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EU Law News

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

Lisbon Treaty

Lisbon Treaty fully ratified

The Lisbon Treaty has been ratified on 3 November 2009, after receiving the final signature of Czech President Václav Klaus. According to EU practice, the Treaty could enter into force on 1 December 2009 and is considered to be the most important reform of EU rules and institutions in recent decades.

The most significant changes that the Lisbon Treaty will bring about are an increase in qualified majority voting in the Council, an increased involvement of the European Parliament by an extended co-decision procedure, the elimination of the current pillar system and the creation of a President of the European Council.

Competition

General Motors halts sale of Opel after concerns regarding Compliance State Aid Rules

General Motors has announced that sale of Opel to Magna International, a Canadian car parts supplier, Russian bank Sberbank and Russian car company Gaz, has been dropped. According to GM, there were serious concerns in the board about consequences of the restructuring plans that Magna/Sberbank/Gaz had in mind. The Canadian-Russian bidder intended to cut about 10,500 jobs overall, of which half of that amount were in Germany.

Germany allocated €4.5 million of State aid to Opel in an attempt to rescue the German manufacturer. There are doubts however, that this State aid is fully compliant with EU State Aid and Market Rules. The European Commission has asked the German government for clarification of the conditions of the sale of Opel, as there were strong indications that the State aid was dependent upon the allocation of the sale to the Canadian-Russian bidder as this sale would not threaten Opel's German based operations and plants.

Even though the sale is dropped, the Commission has again shown its ability to take a strong stand in its role of investigating substantial State aid injections.

Competition

European Commission takes strong measures against market sharing cartel

The European Commission has fined 7 major energy companies accused of forming a cartel within the market for power transformers between 1999 and 2003. The companies ABB, AREVA T&D, ALSTOM, Fuji Electrics, Hitachi, Toshiba and Siemens violated Article 81 EC Treaty on cartels and restrictive business practices by taking part in a secret agreement to share the market for power transformers. This agreement required that the Japanese producers of power transformers would not sell power transformers in Europe and that European producers would offer power transformers on the Japanese market.

Power transformers are used by electricity suppliers in their electricity grids for transmission and distribution of electric power to the customer.

The market sharing agreement between these companies was conducted in a very secretive manner, and was detected by the European Commission when they commenced so-called surprise inspections on the companies in question.

The Commission has imposed fines totaling €67,644,000 on six companies, excluding Siemens. Under the 2002 Leniency Notice of the Commission, which grants immunity from fines and reduction of fines in cartel cases, Siemens received full immunity as it was the first company to share information with the Commission about the cartel. ABB on the other hand received a fine, increased by 50%, as it had already been fined previously for forming a cartel. The Commission found that the cartel not only harmed the customers of the producers, but also European electricity consumers.

Media

European Parliament votes against increased EU influence in media affairs

The debate evolved around the proposed European Parliament resolution on freedom of information in Italy. In 2004, the Parliament already adopted a report condemning the dominance of Italian Prime Minister Silvio Berlusconi. The Parliament rejected the new proposal.

More importantly, the European Parliament has also narrowly voted down a proposal of the European Commission to protect media pluralism in Europe, with a total of 338 votes against, 335 in favor and 13 abstentions. Whereas some view this as an opportunity for the Parliament to condemn political interference in media and to combat media monopolies, a small majority of the Parliament claimed that the EU should not regulate media. It was argued that the Parliament was not the appropriate forum to discuss national and domestic issues or make a case against governments of individual EU Member States.

This decision of the Parliament is set against the background of a very cumbersome process towards increased EU media regulation. Whereas the Parliament previously invited the European Commission in 2007 to provide concrete measures to ensure media pluralism and in particular welcomed the Commission's working paper on media pluralism (SEC(2007)32), the Parliament has now sent a signal that it disapproves of EU interference in national media affairs.

State Aid

Competition authorities use State Aid powers for intervention in major banking groups

The Dutch financial services group ING announced that it will break up its core business by splitting its banking and insurance division. This announcement came after an order from the European Commission to sell large parts of the company's core business to compensate for the State aid ING received during the financial crisis.

ING was under scrutiny of the European Commission after the Commission had opened an in-depth investigation regarding ING's illiquid back-up facility. According to the European Commission, State aid in the form of impaired asset relief, had to be properly remunerated and should not give undue advantages to banks. In January, ING received a €10 billion direct investment from the Dutch government, and state guarantees on 80% of its €27.7 billion mortgage-backed securities portfolio. The bank had earlier announced restructuring plans to the European Commission, but the ruling has made these plans redundant.

The Insurance business of ING by itself is worth an estimated €12-15 billion, but the sale in total is believed to entail a 45% reduction in ING's balance sheet of €1,332 billion (2008). It is expected that the European Commission will continue to investigate substantial State aid given to large banks and corporations such as Lloyds Banking Group and Royal Bank of Scotland.

Financial services

Commission approves creation of new supervisory authorities to strengthen financial supervision

The European Commission has recently adopted a so-called supervision package. This package of proposals aims at strengthening financial supervision by creating a European System of Financial Supervisors (ESFS). The proposal should ensure a more harmonized set of financial rules through the possibility to develop draft technical standards, settle disagreements between national supervisors and facilitate the sharing of micro-prudential information. The package is sent to the Council and the European Parliament for consideration.

This publication has been carefully prepared but is intended for general guidance only. On any specific matter, reference should be made to the appropriate adviser.

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