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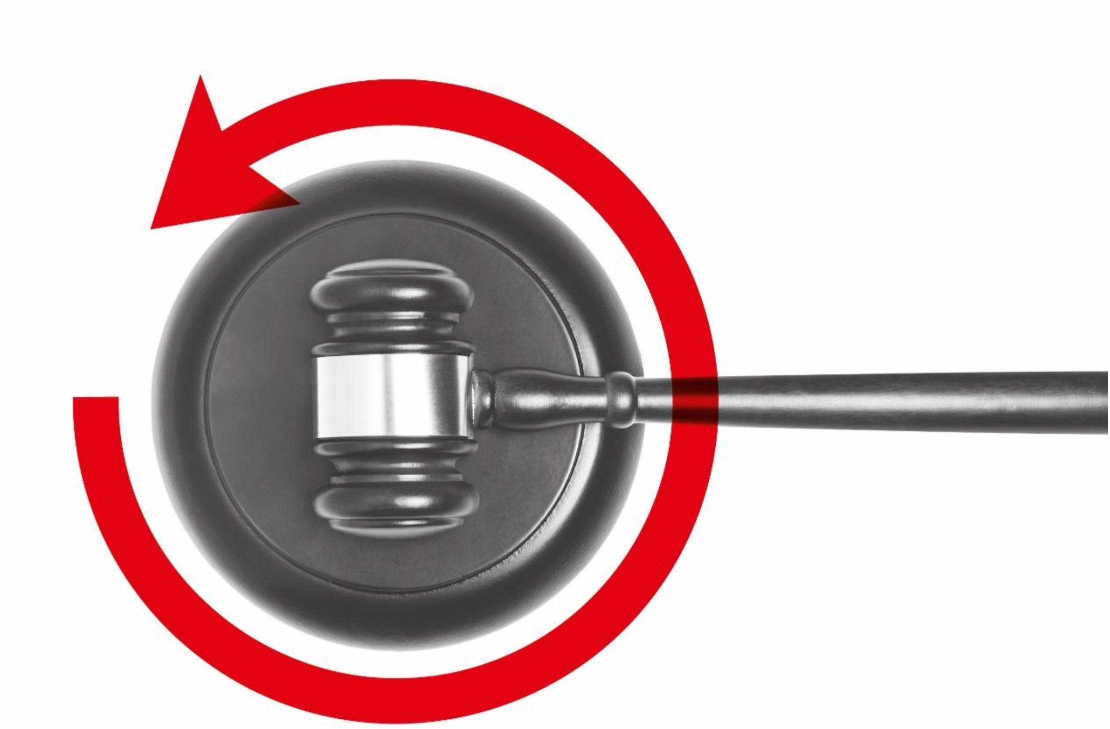

Knowledge Update

EU & Competition Newsletter

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Irish Merger Control

Motor Sector (Retail / Wholesale): Acquisition by Nissan Ireland Limited of sole control of Autolease Fleet Management Limited

The Competition and Consumer Protection Commission ("**CCPC**") has cleared the proposed acquisition by Nissan Ireland of sole control of Autolease Fleet Management, having formed the view that the proposed transaction will not lead to a substantial lessening of competition in any market for goods or services in the State.

Nissan Ireland is the distributor for Nissan motor vehicles in Ireland, supplying Nissan products to a wide range of motor dealers and retailers nationwide. Autolease Fleet Management provides commercial fleet leasing and fleet management services to businesses.

Media Sector (Media Merger): Acquisition by DMG Media Ireland of sole control of Nalac Limited

The CCPC has cleared the acquisition of Nalac Limited ("**Nalac**") by DMG Media Ireland ("**DMG**").

DMG is a wholly owned subsidiary of Daily Mail and General Trust PLC ("**DMGT**"). DMGT operates a number of businesses in the State, which involve the publication of Irish newspapers, such as the Irish Daily Mail and the Irish Mail on Sunday, as well as a number of websites. Nalac is an Irish incorporated company which owns and operates Business Plus and Bizplus.ie. Being a media merger, the proposed transaction is also required to be notified to, and approved by, the Minister for Communications, Climate Action and the Environment.

Engineering Sector: Acquisition by Vertiv Holdings Co of sole control of E&I Engineering Ireland Ltd and Powerbar Gulf LLC

The proposed acquisition of E&I Engineering Ireland by Vertiv Holdings has been cleared by the CCPC.

Vertiv Holdings Co designs, manufactures and services infrastructure technologies for applications in large scale data centres and major communication networks. Its customers include large data-intensive companies; telecoms network operators; and enterprises which have particular energy reliability needs. E&I Engineering Group, which is headquartered in Donegal, is a business engaged in the manufacture and sale of electrical switchgear products and solutions, power distribution solutions and energy management control systems.

Retail and Wholesale Grocery Sector: Ard Services Limited / Griffin Retail Group

The proposed acquisition by Ard Services Limited of certain companies from the Griffin Retail Group was cleared by the CCPC on 28 October 2021.

Ard Services Limited is a subsidiary of Circle K Ireland Holding Limited and operates Circle K's Company Owned Company Operated stores within Ireland. The Griffin Retail Group is active in the convenience retailing of grocery foods as part of a symbol group of retail stores.

Motor Sector (Retail / Wholesale): Gowan Group Limited / Fiat Chrysler Automobiles Ireland Designated Activity Company

The CCPC has cleared the proposed acquisition by Gowan Group Limited of Fiat Chrysler Automobiles Ireland Designated Activity Company ("**FCA**").

The Gowan Group, which was incorporated in Ireland in 1969, is ultimately owned by Convest Limited. The Group is involved in the wholesale distribution of Peugeot vehicles in Ireland and the retail sales of Peugeot, Honda, Kia, and Opel vehicles. FCA was incorporated in Ireland in 1923 and is wholly owned by

Fiat Chrysler Automobiles Italy SpA. FCA is the wholesale distributor of Fiat, Alfa Romeo and Jeep motor vehicles and spare parts in Ireland.

EU Merger Control

Commission clears acquisition of IHS Markit by S&P Global, subject to conditions (divestment).

The European Commission (the "**Commission**") has approved the acquisition of IHS Markit by S&P Global.

The approval, however, is conditional on the divestment of businesses in the areas of commodity price assessments and financial data. S&P Global and IHS Markit are major global providers of commodity and financial data. The Commission conducted an investigation which focused on the global markets for commodity price assessments and market intelligence, as well as for credit ratings, financial data, indices, identifiers, and market intelligence products, especially in the loan value chain.

Following its investigation, the Commission expressed a concern that the acquisition would reduce competition, ultimately leading to potential price increases and a reduction of choice and innovation in the markets for price assessments, loan identifiers, and leveraged loan market intelligence. In an effort to address these concerns, S&P Global and IHS Markit offered the divestment of IHS Markit's Oil Price Information Service ("**OPIS**"). The divestment of OPIS removes the problematic overlap in relation to price assessments for oil, coal, biofuels, and petrochemicals. Additionally, the divestment of S&P Global's issuance and data licensing business, CUSIP, which covers the issuance and data licensing of loan identifiers, removes any overlap in this area. Finally, S&P Global offered to divest its leveraged loan 100 index family and its leveraged loan market intelligence product Leveraged Commentary and Data. This divestment removes any overlap between S&P Global and IHS Markit in relation to leveraged loan indices, and ensures that the merged entity will not have any incentive to foreclose competitors in leveraged loan market intelligence. These structural commitments removed the competition concerns identified by the Commission in the markets for commodity price assessments, loan identifiers, and leveraged loan market intelligence.

Commission opens in-depth investigation into proposed acquisition of Arm by NVIDIA

The Commission has expressed its concern that the merging of Arm and NVIDIA would have the ability and incentive to restrict access by NVIDIA's rivals to Arm's technology, and that the proposed transaction could lead to higher prices, less choice and reduced innovation in the semiconductor industry.

NVIDIA develops and supplies processor products for various applications, including in datacentres, automotive applications, and gaming. Arm licenses out intellectual property for processing units, in particular to semiconductor chipmakers and Systems-on-Chip developers. By acquiring Arm, NVIDIA would gain full control over Arm's technology and licensing business. The Commission will now carry out an in-depth investigation into the effects of the proposed transaction to determine whether its initial competition concerns regarding these markets are confirmed. The Commission has 90 working days, until 15 March 2022 to take a decision on the matter. In the US, the US Federal Trade Commission has recently sued to block the acquisition.

EU State Aid Decisions

Coronavirus Measures

The Commission has approved, under EU State aid rules, a number of State support measures to assist various sectors affected by the coronavirus. One such measure which was approved by the Commission on 15 October was a €31.9 billion Italian scheme to support companies affected by the coronavirus outbreak. The scheme consists of two measures, the first being limited amounts of aid, with the second being support for uncovered fixed costs incurred during the period between March 2020 and December 2021 or parts of that period.

The limited amounts of aid will take the form of tax exemptions, tax credits, and direct grants – and will not exceed €225,000 per company active in the primary production sector of agricultural products, €270,000 per company active in the fisheries and aquaculture sector and €1.8 million per company active in all other sectors. In terms of the support for uncovered fixed costs, the aid will not exceed the overall amount of €10 million per company. The scheme was approved under the State aid Temporary Framework.

Proposal to facilitate implementation of aid measures promoting the green and digital transition

The Commission is inviting Member States and other interested parties to comment on a proposed amendment to the General Block Exemption Regulation ("**GBER**"). The proposed revision seeks to reflect the changes being made to various sets of State aid Guidelines, and to further facilitate public support for the EU's green and digital transition. The aim of the ongoing revision of these Guidelines and of the proposed revision of the GBER is to promote public funding which in turn contributes to the achievement of current EU priorities, notably the Green Deal and the European Industrial and Digital Strategies, and to ensure that State aid rules reflect the most recent market and technological developments.

In the area of aid for environmental protection and energy, the introduction of new 'green' conditions that need to be fulfilled for large energy-intensive businesses to receive block-exempted aid in the form of reduced tax rates have been proposed. In addition, investments in green hydrogen are proposed to be facilitated through the provision of block exemptions for green hydrogen projects and investments in hydrogen infrastructure. Finally, the proposal seeks to incentivise ambitious building renovation projects by introducing a 'green bonus' for aid for improving the energy performance of buildings.

European Commission Decisions and Investigations

Dawn Raid on Wood Pulp Producers

The Commission conducted several dawn raids at the premises of active wood pulp companies in various locations across several Member States on 12 October 2021.

A dawn raid acts as an unannounced inspection by a competition or criminal investigatory authority. It may also signal the start of protracted proceedings, potentially leading to fines, damages actions and, in some jurisdictions, criminal prosecutions and imprisonment for individuals and the disqualification of directors. Such actions expose businesses to the risk of significant financial and reputational damage, governmental prosecutions and subsequent private claims. In this case, the unannounced inspections on each of the companies were conducted in light of concerns that the companies may have breached Article 101 of the Treaty of the Functioning of the European Union, which prohibits cartels and restrictive business practices. The inspections will act as a preliminary step in a comprehensive investigation into the suspected anti-competitive practices. The Commission has noted that the inspections do not necessarily indicate the companies are guilty of the suspected anti-competitive behaviour and that the Commission respects the rights of defence and the right for each company to be heard. If found guilty of anti-competitive behaviour breaching the EU's antitrust rules, the EU may issue fines on each of the companies of up to 10% of their yearly revenue.

Practice Note

The Investment Screening Bill (the "Screening Bill")

In March 2019, the European Union ("**EU**") adopted the Investment Screening Regulation (EU) 2019/452 (the "**Regulation**"), which set up a framework for the screening of investments from non-EU countries, otherwise referred to as foreign direct investment ("**FDI**"), that may affect security or public order.

The Regulation came into full effect in October 2020, and introduced a number requirements in relation to adequate screening mechanisms, such as, transparency of rules and procedures, non-discrimination among foreign investors, confidentiality of information exchanged, the possibility of recourse against screening decisions, and measures to identify and prevent circumvention by foreign investors.

The Regulation's objective is to encourage international cooperation on investment screening, best practices and the sharing of information and experiences on issues of common concern in order to ensure that the EU is equipped to manage challenges and threats that may coincide with FDI, particularly due to the high degree of integration within the EU Member States. The Regulation introduces a framework which creates a cooperation mechanism between EU Member States and the Commission for the first time, so as to allow for the exchange of information and the ability to raise concerns related to specific FDI. It sets out an indicative list of factors to help assess the FDI, which includes for example, the effects of the FDI on critical infrastructure, critical technologies, the supply of critical inputs such as energy and raw materials, the ability to control sensitive information or the freedom and pluralism of the media. Member States and the Commission may also consider whether the investor is controlled by the government of a third country, whether the investor has previously been involved in activities affecting security or public order, or whether there are serious risks that the investor engages in criminal or illegal activities.

The Regulation places no obligation on Member States to adopt an investment screening regime, allowing Member States to maintain their existing screening mechanisms, adopt new ones or to remain without. However, it introduces a number of cooperation and reporting requirements so as to facilitate the method of cooperation between each Member State and the Commission. The Department of Enterprise, Trade and Employment will act as Ireland's national point of contact.

The Heads of Terms of the Screening Bill which have been approved since 27 July 2020, will create a new Investment Screening Board in Ireland with the power to block certain transactions or subject them to specific conditions. This will act similarly to the effect of the merger control mechanisms enforced in Ireland by the CCPC. The Government's Autumn Legislative Programme was published on 28 September 2021 outlining that the Screening Bill is deemed priority legislation for publication and drafting throughout this Autumn session and so it is hopeful that the Screening Bill will be published for enactment by the beginning of the New Year.

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