EVERSHEDS

Legal latest
Competition, EU and Regulatory newsletter

Investigations

Commission launches e-commerce sector inquiry
The sector inquiry will focus primarily on potential barriers erected by companies to cross-border online trade in goods and services in which e-commerce is most widespread such as electronics, clothing and shoes. In the course of a sector inquiry, the Commission can request information from businesses or industry associations and carry out inspections. Fines may be imposed on businesses and industry associations that supply incorrect or misleading information. The Commission expects to publish a preliminary report for consultation in mid-2016.

Commission sends Statement of Objections to Gazprom for alleged abuse of dominance on Central and Eastern European gas supply markets
The Commission's preliminary view is that Gazprom is pursuing an overall strategy to partition Central and Eastern European gas markets, for example by reducing its customers' ability to resell the gas cross-border. This may have enabled Gazprom to charge unfair prices in certain Member States. Gazprom may also have abused its dominant market position by making the supply of gas dependent on obtaining unrelated commitments from wholesalers concerning gas transport infrastructure.

Dawn raid in biofuel sector
Commission officials carried out an unannounced inspection in Spain at the premises of a company active in the production, distribution and trading of ethanol, a biofuel. The Commission has concerns that price benchmarks may have been distorted through anti-competitive behaviour, including through possible collusion when submitting price information to a price reporting agency.

Dawn raid in bioethanol sector
Commission officials undertook unannounced inspections at the premises of companies active in the production or trading of bioethanol. The investigation involves the possible participation by producers or traders of bioethanol in agreements or concerted practices aimed at fixing prices or sharing markets and customers.

Decisions

Ryanair ordered to divest its minority interest in Aer Lingus
The UK Court of Appeal has ordered Ryanair Holdings Plc to divest itself of the majority of its 29.82% shareholding in Aer Lingus Group Plc, by reducing its stake to no more than 5%. This decision upholds the decisions of the UK Competition Commission and the UK Competition Appeal Tribunal. This case highlights the impact on competition law which a minority stake in a competitor can have, particularly where minority stakeholders are found to exercise material influence over the business of a competitor.

LCD cartel
The Court of Justice dismissed the appeal by LG Display against a General Court judgment and confirmed the General Court judgment. The General Court ruling had mainly upheld a Commission decision fining LG Display and others for participating in a cartel in the market for LCD panels.

EU Policies and Guidance

Commission's proposed amendments to anti-trust procedural rules

Submissions for the public consultation on possible improvements of the EU Merger Regulation contained in the White Paper "towards more effective merger control" closed on 3 October 2014. The proposals in particular include: (1) increasing the jurisdiction of the EU Merger Regulation to bring acquisitions of non-controlling minority shareholdings within its scope; (2) making case referrals between Member States and the Commission more business-friendly and effective; (3) making procedures simpler; and (4) fostering coherence and convergence.

Commission welcomes agreement to guarantee an open internet

The agreement enshrines the principle of net neutrality into EU law. Net neutrality ensures that Europeans have access to the online content and services they wish without any discrimination or interference (like blocking or slowing down) by Internet access providers. The rules, set to apply from 30 April 2016, will ensure that:

- every European must be able to have access to the open Internet and all content
- service providers must be able to provide their services via a high-quality open Internet
- all traffic will be treated equally thus banning paid prioritisation of traffic in the Internet access service.

News (Ireland)

CCPC warns National Association of GPs

On 22 May 2015, the CCPC wrote to the National Association of General Practitioners ("NAGP") expressing its grave concerns that the recent conduct of the NAGP amounts to an on-going and escalating campaign designed to encourage its members to engage in a collective boycott of the under-6s contract contrary to EU and Irish competition law. The CCPC is further advising that any individual GP in Ireland who engages in the exchange of information with competitor GPs regarding their future intentions in relation to the under-6s contract risks acting outside of Irish and European competition law.

CCPC Strategy Statement 2015 – 2018

The CCPC recently published its first strategy statement for the period 2015 - 2018. This sets out the CCPC's mission, vision and values; its mandate and functions; the CCPC's operating environment and the CCPC's strategic goals. The CCPC's mission is to make markets work better for consumers and businesses. The CCPC's four strategic goals are (1) to use their enforcement and regulatory powers to make markets work better and get the best results for consumers; (2) to promote the benefits of competition and consumer protection through their advocacy and public awareness activities; (3) to empower and equip consumers to make informed choices and assert their rights; and (4) to continue to develop as a results-driven organisation that aspires to the highest standards in everything they do.

Practice Note

What is tacit collusion?

Tacit collusion (also more accurately described as 'tacit coordination') need not involve any actual 'collusion'. It occurs where two or more firms align conduct so as to maximise profit without explicitly agreeing to do so. From a competition law perspective 'tacit collusion' has been dealt with under 'collective dominance'. It is problematic because, in terms of its effects, the market works as if there were actual collusion between the firms. For example, tacit collusion may diminish competition if it facilitates competitors engaging in co-ordinated price rises.

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