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Trustees in Mergers

Trustees in Mergers: An overview of EU and national case law

UNDERTAKING (NOTION), BEHAVIOURAL REMEDIES, ARBITRATION, SANCTIONS / FINES / PENALTIES, FOREWORD, REMEDIES (MERGERS), TRUSTEE (MERGERS), STRUCTURAL REMEDIES, COMPLIANCE

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Introduction

Ensuring compliance with conditional merger clearance decisions represents an important challenge for competition authorities. While in theory there are a number of compliance monitoring mechanisms available – self-reporting by the parties, formal arbitration provisions, or relying on third parties to monitor compliance – the appointment of a monitoring trustee is an important feature of European Merger Control [*1*] and other merger control jurisdictions such as the UK [*2*], France [*3*] and China [*4*]. Also, in the US monitoring and divestiture trustees are regularly appointed, particularly for complex remedies where the authorities do not have sufficient technical expertise or resources to monitor long-term commitments made by the parties [*5*]. This justifies a closer look at the role of Trustees in merger and the publication of a special issue of e-competitions.

In this foreword, I reflect on the role of the monitoring trustee as the eyes and ears of a competition authority highlighting the main features in a typical merger remedy. I review both structural remedies such as divestures of businesses and business assets to an independent purchaser to restore or maintain competition, and behavioural remedies which can take various forms ranging from hold-separate obligations to access commitments and long-term supply or purchase agreement to enable third parties to preserve competition. Then I discuss a number of challenges that trustees increasingly face particularly in innovation intensive industries where several major global mergers have been cleared subject to sometimes very complex remedies. I draw on my experience as monitoring trustee (both structural and behavioural remedies) for the European Commission, the FTC as well as other national competition authorities, and as a former member of the UK Competition & Markets Authority.

Appointment and Role of the Trustee

1. Appointment

The European Commission's Notice on Remedies requires that the parties to a merger that is cleared only subject to commitments appoint a monitoring trustee to oversee the parties' compliance with the commitments [*6*]. The parties have to submit to the Commission a list of one or more persons whom the parties propose to appoint as

monitoring trustees. The parties may choose the trustee it appoints from among those approved by the Commission, if more than one is proposed. If the Commission rejects all of the proposed, the parties are required to suggest at least two more individuals or institutions. Should they also be rejected, the Commission nominates a trustee to be appointed by the parties. The mechanism illustrates the strong influence the Commission has on the selection of the trustee. It has the 'the last word' on who will be monitoring the parties and may require them to appoint an unwanted trustee.

The situation is similar in other jurisdictions. However, some authorities take a more pro-active role in selecting a Trustee and some chose a trustee for a more limited role. For example, the US Agencies do not always require a Monitoring Trustee to be appointed. As the 2020 merger remedies manual published by the DOJ states: "A monitoring trustee may be required when technical expertise unavailable within the Division is critical to an effective divestiture. Alternatively, one may be required when there is an unusually high burden associated with monitoring compliance with a decree, for example in the case of a complex global asset carve-out that requires an extended transition period, and that burden is more appropriately borne by the parties than the taxpayers" [*7*]. In the US, Monitors' responsibilities therefore vary depending on the type of monitoring task and the parties' obligations. Also, unlike at the EC, Monitors are not typically involved in overseeing the search for a buyer of the assets, whether handled by the parties or by a Divestiture Trustee, discussed below. Likewise, Monitors do not find or vet proposed buyers" [*8*].

2. Eyes and ears of the competition authority – independence

The EU Remedies Notice states: "The monitoring trustee will carry out its tasks under the supervision of the Commission and is to be considered the Commission's "eyes and ears" [*9*]. The same formulation is used by the FTC in its guidance on negotiating merger remedies underlining the key importance of this aspect of the trustee's role [*10*]. As if to avoid any doubt about the role of the monitoring trustee the EU Merger remedies notice confirms that the Commission may give any orders and instructions to the monitoring trustee in order to ensure compliance with the commitments. "The parties, however, may not issue any instructions to the trustee without approval by the Commission." In other words, the monitoring trustee, his team and his partner firms must be independent of the parties and to be accepted by the Commission disclose all current relationships with the parties and affiliated undertakings.

3. Monitoring Hold-Separate obligations

For divestiture commitments the monitoring trustee shall help to ensure that the business is managed and kept properly on a stand-alone basis in the interim period pending a successful divestiture to an approved buyer of a business or pending a final decision (as in the UK) [*11*]. Under both EU and US practice, a hold separate manager is generally appointed to operate any business to be held separate. The hold separate manager reports to and acts under the supervision of the monitoring trustee. The hold-separate-manager is central and key to a successful divesture. Most often he or she comes from the divested business and is an existing manager or director, sometimes close to retirement. This has proved to be an effective solution with experienced managers capable of running a business until a new purchaser comes in to decide how the business will be integrated or run post-divestiture. In my experience the hold-separate-manager can easily feel isolated from his or her previous line management and seek reassurance and guidance from the monitoring trustee.

Violations of hold-separate obligations may lead to penalties and fines such as in PayPal iZettle (CMA 2019) where PayPal faced a fine of £250,000 for violating an interim order imposed during the acquisition of iZettle in 2019, a merger that was eventually cleared by the CMA. As the authors of the article in this special issues noted, "this

record fine is the latest in a series of recent fines which have underscored the CMA's commitment to enforcement of its procedural merger control rules" [*12*].

4. Carve-out and divestiture obligations

Divestiture commitments typically involve the sale of an existing business or business unit but sometimes the divestiture requires the combination of parts of business or a collection of assets raising a number of challenges to a successful implementation. The UK Competition and Markets Authority in its guidance on merger remedies has identified three major implementation risks for divestitures [*13*]:

- Composition risks — these are risks that the scope of the divestiture package may be too constrained or not appropriately configured to attract a suitable purchaser or may not allow a purchaser to operate as an effective competitor in the market.

- Purchaser risks — these are risks that a suitable purchaser is not available or that the merging parties will dispose to a weak or otherwise inappropriate purchaser.

- Asset risks — these are risks that the competitive capability of a divestiture package will deteriorate before completion of divestiture, for example through loss customers or key members of staff.

In particular, complex divestitures and carve-outs affect the ability to design comprehensive and effective remedies in a timely manner and thereby affect the composition risks. Legal and economic complexity can further occur with reverse carve-outs and complex transitional and long-term supply and technology agreements. This was a feature in several automotive component manufacturing mergers and recent major chemicals and agrochemical mergers. In these cases, the assessment of viability post-divestment can become challenging and requires the extended monitoring of transitional supply agreements, manufacturing, and other purchase and supply agreements post-closing by the monitoring trustee, in line with the findings of the FTC Merger Remedies Study published in 2017 [*14*].

To mitigate the purchaser risk, the criteria for accepting a purchaser of a divestment business must be clearly laid out in the Commitments. These are reviewed and assessed by the Monitoring Trustee who then provides the Commission with a purchaser approval report based on which the Commission can issue its approval decision.

What does a Monitoring Trustee typically look at when reviewing a proposed purchaser?

- Independence from the divesting parties
- Financial capabilities
- Industry expertise
- Strategic rationale and incentives to compete
- Competition issues that arise from the divestiture
- Transaction documents

This requires expertise in finance and accounting, business strategy and economics. Typically, the trustee mandate provides for such a report to be prepared within one week of the submission of a proposal of a suitable purchaser by the parties. Such an analysis is impossible to complete within one week unless there has been plenty of time prior to the formal submission of a suitable purchaser proposal.

In practice the Commission does not insist on the Trustee adhering to this strict deadline as the quality of the purchaser review is more important to the Commission who has to be able to issue a purchaser approval decision that is robust and can withstand scrutiny should the purchaser approval decision be challenged in court, something that has happened in a number of instances [***15***].

5. Behavioural remedies

In my foreword to the Special Issue on merger remedies and competition law published in May 2021, I highlighted the trend towards behavioural remedies being increasingly accepted by competition authorities globally [***16***], particularly for mergers in the information technology industries (ICT). The Allen & Overy review of global trends in merger control 2020 also noted this trend as beginning in 2017 [***17***].

In the last three years around half of the deals cleared worldwide conditionally involved a behavioural element (i.e., commitments relating to future conduct of the parties), either standalone or in combination with a structural divestment (so-called "hybrid" remedies). This is in contrast with previous years, where they reported that, pure divestments remained the most common type of merger remedy. Loertscher/Mayer-Rigaud (2020) also highlight the significant use of access remedies in both EU antitrust cases (Art 9 commitments) and EU merger control [***18***].

In his overview of behavioural remedies in the e-competitions Bulletin of May 2019, Louis Campos suggests that there are several sets of circumstances when behavioural remedies may be more appropriate and mentions competition concerns related to "vertical issues or intangible assets, to industries benefiting from significant economies of scale or network effects, to mergers in very dynamic markets" [***19***]. He highlights the role of digital platforms, innovation and investment in intangible assets that become central to economic growth. Recently, Langeheine et al (2020) reviewed the remedies in the mobile telecommunication sector and found a marked shift in the European Commission's approach to remedies in this sector since 2015 [***20***]. The article sets out the circumstances in which access remedies can be successful and draws a comparison to ex-ante telecom regulation.

On 17 January 2019, the French Competition Authority ("FCA") published an interesting study on behavioural remedies in competition law [***21***]. The Autorité is one of the competition authorities that makes the most use of this tool at the international level, often in an innovative way, to end anticompetitive practices and as part of its task of merger control." The study indicated that the effectiveness of behavioural commitments depends on these being effectively monitored. The study also found that their effectiveness could be further strengthened if they could be revised in light of new circumstances likely to affect the competition data on which they were originally based. This is an interesting thought but would in my view require more longer term monitoring and a much wider monitoring remit for Trustees, not just of the compliance with a remedy but also the development of competition and the effectiveness of remedies in the market.

Challenges for the Monitoring Trustee

There are many challenges for monitoring trustee to ensure a timely and effective implementation of remedies in merger control. Here I would like to highlight three challenges that in my view have become more important

recently in the wake of major global mergers particularly in innovation intensive industries: (i) deal complexity, (ii) innovation incentives and (iii) deal urgency. I have reviewed these challenges in more detail in two articles article published in 20219 and 2020 [*22*].

1. Complexity

The most important challenge to the effective implementation of remedies is the increased complexity of the subject matter under investigation. Take the major antitrust cases such as Google Shopping and Google Advertising and the global mergers in the agrochemical and pharmaceutical industries that took place over the last few years. These cases illustrate well the different dimensions of complexity which are of a technical, llegal, institutional, financial, and economic nature.

For my foreword on the special issue on merger remedies in 2018 [*23*]. I reviewed a list of 20 cases that have presented major challenges through their complexity. 10 innovation mergers were reviewed by DG Comp 2015-2017 and discussed by Carles Esteva Mosso at the 2018 ABA conference [*24*]. Another set of cases from the ICT industries led to the acceptance of behavioural remedies (including interoperability commitments) whereas the innovations cases cited by Esteva Mosso typically led to structural remedies in the form of divestiture of existing products or pipeline products. Examples of such behavioural remedies cases in the ICT sector are Qualcomm/NXP (2018) [*25*], Microsoft/LinkedIn (2016) [*26*], Brocade/Broadcom (2017) [*27*], and Discovery/Scripps (2018) [*28*].

The complexity challenge for remedies can be further illustrated by an older French merger involving a large package of remedies including a significant number of behavioural remedies (59 in total): Canal Plus /TPS (2006) [*29*]. Not surprisingly, in this case, the complex implementation proved to be too difficult and led to the imposition of significant fines in 2011 for non-compliance with the commitments and the renotification of the transaction leading to a new set of commitments [*30*]. Another major media merger in the US Comcast/NBC (2011) resulted in a similar large number of behavioural remedies (79 individual remedy components) [*31*].

The implications for the implementation of complex remedies is that more monitoring efforts are required. This applies to structural as well as behavioural remedies. Monitoring trustee teams require more technical expertise and economic skills as will become clear when we analyse below the challenges brought about by innovation mergers with remedies that seek to ensure that the incentives to innovate are maintained.

2. Incentives to innovate

Closely related to the challenges brought about by the complexity of antitrust actions and merger control related to major transactions is the challenge to the design of effective remedies where incentives to innovate are at the heart of the analysis but also key to the design and implementation of suitable remedies that seek to maintain or restore incentives to innovate. These challenges carry over into the implementation of remedies where the approval is required in a divestiture remedy of a suitable purchaser who may or may not be engaged in developing similar products. Such merger reviews are in my experience as Monitoring Trustee becoming ever more demanding and complex, necessitating for innovation mergers an assessment not only of a purchaser´s ability and incentive to compete but also to continue to innovate and invest in R&D at a similar level to the divesting parties.

To take just one major merger case which illustrates the problem of designing and implementing remedies in innovation mergers: Dow/DuPont (2017) [*32*]. This case had been widely reviewed and commented on not least for the theory of harm which focused heavily on the incentives to innovate as I discuss further below [*33*].

In their review of EU merger control in 2017 Niels Ersboll et al discuss the Dow/DuPont merger and claim that ´[t]here were no traces of this theoretical framework in past EC merger decisions. Instead the EC drew inspiration form its own guidance on technology transfer agreements and the DoJ/FTC proposal for IP licensing guidelines in the US [***34***]. Economists have also weighed in on the debate. For example, Cascone Fauver et al refer to the direct effect of the proposed merger on innovation incentives, an approach reminiscent of the "innovation markets" framework developed in the 1990s [***35***]. Even members of the Commission's Chief Economist team weighed into the debate and published a paper on the possible effects of mergers on innovation and consumer welfare in a model where firms compete among others through the quality of their products by innovating. Their formal simulation model suggests that a merger between two out of a limited number of innovators can depress innovation incentives and more broadly reduce current and future consumer welfare, in the absence of innovation-related efficiencies, including the internalisation of knowledge spill-overs. This publication has led up to a lively debate in economic circles on the impact of mergers on innovation in an oligopoly situation.

3. Deal urgency

The third challenge which exacerbates and reinforces the two challenges discussed above has to do with the increased urgency through the increased use of up-front buyer provisions in divestiture commitments where buyers are identified prior to or at the time of a settlement or conditional clearance decision. In 2017 and 2018, approximately one in three of all EC remedy decisions imposed an upfront or fix-it-first purchaser clause [***36***]. Identifying the buyer in the remedy greatly reduces these risks and provides more certainty that the buyer is capable of success, that the right group of assets has been identified for divestiture, and that the divestiture will happen quickly [***37***].

In such a situation, the Trustee is under huge pressure to review and assess a buyer. With the standard first divestiture period being 6 months this give the monitoring trustee time to get to know the business to be divested and familiarise herself with the markets the divestment business competes in as well as the pool of potential buyers who may be interested and prima facie suitable. With the Up-Front buyer condition this time period is typically cut short. From a Trustee perspective these concerns need to be balanced by the challenges of reviewing a complex transaction in a very short time period and the risks that full consistency of a divestment with the Commitments cannot be achieved, or the pool of suitable purchasers has not been properly identified and potential purchasers have been deterred (purchaser risk).

Note from the Editors: although the e-Competitions editors are doing their best to build a comprehensive set of the leading EU and national antitrust cases, the completeness of the database cannot be guaranteed. The present foreword seeks to provide readers with a view of the existing trends based primarily on cases reported in e-Competitions. Readers are welcome to bring any other relevant cases to the attention of the editors.

[*1*] See Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (revised EC Remedies Notice), October 2008 ; See ***Karine Biancone,*** *Merger - Remedies: The European Commission publishes a notice on merger remedies, 22 October 2008, Concurrences N° 1-2009, Art. N° 27678* ; ***Ioannis Kokkoris,*** *Remedies: The European Commission issues a revised version of the Merger Remedies Notice, 22 October 2008, Concurrences N° 2-2009, Art. N° 25968* ; ***Ioannis Kokkoris,*** *The EU*

Commission issues a revised version of the Merger Remedies Notice, 22 October 2008, e-Competitions October 2008, Art. N° 34957 and Best Practice Guidelines and associated Model Texts for Divestiture Commitments and Model Trustee Mandate (last revised 5 December 2013) ; See ***Sergio Sorinas, Estelle Jegou, Grégoire Colmet Daâge,*** *Procedure : The European Commission adopts a package of measures to simplify its merger control procedures, 5 December 2013, Concurrences N° 1-2014, Art. N° 62980* ; ***Peter Citron,*** *The EU Commission publishes a package of measures to reduce the administrative burden of EU merger control, 5 December 2013, e-Competitions December 2013, Art. N° 61415* ; ***Andrea L. Hamilton, David Henry,*** *The EU Commission issues a reform package to simplify and streamline the EU merger control regime, 5 December 2013, e-Competitions December 2013, Art. N° 92789*. For an overview of recent EU and US case law and policy developments see my foreword: ***Thomas Hoehn,*** *Merger remedies and competition law: An overview of recent EU and US case law and policy developments, 19 May 2021, e-Competitions Merger Remedies, Art. N° 99893*.

[***2***] CMA Merger Remedies Guidance, 13 December 2018, CMA87, Section 8: Trustee and third-party monitors ; See ***UK Competition Authority,*** *The UK Competition Authority issues its Merger remedies guidance, 13 December 2018, e-Competitions December 2018, Art. N° 88794*.

[***3***] Autorité de la concurrence, Merger Control Guidelines, (2020), pages 106 – 110. See *French Competition Authority, The French Competition Authority publishes its revised guidelines regarding merger control, 23 July 2020, e-Competitions July 2020, Art. N° 95962*.

[***4***] For an overview of Chinese merger control see *Susan Ning, Ting Gong, Mergers in China: Enforcing China's Anti-Monopoly Law in a Time of Change, 26 September 2019, e-Competitions Mergers in China, Art. N° 90956*.

[***5***] See p 30 of the recently revised Merger Remedies Manual ; See ***Kenneth B. Schwartz, Karen M. Lent,*** *The US DoJ releases a merger remedies manual, 3 September 2020, e-Competitions September 2020, Art. N° 97246* ; ***Steven C. Sunshine, Maria Raptis,*** *The US DoJ issues its merger remedies manual which provides the framework the DoJ will utilise in implementing relief in mergers reviewed by its attorneys and economists, 3 September 2020, e-Competitions September 2020, Art. N° 96833*. The text of the manual can be found at:*https://www.justice.gov/opa/pr/justice-department-issues-modernized-merger-remedies-manual*.

[***6***] Commission Notice on remedies cited 1 above, para. 117.

[***7***] See 5 above, page 30.

[***8***] A Visitor's Guide to Navigating US/EU Merger Remedies, by Patricia Brink, Daniel Ducore, Johannes Luebking and Anne Newton, McFadden, Competition Law International, Vol 12, No 1, April 2016.

[***9***] Para 118 EU Remedies Notice.

[***10***] *https://www.ftc.gov/tips-advice/competition-guidance/merger-remedies#N_1_*.

[***11***] See 1 above EU Remedies Notice para 118.

[12] See ***Veronica Roberts, Ruth Allen,*** *The UK Competition Authority imposes its largest fine for a single breach of an interim enforcement order in a merger (Paypal / iZettle), 24 September 2019, e-Competitions September 2019, Art. N° 93516.*

[13] Classification adopted by UK Competition Commission, Merger remedies guidance, CMA87, 2018, p38.

[14] Federal Trade Commission (2017), *The FTC's Merger Remedies 2006-2012*, A Report of the Bureaus of Competition and Economics, of January 2017.

[15] See for example Judgments of the General Court in Cases T-279/04 and T-452/04 Editions Odile Jacob SAS v Commission (2010) ; See ***Frederic Depoortere,*** *The EU General Court upholds a Commission's phase II merger approval in the publishing sector and rehabilitates parking arrangement (Odile Jacob), 13 September 2010, e-Competitions September 2010, Art. N° 35246* ; ***David Tayar,*** *Concept of concentration: The General Court upholds the decision of the Commission authorizing the purchase of a group in the publishing sector (Odile Jacob), 13 September 2010, Concurrences N° 4-2010, Art. N° 32933* ; ***Alain Ronzano,*** *Holding: The EU General Court confirms a conditional clearance decision related to a holding arrangement followed by an acquisition in the publishing sector but annuls the decision authorising the purchase of sold assets (Odile Jacob), 13 September 2010, Concurrences N° 4-2010, Art. N° 59843.*

[16] See 1 above.

[17] *https://www.allenovery.com/en-gb/global/news-and-insights/global-trends-in-merger-control-enforcement*

[18] Loertscher, B., & Maier-Rigaud, F. P. (2020). On the Consistency of the European Commission's RemediesPractice. In D. Gerard, & K. A., Remedies in EU Competition Law: Substance, Process, Policy, Kluwer Law International.

[19] See ***Luis Campos,*** *Behavioural remedies: An overview of EU and national competition case law, 16 May 2019, e-Competitions Behavioural remedies, Art. N° 90054.*

[20] See ***Bernd Langeheine, Beatriz Martos Stevenson, Jan Przerwa,*** *Mobile telecommunications mergers in the EU – Remedies revisited, February 2020, Concurrences N° 1-2020, Art. N° 92671.*

[21] See ***French Competition Authority,*** *The French Competition Authority issues a study on behavioural remedies in competition law, 17 January 2020, e-Competitions January 2020, Art. N° 92958* ; ***Martin Favart,*** *The French Competition Authority publishes a new study on behavioural remedies in competition law, 17 January 2020, e-Competitions January 2020, Art. N° 93642* ; ***Christophe Lemaire, Hélène Fricaudet,*** *Behavioural commitments: The French Competition Authority publishes a study on behavioural commitments relating to anti-competitive practices and mergers, 17 January 2020, Concurrences N° 2-2020, Art. N° 94922.*

[22] Thomas Hoehn, Challenges in Designing and Implementing Remedies in Innovation Intensive Industries and the Digital Economy', Chapter 7 in: Remedies in EU Competition Law, Substance, Process and Policy, (D Gerard and A Komninos eds), Wolters Kluwer, 2020, and Thomas Hoehn, 'Challenges in designing and implementing merger remedies – a monitoring trustee perspective', Revista de Concorrência e Regulação, Ano X, Número 39, julio – setembro 2019, pp. 15–34.

[23] See **Thomas Hoehn,** *Merger remedies and competition law : An overview of recent EU case law and international policy developments, 27 septembre 2018, e-Competitions Merger Remedies, Art. N° 87957.*

[24] Carles Esteva Mosso, *Innovation in EU Merger Control*, ABA Spring Meeting, Washington, 12 April 12 2018, available at: *http://ec.europa.eu/competition/speeches/text/sp2018_05_en.pdf*.

[25] European Commission, Decision of 18 January 2018, *Qualcomm/NXP*, Case M.8306 ; See **European Commission,** *The EU Commission clears a merger subject to remedies in the market of semiconductors (Qualcomm / NXP), 18 January 2018, e-Competitions January 2018, Art. N° 85976* ; **Porter Elliott,** *The EU Commission conditionally clears a merger in the market of semiconductors (Qualcomm / NXP), 18 January 2018, e-Competitions January 2018, Art. N° 86224* ; **Juha Vesala, Kletia Noti,** *The EU Commission conditionally clears a merger in the semiconductor industry (Qualcomm / NXP), 18 January 2018, e-Competitions January 2018, Art. N° 88563.*

[26] *European Commission, Decision of 6 December 2016, LinkedIn / Microsoft, Case M.8124* ; See **European Commission,** *The EU Commission clears a merger subject to remedies on the professional social networks market (Microsoft / LinkedIn), 6 December 2016, e-Competitions December 2016, Art. N° 82432* ; **Cristina Sjödin, Eleonora Ocello,** *The EU Commission clears the acquisition of a leading global professional social networking platform company by a leading global software company, subject to 5-year remedies that include monitoring and prevention of tying (Microsoft / LinkedIn), 6 December 2016, e-Competitions December 2016, Art. N° 86473* ; **Andrea L. Hamilton,** *The EU Commission conditionally clears a merger in the professional social network market (Microsoft / LinkedIn), 6 December 2016, e-Competitions December 2016, Art. N° 92755.*

[27] European Commission, Decision of 12 May 2017, *Brocade/Broadcom*, Case M.8314 ; See **European Commission,** *The EU Commission clears a merger, subject to remedies, in the market of semiconductor devices (Brocade / Broadcom), 12 May 2017, e-Competitions May 2017, Art. N° 8419.*

[28] European Commission, Decision of 6 February 2018, *Discovery/Scripps*, Case M.8665 ; See **Porter Elliott,** *The EU Commission conditionally approves a proposed merger in the providers of pay-TV channels market (Discovery / Scripps), 6 February 2018, e-Competitions February 2018, Art. N° 86472* ; **European Commission,** *The EU Commission clears a merger subject to remedies in the global media market and rejects a referral request by the Polish Competition Authority (Discovery / Scripps), 6 February 2018, e-Competitions February 2018, Art. N° 86200.*

[29] Avis 06-A-13 du 13 juillet 2006 relatif à l'acquisition des sociétés TPS et CanalSatellite par Vivendi Universal et Groupe Canal Plus. See **Alain Ronzano,** *Commitments: The Minister authorises a merger between the only two pay-for TV providers (Canal Plus, TPS), 30 August 2006, Concurrences N° 4-2006, Art. N° 56041* ; **Stéphanie Yon-Courtin, Olivier Fréget,** *The French Minister of Economics clears the merger between the two pay-TV operators with 59 commitments after consultation of both the audiovisual regulator and the French Competition Council (TPS / Canal Sat), 30 August 2006, e-Competitions August 2006, Art. N° 12542.*

[30] See **Lionel Lesur, Louise Aberg,** *The French Competition Authority withdraws its authorisation of an undertaking's purchase of rival commercial television company in the TV market and imposes a €30 m fine for failing to fulfill the 59 remedies imposed by the Authority (Canal Plus / TPS), 20 September 2011, e-Competitions September 2011, Art. N° 92834* ; **Olivier Beddeleem,** *The French Competition Authority fines two media groups for violating merger*

remedies in the satellite TV sector (TPS / Canal Sat), 20 September 2011, e-Competitions September 2011, Art. N° 40925 ; ***Eric Morgan de Rivery,*** *The French Competition Authority fines a media group for breach of merger commitments and requires unwinding or re-notifying merger (TPS / Canal Sat), 20 September 2011, e-Competitions September 2011, Art. N° 50115.*

[***31***] United States v. Comcast Corp., 76 Fed. Reg. 5,459, 5,461-64(§§ IV-VI) (DOJ Jan. 31, 2011) (proposed final judgment).

[***32***] See ***European Commission,*** *Decision of 27 March, Dow/DuPont, Case M.7932. Bulletin March 2017, Art. N° 84382* ; ***Porter Elliott,*** *The EU Commission conditionally clears merger in the in the chemical sector (Dow Chemical / DuPont), 27 March 2017, e-Competitions Bulletin March 2017, Art. N° 83819.*

[***33***] See in this special issues the artciles by ***Jean-François Bellis, Valérie Lefever,*** *Engagements : La Commission européenne autorise, au terme d'une procédure d'examen approfondi, le rapprochement de deux groupes américains dans le secteur de la protection des cultures et des semences, moyennant le respect d'engagements structurels visant à préserver la concurrence par les prix et l'innovation en matière de pesticides (Dow / DuPont), 27 mars 2017, Revue Concurrences N° 1-2018, Art. N° 86189* [fr] ; [***Maria Sturm,*** *The EU Commission clears a merger between two US chemical companies (Dow/DuPont), 27 March 2017, e-Competitions March 2017, Art. N° 84382.*

[***34***] Niels Ersboll, Athansia Gavala, Tiiu Iverson, & Lazarinka Naydenova, ´2017 EU Merger Enforcement Year in Review, in Arnold & Porter, Kaye Scholer, available at *https://www.arnoldporter.com/-/media/files/perspectives/publications/2018/02/2017-eu-merger-enforecment-year-in-review.pdf?la=en* .

[***35***] Jennifer Cascone Fauver, Subramaniam Ramanarayanan, & Nicola Tosini, ´The Increasing Cross-Border Importance of Innovation in Merger Review´, in *Antitrust*, Spring 2018, pp70-75.

[***36***] See Allen Overy, ´Global Trends in Merger Control Enforcement´, (2019). Available at: *http://www.allenovery.com/publications/en-gb/mergercontroltrends/Pages/Global-trends-in-merger-control-enforcement/Default.aspx* .

[***37***] See 8 above.