

EU Law News

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

- Acquisition of sole control of Wind Tre by Hutchison approved
- Commission clears merger between Praxair and Linde
- In-depth investigations into two mergers of copper producers
- Consumer electronics companies fined
- Google fined €4.34bn for practices regarding Android mobile devices
- In-depth investigation into acquisition of Alstom by Siemens

Acquisition of sole control of Wind Tre by Hutchison approved

On 31 August 2018 the Commission cleared Hutchison's acquisition of sole control of Wind Tre, currently jointly controlled by Hutchison and VEON. Hutchison will remain responsible for fulfilling the conditions of the Commission's 2016 decision clearing the creation of Wind Tre.

Wind Tre was created in 2016 from the combination of the activities of VimpelCom's (now VEON) subsidiary WIND with those of Hutchison's subsidiary H3G, respectively the third and fourth largest operators in the Italian retail mobile market. The Commission had concerns that the creation of Wind Tre would have reduced competition of mobile virtual network operators. These concerns were addressed through structural remedies offered by Hutchison and VimpelCom. The Commission allowed the market entry of the French telecommunications operator Iliad as a new mobile network operator in Italy.

The Commission's review of Hutchison's acquisition in 2018 of sole control over Wind Tre found that the new transaction does not alter the existing competitive situation resulting from the 2016 transaction. The Commission stated that new transaction would raise the same concerns identified in its 2016 clearance decision. To address these concerns, Hutchison accepted to assume full responsibility for complying with the commitments submitted jointly with VimpelCom in 2016. On that basis the Commission approved of the acquisition of sole control.

Commission clears merger between Praxair and Linde

On 20 August 2018 the Commission approved the proposed merger between Praxair and Linde. The approval is conditional on the divestiture of an extensive remedy package.

Praxair, headquartered in the United States, and Linde, headquartered in Germany are active worldwide across the whole supply chains of industrial gases, medical gases, specialty gases and helium. Both companies also offer engineering and gas plant construction services. With Air Liquide and Air Products they are two of the four largest companies.

The Commission concluded that the proposed transaction, as originally notified, would have reduced the number of significant gas players in the European Economic Area (EEA) from four to three, creating a new market leader in the European gas industry. The Commission confirmed the gap between the four major suppliers and other competitors in terms of financial as well as operational and engineering capabilities necessary to bid for the largest projects.

To address the Commission's competition concerns, Praxair and Linde offered three commitments. First, to divest to a suitable purchaser Praxair's entire gas business in the EEA. Second, to transfer Praxair's stake in an Italian joint venture active in Central and Eastern Europe and in Italy to Praxair's current joint venture partner Flow Fin. Third, to divest additional helium sourcing contracts, beyond those needed to satisfy demand in the EEA, to one or more suitable buyers. These commitments are to remove the overlap between Praxair and Linde's activities in the EEA. With respect to the market for the sourcing of helium, which is global, the commitments are designed to ensure that competition is maintained through the divestment of further sourcing contracts. The Commission stated that it cooperated closely with the US Federal Trade Commission and the Canadian competition authority.

In-depth investigations into two mergers of copper producers

On 1 August 2018 the Commission opened an in-depth investigation to assess Wieland's proposed acquisition of Aurubis Rolled Products and of Schwermetall. The Commission is concerned the takeover may reduce competition in the supply of key copper inputs to manufacturers.

Wieland and Aurubis both produce rolled copper products and copper alloys that are used in the manufacturing of many products, including transformers, semiconductors, heat exchangers and roofing materials. Aurubis also produces billets for the manufacturing of copper tubes. Schwermetall is a 50/50 joint venture of Wieland and Aurubis which sells pre-rolled strip to both Wieland and Aurubis Rolled Products, as well as to other copper manufacturers. The Commission in its initial market investigation identified preliminary competition concerns in relation to rolled copper products, pre-rolled strips and billets. The Commission considered initial commitments offered to be insufficient and will now carry out an in-depth investigation until 10 December 2018.

On 23 July 2018 the Commission also opened an in-depth investigation regarding the proposed acquisition of MKM by KME. KME operates several production sites in Europe, the US and China. It is a subsidiary of Intek Group, a listed company with headquarters in Italy. MKM has one plant in Germany.

The Commission is concerned that the merger may reduce competition in the supply of rolled copper products and the supply of pre-rolled strip. Regarding sanitary copper tubes it noted that MKM is a serious challenger to KME, the EU market leader. The transaction would eliminate competition between the companies in many EU countries where the supply of sanitary copper tubes is already particularly concentrated. The Commission has until 29 November 2018 for concluding its in-depth investigation.

Consumer electronics companies fined

On 24 July 2018 the Commission fined consumer electronics manufacturers Asus, Denon & Marantz, Philips and Pioneer a total of €111m for imposing fixed or minimum resale prices on their online retailers.

Between 2011 and 2015 the manufacturers engaged in fixed or minimum resale price maintenance by restricting the ability of their online retailers to set their own retail prices for consumer electronics such as kitchen appliances, notebooks, displays and hi-fi products. Retailers which did not follow the prices requested by manufacturers faced threats or sanctions such as blocking of supplies. Many online retailers use pricing algorithms which automatically adapt retail prices to those of competitors. These practices and sophisticated monitoring by the manufacturers had therefore a broader impact on overall online prices. All four companies cooperated with the Commission by providing evidence with significant added value and by expressly acknowledging the facts and the infringements of EU antitrust rules. The Commission granted reductions to the fines between 40% and 50%. The eventual fines are €63.5 for Asus, €7.7m for Denon & Marantz, 29.8m for Philips and €10.1m for Pioneer.

Google fined €4.34bn for practices regarding Android mobile devices

On 18 July 2018 the Commission fined Google €4.34 billion for imposing illegal restrictions on Android device manufacturers and mobile network operators as a vehicle to cement the dominance of its search engine. The fine has been calculated on the basis of the value of Google's revenue from search advertising services on Android devices in the EEA. Google must stop the conduct within 90 days or face penalty payments of up to 5% of the average daily worldwide turnover of Alphabet, Google's parent company.

Google obtains the vast majority of its revenues via its flagship product, the Google search engine. In response to the shift from PCs to mobile internet it developed a strategy to anticipate the effects of this shift by buying in 2005 the original developer of the Android mobile operating system. Currently about 80% of smart mobile devices in Europe and worldwide run on Android. As a licensable operating system, Android is different from systems exclusively used by vertically integrated developers like Apple iOS or BlackBerry. Those are not part of the same market because they are not available for licence by third party device manufacturers. When Google develops a new version of Android it publishes the source code online. This allows third parties to download and modify this code to create so-called Android forks. However, the source code covers only basic features of a smart mobile operating system, and not Google's proprietary Android apps and services. For that, device manufacturers need to enter into contracts with Google.

The Commission's decision concerns three specific types of contractual restrictions that Google has imposed since 2011 on device manufacturers and mobile network operators. Google required manufacturers to pre-install the Google Search app and browser app Chrome as a condition for licensing Google's Play Store. That store accounts for more than 90% of apps downloaded on Android devices. This market is also characterised by high barriers to entry. Google's practice has therefore reduced the incentives of manufacturers to pre-install competing search and browser apps, as well as the incentives of users to download such apps. Google also made payments to certain large manufacturers and mobile network operators on the condition that they exclusively pre-installed the Google Search app on their devices. Finally Google prevented manufacturers wishing to pre-install Google apps from selling even a single smart mobile device running on alternative versions of Android that were not approved by Google. The Commission has found evidence, for example, that Google's conduct prevented a number of large manufacturers from developing and selling devices based on Amazon's Android fork called "Fire OS".

In-depth investigation into acquisition of Alstom by Siemens

On 13 July 2018 the Commission opened an in-depth investigation to assess the proposed acquisition of Alstom by Siemens. The Commission is concerned that the merger may reduce competition in the supply of several types of trains and signalling systems

Siemens and Alstom are global leaders in high speed, mainline and urban trains as well as metros and trams. They also provide signalling solutions and systems that provide safety controls on mainline and urban rail networks. The Commission is concerned that the proposed transaction would remove a very strong competitor and reduce the number of suppliers for trains. The Commission looked at the impact both within the EEA and on a worldwide basis. That is however excluding China, Japan and Korea which have barriers preventing imports from foreign suppliers. The merged entity would be the undisputed market leader for trains and signalling solutions in both geographic markets. At this stage the Commission found that the entry of new competitors into the EEA train or signalling solutions markets, including in particular of potential Chinese suppliers, appears unlikely to occur in the foreseeable future. The Commission has until 21 November 2018 to take a decision.

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

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