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The July issue of the Brussels Regulatory Brief includes the following topics:

- **Institutional developments**

EU Institutions move forward with the selection of their leaders for the new legislative cycle. *Over the last two weeks, the European Council elected its new president and proposed candidates for President of the European Commission, EU High Representative for Foreign Affairs and Security Policy and President of the European Central Bank. Moreover, the European Parliament elected its new president and formally confirmed the Council's nominee for the post of President of the Commission.*

- **Antitrust and Competition**

European Commission prohibits a proposed joint venture between two producers in the European steel market. *The European Commission blocked the proposed joint venture, considering that it would have limited suppliers and raised prices in the European steel market.*

European Commission approves joint venture between Lufthansa Technik and LG Electronics under the EU Merger Regulation. *On 11 June 2019, the European Commission's decision approving the joint venture between Lufthansa Technik and LG Electronics was published.*

France and Germany push for the reform of EU competition rules. *Since the European Commission prohibition of Siemens' acquisition of Alstom, France and Germany have been pushing for a reform of EU competition rules.*

- **Transport and Mobility**

Court of Justice of the European Union strikes down Germany's plan to end free highway driving. *On 18 June 2019, the Court of Justice of the European Union ruled against Germany's plan to charge motorists of non-German registered vehicles to use autobahns.*

Institutional Developments

EU Institutions move forward with the selection of their leaders for the new legislative cycle

On 2 July 2019, the European Council, which gathers Heads of State or Government of the 28 EU Member States, elected Charles Michel, current interim Prime Minister of Belgium, to be the new European Council President. Josep Borrell, currently Spanish Minister of Foreign Affairs, and Christine Lagarde, Managing Director of the International Monetary Fund, were also picked as official candidates for the roles of EU High Representative for Foreign Affairs and Security Policy and President of the European Central Bank (ECB) respectively.

Moreover, the Council proposed Ursula von der Leyen as candidate for President of the European Commission and on 16 July 2019, the European Parliament ("EP") gave her the mandate to lead the next Commission.

On 3 July 2019, the Members of the European Parliament ("MEPs") elected David-Maria Sassoli, a current Italian MEP, to be the new President of the EP.

European Council

EU leaders elected Charles Michel to lead the European Council for a renewable term until May 2022. The youngest ever Belgian Prime Minister is expected to succeed current European Council President Donald Tusk on 1 December. Besides chairing and driving forward the work of EU leaders, the President plays an important role in facilitating political consensus and ensures the external representation of the EU alongside the Commission President and the EU High Representative for Foreign Affairs and Security Policy. As a liberal and a federalist with experience in navigating the very fragmented Belgian political system, the 43 year old Michel is considered capable of securing unity and reaching compromises among European leaders.

European Commission

As the Heads of State or Government in the European Council decided not to be bound by the "Spitzenkandidaten process"1, and thereby disregard the contenders for the Commission Presidency proposed during the European elections campaign, the name of Ursula von der Leyen thus emerged for the role of Commission President. Von der Leyen's profile - German Defense Minister since 2013, member of the center-right Christian Democratic Union (CDU), Brussels-born and francophone - was able to reconcile EU leaders. On 16 July 2019, the EP confirmed Von der Leyen as President of the Commission by a tight majority (383 votes in favor, just 9 over the 374 required). For the first time since the establishment of the EU, a woman will lead its executive arm. The main tasks and activities of the Commission President include deciding on the organization and work of the Commission, allocating portfolios to the Commissioners and determining the body's policy agenda, while defending the general European interest. Von der Leyen is a convinced supporter of European integration and managed to get the support of the EP thanks to her vision of a greener, fairer and more united Europe.

European Parliament

An Italian journalist-turned-politician will succeed another Italian journalist-turned-politician at the helm of the European Parliament. A MEP from the center-left group of Socialists & Democrats Group (S&D), David-Maria Sassoli, was elected by the Parliament plenary to replace the current center-right President Antonio Tajani (European People's Party or EPP). The election, by absolute majority after two rounds of voting, has been favored by the center and center-right groups (Renew Europe and EPP), which did not present their own candidates. Sassoli was one of the Vice-Presidents during the previous EP mandate and will hold the position for the first half of the next 5-year term of office. In this role, Sassoli will chair parliamentary debates and oversee all the activities of the EP and its committees.

High Representative of the Union for Foreign Affairs and Security Policy

EU leaders proposed Josep Borrell as the next EU High Representative for Foreign Affairs and Security Policy. A veteran member of the Socialist Party, Borrell is the current Spanish Minister for Foreign Affairs and a former Member of the European Parliament, of which he was President in 2004-2007. The 5-year term of the current High Representative Federica Mogherini ends on 31 October and Borrell would take up the office on 1 November. The position of High Representative was created with the aim of managing the external relations of the EU and includes in its portfolio dossiers related to international security and intelligence sharing. The High Representative is appointed

[1] The Spitzenkandidaten process is a procedure whereby European political parties, ahead of the European elections, appoint lead candidates for the role of Commission President, with the presidency of the Commission then going to the candidate of the political party obtaining parliamentary support. The process is intended to ensure that, by voting in the European elections, European citizens not only elect the Parliament itself, but also have a say over the European Commission President.

by the European Council, with the agreement of the President of the Commission. Therefore, the formal appointment of Borrell will be one of the first activities of President Von der Leyen.

European Central Bank

The term of the current President of the ECB, Mario Draghi, ends on 31 October. The ECB President is appointed by the European Council for a period of 8 years based on a recommendation of the Council of the EU and following consultations with the Parliament and the ECB's Governing Council. Following the summit on 2 July, Christine Lagarde emerged as the leading candidate to succeed Draghi. A lawyer and former French Finance Minister, Lagarde will need the backing of a qualified majority of EU leaders to lead the ECB. The Treaty on the Functioning of the EU (TFEU) specifies that the ECB President should have a recognized standing and professional experience in monetary or banking matters, which given Lagarde's position with the IMF, she would appear to satisfy. Leaders are expected to take a final formal decision after receiving the relevant recommendations and opinions on the proposed candidate.

Antitrust and Competition

European Commission prohibits a proposed joint venture between two producers in the European steel market

On 11 June 2019, the European Commission adopted a prohibition decision of the proposed transaction following an in-depth investigation (i.e., Phase II). Over the past ten years, the Commission has approved over 3,000 notified transactions and blocked only ten. However, the number of prohibition decisions is rising as out of these ten decisions, three have been adopted since February 2019.

In September 2018, the parties notified to the Commission the proposed 50/50 joint venture, which would combine the European flat carbon steel businesses of both parties as well as the steel mill services business of one of them. The rationale of the transaction was to create a highly competitive European steel player and to enable the parties to face the significant challenges posed by the global steel market. This market is characterised by overcapacity and the growing relevance of Chinese producers.

In its decision to open a Phase II, which the Commission opens at the end of Phase I, the Commission expressed concerns that, post-transaction customers in the packaging and the automotive industry would face a reduced choice in suppliers, as well as higher prices. The parties' proposed remedies did not remove such concerns. It is worth mentioning that the Commission notably considered that the elimination of relevant suppliers in the steel industry would not be remedied by imports. This is due to the fact that the requirements of car manufacturers and packaging manufacturers are too sophisticated for steel suppliers from non-EU countries.

With respect to metallic coated and laminated steel products for packaging, the Commission noted that the transaction would create a market leader in an oligopolistic environment. This would allow the newly created entity to unilaterally exercise market power, for instance by profitably raising prices post-transaction. The parties' proposed divestment in this market would not have dispelled the Commission's concerns, as this would have only covered a limited part of the parties' overlap. With respect to automotive hot dip galvanised steel products, the Commission noted that the proposed transaction would have eliminated an important competitor in a market where only a few suppliers can offer significant volumes. The parties' proposed divestment did not include sufficient assets to ensure that competition remains effective in this market.

The Commission also noted that, for both the automotive and the packaging industry, the proposed remedies did not include any upstream assets for intermediate steel products. This means that the divested businesses would have been dependent on the new entity's supply of these inputs.

In DG-Competition's statement following the adoption of the decision, Competition Commissioner Margrethe Vestager emphasised the fact that the prohibition of the transaction was aimed at: "protecting European industrial customers that depend on steel products and, ultimately, of course those who buy everyday products such as canned food or cars".

The growing number of prohibition decisions demonstrates how important it is for companies seeking approval of merger activities to craft remedies that ensure that consolidation does not lead to consumer harm, for example via higher prices or less innovation. This requires careful, strategic thinking by the parties at an early stage of the notification process in order to address timely and effectively the Commission's competition concerns during the review process in order to secure clearance.

European Commission approves joint venture between Lufthansa Technik and LG Electronics under the EU Merger Regulation

On 11 June 2019, the decision of the European Commission approving the creation of a joint venture between Lufthansa Technik and LG Electronics under the EU Merger Regulation became publicly available. The joint venture was cleared by the Commission on 29 March 2019.

Lufthansa Technik and LG Electronics will jointly control the full-function joint venture ("JV"). Lufthansa Technik provides maintenance, repair and overhaul services for the aerospace sector worldwide and develops, manufactures and supplies cabin management and in-flight entertainment systems and components for business and VIP jets while LG Electronics is active in the production and supply of electronics, mobile communication devices and home appliances.

As regards the market concerned, the JV will be active in the design, production and supply of in-flight entertainment ("IFE") and cabin management systems ("CMS") for commercial aircrafts. In previous cases, the Commission considered that both IFE and CMS belong to non-avionics aerospace products category but left the market definition open. The results of the market investigation for the present case provided that CMS and IFE differ in terms of certification requirements, scalability and substitutability depending on whether the system is developed for a commercial aircraft, business jet or VIP jets. The Commission, however, left the market definition for IFE and CMS open for the purposes of the decision.

As regards the competitive assessment, the Commission concluded that the JV would raise no competition concerns. In terms of horizontal effects, the JV does not give rise to overlap between the parent companies as LG Electronics is not active in the production and supply of IFE and CMS systems. Although there could be a potential horizontal overlap between Lufthansa Technik and the JV itself given Lufthansa Technik's production and supply of IFE and CMS systems, none of the respondents during the Commission's investigation raised any concerns in this regard. Several respondents in fact stated that the creation of a JV would be a positive development for competition on the market.

The Commission further concluded that the JV is unlikely to give rise to vertical input or customer foreclosure effects. In addition, during the market investigation, no concerns were raised in that regard. For these reasons, the Commission decided not to oppose the concentration.

France and Germany push for the reform of EU competition rules

On 6 February 2019, the European Commission decided to block the Siemens-Alstom merger, preventing the creation of a Franco-German "European rail champion". The takeover would have combined Siemens' and Alstom's transport equipment and services in a new company fully controlled by Siemens, bringing together the two largest European suppliers of different kinds of railway systems, which also have leading positions globally. The decision followed an in-depth investigation, which showed that the acquisition would have significantly impeded effective competition in two main sectors: very-high speed trains and signaling systems, resulting in a limited choice of suppliers and products for customers, train operators and rail infrastructure managers. The remedies offered by the parties to address these concerns have not been considered sufficient by the Commission.

The French and German governments, considering the merger necessary to create a "European Champion" capable to compete with China Railway Rolling Stock Corporation, responded to the Commission decision with the "Manifesto for a European industrial policy fit for the 21st Century". To enable the EU to compete at the global stage, the manifesto calls for the development of a long-term industrial strategy built around three pillars: i) massive investments in innovation; ii) effective measures to protect EU technologies, companies and markets; and iii) the adaptation of the EU regulatory framework. As to the latter point, the document calls for a revision of competition rules to take greater account of industrial policy considerations and facilitate large cross-border mergers. Recommended changes include: i) increased consideration of state-control and subsidies for companies in the context of merger control; ii) an update of merger guidelines to reckon with current and potential future global competition; iii) a right of appeal of the Council to ultimately overrule Commission decisions; and iv) the potential temporary involvement of public actors to support specific sectors so as to ensure their long term and successful development.

The proposal to consider political interests beyond more traditional competition concerns in the context of merger decisions has recently been renewed by both countries.

On 3 June 2019, France published the report "La politique de la concurrence et les intérêts stratégiques de l'UE" on how competition rules should be amended, suggesting a closure of the EU market to investors benefitting from state subsidies and originating from countries where procurement markets are not accessible to EU companies. Furthermore, the report encourages the creation of a chief enforcer position to improve coordination between the Commission's different directorates general and the interplay between competition, trade, industrial, research and innovation policies as parts of a coherent whole.

Similarly, at a conference organized by the Federation of German Industries, German Chancellor Angela Merkel insisted on the need for Germany to set up an emergency tool allowing the public purchase of strategic companies that face a risk of being sold to foreign competitors and on the need for the EU to build "European Champions" able to compete globally.

The Commission, however, remains skeptical about reforming the EU's merger control regime to integrate a political dimension, prohibiting or authorizing transactions on grounds other than competition. In particular, the Commission argues that such a system would allow the creation of uncompetitive behemoths able to dictate prices to suppliers and impose added costs on consumers. It also questions whether such a process would be sufficiently transparent and objective and would permit large Members States to impose their will on small ones. Furthermore, Commissioner for Competition Margrethe Vestager took the view that because the proposed reform grants power to the Council to overrule merger decisions, there would be no judicial means to challenge them. Competition authorities from Sweden, Denmark, Finland, Iceland and Norway back the Commission reaction, arguing that the Franco-German proposal could weaken the functioning of the single market, advancing only a few large European companies while being detrimental to those Member States with small domestic markets. German small-and-medium-sized

Transport and Mobility

Court of Justice of the European Union strikes down Germany's plan to end free highway driving

On 18 June 2019, the Court of Justice of the European Union ruled on case C-591/17, acknowledging an argument presented by Austria in a complaint the country filled with the Court in 2017, supported by the Netherlands. Austria claimed that Germany's plan to offer local drivers tax relief on the so-called 'infrastructure charge' breaches EU competition rules. In its decision, the Court explained that, since the economic burden of the charge falls, de facto, solely on the owners and drivers of vehicles registered in other Member States, the fee discriminates against foreign vehicle owners and violates EU rights guaranteeing free movement. In particular, the Court ruled that Germany failed to justify the legality of the system that charges German-registered car owners the toll, but then allows them to benefit from a tax reduction in an amount which is at least equivalent to the amount paid by the owners and drivers of vehicles registered in other Member States. In addition, the Court ruled that Germany's decision to move to a financing system based on the "user pays" and "polluter pays" principles in practice affects exclusively the owners and drivers of vehicles registered in other EU nations.

EU regulators had also taken Germany to court a year before Austria filed this complaint, using similar arguments regarding the discriminatory nature of the plans. In 2016, the EU agreed with Germany to connect the tax rebate to a reward scheme for cleaner cars and lower the cost of short-term highway toll (so-called "vignettes") for those driving through Germany. Consequently, the Commission had decided to drop the case.

This Court decision comes as the Commission is looking to pass new legislation calling the EU Member States to introduce toll road systems and place the cost of maintaining infrastructure on those who use it. In this respect, the EU promotes a distance-based system that charges drivers per kilometre, differing from Germany's approach which charges drivers based on the time they are on the toll road. The Commission thus takes the view that toll roads are an efficient way of making drivers rather than society at large pay for use of infrastructure and, where relevant, the associated pollution.

Germany's plan was supposed to come into force in October 2020 and German-registered cars would have been charged 130 euros a year, with the cost deducted from road taxes. Drivers of vehicles not registered in Germany would have been able to buy vignettes for shorter periods, but would not get a reimbursement. The highway toll has not yet been applied and, because the Court's judgement is immediately applicable, Germany now will have to amend the original plan, which was a centrepiece of its road transport policy.

Germany is one of the few EU countries not to charge motorists for using highways, but instead covers the costs of its autobahns through taxes, as in Belgium. The introduction of the fee came as a response to German motorists expressing disappointment about foreigners using the network for free. The Court decision goes against its Advocate General opinion, who had recommended to dismiss Austria's complaint. German Transport Minister Andreas Scheuer expressed surprise over the Court's ruling and German Chancellor Angela Merkel stated during a press conference on 18 June 2019 in Berlin that the government will accept the Court's findings and the transport ministry will soon come up with a decision on how to proceed.

The practical impact of the decision for the operators building the toll road infrastructure, Germany's CTS Eventim AG & Co KGaA and Austria's Kapsch TrafficCom AG, remains to be seen, as the companies have stated that they had contractual agreements in place that eliminate the legal risk for them.

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