

Recent Developments in EU and UK Competition Law

1 October 2013-12 August 2014

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ARTICLE 101 TFEU: ENFORCEMENT AT EU LEVEL

1. *Horizontal agreements*

COMMISSION DECISIONS

There were four new cartel decisions in 2013, *Wire harnesses*, *North sea shrimps* and *LIBOR*, where there was one decision for manipulating the Euro Libor and one for the Yen Libor. The fines totalled €1882 million

See also *Telefónica/Portugal Telecom*, *Lundbeck* and *Johnson & Johnson/Novartis*, for which the term 'cartel' is not quite appropriate

The first decision of 2014 was *Polyurethane foam*, fine of €114 million; the second was *EPEX Spot/Nord Pool Spot*, 5 March 2014, fine of €5.9 million for non-compete agreement in spot electricity trading services; the third was *Car and truck bearings*, 19 March 2014, fines of €953 million. It adopted two more decisions on 2 April 2014, *High voltage power cables* and *Steel abrasives*, fines of €302 million and €30.7 million respectively. A further decision was adopted on 25 June 2014 for a cartel in *Canned mushrooms*, for which a fine of €32 million was imposed. Fines of €138 million were imposed in the *Smart card chips* decision of September 2014

There would appear to be many more cartel decisions 'in the pipeline': for example in relation to:

- *Cement*
- *Special glass*
- *Czech electricity*
- *Flexible alternating current transmission systems*
- *Optical disk drives* (SO set 24 July 2012)
- *Paper envelopes*
- *Trucks*

- *Rail freight*
- *Piston engines*
- *Container liner shipping* (proceedings initiated 22 November 2013: price signalling)
- *Seatbelts airbags and steering wheels*
- *Credit default swaps* (SO sent 1 July 2013)
- *Interbank lending rates* (some ongoing investigations: SOs sent 20 May 2014 and 10 June 2014)
- *TAP-Brussels Airlines*
- *Plastic pipes*
- *Thermal systems for cars*
- *Maritime transport services*
- *Lead-recycling*
- *Oil and biofuels*
- *White sugar*
- *Cargo train services*
- *Car exhausts*

Note the Commission's new TTBER, Regulation 316/2014, and Guidelines, 21 March 2014

Note also that the Commission has extended the block exemption on shipping consortia until April 2020: 24 June 2014

Note also the Commission's new Notice on *de minimis* agreements, 25 June 2014

Note also the Commission's consultation on the functioning and future of the Insurance Block Exemption: 5 August 2014

Cartel decisions/other violations of Article 101

- *North sea shrimps*, Commission decision of 27 November 2013

Commission decision imposing fines of €28 million for price fixing and market sharing. Note the following:-

- (i) Klaas Puul received full immunity as the whistleblower
 - (ii) The cartel took the form of 'a range of informal bilateral contacts'
 - (iii) The fines were reduced for two firms, in accordance with paragraph 37 of the Fining Guidelines, as shrimps formed a large part of their total turnover
 - (iv) No reductions for leniency (as opposed to whistleblowing)
 - (v) Application of reduction on grounds of inability to pay rejected
- *LIBOR*, 4 December 2013

Two Commission decisions imposing fines totalling €1.71 billion for manipulating LIBOR rates. Note the following:

Euro interest rate derivatives

- (i) Barclays the whistleblower: it would have been fined €690 million
- (ii) Total fines imposed c. €1047 million
- (iii) The other three firms – Deutsche Bank, RBS and SocGen – all were given leniency reductions
- (iv) This was a settlement decision, leading to reductions in the fines of 10%
- (v) Note that JP Morgan, HSBC and Credit Agricole did not settle, and the investigation of them continues
- (vi) Note also that there is an appeal by SocGen even though it settled!

Yen interest rate derivatives

- (i) The Commission found 7 distinct infringements
- (ii) UBS the whistleblower: it would have been fined €2.5 billion
- (iii) Total fines imposed c. €666 million
- (iv) Citigroup was also given immunity in relation to one infringement
- (v) This was a settlement decision, leading to reductions in the fines of 10%

- (vi) An investigation of ICAP continues

Johnson & Johnson/Novartis, Commission decision of 10 December 2013

Commission decision imposing fines of €16 million for agreeing to delay the entry of a generic drug to the market

Polyurethane foam, Commission decision of 29 January 2014

Commission fine of €114 million on four producers of flexible polyurethane foam for price fixing. Note the following:

- (i) Vita not fined as the whistleblower
- (ii) The other three producers received reductions for leniency
- (iii) The fines were also reduced by a further 10% as this was a settlement
- (iv) This was the tenth settlement

EPEX Spot/Nord Pool Spot, Commission decision of 5 March 2014

Commission fines of €5.9 million for non-compete agreements in the market for spot electricity trading services. This was a settlement case:

Car and truck bearings, Commission decision of 19 March 2014

Commission fines of €953 million for various price-fixing practices. Note the following:

- (i) This is the third fine in the car parts investigation: see earlier *Wire harnesses* and *Polyurethane foam*
- (ii) JTEKT of Japan was the whistleblower
- (iii) Six firms were fined
- (iv) Four of those five had reductions for leniency
- (v) This was another settlement: the twelfth to date

High power voltage cables, Commission decision of 2 April 2014

Commission fines of 302 million for market sharing and bid rigging. Note the following:

- (i) ABB received immunity as whistleblower
- (ii) 11 firms found to be in the cartel, six European, three Japanese and two Korean
- (iii) Various parents found liable, including Goldman Sachs, former owner of Prysmian: liable jointly and severally to a fine of €37.3 million
- (iv) The Commission refers in its press release to the fact that, through IT forensic technology, it was able to recover several thousand documents that had been deleted by an employee of Nexans
- (v) The Commission declined a claim to a reduction of a fine on grounds of inability to pay

Steel abrasives, Commission decision of 2 April 2014

Commission decision imposing a fine of €30.7 million for price fixing. Note the following:

- (i) Ervin received immunity as whistleblower
- (ii) Five firms found to be in the cartel
- (iii) Those firms settled
- (iv) This was the thirteenth settlement case
- (v) However Pometon SpA did not settle, and infringement proceedings continue against it

Canned mushrooms, Commission decision of 25 June 2014

Commission decision imposing a fine of €32 million for a price fixing cartel in the market for canned mushrooms. Note the following:

- (i) Lutèce received immunity as whistleblower
- (ii) Three firms found to be in the cartel

- (iii) This is a settlement decision, the fourteenth to date
- (iv) Proceedings continue against a non-settling undertaking, Riberibro

Servier/Perindopril, Commission decision of 9 July 2014

Fines totalling €427.7 million imposed on Servier and five generic producers for anti-competitive exclusion of generic perindopril

Note: fine also on Servier for infringing Article 102

- *Smart card chips*, Commission decision of 3 September 2014

Commission decision imposing fines of €138 million for cartelisation of the smart card chip market. Note the following:

- (i) Renesas (a joint venture of Hitachi and Mitsubishi) received immunity as a whistleblower
- (ii) The cartel involved bilateral discussions on prices, customers, contract negotiations, production capacity, production utilisation and future market conduct
- (iii) Fines imposed on Infineon, Samsung and Philips
- (iv) Settlement discussions were terminated in 2012

GENERAL COURT

- *Calcium carbide*
 - **Case T-399/09 *Holding Slovenske elektrarne d.o.o. v Commission*, judgment of 13 December 2013**

Unsuccessful appeal in the *Calcium carbide* case

- **Case T-384/09 *SKW Stahl-Metallurgie Holding v Commission*, judgment of 23 January 2014**
- **Case T-391/09 *Evonik Degussa v Commission*, judgment of 23 January 2014**
- **Case T-395/09 *Gigaset v Commission*, judgment of 23 January 2014**

Small reductions in Degussa's and Gigaset's fines: in the case of Degussa over the method of calculation of the fine, the extent to which it was entitled to a reduction for cooperation and on the question of recidivism; in the case of Gigaset over the method of calculation. Evonik and Degussa have appealed to the Court of Justice: Cases C-154/14 P and C-155/14 P

- ***Heat stabilisers***

- **Case T-23/10 *Arkema France v Commission*, judgment of 6 February 2014**
- **Case T-27/10 *AC Treuhand v Commission*, judgment of 6 February 2014**
- **Case T-40/10 *Alf Aquitaine v Commission*, judgment of 6 February 2014**

Unsuccessful appeals in the *Heat stabilisers* case

- ***LCD panels***

- **Case T-91/11 *Innolux Corp v Commission*, judgment of 27 February 2014**
- **Case T-128/11 *LG Display Co Ltd v Commission*, judgment of 27 February 2014**

Small reductions in fines due to errors of calculation

- ***Car glass***

- **Cases T-56/09 and T-73/09 *Saint-Gobain Glass Frances v Commission*, judgment of 27 March 2014**

Reduction in the fine on Saint-Gobain on the issue of recidivism from €880 million to €715 million

- **Power transformers**

- **Case T-519/09 *Toshiba Corp v Commission*, judgment of 21 May 2014**

Unsuccessful appeal

COURT OF JUSTICE

- Case C-510/11 P *Kone Oyj v Commission*, judgment of 24 October 2013

Unsuccessful appeal in the *Elevators and escalators* case

- Case C-40/12 P *Gascogne Sack Deutschland v Commission*, judgment of 26 November 2013
- Case C-50/12 P *Kendrion NV v Commission*, judgment of 26 November 2013
- Case C-58/12 P *Groupe Gascoigne SA v Commission*, judgment of 26 November 2013

Rejection of three appeals in the *Industrial plastic bags* cartel

- Case C-455/11 P *Solvay SA v Commission*, judgment of 5 December 2013

Unsuccessful appeals both by Solvay and the Commission in the *Hydrogen peroxide* case

- Case C-327/12 *Ministero dello Sviluppo economic v SOA Nazionale Costruttori*, judgment of 12 December 2013

Judgment dealing with the application (inter alia) of Articles 101, 102 and 106 to legislation applying minimum tariffs for certification services: no infringement of competition law in the circumstances of this case

- Joined Cases C-239/11 P, C-489/11 P and C-498/11 P *Siemens AG etc. v Commission*, judgment of 19 December 2013

Unsuccessful appeals in the *Gas Insulated Switchgear* case

- Case C-586/12 P *Koninklijke Wegebouw Stevin BV v Commission*, judgment of 19 December 2013

Unsuccessful appeal in the *Dutch bitumen* case

- Case C-612/12 P *Ballast Nedam NV v Commission*, judgment of 27 March 2014

Successful appeal in the *Dutch bitumen* case: fine adjusted downwards

- Cases C-247/11 P and C-253/11 P *Areva v Commission*, judgment of 10 April 2014

Partially successful appeals in the *Gas Insulated Switchgear* case

- Cases C-231/11 P to 233/11 P *Commission v Siemens*, judgment of 10 April 2014

Partially successful appeals in the *Gas Insulated Switchgear* case

- Case C-238/12 P *FLSmidth & Co A/S v Commission*, judgment of 30 April 2014

Unsuccessful appeal in the *Plastic industrial bags cartel*

- Case C-90/13 P *I garantovaná*, judgment of 15 May 2014

Unsuccessful appeal in the *Calcium carbide cartel*

- Cases C-35/12 P and C-36/12 P *Plásticos Españoles SA v Commission* and *Armando Álvarez v Commission*, judgments of 22 May 2014

Unsuccessful appeals in the *Plastic industrial bags* cartel

- Case C-578/11 P *Deltafina SpA v Commission*, judgment of 12 June 2014

Unsuccessful appeal in the *Italian raw tobacco* cartel

2. *Vertical agreements*

- The Commission has launched an investigation of possible infringements of Article 101 in cross-border TV services

ARTICLE 102: ENFORCEMENT AT EU LEVEL

PENDING ARTICLE 102 CASES BEFORE THE COMMISSION

- *Slovak Telekom a.s.* – dawn raid announced on 22 January 2009 – possible refusal to supply and margin squeeze; formal proceedings opened 27 April 2009; investigation extended to the parent, Deutsche Telekom, 17 December 2010; statement of objections sent 8 May 2012 and oral hearing in November 2012; note also Cases T-458/09 and T-171/10, 22 March 2012: Commission entitled to request information pre-accession of Slovakia to the EU about possible infringements thereafter
- *ARA* – opening of proceedings against an Austrian waste management company: hindering access to ARA's infrastructure and putting pressure on customers and collection services providers not to contract with ARA's competitors. Statement of objections sent on 18 July 2013; oral hearing to be held on 26 November 2013
- *MathWorks* – refusal to licence and to provide interoperability information: proceedings opened 1 March 2012: note also DG COMP's public consultation of March 2012 on Access to Interoperability Information of Digital Products and Services. Query: case closed?
- *Bulgarian Energy Holding* – proceedings opened 5 July 2012 in relation to possible abuses in the gas sector in Bulgaria
- *Gazprom* – proceedings opened 4 September 2012 in relation to various possible abuses, including the division of markets geographically. Commitment discussions commenced 13 December 2013
- *Bulgarian Energy Holding* – investigation commenced 3 December 2012 in relation to possible abuses in the wholesaling market for electricity in Bulgaria: statement of objections sent 12 August 2014
- *AB Lietuvos geležinkelai* – proceedings opened 6 March 2013 in relation to rail transport between Lithuania and Latvia
- *Internet connectivity* – the Commission conducted unannounced inspections on 11 July 2013 in relation to possible abuses by telecommunications companies in relation to possible abuses in the internet sector

COMMISSION DECISIONS

- *OPCOM*, Commission decision of 5 March 2014

Commission decision imposing a fine of €1 million on OPCOM for discriminatory treatment of non-Romanian-based electricity traders on the spot market in Romania

- *Motorola Mobility*, Commission decision of 29 April 2014

Commission decision finding an infringement of Article 102 as a result of Motorola's misuse of standard essential patents

- *ServierPerindopril*, Commission decision of 9 July 2014

Fine of €330 million for infringing Articles 101 and 102 in relation to perindopril

GENERAL COURT

- Case T-286/09 *Intel v Commission*, judgment of 12 June 2014

Judgment rejecting Intel's appeal in its entirety

COURT OF JUSTICE

- Case C-351/12 *OSA v LIML*, judgment of 27 February 2014

Judgment dealing, among other things, with when a copyright collecting society might be guilty of charging abusively excessive prices

Case C-295/12 P *Telefónica SA v Commission*, judgment of 10 July 2014

Unsuccessful appeal by Telefónica

Case C-553/12 P *Commission v Dimosia Epicheirisi Ilektrismou AE*, judgment of 17 July 2014

Successful appeal by the Commission against the General Court's ruling that Article 106 did not apply in conjunction with Article 102 to a favourable grant to DEI of lignite rights in Greece

PRACTICE AND PROCEDURE AT EU LEVEL

GENERAL COURT

- Cases T-292/11 etc. *Cemex v Commission*, judgment of 14 March 2014

Unsuccessful challenges to the Commission's requests for information in the *Cement* case

- Case T-181/10 *Reagens SpA v Commission*, judgment of 20 March 2014

Partially successful challenge to Commission's refusal to disclose certain documents relating to inability to pay

COURT OF JUSTICE

- Case C-557/12 *Kone AG v ÖBB Infrastruktur AG*, judgment of 5 June 2014

Judgment establishing the availability of damages against a cartel for 'umbrella pricing'

- Case C-37/13 P *Nexans SA v Commission*, judgment of 25 June 2014

Unsuccessful challenge to the General Court's rejection of an appeal in relation to unannounced inspections

COMMITMENT DECISIONS

Deutsche Bahn, Commission decision of 18 December 2013: commitments concerning prices of electricity provided to rail-freight and rail-passenger competitors of DB to reduce the possibility of a margin squeeze.

Visa Europe, Commission decision of 26 February 2014 accepting commitments in relation to VISA's MIFs

Samsung, Commission decision of 29 April 2014: commitments in relation to the seeking of injunctions in relation to standard essential patents

Google, Commission decision of ?? 2014: commitments in relation to various matters concerning the online search market

Note also a challenge to the Commission's commitments decision in *Thomson-Reuters: Case T-76/14 Morningstar v Commission*

INTERNATIONAL

Note that the Commission has signed an international cooperation agreement with Switzerland on 17 May 2013; and with India on 21 November 2013

DAMAGES

Draft Directive on Damages adopted 11 June 2013, Commission recommendation on Collective Redress of same date. See also the speech of Vice President Almunia on 7 November 2013 and the Canadian Supreme Court's judgment in *Pro-Sys Consultants Ltd v Microsoft Corporation*, 31 October 2013

COMPETITION ACT 1998 AND ARTICLES 101 AND 102:

ENFORCEMENT AT UK LEVEL

**PUBLISHED DECISIONS OF THE OFT/CMA AND SECTORAL REGULATORS
SINCE 1 OCTOBER 2013 OR THAT HAVE BEEN SUBJECT TO APPEALS TO THE
CAT AND/OR COURT OF APPEAL DURING THAT TIME**

Case name	Date of decision	Outcome	On appeal to CAT
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<i>Tobacco</i>	11.7.2008	Early resolution of collusion case: six undertakings agreed to pay finest of £132.3 million	Appeals allowed and decision quashed on 12 December 2012 ¹
	16.4.2010	Final decision: two manufacturers and ten retailers finest a total of £225 million (this includes the £132.3 million agreed to be paid in July 2008)	Note that the OFT subsequently refunded £2.6 million to TM Retail, although it had not appealed the decision Note also that Gallaher and Somerfield have failed in their application to be allowed to appeal against the decision fining them: judgment of the Court of Appeal, 7 April 2014, [2014] EWCA Civ 400 Appeals to CAT formally withdrawn 30 May 2014
<i>CH Jones: bunker fuel cards</i>	6.11.13	'No grounds for action' decision (alleged infringement of Chapter II prohibition and Article 102 TFEU)	

¹ Cases 1160/1/10 *Imperial Tobacco Ltd v OFT* etc.

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<i>Retirement home security suppliers</i>	6.12.13	Infringement of Chapter I prohibition: collusive tendering Fines of £53,410 Immunity for Cirrus Communication Systems	
<i>Quantum Pharmaceutical Ltd</i>	12.12.13 (Note: SO sent 24 January 2014: decision issued 20 March 2014)	Infringement of Chapter I prohibition: market sharing Fine of £387,856 Immunity for Lloyds Pharmacy Ltd	
<i>Discounts on hotel rooms</i>	31 January 2014	Commitments accepted in relation to in relation to the online sale of hotel rooms	On appeal by a third party, Case 1225/2/12/14 <i>Skyscanner Ltd v OFT</i>
<i>Mobility Scooters: Mobility</i>	27 March 2014	Infringement of Chapter I prohibition No fines as 'small agreements'	
<i>Sports bras</i>	13 June 2014	'No grounds for action' decision (alleged infringement of Article 101 TFEU and Chapter I prohibition)	

<i>Road fuels market in the Western Isles</i>	24 June 2014	Commitments accepted in relation to duration of contracts and access to terminal facilities
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NB also *Amazon's price parity policy* (29 August 2013 and 20 December 2013): case closed

NB also consultation on commitments by *epyx Limited* (10 March 2014)

NB also: guilty plea by Peter Snee, 17 June 2014, Southwark Crown Court – *Galvanised steel tanks*

DAMAGES ACTIONS IN THE CAT UNDER SECTION 47A OF THE COMPETITION ACT 1998

Case 1077/5/7/07 *Emerson Electric Co and others v Morgan Crucible Company plc and others*: action for damages arising from the European Commission's decision in *Electrical and Mechanical Carbon and Graphite Products* cartel, COMP/38359: a 2003 decision!!.

- Withdrawn 5 August 2014

Case 1173/5/7/10 *Deutsche Bahn AG v Morgan Crucible plc*: follow-on action in the *Electrical and Mechanical Carbon and Graphite Products* case (see also *Emerson Electric* above). A judgment was handed down on 25 May 2011, [2011] CAT 16, ruling that DB's application was out of time; reversed on appeal to the Court of Appeal, [2012] EWCA Civ 1055, 31 July 2012. The Supreme Court reversed the judgment of the Court of Appeal on 9 April 2014, [2014] UKSC 24

Judgment of 15 August 2013 by the CAT partially lifting the stay of the action – [2013] CAT 18: Brussels Regulation point; permission to appeal to the Court of Appeal rejected, 20 November 2013, 9 [2013] EWCA Civ 1484

Case 1231/5/7/14 *The Ministry of Defence v British Airways*: follow-on action in relation to the OFT's *Fuel surcharges* decision against BA and Virgin

Case 1232/5/7/14 *DSG Retail v MasterCard*: follow-on action in relation to the European Commission's decision in MasterCard

OTHER HIGH COURT LITIGATION

W.H.Newson v IMI and Boliden, judgment of 19 December 2012

A striking-out application was rejected in relation to a claim for damages for conspiracy. The Court of Appeal subsequently agreed that an action in conspiracy could be pursued as a follow-on action under section 47A Competition Act 1998, but concluded that the Commission's decision in the *Copper plumbing tubes* cartel did not disclose an intention on the part of IMI to injure and so struck the claim out: [2013] EWCA Civ 1450, 12 November 2013

Chemistree Homecare Ltd v Abbvie Ltd, judgment of 11 February 2013, [2013] EWHC 264 (Ch)

Refusal of High Court to grant interim injunction for refusal to supply; appeal to Court of Appeal dismissed, 7 November 2013, [2013] EWCA Civ 1338

National Grid Electricity Transmission plc v ABB Ltd and others, judgment of the Court of Appeal, 22 October 2013

French defendants cannot rely on French blocking statute to resist disclosure of documents to claimant

Note: case settled June 2014

Dahabshil Transfer Services Ltd v Barclays Bank plc, judgment of the Chancery Division, 5 November 2013, [2013] EWHC 3379 (Ch)

Interim injunction granted to order Barclays to continue providing certain banking services to the claimants pending trial of the action: possible abuse of a dominant position in refusing to deal. Case subsequently settled

Ryanair Ltd v Esso Italiana Srl, judgment of the Court of Appeal, 19 November 2013, [2013] EWCA Civ, 1450

Jurisdictional clause for England and Wales in a contract did not establish jurisdiction for a tort claim against an Italian member of a cartel.

Arriva The Shires v London Luton Airport Operations, judgment of 28 January 2014, [2014] EWHC 64 (Ch)

Provisional finding of abuse of dominance in commercial arrangements for access to the bus station at Luton Airport; subject to subsequent proceedings, for example to establish CC

Lindum Construction Co v OFT, judgment of 19 May 2014, [2014] EWHC 1613 (Ch)

Claim to restitution of fine paid to the OFT in the *Construction* case failed: Lindum should have appealed against its fine within the limitation period

Bruce Baker v The British Board of Boxing Control, judgment of 25 June 2014, [2014] EWHC 2074 (QB)

Unsuccessful competition law challenge to revocation of a boxing manager's licence

Carewatch Care Services Ltd v Focus Caring Services Ltd, judgment of 11 July 2014, [2014] EWHC 2313 (Ch)

Unsuccessful Eurodefence to claim for an injunction and damages by a franchisor

NB also the BIS response to the consultation on *Private Actions in Competition Law*, January 2013

COUNTY COURT LITIGATION

Martin Retail Group Ltd v Crawley Borough Council, Central London County Court judgment of 24 December 2013

Judgment holding that a Proposed User clause in a letting scheme was void and unenforceable under section 2 Competition Act 1998

2013

COLLECTIVE REDRESS

See Schedule 7 of the Consumer Rights Bill

ENTERPRISE ACT 2002: MARKET STUDIES AND MARKET INVESTIGATIONS

TABLE OF MARKET STUDIES

Completed market studies	Date of report	Outcome of study
<i>Review of banking for SMEs in the UK</i>		
<i>Supply of public sector ICT services</i>		
<i>Residential property management services</i>		

TABLE OF MARKET INVESTIGATION REFERENCES

Title of report	Date of reference	Date of Report	Outcome
<i>Statutory audit services</i>	21 October 2011	17 October 2013	Adverse findings Various remedies, including a requirement to put auditing arrangements out to competitive tender at least every ten years
<i>Aggregates</i>	18 January 2012	14 January 2014	Adverse findings Various remedies, including divestiture by Lafarge Tarmac NB Case 1222/6/8/13 <i>Lafarge Tarmac Holdings Ltd v Competition Commission</i> and Case 1223/6/8/13 <i>Hanson Quarry Products Europe Ltd v Competition Commission</i> on procedural issues NB also Case 1224/6/8/14 <i>Lafarge Tarmac v Competition Commission</i> challenging the substantive decision Note also Case 1225/6/8/14 <i>Hope Construction Materials Ltd v Competition Commission</i> against the decision that it was not a suitable purchaser
<i>Private healthcare</i>	4 April 2012	2 April 2014	Adverse findings Various remedies, including divestiture by HCA

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Title of report	Date of reference	Date of Report	Outcome
			<p>NB Case 1218/6/8/13 <i>BMI Healthcare Ltd v Competition Commission</i> re disclosure: judgment of 2 October 2013, [2013] CAT 24</p> <p>NB also Case 1220/6/8/13 <i>BMI Healthcare Competition Commission</i>: withdrawn 22 April 2014</p> <p>NB three appeals, Cases 1228-1230/6/12/14 <i>AXA v CMA</i></p>
<i>Private motor insurance</i>	28 September 2012		
<i>Payday lending</i>	27 June 2013		
<i>Energy market</i>	26 June 2014		

EUROPEAN UNION MERGER REGULATION

RECENT AND CURRENT PHASE II INVESTIGATIONS

Name of case	Cleared?	Cleared with commitments?	Prohibited?
Case No COMP/M.6796 <i>Aegean Airlines/Olympic Air</i>	Yes (9.10.13)		
Case No COMP/M.7009 <i>Holcim/Cemex West</i> (note: there are two other linked transactions, one that was notified in Spain and has been referred to the Commission under Article 22 EUMR and another that has gone to Phase II in the Czech Republic)	Yes (5.6.14)		
Case No COMP/M.6992 <i>Hutchison 3G/Telefónica Ireland</i>		Yes (28.5.14)	
Case No COMP/M.6905 <i>INEOS/Solvay</i>		Yes (8.5.14)	
Case No COMP/M.7018 <i>Telefónica Deutschland/E-Plus</i>		Yes (2.7.2014)	
Case No COMP/M.7061 <i>Huntsman/Rockwood</i>			
Case No COMP/M.7054 <i>Cemex/Holcim Assets</i>			
Case No COMP/M.7000 <i>Liberty Global/Ziggo</i> NB: Article 9 request by Dutch Authority rejected 25 June 2014			

Amendments to the simplified procedure under the EUMR introduced 5 December 2013

Consultation on various possible changes to the EUMR initiated 9 July 2014

- *Marine Harvest*, Commission decision of 23 July 2014

Fine of €20 million for 'gun-jumping'

GENERAL COURT

Case T-79/12 *Cisco v Commission*, judgment of 11 December 2013

Rejection of appeal by Cisco against the Commission's clearance of the *Microsoft/Skype* merger

UK MERGER CONTROL

**MERGER REFERENCES TO THE COMPETITION COMMISSION/CMA
 UNDER THE ENTERPRISE ACT 2002**

Title	Date of Reference	Date of publication	Finding of substantial lessening of competition?	Remedy
<i>Akzo Nobel NV/Metlac Holding Srl</i>	23 May 2012	21 December 2012	Yes	Complete prohibition Unsuccessful appeal to the CAT, Case 1204/4/8/13, judgment of 21 June 2013 Appeal to the Court of Appeal dismissed, 14 April 2014, [2014] EWCA Civ 482
<i>Ryanair Holdings plc/Aer Lingus Group plc</i> NB: completed merger	15 June 2012	28 August 2013	Yes	Ryanair required to sell its 29.8% stake in Aer Lingus down to 5% An appeal to the CAT was unsuccessful in Case 1219/4/8/13

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				<i>Ryanair Holdings plc v Competition Commission</i> , judgment of 7 March 2014, [2014] CAT 3; permission to appeal was granted on 23 April 2014
<i>Global Radio Holdings Ltd/Real Smooth Ltd</i> NB: completed merger NB: SoS decided there were no media plurality issues	11 October 2012	21 May 2013	Yes	Divestiture required Unsuccessful appeal to the CAT Case 1214/4/8/13 <i>Global Radio Holdings Ltd v Competition Commission</i> , [2013] CAT 26, 15 November 2013
<i>Groupe Eurotunnel SA/Sea France SA</i> NB: completed merger	30 October 2012	6 June 2013	Yes	Eurotunnel to be forbidden from operating ferries out of Dover Decision quashed on appeal to the CAT Case 1217/4/8/13 <i>SCOP v Commission</i> and Case 1216/4/6/13

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				<p><i>Eurotunnel v Commission</i>; remitted to the CC for reconsideration of whether two enterprises had ceased to be distinct</p> <p>Second prohibition 27 June 2014</p> <p>Second appeal 1233/3/3/14 <i>Groupe Eurotunnel v CMA</i> and Case 1235/4/12/14 <i>SCOP v CMA</i></p>
<p><i>Royal Bournemouth and Christchurch Hospitals NHS Foundation Trust/Poole Hospital NHS Foundation Trust</i></p>	8 January 2013	17 October 2013	Yes	Complete prohibition
<p><i>Imerys Minerals Ltd/ Goonvean Ltd</i> NB: completed merger</p>	3 March 2013	10 October 2013	Yes	Price control for 5 years for the supply of kaolin used in the manufacture of paints and adhesives

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<i>Cineworld plc/City Ltd</i>	1 May 2013	8 October 2013	Yes	Divestiture required
<i>Optimax Ltd/Ultralease Ltd</i> NB: completed merger	29 July 2013	20 November 2013	No	
<i>Breedon Aggregates Ltd/Aggregate Industries</i> NB: completed merger	24 September 2013	9 April 2014	Yes	Divestitures required; also price control
<i>Ericsson/Red Bee Media Ltd</i>	30 September 2013		Provisional finding of no SLC (by a majority), 27 February 2014	
<i>Tradebe Environmental Services Ltd/SITA UK Ltd</i> NB: completed venture	29 October 2013		No SLC, 28 March 2014	
<i>Omnicell Inc/Medication Technologies</i>	14 March 2014		No SLC, 8 August 2014	
<i>Pure Gym/Gym</i> NB: cancelled	26 June 2014			

NB also Case 1227/4/12/14 *A.C.Nielsen Company Ltd v OFT*: appeal against the clearance of the merger between Aztec Group and Information Resources Group: the matter has been remitted to the CMA for a fresh decision, [2014] CAT 8