

EU Law News

A bi-monthly review of EU legal developments
affecting business in Europe

- Commission clears merger of ABB and NKT cable businesses
- EU-Canada treaty ratified by European Parliament
- Electric vehicle charging network in Germany
- Fine of €68m for battery recycling companies
- Investigation in three e-commerce sectors
- Anti-dumping duties on steel products from China and Taiwan

Commission clears merger of ABB and NKT cable businesses

On 27 February 2017 the Commission unconditionally cleared the proposed acquisition of ABB's high voltage cable business and power cable accessories business by NKT.

ABB and NKT both develop and supply high voltage power cables and accessories for submarine power applications, in particular to connect transmission grids separated by water and to connect onshore energy generated by wind farms at sea. NKT is a potential entrant in the market for so-called direct current (DC) cables. The Commission found that the acquisition would not significantly reduce competition and that a number of strong competitors would remain and that new competitors from Asia, such as LS Cables and Sumitomo are entering the European market.

The Commission looked at the effects on competition especially with regard to the history of collusion in the industry. In 2014 the producers of high voltage power cables, including NKT and ABB, were involved in a cartel for high voltage underground and submarine power cable projects. The cartel's market and customer allocation included agreements that Japanese and Korean producers would refrain from competing for projects in Europe.

EU-Canada treaty ratified by European Parliament

On 16 February 2017 the European Parliament ratified the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada, thereby concluding the process on the EU level.

The ratification allows for CETA's entry into force and underlines the parties' strong commitment to sustainable trade. Once the Canadian parliament has also ratified this agreement the next step is to put it provisionally in place. CETA includes the cutting of import tariffs and opening up of public procurement, which will create more opportunities for increased trade between the EU and Canada. CETA provides Canada, the European Union and its Member States with a platform to facilitate cooperation between their regulatory authorities, with the objective of achieving better quality of regulation and more efficient use of administrative resources. CETA moves decisively away from the traditional approach of investment dispute resolution. It will establish permanent investment tribunals and aims at a multilateral effort to develop further this new approach to investment dispute resolution into a multilateral investment court. At the same time, the Commission underlined that CETA will not lower respective standards and regulations related to food safety, product safety, consumer protection, health, environment or labour protection. As for imported goods, service suppliers and investors must continue to respect domestic requirements.

Member States will now discuss CETA with the relevant stakeholders in the context of the national ratification process of the agreement.

Electric vehicle charging network in Germany

On 13 February 2017 the Commission decided that Germany's scheme to roll out a network of user-friendly infrastructure for charging electric vehicles across the country is in line with EU state aid rules.

The German €300m support scheme encourages consumers and businesses to use electric vehicles. By offering the necessary infrastructure in a cost-effective way it promotes the installation of new standard and high-speed charging stations for those vehicles. The scheme is open to all companies, individuals and local authorities and is operated through an open and transparent tender procedure. The Commission considers that it will encourage a significant uptake of electric vehicles and therefore make a major contribution towards reducing emissions and improving air quality. The scheme will support low-emission mobility and the speeding up of a charging infrastructure where electricity comes from renewable energy sources. The Commission expects that the financial support for the construction of charging infrastructure will create the conditions for its further expansion without any further support in the future.

Fine of €68m for battery recycling companies

On 8 February 2017 the Commission fined three companies, Campine, Eco-Bat Technologies and Recylex, a total of €68m for fixing prices for purchasing scrap automotive batteries. A fourth company, Johnson Controls, was not fined because it revealed the cartel to the Commission.

The four recycling companies had colluded to maximise their profits on the recycling of batteries from 2009 to 2012 by fixing the purchase prices of used automotive batteries in Belgium, France, Germany, and the Netherlands. The anti-competitive contacts took place on a bilateral basis, mainly through telephone calls, emails, or text messages. The parties were well aware of the illegal character of their contacts and sometimes tried to disguise them by using coded language. The batteries were collected from garages, maintenance and repair workshops, battery distributors, scrapyards and other waste disposal sites. At a 99% recycling rate automotive batteries are the most recycled consumer product in the EU. The recycling companies carry out the necessary treatment and recovery and then sell the recycled materials mostly to battery manufacturers, who use them to make new car batteries. Unlike in most cartels where

companies conspire to increase their sales prices, the behaviour of the four companies was intended to lower the value of used batteries sold for scrap, to the detriment of used battery sellers. The companies affected by the cartel were mainly small and medium-sized battery collectors and scrap dealers.

For setting the fines the Commission used the value of purchases rather than the value of sales as those figures were presumably artificially lowered precisely because of the cartel behaviour. Under the Commission's leniency policy some reductions in the fines were made to reflect the size of Campine and the cooperation with the investigation by Recylex and Eco-Bat.

Investigation in three e-commerce sectors

On 2 February 2017 the Commission launched three investigations to assess whether certain online sales practices prevent consumers from making a cross-border choice and being able to buy consumer electronics, video games and hotel accommodation at competitive prices.

The Commission's Digital Single Market Strategy identifies regulatory barriers that hinder cross-border e-commerce and proposes different initiatives to address these. However, the Commission believes that that businesses may themselves establish barriers to cross-border online trade, with a view to fragmenting the EU along national borders. Preliminary results of the Commission's earlier competition sector inquiry on e-commerce identify business practices that might restrict competition. The three investigations aim to review the specific issues of retail price restrictions, discrimination on the basis of location and geo-blocking.

Regarding electronics products, the Commission will investigate whether Asus, Denon & Marantz, Philips and Pioneer have restricted the ability of online retailers to set their own prices. The effect may be aggravated due to the use of pricing software that automatically adapts retail prices to those of leading competitors. Concerning the video games market the Commission will review bilateral agreements concluded between Valve Corporation and its game distribution platform, as well as five PC video game publishers, Bandai Namco, Capcom, Focus Home, Koch Media and ZeniMax. The concern of the Commission is geo-blocking practices, where companies prevent consumers from purchasing digital content because of the consumer's location or country of residence. Geo-blocking may also restrict parallel trade within the Single Market. Regarding hotel accommodation, and following complaints from customers, the Commission is investigating agreements concluded between large European tour operators on the one hand and Meliá Hotels on the other. The agreements may contain clauses that discriminate between customers, who would not be able to see the full hotel availability or book hotel rooms at the best prices.

On 24 January 2017 the European Commission also invited comments on commitments offered by Amazon to address competition concerns relating to parity clauses in contracts with publishers, which may reduce competition among e-book distributors.

Anti-dumping duties on steel products from China and Taiwan

On 26 January 2017 the Commission's investigation confirmed that Chinese and Taiwanese stainless steel tube and pipe butt-welding fittings had been sold in Europe at dumped prices. These products are used to join pipes and tubes of stainless steel, and are applied in industries such as petro-chemical, food processing, shipbuilding, energy generation and construction. The Chinese exports of these products will be taxed with anti-dumping duties ranging from 30.7% to 64.9%. The taxation of Taiwanese exports will be increased with duties ranging from 5.1% to 12.1%.

The Directorate General for Trade of the Commission has an unprecedented number of trade defence measures in place targeting imports of steel products with a total of 39 anti-dumping and anti-subsidy measures, 17 of which are on products originating from China. In follow up to a Council decision of 13 December 2016 the Commission is seeking the approval of Member States and the European Parliament for new proposals to take measures that might be better suited to the current reality of international trade and comprise more transparency, faster procedures and effective enforcement. The EU is also looking at root causes of overcapacity in the global steel industry through active involvement in the Global Forum on Steel Excess Capacity launched on 16 December 2016. The forum comprises G20 as well as other members of the Organisation for Economic Cooperation and Development.

This publication is intended for general information only. On any specific matter, specialised legal counsel should be sought.

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