

# EU Competition & Regulatory

SLAUGHTER AND MAY

Legal and policy developments at the EU level

Quick Links:

[Front-page](#)[Merger Control](#)[Antitrust](#)

## Increasing Criminalisation of Cartel Activity in the International Arena

Over the last decade, there has been an increasing trend internationally to impose criminal sanctions on individuals in respect of hardcore cartel activity.

The table below highlights key jurisdictions and the criminal sanctions that can currently be imposed on individuals<sup>1</sup>, over and above any regulatory or civil sanctions on the company.

Jurisdiction	Criminal Sanctions for Individuals
Australia	Maximum 10 years imprisonment and/or a fine of A\$220,000 (circa €124,000).
Brazil	Maximum fine of up to 50% of any fine imposed on the offending company.
Canada	Maximum 14 years imprisonment and/or maximum fine of C\$25m (circa €15.7m).
Japan	Maximum 5 years imprisonment and/or fines of up to ¥5m (circa €38,000).
Russia	Maximum 7 years imprisonment.
South Africa	Maximum 10 years imprisonment and/or 500,000 Rand fine (circa €43,000).
UK	Maximum 5 years imprisonment and/or unlimited fine.
United States	Maximum 10 years imprisonment and/or \$1m fine (circa €715,000).

The European Commission does not have jurisdiction to impose criminal or personal sanctions. However, in an interview on 1 March 2010, the new European Competition Commissioner Joaquin Almunia said in relation to sanctions for cartel activity that:

*“There are some ideas that have arrived on my desk, and I think the question of personal responsibility needs to be considered. I’m not talking about criminal responsibility but of administrative or professional responsibilities. There are ideas on the table and let’s see to what extent this is useful in our policy decisions”.*

Precisely what administrative or professional responsibilities the European Competition Commissioner is referring to and how they would work in practice remains to be clarified. However, the message is that the Commission is now looking for ways to see whether individuals responsible for cartel activity can be held accountable for their actions under EU law.

<sup>1</sup> As at January 2010

**Quick Links:**[Front-page](#)[Merger Control](#)[Antitrust](#)

This emphasises the importance for companies of ensuring compliance with the competition rules and that employees do not engage in cartel activities. The consequences of being involved in such cartel activity can be very serious, not only for the company but also for the individuals concerned. If it becomes apparent that cartel activity may be occurring or has or may have occurred in the past, it is of the utmost importance to institute a rapid and thorough internal investigation. In some cases the company and individuals concerned may be able to benefit from immunity if they are the first to inform the authorities of the infringement.

## Quick Links:

[Front-page](#)[Merger Control](#)[Antitrust](#)

## Merger Control

### Notifications

1. *Akzonobel/Rohm and Haas Powder Coating Business* ([Case M.5745, 12.03.2010](#)).
2. *Simplified procedure cases*
  - > *Cucina/Brakes/Menigo* ([Case M.5835, 12.03.2010](#)).
  - > *BC Partners/Spotless* ([Case M.5824, 15.03.2010](#)).

### Phase I Clearances

3. *Unconditional clearance*
  - > *The Stanely Works/Black & Decker* ([IP/10/270, 12.03.2010](#)).
4. *Unconditional clearances: simplified procedure*
  - > *WABCO Europe (Belgium)/RuC/WABCO Würth Workshop Services joint venture* ([MEX/10/0312, 12.03.2010](#)).
  - > *Lloyds TSB Development/Petrochem Carless* ([MEX/10/0315, 15.03.2010](#)).
  - > *KKR & Co/Pets at Home* ([MEX/10/0317, 17.03.2010](#)).
  - > *HAVI Global Logistics/McKey Luxembourg/STI Freight joint venture* ([MEX/10/0317, 17.03.2010](#)).
  - > *Mitsubishi Corporation/JGC Corp/Ebara Corp/Ebara Engineering Services* ([MEX/10/0317, 17.03.2010](#)).

### Article 9 Referral

5. *Motor Oil (Hellas) Corinth Refineries/Shell Overseas Holdings* – The Commission has referred to the Greek national competition authority the proposed concentration by which Motor Oil (Hellas) Corinth Refineries S.A. will simultaneously acquire (i) Shell Gas Commercial and Industrial Societe Anonyme of Gas and Shell Hellas (both ultimately controlled by the Royal Dutch Shell Group (Shell)), as well as (ii) joint control with Shell Overseas Holdings, a subsidiary of Shell, over Shell A.E., a newly created joint venture. The Commission held that the proposed acquisitions and joint venture would only affect the aviation fuel and bitumen market in Greece and so Greece would be best placed to assess the case under Greek merger control. ([IP/10/281, 15.03.2010](#)).

## Quick Links:

[Front-page](#)[Merger Control](#)[Antitrust](#)

## Antitrust

6. ***Commission makes commitments given by EDF to open up French energy market legally binding*** – In December 2008 the Commission sent a Statement of Objections (SO) to EDF in regard to certain arrangements in the French energy market which may constitute a prima facie abuse of a dominant position. In response to the SO, EDF offered a number of commitments, with particular focus on the ability of consumers to change their energy supplier, to allow greater competition in the market. These commitments were market tested in late 2009 and commented on by other market players. The commitments were accepted as suitable to remedy the competition concerns identified and have now become legally binding ([IP/10/290](#), 17.03.2010).

For further information on any EU or UK Competition related matter, please contact your usual Slaughter and May contact, or:

**Ingrid Lauwers**  
Square de Meeûs 40  
1000 Brussels  
Belgium  
T: +32 (0)2 737 94 21  
E: [ingrid.lauwers@slaughterandmay.com](mailto:ingrid.lauwers@slaughterandmay.com)

**Lindsay Draffan**  
One Bunhill Row  
London  
EC1Y 8YY  
United Kingdom  
T: +44 (0)20 7090 4373  
E: [lindsay.draffan@slaughterandmay.com](mailto:lindsay.draffan@slaughterandmay.com)