

EU Law News

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

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- Wire harness manufacturers fined €141.8m for cartel behaviour
- Commission tables proposals to reduce fees from credit and debit card transactions
- Greece referred to ECJ for failure to recover incompatible state aid in two cases
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EU brings first WTO case against Russia

On 9 July 2013, the European Union (EU) launched a challenge to Russia's "recycling fee" on vehicles by requesting consultations through the World Trade Organisation's (WTO) dispute settlement procedures. According to the European Commission, this action was taken only after the issue was repeatedly raised in bilateral talks with Moscow, which were unsuccessful in reaching a concrete solution.

The so-called "recycling fee", introduced by Russia on 1 September 2012, is levied on all imported cars, trucks, buses and other motor vehicles. Vehicles produced in Russia are exempted, as are vehicles imported from Kazakhstan and Belarus due to their Customs Union with Russia. The fee ranges from €420 to €2,700 for a new vehicle and from €2,600 to €17,200 for a vehicle older than three years.

According to EU Trade Commissioner Karel De Gucht, "the fee is incompatible with the WTO's most basic rule prohibiting discrimination against and among imports. It is severely hampering trade in a sector which is key for the European economy". The fee impacts on EU vehicle exports to Russia amounting to €10bn annually, and according to Russian estimates leads to an additional €1.3bn in annual revenue flowing to the Russian government.

If a solution is not found through WTO consultations within 60 days, the EU can ask the WTO to set up a Dispute Panel to rule on the legality of Russia's measures.

Wire harness manufacturers fined €141.8m for cartel behaviour

On 10 July, the European Commission fined the car parts suppliers Sumitomo, Yazaki, Furukawa, SY Systems Technologies (SYS) and Leoni a total of €141.8m for operating five cartels for the supply of wire harnesses to Toyota, Honda, Nissan and Renault. The cartels covered the whole European Economic Area (EEA), with cartel contracts also taking place in Japan.

Wire harnesses are used to conduct electricity in cars, with functions including starting the motor, opening the window or activating the air-conditioner. The companies coordinated the prices and allocation of supplies of wire harnesses to the respective car manufacturers, including the rigging of a series of tenders for supply of wire harnesses to European manufacturing facilities. The duration of the cartels varied across a period from 2000 to 2009.

The Commission's investigation had begun with unannounced inspections in February 2010, with proceedings opened against the companies in August 2012. In parallel, the Commission

is also investigating other areas of the car parts sector, with unannounced inspections taking place in the sectors of occupant safety systems, bearings, thermal systems and lighting.

Commission tables proposals to reduce fees from credit and debit card transactions

On 24 July, the European Commission adopted a new Payment Services Directive and a proposal for regulation on interchange fees for card-based transactions. These proposals aim to reduce the cost of using payment cards for consumers, setting new interchange fee limits at 0.2% and 0.3% of the transaction value for debit cards and credit cards respectively.

Interchange fees (MIFs) are charges paid by a retailer to a cardholder's bank as part of an electronic payment charge transaction, and are designed to share the cost of processing transactions between buyers and sellers. However, the level of interchange fees varies widely between the Member States, indicating to the Commission that they do not have a clear justification. By capping interchange fees, they estimate that costs for retailers and consumers will be reduced by up to €6bn annually.

The proposed package will introduce maximum levels of interchange fees for transactions based on debit and credit cards, as well as banning surcharges on internet transactions such as those levied for paying by card online for airline flights. The rules will primarily affect Visa Europe and MasterCard, and do not cover branded commercial cards issued by retail outlets, nor commercial transactions and three party schemes such as American Express or Diners.

Greece referred to ECJ for failure to recover incompatible state aid in two cases

The European Commission referred Greece to the European Court of Justice (ECJ) on 17 July 2013, for their failure to comply with two decisions ordering the recovery of incompatible state aid from three Greek casinos and from Aluminium of Greece SA. Both orders for recovery were made in 2011, but the full aid amounts have not yet been paid back.

In the first instance, although a €12 admission tax per person was imposed on private casinos by Greek authorities, the public casinos of Mont Parnès and Corfu and the private casino of Thessaloniki only needed to pay €4.80. This resulted in a selective advantage to certain casinos in the opinion of the Commission. In July 2011, Greece had also been requested to

recover incompatible state aid in the form of preferential electricity tariffs from Aluminium of Greece. The aid principal was calculated as amounting to €17.4m.

In both cases, Greece had four months from the decision to ensure its implementation. However, although the measure in favour of the publicly owned casinos was abolished in November 2012, Greek national courts suspended the Commission's recovery orders under both decisions, and so the full amounts have not yet been paid back. The beneficiaries of the incompatible state aid had in both cases appealed the Commission's 2011 decisions before the EU General Court, but had not requested any interim measures to delay the repayment process.

Proposal to create a Single Resolution Mechanism for failing banks

On 10 July 2013, the European Commission proposed to create a Single Resolution Mechanism (SRM) for the forthcoming Banking Union. This would complement the Single Supervisory Mechanism (SSM), which from 2014 will directly supervise EU banks deciding to join the Banking Union. It is intended that the SRM will provide a common framework for the treatment of failing banks within the Banking Union, and would help to protect against distortive national interests in cross-border bank failures.

According to Internal Market and Services Commissioner Michel Barnier, aligning financial resolution at a central EU level will "curb uncertainty and prevent bank runs and contagion to other parts of the euro area". It is intended that a Single Resolution Board, consisting of representatives from the ECB, the European Commission and the relevant national authorities, would be prepared in each instance to prepare the resolution of a bank. It is hoped that an agreement would be reached on the mechanism in time for it to be applied from January 2015.

On the same day, the Commission also announced it would be amending its temporary state aid rules for assessing public support to financial institutions during the crisis. Banks will now be required to work out a sound plan for their restructuring or orderly winding down before they can receive recapitalisations or asset protection measures. In case of capital shortfalls, bank owners and junior creditors will also be required to contribute as a first resort, before banks can ask for public funding.

EU-Colombia Free Trade Agreement takes effect

On 1 August 2013, a Free Trade Agreement between the EU and Colombia came into force. The European Commission estimates that the lowering of trade barriers between the two

countries will bring annual tariff savings of more than €500m for European companies. This marks the final stage of a deal signed between the EU, Colombia and Peru in June 2012, with the improved conditions for trade to be applied between all three countries.

With the EU and Peru already applying the agreement bilaterally since March 2013, Colombia was able to finalise its internal ratification procedures in time for this full implementation. At the end of the transition period, customs duties will be completely removed on all industrial and fisheries products, and substantially removed for agricultural products. The deal also includes provisions on the respect of human rights, the rule of law and effective implementation of international conventions on labour rights and environmental protection. Other Andean countries – Ecuador and Bolivia – have been invited to enter into the partnership at a later date.

This publication is intended for general information only. On any specific matter, specialised legal counsel should be sought.

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