August 2021

APRIL – JUNE 2021: HIGHLIGHTS

UNITED STATES:

- The premerger notification landscape continues to shift as filings reach another record high, and the US Congress contemplates increases to filing fees and New York State contemplates its own premerger notification regime.
- Technology companies remain in the “hot seat” as legislators in the US House of Representatives (House) introduced five antitrust reform bills that would change the enforcement landscape for digital platforms, including seeking to preclude large digital platform companies from acquiring smaller, nascent competitors.
- Aggressive antitrust enforcement is likely to continue with the appointment of Lina Khan as Federal Trade Commission (FTC) Chair and the nomination of Jonathan Kanter to lead the Department of Justice’s (DOJ) Antitrust Division. This appointment reemphasizes the Biden administration’s commitment to more stringent antitrust regulation just as Congress appears to be close to increasing the budgets of both the FTC and DOJ.
- The DOJ is making good on President Biden’s pledge to regulate “Big Ag” by challenging Zen-Noh Grain Corporation’s proposed acquisition of 38 grain elevators from Bunge North America, Inc.

EUROPEAN UNION:

- In Q1 2021, the European Commission (Commission) published its Guidance on Article 22 of the EU Merger Regulation (EUMR). The Guidance encourages the EU Member States to refer certain transactions to the Commission even if the transaction is not notifiable under the laws of the referring Member State(s). In Q2, not long after the issuance of the Guidance, the Commission received its first referral request to assess the proposed acquisition of GRAIL by Illumina.
- In light of the growing global debate on the need for more effective merger control, EU Competition Commissioner Margrethe Vestager confirmed that the Commission will not soften EU merger policy going forward. The Commission's statement was made despite the fact no deals have been blocked by the Commission in about the last two years. It should be noted, however, that in April 2021, Air Canada abandoned its proposed acquisition of Transat after the Commission raised serious competition concerns.
- On May 5, 2021, the Commission proposed a Regulation on foreign subsidies that potentially distort the EU internal market. The proposed Regulation introduces three tools, two of which would have an impact on M&A transactions. One tool concerns a mandatory notification mechanism whereby the Commission would investigate M&A deals meeting a certain threshold. Another tool concerns a general market investigation tool for investigating smaller transactions that do not trigger the thresholds under the mandatory notification mechanism.

UNITED KINGDOM:

- From April 7 to May 5, 2021, the Competition and Markets Authority (CMA) held a consultation on revised guidance regarding interim measures in merger investigations and a new draft of its template initial enforcement order for use in completed cases.
- On April 20, 2021, the CMA issued a joint statement with the German and Australian competition authorities on the need for rigorous and effective merger enforcement. In particular, the three competition authorities stress that a policy of requiring structural remedies over behavioral remedies should be pursued with a view to alleviating identified competition concerns.
- The CMA is working on revised guidance on financial penalties in merger cases. According to the CMA, the CMA's current fining powers are insufficient to ensure compliance and should be reinforced, especially when compared with the powers of the European Commission.

KEY THEMES AND TAKEAWAYS

UNITED STATES

- **Premerger Notification Landscape on the Verge of Dramatic Change Amid Record Number of Filings**

  In May, Hart-Scott-Rodino (HSR) filings reached a new monthly high for 2021 with 326 filings. This surpassed the previous monthly high for the year of 323 filings in March 2021. In April and May alone there were 592 filings, signalling that there will likely be no slowing down for mergers and acquisitions following a busy first quarter.

  These filings may soon carry significantly higher filing fees, as the US Senate passed the Merger Filing Fee Modernization Act of 2021 on June 6, 2021. The bill amends 15 U.S.C. § 18(a) and significantly increases filing fees for high-value mergers. The largest fee increase being for mergers of $5 billion or more, where the fee will increase from $280,000 to $2,250,000. The US House has introduced a similar version of the bill.

  New York State is on the precipice of creating its own premerger notification regime after the New York State Senate passed the Twenty-First Century Anti-Trust Act, by a vote of 43-20, on June 7, 2021. The bill must now pass the New York State Assembly. The premerger notification provision would be the first at the state level and its scope would capture smaller deals than those reportable under the federal premerger notification regime. Under the proposed bill, transactions that result in the acquirer holding more than $8 million in assets or voting securities of the target would need to be notified.

- **US House Addresses Perceived History of Shortcomings in Digital Platform Acquisitions**

  On June 11, 2021, the US House introduced five antitrust reform bills. One such bill, the Platform Competition and Opportunity Act, would preclude any digital platform company from merging with or acquiring a company that competes in any overlapping service or product with the digital platform.

The bill explicitly exempts acquisitions where the target does not constitute a nascent or potential competitor to the covered platform. The bill appears to be a direct response to the government's concerns about alleged harm to competition following prior approval of nascent competitor acquisitions, particularly in Big Tech.

On June 23, 2021, this bill was approved by the US House Judiciary Committee with a 24-to-17 vote and now faces a floor vote by the entire US House.

- **Lina Khan and Jonathan Kanter Tapped to Lead Antitrust Agencies, Likely Leading to Increased Enforcement**

  On June 15, 2021, Lina Khan was confirmed by the US Senate as an FTC Commissioner. In an unexpected move, she was also immediately appointed as FTC Chair, becoming the youngest Chair in the Commission's history. Khan's appointment likely signals increased scrutiny of mergers and acquisitions and expanded FTC enforcement for deals involving non-traditional theories of harm.

  Khan has advocated for blocking mergers as a way to protect labor markets from lower compensation and workforce reductions. On July 1, 2021, Khan and the new Democratic majority of commissioners voted 3-to-2 to revoke the 2015 Policy Statement providing that the Commission would adhere to the consumer welfare standard in determining which cases to pursue. Revoking this statement is the first step in expanding the scope of FTC's powers pursuant to Section 5 of the FTC Act. Khan has also been an outspoken critic of behavioral remedies and may have an increased willingness to litigate against merging parties.

  Under Khan, the FTC also recently voted to repeal a long-standing policy that had eliminated "prior approval" obligations for future transactions in FTC consent orders. The FTC appears poised to insist on such provisions in future merger settlements, providing it with significantly greater authority to review and block future transactions of companies subject to these settlements. Parties should take this change into account when negotiating antitrust risk provisions in transaction agreements going forward.

  On July 20, 2021, President Biden nominated Jonathan Kanter to serve as Assistant Attorney General for the DOJ's Antitrust Division. Like Khan, Kanter is an outspoken critic of Big Tech, having represented complainants before antitrust enforcers against many prominent technology companies. Kanter has yet to be confirmed by the US Senate.

Khan and Kanter may soon have additional resources at their disposal, as the Merger Filing Fee Modernization Act of 2021 would increase the budgets of the FTC and DOJ to $252 million and $418 million, respectively. Additionally, the White House has asked Congress to increase the respective budgets of the FTC's Bureau of Competition and the DOJ's Antitrust Division by about 17% and 6% for the next fiscal year. The FTC has indicated it plans to use the increased funding, if approved, to expand its full-time staff and hire outside economic experts.

- **DOJ Takes First Step in President Biden's Mission to Regulate "Big Ag"**

  On June 1, 2021, the DOJ announced that Zen-Noh Grain Corp. must divest nine grain elevators across nine geographic markets in order to consummate its proposed $300 million acquisition of 48 grain elevators from Bunge North America.

  Zen-Noh Grain Corp. is the US subsidiary of the National Federation of Agriculture Cooperative Associations of Japan and trades in corn, soybeans, sorghum, wheat and by-products. Bunge North America is engaged in grain origination, grain processing and grain trading.

  This DOJ challenge aligns with the Biden administration's pledge to address market concentration in "Big Ag." Tim Wu, a member of the National Economic Council, had previously called for a retrospective investigation into whether the DOJ was right in its decision to approve agriculture mergers that had consolidated the industry in the mid-2000s. This action by the DOJ could serve as a bellwether for future regulatory action in the agriculture industry.

EUROPEAN UNION

- **Recent Guidance on Article 22 EUMR Put into Practice with the Referral of Illumina / GRAIL**

  Following the publication of the Commission's Guidance on Article 22 EUMR on March 26, 2021, the Commission swiftly accepted its first referral request on April 19, 2021. France submitted an initial referral request to the Commission regarding Illumina's proposed acquisition of GRAIL. Belgium, Greece, Iceland, the Netherlands and Norway soon followed suit and joined France's referral request.

Illumina is a US-based global genomics company and a leading supplier of next-generation sequencing systems for genetic and genomic analysis. GRAIL is also a US-based company and develops cancer detection tests relying on next-generation sequencing systems. The proposed acquisition did not reach the EU notification thresholds and was not notifiable in any Member State.

On April 19, 2021, the Commission accepted the referral request on the basis that the combined entity could restrict access to, or increase prices of, next-generation sequencers and reagents to the detriment of GRAIL's rivals active in genomic cancer tests. In particular, the Commission considered that a referral of the transaction was appropriate because GRAIL's competitive significance is not reflected in its turnover despite the fact that the deal is valued at $7.1 billion.

The Commission's review is arguably controversial because the transaction does not meet the thresholds for notification to the Commission or any EU Member State. In light of this, Illumina has sought an annulment of the Commission's decision to review the transaction before the General Court. The case is still pending.

- **Merger Enforcement Remains High Despite COVID-19; Third Phase II Merger Withdrawal in Two Years**

At the European Competition Day, EU Competition Commissioner Margrethe Vestager stated that EU merger policy has not become less stringent vis-à-vis dealmakers, despite the fact that no deals have been vetoed for over two years. Ms. Vestager pointed to three mergers that were abandoned over the past two years after the Commission raised competition concerns. Most recently, Air Canada withdrew its proposed acquisition of Transat (see below, Notable European & UK Cases). During the first quarter of 2021, Fincantieri also abandoned its proposed acquisition of Chantiers de l'Atlantique, and in 2020, Johnson & Johnson withdrew its proposed takeover of TachoSil. Ms. Vestager's comments are particularly meaningful in light of the growing global debate on the need for more effective merger control.

Ms. Vestager noted that the EU merger rules have not been relaxed in light of the COVID-19 pandemic. Especially with regard to the Air Canada's abandoned acquisition of Transat, Ms. Vestager stated, *"When applying merger control during severe shocks, we need to make sure that as companies emerge from the crisis, the competitive foundations are still there for the industry to take off again."*

In addition, the Commission continues to investigate companies for allegedly failing to provide information during merger investigations. In May 2021, the Commission issued a €7.5 million fine to an entity it alleged committed three infringements of the

EUMR by allegedly providing deliberately, or at least negligently, incorrect or misleading information during discussions of a remedies package. Since the EUMR took effect in 2004, the Commission has adopted just two other such decisions. In 2017, the Commission fined Facebook €110 million for allegedly providing incorrect or misleading information during the investigation of its acquisition of WhatsApp. In 2019, the Commission fined General Electric €52 million for allegedly providing incorrect information during the investigation of its acquisition of LM Wind.

- **Commission Proposes New Regulation on Foreign Subsidies that Potentially Distort the EU Internal Market**

  On May 5, 2021, the Commission proposed a new Regulation on foreign subsidies that potentially distort the internal market. The proposed regulation provides for new mechanisms, running alongside the EU merger control rules, which would enable the Commission to address the potential distortive effects of foreign subsidies in the EU internal market. The Commission has proposed two investigation tools that would have an impact on M&A transactions in particular.

  First, under the proposed regime, the Commission would be able to review transactions involving a financial contribution by a non-EU government, where the EU turnover of the company to be acquired (or of at least one of the merging parties) is €500 million or more, and the foreign financial contribution is at least €50 million. If the transaction at hand meets these thresholds, the acquirer would need to notify any financial contribution received from a non-EU government before the deal in question can be closed.

  Second, the Commission also foresees having at its disposal a general tool, which can be applied to smaller deals falling below the thresholds for mandatory notification. The Commission would be able to investigate the transaction in question on its own initiative and may request ad hoc notifications. In such cases, the Commission would be able to take into account foreign subsidies granted in the 10 years prior to launching its ex officio investigation.

UNITED KINGDOM

- **CMA Holds Public Consultation on Guidance on Interim Measures in Merger Cases**

  Between April 7 and May 5, 2021, the CMA held a public consultation with a view to seeking views on its revised guidance on interim measures, *i.e.*, measures taken by the CMA to prevent or unwind preemptive action in merger cases, and its revised initial

enforcement order template. The CMA noted that it has become increasingly aware of merging parties taking insufficient steps to ensure compliance with interim measures. Therefore, the aim of the draft revised guidance is to provide further clarification in relation to whom interim measures will apply.

The draft revised guidance reflects the CMA's expectations on the steps that merging parties should take to ensure compliance with interim measures. In particular*, "the merging parties should take a risk-based approach to the design and implementation of any steps taken to ensure compliance with interim measures."* In this regard, the CMA considers that the following steps are, as a minimum, likely to be necessary to ensure compliance: (i) tailored guidance and staff training; (ii) internal communications reiterating the importance of compliance; (iii) governance structures to oversee compliance; (iv) where appropriate, delegations of authority; and (v) ongoing oversight and reporting mechanisms.

- **CMA Issues Joint Statement on Need for Rigorous and Effective Merger Enforcement**

  On April 20, 2021, the CMA issued a joint statement along with German and Australian competition authorities on the need for rigorous and effective merger enforcement. The competition authorities made this statement in light of the high levels of concentration being seen across various markets in the UK, Germany and Australia, as well as in light of an increase in the number of merger reviews involving dynamic and fast-paced markets. Moreover, the competition authorities consider that effective merger control remains important in circumstances where the economy has been weakened, including in light of the COVID-19 pandemic.

  With respect to dynamic and fast-paced markets, the competition authorities stress that anticompetitive mergers in these markets can cause significant harm, given the increased importance of products and services in this area and the aggregation of data over time across various services. According to the competition authorities, technology markets can be highly concentrated with high barriers to entry due to network effects, allegedly resulting in market power for many years.

  The competition authorities also note that structural remedies should be favored over behavioral remedies. According to the authorities, behavioral remedies have many disadvantages: they can create continuing economic links and dependencies unlikely to recreate the intensity of premerger competition on the market; raise risks of circumvention; become outdated in light of changed

market conditions; distort the natural development of the market; and are more burdensome because of the need for post-merger monitoring. On the other hand, structural remedies are more likely to preserve competition and lead to an optimal solution for stakeholders and are therefore, according to the competition authorities, in the best interests of consumers.

- **CMA Revising Guidance on Financial Penalties**

  The CMA's Non-Executive Director and Chair, Jonathan Scott, recently stated that the CMA is working on revised guidance on financial penalties in merger cases.

  Scott noted that the CMA's current fining powers are insufficient and need to be strengthened to ensure compliance. For example, in a recent case, the CMA fined an acquirer £55,000 for failing to provide information in a timely manner during a merger investigation. The Commission, on the other hand, was able to impose a fine of €110 million on Facebook for providing incorrect or misleading information during the investigation of its acquisition of WhatsApp. According to Mr. Scott, this example shows that the CMA's fining powers need to be bolstered.

  It is expected that the CMA will launch a public consultation on the revised guidance on financial penalties in Q3 2021.

ENFORCEMENT IN KEY INDUSTRIES[1]

Healthcare, Pharmaceuticals & Biotechnology

Technology, Media & Communications

Retail & Consumer Productions

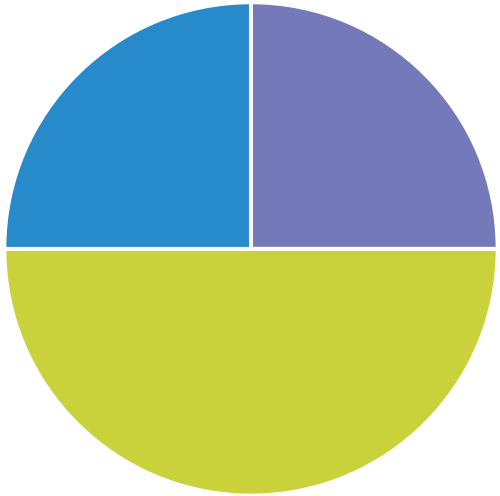
Chemicals & Industrial Prods. or Services

Transportation & Energy

Other

United States

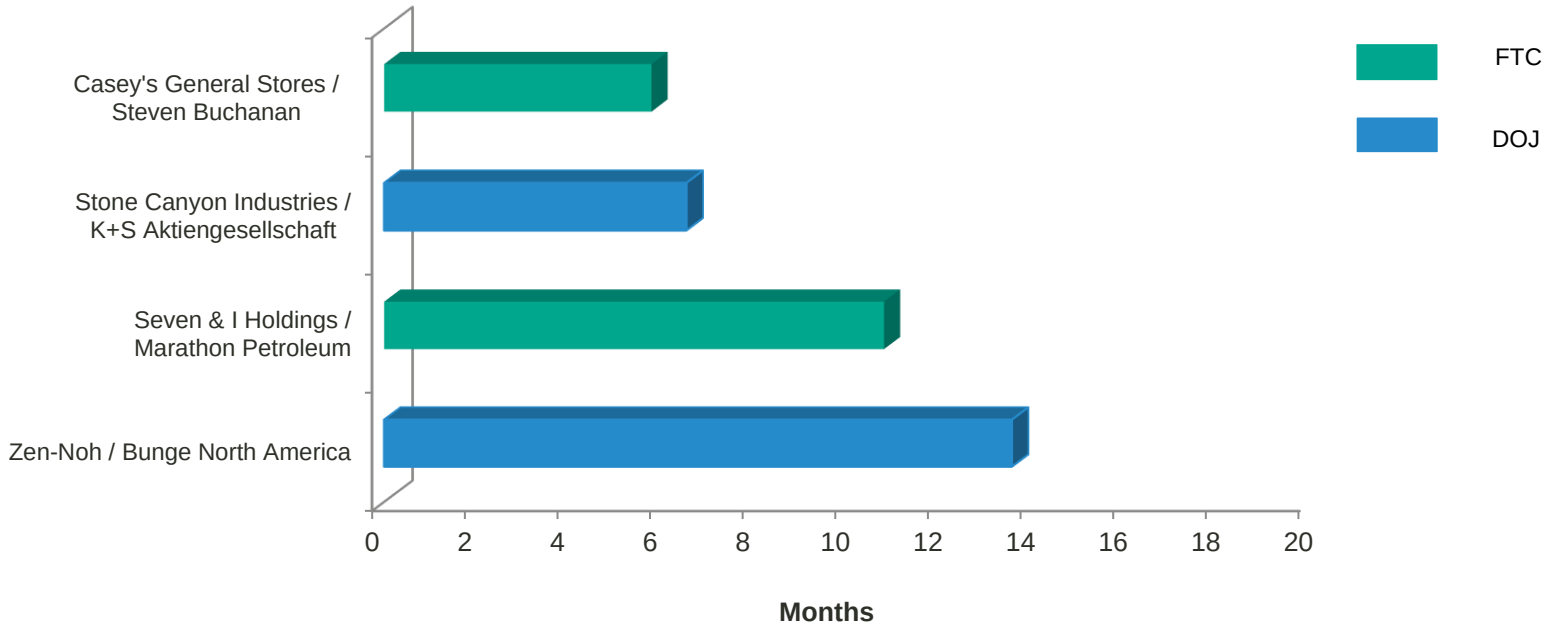
Europe & the UK



[1] For the US, the graphs include cases where an antitrust enforcement agency issued a Second Request, consent order or complaint initiating litigation against the parties to the transaction, as well as transactions that were abandoned after an antitrust investigation. For Europe and the UK, the graphs include cases where an antitrust enforcement agency issued a clearance decision or challenged the transactions, as well as transactions that were abandoned after an antitrust investigation.

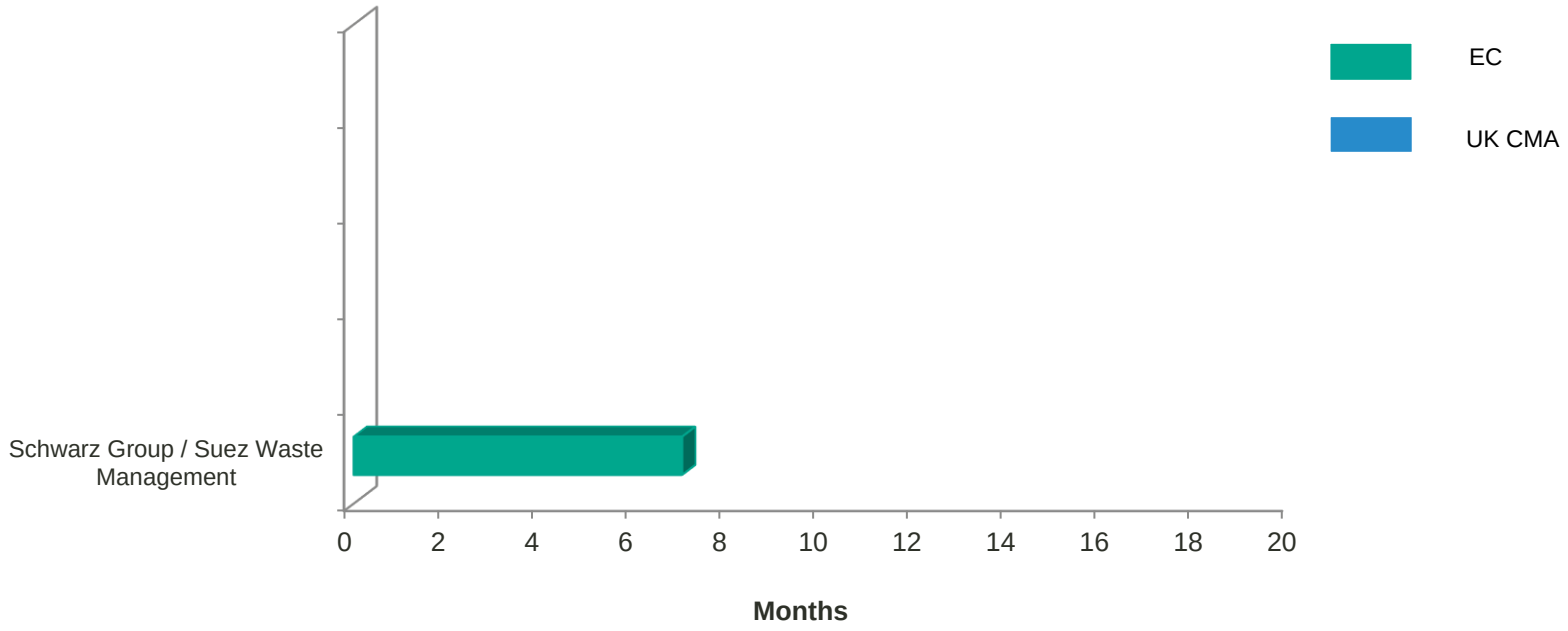
SNAPSHOT OF SELECTED ENFORCEMENT ACTIONS[2]

United States (Time from Signing to Consent or Investigation Closing)



[2] These graphs do not represent a complete list of all matters within a jurisdiction. Certain matters involving Firm clients are not included in this report.

Europe & the UK (Time from Signing to Clearance)



Notable US Cases

PARTIES	AGENCY	CASE TYPE (CLEARED; CONSENT; CHALLENGED; ABANDONED)	MARKETS / STRUCTURE (AS AGENCY ALLEGED)	SUMMARY & OBSERVATIONS
Aon plc / Willis Towers Watson (WTW)	DOJ	Abandoned	DOJ alleged five markets: (1) property casualty and financial risk broking for large customers; (2) health benefits broking for large customers; (3) actuarial services for large single-employer defined benefit pension plans; (4) the operation of private multicarrier retiree exchanges; and (5) reinsurance broking. Of the relevant product markets, the complaint alleges that Aon and WTW are two of the three largest competitors in all five. The estimated combined market shares exceed 40% in each of the relevant markets.	On March 9, 2020, Aon and WTW announced their proposed horizontal merger, which would create the world's largest insurance broker by revenue. The DOJ filed suit to block the Aon / WTW transaction on June 16, 2021, pursuant to Section 7 of the Clayton Act. This filing came after the agency rejected the remedy package offered by the merging parties. With respect to divestiture packages, merging parties bear the burden of demonstrating that the remedies meet the standard of preserving competition. The Acting Chief of the Antitrust Division at the time, Richard Powers, stated that the remedy package was missing key characteristics that the DOJ looks for when evaluating remedy packages, such as the severance of complete business units and the divestiture buyer being free from entanglements with the merged firm. The complaint indicates that Aon and WTW collectively have 180 offices in the US and proposed to divest only two offices that have commercial risk assets. DOJ alleged that just three firms dominate the insurance market: Aon, WTW, and Marsh McLennan. As such, the government is alleged that the merger of two insurance giants will result in "higher fees for lower-quality services." All five counts (split between the relevant product markets) allege the same four anticompetitive effects: (1) eliminating head-to-head competition; (2) reducing competition in general; (3) resulting in increased prices; and (4) causing a decline in quality, service and innovation. On July 26, 2021, the parties abandoned the merger.

PARTIES	AGENCY	CASE TYPE (CLEARED; CONSENT; CHALLENGED; ABANDONED)	MARKETS / STRUCTURE (AS AGENCY ALLEGED)	SUMMARY & OBSERVATIONS
Lehigh Cement Company, LLC / Keystone Cement Company, LLC	FTC	Abandoned	The FTC alleged one relevant product and two relevant geographic markets: (1) Gray Portland cement in eastern Pennsylvania and (2) Gray Portland cement in western New Jersey. The FTC alleged that the proposed transaction would be a 4-to-3 merger.	On May 21, 2021, the FTC issued an administrative complaint and authorized a suit in federal court to enjoin the transaction between Lehigh Cement Company (Lehigh) and Keystone Cement Company (Keystone). The FTC commissioners voted 4-0 in favor of challenging the transaction. The FTC alleged that this transaction would be detrimental to regional competition in the cement market, which is a key component to making concrete. The action was brought under Section 5 of the FTC Act and Section 7 of the Clayton Act. The FTC defined the relevant product market as Gray Portland cement—more specifically Type I and II cement—which is "general-purpose" cement and the most widely consumed. Lehigh and Keystone allegedly compete head-to-head for Gray Portland cement customers in both geographic markets, eastern Pennsylvania and western New Jersey. The complaint alleges that the post-merger market share of the combined firm would be more than 50% and the number of competitors in these geographic areas would be reduced from 4 to 3. The FTC emphasized a number of exacerbating factors. The FTC alleged the merger would eliminate a so-called maverick firm in Keystone, which regularly undercut Lehigh on price. The FTC also believed the transaction would facilitate coordination because the three remaining significant market participants or their parents had a history of coordinating price increases within the relevant market. Lastly, the post-merger Herfindahl-Hirschman Index (HHI) calculation far exceeded the 2,500 threshold for presumptive illegality at 3,500. On June 4, 2021, Lehigh and Keystone abandoned their proposed merger.

PARTIES	AGENCY	CASE TYPE (CLEARED; CONSENT; CHALLENGED; ABANDONED)	MARKETS / STRUCTURE (AS AGENCY ALLEGED)	SUMMARY & OBSERVATIONS
Seven & I Holdings Co., Ltd. / Marathon Petroleum Corp.	FTC	Challenged; Consent	The relevant product markets were: (1) the retail sale of gasoline and (2) the retail sale of diesel. The geographic market consisted of 293 local markets across 20 states. The FTC alleged that the proposed transaction would create: (1) a monopoly for both gas and diesel in 31 and 26 local markets, respectively; (2) a 3-to-2 merger in 73 and 63 local markets, respectively; and (3) a 4-to-3 consolidation in 160 and 64 local markets, respectively.	7-Eleven, a subsidiary of Seven & I Holdings Co., agreed to acquire substantially all of Marathon's Speedway LLC retail assets on August 2, 2020. The parties entered into a timing agreement with the FTC whereby the parties would agree not to close the transaction before May 14, 2021. The timing agreement had already been modified and extended four times prior to agreement on the May 14 date. The parties proposed a consent agreement, which the FTC did not initially accept because a majority of commissioners did not believe the proposal would remedy the potential competitive harms. Despite the lack of agreement regarding the consent proposal, the parties moved forward and closed the transaction on May 14 at the expiration of the timing agreement period and proceeded to divest the assets consistent with the proposed consent agreement. Six weeks after 7-Eleven took ownership of the Speedway assets, on June 25, 2021, the FTC entered into a proposed consent agreement. The proposed consent order required the divestiture of 124 retail fuel outlets to Anabi Oil, 106 retail outlets to CrossAmerica Partners and 63 Speedway retail fuel outlets to Jacksons Food Stores. The consent order further stipulated that 7-Eleven could not enforce any non-compete provisions for employees. Republican Commissioners Noah Phillips and Christine Wilson released a statement indicating they believed this settlement was overdue and that the Commission failed to act after having ample time to evaluate the transaction. Conversely, Democratic Commissioners Rohit Chopra and Rebecca Kelly Slaughter issued a statement claiming that 7-Eleven "chose to close under a cloud of legal uncertainty" and "learned that this Commission will not be dared into accepting settlements [it] do[es] not find adequate." The statement went on to implore future merging parties to learn from 7-Eleven's conduct and work with the FTC rather than consummate a so-called "illegal merger."

Notable European & UK Cases

PARTIES	AGENCY	CASE TYPE (CLEARED; CHALLENGED; ABANDONED)	MARKETS / STRUCTURE (AS AGENCY ALLEGED)	SUMMARY & OBSERVATIONS
Air Canada / Transat	European Commission	Abandoned	Market for passenger air transport services between the EEA and Canada.	On April 15, 2020, Air Canada notified the Commission of its proposed acquisition Transat. Air Canada and Transat are the first and second-largest providers of scheduled passenger air transport services between the EEA and Canada. In May 2020, the Commission opened Phase II proceedings. Following its preliminary investigation, the Commission was concerned that the proposed acquisition could significantly reduce competition in 33 origin and destination (O&D) city-pairs between the EEA and Canada. According to the Commission's market investigation, Air Canada and Transat are each other's closest competitors on EEA-Canada routes and certain O&D city-pairs. The Commission considered it unlikely that another Canadian airline, WestJet, would exert a sufficient competitive constraint on the merged entity. Given the timing of the notification amidst the COVID-19 pandemic and its significant impact on the aviation sector, the Commission also investigated the impact of COVID-19 on Air Canada, Transat and competitors' operations in the mid- and long-term. Nearly one year later on April 2, 2021, Air Canada and Transat announced that they would abandon the proposed transaction. The Commission confirmed that Air Canada had proposed a remedy package, but concluded the package was not sufficient to address the Commission's competition concerns.

PARTIES	AGENCY	CASE TYPE (CLEARED; CHALLENGED; ABANDONED)	MARKETS / STRUCTURE (AS AGENCY ALLEGED)	SUMMARY & OBSERVATIONS
Schwarz Group / Suez Waste Management Companies	European Commission	Cleared (subject to conditions)	Market for the sorting of lightweight packaging (LWP) in the Netherlands.	On February 19, 2021, the Schwarz Group notified the Commission of its proposed acquisition of certain Suez waste management companies. Both parties are active in the collection, sorting, treatment, recycling and disposal of household and commercial waste. The Commission assessed the following markets: (1) horizontal overlaps: the sorting of LWP in the Netherlands and the collection of hollow glass in the Bielefeld Region (Germany) and (2) vertical integration: (i) between the collection of LWP and the collection of industrial and commercial waste (both upstream) and the sorting of LWP (downstream); (ii) between the sorting of LWP (upstream) and the commercialization of LWP (downstream); and (iii) between the collection of industrial and commercial waste (upstream) and the retail sale of daily consumer goods (downstream). Regarding the alleged market for the sorting of LWP, the Commission found that the proposed transaction would combine the two largest and closest competitors. Further, because of other competitors' limited spare capacity, the merged entity would become an unavoidable trading partner, outweighing the buyer power of customers. The Commission considered that new entry in this market was unlikely to be timely and sufficient to deter or defeat the proposed transaction's alleged anticompetitive effect. The Commission alleged the proposed transaction would raise competition concerns in the market for the sorting of Dutch LWP, namely through the creation of a dominant position, the elimination of important competitive constraints that the parties had exerted upon each other pre-transaction, and a reduction of competitive pressure on the remaining competitors. To address the Commission's concerns, the Schwarz Group offered to divest the entirety of Suez's LWP sorting business in the Netherlands.

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