

EU Law News

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

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Digital Single Market

On 6 May 2015 the Commission announced its plans for expanding Europe's digital economy. The proposal for this so-called Digital Single Market covers policy areas from telecoms to online retailing. The aim of the initiative is to take away regulatory barriers and move from 28 national markets to a single one. The Commission estimates this could contribute €415bn per year to the EU's economy and create many new jobs.

The strategy includes 16 targeted actions based on three pillars. The first pillar aims at better access for consumers and businesses to digital goods and services across Europe: for example to end unjustified geo-blocking – a practice used for commercial reasons, when online sellers either deny consumers access to a website based on their location or re-route them to a local store with different prices. The Commission has already launched an antitrust competition inquiry into the e-commerce sector and will also issue a proposal to reduce differences between national copyright regimes.

The goal of proposals under the second pillar is creating the right conditions and a level playing field for digital networks and innovative services. One proposal will look at the EU's telecoms rules, including for example more effective spectrum coordination, incentives for investment in high-speed broadband and creating a better institutional framework for telecom. The Commission will also review the directive for audiovisual media services.

The third pillar aims at maximising the growth potential of the digital economy. New initiatives will include promoting the free movement of data in the European Union, launching certification of cloud services and standards for interoperability in critical areas such as e-health, transport planning or smart metering of energy. The Commission wants to complete the package by 2016, noting that all proposals have to go through the European Parliament and the Council.

Online Data Protection Regulation

On 15 June 2015 the Council agreed a general approach on the Commission's proposal for the Data Protection Regulation in order to keep pace with technological changes. The EU proposal would strengthen the protection of consumers in the digital services market.

The regulation aims to increase consumers' trust in digital services, for example by reinforcing the right to be forgotten. Citizens will also be better informed if their data is hacked. A right to data portability will make it easier for users to transfer personal data between service providers. The rules will also establish a 'one-stop shop' for businesses through a single set of rules across 28 Member States. Companies

based outside the EU will have to apply the same rules when offering services in the EU. Finally, independent national data protection authorities will obtain more power to enforce the rules, and may levy penalties of up to €1m or up to 2% of the global annual turnover of a company.

On 24 June 2015 a first meeting between the Commission, the European Parliament and the Council of Ministers took place. The three institutions intend to agree on a roadmap towards the finalisation of the regulation in 2015.

e-book investigation

On 11 June 2015 the European Commission opened an investigation into business practices by Amazon in the distribution of electronic books ("e-books") and in particular into certain clauses included in Amazon's contracts with publishers. These clauses require publishers to inform Amazon about more favourable or alternative terms offered to Amazon's competitors. Publishers also may have to ensure that Amazon is offered terms at least as good as those of its competitors. The Commission says such clauses may make it more difficult for other e-book distributors to compete with Amazon by developing new and innovative products and services.

E-books have experienced a huge popularity in recent years and are of increasing importance to online retail. EU antitrust rules prohibit abuses of a dominant market position and restrictive business practices. Because Amazon is currently the largest distributor of e-books in Europe its arrangements with publishers could be harmful to consumers.

In 2011 the Commission opened proceedings in the same sector because it had concerns that Apple and five international publishing houses had colluded to limit retail price competition for e-books. In 2012 and 2013, respectively, the companies offered a number of commitments, which took away the Commission's concerns.

ECJ: UK energy efficiency tax reductions illegal

On 4 June 2015 the European Court of Justice (ECJ) decided that the lower rate of value added tax (VAT) for home energy efficiency renovation in the United Kingdom is illegal. The ECJ in Luxembourg agreed with the Commission that the lower price is in violation of the VAT Directive.

According to the Commission, which initiated the infringement proceedings against the UK, a reduced rate could only apply to transactions related to social housing. All British citizens may currently benefit from a reduced rate on the installation and supply of "energy-saving materials" for housing. However, now the

UK government would no longer be able to offer the reduced 5% VAT rate. The ruling is not retroactive and would not affect those who had already pre-ordered or pre-paid.

Interestingly, the European Commission has called on Member States to put “energy efficiency first”. The recent Energy Union strategy even names building renovation as one of its major goals. The UK’s ‘Green Deal’ programme is intended to help Britain meet its climate targets by allowing cost-effective renovations and refurbishments of energy-inefficient homes. These investments can be recouped through energy bill payments. The building and renovation industries say that renovating buildings to boost energy efficiency is one of the best ways to reduce consumption, increase energy security, and fight climate change.

However, the Commission has stated that there are other ways of promoting the installation of energy-saving materials while remaining in line with EU law, for example through direct subsidies. Others have suggested that the UK government could instead apply to offer the reduced rate through an exemption allowed for home renovation or refurbishment. Later this year, the European Commission will propose a review of reduced VAT rates - in order to improve tax efficiency. Such a reform might be a way out for the UK’s worries, but would need unanimous support by Member States in the Council..

Fines for retail food packaging cartels

On 24 June 2015 the European Commission fined eight manufacturers and two distributors of retail food packaging trays. The fine totals close to €116m for covering each company that has participated in at least one of five separate cartels.

For periods ranging from just over a year to almost eight years the companies carved up the retail food packaging market and fixed prices. They also allocated customers of polystyrene foam or polypropylene rigid trays to the various companies. These products are used for packaging fresh foods sold in shops or supermarkets. Each of the cartels operated within the framework of multilateral and bilateral contacts usually held on the fringes of legitimate industry gatherings. Meetings in person were complemented by numerous emails and phone exchanges.

The Commission concluded that a clear breach of EU competition law had occurred. One company, Linpac, received full immunity under the Commission’s leniency guidelines as it revealed the existence of the cartels to the Commission.

Commission approves Orange’s Jazztel acquisition

On 19 May 2015 The European Commission approved under the EU Merger Regulation the acquisition in the telecommunications industry proposed by Orange in France to take over Jazztel, a company registered in the UK but mainly active in Spain. Orange offers services in more than 30 countries.

The vast majority of fixed internet contracts in Spain are bundled with a mobile component so that a new entrant will need access to a mobile network to compete effectively. High investments are needed to enter the retail markets involving fixed internet access services with speeds up to 30 megabits per second. Both Orange and Jazztel are currently important competitors in the retail markets involving fixed internet access services in Spain. In particular, they have attracted a higher share of new customers and are the only two nationwide operators that have significantly increased their market shares in recent years. The remaining major competitors, Telefónica and Vodafone, would have been unlikely to reduce the competitive pressure.

The Commission’s concern was therefore that the takeover could have led to higher prices for Spanish consumers. The takeover was allowed after Orange agreed to sell the optical fibre network in Spain covering almost 1 million building units and of a number of commitments that will ensure effective competition on the fixed internet access services markets.

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

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