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Telecommunications

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Introduction

> *The overall aim of the Digital Agenda is to deliver sustainable economic and social benefits from a digital single market based on fast and ultra fast internet and interoperable applications.*[1]

It has been a busy year in telecoms and this review cannot possibly do justice to all developments. We have therefore focused on three main areas that have, in our view, especially interesting implications for electronic communications providers – particularly in relation to the convergence of competition law and ex ante regulation insofar as they apply to telecoms. These are: first, implementation of the revised regulatory framework for electronic communications; second, recent case law on margin/price squeeze; and third, guidelines on the applicability of state aid to broadband networks.

Revised regulatory framework for electronic communications

The European Commission (the Commission) adopted the Digital Agenda on 19 May 2010 as part of Europe 2020, a 10-year strategy to revive the economy of the European Union. It aims to provide 'smart, sustainable, inclusive growth' with greater coordination of national and European policy. The Digital Agenda is an ambitious programme of policies designed to boost job creation, promote economic growth and benefit EU citizens and businesses. It sets out over 30 proposals for new EU legislation, including in the areas of intellectual property, data protection and privacy, combating cybercrime and cyber attacks, spectrum policy and electronic commerce. The Commission has also completed public consultations concerning the scope of universal service and net neutrality, and is expected to announce new legislative and/or policy objectives during 2011 in respect of these areas.

One of the most significant recent developments in the EU telecoms field was the full entry into force, on 26 May 2011, of the 2009 reforms to the EU Regulatory Framework, by which date member states were required to implement into national law the provisions of the Better Regulation, and Citizens' Rights Directives. National regulatory authorities (NRAs) must now apply these provisions when regulating the telecoms sector. The Commission is tasked with overseeing NRAs' regulation of operators with significant market power (SMP), and, in conjunction with the Body of European Regulators for Electronic Communications (BEREC), has new powers to review (but, significantly, not to veto) remedies that NRAs propose to impose on operators designated as having SMP.

One important reform introduced by the Better Regulation Directive was the amendment to the Access Directive (by inserting a new article 13a) to provide for the new remedy of functional separation, which NRAs can exceptionally impose on operators designated as having SMP in a relevant wholesale market. The new article 13a enables NRAs to require a vertically integrated operator to separate its network business from its services business (without any change in overall ownership). The network business would be obliged to supply access products and services to all companies, including other business units within the parent company, within the same timescales, on the same terms and conditions, and by means of the same systems and processes. If an NRA wishes to impose a functional separation remedy, it must follow the procedures set out in articles 7, 7a and 13a of the Framework Directive. First, the NRA must notify the Commission and BEREC of its proposals under the specific consultation procedures applicable to the voluntary imposition of functional separation, set out in the new article 13a of the Framework Directive. Its proposal would need to be objectively justified (on the basis of a full market analysis), identify why persistent competition and regulatory issues cannot be resolved by imposing other remedies, and specify the precise nature and level of separation to be implemented. Once the Commission has approved the proposal, and before it can implement the functional separation obligations, the NRA must then complete the full market analysis required by articles 15 and 16 of the Framework Directive and comply with the transparency and consultation procedures laid down in articles 6 and 7 of the Framework Directive. Voluntary proposals to functionally separate are subject to review as well.

Recent developments in margin-squeeze case law

The electronic communication sector has seen considerable activity in the area of margin squeeze in recent years. A margin squeeze arises if the difference between wholesale and retail prices is either negative or insufficient to cover the wholesale costs incurred by an SMP operator in supplying its own retail services to end users. Under evolving EU competition law precedents, this difference must not be such as to prevent a competitor (which is deemed to be as efficient as the SMP operator)[2] from competing for the supply of the retail services to end users. Otherwise, an equally-efficient competitor could not operate on the retail market other than at a loss or at artificially reduced levels of profitability.

Margin-squeeze cases in recent years

The Commission has found violations of EU competition law in several high-profile margin-squeeze[3] cases involving the electronic communications sector over the past few years. For example, in 2003, Deutsche Telekom[4] was found to have committed an abuse in the form of a margin squeeze generated by an inappropriate spread between wholesale charges for local-loop access services and retail charges for end-user access services. Similarly, Telefónica[5] was fined €151.8 million in 2007 for an abuse of a dominant position on the Spanish broadband market by way of a similar type of margin squeeze (ie, the margin between Telefónica's retail price and the wholesale access prices was insufficient to cover the costs that an operator as efficient as Telefónica would have to incur).

The assessment of margin squeeze as an abuse of dominance has also been a recurring theme before the European courts – both in appeals from decisions of the Commission[6] and on references from NRAs.[7] These cases are significant in developing margin squeeze under EU competition rules, which can be complex in situations where there is a positive but allegedly insufficient margin.

The latest European Court of Justice (ECJ) margin-squeeze cases

The ECJ has recently handed down two important judgments under article 102 of the TFEU (article 102) concerning margin squeeze. The ECJ has also recently decided a predatory pricing case involving the telecommunications sector, which addresses similar issues.[8] At the time this article went to press, the industry was still awaiting the decision by the ECJ in the *Telefónica* case.

In *Deutsche Telekom*,[9] the Court confirmed that article 102 is generally applicable in regulated markets, although this does not apply where regulation has the effect of preventing the company from behaving in an autonomous manner and this fact is determinative of its competitive behaviour. In terms of proving a margin squeeze, the Court confirmed that, in applying a margin-squeeze test, it is not necessary to prove that the upstream wholesale price was excessive or that the downstream retail price was predatory: it is sufficient to prove that the margin was insufficient for a competitor that is 'as efficient' as the dominant firm to compete profitably. The Court also confirmed that margin squeeze is not a 'per se' abuse and that there must be an anti-competitive effect before a pricing practice can amount to an abusive margin squeeze.

In *Konkurrensverket v TeliaSonera Sverige*,[10] the ECJ gave a preliminary ruling based on a reference from the Stockholm District Court in relation to proceedings between the Swedish competition authority and TeliaSonera,[11] which raised a number of questions. As the most recent judgment of the ECJ on margin squeeze involving electronic communications providers, we will now turn to this case in more detail.

The importance of the judgment in *TeliaSonera*

In *TeliaSonera* the ECJ confirmed that margin squeeze is a distinct category of abuse and is not simply a form of refusal to supply. The Court examined the circumstances in which a vertically integrated company may be found to margin squeeze on the basis of the price charged to ADSL wholesale customers and that charged to end-users. It once again found that the central issue was whether the spread between wholesale input (ie, ADSL) prices and retail prices charged to end users for broadband connection services is negative or insufficient to cover the specific costs of the input services that the dominant company has to incur in order to supply its own services to end users. There is a squeeze if that spread does not allow a competitor that is as efficient as the dominant company to compete for supply of those services to end users.

The advocate general (AG) had advised that a margin squeeze could constitute an abuse either when the wholesale product was essential (comparing dealing at a high price to a constructive refusal to deal),[12] or when its supply was mandated by regulation. The ECJ's ruling went further than the AG's advice on this point. A dominant company could be responsible for an unlawful margin squeeze even if the wholesale product was not 'indispensable' and not mandated by regulation if the practice was capable of having anti-competitive effects on the markets concerned. The ECJ noted, however, that indispensability would be good evidence that a margin squeeze would be likely to have anti-competitive effects.[13]

As to the question of whether the absence of any regulatory obligation to supply ADSL on the wholesale market has any effect on whether the pricing practice is abusive, the ECJ held that it did not. The court concluded that the absence of any such regulatory obligation had no effect[14] on the question of whether the pricing practices were abusive: rather, margin squeeze is primarily about the spread of prices offered by the dominant company.

Of importance for electronic communications providers was the ECJ's admonition that, in assessing whether practices are abusive, the court should consider all the circumstances of each individual case. It highlighted the following factors as being particularly relevant in assessing whether margin squeeze has taken place:

- as a general rule, the pricing criteria based on the costs of the undertaking concerned should be taken into consideration first. Only where this is not possible (for example, if the pricing structure of the dominant undertaking is not precisely identifiable for objective reasons), should the prices and costs of competitors in the same market be examined; and
- it is necessary to demonstrate that (taking into account whether the wholesale product is indispensable) the practice produces an anti-competitive effect, at least potentially, on the retail market, and that the practice is not in any way economically justified.[15]

The ECJ outlined several factors that – as a general rule – will typically be irrelevant to the assessment of whether a practice constitutes a margin squeeze, including:

- whether the customers to whom such a pricing practice is applied are new or existing customers of the undertaking concerned (unlike in the case of a refusal to supply);
- the fact that the dominant undertaking is unable to recoup any losses which the establishment of such a pricing practice might cause; and
- the extent to which the markets concerned are mature markets and whether they involve new technology, requiring high levels of investment.

Implications of *TeliaSonera* and comparison with the US approach

The *TeliaSonera* judgment does not close the door on the debate as to whether the test for margin squeeze should be based solely on the downstream costs of the dominant undertaking (ie, the position of an 'as efficient competitor') or the costs of competitors on the downstream market. Indeed, the decision of the General Court in *Telefónica* may well provide further detail on that, and other, aspects of the margin-squeeze 'test'.

In terms of international comparators, the *TeliaSonera* judgment leaves much more scope for successful margin-squeeze complaints in Europe than in the US. *In Pacific Bell Telephone Co v Linkline Communications*,[16] the US Supreme Court ruled that, as a matter of competition law, an undertaking is not required to price its services in a manner that preserves its wholesale customers' ability to compete at the retail level. Indeed, according to the Court, such an undertaking would not violate competition law even if it chose to charge more for its retail service than for its wholesale service.

The *Linkline* case arose out of conditions, imposed by the Federal Communications Commission (FCC) on the merger between AT&T and SBC, which required AT&T[17] to provide wholesale 'DSL transport' service to competitive DSL providers at prices no greater than the price at which AT&T sells DSL service to its retail customers. AT&T complied with the FCC's 'DSL transport' requirement. However, Linkline and three other competitive DSL providers filed a lawsuit alleging that AT&T had violated section 2 of the Sherman Antitrust Act[18] by charging a relatively high price for wholesale DSL transport and a relatively low price for retail DSL service, effectively precluding them from competing against AT&T in the retail DSL market in the state of California.

The case was ultimately decided by the US Supreme Court, which rejected the independent DSL providers' claim. The Court

began by noting that, as a matter of US antitrust law, undertakings – even those with SMP – are generally free to decide with whom, and on what terms, they deal. The Court held that the only exceptions are:

- the 'limited circumstances' in which antitrust law imposes a duty to deal, such as where a firm controls an essential facility; and
- those cases in which a firm seeks to provide services at prices that constitute predation, which is extremely difficult to prove under US antitrust law.[19]

In *Linkline*, the Court held that AT&T did not have a duty under competition law to deal with its rival. Indeed, from a competition law perspective, AT&T was free to discontinue offering a wholesale DSL service.[20] The Court further found that, in this case, there was no allegation that AT&T's retail prices were predatory. The Court went on to conclude that 'if there is no duty to deal at the wholesale level, and no predatory pricing at the retail level, then a firm is certainly not required to price both of these services in a manner that preserves its rival's profit margin.'[21]

While the *Linkline* decision forecloses imposition of ex post liability for price squeezing under US antitrust laws, it does not restrict the ability of sectoral regulatory authorities from imposing ex ante requirements regarding wholesale and retail rates charged by regulated operators, in order to ensure that competitive providers are able to replicate incumbent operators' retail services. The FCC, however, has declined to avail itself of this power in the broadband market. Rather, the FCC has taken the view that facilities-based competition between incumbent telecoms and cable operators has provided a sufficient level of competition to protect consumers, and that regulatory intervention could deter incentives for further investment in broadband facilities.[22]

Margin-squeeze tests under ex ante regulation

Finally, we note the test applied under (ex ante) telecommunications regulation in the EU may impose a higher hurdle than the test applied under competition law, given the different objectives of the two regimes. In particular, the fact that regulation allows for the promotion of competition arguably justifies the application of a more stringent test to promote entry (for example, by applying a 'reasonably efficient' versus an 'equally efficient' operator test). This is a point made by Telefónica in its recent appeal to the General Court against the Commission's decision.[23] Indeed, the former European Regulators Group (replaced by BEREC) made the same point in a 2009 report on margin squeeze:

> *These objectives as laid out in article 8 of the Framework Directive are to: "promote competition [...] contribute to the development of the internal market [...] promote the interests of the citizens of the European Union". While competition law is intended to prevent margin squeeze as an exclusionary abuse, ex-ante regulation seeks the more ambitious goal of promoting competition by facilitating entry into those markets.*

NGA networks and broadband guidelines

Broadband networks are seen as strategically fundamental to achieving a number of objectives set out in the Digital Agenda. In September 2010, after considering several draft proposals, the Commission adopted a package intended to foster the deployment of both copper-based broadband networks and so-called next generation access (NGA) networks (ie, ultra-fast fibre-based networks). The package includes the Commission's NGA Recommendation and Guidelines on the application of state aid rules in relation to the rapid deployment of broadband networks (the Broadband Guidelines). Both documents aim to help achieve the Commission's objectives to deliver broadband to all EU citizens by 2013, and to increase bandwidth speeds to 30Mbps for all Europeans by 2020, with 50 per cent or more of European households subscribing to internet connections above 100Mbps.

The Commission's NGA Recommendation

With the adoption of the Commission's NGA Recommendation, the Commission provided guidance to NRAs on how they should regulate third-party competitive access to NGA networks. The NRAs are bound to take utmost account of the Commission's NGA Recommendation and, whenever they decide to depart from it (which, as explained below, a number of NRAs have done), they should provide the Commission with valid explanations for doing so.

The aim of the Commission's NGA Recommendation is to provide legal certainty in a field where the right balance must be struck between the need to foster investments and the need to protect competition. NRAs are encouraged to carry out this balancing exercise through, among other things:

- factoring in the added risk incurred by dominant companies when setting cost-orientated access prices (thereby providing an impetus to private investment);
- providing some price flexibility for Fiber-to-the-Home as a consequence of risk incurred by regulated undertakings; and
- lifting regulatory obligations in some circumstances of co-investment.

So far, a number of NRAs have approved national NGA regulations that deviate substantially from the Commission's NGA Recommendations. It remains to be seen whether economic conditions and other factors at national level will result in significantly divergent regulatory approaches to NGA across the EU.

State aid and the Broadband Guidelines

The Broadband Guidelines provide a detailed explanation of how and where public funds should be used to develop broadband networks by distinguishing between areas that do and do not justify state intervention. The Commission identifies 'white areas, where it will support state aid, as areas that are underserved by broadband networks. In particular, these include rural areas where state aid for broadband deployment is deemed to promote social cohesion and address market failures. Conversely, in 'grey areas' (ie, where a single broadband network operator is active but certain users may still have inadequate broadband service), the Commission will request a detailed analysis of the aid and the market failures it should address. In 'black areas' (ie, where there are at least two broadband network operators and as such, the market is likely to be competitive), the Commission would not in principle allow any state intervention.[24]

The Broadband Guidelines apply the same distinction in the case of NGA networks (where roll-out is still at an early stage); member states will have to take into account not only existing NGA infrastructure, but also plans that operators might have to deploy such networks in the near future.

The objective of the Broadband Guidelines is clearly one of fostering a speedy roll-out of both basic and NGA broadband networks by promoting competition in the sector and avoiding the 'crowding out' of private investment. To achieve this aim, a number of conditions are imposed, for example, detailed mapping, open tender, open access obligations and technological neutrality.

The Commission is in the process of carrying out a review of the Broadband Guidelines. The public consultation on the review is open until the end of August 2011 and it focuses on issues such as:

- the definition of NGA in light of technological developments;
- the open access requirements in cases of subsidised NGA networks;
- criteria for distinguishing between white, grey and black areas (as well as the application of this distinction to NGA networks); and
- the role NRAs should play in helping public bodies to implement state aid to broadband.

As a result of the public consultation, the Commission may issue new revised Broadband Guidelines or legislation or both that will influence the future support measures for the deployment of broadband networks.

What's next

As we have noted, the past year has been a very busy one in the telecoms arena, from both the antitrust enforcement and regulatory perspectives. The year to come is unlikely to be any less eventful for electronic communication providers, sector regulators and antitrust authorities.

In terms of the regulatory framework, the Commission has recently commenced infringement proceedings against no less than 20 member states for failure to implement the revised regulatory package for electronic communications within the prescribed deadline.

From a competition law perspective, the General Court's decision in *Telefónica* will be of keen interest to incumbent operators and access seekers alike.

In the NGA arena, the Commission and NRAs will be testing out the new article 7 procedures. They will also be grappling with a number of difficult trade-offs in deciding how best to encourage private NGA investment, (including broadband roll-out to higher-cost (rural) areas) as well as competition, at a time when consumer demand and access to finance are at best uncertain due to the continuing economic downturn and the eurozone crisis.

Finally, on the legislative front, a number of developments are worth noting. In the all-important area of spectrum, the commissioner for the Digital Agenda has urged the Council to reach a decision on the Commission's proposal for a Radio Spectrum Policy Programme (RSPP). This should free up radio spectrum for wireless broadband, which is considered by the Commission to be an essential requirement for meeting the Digital Agenda commitments. The current draft of the RSPP (article 5) contains a number of competitive safeguards that will provide national spectrum authorities with new regulatory tools to address potential issues arising from spectrum liberalisation and trading initiatives. It is envisaged that the Council's telecoms working group will have its proposals for amendments to the current draft of the RSPP ready for its negotiations with the EU parliament and the Commission by October, and the expectation is that the text of the RSPP will be finalised by mid-December 2011.

Notes

1 A Digital Agenda for Europe, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions, COM(2010) 245 final/2, 26 August 2010.

2 The Commission uses the as efficient competitor test in its most recent competition cases on margin squeeze, but for alternative tests – the 'reasonably' efficient competitor test – is used by some NRAs for purposes of ex ante regulation (see further below).

3 Margin-squeeze cases will be the focus of this article. Note, however, the European Commission has also fined electronic communications providers for other abuses of dominant position. See for example, the fine imposed on France Telecom [Wanadoo Interactive] (Case COMP/38.233) of €10.35 million in 2003 for predatory pricing for consumer broadband internet access services.

4 Decision 2003/707/EC – Case COMP/C-1/37.451, 37.578, 37.579 – *Deutsche Telekom AG*.

5 Telefónica (European Commission Decision in Case COMP/38.784 – *Wanadoo España v Telefónica*) currently on appeal to the European General Court (*Telefónica and Telefónica de España v Commission* (Case T-336/07)).

6 For example, Deutsche Telekom (*Deutsche Telekom AG v Commission*, *Vodafone and others* (Case C-280/08)).

7 For example, TeliaSonera (*Konkurrensverket v TeliaSonera AB* (Case C-52/09)).

8 *France Telecom SA v Commission* (Case C-202/07 P).

9 Case C-280-08 P, judgment of 14 October 2010.

10 Case C-52/09, judgment of 17 February 2011.

11 TeliaSonera is the Swedish fixed telephone network operator, and owns the local telecoms infrastructure – the local loop. TeliaSonera offered its retail competitors unbundled access to the local loop in line with its obligations under Regulation (EC) No. 2887/2000. It also offered (voluntarily, without obligation) an asymmetric digital subscriber lines (ADSL) product intended for wholesale users, enabling those operators to supply retail broadband services to end users. At the same time, TeliaSonera offered retail broadband connection services directly to end users, in competition with the companies to whom it supplied wholesale services.

12 At paragraph 16.

13 The Court argued (in paragraph 72 of the judgment) that: 'taking into account the dominant position of the undertaking concerned in the wholesale market, the possibility cannot be ruled out that, by reason simply of the fact that the wholesale product is not indispensable for the supply of the retail product, a pricing practice which causes margin squeeze may not be able to produce any anti-competitive effect, even potentially. Accordingly, it is again for the referring court to satisfy itself that, even where the wholesale product is not indispensable, the practice may be capable of having anti-competitive effects on the markets concerned. In other words: it is possible that a margin squeeze may have anti-competitive effects even if the wholesale product is not indispensable, and the national court must examine such potential effects.'

14 The ECJ noted that if there is national legislation in force which affects an undertaking's conduct, but a dominant vertically integrated undertaking has the scope to adjust even its retail prices alone, the margin squeeze may on that ground alone be attributable to it (*Deutsche Telekom*).

15 Here the Court applied *Deutsche Telekom*, and noted (in paragraph 62 of the judgment) that 'the Court has ruled out the possibility that the very existence of a pricing practice of a dominant undertaking which leads to a margin squeeze of its equally efficient competitors can constitute an abuse within the meaning of Article 102 without it being necessary to demonstrate an anti-competitive effect.'

16 *Pacific Bell Telephone Co v Linkline Communications*, No. 07-512, 555 US (2009) (official citation pending).

17 AT&T is the incumbent operator in the most of western and central United States.

18 Section 2 of the Shearman Antitrust Act prohibits 'monopolisation' – an offence comparable to the 'abuse of dominance' concept in the EU context.

19 In *Brook Group v Brown & Williams*, 509 US 209 (1993), the Supreme Court held that, in order to prove that an undertaking has engaged in predatory prices, it is necessary to demonstrate that the undertaking: set prices below costs; that this drove its rival from the market; and that barriers to entry are so high that, after driving its rivals from the market, the undertaking would be able to set its prices at a level that would enable it to recoup the losses that it had incurred during the period in which the predation occurred.

20 The Court's conclusion is consistent with its prior determination, in *Verizon Communications v Trinko*, 540 US 398 (2004), that an incumbent telco has no duty, under competition law, to deal with competitive entrants. Therefore, an incumbent operator's alleged failure to comply with interconnection requirements imposed by the FCC did not provide a basis on which impose ex post liability under the US antitrust laws.

21 The Court also expressed concern that, institutionally, the judiciary is not well-equipped to 'police both wholesale and retail prices.' In particular, the Court expressed concern that it would not be possible to adopt a workable standard for liability. The Court considered, and expressly rejected, the EU approach of seeking to determine whether an undertaking could profitably sell its retail services if it were required to purchase the inputs at the price that it charges its wholesale customers. This approach, the Court stated, would deter the very retail price-cutting that the US antitrust laws seek to promote.

22 See Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, 200 FCC Rcd 14853 (2005).

23 According to publicly available reported sources, Telefónica asserted that 'The Commission acted as a regulator, not as an enforcer of competition law, by using [market definition] categories imported from regulatory law that seem alien to competition law. Article 102 doesn't oblige the Commission to help small players into the market' – Telefónica contests lack of 'causal link' in EC's margin squeeze cases (www.mlex.com/ITM/Content.aspx?ID=148142). (The full report of the hearing is currently available only in Spanish.) In particular, Telefónica contends that the Commission made a manifest error in defining three separate wholesale markets and finding that it had a dominant position on both the wholesale and the retail markets.

24 The Commission has, however, approved a number of controversial broadband state aid projects, including clearing aid to the Hauts-de-Seine department of Paris in 2009. This is one of the wealthiest departments in France and it has a number of broadband providers who were planning their own roll-out of fibre in the area.

Jonathan Nadler
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Jack is a partner in Squire Sanders' Washington, DC, office, where he focuses his practice on telecommunications regulation. Jack has worked extensively on issues regarding telecommunication liberalisation, competitive safeguards and the regulation of IP-based services. He also has substantial experience in communications-related antitrust matters. He has advised governments and regulatory authorities in Europe, Asia, the Middle East, Africa and South America. Since 1999, he has served as a legal adviser to the government of Singapore regarding the introduction of competition in the telecommunications, media and postal sectors

In the United States, Jack has represented communications industry clients including regulated telephone companies (both wireline and wireless), information service providers, computer and communications equipment manufacturers, and large corporate users. He was actively involved in the legislative proceedings leading to the adoption of the Telecommunications Act of 1996, major FCC implementation proceedings and numerous court of appeals cases growing out of the Act before the United States Courts of Appeals. He subsequently advised operators regarding licensing, interconnection, unbundling and resale issues. Jack's extensive experience in antitrust (competition) law matters includes counselling communications clients regarding such issues as vertical and horizontal integration, exclusive program distribution agreements, price discrimination and predatory pricing.

Ann LaFrance
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Ann leads Squire Sanders' European and Middle East communications law practice. Drawing on more than 20 years of industry experience, Ann advises clients on telecommunications and media regulation, competition law, merger control, advocacy and dispute resolution, and general commercial and corporate law. Ann has considerable experience advising on the evolving EU regulatory framework for electronic communications including interconnection and access, SMP/market reviews, margin squeeze and the pricing of regulated bundles of services, net neutrality, spectrum licensing and refarming, Next Generation Access, e-commerce matters including data protection and data retention, international internet policies and a range of licensing issues. She also has experience negotiating commercial arrangements between and among operators, service providers and customers. Ann has expertise in the drafting of legislative and regulatory frameworks to facilitate sector restructuring, liberalisation and privatisation in emerging markets.

Nicola Elam
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Nicola is a senior lawyer based in the Manchester and London offices of the Regulatory practice group. She worked at the European Commission (DG Internal Market) before qualifying into the competition team at Slaughter and May in 2002. Nicola subsequently worked for three years at Freshfields Bruckhaus Deringer in London, where she specialised in antitrust. Her experience includes advising major UK companies on cartel investigations by the EC and OFT (including participating in dawn raids and subsequent leniency applications), as well as undertaking merger filings before the European Commission and UK competition authorities. She has extensively advised UK corporates on the competition aspects of commercial transactions, and has designed and implemented bespoke competition law compliance programmes, including undertaking mock dawn raids. She has particular expertise in the chemicals sector and advises extensively on the competition law implications of REACH.

Alessandro Nucara
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Alessandro Nucara is a senior associate in Squire Sanders Hammonds' European Law practice, based in our Brussels office. After having graduated from the College of Europe (Bruges), he worked at national and international firms both in Brussels and Rome, focusing on all areas of EC law. Alessandro joined the firm in Rome in 2004 and moved to Brussels in 2007. His particular expertise covers Community law, EC and national competition law, and state aid.

Alessandro regularly advises European and non-European clients on EC and national competition law, as well as general EC law. In particular, he has developed a specific expertise in the telecom, media and steel sectors, advising clients in cartel, abuse of dominance, state aid and merger control cases, as well as on regulatory issues.

He has also gained an extensive experience in the state aid field, regularly advising public and private sector clients on how to structure public funding in compliance with state aid rules, as well as on notifications of state aid measures to the European Commission, including state aid proceedings before European institutions.

Alessandro was also a visiting professor of law and economics (antitrust and state aid) at the University of Catanzaro (Italy) from January 2007 to March 2009. He is a regular lecturer at a number of Italian universities since 2002 and he has published a number of articles on state aid and competition law issues.

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