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Brussels Brief

A weekly overview of the regulatory, legal and political developments of the institutions and the issues facing the European Union

25 July 2008

Key Developments

Automobiles: WTO Panel Delivers First Ever Ruling Against China

Philip Torbøl

On 18 July 2008 a World Trade Organisation (WTO) Panel Report decided in favour of complaints brought by the European Union, the United States and Canada that China had violated its WTO obligations by imposing a special tax on imported car parts that represent a proportion above a certain threshold of the fully assembled car. This tax was an addition to the general 10 per cent import duty levied on car parts and was designed to bring the total duties imposed on such car parts up to the level duties levied on imported cars, *i.e.,* 25 per cent. It is the first trade dispute ruling against China since the country's accession to the WTO in 2002 and China is expected to appeal the decision. This will effectively postpone China's obligations to amend its regime until at least next year. Other WTO cases against China are pending. These include complaints in the fields of intellectual property rules and financial news agencies.

Mergers: Commission Approves Spirits Acquisition, Subject to Conditions

Patricia Armesto

The European Commission has cleared the proposed acquisition of the Swedish State-owned company, V&S Vin & Sprit, by Pernod Ricard of France. Both companies are active in the production and distribution of alcoholic beverages. The Commission's investigation identified competition concerns in a number of national markets where the merged entity would have a strong market position, namely: (i) aniseed flavoured spirits in Finland; (ii) vodka in Greece; (iii) gin in Poland and Sweden; and (iv) cognac, port and Canadian whisky in Sweden. In order to address these concerns, Pernod Ricard offered to divest its business conducted under a number of brands in those markets. Having analysed these commitments, the Commission concluded that they would remedy its concerns and effective competition would not be impeded.

State Aid: Commission Declares Alitalia Loan Illegal

Daniel Kelly

On 22 July 2008 the European Commission published a statement declaring that, based on the information at its disposal, aid measures granted by the Italian Government to Alitalia were incompatible with the Common Market. Under the Decree Law of 22 April 2008, the Italian authorities granted a loan of EUR 300 million to Alitalia to enable it to overcome its financial problems. This loan was followed by a second Decree Law of 27 May 2008 allowing Alitalia to incorporate that sum into its equity capital. The statement, which was part of a formal invitation to interested parties to present comments on the aid, comes just over a month after an in-depth investigation was opened by the Commission (see Brussels Brief, 13 June 2008). In its statement, the Commission took the view that the aid provided Alitalia with an economic advantage it would not have had under normal market conditions. Furthermore, both rescue and restructuring aid had been granted to the company within the past ten years, which precluded the Italian Government from granting aid at this time.

Energy: ECJ Rules Spanish Energy Merger Restrictions Illegal

Andrea Hamilton

The European Court of Justice (ECJ) has ruled that Spain infringed European Community law by requiring that mergers and acquisitions in Spain's energy sector be approved in advance by the Spanish National Energy Commission (NEC). The system of prior notification, introduced in 2006, was applied controversially when the NEC blocked a takeover bid for Spanish energy company Endesa by E.ON, a German energy group—a move widely viewed as protectionist. The ECJ ruled that Spain's prior notification system infringes EC Treaty rules on the free movement of capital and freedom of establishment because it is likely to deter investors located in other Member States from acquiring interests in Spanish energy entities. Moreover, the ECJ ruled that the prior notification system was not justified by—or proportionate to—any overriding public interest concerns, such as security of energy supply.

Mergers: Commission Opens Second Phase Investigation into Dairy Products Deal

Andrea Hamilton

The European Commission has opened a second phase, in-depth investigation into the proposed merger between Dutch dairy companies Campina and Friesland Foods. Campina and Friesland are both active in, among other things, the procurement and processing of raw milk and the development, production and sale of consumer dairy products and industrial dairy and non-dairy products. Both companies are active in The Netherlands and other EU Member States and, according to the Commission, are each other's closest competitors in fresh dairy products, cheese and other consumer and industrial products. The Commission is concerned that the merger could substantially reduce competition and create a dominant market player in a number of dairy markets and also create supply problems for competitors. The Commission now has 90 working days to take a final decision as to whether the merger will substantially impede competition in the EU Single Market.

Competition: Supplementary Statement of Objections for Intel

Bróna Heenan

Intel has received a supplementary Statement of Objections (SSO) from the European Commission, adding to the abuse of dominance allegations made in a Statement of Objections (SO) issued in July 2007. The SSO introduces three allegations that Intel abused its dominant position on the market for x86 Central Processing Units (CPUs), namely: (i) that Intel provided rebates to a leading PC retailer on the condition that it sold only Intel-based PCs; (ii) that Intel made payments to induce a leading original equipment manufacturer (OEM) to delay the launch of a product containing a rival CPU from its competitor AMD; and (iii) that Intel subsequently provided rebates to that same OEM on the condition that it obtained all its CPUs from Intel. Intel has eight weeks to reply to the SSO.

VAT: ECJ Declares Italian Tax Amnesty Unlawful

Martino Sforza

The European Court of Justice (ECJ) has found that Italy has failed to fulfil its obligations under the Sixth VAT Directive and the general principle of good faith cooperation, which require each Member State to take all legislative and administrative measures appropriate to ensure VAT collection, by checking returns and calculating and collecting the tax due. In particular, the ECJ found that Law No 289 of 27 December 2002, providing for general and indiscriminate waiver of verifications effected in the 1998 to 2001 period, generates a considerable imbalance between the amounts actually due and the amounts paid by taxable persons taking advantage of the tax amnesty. This seriously disrupts the proper functioning of the common VAT system.

Next Week's Events

Monday 28 July – Friday 1 August 2008

COUNCIL MEETINGS

No Council meetings scheduled for next week.

COURT OF JUSTICE

Judicial vacation of the Court of Justice from 14 July 2008 to 31 August 2008 inclusive.

COURT OF FIRST INSTANCE

Judicial vacation of the Court of First Instance from 14 July 2008 to 31 August 2008 inclusive.

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