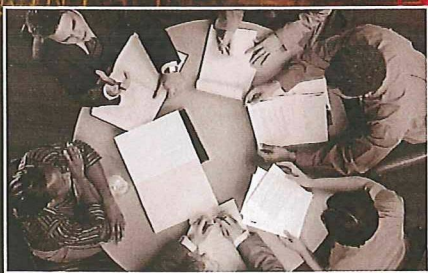


# CorporateINTL

corporate international

## Corporate Social Responsibility: Green strategies for a brighter future



Network Review



Restructuring and Insolvency

December 2009

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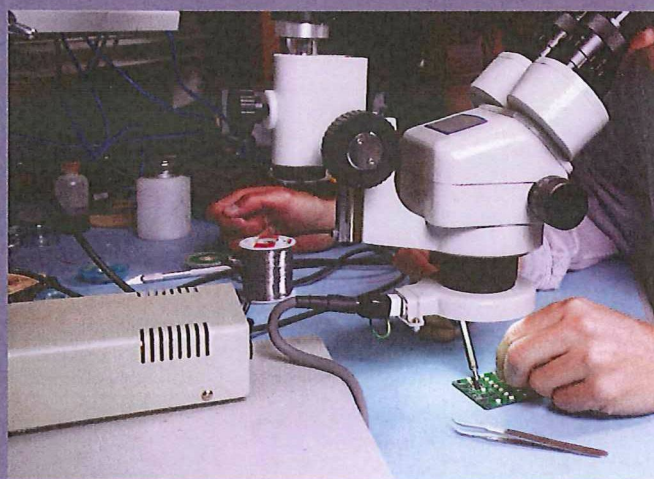


# COMPETITION LAW AROUND THE WORLD

Monitoring and maintaining competition in the markets has become an integral part of the global business environment and a mainstay of the business pages worldwide recently. As such, companies are under more pressure and scrutiny than ever before, especially in the current environment, which has given rise to a number of landmark competition cases. For example, in May this year Intel, the world's biggest microchip maker, was handed a record-breaking €1.06 billion (£950 million) fine for anti-competitive behaviour by the European Commission.

While the anti-competitive actions of large, international corporates continue to dominate the headlines of the business pages, there are underlying issues that all SMEs should be aware of. The advice of the right competition adviser is essential in assisting managers in complying with the law and avoiding the sharp teeth of the competition authorities.

Corporate International spoke to a number of professional advisers from around the world to find out more about the competition regime in their jurisdiction and the key issues facing companies in this area today.



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France's competition law and policy has recently undergone significant reform, culminating in the enactment of new legislation (Loi de Modernisation de l'Economie, or LME) in August 2008 that aims to streamline competition enforcement.

The new law brought about the existence of the French Competition Authority, which replaced the Competition Council in January 2009. The Competition Authority now has exclusive jurisdiction for concentrations even if the Ministry of the Economy maintains a form of control in certain circumstances.

In addition, the role of the Authority has been reinforced with regard to investigations. Emmanuelle van den Broucke, EU & Competition Partner in the Paris office of Salans said: "Whereas investigations were previously led by the French Ministry of the Economy, the French Competition Authority now has its own team of investigators and the Ministry of the Economy is only able to investigate for anticompetitive practices limited in scope."

It is also significant to note that in line with the standards of EU rules, a hearing officer position has been created in order to collect the parties' comments on every aspect of the progress of a case and to control the proper application of rules of procedure. Likewise, the LME has changed the rules for appeals against inspections and seizures and has expressly provided for the right of companies to be represented by counsel during the inspection.

Ms van den Broucke said this reform focuses the powers of enforcement of competition rules within a single authority, which is the end of the French dual system. Ms van den Broucke said: "Although one may expect for this to accelerate merger control procedures to the benefit of companies, it will also be important for the new hearing officer to correctly perform his role in order to enforce the defence rights of companies prosecuted for anticompetitive practices, given the enhanced responsibilities of an already quite powerful Competition Authority."

Nowadays there is growing interest by companies to implement compliance programs. It enables them to get a better understanding of the rules of competition law and helps them to behave in conformity while running their daily business. In September 2008, the

French Competition Authority published a study on this specific matter affirming that compliance should be considered an asset for companies. The Competition Authority clearly committed itself in favour of compliance programs and expected them 'to expand along with the curbing of anticompetitive practices and the implementation of negotiated procedures.'

Ms van den Broucke said: "In the undertakings that companies may present to the Competition Authority when they are sued for anticompetitive practices in order to improve the competitive situation in the future, the implementation of comprehensive compliance programs can lead to a quite significant reduction of the fine imposed. However, if the company has proactively implemented a compliance program after having undergone an inspection, it is not clear whether the Competition Authority will consider this as a factor in reducing the fine."

Emmanuelle van den Broucke specialises in competition and Community law. She is experienced in French, Community and multi-jurisdictional merger control filings and in the assistance of clients during proceedings for anti-competitive practices before the French Competition Authority and the French courts. She has also developed thorough expertise in the French regulation of restrictive practices including review of annual agreements undertaken between producers and distributors, resale at loss or abrupt termination of commercial relations.



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Since Poland's transformation into a market economy, competition law has become of central importance. The Law on Competition and Consumers Protection (Competition Law) is the



principal vehicle for the control of anti-competitive agreements between firms, abuse of dominant positions and mergers in Poland.

The legislation sets out the main objectives of Polish competition policy and deals with the prohibition of agreements and concerted practices between firms which may prevent, restrict or distort competition and prohibition of abuse of a dominant position and preventive supervision of mergers by approving or prohibiting the envisaged alliances.

Malgorzata Surdek, a partner in CMS Cameron McKenna, said the Polish Competition Law may be divided into three basic headings: anti-trust, merger control and state aid. "As far as the legal framework is concerned Poland's Competition Law is aligned with EU legislation, particularly in terms of antitrust. However, national merger control legislation differs to that of the EU in that it comprises only one stage of proceedings, as opposed to two. This is something that could be addressed in the future, because at present merger control proceedings tend to take longer in Poland than in other jurisdictions. When it comes to state aid, the EU legislation directly applies in Poland, save for some procedural aspects which are regulated at the national level."

The Competition Law is enforced by the central administrative body, the Office for Competition and Consumer Protection (OCCP), which is headed up by Malgorzata Krasnodębska-Tomkiel. Ms Krasnodębska-Tomkiel was appointed President of the OCCP in 2008 and during her first days in office she announced a more strict approach to competition enforcement. Ms Surdek said: "Following the new President's opening address on enforcing the law more stringently, the OCCP has been conducted more investigations, dawn raids etc. and focusing on more high profile cases. This has been also helped by earlier amendments to the merger control legislation that increased the turnover thresholds, thus limiting the number of merger control notifications and allowing the authority to focus on more complex antitrust matters."

The consequences of non compliance with Polish competition laws is similar to EU standards, however there are some significant differences in terms of the maximum amount of fines that can be imposed. For example, business operators in Poland can be fined up to 10% of the particular company's turnover achieved in the previous year, while in the EU fines totalling 10% of the group's worldwide turnover can be imposed. Ms Surdek said: "The OCCP is now more willing to impose high fines, especially in abuse of dominant position cases. For example, in July 2009 the President of OCCP fined the Polish railway cargo carrier incumbent €14 million for discriminating competitors in concluding freight agreements, raising question on the ability of an undertaking in a dominant position, faced with aggressive comportment of competitors, to respond with similar measures."

Firms are now becoming increasingly proactive when it comes to addressing competition issues and avoiding the increasingly heavy hand of the competition authority. Ms Surdek said management teams are seeking more than just brief training on dawn raids and looking towards the implementation of full compliance system.



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In 2006 Belgium enacted a new competition law that introduced some major institutional, substantive and procedural changes and brought Belgian competition law further in line with EU competition law.

Created in 1991, the Competition Council did not have the financial and human resources to function properly. The new competition legislation solved this through an in-depth institutional, procedural and material reform, which, according to Annabelle Lepiece, strengthened the Belgian competition authority and provided it with new powers designed to ensure a more effective and coherent competition law enforcement policy. Ms Lepiece said: "Although it is still too early to call the reform a complete success, the Competition Council has already shown an increased focus on anticompetitive behaviour such as cartels and abuse of a dominant position. In May this year the Competition Council imposed a record fine of €66.3 million on mobile telephone operator Proximus for abusing its dominant position and excluding its rivals from the market for business

customers. This decision sent a clear signal: it is now ready to promote and safeguard active competition in the Belgian market. With dawn raids multiplying, companies can no longer ignore the risks of infringing Belgian competition law."

The 2006 competition legislation was amended in May 2009, introducing a number of changes in relation to the staffing of the Belgian Competition Council. Most notably, the President of the Council will be appointed for six years instead of the previous three year term. In addition, it will now be easier for the Minister to request the initiation of an investigation, as the requirement for identifying 'strong indications' of anti competitive behaviour have been abolished.

Competition law is becoming increasingly complex and the need for clarity, flexibility and a common sense approach to this area of law has never been greater. CMS DeBacker's competition department has exactly the kind of common sense approach that companies need. Ms Lepiece said: "We regularly assist clients in the notification of their mergers to the Belgian Competition Council. We lodged several complaints for abuses of dominant position which lead to enquiries including dawn raids. The Belgian Competition Council is currently investigating an alleged abuse of dominant position related to excessive pricing, following a complaint we lodged in February 2009 on behalf of one of our clients active in the energy sector. The complaint was taken very seriously by the College of Competition Prosecutors and lead to a dawn raid in September 2009. The enquiry is ongoing and could result in a decision in 2010."

CMS DeBacker has also been busy advising the Walloon authorities on airports for many years. One of the highlights was the Ryanair/Charleroi airport case. Recently, the firm represented the authorities in the notification of their joint control of Brussels South Charleroi Airport with the Italian group SAVE. Ms Lepiece said: "Despite a complaint lodged by an unsuccessful bidder, we obtained the clearance of the Competition Council on 4 November 2009."

