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COMPETITION

- **European Commission reviews Google's acquisition of DoubleClick**

Shortly after the landmark Microsoft decision, which confirmed the Commission's approach towards market power, the European Regulatory Authority will be investigating another giant's, Google's, planned acquisition of the global leader in graphic online ads, DoubleClick. The notified 3,1 billion dollar (2,2 billion euro) deal triggers competition concerns since Google not only operates the dominant search engine, but also links thereto text-based internet advertising. One of the main initial questions is whether DoubleClick and Google actually operate in the same market. If that is the case, the consolidation of their respective strong positions might lead to the creation of a dominant position, which would infringe article 2 of the EU Merger Regulation.

Another major issue is the need to maintain the users' privacy. Google, which is rapidly expanding in new domains and introducing more new services in its portfolio, has caused concerns before due to its characterised as 'shaky' privacy policy. It was found to register and retain the users' surfing history and other private data for a period of two years. Some months ago, the "Article 29 Working party", set up by Directive EC/2002/58 on privacy and electronic communications, questioned the company regarding the treatment of the data collected.



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Moreover, DoubleClick as well tracks down the users' Internet Protocol address and registers their clicks. The companies argue that this is done in order to enhance the users' experience by better targeted ads etc. However, if the go ahead is given, the amount of information's use will not be controlled. This is why European consumer organisations are worried. They also fear that some online advertisers might be excluded altogether or discriminated upon.

The Commission announced that it will decide whether to approve the deal, postpone its evaluation for another two weeks or open an in-depth investigation by October 26th. Given the above mentioned complicated questions, it is most probable that the Commission will not release the case at hand this easily.

- **Visa fined 10.2 million euros for excluding Morgan Stanley**

Visa, Europe's biggest credit card provider, was found to have violated the EC Treaty and EEA Agreement rules on restrictive business practices for not admitting Morgan Stanley as a member of its network between 2000 and 2006. Morgan Stanley is a diversified financial services firm which provides institutional securities and asset management. Among other things, it also provides payment methods as a card network operator. However, and despite having concluded agreements with other card network operators (such as Citigroup, the owner of the Diners' Club network), Visa decided to exclude Morgan Stanley.



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The Commission argued that retailers expect banks to offer card acceptance contracts as a package including both Visa and MasterCard. However, Visa's rejection to admit Morgan Stanley as a member of its network restricted the latter from competing in the so-called "acquiring market", i.e. the market for providing merchants with card acceptance capabilities. Since this market is highly concentrated in the UK, the Commission was even more alarmed to see Visa exclude a potential competitor.

Visa finally accepted Morgan Stanley and the latter withdrew its complaint. However, the Commission went ahead and fined Visa for the six and a half years of previous exclusion. Visa threatened to appeal the Commission's decision, arguing that it should not be pursued anymore after the complaint was withdrawn. The Competition Commissioner Mrs. Neelie Kroes stressed the 'key role' of the payment cards' industry in the creation and functioning of the single market for payments. She said that a 'hard line' will be followed to eliminate competition distortions in this segment. Visa was thus, at this instance, fined 10,2 million euros.



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INFORMATION & COMMUNICATION TECHNOLOGIES

- **Second approval of *Sony/Bertelsmann* joint venture**

The joint venture between Sony Corp of America, which belongs to the Japanese Sony group, and Bertelsmann Music Group, a subsidiary of the German-based international media company Bertelsmann AG, was approved by the Commission back in 2004. Its investigation at the time had shown that the venture would not impede effective competition in the relevant market, which was the market for recorded music, because of the heterogeneity of the products concerned, the lack of market transparency (which discourages collusion) and because the five largest companies would not apply retaliatory measures in case one of them acted differently.

Two years later, however, the Court of First Instance annulled the Commission's decision arguing that this contained noticeable errors of assessment and that the evidence put forward was insufficient. Indeed, it criticised that not all relevant data was considered before reaching the conclusion that the market was not transparent. Moreover, it was not safe to rely on the absence of retaliatory measures in the past to prove their inexistence, especially since some deterrent measures were possible in the given context. Therefore, the potential use of retaliatory measures could not be excluded either, since it might have been the case that, up to then, no sanctions were applied because the companies were complying with the common policy.



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The new, recently concluded evaluation by the Commission found, once again, that the planned joint venture would not pose a threat of competition distortion in the relevant market. An econometric analysis of all net prices, discounts and wholesale prices for all CD chart albums sold by major record companies between 2002 and 2006 has indicated no signs of collusion. What's more, no price coordination was found according to various price and non-price theories, such as budget coordination, pricing of each title, access to retailers or airplay or coordination of publishing activities. The venture did not pose a threat to the newly emerged market of licensing of recorded music in digital format either. In view of the above, it was given the go-ahead on October 3rd, more than three and a half years after its initial notification.

INTELLECTUAL PROPERTY

- Anti-trust proceedings against Qualcomm

In response to complaints by six mobile phone and chipset manufacturers, the European Commission announced, on October 1st, that it is starting an in-depth investigation of the US chipset manufacturer Qualcomm. Qualcomm holds intellectual property rights of the Code Division Multiple Access (CDMA) and the Wideband Code Division Multiple Access (WCDMA) standards for mobile telephony, which form part of the UTMS, the 3G (third generation) standard for European mobile phone technology.



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Code division multiple access (CDMA) describes a communication channel access principle which employs spread-spectrum technology and a special coding scheme (each transmitter is assigned a code). In other words, it can be compared with a room (channel) in which people wish to communicate with each other, yet speak different languages. CDMA is something of a 'common language' since each group of users in radio CDMA is given a shared code. Many codes occupy the same channel, but only users associated with a particular code can understand each other.

WCDMA (Wideband Code Division Multiple Access) is a type of 3G (3rd generation) 3G cellular network which describes a higher speed UMTS transmission protocol. As a wideband spread-spectrum mobile air interface, it employs the above mentioned CDMA signaling method to achieve higher speeds and support more users. Its importance to the mobile phone sector is vital, since UMTS, using WCDMA, can support up to 14.0 Mbit/s data transfer rate, thus offering fast internet access and data transfer on mobile devices.

The complainants, including Ericsson, Nokia, Texas Instruments, Broadcom, NEC and Panasonic argue that Qualcomm's licensing terms and conditions are not fair, reasonable and non-discriminatory (FRAND). They claim that Qualcomm is trying to keep rival chip manufacturers out of the market by misusing its patents.



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According to the complainants, charging royalties which are not FRAND could lead to final consumers paying higher handset prices. Furthermore, the 3G standard roll out and take off would take longer and would thus adversely affect the UMTS-based economic activities.

ENERGY & ENVIRONMENT

- EU supports 'green cars'

On October 10th, the Commission, which seeks to reduce Europe's dependency on fossil fuels, proposed two actions to boost the development of hydrogen cars and technologies. It firstly proposed to set up a Fuel Cells and Hydrogen Joint Technology Initiative (JTI) in the form of a private-public partnership. Within this partnership, the European Commission, representing the European Community, will come together with an industry grouping, which will represent the interests of the relevant European business sectors. Furthermore, the Commission will contribute 470 million euros over an initial 6-years' period for JTI's financing. Another part of the expenses will be covered by the industry itself.

The synergies which can be expected lie with the collaboration between public and private players. Given the complexities of research in the fuel cell sector, no single company or public research institution can conduct it by itself.



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Through this partnership, companies should gain in confidence so as to develop better capabilities for research, for example by using the research capacities of universities.

The second proposal relates to a simplified approval of hydrogen cars commercialisation. Today, there are such cars already ripe for the market which are, however, not in the market because of complicated and costly approval procedures. The Commission assures that hydrogen cars put on the market under the new proposal will be at least as safe as conventional vehicles. It is expected that the use of hydrogen will not only contribute to the improvement of air quality in cities but it will also help cut down on greenhouse gases produced from conventional cars.

RESEARCH & SCIENCE

- Query against Member States for researchers' visa

In a bid to meet the Lisbon and Barcelona targets of making Europe the most competitive and dynamic knowledge economy globally, the Council Directive 2005/71/EC, which took effect two years ago, seeks to advance the admission and mobility of third country researchers in EU Member States. The researchers' visa directive encourages the simplification and acceleration of the admission procedure of researchers. Furthermore, it grants researchers an equal treatment as nationals when it comes to, for example, social security or working conditions.



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Up to the deadline of October 12th, only six member states (Austria, Belgium, Germany, Hungary, Portugal and Romania) have fully implemented the directive. France, Latvia, Lithuania and the Slovak Republic have notified partial implementation. The European Commission is set to start infringement proceedings against those countries which have not at all or only partially implemented the directive. Before taking action against them though, the Commission's Vice-President Mr. Franco Frattini urged those Member-States to promptly adopt the necessary legislation and administrative procedures.

PUBLIC AFFAIRS

- The European Transparency Initiative

On Monday, October 8th, the Committee on Constitutional Affairs of the European Parliament held a workshop on lobbying in the European Union. The main themes to be discussed were ways to enhance quality lobbying within the EU not only among politicians but also from a lobbyist's point of view. The event was organised in preparation of the forthcoming legislative measures relating to the European Transparency Initiative. On March 3rd 2006, the Commission adopted a Green Paper on this initiative. One year later, it started to take the first steps towards conceiving a public register for representatives who try to influence decisions taken by the European institutions.



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During the workshop, the different lobbying practices employed in the USA, where lobbying is regulated by the Lobbying Disclosure Act of 1995, and in the EU were compared. According to the Commission's Vice-President Mr Siim Kallas, the main objective of the Transparency Initiative will be to assure the public that the decision-making within the EU is not biased.

Lobbyists from different companies and agencies shared their opinions and suggested the best way in their view to implement the European Transparency Initiative in practice. For lawyers, one major concern was the confidentiality at stake which governs their relationship with clients. Over and above, the need to come up with clear and generally accepted definitions (especially of 'lobbying' and 'lobbyist') was stressed. The questions as to whether the register should be mandatory or optional, as well as whether there should be only one register for all institutions or each institution should maintain a different one, were subject of debate and were left open at the end.