

Competition team of the year

WINNER

O'Melveny & Myers

John Cook

Gained Phase I clearance for TUI/First Choice union



Chris Ashworth of O'Melveny & Myers (centre) with David Lovett of AlixPartners

Clients close to the merger of TUI and First Choice were unabashed in their praise for O'Melveny & Myers' John Cook, who drew on his considerable experience and knowledge of antitrust law to ensure the European Commission cleared the tie-up quickly and with the minimum fuss and cost.

The TUI/First Choice merger ran hot on the heels of the announced marriage of Thomas Cook/My Travel. This meant the subsequent TUI/First Choice deal would reduce the number of leading players in the market from three to two, so a lengthy and costly Phase II investigation into likely anti-competitive effects of the proposed link-up was expected from certain quarters.

But Cook was having none of it. He judged that to attempt to change the established market definitions used by the Commission would lead to a Phase II investigation and successfully argued that forces from outside the market prevented the merged entity raising prices. The Commission accepted this and used it as a basis for the Phase I clearance.

'John was confident that he could get the deal cleared at Phase I,' said Colin Mitchell, managing director of Thomsonfly. 'The deal would have been put on hold for a time if Phase I hadn't been achieved, and who knows what would have happened after that. Sometimes circumstances change by the time a Phase II investigation has finished – you could even go as far as to say the merger may not have happened if it had gone to Phase II.'

The result meant there was no delay in implementing the merger and Thomas Cook/My Travel was not able to steal a march on TUI/First Choice in the marketplace.

HIGHLY COMMENDED

CLEARY GOTTLIEB STEEN & HAMILTON

Nicholas Levy

SLAUGHTER AND MAY

John Boyce; Philippe Chappatte

It was a major undertaking for both firms to persuade the European Commission to unconditionally clear the Sony BMG joint venture, after the Court of First Instance had originally annulled the Commission's clearance decision in 2006. This followed one of the most intensive Phase II

Appeal. In this long-running, high-profile dispute, the appeal judges overturned the High Court decision of December 2005 that had found that the BHB held a dominant market position for the sale of pre-race data and was abusing that position through excessive pricing, refusal to supply and discriminatory pricing. This crucial result vindicated BHB's entire strategy on pre-race data.

FRESHFIELDS BRUCKHAUS DERINGER

Nicholas Spearing

Having received instructions from Sportech only after its proposed acquisition of Vernons Football Pools had been notified, the signs were not good for Spearing and his team. Sportech would become the sole provider of football pools in the UK and over 100 complainants were vociferously opposed to the merger. But Freshfields' team convinced the Competition Commission to clear the deal unconditionally at the end of its inquiry, in a very rare example of a 'merger to monopoly' being approved.

PETERS & PETERS

Keith Oliver

This highly regarded white-collar crime and civil fraud boutique has fashioned an enviable claimant practice in regulatory disputes, as illustrated by its work in one of the biggest cartel cases currently in the UK courts. Litigation arose when several major pharmaceutical companies were alleged to have charged the NHS over the odds for medicines. There have been numerous settlements, so far totalling £34m, and the case has seen Peters & Peters take on, and beat, some of the major City firms.

O'Melveny & Myers ensured the European Commission cleared the TUI/First Choice tie-up quickly.

investigations to date, with Cleary advising Sony and Slaughters acting for Bertelsmann Music Group. It lasted an arduous 14 months and was unprecedented in that it allowed the Commission to examine the impact of the transaction on the market some two years after the joint venture had been up and running.

DENTON WILDE SAPTE

Sam Szlezinger

Szlezinger secured a landmark win for the British Horseracing Board (BHB) against Attheraces over market abuse in the first Article 82 case ever to go to the Court of

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– Competition Team of the Year –

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To find out more about AlixPartners, please contact us:

**FORENSIC ACCOUNTING
& INVESTIGATIONS:**

Martin Hall, +44 207 098 7443
mhall@alixpartners.com

Andrew Grantham, +44 207 098 7474
agrantham@alixpartners.com

**CORPORATE TURNAROUND
& RESTRUCTURING:**

David Lovett, +44 207 098 7416
dlovett@alixpartners.com

Stephen Taylor, +44 207 098 7477
staylor@alixpartners.com

COMPETITION SERVICES:

Kate Elliott, +44 207 098 7516
kelliott@alixpartners.com

AlixPartners

www.alixpartners.com