K&L GATES

BRUSSELS REGULATORY BRIEF

JULY

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Antitrust and Competition

European Court Confirms Commission's Jurisdiction for Fighting International Cartels

On 9 July 2015, the Court of Justice of the European Union ('**CJEU**') upheld the EUR 288 million fine imposed on a Taiwanese producer of liquid crystal display ('**LCD**') panels that was imposed in 2010, for participation in a price fixing cartel between 2001 and 2006.

The CJEU found that the Commission was entitled, when calculating the fines, to take into account the direct sales of LCD panels to Europe and the value of LCD panels incorporated into finished products by a vertically-integrated company based outside of Europe (in this case Taiwan and China) which were sold in Europe.

With this judgement, the highest European court confirmed the Commission's jurisdiction to rule against vertically integrated companies who are active in a cartel outside of the EU and to take the sales of finished products into account for the purposes of calculating cartel fines, up to the value of the cartelized components.

This judgement has a significant impact on businesses since it increases the exposure to higher fines and the number of companies that can fall under European competition law regime.

More information about this judgement can be found in our alert: *The Court of Justice of the European Union Confirms the Commission's Long Arm in Fighting International Cartels*.

Commission Sends Statement of Objections to Six US Film Studios and a British Telecommunication Company

On 23 July 2015, the European Commission ('**Commission**') sent a Statement of Objections to a British telecommunication company and six U.S. film studios as part of a wider probe into national pay TV systems that started in January 2014. The European competition authority contends that the contracts between the movie studios and the telecommunication company restrict the access for customers outside of the U.K. market to services offered by national broadcasters. As a result, such contracts allegedly eliminate cross-border competition and, in the Commission's view, constitute a serious violation of EU Competition Law rules.

The movie studios and the telecommunication company now have between two and three months to respond to the allegations contained in the Statement of Objections; they can also request an oral hearing to present their comments before the Commission.

This Statement of Objections should be regarded in the context of the Commission's agenda to implement a European Digital Single Market ('**DSM**'); as part of this policy initiative, unjustified territorial restrictions for selling goods and services online should be eliminated. However, policy makers should take into account that the elimination of the existing movie rights distribution system could possibly lead to higher than average prices for entertainment products throughout Europe and thus harm consumers in several Member States.

International Trade, Customs and External Relations

TTIP: Round 10

The 10th round of negotiations on the Transatlantic Trade & Investment Partnership ('**TTIP**') took place in Brussels on 13-17 July 2015. The parties have announced "a fresh start" after the negotiations have been backed by the decision of the European Parliament on TTIP recommendations and the adoption of the Trade Promotion Authority ('**TPA**') by the US Senate.

The negotiations were accompanied by a number of stakeholder events organised by the Directorate General for Trade of the European Commission.

Markedly, the negotiations focused on the issues of services market access and assessed the creation of a positive list for products and services under the agreement; furthermore the issues of regulatory coherence (e.g. technical barriers to trade, harmonisation of rules in automobile, sanitary, pharma and medical devices sector) have been intensively examined.

The parties agreed to postpone debates on other controversial matters such as financial services or rules on Investor State Dispute Settlement ('**ISDS**') for the next rounds.

TTIP is considered to be the world's biggest trade deal, creating a market of 850 million consumers and accounting for more than half of global economic output.

P5+1 and the EU reach an agreement with Iran on sanctions and nuclear programme

On 14 July 2015, the P5+1 nations (i.e. the United States, China, France, Germany, Russia, and the United Kingdom), together with the European Union (the '**EU**') and Iran concluded the Joint Comprehensive Plan of Action ('**JCPOA**'). With this deal, Iran agrees not to develop or acquire nuclear weapons in exchange for the gradual lifting of EU, US and UN sanctions. The JCPOA is expected to have a considerable economic impact on business and trade with Iran. However, the lifting of the sanctions will not be immediate but will gradually take place in the coming years, following a positive assessment by the International Atomic Energy Agency (the '**IAEA**') regarding Iran's fulfilment of its obligations.

Current measures against Iran provide for travel bans and asset freezing against specific individuals and entities and sanctions in certain areas, including finance, energy, transport, metals and software.

More information concerning the deal can be found in our alert: *EU Focus: Iranian Nuclear Accord Reached, but Specific Implementation of Meaningful EU Sanctions Relief Will Not Be Immediate*.

Energy and Renewables

The European Parliament has adopted the CO2 market stability reserve

On 8 July 2015, the European Parliament endorsed a reform of the EU Emissions Trading Scheme ('**ETS**'), which was informally agreed with the Latvian Presidency of the Council of the EU ('**Council**'). The new scheme -

scheduled to start operating on 1 January 2019 - aims at reducing the surplus of carbon credits available for trading with the goal of supporting the price of the emission rights. The system works as follows: a part of the ETS allowances is automatically taken off the market and placed in a reserve in case the surplus exceeds a certain threshold; on the contrary, should the ETS allowances in circulation be less than a certain threshold, allowances that have been put into the reserve can be returned to the market (‘**Market Stability Reserve**’). It is estimated that the current surplus of emission allowances is over 2 billion.

In order to come into force, the new legislation needs to be approved by the Council in September.

Telecommunications, Media and Technology

Launch of a public consultation on a revised Audiovisual Media Services Directive (AVMSD)

On 6 July 2015, the Commission launched a public consultation seeking to receive feedback from all interested stakeholders on the current framework regulating Europe’s audiovisual media landscape. Stakeholders and viewers are asked for their views on how to improve the current functioning of the audiovisual framework. Issues dealt with range from the market players’ regulation to the promotion of European works, child protection and advertising rules. This consultation is open until 30 September and is part of the Digital Single Market (**‘DSM’**) strategy, published on 6 May this year. A review of this Directive is expected in 2016 and the Commission had previously consulted on these issues in 2013.

Privacy, Data Protection and Information Management

Negotiations on the General Data Protection Regulation move forward

On 15 June 2015, the Council adopted its general approach to the General Data Protection Regulation (‘**GDPR**’) aimed at modernising the old 1995 Data Protection Directive. The first three-way talk meeting between the Commission, the Council and the European Parliament (commonly referred to as ‘trilogues’) took place on 24 June and allowed parties to agree on the overall roadmap for negotiations. It was followed by a second meeting on 14 July, which addressed the issues of territorial scope and international transfers of data. The next trilogue meeting is scheduled for September and will deal with data protection principles, data subject rights as well as controllers and data processors’ obligations.

Economic and Financial Affairs

Financial services priorities of the Luxembourg Presidency of the Council

Luxembourg took over the rotating EU Council Presidency on 1 July. On 15 July, Pierre Gramegna, Finance Minister of Luxembourg and ECOFIN Council President, met with Members of the European Parliament’s Economic and Monetary Affairs Committee, to outline his priorities for the coming six months. The main focus of the incoming Presidency will be on implementing the Juncker Plan for investment, the Capital Markets Union (‘**CMU’**), and will inter alia work on a more effective and more efficient Economic and Monetary Union (‘**EMU’**) on the basis of the Five Presidents’ report issued a few weeks ago. Similarly, the fight against fraud and work towards fairer corporate taxation is among the Presidency’s priorities.

The Greek Crisis outcome and its Impact on the Eurozone - K&L Gates Webinar

On 23 July 2015, the Greek Parliament passed the second set of legislative reforms agreed in the Euro Summit statement of 12 July (230 votes in favour, 63 against and 5 abstentions). In comparison to the previous week when Greece passed an initial set of austerity measures (this included a mix of economic reforms and budget cuts), the second set of reforms were more structural in nature and included the adoption of the Code of Civil Procedure, and the transposition of the Bank Recovery and Resolution Directive (‘**BRRD’**). Notably, the more divisive measures such as the phasing out of early retirement and tax rises for farmers have been delayed until August.

On 14 July 2015, two days after the decisive Euro Summit talks, which saw Greece remain a member of the Eurozone, the K&L Gates public policy team, consisting of Ignasi Guardans, Giovanni Campi and Sean Donovan-Smith, held a webinar with clients, which focused on the outcome of the Euro Summit and the implications of the reform measures agreed. To listen to a copy of the webinar, please click here.

On 22 July 2015, the ECB raised the emergency liquidity assistance ('**ELA'**) by EUR 900 million, which comes after the European Commission's proposal for the European Financial Stabilisation Mechanism ('**EFSM'**) bridge financing was approved by Member States on 17 July. Correspondingly, the Commission unveiled a plan to help Greece maximise its use of the EU funds. The plan will mobilise more than EUR 35 billion up to 2020 to support the Greek economy and provide the necessary tools for the reforms' success. Subsequently, a disbursement of EUR 7.16 billion was made to Greece under the EFSM.

Regarding the next steps, the ESM (European Stability Mechanism) Board of Governors gave the signal to the institutions to begin negotiating a Memorandum of Understanding ('**MoU'**) detailing the policy conditionality attached to the three year ESM stability support to Greece. The negotiations for approving the terms of a third bailout started on 27 July in Athens and are expected to continue until the second week of August.

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