Luther

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EU Law News

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

EU anti-dumping duties overturned for lack of explanation of a cost adjustment

Punitive anti-dumping duties placed on two Chinese canned-fruit producers have been annulled by the European Union's General Court in an appeal put before it on 17 February 2011. The court ruled that the EU institutions had failed to properly explain the cost adjustment in the price calculations for the imposition of duties. Zhejiang Xinshiji Foods and Hubei Xinshiji Foods brought an appeal to the General Court for the annulment of duties imposed by the EU worth 80% of the import value of their preserved-mandarin imports, or €490.7 per tonne. The court found that the regulation imposing the duties "infringes the rights of the defence and fails to set out reasons insofar as it concerns the applicants".

At issue was a change made by the Commission to the export from China price used as a comparison with the domestic EU price. The import adjustments appeared only to take into account costs up to the importer's warehouse and did not include submissions made by the two applicants during the anti-dumping investigation. The court found that the EU institutions had failed to communicate to the two companies why such an adjustment was appropriate and they were therefore put in a position where they could not effectively make their views known as to whether they felt the comparison was fair. The court said that clarifications made by the EU institutions during the case would not change the ruling as this should have been part of the actual measure imposing the duties.

Commission sets out roadmap to 2050 for a low-carbon economy

The European Commission has announced the adoption of a roadmap for a low carbon economy to 2050. The roadmap aims to set out the means by which Europe will meet the objective of reducing EU greenhouse gas emissions to 80-95% below 1990 levels. The focus of the document is on domestic action, which accounts for 80% of the proposed reduction, achieved progressively through 25%, 40% and 60% cuts below 1990 levels by 2020, 2030 and 2040 respectively. The 25% cut by 2020 is higher than the 20% cut already aimed for.

To achieve these cuts, the Commission has said that increased investments to the amount of 1.5% of EU GDP – or €270bn – will be required on top of currently forecast spending. Much of these costs will be recovered through savings by avoiding the import of gas and oil, estimated at €175-320bn a year. A proposed means of meeting these cuts would be to cut the number of emission allowances made available to companies operating in the EU in the coming years. The roadmap foresees a need for further action through the creation of a number of more specific sectoral roadmaps to meet these goals.

The 2050 roadmap follows the launch in January of "A resource-efficient Europe" which was one of the Commission's flagship initiatives under the Europe 2020 strategy launched last year. Other plans under that initiative include:

- A 2020 efficiency plan
- A whitepaper on the future of transport
- An energy roadmap to 2050
- A roadmap to a resource-efficient Europe
- Reforms to the Common Agricultural, Common Fisheries and Cohesion Policies
- A new EU biodiversity strategy for 2020, and
- Measures regarding commodity markets and raw materials

Court of Justice rules insurance premiums based on gender unlawful

In a preliminary ruling the European Court of Justice (ECJ) has decided that insurance premiums based on gender are contrary to EU law. The case was referred to the ECJ by the Belgian

Constitutional Court who was asked to annul the law implementing Directive 2004/113/EC which ensures equal treatment between men and women in access to services. A special exemption had been made for insurance premiums pending a review by Member States. In its judgment, the court noted that, given there was no temporal limit on how long this exemption would remain, it could last indefinitely. The court ruled that, as the exemption works against the achievement of the objective of equal treatment, it should be considered invalid with the expiry of the "transition period" on 21 December 2012.

This decision has the effect that insurance premiums may no longer be based on gender, resulting in the abolishment of a long running practice of charging women lower premiums for car insurance because they are statistically less likely to be involved in accidents. The ruling has implications for men too, who have generally been the beneficiaries of higher retirement payments due to having a shorter life expectancy than women.

The ruling has received a mix response. The European Insurance and Reinsurance Federation said that the ruling will result in increased costs for consumers, particularly women drivers, who will face higher premiums. Counter to this, the European Women's Lobby and AGE Platform Europe in a joint statement expressed their delight in the ruling, saying it was "a victory for fairness, common-sense, solidarity and the rule of law". They said that other criterion should be used such as lifestyle choices which might be considered legitimate factors in risk assessment. Open Europe, a UK based think tank, has estimated that the ruling will result in an additional cost of £4,300 (€4,935) in insurance premiums for a 17 year old female driver by the time she reaches 26, while male drivers will save £3,250 (€3,730) over the same period.

German airports may be liable to airlines for illegal state aid

The German Federal Supreme Court has ruled that airlines may sue airports for awarding illegal state aid to competitors in breach of European Union rules. German airlines Lufthansa and Air Berlin claimed that Ryanair had been the recipient of illegal state aid from the Frankfurt Hahn and Hamburg Luebeck airports. These airports are ultimately state-owned and had allegedly imposed lower airport charges on the low-cost airline in contravention of state aid rules. The court argued that the objective of the European Union rule was not only to prohibit illegal state aid, but also to protect those affected by market distortions due to such subsidies.

The cases have now been referred back to the lower courts, which had previously rejected claims by Lufthansa for the disclosure of the benefits granted to Ryanair and seeking an order against the granting of "marketing support" or any other financial support to the airline. The lower courts had taken the view that EU law did not provide a legal basis for such claims. According to the Federal Supreme Court, however, German national law does provide this basis as well as providing for the award of damages.

The lower courts will now have to assess whether the support for Ryanair constituted state aid. This decision follows a number of complaints against the low cost airline that has been accused of unfairly receiving state aid. This is, however, the first time that leave has been granted to private companies on the basis of damages provisions.

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