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EU Law News

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

Liberalisation of Postal Services

New report shows postal market gradually being opened up

The European Commission's latest report on liberalising the postal market, dated 22 December 2008 and covering the period 2006-2008, shows mixed progress. In Finland, Germany, Sweden and the UK, postal markets are now fully liberalised, but the Netherlands, where full market opening was planned for 2008, has postponed liberalisation without setting any firm date for full market opening. Despite three Directives since the first liberalisation proposals in 1992, the opening up of EU postal markets remains patchy. The Directives created a regulatory framework guaranteeing citizens a universal service, while gradually reducing the "reserved areas" to which Member States can restrict access for economic operators.

The Third Postal Directive (2008/06/EC), adopted in February 2008, set the deadline for full market opening at 31 December 2010 for most Member States (covering 95% of EU postal markets in terms of volume) and at 31 December 2012 for the remaining Member States. In many Member States, however, a large part of the addressed mail market is still reserved for the incumbent postal operators. Excessive licensing requirements and denial of access to essential elements of the postal infrastructure also show the rise of protectionist tendencies in some Member States. The Commission wants National Regulatory Authorities (NRAs) to play a bigger part in establishing common rules and removing barriers to competition.

Unannounced Anti-trust Inspections

Commission targets possible cartel of smart chip producers

The Commission has recently confirmed that its anti-trust officials carried out "dawn raids" at the premises of several smart card chip producers in several Member States on 21 October 2008, in the belief that the companies under inspection might have been involved in price-fixing, customer allocation, and the illegal exchange of commercially sensitive information. The chips in question are used for the production of smart cards, such as telephone SIM cards, bank cards and identity cards. The companies raided were not identified, but Europe's STMicroelectronics, Infineon and NXP have all confirmed that they were inspected.

Potential fines for operating a cartel are high (up to 10 % of the company group's turnover). As reported in the last issue of *EU Law News*, the French glass-maker St Gobain was recently fined almost €900 million for illegal market sharing. However, the fact that the Commission carries out inspections does not mean that the companies are guilty of anti-competitive behaviour; nor does it prejudge the outcome. There is no strict deadline for completing cartel inquiries, which depend on the complexity of each case, the extent to which companies co-operate and the exercise of the rights of defence.

German Loans Pass State Aid Test

Commission approves emergency financial support package

To alleviate the economic crisis, the German government recently introduced two financial support measures:

- a €15 billion loan programme (KfW-Sonderprogramm 2009) which is intended to provide liquidity for undertakings affected by the current credit squeeze. The programme would provide for interest rate reductions on loans to finance investments and working capital of up to €50 million to be granted to undertakings with annual turnover of less than €500 million. The programme will be administered by the Kreditanstalt für Wiederaufbau (KfW), the main public development bank in Germany, in close co-operation with the undertakings' own bankers.
- a federal framework scheme (Bundesregelung Kleinbeihilfen) allowing economic policy actors at federal, regional, and local level to provide aid of up to €500,000 per undertaking to firms in need.

The two schemes had to be submitted to the European Commission for approval within the framework of EU state aid rules. Within a few days over the Christmas break, the Commission gave the go-ahead, after deciding that the measures are compatible with Article 87.3.b of the EC Treaty as aid to remedy a serious disturbance in the economy of a Member State. These are the first cases to be approved under the Commission's new temporary framework, providing quick measures to tackle the effects of the credit squeeze on the real economy.

Accelerated Public Procurement Process

More encouragement for public sector investment projects

The public procurement Directive 2004/18/EC allows recourse to accelerated procedures in cases of urgency. The Commission accepts that the exceptional nature of the current economic situation justifies the use of the accelerated procedure, reducing the time limit from 87 days to 30 days. The presumption of urgency will apply throughout 2009 and 2010 for public sector projects in the EU, thus helping to stimulate economic activity and employment.

The speeding up of procurement procedures should encourage Member States to boost their economies through rapid execution of major public investment projects. This emphasis on public spending, as a way to alleviate the financial crisis, is evidence that we are moving towards more state intervention in the markets.

Moves Towards Global Banking Reform

Bank for International Settlements may toughen regulations

US and European banking chiefs recently came together with central bankers and regulators in Basel, Switzerland, for an unofficial meeting, hosted by the Bank for International Settlements, to discuss the post-crisis regulatory framework.

It is expected that the Basel Committee for Banking Supervision, which sets world banking regulations and designed the Basel II framework for measuring banks' capital, will soon propose plans to encourage banks to hold greater capital reserves in future, while making provisions for future bad debts throughout the economic cycle.

EU Electricity Network Established

Energy package brings together transmission operators

Unaffected by turbulence in the natural gas market, the situation in the electricity sector seems to be business as usual. On 19 December 2009, the Commission welcomed the establishment of the European Network of Transmission System Operators for Electricity (ENTSO-E). The 42 European Transmission System Operators (TSOs) have signed an agreement to establish this new organisation which could become the TSO organisation foreseen by the Third Energy Package, which is under discussion between the Council and the Parliament, with a view to its final adoption in spring 2009.

Existing associations such as ETSO, the Union for Co-ordination for Transmission of Electricity (UCTE) and Nordel will be dissolved and their tasks and functions will be undertaken by the new organisation. Challenges for the electricity grid come from connecting large amounts of wind power, often far away from consumption, increased volatility of production and increasing share of generation in the distribution networks. In addition to increasing the capacity of the grids to meet these challenges, control systems and electricity markets need to be reshaped to allow for secure, efficient and economically optimal output of the European electricity system. The Package foresees the establishment of the equivalent organisation for natural gas, ENTSO-G, but discussions between the various stakeholders with regard to the exact ENTSO-G statutes are still on-going.

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