European Competition Network Brief - Issue 2/2014

The latest issue of the ECN Brief was published in May 2014, covering the first half of 2014. The ECN (European Competition Network) is the organisation through which the European Commission ("EC") and the EU’s National Competition Authorities cooperate. The table below summarises the major developments in the application of EU competition law, at EU and national level, covered by this ECN Brief.
**European Union**

EC intervenes in the 'patent wars', adopting decisions addressed to Motorola and Samsung. The EC has adopted two antitrust decisions concerning the enforcement of standard essential patents ("SEPs") for the second and third generation telecom standards. The two decisions clarify how EU competition rules apply to the strategic use of SEPs by establishing that the seeking and enforcing of injunctions may infringe Article 102 TFEU when two conditions are met; first, a dominant SEP holder has given a commitment to license on fair, reasonable and non-discriminatory ("FRAND") terms during standard-setting; and second, the potential licensee is willing to enter into a licence on FRAND terms (29.04.2014).

EC adopts revised competition regime for technology transfer agreements. The EC has adopted two new instruments. First, the revised Technology Transfer Block Exemption Regulation ("TTBER") creates a safe harbour for licensing agreements concluded between companies that have limited market power and that respect certain conditions. Second, the Technology Transfer Guidelines provide guidance on the application of EU competition law to technology transfer agreements that fall outside the safe harbour of the TTBER (21.03.2014).

**European Parliament**

European Parliament approves Directive on antitrust damages actions. The Directive has the objective of ensuring the effective exercise of the EU right to compensation for harm suffered as a result of an antitrust infringement, and to optimise the interplay between private actions for damages and public enforcement of EU competition law (17.04.2014).

**Bulgaria**

Commission for the Protection of Competition ("CPC") recommends abolishing unreasonable administrative barriers to competition in the audit market. The CPC has issued an opinion in which it recommends abolishing various administrative barriers restricting the economic activities of registered auditors in Bulgaria (12.03.2014).

CPC advocates for more competition on retail market of reimbursable drugs. The CPC has adopted an opinion on the compatibility with competition rules of certain provisions of the National Health Insurance Fund (26.03.2014).
### Cyprus

**Amendments to the Protection of Competition Law Act enter into force.** The Protection of Competition (Amendment) Law 2014 has entered into force, increasing the powers of the Cypriot competition authority and providing further convergence with EU Law and Recommendations endorsed by the ECN (28.03.2014).

### Denmark

**Danish Competition Council accepts new commitments on football clubs’ joint sale of media rights.** The new commitments make it more difficult for one broadcaster to buy all the important rights and also allow for a longer rights period (26.02.2014).

### France

**Autorité de la concurrence fines the editor of sport newspaper l’Equipe €3.5m for forcing out Le10Sport.com from the daily sporting press market.** The Amaury Group was found to have implemented a strategy aimed at forcing out of the market the new entrant, Le10Sport.com, in order to maintain the monopoly of L’Équipe, its own newspaper (20.02.2014).

**Autorité accepts commitments from PMU to separate its online horserace betting activity from its network of physical points of sale.** In 2010 a new law opened up competition in the online gambling and betting sector in France. However, PMU maintained its monopoly over horserace betting through its network of physical outlets. The Autorité’s investigation showed that PMU pooled into a single pot all the bets placed, which led to a risk of marginalisation and eviction of its online competitors (25.02.2014).

**Autorité publishes the results of its long-distance coach transport inquiry.** The Autorité concluded that coach transport is an economical and efficient mode of transport which can be beneficial for consumers. It notes that a simpler, open and more transparent regulatory framework should be implemented, and in particular it recommends simplifying and shortening the market access procedure, clarifying the access procedure for coach stations and setting up an independent administrative authority responsible for the multimodal regulation of the rail and road transport sector (27.02.2014).
### Jurisdiction | Enforcement Action | Court Proceedings and Policy Developments
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**Germany** | The Bundeskartellamt ("BKartA") imposes fines on sugar manufacturers for cartel agreements. The BKartA has imposed fines totalling approximately €280m on the three major German sugar manufacturers, Pfeifer & Langen, Südzucker and Nordzucker for a cartel fixing sales areas, quotas and prices of industrial and retail sugar (18.02.2014).  
**Germany** | The BKartA imposes fines on wallpaper manufacturers. The BKartA has imposed fines totalling approximately €17m on four wallpaper manufacturers, their representatives and trade association for price fixing (25.02.2014).  
**Germany** | Standard fees for electronic cash card payment system abandoned. The BKartA has accepted commitments from the leading banking associations in Germany to abandon their agreement on standard fees payable by retailers when using the electronic cash card payment system issued by Girocard (08.04.2014).  
**Greece** | Hellenic Competition Commission ("HCC") issues formal Opinion on professional rights of engineers. The HCC has issued an opinion following a formal request from the Greek Government on draft legislation amending the current national legal framework on professional rights of engineers (30.01.2014).
**Ireland**

**Competition and Consumer Protection Bill merges Consumer Agency and Competition Authority.** The draft legislation will: merge the National Consumer Agency and Competition Authority and deliver improvements in competition law; regulate certain practices in the grocery goods sector aimed at ensuring balance and fairness between the various players in the sector; and update and modernise the law on media mergers to take account of international best practice and technological developments (31.03.2014).

**Italy**

**Italian Competition Authority ("ICA") fines Roche and Novartis for cartelizing sales of two major ophthalmic medicines.** The ICA imposed on Roche and Novartis fines totalling €90.5m and €92m respectively (27.02.2014).

**Latvia**

**Competition Council ("CC") publishes survey on TV sector.** The survey gathered information on an alleged abuse of dominance and concludes that price sensitivity is of greatest importance to respondents (March 2014).

**CC launches inquiry into the supply of information systems to public authorities.** The CC will consider whether distributors and maintainers of information systems set favourable conditions for themselves in their agreements with their clients relating to the transfer, use, maintenance and further development of their software (10.02.2014).
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<th>Jurisdiction</th>
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<td>Lithuania</td>
<td>Agreement among brewers to cease production of strong beer violates competition rules. The Competition Council (&quot;CC&quot;) has found that the Lithuanian Guild of Brewers and its members entered into a prohibited agreement restricting the production of beer, in breach of Article 101 TFEU. The CC did not impose fines, however, since the parties to the agreement ceased the infringement during the investigation and the CC had no objection to the previous version of the Brewers Honour Code (04.03.2014).</td>
<td>Supreme Administrative Court (&quot;Supreme Court&quot;) refers to the ECJ for preliminary ruling in Eturas. The case concerns the online sale of package tours. The Supreme Court seeks clarification on whether Article 101(1) must be interpreted as meaning that participation of undertakings in a common information system may allow a presumption that the undertakings knew or should have known about applicable discount restrictions and agreed to restrict price discounts (17.01.2014).</td>
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<td>The Netherlands</td>
<td>The Authority for Consumers and Markets (&quot;ACM&quot;) develops new consultation method to set its strategic agenda. The online consultation has not only helped the ACM to gather market-specific information, but also to generate support for its actions and advocate the importance of competition and regulation within certain key markets (05.02.2014).</td>
<td>Supreme Court upholds the CC’s decision in shipping agency case and adjusts fines. The Supreme Court has upheld the CC’s decision of 8 December 2011, finding that the Lithuanian Shipbrokers and Agents Association and 32 association members had infringed Article 101 for concluding an anti-competitive agreement setting minimum tariffs for shipping services (07.04.2014).</td>
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<td>Poland</td>
<td>New competition policy strategy from the Office of Competition and Consumer Protection (&quot;OCCP&quot;). The OCCP’s goal is to ensure more effective protection of weaker market participants. Of particular importance is the fight against bid rigging (20.02.2014).</td>
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<td>Romania</td>
<td>Romanian Competition Council (&quot;RCC&quot;) imposes fines on companies active in the dental products market. The RCC has announced fines totalling €102,613 on five companies for agreeing the maximum discount that could be offered by distributors of certain dental products (05.02.2014).</td>
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<td>United Kingdom</td>
<td>Competition and Markets Authority (&quot;CMA&quot;) starts work. The CMA has started work as the UK’s primary competition agency. Bringing together the Competition Commission with the competition and certain consumer functions of the Office of Fair Trading (&quot;OFT&quot;), the CMA has a range of responsibilities and powers (01.04.2014).</td>
<td>CMA announces programme of work on banking. The CMA has announced a short programme of work on banking, which will lead to a decision on whether or not to make a market investigation reference. The CMA will conclude the OFT’s market study into banking for small and medium sized enterprises. The CMA will publish its findings in Summer 2014 (11.03.2014).</td>
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<td>The Office for Gas and Electricity (&quot;Ofgem&quot;) proposes reference to the CMA to investigate the energy market. Ofgem, the OFT and the CMA have published a joint assessment of competition in the energy market, finding that competition in retail energy markets may not be achieving good outcomes for consumers and small businesses (27.03.2014).</td>
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Merger Control

NOTIFICATIONS

1. Apple/Beats (Case M.7290, 24.06.2014).
2. Bekaert/Pirelli Steel Tyre Cord Business (Case M.7230, 24.06.2014).
3. INEOS/Doeflex (Case M.7132, 24.06.2014).
4. Simplified procedure case
   - AMEC/Foster Wheeler (Case M.7215, 24.06.2014).

PHASE I CLEARANCES

5. Unconditional clearances
   - American Express Company/Qatar Holding/GBT (Case M.7238, MEX/14/0620, 20.06.2014).
   - EDF/Dalkia en France (Case M.7137, MEX/14/0626, 26.06.2014).
   - Carphone Warehouse/Dixons (Case M.7259, MEX/14/0626, 26.06.2014).
6. Unconditional clearances: simplified procedure
   - Carlyle/PAI/CST (Case M.7257, MEX/14/0620, 20.06.2014).
   - China Huaxin Post and Telecommunication Economy Development Center/Alcatel-Lucent Enterprise Business (Case M.7244, MEX/14/0625, 25.06.2014).
   - Ageas/Ocidental Seguros/Médis (Case M.7262, MEX/14/0625, 25.06.2014).

ARTICLE 9 REFERRAL REJECTED

7. Liberty Global/Ziggo – The European Commission rejected the Dutch competition authority’s (“ACM”) request under Article 9(2)(a) EUMR regarding the review of Liberty Global’s proposed acquisition of Ziggo. In view of the Commission’s experience in assessing mergers in the media and telecommunications sectors, the presence of Liberty Global in 12 EEA countries and the need for a consistent application of merger control rules, the Commission concluded that the ACM was not better placed to examine the transaction. Therefore, the Commission will continue with its investigation (Case M.7000, IP/14/726, 25.06.2014).

Antitrust

8. Commission extends validity of special competition regime for liner shipping consortia until April 2020 – The European Commission has extended until April 2020 the validity of the existing legal framework that exempts, subject to conditions, liner shipping consortia from EU antitrust rules (Regulation 903/2009). Pursuant to a public consultation, the Commission has concluded that current market circumstances warrant a prolongation of the exemption which brings legal certainty, benefits consumers and does not unduly distort competition (IP/14/717, 24.06.2014).

9. Commission fines three producers of canned mushrooms € 32 million in cartel settlement – The European Commission has imposed fines totalling € 32 225 000 pursuant to its finding that Lutèce, Prochamp and Bonduelle were members of a cartel that coordinated prices and allocated customers of canned mushrooms in Europe over more than a year. Lutèce was not fined as it benefited from immunity under the Commission’s 2006 Leniency Notice for revealing the existence of the cartel to the Commission. Notably, all three
undertakings had their fines reduced by a further 10% because they agreed to settle the case with the Commission. With regard to Riberebro, the Commission continues its investigation under the standard cartel procedure (IP/14/727, 25.06.2014).

10. Commission adopts revised safe harbour rules for minor agreements – The European Commission has issued a revised De Minimis Notice containing revised rules for assessing when minor agreements are not caught by the general prohibition of anticompetitive practices under EU Competition law. The Notice facilitates the concentration of the European Commission’s resources on agreements with a greater risk of distorting competition. As per the previous Notice, a “safe harbour” remains for companies whose market shares do not exceed 10% for agreements between competitors or 15% for agreements between non-competitors. The key change since the previous Notice is that agreements aimed at restricting competition (i.e. restrictions “by object”) cannot be considered minor; such agreements always constitute an appreciable restriction of competition in breach of Article 101(1) TFEU and can never benefit from the safe harbour. The Notice is accompanied by a Staff Working Document that lists the restrictions of competition that are described as restrictions by object or hardcore under EU competition rules (Revised Commission De Minimis Notice, Commission Working Paper, IP/14/728, 25.06.2014).

11. Court of Justice (ECJ) judgment in Nexans and Nexans France v Commission – The ECJ dismissed the appeal against a General Court judgment that had partially upheld the European Commission’s decision authorising unannounced inspections in the electrical cables sector. In particular, the ECJ held that the General Court explained to the requisite legal standard why it found that the Commission had described in sufficient detail the scope of the suspected cartel by indicating that it ‘probably [had] a global reach’. The ECJ also held that the Commission was not, during its inspection, required to limit its investigations to documents relating to the projects which had an effect on the common market. Taking account of Commission’s suspicions concerning an infringement, which probably had a global reach, involving client attribution, even documents linked to projects located outside the common market were likely to provide relevant information on the suspected infringement (Case C-37/13P, Nexans and Nexans France v Commission, Judgment of 25.06.2014).

State Aid

12. Commission approves revised restructuring plan for NCG following sale to Banesco Group – The European Commission has found that the sale of the Spanish bank NCG Banco to Banesco Group and proposed amendments to its restructuring plan were compliant with EU State aid rules. In particular, the proposed amendments do not threaten the restoration of NCG’s long-term viability and do not increase the risk of competition distortions in the Single Market (IP/14/704, 20.06.2014).

13. Commission adopts new rules for State aid in agriculture, forestry and rural areas – As part of its State Aid Modernisation (SAM) initiative, the European Commission has published a new Agricultural Block Exemption Regulation and new Guidelines for State aid in the agricultural and forestry sectors in rural areas 2014 to 2020. The new rules, which will apply from 1 July 2014, aim to improve efficiency on State aid issues by speeding up approval procedures and cutting red tape for public authorities dealing with State aids in the agriculture sector (IP/14/714, 25.06.2014).

14. Commission approves aid to STMicroelectronics for nanoelectronics research – The European Commission found, in particular, that the grant of €400 million of state aid by France to ST to support a research programme for the
development of nanoelectronics technology will remedy market failures, improve co-ordination within the sector, enable European suppliers of the semiconductor industry to develop infrastructure and allow energy savings in future (IP/14/733, 25.06.2014).

15. **Commission approves fourth prolongation of Cypriot bank guarantee scheme** – The European Commission found that the prolongation of a Cypriot government guarantee scheme for credit institutions until 31 December 2014 to be targeted, proportionate and limited in time and scope and that therefore, the guarantee scheme is in line with its rules on state aid to banks during the crisis (MEX/14/0625, 25.06.2014).