

EU Law News

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

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Commission clears Apple's acquisition of Shazam

On 6 September 2018 the Commission approved the proposed acquisition of Shazam by Apple. The Commission concluded that the merger would not adversely affect competition.

Apple operates "Apple Music", which is the second largest music streaming service in Europe, after Spotify. Shazam is a UK based developer that offers a leading music recognition application ("app") worldwide. It mainly generates revenues from online advertising and commissions earned on referrals of users to digital music streaming and download services.

The Commission undertook investigative measures and received feedback from key market participants in the digital music industry. It found that the merged entity would not be able to shut out competing providers of digital music streaming services by accessing commercially sensitive information about their customers. Access to Shazam's data would not materially increase Apple's ability to target music enthusiasts and any conduct aimed at making customers switch would have only a negligible impact. The app has also a limited importance as an entry point to the music streaming services of Apple Music's competitors. The integration of Shazam's and Apple's datasets on user data would not confer a unique advantage on the merged entity in the markets on which it operates. Shazam's data is not unique and Apple's competitors would still have the opportunity to access and use similar databases.

Investigation into clean emission technology

On 18 September 2018 the Commission opened an in-depth investigation to assess whether BMW, Daimler and VW colluded in breach of competition rules on the development and roll-out of technology to clean the emissions of petrol and diesel powered passenger cars.

The Commission's investigation follows inspections carried out at the premises of German car manufacturers in Germany in October 2017. It focuses on information indicating that they participated in meetings where they discussed, among other matters, the development and deployment of technologies to limit harmful car exhaust emissions. The Commission will assess whether the companies colluded to limit the development and roll-out of certain emission control systems for cars sold in the European Economic Area. The first such system is the selective catalytic reduction to reduce harmful nitrogen oxides emissions from passenger cars with diesel engines. The second system is based on the "Otto filters" to reduce harmful particulate matter emissions from cars with petrol engines.

The Commission's formal investigation is concerned solely with these emission control systems. Numerous other technical topics were discussed, including common quality requirements for car parts and quality testing procedures or exchanges concerning their own car models on the market. Cooperation extended to crash tests where the car companies pooled technical expertise and development efforts to improve testing procedures for car safety. At this stage the Commission does not have sufficient indications that these discussions constituted anti-competitive conduct that would merit further investigation.

ECJ refers Infineon case back to General Court

On 26 September 2018 the European Court of Justice (ECJ) ruled that the factors which must be taken into account in the context of the assessment of the amount of the fine must include the number and intensity of the incidents of anticompetitive conduct.

In 2014 the Commission imposed fines totaling €138m on companies for having coordinated pricing policies in the smart card chip sector. The €82.8m fine on Infineon was after applying a reduction of 20% because its participation was limited to the arrangements with only Samsung and Renesas. Infineon asked for the General Court's annulment of the Commission's decision and the amounts of the fine. On 15 December 2016 the General Court dismissed this request and upheld the fines. Infineon appealed to the ECJ and complained that the General Court examined only five of the eleven allegedly illegal contacts found by the Commission and that the incomplete judicial review of the decision led to an insufficient review of the fine.

On 26 September 2018 (C-99/17 P Infineon Technologies) the ECJ ruled that, although, for the purpose of assessing the gravity of the infringement committed by the applicant and setting the amount of the fine the General Court is not required to rely on the exact number of bilateral contacts, that factor may constitute a relevant factor among others. Consequently, the General Court was not entitled to refrain from responding to the argument raised by Infineon. It should not have confined itself to confirming five of the eleven contacts found in the Commission's decision, whilst leaving open the question whether the Commission had also established the existence of the six other contacts found.

The ECJ referred the case back to the General Court to assess the proportionality of the fine imposed in relation to the number of contacts found against Infineon, if necessary by examining whether the Commission established the existence of the six contacts on which the General Court has not yet adjudicated.

Commission approves Slovakian State Aid for Jaguar Land Rover

On 4 October 2018 the Commission concluded that Slovakia's €125m investment aid to Jaguar Land Rover (JLR) is in line with State Aid rules.

JLR is a car manufacturer owned by Tata Motors Limited India. It is investing €1.4bn to build a manufacturing facility in the region of Nitra, Slovakia, which is an area eligible for regional aid under EU State Aid rules. Slovakia notified the Commission of its plans to grant €125m of public support for the project under the Commission's Guidelines on Regional State Aid for 2014-2020. The guidelines enable support to be provided for economic development and employment in EU's less developed regions and to foster regional cohesion in the Single Market.

The Commission's in-depth investigation confirmed that JLR considered several locations. The aid was limited to the minimum necessary to influence the decision by JLR as it compensated the company for the financial disadvantages incurred for carrying out the project in Nitra rather than Mexico. The plant would have a production capacity of 150,000 cars per year and is expected to create 3,000 direct jobs. Infrastructure measures financed by the Slovak state would also benefit other companies located in the Nitra region. The aid does not give a selective advantage to JLR vis-à-vis other companies. The Commission found that the transfer of a 185 hectare land plot was carried out at market price. The Commission concluded that the positive effects of the project outweigh any distortion of competition.

Report on competition in the agricultural sector

On 26 October 2018 the Commission published its first report on the application of competition rules in the agricultural sector.

EU competition rules apply to the production and trade of agricultural products. However, the Common Market Organisation Regulation ("CMO Regulation") contains derogations from the application of these rules, which affect all or some agricultural sectors. The new Article 152 of the CMO Regulation, introduced in January 2018, provides a safe harbour from the application of competition rules for recognised producer organisations and their associations. The report covers the period from 1 January 2014 to mid-2017.

Competition authorities carried out 178 investigations. Farmers were the single largest group of complainants. Most competition infringements concerned agreements on prices between competing processors to set the wholesale price, or between processors and retailers concerning retail prices, for example for dairy products, meat or sunflower oil. The report identified several instances of European competition authorities stopping

and sanctioning practices employed by large buyers that aimed to reduce prices paid to farmers.

Competition authorities investigated and stopped a number of collective agreements, where for instance farmers in a given Member State attempt to hinder sales by farmers from other Member States. Authorities have also provided guidance to farmers, other operators and governments on how to interpret and apply competition law in the sector, such as on the farmers' sustainability initiatives or the publication of prices by sector organisations and the balance of bargaining power between farmers and other levels of the chain.

Recognised producer organisations and interbranch organisations, of which there are 128 in the EU, mainly located in France and Spain, can help strengthen the farmers' position and can contribute to a more efficient food supply chain.

Investigation into Tata Steel and Thyssen Krupp merger

On 30 October 2018 the Commission opened an in-depth investigation to assess the proposed creation of a joint venture by Tata Steel and ThyssenKrupp for the supply of various high-end steels.

Tata Steel, headquartered in India, and Thyssen Krupp, headquartered in Germany, are major integrated producers of flat carbon steel and electrical steel with significant production facilities in the European Economic Area (EEA), in particular in Germany, the Netherlands and the UK. They plan combining their European carbon steel and electrical steel businesses in a joint venture.

The Commission's initial investigation raised issues in the markets of steel for automotive applications, metallic coated steel for packaging and grain oriented electrical steel, which is used to produce a variety of engineering products such as transformers. The Commission is concerned that these customers would face a reduced choice in suppliers and higher prices. Customers include various European companies that compete with imported products in the EEA, or export their products outside Europe and compete globally. The Commission has until 19 March 2019 to make a decision.

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

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

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