



# Newsletter EU Law

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

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## Ukraine war – State Aid Temporary Framework

In April 2022 the Commission approved several national schemes under the rules of state aid to support the economy in the context of Russia's invasion of Ukraine. The German scheme, for example, covers aid up to EUR 20 billion.

The Commission adopted the State Aid Temporary Crisis Framework on 23 March 2022 in the context of Russia's invasion, to enable Member States to use aid flexibly in three ways: first, up to EUR 35,000 per company affected by the crisis active in the agriculture, fisheries and aquaculture sectors and of up to EUR 400,000 per company in all other sectors; second, liquidity support in form of state guarantees and subsidised loans; and thirdly aid to compensate for high energy prices. When the company incurs operating losses, further aid may be necessary to ensure the continuation of an economic activity. Sanctioned Russian-controlled entities will be excluded from the scope of these measures. The Framework will be in place until 31 December 2022 and includes a number of safeguards including proportional methodology, eligibility conditions and sustainability requirements.

## Acquisition of Meggitt by Parker cleared

On 11 April 2022 the Commission approved the proposed acquisition of Meggitt by Parker. The approval is conditional on full compliance with commitments offered by Parker.

Parker and Meggitt are leading global aerospace component suppliers, with wide product portfolios. They compete among others in the design, manufacture and supply of aircraft wheels and brakes and aerospace pneumatic valves.

The market investigation revealed that the transaction would further reduce the already limited number of suppliers of wheels and brakes for small general aviation aircraft, business jets, civil and military helicopters, and military fixed-wing drones. To address the Commission's competition concerns, Parker committed to divest its entire aircraft wheels and brakes division, including provisions to ensure that a buyer can operate the business viably and independently from the merged entity. The Commission did not find competition concerns in other aerospace component markets in which the parties compete, including aerospace pneumatic valves, as sufficient alternative suppliers would remain active following the transaction.

## Airfreight cartel decision partially annulled (again)

On 30 March 2022 the General Court dismissed the actions brought by several airlines and upheld the fines imposed on them by the Commission for their participation in a cartel in airfreight. However, it annuls the Commission decision in part on certain other airlines.

In 2010 the Commission had adopted a decision against multiple carriers operating on the airfreight market which had participated in a pricing cartel between 1999 and 2006, and imposed a fine of EUR 790 million total. The cartel related to elements of the price of services, in particular the introduction of fuel and security surcharges, as well as the refusal to pay commission to freight forwarders on those surcharges. Lufthansa and two of its subsidiaries were granted immunity from fines. In 2015 the General Court upheld actions brought against that decision and annulled the Commission's decision on the grounds of internal contradictions likely to undermine the rights of defence of the companies in question. In 2017 the Commission adopted a new decision, in which it amended the defective statement of reasons identified by the General Court.

The carriers that had challenged the Decision of 2010 brought fresh actions before the General Court. The Court dismissed the actions brought by Martinair, Cargolux, Air France-KLM, Lufthansa, Singapore Airlines and upheld the fines imposed. However, the General Court annuls the Commission decision in part on certain other airlines. As regards intra-European routes, the Commission wrongly found Japan Airlines, Cathay Pacific Airways, Latam Airlines and Lan Cargo liable, since the decision was adopted over ten years after the conduct had ceased, i.e. after the expiry of the limitation period. The Court also annuls the Commission decision regarding Latam and Lan Cargo relating to the security surcharge and the refusal to pay commission on surcharges as well as their participation relating to the fuel surcharge prior to July 2005. Regarding Air Canada, British Airways and SAS Cargo the General Court annuls the decision in so far they participated in the infringement relating to the refusal to pay commission on the surcharges. However, in order to ensure equal treatment, the Court increased part of the fines for SAS Cargo, by including the value of sales made on internal routes within Denmark, Sweden and Norway. Finally, the Court finds that the Commission was entitled to take into account documents which were submitted in the context of Air Canada's leniency application and which the latter sought to have withdrawn subsequently.

## State aid for battery plants approved

On 22 March 2022 the Commission found that Hungary's EUR 209 million measure in favour of Korean company SK is in line with the applicable Guidelines on Regional State Aid. The investment aid will support the construction of a new battery cell manufacturing plant in the Közép-Dunántúl region. On 18 March 2022 the Commission also approved Poland's EUR 95 million measure in favour of LG Chem Group. The investment aid will support the expansion of LG Chem's battery cell production facility for electric vehicles in the Polish Dolnośląskie region.

In both cases the aid has a real "incentive effect", was kept to the minimum necessary to attract the investment to the disadvantaged region, did not have undue negative effects, and will also contribute to the development of the region, whilst preserving competition.

## Commission approved acquisition of MGM by Amazon

On 15 March 2022 the Commission approved unconditionally the proposed acquisition of MGM Holdings Inc. ('MGM') by Amazon.com Inc ('Amazon').

Amazon operates a range of businesses including retail, consumer electronics and technology services, as well as the (co-)production and retail supply of own and third-party audio-visual ('AV') content through Prime Video. MGM is an entertainment company, which produces and distributes AV content. MGM also offers a wholesale channel, MGM+ via retail distributors Prime Video, Zattoo, and Mediaset.

Based on its investigation, the Commission found that the overlaps between Amazon and MGM are limited in the AV content value chain. They are active in different parts of that value chain and where both are active, their combined market shares are low. MGM's upstream activities as a producer and licensor of AV content are limited compared to other market players' activities. MGM's content cannot be considered as must-have and there is a wide variety of alternative content. Even in the national markets where Amazon has a sizeable market presence Amazon faces strong competition. Regarding the production and licensing of films and the downstream market for the theatrical exhibition of films, MGM's films represent only a limited share of box office revenues. Overall MGM is not among the top production studios, despite its

successful film franchises such as James Bond. The Commission concluded that the addition of MGM's content into Amazon's Prime Video offer would also have no significant impact on Amazon's position as provider of marketplace service.

## Commission investigates Google-Meta online display agreement

On 11 March 2022 the Commission opened an investigation to assess whether an agreement between Google and Meta (former Facebook) for online display advertising services may have breached EU competition rules.

Google provides advertising technology services that intermediate between advertisers and publishers by real time auctioning of online display advertising space on web sites or mobile apps. Important intermediate services run through Google's 'Open Bidding programme'. Meta provides online display advertising services and, through its 'Meta Audience Network', participates in auctions for third party publishers' advertising space using Google's and rivals' advertising technology services.

The Commission investigation focuses on an agreement of September 2018, which Google code-named "Jedi Blue", between Google and Meta for the participation of Meta's Audience Network in Google's Open Bidding programme. Many publishers rely on online display advertising on their websites and apps to fund online content for consumers. The Commission is concerned that the agreement may form part of efforts to exclude ad tech services companies competing with Google's Open Bidding programme, and therefore restrict or distort competition in markets for online display advertising, to the detriment of rival ad serving technologies, publishers and ultimately consumers.

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