



ECN Brief 04/2014

ECN Brief

Welcome to the October 2014
issue of the
ECN Brief

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Dear Reader,

This is the 25th issue of the ECN Brief, which is a publication of the European Competition Network (ECN). The ECN is a network of the Member States' competition authorities (NCAs) and the European Commission (DG Competition). The ECN Brief aims to inform you about the activities of the ECN and its members and to reflect the richness of enforcement actions and advocacy in the Network. It focuses on news of major interest about EU competition law and policy.

The present issue covers news from June to October 2014. It reports on a wide variety of enforcement actions undertaken by the NCAs in a large variety of sectors such as freight transport, services in the automotive sector, food, energy, pharmaceuticals and broadcasting rights. Legislative, policy and institutional developments are also covered such as the establishment of the Competition and Consumer Protection Commission in Ireland on 31 October. Finally, this issue presents the results of several sectoral studies and inquiries namely into the food sector.

More news about the activities of the ECN and its members will be published in December 2014. In the meantime, we wish you interesting reading!

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Any reactions, comments, ideas, suggestions for the improvement of this Brief are very welcome and should be sent to the following address comp-ecn-brief@ec.europa.eu

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ENFORCEMENT & CASES

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Denmark: Nets Holding commits to reducing Prices on Payment Card Processing Services

The Danish Competition and Consumer Authority accepted binding commitments in a case of a possible abuse of a dominant position in the Danish market for payment cards. It considers that the commitments will mean lower prices for acquiring processing services by acquiring banks when handling international payments for retailers in Denmark.

[Read more](#)

France: Autorité de la concurrence makes binding improved Commitments from Nespresso to lift Barriers to Entry for other Coffee Capsule Manufacturers

The Autorité considers the commitments will successfully lift technical, legal and commercial barriers to entry for other coffee capsule makers. Whilst they prevent weakening of competition on the market, the commitments remains proportional, such that they will not hinder Nespresso's innovation.

[Read more](#)

Spain: Comisión Nacional de los Mercados y la Competencia fines Association in Market for Transport of Freight by Road in Port of Alicante

The Authority found that ASTRACO infringed competition rules by collectively recommending prices and other trading conditions for transport originating in the Port of Alicante as well as by limiting and controlling the provision of such services.

[Read more](#)

United Kingdom: Competition and Markets Authority accepts Commitments on Platform Services for Automotive Sector

On 9 September 2014, the Authority accepted commitments offered by Epyx Limited relating to service, maintenance and repair platform services. They will in particular make it easier for Epyx's current customers to switch to rivals.

[Read more](#)

Finland: Market Court imposes Fine in Case of Abuse of Dominance in Fresh Milk Market

On 26 June 2014, the Market Court imposed on Valio a € 70 000 000 fine for abuse of dominant position in the production and wholesale market for fresh milk. The Market Court followed the proposal of the Finnish Competition and Consumer Authority and rejected Valio's appeal.

[Read more](#)

LEGISLATION & POLICY

- o **Austria:**
 - Guidance on Vertical Price Agreements published
 - Authority carries out Market Analysis of Mobile Telecom Sector
- o **Bulgaria:**
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 - New Legislation on Translator Services proposed
 - CPP recommends Amendments to Procedure for Awarding Contracts for Activities in Forest Territories
- o **Estonia:**
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- o **Finland:**
 - Report finds numerous Problems on Copyright Market
- o **Hungary:**
 - Changes to Competition Rules enter into Force
- o **Latvia:**
 - Survey on Competition Concerns of Entrepreneurs in Latvia published
- o **Lithuania:**
 - Competition Council approves Parliament's Decision to reject Amendments to Competition Law
- o **The Netherlands:**
 - ACM makes Recommendations for improving Competition in Banking Sector
- o **Romania:**
 - Recent Developments in Competition Legal Framework
 - Guidelines on Mobile Communication Network Sharing Agreements published

Croatia: Practical Guide on Compliance Programme published

In order to help undertakings, especially SMEs, to respect the competition rules, the Authority prepared a practical guide containing simple instructions which can be adapted for each company depending on its activities and the markets in which it operates.

[Read more](#)

Germany: Results of Inquiry into Buyer Power into Food Retail Sector published

On 24 September 2014, the Bundeskartellamt presented the final results of its inquiry concerning buyer power in the food retail sector. Interested parties have been invited to submit written comments on the report by 31 December 2014.

[Read more](#)

Ireland: New Competition and Consumer Protection Commission to be established on 31 October 2014

The new authority is being created by the merger of the Competition Authority and the National Consumer Agency. It will have a dual mandate with robust powers in the enforcement of both competition and consumer law.

[Read more](#)

The Netherlands: Harmonisation of Procedural Rules of Netherlands Authority for Consumers and Markets

On 1 August 2014, the Dutch Streamlining Act came into force. It streamlines the powers enforcement tools and procedures set out in the laws enforced by the ACM, thereby creating a clear and uniform set of rules.

[Read more](#)

Sweden: Marker System introduced in Swedish Leniency Programme

On 1 August 2014, new provisions on a marker system entered into force. The marker system is a means for immunity applicants to reserve their place in the queue for a limited period of time whilst they gather sufficient information to fulfil the requirements of the programme.

[Read more](#)

European Commission: Results of Modern Retail Study in EU Food Sector published

On 2 October 2014, the Commission published the results of its modern retail study on choice and innovation in the EU food sector and invited interested parties to provide their views and written comments before 30 January 2015.

[Read more](#)

OTHER ISSUES OF INTEREST

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- o **Lithuania:**
11th Baltic Competition Conference on Competition Enforcement: Trends and Case-Studies
- o **Romania:**
Launch Event for Project between OECD, Romanian Government and Romanian Competition Council
- o **Spain:**
Competition Authority hosts VI Iberian Competition Forum

Personalia

- **Portugal:** New Board Member appointed
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New Commissioner for Competition

Annual Reports

- **France:** Annual Report 2013 published
- Link to the Annual Reports of all ECN Members**

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Access to Commission Cases

Training of Judges

Austria:

- Workshop on 'The New Directive on Private Enforcement on EU Competition Law'

On 6 November 2014, the Austrian Competition Authority organises an evening event on the proposed new Directive on Private Enforcement of EU Competition law. The event is open to the public.

[Read more](#)

- Competition Conference on 'Best Practices in Investigations'

On 11/12 December 2014, the Austrian Competition Authority hosts an event for the exchange of experience and expert knowledge among national competition authorities in the field of investigations and related topics. The first day of the conference is open to national competition authorities only, while the second day is open to the public.

[Read more](#)

Romania: Contest on Competition as Key Factor for Economic Development and Consumer Welfare

The Romanian Competition Council launched the second edition of this contest which aims to inform the public about the benefits of effective competition among companies. Contributions include radio and TV broadcasts as well as written press articles. The most interesting contributions are awarded a Diploma of Excellence or Certificate of Merit.

[Read more](#)

ECN members' websites

Number of envisaged decisions by national competition authority; types of envisaged decisions etc.: <http://ec.europa.eu/competition/ecn/statistics.html>

Case search

- Results of Call for Proposals 2014
- New tender published

ENFORCEMENT & CASES

AUTHORITIES

• **Denmark: Nets Holding commits to reducing Prices on Payment Card Processing Services**

On 28 May 2014, the Danish Competition and Consumer Authority (DCCA) accepted binding commitments in a case against Nets Holding A/S (Nets) regarding a possible abuse of a dominant position in the Danish market for payment cards. The Authority considers that the commitments will mean lower prices for acquiring processing services by acquiring banks when handling international payments for retailers in Denmark.

Nets is the main player in Denmark for payment transactions and handles the central payment card infrastructure in Denmark. Banks that want to provide retailers with the service of acquiring Visa or MasterCard international transactions made in Denmark have to buy certain processing (front-end acquiring processing, FAP) services from Nets on the wholesale level. Furthermore, Nets's subsidiary Teller is by far the largest acquirer in Denmark regarding international payment cards.

An inspection carried out on 4 December 2012 by the DCCA led to concerns that Nets might have implemented an illegal margin squeeze on the Danish market for acquiring international payment cards. Nets had possibly set excessive prices for some upstream processing services to a number of acquirers that are competitors to Teller on the downstream level.

Nets committed to abstaining from performing a margin squeeze in violation of section 11 of the Danish Competition Act and Article 102 TFEU, including:

- Introducing a new price model for FAP services that will apply to all acquirers and reduce the average price charged for FAP significantly, in particular compared to previous prices for certain of Teller's competitors.
- Providing all of Teller's acquiring customers with an extraordinary termination right for the first three months of the commitments, and without imposing any costs on those acquiring customers that choose to make use of this possibility.

The DCCA found that the commitments would meet the concerns regarding a potential abuse of a dominant position, and that Teller's competitors in the market for acquiring international payment cards would be able to compete on equal terms with Teller.

See further [here](#).

• **France: The Autorité de la concurrence makes binding improved Commitments by Nespresso to Lift Barriers to entry for other Coffee Capsule Manufacturers**

In the context of the procedure initiated before the Autorité de la concurrence (the Autorité) by DEMB and the Ethical Coffee Company, Nespresso proposed a series of commitments that add to and substantially improve upon the commitments it submitted in April 2014. On 4 September 2014, the Autorité made the new commitments binding. It considers that taken as a whole, the commitments form a coherent package, which the Autorité feels will successfully lift technical, legal and commercial barriers to entry for other coffee capsule makers – compatible with Nespresso coffee machines – as well as barriers to their growth. In addition, the Autorité considers that whilst they prevent weakening of competition on the market, the commitments remain proportional, such that they will not hinder Nespresso's innovation. The Autorité is the first competition authority to examine commitments in this market.

Further to a complaint lodged by Nespresso's competitors, the Autorité's investigation services found that Nespresso appeared to have implemented various practices that encourage consumers to use only Nespresso capsules in its machines and that Nespresso may have abused its dominant position by linking

the purchase of its capsules to that of its coffee machines, with no objective justification, thereby excluding manufacturers producing competing capsules.

In the hope of addressing these issues, Nespresso put forward a first series of commitments in April 2014 (see ECN Brief 3/14). The Autorité then launched a market test to ascertain whether the commitments would be sufficient to allay the competition concerns. The upshot of the market test is that the Autorité requested improvements be made to the commitments.

The improved and reinforced commitments submitted by Nespresso cover and address the competition concerns raised by the Autorité as follows:

- Transparency as regards technical modifications to its machines and, in particular, notifying competing capsule manufacturers of all modifications that are liable to affect the use of the capsule in the Nespresso machine. In this regard (i) the timing of this notification was improved upon in the second series of commitments, (4 months before sales begin or at the date the production of the said machines begins, whichever is earliest) (ii) as part of this notification, a 'trusted third party' will be appointed as an intermediary whose role is to prevent the transfer of confidential information, and (iii) Nespresso will be more transparent as to the reasons behind technical modifications, notably by providing the Autorité with a document setting out such reasons.
- The implementation of warranty conditions which apply regardless of the brands of capsules used; and
- Refraining from making comments that would discourage consumers from using competitors' capsules, implemented notably as part of a new compliance programme.

More information available [here](#).

• **Spain: The Comisión Nacional de los Mercados y la Competencia fines Association in Market for Transport of Freight by Road in Port of Alicante**

On 10 July 2014, the Comisión Nacional de los Mercados y la Competencia (CNMC) adopted a decision in which it found that ASTRACO (Asociación Provincial de Auto-Patronos y Empresarios de Transporte de Contenedores por Carretera de la Provincia de Alicante), an association of self-employed and entrepreneurs active in road transport of freight in the Port of Alicante, infringed Articles 1 of the Spanish LDC and 101 TFEU by collectively recommending prices and other trading conditions for freight by road originating in the Port of Alicante as well as by limiting and controlling the provision of such services. The CNMC Council imposed a € 200 000 fine on ASTRACO.

Following its investigation, the CNMC established that these practices were implemented from 2003 to at least 2011 and that they were capable of appreciably affecting trade between Members States, as road transport of freight could have another EU Member State as final destination.

This case was triggered by an investigation carried out by the CNMC in case S/0314/10. During the inspections in that case, the CNMC became aware of possible anti-competitive practices carried out by ASTRACO, which allowed the CNMC to open an investigation against this association and carry out inspections.

See further: [S/0463/13](#)

• **United Kingdom: The Competition and Markets Authority accepts Commitments relating to Platform Services for Automotive Sector**

On 9 September 2014, the Competition and Markets Authority (CMA) accepted final commitments offered by Epyx Limited (Epyx) relating to service, maintenance and repair platform services.

Service, maintenance and repair (SMR) platforms are online platforms that help businesses with vehicle fleets (such as leasing companies and rental companies) to procure SMR services for these vehicles from other businesses (such as vehicle dealers, fast-fit outlets and garages). Epyx's SMR platform is known as 1link Service Network

The commitments remove, and in some other respects modify, potentially restrictive terms in Epyx's contracts for the use of 1link Service Network, offering clear opportunities for competitors to enter the market, in particular by making it easier for Epyx's current customers to switch to rivals if they choose to.

Following acceptance of the commitments, the CMA closed its investigation into whether Epyx had abused a dominant position in relation to the provision of SMR platforms in the UK, with no decision made as to whether or not the Competition Act 1998 or the TFEU had been infringed.

The final commitments came into effect on 9 September 2014 and have a duration of five years.

For more information, see [here](#).

• **Denmark: Distributor of White Goods pays Fine in Resale Price Maintenance and Prevention of Parallel Imports and passive Sales Case**

On 10 July 2014, Witt Hvidevarer, a Danish distributor of white goods, entered into a settlement with the Danish Public Prosecutor for Serious Economic and International Crime concerning infringements of Section 6 of the Danish Competition Act and Article 101 TFEU.

Witt Hvidevarer will pay a fine of DKK 1 100 000 (€ 147 500) and two managers of the company will pay fines of DKK 20 000 each (€ 2 700).

In November 2010, the Danish Competition Council had adopted a decision finding infringements consisting of resale price maintenance vis-à-vis some of the company's dealers as well as restriction of parallel imports and passive sales. The infringements took place for a period of approximately one year. The prevention of parallel imports involved contacts with companies similar to Witt Hvidevarer in other countries.

The Danish Competition and Consumer Authority informed the police of the infringements in 2011.

See further [here](#).

• **Denmark: The Competition Council finds Agreement to fix Prices and share Markets in Robotic Milking Systems Sector**

On 25 June 2014, the Danish Competition Council (DCC) adopted a decision in the market for robotic milking systems, the market for repair and maintenance, and the market for accessories and spare parts used in such systems. The case concerns the Danish companies Lely Scandinavia (franchisor), Lely Center Herrup, Lely Center Rødekro, Lely Center Tarm and Lely Center Viborg (franchisees – the Danish Lely Centers).

The DCC found that Lely Scandinavia and the Danish Lely Centers concluded an agreement to fix selling prices directly or indirectly, and to share markets by agreeing not to conclude passive sales outside the area assigned to each franchisee. The DCC decided that the companies had infringed Section 6 of the Danish Competition Act and Article 101 TFEU.

Lely Scandinavia and the franchisees frequently met and discussed products, prices and the geographical sharing of the markets. The anti-competitive behaviour may have increased prices of the products concerned and so might have increased the prices consumers paid for dairy products.

In its decision, the DCC ordered Lely Scandinavia, Lely Center Herrup, Lely Center Rødekro, Lely Center Tarm og Lely Center Viborg to stop the anti-competitive behaviour and refrain from any identical or similar behaviour. In addition, the DCC ordered Lely Scandinavia to inform its franchisees (Lely Centers) in Denmark of the decision.

In this case, the DCC benefited from valuable cooperation with the competition authorities in the Netherlands and Germany which carried out inspections its behalf.

See decision in [Danish](#).

See [English summary](#).

• France: The Autorité de la concurrence imposes Fine for abusive Refusal to sell Information Database to Pharmaceutical Laboratories

On 8 July 2014, the Autorité de la concurrence (the Autorité) fined Cegedim SA (Cegedim) € 5 700 000 for having abused its dominant position on the market for database of medical information used by pharmaceutical companies to manage their visits to doctors and pharmacies in France.

To optimise the work of their sales force, pharmaceutical companies use two tools, namely (i) databases containing medical information and contact details of doctors and (ii) customer management software that makes it possible to use this information.

Cegedim is a leader in the medical database market in which it has a dominant position, offering both databases and customer management software to laboratories. It notably produces the OneKey database, recognised as a benchmark for the sector.

Euris, a company that only produces customer management software but no databases, accused Cegedim of abusing its dominant position, as Cegedim refused to sell its OneKey database to laboratories that were using the software marketed by Euris, whereas it agreed to sell OneKey to laboratories using software developed by other competitors.

In its complaint lodged to the Autorité, Euris claimed that the OneKey database amounts to an essential facility that Cegedim, which has a dominant position on the market for database of medical information used by pharmaceutical companies for the management of their visits to doctors and pharmacies in France, must grant access to its competitors and that Cegedim had adopted a discriminatory behaviour by refusing to sell OneKey to laboratories that use Euris' software.

Cegedim's dominant position

Cegedim's share on the market for database of medical information used by pharmaceutical companies for the management of their visits to doctors and pharmacies in France was assessed by the Autorité excluding the databases developed by the laboratories themselves for their own use. On this basis, was held to be in excess of 75%. Moreover, the Autorité established that no competing database was equal to Cegedim's OneKey database in terms of breadth, quality, comprehensiveness and frequent updating. Barriers to establishing an equivalent database in the medium term by a competitor were found to be significant, in light of the notoriety, reputation and wide dissemination of the OneKey database. Finally, the possibility for laboratories to develop a home-grown database for their own consumption did not constitute a sufficient countervailing factor, because the fixed costs entailed by the development of a home-grown solution with the same features as OneKey would mean such own consumption would be less cost-effective (the breadth of Cegedim's client base drives down its unitary costs). This is particularly relevant for the segment of diversified laboratories which more than others, require, a high-quality database to support their medical sales representatives.

The absence of an essential facility

In accordance with the Autorité's precedents as well as European Court of Justice case law, in order to be qualified as an essential facility it must be demonstrated that:

- the company that has the facility is in a dominant position;
- access to that facility is indispensable to access other markets (such as downstream markets);
- the facility cannot be reproduced in economically reasonable conditions;
- access to the facility has been refused or that it has been granted under unnecessarily restrictive conditions; and
- access to the facility is (technically) possible.

In this case, the Autorité found that access to the OneKey database was not indispensable to Cegedim's competitors on the downstream market for customer management softwares. While acknowledging that OneKey was the most comprehensive and reliable database, the Autorité found that a significant portion of laboratories relied either on proprietary databases or alternative solutions, with the result that access to OneKey was not indispensable for operating on the market for customer management softwares. As a result, the Autorité held that Cegedim's OneKey database is not an essential facility.

The presence of discrimination

In this instance, the Autorité established that Cegedim maintained a continuous and unilateral refusal to grant access to OneKey specifically targeting actual or potential clients of Euris. This difference in treatment of companies otherwise placed in similar situations constitutes, in the Autorité's view, a form of discrimination and Cegedim was unable to provide any objective justification.

This discriminatory treatment resulted in Euris losing the ability to grow in the management software market. The laboratories that used its software or that were interested in using its software could not access the leading database and consequently were deterred from working with Euris. As a result, this practice had a seriously harmful effect on Euris (which lost 70% of its customers between 2008 and 2012) and restricted the laboratories in their choice of customer management software.

In setting the amount of the fine, the Autorité took into account the length of the infringement (April 2007 to April 2013), the seriousness of the infringement and the damage to the economy. It also ordered Cegedim to cease discriminating between its customers based on the software they use.

See further [here](#) (full text of the decision in French).

• **France: The Autorité de la concurrence orders Interim Measures suspending Performance of Contract on Broadcasting Rights over Rugby Matches**

In the context of a procedure initiated before the Autorité de la concurrence (the Autorité) by beIN Sports, a Qatari company active in the sector of fee-paying television channels with an emphasis on sports events, against the national rugby league (the Ligue national du rugby, LNR) and Canal Plus, the Autorité ordered on 30 July 2014 suspension of the contract between LNR and Canal Plus pertaining to broadcasting rights for rugby matches, until a decision is reached on the merits.

This decision was adopted pursuant to Article L. 464-1 of the French Commercial Code, which enables the Autorité to order provisional emergency measures when the alleged practices constitute a serious and imminent threat to the economy, the relevant sector, consumers' best interests or the party making the allegations.

The facts

In December 2013, following the breakdown of the renegotiations between LNR and Canal Plus on the valuation of broadcasting rights, LNR decided to terminate its contract with Canal Plus and to carry out a competitive tender to grant broadcasting rights to the matches of the 'Top 14' rugby tournament for the four following seasons (2014/2015 – 2017/2018). Canal Plus then commenced proceedings against LNR, including an action seeking an injunction ordering LNR to end the competitive tender. Before the Tribunal of Paris handed down a decision on this issue, LNR halted its tender on 10 January 2014 and, on 14 January 2014, granted the broadcasting rights to Canal Plus for five seasons (2014/2015 – 2018/2019). In March 2014, beIN Sports contested the manner in which LNR had granted these rights. BeIN Sports claimed that articles L. 420-1 and L. 420-2 of the French Commercial Code and Articles 101 and 102 TFEU have been infringed, on the basis that the aggressive judicial intimidation conducted by Canal Plus against LNR constitutes an abuse of a dominant position by Canal Plus, and the execution of an agreement granting 'Top 14' broadcasting rights for five seasons not only amounts to an abuse of a dominant position, but also constitutes an anticompetitive agreement between Canal Plus and LNR.

The practices at stake

At this stage of the procedure, the Autorité held that the contract and the manner in which it was negotiated and implemented may constitute an anti-competitive agreement infringing Article 101 as well as an abuse of a dominant position under Article 102 TFEU. Indeed, the Autorité established that, in light of the popularity of the rugby competition at stake, a television channel's ability to broadcast the Top 14 matches is an element that is likely to attract customers. As such, the rights over the Top 14 matches can be designated as 'premium rights' and should therefore be granted for a limited time, under transparent and non-discriminatory conditions.

The facts that LNR and Canal Plus were previously engaged in negotiations, that the competitive tender was closed prematurely before any offers could be made, that exclusive negotiations were resumed and that Canal Plus was granted all the rights for an excessively long duration (since according to the European

Commission's and most NCAs' practice the joint selling of broadcasting rights to football matches is only acceptable for a maximum duration of three seasons) point towards the existence of an anti-competitive agreement. Indeed, Canal Plus's competitors were not able to make an offer for the broadcasting rights, and will not be able to do so for five years.

The injunctions ordered by the Autorité

Given that all rights to the 'Top 14' matches were granted to Canal Plus for a period of five years, the Autorité established that there is a serious and imminent threat to the fee-paying television sector and to consumers' interests, insofar as the agreement would effectively reserve those matches exclusively to consumers able to afford the subscription to Canal Plus. The agreement would also hinder the development of beIN Sports, the only new player capable of competing in relation to fee-paying sports programmes.

As a result, and until it hands down a decision on the merits, the Autorité ordered:

- Canal Plus and LNR to suspend their agreement of 14 January 2014 (however, in order to avoid disrupting the 2014/2015 season and to protect clubs, broadcasters and viewers, this suspension will take effect at the end of the 2014/2015 season);
- LNR to conduct, without delay and at the latest by 31 January 2015, a transparent and non-discriminatory competitive tender for the allocation of the rights relating to the 2015/2016 and following seasons; and
- Canal Plus to cease communications, whether public or directed to its subscribers, pertaining to the exclusive allocation of Top 14 rights until the 2018/2019 season.

See further [here](#) (full text of the interim decision in French).

• **Germany: Providers of Specialist Mining services fined for Price Fixing and Bid Rigging Cartel**

On 28 August 2014, the Bundeskartellamt (BKartA) imposed fines totalling € 17 400 000 on five providers of specialist underground mining services on account of price fixing and bid rigging. The companies fined are BeMo Tunnelling GmbH, Deutschland (BeMo), Deilmann-Haniel GmbH (Deilmann-Haniel), Feldhaus Bergbau GmbH & Co. KG (Feldhaus), Schachtbau Nordhausen GmbH (Schachtbau) and Thyssen Schachtbau GmbH (Thyssen; the company does not belong to the ThyssenKrupp group).

The BKartA opened proceedings with an inspection carried out in April 2013 following a leniency application filed by Operta GmbH (Operta). It cooperated closely with the public prosecutor's office in Bochum since the cartel agreements involved publicly tendered services.

The BKartA established that the infringement concerned two different projects. The first one was initiated in 2007 and aimed at transforming the 'Schacht Konrad', a former iron ore mine near Salzgitter, into a final storage site for radioactive waste. For this project, the Deutsche Gesellschaft zum Bau und Betrieb von Endlagern für Abfallstoffe (DBE GmbH, Peine), a German engineering company specialised in the final disposal of radioactive waste, awarded contracts with a total value amounting to approximately € 110 000 000 for specialist underground mining services in several lots in early 2011. The BKartA found that six companies involved formed several bidding consortia to coordinate their bids: they not only divided specific lots among themselves, but also coordinated the price levels of their bids (and cover quotas).

The second issue concerned an anti-competitive agreement concluded between BeMo, Operta and Thyssen in late January 2008 at a hotel in Gladbeck in order to avoid a 'price war' for future contracts for specialist mining services to be concluded with RAG Deutsche Steinkohle AG. Participants agreed to coordinate their bids and set quotas for future contracts. As a result, between October 2010 and November 2012, the companies coordinated their bids for more than 30 projects for the Auguste Victoria, Ibbenbüren and Prosper Haniel collieries amounting to a net tender value of approximately € 80 000 000.

No fines were imposed on Operta in accordance with the BKartA's leniency programme. In calculating the level of fines, the BKartA took into consideration the cooperation of all companies within the scope of its leniency program. The settlement with the five companies fined also helped to reduce the level of the fines.

The fining decisions are not yet final and can be appealed to the Düsseldorf Higher Regional Court. The public prosecutor's office is investigating the individuals involved.

See [press release](#) (in English).

• Germany: The Bundeskartellamt imposes Fines on Sausage Manufacturers

On 15 July 2014, the Bundeskartellamt (BKartA) imposed fines totalling approximately € 338 000 000 on 21 sausage manufacturers, both individual small and medium-size companies and companies belonging to corporate groups, as well as 33 individuals involved in a price-fixing cartel.

The BKartA obtained the first indications of the cartel from an anonymous source.

The BKartA established that there was a traditional 'basic consensus' among the sausage manufacturers to regularly inform one another about requested price increases. Over several decades, well-known manufacturers regularly met within the so-called 'Atlantic Group', named after their first meeting place, the Hotel Atlantic in Hamburg, to discuss market developments and prices. In addition, and particularly since 2003, several sausage manufacturers concluded agreements in order to jointly implement price increases for the sale of sausage products to the retail trade.

Most of the agreements were concluded via telephone, either by bilateral or organised ring-round calls. Due to the heterogeneity of the products concerned (different types of sausage, different package sizes, etc.), setting specific prices for individual products was impossible. Therefore, price ranges were agreed for product groups (raw, boiled and cooked sausage and ham). As a result of the cartel, the manufacturers were able to ask for higher wholesale prices for their products.

The fines range from several hundred thousand to several million Euros. The largest proportion of the fines (approximately 85%) falls on the cartel members belonging to corporate groups. The average fine for the 15 small and medium-sized companies involved in the cartel amounts to a low one-digit million amount, accounting for on average around 2% of their annual turnover.

During the proceedings, 11 companies cooperated with the BKartA. The cooperation was taken into account as a mitigating factor when setting the fines.

The fining decisions are not yet final and can be appealed within two weeks to the Düsseldorf Higher Regional Court.

See [press release](#) (in English).

• Hungary: Decision adopted in Car Refinishing Paints Case

On 1 August 2014, the Hungarian Competition Authority (GVH) adopted a decision finding that several importers of car refinishing paints concerted their practices in an anticompetitive manner by fixing indirectly the average price of car refinishing paints used in domestic damage calculation softwares on a higher level than the actual price over a period of six years. The GVH imposed fines totalling HUF 175 900 000 (approximately € 586 300) on the seven undertakings concerned.

For most motor vehicle repair work completed under Casco or third-party liability insurance, insurance companies and repair shops use so-called 'vehicle repair estimating systems' to determine the price of repairs. These systems are developed to calculate the cost of repairing damage to motor vehicles and are acquired by the vehicle repair shops and insurance companies. Part of the cost of car repairs is the cost of refinishing. In the repair estimating systems, the average cost of refinishing is calculated based on refinishing paint importers' list prices which are given to Eurotax Glass Hungary (Eurotax) by the paint importer companies. These are then forwarded by Eurotax to an independent company which estimates the average cost of refinishing.

Following its investigation, the GVH established that refinishing paint importers set their prices in more than 90% of sales at a level 35-45% lower than the retail price lists they had given to Eurotax. This means that the list prices provided by importers to Eurotax were significantly higher than the real prices, which distorted the average cost of polishing, which in turn was the basis of calculating the cost of repair jobs. Repair shops which bought their paint from refinishing paint importers (at a lower price), but used the higher prices as calculated by the 'vehicle repair estimating systems', therefore made a higher profit.

See further [here](#).

• Italy: The Italian Competition Authority accepts Commitments in Energy Converters Case

On 2 July 2014, the Italian Competition Authority (ICA) adopted a commitment decision in relation to an alleged violation of Article 101 TFEU by Power-One Italy Spa (Power-One), an Italian undertaking selling renewable energy converters (i.e. systems to convert solar or, to a much lesser extent, wind energy into useable grid-connected power).

The case was opened in October 2013 on the basis of an anonymous complaint alleging that Power-One had adopted, as from January 2012, a system of minimum resale prices (RPM) with its Italian distributors.

In February 2014, Power-One offered commitments to the ICA, intended to remove the RPM clause in the territory of the European Union. In particular, Power-One committed to adopt, within 3 months from the ICA's decision, new agreements for its distribution networks in Italy and the rest of the EU. These agreements would: a) not include any provision concerning direct or indirect minimum resale prices, fixed resale prices or any other provision or term which might limit or influence the autonomy of the distributors/resellers to fix their resale prices freely and independently; b) not include, for 3 years from the date of the ICA's decision, any provision recommending prices, except under specific circumstances (for example the launch of a new product), and in any case clearly indicate the non-binding nature of any recommended price c) not include any rule, mechanisms or incentives (e.g. loyalty rebates or similar discount scheme) which might be interpreted as an indirect way of influencing intermediaries' pricing policies; d) expressly and unequivocally state the full and unconditional freedom of intermediaries to fix their resale prices; e) not include, for 3 years from the date of the ICA's decision, any systematic price benchmarking, exchange of information or other similar activities aimed at systematically monitoring the resale prices of Italian and European distributors and resellers.

These commitments were market tested, and the ICA considers they are appropriate and sufficient to meet its competition concerns.

The measures will be introduced in all contracts, existing or new, signed or to be signed by Power-One with its Italian and European distributors, as well as, in the case no written contract exists, in the price lists and general contractual conditions eventually applicable in Italy and in Europe to sell Power-One's products.

The commitments, with the exception of those in b) and e), will have an unlimited duration. Moreover, Power-One offered to refrain from including in the new contracts, for a 3-year period from the adoption of the ICA's decision, any provision concerning territorial and product exclusivity. After 3 years, the distribution contracts may include provisions providing for territorial and product exclusivity for active sales, but not for passive sales.

See further [here](#).

• Slovenia: The Competition Protection Agency fines Media Company PRO PLUS in Abuse Case

On 21 July 2014, the Slovenian Competition Protection Agency (CPA) imposed a fine of nearly € 5 000 000 on PRO PLUS, a leading broadcasting and internet media company in Slovenia, for having abused its dominant position. This fine was imposed in the framework of a minor offences procedure carried out by the CPA and is the highest ever imposed for breaking competition rules in Slovenia.

The formal antitrust proceedings were initiated ex officio on 10 August 2011, based on two complaints from competitors on the market. Subsequently, the CPA conducted an inspection at the premises of PRO PLUS. On 24 April 2013, the CPA issued a decision finding that PRO PLUS had abused its dominant position on the market for television advertising air time on the territory of the Republic of Slovenia as well as on the Internal Market by concluding exclusive dealing arrangements with advertisers and granting conditional rebates with loyalty-inducing effects and in particular by (i) requiring individual advertisers to devote their entire advertising budget exclusively to PRO PLUS; and (ii) granting a high level of discount as a reward for exclusivity, thereby excluding competitors from the advertising market or preventing them from accessing the market and preventing their development.

The CPA concluded in its decision that these behaviours infringed Article 9 of the Prevention of Restriction of Competition Act (ZPOmK-1) as well as Article 102 TFEU.

Following the appeal by PRO PLUS, the Supreme Court upheld the decision in December 2013. The CPA then conducted a separate minor offences procedure which led to the imposition of the above fine.

When setting the fine, the CPA considered the gravity and particularly long duration of the infringement; PRO PLUS's abuse of its dominant position lasted more than ten years. The CPA also considered the fact that PRO PLUS had never before been sanctioned for a breach of competition law as a mitigating circumstance.

See further [here](#) (decision in Slovenian).

Press release in [EN](#).

Press release in [SI](#).

• Spain: The Comisión Nacional de los Mercados y la Competencia imposes Fine in Purebred Horses Morphological Competition Sector

On 9 September 2014, the Comisión Nacional de los Mercados y la Competencia (CNMC) Council adopted a decision finding that the ANCCE (Asociación Nacional de Criadores de Caballos de Pura Raza Española, National Association of Purebred Spanish Horse Breeders of Spain) abused its dominant position in the management of the public genealogic record of Purebred Spanish Horses (the breed Stud Book) and the regulation of the morphological competitions. The abuse consisted of: (i) modifying the requirements established by the rules on morphological competitions of Purebred Spanish Horses to act as technical secretariat providing the necessary technical services for the organisation of such competitions; (ii) requiring technical secretariats of morphological competitions held in 2013 to publish on ANCCE's web page almost in real time the outcome of the competitions; and (iii) requiring the organizing committees of morphological competitions held in 2013 to make available to ANCCE all graphic material and publishing rights.

The case follows a complaint lodged by MELPI S.L. (MELPI), a Spanish company established in Spain, Europe and America, which is active in the development of management software for livestock. It develops computer, commercial and promotion products and services linked to Purebred Spanish Horses, and, among others, provides technical secretariat services for morphological competitions, as well as several web pages through which it is possible to follow competitions live and check their outcomes. ANCCE represents the breeders and owners and is officially recognized (since January 2007) as the administrator of the breed Stud Book of Purebred Spanish Horses, and has within its remit the organization and management of morphological competitions and the drafting of their technical regulations. ANCCE is also active in the Purebred Spanish Horses promotion market, sells a livestock management program and manages three web pages (www.ancce.es, www.sicab.org and www.sicab.tv) where information and images of morphological competitions are available.

The CNMC Council found that ANCCE committed a serious infringement of Articles 2 LDC and 102 TFEU from at least January 2011 to March 2013. It took into account that ANCCE enjoys a dominant position for managing and regulating the morphological competitions, where it is the only provider; and that ANCCE is also active in the related markets of providing technical secretariat services and developing ad hoc computer tools used to provide the technical secretariat services. The CNMC Council considered that ANCCE's behaviour has had direct effects, related mainly to the exclusion of MELPI from the technical secretariats' market for two years, and also indirect effects on other competitors, increasing barriers to enter the related market of Purebred Spanish Horses promotion. The CNMC Council imposed a fine of € 152 833 on ANCCE.

For further information: [S/0345/11](#)

• Sweden: The Competition Authority initiates Fines Proceedings against Companies in Removal Services Market

On 14 July 2014, the Swedish Competition Authority (SCA) filed proceedings before the Stockholm City Court against NFB Transport Systems AB (NFB), ICM Kungsholms AB (ICM) and Alfa Quality Moving AB (Alfa). The SCA requested the imposition of a fine totalling approximately SEK 42 000 000 (approximately € 4 566 000) for the companies' infringement of Chapter 2 Article 1 of the Swedish Competition Act and Article 101 TFEU.

In 2006, NFB, ICM, and Alfa were three of the four leading national players on the Swedish removal services market. The companies offered both domestic and international (cross-border) removals. At the end of 2006, Alfa acquired NFB's international operations. The transfer agreement contained a non-compete clause which prevented NFB from competing with Alfa in the international removals market for a period of five years. In 2010-2011, NFB acquired ICM, and NFB's owners transferred ICM's international operations to Alfa. This transfer agreement contained a non-compete clause which prevented ICM from competing with Alfa in the international removals market for a period of five years.

The transactions were not subject to notification to competition authorities as they fall below the relevant thresholds and so were not examined by the SCA. Following a complaint the SCA started proceedings. The investigation showed that the non-compete clauses were not directly related or necessary to the implementation of the concentrations, as the duration of the non-compete clauses exceeded what was reasonably necessary. The clauses have been assessed under Chapter 2 Article 1 of the Swedish Competition Act and Article 101 TFEU. NFB and ICM on the one hand and Alfa on the other hand were found to have infringed the prohibition against anti-competitive cooperation which led to a greatly limited supply in the market for cross-border removal services.

See further the [summons application](#) (in Swedish).

COURTS

• Finland: Market Court imposes Fine in Case of Abuse of Dominant Position in Fresh Milk Market

On 26 June 2014, the Market Court imposed on Valio Oy (Valio) a € 70 000 000 fine for abuse of dominant position in the production and wholesale market for fresh milk. In doing so, the Market Court followed the proposal of the Finnish Competition and Consumer Authority (FCCA) and rejected Valio's appeal. The FCCA considers this decision highly important for safeguarding effective competition. The decision is a landmark in evaluating abuse of dominance in Finland.

'The FCCA is satisfied with the Market Court decision. It sends a strong signal that abuse of dominance and other conduct contrary to the Competition Act will not be tolerated. It is in the interests of consumers to preserve the competitive structure of the market. The decision also demonstrates that the competition authority and the Court are capable of evaluating broad and complicated competition issues,' says Juhani Jokinen, Director General of the FCCA.

In a decision issued at the end of 2012, the FCCA ordered Valio to cease its abusive conduct and proposed to the Market Court that a fine be imposed for a breach of the Competition Act as well as Article 102 TFEU. The FCCA intervened in Valio's conduct because the predatory pricing, if sustained, would have led to Valio gaining a position close to a monopoly on the fresh milk market, which would have caused an increase in prices (see also article in [ECN 1/2013](#)). The decision of the Market court has been appealed and the case is pending before the Supreme Administrative Court.

See further Market Court press release (in [Finnish](#)) and FCCA press release on proposing fines (in [English](#)).

• The Netherlands: Fines on Flour Cartel largely upheld by Rotterdam Court

In 2012, the Netherlands Authority for Consumers & Markets (ACM, formerly the NMa) fined 14 (Dutch, German and Belgian) milling companies for taking part in a cartel infringement (See [ECN brief 2/2012](#)). Eleven companies appealed the decision and on 17 July 2014, the Court of Rotterdam (first instance; the Court) confirmed the ACM's findings concerning five companies. However, the Court found that there was insufficient evidence that six, mainly German, companies had infringed the cartel prohibition.

In 2012, the ACM imposed fines amounting to approximately € 62 000 000 for the participation by eight companies in a single continuous infringement consisting of 1) a non-aggression pact, 2) the joint buy-out of a competitor, 3) the joint purchase of a competitor, and 4) the dismantling of a potential competitor, namely a mill producer. Five (German) companies were also fined for a separate, single infringement, namely the dismantling of the potential competing milling company.

The parties mainly contested the fact that the four practices taken together could constitute a single continuous infringement. The Court confirmed the ACM's assessment of the facts. With regard to the dismantling of the potential competitor, the Court held that the practice could constitute part of a single continuous infringement for certain parties, while at the same time being a single infringement for others.

In accordance with European case-law, the Court found that evidence in cartel cases is usually only fragmentary and sparse, so that it is often necessary to reconstitute certain details by deduction. Accordingly, in most cases, the existence of an anti-competitive practice or agreement must be inferred from a number of coincidences and indicia which, taken together, may, in the absence of another plausible explanation, constitute evidence of an infringement of the competition rules. The Court also found that if the findings of an infringement are primarily based on statements of leniency applicants which are disputed, the statements cannot be regarded as adequate proof unless supported by other evidence.

Applying this standard of proof, the Court ruled that in relation to two parties, the ACM had insufficient evidence and thus could not prove that those two undertakings had participated in the single continuous infringement. With regard to four other undertakings, the Court reached a similar conclusion for the single infringement, namely insufficient evidence that they had contributed to the dismantling of the potential competitor.

In this case, the ACM received four applications for leniency. The Court found that the first applicant should have been granted full immunity instead of a reduction of the fine. The Court reasoned that the leniency application had been submitted prior to the decision to start the investigation into the cartel and that a proposal to investigate by an ACM employee does not qualify as the start of an investigation within the meaning of the Leniency Guidelines. In the view of the Court, only a written note by the Board of the ACM on the suspected infringement would mark the start of the investigation within the meaning of the Guidelines.

The parties can appeal the ruling of the Court to the Trade and Industry Appeals Tribunal. (references ECLI:NL:RBROT:2014:5830, ECLI:NL:RBROT:2014:5884, ECLI:NL:RBROT:2014:5849, ECLI:NL:RBROT:2014:5822).

•Romania: The Romanian Courts uphold Authority's Decision on Bid Rigging in Gas Sector

In a ruling of June 2014, the Supreme Court of Justice and Cassation (SCJC) confirmed a 2012 decision of the Romanian Competition Council which found that S.C. Moldocor S.A. (Moldocor) had rigged bids in order to take part into a gas transport pipeline tender procedure. The Supreme Court's decision is final.

In 2012, the Romanian Competition Council (RCC) found that Moldocor and S.C T.M.U.C.B. S.A. infringed Article 5 (1) f) of Competition Law no. 21/1996 and Article 101 TFEU by taking part with rigged bids in the 'Giurgiu Ruse 20' gas transport pipeline tender procedure and fined them a total of over € 3 000 000. (See [ECN Brief 5/2012](#)).

The undertakings concerned appealed the RCC's decision to the Bucharest Court of Appeal (BCA), Contentious and Fiscal Section. The BCA upheld the decision of the RCC against S.C. T.M.U.C.B. S.A. as well as against Moldocor. The latter further challenged the BCA's decision to the Supreme Court of Justice and Cassation (SCJC), which rejected the appeal as unfounded.

See further: [Decision](#) (in Romanian).

See further: [Ruling](#) of Supreme Court.

LEGISLATION & POLICY

• Croatia: Practical Guide on Compliance Programme published

In order to help companies avoid infringing competition rules, the Competition Agency (CCA) has published the “Practical Guide to Compliance Programme for Entrepreneurs” on its website on 8 July 2014. This guide is inspired by the policy of the European Commission as well as of other national competition authorities.

In Croatia, competition infringements often appear due to a lack of awareness of competition regulations on the part of managers and employees. Most large enterprises seem to have implemented some form of programme for the purpose of compliance of their procedures with competition rules. In small and medium-sized enterprises (SMEs), however, this approach usually does not exist due to lack of financial and human resources.

In order to help all undertakings, especially SMEs, to respect the competition rules, the CCA has prepared a practical guide which contains simple instructions which can be adapted for each company depending on its activities and the markets in which it operates.

The guide has five parts:

- Basic principles of competition
- Prevention
- Risk identification
- Risk management
- Recommendations

It explains several forms of hard core restrictions of competition in detail, horizontal agreements, vertical agreements, and abuse of a dominant position, as well as their practical impact. The guide also identifies and ranks the infringement risks, offers guidelines for identifying potential risk situations, and provides tools to manage risks or to reduce them to a minimum. Finally, it provides a short list of recommendations and competition rules along with a link to a European Commission webpage on compliance.

To make the information about the programme available to a greater number of users, the Agency published the guide on its website (www.aztn.hr), and in the special edition of its regular monthly newsletter, CCA info.

See further [here](#) (in Croatian).

• Germany: Results of the Inquiry on Buyer Power into Food Retail Sector

On 24 September 2014, the Bundeskartellamt (BKartA) presented the final results of its inquiry concerning buyer power in the food retail sector. Interested parties have been invited to submit written comments on the report by 31 December 2014.

The sector inquiry focuses on the competition conditions between the food retailers and suppliers. In the course of the three year inquiry, the BKartA examined the respective market structures in Germany with a particular focus on the negotiations between food retailers and brand manufacturers. The BKartA collected and evaluated the data provided by more than 200 manufacturers and 21 retail companies, and conducted an econometric analysis of approximately 3 000 negotiations on the basis of a representative sample of 250 branded products from different product categories. Overall, the BKartA processed approximately 65 000 data sets including a large amount of individual data.

The results of the inquiry indicate that according to important supraregional structural factors (turnover, total sales floor space, outlet density, customer reach, distribution channel concepts etc.) a group made up of the companies Edeka, Rewe and the Schwarz Group constitutes the group of leading food retailers in Germany. This group of leading food retailers also accounts for the largest share of total demand across

all the procurement markets in the sector (private labels and branded products). Those large German retail companies are benefitting from structural advantages in comparison to their smaller competitors that increase their buying power vis-à-vis brand manufacturers.

Furthermore the sector inquiry showed that the market situation on the food retail market in Germany requires a strict monitoring since further deterioration is to be expected in the future. On the other market side, the BKartA also observed a concentration of the manufacturers.

The BKartA started the sector inquiry in September 2011 since it suspected competition problems in the sector and had received numerous complaints in this respect. The issue of buyer power in the food sector has already been at stake in several merger and antitrust proceedings in Germany, i.e.: the Edeka/Trinkgut merger, the planned purchasing cooperation between Rewe and Wasgau and, most recently, an abuse of dominance by Edeka, which consisted of inducing suppliers to grant benefits without any objective justification.

See [press release](#) (in English).

See Summary of the report (in English).

See [full report](#) (only available in German).

• **Ireland: New Competition and Consumer Protection Commission to be established on 31 October 2014**

Ireland's new Competition and Consumer Protection Commission is to be established on 31 October 2014. It is being created by the merger of the Competition Authority and the National Consumer Agency, under the Competition and Consumer Protection Act signed into law on 28 July 2014 by the Irish President (See [ECN Brief 2/2014](#)).

The new Commission will have a dual mandate with robust powers in the enforcement of both competition and consumer law. It will also regulate certain practices in the grocery goods sector aimed at ensuring balance and fairness between the various players in the sector – suppliers, retailers and consumers. The Act empowers the Minister for Jobs, Enterprise and Innovation to make such regulations and they are expected to be introduced after 31 October.

The Competition and Consumer Protection Commission will initially be composed of five full time members:

- Isolde Goggin (Chair) - currently Chairperson of the Competition Authority
- Stephen Calkins – currently a Member of the Competition Authority
- Gerald FitzGerald – currently a Member of the Competition Authority
- Patrick Kenny – currently a Member of the Competition Authority
- Karen O'Leary – currently CEO of the National Consumer Agency

The full text of the Act and explanatory documents are available [here](#).

• **The Netherlands: Harmonisation of Procedural Rules of Netherlands Authority for Consumers and Markets**

On 1 August 2014, the Dutch Streamlining Act (the new Act) came into force. The new Act streamlines and simplifies many of the powers, enforcement tools and procedures set out in the laws enforced by the Netherlands Authority for Consumers and Markets (ACM), thereby creating a clear and uniform set of rules.

The ACM was established on 1 April 2013, when the Netherlands Competition Authority (NMa), the Netherlands Independent Post and Telecommunication Authority (OPTA), and the Netherlands Consumer Authority joined forces. These three authorities each enforced different laws, using different administrative procedures. The new Act amends the Establishment Act of the ACM, as well as the laws that the ACM enforces.

The new Act establishes the Dutch General Administrative Law Act ('Algemene wet bestuursrecht') as the basis for the ACM's enforcement methods. With regard to sanction setting under the Dutch Competition Act, the ACM is no longer statutorily required to consult an independent advisory committee on

administrative appeals when the fining decision is appealed. The rules on payment of fines under the different laws enforced by the ACM have been harmonized to provide for payment within six weeks of a fining decision.

The power to inspect private residences, which already existed in competition law, is now extended to the consumer and regulatory enforcement areas. Furthermore, information that becomes available to the ACM on the basis of the powers set out in one law may now be used for another legal procedure, where necessary.

The Streamlining Act also contains detailed rules on the publication of the ACM's decisions and confidentiality of information. Publication of decisions regarding a serious breach of the law is now mandatory. Information coming from companies will automatically be treated as confidential (with some limited exceptions). Such information cannot be made available as a result of a request under the national freedom of information legislation. Information about the ACM itself, such as internal documents and expense claims, continue to fall under the Dutch Act on Public Access to Government Information.

With regard to concentrations, the global turnover threshold above which the ACM has jurisdiction over mergers has been raised to € 150 000 000, an adjustment in line with inflation.

New [fining guidelines](#) were also issued by the Dutch Minister for Economic Affairs.

The Streamlining Act is essential for the functioning of the ACM as an authority. It allows the ACM to work more effectively and efficiently, which was an important aim of the merger between the competition authority, consumer authority and sector-specific regulator.

See further [here](#).

• **Sweden: Marker System introduced in Swedish Competition Act**

On 1 August 2014, amendments to the Swedish Competition Act (2008:579) entered into force, which introduce new provisions on a marker system in the Swedish leniency programme. At the same time, some provisions on stopping the clock in merger reviews were introduced.

The introduction of a marker system is inspired by the ECN Model Leniency Programme and is used as a means for immunity applicants to reserve their place in the queue for a limited period of time whilst they gather sufficient information to fulfil the requirements of the leniency programme.

According to the newly introduced marker system, undertakings seeking to apply for immunity have the possibility to - at the first stage - provide a limited amount of information and apply for a 'marker'. This marker system means that the applicant's place in the queue for immunity is protected for a limited period of time. During this period, the undertaking is allowed to gather all the information and evidence required to qualify for immunity without the risk of another undertaking doing so first.

In order to secure a marker, the undertaking must provide the Competition Authority with information on the affected products, the undertakings involved and the nature of the alleged anti-competitive conduct. If the undertaking is able to submit sufficient information to qualify for immunity within the decided time period, the application will be considered submitted on the date when the marker was granted.

A marker system is intended to facilitate undertakings' withdrawal from collusive practices, and it is hoped that the new provisions will increase incentives for cartel participants to report their behaviour. Furthermore, by giving undertakings more time to collect evidence and complete their application, higher quality applications can be expected, thus facilitating the Swedish Competition Authority's continued investigation. The introduction of a marker system is yet another important step in the fight against cartels.

• European Commission: Results of Modern Retail Study in EU Food Sector published

On 2 October 2014, the European Commission (the Commission) published the results of its 'modern retail study' on choice and innovation in the EU food sector. The Commission invites comments and opinions on both the findings as well as possible follow-up issues, from those interested in the study. Written comments should be submitted before 30 January 2015.

The Commission launched the study at the end of 2012 after having received complaints from operators in the food supply chain (mainly from food manufacturers complaining that the conditions imposed by large modern retailers would impede investments in the sector and ultimately lead to a reduction in choice and innovation) and calls from the European Parliament to investigate whether competition is working in the European food supply chain.

The study assesses the evolution of choice and innovation in 23 product categories, on the shelves of 350 shops in 9 Member States over the period 2004-2012. The study investigates a wide range of potential drivers of choice and innovation (concentration-related factors, socio-economic environment, shop characteristics, etc.) and identifies the most likely drivers through an econometric analysis. The study further analyses some fresh and agricultural products in a more qualitative way through case studies.

The results indicate that choice - in particular the number of products and the number of brand suppliers present on the shop shelves - has increased continuously over the last decade, although it slowed down after the crisis. Innovation increased until 2008 and decreased afterwards; the share of packaging innovation increased. Econometric analysis indicates that these evolutions are mainly related to the evolution of the economic climate in the EU during the last years. In addition, competition dynamics at local level would play an important role since new shop openings are associated with more choice and innovation on the shelves of competing retailers in the local area concerned.

The econometric analysis also found a positive correlation between increases in retail concentration (relatively to supplier concentration) and innovation. Put otherwise, an increase of imbalances in concentration in favour of retailers does not appear to be detrimental for innovation. It has to be stressed however that these results are only valid for moderately concentrated retail markets as comprehensive data at local level was not available for markets with few highly concentrated modern retail in the EU. More investigation would be required regarding other markets. Furthermore, according to the econometric results, choice and innovation appear to be independent of private label penetration until a certain level beyond which an increase of the private label share in the retailer's assortment is associated with less choice and innovation. These findings which are valid even for markets with moderately concentrated modern retail call upon competition authorities to investigate further potential effects of private labels.

See [press release](#) (in English).

See [full report](#) (in English).

See [case studies report](#) (in English).

• Austria: The Competition Authority publishes Guidance on Vertical Price Agreements

During the course of investigations carried out over the last few years, the Federal Competition Authority (BWB) became aware of anti-competitive agreements between suppliers and retailers, especially agreements or concerted practices concerning retail prices (vertical price maintenance).

On 31 July 2014, the BWB published a document called 'Perspective on vertical price agreements' (Standpunkt) which intends to inform and make it easier - especially for small and medium-sized enterprises - to recognize infringing behaviours. The guidance is not binding.

The BWB finalized the guidance after receiving numerous comments on the draft document (See [ECN Brief 3/2013](#)) from interest groups, consumer protection organisations, businesses and other interested parties.

The guidance deals with vertical price agreements, especially resale price maintenance and clarifies which types of cases the BWB could see as potentially problematic. Furthermore, it addresses some questions and topics that may concern every sector:

- Why are vertical price agreements problematic according to European and Austrian competition rules?
- Which legal provisions apply?
- When do potentially problematic agreements or certain behaviours typically occur?
- Vertical price maintenance is a restriction of competition by object.
- What are the characteristics of a non-binding price recommendation?
- Unilateral measures that may infringe competition rules.
- Which kinds of behaviour are in principle impermissible/permissible?
- What should a company do if violations occur?
- Special topics and examples.

The main aim is to give (non-exhaustive) guidance to suppliers and retailers (at all trade levels), and to small and medium-sized businesses in particular. The guidance explains both clearly problematic behaviour and generally non-problematic behaviour (for example non-binding price recommendations).

In conclusion, selected examples illustrate the subject to provide additional assistance to companies.

See further [here](#) (in German) and [here](#) (in English).

• **Austria: The Competition Authority carries out Market Analysis of Mobile Telecom Sector**

In August 2014 the Federal Competition Authority (BWB) launched a market analysis of the Austrian mobile telecom sector in view of quantifying price increases which have been taking place for customers and understanding their causes. The investigation is being carried out in close collaboration with the Austrian telecoms regulator, the Austrian cartel prosecutor and labour and consumer associations.

In 2012, the European Commission approved the acquisition of Orange Austria by Hutchinson 3G Austria (COMP/M.6497) subject to remedies. The remedies accepted for the four-to-three concentration were aiming at lowering market entry barriers for potential mobile network operators (MNOs) and virtual providers (MVNOs). Additionally, a smaller accompanying merger regarding the acquisition of Yesss! (a no-frills brand of Orange) by the former monopolist was cleared by the Austrian cartel court without remedies.

At the time, the BWB was concerned that the mergers would impede competition and the submitted remedies would not suffice to address the competition concerns. Indeed, a market entry did not materialize, and Austria's remaining MNOs continuously increased prices for new and pre-existing customers. MNOs also claimed that they had to adjust prices to compensate for rising costs (e.g. LTE investments) and declining revenues (e.g. roaming).

• **Bulgaria: The Commission for the Protection of Competition recommends Wider Representation of Interested parties in Adoption Procedure of Regulatory Acts in Healthcare Sector**

On 23 July 2014, the Commission on Protection of Competition (CPC) adopted an advocacy opinion stating that the legal framework regulating the decision-making process in the compulsory health insurance sector should be clarified, and that all entities that may be affected by regulatory acts setting conditions, volumes and prices of the reimbursed medical services should be represented in the process of formulating and adopting these acts.

In Bulgaria, the professional associations of physicians, dentists and pharmacists are empowered by law to take part in the formulation and adoption of regulatory acts relating to compulsory health insurance that set conditions, volumes and prices for medical services. The provisions of such regulatory acts are compulsory for medical care providers and pharmacies that have a contract with the National Health Insurance Fund (NHIF). However, these professional associations do not represent hospitals and ambulatory medical care practices. The professional association of pharmacists does not represent pharmacy owners who do not hold a Master's degree in pharmacy. In addition, Insured individuals are also not adequately represented in the process of adoption of regulatory acts, even though they are a main source of financing for the Health Insurance Fund, and are consumers of the healthcare services.

The above professional associations cannot be considered as competent state authorities when they take part in the adoption of regulatory acts which create rights and obligations for entities (e.g. hospitals) that are not represented in the process of formulation and adoption. If the professional associations were not to take part in the process, the conditions, volumes and prices of the compulsory health insurance would be defined unilaterally by the NHIF, which would be contrary to the principle of independence of the NHIF's budget from the state budget.

The CPC is of the opinion that in view of the chosen model of compulsory health insurance, all interested parties (patients, hospitals, etc.) should be represented in the process of formulation and adoption of regulatory acts, which set conditions, volumes and prices for reimbursed medical services.

Opinions of the CPC are not binding; it is up to the competent authority to decide whether to follow the opinion or not.

See the [Decision](#) (in Bulgarian).

• **Bulgaria: The Commission for the Protection of Competition proposes Adoption of new Legislation on Translator Services**

On 16 July 2014, the Commission on Protection of Competition (CPC) adopted an opinion (Decision 964/2014) finding the current regulatory framework for certified translations (in particular Article 2.a. of the Rules for legalization, certification and translation of documents and other papers - the Rules) is obsolete and inadequate, that those Rules do not have any legal basis and that they restrict competition and access to the market by freelance translators.

The Rules do not regulate contractual procedures with translators and do not provide for the possibility to appeal refusals to grant contracts or unilateral termination of contracts by the Ministry of Foreign Affairs. Moreover, the legislation lacks a definition of the terms 'certified translation' and 'certified translator'. According to the CPC, such factors affect the legal certainty of the players on the sub-market of translations of official documents and other papers, restrict competition between economic operators as well as the choice of translation services, and lead to price increases to the detriment of consumers.

The CPC considers that the conditions for entry on the market of certified translation services, introduced by the standard contract approved by the Order of the Minister of Foreign Affairs pursuant to Article 2.a. of the Rules, limit the ability of translation service providers to organize their own production process. With respect to the restrictive conditions in question, the CPC is of the opinion that it is the market that should determine the competitiveness of translation service providers and, in particular, whether they should have an office with the relevant equipment and whether at least two translators on a permanent contract are needed or a network of translators could be used (the translators would be selected on the basis of the requirements of the particular contract).

On the basis of the above, the CPC recommends to the competent state authorities, including those with power of legislative initiative, to amend or repeal Article 2.a. of the Rules and related acts, and to establish a comprehensive legal framework for translation services in the country governed by the principles of competition law.

See the [Decision](#) (in Bulgarian).

• **Bulgaria: The Commission for the Protection of Competition recommends amending Legislation on Procedure for Awarding Contracts for Activities in Forest Territories**

On 18 June 2014, the Commission for the Protection of Competition (CPC) adopted an opinion (Decision N°786/2014) regarding the provisions of the Ordinance on the conditions and procedure for awarding contracts for activities in the forest territories – state and municipality owned properties – and for using timber and non-timber forest products (the Ordinance). These activities are exhaustively listed in the Ordinance and include: felling of trees and transportation of timber, collection of seeds, growing of forest plants, forestation, prevention of forest fires and soil erosion, etc.

The opinion was requested by the Deputy Prime Minister for Economic Development of Bulgaria, as it appears that the current legal framework and the non-market-based methodology for determining timber sale prices hamper the supply of timber for the production of cellulose and keep prices of timber very high.

The CPC analysed the provisions of the Ordinance and the respective rules of the Forestry Act.

The CPC is of the opinion that the Ordinance contains a provision which may restrict competition. According to this provision, the initial value of the subject of the tender is to be determined on the basis of the average value of signed contracts for the relevant activity for the preceding 12 months. The CPC recommends this provision be repealed: this methodology for determining the price does not reflect market conditions and may facilitate bid-rigging, as it enables the undertakings to evaluate the initial price long before the beginning of the procedure.

In addition, the CPC also discusses the appropriateness of regulating the conditions and the procedure for awarding contracts for activities in the (state and municipality-owned) forest territories by an ordinance which is an act of secondary law according to the Bulgarian legislative framework. According to the CPC, the existence of a clear and stable legal framework regarding the award of activities in forest territories is crucially important for the development of competitive markets in favour of consumers. It is therefore of the opinion that it would be appropriate to consider adopting an act of primary legislation. This is reinforced by the fact that, as an act of secondary law, the Ordinance does not contain provisions regarding administrative liability for non-compliance with the rules.

See the Decision in [Bulgarian](#).

• **Estonia: Technical Surveillance Authority becomes competent for regulating and supervising Electronic Communications**

On 1 July 2014, amendments to the Electronic Communications Act entered into force, modifying the provisions concerning the organisation and supervision of electronic communications at the national level. The tasks, rights and obligations of the electronic communications' market regulator, which previously had been divided between the Estonian Competition Authority and the Technical Surveillance Authority, were brought under the competence of the latter. The amendments were designed to ensure optimal organisation of this market.

The Competition Authority remains responsible for competition supervision in the markets of electronic communications while the Technical Surveillance Authority supervises only sector-specific issues. So, now the functions provided for in the sector specific legislation related to costs and tariffs, universal service, network access and interconnection of electronic communications are performed by the Technical Surveillance Authority.

The Estonian Competition Authority was responsible for regulating electronic communications since 1 January 2008.

• **Finland: Report of the Competition and Consumers Authority finds numerous problems in Copyright Sector**

On 30 June 2014, the Finnish Competition and Consumer Authority (FCCA) published a report on collective management organisations (CMOs) and the functioning of the copyrighted works sector. According to the FCCA, the ambiguity of the current legislation and the complexity of the sector serve to strengthen the monopoly of the CMOs on the markets concerned.

As part of the Government's programme to promote healthy competition (see [ECN Brief 5/2012](#)), the FCCA investigated the impact of copyright legislation and the functioning of CMOs on the markets using copyright-protected music and audio-visual content. The report discusses the relationship between four CMOs – Teosto, Gramex, Kopiosto and Tuotos – and the users of copyright-protected works, such as TV and radio companies, companies in the tourism, hotel and restaurant sectors and telecommunications operators.

The complexity of copyright legislation, the agreements and practices of CMOs and the obscurity of

When assessing multi-channel distribution of copyright-protected works from the consumer's point of view, the market is essentially a content market, not a technology market or a distribution channel market. Hence, it is the FCCA's view that the application of such pricing practices by CMOs that treat competing technologies or distribution channels in a different manner without objective justification are detrimental to the development of the sector.

It is also essential to ensure that the private copying levy system does not cause market disruptions in the consumer retail trade or prevent or obstruct the introduction of more advanced recording devices. Overall, clarity and easy availability of CMOs pricing principles could lower the threshold of entry to the market for new, innovative services.

See further FCCA report (in [Finnish](#)).

• Hungary: Changes to Competition Rules enter into Force

The amendments to Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices Act (the Hungarian Competition Act: the Act), which entered into force on 1 July 2014, made several procedural modifications to the Hungarian competition legal framework. The aim was to make the GVH's proceedings (Gazdasági Versenyhivatal (GVH) - Hungarian Competition Authority) clearer, more transparent and enable the authority to carry out its tasks more efficiently.

These changes, resulting from expertise gained over the last couple of years of competition enforcement, are inspired by both current European Union and Member States legal practices and take into account economic changes since the Act was last modified.

Changes concerning cartel proceedings involve some modifications to the GVH's leniency policy in the light of the revised ECN Model Leniency Programme and with a view to the Proposal for an EU directive on EU cartel damage actions. Pursuant to the new Hungarian rules on access to file, both leniency statements and settlement submissions are confidential documents which are not accessible unless it is necessary to ensure the rights of defence of another undertaking under investigation. Even in the case of access to such documents, they can only be used for the purpose of exercising rights of defence. Access to documents in the file is subject to strict and effective judicial control which takes into account its scope, necessity and proportionality. During the administrative procedure, business secrets and confidentiality protections are to be respected.

Procedural changes were made in the area of merger control; the deadline for simple (first phase) merger cases has been reduced from 45 to 30 days. Another significant change is that a merger cannot be implemented until approved by the GVH. In the GVH's opinion, these modifications reduce the administrative burden on market players without substantially increasing the risk of restrictive mergers being approved, and provide effective tools against undertakings that infringe merger legislation. Rules regarding access to file and data management have also been changed significantly in order to enable the GVH to conduct its investigations more effectively, while continuing to comply with data management and data protection standards.

The amendments also aim at highlighting that the development of competition advocacy and competition culture is a key task for the GVH. Indeed, by creating a competition-friendly legal environment, and increasing respect for and compliance with competition law through greater consumer awareness, the GVH can effectively contribute to improving the degree of competition in the market and, thus, to economic growth, employment and living standards, and overall, to social welfare.

Finally, in order to increase transparency in the area of consumer protection, the provisions of the Act on Business Advertising Activity regarding the prohibition of misleading and unlawfully comparative advertising have been incorporated into the Competition Act.

See further [here](#):

• Latvia: The Competition Council carries out Survey on Competition Concerns of Entrepreneurs in Latvia

Following a survey carried out in April and May 2014, the Competition Council (CC) concluded on 19 June 2014 that entrepreneurs in Latvia are rather passive in contributing to the assessment of problems related to competition in their sectors. Those approximately 50 entrepreneurs who did indeed provide an insight into their sectors helped the CC to identify a number of competition concerns on which the CC has already focused in the meantime or plans to address in near future.

The CC intended to assess the state of competition in sectors such as pharmaceuticals, construction material manufacturing, education, transport, postal services, IT, waste management, public procurement, media, as well as the issue of involvement of municipalities in business.

53% of the respondents claim to have faced competition restrictions by suppliers, with the most common restriction being refusal to supply. In some cases there were indications of concerted practices and signs of possible resale price maintenance.

45% of the respondents admitted that competitors have tried to hinder their business activity by choosing a pricing policy that reduced their prices close to or below cost, a strategy which entrepreneurs see as a sign of demonstrating inherent economic strength by large or dominant market participants. Therefore, entrepreneurs appeal to the CC to restrict the market power of dominant undertakings and to prevent targeted price dumping. This tendency is characteristic in public procurement, media, transport and security services.

41% indicated that actions or decisions by the state or local governments in Latvia may significantly restrict competition. For example, rules on public procurement which protect the interest of specific market participants, large business regulation in the pharmaceutical sector and the involvement of local governments in the media sector, impeding the development of the private sector, were mentioned.

Lastly, entrepreneurs pointed out instances of other violations of rules such as tax administration and smuggling. These issues are undeniably a threat to fair competition; however, they cannot be solved by competition law tools.

The CC plans to conduct similar surveys once a year to investigate the situation within local markets.

The survey was conducted in collaboration with the Confederation of Latvian Employers. The aim was to gather information on competition restrictions which hinder business activities. All data collected will be used in the CC's efforts to prevent violations of the Competition Law.

Link to the [press release](#) (in Latvian).

• Lithuania: The Competition Council approves Parliament's Decision to reject Amendments to Competition Law

On 18 September 2014, the Parliament of the Republic of Lithuania (the Parliament) rejected the amendments to the Law on Competition that proposed setting a fixed maximum fine of LTL 150 000 (€43 378) for the implementation of non-notified mergers that do not significantly restrict competition on the relevant market. Most of the Parliament members noted that the existing regulation, allowing fines of up to 10% of companies' annual turnover to be imposed depending on the gravity of infringement, is a significant preventive tool and that the Competition Council should not be deprived of it by having to reduce the fine to a maximum of LTL 150 000.

On 15 July 2014, the Parliament proposed amendments to the Law on Competition according to which the maximum fine for implementing a non-notified merger should not exceed LTL 150 000, provided that the merger did not significantly restrict competition within the relevant market.

On 29 July, the President of the Republic of Lithuania vetoed the amendments and returned the bill for reconsideration, emphasizing that the amendments would create the possibility for large companies to escape fines that would adequately sanction the infringements.

On 18 September, 79 out of 99 members of the Parliament supported the President's veto and rejected the amendments.

The Competition Council welcomes this decision, since the implementation of a non-notified merger is not just a procedural infringement. 'Failure to notify a merger is one of the most serious infringements of competition law. Such an infringement may have a strong negative effect on consumers as well as market participants. A merger has to be notified prior to its implementation' – reminds Šarūnas Keserauskas, Chairman of the Competition Council.

• **The Netherlands: The Authority for Consumers and Markets makes Recommendations for improving Competition in Banking Sector**

In June 2014, the Authority for Consumers and Markets (ACM) published nine recommendations to lower entry barriers and improve competition in the Dutch retail banking markets.

Reduce and simplify banking regulations, evaluate the licensing scheme for banks and make it easier for consumers to switch banks, these are some of the nine recommendations that the ACM has made to the Dutch Minister of Finance and to the Dutch Cabinet in its study of barriers to entry in the Dutch banking sector. New market entrants, or the threat of their entry, improve the competition level in this sector. This is especially important as competition among banks has slowed down since the financial crisis. More competition leads to lower prices, better services, and more choices for businesses and consumers.

Make regulations and supervision simpler and more specific

Regulations and supervision in the banking sector are largely the same for all banks – large or small. Yet, the bankruptcy of a small bank causes less harm to the economy than the bankruptcy of a large bank would. New entrants are thus faced with an unnecessarily heavy burden. Recent initiatives by the Dutch central bank (DNB), where the potential damage to the economy is taken more into account, are a step in the right direction. Henk Don, Member of the Board of the ACM, explains: 'We are in favour of more tailor-made regulation and supervision. Initiatives such as credit unions cannot get off the ground because they have to conform to disproportionately strict rules.'

Banking regulations have become vast and complex. This makes it less attractive for new banks to enter the market. Therefore, the ACM advises reducing or simplifying existing rules where possible. Moreover, several parties in the banking sector indicate that uncertainty during the licensing process and the unforthcoming attitude of DNB, have made them cautious about filing a license application. The ACM does not comment on the accuracy of such statements, but it does emphasize that new entrants' expectations in themselves potentially already form a barrier to starting a bank. The ACM takes these indications seriously, and therefore advises that DNB's licensing scheme be evaluated.

Create clarity about mortgage rules, and stimulate switching

Uncertainty about future mortgage rules in the Netherlands can lead to banks postponing a decision to become active in the country. The ACM advises the Dutch Cabinet to reduce this uncertainty to a minimum.

Consumers rarely switch banks for their current or savings accounts. This makes it difficult for new entrants to attract customers. This is why the ACM has made a number of concrete recommendations so that more consumers will switch, such as improving and promoting the switching service for bank accounts.

No barriers to movement of capital

The ACM believes it is desirable to restore completely free movement of capital within Europe. That way, foreign savings can be used to finance loans in the Netherlands. National regulators limited this movement of capital after the crisis. That was because the costs of previous failures of banks that operate in more countries were borne by the government in the country of residence. The ACM is in favour of introducing a European deposit guarantee scheme, and of improving the European rules that enable unhealthy banks to fail without causing damage to the economy. With these measures, national regulators no longer need to maintain restrictions on the movement of capital. If these rules work effectively, they will also ensure that large banks lose their unfair competitive advantage, because they do not need to be saved by the

governments any longer.

The full report is on the ACM's website. This fall, the Dutch Cabinet will publish a written response to the recommendations.

See further [here](#).

• **Romania: Recent Developments in Competition Legal Framework**

At the end of July 2014, Romanian Competition Law no. 21/1996 was amended to enhance the decision-making powers of the competition authority. The new provisions concern the quorum requirements and representation of board members for adoption of decisions by the board of the Competition Council (the Council), the prioritization criteria, an increase in transparency by informing parties of the closure of ex officio investigations when there are no grounds for action, the ways of challenging administrative acts refusing access to confidential information in the case file and finally, tariffs charged for copies or extracts of the case file.

Previously, on 3 April 2014, the Romanian Competition Law was republished to include provisions introduced by the laws implementing the Criminal Code and the Code of Criminal Procedure applicable since 1 February 2014. Two major developments were then included: the requirement of a judicial authorisation to conduct inspections and the possibility for individuals to benefit from immunity or reduction of fine.

As to the judicial authorisation, the competent court is the Bucharest Court of Appeal based on a reasoned request by the Council. Such authorisation allows the competition authority to conduct inspections in companies or private premises of administrators, managers, directors or other members of staff of the investigated parties. The judicial authorization can be challenged by investigated parties. The review court is the High Court of Cassation and Justice. In this context, at the end of June, the Council conducted inspections at the premises of 13 companies in a case of bid-rigging in a public auction organised in 2011 by Transgaz Medias. This was the first time that the new provisions of the law enforcing the Code of Criminal Procedure were applied with regard to judicial authorizations.

The amendments also introduced the possibility for companies' administrators, legal representatives or other members of the board to apply to the Court for leniency in case of anti-competitive practices prohibited by Article 5 (1) of the Competition Law (similar to Article 101(1) TFEU) which are not exempt under Article 5(2) (similar to Article 101(3) TFEU), and which might entail a custodial sentence. In addition, the amendments increased the maximum period of detention from 3 years to 5 years.

The republished law of 3 April 2014 is available [here](#).

More information available [here](#).

• **Romania: Guidelines on Mobile Communication Network Sharing Agreements published**

In June 2014, the Romanian Competition Council (RCC) released the 'Guidelines for the interpretation and application of article 5(2) of the Competition Law no. 21/1996 republished, as subsequently amended, on co-investments agreements, respectively on mobile network sharing agreements' (the Guidelines). The Guidelines provide undertakings acting on the Romanian mobile networks market with an overview of the RCC's approach to mobile network sharing agreements. The Guidelines take into account agreements between providers of mobile networks and services that contain provisions related to the sharing and development of infrastructure assets (passive or active) that are part of the mobile networks operated by the involved undertakings.

The Guidelines have three chapters: (i) general framework for assessing and reviewing possible competition concerns that might arise as a result of mobile network sharing agreements or co-investment agreements; (ii) description of possible competition concerns, and (iii) relevant aspects to be taken into account in the assessment. The co-investment and sharing agreements may relate to passive infrastructure and/or active infrastructure, and may affect trade between Member States depending on their scope. Consequently, the guidelines clearly state that these agreements may fall under the competition provisions of Article 5(1) of the Competition Law and the equivalent EU provisions (Article 101(1) TFEU), but may be exempted from the prohibition if they meet the conditions set in Article 5(2) of the Competition Law and Article 101(3) TFEU. Additionally, the

guidelines give detailed explanations about the criteria to be fulfilled to benefit from the exemption.

Although these agreements may benefit the involved undertakings economically, they may raise competition concerns, such as: exchange of confidential information that may have as object or effect the coordination of the parties' behaviour; the possibility of the parties to have, even tacitly, a common policy that excludes competitors by an unjustified refusal to grant access to the shared infrastructure; and significant reduction of competition between the parties to the agreement.

According to the Guidelines, the assessment of these types of agreements should also take into consideration the particularities of the case and especially the economic context and the nature of the agreement (i.e. cooperation or merger agreement).

In March and April 2014, the draft guidelines were published for public consultation. Within the framework of the technical assistance process provided to the RCC, the World Bank reviewed the draft and made comments on it. Additionally, the RCC analysed stakeholder comments on the draft guidelines and published the final version in June.

See [press release](#) (in Romanian).

Final version of Guidelines in Romanian [here](#).

OTHER ISSUES OF INTEREST

• Austria: Competition Authority organizes Workshop ‘The New Directive on Private Enforcement of EU Competition Law’ on 6 November 2014

Within the framework of its Competition Talk series, the Austrian Competition Authority is organising for the first time an evening event on 6 November 2014, called ‘The New Directive on Private Enforcement of EU Competition Law: the Way forward in its Implementation’.

National and international experts from national competition authorities and academia as well as professionals will present the proposed new Directive and its impact on national procedural rules with regard to private enforcement of EU competition law.

Registered and unregistered participants are welcome, nevertheless we kindly ask for your registration at: comptalk@bwb.gv.at or +43 (0)1 24508.

See further information [here](#).

• Austria: Competition Authority hosts Competition Conference on ‘Best Practices in Investigations’ on 11/12 December 2014

The Austrian Competition Authority (BWB) is creating a forum for expert discussions on ‘Best Practices in Investigations’ by organising an event for exchanging experience and expert knowledge among national competition authorities in the field of investigations and related topics. Topics discussed will include best practices in interviews, the use of Forensic IT and its legal boundaries, settlements in cartel cases, as well as the need for appropriate institutional designs and independence of competition authorities.

The conference will take place on 11-12 December 2014 in the heart of Vienna. The first day of the conference is open to national competition authorities only while the second day is open to the public.

For further information please do not hesitate to send an e-mail or contact our organizing team: Ms Sarah Füllinger (Tel.: 0043 1 24508-352) and Mr Ralph Taschke (Tel.: 0043 1 24508-314) or send an e-mail to conference@bwb.gv.at.

For further information see [here](#).

• Romania: Contest on ‘Competition – Key to Economic Development and Consumer Welfare’ launched

In July 2014, the Romanian Competition Council launched the second edition of its contest addressed to journalists, entitled ‘Competition – Key to economic development and consumer welfare’. The aim of the contest is to inform the public about the benefits of effective competition among companies.

To enter the contest, the candidates – journalists from the written press, audio-visual or online media, employees of mass media organisations or independent journalists, over the age of eighteen – are invited to deliver materials on competition policy. The output can take the form of articles, investigations, reports, documentaries or any other editorials. Teams of up to five journalists are also eligible to participate in the contest. The deadline for submitting contributions was 10 September.

The selection is done by a specialised jury, composed of members with experience in mass media who evaluate the technique used by the journalists, as well as of experts in economics and competition who assess the accuracy and quality of information provided by the candidates. The award ceremony took place on 4th of October 2014 within a competition a workshop on competition and State aid issues.

Again this year, the Competition Council rewarded the most interesting contributions with a Diploma of Excellence or Certificate of Merit. The following contributions were rewarded last year: ‘What hinders SMEs

from being drivers of the economy?’ (written press), ‘Mamaia, more expensive than Ibiza’ (TV), ‘Modern retail leaves traditional retail breathless. How many citizens do their shopping in corner shops?’ (written press), ‘The grass on the neighbour’s side is always greener’ (radio).

See the [press release](#) (in Romanian).

• Lithuania: The Competition Council hosts 11th Baltic Competition Conference on ‘Competition Enforcement: trends and case-studies’ in Vilnius

On 10 September 2014, the Lithuanian Competition Council (KT) organized the 11th Baltic Competition Conference. The conference was attended by more than 180 participants from seven European countries, among them representatives of national competition authorities, private practice and academia.

The morning session started with a keynote speech on ‘Competition Law Enforcement: Recent Trends’ delivered by Richard Whish QC, Professor Emeritus at King’s College London.

Competition enforcers and law practitioners from across the Baltics focused on three core themes:

- the importance of economic analysis when assessing vertical agreements;
- competition enforcement in internet-based trade;
- challenges of interplay between competition law and public procurement.

The panel sessions included presentations by competition law experts on, a.o. vertical restraints cases including the issue of online vertical restraints and on the interplay between public procurement and competition.

John Davies, Head of Competition Division at OECD, focused on how the OECD encourages global competition.

Dr Ioannis Kokkoris, Chair in Law and Economics at the Centre for Commercial Law Studies, Queen Mary University London, presented different approaches to resale price maintenance.

Nils von Hinten-Reed, Managing Partner at CEG Europe, presented the issue of the role of National Competition Authorities in assessing, for example, the compatibility of European Economic Area-wide distribution schemes with European competition rules.

Dr Gintarė Surblytė, Senior Research Fellow at the Max Planck Institute for Innovation and Competition, Germany, shared her views on internet-based trade from an academic perspective while Dr Philip Marsden, Deputy Panel Chairman, Competition and Markets Authority, UK, discussed whether full convergence among competition authorities in the investigation of online vertical restraint cases is possible.

Gunnar Kallfass, Head of German and European Antitrust Law Unit at the German Bundeskartellamt/Federal Cartel Office, presented current practices of the Bundeskartellamt with regard to competition enforcement in internet-based trade. He also elaborated on issues such as price maintenance, dual pricing schemes, and restrictions in selective distribution and presented some cases relating to price parity clauses.

Dr Lauras Butkevičius, law practitioner and Associate Professor at the Faculty of Law, Vilnius University, spoke about the tools that single economic units may use in public procurement cases and reported on Lithuanian practice in this area.

Göran Karreskog, Head of the Cartels and Mergers Unit at the Swedish Competition Authority, reflected on the interplay between competition law and public procurement and reported on Swedish experience in this field. The issue of interplay between public procurement and competition was also raised by Thilo Reimers, Counsel for Antitrust at Deutsche Bahn, He also highlighted the need for specialised education and guidance for procurement staff.

The Baltic Competition Conference is a rotating competition forum held for the 11th time in succession. The KT wishes all the best to its Latvian and Estonian colleagues, who will take the lead in organising the Baltic Competition Conference in the coming two years, and already looks forward to 2017, when Vilnius will host the Baltic Competition Conference again.

In the meantime, please take the time to have a look at the [photo gallery](#) and conference materials.

• Romania: Launch Event of a Project Marking a Partnership among the OECD, the Romanian Government and the Romanian Competition Council

The Romanian Competition Council (RCC), in cooperation with the Prime Minister's Chancellery and the Ministry of Finance and assisted by the OECD, are about to implement the project 'The analysis of the impact of laws and regulations on a competitive environment in key sectors of the Romanian economy' in the period 2014-2015.

The event takes place within the general theme of public policies and regulation of the business environment playing a sound role in the effective functioning of the Romanian economy and in assisting the accomplishment of public policy objectives.

The project was launched with an event on October 15, 2014 at the Chamber of Commerce and Industry of Romania.

The conference benefited from the participation of Mr. Victor Ponta, Prime-Minister of Romania and Mr. William Danvers, Deputy Secretary-General of the OECD.

It deserves to be mentioned that within the project, the Romanian Government with the OECD support will analyze the laws and regulations in three key economic sectors [food processing, transport (freight), construction (materials, tenders)] in order to remove the anticompetitive provisions and achieve thus increased competitiveness of the Romanian economy.

The project thus focuses on the following three objectives:

- screening by OECD of laws and regulations in the mentioned Romanian key economic sectors in order to identify the anticompetitive provisions and to draft proposals/recommendations to improve the regulatory environment and stimulate economy-wide growth;
- defining a methodology for an impact assessment on competition of normative acts and public policies;
- strengthening the competition assessment capabilities of the Romanian public administration in order to measure the burden on competition imposed by the regulatory framework, with a view to setting-up 'the National Competition Network'.

See also the communication about the event on the [RCC's website](#)

• Spain: Competition Authority hosts VI Iberian Competition Forum

On 1 July 2014, Spain's National Authority for Markets and Competition (CNMC) and the Portuguese Competition Authority (PCA) held their VI Iberian Competition Forum in Madrid. The Forum is a coordination meeting between the Spanish and Portuguese authorities and has been held since 2004 with the purpose of fostering contact between the two Authorities.

During the meeting, the CNMC and the PCA discussed the priorities they set for their actions. Specifically, they addressed the institutional changes resulting from the creation of the CNMC and the new Portuguese legislation on competition. In addition, bilateral meetings were held between the heads of the two institutions, with the aim of fostering cooperation on priorities in cartel investigations and inspections in their effort to eliminate practices that restrict competition, as well as cooperation in the area of mergers. Furthermore, the role of chief economist in both authorities was discussed. Finally, a common strategy was agreed upon regarding the promotion of competition by preparing studies and reports on regulatory projects.

The two Authorities agreed to collaborate more closely through the establishment of a staff exchange programme, as well as through regular meetings to help identify areas of common interest.

The Iberian Forum was created in 2004 to foster contact between the two Authorities with the aim of protecting competition and establishing and benefitting from new alliances and forms of cooperation. As a result of the good cooperation between the two authorities, the VII Bilateral Iberian Meeting will take place in Lisbon next year.

Further information on [CNMC website](#).

PERSONALIA

• Portugal: New Member of the Board of the Competition Authority appointed

On 1 September 2014, Maria João Melícias took office as Member of the Board of the Portuguese Competition Authority (PCA), thus completing the new Board of the PCA. On 16 September 2013, António Gomes took office as President of the PCA, along with Nuno Rocha de Carvalho, who took office as Member of the Board.

Previously, Maria João Melícias was a Legal Secretary at the Court of Justice of the EU, in Luxembourg. Between 2002 and 2012, she was an Associate and Senior Associate Lawyer specialising in the area of European Law and Competition at PLMJ, in Lisbon.

Maria João Melícias holds a degree from the Faculty of Law, Universidade de Lisboa, as well as a Master's (LL.M) in Trade Regulation from New York University, a Master's (MA) in EU Competition Law from King's College London and a postgraduate diploma in Competition Law, also from King's College. She was awarded the Franz T. Diersen Prize at New York University, for distinction in her LL.M programme, having also been a research assistant at that university.

Maria João Melícias was a member of the Portuguese Association of European Law (APDE), the Competition Commission of the International Chamber of Commerce (ICC) and the Circle of Portuguese Competition Lawyers (CAPDC).

She gives regular lectures in courses and conferences and has had several articles published in the most prestigious international journals, particularly on the subject of antitrust law and competition policy.

Further information regarding the Board of the PCA may be found on the website of the PCA [here](#).

• European Commission: New Commissioner for Competition

On 22 October 2014, the European Parliament has given its consent to the new Commission which will take office on 1 November 2014. The European Council of 23/24 October 2014 formally appoints the Commission, in line with Article 17(7) TFEU.

The new European Commissioner for Competition is Margrethe Vestager. For further details on Mrs Vestager's mission, see [the letter](#) of President Juncker.

See further: [press release](#), the structure of the [new Commission](#) and the [Political Guidelines](#) for the next European Commission.

ANNUAL REPORTS

• France: The Autorité de la concurrence publishes Annual Report 2013

On 10 July 2014, the Autorité de la concurrence (the Autorité) published its Annual Report 2013 which provides an overview of its past year's activity in the areas of merger control, antitrust enforcement and advocacy.

The Autorité saw sustained antitrust activity in 2013, imposing fines in 10 decisions totalling € 160 500 000, including a €79 000 000 fine in the commodity chemicals sector (see [here](#)). The Autorité also imposed fines in the pharmaceutical sector (see [here](#)) and in the photovoltaic solar power sector (see [here](#)).

The Autorité remained as active as in 2012 in its advisory capacity, publishing 28 opinions in total. It notably continued to pay attention to the health sector in relation to which, after having gathered market players' insight and carried out an in-depth analysis of how the sector operates, it released an opinion on the distribution of medicinal products (see [here](#) and [here](#) in relation to on-line sales of medicinal products not subject to prescription). It also focused on the transport sector, notably with an opinion provided to the French government on a rail reform bill (see [here](#)) and a negative opinion on a bill pertaining to chauffeur-driven passenger vehicles (see [here](#)).

The Autorité adopted more than 200 merger control decisions in 2013, almost half of which were made following the simplified procedure. Furthermore, seven of the clearances were granted subject to commitments. The merger control decisions illustrate the broad spectrum of sectors the Autorité has analysed, including print media, maritime and public transport, trade, building materials manufacturing, and food retail. In particular, the Autorité cleared the acquisition of sole control over Monoprix by Casino, which already held 50% of the capital of Monoprix. In order to authorise the transaction, the Autorité carried out a thorough examination of the relevant markets, catchment area by catchment area, using advanced screening tests, as a result of which commitments were required. Ultimately, the Autorité cleared the merger subject to the sale of 55 shops in Paris and 3 outside the Paris region (see [here](#)).

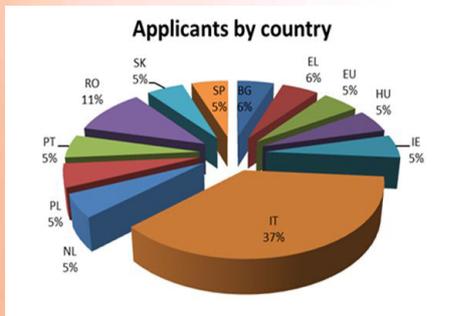
Finally, based on the Autorité's experience since 2009, new merger control guidelines were published and came into force on 10 July 2013. In particular, the new guidelines (i) encourage pre-notifications, (ii) specify the terms of the simplified procedure, (iii) clarify the conceptual framework of the analysis of relevant markets and (iv) facilitate corporate practice by providing companies with templates on trustee mandates and divestiture commitments (see [here](#)).

See further [here](#) (summary in French) and [here](#) (full report in French).

TRAINING OF JUDGES

The Call for Proposals 2014 – Training of National Judges on Competition Law – has been closed on 29 August 2014. 19 applications were received from 12 different nationalities. Evaluations were carried out during the months of September 2014 and applicants will be informed of the results during the course of October.

With a total budget of € 1 000 0000 euros, a range of 8-12 projects are expected to be financed.



A new tender is open: COMP/2014/007: 'Study on judges' training needs in the field of competition law'. Potential interested parties are invited to submit proposals by 14 November 2014. For further details please see the [website](#).

The study will assess the Training of National Judge's programme in the field of EU competition law (evaluate the results of past activities and re-assess the objectives), which is included in the Civil Justice Programme 2007-2013 (Decision No 1149/2007/EC8) and in the Justice Programme 2014-2020, (Regulation (EU) No1382/20139). The aim is to review the judges' training needs in the field of competition law, and their need for networking support. The study should look in particular at the needs of judges who deal with competition cases at national level from all 28 Member States. Research will therefore need to be carried out in all 28 Member States.

Participation in this tender procedure is open to all eligible natural and legal persons.