

EU Law News

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

- Commission approves acquisition of Rockwell Collins by UTC
- Commission fines Altice €124.5m for gun-jumping
- Commission investigates Apple's proposed acquisition of Shazam
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Commission approves acquisition of Rockwell Collins by UTC

On 4 May 2018 the Commission approved the acquisition of Rockwell Collins by United Technologies Corporation (UTC) in the aerospace sector. The approval is conditional on divestment of businesses in actuators, pilot controls, ice protection and oxygen systems.

UTC and Rockwell Collins are suppliers of aerospace systems and equipment to aircraft producers such as Airbus and Boeing with mostly complementary portfolios. UTC produces power generation, propulsion systems and landing systems, while Rockwell Collins manufactures avionics and cabin interiors. The Commission was concerned that the transaction would have reduced competition in specific markets. UTC offered to divest Rockwell Collins' entire global business for trimmable horizontal stabiliser actuators and pilot control businesses mainly in the US and Mexico, and also Rockwell Collins' entire global business in ice protection in the US, and UTC's two research projects in oxygen systems. The Commission found that these commitments removed the overlaps between UTC and Rockwell Collins where competition concerns had been identified. It also concluded that vertical links between UTC and Rockwell Collins' activities did not lead to any competition concerns and that the merged entity would have neither the market power nor the incentives to engage in bundling or tying.

Commission fines Altice €124.5m for gun-jumping

On 24 April 2018 the Commission imposed a €124.5m fine on Altice, the multinational cable and telecommunications company based in the Netherlands, for implementing its acquisition of the Portuguese telecommunications operator PT Portugal before notification or approval by the Commission.

In February 2015 Altice notified the Commission of its plans to acquire PT Portugal. The transaction was conditionally cleared by the Commission on 20 April 2015, subject to the divestment of Altice's businesses in Portugal at the time, Oni and Cabovisão. In May 2017 the Commission sent a Statement of Objections to Altice detailing its concerns that Altice implemented its acquisition of PT Portugal before obtaining the Commission's clearance, and in some instances, even before its notification of the merger. The EU merger rules require that merging companies notify planned mergers of an EU dimension for review by the Commission and do not implement them until cleared by the Commission. That "standstill obligation" prevents the potentially irreparable negative impact of transactions on the market, pending the outcome of the Commission's investigation.

The Commission has now confirmed its preliminary view that Altice breached the EU Merger Regulation and imposed a

€124.5m fine on Altice. The Commission stated that certain provisions of the purchase agreement resulted in Altice acquiring the legal right to exercise decisive influence over PT Portugal. Altice also gave PT Portugal instructions on how to carry out a marketing campaign and by seeking and receiving detailed commercially sensitive information about PT Portugal outside the framework of any confidentiality agreement. The decision has no impact on the Commission's 2015 decision that permitted the transaction under the EU Merger Regulation.

Commission investigates Apple's proposed acquisition of Shazam

On 23 April 2018 the Commission opened an in-depth investigation to assess the proposed acquisition of Shazam by Apple. The Commission is concerned that the merger could reduce choice for users of music streaming services.

Apple manufactures and sells mobile communication, media devices, portable digital music players and personal computers. It delivers digital content online and offers the music and video streaming service "Apple Music" which in the last three years has become the second largest music streaming service provider in Europe. Shazam is a UK based developer and distributor of music recognition applications for smartphones, tablets and PCs. It mainly generates revenues from online advertising and commissions earned on referrals of users to digital music streaming and download services, such as Apple Music, Spotify and Deezer. Shazam also offers the leading music recognition app for mobile devices worldwide which allow consumers to recognise music based on a short audio sample by using microphones built into their mobile devices.

The Commission is concerned that, following the takeover of Shazam, Apple would obtain access to commercially sensitive data about customers of its competitors for the provision of music streaming services. It could allow Apple to directly target its competitors' customers and encourage them to switch to Apple Music. It will also further investigate whether Apple Music's competitors would be harmed if Apple were to discontinue referrals from the Shazam app to them. The Commission has until 4 September 2018 to pass a decision.

European Court rules in favour of French government and against Uber

On 10 April 2018 the European Court of Justice (ECJ) ruled against Uber France. Uber France provides the UberPop services through which it puts non-professional drivers using their own vehicle in contact with persons who wish to make urban journeys. Uber France fixes the rates and collects the fare for each journey from the customer, paying part of it to the non-professional driver and prepares the invoices.

Criminal law proceedings have been brought against Uber France. The Regional Court in Lille, France, before which the matter was brought, asked the Court of Justice whether the French authorities were required to notify the Commission of the draft legislation in advance. Uber France maintains that the French legislation on which the criminal proceedings against it are based constitutes a technical regulation which concerns an information society service within the meaning of the directive on technical standards and regulations. That directive (98/34/EC) requires Member States to notify the Commission of any draft legislation or rules.

The ECJ ruled that Member States may prohibit and punish, as a matter of criminal law, the illegal exercise of transport activities in the context of the UberPop service, without notifying the Commission in advance of the draft legislation. The French government was therefore within its rights to pass a 2014 law banning some transport services without first notifying the Commission. The ECJ also ruled on 20 December 2017 that the UberPop service offered in Spain belonged to the field of transport and did not constitute an information society service.

Commission fines capacitor cartel participants €254m

On 21 March 2018 the Commission fined Elna, Hitachi Chemical, Holy Stone, Matsuo, NEC Tokin, Nichicon, Nippon Chemi-Con and Rubycon €254m. Sanyo received immunity for revealing the existence of the cartel to the Commission, thereby avoiding a fine of €32m.

Capacitors are electrical components that store energy electrostatically in an electric field and are used in a wide variety of electric and electronic products. The Commission's investigation found that from 1998 to 2012 nine Japanese companies participated in various meetings to exchange commercially sensitive information about the supply of aluminium and tantalum electrolytic capacitors. The objective was to coordinate future behaviour and avoid price competition. The companies exchanged information on future prices and pricing intentions and on future supply and demand information. In some instances, the participants also concluded price agreements and monitored their implementation.

The investigation found that the companies were well aware of the anti-competitive nature of their behaviour as evidenced by their intention to conceal it. Messages exchanged between the companies or internal emails containing reports of the meetings included mentions such as "Discard after reading". The meetings involved discussions between senior managers and occasionally even presidents and took place mainly in Japan. However, the cartel conduct was implemented on a global scale that included the European Economic Area.

Commission clears Bayer's acquisition of Monsanto, subject to conditions

On 21 March 2018 the Commission approved the acquisition of Monsanto by Bayer. The merger is conditional on an extensive remedy package which addresses the parties' overlaps in seeds, pesticides and digital agriculture. On 30 April 2018 the Commission conditionally approved the acquisition of parts of Bayer's Crop Science business by BASF.

Monsanto is the world's largest supplier of seeds, which generates most of its sales in the US and Latin America. It sells glyphosate which is the most used pesticide. Bayer is the second largest supplier of pesticides worldwide with a stronger focus in Europe. It is an important globally active seeds supplier for a number of crops. The transaction creates the largest global integrated seed and pesticide player.

The Commission concluded that the transaction as notified would have significantly reduced competition on price and innovation in Europe and would have strengthened Monsanto's dominant position on certain markets where Bayer is an important challenger of Monsanto. The companies addressed these concerns by removing existing overlaps in seed and pesticide markets. Bayer committed to divest businesses of over €6bn. These include Bayer's global R&D organisation for seeds and traits as well as Bayer's research activities to develop a challenger product to Monsanto's glyphosate. They cover certain Monsanto assets which in future would have competed with a Bayer seed treatment against nematode worms. Bayer has also committed to grant a license to its entire global digital agriculture product portfolio and pipeline products to ensure continued competition on this emerging market.

On 30 April 2018 the Commission also conditionally approved the acquisition of parts of Bayer's Crop Science business by BASF. Since BASF does not currently sell seeds or non-selective herbicides and has only recently started to develop a limited offering in digital agriculture, the Commission did not identify competition concerns with most parts of the transaction. However, it had concerns regarding the development of two products. To address these concerns BASF committed to divest one of the overlapping lines of research for the development of non-selective herbicides and a BASF pipeline nematicidal seed treatment product.

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

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