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Merger Remedies

Merger remedies and competition law: An overview of recent EU and US case law and policy developments

MERGERS, BEHAVIOURAL REMEDIES, FOREWORD, REMEDIES (MERGERS), MERGER (NOTION), MERGER CLEARANCE (PHASE II), MERGER CLEARANCE (PHASE I), STRUCTURAL REMEDIES

Note from the Editors: Although the e-Competitions editors are doing their best efforts to build a comprehensive set of the leading EU and national antitrust cases, the completeness of the database can not be guaranteed. The present foreword provides readers with a fair view of the existing trends based on cases reported in e-Competitions and alternative sources gathered by the author. Readers are welcome to bring to the attention of the editors any other relevant cases. Also, note that the foreword, in accordance with the authors, does not comment cases dealing with the motor vehicle block exemption

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Introduction

Over the last three years, merger control has remained an active area of antitrust enforcement in Europe as well as other parts of the world. The global merger boom of the last few years has continued even if it lost some momentum from mid-2018 onwards. According to a report by EY, global M&A in 2020 was tracking below 2019's value, but still was expected to rank fifth for value of deals in the post-global financial crisis period [*1*]. In their global surveys of merger control enforcement, Allen & Overy observed for 2019 an increase in M&A deals being frustrated by merger control interventions with 40 deals prohibited or abandoned whereas in 2020 the number was 25% lower with 29 deals being frustrated [*2*]. In 2019, 143 cases were cleared subject to remedies and in 2020 the number of conditional clearances subject to remedies was 138, slightly lower. In 2018, the number of deals prohibited was 7 with 22 deals abandoned whereas 139 cases were cleared subject to conditions.

My own analysis of the statistics regularly published by the European Commission (EC) confirms that for the years 2018 to 2020 the relative level of merger control enforcement activity, measured by the number of interventions divided over the total number of notifications, was 5%, against a 6.3% intervention rate in the previous three years 2015 to 2017. In the European Union (EU), in the most recent three-year period, there were a total of 58 merger control interventions, of which 40 were conditional clearances in Phase 1, 15 conditional clearances in Phase 2 and 3 prohibition decisions [*3*]. This compares with 65 conditional clearances by the EC over the period 2015- 2017, and 3 prohibitions, a decrease by 10 cases or 15%. Interestingly, the number of Phase 2 conditional clearances and prohibitions was at the same level in both periods.

Clearly, the continued importance of conditional clearances, whether assessed at the global or EU level, justifies the publication of this special issue by Concurrence. Remedies is where the action takes place in merger control. This was true at the time of the last special issue in September 2018 and is still so now.

I am pleased to have been asked to write the foreword to this timely publication. In my last foreword published three years ago, I provided an overview of the recent enforcement practice and use of remedies in EU merger control by highlighting key cases and policy developments particularly in the area of merger control in innovation and R&D intensive industries and with respect to the increased application of behavioural remedies [*4*]. In this foreword, I will similarly review the sectoral trends in global mergers as well as highlighting key national cases that were subject to remedies. I then discuss the continued trend towards adopting behavioural remedies and another important trend by competition authorities to review compliance with remedies leading in some instances to significant fines for breaches of commitments. On the policy front the major development was the concerted effort by all major competition authorities to come to grips with the competition issues raised in the digital economy leading to increased actions by competition authorities and proposals for new competition tools by the EU in December 2020. I will conclude with a brief discussion what these policy developments mean for merger remedies going forward.

Global merger remedies

Over the last three years the consolidation and restructuring of major global industries such as the the agrochemical and pharmaceutical industries continued to give rise to over a half a dozen global deals that were scrutinized by competition authorities worldwide. The three biggest deals, all worth over USD 60 billion and reviewed in the special issue, were Abbvie/Allergan (2019), Takeda/Shire (2018) and Bayer/Monsanto (2018).

The combination AbbVie with Allergan gave rise to concerns over existing and future competition in the market for treatment of inflammatory treatment of bowel disease drugs in both the EU and US, leading to a relatively straightforward divestment of certain drugs as well as a pipeline product to Nestle [*5*].

In Takeda/Shire, the US authorities cleared the deal unconditionally whereas the EU accepted a limited divestment of a biological drug under development by Shire to deal with its concern over loss of innovation, a typical remedy in this industry [*6*]. What is interesting and noteworthy in this case is that these commitments were waived by the EU two years later, after an investigation revealed several permanent, significant and unforeseeable developments that changed the nature of competition for the treatment of inflammatory bowel diseases including adverse results of clinical studies and problems with the management of trials for the divested pipeline product [*7*]. Such waivers are rare and require a high burden of proof by the applicant.

By far the most complex set of multijurisdictional remedies were agreed in the last of the three large agrochemical mergers, Bayer/Monsanto in 2018 [*8*]. This deal became subject of a discussion over the limits of remedial action in merger control. Was this deal too big to fix from a competition policy perspective? I reviewed this question in an article published last year [*9*], where I quoted the recently retired head of the compliance division of the FTC, Daniel Ducore, who felt compelled to write a letter to the American Antitrust Institute providing a robust defense of the settlement, which is a fix-it-first remedy and makes the approved buyer, BASF, party to the settlement although it is not a named defendant in the FTC's complaint [*10*] Ducore discusses the dilemma competition authorities face reviewing complex mergers that raise major challenges in designing and implementing merger remedies such as the broad scope of the remedy, the risks that remain and the need to monitoring compliance. He makes the

suggestions that the Antitrust Division should continue to review this particular remedy in the years following its implementation and share its learning with the public. I believe this case illustrates very well the dilemma of complex mergers requiring broad and complex remedies.

The Bayer/Monsanto deal is also interesting from a merger remedies perspective as the purchaser of the divestment businesses worth EUR 6 billion, BASF, was itself active in a number of relevant markets and therefore the divestment itself was also subject to merger control. This led in the EU to a second remedy package to deal with competition and innovation concerns. [*11*]. While somewhat unusual, it does in my experience occasionally happen that a purchaser must itself divest some business in a second round of remedies, a remedy of a remedy.

The other major pharmaceutical deals and deals related to the healthcare sector more generally that are reviewed in this special issue include remedies reducing horizontal overlaps of existing generic products in Mylan/Upjohn (2020) [*12*], pain management products in GSK/Pfizer consumer health (2019) [*13*], and a combination of current and pipeline animal health products in elanco/Bayer (2020) [*14*]. Danaher / GE Biopharma (2019/2020) was another major deal where the supply of products and equipment to the biotech industry was subject to investigations in the EU and US, leading to a relatively complex set of remedies involving 5 divestments businesses to an upfront buyer [*15*].

Other technology related sectors also saw large mergers: in the Aerospace & Engineering industry the USD 30 billion Rockwell and United technologies was subject to intense scrutiny by regulatory authorities on both sides of the Atlantic and cleared only after significant structural remedies and divestments [*16*]. Finally, the technology, media and telecommunications sectors saw three big deals. In the US, the DOJ cleared the merger of the third and fourth largest telecommunications providers T-Mobile and Sprint subject to structural remedies, [*17*] and in Europe the EU Commission conditionally cleared the Vodafone/Liberty Global (2019) merger in the cable network market in four countries subject to a number of behavioural commitments [*18*]. In the global media & entertainment merger between the Walt Disney Company and 21st Century in 2018 saw the US DOJ challenge the merger and in its final judgement (2019) require the divestiture of Fox's interests in a number of video networks and programming assets [*19*]. In the EU, the EC also required a structural divestment of a number of factual channels [*20*], while in Mexico, the Federal Economic Competition Commission (COFECE) required Fox to cease its participation in a JV with Sony Pictures [*21*].

Behavioural Merger Remedies: here to stay

In my last review three years ago, I highlighted the trend towards behavioural remedies being increasingly accepted by the EC , particularly for mergers in the information technology industries (ICT). I cited the decision on Qualcomm/NXP from January 2018, [*22*] where the Commission accepted commitments similar to other recent conditional merger clearances in the EU in the ICT industry, namely to continue to provide the same level of interoperability between its own base band chipset and the near filed communications (NFC) and secure element (SE) products it acquired from NXP. [*23*] These commitments echo interoperability and FRAND licensing commitments given among others by Worldline in 2016 concerning a certain payments systems software used in Germany for merchant acquisition services, [*24*] and in the merger of three card payment service operators in Spain, Servired/Sistema (2018) [*25*]. In the media sector, in Discovery/Scripps (2018), commitments were accepted whereby the merging parties agreed to make available TV news channels in Poland for 7 years on reasonable terms [*26*]. In the US, the Federal Trade Commission in a decision from 2018 required Northrop Gunman "to supply solid rocket motors to competitors on a non-discriminatory basis as part of a settlement resolving charges that Northrop's $7.8 billion acquisition of aerospace and defense contractor Orbital ATK likely would be anticompetitive". [*27*]

The Allen & Overy review of global trends in merger control cited above observes that the overall balance has moved in favour of remedies involving behavioural commitments since 2017 [*28*]. In the last two years around half of all deals cleared 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 [*29*].

While it is difficult to pinpoint a single reason for this shift, Allen& Overy suggest that it may in part be a result of an increase in the number of vertical mergers. 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" [*30*]. He highlights the role of digital platforms, innovation and investment in intangible assets that become central to economic growth. In his case review he cites among others the EU conditional clearance decisions in Liberty/Ziggo (2018), Daimler/BMW JV (2018) and the Italian decision in Luxottica/Barberini (2018), all three representing examples of access remedies, be they related to physical infrastructure or intangible assets, such as IP rights. [*31*]. The JV between the two car sharing services platforms of Daimler (car2go/moovel) and BMW (DriveNow) provide an example of the behavioural remedies being applied to address concerns in relation to online applications.

Since his review was published, there have been further remedies cases in the telecommunications industry with Vodafone/Liberty Global (2019) being one of the more significant and larger deals [*32*]. 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 [*33*]. The article sets out the circumstances in which access remedies can be successful and draws a comparison to ex-ante telecom regulation.

For a critical review see contributions by Kwoka (2020) and Russel Pitman (2020). [*34*] For example, Pitman argues that behavioural remedies may be even more complex and raise more complicated economic issues than has been previously appreciated and suggests that competition agencies would do well to approach behavioural remedies with great care. He singles out the potential ambiguities in the wording of behavioural remedies such as non-discriminatory prices and access conditions that create incentives for merging firms to set prices and other commercial conditions strategically.

On 17 January 2019, the French Competition Authority ("FCA") published a new study on behavioural remedies in competition law [*35*]. The press release of the FCA as well the review by Martin Favart which forms part of this special issue make clear that the FCA has made significant use of behavioural remedies, both to put an end to anticompetitive practices, and in the course of merger control reviews [*36*]. As the FCA itself puts it: "This study has the dual aim of taking stock of the decision-making practice of the Autorité de la concurrence in regard to behavioural commitments, and providing material for broader discussion on the subject. 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." Favart comments that the study indicated that the effectiveness of behavioural commitments depends on these being effectively monitored. The study 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 not just of the compliance with a remedy but also the development of competition and the effectiveness of remedies in the market, a much wider monitoring remit.

In 2018, the OECD held a roundtable where the focus was on the effectiveness of consumer facing behavioural remedies and on how competition authorities and regulators can intervene in markets to make the demand-side work well, delivering benefits for consumers [***37***]. The report which is summarised in this special issue noted that while much work of competition authorities focuses on supply-side interventions, competition and consumer authorities may also intervene on the demand side applying a wide range of tools, such as market studies, antitrust enforcement, consumer protection cases, mergers or, more generally, in their role as advocates for competition in policy formation or as promoters of awareness of competition issues. Market studies, in particular, represent a flexible tool for competition authorities to seek to improve outcomes for consumers, enabling intervention on both the demand and supply sides of markets. Similarly, regulators often look to combine both demand and supply-side interventions to facilitate competition in their sectors."

The study builds on work carried out by the UK Competition and Markets Authority and the Financial Conduct Authority. [***38***] The conclusions of the UK study claims that the understanding of remedies to address problems in consumer markets has progressed a great deal over the past decade or so, particularly as regulators have reviewed the outcomes of past interventions and as the insights of behavioural economics have continued to influence policy making. However, "the evaluation of past intervention demonstrates that it is often not enough simply to provide consumers with a surplus of information and expect them to solve everything alone. Where people are making complex, or difficult long-term decisions, we also need to ensure that consumers are properly supported and/or protected."

Compliance with remedies

A further noteworthy trend can be observed with respect to actions taken by competition authorities regarding non-compliance with remedies leading in some instances to significant fines for breaches of commitments. In their 2020 review of global trends in merger control enforcement, Allen Overy found a significant number of cases where competition authorities imposed fines for non-compliance with merger control procedures, totalling EUR 144.6 million in 2019. While most of the fines were imposed for failure to file, gun jumping or provision of misleading information there were a number of cases that related to breaches of commitments.

Compliance cases reviewed in this special issue include a French case, Fnac/Darty (2019) [***39***] In this case the Conseil d'État, dismissed the action brought by Fnac in its entirety, and upheld the fine of EUR 20 million imposed by the French competition authorities in its decision of 27 July 2018 for non-compliance with the commitments made by Fnac.

In Spain, in 2019 the CDMC fined Telefonica EUR 1.5 million for breaching one of the commitments attached to its acquisition of DTS, a merger which was cleared in 2015 by the CNMC on the condition that Telefonica fulfilled a number of commitments in the pay TV market [***40***]. This included, among others, making Telefonica's yearly wholesale offer of contents for premium channels available to competitors. Monitoring these such commitments, the CNMC found that Telefonica failed to adequately assign the fixed costs related to football TV channel "Movistar Partidazo", which was part of its wholesale offer of premium channels for the 2016/2017 season.

In the UK, PayPal faced a fine of GBP 250,000 for violating an interim order imposed during the investigation into the acquisition of iZettle in 2019, a merger that was eventually cleared. As the authors of the article in e-competitions 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" [***41***]. Other UK compliance cases that led to

fines included Electro Rent in June 2018, fines on Ausurus (GBP 300,000 in January 2019 in respect of two breaches), Electro Rent (a second fine of GBP 200,000 in February 2019, in respect of a further breach of the same IEO), and Nicholls (GBP 146,000 in June 2019, in respect of three breaches). [***42***].

In the EU, the Commission opened infringement proceedings against Telefonica Deutschland issuing a Statement of Objections alleging the company breached commitments it offered to secure the Commission's approval of its acquisition of E-Plus in 2014. The Commission's preliminary view was that Telefónica did not properly implement its obligations under the wholesale 4G access obligation by not including certain existing wholesale agreements in the benchmark. This is the first time that the Commission has sent a Statement of Objections alleging that a company breached commitments it offered to secure the Commission's approval of a transaction under the EU Merger Regulation.

National and International Policy developments

In September 2020, the Antitrust Division of the DOJ released an updated Merger Remedies Manual (the manual), which provides guidance on how the agency currently intends to approach the structure and implementation of remedies in merger cases. [***43***] The DOJ last issued guidance on merger remedies during the Obama administration with the publication of the 2011 Policy Guide on Merger Remedies (the 2011 Policy Guide). This special issue contains two excellent summaries by US practitioners. [***44***] Both comment on the way the manual deals with behavioural remedies (called conduct remedies in the US) and note that despite the stated strong preference for structural remedies, the manual outlines a narrow set of circumstances where a conduct remedy may be appropriate to facilitate structural relief, such as agreements to transfer personnel or limited-duration supply agreements. The manual directs that standalone conduct commitments are only appropriate where the parties can prove that: "(1) a transaction generates significant efficiencies that cannot be achieved without the merger; (2) a structural remedy is not possible; (3) the conduct remedy will completely cure the anticompetitive harm, and (4) the remedy can be enforced effectively." [***45***] Finally, the manual notes that conduct remedies may be easier to enforce in markets in which 'regulatory oversight is already employed and data on the merged firm's conduct would be collected regularly and audited in any event' [***46***].

In Germany, on 19 January 2021, the 10th amendment of the German Act against Restraints of Competition ("ARC"), the so-called ARC Digitisation Act (the "ARC-DA") entered into force [***47***]. The ARC-DA brings far-reaching amendments to German competition law, *containing inter alia:*

- the introduction of a new framework to intervene in the digital sector and a revision of the rules on abuse of dominance including enhanced rules for access to data;
- significant increases of merger control notification thresholds applicable across industries; and
- a number of further substantial amendments including a codification of the FCO's leniency program, the implementation of the European Commission's ECN+ Directive introducing new powers of the Federal Cartel Office in the context of inspections, and changes concerning cartel damage claims.

The most significant policy developments in the last two years concerns the various studies and initiatives that have been launched in Europe as well as the US concerning competition issues prevalent in the digital economy. [***48***] This culminated in the EU Digital Markets Act proposal 15 December 2020 and the proposals of the digital taskforce in the UK a few weeks earlier. In a well-researched and informative article in the e-competitions bulletin, Caffarra and Scott Morton reviewed the set of ex-ante rules that are being proposed in the form of obligations that platforms identified as "gatekeepers" should abide by [***49***]. As the authors note, "this is

happening, extraordinarily, in the very same weeks that have seen five major complaints filed in the US against Google and Facebook by the federal agencies and the state attorney generals. And China has opened a major investigation of e-commerce giant Alibaba."

These proposals form part of the Commission's policy to make "*A Europe fit for the Digital Age*", one of the *six priorities* for Ursula von der Leyen's Commission which runs from 2019 to 2024. [***50***]). The policy proposals are mainly about ex ante regulation, institutional changes and special obligations imposed on big tech to deal with perceived failures of the current ex-post antitrust regime and less about merger control. Gatekeepers, however, must inform the Commission of all intended concentrations within the meaning of the EU Merger Regulation (EUMR) of businesses providing any services in the digital sector, regardless of whether they meet the EUMR thresholds. This is an information measure, it does not grant the Commission new jurisdiction under the EUMR. Caffarra and Scott-Morton cited above are critical and argue that "[w]ithout changes to the merger regime, the EC digital regulation package will remain incomplete (and risk the repeat of decisions like Google/Fitbit)".

Nevertheless, it seems to be clear to me that merger remedies in the digital economy will see major changes and more rather than less behaviour remedies. In an article from 2020, I discussed the challenges for remedies design and implementation facing antitrust authorities when dealing with competition issues in the digital economy including the risk of such platforms stifling or impeding competition through acquisitions of start-ups and potential competitors. In a number of past high-profile mergers and acquisitions, firms such as Google, Intel, Cisco, Siemens and GE have already felt obliged to offer commitments to provide free and open access to healthcare systems to license intellectual property on FRAND terms, to agree the provision of interoperability information for microprocessor chips and to divest interoperability protocols for videoconferencing solutions in order to obtain clearance for major acquisitions [***51***]. More recently, several ICT mergers reviewed in this special issue have involved a complex assessment of innovation effects of a merger that carried through to the design and implementation of appropriate remedies. In the latter group we find cases such as Qualcomm/NXP (2018), Microsoft/LinkedIn (2016), Brocade/Broadcom (2017) and Discovery/Scripps (2018) which are notable as they led to the acceptance of behavioural remedies (including interoperability commitments) also involved interoperability remedies [***52***].

Let me close with two national initiatives discussed by Caffarra and Scott-Morton that make explicit reference to merger control and merger remedies [***53***]. In the proposed UK regime, there are proposals for specific merger rules to tighten merger control for a designated group of companies with a strategic market status (SMS). In making merger control an explicit part of its new digital regime, the UK authorities recognise that all acquisitions by SMS firms need to be scrutinised with care. Instead of the usual standard, which is applied to any merger, there will be "a lower and more cautious standard of proof". That is, the substantive test does not change (it is still a "substantial lessening of competition"), but the level of certainty the CMA will be required to have is lowered from a "balance of probabilities" test to a "realistic prospect" test. Also, in the US, the recent complaints at the federal and state level have essentially underscored that enforcers must either be much stricter in the mergers they block or be clear with industry participants that they face a risk that a few years down the road there may be a need to review and undo those mergers that turned out to be harmful.

[***1***] *https://www.ey.com/en_gl/news/2020/12/conditions-ripe-for-already-resilient-m-and-a-activity-to-accelerate-in-2021-and-beyond*

[2] *https://www.allenovery.com/en-gb/global*

[3] *https://data.europa.eu/euodp/en/data/dataset/mergers-statistics*

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

[5] ***US Federal Trade Commission***, *The US FTC clears merger of 2 Big Pharma companies after they agreed to divest 3 drugs businesses (AbbVie / Allergan), 5 May 2020, e-Competitions Merger Remedies, Art. N° 94737*, and ***Porter Elliott***, *The EU Commission conditionally clears a merger in the pharmaceutical sector (AbbVie / Allergan), 10 January 2020, e-Competitions January 2020, Art. N° 93240.*

[6] ***Michele Giannino***, *The EU Commission conditionally approves an acquisition in the pharmaceutical sector (Takeda / Shire), 20 November 2018, e-Competitions November 2018, Art. N° 89622.*

[7] ***European Commission***, *The EU Commission waives all structural remedies committed to by merging pharmaceutical parties due to new significant permanent changes in market conditions during the divestiture process (Takeda / Shire), 28 May 2020, e-Competitions May 2020, Art. N° 95168.*

[8] ***Porter Elliott***, *The EU Commission conditionally clears a merger in the agriculture sector (Bayer / Monsanto), 21 March 2018, e-Competitions March 2018, Art. N° 86626*, and ***Matthew Readings, Geert Goeteyn, James Webber, Ruba Noorali,*** *The EU Commission considers potential harm to innovation as part of its merger assessments, particularly in R&D driven sectors such as pharmaceuticals and technology (Bayer / Monsanto), 21 March 2018, e-Competitions March 2018, Art. N° 86559.*

[9] See Thomas Hoehn, Challenges in Designing and Implementing Remedies in Innovation Intensive Industries and the Digital Economy, in: Remedies in EU Competition Law – Substance, Process and Policy, Gerard and Komminos (eds), Wolters Kluwer, 2020, p 121 – 148.

[10] Daniel Ducore, Letter to Diana L. Moss, President American Antitrust Institute, August 2, 2018.

[11] ***European Commission,*** *The EU Commission clears a merger subject to remedies on the seeds, pesticides and digital agriculture market (Bayer's Crop Science / BASF), 30 April 2018, e-Competitions April 2018, Art. N° 87062.*

[12] ***European Commission***, *The EU Commission clears merger of generic Big Pharma company with a competitor's generic division, subject to divestment of business for certain generic medicines (Mylan / Upjohn), 22 April 2020, e-Competitions Merger Remedies, Art. N° 94577*, and ***Porter Elliott***, *The EU Commission conditionally clears an acquisition between a pharmaceutical company and an off-patent medicines producer and distributor (Milan / Upjohn), 22 April 2020, e-Competitions Merger Remedies, Art. N° 95160.* This merger was cleared subject to conditions in the US in October 2020, see ***US Federal Trade Commission***, *The US FTC imposes conditions on pharmaceutical merger with competition concerns in ten generic drug markets (Mylan / Upjohn), 30 October 2020, e-Competitions October 2020, Art. N° 97734*

[13] **European Commission,** *The EU Commission clears a merger subject to remedies in the pharmaceutical market (GlaxoSmithKline / Pfizer Consumer Health Business), 10 July 2019, e-Competitions July 2019, Art. N° 91175*

[14] **Catherine Gordley,** *The EU Commission conditionally clears an acquisition between two global developers and suppliers of veterinary pharmaceuticals (Elanco / BAH), 8 June 2020, e-Competitions Merger Remedies, Art. N° 95623*, and ***US Federal Trade Commission***, *The US FTC approves final order requiring animal health product suppliers to divest assets in three product markets as a condition of acquisition (Elanco Animal Health / Bayer Animal Health), 11 September 2020, e-Competitions September 2020, Art. N° 96725.*

[15] ***US Federal Trade Commission***, *The US FTC finishes public consultation period and clears pharmaceutical merger subject to divestments in highly concentrated markets that supply biopharmaceutical companies with key inputs (Danaher / GE Biopharma), 29 May 2020, e-Competitions May 2020, Art. N° 95185* ; ***European Commission***, *The EU Commission clears a merger subject to remedies in the biotechnologies market (Danaher / GE Healthcare Life Sciences' Biopharma Business), 18 December 2019, e-Competitions December 2019, Art. N° 92810.*

[16] ***Eric Paroche, Céline Verney, Structural remedies***, *The European Commission approves a $30 billion horizontal merger in the aviation industry, subject to the divestment of several businesses in actuators, pilot controls, ice protection and oxygen systems (UTC / Rockwell Collins), 4 May 2018, Concurrences N° 1-2020, Art. N° 92990*, and; ***European Commission***, *The EU Commission clears a merger subject to remedies in the aerospace sector (Rockwell Collins / UTC), 4 May 2018, e-Competitions Merger Remedies, Art. N° 87064.* For a more general review of the deal, see also ***Jon B. Dubrow***, *The US DoJ challenges a merger which highlights key considerations for antitrust reviews of aerospace and defence industry transactions (United Technologies / Raytheon), 26 March 2020, e-Competitions Merger Remedies, Art. N° 94423.*

[17] ***US Department of Justice Antitrust Division***, *The US District Court for the District of Columbia enters final judgment in merger of third and fourth largest telecommunications providers and allows proposed structural remedies to proceed (T-Mobile / Spring), 1 April 2020, e-Competitions Merger Remedies, Art. N° 94708.*

[18] ***Porter Elliott***, *The EU Commission conditionally clears a merger in the cable network market in four countries (Vodafone / Liberty Global), 18 July 2019, e-Competitions Merger Remedies, Art. N° 91431.*

[19] *https://www.justice.gov/atr/case/us-v-walt-disney-company-and-twenty-first-century-fox-inc*

[20] ***European Commission***, *The EU Commission clears a merger, subject to remedies, in the markets of production and distribution of films for release in movie theatres and distribution of content for home entertainment and licensing of films and other TV content (Fox / Disney), 6 November 2018, e-Competitions November 2018, Art. N° 88648.*

[21] ***Mexican Competition Authority***, *The Mexican Competition Authority clears a merger in the entertainment industry subject to structural remedies (Disney / Fox), 6 February 2019, e-Competitions February 2019, Art. N° 89219.*

[22] ***European Commission***, *Decision of 18 January 2018, Qualcomm/NXP, Case M.8306. See also Porter Elliott, The EU Commission conditionally clears a merger in the market of*

semiconductors (Qualcomm / NXP), 18 January 2018, e-Competitions Bulletin January 2018, Art. N° 86224.

[23] *European Commission, Decision of 6 December 2016, LinkedIn / Microsoft, Case M.8124*; European Commission, Decision of 12 May 2017, Brocade/Broadcom, Case M.8314

[24] ***European Commission**, Decision of 20 April 2016, Equens / Worldline, M.7873.* See ***Porter Elliott**, The EU Commission conditionally approves a merger subject to divestment commitments and behavioural conditions in the payment services and terminals sector (Equens / Worldline), 20 April 2016, e-Competitions Bulletin April 2016, Art. N° 79443.*

[25] Spanish National Markets and Competition Commission, Servired/Sistema, n° C/0911/17, 1 February 2018 ; See ***Pedro Callol**, The Spanish National Markets and Competition Commission clears the merger of the three card payment systems operating in Spain (Servired / Sistema), February 2018, e-Competitions Bulletin Behavioral remedies, Art. N° 87238.*

[26] 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 (Scripps / Discovery), 6 February 2018, e-Competitions Bulletin February 2018, Art. N° 86472.*

[27] *https://www.ftc.gov/news-events/press-releases/2018/06/ftc-imposes-conditions-northrop-grummans-acquisition-solid-rocket*

[28] See 2 above.

[29] 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.

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

[31] Liberty Ziggo (2018) ; ***European Commission**, The EU Commission clears for the second time a merger subject to remedies on the market for the wholesale of premium Pay TV film channels (Ziggo / Liberty Global), 30 May 2018, e-Competitions Merger Remedies, Art. N° 87263*; Daimler BMW (2018) ; ***European Commission**, The EU Commission clears the creation of six joint ventures in the automobile sector, subject to remedies (Daimler / BMW), 7 November 2018, e-Competitions Merger Remedies, Art. N° 88649*; Luxottica/Barberini (Italy 2018) ; ***Michele Giannino**, The Italian Competition Authority conditionally clears a merger in the optical sector (Luxottica / Barberini), 19 November 2018, e-Competitions Merger Remedies, Art. N° 88658.*

[32] ***Porter Elliott**, The EU Commission conditionally clears a merger in the cable network market in four countries (Vodafone / Liberty Global), 18 July 2019, e-Competitions Merger Remedies, Art. N° 91431.*

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

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[35] ***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.*

[36] ***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.*

[37] ***OECD***, *The OECD holds a roundtable on designing and testing effective consumer-facing remedies, 5 June 2018, e-Competitions June 2018, Art. N° 87516.*

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[39] ***Eric Paroche, Céline Verney***, *Sanction: The French Supreme Administrative Court confirms the French Competition Authority's decision imposing a EUR 20 million fine on a French electrical household distributor for breach of its commitments undertaken in the context of a merger (Fnac / Darty), 7 November 2019, Concurrences N° 1-2020, Art. N° 93344* ; ***Alain Ronzano***, *Remedies: The French State Council confirms the €20 million fine imposed on a distributor of electronic products for non-compliance with a structural remedy that conditions the clearance of their merger (Fnac Darty), 7 November 2019, Concurrences N° 1-2020, Art. N° 92297.*

[40] ***Clara García Fernández, Miguel Troncoso Ferrer, Sara Moya Izquierdo***, *The Spanish Competition and Markets Authority fines company for for a merger commitment breach (Telefonica), 22 October 2019, e-Competitions October 2019, Art. N° 92289.*

[41] ***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.*

[42] See above.

[43] Press Release, Dep't of Just. Off. of Pub. Affairs, Justice Department Issues Modernized Merger Remedies Manual (Sept. 3, 2020). *https://www.justice.gov/opa/pr/justice-department-issues-modernized-merger-remedies-manual*. For the main document see *https://www.justice.gov/opa/pr/justice-department-issues-modernized-merger-remedies-manual*

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[***45***] See 43 above, at page 16

[***46***] See 31 above, at page 17

[***47***] ***Horst Henschen, Sarah Hachmeister, Peter D. Camesasca***, *The German Parliament enters into force its 10th amendment of the act against restraints of competition bringing powers for intervention in digital markets and changing the merger control regime, 19 January 2021, e-Competitions Preview, Art. N° 98965*.

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[***49***] ***Cristina Caffarra, Fiona M. Scott-Morton***, *The EU Commission issues the proposed digital markets act aimed to complement antitrust intervention in digital markets with ex-ante regulation in the form of a set of obligations that platforms identified as "gatekeepers" should abide by, 15 December 2020, e-Competitions January 2021, Art. N° 98686*; See also ***Lesley Hannah, Kio Gwilliam***, *The EU Commission announces a package of digital markets legislation intended to better regulate major online platforms and to protect consumers and businesses, 15 December 2020, e-Competitions January 2021, Art. N° 98440*, and ***Laurent de Muyter, Bernard Amory, Alexandre G. Verheyden, Yvan N. Desmedt, Eric Barbier de la Serre, Craig A. Waldman, Jörg Hladjk, Undine Von Diemar, Matt Evans,*** *The EU Commission unveils sweeping proposals to regulate the digital sector, 15 December 2020, e-Competitions January 2021, Art. N° 98610*.

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[***52***] European Commission, Decision of 18 January 2018, Qualcomm/NXP, Case M.8306. European Commission, Decision of 6 December 2016, LinkedIn / Microsoft, Case M.8124. European Commission, Decision of 12 May 2017, Brocade/Broadcom, Case M.8314. European

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[*53*] See 49 above