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EU Law News

A bi-monthly review of EU legal developments

affecting business in Europe

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Newsletter July/August 2015

Luxembourg Presidency

Luxembourg has started its Presidency of the Council of the European Union for the second half of 2015 with a “Better Regulation” proposal aiming at improved cooperation between EU institutions to ensure the quality of legislation. Another topic is an increase in sustainable development initiatives based on research and innovation. A proposed reform of the Court of Justice would increase the number of judges in the General Court. The Presidency aims to finalise the EU data protection reform for the proper functioning of the single market and to discuss the Commission's forthcoming Single Market Strategy for goods and services. In order to stimulate investment Luxembourg will ensure that capital markets play a bigger role in the financing of the economy, the structural reform of banking and introduce a proposal regarding market infrastructures.

Within the context of the European energy policy, the Presidency will table the future design of the internal energy market for electricity, its implementation and the future role played by end-consumers. Luxembourg intends to place the fight against fraud and tax evasion in a global context and table the Action Plan for fairer corporate taxation, as proposed by the Commission on 17 June 2015. The Presidency will advance discussions on the Transatlantic Trade and Investment Partnership (TTIP) and pay particular attention to discussions on the Investor-State Dispute Settlement (ISDS) mechanisms.

Regarding the strategy on climate change Luxembourg will work on an agreement for the Market Stability Reserve (MSR) mechanism and on the Emissions Trading Scheme (ETS). Sustainability will also be addressed through various international negotiations such as the Special Summit on Sustainable Development in September in New York and the 21st Conference of Parties at the United Nations Framework Convention on Climate Change (COP21) in December in Paris.

Antitrust Investigations into Qualcomm

In July 2015 the European Commission opened antitrust investigations into possible abusive behaviour by Qualcomm in the field of chipsets used in consumer electronic devices. Competition Commissioner Margrethe Vestager stated she wanted to ensure that high technology suppliers can compete on the merits of their products and that customers get value for money when buying a mobile phone, a tablet and other mobile broadband devices. Qualcomm is the world's largest supplier of chipsets powering these devices.

The first investigation will examine whether Qualcomm has breached rules that prohibit the abuse of a dominant market position. The Commission focuses on Qualcomm's conditions related to the supply of certain chipsets that comply with 3G (UMTS) and 4G (LTE) standards and are used to deliver cellular mobile connectivity in smartphones and tablets. The question here is whether Qualcomm has granted payments, rebates or other financial incentives to its customers on condition that they purchase all or a significant part of their chipsets requirements from Qualcomm, and whether any such behaviour might inhibit the ability of rivals to compete.

The second investigation will look into the question whether Qualcomm engaged in 'predatory pricing' by charging prices below cost for certain chipsets that comply with 3G (UMTS) standards and are used to deliver cellular mobile connectivity. Such a pricing policy could push competitors out of the market. The Commission has stated that it will examine the case with priority.

European Court to opine on Uber

In July 2015 a Spanish judge has asked the European Court of Justice (ECJ) if taxi service provider Uber is a "mere transport service" or a digital service, providing “electronic intermediation or information society service”. The case could set a precedent across Europe. The court dispute has been started by the city of Barcelona's main taxi operator against Uber in late 2014.

Since Uber launched in Europe in 2011 it has been challenged by national courts in Belgium, France, Germany, the Netherlands and Spain. Uber has already filed complaints with the European Commission against a new French law which it says favours local taxis. It has complained that Germany’s laws on taxis and its competition rules violate EU law. German courts have required the company to apply for a taxi operator’s licence. The Commission has now questioned Germany on the background of its rules.

If the ECJ declares Uber to be a "mere transport service" it would submit Uber subject to stricter rules on licensing, insurance and passenger safety. If on the contrary the ECJ qualifies Uber’s activity a “society service” Uber could benefit from certain protection under EU rules. The ECJ was also asked to decide whether the restrictions placed by Spain on Uber are lawful given that Uber is registered in a different EU member state (the Netherlands).

EU-Vietnam Free Trade Agreement

On 4 August 2015 the EU agreed a Free Trade Agreement (FTA) with Vietnam. The FTA will remove nearly all tariffs on goods traded the value of which was approximately €28bn in 2014, with €22.1bn of imports from Vietnam into the EU and €6.2bn of EU exports to Vietnam. The EU is Vietnam’s second-biggest trading partner after China. Vietnam’s economy is supposedly growing by 6% in 2015 and young people represent a high percentage of its 90 million inhabitants.

European clothing, footwear and sportswear companies were a principal obstacle in concluding the agreement because of fears that China would use Vietnam as a conduit for entry into the EU markets. The EU has introduced strict “rules of origin” safeguards, ensuring that raw materials from China must undergo sufficient workmanship in Vietnam before they can be re-exported to Europe. Vietnamese geographic indications will be recognised as such in the EU, providing an adequate framework for further promotion of imports of quality products.

Besides eliminating tariffs, Vietnam will also remove almost all of its export duties, and has agreed to liberalise trade in financial services, telecommunications, transport, postal and courier services. It will remove limitations on the manufacturing of food products and beverages. The deal would allow EU companies to bid for big public contracts such as roads and ports in Vietnam. It will open up the service sector in, for example, banking and insurance. The deal will support conservation and sustainable management of natural resources. Attention is paid to areas such as Corporate Social Responsibility and fair and ethical trading schemes.

The negotiating teams will now settle some remaining technical issues. The agreement will need approval by the Council and the European Parliament. After the conclusion of the Singapore FTA in 2014, this will be the second FTA between the EU and a country of the Association of South East Asian Nations (ASEAN).

Commission investigates Disneyland

On 28 July 2015 the European Commission announced that it is investigating whether Disneyland Paris is overcharging customers from certain countries in breach of the EU’s competition laws. Disney has allegedly overcharged British and German customers on the basis of their place of residence. The Commission says price discrimination in Europe occurs when differences are made in treatment on the grounds of nationality or residence. The case could have broader implications for the retail and services sector.

The situation is most prominent when service providers publish residence-based payment and delivery rules, selective offers and family discounts, or redirect consumers to higher priced national websites. Disneyland Paris claims that its promotions in local markets are based on booking patterns and school holidays. The Commission’s review of price discrimination is part of a broader initiative to eradicate so-called geo-blocking in Europe, where consumer Internet Protocol (IP) addresses or payment cards are used to block them from access to certain services.

Cross-border pay-TV services

On 23 July 2015 the European Commission sent a statement of objections to Sky UK and six major US film studios: Disney, NBC-Universal, Paramount Pictures, Sony, Twentieth Century Fox and Warner Bros. The Commission takes the view that each of the six studios and Sky UK have bilaterally agreed to put in place contractual restrictions that prevent Sky UK from allowing EU consumers located elsewhere in the EU to access, via satellite or online, pay-TV services available in the UK and Ireland.

The Commission's investigation was opened in January 2014. Some agreements contain clauses requiring studios to ensure that, in their licensing agreements with broadcasters other than Sky UK, these broadcasters are prevented from making their pay-TV services available in the UK and Ireland. The Commission previously also set out concerns as regards licensing agreements between the film studios and other major European broadcasters (Canal Plus of France, Sky Italia of Italy, Sky Deutschland of Germany and DTS of Spain).

In parallel with its actions under EU competition law, the Commission will propose modernisation of EU copyright rules and will review the EU Satellite and Cable Directive as part of its Digital Single Market Strategy adopted in May 2015. The aim is to reduce the differences between national copyright regimes and allow for wider access to online content across the EU.

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