

EU Law News

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

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EU-Canada trade deal signed

On 30 October 2016 the EU and Canada signed the Comprehensive Economic and Trade Agreement (CETA) and a new Strategic Partnership Agreement that deepens cooperation across a large number of policies. CETA will eliminate almost all import duties and provide significant savings for businesses that trade between Canada and the EU. The agreement recognises workers' rights, environmental standards and consumer safety.

By signing the Strategic Partnership Agreement, the EU and Canada will deepen their cooperation in vital areas of policy including security, the fight against terrorism, defence, migration, climate change, energy, research and innovation. CETA will provisionally come into force for a number of policies as of 2017. However, the process of full ratification by national and regional parliaments is expected to take years in the light of delay caused by Belgian regional governments prior to signing the CETA.

It may also make progress with trade deals such as the Transatlantic Trade and Investment Pact (TTIP) more difficult. TTIP negotiations are expected to resume with the new US administration. The US Trade Representative, Michael Froman is still optimistic that the US Congress will pass the Transpacific Partnership treaty in the next few weeks.

Syngenta and ChemChina

On 28 October 2016 the Commission opened an in-depth investigation into the proposed acquisition of Syngenta by ChemChina. The €40bn deal would be the biggest overseas Chinese acquisition ever. The Commission will assess whether the deal may reduce competition in crop protection products and the supply of certain chemicals.

Syngenta is a global agrochemical and seeds company with headquarters in Switzerland. ChemChina is a diversified Chinese state-owned company which is active in the agrochemical sector through its division named China National Agrochemical Corporation and its wholly-owned subsidiary, Adama Agricultural Solutions. Adama is the largest supplier of generic crop protection products in Europe. The companies each have strong and partially overlapping portfolios of herbicides, insecticides, fungicides and plant growth regulators.

The concerns focus on the fact the companies have relatively high combined shares in many of these markets and that some of each party's products may compete directly with those of the other. Adama may also be an important generic competitor of Syngenta and has a broad portfolio, wide geographic coverage and good access to downstream distributors. The Commission is concerned that the proposed merger could reduce competition

and eventually have an impact on price and choice of products for farmers. The investigation will also verify whether the merger may negatively affect the supply of active ingredients which are key chemicals for other manufacturers to make crop protection products.

The Commission has until 15 March 2017 to make a decision. It is cooperating with competition authorities in the US, Brazil and Canada.

Commission approves German electricity demand response scheme

On 24 October 2016 the Commission approved under EU state aid rules a German measure to stabilise the electricity network by reducing electricity consumption of large consumers.

The increasing share of intermittent renewable energy in the energy mix requires increasing flexibility in the electricity grid. Under the measure "Verordnung zu abschaltbaren Lasten" German network operators can enter into flexible weekly contracts with customers for a total of 1,500 megawatt of capacity. This allows the network operators to remotely and at short notice reduce the consumption of those customers in exchange for the payment of a fee. The measures will help the network operators to maintain balance in the grid and improve security of supply by managing demand rather than by adding or maintaining electricity generation capacity.

Weekly competitive auctions to determine the fee paid to customers and will be open to a wide variety of participants. Not only medium and large companies, but smaller customers can also participate if they bundle their offers to meet the threshold. The Commission found that the measure has the long-term benefit of creating a more responsive demand side and concluded that the measure improves the security of electricity supply whilst maintaining competition in the Single Market.

Public consultation EU merger control rules

On 7 October 2016 the Commission launched a public consultation on the functioning of procedural and jurisdictional aspects of EU merger control. It will focus on the effectiveness of purely turnover-based thresholds in the EU Merger Regulation, the treatment of cases that typically do not raise competition concerns and the referral mechanisms between Member States and the Commission.

Regarding the effectiveness of the purely turnover-based notification thresholds there have been suggestions to complement thresholds by alternative criteria in order to capture some types

of transactions in, for example, digital services and pharmaceuticals which have a high market potential. For example, in the pharmaceutical industry established players may purchase highly valued biotech companies that own products under development that have not yet been marketed and therefore do not generate significant turnover.

The Commission also seeks feedback on the functioning of the simplified procedure for certain cases that generally do not raise competition concerns. There may be scope to further simplify these cases beyond the proposals that were contained in its 2014 White Paper. The consultation covers the case referral system, as well as certain procedural and technical aspects of the regulation, which allow for the re-allocation of responsibility between Member States and the Commission over specific transactions and as to which competition authority carries out the merger assessment. The consultation will close on 13 January 2017.

Investigation into Deutsche Börse LSE merger

On 28 September 2016 the Commission opened an in-depth investigation to assess whether the proposed merger between Deutsche Börse AG and London Stock Exchange Group would reduce competition in financial market infrastructure areas. The merger would create by far the largest European operator with exchanges between Germany, the United Kingdom and Italy, as well as several of the largest European clearing houses providing settlement and custody services, market data, indices and other information products.

The Commission is concerned that the combination could reduce competition in bonds, derivatives and repurchasing agreement (repos) as well as settlement and custody services. Repos have grown in importance since the financial crisis as a secure way of obtaining financing at short notice. Both parties have recently set up or are launching competing offerings to each other's franchises for derivatives traded off-exchanges, through so-called over-the-counter transactions. The Commission will consider whether their development might be put at risk by the proposed merger or could lead to a near-monopoly in single stock equity futures and options based on Italian securities.

The parties would also combine two of the three largest venues that currently offer trading in German listed equities. It would also create a large player in the areas of listing, trading and clearing of exchange traded products. These are used as passive investment vehicles and have become an increasingly popular means of investment. The Commission will also analyse the impact on competition in other markets, for example, international listing and dealer-to-dealer electronic trading of German Government bonds. The Commission has until 13 February 2017 to make a decision.

ECJ allows minimum price legislation for tobacco products

On 21 September 2016 the European Court of Justice (ECJ) ruled that minimum price legislation in Belgium banning retailers from selling tobacco products below the price set on the packet's revenue stamp is not in breach of EU law. Belgian supermarket chain Colruyt's filed the case after it was fined for selling cigarettes and other tobacco products at prices lower than the tax-stamp. Colruyt was also accused of illegal advertising, by offering quantity discounts and sales on tobacco products on certain dates, and by offering discounts to youth organisations.

Regarding the scope of Directive 2011/64 on the structure and rates of excise duty applied to manufactured tobacco, the government argued that minimum prices were allowed as a tool for controlling the sale of tobacco and as a disincentive in the amount of excise duty charged. Colruyt argued that the price of an article cannot be considered advertising, and pointed to the same directive that allows the fixing of a maximum price, but says nothing about a minimum price and that therefore minimum prices were in breach of the principle of free movement of goods and fair competition.

The ECJ ruled in favour of the Belgium government because Directive 2011/64 must be interpreted as not precluding national legislation which prohibits retailers from selling tobacco products at a unit price lower than the price indicated by the manufacturer or importer on the revenue stamp affixed to those products, as long as that price has been freely determined by the manufacturer or importer. The ECJ also stated that Article 34 TFEU prohibits quantitative restrictions on imports but does not preclude the national legislation in question. Article 101 TFEU which prohibits anticompetitive agreements and concerted practices also allows for national legislation on minimum prices for these products.

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

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