



Legal latest

Competition, EU and Regulatory newsletter

October 2017

Investigations

Dawn raids of German car manufacturers

On 23 October, the European Commission (the “**Commission**”) carried out dawn raids at the premises of car manufacturers in Germany.

The inspections were related to Commission concerns that several German car manufacturers may have violated EU anti-trust rules that prohibit cartels and restrictive business practices. This follows a dawn raid that the Commission carried out on 16 October at the premises of a car manufacturer in Germany.

Dawn raids concerning access to bank account information by competing services

On 3 October, the Commission carried out dawn raids in several Member States concerning online access to bank account information by competing service providers.

The alleged anti-competitive practices being investigated concern the possible exclusion of non-bank owned providers of financial services, by preventing them from gaining access to bank customers’ account data, despite the fact that the respective customers had given their consent to such access.

Decision

Lithuanian Railways fined €28 million for hindering competition on rail freight market

The Commission has fined Lithuanian Railways €27,873,000 for breaching EU anti-trust rules, by removing a rail track connecting Lithuania and Latvia.

Lithuanian Railways is the incumbent state-owned rail company in Lithuania. In 2008, AB Orlen Lietuva (“**Orlen**”), a major commercial customer of Lithuanian Railways, considered redirecting its freight from Lithuania to Latvia by using the services of another rail operator. In October 2008, Lithuanian Railways dismantled a 19km long section of track connecting Lithuania and Latvia, close to Orlen’s refinery. The removal of the track meant that Orlen would need to use a much longer route to reach Latvia. Since then, the dismantled track has not been rebuilt.

These actions hindered competition on the rail freight market by preventing a major customer of Lithuanian Railways from using the services of another rail operator. Lithuanian Railways failed to show any objective justification for the removal of the track. Such behaviour is in breach of Article 102 of the Treaty on the Functioning of the European Union which prohibits the abuse of a dominant market position.

In addition to imposing a fine, the Commission required Lithuanian Railways to bring the infringement to an end and refrain from any measure that has the same or an equivalent object or effect.

State Aid

Commission refers Ireland to Court for failure to recover illegal tax benefits from Apple

The Commission has decided to refer Ireland to the European Court of Justice for failing to recover from Apple illegal State Aid worth up to €13 billion, as required by a Commission decision of August 2016.

The deadline for Ireland to implement the Commission’s decision on Apple’s tax treatment was 3 January 2017.

Ireland has appealed the Commission’s August 2016 decision to the Court of Justice. This does not suspend Ireland’s obligation to recover illegal aid. The money can be placed in an escrow account pending the outcome of an appeal, but there is still an obligation to recover the sum.

Ireland (News)

Potential anti-competitive conduct in the private nursing home sector

The CCPC has commenced an examination of information provided to it in relation to potential anti-competitive conduct in the private nursing home sector.

Competition law requires businesses to act independently in setting the price of the goods or services that they supply and the conditions under which they supply them. Following recent media reports, the CCPC has been monitoring the situation and in past few weeks, information has been provided to the CCPC which the CCPC has stated raises ‘serious concerns’.

Merger Determination

Hammerson/Teba

This transaction involved the acquisition by Hammerson plc of a 50% interest of the Pavilions Shopping Centre I & II in Swords from Teba Unlimited Company.

There was a horizontal overlap between the activities of the parties with respect to the supply of rentable retail space in the State.

The CCPC did not need to come to a definitive view on the precise relevant product market since its conclusion would be unaffected whether the precise relevant product market was narrow (e.g. separate potential markets for each category of rentable commercial space: (i) office space; (ii) retail space; and (iii) industrial space) or broader (e.g. all categories of rentable commercial space).

The CCPC therefore assessed the potential market for the supply of rentable retail space.

In relation to the geographic market, the CCPC considered a 50 km radius around Dublin city centre.

Hammerson provided an estimate of 1,737,847 square metres for the potential market for the supply of rentable retail space in the Greater Dublin Area ("GDA").

The CCPC noted that following implementation of the proposed transaction, Hammerson would own 10-15% of the total rentable retail space in the GDA, and Hammerson's increase in market share would be less than 5%.

In light of these points, the CCPC concluded that the transaction would not substantially lessen competition in any market for goods or services in the State.

Practice Note

What is a media merger?

A media merger arises in either of the following two circumstances:

- a merger or acquisition in which two or more of the undertakings involved carry on a media business in the State
- a merger or acquisition in which one or more of the undertakings involved carries on a media business in the State and one or more of the undertakings involved carries on a media business elsewhere.

A 'media business' means the business (whether all or part of an undertaking's business) of:

- the publication of newspapers or periodicals consisting substantially of news and comment on current affairs, including the publication of such newspapers or periodicals on the internet
- transmitting, re-transmitting or relaying a broadcasting service
- providing any programme material consisting substantially of news and comment on current affairs to a broadcasting service
- making available on an electronic communications network any written, audio-visual or photographic material, consisting substantially of news and comment on current affairs, that is under the editorial control of the undertaking making available such material.



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