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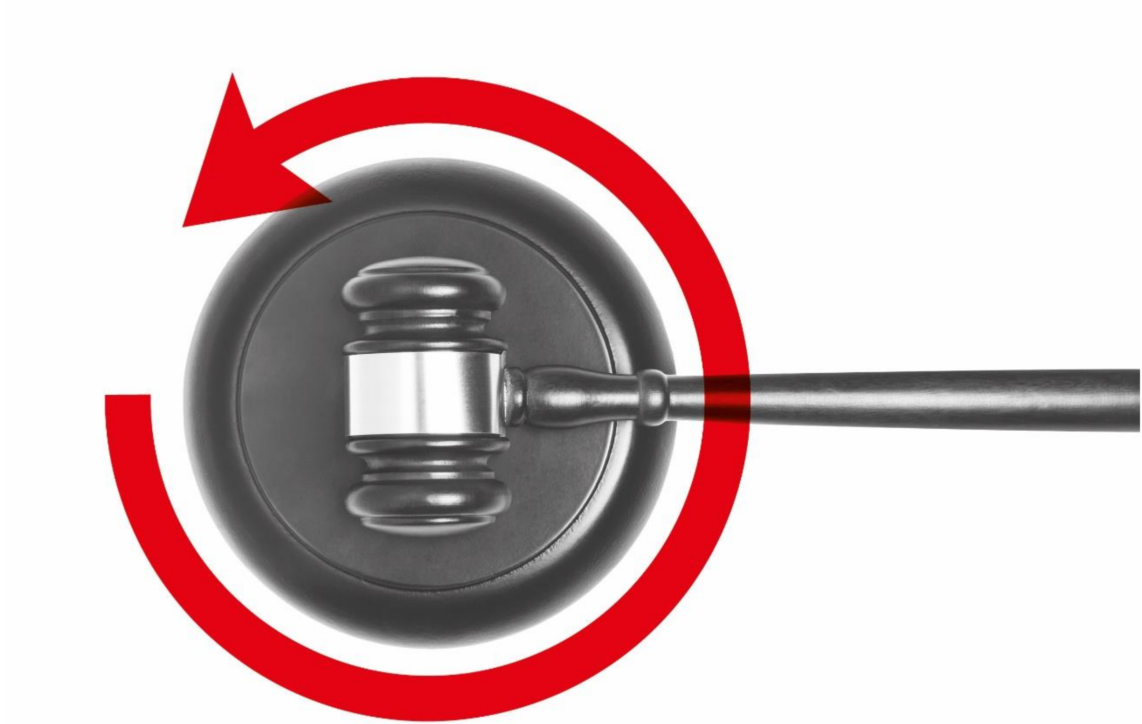

Knowledge Update

EU & Competition Law Newsletter

Issue No. 2, 2022

Irish Merger Control

Agriculture: Glanbia Co-Operative Society Limited/Glanbia Ireland DAC

Having been notified on 14 February 2022, and with a requirement for further information issued on 9 March 2002, the proposed acquisition of Glanbia Ireland DAC by Glanbia Co-Operative Society Limited was cleared by Competition and Consumer Protection Commission (the "CCPC") on 28 March 2022.

Glanbia Co-Op is an industrial and provident society which operates mainly in the south and east of Ireland as an agricultural co-operative society which comprises of approximately 11,200 members. Glanbia Ireland DAC trades under the Glanbia brand in over 80 countries providing numerous services including milk processing, producing/supplying a range of value-added dairy ingredients. There are 52 agri-branches, including 13 garden centres under the operation of Glanbia Ireland.

Motor Sector: Allied Irish Banks PLC ("AIB") / Autolease Fleet Management Limited ("Autolease")

Notified on 4 February 2022, the proposed acquisition by AIB of Autolease was cleared by the CCPC on 16 March 2022.

AIB is one of Ireland's best-known financial institutions which provides a wide range of services to personal, business and corporate customers. Autolease provides commercial fleet leasing and fleet management services to businesses.

Energy & Utilities: Acquisition of ElectroRoute Holdings Limited by Diamond Generating Europe Ltd

On 24 January 2022, the CCPC cleared the acquisition of ElectroRoute Holdings Limited by Diamond Generating Europe Ltd.

Diamond Generating Europe Ltd is a wholly owned subsidiary of the Mitsubishi Corporation and is active in the electricity business in Europe and the Middle East. ElectroRoute is an Irish-incorporated entity, active in energy commodities, including the wholesale sale of electricity within the State.

EU Merger Control

The European Commission prohibits proposed acquisition of Daewoo Shipbuilding & Marine Engineering by Hyundai Heavy Industries Holdings

This European Commission has prohibited the proposed acquisition of Daewoo Shipbuilding & Marine Engineering by Hyundai Heavy Industries Holdings as the merger would have given the new merged company a dominant position in the worldwide market for the construction of large liquefied gas (LNG) carriers. Furthermore, the parties did not offer remedies to the Commission's concerns over this merger.

Hyundai Heavy Industries Holdings ("HHIH") is a privately owned South Korean company mainly operating in shipbuilding. It produces a range of commercial vessels, marine engines and offshore facilities used to explore, produce and process oil and gas under the sea, including LNG carriers of numerous sizes. Daewoo Shipbuilding & Marine & Engineering ("DSME") is a South Korean company that is also mainly active in shipbuilding. It also produces a range of commercial vessels and offshore facilities, including large LNG carriers. Its majority shareholder, and seller in the proposed transaction, is the Korea Development Bank ("KDB").

Both companies are global leaders in the construction of large LNG carriers; they are two of the three largest companies in this concentrated market. During its investigation, the Commission received feedback from various customers, competitors and other third parties. The feedback raised concerns over the transaction and its potential to create a company with a dominant position in the worldwide market for the construction of large LNG carriers, reduce competition and increase prices across the board.

The Commission based its decision on numerous considerations, some of which were:

- **The parties enjoy very large and increasing market shares:** The merged company would have undoubtedly been the largest player globally, in an already concentrated market. Its combined market shares would be of at least 60%.
- **Very few alternatives for customers:** Other than the parties concerned, there is one remaining large competitor in the LNG carriers market.
- **Limited capacity in the market:** Following the Commission's investigations, it found that the new merged company would hold a central place in the market as the capacity of the other competitors would not have met the projected market demand.

The European Commission has cleared the acquisition of joint control of Missguided Limited by Apollo Management L.P and Mr. Passi

The European Commission has approved the acquisition of joint control of Missguided Limited, a UK based company, by companies controlled by

Apollo Management L.P. of the US and Mr. Passi, respectively.

Missguided Limited is a retailer and wholesale supplier of clothing, apparel, footwear, and beauty products. Apollo Management L.P. managed investments in companies active in a wide range of sectors, including the design, wholesale and retail of women's apparel. The Commission concluded that the transaction would raise no competition issues given the overlaps between the activities of the companies.

EU State Aid Decisions

Gigabit networks in Italy

The European Commission has approved, under EU State aid rules, a €3.8 billion Italian scheme made available through the Recovery and Resilience Facility (RRF) to deploy high-performing gigabit networks in areas of the country where there is no current or planned network able to provide at least 300 megabits per second (Mbps) download speed. It will contribute to the EU's strategic objectives relating to the digital transaction. The scheme will be entirely funded via the Recovery and Resilience Facility (RRF).

The Commission found that: (a) the measure amounts to State aid in favour of electronic communications services providers; and (b) the measure is necessary to address market failures resulting from the absence of current or planned broadband networks that would adequately address end-users' needs. Broadband connectivity is of strategic importance for European growth and innovation in all sectors of the economy and for social and territorial cohesion.

TAP Air Portugal restructuring aid and compensation for damages suffered due to coronavirus pandemic

The European Commission has approved, under EU State aid rules: (i) €2.55 billion of restructuring aid to enable Group Transportes Aéreos Portugueses SGPS S.A. ('TAP SGPS') and the airline TAP Air Portugal return to viability; and (ii) €107.1 million aid to compensate TAP Air Portugal for damages suffered as a result of the coronavirus pandemic between 1 July 2020 and 30 December 2020.

TAP Air Portugal is a Portuguese flag carrier and, as the largest airline based in Portugal, a major provider of mobility services for people and cargo. The company plays a key role in the growth of Portuguese tourism and economy as whole, and is an important employer in Portugal.

The support will take the form of €2.55 billion equity or quasi equity measures, including the conversion of the €1.2 billion rescue loan into equity. The plan provides for a split of businesses into: (i) the airlines TAP Air Portugal and Portugalia (that will be supported and restructured); and (ii) a perimeter of non-core assets to divest in the course of the restructuring, namely subsidiaries in adjacent business of maintenance (in Brazil), catering and ground handling.

TAP Air Portugal will make available up to 18 slots per day at Lisbon airport to a competing carrier. These measures will enable the lasting entry or expansion of a competing carrier at this airport, to the benefit of consumers. A transparent and non-discriminatory selection procedure will be organised by the Commission to select the competing carrier.

The Commission also approved €107.1 million to compensate TAP Air Portugal for damage it suffered between 1 July 2020 and 30 December 2020 as a direct result of the travel restrictions in place to limit the spread of the virus. The aid will take the form of either: (i) a capital injection; or (ii) a loan that may be converted into capital.

European Commission Decisions and Investigations

Investigation into licensing and distribution practices of Pierre Cardin and Ahlers

The European Commission has launched a formal antitrust investigation to assess whether Pierre Cardin and its licensee the Ahlers Group may have breached EU competition rules by restricting cross-border and online sales of Pierre Cardin-licensed products, as well as sales of such products to specific customer groups.

The Commission will investigate whether Pierre Cardin and Ahlers have developed a strategy against parallel imports and sales to specific customer groups of Pierre Cardin-branded products by imposing various restrictions in licensing agreements. If proven, the companies' behaviour may breach EU competition rules that prohibit anti-competitive agreements between companies.

An in-depth investigation will now be carried out by the Commission as a matter of priority. There is no deadline for the completion of the investigation, as the duration of any investigation depends on a number of factors, including the complexity of the case, the cooperation of the companies with the Commission and the exercise of the rights of defence.

Practice Note

The Competition (Amendment) Bill 2022 (the "Competition Bill")

On 31 January 2022, the Minister for Enterprise, Trade and Employment published the Competition Bill which seeks to further empower the CCPC to challenge anti-competitive practices by businesses.

At present, the CCPC cannot make a finding of infringement nor can it directly impose financial penalties. Any alleged competition law offences may only be tried following a recommendation of prosecution to the Director of Public Prosecutions (the "DPP"). The Competition Bill will give the CCPC new powers to ensure open competitive markets through an ability to fine companies for breaches of competition law such as cartels, bid rigging and abusive market practices.

Ireland is one of a small number of European Union countries that only allows for a company to be fined by a Court if the breach in question is proven to a criminal standard. The Competition Bill will bring Ireland in line with other European Union countries by drawing on EU competition fining procedures currently in place so that fines can be imposed on an administrative basis.

The Competition Bill will also introduce other changes. For example, while there is currently compulsory notification thresholds, parties to a deal falling below the thresholds in the Competition Act 2002 (the "Competition Act") need not notify the CCPC. The Competition Bill will empower the CCPC to "require" parties involved in a "below-threshold" deal to notify the CCPC if it is thought that the deal may "effect competition" in Ireland.

In terms of notified deals, the CCPC is currently unable to impose interim measures. The Competition Bill seeks to correct this by allowing the CCPC to impose interim measures and creates an offence for non-compliance with any interim measures imposed. These interim measures include preventing the parties from taking steps to effecting a deal, or from further effecting a deal.

In respect of other proposed changes, the process of issuing Requirements for Further Information ("RFI's") will be formalised and the CCPC will be able to issue RFI's to persons or undertakings which it believes may have information relevant to a deal, in addition to the parties to the deal.

The Competition Bill is currently making its way through the legislative process.

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