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Newsletter EU Law

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

Issue September/October 2020

Adapting state aid rules to Green and Digital Strategies

On 30 October 2020 the Commission published a staff working document with an evaluation of the state aid rules adopted as part of the State Aid Modernisation package.

The evaluation concluded that the state aid control system and rules are fit for purpose. However, individual rules will need some adaptation in the light of the recent European Green Deal and the EU's Industrial and Digital Strategies. The Commission plans to anticipate the review of the relevant state aid guidelines. These include the guidelines on regional state aid, communication on important projects of common European interest, state aid for research, development and innovation, risk finance guidelines and relevant provisions of the General Block Exemption Regulation. In particular, the revision of the energy and environmental rules will have to facilitate appropriate measures thereby further promoting a modern decarbonised and circular economy, while ensuring limited distortions of competition and adequate safeguards to the integrity of the single market.

Commission prolongs Temporary Framework

On 13 October 2020 the Commission prolonged and extended the scope of the state aid Temporary Framework adopted on 19 March 2020 to support the economy in the context of the coronavirus outbreak. All sections are prolonged for six months until 30 June 2021, and the section to enable recapitalisation support is prolonged until 30 September 2021.

The Commission also introduced a new measure to enable Member States to support companies facing a decline in turnover during the eligible period of at least 30% compared to the same period of 2019 due to the coronavirus. The support will contribute to a part of the beneficiaries' fixed costs that are not covered by their revenues, up to a maximum amount of €3m per undertaking. The Commission adapted the conditions for recapitalisation measures, in particular for the state's exit from the recapitalisation of enterprises where the state was an existing shareholder prior to the recapitalisation. Due to a continued lack of sufficient private capacity to cover all economically justifiable risks for exports, the amendment provides for an extension until 30 June 2021 of the temporary removal of all countries from the list of "marketable risk" countries under the short-term export-credit insurance communication.

Commission accepts Broadcom chipset commitments

On 7 October 2020 the Commission accepted commitments by Broadcom to ensure competition in chipset markets for modems and set-top boxes.

The Commission investigated alleged anticompetitive practices by Broadcom in the area of components for TV set-top boxes and residential gateways. It took issue with certain exclusivity and leveraging arrangements imposed by Broadcom. In October 2019 the Commission imposed interim measures on Broadcom to stop applying these provisions in agreements with six of its main customers.

In July 2020 Broadcom offered commitments to address the Commission's concerns. Broadcom will suspend all existing agreements vis-à-vis all device manufacturers and include products not covered by the interim measures decision. In Europe, Broadcom will not require or induce by means of price or non-price advantages an Original Equipment Manufacturer (OEM) to obtain any minimum percentage of its requirements for chips for TV set-top boxes and modems. It will also not impose conditions on the supply of, or the granting of advantages for, such chips and modems on an OEM obtaining from Broadcom any other product within the scope of the commitments. At worldwide level (excluding China) Broadcom will not require or induce an OEM by means of certain types of advantages to obtain more than 50% of its requirements for chips and modems from Broadcom. The commitments also include specific provisions regarding incentives to bid for equipment based on Broadcom products as well as certain additional clauses with regard to service providers in Europe.

The Commission has made these commitments legally binding for seven years. If Broadcom were to breach the commitments, the Commission could impose a fine of up to 10% of Broadcom's total annual turnover.

General Court annuls part of Commission inspection decision

On 5 October 2020 the General Court annulled in part the Commission's inspection decisions following suspicions of anticompetitive practices by a number of French undertakings in the distribution sector. In 2017 the Commission visited several companies in the distribution sector and took copies of the content on computers. A number of the companies

inspected brought actions seeking annulment of those decisions. Regarding the copying of certain private data, the General Court stated that all undertakings have a duty to ensure the protection of their employee's private lives and the processing of personal data. At inspection companies can request for protection; however such request must be in sufficiently precise terms to enable the Commission usefully to define its position.

The Court found that the inspection decisions stated clearly and in detail that the Commission was of the view that it had sufficiently strong evidence to suspect anticompetitive practices. With regard to the form of the evidence which justified the inspection, the Court pointed out that interviews with suppliers carried out before an investigation is opened, form evidence even if they have not been recorded. Interviews constitute evidence available to the Commission from the date on which they took place.

With regard to the tenor of the evidence which justified the inspection decisions, the Court notes that the threshold at which it is recognised that the Commission has sufficiently strong evidence must of necessity be placed below that allowing a finding of a concerted practice. In the light of those considerations, it finds that the Commission had sufficiently strong evidence to suspect a concerted practice as regards the exchanges of information on discounts obtained on the supply markets of certain everyday consumer products and the prices on the market for the sale of services to manufacturers of branded products. However, evidence was lacking as regards the exchanges of information concerning the future commercial strategies of the undertaking. The Court determined an infringement of the right to the inviolability of the home and therefore annulled the inspection decisions in part.

Worldline's acquisition of Ingenico approved

On 30 September 2020 the Commission approved, subject to conditions, Worldline's acquisition of Ingenico. Worldline is active in the payment and transactional services industry. It is present throughout Europe and in emerging markets worldwide. Ingenico Group is engaged in the design and supply of point-of-sale (POS) terminals and provides payment-related services such as merchant acquiring services worldwide.

The Commission's investigation revealed competition concerns on the markets for the provision of POS merchant acquiring services and POS terminal provision and manage-

ment services in Belgium, Luxembourg and Austria. Worldline is already the largest player in each of these Member States. The Commission's investigation revealed that Ingenico is an important competitor while a limited number of credible competitors would remain in these markets. Similarly, Ingenico represents an important alternative to Worldline, the leader in POS provision and management in Austria and Belgium. The companies offered to divest Ingenico's Austrian and Belgian business and part of Worldline's merchant acquiring business in Luxembourg. The package includes the support services necessary to operate the businesses. The Commission concluded that the proposed transaction, as modified by the commitments, no longer raises competition concerns.

Fine in car parts cartel

On 29 September 2020 the Commission fined Brose €3m and Kiekert €15m for taking part in cartels concerning car parts.

Magna, based in Canada, and Brose, based in Germany, took part in a bilateral cartel concerning supplies of door modules and window regulators for a certain Daimler car model. Magna and Kiekert, based in Germany, participated in a separate bilateral cartel for the supplies of latches and strikers to BMW and Daimler. Between 2009 and 2012 the three car equipment suppliers coordinated their pricing behaviour and exchanged commercially sensitive information. Their aim was to preserve each party's existing business and to avoid a deterioration of the prevailing pricing levels. In setting the level of fines, the Commission took into account the companies' sales value in Europe, the nature of the infringements, their geographic scope and duration. Magna received immunity for revealing both cartels, thereby avoiding a €6m fine. Brose and Kiekert benefited from reductions of their fines for their cooperation with the investigation. In addition, the Commission applied a reduction of 10% in view of their acknowledgment of the participation in the cartel. This decision brings the total amount of Commission fines for cartels in this sector to €2.17bn.

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

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**Luther, EU Law Center
Avenue Louise 326, 1050 Brussels, Belgium
Phone +32 2 6277 760, Fax +32 2 6277 761
helmut.janssen@luther-lawfirm.com**

Luther.

Bangkok, Berlin, Brussels, Cologne, Delhi-Gurugram, Dusseldorf, Essen,
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