



## Legal latest

### Competition, EU and Regulatory newsletter

January 2017

#### Investigation

##### **Commission alleges Facebook provided misleading information about WhatsApp takeover**

The Commission has sent a Statement of Objections to Facebook alleging the company provided incorrect or misleading information during the Commission's 2014 investigation of Facebook's planned acquisition of WhatsApp.

When reviewing Facebook's planned acquisition of WhatsApp, the Commission looked, among other elements, at the possibility of Facebook matching its users' accounts with WhatsApp users' accounts. Facebook indicated to the Commission that it would be unable to establish reliable automated matching between the two companies' user accounts.

In August 2016, WhatsApp announced the possibility of linking WhatsApp user phone numbers with Facebook user identities.

The Commission takes the preliminary view that, the technical possibility of automatically matching Facebook users' IDs with WhatsApp users' IDs already existed in 2014.

If the Commission's preliminary concerns in this case are confirmed, the Commission could impose a fine of up to 1% of Facebook's turnover.

#### Decision

##### **European Court of Justice gives ruling in Santander case (C-20/15P and C-21/15P)**

The Commission previously found that Spanish provisions, offering companies taxable in Spain certain tax advantages in relation to the acquisition of certain shareholdings in foreign companies held for a period of at least one year, constituted State Aid. The same tax advantages were not available to companies taxable in Spain who acquired similar shareholdings in companies established in Spain.

While the General Court, on appeal, annulled the Commission's decisions, the European Court of Justice ruled that the General Court erred in law in annulling the contested decisions of the Commission on the ground that the Commission had failed to identify a category of undertakings that were exclusively favoured by the tax measure. The European Court of Justice stated that the only relevant criterion in order to establish the selectivity of a national tax measure consists in determining whether that measure is such as to favour certain undertakings over other undertakings which, in light of the objective pursued by the general tax system concerned, are in a comparable factual and legal situation and who accordingly suffer different treatment that can, in essence, be classified as discriminatory.

#### EU Policies & Guidance

##### **Insurance Block Exemption Regulation expires on 31 March 2017**

The Commission's Insurance Block Exemption Regulation ("IBER") will lapse on 31 March 2017. The IBER exempts certain types of co-operation between insurers from competition scrutiny regarding the prohibition of anti-competitive business practices. The exemptions relate to the exchange and/or aggregation of data in statistics and studies and to the joint insurance and/or reinsurance of risks in pools.

The expiry of the IBER does not mean that these forms of co-operation become unlawful. Rather, insurers will need to assess their co-operation in the market context to see whether it is in line with anti-trust rules.

## News (Ireland)

### CCPC concludes investigation into the IPOA

The CCPC has concluded an investigation into potential anti-competitive conduct by the Irish Property Owners Association ("IPOA"). The IPOA is a national association representing approximately 5,000 landlords across Ireland.

In December 2016, the IPOA released a press statement in response to legislation introducing rent controls in the private residential rental sector. The IPOA stated in this statement that following a meeting of its members, property owners were considering a range of potential measures, including the introduction of a number of new charges to tenants and the withdrawal from State-sponsored rental schemes.

To address the CCPC's competition concerns, the IPOA has agreed to enter into an Agreement and Undertakings with the CCPC, under which the IPOA has given binding commitments to:

- retract the press statement and to make no further reference to its contents
- introduce a competition law compliance training programme to members of the IPOA committee
- not to issue recommendations or suggestions to, or otherwise seek to influence decisions of, members of the IPOA or other landlords in the private rental sector with respect to the setting of rents and charges and terms and/or withdrawal from State-sponsored rental schemes and/or any recommendations that have similar effect.

## Practice Note

### Breach of a commitment or a CCPC determination

Section 26(4) of the Competition Act 2002, as amended, provides that it is an offence for a person to contravene a provision of a commitment or a CCPC determination. Such an offence is punishable:

- on summary conviction, to a fine not exceeding €4,000 or to imprisonment for a term not exceeding 6 months or to both, or
- on conviction on indictment, to a fine not exceeding €10,000 or to imprisonment for a term not exceeding 2 years or to both.

Where such an offence is committed by a body corporate and is proved to have been so committed with the consent or connivance of, or to be attributable to any neglect on the part of, any person who is a director, manager, secretary, member of the committee of management or other controlling authority of such body corporate, or who is any similar officer of such body corporate, that person will also be guilty of an offence and will be liable to be proceeded against and punished as if he or she was guilty of the first-mentioned offence.

## Merger Determination

### Counterpoint / East Coast / Knockton

This transaction involved the proposed acquisition by Counterpoint Wholesale (Ireland) Limited ("**Counterpoint**") of Knockton Limited and certain assets of the licensed wholesale business of East Coast Suppliers Limited (together the "**Target Businesses**").

While there was a horizontal overlap between the parties' activities in the State with respect to the wholesale supply of packaged alcoholic and non-alcoholic beverages in the State, the CCPC did not need to come to a definitive view on the precise relevant product market since its conclusion on the competitive impact of the proposed transaction would be unaffected whether the precise relevant product market was defined narrowly (eg, in terms of the wholesale supply of specific packaged alcoholic and non-alcoholic beverages) or more broadly to encompass the wholesale supply of all categories of packaged alcoholic and non-alcoholic beverages. The CCPC considered it reasonable to include alcoholic and non-alcoholic beverages in the same wholesale product market. The CCPC assessed a potential market for the wholesale supply of packaged alcoholic and non-alcoholic beverages in the State.

In this case, the CCPC assessed the proposed transaction's impact on competition in the narrowest possible geographic market, namely Co. Dublin.

Finally, the CCPC considered that the proposed transaction would not substantially lessen competition in the potential market identified for the following reasons. There were a number of undertakings active in the wholesale supply of packaged alcoholic and non-alcoholic beverages in Co. Dublin which will act as a competitive constraint post-completion. These include two of the largest wholesalers active in the State, namely: C&C Gleeson and Western Beverages Limited / Comans Beverages Limited. Counterpoint estimated that each of Counterpoint and the Target Businesses had between 10% and 15% of the wholesale supply of packaged alcoholic and non-alcoholic beverages to on-trade outlets in Co. Dublin in 2016. Counterpoint also estimated that each of C&C Gleeson and Western Beverages Limited / Coman Beverages Limited had a 15-20% share of the same market in 2016.



**Sean Ryan**  
*Partner*

+353 1 6644207  
seanryan@eversheds-sutherland.ie



**Lisa Devanny**  
*Solicitor*

+353 1 6644296  
lisadevanny@eversheds-sutherland.ie