¹¹⁷⁸ Ibid., par 84.

¹¹⁷⁹ Ibid., par 85.

in the EEA under any alternative market definition. It is therefore appropriate to leave open the question whether internet search constitutes a separate market”. ¹¹⁸⁰

¹¹⁸⁰ Ibid., par 86.

M. 5762 Innolux – Chi Mei - TPO

The European Commission clears the merger of InnoLux, Chi Mei and TPO. ¹¹⁸¹

InnoLux manufactures large LCD panels used mainly in its own finished consumer products – primarily computer monitors. Chi Mei Optoelectronics manufactures large LCD panels for use in monitors, televisions, notebook computers, public displays, and other large applications. TPO manufactures almost exclusively small-sized panels that are used for applications such as digital cameras, mobile phones, and multifunction printers. ¹¹⁸²

As regards the relevant product market and geographical scope

LCD Panels

“The Commission in its previous decisions considered segmenting the display markets according to the size of the panel”. ¹¹⁸³

“The Commission also considered whether the market for LCD panels should be further sub-segmented according to the end-use application in which panels are used”. ¹¹⁸⁴

“In a previous decision, the Commission noted also that the market for LCD panels might have to be further segmented according to the technology used to produce the displays”. ¹¹⁸⁵

“For the purpose of the assessment of the present transaction, the exact definition of the relevant product market for LCD displays can be left open, given that the proposed transaction does not raise any competition concerns under any alternative product market definition”. ¹¹⁸⁶

“In its previous decisions, the Commission concluded that the relevant geographic market for LCD panels is worldwide, based on low transportation costs, homogenous prices and global trading of LCDs”. ¹¹⁸⁷

¹¹⁸¹ http://europa.eu/rapid/press-release_IP-10-195_en.htm

¹¹⁸² http://europa.eu/rapid/press-release_IP-10-195_en.htm

¹¹⁸³ Commission Decision in case No COMP/M.5762 - INNOLUX / CHI MEI / TPO, par 11.

¹¹⁸⁴ Ibid., par 14.

¹¹⁸⁵ Ibid., par 17.

¹¹⁸⁶ Ibid., par 20.

¹¹⁸⁷ Ibid., par 21.

M. 5650 T-Mobile - Orange

The European Commission clears the merger (JV) between UK subsidiaries of France Telecom (Orange) and Deutsche Telekom (T-Mobile), subject to conditions.¹¹⁸⁸

Orange UK is a wholly-owned subsidiary of the French incumbent telecommunications operator France Telecom. It provides mobile telephony services in the UK and, to a lesser extent, broadband internet access services on a fixed network. T-Mobile UK is a wholly-owned subsidiary of the German incumbent telecommunications operator Deutsche Telekom. It provides mobile telephony services in the UK.

As regards the relevant product market and geographical scope

Mobile Telecommunication Services to End Customers

*“In previous decisions the Commission did not further subdivide the market for the provision of mobile telecommunications services to end customers by type of customer (corporate or private, post-paid subscribers or pre-paid customers) or by type of network technology (2G/GSM or 3G/UMTS networks). The Commission therefore assessed the previous cases on the basis of a single market for the provision of mobile telecommunications services to end customers. The parties concur with this assessment”.*¹¹⁸⁹

*“Therefore, for the purpose of this decision, the Commission considers that there is a single market for the provision of mobile communication services to end customers, in so far as they can be provided on both a 2G and a 3G basis”.*¹¹⁹⁰

*“In accordance with previous Commission decisions, the parties suggest that the geographic market should be defined in national terms, i.e. restricted to the UK”.*¹¹⁹¹
*“The market investigation confirmed this assessment”.*¹¹⁹²

Wholesale Access and Call Origination on Public Mobile Telephone Networks

*“Network access and call origination have been considered in previous Commission decisions as part of the same market”.*¹¹⁹³

*“In any event, the assessment in the present case would not change irrespective of the market definition for the wholesale access and call origination on public mobile phone networks”.*¹¹⁹⁴

“The geographic scope of the product market for wholesale access and call

¹¹⁸⁸ http://europa.eu/rapid/press-release_IP-10-208_en.htm

¹¹⁸⁹ Commission Decision in case No COMP/M.5650 - T-MOBILE / ORANGE, par 20.

¹¹⁹⁰ Ibid., par 24.

¹¹⁹¹ Ibid., par 25.

¹¹⁹² Ibid., par 26.

¹¹⁹³ Ibid., par 27.

¹¹⁹⁴ Ibid., par 30.

*origination on public mobile telephone networks is national. This is due to regulatory barriers as the geographical scope of the licences granted to MNOs is in principle limited to areas which do not extend beyond the borders of a Member State. Moreover, the coverage of mobile networks tends to correspond to national borders, with the result that the supply of access and origination at wholesale level is national in scope, i.e. the UK in the present case”.*¹¹⁹⁵

Wholesale market for international roaming

*“International roaming is a service which allows mobile subscribers to use their mobile handsets and SIM cards to make and receive calls, to send and receive text messages and to use other data services when abroad. In order to be able to offer this service to their customers, mobile network operators conclude wholesale agreements with one another providing access and capacity on mobile networks in the foreign country”.*¹¹⁹⁶

*“As in previous decisions, the Commission regards the market as national in scope. This analysis is based on the fact that wholesale international roaming agreements can be concluded only with companies which have an operating licence in the relevant country and licences to provide mobile services are restricted to national territory”.*¹¹⁹⁷

Wholesale market for mobile and fixed call termination

*“As established in previous Commission decisions, there is no substitute for call termination on each individual network since the operator transmitting the outgoing call can reach the intended recipient only through the operator of the network to which the recipient is connected. Each individual network therefore constitutes a separate market for termination. This applies both to fixed networks and to mobile networks”.*¹¹⁹⁸

*“Geographic markets for call termination in mobile (and fixed) networks tend to be national since they correspond to the geographic dimension of the network which in general is limited to national borders. This is essentially owing to regulatory barriers as the geographical scope of licences is in principle limited to areas which do not extend beyond the borders of a Member State”.*¹¹⁹⁹

¹¹⁹⁵ Ibid., par 31.

¹¹⁹⁶ Ibid., par 32.

¹¹⁹⁷ Ibid., par 35.

¹¹⁹⁸ Ibid., par 37.

¹¹⁹⁹ Ibid., par 38.

M. 5529 Oracle – Sun Microsystems

The European Commission clears the sole control acquisition of Sun Microsystems by Oracle.¹²⁰⁰

Oracle is a supplier of business software, including middleware (i.e. software that connects software components applications), database software, enterprise application software and related services.¹²⁰¹

Sun provides network computing infrastructure solutions that include computer systems, software, storage and services. In 2008, Sun acquired the open source database, MySQL.¹²⁰²

1. Databases

As regards the relevant product market

*“As stated in the Article 6(1)(c) decision the Commission has addressed the issue of product market definition for databases in the context of a merger proceeding in only one prior decision, IBM/Informix. In that case, however, the precise product market definition was ultimately left open”.*¹²⁰³

*“For the reasons discussed in section 2.1.1., however, it is not appropriate for the purposes of assessing the proposed transaction to define either a distinct product market for embedded databases or indeed alternative product markets according to operating system, customer group or any of the other criteria mentioned in the Article 6(1)(c) decision”.*¹²⁰⁴

Embedded vs. non-embedded RDBMS

*“In its detailed reply to the Article 6(1)(c) decision, Oracle submitted that embedded databases, or at least those developed specifically for embedding in software programs or devices, should be treated as a separate market”.*¹²⁰⁵

“On the basis of the elements discussed in the preceding paragraphs, the Commission reached the preliminary conclusion when adopting the Statement of Objections that it would not be appropriate to define separate product markets for embedded and non-embedded databases. This conclusion was subsequently supported by a number of third parties which made comments on the non-confidential version of the Statement of Objections. The notifying party itself did not contest the Commission's findings when replying to the Statement of Objections. The Commission therefore remains of the opinion that for the purposes of this Decision it is not appropriate to define

¹²⁰⁰ http://europa.eu/rapid/press-release_IP-10-40_en.htm

¹²⁰¹ http://europa.eu/rapid/press-release_IP-10-40_en.htm

¹²⁰² http://europa.eu/rapid/press-release_IP-10-40_en.htm

¹²⁰³ Commission Decision in case No COMP/M.5529 - ORACLE / SUN MICROSYSTEMS, par 86.

¹²⁰⁴ Ibid., par 91.

¹²⁰⁵ Ibid., par 93.

*distinct product markets for embedded and non-embedded databases”.*¹²⁰⁶

Product market definition on the basis of other criteria

*“In the light of the results of the market investigations in the first and second phase of the investigation in this case, it is concluded that the relevant product market in this case is that comprising all RDBMS. Given the differentiated nature of RDBMS, however, various sub-segments of the overall RDBMS market should be taken into account for the purposes of assessing the competitive effects of the proposed transaction”.*¹²⁰⁷

As regards the relevant product market

*“The notifying party claims that the geographic market is worldwide”.*¹²⁰⁸ *“In a previous decision the Commission concluded that the market for databases is at least EEA-wide and probably worldwide”.*¹²⁰⁹

*“The market investigation in this case has confirmed that the relevant geographic market is worldwide as the IT industry is a global industry and databases can be purchased and used anywhere and any database software can be licensed and installed at any specific geographic location”.*¹²¹⁰ *“The scope of the relevant geographic market for RDBMS is therefore worldwide”.*¹²¹¹

2. Middleware

As regards the relevant product market

*“The notifying party considers that all types of middleware belong to a single product market. In the recent Oracle/BEA decision, the Commission left the product market definition open but stated that the market investigation had confirmed that middleware could be sub-segmented according to the end use of the product”.*¹²¹²

“For the purposes of this case, the exact product market definition in relation to middleware can however be left open, as the proposed transaction does not raise serious doubts as to its compatibility with the common market under any alternative market definition”.

As regards the geographical scope

“In Oracle/BEA, the Commission assessed the effects of the transaction on the overall middleware market and sub-segments thereof under a worldwide geographic scope”.

¹²⁰⁶ Ibid., par 104.

¹²⁰⁷ Ibid., par 109.

¹²⁰⁸ Ibid., par 110.

¹²⁰⁹ Ibid., par 111.

¹²¹⁰ Ibid., par 112.

¹²¹¹ Ibid., par 113.

¹²¹² Ibid., par 762.

*“The market investigation in this case has confirmed that the market for middleware has a worldwide geographic scope”.*¹²¹⁴

*“For the purposes of this Decision, the relevant geographic market for the overall middleware market and sub-segments thereof will therefore be considered to be worldwide”.*¹²¹⁵

3. IT Stack

As regards the relevant product market

Servers

*“In its previous HP/Compaq decision, the Commission's market investigation indicated that a delineation of the relevant product market by price range would be appropriate. Ultimately the definition of the product market was left open. For the purpose of this Decision the precise product market definition as regards servers can be left open”.*¹²¹⁶

Storage solutions

*“As regards storage solutions, the Commission has in a previous Decision identified potential separate product markets according to the storage media used, such as disk, optical and tape. For the purposes of this Decision the precise product market definition as regards storage solutions can be left open”.*¹²¹⁷

Operating systems

*“In the Microsoft antitrust decision the Commission defined operating system markets, in particular the market for workgroup server operating systems, pursuant to a functional approach, that is to say, different server operating systems were found to be in the same market if they provided the same functionality even if they ran on different processors or belonged to different "families" of operating systems (such as Unix or Windows)”.*¹²¹⁸

*“For the purpose of this Decision the precise product market definition as regards operating systems can be left open”.*¹²¹⁹

EAS

¹²¹³ Ibid., par 767.

¹²¹⁴ Ibid., par 768.

¹²¹⁵ Ibid., par 769.

¹²¹⁶ Ibid., par 941.

¹²¹⁷ Ibid., par 943.

¹²¹⁸ Ibid., par 945.

¹²¹⁹ Ibid., par 946.

“In the decision in Oracle/Peoplesoft, the Commission defined the EAS market as a sub-category of business application software (as opposed to consumer software) which comprises "(i) enterprise applications and (ii) services related to the implementation and use of such software (these may include integration services, support and maintenance services, training services and/or hosting services)". Furthermore, the Commission found that the EAS market could be sub-divided in various categories, "having functionality with broadly similar purposes", such as Enterprise Resource Planning (ERP), Customer Relationship Management (CRM) and Supply Chain Management (SCM)", but only concluded as to the existence of separate markets for two sub-categories of ERP (FMS – financial management systems and HR – human resources)”.¹²²⁰

“For the purpose of this Decision the precise product market definition as regards EAS can be left open”.¹²²¹

As regards the geographical scope

“In previous cases the Commission considered that the markets for servers, storage solutions, and EAS are at least EEA-wide in scope. In the Oracle/Peoplesoft decision, the Commission also considered the relevant geographic market for EAS to be at least EEA-wide, but ultimately left the market definition open. In its Microsoft antitrust decision the Commission found the markets for operating systems to be worldwide. For the purpose of this Decision the precise geographic scope of the markets for servers, storage solutions, EAS and operating systems can be left open”.¹²²²

¹²²⁰ Ibid., par 947.

¹²²¹ Ibid., par 948.

¹²²² Ibid., par 950.

M. 5763 Dassault Systems – IBM DS PLM software business

The European Commission clears the sole control acquisition of IBM DS PLM software business by Dassault Systèmes.¹²²³

Under the proposed operation, Dassault Systèmes will buy IBM Systèmes PLM software business (IBM DS) from IBM Corp. IBM DS distributes the Dassault PLM software products under a contractual arrangement with the French company.¹²²⁴

As regards the relevant product market and geographical scope

PLM software

*“In that previous decision, Siemens/UGS, the Commission left open the questions (i) whether PLM software could be distinguished from EAS; and (ii) whether the various possible software applications and segments within the PLM software and solutions space constitute distinct product markets, namely DPD, CAD, CAE, CAM, DM and PDM”.*¹²²⁵

*“For the purposes of the present case, the precise delineation of the product market can be left open since no competition concerns arise on the basis of any of the possible market definitions”.*¹²²⁶

*“Previous Commission decisional practice left the precise geographic scope of the market open. Respondents to the Commission's market investigation have almost unanimously confirmed that the scope of the market is at least EEA-wide”.*¹²²⁷

*“However, given that there are no competition concerns arising from the proposed transaction, the geographic scope of the market can be left open”.*¹²²⁸

¹²²³ http://europa.eu/rapid/press-release_IP-10-375_en.htm

¹²²⁴ http://europa.eu/rapid/press-release_IP-10-375_en.htm

¹²²⁵ Commission Decision in case No COMP/M.5763 - DASSAULT SYSTEMES / IBM DS PLM Software business, par 14.

¹²²⁶ Ibid., par 20.

¹²²⁷ Ibid., par 21.

¹²²⁸ Ibid., par 22.

M. 5669 Cisco - Tandberg

The European Commission clears the sole control acquisition of Tandberg by Cisco, subject to conditions.¹²²⁹

Cisco Systems is globally active in the development and sale of networking products. In particular it designs, manufactures, and sells Internet Protocol (IP)-based networking products related to the communications and information technology industry, and, specifically, video communications solutions systems. Tandberg is also a vendor of a broad range of video communications solutions systems. In addition, Tandberg produces Multipoint Control Units ("MCUs") which are devices needed for communications that are not simply "point-to-point" connections between comparable videoconferencing formats.

As regards the relevant product market and geographical scope

Video communications solutions

*"In light of the above analysis, the Commission considers that dedicated-room VCS, multi-purpose room-base VCS and executive office/desktop VCS constitute three separate markets. Moreover, the Commission considers that for the purpose of the assessment of the present transaction, it is not necessary to conclude on whether telepresence is a separate market and on whether a distinction should be made between ready-built and custom-built solutions, given that the same conclusion applies irrespective of the above possible distinctions".*¹²³⁰

Multi-point control units

*"For the purpose of the assessment of the present transaction, the exact definition of the relevant product market for MCUs can be left open, given that the proposed transaction does not raise any competition concerns under any alternative market definition".*¹²³¹

*"While the Commission sees reasons to assume that the geographic scope of the above markets to be at least EEA-wide, if not worldwide, the exact definition of the relevant geographic market for VCS and MCUs can be left open, as the conclusions of the competition assessment would be the same regardless of the geographic market considered".*¹²³²

¹²²⁹ http://europa.eu/rapid/press-release_IP-10-377_en.htm

¹²³⁰ Commission Decision in case No COMP/M.5669 - CISCO / TANDBERG, par 23.

¹²³¹ Ibid., par 28.

¹²³² Ibid., par 33.

M. 5804 Samsung Electronics Co – Samsung Digital Imaging CO

The European Commission clears the sole control acquisition of Samsung Digital Imaging by Samsung Electronics.¹²³³

*SEC is active worldwide in the manufacturing of household appliances, mobiles phones and communication systems, semiconductors and LCD display panels. In particular, SEC sells memory semiconductors; including Dynamic Random Access memory semiconductor chips (DRAM) and flash memories which are incorporated, inter alia, into digital cameras. SDIC specialises in the production of digital still cameras and is active worldwide.*¹²³⁴

As regards the relevant product market and geographical scope

DSCs

*“In a recent decision, the Commission considered the DSC market as a whole since different models fall along a general spectrum of prices and performance characteristics but ultimately left the precise definition of the product market open”.*¹²³⁵

*“However, for the assessment of this case, it is not necessary to conclude on the exact product market definition, since it does not affect the competitive assessment”.*¹²³⁶

*“The parties submit that DSCs sold throughout the EEA are essentially identical with the same main brands present in all Member States and no significant country-specific variations in retail prices or market presence of the various players. The question was left open in Panasonic/Sanyo and it is also unnecessary to reach a definitive conclusion on the geographic scope of these markets (EEA-wide or national) in this case given that the competitive assessment would not change”.*¹²³⁷

Memory semiconductors and other components for DSCs

i) DRAMs

*“In line with the reasoning of a previous Commission decision, the parties submit that DRAMs could be differentiated by memory size and by intended applications. In this decision, the Commission also considered that other types of chips such as static random access memory (SRAM) perform different functions to DRAM and cannot therefore be regarded as substitutes. However, the Commission left open the precise definition of the DRAM market”.*¹²³⁸

¹²³³ http://europa.eu/rapid/press-release_IP-10-389_en.htm

¹²³⁴ http://europa.eu/rapid/press-release_IP-10-389_en.htm

¹²³⁵ Commission Decision in case No COMP/M.5804 - SAMSUNG ELECTRONICS CO / SAMSUNG DIGITAL IMAGING CO, par 8.

¹²³⁶ Ibid., par 10.

¹²³⁷ Ibid., par 24.

¹²³⁸ Ibid., par 14.

*“In any event, the precise market definition with regard to DRAM can be left open for the purposes of this case since the competitive assessment would not change”.*¹²³⁹

ii) Flash memories

*“In a recent decision, the Commission took the view that an overall flash memory market does not appear to be concretely established since the use of NOR versus NAND flash memory is dictated by the different end-application which from the outset is designed with the chosen component of flash memory (be it NOR or NAND). Separate markets could thus be considered for: (i) stand-alone NOR, and (ii) stand-alone NAND”.*¹²⁴⁰

*“In any event, the precise market definition with regard to flash memories can be left open for the purposes of this case since under any of the alternative definitions of the product markets discussed above the competitive assessment would not change”.*¹²⁴¹

*“In line with the Commission's previous decisions concerning the markets for DRAMs and flash memories, the parties submit that the geographic scope of all possible products markets is worldwide. The market investigation did not reveal that the scope of these markets should be narrower than the world”.*¹²⁴²

*“However, for the assessment of this case, it is not necessary to conclude on the exact geographic market definition, since whichever geographic market definition is retained, the competitive assessment would not change”.*¹²⁴³

¹²³⁹ Ibid., par 18.

¹²⁴⁰ Ibid., par 20.

¹²⁴¹ Ibid., par 23.

¹²⁴² Ibid., par 25.

¹²⁴³ Ibid., par 26.

M. 5666 Xerox – Affiliated computer services

The European Commission clears the sole control acquisition of Affiliated computer services by Xerox.¹²⁴⁴

Xerox is a global provider of document production equipment and related services. ACS provides a range of business process outsourcing ("BPO") and information technology outsourcing ("ITO") services and solutions to commercial and government clients worldwide.¹²⁴⁵

As regards the relevant product market and geographical scope

IT services

*"In several previous decisions related to IT services, the Commission considered the possibility of defining an overall market for IT services but ultimately left the market definition open".*¹²⁴⁶

*"However, for the purpose of the assessment of the present transaction, the exact scope of the market for IT services can be left open, given that the proposed transaction does not raise any competition concerns under any alternative market definition".*¹²⁴⁷

*"In previous decisions, the Commission indicated that the IT services market has increasingly shown a strong trend towards internationalisation of supply and demand, but left the geographic market definition open".*¹²⁴⁸

*"However, for the purpose of the assessment of the present transaction, the exact geographic scope of the IT services market or its possible sub-segments can be left open, given that the proposed transaction does not raise any competition concerns under any alternative market definition".*¹²⁴⁹

Document production equipment

*"In these cases, the Commission left open the exact product market definition as to the possible segmentation based on single function v. MFPs, black-and-white v. colour or speed range because the transactions did not raise any competition concerns under any alternative product market definition".*¹²⁵⁰

"However, for the purpose of the assessment of the present transaction, the exact definition of the relevant product market as regards document production equipment

¹²⁴⁴ http://europa.eu/rapid/press-release_IP-10-35_en.htm

¹²⁴⁵ http://europa.eu/rapid/press-release_IP-10-35_en.htm

¹²⁴⁶ Commission Decision in case No COMP/M.5666 - XEROX / AFFILIATED COMPUTER SERVICES, par 9.

¹²⁴⁷ Ibid., par 15.

¹²⁴⁸ Ibid., par 17.

¹²⁴⁹ Ibid., par 19.

¹²⁵⁰ Ibid., par 25.

*can be left open, given that the proposed transaction does not raise any competition concerns under any alternative market definition ”.*¹²⁵¹

*“In Konica/Minolta and Canon/Océ, the Commission analyzed the document production equipment market at both the EEA-wide and national levels, but ultimately left the geographic market definition open ”.*¹²⁵²

*“However, for the purpose of the assessment of the present transaction, the exact geographic scope of the document production equipment market(s) can be left open, given that the proposed transaction does not raise any competition concerns under any alternative market definition ”.*¹²⁵³

¹²⁵¹ Ibid., par 29.

¹²⁵² Ibid., par 31.

¹²⁵³ Ibid., par 33.

M. 5870 Foxconn – Sony LCD TV Manufacturing Company in Slovakia

The European Commission clears the sole control acquisition of Sony's television manufacturing company in Slovakia by Foxconn.¹²⁵⁴

Foxconn provides external assembly services, so-called electronic manufacturing services ("EMS"), for electronic products such as computers, mobile phones, or televisions to original equipment manufacturers ("OEM"). The Sony entities to be acquired in Slovakia and Mexico currently supply Sony's in-house production of LCD televisions. As a result of the transaction, the production capacity of the Slovakian and Mexican entities will be transferred to Foxconn.¹²⁵⁵

As regards the relevant product market and geographical scope

*“According to the notifying party, the relevant product market is the overall market for electronic assembly”.*¹²⁵⁶

*“In previous decisions dealing with EMS, the Commission has not included in-house production and assembly for the purposes of defining the scope of relevant product market”.*¹²⁵⁷

*“The Commission has also left open the question whether each end-use product may constitute a separate relevant product market”.*¹²⁵⁸

*“In any event, the exact product market definition can be left open as the proposed transaction does not raise competition concerns under any of the alternative product market definitions”.*¹²⁵⁹

*“In previous cases, the Commission has considered the provision of EMS as worldwide or at least EEA-wide, but has ultimately left the question open”.*¹²⁶⁰

*“The relevant geographic product market is therefore at least EEA-wide. Whether it is wider than EEA-wide can be left open as the proposed transaction does not raise competition concerns under any of the alternative geographic market definitions”.*¹²⁶¹

¹²⁵⁴ http://europa.eu/rapid/press-release_IP-10-840_en.htm

¹²⁵⁵ http://europa.eu/rapid/press-release_IP-10-840_en.htm

¹²⁵⁶ Commission Decision in case No COMP/M.5870 - FOXCONN / SONY LCD TV MANUFACTURING COMPANY IN SLOVAKIA, par 10.

¹²⁵⁷ Ibid., par 16.

¹²⁵⁸ Ibid., par 17.

¹²⁵⁹ Ibid., par 21.

¹²⁶⁰ Ibid., par 23.

¹²⁶¹ Ibid., par 25.

M. 5838 Bertelsmann – Planeta - Circulo

The European Commission clears the joint control of Circulo by Bertelsmann and Planeta.¹²⁶²

Under the proposed transaction, Planeta, a Spanish media group active in the production of cultural, news, educational and entertainment content, would acquire a controlling stake in Círculo, a company active in the sale of books to consumers through its book clubs in Spain. Círculo is currently owned by Bertelsmann, an international media company active in television, book publishing, magazine publishing, music rights management, distance selling, media services and media clubs. As a result of the transaction, Bertelsmann and Planeta would have joint control over Círculo.¹²⁶³

Planeta and Círculo both publish and sell books to dealers and consumers in Spain. The Commission's assessment showed that the proposed transaction would not give rise to any competition concerns on the Spanish markets for the acquisition of primary publishing rights, the sale of books to dealers, and the sale of books to consumers, regardless of the exact market definition. Planeta's and Círculo's combined market share remains in any case limited. The proposed transaction only leads to a small increment given Círculo's marginal activities in the publishing and sale of books to dealers.¹²⁶⁴

As regards the relevant product market and geographical scope

(i) Markets for publishing rights

Acquisition of primary book publishing rights

*“In previous cases, the Commission has always distinguished between the rights to publish a work in its original language and the rights to translate a work into a given language”.*¹²⁶⁵

*“The Commission has considered the geographic market for the acquisition of publishing rights for works written in French, as well as those to translate a work into French, to be worldwide. Publishers pay no attention to an author's nationality when selecting a work and rights acquired by publishers cover worldwide exploitation. Non-French publishers also assign the rights for all aspects of the exploitation of the work in French. According to the parties, the same reasoning could be applied for the purpose of the notified operation”.*¹²⁶⁶

¹²⁶² http://europa.eu/rapid/press-release_IP-10-889_en.htm

¹²⁶³ http://europa.eu/rapid/press-release_IP-10-889_en.htm

¹²⁶⁴ http://europa.eu/rapid/press-release_IP-10-889_en.htm

¹²⁶⁵ Commission Decision in case No COMP/M.5838 - BERTELSMANN / PLANETA / CIRCULO, par 20.

¹²⁶⁶ Ibid., par 22.

Acquisition of secondary publishing rights

*“The Commission has already considered that book club marketing rights are a special category of rights forming a market distinct from both primary rights and another type of secondary publishing rights, pocket-format rights. In assessing this, the Commission has looked at the ways of marketing books through book clubs or the amount of royalties paid to the publisher and to the author”.*¹²⁶⁷

*“As to whether the book club publishing rights should be further subdivided by the categories of books concerned, the Commission has noted that the great majority of works marketed by book clubs are general literature titles, the only other categories being children's books, guides and manuals, art books and strip cartoon albums. However, the Commission has left open whether this market should be further segmented”.*¹²⁶⁸

*“Although the Commission has already considered that the market for the acquisition of exploitation of book club rights could have a geographic scope wider than national, possibly worldwide, the notifying parties admit that the marketing rights acquired by a book club in Spain are often restricted in their geographic scope”.*¹²⁶⁹

(ii) Sale of books

Sale of books by publishers to dealers

*“In Lagardere/Natexis/VUP, the Commission has subdivided the French market by reference to the following types of dealers – hypermarkets, wholesalers and bookstores (including both bookstore chains and independent bookstores). It has done so on the grounds that publishers organise their sales teams according to these three categories; that each category of customer is very different in terms of what it buys from publishers and the titles that it offers to consumers; and that the terms on which publishers sell books to each category of dealers is very different”.*¹²⁷⁰

*“In Lagardere/Natexis/VUP, the Commission identified a geographic market encompassing the French-speaking part of the Community, notably on the grounds that discounts are calculated on a similar basis in these countries and there is substantial cross-border trade”.*¹²⁷¹

*“In the present case, linguistic barriers point towards a narrower market which is national in scope”.*¹²⁷²

Sale of books to consumers

¹²⁶⁷ Ibid., par 23.

¹²⁶⁸ Ibid., par 24.

¹²⁶⁹ Ibid., par 25.

¹²⁷⁰ Ibid., par 26.

¹²⁷¹ Ibid., par 28.

¹²⁷² Ibid., par 29.

*However, in a recent decision, the Commission has identified a single market for all sales of books to final customers and noted that the Commission's market investigation did not bring forward any element on the basis of which a distinct "distant sale" market (including book clubs, mail order and sales via the Internet) might be identified.*¹²⁷³

*"The notifying parties submit that the relevant geographic market for all retail sales of books is national".*¹²⁷⁴

*"Given the fact that the notified operation concerns mainly the sale of Spanish language books in Spain, the relevant geographic market to be considered in this case is Spain".*¹²⁷⁵

Conclusion

*"For the present case, the exact product and geographic market definitions can be left open since the notified operation is unlikely to raise any competition concerns under any possible market definition".*¹²⁷⁶

¹²⁷³ Ibid., par 33.

¹²⁷⁴ Ibid., par 34.

¹²⁷⁵ Ibid., par 35.

¹²⁷⁶ Ibid., par 36.

M. 5779 Comcast – NBC Universal

The European Commission clears the sole control acquisition of NBC Universal by Comcast.¹²⁷⁷

Comcast is active in cable networks in the US, as well as in the production and licensing of TV content and channels, but owns no cable assets in the EEA. Comcast also has a stake in Metro-Goldwyn-Mayer ("MGM"), the US film and entertainment company.¹²⁷⁸

*“NBCU is a global media and entertainment company, active in the development, production, marketing and distribution of entertainment, news, and information. It is currently 80%-owned by General Electric Company ("GE", USA). NBCU owns and operates a portfolio of news and entertainment channels, a motion picture company, television production operations, a network of television stations and theme parks. In the EEA, NBCU is mainly present through: (i) its international general entertainment pay-TV channels; (ii) the CNBC news channel; (iii) licensing of rights for motion pictures and TV programmes; (iv) home video distribution (home entertainment); (v) motion picture distribution; and (vi) local TV and motion picture production”.*¹²⁷⁹

As regards the relevant product market and geographical scope

Licensing of TV content

*“The parties have considered their respective positions by reference to the following categories: (i) licensing of broadcasting rights for pay-TV; (ii) licensing of broadcasting rights for free-TV; and (iii) licensing of broadcasting rights for TV channels”.*¹²⁸⁰

*“For the purposes of the present case, the exact definition of the relevant product and geographic markets as regards the licensing of TV content may be left open in the present case as the proposed transaction does not give rise to any competition concerns under any conceivable market definition”.*¹²⁸¹

¹²⁷⁷ http://europa.eu/rapid/press-release_IP-10-935_en.htm

¹²⁷⁸ http://europa.eu/rapid/press-release_IP-10-935_en.htm

¹²⁷⁹ Commission Decision in case No COMP/M.5779 - COMCAST / NBC UNIVERSAL, par 4.

¹²⁸⁰ Ibid., par 19.

¹²⁸¹ Ibid., par 26.

M. 5734 Liberty Global Europe - Unitymedia

The European Commission clears the sole control acquisition of Unitymedia by LGE.¹²⁸²

LGE is a cable network operator currently active in nine member states including Austria, but not in Germany. Its division, Chellomedia is active in the production of three pay-TV channels broadcast in Germany: Extreme Sports Channel, Zone Reality and Zone Club. Unitymedia is a German cable network operator active only in the German Federal States of North Rhine-Westphalia and Hesse.¹²⁸³

As regards the relevant product market and geographical scope

A. TV content markets

*“LGE, LMC (through QVC), Discovery and Unitymedia are active in TV content markets. In relation to TV content markets, the Commission has in the past defined two separate relevant markets: [...]”.*¹²⁸⁴

1. Broadcasting rights

*“The market for the licensing of broadcasting rights brings together production companies and free TV or pay TV broadcasters. Broadcasting content, such as films, TV shows or sports programmes, is produced either by separate production companies, or by broadcasters in-house. TV broadcasters use the content acquired on this market to assemble their TV channels. The Commission has in previous decisions considered but did not conclude on further sub-segmentation of this market according to content type and delivery method”.*¹²⁸⁵

*“As the transaction does not raise competition concerns regardless of the exact product market definition, the issue of further sub-segmentation can be left open”.*¹²⁸⁶

2. Licensing of pay TV channels

*“In the decisions Cinven-Warburg Pincus/Casema-Multikabel, concerning the TV markets in the Netherlands, and LGI/Telenet, concerning the Belgian TV markets, the Commission took the view that in these countries, the licensing of distribution rights for TV channels (including Pay-TV channels) does not constitute a separate market, but falls into the overall market for wholesale signal transmission (see below)”.*¹²⁸⁷

“Ultimately, the issue of whether the licensing of pay TV channels is a separate

¹²⁸² http://europa.eu/rapid/press-release_IP-10-49_en.htm

¹²⁸³ http://europa.eu/rapid/press-release_IP-10-49_en.htm

¹²⁸⁴ Commission Decision in case No COMP/M.5734 - LIBERTY GLOBAL EUROPE / UNITYMEDIA, par 10.

¹²⁸⁵ Ibid., par 12.

¹²⁸⁶ Ibid., par 13.

¹²⁸⁷ Ibid., par 18.

*relevant market or is part of the market for wholesale signal transmission can be left open, as the transaction does not raise competition concerns regardless of the exact market definition”.*¹²⁸⁸

*“The Commission has previously found that the geographic scope of the market is national due to national characteristics and the fact, that negotiations are usually conducted on a national basis irrespective of where the channels are produced”.*¹²⁸⁹

*“As the transaction does not raise competition concerns regardless of the exact geographic market definition, the market definition can be left open”.*¹²⁹⁰

B. Infrastructure markets

Market for wholesale signal transmission

*“The Commission, in recent decisions regarding the German cable sector, has left open whether additional transmission modes must also be included in this market”.*¹²⁹¹

*“If the wholesale transmission market is considered to be limited to cable infrastructure, its geographic scope is limited to the coverage area of the cable network concerned (in this case, NRW and Hesse). If other transmission modes available on a Germany-wide basis, such as satellite, DTT or IPTV, are included in the product market, its geographic scope is national”.*¹²⁹²

*“In any event, for the present purposes it is not necessary to decide on the exact product and geographic market definition, as the Transaction will not significantly impede effective competition irrespective of market definition”.*¹²⁹³

Intermediary market for signal delivery

*“The question of exact product and geographic market definition can be left open as the Transaction will have no effect on the intermediary signal delivery market(s)”.*¹²⁹⁴

Retail supply of signal transmission

“As described by the Commission in Apollo/JP Morgan/PrimaCom, Level 4 Operators (including Level 3 Operators acting as integrated Level 3/Level 4

¹²⁸⁸ Ibid., par 23.

¹²⁸⁹ Ibid., par 24.

¹²⁹⁰ Ibid., par 25.

¹²⁹¹ Ibid., par 28.

¹²⁹² Ibid., par 29.

¹²⁹³ Ibid., par 30.

¹²⁹⁴ Ibid., par 34.

*Operators) deliver signals from the termination point of the level 3 network to their customers, who can be individual customers or housing associations acting for their tenants. Whether the German signal transmission retail market needs to be sub-divided into the various modes of transmission (cable, satellite, other) has previously been left open by the Commission”.*¹²⁹⁵

*“According to the parties, the German market for the retail transmission of television signals encompasses at least cable and IPTV over DSL, if not also satellite and DTT”.*¹²⁹⁶

*“As regards geographic scope, the market for the retail supply of signal transmission, which may be regional or national”.*¹²⁹⁷

*“For the purposes of the present transaction, however, the question of exact product and geographic market definition can be left open, given that the transaction will have no relevant effects on the signal transmission retail market irrespective of the precise market definition”.*¹²⁹⁸

C. Retail Pay TV services

*“Unitymedia is active in the market for pay TV services in Germany. LGE, through its subsidiaries, is active in pay TV services in several neighbouring countries, but not in Germany. In relation to pay TV services, the Commission has in the past identified a market for the retail distribution of pay TV, which is distinct from the market for free TV. Specifically regarding Germany and Austria, the Commission took a view that pay TV is complementary to free TV. Since pay TV operators offer pay TV services on a national basis, the geographic scope of the pay TV retail market is national”.*¹²⁹⁹

D. Voice telephony

*“The proposed market definitions are consistent with the Commission's recommendation on the relevant product and service markets within the electronic communications sector”.*¹³⁰⁰

E. Retail market for broadband Internet access

“According to the parties, the relevant product market is the provision of internet connectivity to the users. This is consistent with Commission precedents. The

¹²⁹⁵ Ibid., par 35.

¹²⁹⁶ Ibid., par 36.

¹²⁹⁷ Ibid., par 37.

¹²⁹⁸ Ibid., par 38.

¹²⁹⁹ Ibid., par 40.

¹³⁰⁰ Ibid., par 41.

*geographic market is considered national in scope due to regulatory barriers”.*¹³⁰¹

F. Retail Triple-play services

*“In previous decisions, the Commission has considered whether it would be appropriate to define a separate market for multiple-play services but ultimately left the question open”.*¹³⁰²

*“Ultimately, the issue of whether triple-play is a separate relevant market can be left open, as the transaction does not raise competition concerns regardless of the exact market definition”.*¹³⁰³

¹³⁰¹ Ibid., par 42.

¹³⁰² Ibid., par 43.

¹³⁰³ Ibid., par 48.

M. 5904 Sap - Sybase

The European Commission clears the sole control acquisition of Sybase by SAP.¹³⁰⁴

SAP is the leading supplier of EAS solutions worldwide and is mainly active in this market, while Sybase is a software vendor focusing on databases, middleware and mobile enterprise solutions.¹³⁰⁵

As regards the relevant product market and geographical scope

1. Databases

*“In the Oracle/Sun Microsystems case, the Commission considered a number of possible narrower market definitions of RDBMS, such as distinguishing between general purpose databases and specialized databases for instance those for data warehousing, but ultimately concluded that the market was the one “comprising all RDBMS””.*¹³⁰⁶

Possible submarkets in the data warehousing space

*“This issue may be left open since, even on the basis of a further segmentation between data warehousing generation tools and data warehousing management tools, the operation would not raise any competition concerns”.*¹³⁰⁷

Possible submarket for embedded databases

*“In the Oracle/Sun Microsystems case, the Commission also analyzed the possibility of a sub-market for embedded databases but concluded that it was not appropriate to conclude as to existence of such separate market. In the case at hand, given that only Sybase is active in the embedded database segment with a small market share, the assessment of the case will not change in relation to any possible market definition”.*¹³⁰⁸

*“For the purposes of this decision, the exact definition of the relevant product market in relation to databases can be left open, as the proposed transaction does not raise any competition concerns under any alternative market definition”.*¹³⁰⁹

*“Given the purchase and utilisation patterns of databases software, the Commission considers the geographic scope of possible database markets as worldwide. This is in-line with its conclusion in the Oracle/Sun Microsystems case”.*¹³¹⁰

Enterprise Application Software (EAS)

¹³⁰⁴ http://europa.eu/rapid/press-release_IP-10-992_en.htm

¹³⁰⁵ http://europa.eu/rapid/press-release_IP-10-992_en.htm

¹³⁰⁶ Commission Decision in case No COMP/M.5904 - SAP / SYBASE, par 11.

¹³⁰⁷ Ibid., par 14.

¹³⁰⁸ Ibid., par 15.

¹³⁰⁹ Ibid., par 16.

¹³¹⁰ Ibid., par 17.

*“In the Oracle/Peoplesoft decision, the Commission has considered the market for EAS as a sub-category of business application software (as opposed to consumer software) which comprises applications and services related to the implementation and use of such software. In that decision, the Commission also found that the EAS market could be sub-divided into various categories having functionality with broadly similar purposes”.*¹³¹¹

*“In the SAP/Business Objects case, the Commission considered further delineations of the BA segment into: (i) performance management tools and applications ('PMT'); and (ii) data warehouse platforms. Whilst the market investigation in this case pointed towards the existence of a market for BA, the exact product market definition was ultimately left open”.*¹³¹²

*“The market investigation was inconclusive regarding the segmentation of EAS on the basis of industry sector of application. Yet, the market investigation indicated that it would be possible to segment EAS on the basis of high-end, mid-range and low-end software. However, for the purposes of this decision, the exact product market definition may be left open in relation to EAS since the competitive assessment will not change regardless of the market definition”.*¹³¹³

*“In previous decisions, the Commission considered that the geographic market for EAS was at least EEA-wide, but ultimately left the market definition open. The notifying party submits that the geographic scope of the EAS market is worldwide”.*¹³¹⁴

*“For the purposes of this decision, the exact geographic market definition may be left open since the proposed transaction will not give rise to any serious competition concerns even on the narrowest possible geographic market (EEA)”.*¹³¹⁵

Middleware and mobile middleware

*“In Oracle/BEA a segmentation of the overall middleware space according to the end- use of the product, although widely acknowledged by the investigation, was ultimately left open”.*¹³¹⁶

*“In the present case, although the market investigation points towards the existence of a market for mobile middleware and possibly towards the existence of separate sub- markets, the exact delineation of the market can be left open as, even under the narrowest possible definition, the transaction does not raise serious competition concerns”.*¹³¹⁷

“The Commission assessed middleware markets in the Oracle/BEA and the

¹³¹¹ Ibid., par 20.

¹³¹² Ibid., par 23.

¹³¹³ Ibid., par 28.

¹³¹⁴ Ibid., par 29.

¹³¹⁵ Ibid., par 30.

¹³¹⁶ Ibid., par 32.

¹³¹⁷ Ibid., par 42.

Oracle/Sun transactions as worldwide markets. In the present case, the worldwide scope of the market is also widely acknowledged by the investigation. The Commission will therefore assess the transaction under a worldwide scope”. ¹³¹⁸

¹³¹⁸ Ibid., par 43.

M. 5765 Foxconn – Dell (products) Poland

The European Commission clears the sole control acquisition of Dell computer production facility in Poland, by Foxconn.¹³¹⁹

Foxconn provides external assembly services, so-called electronic manufacturing services ("EMS"), for electronic products such as computers, mobile phones, or televisions to original equipment manufacturers ("OEM"). Dell's subsidiary in Lodz (Poland) currently supplies Dell's in-house production of computers. As a result of the transaction, the production capacity of the Polish subsidiary will be transferred to Foxconn.¹³²⁰

As regards the relevant product market and geographical scope

*“According to the notifying party, the relevant market is the overall market for electronic assembly”.*¹³²¹

*“The notifying party argues that there are several factors that support a single product market including in-house production and the provision of EMS by third parties”.*¹³²²

*“In previous decisions dealing with EMS, the Commission has not included in-house production and assembly for the purposes of defining the scope of relevant product market. The Commission has also left open the question of whether EMS for different end-use products constitute separate relevant product markets. However, the supply-side substitutability between different electronic products has been confirmed by various Commission market investigations”.*¹³²³

“The exact product market definition may be left open as the proposed transaction does not raise competition concerns under any of the alternative definitions”.

*“The notifying party submits that the relevant market is worldwide. First, EMS providers usually conclude EMS agreements with OEMs on a global basis. Second, shipping costs and tariffs are limited. This is evidenced by the existence of significant imports of EMS-produced goods into the EEA (20% of the total value of EMS-produced goods sold within the EEA)”.*¹³²⁴

*“In previous cases, the Commission has considered the provision of EMS as worldwide or at least EEA-wide, but has ultimately left the question open”.*¹³²⁵

“All respondents to the market investigation confirm that the provision of EMS is

¹³¹⁹ http://europa.eu/rapid/press-release_IP-10-1191_en.htm

¹³²⁰ http://europa.eu/rapid/press-release_IP-10-1191_en.htm

¹³²¹ Commission Decision in case No COMP/M.5765 - FOXCONN / DELL (PRODUCTS) POLAND, par 10.

¹³²² *Ibid.*, par 11.

¹³²³ *Ibid.*, par 17.

¹³²⁴ *Ibid.*, par 25.

¹³²⁵ *Ibid.*, par 26.

worldwide".¹³²⁶

"Whether the provision of EMS is wider than EEA-wide can be left open as the proposed transaction does not raise competition concerns under any of the alternative geographic market definitions".¹³²⁷

¹³²⁶ Ibid., par 27.

¹³²⁷ Ibid., par 28.

M. 5964 TPV – Philips branded monitors and colour TVs

The European Commission clears the sole control acquisition of Philips branded monitors and colour TVs by TPV.¹³²⁸

TPV is active in the design and manufacture of a range of TV and monitor display technology for distribution in Asia, Europe and the US. Pursuant to an agreement of 29 September 2010 TPV proposes to acquire the branding and distribution business of Philip's colour TVs in the People's Republic of China.¹³²⁹

As regards the relevant product market and geographical scope

*“In Alba/Beko/Grundig, the Commission considered a distinction between the supply of own-branded OEM colour TVs and the supply of non-branded OEM colour TVs. In TPV/Philips Branded Monitors, the Commission considered that the supply of computer monitors on an OEM basis and the supply of branded computer monitors could constitute separate markets. In Foxconn/Sony Slovakia⁸, the Commission considered a distinction between the in-house production of colour TVs by OEMs and the production of colour TVs by third-party manufacturers. However, in all these cases the Commission eventually left the product market definition open. The exact product market definition can also be left open in the present case, as the proposed transaction does not raise any competition concerns under any alternative product market definition”.*¹³³⁰

*“In conclusion, the exact geographic market definition of the market for branded colour TVs can be left open for the purpose of the present case, as the Ebony transaction does not raise any competition concerns under any of the alternative geographic market definitions considered”.*¹³³¹

¹³²⁸ http://europa.eu/rapid/press-release_IP-10-1488_en.htm

¹³²⁹ http://europa.eu/rapid/press-release_IP-10-1488_en.htm

¹³³⁰ Commission Decision in case No COMP/M.5964 - TPV / PHILIPS BRANDED MONITORS AND COLOUR TVS, par 13.

¹³³¹ Ibid., par 21.

M. 5932 News Corp - BskyB

The European Commission clears the sole control acquisition of BskyB by News Corp.¹³³²

News Corp and BskyB are mainly active in different markets in the UK and Ireland and compete with each other only to a limited extent, in the wholesale supply of basic pay-TV channels and in the supply of online and TV advertising space.¹³³³

As regards the relevant product market and geographical scope

AV content

*“Audiovisual content comprises all the ‘entertainment products’ (for example films, sports, TV programmes) that can be broadcast via TV. TV broadcasting rights belong to the creators of these products, who license them to broadcasters (which then incorporate them into a linear stream of content – TV channel) or content platform operators which retail directly to end users on a VOD/PPV basis”.*¹³³⁴

*“The notifying party submits that there is a single product market for the acquisition of all TV content rights, which encompasses all types of content, as well as both FTA and pay-TV rights. However, for the purposes of assessing the proposed transaction, the notifying party agreed to distinguish between the licensing of (i) films; (ii) sport content; and (iii) TV programmes”.*¹³³⁵

*“In past decisions, the Commission has considered distinguishing between US-produced films and other films, indicating that the relevant market for films was mainly composed of commercially ‘successful films’, which in general tends to correspond to films produced by the Hollywood majors. As regards the licensing of broadcasting rights for premium films for pay-TV, in past decisions, the Commission has identified separate markets for the following different exhibition windows: (i) PPV/VOD; (ii) the first pay-TV window; and (iii) the second pay-TV window”.*¹³³⁶

*“For the purposes of the present decision, it is not necessary to conclude on the exact product market definition as the proposed transaction does not raise any competition concerns under any alternative market definition for the licensing and acquisition of broadcasting rights to audiovisual content”.*¹³³⁷

*“In past decisions, the Commission has considered that the market for the licensing/acquisition of audiovisual content (film and other content) is national in scope or relates to linguistically homogeneous areas”.*¹³³⁸

¹³³² http://europa.eu/rapid/press-release_IP-10-1767_en.htm

¹³³³ http://europa.eu/rapid/press-release_IP-10-1767_en.htm

¹³³⁴ Commission Decision in case No COMP/M.5932 - NEWS CORP / BSKYB, par 55.

¹³³⁵ Ibid., par 56.

¹³³⁶ Ibid., par 60.

¹³³⁷ Ibid., par 66.

¹³³⁸ Ibid., par 68.

*“As regards the acquisition of rights to premium films, in its News Corp/Telepiù decision, the Commission noted that “nothing prevents operators from acquiring rights for more than one territory at the time”. However, in that case, the Commission ultimately found that broadcasting rights were divided and sold on a mainly national basis or, at most, by language area”.*¹³³⁹

*“As regards rights for football events that are played regularly throughout the year, in past decisions, the Commission has found that such rights are sold on a national basis”.*¹³⁴⁰

*“The market investigation largely confirmed the past Commission decisional practice of defining the geographic scope of markets for the licensing/acquisition of audiovisual TV content (film and other content) as national or relating to linguistically homogeneous areas”.*¹³⁴¹

*“In light of the above and for the purposes of the present decision, it may be concluded that the geographic scope of markets for the licensing/acquisition of broadcasting rights to audiovisual content (film and other content) is national or, at most, relates to linguistically homogeneous areas”.*¹³⁴²

Wholesale supply of TV channels

*“As regards product market definition, the notifying party departs from the Commission's findings in past cases and submits that the relevant product market is at least as broad as the wholesale supply of TV channels (including both FTA and pay-TV channels), and possibly larger”.*¹³⁴³

*“In past decisions, the Commission has identified pay-TV and FTA TV as belonging to separate markets. In its SFR/Télé 2 decision, the Commission considered that in the intermediate market for the distribution of TV channels, a distinction must be made between FTA and pay-TV channels”.*¹³⁴⁴

*“In light of the above and for the purposes of the present decision, the Commission considers that FTA and pay-TV channels (both basic pay-TV and premium pay-TV) constitute two separate product markets, in line with the precedents of the Commission. The market investigation also provided strong indications that the premium pay-TV channels belong to a separate product market from basic pay-TV channels. However, for the purpose of the present decision, the possible distinction between premium and basic channels is left open, given that the transaction would not raise serious doubts as to its compatibility with the internal market under any alternative market definition”.*¹³⁴⁵

¹³³⁹ Ibid., par 69.

¹³⁴⁰ Ibid., par 70.

¹³⁴¹ Ibid., par 72.

¹³⁴² Ibid., par 75.

¹³⁴³ Ibid., par 77.

¹³⁴⁴ Ibid., par 80.

¹³⁴⁵ Ibid., par 85.

*“In past decisions, the Commission has consistently found that the markets for the wholesale supply of TV channels were national or delineated along the linguistic areas. The market investigation conducted for the purpose of this case did not contradict these findings”.*¹³⁴⁶

*“In light of the above and for the purposes of the present decision, it may therefore be concluded that the geographic scope of markets for the wholesale supply of TV channels is national or, at most, relates to linguistically homogeneous areas”.*¹³⁴⁷

Retail supply of audiovisual content to end users

*“According to the notifying party, the relevant product market for the retail provision of audiovisual content to end-users encompasses at least the provision of FTA and pay-TV channels via all distribution channels (satellite, DTT, cable, IPTV and others), as well as the provision of non-linear services and pre-recorded media (such as PPV, VOD or DVD)”.*¹³⁴⁸

Pay-TV and FTA

*“However, the Commission concluded, also based on the results of the market investigation, that in Italy, FTA and pay-TV are two separate markets”.*¹³⁴⁹

*“In conclusion, for the purpose of the present decision, the Commission considers that the retail supply of pay-TV and FTA TV belong to separate markets”.*¹³⁵⁰

Distribution channels

*“In past decisions, the Commission has only identified pay-TV and FTA TV as belonging to separate markets, without distinguishing between terrestrial, satellite cable or other means of transmission”.*¹³⁵¹

*“Finally, the market investigation confirmed that non-linear services comprising (i) DVDs and (ii) PPV/VOD are not substitutable with the retail supply of pay-TV linear channels at this point in time in the UK”.*¹³⁵²

*“Based on the above and for the purpose of the present decision, the Commission considers that, within the pay-TV market, the retail supply of non-linear services and linear channels belong to two separate markets”.*¹³⁵³

“In a previous decision, the Commission considered that TV broadcasting is generally organised on a national basis. The market investigation conducted for the

¹³⁴⁶ Ibid., par 87.

¹³⁴⁷ Ibid., par 88.

¹³⁴⁸ Ibid., par 89.

¹³⁴⁹ Ibid., par 97.

¹³⁵⁰ Ibid., par 99.

¹³⁵¹ Ibid., par 103.

¹³⁵² Ibid., par 106.

¹³⁵³ Ibid., par 107.

*purpose of this case did not contradict these findings”.*¹³⁵⁴

*“In light of the above and for the purposes of the present decision, it may therefore be concluded that the geographic scope of markets for the retail distribution of content to consumers is national or, at most, relates to linguistically homogeneous areas”.*¹³⁵⁵

Supply of pay-TV technical Services

*“In the News Corp/Premiere decision, the Commission however considered that the provision of CA solutions is a separate product market”.*¹³⁵⁶

*“With regard to the geographic scope of the market, the notifying party argues that this is at least EEA-wide, if not global. Concerning CA systems, the Commission noted in the News Corp/Premiere decision that the market investigation revealed that providers of CA systems usually offer their encryption systems on a global basis, but ultimately left the question open. Also in the News Corp/Premiere case⁸⁰, the Commission noted that the market investigation revealed no elements⁸¹ on the basis of which the geographic scope of the middleware market would not have to be defined as at least EEA-wide or even worldwide, but ultimately left the question open”.*¹³⁵⁷

*“For the purposes of this decision, the exact scope of the product and geographic market definition may be left open, as the proposed transaction does not raise competition concerns under any alternative product market definitions”.*¹³⁵⁸

¹³⁵⁴ Ibid., par 109.

¹³⁵⁵ Ibid., par 110.

¹³⁵⁶ Ibid., par 111.

¹³⁵⁷ Ibid., par 113.

¹³⁵⁸ Ibid., par 114.

M. 5881 ProSiebensat.1 Media – RTL Interactive - JV

The European Commission refers planned joint venture between ProSiebensat.1 Media and RTL to the German and Austrian Competition authorities.¹³⁵⁹

“RTL and ProSiebenSat.1 are the two most important private free-to-air broadcasting companies in Austria and Germany. RTL provides primarily free-to-air TV and encompasses the TV-related activities of Bertelsmann, an international media group headquartered in Germany. ProSiebenSat.1 is an international media company headquartered in Germany and primarily active in free-to-air TV. RTL and ProSiebenSat.1 hold significant viewer and advertising shares in linear TV in both Austria and Germany”.¹³⁶⁰

¹³⁵⁹ http://europa.eu/rapid/press-release_IP-10-1174_en.htm

¹³⁶⁰ http://europa.eu/rapid/press-release_IP-10-1174_en.htm

2011

Thema	Zaak nr	Partijen
Merger	M.6369 C(2011) 10049	HBO / ZIGGO / HBO NEDERLAND
Merger	M.6137 C(2011) 1534 final	CITIGROUP / MALTBY ACQUISITIONS LIMITED
Merger	M.6095 C(2011) 1538 final	ERICSSON / NORTEL GROUP (MSS & GLOBAL SERVICES)
Merger	M.6127 C(2011) 2109 final	ATOS ORIGIN / SIEMENS IT SOLUTIONS & SERVICES
Merger	M.6237 C(2011) 4515 final	COMPUTER SCIENCES CORPORATION / iSOFT GROUP
Merger	M.5984 C(2011) 529 final	INTEL / MCAFEE
Merger	M.6196 C(2011) 5493 final	LENOVO / MEDION
Merger	M.6214 C(2011) 7592 final	SEAGATE TECHNOLOGY / THE HDD BUSINESS OF SAMSUNG ELECTRONICS
Merger	M.6393 C(2011) 9020	ASTRIUM HOLDING / VIZADA GROUP
Merger	M.6126 C(2011)3465	THERMO FISHER / DIONEX CORPORATION
Merger	M.6175 C(2011)4423	DANAHER / BECKMAN COULTER
Merger	M.6281 C(2011)7279	MICROSOFT / SKYPE
Merger	M.5900 K(2011) 4428 endgültig	LGI / KBW
Merger	M.6203 none	WESTERN DIGITAL IRELAND / VIVITI TECHNOLOGIES

M. 6369 HBO – Ziggo – HBO Nederland

The European Commission clears the Joint Venture between HBO and Ziggo.¹³⁶¹

HBO Nederland is a full-function joint venture that will be jointly controlled by HBO and Ziggo. It will develop and operate six new HBO-branded pay-TV channels mainly featuring films and other television shows and will be active in the Netherlands only.

As regards the relevant product market and geographical scope

(i) Licensing of audiovisual content

*“In previous decisions, the Commission identified separate product markets for the licensing of broadcasting rights for the different exhibition windows, namely: (1) VOD; (2) PPV; (3) first pay-TV window; (4) second pay-TV window (where applicable); and (5) free-to-air (“FTA”) TV. Moreover, within the market for licensing of broadcasting rights for pay-TV, the Commission considered that, from a demand and supply-side perspective, certain types of content are not substitutable, and defined separate product markets for the licensing of broadcasting rights for: (i) films, (ii) sport events and (iii) other TV content. The Commission also considered that the market for the licensing of pay-TV broadcasting rights to films could be further divided into separate product markets for: (i) films produced by Hollywood studios and (ii) films produced by independent studios”.*¹³⁶²

*“The market investigation did not put into question the existence of separate markets for different exhibition windows”.*¹³⁶³

*“In any event, since the transaction will not raise competition concerns under any of the above outlined product markets in the licensing of audiovisual content, the exact scope of the relevant product market can be left open”.*¹³⁶⁴

*“In past decisions, the Commission considered that the market for the licensing of broadcasting rights to audiovisual content is either national in scope or relates to linguistically homogeneous areas”.*¹³⁶⁵

*“In light of the above, and for the purposes of the present decision, it can therefore be concluded that the geographic scope of the market for the licensing of audiovisual content (and its possible segments) is national”.*¹³⁶⁶

(ii) Wholesale supply of TV channels

“Within this market, the Commission identified two separate product markets for the wholesale supply of FTA and pay-TV channels, based on the different financial

¹³⁶¹ http://europa.eu/rapid/press-release_IP-11-1593_en.htm

¹³⁶² Commission Decision in case No COMP/M.6369 - HBO / ZIGGO / HBO NEDERLAND, par 18.

¹³⁶³ Ibid., par 20.

¹³⁶⁴ Ibid., par 21.

¹³⁶⁵ Ibid., par 32.

¹³⁶⁶ Ibid., par 35.

models of these two types of channels.²⁰ Moreover, within the market for the wholesale supply of pay-TV channels, the Commission indicated that there is a differentiation between "basic" and "premium" pay-TV channels, without, however, reaching a final conclusion as to whether these channels constitute separate markets".¹³⁶⁷

"In any event, since the transaction will not raise competition concerns under any of the above outlined product markets in the wholesale supply of TV channels, for the purpose of this decision, the exact scope of the relevant product market can be left open".¹³⁶⁸

"In previous decisions, the Commission consistently held that the market for the wholesale supply of TV channels is national or delineated along linguistically homogenous areas".¹³⁶⁹

"In light of the above, and for the purposes of the present decision, it can therefore be concluded that the geographic scope of the market for the wholesale supply of TV channels (and its possible segments) is national".¹³⁷⁰

(iii) Retail supply of TV services

"In previous decisions, the Commission indicated that, within the market for the retail supply of TV services, a distinction should be made between FTA-TV and pay-TV services. As regards a possible segmentation of the retail market based on the different types of transmission infrastructure (e.g., cable, satellite, digital terrestrial, xDSL, etc.), in previous cases, the Commission did not deem it necessary to proceed to any such segmentation, including with specific respect to the Dutch market".¹³⁷¹

"In any event, since the transaction will not raise competition concerns under any of the above outlined product markets in the retail supply of TV channels, the exact scope of the relevant product market can be left open".¹³⁷²

"With regard to the retail supply of TV services, the Commission considered that the markets for organisation of television, including the retail markets for pay-TV, are national in nature or relate to linguistically homogeneous areas".¹³⁷³

"In light of the above, and for the purposes of the present decision, it can therefore be concluded that the geographic scope of the market for the retail supply of TV channels (and its possible segments) is national".¹³⁷⁴

¹³⁶⁷ Ibid., par 22.

¹³⁶⁸ Ibid., par 27.

¹³⁶⁹ Ibid., par 36.

¹³⁷⁰ Ibid., par 39.

¹³⁷¹ Ibid., par 28.

¹³⁷² Ibid., par 31.

¹³⁷³ Ibid., par 40.

¹³⁷⁴ Ibid., par 43.

M. 6095 Ericsson – Nortel Group (MSS & Global Services)

The European Commission clears the sole control acquisition of Nortel Group by Ericsson.¹³⁷⁵

Telefonaktiebolaget LM Ericsson ("Ericsson") provides telecommunication equipment and related services to mobile and fixed network operators. It comprises four main business units: Networks, Global Services, Multimedia, and CDMA and GSM Business.¹³⁷⁶

The Nortel Multi-Service Switching (MSS) Business is globally active in the sale of MSS switches to service providers delivering in real-time a variety of data, voice, and video services. The MSS Business also provides certain associated services such as maintenance and support services.¹³⁷⁷

As regards the relevant product market and geographical scope

MSS switches

*In a previous decision, the Commission considered the market definition for products in the switching and routing industry identifying five main categories of switches [...]”.*¹³⁷⁸

*“For the purpose of the present transaction, the notifying party considers the narrowest possible market, namely the sale of MSS switches”.*¹³⁷⁹

*“However, for the purpose of the assessment of the proposed transaction, the exact definition of the relevant product market can be left open, given that the proposed transaction does not raise any competition concerns under any alternative product market definition”.*¹³⁸⁰

*“In line with previous Commission's decisions, the notifying party submits that the geographic scope of the market for all categories of networking products (including switches and routers) is at least EEA-wide, if not worldwide, due to customers and suppliers having an EEA, if not worldwide, presence, and the evolution of IP technology and EEA/worldwide standardisation. In addition, prices and tenders for these products are normally negotiated on an EEA, if not worldwide, basis and transport costs are not a determining factor when considering suppliers. This was confirmed by the market investigation”.*¹³⁸¹

“For the purpose of the assessment of the present transaction, the exact definition of the relevant geographic market (EEA or worldwide) for all categories of networking products (including switches and routers) can be left open as the proposed

¹³⁷⁵ http://europa.eu/rapid/press-release_IP-11-249_en.htm

¹³⁷⁶ http://europa.eu/rapid/press-release_IP-11-249_en.htm

¹³⁷⁷ http://europa.eu/rapid/press-release_IP-11-249_en.htm

¹³⁷⁸ Commission Decision in case No COMP/M.6095 - ERICSSON / NORTEL GROUP (MSS & GLOBAL SERVICES), par 18.

¹³⁷⁹ Ibid., par 22.

¹³⁸⁰ Ibid., par 24.

¹³⁸¹ Ibid., par 25.

*transaction does not give rise to any competition concerns under any alternative geographic market definition”.*¹³⁸²

Mobile telecommunications network infrastructure

(i) UMTS/WCDMA – GSM

*“In its decision in Case COMP/M.4297 - Nokia/Siemens, the Commission concluded that RAN elements and CNS elements constitute separate product markets”.*¹³⁸³

*“However, for the purpose of the assessment of the proposed transaction, the exact definition of the relevant product market (GSM/UMTS – RAN/CNS) can be left open, given that the proposed transaction does not raise any competition concerns under any alternative product market definition”.*¹³⁸⁴

*“In line with a previous decision, the notifying party submits that the markets for mobile network infrastructure equipment and associated mobile services are global or at least EEA-wide in scope due to (i) the international standardisation of mobile telecommunication networks equipment and related services, (ii) the fact that contracts are concluded on a global basis, and (iii) the limited regional variations in cost and price”.*¹³⁸⁵

*“For the purpose of the assessment of the present transaction, the exact definition of the relevant geographic market (EEA or worldwide) can be left open as the proposed transaction does not give rise to any competition concerns under any alternative geographic market definition”.*¹³⁸⁶

(ii) VoIP

*“However, for the purpose of the assessment of the proposed transaction, the exact definition of the relevant product market for VoIP infrastructures can be left open, given that the proposed transaction does not raise any competition concerns under any alternative product market definition”.*¹³⁸⁷

*“According to the notifying party, the geographic scope of the VoIP infrastructure market is global or at least EEA-wide as (i) the same equipment is used for VoIP infrastructure worldwide and (ii) contracts in the VoIP infrastructure market are competed globally”.*¹³⁸⁸

“For the purpose of the assessment of the present transaction, the exact definition of the relevant geographic market for VoIP infrastructures (EEA or worldwide) can be left open as the proposed transaction does not give rise to any competition concerns

¹³⁸² Ibid., par 26.

¹³⁸³ Ibid., par 29.

¹³⁸⁴ Ibid., par 31.

¹³⁸⁵ Ibid., par 32.

¹³⁸⁶ Ibid., par 34.

¹³⁸⁷ Ibid., par 42.

¹³⁸⁸ Ibid., par 43.

under any alternative geographic market definition”. ¹³⁸⁹

¹³⁸⁹ Ibid., par 44.

M. 6127 Atos Origin – Siemens IT Solutions & Services

The European Commission clears the sole control acquisition of Siemens IT solutions & services by Atos Origin.¹³⁹⁰

Both companies are active in information technology ("IT") services. Atos Origin provides various IT services such as the design, building and operation of IT systems, including payment card processing services. SIS provides comprehensive IT services, industry specific IT solutions, IT consulting services and system integration services to Siemens and its affiliates as well as to external customers.¹³⁹¹

As regards the relevant product market and geographical scope

IT – Services

*“In previous decisions, the Commission considered various market segmentations based on the type of IT services (according to industry analyst Gartner) namely: [...]. In all the above cases, the Commission left open the exact delineation of the product market”.*¹³⁹²

*“For the purpose of the present decision, the precise product market definition can be left open as under all possible product market definitions the proposed transaction does not give rise to any competition concerns”.*¹³⁹³

*“In past decisions, the Commission considered that certain IT services markets could have a national dimension, since IT solutions are customised according to language and local business particularities and also in light of the fact that IT services require the maintenance of a close and constant relationship between the service provider and the client. However, market investigations in more recent cases have indicated an increasing globalisation of the supply and demand for IT services”.*¹³⁹⁴

*“For the purpose of the present decision, the exact delineation of the geographic market for IT services (and its possible further segmentation) can be left open as under all possible product market definitions the proposed transaction does not give rise to any competition concerns”.*¹³⁹⁵

¹³⁹⁰ http://europa.eu/rapid/press-release_IP-11-366_en.htm

¹³⁹¹ http://europa.eu/rapid/press-release_IP-11-366_en.htm

¹³⁹² Commission Decision in case No COMP/M.6127 - ATOS ORIGIN / SIEMENS IT SOLUTIONS & SERVICES, par 14.

¹³⁹³ Ibid., par 17.

¹³⁹⁴ Ibid., par 18.

¹³⁹⁵ Ibid., par 21.

M. 6237 Computer sciences corporation – iSoft Group

The European Commission clears the sole control acquisition of iSoft by CSC.¹³⁹⁶

*“CSC is a provider of IT services to a large base of multinational companies, governments and agencies across a range of industries”.*¹³⁹⁷ *“iSOFT is a provider of healthcare software. iSOFT works with healthcare professionals to design and build software applications for a range of needs across the healthcare sector, principally in Australia and Europe”.*¹³⁹⁸

As regards the relevant product market and geographical scope

IT services

*“The Commission however considered in the past that IT services markets could be segmented according to (i) the functionality of the services and (ii) the different sectors concerned”.*¹³⁹⁹

*“As regards functionality, the Commission usually considers that the main segments of IT services are (i) consulting, (ii) development and integration, (iii) hardware and maintenance, (iv) management services, (v) business process outsourcing, (vi) software maintenance and (vii) education and training”.*¹⁴⁰⁰

*“For the purposes of this decision, the exact product market definition as regards IT services can be left open since the proposed transaction does not give rise to any competition concerns even on the narrowest possible markets, namely the markets for the provision of the various functions of healthcare IT services”.*¹⁴⁰¹

*“The Commission considered in the past that IT services are provided on a national basis, mainly due to the fact that customized solutions are offered according to languages and local business particularities. However, the Commission’s recent decisional practice in IT services has specifically pointed towards a broader geographic scope than national markets, as major providers of IT services operate on a worldwide basis and customers frequently have worldwide/EEA-wide tenders”.*¹⁴⁰²

*“For the purposes of this decision, the exact geographic scope of the IT services market (and any potential submarkets) can be left open since the proposed transaction does not give rise to any competition concerns even on the narrowest possible geographic market (i.e. national)”.*¹⁴⁰³

Software

¹³⁹⁶ http://europa.eu/rapid/press-release_IP-11-764_en.htm

¹³⁹⁷ Commission Decision in case No COMP/M.6237 - COMPUTER SCIENCES CORPORATION / iSOFT GROUP, par 2.

¹³⁹⁸ Ibid., par 3.

¹³⁹⁹ Ibid., par 9.

¹⁴⁰⁰ Ibid., par 10.

¹⁴⁰¹ Ibid., par 15.

¹⁴⁰² Ibid., par 17.

¹⁴⁰³ Ibid., par 19.

*“First, as regards functionality, the software industry generally distinguishes between the following types of software within the "IT stack": (i) infrastructure software (i.e. servers and databases); (ii) middleware (i.e. integration platforms); (iii) application software and office software; and (iv) operating/browser software”.*¹⁴⁰⁴

*“Secondly, as regards end-use, the Commission also previously defined software markets on the basis of the end-use of the software, either by distinguishing between high-end and low-end or by distinguishing between high-end, mid-range and low-end”.*¹⁴⁰⁵

*“However in the present case, all healthcare software belongs to the category of high- end use. Therefore applying this further segmentation would not change the competitive assessment”.*¹⁴⁰⁶

*“For the purposes of this decision, the exact product market definition as regards the healthcare software market can be left open, since the proposed transaction does not give rise to any competition concerns even on the narrowest possible product market (i.e. healthcare software further segmented by modules)”.*¹⁴⁰⁷

*“For the purposes of this decision, the exact geographic market definition of the software market(s) may be left open since the proposed transaction does not give rise to any competition concerns even on the narrowest possible geographic market (i.e. national)”.*¹⁴⁰⁸

¹⁴⁰⁴ Ibid., par 23.

¹⁴⁰⁵ Ibid., par 27.

¹⁴⁰⁶ Ibid., par 28.

¹⁴⁰⁷ Ibid., par 32.

¹⁴⁰⁸ Ibid., par 36.

M. 5984 Intel - McAfee

The European Commission clears the sole control acquisition of McAfee by Intel, subject to conditions.¹⁴⁰⁹

Intel is the leading manufacturer of central processing units ("CPUs"), the core chip of a computer, and chipsets, which are used in industries such as computing and communications, and are among the most important components of computers. Intel also develops platforms of digital computing technologies, which combine various types of hardware and software.¹⁴¹⁰

McAfee is a security technology company active in the design and development of security products and services focused on ensuring that internet connected devices are protected from malicious content.¹⁴¹¹

As regards the relevant product market and geographical scope

CPU

"In the 2009 Commission Intel antitrust decision the Commission found that (1) there is a distinct market for x86 CPUs and that (2) CPUs for non-computer devices and CPUs for computers are not demand-side substitutes".¹⁴¹²

"In the 2009 Commission Intel antitrust decision, the Commission has considered that a chain of substitution could exist on the demand-side across the three different types of platform, meaning that all CPUs for computers are in one relevant product market "even though, for example, the cheapest CPUs destined for low-end desktops are not direct substitutes for more expensive CPUs destined for expensive servers". The Commission has however ultimately left open the exact delimitation of the relevant product markets for x86 CPUs with regards to the type of platform".¹⁴¹³

"The market investigation suggests that it might possibly be appropriate to further segment x86 CPUs according to the type of platforms. In this regard, x86 CPUs for servers, desktops and notebooks might belong to separate product markets. X86 CPUs for new types of devices, such as netbooks, tablets, handheld devices and consumer electronics might also form different product markets that have not been assessed at the time of the 2009 Commission Intel antitrust decision. The question of further segmentation according to the type of device can however be left open since the conclusions of the assessment remain unchanged".¹⁴¹⁴

"The Commission therefore concludes that the relevant product market encompasses x86 CPUs, potentially segmented according to the type of platform".¹⁴¹⁵

"In the 2009 Commission Intel antitrust decision, the Commission concluded that the

¹⁴⁰⁹ http://europa.eu/rapid/press-release_IP-11-70_en.htm

¹⁴¹⁰ http://europa.eu/rapid/press-release_IP-11-70_en.htm

¹⁴¹¹ http://europa.eu/rapid/press-release_IP-11-70_en.htm

¹⁴¹² Commission Decision in case No COMP/M.5984 - INTEL / MCAFEE, par 25.

¹⁴¹³ Ibid., par 27.

¹⁴¹⁴ Ibid., par 29.

¹⁴¹⁵ Ibid., par 30.

*markets for x86 CPUs are worldwide. This conclusion was supported by the fact that the main suppliers compete globally, CPU architectures are the same around the world, the main customers (in particular the OEMs) operate on a worldwide basis, and the cost of shipping CPUs around the world is low compared to their cost of manufacture”.*¹⁴¹⁶

*“The market investigation confirms the notifying party's point of view that the relevant geographic markets for x86 CPUs are indeed worldwide”.*¹⁴¹⁷

*“The Commission therefore concludes that the relevant x86 CPU market has a worldwide geographic scope”.*¹⁴¹⁸

Chipsets

*“Chipsets could constitute a distinct product market from other hardware components, in particular CPUs, since they can be bought and sold independently. Until a few years ago there were a number of independent chipset producers competing to produce chipsets for the x86 CPUs of Intel and AMD”.*¹⁴¹⁹

*“Apparently as a result of a number of more recent changes first in Intel's and then in AMD's interoperability policies industry analysts describe today a situation where x86 chipset markets may have to be further subdivided in the markets for chipsets compatible with Intel CPUs and chipsets compatible with AMD CPUs. Intel and AMD manufacture chipset for their own CPUs only, which would support this further subdivision into two separate 'aftermarkets'. Intel, AMD and Nvidia are the sole remaining significant players on this market or markets (see paragraphs 60 and 61 below)”.*¹⁴²⁰

*“For the purpose of the present assessment, the market definition can however be left open since the conclusions of the assessment remain unchanged”.*¹⁴²¹

*“Based on industry analyst reports, that have not been contradicted by the market investigation, the Commission considers that the market for chipsets which has very similar characteristics as the CPU market is worldwide”.*¹⁴²²

Security software

“In a previous decision the Commission used similar IDC break-down general

¹⁴¹⁶ Ibid., par 31.

¹⁴¹⁷ Ibid., par 32.

¹⁴¹⁸ Ibid., par 33.

¹⁴¹⁹ Ibid., par 34.

¹⁴²⁰ Ibid., par 35.

¹⁴²¹ Ibid., par 36.

¹⁴²² Ibid., par 37.

security software categories into sub-categories”. ¹⁴²³

“The market investigation in the present case largely confirms that the IDC segmentation of the security solution market is appropriate and that endpoint security can be regarded as a distinct product market”. ¹⁴²⁴

“The exact definition of the relevant product markets for endpoint security can be left open, as the conclusions of the assessment would be the same regardless of whether the market for endpoint security is further segmented or extended as suggested above”. ¹⁴²⁵

“The Commission however left open the exact definition of the relevant geographic markets for security software”. ¹⁴²⁶

“The market investigation confirms that the relevant geographic markets for endpoint security are at least EEA-wide”. ¹⁴²⁷

“In conclusion, the Commission considers that the endpoint security markets have a worldwide or at least EEA-wide geographic scope”. ¹⁴²⁸

¹⁴²³ Ibid., par 43.

¹⁴²⁴ Ibid., par 45.

¹⁴²⁵ Ibid., par 51.

¹⁴²⁶ Ibid., par 53.

¹⁴²⁷ Ibid., par 54.

¹⁴²⁸ Ibid., par 55.

M. 6196 Lenovo - Medion

The European Commission clears the sole control acquisition of Medion by Lenovo.¹⁴²⁹

Lenovo is a Chinese manufacturer of desktop and notebook PCs, workstations, servers, storage drives and IT management software, and a provider of IT services.¹⁴³⁰ Medion is a German manufacturer of a wide range of electronic equipment, including desktop and notebook PCs; peripherals to desktop PCs such as displays, memory and storage devices and printers.¹⁴³¹

As regards the relevant product market and geographical scope

Desktop and portable PCs

*“However the Commission has segmented the PC market between (i) desktop PCs and (ii) laptops (or portable PCs)⁴. The existence of a distinct market for tablets, a new type of device within the portable PCs market, is also considered”.*¹⁴³²

*“Moreover, the Commission has segmented each of these markets according to the type of end-customer category (professional use v. private use)”.*¹⁴³³

*“For the purpose of the present decision, the exact product market definition can be left open since the proposed operation does not raise any competition concerns under any alternative product market definition”.*¹⁴³⁴

*“The Commission has however considered that the geographic markets for desktop and portable PCs could be either national or EEA”.*¹⁴³⁵

*“For the purpose of the present decision, the exact geographic scope of the markets for desktop and portable PCs can be left open since the proposed operation does not raise any competition concerns under any alternative geographic market definition”.*¹⁴³⁶

PC monitors

*“The Commission has segmented the PC monitor market according to the type of technology. PC monitors can be based on Cathode Ray Tube (CRT) technology or Liquid Crystal Display (LCD) technology. Neither of the parties sells CRT monitors. Hence, the assessment will focus on the sale of LCD displays only”.*¹⁴³⁷

“Moreover, the Commission has distinguished between the sale of PC monitors by

¹⁴²⁹ http://europa.eu/rapid/press-release_IP-11-928_en.htm

¹⁴³⁰ http://europa.eu/rapid/press-release_IP-11-928_en.htm

¹⁴³¹ http://europa.eu/rapid/press-release_IP-11-928_en.htm

¹⁴³² Commission Decision in case No COMP/M.6196 - LENOVO / MEDION, par 13.

¹⁴³³ Ibid., par 14.

¹⁴³⁴ Ibid., par 15.

¹⁴³⁵ Ibid., par 17.

¹⁴³⁶ Ibid., par 18.

¹⁴³⁷ Ibid., par 19.

*monitor manufacturers with their own brand label and the sale of monitors on an OEM basis. The parties sell PC monitors only with their own brand label and not to OEMs, so the assessment will focus on the sale of PC monitors by monitor manufacturers with their own brand label”.*¹⁴³⁸

*“For the purpose of the present decision, the exact product market definition can be left open since the proposed operation does not raise any competition concerns under any alternative product market definition”.*¹⁴³⁹

*“The Commission has however considered that the geographic markets for PC monitors could be either national or EEA”.*¹⁴⁴⁰

*“For the purpose of the present decision, the exact geographic scope of the markets for desktop and portable PCs can be left open since the proposed operation does not raise any competition concerns under any alternative geographic market definition”.*¹⁴⁴¹

Computer accessories and peripherals

*“The notifying party proposes to subdivide the overall segment of computer accessories and peripherals into the following sub segments: (i) laptop accessories, (ii) memory and storage devices and (iii) computer peripherals other than monitors, memory and storage devices and printers”.*¹⁴⁴²

*“The Commission considers however that memory and storage devices should be further segmented between (i) external hard disc drives (XHDD), (ii) solid state drives (SSD), (iii) external CD/DVD writers, and (iv) USB sticks”.*¹⁴⁴³

*“For the purpose of the present decision, the exact product market definition can be left open since the proposed operation does not raise any competition concerns under any alternative product market definition”.*¹⁴⁴⁴

*“The Commission however considers that the geographic markets for computer accessories and peripherals could be either national or EEA”.*¹⁴⁴⁵

*“For the purpose of the present decision, the exact geographic scope of the markets for computer accessories and peripherals can be left open since the proposed operation does not raise any competition concerns under any alternative geographic market definition”.*¹⁴⁴⁶

¹⁴³⁸ Ibid., par 20.

¹⁴³⁹ Ibid., par 21.

¹⁴⁴⁰ Ibid., par 23.

¹⁴⁴¹ Ibid., par 24.

¹⁴⁴² Ibid., par 25.

¹⁴⁴³ Ibid., par 26.

¹⁴⁴⁴ Ibid., par 27.

¹⁴⁴⁵ Ibid., par 29.

¹⁴⁴⁶ Ibid., par 30.

M. 6214 Seagate Technology – The HDD business of Samsung Electronics

The European Commission clears the sole control acquisition of the HDD business of Samsung Electronics by Seagate Technology.¹⁴⁴⁷

Seagate is active worldwide in the manufacture of HDDs, SSDs and branded external drives. Its operations are vertically integrated upstream in the manufacturing of key components, such as heads and media.¹⁴⁴⁸ Samsung's HDD business produces HDDs and branded external drives. Samsung's HDD Business is not vertically integrated upstream in the manufacturing of components. Samsung's SSD business will not be transferred to Seagate. A HDD is a device used to store and allow access to digital data.¹⁴⁴⁹

As regards the relevant product market and geographical scope

HDD

*“It is apparent that from a demand-side perspective customers appear unable to substitute HDDs produced for certain end-uses with other drives displaying a different form factor or other technical features required by different end-use applications”.*¹⁴⁵⁰

*“ From a supply-side perspective, the results of the market investigation could not establish sufficient supply-side substitutability in terms of effectiveness and immediacy to justify a broader market definition. In the current market conditions where not all of the HDDs manufactures are offering the same types of HDDs due to Toshiba's lack of offer of 3.5" HDDs for Desktop and CE applications, it does not appear that Toshiba would be able to convert its production capacity to manufacture those types of drives immediately and without significant additional costs in line with the requirements for the existence of supply-side substitution. Moreover, there are indications that not all the HDD suppliers have the same flexibility to immediately switch production across all types of HDDs drives with a different form factor”.*¹⁴⁵¹

*“The following relevant product markets [...] can be determined: (i) Mission Critical Enterprise HDDs, (ii) 3.5" Business Critical HDDs, (iii) 3.5" Desktop HDDs, (iv) 3.5" CE HDDs, (v) 2.5" Mobile HDDs and (vi) 2.5" CE HDDs”.*¹⁴⁵²

*In its most recent decision, the Commission defined the market(s) for HDDs as worldwide in scope”.*¹⁴⁵³

*“It may therefore be concluded that the the relevant geographic market for all HDD products is worldwide in scope”.*¹⁴⁵⁴

¹⁴⁴⁷ http://europa.eu/rapid/press-release_IP-11-1213_en.htm

¹⁴⁴⁸ http://europa.eu/rapid/press-release_IP-11-1213_en.htm

¹⁴⁴⁹ http://europa.eu/rapid/press-release_IP-11-1213_en.htm

¹⁴⁵⁰ Commission Decision in case No COMP/M.6214 - SEAGATE TECHNOLOGY / THE HDD BUSINESS OF SAMSUNG ELECTRONICS, par 260.

¹⁴⁵¹ Ibid., par 261.

¹⁴⁵² Ibid., par 262.

¹⁴⁵³ Ibid., par 280.

¹⁴⁵⁴ Ibid., par 282.

M. 6393 Astrium Holding – Vizada Group

The European Commission clears the sole control acquisition of Vizada group by Astrium holding.¹⁴⁵⁵

Astrium, a subsidiary of EADS, provides space technologies products and services on a worldwide basis. Vizada is a worldwide provider of satellite-based mobility communication services.¹⁴⁵⁶

As regards the relevant product market and geographical scope

Comsatcom services (wholesale and retail)

*“The Commission analyzed the Comsatcom services sector in its Apax Partners/Telenor decision, where it identified: (1) a Comsatcom services wholesale market; and (2) a Comsatcom services retail market, while leaving the question open as to whether further segmentations of either product market based on the type of service (i.e. MSS v FSS) and/or the area of use (land, sea, air) are warranted”.*¹⁴⁵⁷

*“Since the proposed transaction will not raise competition concerns on any product market definition, the exact scope of the relevant product market can be left open for the purposes of this case”.*¹⁴⁵⁸

*“In its Apax Partners/Telenor decision, the Commission left the geographic scope of the retail Comsatcom services (and its possible segments) open”.*¹⁴⁵⁹

*“For the purposes of this case, and consistent with the Apax Partners/Telenor decision, the Commission will consider the Comsatcom services wholesale market to be worldwide. As regards the Comsatcom services retail market since the proposed transaction will not raise competition concerns on any geographic market definition, the exact scope of the relevant geographic market can be left open for the purposes of this case”.*¹⁴⁶⁰

Comsatcom equipment

*“The Commission analysed the manufacture and supply of Comsatcom equipment in its Thrane and Thrane/Nera decision, where it considered that separate relevant product markets should be defined for the supply of Comsatcom equipment for each of land, maritime, and aeronautical use”.*¹⁴⁶¹

“Since the proposed transaction will not raise competition concerns on any product market definition, the exact scope of the relevant product market can be left open for

¹⁴⁵⁵ http://europa.eu/rapid/press-release_IP-11-1486_en.htm

¹⁴⁵⁶ http://europa.eu/rapid/press-release_IP-11-1486_en.htm

¹⁴⁵⁷ Commission Decision in case No COMP/M.6393 - ASTRIUM HOLDING / VIZADA GROUP, par 22.

¹⁴⁵⁸ Ibid., par 23.

¹⁴⁵⁹ Ibid., par 31.

¹⁴⁶⁰ Ibid., par 32.

¹⁴⁶¹ Ibid., par 26.

the purposes of this case”. ¹⁴⁶²

“In its Thrane and Thrane/Nera decision, the Commission took the view that, at least with respect to maritime communication equipment and land earth stations, the geographic scope of the market was indeed worldwide”. ¹⁴⁶³

“For the purposes of this case, and consistent with the Thrane and Thrane/Nera decision, the Commission will consider the Comsatcom equipment market to be worldwide”. ¹⁴⁶⁴

¹⁴⁶² Ibid., par 27.

¹⁴⁶³ Ibid., par 34.

¹⁴⁶⁴ Ibid., par 35.

M. 6281 Microsoft - Skype

The European Commission clears the sole control acquisition of Skype by Microsoft.¹⁴⁶⁵

Microsoft Corporation is a United States based corporation primarily involved in the design, development and supply of computer software, operating system and related services.¹⁴⁶⁶ Skype Global S.a.r.l. provides communications over the Internet. Its software enables instant messaging, voice, and video communication.¹⁴⁶⁷

As regards the relevant product market

Consumer communications services

*“For the purpose of the assessment of the present transaction, the exact product market definition as regards consumer communications services can be left open since the proposed transaction does not give rise to any competition concerns even on the narrowest possible product markets considered”.*¹⁴⁶⁸

Enterprise communications software services ("Entreprise communications services")

*“In a previous Commission decision enterprise communications (also called "unified communications" or "UC") services were defined as "products and services [...] used by business customers of all sizes to improve workgroup and collaborative communications, and [...] designed to provide a simple and consistent user experience across all types of communications (telephone, fax, email, voicemail, voice and videoconference, instant messaging, etc.)”.*¹⁴⁶⁹

*“For the purpose of the assessment of the present transaction, the exact product market definition as regards enterprise communications services can be left open since the proposed transaction does not give rise to any competition concerns even on the narrowest possible product markets considered”.*¹⁴⁷⁰

As regards the geographical scope

*“Nevertheless, for the purpose of the assessment of the present transaction, the exact geographic scope of consumer and enterprise communications markets (and any potential submarkets) can be left open as the notified operation does not give rise to any competition concerns even on the narrowest possible geographic market (i.e. EEA)”.*¹⁴⁷¹

¹⁴⁶⁵ http://europa.eu/rapid/press-release_IP-11-1164_en.htm

¹⁴⁶⁶ http://europa.eu/rapid/press-release_IP-11-1164_en.htm

¹⁴⁶⁷ http://europa.eu/rapid/press-release_IP-11-1164_en.htm

¹⁴⁶⁸ Commission Decision in case No COMP/M.6281 - MICROSOFT / SKYPE, par 43.

¹⁴⁶⁹ Ibid., par 44.

¹⁴⁷⁰ Ibid., par 63.

¹⁴⁷¹ Ibid., par 68.

M. 5900 LGI - KBW

The European Commission refers the sole control acquisition of KBW to LGI to the German competition authority.¹⁴⁷²

LGI is an international cable operator. It owns and operates cable networks offering TV, broadband internet and voice telephony services in 11 countries across Europe (including Belgium, Germany, Austria and Switzerland). In Germany, LGI owns Unitymedia, which is the second largest cable operator in the country and operates cable networks in the German federal States of Hessen and Nordrhein-Westfalen.¹⁴⁷³ KBW is a regional cable network operator in Germany providing TV, broadband internet and voice telephony services to customers in the German federal State of Baden-Württemberg.¹⁴⁷⁴

¹⁴⁷² http://europa.eu/rapid/press-release_IP-11-749_en.htm

¹⁴⁷³ http://europa.eu/rapid/press-release_IP-11-749_en.htm

¹⁴⁷⁴ http://europa.eu/rapid/press-release_IP-11-749_en.htm