



# **EU COMPETITION LAW DEVELOPMENTS**

**TONY REEVES**

**ST. MARTIN CONFERENCE 2011**

**20 YEARS OF CZECH COMPETITION  
LAW**

**C L I F F O R D  
C H A N C E**

# Structure of the Presentation

- **Highlights**
- **Article 101 TFEU**
- **Article 102 TFEU**
- **EUMR**
- **Practice and Procedure**
- **Policy Output**

# Highlights

- EU cartel fines down from €2.9b in 2010 to €453m in 2011
- General Court: 11 cartels, 72 appeals
- ECHR *Menarini* - judicial review and the fundamental right to a fair trial
- Article 102: *Telekom Polska* decision, IBM commitments, Google
- CJEU *Telia Sonera* – clarification of the law on margin squeezes
- EUMR: *Olympic/Aegean* prohibition, Article 22 referrals, interface commitments, priority rule, Chinese SOEs
- Procedure: breach of seals
- Policy output: Horizontal Guidelines, Block Exemptions, Best Practices



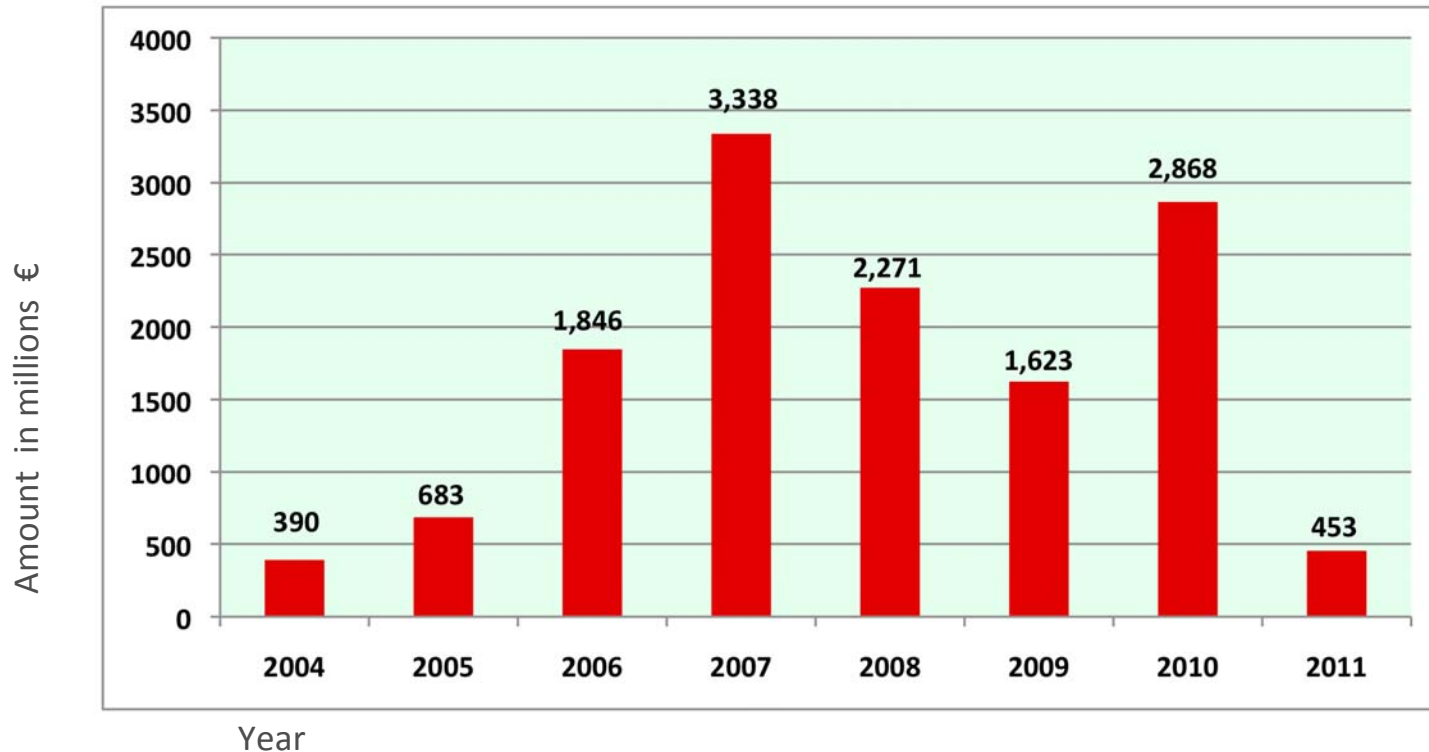
# Article 101 TFEU

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# Cartel Fines 2004 – 2011

Total Fines Imposed\*



\* Amounts corrected for changes following judgments of the GC and CJEU. Source:  
<http://ec.europa.eu/competition/cartels/statistics/statistics.pdf> (last updated 12 October 2011)

# Total Fines per Case

Ten highest cartel fines per case (since 1969)\*

1	2008	<i>Car glass</i>	€1,383,896,000
2	2009	<i>Gas</i>	€1,106,000,000
3	2007	<i>Lifts and escalators</i>	€832,442,250
4	2010	<i>Air freight</i>	€799,445,000
5	2001	<i>Vitamins</i>	€790,515,000
6	2008	<i>Candle waxes</i>	€676,011,400
7	2010	<i>LCD panels</i>	€648,925,000
8	2010	<i>Bathroom Fittings</i>	€622,250,783
9	2007	<i>Gas insulated switchgear</i>	€539,185,000
10	2008	<i>Flat glass</i>	€486,900,000

\* Amounts corrected for changes following judgments of the GC and CJEU

# Fines per Undertaking

Ten highest cartel fines per undertaking (since 1969)\*\*\*

1	2008	Saint Gobain ( <i>Car Glass</i> )	€896,000,000
2	2009	E.ON ( <i>Gas</i> )	€553,000,000
3	2009	GDF Suez ( <i>Gas</i> )	€553,000,000
4	2001	Hoffmann-La Roche AG ( <i>Vitamins</i> )	€462,000,000
5	2007	Siemens AG ( <i>Gas Insulated Switchgear</i> )	€396,562,500
6	2008	Pilkington ( <i>Car Glass</i> )	€370,000,000
7	2010	Ideal Standard ( <i>Bathroom fittings</i> )	€326,091,196
8	2007	ThyssenKrupp ( <i>Lifts &amp; Escalators</i> )	€319,779,900
9	2008	Sasol Ltd ( <i>Candle Waxes</i> )	€318,200,000
10	2010	AirFrance/KLM ( <i>Air Freight</i> )	€310,080,000

\* Amounts corrected for changes following judgments of the GC and CJEU.

\*\* If more than one legal entity of the same group were subject to the decision, they are counted as one undertaking for the purpose of this table.

# 2011 Cartel Decisions

<b><i>Air Freight</i></b>	<b>9 November 2010</b>	<b>€799,445,000</b>
<b><i>LCD Panels</i></b>	<b>8 December 2010</b>	<b>€648,925,000</b>
<b><i>Consumer detergents*</i></b>	<b>13 April 2011</b>	<b>€315,200,000</b>
<b><i>Exotic fruit</i></b>	<b>12 October 2011</b>	<b>€8,919,000</b>
<b><i>Special glass*</i></b>	<b>19 October 2011</b>	<b>€128,736,000</b>
<b><i>Total</i></b>		<b>€1,901,225,000</b>
<b><i>Total (2011 only)</i></b>		<b>€452,855,000</b>

*\*settlement decision*

Source: <http://ec.europa.eu/competition/cartels/statistics/statistics.pdf> (last updated 12 October 2011)



# Fine Tuning

## ■ Fine of ArcelorMittal (*Prestressing Steel*) reduced twice

- Originally €276,480,000 (June 2010)
- Reduced to €230,400,000 (September 2010)
- Reduced further to €45,705,600 (April 2011)
- 18 year cartel largely operated by smaller companies subsequently acquired by ArcelorMittal; taking parent turnover into account was therefore “disproportionate” and “*ArcelorMittal was under no legal obligation to pay it for them*”

## ■ Fine of Prym (*Fasteners*) reduced

- September 2007: Prym fined € 40 million in *Fasteners* cartel (total fines of €328 million)
- Request for interim relief before the GC: difficulties in providing the bank guarantee: indications that Prym had difficulties in obtaining financing – withdrawn in March 2009
- March 2011: Fine reduced to € 15.5 million

## ■ Fine of Jungbunzlauer (*Citric acid*) waived

- In July, the Commission issued a decision waiving part of a €17.6 million fine imposed on Jungbunzlauer for participating in the *citric acid* cartel
- Basis for the waiver is not public
- Earlier waivers were granted due to insolvency of addressees

# Article 101: *Visa MIF-Visa Europe*

- In 2007 MasterCard (“MC”) decision, the Commission found that MC’s multilateral interchange fees (“MIFs”) restricted competition and there was no evidence of efficiencies passed on to consumers
- In 2008, Commission launched an investigation into Visa’s MIFs
- The Commission issued an SO in April 2009
- Visa offered commitments for debit transactions in April 2010
- Commission made binding Visa commitments binding for four years in December 2010:
  - Visa will reduce its MIFs for cross-border and domestic transactions in nine countries to 0.2%
  - Visa will undertake measures to increase transparency and competition
- Visa’s credit transactions investigation still ongoing

# Article 101: *Ordre National des Pharmaciens*

- ***Ordre National des Pharmaciens (ONP)*** - the professional body for pharmacists in France
- **First Commission fine of an association of undertakings**
- **Commission fined ONP €5 million for restrictions on competition:**
  - ONP decisions systematically targeted groups of laboratories with the aim of slowing down or preventing acquisitions and changes in capital.
  - ONP took decisions aimed at imposing minimum prices for clinical laboratory tests. It sought to prohibit discounts of over 10% on the prices charged to state hospitals and state health insurance bodies. According to the Commission, clinical lab test services were 2x-3x more expensive in France than in other MS.
  - ONP systematically used or threatened to use its disciplinary powers if its instructions were not followed.

# Article 101: Public Open Investigations

## Cartels

- Window mountings
- Freight forwarding
- Cathode ray tubes
- Smart card chips
- Cement and related products
- Power cables
- Refrigeration compressors
- North Sea shrimps
- Czech electricity sector
- French generics
- Electrical equipment

- Automotive electric and electronic components
- French water and sanitation
- Polyurethane Foam
- Paper envelopes
- Truck sector
- Telefónica/ Portugal Telecom
- Rail freight
- Container shipping lines\*
- Piston engines\*
- Seatbelts, airbags\*
- Natural gas\*
- Euro interest rate derivatives\*

## Other

- Continental/United/ Lufthansa/ Air Canada
- Servier
- Lundbeck
- Nexium (esomeprazole)
- Brussels Airlines/TAP Air Portugal
- Lufthansa/Turkish Airlines
- E-books\*
- Cephalon & Teva\*
- E-payment standards\*
- J&J, Novartis\*

*\*opened during last 12 months*

# Article 101: SOs Issued

- **Power Cables (July 2011)**
- **Telefónica/ Portugal Telecom (October 2011)**

# Article 101 Court Judgments

## ■ General Court

- Spanish raw tobacco
- Gas insulated switchgear
- Copper fittings producers
- Italian raw tobacco
- Bleaching agents
- Lifts & Escalators
- Synthetic rubbers
- International removals
- Dutch brewers
- Acrylic glass
- Sodium Chlorate
- *Visa Europe Ltd and Visa International Service v Commission*

## ■ Court of Justice

- *General Quimica and Others v. Commission*
- *Activision Blizzard Germany GmbH v Commission*
- Steel beams
- Monochloroacetic acid
- *Pfleiderer*
- *Premier League*
- *Pierre Fabre Dermo-Cosmetique*

# Fundamental Right to a Fair Trial

- ECHR in *Menarini*: in order to ensure compliance with the fundamental right to a fair trial, court must have and exercise powers fully to review administrative body's decision
- Is the General Court's level of review sufficient to safeguard a fair trial?

# Level of General Court Scrutiny

- 72 appeals brought
- A third partly successful
- Successful appeals *inter alia* on:
  - Parental liability (e.g. *International removers, Dutch Brewers*)
  - Reduction for duration (e.g. *Copper fittings, Italian Raw Tobacco*)
  - Recidivism (e.g. *Lifts & Escalators, Synthetic Rubbers*)
  - Reduction for cooperation (e.g. *Spanish Raw Tobacco, Gas Insulated Switchgear*)
  - Deterring effect of the fine (e.g. *Acrylic Glass, Copper Fittings*)
  - Unequal treatment; different methods of calculating the fine (*Gas Insulated Switchgear*)



# Parental Liability

- ***Acrylic Glass and Bleaching Agents: Akzo*** presumption of decisive influence applies not only in cases of 100% ownership, but also where parent owns almost all of the stock in the subsidiary (e.g., 96%)
- ***General Quimica***: Parties may adduce evidence to rebut *Akzo* presumption of decisive influence for 100% owned subsidiaries and the Commission must examine the evidence
- ***Monochloroacetic acid***: Commission must discuss evidence submitted to rebut the *Akzo* presumption and must, if it relies solely on *Akzo* to establish parental liability, explain why certain evidence submitted by the parties was insufficient or irrelevant to rebut the presumption
- ***Dutch Brewers***: failure by the Commission to identify parent and subsidiary, treating both as a single entity without explaining reliance on the *Akzo* rule, undermines companies ability to rebut the presumption and cannot lead to parental liability
- ***International removals***: a foundation - Stichting Administratiekantoor Portielje - did not exercise decisive influence over cartel participant Gosselin
- ***NB Power cables*** investigation: can a private equity firm (owning 100% of the stock of a cartel participant) be presumed to exercise decisive influence under *Akzo*?

# Evidence in Cartel Cases

- ***Gas insulated switchgear***: the Commission bears the burden of proof of the duration of the cartel, BUT if addressee claims he has not participated in the cartel for its full duration, addressee must provide evidence to prove they left the cartel earlier
- ***Copper fittings***: appeals of Aalberts, Aquatis and Simplex successful as GC found they did not participate in the cartel between 25 June 2003 and 1 April 2004
- ***Dutch Brewers***: reliance on handwritten notes that only sporadically and briefly referred to alleged fixing of commercial conditions other than prices
  - Companies had provided plausible alternative explanations for the alleged conduct
  - General Court annulled relevant part of the decision

# Follow-on Damages

- An increasing risk for addressees of Commission cartel decisions
  - Stated policy objective of the Commission
- Companies desperate to avoid infringement findings
  - Whistleblowers (having received immunity from fines) have appealed Commission decisions (eg *Lufthansa on Air Freight*)
  - *Gas Insulated Switchgear*: General Court annulled fines for some participants, but they nonetheless appealed to the CJEU
- Cartel settlement decisions: does reduced number of pages help obstruct follow-on damages claims?
- *Pfleiderer*: no clear guidance on whether companies should be permitted access to leniency documents; matter of national law
  - Can lead to divergent approaches and forum shopping
- Commission initiated its own follow-on damages claim in relation to the *Lifts & Escalators* cartel
  - Brussels Commercial court has sent preliminary reference to the CJEU: can the Commission be police, prosecutor, judge, jury, and plaintiff in the same case?

# ***GC: Visa Europe Ltd and Visa International Service v Commission***

- **2007 Commission decision fining Visa Europe Ltd and Visa International Service €10.2 million for excluding Morgan Stanley from Visa system in the EU**
- **Visa argued that Commission should not impose fines in an effects case (as opposed to an object case)**
- **The GC rejected Visa's appeal**

# **CJEU: *Activision Blizzard Germany GmbH v Commission***

- **2002 Commission decision fined Nintendo and some of its distributors fines totalling €167.8 million**
- **The GC reduced Activision Blizzard (CD-Contact Data)'s fine by 50% to €500,000 due its passive role in the infringement**
- **The CJEU affirmed the GC judgment dismissing Activision Blizzard (CD-Contact Data)'s annulment application**

# **CJEU: *Pierre Fabre Dermo-Cosmetique***

- **PFDC cosmetic distribution contracts stipulated that sales must be made exclusively in a physical space in the presence of a qualified pharmacist**
- **French competition authority decision treated this as a de facto ban on all internet sales**
- **PFDC appealed and Paris court made a reference to CJEU**
- **CJEU confirmed that absolute ban on internet sales is a restriction by object**
- **Not justified by perceived need to provide in-person advice**
- **Not justified by need to protect prestigious brand image**



# Article 102 TFEU

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# Article 102: Commission Decisions

- ***Telekom Polska***: infringement decision
- ***Omnis/Microsoft***: rejection of complaint
- ***Si.mobil/Mobitel***: rejection of complaint
- ***Boehringer Ingelheim***: investigation closed



# Article 102: *Telekom Polska*

- June 2011 fine of €128 million on Telekom Polska for refusing and obstructing remunerated access to its network and wholesale broadband services
  - *E.g.*, unreasonable conditions, delayed negotiations, refusals to supply reliable and accurate information
  - Prevented entry from alternative operators on downstream broadband market
- Commission particularly concerned about low (+/- 13%) broadband penetration, low connection speeds and high prices per Mbit/sec
- Investigation was opened on Commission's own initiative

# Article 102: *Omnis/Microsoft*

- Commission rejected a complaint by Omnis alleging that Microsoft abused a dominant position in Enterprise Resource Planning (“ERP”) software or in the broader EAS market
  - Claims of abusive refusal to deal, refusal to supply essential information, discrimination and tying
  - Commission dismissed these allegations as being insufficiently substantiated
- Omnis also alleged breach of Article 101 through ‘exclusive’ arrangement with the Romanian government
  - Commission found that arrangement should be scrutinized under relevant public procurement laws and not under Article 101
- Market definition reviewed under *Oracle/PeopleSoft*, *SAP/Business Objects* precedents
  - Microsoft not found to occupy a dominant position in any relevant market

# Article 102: *Si.mobil/Mobitel*

- Commission rejected a complaint by Si.mobil alleging that Mobitel abused a dominant position in Slovenian mobile retail and wholesale markets
- Retail complaint: Commission considered that the issues were already dealt with by the Slovenian competition authority
  - Arguments about institutional shortcomings of the Slovenian authority dismissed
- Wholesale complaint: rejected for insufficient EU interest
  - effects mostly confined to Slovenia
  - complexity of investigation required
  - limited likelihood of showing an infringement

# The Aftermath of the Pharma Sector Inquiry

- ***Boehringer Ingelheim***: misuse of patent system to exclude potential competition in COPD drugs - investigation closed
- ***Servier (perindopril)***: attempts to delay entry of generic perindopril
- ***Sanofi-Aventis, Teva, Novartis, Sandoz, Ratiopharm and Ranbaxy***: dawn raids in October 2009
- ***Lundbeck***: the Commission opened formal proceedings in January 2010
- ***Nexium (esomeprazole)***: dawn raids in November 2010
- ***Cephalon/Teva***: investigation opened in April 2011 into patent settlement whereby Teva agreed not to sell generic Modafinil in the EEA
- ***Johnson & Johnson/Novartis***: investigation opened 21 October 2011 into agreement to exclude generic Fentanyl from the Netherlands

# Article 102: Ongoing Investigations

- Standard & Poor's
- Thomson Reuters
- Credit Default Swaps
- IBM: Spare Parts
- Google
- Alcan
- Slovak and Deutsche Telekom
- Deutsche Bahn
- Czech Electricity Companies
- ARA
- Luxury Watch Makers (CEAHR)
- Servier
- Lundbeck
- Nexium (Esomeprazole)

# Article 102: Financial Sector Investigations

- ***Standard & Poor's***: investigation into license fees for use of U.S. International Securities Identification Numbers; commitments offered
- ***Thomson Reuters***: prevention of translation of Reuters Instrument Codes to alternative identification codes of other datafeed suppliers
- ***Credit Default Swaps***:
  - anti-competitive control over essential CDS financial information by industry body Markit, which is controlled by 16 investment banks
  - anti-competitive fee structures used by ICE Clearing, a CDS clearing platform, giving its nine controlling banks an unfair advantage *vis-a-vis* their rivals

# Article 102: IT Sector Investigations

- **IBM:** unfair trading conditions relating to spare parts necessary for independent suppliers of maintenance services for IBM's mainframe computers
- **Google:** foreclosure of vertical search and information competitors *inter alia* through 'penalizing' rivals' search results in algorithmic search rankings

# Article 102: IBM Spare Parts

- IBM Spare Parts investigation initiated in July 2010 on Commission's own initiative
- Allegation: IBM uses unfair trading conditions for supply of IBM-compatible spare parts
- What is dominance based on?
  - Aftermarket for IBM mainframe-compatible spare parts?
  - Primary market for mainframes?
- IBM has offered commitments to supply spare parts on reasonable, non-discriminatory terms
  - Commitments market-tested in October
- Earlier, Commission closed a formal investigation into allegedly abusive 'tying' of IBM's mainframe operating system software with its own hardware, thereby excluding rival mainframe hardware suppliers and developers of 'emulator' software



# Article 102: Google

- Investigation opened in November 2010 upon complaints from Foundem, eJustice.fr, and Ciao!
- Microsoft filed a complaint in March 2011
- Since then, complaints from four other information services have been added to the investigation
- Some of the main substantive concerns include:
  - Google penalizes the search results of rival vertical search engines
  - Google gives preferential treatment to its own products
  - Google imposes exclusivity obligations on third parties seeking to use its services, such as the Google search-box for websites and Google advertising

# Article 102: Other Investigations

- **Alcan:** SO - tying dominant aluminium smelting technology with handling equipment
- **Slovak Telekom & Deutsche Telekom:** refusal to supply, margin squeeze, and tying on market for broadband Internet access
- **Deutsche Bahn:** alleged discriminatory treatment in supply of electricity to rival rail freight operators
- **CEZ:** preventing entry of competitors into the Czech wholesale electricity market through hoarding of capacity in its transmission network
- **ARA:** possible foreclosure of rival waste management providers by refusing access to ARA's waste collection infrastructure
- **CEAHR:** reopened investigation of complaint by European Confederation of Watch & Clock Repairs' Associations (CEAHR) alleging refusal by luxury watch manufacturers to supply spare parts to independent watch repairers

# Article 102: Court Judgments - *TeliaSonera*

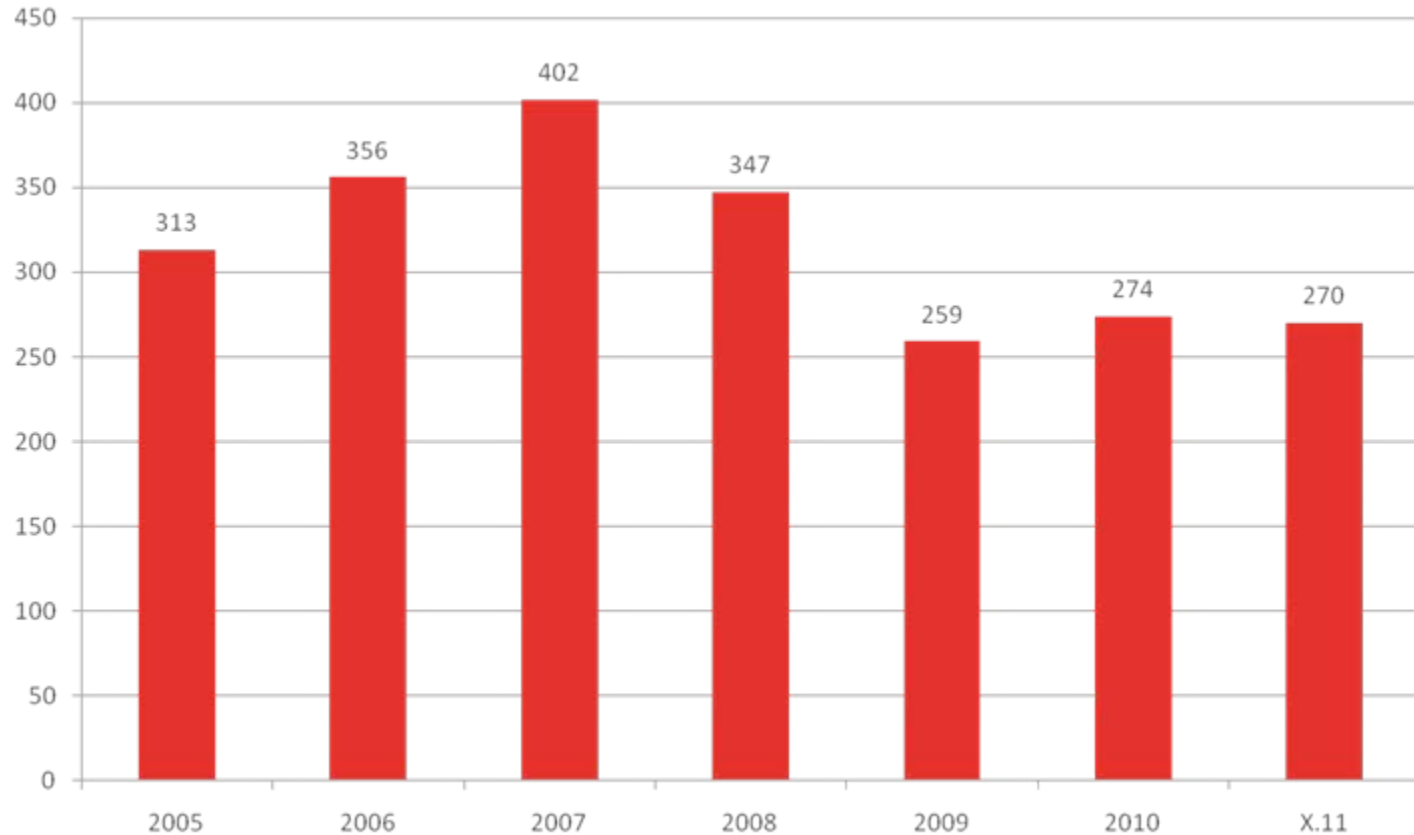
- Preliminary reference from Swedish court
- Followed *Deutsche Telekom* judgment
- Margin squeeze is a distinct abuse separate from (constructive) refusal to supply
- Not abusive *per se*; effects must be shown
- Court reiterated relevance of the ‘as efficient competitor’ test



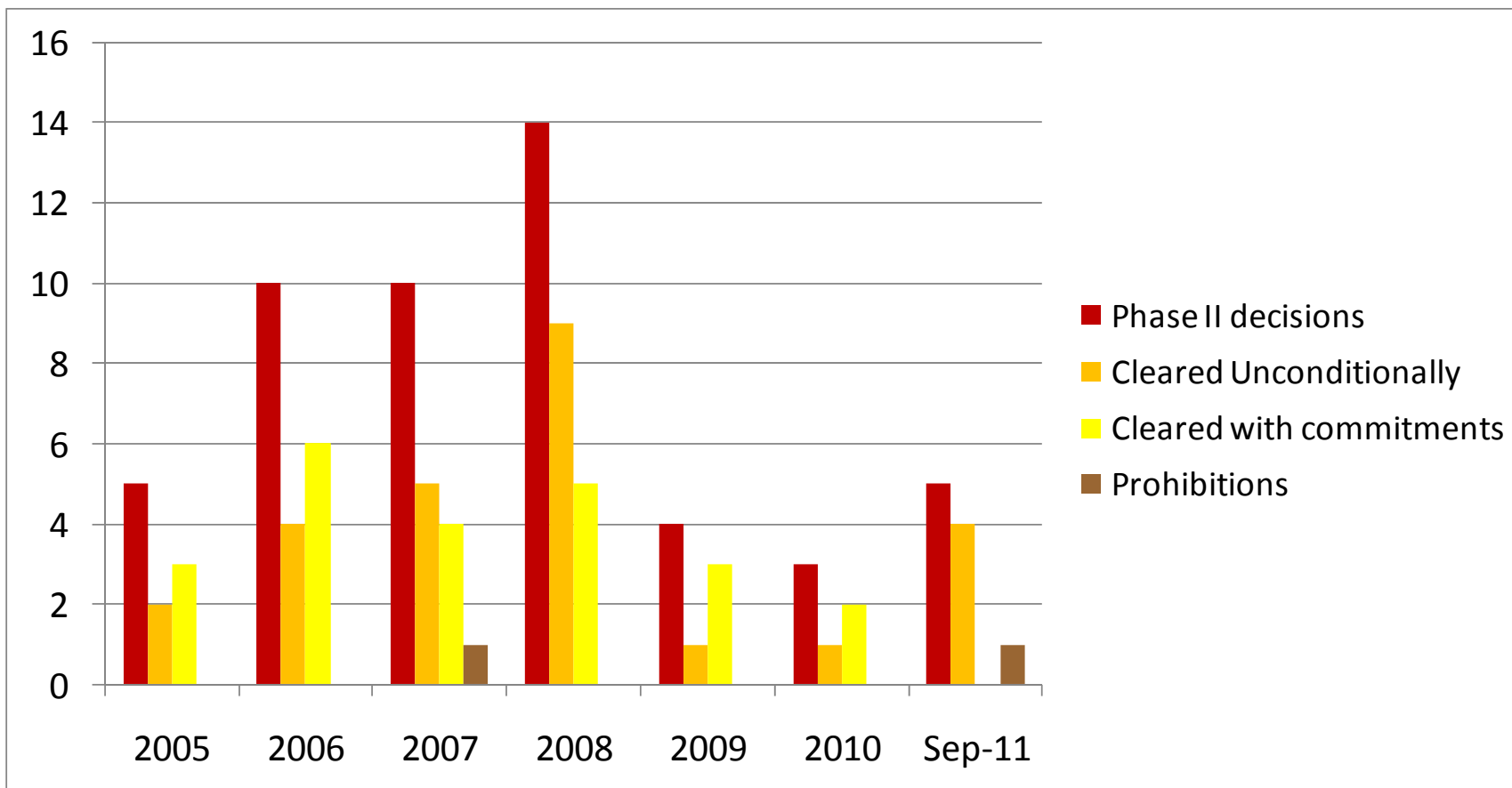
# Mergers

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# EUMR: Number of Notified Cases



# EUMR: Phase II Trends



# EUMR: *Olympic/Aegean*

- First prohibition decision since *Ryanair/Aer Lingus* on similar facts in airline sector
- Olympic Air and Aegean Airlines accounted for 90% of Greek domestic air transport market and have the same home airport (Athens)
- Commission found new entry to be unlikely
- Therefore, remedies proposed by parties which were similar to the Lufthansa cases, e.g. slots at Athens airport, third party access to their frequent flyer programmes, were not sufficient – Availability of slots not primary issue.
- What will be the fate of the two airlines?

# EUMR: Article 22 Referrals

	<i>Syngenta / Monsanto</i>	<i>SC Johnson / Sara Lee</i>	<i>Caterpillar / MWM</i>
<b>Product Market</b>	Sunflower seeds	Household insecticides	Gensets
<b>National filings</b>	Hungary and Spain	Portugal and Spain	Austria, Germany and Slovakia
<b>Referral request</b>	Hungary and Spain	Belgium, Greece, France, Czech Republic, Italy and Spain (Portugal did not join the referral request)	Austria, Germany and Slovakia
<b>Article 22 Decision</b>	November 2009	September 2010	January 2011
<b>EU filing</b>	April 2010	November 2010	March 2011
<b>Outcome</b>	November 2010: Conditional Phase II clearance decision	May 2011: Case aborted	October 2011: Unconditional Phase II clearance



# **EUMR: *Intel/McAfee* Interoperability Commitments**

- Parties had neighboring/complementary products (computer chips and security software)
- The Commission was mainly concerned that the merged entity may embed its own security solutions into its chips
- To address the concerns and secure a Phase I clearance, Intel agreed to:
  - Ensure that vendors of rival security solutions will have access to all necessary interoperability information
  - Not actively impede competitors' security solutions from running on its chips
  - Avoid hampering the operation of McAfee's security solutions when running on personal computers containing CPUs or chipsets sold by Intel's competitors.

# EUMR: Priority Rule

	Western Digital / Hitachi	Seagate / Samsung HDD
<b>Case number</b>	M.6203	M.6214
<b>Notification date</b>	20 April 2011	19 April 2011
<b>Article 6(1)(c) Decision</b>	30 May 2011 (with an SO in August 2011)	30 May 2011
<b>Outcome</b>	Still under review with a 30 November 2011 deadline	19 October 2011: Unconditional clearance

# EUMR: Waiving Commitments

- **1998: Hoffman La Roche's acquisition of Boehringer conditionally cleared**
  
- **2008: Hoffman La Roche asked for a waiver of the 1998 commitments relating to DNA probes: its PCR patent portfolio was no longer a barrier to entry to the DNA probes market**
  
- **2011: Despite the absence of a review clause, commitments waived:**
  - **The circumstances in the DNA probes market had changed**
  - **Third parties did not oppose the waiver**
  - **The commitments in question had fulfilled their role**
  - **The waiver would not affect third parties' rights**

# EUMR: Chinese State-Owned Enterprises

- Recital 22 EUMR lays down the general principle of non-discrimination between public and private undertakings
- Key question is whether public undertaking is an economic unit with ‘an independent power of decision’
- Whilst designed and developed to apply to European SOEs, the Commission is increasingly having to apply the rules to Chinese SOEs:
  - *DSM / Sinochem JV*
  - *China National Bluestar / Elkem*
  - *Huaneng / OTPPB / Intergen*
  - *PetroChina / Ineos / JV*

# EUMR: Case T-224/10 *ABCTA v. Commission*

- Appeal by the *Association belge des consommateurs test-achats (ABCTA)* against
  - refusal to partially refer *EDF / Segebel* to the Belgian NCA and
  - clearance decision in *EDF / Segebel*
- The General Court rejected both claims:
  - ABCTA did not have *locus standi* to challenge the clearance decision:
    - ABCTA was not directly and individually concerned by the clearance decision
    - ABCTA's procedural rights were not infringed as ABCTA had failed to apply for its right to be heard following the formal notification of the merger
  - Third parties, including ABCTA, are not entitled to challenge a decision to reject a referral request (but they can challenge a referral decision)



# Practice and Procedure

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# Practice & Procedure

## ■ Commission Decisions

- *Suez Environnement, Lyonnaise des Eaux* – 24 May 2011

## ■ Judgments of the General Court

- T-141/08 *E.ON Energie v Commission* – 15 December 2010
- T-427/08 *CEAHR v Commission* – 15 December 2010

## ■ Judgments of the Court of Justice of the European Union

- C-375/09 *Tele 2 Polska* – 3 May 2011

# Practice & Procedure: Breach of Seal

## ■ *E.ON Energie v Commission*

- On 15 December 2010, the GC upheld the Commission decision fining E.ON Energie €38 million for breach of the Commission seal during dawn raid inspections
- GC found:
  - the Commission was entitled to apply a negligence standard to the breach
  - the fine was not disproportionate for the infringement given the company's turnover (fine was 0.14%), the serious nature of the infringement, the size of the company, as well as ensuring the deterrent effect of the fine



# ***CEAHR v. Commission***

- In 2008 Commission rejected CEAHR's Article 101 and 102 complaint against watch manufacturers for refusal to supply spare parts to independent repairers
- GC annulled Commission's rejection decision in December 2010
- GC uniquely rejected the Commission's wider market definition including primary market for watches and aftermarket for spare parts, signalling a willingness to review complex assessment of fact
  - CEAHR proposed definition of an aftermarket for repairs to individual watch models
- Commission argued no Community interest and NCAs better placed to address complaints
- GC considered that Commission must affirmatively consider whether *“action on the EU level could be more effective than various actions at the national level”*

# Tele2 Polska

- Preliminary reference from Polish court
- Held: a national competition authority cannot issue a negative finding of infringement
  - *i.e.*, a finding of no infringement of EU competition law
- National competition authority *can* issue a ‘no grounds for action’ decision
- In order to ensure consistency in application of EU competition law, only the European Commission can issue a negative finding



# Policy Output

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# Policy Output

## ■ Horizontal Guidelines

## ■ Best Practices package:

- Notice on Antitrust Best Practices
- Best Practices on the Submission of Economic Evidence
- Revised Hearing Officer's Terms of Reference

# Policy Output – Horizontal Guidelines

- **New guidelines on the assessment of horizontal co-operation agreements came into effect on 1 January 2011**
- **Revisions to the block exemptions for R&D and specialisation agreements**
- **The main changes to the existing Horizontal Guidelines include:**
  - **New guidance on information exchanges between competitors**
  - **Expanded guidance in the area of standard setting**

# Policy Output – Best Practices

- Earlier opening of formal proceedings
- Disclosure of key submissions, including early access to the complaint
- Publicly announcing the opening and closure of procedures and rejection of complaints
- Inclusion of a section on fines in the SO
- State of play meetings in cartel cases

# Policy Output – Best Practices

- Increased role and mandate for the Hearing Officer on procedural rights, beyond the right to be heard, eg
  - Recommendations on legal professional privilege
  - Recommendations self-incrimination questions
  
- Do the published Best Practices match the Commission's internal ManProc?
  - Parts of ManProc to be disclosed in due course

# EU Competition Law Developments

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