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# UK

## OFT

### **OFT withdraws criminal proceedings against current and former BA executives**

The OFT announced on 10 May 2010 that it has decided to withdraw its criminal proceedings against four current and former British Airways executives for price-fixing. The decision followed the discovery of a substantial volume of electronic material, which neither the OFT nor the defence had previously been able to review. Given that the trial had already begun and the volume of material involved, the OFT accepted that to continue with the trial in light of this unforeseen development would be potentially unfair to the defendants.

[Read press release](#)

[Read OFT further statement](#)

### **OFT decides that Project Canvas falls outside UK merger control jurisdiction**

The OFT concluded on 19 May 2010 that Project Canvas, the proposed joint venture (JV) between the BBC, ITV, Channel 4, Five, BT, Talk Talk and Arqiva (known as Project Canvas), does not qualify for investigation under the merger provisions of the Enterprise Act 2002. Project Canvas involves a proposal to build an open internet-connected television platform with common technical standards. The OFT decided that it does not have jurisdiction to review Project Canvas, in particular because none of the JV partners (including the BBC) is contributing a pre-existing business ('enterprise') to the Canvas JV

[Read press release](#)

[Read OFT decision](#)

### **OFT publishes decision that Coca-Cola increased shareholding in Fresh Trading does not give rise to relevant merger situation**

On 14 May 2010, the OFT published a decision setting its reasons for deciding that the anticipated acquisition by Coca-Cola of an increased shareholding in Fresh Trading Limited did not give rise to a relevant merger situation under the Enterprise Act 2002.

[Read OFT decision](#)

### **OFT and Competition Commission consultation on good practice in consumer surveys in merger inquiries**

On 25 May 2010, The OFT and the Competition Commission launched a joint consultation on a good practice guide for parties presenting evidence in merger inquiries. The draft guide provides advice on how to design and present consumer survey evidence. It sets out several principles of good survey design and details a range of practices that will tend to increase the evidential weight that can be given to survey results. Comments on the draft guide are invited by 3 September 2010.

[Read press release](#)

[Read Consultation document](#)

### **OFT invitation to comment on possible water merger**

On 13 May 2010, the OFT issued an invitation to comment in relation to the completed acquisition by RREEF Pan-European Infrastructure Fund LP of a minority interest in Kelda Holdings Limited, the parent of Yorkshire Water Services Limited.

[Read OFT invitation to comment](#)

### **OFT publishes decision clearing acquisition of Titan by JC Decaux**

On 14 May 2010, the OFT published its decision to clear the completed acquisition by JC Decaux UK Limited of Titan Outdoor Advertising Limited. The OFT concluded that the merger would not give rise to unilateral competition concerns or co-ordinated effects in the market for the supply of outdoor advertising space for supermarkets.

[Read decision](#)

### **OFT announces stock-take of infrastructure ownership and control**

On 14 May 2010 the OFT announced a stock-take of ownership and control across economic infrastructure in the UK. This work will include examining the different forms of ownership such as private equity ownership, statutory corporations, infrastructure investment funds and limited companies. The OFT is inviting submissions from interested parties by 11 June 2010.

[Read press release](#)

[Read stock take questions and answers](#)

### **OFT launches market study into outdoor advertising**

On 18 May 2010, the OFT announced that it is conducting a market study into outdoor advertising. The study will focus on both the structure of and competition within the sector. The sector is highly concentrated at the levels of the specialist buyers and outdoor media owners. This study will consider whether there are any distortions of competition or barriers to entry at different levels within the sector.

[Read press release](#)

[Read study questions and answers](#)

### **OFT publishes views on online targeted advertising**

On 25 May 2010, the OFT published a market study setting out its current views on behavioural advertising and targeted pricing practices. The report finds that, although industry self-regulation addresses some concerns about behavioural advertising, more could be done to provide consumers with better information about how personal information is collected and used. It also sets out how regulation might apply to these new and emerging practices.

[Read press release](#)

[Read market study document](#)

[Read study questions and answers](#)

### **OFT market study on advertising of prices**

On 28 May 2010, the OFT published a discussion paper on how new fair trading laws might apply to common pricing practices such as 'three for two' deals or 'was £60, now £30' offers. The legal discussion paper has been issued together with two new research reports as part of the OFT's wider market study into the advertising of prices, the final conclusions of which will be published in the autumn.

[Read press release](#)

[Read legal discussion paper](#)

### **OFT launches review of barriers to entry, expansion and exit in retail banking**

On 26 May 2010, the OFT launched a review of barriers to entry, expansion and exit in retail banking, to identify any obstacles facing new entrants and smaller banks seeking to expand. The OFT is calling for evidence on the extent of any barriers affecting banking for personal customers and for SMEs. The call for evidence will run until 8 July 2010.

[Read press release](#)

[Read call for evidence document](#)

[Read review questions and answers](#)

### **Speech by Philip Collins on UK competition and consumer regimes**

On 20 May 2010, the OFT published a speech given by its Chairman, Philip Collins, on the possible evolution of UK competition and consumer regimes. The speech considers how the competition and consumer regimes have changed over the last 10 years and what the future holds in light of their growing interdependence.

[Read speech](#)

### **Competition Commission**

#### **CC publishes final decision on ITV's CRR Undertakings**

On 12 May 2010, the CC published its final report on its review of ITV's Contracts Rights Renewal undertakings (the CRR Undertakings), which were accepted in 2003 as a condition to the merger of Carlton Communications Plc and Granada Plc. The CC confirmed its provisional findings and concluded that ITV's unrivalled ability to deliver large audiences on ITV1 means that

the CRR undertakings are still needed to prevent the channel from exploiting this position to the detriment of advertisers and other commercial broadcasters.

[Read press release](#)

[Read final report](#)

### **Competition Commission publishes final decision in Ticketmaster/ Live Nation merger**

On 7 May, the CC announced that it has again cleared the merger of Ticketmaster and Live Nation in the UK. The CC had initially cleared the merger in December last year but agreed to reconsider and make a new decision following a challenge to the Competition Appeal Tribunal by CTS Eventim in January 2010. In its final decision the CC has again concluded that the merger would not result in a substantial lessening of competition in the market for live music ticket retailing or in any other market in the UK, including live music promotion and live music venues.

[Read press release](#)

[Read final report](#)

### **CC publishes paper on the use of counterfactuals in merger inquiries**

On 27 May 2010, the CC published a paper on the use of counterfactuals in merger inquiries. The paper considers the proper role of alternative counterfactuals, including, in particular, the failing and flailing firm defences.

[Read CC paper](#)

### **CC publishes note on Heathrow consultation protocol**

On 19 May 2010, the CC published a note in relation to progress in agreeing with the Civil Aviation Authority (CAA) a new Heathrow consultation protocol. This follows the CC's final report on the BAA airports market investigation in which it recommended that the CAA should seek to improve airline consultation at Heathrow.

[Read market investigation](#)

### **Speech by Peter Freeman, Chairman of CC, on investigation of the banks**

On 20 May 2010, the CC published a speech by Peter Freeman, Chairman of the Competition Commission, on the issues that may arise in a hypothetical investigation of the banking sector. The speech examines the different ways in which such a market investigation could be approached, considering the relative advantages of a broad or a more focused approach and examining the possible issues that could come under consideration. It also examines possible remedies, including structural remedies, pointing out that these are not the only measures available to improve competition.

[Read speech](#)

## **Competition Appeal Tribunal**

### **CAT judgment in Stagecoach appeal**

On 21 May 2010, the CAT handed down its judgment on the appeal by Stagecoach, under section 120 of the Enterprise Act 2002, against the Competition Commission's final report on the Stagecoach/ Preston Bus merger. In its judgment the CAT held that the CC had applied the correct legal test when choosing the counterfactual (namely what could have been expected to happen in the absence of the merger), but that it not acted rationally in choosing the appropriate counterfactual. The CAT will now hear submissions from the parties on the form of an appropriate order.

[Read summary of judgment](#)

[Read full judgment](#)

## **Court of Appeal**

### **Court of Appeal ruling on requirement of dishonesty in criminal cartel offence**

On 28 May 2010, the Court of Appeal handed down a ruling on the interpretation of the requirement of dishonesty in the Enterprise Act 2002 criminal cartel offence. The issue of interpretation arose during the preparatory hearings in the price-fixing trial of four BA executives,

which subsequently collapsed (see further above). The Court of Appeal concluded that the requirement of dishonesty only had to be established on the part of the defendants; it was not necessary to prove that the individual(s) with whom the agreement had been made had also acted dishonestly.

[Read judgment](#)

## **Other**

### **Government decides to repeal Land Agreements Exclusion Order**

The Government has decided to repeal the Competition Act 1998 (Land Agreements Exclusion and Revocation) Order 2004 with effect from 6 April 2011. From this date, companies will have to self-assess land agreements for compatibility with competition law in the same way as they must assess other types of agreement.

[Read Government response to the consultation](#)

### **Coalition and implications for competition law**

On 20 May 2010, the Cabinet Office published a document, "The Coalition: our programme for government", setting out the programme for the coalition government for the next five years. In its document the government states its intention to create a single agency to take on the work of tackling serious economic crime currently conducted by, amongst other bodies, the OFT. Other proposed measures include enabling councils to take competition issues into consideration in relation to retail developments, establishing a Grocery Ombudsman, relaxing local media merger rules and stopping unfair competition from local authority newspapers.

[Read Coalition document](#)

### **Ofcom extends deadline for responses to consultation on Airtime Sales Rules**

On 28 May 2010, Ofcom announced that it has extended by two weeks the deadline for responses to its consultation on proposals for the removal of the Airtime Sale Rules. Responses are now invited by 21 June 2010. As part of the consultation, Ofcom has also published an independent econometrics report on the TV advertising market.

[Read consultation documents](#)

[Read econometrics report](#)

### **Ofgem announces new policy on network mergers**

On 25 May 2010, Ofgem announced its new policy on mergers between energy network companies. From 26 May 2010 onwards, Ofgem will advise the merger authorities and Government on any relevant mergers based on the relevant factors surrounding the merger in question. Ofgem states that it believes that there is a potential detrimental impact from mergers on its ability to regulate effectively and protect the interests of present and future consumers.

[Read Ofgem information note](#)

# EU

## **Antitrust**

### **Commission fines DRAM producers €331 million for price cartel - first settlement in a cartel case**

On 19 May 2010 the European Commission adopted its first settlement decision in a cartel case involving 10 producers of memory chips or DRAMS used in computers and servers. The fine totalling €331 273 800 million includes a reduction of 10% for the companies' acknowledgement of the facts. The addressees of the decision are: Micron, Samsung, Hynix, Infineon, NEC, Hitachi, Mitsubishi, Toshiba, Elpida and Nanya. Micron, however, was not fined because it revealed the existence of the cartel to the Commission.

[Read press release](#)

[Read Commission memo](#)

### **Commission confirms dawn raids in the sector of stretch film for agricultural use**

On 12 May 2010 the European Commission confirmed that on 28th and 29th April 2010 Commission officials carried out unannounced inspections at the premises of companies active in the bale wrap industry and on related markets in several Member States. Bale wrap is plastic stretch film used for the packaging and preservation of silage, hay or straw. The Commission has stated that it has reason to believe that the companies concerned may have violated EU antitrust rules that prohibit cartels and restrictive business practices and/or abuse of a dominant market position (respectively Articles 101 and 102 of the Treaty on the Functioning of the EU).

[Read press release](#)

### **Commission opens proceedings against Czech J&T Group for obstruction during inspection**

The European Commission has opened proceedings against J&T Finance Group, J&T Investment Advisors and Energetický, active in the electricity and lignite sectors in the Czech Republic, to investigate whether these companies have obstructed the Commission's inspection of 24 to 26 November 2009 at their premises. The Commission will in particular examine whether these companies produced the required records in incomplete form and whether their behaviour constitutes a refusal to submit to an inspection, in violation of EU rules governing antitrust investigations.

[Read press release](#)

### **Commission consults on commitments offered by Visa Europe**

On 28 May 2010, the European Commission published in the Official Journal a notice inviting comments on commitments offered by Visa Europe Limited. The commitments have been offered by Visa in order to address the Commission's concerns that the multilateral interchange fees (MIFs) set directly by Visa in the EEA for point of sales transactions with immediate direct debit cards (both cross-border transactions and domestic transactions in nine member states) restrict competition between banks, contrary to Article 101(1) of the TFEU.

[Read Market Test Notice](#)

[Read Commission memo](#)

### **Commission accepts binding commitments from E.ON to open up German gas market to competitors**

On 4 May, the European Commission announced that it had adopted a decision that renders legally binding commitments offered by E.ON to effectively open up access to the German gas market thereby addressing concerns that it may have unfairly shut out competitors in a possible abuse of its dominant market position. After the recent decisions involving RWE in Germany and GDF Suez in France, this is now the ninth major decision since the 2007 energy sector competition inquiry.

[Read press release](#)

[Read Commission memo](#)

## **Commission publishes summary of decision to accept commitments from EDF in relation to long-term contracts**

On 22 May 2010, the European Commission published in the Official Journal a summary of its decision under Article 9 of Regulation 1/2003 to make legally binding commitments offered by EDF SA (OJ 2010 C133/5). The commitments were offered in order to address the Commission's concerns that EDF might have abused its dominant position in the French market for the supply of electricity to large industrial customers by concluding long-term supply contracts and by including restrictions on resale in its supply contracts.

[Read summary of decision](#)

[Read press release](#)

## **State Aid**

### **General Court ruling in appeal against France Telecom aid decision**

The General Court has handed down its ruling on appeals against the European Commission's decision of August 2004 finding that France had granted France Telecom illegal "psychological" state aid via the combination of public statements of support and the offer of a loan. The General Court annulled the Commission's decision, finding that although the actions of the French Government provided the company with a financial advantage, no state resources were actually transferred to France Telecom.

[Read judgment](#)

### **Commission requests France to comply with Court judgment on recovery of incompatible tax exemptions for takeover of ailing companies**

The European Commission has formally requested France to implement a 2008 judgment of the European Court of Justice declaring that France had failed to recover incompatible State aid awarded in the form of exemptions from corporate tax for takeovers of ailing companies (case C-214/07). The Commission's request takes the form of a letter of formal notice, the first step in infringement proceedings for failure to respect a Court judgment (Article 260 of the EU Treaty).

[Read press release](#)

### **Commission publishes latest overview of national state aid measures adopted in response to the economic crisis**

On 12 May 2010, the European Commission published its latest overview of national state aid measures adopted in response to the economic crisis. This version updates the one published in February 2010.

[Read European Commission overview](#)

### **Commission publishes working document on phasing out bank guarantees**

On 18 May 2010, the European Commission published a staff working paper on the gradual phasing out after 30 June 2010 of government guarantees for banks that are no longer required due to the recovery of the financial markets.

[Read staff working paper](#)

## **Mergers**

### **Commission approves acquisition of animal health assets of Pfizer by Eli Lilly**

On 25 May 2010, the European Commission announced that it has decided under Article 6(1)(b) of the EU Merger Regulation to approve the acquisition of the animal health assets of Pfizer by Eli Lilly (COMP/M.5843). Eli Lilly is a US research based, pharmaceutical company which is active globally in the research, development, manufacture and sale of a range of pharmaceutical products for humans and animals. Pfizer is a US company that is active in the production of vaccines for animals. The transaction was examined under the simplified merger review procedure.

[Read decision](#)

### **OECD publishes paper on the tests for the assessment of mergers**

The Organisation for Economic Cooperation and Development (OECD) has published a paper setting out the proceedings of a policy roundtable on the tests used in the assessment of mergers held in June 2009. The paper considers a move away from tests based on the principle of dominance to those based on a substantial lessening of competition.

[Read OECD Paper](#)

### **Public procurement**

#### **ECJ ruling on right to bring actions against public procurement procedures**

On 6 May 2010, the European Court of Justice (ECJ) handed down its judgment on two joined preliminary references from the Greek national court. The ECJ ruled that a mixed contract of which the main object is the acquisition by an undertaking of 49% of the capital of a public undertaking and the ancillary object, indivisibly linked with that main object, is the supply of services and the performance of works does not, as a whole, fall within the scope of the directives on public contracts. The Court also ruled that EU law, in particular the right to effective judicial protection, precluded a national rule depriving members of a temporary association (acting as tenderer in a public procurement procedure) of the possibility of seeking, individually, compensation for the loss which they suffered individually as a result of a decision adopted by an authority, other than the contracting authority.

[Read judgment](#)

### **Other**

#### **Commission consultation on draft revised Research and Development block exemption, Specialisation block exemption and Horizontal Co-operation Agreements Guidelines**

On 4 May 2010, the European Commission published for consultation drafts of a revised Research and Development block exemption, Specialisation block exemption and Horizontal Co-operation Agreements Guidelines. The draft revised Horizontal Guidelines include a new chapter on information exchange and a revised chapter on standardisation.

[Read consultation page](#)

[Read draft R&D block exemption](#)

[Read draft Specialisation block exemption](#)

[Read draft Horizontal guidelines](#)

#### **New guidelines on vertical restraints published in Official Journal**

On 19 May 2010, the new version of the European Commission's guidelines on vertical restraints was published in the Official Journal (OJ 2010 C130/1). These revised guidelines were adopted, together with the new vertical agreements block exemption regulation (Regulation 330/2010), on 20 April 2010. The new block exemption includes a market share threshold for the buyer as well as the supplier and the new guidelines provide additional guidance on restrictions imposed on the use of the internet by retailers and distributors.

[Read press release](#)

[Read guidelines on vertical restraints](#)

[Read Block Exemption Regulation](#)

#### **Commission adopts new motor vehicle block exemption regulation and accompanying guidelines**

On 27 May 2010, the European Commission announced that it has adopted a new motor vehicle block exemption regulation and accompanying guidelines on vertical restraints in agreements for the sale and repair of motor vehicles and for the distribution of spare parts for motor vehicles. The application of the existing motor vehicle block exemption is extended until 31 May 2013 in so far as it relates to vertical agreements relating to the sale of new motor vehicles.

[Read press release](#)

[Read block exemption regulation](#)

[Read supplementary guidelines](#)

**Speech by Commissioner Almunia on the challenges for EU competition policy**

On 12 May 2010, the European Commission published a speech by Joaquin Almunia, Competition Commissioner, on the future of competition policy in the European Union.

[Read speech](#)

**Speech by Alexander Italianer on current priorities for competition policy**

The European Commission has published a speech given by Alexander Italianer, Director-General of DG Competition, on 20 May on the priorities for competition policy. Mr Italianer discussed the role of competition policy during the financial crisis. He also discussed the Commission's enforcement work, the work being carried out in relation to collective redress and due process in Commission investigations.

[Read speech](#)

The information in this newsletter is intended to be a general guide only and not to be comprehensive nor to provide legal advice. For further information on any topic in this newsletter, please contact [competition@reedsmith.com](mailto:competition@reedsmith.com) or one of your regular contacts at Reed Smith.

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