

EU Law News

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

- EU launches WTO negotiations on environmental trade agreement
- ECJ ruling prompts damage claims against cartels
- Google implements “right to be forgotten”
- Three producers of canned mushrooms fined €32m in cartel settlement
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EU launches WTO negotiations on environmental trade agreement

On 9 July 2014, the EU joined 13 other WTO members to formally open multilateral negotiations in the WTO on liberalisation of trade in so-called “green goods”.

At the first stage, the involved countries will endeavour to eliminate tariffs or customs duties on a broad list of goods which have proven capabilities to help clean the air and water, manage waste, improve energy efficiency, control air pollution, and help generate renewable energy. Negotiations could go on to address non-tariff barriers and environmental services, with the EU expressing a particular interest in reducing barriers to the trade of services linked to exported green goods. For example, companies using renewable energy technology will need continued access to maintenance and engineering services from the point of origin.

The green goods negotiations have started after several months of preparation following on from the launch of the Green Goods Initiative in January. The group of WTO members (EU, Australia, Canada, China, Costa Rica, Chinese Taipei, Hong Kong, Japan, Korea, New Zealand, Norway, Switzerland, Singapore and the US) will engage in regular and intensive negotiations, with all parties agreeing that “the timely conclusion of the agreement” is a priority given the urgency of global environmental challenges.

ECJ ruling prompts damage claims against cartels

On 5 June 2014, the European Court of Justice (ECJ) confirmed that companies found guilty of taking part in cartels could be found liable for price rises initiated by rival businesses outside the cartel.

This conclusion came as part of the ECJ’s landmark ruling in a case involving elevator manufacturers Kone, Otis, Schindler and ThyssenKrupp. These companies had been fined €992m by the European Commission in 2007 for fixing prices of elevators and escalators in Belgium, Germany, Luxembourg and the Netherlands. A subsidiary of the Austrian Federal Railways later sued the companies for €1.8m in an Austrian court, under the reasoning that its elevator suppliers, which were not members of the cartel, were able to charge an inflated price as a consequence of the price fixing behaviour.

According to the ECJ, “where a cartel has the effect of leading competitors to raise their prices, the members of the cartel may be held liable for the loss caused as a result”. With increasing numbers of European companies taking legal action to recover losses from cartel behaviour, this decision increases the exposure and potential damage for cartel defendants.

Google implements “right to be forgotten”

On 29 June 2014, Google began implementing the European Court of Justice’s ruling that “individuals have the right – under certain conditions – to ask search engines to remove links with personal information about them”. The internet search engine put up an online form allowing EU citizens to request that links to information about them be removed from search results. By the end of the first day, over 12,000 requests had already been received.

The ECJ’s ruling came in response to a 2010 complaint from a Spanish citizen, against a Spanish newspaper with the Data Protection Agency, and against Google Spain and Google Inc. The citizen had complained that an auction notice of his repossessed home on Google’s search results infringed his privacy rights because the proceedings concerning him had been fully resolved for a number of years, and hence the reference to these was entirely irrelevant. As well as requesting that the newspaper be obliged to remove or alter the pages in question, he insisted that Google should be required to remove the personal data related to him, so that it no longer appeared in their search results.

As a consequence of the ruling, Google and other companies will have to analyse whether requests refer to “inadequate, irrelevant or no longer relevant” information, and determine whether the data in question is “excessive in relation to the purposes for which they were processed and in light of the time that has elapsed”. It remains to be clarified how this broad guidance should be interpreted in practice, with the 28 national heads of EU data protection authorities meeting for two days in Brussels to agree on a common approach.

Three producers of canned mushrooms fined €32m in cartel settlement

On 25 June 2014, the European Commission ruled that Lutèce, Prochamp and Bonduelle participated in a cartel to coordinate prices and allocate customers for canned mushrooms in the EU, with fines imposed totaling €32,225,000. Lutèce was not fined at all after benefiting from “whistleblower” immunity for revealing the existence of the cartel to the Commission. The fines for Prochamp and Bonduelle were further reduced by 10% as a consequence of their agreement to settle the case with the Commission.

Canned mushrooms are mushrooms sold in tins and jars. The cartel covered the sales of private label canned mushrooms via tender procedures to retailers and food wholesalers and to professional customers. Their overall aim was to stabilise respective market shares and stop the decline of prices, with the cartel members exchanging confidential information on ten-

ders, setting minimum prices, agreeing on volume targets and allocating customers. The cartel lasted from 1 September 2011 to 28 February 2012, and included a compensation scheme in case of customer transfer and application of minimum prices which had been agreed beforehand.

This concluded the second of a series of investigations concerning food products, after an equivalent ruling was delivered to four shrimp traders in November 2013. The Commission also continues to work with national competition authorities to implement the specific competition rules applying to agricultural products following the reform of the common agricultural policy.

European Commission cuts EU roaming costs

On 1 July 2014, the European Commission took the first steps towards its objective of ending all roaming charges, with a decision to cut web browsing costs by 50%, and calling costs by 25%. Through these changes, data roaming has been made 25 times cheaper than it was in 2010. Mobile operators have also been obliged to offer “the possibility to subscribe to roaming contacts before departure... and to choose a local mobile operator”.

In September 2013, the Commission had submitted a legislative package known as “Connected Continent”, aimed at creating a single EU telecommunications market. Its objective is to make internet access available on an “equal and open” basis across Member State borders, and to support the rights of European consumers in mobile communications and high speed browsing on EU territory. On 3 April 2014, the European Parliament voted to suspend roaming charges completely by the end of 2015, something that has been supported by the Italian presidency of the EU Council, despite protest by major European telecommunications operators.

Marine Harvest fined €20m for taking control of Morpol without prior EU merger clearance

On 23 July 2014, the European Commission imposed a fine of €20m on salmon farmer and processor Marine Harvest ASA, for acquiring its rival Morpol ASA without receiving prior authorisation under the EU Merger Regulation. Mergers and acquisitions with an EU dimension must be formally authorised by the Commission before they are implemented, so that any competition concerns can be fully evaluated. This “standstill obligation” aims to protect customers from the potential negative impacts of anti-competitive mergers.

By acquiring a 48.5% in Morpol on 18 December 2012, Marine Harvest had acquired de facto sole control over Morpol, with a stable majority at shareholders’ meetings. The acquisition was implemented eight months prior to Marine Harvest’s formal notification to the Commission. According to the Merger Regulation, the Commission can as a consequence impose fines of up to 10% of the group turnover of all companies that intentionally or negligently infringe the notification requirement and standstill obligation.

Because the transaction, as originally implemented, had raised serious doubts as to its compatibility with the internal market, with significant remedies having to be submitted, the Commission considered that Marine Harvest’s infringement was “particularly serious”. Because Marine Harvest is a large European company with previous experience of EU merger control rules, the Commission also concluded that it should have been more aware of its notification obligations.

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

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