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EU Law News

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

EU Presses for Solvency II Directive

Market turmoil gives new impetus to regulatory reform

The global financial crisis, bringing down Lehman Brothers and threatening other giants such as American International Group (AIG), has given new urgency to the need for changes to insurance industry regulation. The Solvency I Directives, which came into force in 2004, were only the first step in updating the 30-year old EU rules covering life and non-life insurance companies.

The European Commission is now keen to proceed with the more fundamental reforms envisaged in Solvency II. These proposals deal with capital adequacy requirements and risk management standards. The new rules would replace the existing "flat rate" system by calculating the capital a company needs to hold as a guarantee against default in proportion to the level of economic risk taken by the insurer. Supervision procedures would be strengthened by requiring more transparency from insurers and reinsurers and by increasing co-operation among national supervisors, especially for multinational companies.

Progress on getting these proposals accepted has been slow, with much heated debate about their pros and cons. There has been criticism of the scope of the directive and warnings that competition would be distorted to the disadvantage of insurance companies. But the climate for greater regulatory intervention is changing and the European Parliament, which is due to vote on the Solvency II package in November, seems likely to support the reforms.

Inconclusive Verdict on GSK Case

Definition of "ordinary" orders referred back to Greek courts

In our last edition, we reported on the long-running legal battle between GlaxoSmithKline (GSK) and a group of Greek pharmaceutical wholesalers. On 16 September 2008, the European Court of Justice

(ECJ) issued its judgment in this case which concerned a possible abuse of dominant position by GSK, which had stopped the claimants from exporting to other EU countries GSK products bought cheaply in Greece (so-called parallel trade). The wholesalers complained that GSK's restrictions constituted anti-competitive behaviour.

The ECJ ruled that if a dominant company refused to meet "ordinary" orders for medicinal products to prevent parallel exports, it would be breaching EU competition law, but that it was for the national court to ascertain whether the orders were ordinary in the light of both the size of those orders in relation to the requirements of the market in Greece and the previous business relations between GSK and the wholesalers concerned. Further litigation can be expected.

Google-Yahoo Deal under Scrutiny

European Commission investigates anti-trust aspects

The European Commission is investigating whether the advertising deal between Google, the world's biggest internet company, and its nearest competitor, Yahoo, might distort competition in the EU. The Commission has the power to fine Google and Yahoo 10% of their global revenues if the two disregard regulators. US anti-trust lawyers are also examining the deal, which would involve Yahoo running Google advertisements on search queries in the US and Canada. Google claims it would not "have any significant effect on Europe".

The deal is due to be closed in October and takes place as Google, Yahoo and Microsoft struggle for advantage in the search advertising business. The World Association of Newspapers, which represents 18,000 publications, dismisses Google's claim that the deal would have no effect in the EU. It argues that the deal would "give Google unwarranted market power over important segments of online advertising", seriously weaken competition, reduce newspapers' revenues and raise their marketing costs".



Commission Approves Sony Acquisition

Sony to become sole owner of Sony BMG

The European Commission has cleared, under the EU Merger Regulation, the proposed €844 million purchase by Sony Corporation of America of the 50% share held by Bertelsmann AG in Sony BMG.

Sony Corporation of America, part of the Japanese Sony group, has activities in consumer electronics, the entertainment industry, music recording and music publishing. Sony BMG, set up in 2004 as a joint venture between Sony and Bertelsmann, is active in the development of artists and the subsequent marketing and selling of recorded music in physical and digital format. It is one of the global industry's "big four" along with Universal, EMI and Warner Music. Under the proposed transaction, Sony will acquire full ownership and control of Sony BMG which will be renamed Sony Music Entertainment Inc.

The Commission concluded that the acquisition would not lead to any "horizontal overlaps in the music recording markets", since Sony has no other music recording activities in Europe.

To the dismay of independent music companies, the Commission also decided that the vertical integration between the activities of Sony in consumer electronics, video games and cinema, and its activities in music publishing and music recording would not create competition problems, and that Sony would not restrict access to its music catalogue to competitors in these areas. Online retailers would continue to have access to a sufficiently large portfolio of music rights from alternative suppliers and Sony would continue to have the incentive to purchase music from different sources.

No Damages for Blocked Merger

ECJ rules against compensation for MyTravel

In 1999, the European Commission decided that MyTravel Group, previously known as Airtours, could not buy the British tour operator, First Choice, as that would have left three travel companies owning a 79% share of the UK market for package holidays.

Three years later, however, the Court of First Instance ruled that the Commission had not successfully proved the merger would stifle competition. MyTravel then filed a claim for damages of €644 million, arguing that the Commission's unjustified decision to block the merger had resulted in a loss of profits.

The Court of First Instance has now decided that, in reaching its decision, the Commission did not manifestly and gravely infringe Community Law by unjustifiably blocking the merger and, therefore, the claimant was not entitled to damages.

Implementation of Internal Market Law

Commission takes action against 12 Member States

On 18 September 2008, the Commission announced its decision to take Austria, Belgium, Cyprus, France, Greece, Ireland, Portugal and Spain to the ECJ for failure to communicate measures transposing Directive 2005/36/EC on the recognition of professional qualifications. The Commission has also decided to send a reasoned opinion to Denmark on the same grounds.

In addition, the Netherlands will be referred to the ECJ over non-implementation of a Directive on transparency obligations of listed companies, as will the UK over non-implementation of a Directive on motor insurance. Finally, the Commission has decided to send a letter of formal notice to Luxembourg requesting information on its compliance with a previous ECJ judgment concerning implementation of a Directive on public procurement.

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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