



Legal latest

Competition, EU and
Regulatory newsletter

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Investigations

AB InBev under investigation for preventing cheaper imports of beer

The European Commission has informed AB InBev of its preliminary view that the company has abused its dominant position on the Belgian beer market, by hindering cheaper imports of its Jupiler and Leffe beers from the Netherlands and France into Belgium.

Anheuser-Busch InBev SA ("**AB InBev**") has a very strong position on the Belgian beer market. Its most popular beer brands in Belgium are Jupiler and Leffe. AB InBev also sells these two brands in the Netherlands and France. The Commission's investigation has shown that in these two countries, AB InBev sells Jupiler and Leffe at lower prices than in Belgium due to the increased competition it faces there.

The Commission has concerns that AB InBev:

- changed the packaging of Jupiler and Leffe beer cans in the Netherlands and France to make it harder to sell them in Belgium; and
- limited Dutch retailers' access to key products and promotions, in order to prevent them from bringing less expensive beer products to Belgium.

Decisions

Five car safety equipment suppliers fined €34 million in cartel settlement

The Commission has fined Tokai Rika, Takata, Autoliv, Toyoda Gosei and Marutaka a total of €34 million for breaching EU competition rules.

The companies took part in one or more of four cartels for the supply of car seatbelts, airbags and steering wheels to Japanese car manufacturers in the EEA. The five car component suppliers co-ordinated prices or markets, and exchanged sensitive information for the supply of seatbelts, airbags and steering wheels to Toyota, Suzuki and Honda in the EEA.

All five suppliers acknowledged their involvement in the cartels and agreed to settle the case. Takata was not fined for three of the cartels as it revealed their existence to the Commission (thereby avoiding an aggregate fine of approximately €74 million). Tokai Rika was not fined for one of the cartels as it revealed its existence to the Commission (thereby avoiding an aggregate fine of approximately €15 million).

State Aid

Irish support scheme for SMEs

The Commission has found a €10 million Irish aid scheme to facilitate the restructuring of small and medium sized companies ("**SMEs**") in Ireland, to be in line with EU State Aid rules.

Under the scheme, which will run until 2020, Enterprise Ireland will be entitled to offer restructuring support to SMEs in financial difficulty. In particular, the scheme will provide support if a company's failure is likely to trigger job losses.

The support will take the form of equity investments and will be available to SMEs active in all sectors of the economy, with the exception of the steel, coal and financial sectors.

The scheme requires potential beneficiaries of the restructuring aid to:

- present a sound restructuring plan to ensure their long-term viability; and
- contribute at market terms to the restructuring costs – up to 40% of these costs in the case of medium-sized enterprises or up to 25% of these costs in the case of small enterprises.

Spanish support scheme for renewable electricity

The Commission has found the Spanish scheme supporting electricity generation from renewable energy sources, high efficiency cogeneration of heat and power and waste to be in line with EU State Aid rules.

Under the scheme, beneficiaries receive support through a premium on top of the market price of electricity, so that they have to respond to market signals.

The scheme has been in place since 2014 and applies to new beneficiaries as well as to facilities that were benefitting from previous support. In 2016, the annual payments under the scheme amounted to €6.4 billion.

Commission opens in-depth investigation into UK tax scheme for multinationals

The Commission has opened an in-depth probe into a UK scheme that exempts certain transactions by multinational groups from the application of UK rules targeting tax avoidance. It will investigate if the scheme allows these multinationals to pay less UK tax, in breach of EU State Aid rules.

The general purpose of the UK's Controlled Foreign Company ("**CFC**") rules is to prevent UK companies from using a subsidiary, based in a low or no tax jurisdiction, to avoid taxation in the UK. In particular, they allow the UK tax authorities to reallocate all profits artificially allocated to an offshore subsidiary back to the UK parent company, where it can be taxed accordingly.

However, since 2013, the UK's CFC rules include an exception for certain financing income (i.e. interest payments received from loans) of multinational groups active in the UK. This exempts from reallocation to the UK, financing income received by an offshore subsidiary from another foreign group company.

Merger determination

ABP/Good Herdsmen

This proposed transaction involved the acquisition of sole control of Good Herdsmen Limited by ABP Food Group Unlimited, through its wholly owned subsidiary.

There was horizontal overlap between the activities of the parties in the State in the purchase of live cattle for slaughter and the processing of live animal carcasses to produce fresh beef and lamb meat for sale to grocery retailers and industrial processors.

The CCPC identified the following potential markets:

1. The purchase of live cattle for slaughter in the State;
2. The sale of fresh beef meat to grocery retailers in the State;
3. The sale of fresh beef meat to industrial processors in the State; and
4. The sale of fresh lamb meat in the State.

In relation to each potential market above, the CCPC noted that:

- the proposed transaction would lead to a minimal increase in ABP's share of the relevant market; and
- post-transaction, there would be several competitors operating on the relevant market.

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

Practice note

Calculation of turnover of insurance undertakings

For merger control purposes, in order to calculate the turnover of insurance undertakings, the value of gross premiums written is taken into account. This comprises all amounts received and receivable in respect of insurance contracts issued by or on behalf of the insurance undertakings, including also outgoing reinsurance premiums, and after deduction of taxes and parafiscal contributions or levies charged by reference to the amounts of individual premiums or the total volume of premiums.

In order to constitute appropriate reserves allowing for the payment of claims, insurance undertakings usually hold a portfolio of investments in shares, interest-bearing securities, land and property and other assets providing annual revenues. The annual revenues coming from these sources are only considered as turnover for insurance undertakings (in addition to the above turnover), if the investment concerned results in the insurance undertaking:

- owning more than half the capital or business assets; or
- having the power to exercise more than half the voting rights; or
- having the power to appoint more than half the members of the supervisory board, the administrative board or bodies legally representing the undertakings; or
- having the right to manage the undertakings' affairs.

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