



## Legal latest

### Competition, EU and Regulatory newsletter

October 2015

#### Investigation

##### **Speech by Director General for Competition on "The Digital Single Market, consumers and EU competition policy"**

On 21 September, the DG for Competition, in the above entitled speech, commented on the sector enquiry into e-commerce launched in May. The DG stated that requests for information are reaching over 2,000 companies in every country of the EU and that they have already received hundreds of replies. The DG also stated that their goal is building a detailed picture of the competitive conditions in the sector, both for goods such as clothes and consumer electronics and for digital content such as films and sports events. The DG went on to say that a preliminary report will go out for consultation about the middle of next year and that once all stakeholders have had a chance to comment on it, a final report will be produced.

#### Decision

##### **Commission fines suppliers of optical disc drives €116 million for cartel**

The Commission has fined eight optical disc drive suppliers a total of €116 million for having coordinated

their behaviour in relation to procurement tenders organised by two computer manufacturers, in breach of EU anti-trust rules. The anti-competitive conduct subject to fines in this case concerns agreements to collude in procurement tenders for optical disc drives for laptops and desktops produced by Dell and Hewlett Packard. Eight suppliers engaged in the illegal practices covered by this decision, namely Philips, Lite-On, their joint venture Philips & Lite-On Digital Solutions, Hitachi-LG Data Storage, Toshiba Samsung Storage Technology, Sony, Sony Optiarc and Quanta Storage. Philips, Lite-On and Philips & Lite-On Digital Solutions received full immunity from fines as they were the first to reveal the existence of the cartel. The Commission's investigation revealed that the companies participating in the cartel communicated to each other their intentions regarding bidding strategies, shared the results of procurement tenders and exchanged other commercially sensitive information concerning optical disc drives used in laptops and desktops. Hitachi-LG Data Storage received a 50% reduction on its fines for its cooperation in the investigation and partial immunity for enabling the Commission to establish a longer duration of the cartel.

## EU Policies and Guidance

### Commission signs best practices cooperation framework with China

On 15 October, the Commission's competition department and the Ministry of Commerce of the People's Republic of China signed best practices for cooperation on reviewing mergers. The practical guidance document creates a dedicated framework to strengthen cooperation and coordination between the Commission and China's merger review authority. The guidance will facilitate communication throughout the entire merger review procedure on issues of procedure and substance, including the definition of relevant markets, theories of harm, competitive impact assessments and remedies.

### Commission considers new cartel whistleblower programme

On 30 September, the Director of the Cartels Directorate, announced that the Commission is considering reforms to its current whistleblower programme to fight cartels. The new programme would allow informants to disclose details of companies' alleged anti-competitive behaviour to an independent consultancy. Under the current programme, anonymous disclosures can be made to the Commission. However, the anonymity of informants prevents the Commission from seeking from the informants further information that may be required to allow the Commission to investigate any price-fixing or collusion allegations.

### Commission publishes updated statistics on cartels

On 21 October, the Commission published updated statistics in relation to cartels. The statistics note that in 2015 (up to the date of publication), fines of €364,531,000 have been imposed for cartel infringements under Article 101 of the Treaty on the Functioning of the European Union. This compares to fines of €611,823,000 imposed in 2011; €1,814,767,000 in 2012; €1,882,975,000 in 2013; and €1,689,497,000 in 2014. The statistics also note that the highest cartel fine per case (€1,409,588,000) was imposed in 2012 in relation to tv and computer monitor tubes. The statistics go on to note that the highest cartel fine per undertaking (€715,000,000) was imposed on Saint Gobain in 2008 in relation to carglass.

## News (Ireland)

### CCPC secures 5-year commitments from Booking.com

On 6 October, the CCPC published details of commitments it has secured from Europe's largest online travel agent platform, Booking.com. The commitments will allow accommodation providers in Ireland to offer cheaper rates through different online travel agents and to consumers who contact them directly. Following an investigation, the CCPC formed the view that some aspects of the arrangements Booking.com had with Irish hotels restricted price competition and risked infringing both Irish and EU competition law. Specifically, Booking.com offered a "Best Price Guarantee", whereby it guaranteed to match lower rates for the same room found elsewhere. This was underpinned by a "Price Parity" agreement which prevented hotels hosted by Booking.com on its website from offering lower prices via other online travel agents, other marketing channels or directly to consumers. Thus the "Best Price Guarantee" meant that the lowest price available to consumers was based, not on open competition across different channels, but on an underlying agreement not to undercut the Booking.com price. Booking.com may continue to offer a "Best Price Guarantee", however, it must now fund the cost of any claims under the "Best Price Guarantee" itself, rather than obliging the hotel to fund the cost.

## Practice note

### What is resale price maintenance?

Resale price maintenance ("RPM") is the term used to describe the practice where a manufacturer or distributor dictates the retail price of items to retailers. RPM is a serious infringement of both Irish and EU competition law. It is prohibited because it results in consumers having to pay higher prices than they would if the retailers were free to set their own prices. While suppliers are not permitted to agree with resellers, such as retailers, the price at which they must resell the goods, suppliers can recommend resale prices.



**Sean Ryan**  
Partner

+353 1 6644207  
seanryan@eversheds.ie



**Lisa Devanny**  
Solicitor

+353 1 6644296  
lisadevanny@eversheds.ie