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EU Law News

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



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Settlement Procedure for Cartels

Commission calls for comments on draft package

The European Commission has launched a public consultation until 21 December 2007 on a package designed to allow for the settlement of cartel cases where the parties not only acknowledge their involvement in the cartel and their liability for it but also agree to a faster and simplified procedure for settling the problem. The draft Notice and Regulation aim to simplify the administrative proceedings and could reduce litigation in cartel cases. If adopted, it would allow the Commission to impose a lower fine on parties who agreed to the settlement procedure. The Commission will have a broad margin of discretion to determine which cartel cases are suitable for this treatment.

Such co-operation would be different from the voluntary production of evidence to trigger or advance the Commission's investigation, which is already covered by the recently revised Leniency Notice. This initiative also complements the revised fines Guidelines. Comments on the package must be made by 21 December 2007, after which a revised proposal will be prepared, in consultation with Member State competition authorities, for adoption in 2008.

Investment Services

Markets in Financial Services Directive (MiFID)

On 1 November 2007, the Markets in Financial Services Directive 2004/39/EC entered into force, replacing the 1993 Investment Services Directive. The Commission believes



this landmark law will play a central role in creating a robust, common regulatory framework for Europe's securities markets. MiFID is expected to be an important tool for financial markets and investor protection, increasing competition among exchanges, multilateral trading facilities (MTFs) and investment firms and giving them a "single passport" to operate throughout the EU on the basis of authorisation in their home Member State.

The Committee of European Securities Regulators (CESR) has issued detailed guidance for companies operating in those few Member States where transposition of MiFID into national law has not yet been completed.

Merger Control: Danone Numico

Proposed acquisition approved subject to conditions

The Commission has approved the proposed acquisition of the Dutch company, Numico, by the French group, Danone. Both companies are major EU suppliers of baby food and baby milk products. Because of the Commission's serious doubts about the implications for Single Market competition rules, its approval of the deal was made conditional on the divestment of Numico's baby milk and baby drink business

in France, Danone's baby meals, baby milk, baby snacks, and baby drink activities in Belgium, and Danone's baby meal and baby snacks activities in The Netherlands. Subject to these commitments, the Commission has concluded that the transaction would not significantly impede effective competition in the European Economic Area.

EU-Russia Relations

Summit and Industrialists Roundtable held

In late October, European and Russian leaders met in Portugal to discuss the steady expansion in co-operation between the EU and Russia, as well as international and regional issues. In the margins of the EU-Russia Summit, an agreement was signed on further expansion of trade in steel and steel products. The Summit also looked at the recently launched EU-Russia investment dialogue, and the joint initiatives to tackle the problem of lengthy queues at many border crossings. Russia's WTO membership was also discussed, acknowledging the progress made, emphasising the need for Russia's early accession, and aiming to find mutually acceptable solutions to the outstanding issues. Discussions in the field of energy included development of an early warning mechanism in case of potential supply difficulties, and the regular report of the EU-Russia energy dialogue.

To enhance co-operation on a practical level, an EU-Russia Industrialists Roundtable meeting took place with the participation of Commissioner for Enterprise and Industry Günter Verheugen and Energy Commissioner Andris Piebalgs.

Company Law Update

Increasing cross-border mobility for companies

Expected by mid-2008 are Commission proposals for a European Private Company (EPC) Statute that would make it easier for small and medium-sized enterprises (SMEs) to operate across EU borders. A draft resolution on the EPC was adopted by the European Parliament in February 2007. Public consultation on the issue ended on 31 October 2007 but the Commission wants to test some issues with the market before making final proposals. It is hoped that the proposed regulatory framework will allow SMEs to make the most of increasingly integrated European markets.

The Commission has dropped the idea for a "14th company law directive" stipulating the conditions for transfer of registered office in the EU. Several companies have already transferred their registered office, using the possibilities offered by the European Company Statute. Moreover, the Cross-border Merger Directive, which comes into force in December 2007, will give all limited liability companies, including SMEs, the option to transfer registered office. They could do so by setting up a subsidiary in the Member State to which they want to move and then merging the existing company into this subsidiary. Meanwhile, work continues on the European Foundation Statute, with the results of a feasibility study expected in mid-2008.

EU-US Developments

First formal meeting of Transatlantic Economic Council

Seeking closer integration of the EU and US economies, business leaders working through the Transatlantic Business Dialogue (TABD) submitted their recommendations to the first formal meeting of the Transatlantic Economic Council in Washington on 9 November 2007. The recommendations focused on six priorities:

- regulatory co-operation (*e.g., harmonise automotive standards and nanotechnology regulation*)
- investment (*e.g., launch an Investment Dialogue and implement the transatlantic open skies agreement*)
- secure trade (*e.g., achieve mutual recognition of Authorised Economic Operator (AEO) and Customs Trade Partnerships against Terrorism (C-TPAT) programmes*)
- financial markets (*e.g., achieve regulatory equivalence of accounting standards by 2008*)
- intellectual property protection (*e.g., agree on US patent system reform to enable "first to file" protection*)
- innovation and technology (*e.g., joint biofuel standards*)

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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