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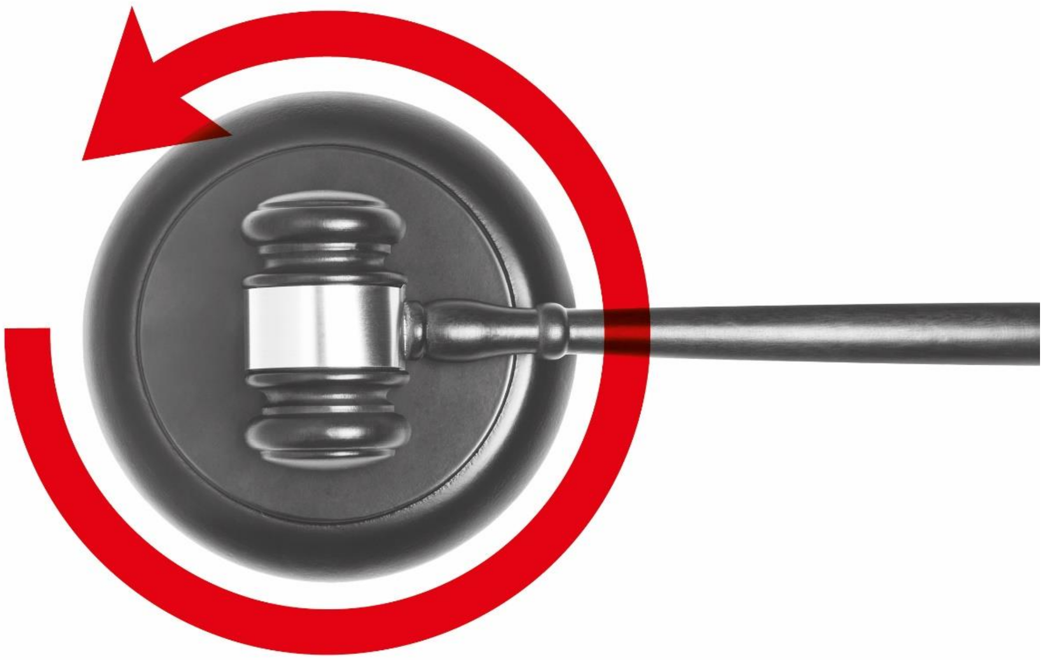

Knowledge Update

EU & Competition Newsletter

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Irish Merger Control

CCPC seeks High Court order on Coach House agreement

During April 2019, the Competition and Consumer Protection Commission (the "**CCPC**") launched an investigation into Chairs Limited, in relation to suspected anti-competitive practices for the sale of household furniture. Chairs Limited is a wholesale and trade-only supplier of household furniture products and supplies household furniture products to resellers located in Ireland where it trades under the name 'Coach House'. The investigation focused on whether there was conduct which constituted resale price maintenance, contrary to section 4 of the Competition Act 2002 as amended (the **"Act**") and/or Article 101 of the Treaty on the Functioning of the European Union ("**TFEU**").

Following the investigation, the CCPC formed the preliminary view that Coach House may have engaged in resale price maintenance conduct by enforcing its suggested selling prices on four resellers in the State between March 2013 and August 2017. Resale price maintenance involves an agreement or concerted practice having as its direct or indirect object the establishment of a fixed or minimum resale price. Coach House denied that there was any such breach of section 4. However, the CCPC and Coach House entered into an agreement on 15 April 2021 whereby Coach House committed not to engage in resale price maintenance conduct, and in particular to: (i) refrain from imposing or agreeing any terms and conditions that place obligations on its resellers to adhere to Coach House's suggested, minimum or fixed resale prices for household furniture products, and (ii) to refrain from restricting the ability of resellers to independently determine the resale price of household furniture products. On 14 May 2021 the CCPC made an application to the High Court under section 14B of the Act to make the agreement an order of the court.

DMG Media Limited acquisition of New Scientist Group Limited

The CCPC has cleared the proposed acquisition by DMG Media Limited of sole control of New Scientist Group Limited. This media merger sees DMG Media Limited, a wholly-owned subsidiary of Daily Mail and General Trust Plc, acquiring the weekly science and technology magazine New Scientist. The CCPC was informed that the transfer of ownership occurred in the UK on 3 March 2021 before CCPC clearance was granted. The parties confirmed with the CCPC that they would retain the status quo as regards the minimal Irish activities of the Target, notwithstanding the transfer of ownership, as is the requirement of the standstill obligation under section 19(1) of the Act. The CCPC cleared the merger on 12 April, having formed the view that the transaction would not substantially lessen competition in any market for goods or services in the State.

EU Merger Control

Acquisition of Belchim by Mitsui Cleared

Commission clears acquisition of Freesat by Channel 4, together with BBC and ITV

The European Commission has approved, under the EU Merger Regulation, the acquisition of Freesat (UK) Limited ("**Freesat**") by Channel 4 Television Corporation ("**Channel 4**"), together with the British Broadcasting Corporation ("**BBC**") and ITV Network Limited ("**ITV**").

Freesat is a joint venture currently controlled by the BBC and ITV. It provides a satellite broadcasting platform to around 1.1 million homes. The European Commission concluded that the operation does not raise any competition concerns as there are no horizontal or vertical overlaps between the activities of Channel 4 and Freesat.

Commission clears acquisition of Oikos by Goldman Sachs

The European Commission has approved the acquisition of sole control over Oikos Holding GmbH ("**Oikos**") of Germany by Goldman Sachs Group, Inc. ("**Goldman Sachs**") of the US.

Oikos plans, develops and manufactures prefabricated houses. Goldman Sachs is a global investment banking, securities and investment management company. The European Commission concluded that the proposed acquisition would raise no competition concerns, because the transaction does not lead to any horizontal overlap or vertical relationship between the activities of the companies.

EU State Aid Decisions

Coronavirus Measures

The European Commission has approved a number of State support measures to various sectors affected by coronavirus. A €500 million Greek scheme to support food service companies affected by coronavirus was approved by the European Commission under the State Aid Temporary Framework. This scheme will provide support to food service companies, such as restaurants and mobile food services, event catering, beverage serving and other food service activities, affected by coronavirus. The European Commission also approved under the State Aid Temporary Framework a €1.9 billion Czech scheme to support companies in the context of the coronavirus outbreak. This scheme is wider in its support and is addressed to companies of all sizes and active in all sectors, except for the financial sector. A scheme of €1.74 billion to support mink farmers and related businesses in Denmark was also approved by the European Commission. The scheme will compensate mink farmers and mink-related businesses for measures taken in the context of the coronavirus outbreak.

The airline sector has been hit hard by the coronavirus pandemic, leading to numerous State support schemes which have been approved by the European Commission under EU State Aid rules. A French measure to grant up to €4 billion to recapitalise Air France has been approved by the European Commission. Two Portuguese measures to support various airlines have also been approved by the European Commission. The first is a support measure of €462 million to Transportes Aéreos Portugueses, S.A., as compensation due to damages suffered as a direct result of travel restrictions. A second compensation package of €12 million to Sociedade Açoriana de Transportes Aéreos S.A. ("**SATA Air Açores**") was approved by the European Commission, in addition to €255.5 million additional liquidity support to SATA Air Açores. However, the European Commission also extended the ongoing in-depth investigation into past support measures in favour of the airline to assess whether Portugal's planned restructuring support are in line with EU State Aid rules.

European Commission Decisions

Commission fines three EU railway companies €48 million for customer allocation cartel

The European Commission has fined railway companies Österreichische Bundesbahnen ("**ÖBB**"), Deutsche Bahn ("**DB**") and Société Nationale des Chemins de fer belges / Nationale Maatschappij der Belgische Spoorwegen ("**SNCB**") a total of €48 million for breaching EU antitrust rules.

The companies participated in a customer allocation cartel concerning cross-border rail cargo transportation services on key rail corridors in the EU. The European Commission's investigation revealed that the three railway companies coordinated by exchanging collusive information on customer requests for competitive offers and provided each other with higher quotes to protect their respective business.

The companies thus participated in a customer allocation scheme, which is prohibited under EU competition rules. The three companies admitted their involvement in the cartel and agreed to settle the case.

Commission fines investment banks €28 million for participating in trading cartel

The European Commission has found that four banks, Bank of America Merrill Lynch, Crédit Agricole, Deutsche Bank, and Credit Suisse took part in a cartel in the secondary trading market within the European Economic Area of Supra-sovereign, Sovereign and Agency (SSA) bonds denominated in US Dollars.

The four investment banks participated in a cartel through a core group of traders working in their USD SSA bonds divisions, who were in regular contact with each other. The traders, who were in direct competition, typically logged into chatrooms on Bloomberg terminals. They knew each other on a personal basis, thus creating a closed circle of trust. They provided each other with recurring updates on their trading activities, exchanged commercially sensitive information, coordinated on prices shown to their customers, or to the market in general and aligned their trading activities on the secondary market for these bonds. The conduct took place during a five-year period and affected the trading of US denominated SSA bonds on the secondary market in the entire EEA.

The European Commission's investigation revealed that, further to coordination on prices quoted to specific clients or the market in general, the traders at times agreed to refrain from competing with other members of the cartel and to split trades between each other and combined or reduced their respective positions to meet a specific customer's demand, without the customer being aware that it was dealing with more than one trader which meant that in practice the customer had limited choice.

The behaviour of the four banks violated EU rules that prohibit anticompetitive business practices such as collusion on prices (Article 101 of the TFEU and Article 53 of the EEA Agreement).

Bank of America Merrill Lynch, Crédit Agricole, and Credit Suisse were fined a total of €28,494,000 for breaching EU antitrust rules. Deutsche Bank was not fined as it revealed the existence of the cartel to the European Commission.

European Commission Investigations

Commission sends Statement of Objections to Apple on App Store rules for music streaming providers

The European Commission has informed Apple of its preliminary view that it distorted competition in the music streaming market by abusing its dominant position for the distribution of music streaming apps through its App Store.

The European Commission takes issue with the mandatory use of Apple's own in-app purchase mechanism imposed on music streaming app developers to distribute their apps via Apple's App Store. The European Commission is also concerned that Apple applies certain restrictions on app developers preventing them from informing iPhone and iPad users of alternative, cheaper purchasing possibilities.

The Statement of Objections concerns the application of these rules to all music streaming apps, which compete with Apple's music streaming app "Apple Music" in the European Economic Area (EEA). This follows-up on a complaint made by Spotify.

The European Commission's preliminary view is that Apple's rules distort competition in the market for music streaming services by raising the costs of competing music streaming app developers. This in turn leads to higher prices for consumers for their in-app music subscriptions on iOS devices. In addition, Apple becomes the intermediary for all in-app purchase transactions and takes over the billing relationship, as well as related communications for competitors. Apple will now have the opportunity to submit a formal reply to the European Commission and request an oral hearing.

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