

European Court of First Instance Upholds Acquisition by Morgan Lewis Clients Apollo Management and Hexion

July 11, 2007

On July 9, 2007, the European Court of First Instance handed down a judgment in favor of Apollo Management and Hexion Specialty Chemicals, Inc., upholding Hexion's acquisition of Akzo Nobel's Inks and Adhesives Resins business. The European Commission had cleared the acquisition—despite apparently high market shares and some third-party opposition—because it agreed with Hexion that the acquisition would not give Hexion the ability to raise prices. The appeal to the Court of First Instance against the Commission's decision alleged that the Commission should have found the acquisition to be anticompetitive under the Commission's Horizontal Merger Guidelines. The Court rejected that contention, concluding that the Commission was correct on every point, and awarded costs to Apollo and Hexion.

The case is the first time the Court has considered the concept of “noncoordinated effects” (a firm's ability to raise prices unilaterally) under the Commission's Horizontal Merger Guidelines, and only the second time the Court has considered “coordinated effects” (the ability of firms to collude either explicitly or tacitly) under the Guidelines. The decision provides useful guidance on a variety of important issues relevant to merger analysis, such as the market factors necessary to enable firms to collude, when market shares are sufficient to presume “dominance” (monopoly power), the role of concentration in merger analysis, when parties should be considered close competitors, and how to analyze alternate suppliers, barriers to switching suppliers, and buyer power.

Morgan Lewis partner Izzet Sinan and associate Jonathan Uphoff appeared before the Court of First Instance. Partners Izzet Sinan, Jonathan Rich, and Will Tom; associates Jonathan Uphoff, Eva Rayle, Alexis Gilman, and Catrine Tengqvist; and former associate Jason Lomax obtained the Commission merger clearance on behalf of Apollo and Hexion.

For more information, please contact any of the following Morgan Lewis attorneys:

Brussels

Izzet M. Sinan 32.2.507.7522
Jonathan Uphoff 32.2.507.7543

isinan@morganlewis.com
juphoff@morganlewis.com

Washington, D.C.

Jonathan Rich 202.739.5433

jrich@morganlewis.com

About Morgan, Lewis & Bockius LLP

Morgan Lewis is a global law firm with more than 1,300 lawyers in 22 offices located in Beijing, Boston, Brussels, Chicago, Dallas, Frankfurt, Harrisburg, Houston, Irvine, London, Los Angeles, Miami, Minneapolis, New York, Palo Alto, Paris, Philadelphia, Pittsburgh, Princeton, San Francisco, Tokyo, and Washington, D.C. For more information about Morgan Lewis or its practices, please visit us online at www.morganlewis.com.

This LawFlash is provided as a general informational service to clients and friends of Morgan, Lewis & Bockius LLP. It should not be construed as, and does not constitute, legal advice on any specific matter, nor does this message create an attorney-client relationship. These materials may be considered **ATTORNEY ADVERTISING** in some states.
Please note that the prior results discussed in the material do not guarantee similar outcomes.

© 2007 Morgan, Lewis & Bockius LLP. All Rights Reserved.

