MERGERS (INTERNET): THE AOL/TIME WARNER CASE

Subject:	Mergers Vertical integration
Industry:	Internet; music; publishing
Parties:	Time Warner Inc America on Line Inc
Source:	Commission Statement IP/00/634, dated 19 June 2000

(Note. In global terms, this is one of the biggest and most significant mergers ever to be contemplated; and its effects in Europe are bound to be substantial. Whether these effects are likely to be beneficial, from the point of view of competition policy, trade policy and the interests of consumers will be examined by the Commission under the strict time-table laid down by the Mergers Regulation. The Commission's main concern is the degree of vertical integration resulting from the merger.)

The Commission has decided to open a full investigation into the proposed merger between AOL Inc. and Time Warner Inc., both of the United States. In the course of its investigation the Commission will examine the effects of the transaction on the emerging business of music distribution over the Internet and on the markets for Internet dial-up access and paid-for content. This deal is about the combination of Time Warner, one of the world's largest recording and music publishing companies, with AOL, the largest Internet access and service provider in the world. The main competition issue raised by the merger is the vertical integration of Time Warner content with AOL on-line services.

This matter is complicated by the fact that AOL has recently entered into a joint promotion, distribution and sales agreement with Bertelsmann, the German music recording, publishing and broadcasting group. This agreement brings about a considerable integration of the two companies' commercial activities.

Therefore, as a result of the merger with Time Warner, AOL will have preferential access to the leading source of music publishing rights and music repertoire in most Member States. It cannot be excluded that, because of the strength of the music catalogue to which AOL will have access, it will be able to dictate the technical standards for delivering music over the Internet and monopolise the music player software. This strategy could enable AOL to play the role of the "gate-keeper" in the emerging on-line music distribution channel.

As regards the Internet, the Commission found that AOL, which with a market share of almost 40% is the leading Internet company in the USA, is the only Internet company with a presence in most European Member States. During its second phase investigation the Commission will thus examine whether AOL could leverage its strong position in America and its proprietary content and services to achieve dominance in Europe, in particular, in a number of neighbouring Internet paid-for content markets, such as films, TV programmes and financial news.

To ease the competition problems identified by the Commission AOL has offered some commitments aimed at severing a structural link with Bertelsmann stemming from their European joint venture AOL/Europe. After examination of the proposed commitments, the Commission has found that they are insufficient to ease the competition concerns raised by the transaction and decided to open a full investigation. The Commission is also carrying out a full investigation into the merger between Time Warner and EMI Group plc of Britain in the music sector which has been the subject of a separate notification. ■

The Saeco Case

The Commission has closed a competition case against Saeco SpA, a leading Italian manufacturer of coffee machines, after Saeco's implementation of a new guarantee scheme for its products without territorial restrictions. The case had been opened following a complaint brought by EK Großeinkauf, a purchasing co-operative based in Germany, against Saeco's warranty conditions, under which consumers were entitled to a guarantee only in the Member State in which they had purchased their machine and into which the machine had been imported directly by the official importer. This restriction represented a problem when EK exported Saeco products to Austria. Following the complaint, however, Saeco decided to lift the territorial restrictions and has in the meantime taken all necessary steps to ensure the full implementation of a Community-wide guarantee system, including the substitution of the old guarantee certificates by new certificates.

The Commission has insisted on many occasions that, where a manufacturer offers a guarantee for the products bearing his trade mark, he has to make sure that the guarantee can be invoked within a manufacturer's distribution network in the whole of the European Union. Territorial restrictions as to warranty claims act as a disincentive for parallel trade between Member States and discourage consumers from buying products in a Member State other than the one in which they are resident. They thus constitute an obstacle to the inter-penetration of markets. Although Saeco claimed that its guarantee was generally honoured despite the restrictive wording of its guarantee certificates, the complaint showed that there were problems, at least in some cases. Furthermore, it is essential that customers have certainty about their rights. The Commission has closed the case without taking any formal measures.

Source: Commission Statement IP/00/684, dated 29 June 2000.

The Boeing / Hughes Case

The Commission has opened an in-depth investigation into the proposed acquisition by the Boeing Company of the satellite business of Hughes Electronics Corporation. The initial investigation has shown that the operation could strengthen Hughes' already leading position in commercial communication geostationary satellites (GEO satellites); there are also indications that, after the transaction, Hughes could induce its satellite customers to procure launch services from Boeing. In view of Hughes' current market position in GEO satellites, and of the recent development of Boeing's activities in launch services, the Commission has therefore identified risks that the acquisition may lead to the creation or strengthening of a dominant position on these markets. Concerns have also been raised with regard to access for third parties to certain satellite equipment manufactured by Hughes.

Boeing is active in commercial aircraft, defence and space industries. The US-based company supplies navigation satellites and has substantial activities in the field of satellite launch services, where it operates its family of Delta launchers and has an interest in Sea Launch, another launch service operator. Hughes, a subsidiary of General Motors, is the world's leading manufacturer of commercial GEO satellites. It produces certain satellite equipment and provides satellite-based communication services and pay-TV. The proposed transaction would combine the parties' satellite manufacturing activities and result in vertical integration between Hughes' satellite operations and Boeing's launch activities.

At this stage of the investigation, the Commission has identified serious concerns that the operation could lead to the creation or a strengthening of a dominant position on the world-wide market for commercial GEO satellites and to the creation of a dominant position on the market for launches of commercial satellites. Hughes is currently clearly the market leader for commercial GEO satellites, with market shares around 35-40%. There are indications that the operation could strengthen this position.

With the decision to open a full investigation in the case, the Commission will continue a detailed-fact finding exercise, using as a legal test the likelihood that the proposed acquisition might create or reinforce a dominant position. Pursuant to the bilateral agreement of 1991 on antitrust co-operation between the European Union and the United States, the Commission has co-operated with the Federal Trade Commission (FTC) in the analysis of the transaction. The Commission's decision to open an in-depth investigation in this case does not prejudice the outcome of the assessment in the United States. The investigation of the case in the United States has not yet terminated.

Source: Commission Statement IP/00/539, dated 26 May 2000.