Round Up

EU Competition Law Developments October—December 2012

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I. Cartels and horizontal agreements

A. GC annuls decisions ordering 'fishing expeditions'

On 14 November 2012, the General Court (GC) issued two important judgments regarding the extent of the European Commission's powers to dawn raid companies for suspected competition law infringements.[1]

The GC held that the European Commission must precisely delimit the products concerned by a dawn raid in the decision ordering the inspection, and went on to annul the Commission's inspection decisions in both cases on the grounds that it considered that the Commission did not have reasonable grounds to launch inspections in relation to the broad category of products set out in the decisions, but only in relation to a sub-category of those products.

The GC noted that there is an obligation on the European Commission to specify the subject-matter and purpose of an inspection in its decision. The reasons given for an inspection decision '*need not necessarily delimit precisely the relevant market*', but the Commission is required to state in the decision '*the essential characteristics of the suspected infringement, indicating inter alia the market thought to be affected*'.[2] The Commission must

> *identify the sectors covered by the alleged infringement with which the investigation is concerned with a degree of precision sufficient to enable the undertaking in question to limit its cooperation to its activities in the respect of which the Commission has reasonable grounds for suspecting an infringement of the competition rules, justifying interference in the undertaking's sphere of private activity, and to make it possible for the Court of the European Union to determine, if necessary, whether or not those grounds are sufficiently reasonable for those purposes.*[3]

The GC ruled that by referring in the inspection decisions to all electric cables and all material associated with those cables, the Commission had met its obligation to define the subject matter of its investigation.

However, the GC then reviewed whether the Commission had reasonable grounds to issue the inspection decisions in question—in light of their very broad scope. The GC closely reviewed the actual evidence which the Commission had at its disposal before the adoption of the inspection decisions, including evidence from a leniency application. It also considered the Commission's press release of 3 February 2009, as well as the identity of the employees in whom the inspectors took an interest during the inspection. On the basis of this evidence, the GC concluded that the Commission had not demonstrated that it had reasonable grounds for ordering inspections relating to all electrical cables and all material associated with such cables. It had reasonable grounds only for ordering inspections covering high voltage underwater and underground electric cables and material associated with those cables. The GC therefore annulled the Commission's inspection decisions in both cases.

The GC rejected as inadmissible both parties' challenge to the fact that the Commission took away copy images of documents and hard drives, in order to review them later at the Commission's premises. The legality of that Commission conduct could be examined in the context of an action challenging any final decision in the case adopted under Article 101 TFEU, or in an action for compensation brought against the Commission. Alternatively, the parties could have generated an early

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1 Case T-135/09 *Nexans v Commission* and Case T-140/09 *Prysmian v Commission*.

2 See Case T-135/09 *Nexans v Commission*, para. 44.

3 See Case T-135/09 *Nexans v Commission*, para. 45.

challengeable measure by refusing to allow the Commission to take away the copies in question or to answer oral questions, thus inducing the Commission to issue a formal decision imposing fines under Article 23(1) (c) and (d) of Regulation 1/2003.

Following these judgments, the European Commission is likely to draft its inspection decisions with increased attention to ensure that the scope of the investigation is clearly delimited, and only covers areas where it has grounds to suspect a competition law breach and where it therefore has a reasonable basis to launch an inspection.

It is regrettable that the GC was not able to rule on the issue of whether the European Commission can effectively continue a dawn raid at its premises by copy-imaging documents for later review with the parties. This is an area where legal certainty would be very useful. Perhaps when the administrative procedure in the cables case has been completed, these points will return to the GC.

B. IT obstruction

On 19 October 2012, the European Commission published in the Official Journal a summary of its decision fining Energeticky a prumyslovy and EP Investment Advisors a total of €2.5 million for obstructing a dawn raid.[4] The obstruction related to two incidents, both of which concerned IT. The first incident involved the failure to block an e-mail account. On the first day of the raid, the inspectors requested e-mail accounts of key persons to be blocked until further notice by setting a new password known only to the inspectors. On the second day, the inspectors discovered that the password for one account had been modified in the course of the first day in order to allow the account holder to access the account. The second incident involved the diversion of incoming e-mails. On the third day, the inspectors discovered that one of the employees had requested the IT department on the second day to divert all incoming e-mails to the accounts of several key persons away from those accounts to a computer server. As a result, the incoming e-mails did not become visible in the inboxes concerned and could not be searched by the inspectors.

C. Right to intervene in actions for annulment of a cartel decision

In October 2012, the Court of Justice of the European Union (CJEU) published a series of orders it adopted on 8 June 2012, dismissing appeals by Schenker AG against the GC's refusal to grant it permission to intervene in appeals challenging the European Commission's decision in the air cargo cartel case.[5] The CJEU confirmed the GC's view that the fact that Schenker was a customer of the cartel members, and intends to bring a damages action to recover losses that it suffered as a result of high cartel prices, is not sufficient to give it a direct and existing interest in the outcome of the annulment proceedings, as required by Article 40 of the Statute of the CJEU. The CJEU held[6] that '*the mere fact that an undertaking might possibly be affected by high prices caused by an alleged cartel does not distinguish it sufficiently from the other economic operators in the relevant sector which are also affected by the anticompetitive practices of the members of a cartel. It follows that the fact that an undertaking is a customer of the undertaking participating in a cartel is not sufficient, in itself, to establish the right to intervene*'. The Court did, however, note that active participation in the administrative procedure may establish an interest in the result of the case. As a matter of policy, the Court noted that it is not the purpose of annulment actions brought to challenge Commission cartel decisions to facilitate the bringing of civil actions in national courts. It stated that '*to recognise that each physical or legal person who could potentially bring a civil action for damages for loss resulting from the anti-competitive conduct of an undertaking has a direct and existing interest in the result of a case for the purposes of Article 40 . . . would risk seriously undermining the effectiveness of the procedure before the Courts of the European Union*.'[7]

This case serves as a reminder of the fact that prospective claimants might want to think about actively participating in administrative proceedings before the European Commission to ensure rights of intervention in any annulment procedure.

D. Interim relief to prevent publication of leniency information

On 16 November 2012, the GC granted requests from Akzo Nobel[8] and Degussa[9] for interim relief in suspending the Commission's refusal to grant confidential treatment for information provided in the context of a leniency application. In 2006, the Commission adopted a decision in which Akzo Nobel and Degussa, amongst

4 Case COMP/39.793 (OJ (2012) C 316/8).

5 Case C-589/11 P(I) *Schenker v Air France and Commission*; Case C-590/11 P(I) *Schenker v Air France-KLM and Commission*; Case C-596/11 P(I) *Schenker v KLM and Commission*; Case C-598/11 P(I) *Schenker v Cathay Pacific Airways and Commission*; C-600/11 P(I) *Schenker v Lan Airlines and Others*; and C-602/11 P(I) *Schenker v Deutsche Lufthansa and Others*, orders of 8 June 2012.

6 See Case C-598/11 P(I) *Schenker v Cathay Pacific Airways and Commission*, para. 15.

7 See Case C-598/11 P(I) *Schenker v Cathay Pacific Airways and Commission*, para. 24.

8 Case T-345/12 R *Akzo Nobel and Others v Commission*.

9 Case *T-341/12 R Evonik Degussa GmbH v Commission*.

others, were fined for participating in a cartel concerning bleaching chemicals. Subsequently, in September 2007, the Commission published a non-confidential version of that decision on its website. In 2011, however, the Commission made known its intention to publish an extended non-confidential version of the 2006 decision. This extended version would also disclose information provided to the Commission on the basis of the Leniency Notice. This information had not been published before for reasons of confidentiality.

The President of the GC concluded that the request raised complex questions of law relating to the protection from publication of information provided by leniency applicants, and that the balance of interests was in favour of granting interim measures to prevent publication of the contested information pending the conclusion of the annulment proceedings. The President noted that, during the main proceedings, it will be necessary to investigate the divergences in the case law in relation to the assessment of the confidentiality of leniency information and how any divergences may be overcome. He also noted that it would be necessary '*to examine the merits of the argument that the applicants' interest in the information which they provided as leniency applicants being kept secret is not deserving of protection, because the Commission's leniency programme contains sufficient incentive by offering the prospect of a reduced fine, and consequently the Commission has no need to grant any further advantage to leniency applicants*.'[10]

E. Broken seal case

On 22 November 2012, the CJEU confirmed that E.ON Energie AG had to pay a fine of €38 million for breaking a seal during a dawn raid.[11] The CJEU upheld the GC judgment, in which E.ON's action against the Commission's decision was rejected.

The CJEU concluded that the GC had not unduly reversed the burden of proof or set aside the principle of the presumption of innocence. Since the Commission had determined that there had been a breach of seal based on a body of evidence, the GC was entitled to conclude that it was for E.ON to adduce evidence which challenged that finding.

10 Case T-345/12 R *Akzo Nobel and Others v Commission*, para. 51. See also, in a similar situation, another order suspending, on 29 November 2012, a Commission decision to transmit certain documents to the High Court of England and Wales that had been submitted to the Commission during a cartel investigation (although it did not concern leniency information, only confidential documents unrelated to the cartel): Case T 164/12 *R ALSTOM v Commission*.

F. Model leniency programme

On 22 November 2012, the European Competition Network (ECN) published a new version of its 2006 Model Leniency Programme (MLP).[12] The revised MLP makes clear that all leniency applicants that apply to the European Commission in cases concerning more than three Member States may submit a summary application to all relevant national competition authorities. The 2006 MLP had introduced a uniform summary application system, but had limited the ability to submit a summary application to the first applicant only. The ECN has also published a new template which can be used for making summary applications.

II. Abuse of dominant position

A. AstraZeneca case

On 6 December 2012, the CJEU handed down the final chapter in the long-running AstraZeneca case.[13] Whilst the CJEU refrained from establishing a detailed test for when conduct before a patent office can constitute an abuse of a dominant position, it confirmed that misuse of regulatory procedures can in certain circumstances constitute an abuse of dominance under the EU competition rules and appeared to rule out the possibility that simple unintentional mistakes in a patenting process could be held to be an abuse.

In 2005, the European Commission fined AstraZeneca €60 million for abuse of dominance. AstraZeneca was alleged to have committed two abuses: (i) making misleading representations before patent offices in order to obtain supplementary protection certificates, which extended patent protection for Losec (its anti-ulcer medicine); and (ii) using regulatory procedures (the deregistration of Losec's capsule form) to delay the authorisation of competing generic products.

AstraZeneca appealed the fine and challenged the decision to the GC. In 2010, the GC dismissed most of AstraZeneca's arguments, but reduced the overall fine to €52.5 million on the grounds that the European Commission had not proved that AstraZeneca's conduct had prevented parallel imports of Losec to Norway and Denmark.

The CJEU upheld both abuses and the GC's earlier judgment in this case.

11 Case C-89/11 P *E.ON Energie AG v European Commission.*

12 See <http://ec.europa.eu/competition/ecn/documents.html> last accessed 11 February 2013.

13 Case C-457/10P *AstraZeneca v European Commission.*

1. First abuse—misleading statements to the patent office

AstraZeneca argued that the GC was wrong when assessing whether its representations to the patent offices were objectively misleading to have dismissed as irrelevant the reasonableness of their interpretation of an EU regulation and their *bona fides* in that regard. They argued that this strict interpretation meant that dominant undertakings had to be infallible in their dealings with regulatory authorities, and that even an error that was made unintentionally and immediately rectified could be considered an abuse of dominance.

The CJEU held that the assessment whether representations made to public authorities for the purposes of improperly obtaining exclusive rights are misleading must be made *in concreto* and may vary according to the specific circumstances of each case. The CJEU set out that there were a number of objective reasons why AstraZeneca's conduct was consciously motivated by the desire to mislead public authorities. The CJEU noted that if AstraZeneca's interpretation of the relevant EU regulation had been reasonable, it should have disclosed the relevant information which informed its interpretation. Furthermore, it stated that, where a dominant company has a '*legally defensible interpretation*' this is not an excuse which can allow it to make highly misleading representations with the aim of leading public authorities into error.

The CJEU noted that the GC's judgment had been confined to the specific circumstances of the case. It stated that the GC did not hold that a company faces liability merely for ordinary fallibility or because the subject matter of a patent application is ultimately found not to have met the patentability criteria.

2. Second abuse—misuse of regulatory procedures

AstraZeneca argued that its withdrawal of the market authorisation for Losec was the exercise of a right conferred upon it by EU law, and that the exercise of a right cannot be both prohibited and granted at the same time. The CJEU upheld the GC in finding that the use of a regulatory procedure to exclude competitors infringes Article 102 TFEU, unless it can be shown that there is a legitimate reason or objective justification for that regulatory act. The Court held that there was no objective justification for AstraZeneca to have withdrawn the market authorisations, that AstraZeneca was not in any way legitimately protecting an investment which came within the scope of competition within the merits, and that the '*illegality of abusive conduct . . . is unrelated to its compliance or non-compliance with other legal rules and, in the majority of cases, abuses of dominant positions consist of behaviour which is otherwise lawful under branches of law other than competition law*'.[14]

III. Mergers

A. Notification and *de facto* control issues

On 12 December 2012, the GC issued a stark reminder of the financial consequences of not notifying mergers in difficult situations of change of *de facto* control.[15] The GC fully dismissed Electrabel's challenge of a European Commission decision to fine Electrabel €20 million for acquiring *de facto* control over Compagnie Nationale du Rhône (CNR) without prior approval under the EU Merger Regulation.

In 2003, Electrabel acquired shares in CNR, with a resulting shareholding of less than 50 per cent. This transaction was not notified to the European Commission. In 2008, Electrabel notified its proposal to acquire the remaining shares in CNR. The transaction was cleared by the European Commission, but the European Commission then investigated whether Electrabel had in fact obtained control over CNR through the 2003 acquisitions so as to trigger a merger notification obligation under the EU Merger Regulation.

In June 2009, the European Commission found that Electrabel acquired *de facto* sole control of CNR through the 2003 acquisitions, and fined Electrabel €20 million for implementing a merger without seeking its prior approval in breach of the EU Merger Regulation. The 2003 transactions led Electrabel to increase its shareholding in CNR from 17.68 per cent of the shares and 16.88 per cent of the voting rights to 49.95 per cent of the shares and 47.95 per cent of the voting rights. Despite the fact that these percentages were less than 50 per cent, the European Commission considered that Electrabel had acquired *de facto* sole control of CNR in 2003. The Commission looked at shareholder voting patterns at CNR's AGMs, and concluded that Electrabel, due to the wide dispersion of the remaining shares and past attendance rates, had consistently obtained an absolute majority enabling it to have resolutions passed and that this constituted *de facto* control. This was reinforced by other factors, notably the fact that Electrabel was the sole industrial shareholder of CNR and had taken over the role previously held by EDF in the operational management of the power plants and the marketing of the electricity of CNR.

14 See Case C-457/10P *AstraZeneca v European Commission*, para. 132.

15 Case T-332/09 *Electrabel v European Commission.*

The GC dismissed Electrabel's challenge of the European Commission's decision. Key findings of the judgment are:

- a minority shareholder must be considered to hold *de facto* sole control of an undertaking under the EU Merger Regulation if the shareholder is virtually certain of obtaining a majority at future general meetings because the remaining shareholders are widely dispersed, and where this could be shown by attendance at shareholders' meetings in years prior to the relevant acquisition. It rejected Electrabel's argument that it only acquired *de facto* sole control in June 2007 when it was in a position to analyse the shareholders' meeting over the past three years and confirm that it had achieved a consistent majority of voting rights. This analysis should have applied to the facts prior to 2003.
- *De facto* sole control can trigger a filing requirement in its own right. The GC rejected Electrabel's argument that the European Commission had failed to take into account a French Law (Loi Murcef), which provided that private companies could not hold more than 50 per cent of CNR's share capital and voting rights. This French law did not prevent Electrabel from acquiring *de facto* sole control under the EU Merger Regulation.
- Early implementation of a notifiable transaction prior to European Commission approval is liable to bring about significant changes in the competition situation, and is therefore a serious infringement, and not a mere formal or procedural infringement.
- The fact that the infringement was committed through negligence should not give rise to a reduction in the fine.
- The fact that Electrabel's acquisition was ultimately found not to raise any competition issues was not a decisive factor for determining the gravity of the infringement.

IV. State aid

A. Latest developments in the commission's State aid modernisation programme

On 8 May 2012, the European Commission announced its plans for modernising the rules and procedures governing State aid (COM(2012) 209 final). The programme promises to be the largest revision of the EU State aid rules since the Commission launched the State Aid Action Plan in 2005. The key aims of the Commission's modernisation are to: (i) foster growth in a competitive internal market; (ii) focus investigations on cases with the biggest impact on the internal market; and (iii) to streamline the rules to enable decisions to be taken more swiftly.

Besides the revision of most guidelines on compatibility assessment and a communication on the notion of State aid, a core element of the Commission's modernisation process consists in amending:

- Council Regulation 994/98 (the 'Enabling Regulation'), which allows the Commission to adopt Regulations declaring that, subject to specific conditions, certain categories of aid are compatible with the internal market, and do not need to be notified to the Commission; and
- Council Regulation 659/1999 (the 'Procedural Regulation'), which sets out detailed rules of procedures governing the enforcement of the State aid rules.

On 5 December 2012, the Commission adopted its proposals for amending both of these Regulations.

With regard to the Enabling Regulation, the Commission is proposing to extend its scope to cover additional categories of aid that the Commission considers have limited potential to seriously distort competition or in respect of which the Commission has sufficient experience to enable it to define clear compatibility conditions for its inclusion in the general block exemption regulation. The categories of aid that the Commission is proposing to include in the Enabling Regulation include aid granted in favour of: (i) culture and heritage conservation; (ii) making good the damage caused by natural disasters or adverse weather conditions in fisheries; (iii) innovation; and (iv) certain broadband infrastructure.

With regard to the proposal to amend the Procedural Regulation, the Commission's main aims seek to improve: (i) the way in which the Commission handles complaints that it receives; (ii) ensure that it is able to gather effective and reliable information from the market through so-called Market Information Tools (MIT) and conduct sector enquiries; and (iii) create an explicit legal basis for dialogues between the Commission and national courts in situations where the national court is faced with State aid related issues.

With regard to complaints handling, under the current Procedural Regulation, the Commission is obliged to examine all complaints that it receives in respect of potentially unlawful and/or incompatible aid, and, if it determines that the complaint is unfounded, issue a reasoned formal decision rejecting the complaint (it should be recalled that the Commission has the exclusive competence to decide on the compatibility of

aid with the internal market; this is a landmark difference as compared with Article 101(3) TFEU where the Commission shares the exemption powers with national competition authorities and national courts; under State aid rules, national courts intervene only in case of unlawful aid, that is aid not notified or notified but implemented before the Commission decides on their compatibility with the internal market). The Commission receives on average over 300 complaints each year, many of which do not raise genuine competition concerns or provide sufficient information substantiating the complaint. The Commission's obligation to investigate all complaints reduces its ability to focus on and prioritise the most important cases.

The Commission, therefore, proposes the introduction of a standard complaint form that requires complainants to submit certain compulsory information and demonstrate that it has a '*legitimate interest*' in bringing the complaint. If a complainant does not provide the required information or does not demonstrate a sufficient interest, its complaint will be deemed inadmissible (or withdrawn if it fails to respond satisfactorily to requests to supplement the information initially provided) and will not be investigated.

With regard to the Commission's ability to gather information effectively, the Commission's primary source of information in State aid matters comes directly from the Member State concerned. In its proposal, the Commission wishes to bring the procedures for requesting information from third parties into line with those for antitrust and merger investigations, under which the Commission can issue information requests and potentially fine recipients if they provide incorrect, incomplete, or misleading information, or fail to respond within the prescribed period. The Commission considers that such new powers would increase its ability to efficiently gather complete and reliable factual information from the market.

In addition, the Commission is also proposing to introduce new provisions enabling it to conduct sector inquiries where it has reasonable grounds to believe that State aid measures in a particular sector or based on a particular instrument may restrict or distort competition or are no longer compatible with the internal market.

In light of the need to ensure a consistency of application of the State aid rules across the EU, in its proposal the Commission also seeks to create a formal legal basis for national courts faced with questions related to State aid to seek information from the Commission or its opinion on points concerning the application of State aid law. If adopted, the proposal would also introduce the right for the Commission to make submissions to national courts in written or oral form (in this latter case being duly authorised by the national court concerned)—as it is currently able to do in Articles 101–102 TFEU related cases under Article 15 of Regulation 1/2003.

Overall, the Commission's proposals, particularly in respect of the Procedural Regulation are a welcome development and will hopefully go some way to addressing the deficiencies of the current system—especially with regard to the current restrictions on the Commission's ability to gather information from the market to supplement and verify that received from the Member State concerned. It is unfortunate, however, that the Commission has not gone further by proposing ways to encourage further involvement in the process by both the beneficiary of the aid and any other potential interested parties—both of whom remain formally excluded from the Commission's investigation. The Commission was, however, realistic as to what was politically acceptable by the Member States currently.

The Commission's proposals for revising the Enabling Regulation and Procedural Regulation are currently being considered by the Council (these are Council regulations) and the European Parliament (for consultation) and it is hoped that the final texts will be adopted before the end of 2013.

B. Airport infrastructure construction

On 19 December 2012, the CJEU rejected[16] appeals lodged by Mitteldeutsche Flughafen (MF) and Flughafen Leipzig-Halle (FLH) against a GC judgment relating to a Commission decision that a grant of €350 million by Germany to FLH in the form of capital contributions for the purposes of funding investments relating to the construction of a new southern runway constituted State aid (nevertheless declared compatible with the internal market).

MF and FLH argued that the construction or extension of airport infrastructure does not constitute an economic activity falling within the scope of State aid rules so that financing it by means of public funds is not liable to constitute State aid. An important part of their argument was based on the European Commission's 1994 Communication on the application of State aid rules in the aviation sector, which provides that '*the construction or enlargement of infrastructure projects*

16 *Case C-288/11 P Mitteldeutsche Flughafen and Flughafen Leipzig-Halle v Commission.*

(such as airports, motorways, bridges, etc.) represents a general measure of economic policy which cannot be controlled by the Commission under the Treaty rules on State aids'. The Court rejected this argument. It held that a Communication can only be applied if it does not depart from the proper application of the rules in the TFEU. The Court noted that the *Aéroport de Paris* case (Case T-238/98) confirmed that an airport operator is in principle to be regarded as engaging in an economic activity within the meaning of Article 107(1) TFEU. It held that, for the purposes of establishing whether the construction of the new southern railway could be characterised as an economic activity, the GC had made an assessment of that activity, and had found that the construction of the runway could not be dissociated from the operation by FLH of airport infrastructure, which constitutes an economic activity.

The Court referred to the constant case law whereby, in the field of competition law, any activity consisting in offering goods or services on a given market is an economic activity. The fact that an activity is not carried out by private operators or the fact that it is not profitable were not relevant criteria for the purposes of whether or not it was characterised as an economic activity.

Further to this important case, which clearly sets aside the 1994 Communication as no longer being valid applicable law, infrastructure construction projects will no longer escape State aid discipline, provided (i) there exists an EU market, (ii) the construction falls out of the exercise of State authority, and (iii) there exists a sufficient link between the construction and the operation of the infrastructure.

V. General issues

A. Food sector

On 11 December 2012, the European Commission announced that it is launching a study to examine choice and innovation in the retail food sector.[17] The study will examine, in particular, whether increased concentration and the use of own brand products has hampered choice and innovation. It will develop a methodology to quantify the delivery of choice and innovation along the food supply chain. It will also measure the variety of products available to consumers and the extent of innovation in products. Further, it will consider whether local retail concentration has an impact on choice and innovation.

The Commission will issue a call for tenders for expert researchers to submit proposals for conducting this study (deadline 14 February 2013). The final report of the study is expected by the end of 2013.

VI. Looking ahead

A. EUMR simplification

EU Competition Commissioner, Joaquín Almunia, indicated in several speeches in 2012 that the Commission is considering the further simplification of the simplified merger procedure and the review of its pre-notification practice. This is a simplification and regulatory burden initiative to be adopted in 2013 in the Commission's 2013 Work Programme.

The Commission is also examining the issue of the acquisitions of non-controlling minority interests. In a speech in November,[18] Mr Almunia stated that there are two options:

- to propose a selective system in which the Commission identifies the cases that may raise specific problems; or
- a mandatory notification system of the kind in use today for mergers involving the acquisition of control.

Mr Almunia stated that the preliminary preference is for a selective system, which would identify the cases that *prima facie* can raise competition problems rather than creating a system in which significant minority shareholdings would have to be notified in all instances. The Commission will launch a public consultation to discuss the options.

doi:10.1093/jeclap/lpt003

17 Commission press release IP/12/1356.

18 Commission SPEECH/12/773, Joaquín Almunia, Vice President of the European Commission responsible for Competition Policy, 'Merger review: Past evolution and future prospects', Conference on Competition Policy, Law and Economics, Cernobbio (Italy), 2 November 2012.