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Consumer Goods and Retail Industry Competition Bulletin

Over the course of the last few months, there have been a number of developments in the sector. This edition of the Consumer Goods and Retail Industry Competition Bulletin includes details of the two recently commenced investigations into arrangements governing the sale of e-books and a brief oversight of the UK's competition regulators' joint commentary on retail mergers. As in previous editions of the Bulletin, we also identify the latest developments in the sector that have taken place across a wide range of jurisdictions.

HOT TOPICS

- **EU and UK: e-publications – a round-up of issues arising.** The UK's Office of Fair Trading and the European Commission have announced investigations into whether arrangements between certain publishers and some retailers for the sale of e-books may breach competition rules.

- **UK: OFT and CC publish joint commentary on retail mergers.** The Office of Fair Trading and the UK's Competition Commission have published a joint, non-binding commentary on retail mergers.

SUPERMARKETS/GROCERIES RETAILING

- **UK: Safeway fails in claim to recover fine from former employees.** Safeway's claim to recover from its former directors and employees a £10.7 million fine imposed on it by the UK's Office of Fair Trading has been dismissed by the UK Court of Appeal. The UK Supreme Court has refused Safeway permission to appeal.

- **Romania: Acquisition of supermarkets approved.** Romania's Competition Council has cleared the acquisition, by Mega Image, of two commercial spaces belonging to Can Serv SRL.

BEVERAGES, BREWERIES AND TOBACCO

- **UK: Acquisition of Cockburn's port cleared.** The Office of Fair Trading has approved unconditionally the anticipated acquisition of the Cockburn's port brand by Symington.

MILK, DAIRY AND FOOD PRODUCTS

- **Germany: Authorities scrutinise food retail sector.** In February 2011, Germany's Federal Cartel Office announced the beginning of an inquiry into the food retail sector.

Sections

If you would like to know more about the subjects covered in this publication or our services, please contact any of the Global Antitrust Contacts on the last page of this newsletter.

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- **Germany: BKartA fines three producers of consumer goods for information exchange.** In March 2011, the German Federal Cartel Office fined Kraft, Unilever, and Dr. Oetker a total of approximately EUR 38 million for an alleged exchange of sensitive information.

- **Greece: Acquisition of ice cream business conditionally approved.** On 1 February 2011, Greece's Hellenic Competition Commission cleared Unilever's acquisition of EVGA's ice cream business, subject to conditions.

- **Netherlands: International flour cartel participants fined.** The Dutch Competition Authority has imposed fines totalling EUR 81.6 million on 15 producers of flour in the Netherlands, Belgium and Germany.

- **Ukraine: Decrease in milk and poultry prices ordered.** In November 2010 the Antimonopoly Committee of Ukraine imposed a mandatory decrease in wholesale and retail prices for milk products and poultry meat on various companies.

- **US: Dean Foods settles civil antitrust lawsuit.** Dean Foods has agreed to settle a civil antitrust lawsuit, filed by Vermont dairy farmers for USD 30 million, which alleged a conspiracy to fix prices of certain milk products.

NON-FOOD RETAILING

- **China: NDRC finds that tying practices infringe Anti-Monopoly Law.** The Hubei Price Bureau of the National Development and Reform Commission has found a salt supplier guilty of anti-competitive tying conduct.

- **Czech Republic: Husky fined for RPM.** The Czech Competition Office has upheld a decision to fine HUSKY CZ s.r.o., an outdoor equipment manufacturer, for having directly the fixed retail sales prices of its products.

- **EU: Commission fines LCD panel cartel participants.** The European Commission has fined six producers of liquid crystal display panels a total of EUR 648.9 million for cartel activity which took place outside the EU.

- **EU: Commission fines members of detergents cartel.** The European Commission reached a settlement with Procter & Gamble and Unilever in relation to the fixing of laundry detergent prices. Under the settlement, the Commission has reduced the fines that would otherwise have been imposed.

- **EU: ECJ dismisses Activision appeal against Nintendo fines.** The European Court of Justice has dismissed an appeal by Activision Blizzard Germany GmbH against a judgment of the General Court of the EU which upheld the European Commission's decision fining Nintendo and certain distributors for agreements allegedly aimed at restricting parallel trade.

- **Poland: "Clicks and bricks" retail merger blocked.** In a rare prohibition decision, and the first to be motivated by competition concerns in an online retail market, Poland's Office of Competition and Consumer Protection has blocked a merger of two leading retailers, Empik and Merlin.s

- **Poland: Fines for companies fixing paint prices.** Poland's Office of Competition and Consumer Protection has fined a manufacturer and four retailers of paints and varnishes approximately EUR 13.5 million for distorting competition through retail price maintenance.

- **Spain: Members of long-standing cosmetics cartel fined.** Eight companies and an industry association have been fined EUR 51 million in total for a professional hairdressing products cartel lasting more than two decades.

- **UK: OFT issues first "fast-track" referral to the Competition Commission.** The UK's Office of Fair Trading has made its first "fast track" merger reference to the Competition Commission, in respect of an anticipated joint venture between certain British travel agents.

- **US: Toys 'R' Us settles purported class actions.** Toys 'R' Us and several manufacturers have paid USD 35.2 million to settle two proposed class action lawsuits, which alleged a conspiracy to illegally raise prices and to prevent certain competitors from discounting certain baby products.

HOT TOPICS

EU, UK, Belgium, Netherlands, France: e-publications: Round-up of issues arising

Summary. The UK's Office of Fair Trading (OFT) and the European Commission (Commission) have announced investigations into whether arrangements between certain publishers and some retailers for the sale of e-books (electronic or digital books) may breach competition rules.

Background. Article 101(1) of the Treaty on the Functioning of the European Union prohibits agreements between undertakings and decisions by associations of undertakings which have as their object or effect the prevention, restriction or distortion of competition within the common market. There is a similar provision in UK domestic competition law under Chapter I of the Competition Act 1998. The maximum penalty the OFT can impose is 10% of worldwide turnover of the relevant undertaking in its last business year (*Competition Act 1998 (Determination of Turnover for Penalties) (Amendment) Order 2004 (SI 2004/1259)*)

Facts. The OFT announced on 1 February 2011 that it has begun investigations into whether arrangements between certain publishers and some retailers for the sale of e-books may breach competition rules, following a significant number of complaints. On 1 March 2011, the Commission raided the premises of several EU publishers regarding similar potential infringements, although Competition Commissioner Almunia has stated that "*the Commission has not received any formal complaints in the matter of e-book pricing*". Press reports suggest that the regulators are scrutinizing whether the so-called agency model of pricing involves illegal price fixing, with French publishers appearing to be a focal point of the Commission's investigation. Under the agency model, the retailer (e.g. Amazon) acts as an agent of the publisher; the publisher sets the retail price of the e-books, with the retailer taking a commission. Similar inquiries have also been launched in some US States.

Comment. It is very early days in both the UK and EU investigations, and both regulators have been at pains to stress that the initiation of the investigations does not mean that an infringement has been committed. Nevertheless, the near-simultaneous timing of the investigations at the national and EU level is a rare and interesting phenomenon; the OFT has stated that both agencies "*are co-operating very closely to avoid any duplication between the two investigations*".

Furthermore, it is interesting to note other agency-type arrangements have come under the scrutiny of the US authorities which have initiated an investigation into Apple Inc. (Apple) pricing model in relation to the distribution of newspaper content via its iTunes content portal. Under this arrangement, Apple receives a 30% commission for each newspaper or magazine subscriber enlisted through iTunes, and also restricts publishers from selling content via other media for less than they charge through their iPhone or iPad apps. To date, press reports suggest that the US authorities are investigating Apple's pricing model. Following similar complaints of abuse of dominance in the EU, the Commission has recently commented that it remains unclear whether Apple holds a dominant position on the market for products such as iPads, iPods and iPhones, since the markets are relatively nascent and quickly evolving. However, it did note that the Commission would continue to monitor the market situation "*so as to ensure that competition, innovation and a level playing field are preserved among all market players*".

UK: OFT and CC publish joint commentary on retail mergers

Summary. The Office of Fair Trading (OFT) and the Competition Commission (CC) have published a joint, non-binding commentary on retail mergers.

Facts. Drawing on their extensive experience in dealing with retail mergers since the introduction of the Enterprise Act 2002 (the Act), the OFT and the CC have collaborated to produce a commentary which is hoped to "*be of interest to retail companies and their advisers, in setting out in a single joint document key themes that the OFT and the CC have explored across a broad spectrum of retail cases*".

The commentary focuses on three issues which have often arisen in previous cases:

i. the local catchment area for retail outlets;

ii. the extent to which competition takes place at the local and national levels; and

iii. the quantitative techniques used to assess how mergers might affect retail prices.

The OFT and CC (the Authorities) note that catchment areas are typically used as a filtering process to identify unproblematic areas and as such they tend to adopt a cautious approach when (i) selecting the catchment area measure; (ii) determining which stores are treated as competing fascia; and (iii) determining what is considering a suitable number of remaining fascia post-merger. The Authorities also noted that they tended to re-centre catchment areas (i.e. run the isochrone analysis around both of the merging parties' stores).

In terms of appropriate drive times or distances, the Authorities suggest that they have previously often identified catchment areas by measuring the area in which approximately 80 per cent of the store's sales are captured (as calculated on the basis of an average for a sample of stores of that profile). The impact of store openings and the actual distances between stores is also used as evidence of the appropriate catchment area; the latter is used by the OFT to identify those instances where the parties may not be in the initial catchment distance but are nevertheless still the closest outlets to one another (e.g., when assessing rural or sparsely populated areas). The commentary acknowledges that different store types may have different catchment areas, which may result in the finding of asymmetric competitive constraint (e.g., large grocery stores may have larger catchment areas than local convenience stores.

In relation to local and national levels of competition, the Authorities' commentary underlines that the Authorities' starting position will be that consumers shop in local retail outlets, so "*there will be material local competition on one or more aspects of price, quality, range and service*". The Authorities will then seek to gather evidence (internal strategy and board documents or external survey evidence) to demonstrate the extent to which the parties determine some or all of their retail offer on a national or local basis and/or the merger would incentivise changes to an existing national policy to react to local competition. The CC notes its previous use of economic or econometric analysis (e.g., regression analysis, price (margin) concentration analysis or entry analysis) to explore the extent of local competition. For example, in *Somerfield/Morrisons*, the CC found that despite both merging parties having national pricing policies, Somerfield's was tiered and as such led to variation in local prices. When considering the level of incentives of a merged firm in moving from a national to local policy, the Authorities have previously considered a cost-benefit analysis (e.g., whether possible IT and/or reputational costs outweighed any benefit gained from changing policy.

When assessing how mergers might affect retail prices, the Authorities will use simple quantitative indicators such as "illustrative price rises" to quantify upward price pressure or price movement, but note that this may not take account of the effects of new entry or the response of other competitors. The commentary also cites examples of Authorities having used diversion ratios and margins. Regarding the former, the Authorities note the use of survey or event studies to provide the relevant data needed to estimate customer switching. In relation to margin analysis, the Authorities note that, generally, unilateral effects are more likely to arise if margins are considered to be high.

Comment. The Authorities have stressed that this commentary is neither "formal guidance" under section 106(1) and (3) of the Act nor binding in relation to their future retail merger analysis. Instead, the commentary simply aims to provide some insight into how the Authorities addressed matters in past cases, and can be seen as a step towards increasing the transparency in their decision making.

SUPERMARKETS/GROCERIES RETAILING

UK: Safeway fails in claim to recover cartel fine from former employees

Summary. The English Court of Appeal (CA) has dismissed a novel claim by Safeway, the UK supermarket chain, to recover from its former directors and employees a fine imposed on Safeway by the Office of Fair Trading (OFT). The Supreme Court has since refused Safeway's application for permission to appeal against the CA ruling.

Background. Chapter I of the Competition Act 1998 (the Act) prohibits agreements or concerted practices which have the object or effect of preventing, restricting or distorting competition in the UK (Chapter I prohibition). The maximum penalty the OFT can impose is 10% of worldwide turnover of the relevant undertaking in its last business year (*Competition Act 1998 (Determination of Turnover for Penalties) (Amendment) Order 2004 (SI 2004/1259)*).

The OFT investigated an alleged cartel in which supermarkets and dairies were suspected of exchanging price information regarding dairy products in 2002-3. In September 2007, the OFT issued a statement of objections to certain supermarkets and dairy processors alleging that their exchanges of pricing information breached the Chapter I Prohibition.

Safeway concluded an 'early resolution agreement' with the OFT, under which Safeway admitted liability and agreed to pay a reduced penalty of £10.7 million. In September 2008, Safeway brought proceedings against 11 of its former directors and employees to recover the amount of this fine and the costs it had incurred during the OFT investigation. In its claim, Safeway alleged that the defendants had breached both their employment contracts and fiduciary duties owed to Safeway, and had acted negligently. The defendants applied for the claim to be struck out, on public policy grounds – namely that a person who commits an illegal or unlawful act cannot obtain compensation for loss which he suffers as a result (a principle known as 'ex turpi causa non oritur actio'), and that undertakings fined under the Act should not be able to be pass on those fines to directors and employees.

Facts. On 21 December 2010, the CA handed down its judgment in *Safeway v Twigger*, unanimously reversing the first instance decision, and holding that the case brought by Safeway against its former directors and employees should be struck out. The CA concluded that the Act imposed liability on Safeway as the relevant undertaking, not on its directors or employees – making Safeway's liability under the Act personal, not vicarious. It would thus be inconsistent with the CA 1998 to allow Safeway to recover the fine from its directors or employees. The CA also rejected Safeway's fallback argument, namely that the infringing acts could not properly be attributed to it, since the defendants were acting against Safeway's interests.

The CA refused Safeway, acquired by Morrisons in 2004, permission to appeal its judgment. Safeway applied directly to the Supreme Court for permission to appeal but, on 4 April 2011, the Supreme Court rejected that application. The case cannot, therefore, now be subject to any further judicial scrutiny in the UK.

Comment. The decision establishes the rule that an undertaking fined by a UK competition authority for breach of the Chapter I prohibition cannot seek to recover that fine from its directors or employees. Had the case been successful it would have given rise to the prospect of companies effectively shifting the ultimate burden of fines from shareholders to the providers of director and officer liability insurance. More broadly, the outcome benefits the OFT's leniency programme, by ensuring that employees will not be discouraged from reporting a suspected infringement for fear of later being sued by their employer for the amount of any fine imposed.

Romania: Acquisition of supermarkets by Mega Image approved

Summary. The Romanian Competition Council (RCC) has approved the acquisition by Mega Image SRL of two commercial spaces belonging to Can Serv SRL. Both parties are Romanian retailers of consumer goods.

Background. Under Romanian competition law, two or more transactions (including asset acquisitions) taking place between the same parties during a period of two years, may be considered to be a single economic concentration, with effect from the date of the latest transaction.

In the first acquisition, Can Serv sold a commercial space located in Bucharest to Mega Image. Within a year, Mega Image also purchased a second commercial space, in Pitesti, from Can Serv. These two acquisitions did not, independently, meet the thresholds under Romanian competition law above which mergers must be notified to the RCC.

Facts. The RCC considered the relevant market to be the retail market for daily consumer goods via supermarkets / hypermarkets, discounters and other similar shops (traditional/proximity shops). The RCC excluded from the relevant market cash and carry shops, as they are considered to be a different format of shops. Both the RCC and the European Commission had considered in previous cases (e.g. Lidl's acquisition of Plus Romania and Plus Bulgaria from Tengelmann that, though there are differences with the modern daily consumer goods retail trade, traditional trade is part of the relevant market in Romania. This was supported by the vast majority of retailers surveyed as part of the RCC's review of the transaction. Approximately 57% of Romania's national consumer goods retail trade is made via traditional channels (although modern channels represent 70% of the consumer goods retail trade in Bucharest). Ultimately, in this case the RCC concluded that no concerns arose, irrespective of whether traditional stores were included in the same relevant market.

Whilst the RCC also analysed possible foreclosure in the upstream market, the supply of daily consumer goods market, the RCC concluded that the notified concentration did not have any negative effects.

The geographic markets were identified as the cities of Bucharest and Pitesti, including all shops/areas within a 10-30 minute drive time. This area could also be extended if there are large overlaps of several local areas.

BEVERAGES, BREWERIES AND TOBACCO

UK: OFT clears Symington's acquisition of Cockburn's port brand

Summary. The UK's Office of Fair Trading (OFT) has cleared unconditionally the anticipated acquisition of the Cockburn's port brand (Cockburn's) by Symington Family Estates (Symington).

Background. On 6 October 2010, Symington signed an agreement to acquire the Cockburn's brand, subject to merger clearance from the OFT. As a result of the transaction, the combined business would have a share of supply of port in the UK in excess of 25%.

Facts. On 7 December 2010, the OFT decided to clear unconditionally Symington's proposed acquisition of the Cockburn's port brand Family Estates, notwithstanding that the parties overlapped in the supply of branded port. Whilst the parties' combined shares were not low enough to exclude *prima facie* competition concerns, the OFT received evidence suggesting a competitive constraint from own label goods and those supplied by the Fladgate Group. In addition, the OFT considered that the parties' brands do not compete closely, and that customers can easily switch - given, for example, significant spare capacity and countervailing buyer power.

Comment. The OFT has, in several cases, considered whether own label and branded consumer goods form part of the same product market(s). In this case, the OFT accepted that branded and own label port did form part of the same. Interestingly, the OFT agreed with the parties' submission that, within this market, own label sales were attributable to the relevant customer (i.e., retailers) rather than the supplier. In a few previous cases, the OFT and the European Commission have acknowledged that this approach may be appropriate in certain circumstances, but *Symington/Cockburn's* appears to be the clearest precedent thus far that own label sales should be attributed to the relevant customers, not retailers.

MILK, DAIRY AND FOOD PRODUCTS

Germany: Authorities scrutinise food retail sector

Summary. The German Federal Cartel Office (FCO) has announced the start of a sector inquiry in the food retail sector.

Background. Pursuant to § 32 e of the German Act against Restraints of Competition, the FCO can investigate a specific industry or sector if circumstances suggest that competition in Germany may be restricted or distorted. In this context the FCO is deemed to be allowed to request information from undertakings in the sector and, under certain circumstances, to carry out inspections.

In its reviews of several mergers over the last few years, the FCO has considered that the major German food retail chains hold a very strong position *vis-à-vis* their suppliers. For example, in its decision of October 2010 on EDEKA's acquisition of trinkgut (a retailer of beverages), the FCO considered EDEKA, REWE and Schwarz-Group to constitute a potential oligopoly *vis-à-vis* beverage suppliers.

Facts. In February 2011, the FCO initiated a sector inquiry to investigate the competitive position of the major food retailers in Germany as compared with suppliers of certain products. The FCO intends to focus on potential effects of the retail chains' buyer power on their small and medium sized competitors. Finally, the FCO will consider existing purchasing co-operation arrangements, particularly those involving at least one major retailer. The FCO is likely to consider the relevant purchasing markets on a national level.

Comment. Based on the FCO's figures, the four biggest retailers in Germany hold 85% of the retail market(s). This has clearly led to the FCO having concerns in relation to both the purchasing markets and the downstream retail markets, which the FCO considers to be regional in geographic scope. This background has already made it difficult for the major players to expand by acquiring existing retail stores – for example, EDEKA's acquisition of trinkgut in 2010 was only cleared subject to a number of conditions, and the FCO actually blocked the acquisition of certain RATIO stores by EDEKA in 2011. Whilst the downstream (retail) markets are not within the scope of the FCO's recently announced sector inquiry, if the current inquiry reveals an oligopolistic situation on the purchasing markets, then the FCO will likely increase its scrutiny of major retailers acquiring competing stores.

Germany: BKartA fines Kraft, Unilever, Dr. August Oetker for information exchange

Summary. The German Federal Cartel Office (FCO) has imposed fines totalling approximately EUR 38 million on three producers of consumer goods for an alleged exchange of sensitive information.

Background. Article 101(1) of the Treaty of the functioning of the European Union (Article 101) prohibits cartels and other agreements or concerted practises that restrict competition. A similar provision exists under German law pursuant to which the FCO considers, amongst other things, that the exchange of commercially sensitive information may restrict competition.

For several years, the consumer goods and retail sectors has been a focus of the FCO's attention – both in terms of alleged infringements of competition law (in particular vertical and horizontal exchange of information and/or agreement on prices) as well as the review of proposed mergers.

Facts. After a leniency application by Mars GmbH and a dawn raid conducted in early 2008, the FCO initiated investigations into whether certain suppliers had breached competition law by exchanging competitively sensitive information. Those investigations culminated in the FCO's decision in March 2011 to impose fines, based on a so-called 'settlement procedure', totalling EUR 38 million on Kraft Foods Deutschland AG, Unilever Deutschland Holding AG and Dr. August Oetker Nahrungsmittel KG. The FCO considered that these companies had exchanged, via regular meetings, information on negotiations with their downstream customers (i.e., retailers) and on intended price increases. The FCO considers that the companies involved were the main competitors in products including confectionery, ice cream, dry convenience food, frozen pizza, pet food and detergents – and that the exchange of information thus seriously harmed competition. Under the FCO's leniency guidelines, the FCO has not fined Mars.

Comment. These fines are the latest step in a series of similar procedures. For example, Unilever was also fined in 2008 for exchange of information in relation to branded drugstore products. Further, the FCO continues to conduct proceedings against producers of confectionery, based on allegations of information exchanges and agreed price increases.

Greece: HCC conditionally approves acquisition of ice cream business by Unilever

Summary. On 1 February 2011, Greece's Hellenic Competition Commission (HCC) cleared the acquisition of EVGA's ice cream business by Elais Unilever Hellas (Unilever), albeit subject to certain conditions.

Facts. The HCC was concerned that the acquisition may lead to a collectively dominant position of the two brands for "impulse" and family ice cream. Indeed, the acquisition led to Unilever having the largest market share in the overall Greek ice cream market (approximately 44.5%), ahead of Nestlé (with a market share of approximately 40%).

After issuing a statement of objections and holding an oral hearing, the HCC cleared the transaction subject to the following conditions: (a) EVGA's existing cooperation and distribution contracts and contracts for the provision of freezer cabinets on a rent-free basis to be modified so as to remove any exclusivity clauses; and (b) the transaction's non-compete clause – which prevented EVGA from producing, marketing and distributing ice-cream in cooperation with third parties – to be reduced in duration, from three years to only one year.

Netherlands: Participants in international flour cartel fined

Summary. The Dutch Competition Authority (NMa) has imposed fines totalling EUR 81.6 million on 15 producers of flour in the Netherlands, Belgium and Germany.

Background. Article 6 of the Dutch Competition Act, which is equivalent to Article 101 of the Treaty on the Functioning of the European Union (TFEU), prohibits cartels and other agreements or concerted practices which restrict competition.

Facts. The NMa identified five forms of collusion which took place between 2001 and 2007, and which together resulted in a single and continuous infringement of Article 6 of the Dutch Competition Act and Article 101 TFEU.

The NMa concluded that certain flour producers had divided markets between themselves, by means of a general agreement not to compete for each other's customers. The NMa also concluded that these producers had responded to various *ad hoc* issues that threatened the existence of their market-sharing arrangements by, for example: (i) compensating a cartel participant for revenue losses; (ii) jointly acquiring certain units of a competitor not participating in the cartel; and (iii) jointly acquiring and subsequently dismantling a flour mill, to avoid market entry by a new competitor.

Comment. According to the NMa, the main objective for the participants of the cartel was to protect the existing level of flour sales, which have not shown any growth for many years. The NMa considered this cartel to be particularly harmful, since it influenced such a large group of consumers.

Eight German and three Belgian flour producers were involved in the cartel. Three parties – two German and one Dutch – applied to the NMa for leniency, which resulted in reductions in their fines. Consequently, during its investigation the NMa co-operated closely with competition authorities in both Germany and Belgium. Recently, the Belgian competition authority announced that it has initiated investigations into alleged cartel agreements on the Belgian flour market. The Belgian investigation involves a number of the producers on which the NMa imposed fines.

Ukraine: Decrease in milk and poultry prices ordered

Summary. In November 2010, the Ukraine's Antimonopoly Committee (AMC) imposed a mandatory decrease in various companies' wholesale and retail prices for milk products and poultry meat.

Background. Over the past year or so, acute problems with the pricing of dairy milk products and poultry meat have been identified, and the AMC has been closely investigating concerted actions (and, in particular, alleged price-fixing) by major Ukrainian producers and retailers of milk and poultry meat products.

Facts. In November 2010, following an in-depth investigation, the AMC reached an agreement with Managing Company "Terra Food" Limited Liability Company, "Milkiland-Ukraine" Subsidiary Company, "Unimilk" Limited Liability Company, "Myronivsky Khliboproduct" Open Joint Stock Company – one of the biggest Ukrainian producers of poultry meat – and , large Ukrainian producers of milk, sour cream, other dairy products and cheese to reduce the wholesale prices for the above mentioned products by proportions varying from 3% to 10%.

In addition, in December 2010, the AMC ordered several of major Ukrainian food retail chains – including "Metro Cash & Carry Ukraine" Limited Liability Company, "ATB-Market" Open Joint Stock Company, "Pakko-Holding" Limited Liability Company, "ECO" Limited Liability Company, "Food Market" Limited Liability Company, "Auchan Ukraine" Limited Liability Company, "Adventis" Limited Liability Company and "Furshet" Limited Liability Company – to reduce their retail prices for milk products and poultry meat to "economically justifiable" levels. The retail chains were also required to conclude supply contracts directly with producers, thereby avoiding wholesale arrangements with intermediaries.

Comment. It will be interesting to monitor the extent to which the producers and retailers of milk products and poultry meat adhere to AMC's orders, in particular given the volatility of Ukraine's national currency and high rates of inflation, and how the AMC will further oversee the price formation on these sensitive Ukrainian markets.

US: Dean Foods

Summary. Dean Foods has agreed to settle, for USD 30 million, a civil antitrust lawsuit filed by dairy farmers in the US State of Vermont. The Vermont dairy farmers alleged that Dean Foods – the largest US dairy producer – and three other dairy-industry defendants had conspired to fix prices in the milk market in the Northeastern USA. In September 2010, a federal judge dismissed some claims against three defendants, but let claims stand against Dean Foods.

Not long after the above referenced development, Dean Foods settled a lawsuit with the US Department of Justice (DOJ). The DOJ's lawsuit, to which several US State attorney generals joined, stemmed from Dean Foods' April 2009 acquisition of Foremost's Consumer Products Division (including its dairy processing plants in Wisconsin, USA). The transaction was not required to be reported under the premerger notification law, but was challenged by the DOJ after the transaction had completed. The DOJ alleged that the transaction substantially lessened competition in the sale of milk to schools, grocery stores, convenience stories and other retailers in Illinois, Michigan and Wisconsin. The settlement requires Dean Foods to divest a significant milk processing plant in Waukesha, Wisconsin, and related assets that it acquired from the Foremost Farms USA Cooperative (including the "Golden Guernsey" brand name).

NON-FOOD RETAILING

China: NDRC finds that tying practices infringe Anti-Monopoly Law

Summary. The Hubei Price Bureau of the National Development and Reform Commission (Hubei NDRC) has adopted a decision against the Wuchang branch (Wuchang SI) of the Hubei Salt Industry Group (HSI), a supplier of table salt, for anti-competitive tying conduct.

Background. Chapter 3 of the China Anti-Monopoly Law (AML) prohibits companies with a dominant position from abusing that position; it is similar to Article 102 of the Treaty on the Functioning of the European Union (TFEU). Article 7 of the AML places a special duty on state-owned enterprises and companies with exclusive rights to conduct business in accordance with the law and not to harm consumer interests by taking advantage of a dominant position or exclusive rights. China's Price Law regulates price-related processes conduct which restrict competition.

On 12 August 2010, the Hubei NDRC launched an investigation into the commercial practices of Wuchang SI, following press reports that Wuchang SI had engaged in anti-competitive practices by tying the sale of salt to local distributors with the sale of Huo Li Er Ba, a local brand of washing powder distributed by HSI.

Facts. On 15 November 2010, the Hubei NDRC published a decision finding that Wuchang SI had abused a dominant position by engaging in the anti-competitive tying of the sale of salt with the sale of Huo Li Er Ba. The Hubei NDRC reached this decision notwithstanding that neither wholesalers nor retailers necessarily tied together, in turn, the resale of those products. The Hubei NDRC also found that Wuchang SI infringed Article 7 of the AML by failing, *inter alia*, to "*conduct business in an honest and trustworthy manner [...] and harm[ing] consumer interest by taking advantages of their position*".

The Hubei NDRC suspended its investigation; it imposed no fines but issued a warning letter to Wuchang SI and HSI. The Hubei NDRC's leniency may be due to Wuchang SI's cooperation during the authorities' investigation, and/or to Wuchang SI having repurchased from the wholesalers any unsold washing powder. In addition, Wuchang SI offered commitments and undertook to cease the infringing conduct; Wuchang SI was given one month to change its practices, and HSI undertook to monitor Wuchang SI's compliance with its commitments.

Comment. In recent months, local NDRC bureaus have actively taken enforcement action against companies engaging in anti-competitive practices under the existing Price Law. However, the commercial practices in this latest case were also considered to be unlawful under the AML. The case shows the NDRC's continued interest in the commercial practices of companies in relation to staple foods – previous cases concerned, e.g. rice noodles and mung green beans. More importantly, the case offers an insight into the NDRC's likely approach to anti-competitive tying conduct, and confirms that the AML applies equally to state-owned enterprises.

Czech Republic: Outdoor equipment supplier engaged in RPM

Summary. The Czech Competition Office (COO) has upheld its decision to impose a fine of CZK 2,316,000 (approximately EUR 0.1 million) on HUSKY CZ s.r.o, (Husky) for having directly fixed retail selling prices.

Background. Section 3(1) in connection with Section 3(2)(a) of the Czech Competition Act prohibits agreements which provide for direct or indirect fixing of prices or any other trading conditions, and is equivalent to Article 101 of the Treaty on the Functioning of the European Union.

Facts. Based on an investigation into the sale of outdoor equipment, the COO became suspicious that Husky, a manufacturer and supplier of outdoor equipment, may have been involved in resale price maintenance (RPM).

Email communication and phone call records, later secured as evidence during a dawn raid at Husky's premises,, showed that Husky and its online distributors had concluded oral agreements providing for minimum retail sales prices. The RPM included an obligation to adhere to the so-called "recommended prices" contained in the price lists distributed, via email, by Husky to its distributors. Distributors could not sell at prices lower than the "recommended" retail sales prices, including VAT, less 8%. Husky monitored and enforced compliance, ceasing cooperation with, or imposing other penalties on, distributors who did not comply. In addition to its fine, Husky was ordered to inform its distributors in writing about the COO's decision, and that the recommended prices were intended only to be a guide, and not to bind, distributors.

Comment. RPM amounts to a hard-core restriction, and no *de minimis* exception applies. This particular case demonstrates that particular caution should be taken when distributing "recommended" price lists – which, whilst not in breach of competition law *per se*, should not be used so as to make addressees feel obliged, or even incentivized, to adhere to the recommended prices.

EU: Commission fines LCD panel cartel EUR 649 million

Summary. The European Commission (Commission) has fined five producers of liquid crystal display (LCD) panels a total of EUR 648.9 million for participation in a cartel, notwithstanding that the relevant activity took place outside the EU.

Background. Article 101(1) of the Treaty on the Functioning of the European Union (Article 101) prohibits cartels and other agreements or concerted practices that restrict competition. Under Article 18 of Regulation 1/2003, in order to carry out the duties assigned to it by the Regulation, the Commission may require undertakings and associations of undertakings to provide certain information.

Facts. On 8 December 2006, the Commission sent formal information requests to a number of LCD panel producers, in order to elicit evidence of a cartel agreement and related price fixing practices. In February 2007, having received no response to its information request, the Commission took a decision formally requiring several European units of Chi Mei Optoelectronics (together Chi Mei) to provide specific information relating to the investigation which was held by their parent companies in Taiwan and Japan. In April 2007, Chi Mei appealed the Commission's decision to the General Court of the EU, arguing a lack of investigative and enforcement power to compel EU subsidiaries to produce documents under the sole custody and control of legal entities located outside the Commission's jurisdiction. Chi Mei argued that this exercise of power violated principles of international law, including territoriality, sovereignty, non-intervention and equality of States, and that such requests could have international repercussions - most notably, for class-action plaintiffs in the United States, keen to gain access to off-limits documents in Europe. In February 2011, Chi Mei dropped its appeal.

In December 2010, the Commission fined five LCD panel producers a total of EUR 648.9 million for operating a cartel which had agreed prices and exchanged information on future production planning, capacity utilisation and other commercial conditions, meeting around 60 times in Taiwan between October 2001 and February 2006. Under the Commission's leniency programme, Samsung Electronics received full immunity from fines. Competition Commissioner Almunia said that "*Foreign companies, like European ones, have an obligation to respect competition rules when they do business in Europe. The fact that cartel meetings took place outside the EU is no excuse*", and stated that EU action was necessary as cartel participants' activities had led to increases in the price of goods sold to European consumers.

Comment. The case highlights the scope of the Commission's powers to investigate and sanction cartels; this issue was central to the appeal launched in April 2007 (but later dropped) by Chi Mei. The Commission justified its punishment of cartel activity occurring outside of the EU based on adverse effects within the EEA, although the scope of the Commission's powers could potentially still be contested as an infringement of international law principles. Indeed, one company fined, AU Optronics, has appealed the Commission's infringement decision to the General Court, arguing that the Commission failed to establish that it had jurisdiction to apply Article 101 or that the alleged agreement had an immediate, substantive and foreseeable effect in the EEA.

Two other appeals against the Commission's infringement decision to the General Court have been launched, albeit not in relation to the scope of the Commission's investigative powers. Rather, Chimei InnoLux is challenging the Commission's calculation of the sales values on which the fines were based, based on the inclusion of products not related to the infringement, and the effective shift in sales from outside the EEA to within the EEA depending on where the finished goods are sold. LG Display's appeal contains several grounds, including an appeal similar to that of Chimei InnoLux against the concept of so-called 'direct EEA sales through transformed products'.

EU: Commission fines members of detergents cartel

Summary. The European Commission reached a settlement with Procter & Gamble and Unilever in relation to the fixing of laundry detergent prices. Under the settlement, the Commission has reduced the fines that would otherwise have been imposed.

Background. Article 101(1) of the Treaty on the Functioning of the European Union (Article 101) prohibits cartels and other agreements or concerted practices that restrict competition.

The Commission's settlement procedure (contained in a Commission Notice and Regulation to amend Regulation 773/2004) was finalised on 30 June 2008 (Settlement Procedure). The aim of the Settlement Procedure is to reduce the length of the Commission's investigation in a given cartel case, thereby freeing up the Commission's resources to pursue other investigations. In order to benefit from the Settlement Procedure, participants must, *inter alia*, acknowledge their company's liability for a defined infringement (including scope and duration). At the end of the settlement procedure, the defendant may receive a 10% reduction in its fine, which will be cumulative to any reduction received under the Commission Notice on Immunity from fines and reduction of fines in cartel cases *(OJ [2006] C298/11).*

Facts. In 2008, Henkel applied to the Commission for leniency in respect of an alleged cartel aimed at stabilising market positions and at coordinating prices for household laundry detergents in eight EU countries. In June 2008, the Commission carried out unannounced inspections at several companies' premises, and on 13 April 2011 announced its decision to fine Procter & Gamble and Unilever a total of EUR 315.2 million for having operated a cartel, with Henkel.

Procter & Gamble and Unilever indicated in the second half of 2010 their willingness to settle the case, and in January 2011 acknowledged their respective liability. In February 2011, the Commission issued a Statement of Objections reflecting the parties' submissions, which the parties subsequently confirmed. Two months later, the Commission adopted and announced its streamlined settlement decision, reducing the fines of Procter & Gamble and Unilever by 10% on account of their cooperation with the investigation. Procter & Gamble and Unilever also benefit from fine reductions of 50% and 25% respectively under the Commission's leniency notice.

Comment. This is only the occasion in which parties have used the Commission settlement procedure. More EU cases are likely to end in settlement; indeed, when announcing the Commission's previous decision in the *DRAM* case, Competition Commissioner Almunia enthused about the Settlement Procedure, and noted that "*there are several more settlement cases in the pipeline*".

EU: ECJ dismisses Activision appeal against Nintendo fines

Summary. The European Court of Justice (ECJ) has dismissed an appeal by Activision Blizzard Germany GmbH (Activision) against a judgment of the General Court of the EU, which upheld a European Commission (Commission) decision to fine Nintendo and certain distributors for agreements allegedly aimed at restricting parallel trade.

Background. Article 101(1) of the Treaty on the Functioning of the European Union prohibits cartels and other agreements or concerted practices that restrict competition.

In October 2002, the Commission imposed fines totalling EUR 167.8 million on Nintendo and seven of its official distributors in Europe (the distributors), for allegedly preventing exports from low-priced countries to high-priced countries. CD-Contact Data, now Activision, was fined EUR 1 million; Nintendo was fined EUR 149 million.

Facts. Activision, along with Nintendo and another distributor, appealed to the General Court. On 30 April 2009, the court refused to annul the Commission's decision but reduced Nintendo's fine because the Commission had breached the principle of equal treatment by making a significantly larger reduction to the fine of a distributor who started to co-operate with the Commission only eight days before Nintendo had done so. The court also reduced the basic amount of the fine imposed on Activision, to EUR 0.5 million, in view of Activision's exclusively passive role in the infringement.

Activision then appealed the General Court's decision, arguing that:

- The General Court erred in law by finding an illegal agreement between Activision and Nintendo on an incorrect legal categorisation of the facts. Activision argued that the agreement was perfectly legal under Article 101, as it restricted active sales but not passive sales, and that the General Court had not taken account of this distinction.
- The General Court distorted evidence to show that Activision intended to pursue an anti-competitive object.
- The Commission made a manifest error in its assessment of the evidence.

Decision. The ECJ dismissed the appeal. It held that Activision's first ground of appeal had no factual basis, and that, based on an analysis of the evidence, the General Court had considered there to be a concurrence of wills. The ECJ also held that the General Court had not distorted the evidence or made a manifest error of assessment in its assessment of the evidence. The ECJ considered that the General Court had provided sufficient reasons for its decision, and that the standard of proof required for the purposes of establishing the existence of an anti-competitive vertical agreement is no higher than in the context of a horizontal agreement.

Comment. This case confirms that, although a distribution agreement may on its face be compliant with Article 101, related correspondence showing a "concurrence of wills" between parties to limit parallel trade may amount to evidence of an anti-competitive distribution agreement. Nevertheless, the Commission's most recent prosecution of a vertical infringement dates back as far as 2005 - where the Commission fined Automobiles Peugeot SA EUR 49.5 million for operating, through Peugeot Nederland NV, a strategy aimed at preventing Dutch Peugeot dealers from exporting cars for sale to consumers in other Member States. The prosecution of vertical infringements has been far more of a focus of the national competition authorities than for the Commission.

Poland: "Clicks and bricks" retail merger blocked

Summary. Poland's competition authority, the Office of Competition and Consumer Protection (OCCP) has blocked a merger of two leading retailers, after concluding that the transaction would impede competition in Polish online retail markets for non-specialist books and music discs, and in the Polish market for non-specialist books.

Background. The Polish Act on Competition and Consumer Protection empowers the OCCP to examine the market consequences of notified mergers and acquisitions. The authority may prohibit a transaction that would lead to significant impediment of competition in the relevant markets.

Facts. In July 2010, NFI Empik (Empik) notified the OCCP of its contemplated acquisition of 60% of the shares in (and thus control over) Merlin. Empik – the leading traditional retailer of books and media in Poland – manages a chain of consumer goods retail outlets (salons), a chain of stores offering products for children (Smyk) and an online store. Merlin is the leading Polish online retailer of books and media, via the website, Merlin.pl.

The OCCP analysed the structure of and concentration in the retail markets for culture-related products, with a particular focus on modern distribution channels. Empik argued that, for books and recorded music, traditional and online retail sales comprise a single relevant product market for retail sales. The OCCP considered this definition too broad, and further segmented each market into separate markets for online sales and traditional sales. The market for the retail supply of books was further divided into sales of non-specialist, specialist and academic books.

A large-scale market investigation revealed that Empik and Merlin were the second-largest player and the market leader respectively, and perceived to be close competitors. The OCCP found that incentives to effectively compete would disappear post-transaction, as the dispersed competition facing the combined entity would not constrain Empik from imposing higher prices and worsened trade conditions. The OCCP found that Empik enjoys a significant competitive advantage through its well-developed network of free collection points, that a number of publishers are dependent on Empik and that the acquisition would significantly reduce competition in the markets for online retail sales of non-specialist books and music discs as well as in the market for purchase of non-specialist books. The OCCP saw no possibility for the parties to sufficiently address these concerns through the offer of commitments.

Empik has appealed the OCCP's decision to block the merger to the Competition Court – arguing, for example, that the OCCP was incorrect to distinguish two separate markets for traditional and online retail sales. The appeal is pending.

Comment. The OCCP took a rather conservative approach based almost exclusively on conditions "*at the current stage of social and economic development*", and disregarded the potential dynamic evolution of online markets. The OCCP also put a particular emphasis on brand awareness, brand image and brand equity.

This is the first OCCP prohibition decision to be based on the grounds that competition in an online segment of a retail market would be significantly impeded. In general, the OCCP rarely blocks transactions; *Empik/Merlin* is only the sixth prohibition decision since 2004.

Poland: Fines for companies fixing paint prices

Summary. Poland's Office of Competition and Consumer Protection (OCCP) has fined one manufacturer, and four retailers, of paints and varnishes a total of approximately EUR 13.5 million for distorting competition through retail price maintenance (RPM).

Background. The Polish Act on Protection of Competition and Consumers – which is similar to Article 101 of the Treaty on the Functioning of the European Union – prohibits price fixing, including RPM. For violating this prohibition, an undertaking may be fined, by way of a decision, up to 10% of its turnover earned in the preceding year. However, the Polish leniency regulation allows undertakings to apply for immunity from (or for a reduction of) any applicable fine.

Facts. On 22 December 2006, the OCCP instituted anti-monopoly proceedings against Akzo Nobel and one retailer, which were extended in July 2007 to additional retailers. Following its investigation, the OCCP found that between 2004 and 2006 Akzo Nobel and certain retailers had fixed minimum resale prices for certain paints and varnishes. Akzo Nobel initiated and coordinated the agreement, introducing and maintaining minimum resale prices; where a retailer did not comply, Akzo Nobel would threaten to stop supplies or to reduce its rebates. The OCCP classified the arrangements as 'vertical' in their nature, but with effects typically related to horizontal agreements. The OCCP stressed that the practices had an exploitative character and, in particular, anti-competitive intra-brand effects.

In the course of the proceedings, one retailer applied for immunity and Akzo Nobel subsequently submitted a leniency application. The OCCP accepted both applications. The retailer was granted full immunity from fines, and Akzo Nobel's fines were reduced by 50% (to approximately EUR 2.6 million).

Comment. Since 2006, the OCCP has already issued at least seven decisions concerning anti-competitive agreements on the market for paints and varnishes; most have resulted from leniency applications. Whilst the OCCP has in recent years carefully monitored the sector, at present no new decisions concerning paints are expected.

In its decision, the OCCP confirmed that under Polish competition law, unlike counterpart arrangements at the EU level, undertakings may apply for leniency in cases involving vertical agreements. The OCCP also confirmed that the requirement for a leniency applicant not to be an initiator or a coordinator of the relevant agreement(s) relates only to the first "leniency applicant", i.e. the company which applies for full immunity from a fine.

Spain: Members of long-standing cosmetics cartel fined

Summary. Spain's competition authority, the CNC, has fined eight companies and the industry association (STANPA) a total of EUR 51 million for implementing a cartel in the professional hairdressing products market lasting more than two decades.

Background. Article 1 of the Spanish Competition Act 15/2007, of 3 July 2007 (LDC) prohibits "*direct or indirect price fixing or any other trading or service conditions*". The CNC can impose a maximum fine of 10% of the relevant undertaking's turnover in its last business year. In addition, the CNC operates a leniency programme similar to that operated by the European Commission (Commission) under Article 101 of the Treaty on the Functioning of the European Union.

Facts. In February 2008, the CNC received a leniency application from Henkel Ibérica, S.A. (Henkel). The CNC carried out inspections on the premises of four hairdressing products manufacturers and STANPA – during which the CNC found evidence of anti-competitive behaviour, via exchanges of commercially sensitive information. In June 2008, the CNC opened formal proceedings against eight hairdressing products manufacturers and STANPA. In December 2008, Productos Cosméticos, S.L.U. (Wella) filed a leniency application with the CNC, aimed at reducing Wella's fine.

On 2 March 2011, the CNC published its decision in Case S/0086/08 *Peluquería Profesional*. The CNC concluded that eight hairdressing products manufacturers (the so-called "G-8") met every six months, preparing minutes of each meeting, and exchanging commercially sensitive information such as price increases, rebates to hairdressers and financing methods. The CNC also considered that the G-8 had agreed on a non-solicitation agreement. The CNC imposed fines totalling EUR 51 million, for what it considered a very serious violation of competition law over more than two decades. As leniency applicant, Henkel was exempted from paying a fine of EUR 9.9 million. The CNC fined the other manufacturers as follows: L'Oréal (EUR 23.201 million); Wella (EUR 12.032 million); The Colomer Group Spain (EUR 8.739 million); Eugene Perma España (EUR 2.288 million); Montibello (EUR 2.555 million); Lendan (EUR 1.003 million) and DSP Haircare Products (EUR 0.299 million). STANPA received a fine of EUR 0.9 million.

Comment. Notwithstanding its application for leniency, the CNC did not grant Wella any fine reductions as it considered that Wella had not provided significant added value to the investigation. In three cases now where companies have submitted applications for obtaining a fine reduction (*Sherry Jerez*, *Transitarios* and *Peluquería Profesional*) the CNC has not granted fine reductions.

In addition, several of the undertakings which were fined argued that their information exchanges did not amount to a cartel under the LDC. Nevertheless, the CNC considered - based on the Commission's Communication on the applicability of Article 101 to horizontal co-operation arrangements - that exchanges of information such as those in this case are highly likely to lead to collusive outcomes, constitute a restriction of competition by object, and must be treated and fined as cartels.

UK: OFT issues first "fast-track" referral to the Competition Commission

Summary. The UK's Office of Fair Trading (OFT) has made a fast track merger reference to the Competition Commission (CC), in respect of the anticipated joint venture between UK travel agents Thomas Cook Group plc (Thomas Cook), the Co-operative Group Limited (CGL) and the Midlands Co-operative Society Limited (Midlands).

Background. On 9 November 2010, the joint venture was notified to the European Commission under the EU Merger Regulation (EUMR). On 2 December 2010 the OFT requested that the proposed joint venture be referred back to the UK under Article 9 of the EUMR, with a view to it being assessed under the Enterprise Act 2002 (EA 2002). On 6 January 2011, the Commission decided to refer in its entirety the proposed joint venture to the OFT.

The OFT is under a duty to refer an anticipated merger to the CC if it believes that there is, or may be, a relevant merger situation that may be expected to result in a substantial lessening of competition (Section 33, EA 2002).

Facts. On 14 February 2011, in an attempt to speed up the UK merger review process, the parties asked for the joint venture to be reviewed by the CC instead of the OFT, pursuant to the OFT's Jurisdictional and Procedural Guidance (Guidance). Clause 4.71 of the Guidance allows referrals to the CC to be accelerated where this corresponds with the notifying parties' wishes, and there is sufficient evidence available to meet the OFT's statutory threshold for reference.

On 2 March 2011, the OFT made a "fast-track" reference to the CC of the anticipated joint venture. The OFT expressed concerns that the deal would bring together two of the three largest UK "high street" travel agents, and could significantly affect competition in the supply of travel services via retail travel agency outlets in the UK - which remain an important distribution channel, in particular for package holidays and other holiday products. The OFT also considered that independent tour operators may lose or have reduced access to distribution through the former CGL and Midlands stores, due to Thomas Cook's significant presence at tour operator level in the supply and distribution of package holidays in the UK.

Comment. This is the OFT's first use of the so-called "fast track" reference procedure. The procedure provides merging parties with an opportunity to streamline the first phase of UK merger review, in cases which may raise complex issues or which clearly meet the threshold test for reference to the CC. The CC is expected to report by 16 August 2011.

US: Toys 'R' Us settles purported class actions

Summary. Toys 'R' Us and several manufacturers have paid USD 35.2 million to settle two proposed class action lawsuits. The purported class actions involve an alleged conspiracy between the retailer and several baby products manufacturers to illegally raise the prices of items such as BabyBjörn baby carriers, Britax car seats, Maclaren strollers, and Peg Perego high chairs and strollers. BabyBjörn, Britax, Kids Line, Maclaren, Medela, Peg Perego, and Regal Lager were named as co-conspirators. The alleged conspiracy involved policies that prevented competitors of Toys 'R' Us' subsidiary Babies 'R' Us, including internet retailers, from discounting certain baby products.

Less than a month earlier, Toys 'R' Us settled a claim by the Federal Trade Commission (FTC) that Toys 'R' Us violated a 1998 order issued by the FTC. The 1998 order stemmed from allegations that Toys 'R' Us used its market power to conspire with toy suppliers to limit toy sales at warehouse clubs – and prohibited Toys 'R' Us from *"urging, inducing, coercing, or pressuring, or attempting to urge, induce, coerce, or pressure, any supplier to limit supply or to refuse to sell toys and related products to any toy discounter*", including warehouse clubs. The FTC alleged that Toys 'R' Us violated the order by complaining to toy manufacturers such as Peg Perego, Graco, Medela, Britax, Kolcraft, about the discounting of their products by toy discounters and their supply of product to toy discounters. The FTC further alleged that complaints by Toys 'R' Us to a supplier about discounting by a toy discounter may lead the supplier to limit supply or refuse to sell to the toy discounter. Toys 'R' Us agreed to pay a USD 1.3 million civil penalty to settle the allegations.

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