BRUSSELS REGULATORY BRIEF: JUNE

Date: July 2015

European Regulatory / UK Regulatory Newsletter

By: Francesco Carloni, Giovanni Campi

This is the first in a series of monthly EU regulatory briefs - summarising key regulatory developments across a number of sectors in the EU. For more detailed information on any of these areas please contact Philip Torbøl or Ignasi Guardans.

ANTITRUST AND COMPETITION

The European Commission launches an e-commerce sector inquiry

On 6 May, the EU Commission ("**Commission**") opened a sector inquiry into the e-commerce in Europe. This is a far-reaching competition review of the sector by the Commission, bringing potentially significant changes to rules and regulations related to selling online in Europe. To date, the Commission has undertaken sector inquiries in a number of sectors, including energy, financial services and pharmaceuticals.

The sector inquiry intends to complement the actions launched within the framework of the Digital Single Market strategy and identify perceived obstacles to cross-border online trade erected by private enterprises in the sectors where e-commerce is widely spread (electronics, clothing, shoes and digital content). The Commission indicated that it will principally look into distribution contracts, price parity clauses and territorial restriction with regard to digital content.

Within the inquiry, the Commission has the power to: (i) send requests for information to the companies or associations of undertakings concerned; (ii) take statements from natural and legal persons; and (iii) conduct any inspections. The sector inquiry can also be accompanied or followed by individual antitrust investigations.

It is reported that the first questionnaires totaling more than 100 pages were sent out on 22 June to a number of companies that own the rights to movies, TV shows, music and sports. According to press reports, the questions focus on technical obstacles to cross-border access to digital content (e.g. IP location, credit card blockings etc.). Moreover, the Commission required copies of contracts and sensitive commercial information.

The next round of questionnaires for the other sectors (e.g. retail, books) is expected to come in the following weeks. A preliminary report on consultations is expected in mid-2016; a final report is scheduled for the first quarter of 2017.

What big business should be afraid of?

With the new EU Competition Commissioner Margrethe Vestager, big internet companies are coming under the European antitrust authorities' scrutiny. In Europe, unilateral conduct by companies which abuse their dominant position is prohibited.

©2005-2026 K&L Gates LLP. All Rights Reserved.

By way of illustration, the Commission has been investigating a price comparison service offered by a major search engine services provider and, additionally, it has recently opened proceedings against that company in connection with its mobile operating system.

As regards the price comparison services investigation, the Commission sent a statement of objections to a major search engine services provider outlining its preliminary competition concerns. According to the Commission, that company would systematically favour its own comparison shopping products in its general search results and thus allegedly abuse its dominant position in a number of EU Member States. Sending a statement of objections does not prejudge the outcome of the investigation and the company now has the opportunity to respond to the Commission's contentions. It could also seek to settle the case by agreeing to change its business practices. Should negotiations fail, the Commission could adopt a prohibition decision finding an abuse of dominant position and impose a fine of up to 10 percent of that company's' global sales.

INTERNATIONAL TRADE, CUSTOMS AND EXTERNAL RELATIONS

New impetus in the EU sanctions against Russia

On 22 June, the Foreign Affairs Council of the EU decided to renew existing sectoral sanctions against Russia for six months, until 31 January 2016 (they were due to expire on 31 July 2015). The sanctions concerned include financial measures against energy technologies, equipment and services, an embargo on weapons and related material, and a ban on the export of dual use goods and technologies for military purposes or for final military use. The Council has also renewed for one year (until 23 June 2016) the sanctions in response to the illegal annexation of Crimea and Sevastopol (i.e. prohibitions on imports of products from Crimea or Sevastopol, investments and tourism services in those regions, exports of certain goods and technologies to Crimea).

Moreover, it is reported that the EU and the US are contemplating a new set of sanctions against Russia. In mid-June, US Secretary of State John Kerry, told reporters that the implementation of the new measures will be kept 'on hold' and will depend on what happens on the ground in Ukraine. Particularly, much will rest on President Putin's support for the full implementation of the ceasefire agreed in February. It is reported that the new set of sanctions will target Russia's fuel exports, Russian banks and the transactions of Russian businesses outside Russia. They will also entail the addition of the names of Russian officials and businessmen to the list of individuals who are subject to targeted sanctions (asset freezes and travel bans). Notably, there seems to be no consensus among the EU Member States on the imposition of new measures.

ENERGY AND RENEWABLES

The European Commission targets electricity producers with first ever State aid sector inquiry

The Commission is now sending questionnaires to several national public authorities and companies active in the energy sector (including generators and network operators), within its first ever State aid sector inquiry.

The aim of the investigation is for the EU regulator to assess the measures put in place by the EU Member States to ensure an adequate production of electricity at all times (the so-called 'capacity mechanisms'). In particular, the Commission intends to ascertain whether these measures constitute State aid (i.e. an advantage in any form

©2005-2026 K&L Gates LLP. All Rights Reserved.

conferred on a selective basis to companies by national public authorities) that distort competition between electricity providers and if they are an obstacle to cross-border trade. The possible outcome of the inquiry is two-fold: (i) new rules on aid to electricity production; and (ii) the launch of State aid proceedings against specific measures subsidizing electricity producers. The preliminary findings of the inquiry will be published by the end of 2015, while the final report is expected for mid-2016.

INTELLECTUAL PROPERTY

Launch of the debate on a reformed EU copyright framework

On 16 June, the European Parliament's Legal Affairs committee voted on the 550 amendments tabled to the draft report by Julia Reda's (a German member of the European Parliament from the Greens group) on the implementation of the 2001 directive on copyright and related rights. This own-initiative report (INI), is of some importance (although non-legally binding), as it expresses the Parliament's position with regard to the forthcoming Commission's proposals on copyright reform expected to be released by the end of 2015. The final report received the broad support of all political groups whilst only two members of France's Front National rejected it. The report backs among others, exceptions to the text and data mining and calls for greater ease for libraries to lend digital books, although members of the committee rejected Reda's proposal to expand the freedom of panorama (i.e. the taking of photographs or video footage in a public space).

The report will now need to be adopted in the European Parliament's plenary session on 9 July.

TELECOMMUNICATIONS, MEDIA AND TECHNOLOGY

The European Parliament moves forward in protecting trade secrets

On 16 June, the European Parliament's Legal Affairs committee approved by a large majority draft rules aimed at helping businesses obtain legal redress against the theft or misuse of their trade secrets. Facing heavy criticism by journalists worried that their freedom of expression might be weakened by stringer rules, the draft report was amended to clarify and reinforce media freedom and to provide adequate protection for whistle-blowers. The proposed rules would introduce an EU-wide definition of trade secrets and oblige EU Member States to adopt a range of tools to ensure that victims of trade secret misuse will be able to defend their rights in court and seek compensation. They would also better guarantee workers' professional mobility. The Legal Affairs committee approved on this occasion a mandate to start informal talks with the Council (commonly referred to as "trilogues") with a view to reaching an agreement in first reading.

FINANCIAL SERVICES

The Capital Markets Union

On 18 June, the Commission held a public hearing on the Capital Markets Union (CMU), following its Green Paper and public consultations, published earlier this year. The hearing revealed that over 700 responses had been received to the consultation and that there is broad support for the main goal of the Green Paper, which is to overcome the current capital markets' fragmentation by changing the structure of the EU financial system towards

©2005-2026 K&L Gates LLP. All Rights Reserved.

an improved and diversified mix of market based finance and bank credit. Additionally, the European Parliament's Economic and Monetary Affairs (ECON) Committee' adopted its own Motion for a Resolution on the CMU on 16 June, calling for a balanced approach to be taken under the CMU and highlighting the importance of investor protection and financial education for SMEs and for retail investors. The Commission will now begin work on analysing the responses to the consultation, which will form the basis for its Action Plan due in September.

TAX

European Commission Action Plan for Fair and Efficient Corporate Taxation in the EU

On 17 June, the Commission adopted its Action Plan for Fair and Efficient Corporate Taxation in the EU. The Action Plan, presented by Commissioner Pierre Moscovici (Economic and Financial Affairs, Taxation and Customs) sets out measures to tackle corporate tax avoidance and promote growth-friendly taxation in the EU's Single Market. The Action Plan contains five key areas of action, which includes a strategy to re-launch the Common Consolidated Corporate Tax Base (CCCTB), improvements to EU coordination, a reform of the Code of Conduct Group and measures to create a tolerant business environment. Notably, the fight against corporate tax avoidance is central to the Commission's political priority to ensure a fairer Single Market and also highlights ongoing international work within OECD/G-20 project on Base erosion and profit shifting (BEPS). The Commission will adopt a staged approach to a mandatory CCCTB, with no consolidation in the first place. A new CCCTB proposal is expected in early 2016.

KEY CONTACTS



FRANCESCO CARLONI
OFFICE MANAGING PARTNER, BRUSSELS

BRUSSELS, MILAN
+32.2.336.1908
FRANCESCO.CARLONI@KLGATES.COM



GIOVANNI CAMPI
SENIOR POLICY DIRECTOR

BRUSSELS
+32.2.336.1910
GIOVANNI.CAMPI@KLGATES.COM

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.

©2005-2026 K&L Gates LLP. All Rights Reserved.