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Newsletter EU Law

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Acquisition of Varian by Siemens Healthineers cleared

On 19 February 2021 the Commission conditionally approved the acquisition of Varian Medical Systems by Siemens AG.

Siemens Healthineers provides imaging healthcare solutions. Varian is a provider of medical devices and software solutions for treating cancer and other medical conditions with radiotherapy. The Commission had concerns that the transaction would have led to the foreclosure of competitors in the European Economic Area (EEA) and in the UK, in particular through the degradation of the interoperability between imaging and radiotherapy solutions.

To address the Commission's concerns, Siemens Healthineers committed to continue adhering to the de facto industry-wide interoperability standard (DICOM) and to ensure interoperability between (i) its medical imaging solutions and rivals' radiotherapy solutions and (ii) its radiotherapy solutions and rival's imaging solutions, by providing the relevant information and technical assistance to third parties and customers. The commitments will run for ten years, which the Commission may extend by an additional five years.

General Court supports Covid airlines aid

On 17 February 2021 the General Court decided that the loan guarantee scheme put in place by Sweden to support airlines holding a Swedish operating licence amid the Covid-19 pandemic is compatible with EU law.

In April 2020, Sweden notified the Commission of an aid scheme aimed at airlines which, on 1 January 2020, held a Swedish licence to conduct commercial activities in aviation. The maximum amount of the loans is SKR 5bn (€500m) and the guarantee had to be granted until 31 December 2020 for a maximum of six years. The Commission assessed the aid in the light of its communication of 19 March 2020, entitled 'Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak'. On 11 April 2020, the Commission declared the scheme compatible with the internal market in accordance with Article 107(3)(b) TFEU. Ryanair brought an action to annul that decision.

The General Court confirms that the objective of the loan guarantee scheme satisfies the conditions of Article 107(3)(b) as it effectively seeks to remedy a serious disturbance in the

Swedish economy. The possession of a Swedish licence is appropriate for achieving that objective, because the principal place of business of the airlines is on Swedish territory and these airlines are subject to financial and reputational monitoring by the Swedish authorities. The General Court states that the Commission correctly considered the scheme to be proportionate, in that the airlines eligible for loans contribute most to Sweden's regular freight and passenger transport and ensure Sweden's connectivity. The extension of that scheme to airlines not established in Sweden, however, would not have made it possible to achieve that objective. It satisfies the requirements of the derogation laid down in Article 107(3)(b) TFEU and does not amount to discrimination prohibited under the first paragraph of Article 18 TFEU.

Acquisition of Belchim by Mitsui cleared

On 11 February 2021 the Commission cleared the acquisition of Belchim by Mitsui. Belchim and Mitsui both distribute third-party crop protection products and supply their own formulated products for high-value crops such as potatoes, other vegetables and vines. These products are mostly based on off-patent active ingredients.

The Commission's investigation found that the proposed transaction would have reduced competition in the market for plant growth regulators (PGR) used to prevent or control sprouting in stored potatoes. In 2020 chlorpropham was banned by the EU and since then, both Mitsui and Belchim have been among very few suppliers that sell alternative PGR products. The transaction would have led to high combined market shares in certain countries where Mitsui and Belchim compete. The Commission was also concerned that the merged company would have very high market shares in the Netherlands for paraffinic oils. These oils are used to prevent or limit the spread of viruses in seed potatoes and flower bulbs.

To address these concerns, Mitsui offered to transfer to one or two remedy takers the Mitsui distribution agreement and customer relationships for its potato PGRs. If it could not achieve that within a certain timeframe, it offered to transfer instead the Belchim distribution agreement and customer relationships for its PGR. Mitsui also offered to transfer to a remedy taker the Belchim distribution agreement and other relevant data and agreements for its paraffinic oils in the Netherlands.

Aspen commits to medicine price reductions

On 10 February 2021 the Commission accepted the commitments by Aspen to reduce prices for six off-patent cancer medicines by 73% addressing excessive pricing concerns.

Aspen is a global pharmaceutical company headquartered in South Africa, with several subsidiaries in Europe. In 2017, the Commission announced a formal investigation into Aspen's pricing practices regarding six critical off-patent cancer medicines mainly used in the treatment of leukaemia and other haematological cancers. After acquiring the cancer medicines business from another company, Aspen started in 2012 to progressively increase its prices in Europe. The Commission's analysis of Aspen's accounting data showed that Aspen's prices exceeded its relevant costs by almost 300% on average. The investigation did not reveal any legitimate reasons for Aspen's very high profit levels, in particular, as Aspen's medicines have been off-patent for 50 years. Patients and doctors had mostly no alternatives. When national authorities tried to resist Aspen's requests for price increases, Aspen went as far as threatening to withdraw the medicines from the national list of reimbursable medicines or even withdraw from the market.

Aspen offered a set of commitments. It will reduce its prices across Europe for the six medicines by approximately 73%, which is on average below the prices of 2012. The reduced prices will last for 10 years. Aspen guarantees the supply of the medicines for the next five years, and for an additional five-year period, will either continue to supply or make its marketing authorisation available to other suppliers.

Infringement procedures concerning telecom rules

On 4 February 2021 the Commission opened infringement procedures against 24 Member States for failing to enact new EU telecom rules.

The European Electronic Communications Code modernises the regulatory framework for electronic communications, to enhance consumers' choices and rights, for example by ensuring clearer contracts, quality of services, and competitive markets. The Code also ensures higher standards of communication services, including more efficient and accessible emergency communications. It allows operators to benefit from rules incentivising investments in very high capacity

networks, as well as from enhanced regulatory predictability, leading to more innovative digital services and infrastructures. The deadline for transposing the Code into national legislation was 21 December 2020. Greece, Hungary and Finland have notified to the Commission that they adopted all necessary measures for transposing the Directive. The Commission sent notice to the other 24 Member States, requesting them to adopt and notify the relevant measures.

€7.8m fine for geo-blocking

On 20 January 2021 the Commission fined Valve and five publishers of PC video games for geo-blocking practices.

Valve is owner of "Steam", which is one of the world's largest online platforms offering users to directly download or stream PC video games. Valve provides to video game publishers the technical means to activate and play games on Steam, including those games bought outside Steam, through the so-called, "Steam activation keys". Valve also offers to the publishers a territory control function, which enables geographical restrictions upon game activation. The combination of Steam activation keys with the territory control function enables geo-blocking based on the geographical location of the user.

Five video game publishers (Bandai Namco, Capcom, Focus Home, Koch Media and ZeniMax) granted Valve a non-exclusive licence to exploit specified PC video games. In turn, the publishers obtained from Valve a licence for the use of Steam activation keys for distribution of those PC video games outside Steam. The publishers requested Valve to set up geographical restrictions. The publishers provided those keys to their distributors for sale and distribution of the PC video games. The Commission found that by bilaterally agreeing to geo-block, Valve and each publisher partitioned the European market between 2010 and 2015. Geo-blocking practices which restricted cross-border (passive) sales of around 100 PC video games, lasted between 2007 and 2018.

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

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