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EU Law News

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

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Newsletter September/October 2014

The new Competition Commissioner

Margrethe Vestager has been nominated as the Competition Commissioner in the line-up of the new European Commission that will start its 5-year term soon. She hails from Denmark, and has sailed easily through the European Parliament hearings. By the time she settles into her job in Brussels by the end of the year, her predecessor Joaquin Almunia might already have triggered the Commission to decide on some high-profile cases that were still pending during the last days of his mandate, thereby enabling Ms. Vestager to start with a clean slate.

Her initial focus is expected to be on issues such as state-aid and taxation rules at Member State level that may distort the level playing field for companies and investment across the EU. In the hearings she said *"I will make sure that those principles are fully implemented by Member States. I will also push for greater transparency on subsidies at the international level"*. At the same time she will need to balance this contentious point with the demand from EU, as well as from national policy makers, to create European industrial champions that can compete effectively in global markets.

As a result of the new structure of the Juncker Commission, she will work closely with the Vice-Presidents. Vestager referred to this, stating: *"Competition policy is a key to success for our agenda for jobs, growth and investments, for how to create a connected Digital Single Market as well as a resilient Energy Union that includes a forward-looking climate change policy"*.

She previously headed the Social Liberal Party and was minister for Economic Affairs and the Interior and appeared to be very successful in pushing through her ideas and policies. The forthcoming months will see her impact on the European state-aid as well as on competition law.

Canada and the EU Trade Agreement

In September 2014, after five years, negotiators have finished their work to deliver a Comprehensive Economic and Trade Agreement between the EU and Canada (CETA). The value of bilateral trade in goods between the EU and Canada was €58.8bn in 2013. The trade in services, including transportation, travel, insurance and communication, amounted to €26.9bn in 2012. European investments in Canada and Canadian direct investment stocks in the EU are significant.

CETA will remove over 99% of tariffs between the two economies. Interestingly, the EU achieved very extensive protection in Canada of the designations of Europe's high quality agricultural products. EU companies will be able to bid for public contracts in Canada at all levels of government. Both sides also agreed to further strengthen links between the relevant standard setting bodies. CETA includes an extensive investment protection chapter and investor-to-state dispute settlement (ISDS) process, which aims to protect foreign investors from expropriations or other unfair treatment and requires countries to give up some of their sovereignty.

On 17 October, the European Union has also concluded talks on a trade agreement with Singapore which has similar investor protection clauses. Karel de Gucht, Trade Commissioner said that going back on agreements already reached would be a bad idea and that 24 of 28 member states believe that ISDS should be part of investment agreements, including with the United States.

CETA will go next into legal review followed by its translation into all official languages of the EU, and will eventually need to be approved by the Council and the European Parliament.

Dawn raids and human rights

On 2 October 2014, the European Court of Human Rights (case 97/11 Delta Pekárny A.S. v République Tchèque) found that the Czech Republic's procedural rules governing dawn raids violated companies' fundamental rights.

A bakery company, Delta Pekárny, had argued that inspections of its computers, including the copying of private e-mails and the seizing of private letters had breached its rights as protected by Article 8 (right to respect private and family life, home and correspondence) of the European Convention on Human Rights . It also said the Czech laws and Court's supervision did not provide sufficient procedural guarantees to avoid the abuse of power. The Court ruled in its favour.

Although it is not directly affected by this specific ruling or a party to the Convention, the European Commission will need to review what the implications are for its own powers to conduct dawn raids pursuant to Regulation No. 1/2003.

ECJ and MasterCard ruling

On 11 September 2014 the European Court of Justice (ECJ) ruled that MasterCard had broken EU competition law by setting interchange charges for cross-border card payments. By rejecting the appeal the Court upheld the Commission's 2007 decision and confirmed the 2012 General Court judgment. Following this ruling, the adoption of a proposed regulation for open, transparent and lower card fees for all payment users is a priority that many citizens' action groups as well as retailers' trade organisations were looking for.

In its 2013 draft Regulation the Commission proposed to cap cross-border fees at 0.2% of the transaction value for debit card payments, and at 0.3% for credit card payments. Caps on domestic fees are brought into force after a transitional period. In April 2014, the European Parliament passed amendments to the revised Payment Services Directive legislation. That package contained also an interchange fee regulation. The Parliament and the Council are expected to finalise all outstanding matters for adoption by 2015, with caps entering into force in 2016.

In addition, the judgment may influence the outcome of several other competition law cases which are pending at the Court in Luxembourg, as well as Competition Authorities or Courts in Cyprus, France, Germany, Hungary, Italy and the UK.

Energy and climate targets for 2030

On 23 October 2014 the European Council agreed on a new energy and climate package for 2030. The main commitments are to reduce greenhouse gas emissions by at least 40%, and increase energy efficiency and renewable energy by at least 27%, compared to 1990 levels.

The European leaders explained that the 40% emissions reduction target will be allocated to individual Member States based on their per capita GDP. Any country that sets lower targets will have to compensate by doing more in other areas. The Council lowered Europe's ambitions on the energy efficiency from the 30% as proposed by the Commission to 27%. This target is not legally binding and will be reviewed in 2020 against a 30% EU-level target. The renewables target of at least 27% is binding at EU-wide level but not at national level. Chancellor Merkel said that the binding target of at least 27% renewables was particularly important to Germany as it should encourage other Member States to achieve the maximum they can in this initiative, even if Germany has already set a higher national target.

Environmental groups have already said the deal is too weak, and even business leaders have called for more ambitious targets than those agreed by EU leaders. Diplomats argued that it was the only chance to win sufficient political support from all 28 Member States. In 2015 the Commission is expected to draft proposals to consolidate the 2030 targets into EU legislation. In December 2015 the UN summit aims to reach a global agreement on climate protection that would replace the Kyoto Protocol.

The Council also reached agreement on increasing the interconnectivity of the EU's energy markets. This will be an important part of the EU's plans for the so-called "Energy Union" which is an initiative comprising several Commissioners which Maroš Šefčovič, Vice-President of the Commission, is heading up. The Council maintained its 2002 commitment on energy trading through electricity grid connectors between Member States of at least 10% by 2020, with a further commitment to subsequently increase that to 15% by 2030. Spain, Portugal, Malta, Cyprus, Greece and the Baltic states are the highest priority in that regard, with the objective being to match supply and demand across borders.

The EU leaders agreed to implement critical projects of common interest in the gas sector, including the North-South corridor, the Southern Gas Corridor, and the promotion of a new gas hub in Southern Europe. Finland and the Baltic States are deemed to be the most vulnerable in the case of a complete disruption of Russian gas supplies. The European Commission was requested to monitor progress and make legislative proposals on funding if appropriate.

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