May 2022

JANUARY – MARCH 2022: HIGHLIGHTS

UNITED STATES:

- The US antitrust agencies continue with their aggressive merger enforcement posture. The agencies challenged four transactions this quarter, including multiple vertical mergers.
- The agencies are increasingly skeptical of merger remedies, including behavioral remedies and divestitures. Leaders at both agencies have signaled that they are more willing to challenge transactions outright rather than enter into "risky" settlements with merging parties.
- The Federal Trade Commission (FTC) and the Department of Justice (DOJ) are working together to update the current Horizontal Merger Guidelines. The updated guidelines will likely signal a more aggressive enforcement posture.

EUROPEAN UNION:

- Phase II in-depth investigations featured prominently in the first quarter of 2022. The European Commission (Commission or EC) blocked one transaction in Phase II and cleared two transactions. Three transactions were abandoned after the Commission initiated a Phase II investigation.

- The Commission made use of partial referrals to member state national competition authorities in two cases.
- The Commission ordered Hungary to withdraw its decision to prohibit Vienna Insurance Group's (VIG) acquisition of AEGON Group's Hungarian subsidiaries on foreign direct investment grounds, holding that Hungary's prohibition decision infringed Article 21 of the EU Merger Regulation (EUMR). Article 21 of the EUMR provides the Commission with exclusive competence to examine concentrations with a "[European] Union dimension."

UNITED KINGDOM:

- In the UK, the first quarter of 2022 also saw a number of Phase II investigations. Specifically, the Competition and Markets Authority (CMA) cleared one transaction in Phase II and blocked two other transactions in Phase II. One transaction was abandoned after the CMA initiated a Phase II investigation.
- The CMA blocked the merger of Cargotec and Konecranes just one month after the EC cleared the transaction subject to commitments in Phase II. The parties abandoned the transaction following the CMA's decision.
- The CMA imposed a second fine on Meta (formerly Facebook) for allegedly breaching the terms of an initial enforcement order issued after Facebook's acquisition of Giphy.

KEY THEMES AND TAKEAWAYS

UNITED STATES

- **Antitrust Agencies Continue with Aggressive Merger Enforcement**

  The FTC and the DOJ, under progressive leadership, continued their vigorous enforcement efforts against mergers and acquisitions this quarter. The agencies demonstrated their willingness to challenge transactions outright—including vertical mergers—rather than entering into consent agreements with merging parties. In recent remarks, FTC and DOJ personnel highlighted that many recent policy changes at the agencies are aimed at creating uncertainty, heightening risk and raising the transaction costs of doing deals to slow the pace of M&A activity. Agency leaders also stated that they expect to challenge more transactions in court.

  On January 25, 2022, the FTC filed a complaint in the US District Court for the District of Columbia to block Lockheed Martin's proposed acquisition of propulsion supplier Aerojet Rocketdyne. On February 17, 2022, the FTC, jointly with the Rhode Island

attorney general, filed a complaint in the US District Court for the District of Rhode Island to block the proposed merger of Lifespan and Care New England, two Rhode Island healthcare systems.

On February 24, 2022, the DOJ, together with the attorneys general in Minnesota and New York, filed a complaint in the DC federal district court to block UnitedHealth Group's acquisition of Change Healthcare. The DOJ also filed a complaint on March 17, 2022, to block Grupo Verzatec S.A. de C.V. from acquiring Crane Composites.

The FTC had a major victory and a significant defeat in two merger cases it filed previously. On March 22, 2022, the US Court of Appeals for the Third Circuit affirmed a federal district court's decision to grant the FTC a preliminary injunction blocking the merger of two hospital systems in northern New Jersey: Hackensack and Englewood. Earlier in the quarter, on February 15, an FTC administrative law judge dismissed FTC staff's complaint that sought to unwind Altria's 35% equity investment in JUUL Labs.

- **DOJ and FTC Are Increasingly Skeptical of Merger Remedies**

  Both US antitrust agencies are increasingly skeptical that merger remedies—both behavioral and structural—are effective in preserving competition. In a speech delivered on January 25, 2022, the Assistant Attorney General for the DOJ's Antitrust Division, Jonathan Kanter, stated that when the antitrust agencies find a competitive problem with a transaction, they should generally seek to block the deal outright rather than require divestitures. Kanter said remedies are highly disfavored and that only in rare instances can a divestiture remedy an otherwise anticompetitive transaction. In the Cargotec and Konecranes merger, the parties abandoned the transaction after the DOJ, like the UK CMA, rejected the settlement stating, "The department will not accept patchwork settlements that do not replace the competition that is lost by a merger."

  In keeping with Kanter's comments, Principal Deputy Assistant Attorney General Doha Mekki recently stated that the current DOJ will reject "risky settlements" and seek to block anticompetitive transactions more often—potentially even before merging parties substantially comply with a request for additional information and documentary material (Second Request) issued in an in-depth antitrust investigation. Nevertheless, the agencies continue to enter into consent agreements requiring divestiture with merging parties.

- **Antitrust Agencies Are Revamping the Horizontal Merger Guidelines**

  On January 18, 2022, the FTC and the DOJ launched a joint public inquiry aimed at modernizing the current Horizontal Merger Guidelines. The agencies are likely to issue jointly a new set of merger guidelines, but the timing remains unclear. The agencies

have not excluded the possibility of issuing one new set of guidelines that covers horizontal and non-horizontal transactions. Leaders at the FTC and the DOJ have stated that they are striving to make the new guidelines easier for lay people to understand in order to increase transparency and provide clear guidance as to transactions the agencies would consider anticompetitive. The updated guidelines are also likely to give more attention to labor market concerns and threats to nascent competition and innovation.

EUROPEAN UNION

- **Phase II Investigations Feature Prominently in the Commission's First-Quarter Enforcement Activity**

  The Commission continues to aggressively conduct in-depth analyses of proposed transactions through Phase II investigations. In the first quarter of 2022, the Commission conditionally cleared two cases in Phase II. Unlike the US antitrust agencies and the UK CMA, the Commission appears willing to accept behavioral remedies to address vertical concerns. For example, the Commission conditionally cleared the *Meta / Kustomer* transaction, requiring comprehensive API access commitments with a 10-year duration. The commitments addressed the EC's concerns that the transaction would reduce competition in the market for the supply of customer relationship management (CRM) software and the market for the supply of customer service and support CRM software. While the Commission also cleared the *Cargotec / Konecranes* transaction in February 2022, following a Phase II investigation involving commitments, the UK CMA later blocked the transaction. (*See* United Kingdom Key Themes & Takeaways and Notable European & UK Cases.)

  Three transactions in Phase II proceedings were abandoned: *Kingspan / Trimo*, *Nvidia / Arm* and *Greiner / Recticel*. The Commission blocked the *Hyundai Heavy Industries Holdings / Daewoo Shipbuilding & Marine Engineering* transaction nearly three years after the transaction was announced because the parties failed to formally offer remedies to address the Commission's concerns that the transaction would create a dominant position and would reduce competition in the worldwide market for the construction of large liquefied-gas carriers.

- **The Commission Utilized Partial Referrals to National Regulators in Two Cases**

  The Commission made partial referrals to member state national competition authorities in two cases. Partial referrals allow a member state's competition authority to assess the effect of a transaction on its jurisdictional market, while allowing the Commission to evaluate the remaining aspects for the European Economic Area (EEA) market. On March 30, 2022, the Commission unconditionally cleared Phoenix's proposed acquisition of part of McKesson outside of France. It partially referred the proposed

acquisition to the French competition authority at the latter's request. The French competition authority identified competition concerns regarding several markets in France, notably the markets for the wholesale distribution of pharmaceutical goods. In addition, the authority claimed that it would be well placed to review the competition effects in France given its knowledge and expertise in handling similar cases in the past. The proposed acquisition is still under review by the French competition authority.

Similarly, on December 13, 2021, following a partial referral by the Commission upon the notifying parties' request, the German competition authority conditionally cleared Refresco Group's acquisition of Hansa-Heemann in relation to the German market. On January 24, 2022, the Commission then cleared the transaction in relation to the remainder of the EEA-market.

- **The Commission Ordered Hungary to Withdraw Its Decision to Block an Acquisition on Foreign Direct Investment Grounds**

  On August 12, 2021, the Commission unconditionally cleared VIG's acquisition of AEGON CEE. Prior to the clearance decision, however, Hungary's competition authority blocked the acquisition of AEGON Group's Hungarian subsidiaries based on emergency foreign direct investment legislation introduced during the COVID-19 pandemic. Hungary argued that the acquisition threatened Hungary's legitimate interests.

  In October 2021, the Commission opened an investigation into Hungary's decision. On February 21, 2022, the Commission held that Hungary's prohibition decision infringed Article 21 of the EUMR, which provides the Commission with exclusive competence to examine concentrations that have a "[European] Union dimension." While member states may take measures to protect legitimate interests under certain conditions, such measures must be compatible with the general principles and other provisions of EU law and must be genuinely aimed at protecting a legitimate interest.

  The Commission found that there were reasonable doubts as to whether Hungary's prohibition decision was genuinely aimed at protecting Hungary's legitimate interests within the meaning of the EUMR. In particular, the Commission determined that it is unclear how the acquisition of AEGON's Hungarian assets posed a threat to a fundamental interest of society given that VIG and AEGON are well-established EU insurance companies with an existing presence in Hungary. Thus, the Commission found that Hungary should have communicated its intention to prohibit the transaction to the Commission prior to its implementation and that Hungary's failure to do so infringed Article 21 of the EUMR. The Commission further found that Hungary's prohibition decision restricted VIG's right to engage in a cross-border transaction, and that Hungary failed to show that the measure was justified, suitable and proportionate. In light of the above, the Commission ordered Hungary to revoke its prohibition decision.

UNITED KINGDOM

- **The CMA Continues Active Merger Enforcement with Several Phase II Investigations**

  In the United Kingdom, Phase II investigations have also featured prominently in the first quarter of 2022, although the CMA cleared just one transaction in Phase II: *Sony Music Entertainment / AWAL and Kobalt Neighbouring Rights* on March 16. The CMA blocked two transactions following a Phase II investigation: *Cargotec / Konecranes* and *JD Sports Fashion / Footasylum* (including requiring JD Sports to unwind the entire Footasylum acquisition). (*See* discussion below and Notable European & UK Cases table.) Finally, the CMA dropped its Phase II investigation in *Nvidia / Arm* on February 8, after receiving written assurances from the parties that the proposed transaction had been abandoned.

- **The CMA Takes a Divergent Approach from the Commission on Merger Control**

  The CMA blocked the merger of Cargotec and Konecranes just one month after the Commission cleared the transaction subject to commitments in Phase II. The CMA referred the transaction to a Phase II investigation due to concerns that the merger may result in a substantial lessening of competition for the supply of various equipment. Although the parties offered structural remedies to allay the CMA's concerns, including two separate partial divestiture packages, the CMA deemed the proposed remedies insufficient primarily due to the fact that the proposed remedy involved divestiture of partial assets from each party, rather than a standalone business. On March 29, 2022, the CMA blocked the transaction, which was later abandoned. (*See* Notable European & UK Cases.)

  The CMA's decision in this matter further demonstrates that the CMA will not shy away from taking a divergent approach from that of the Commission in evaluating transactions.

  When probed, at the American Bar Association (ABA) Spring Meeting in April 2022, on the antitrust enforcers' diverging approaches to the transaction, Commissioner for Competition and Executive Vice-President of the Commission Margrethe Vestager replied that this case should not be seen as a sign of deteriorating trust between the regulators. She explained that the Commission conducted two market tests and found that the remedy package was viable and that the market situation in Europe differed from other jurisdictions evaluating the transaction.

- **Meta Receives Second Fine from the CMA for Allegedly Breaching the Terms of an Initial Enforcement Order**

  The CMA imposed a second fine on Meta (formerly Facebook) for allegedly breaching the terms of an Initial Enforcement Order issued following Facebook's acquisition of Giphy. As reported in last quarter's *M&A Snapshot* (available here), in October 2021 the

CMA fined Facebook (now Meta Platforms, Inc.) £50.5 million for allegedly breaching the initial enforcement order it issued in June 2020 preventing Facebook and Giphy from further integrating their businesses pending the CMA's investigation into the transaction. On February 4, 2022, the CMA announced its decision to impose a second penalty of £1.5 million on Meta for its alleged failure to comply with the requirements of the initial enforcement order. According to the CMA, Meta allegedly failed to seek consent from and actively inform the CMA of changes to key staff prior to the departure of a staff member and the assumption of their responsibilities by another. The CMA's action demonstrates it will aggressively enforce compliance with initial enforcement orders issued in connection with an investigation.

ENFORCEMENT IN KEY INDUSTRIES[1]

Healthcare, Pharmaceuticals & Biotechnology

Technology, Media & Communications

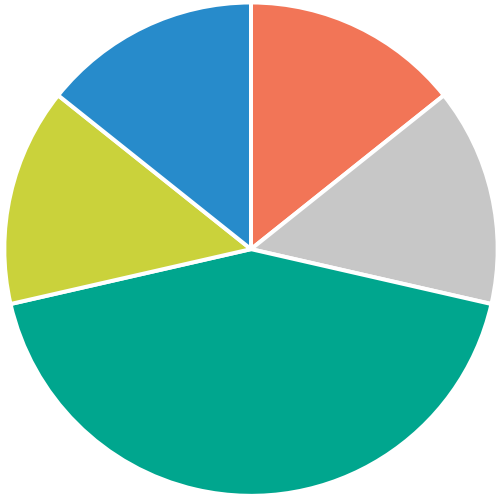
Retail & Consumer Productions

Chemicals & Industrial Prods. or Services

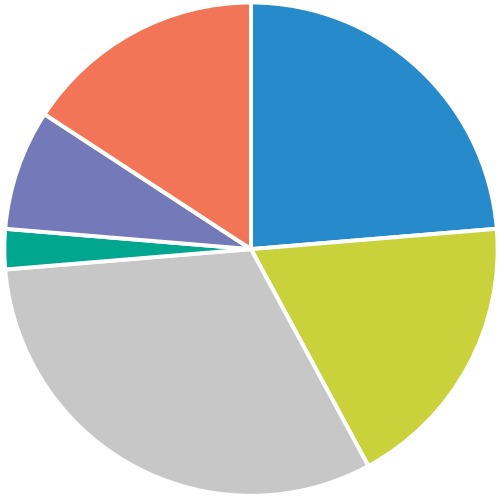
Transportation & Energy

Other

United States



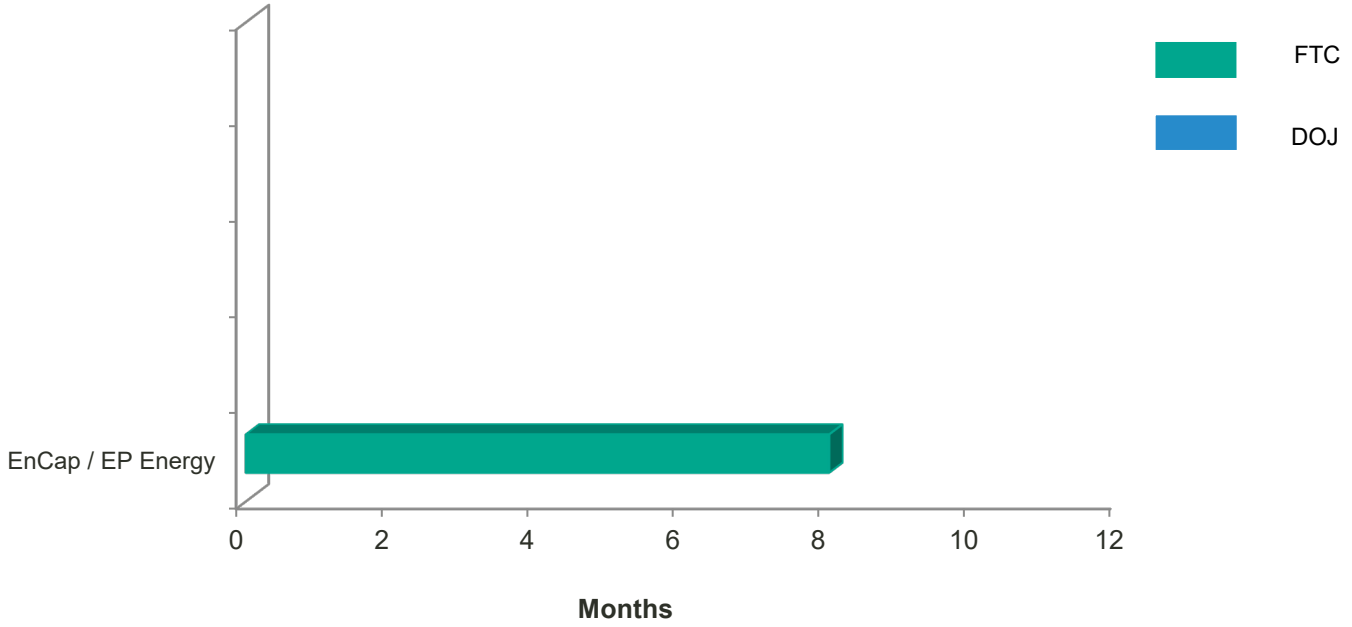
Europe & the UK



[1] For the United States, the graphs include cases during the quarter 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 United Kingdom, 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.

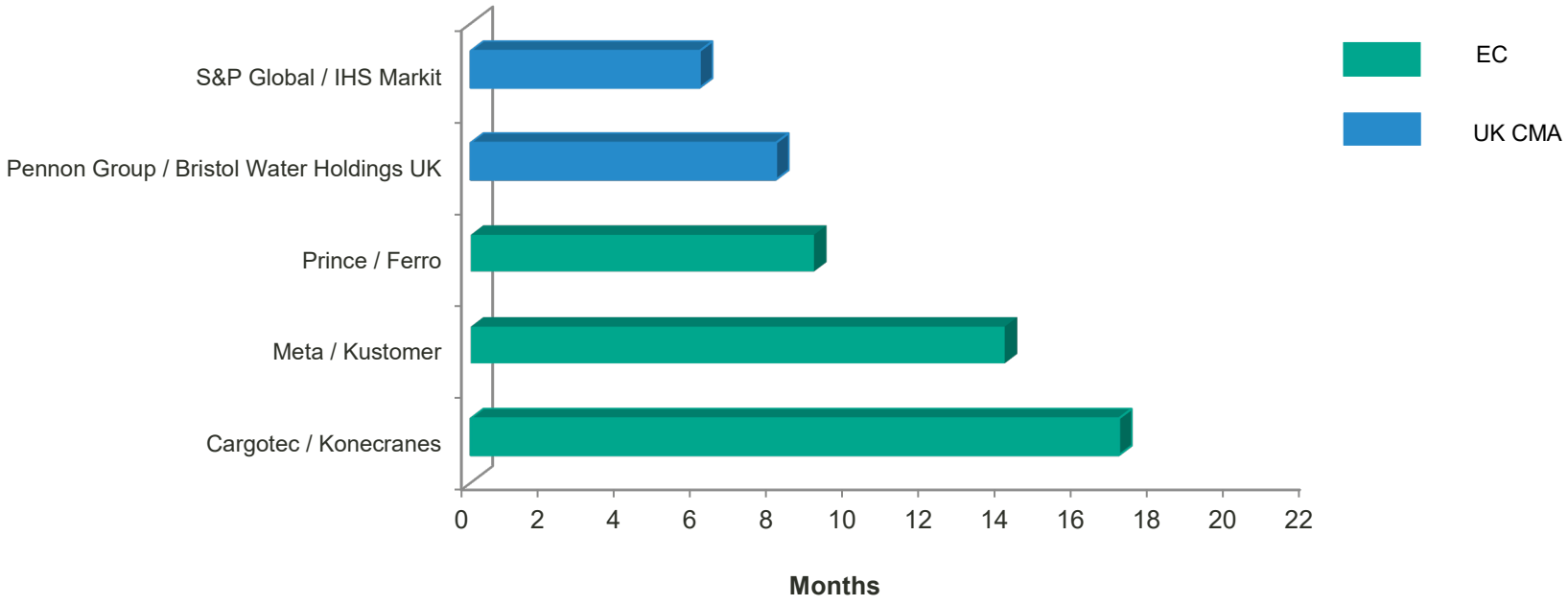
SNAPSHOT OF SELECTED ENFORCEMENT ACTIONS[2]

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
Altria Group / JUUL Labs	FTC	Challenged rejected	Closed-system electronic cigarettes. The FTC alleged the transaction resulted in a highly concentrated market (with an HHI exceeding 2,500).	In April 2020, the FTC filed an administrative complaint alleging that Altria Group and JUUL Labs entered a series of agreements, including Altria's acquisition of a 35% stake in JUUL for $12.8 billion, that eliminated competition in violation of the antitrust laws. The FTC alleged that Altria agreed to exit the market for closed-system e-cigarettes in return for the 35% ownership interest in JUUL, its leading competitor. The FTC further alleged that Altria agreed not to compete with JUUL by developing or acquiring a competing e-cigarette product while it maintained its investment in JUUL. The FTC brought claims under Section 1 of the Sherman Act, Section 5 of the FTC Act and Section 7 of the Clayton Act. The FTC sought an order voiding all agreements related to the transaction and mandating that Altria divest its equity stake in JUUL. Following a three-week trial, Chief Administrative Law Judge D. Michael Chappell ruled in favor of Altria and JUUL on February 15, 2022, dismissing the FTC's charges. Judge Chappell concluded that the FTC failed to show that the parties' agreement was predicated on Altria dropping its e-cigarette business. Rather, the evidence suggested that Altria had alternative explanations for winding down its e-cigarette business that were consistent with its own economic interest: Altria's MarkTen e-cigarette product was losing money and Altria was struggling to meet required FDA approvals. Judge Chappell also concluded that the FTC failed to show that the parties' agreement substantially lessened competition or was likely to do so in the near future. Judge Chappell noted that since Altria acquired its minority stake in JUUL, the closed-system e-cigarette market had become more competitive, with other companies gaining considerable market share and pushing down prices. Judge Chappell also found that Altria was years away from commercializing a competitive e-cigarette product. The FTC filed a notice to appeal the decision to the full Commission.

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Hackensack Meridian Health, Inc. / Engelwood Healthcare Foundation	FTC	Challenge upheld	The combined health system would control three of six inpatient general acute care hospitals in Bergen County, NJ, leading to a post-transaction market share of approximately 50%.	In October 2019, Hackensack, the largest healthcare system in New Jersey, announced plans to merge with Englewood Healthcare. Hackensack owns two of six hospitals in Bergen County, New Jersey. Englewood is the third-largest provider of inpatient general acute care services in Bergen County and owns one hospital in the area. In December 2020, the FTC filed suit in the US District Court for the District of New Jersey seeking a preliminary injunction to block the merger. The FTC alleged that the proposed acquisition would reduce competition for general acute care services and would enable Hackensack to increase prices and reduce the quality of care available to patients. The FTC defined the relevant geographic market as all hospitals used by commercially insured patients who reside in Bergen County. Following a seven-day hearing, the district court issued a preliminary injunction to halt the merger in August 2021. The parties appealed the decision to the Third Circuit. In their appeal, the hospital systems argued that the district court erred in its evaluation of the geographic market, the likelihood of price increases, and the procompetitive benefits of the acquisition. In a March 2022 ruling, the Third Circuit affirmed the district court's decision. The court first found that the district court did not err in accepting the FTC's proposed geographic market. The hospitals argued that the FTC needed to show that price discrimination was feasible to define a patient-based geographic market—in other words, that patients in the FTC's proposed market could be charged higher prices for inpatient general acute care services than patients living outside the proposed market. The Third Circuit disagreed and declined to adopt a rigid requirement that price discrimination must be feasible to define a customer-based geographic market. The court emphasized that courts should consider the "commercial realities" of the industry involved when defining the relevant market. The court also found that the district court did not clearly err in its application of the hypothetical monopolist test. The Third Circuit went on to hold that the record "thoroughly" supported the district court's conclusion that the FTC had established a prima facie case. Finally, the Third Circuit rejected the hospital systems' various arguments that the merger would result in procompetitive benefits, rejecting them as speculative or non-merger-specific, or concluding that the claimed efficiencies were not significant enough to offset the likely anticompetitive effects of the merger.

PARTIES	AGENCY	CASE TYPE (CLEARED; CONSENT; CHALLENGED; ABANDONED)	MARKETS / STRUCTURE (AS AGENCY ALLEGED)	SUMMARY & OBSERVATIONS
UnitedHealth Group / Change Healthcare Inc.	DOJ	Challenged	United owns the largest health insurer in the United States; Change operates the nation's largest electronic data interchange (EDI) clearinghouse. United and Change are also the two leading vendors of first-pass claims editing solutions, with an alleged 75% combined share.	On February 24, 2022, the DOJ filed suit in the DC district court to block UnitedHealth Group's (United) proposed $13 billion acquisition of Change Healthcare Inc. (Change). The DOJ alleges that the transaction would combine the nation's largest health insurance company with the leading independent supplier of several technologies used by health insurance companies to evaluate and process health insurance claims. According to the complaint, Change operates the nation's largest electronic data interchange (EDI) clearinghouse, which transmits claims data between healthcare providers and insurers. The DOJ alleges that nearly all of United's major health insurance rivals rely on Change's EDI and these claims data provide a window into the inner workings of health insurers and their plans. Change also licenses separate claims editing technology that enables health insurers to process health claims in real time and ensure compliance with their health insurance policies. United operates its own EDI clearinghouse and offers a competing claims-editing technology through OptumInsight. This case has horizontal and vertical elements. The DOJ alleges that the proposed transaction would harm competition in the sale of commercial health insurance by giving United access to and control over sensitive business information about its health insurance rivals through Change's claims data. In particular, the DOJ alleges that United would gain the ability to apply machine learning to rival insurers' claims data, gain insights into their competitive strategies, preempt those strategies and reduce its rivals' incentives to innovate. The DOJ also argues that the proposed acquisition would allow United to use its control over Change's technologies to raise its rivals' costs and reduce or withhold quality improvements and innovations from rivals. In addition, the DOJ alleges that the proposed acquisition would eliminate significant head-to-head competition between United and Change to supply first-pass claims editing solutions. According to the complaint, the transaction would give United a more than 75% share of the market for those services, leaving insurers "at the mercy of a vertically integrated monopolist." The trial is set for August 1, 2022.

Notable European & UK Cases

PARTIES	AGENCY	CASE TYPE (CLEARED; CHALLENGED; ABANDONED)	MARKETS / STRUCTURE (AS AGENCY ALLEGED)	SUMMARY & OBSERVATIONS
Hyundai Heavy Industries Holdings / Daewoo Shipbuilding & Marine Engineering	EC	Blocked	Combined share of at least 60% for the construction of large liquefied-gas carriers (decision text not yet available).	In 2019, Hyundai Heavy Industries Holdings announced it would acquire a 55.7% stake in Daewoo Shipbuilding & Marine Engineering Co., Ltd (DSME) for $1.68 ($2 billion won). The Commission opened a Phase II in-depth proceeding in December 2019. On January 13, 2022, the Commission blocked Hyundai Heavy's acquisition of DSME. The Commission had an initial May 7, 2020, deadline to render its decision. However, the procedure was suspended three times because Hyundai Heavy failed to respond to the Commission's information requests in a timely manner. The Commission considered that the transaction would have created a dominant position on the part of the merged company and reduced competition in the worldwide market for the construction of large liquefied-gas (or liquified natural gas (LNG)) carriers. According to the Commission, this would have resulted in reduced choice in suppliers, as well as higher prices for EU customers and ultimately for energy consumers. The Commission found that Hyundai Heavy and DSME had very large combined market shares of at least 60%. It also found that there were few alternatives for customers, and remaining competitors in the market had limited capacity to cover projected market demand. The Commission also determined that the only other large competitor in the market was insufficient to act as a credible constraint on the merged entity. Finally, the Commission found that the market had high barriers to entry and buyers lacked sufficient bargaining power to constrain the merged entity. The parties did not formally offer remedies to address the Commission's concerns.

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Cargotec / Konecranes	EC, CMA, and US DOJ	Cleared by EC but abandoned by the parties after transaction was blocked by CMA and the US DOJ threatened to sue to block the transaction.	Container and cargo handling equipment in Europe, including (i) gantry cranes, (ii) automated stacking cranes, (iii) shuttle carriers and straddle carriers, (iv) empty container handlers, (v) heavy duty forklift trucks, (vi) reach stackers and (vii) automated terminal tractors (ATTs).	Cargotec Corporation and Konecranes plc announced a merger of equals in October 2020. Both the Commission and the CMA opened in-depth investigations into the transaction. In July 2021, the Commission opened a Phase II investigation into the proposed merger due to concerns that the proposed acquisition may reduce competition in the supply of certain container and cargo-handling equipment in Europe. In particular, the Commission was concerned that the transaction would lead to reduced choice and higher prices for customers in the EEA for certain container and cargo handling equipment: (i) gantry cranes, (ii) horizontal equipment and (iii) mobile equipment. The Commission found that for each type of terminal equipment, the transaction would lead to high combined market shares in already-concentrated markets, with limited or even no credible alternative suppliers remaining post-transaction. The Commission cleared the merger on February 24, 2022, following commitments to divest overlapping product lines, with some assets from both parties ("mix and match"). The CMA similarly opened a Phase II investigation into the merger in July 2021. On March 29, 2022, the CMA found that the merger may be expected to result in a substantial lessening of competition because of horizonal unilateral effects in the supply of various types of container and cargo handling equipment in Europe (including the UK). The CMA found that an increased competitive threat from Chinese suppliers would be insufficient to offset the loss of competition resulting from the merger of two established suppliers. The CMA considered two divestiture proposals. First, the CMA considered divestiture of either Konecranes' or Cargotec's container-handling business. Although the CMA provisionally found that this remedy option was potentially effective, the parties decided not to pursue this remedy. Second, the CMA considered the parties' remedy proposal, which involved two separate partial divestiture packages, one from each of Cargotec and Konecranes, which would be sold to a single purchaser (a mix-and-match divestiture). The CMA identified risks with the structural elements of the proposed commitments and had concerns regarding the limited scale of the divestiture businesses, including that:

PARTIES	AGENCY	CASE TYPE (CLEARED; CHALLENGED; ABANDONED)	MARKETS / STRUCTURE (AS AGENCY ALLEGED)	SUMMARY & OBSERVATIONS
				• Certain assets currently used in the operation of the parties' businesses were not included in the divestiture. • Other assets (such as the parties' existing brands, connectivity solutions and other software systems) were included but only in part and/or with limitations attached to their use, which could undermine their value to the divestiture businesses. • There was material uncertainty regarding the identification of assets and people needed to effectively operate the divestiture businesses. • The parties competed closely for certain customers who value portfolio breadth, which the divestiture businesses and many competitors lack, limiting the competitive constraint on the merged entity CMA was seeking to restore through remedial action. • The divestiture buyer would not benefit from the parties' advantages of scale due to the limited extent of each divestiture package. The CMA also identified significant risks relating to the complexity of the proposed asset carve-outs subject to divestiture, which had the ability to impair the competitive capabilities of the divested business. The remedy proposal did not involve the divestiture of fully standalone businesses, but comprised carve-outs of assets, operations, employees, and customer and supplier contracts. Thus, the CMA rejected the remedy proposal and blocked the transaction. The US DOJ similarly expressed concerns with the "patchwork" settlement proposal that the parties offered and also threatened to sue to block the transaction. Cargotec and Konecranes abandoned the merger on March 29, 2022.

PARTIES	AGENCY	CASE TYPE (CLEARED; CHALLENGED; ABANDONED)	MARKETS / STRUCTURE (AS AGENCY ALLEGED)	SUMMARY & OBSERVATIONS
JD Sports Fashion / Footasylum	CMA	Blocked	Sports-inspired casual footwear and apparel retailing and, more specifically, (i) the retail supply of sports-inspired casual footwear in-store and online in the UK, and (ii) the retail supply of sports-inspired casual apparel in-store and online in the UK. Combined market share of 30%-40%, though the CMA emphasized the practical limitations of calculating share in a differentiated retail market and instead focused on closeness of competition.	In April 2019, JD Sports Fashion plc announced it would acquire Footasylum plc for £90 million. In October 2019, the CMA referred the proposed acquisition for a Phase II investigation. The CMA found that the merger may be expected to result in a substantial lessening of competition for the supply of sports-inspired casual footwear and apparel, both in-store and online in the UK. It concluded that the full divestiture of Footasylum by JD Sports was the only effective remedy. In July 2021, the UK Competition Appeals Tribunal (CAT) accepted commitments to give effect to this remedy. However, JD Sports successfully appealed the CMA's final report before the CAT, which held that the CMA's conclusions as to the likely effects of the COVID-19 pandemic were unfounded. On November 4, 2021, the CMA published its final report, following remittal from the CAT. The CMA again confirmed its findings that the transaction would result in a substantial lessening of competition (although for different reasons) and again ordered JD Sports to divest Footasylum. This time, the CMA considered that the substantial lessening of competition was "*based primarily on the removal of the constraint imposed by JD Sports on Footasylum*." According to the CMA, market developments since its Phase 2 Final Report resulted in Footasylum becoming a weaker constraint and other competitors becoming stronger constraints on JD Sports. However, these market developments did not weaken Footasylum to such an extent that the merger does not result in a substantial lessening of competition in the market. On January 14, 2022, the CMA accepted final commitments from the parties which require JD Sports to divest Footasylum. On February 14, 2022, the CMA also announced that it imposed fines totaling £4.7 million on JD Sports and Footasylum for breaching an interim enforcement order (IEO) and a formal information request issued to the parties during the remitted Phase II investigation. The IEO prohibited the parties from exchanging commercially sensitive information (CSI) without the CMA's prior consent and required the parties to immediately alert the CMA when CSI may have been shared. It also required the parties to put in place robust safeguards to prevent such breaches and ensure compliance with the IEO. The CMA found that the parties had failed to put safeguards in place and that they had shared CSI and failed to alert the CMA accordingly, thus resulting in the imposition of fines.

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