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EU Law News

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

EU claims some victory despite WTO Appellate Body ruling that Airbus received illegal subsidies; Panel report finds that Boeing also received illegal subsidies

The EU is claiming victory following the publication of the WTO's Appellate Body's report of 18 May 2011 on a long standing dispute between the US and Europe relating to illegal subsidies paid to Airbus, Europe's flagship airplane manufacturer. The report has yet to be adopted by the WTO's Dispute Settlement Body before it becomes law. The Appellate Body's report overturns the findings of the Panel, and most significantly that the support given by Germany, France and the UK for the launch of Airbus A380, was a prohibited export subsidy. The victory was not complete for the EU, however, as the report upheld the decision by the Panel that a number of other subsidies paid by European countries were illegal, including certain old equity infusions and restructuring measures by France and Germany, infrastructure measures in Germany and certain regional grants by Spain and Germany.

The decision follows the most recent decision by the Panel in a sister case on 31 March, this time involving Boeing, the US based airplane manufacturer. The Panel in that case ruled in favour of the EU who had claimed that Boeing had received huge subsidies from the US government. "This WTO Panel report clearly shows that Boeing has received huge subsidies in the past and continues to receive significant subsidies today ... These subsidies have resulted in substantial harm to EU interests, causing Airbus to lose sales, depress its aircraft prices and unfairly lose market share to Boeing" said Karel De Gucht, the EC Trade Commissioner, in a statement. The EU does not seem fully happy with the decision, however, having appealed the decision to the Appellate Body on 4 April.

The disputes date back to 2004 when the US pulled out of a bilateral agreement with the EU on support for aircraft producers and filed their complaint on subsidies made by the EU to the airline industry over a 30-40 year period. The EU responded by filing a second claim against the US government's own subsidies to Boeing on the same day.

European Commission investigates investment banks on antitrust allegations

The European Commission has announced that it has opened two antitrust investigations into the Credit Default Swaps (CDS) market. CDS are a financial instrument meant to protect investors in the event that a company or State they have invested in defaults on their payments. CDS are also used as a speculative tool. The Commission is investigating whether 16 investment banks and the leading provider of financial information in the CDS market, Markit, have colluded or hold and abuse a dominant position in order to control the value of CDS. A second case relates to the investigation into nine banks and the leading clearing house for CDS, ICE Clear Europe, and whether preferential tariffs granted by ICE to the banks have the effect of locking them into the ICE system to the detriment of competitors. The cases follow criticism directed at the role the CDS market played in prolonging the global economic downturn following the global economic crisis. There is no time limit in which the Commission must complete their investigations, but should the firms involved be found guilty, they can be fined up to 10% of their global revenue.

European Court of Justice rules same-sex couples must be treated equally to married couples for pension entitlements

The European Court of Justice, in a preliminary ruling, has held that people in same-sex civil partnerships are entitled to the same pension rights as people in a heterosexual marriage. The case was referred to the Court of Justice by the Labour Court of Hamburg, Germany, and involves a former employee of the Freie und Hansestadt Hamburg (the City of Hamburg). Despite having lived with his partner since 1969, the City of Hamburg refused to treat him as married which would have entitled him to higher pension payments. The Court noted that under German law, marriage presupposed that the couple were in a heterosexual relationship and that civil-partnership presupposed a homosexual relationship, but that following gradual harmonisation there was no longer any significant difference between the statuses of heterosexual and homosexual people. "As the German law on registered life partnerships provides that life partners have duties towards each other to support and care for one another and to contribute adequately to the common needs of the partnership, the same obligations are incumbent on both registered life partners and married spouses and both cases are comparable", the court said. The court also noted that the contributions required from the applicant were as high as those required from married persons. The ruling sets an important precedent for other countries in Europe, such as France, the Czech Republic and Slovenia, where registered same-sex partnerships have mutual support obligations but appear to be excluded from a surviving partner's pension.

European Union to reform Generalised System of Preferences

The European Commission has announced that it intends to revamp its long standing Generalised System of Preferences, or GSP, by cutting in half the number of countries benefitting from the lower tariff. Under WTO rules, all members must charge each other the same tariff rate applied to any other member. Few exceptions exist, one being that lower tariffs may be imposed on developing countries to help them in accessing foreign markets. The cut, amounting to up to 80 countries, "takes into account the emergence of more advanced developing countries which are now globally competitive" said a Commission statement. The cut reflects changes to higher income per capita in some countries, with Russia as well as Middle Eastern countries Kuwait, Qatar and Saudi Arabia specifically singled out. The "graduation" principle, where countries whose products in a certain sector will lose the benefits when they reach a certain market share, will also be revised, and will in the future apply to more product sectors.

The GSP+ system, where special tariff rates are imposed based on a country's respect for human rights, labour rights, good governance and sustainable development, will also be revised by removing the graduation principle from GSP+ countries as well as by increasing the number of countries eligible to benefit from the rules.

The proposed regulation must first pass the European Parliament and Council of Ministers before coming into effect. However, a time constraint does exist, with the current GSP scheme coming to an end in December 2011 and the Council and Parliament having passed a "roll-over" scheme only to the end of 2013.

Landmark judgment on access to whistle-blowers' files

Under EU law members of a cartel can escape exorbitant fines, which can amount to up to 10% of their worldwide group turnover, if they blow the whistle on the cartel and file leniency applications with antitrust authorities. These applications contain information useful to companies that have suffered damage due to the cartel and are considering suing the members of the cartel for compensation. The European Commission and national antitrust authorities have so far refused claimants a right to access these files as they fear that such access will render their leniency programmes less attractive and might spell the end of their most successful tool in the detection of cartels. However, German law expressly states that access to such documents must be granted. A German court has therefore referred the question to the European Court of Justice as to whether this provision of German law is contrary to the effect of EU cartel enforcement and should therefore be disregarded. The Court of Justice is expected to deliver its judgment on this landmark case on 14 June 2011.

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