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| MERGER CONTROL

– EUROPEAN UNION LEVEL –

Commission blocks Three's acquisition of O2 in the UK

On 11 May 2016, the European Commission ("Commission") prohibited the proposed acquisition of Telefónica's O2 by Hutchison's Three under the EU Merger Regulation. The Commission's primary concern was that a combined Three/O2 would have the ability and incentive to raise prices in the UK market for mobile telecom services.

The Commission was concerned that a 'four to three' deal would lead to reduced choice and quality for customers, hamper the future development of UK mobile network infrastructure, and reduce the number of mobile network operators ("MNOs") effectively willing to host mobile virtual network operators ("MVNOs"). MVNOs do not own the networks they use to provide mobile services but instead agree with MNOs to access their network at wholesale rates. Further concerns arose as the four UK MNOs have already agreed to share their network infrastructure – O2 with Vodafone, and Three with EE. As a result, the merger would enable the combined Three/O2 to hamper its rivals' plans to improve those shared networks by, for example, making it more expensive for one rival to expand or frustrating investments by the other. Lastly, the parties argued that UK customers would benefit from the deal based on the integration of the Three and O2 networks. However, the Commission regarded the claimed efficiencies as uncertain to materialise and likely to do so, if at all, only a few years after the merger.

Three/O2 is the 25th Commission prohibition in 26 years of EU merger control practice. It is also the first mobile telecom merger blocked under the EU Merger Regulation and in sharp contrast to recent cases involving mobile telecom consolidations. While Commissioner Almunia was in office, the Commission conditionally approved 'four to three' mobile telecom deals in Austria (*see VBB on Competition Law, Volume 2013, No. 1*), Ireland (*see VBB on Competition Law, Volume 2014, No. 6*), and Germany (*see VBB on Competition Law, Volume 2014, No. 7*). However, since Commissioner Vestager came to office in November 2014, the preference for conditional clearance of 'four to three' mobile telecom deals has shifted. For example, the Commission acknowledged it had been "on the road" to prohibit the *Telenor/TeliaSonera* merger in Denmark before it was abandoned prior to a formal decision in September 2015 (*see VBB on Competition Law, Volume 2015, No. 9*).

Of course, each merger analysis is fact-specific and there is no "magic number" that either three or four MNOs must be retained for a competitive telecom market. The message from the Commission is that competition, not consolidation, has promoted investment in mobile network infrastructure. Nonetheless, Three/O2 represents an important policy turning point. Currently, the Commission is carrying out an in-depth investigation into another 'four to three' mobile telecom deal: the *Three/WIND* joint venture in Italy. A decision is expected in August 2016 and it will be interesting to see how the new approach will apply.

The *Hutchison/Telefónica* case also illustrates the close working relationship between the UK's Competition and Markets Authority ("CMA") and the Commission. The CMA originally sought a referral of the Three/O2 transaction to the UK, under Article 9(2) of the EU Merger Regulation. Despite the Commission refusing its request, the CMA later noted that it enjoyed 'extensive, constructive engagement' during the investigation. Later, the CMA argued in an open-letter that the parties' proposed remedies were 'materially deficient' and concluded that absent comprehensive structural remedies – such as the divestment of the entire Three or O2 mobile network businesses – the only option available was prohibition. Ultimately, the Commission agreed.

Commission conditionally clears AB InBev's acquisition of SAB Miller

On 24 May 2016, the Commission cleared the proposed acquisition of SABMiller, the world's second largest brewer, by AB InBev, the world's largest brewer. AB Inbev's brands include *Corona, Stella Artois* and *Budweiser*. SABMiller owns brands such as *Miller, Peroni, Pilsner Urquell* and *Grolsch*. The clearance is conditional on AB InBev selling almost the entire SABMiller business in Europe.

From the outset, AB InBev offered to divest the whole of SABMiller's business in France, Italy, the Netherlands and the UK to pre-empt possible competition concerns that the merger would lead to higher consumer prices in the €125 billion beer market in Europe. AB InBev had already accepted an offer from the Japanese brewer Asahi to acquire a package of divested assets which addressed those concerns.

During the preliminary investigation, the Commission identified concerns that the merger would increase the likelihood of tacit price coordination among major brewers in the EEA, as the Commission's investigation revealed evidence of "follow the leader" type pricing, whereby the market leader takes the initiative of price increases in the expectation that rivals follow.

Further concerns arose that the merger would remove an important competitor in Romania and Hungary; create a substantial link between Molson Coors (as the licenced bottler and distributor of AB InBev) and its pre-transaction rival SAB Miller in the Czech Republic, Hungary, Romania and Slovakia; and, finally, facilitate tacit price coordination among brewers in the EEA through a number of multimarket contacts.

Accordingly, AB InBev offered to further divest SABMiller's business in the Czech Republic, Hungary, Poland, Romania and Slovakia. On this basis, the Commission concluded that the proposed remedies allayed its preliminary competition concerns. Essentially, the Commission regarded the intensity of competition in the European beer markets as remaining unchanged post-transaction.

ECN publishes report on information burden for merging parties

On 4 May 2016, the European Competition Network ("ECN") published a report setting out the information requirements for merger notifications in each Member State in the EU.

The report highlights the varied and, at times, heavy burdens on merging parties to supply information when completing national level merger filings in the EU. Further, the report catalogues for each national filing the relevant procedural steps, the information requirements, the information required to identify the parties involved and the relevant markets which need to be addressed. In so doing, the report shows that information requirements are fragmented and inconsistent under different national merger regimes within the EU. Nonetheless, the comparative overview may serve to help parties coordinate the information gathering for multiple national filings in the EU.

Halliburton and Baker Hughes saga ends

Nearly a year-and-a-half after announcing their merger plans, Halliburton and Baker Hughes, two leading suppliers of oilfield services, have agreed to terminate their merger agreement.

On 17 November 2014, Halliburton and Baker Hughes entered into an agreement whereby Halliburton would acquire the whole of Baker Hughes. After nearly seven months of pre-notification consultation with the Commission, the parties formally filed the transaction on 23 July 2015, only for the Commission to reject the 600-page notification as incomplete. The transaction was eventually re-notified on 27 November 2015; more than a year after the deal had been announced.

An in-depth Phase II investigation was opened on 12 January 2016, as the Commission considered that the deal raised preliminary competition concerns on a number of markets for the exploration and production of oil and gas, both onshore and offshore. Although third party Schlumberger is recognised as the leading supplier of oilfield services both worldwide and in Europe, the Commission regarded the parties to be close competitors to one another, both in terms of tenders to customers (i.e., oil and gas companies) and innovation/R&D. The Commission also expressed concerns that, post-transaction, Schlumberger and the merged entity would be the only companies able to participate in integrated tenders, offering customers multiple oilfield services together with project management capabilities.

The Commission's Phase II investigation was suspended several times, once at the request of the parties and twice due to the parties' inability to respond on time to lengthy Commission questionnaires, of which more than 100 were issued to the parties and third parties during the course of the Commission's review.

On 1 May 2016, following a Statement of Objections issued by the Commission and an earlier civil antitrust lawsuit filed by the US Department of Justice seeking to block the deal, Halliburton and Baker Hughes publicly announced that the companies had terminated the merger agreement. The par ties withdrew their notification to the Commission on 2 May 2016.

The *Halliburton/Baker Hughes* case is a reminder that the number of prohibition decisions issued by the Commission does not tell the full story in terms of the number of deals it has had a role in preventing. Although the Commission has only blocked 25 transactions in the 26 years of the Merger Control Regulation, another 167 deals have been withdrawn after being notified to the Commission for approval.

There are of course a number of reasons why parties withdraw their merger notifications, and the risk of a prohibition decision is only one such reason. Often, deals are abandoned at least in part because the financial rationale that existed when the deal was first agreed has dissipated during the course of the Commission's investigation. This was the case in *Halliburton/Baker Hughes*. Of course, the longer the Commission reviews a transaction, the greater the likelihood becomes that the deal no longer makes financial sense to one or both parties, especially in the context of declining markets.

Merging parties are well advised to take into account the potential for increasingly long delays – and the consequences of these delays in terms of the deal rationale – when notifying challenging transactions to the Commission. Without even considering remedies that must be offered to obtain approval, which can themselves severely undermine the deal rationale, the length of the Commission's investigation may itself render a transaction unfeasible from a commercial perspective.

– MEMBER STATE LEVEL –

IRELAND

CCPC approves sale of assets subject to divestment in service station merger

On 19 May 2016, the Irish Competition and Consumer Protection Commission ("CCPC") cleared the acquisition by Maxol of certain retail fuel service stations and associated stores from Topaz. Maxol is a competitor of Topaz in Ireland and also active in the market for wholesale and retail distribution of petrol products. The target assets were subject to a divestment commitment by the CCPC, following an in-depth investigation of the *Topaz/Esso* merger in 2015. The transaction represents the first case in which a divestment remedy was imposed in relation to a local retail market in Ireland.

LITHUANIA

LCC prohibits completed merger in classified advertising

On 6 May 2016, Lithuania's Competition Council ("LCC") prohibited a completed merger having found that it restricted competition in the markets for classified advertising for real estate and vehicles in Lithuania.

In 2014, Eesti Meedia acquired 100% of AllePAL OÜ's shares. Eesti Meedia is one of the largest managers of websites for classified advertising in Lithuania. The LCC suspected that the merger created or strengthened a dominant position and/or restricted competition on the relevant Lithuanian markets. As a result, the LCC required the parties to submit a merger notification and found that the completed merger indeed eliminated competition and increased prices among websites for classified advertising for real estate and vehicles. In its defence, Eesti Meedia submitted that it had previously transferred the shares of a related group company to third parties, which it claimed should have eliminated the LCC's competition concerns. However, the LCC found that it did not have sufficient data available to it to determine this and therefore proceeded to block the deal.

The LCC has ordered Eesti Meedia to take all necessary action to restore effective competition on the relevant market within three months – although it is for the parties to decide whether a structural divestment, asset sale or contract termination best achieves this objective. Failure to do so can give rise to fines of up to 10% of turnover in the most recent financial year.

UNITED KINGDOM

Merger abandoned in washing machines for machinery components in face of in-depth investigation

On 20 May 2016, the parties involved in the *Safetykleen/Pure Solve* merger confirmed that they had abandoned the transaction, following an 11 May 2016 announcement by the CMA that it would open an in-depth investigation of the deal. The CMA regarded Safetykleen as the market leader, followed by Pure Solve.

The parties are active in the market for the supply of parts washing machines and associated services in the UK. Parts washing machines are used to clean parts and components in machinery (such as nuts, bolts and screws, engine blocks and related parts, bearings, gear boxes and machine assemblies). The UK£ 100 million market is regarded as an essential service for small businesses in the UK.

| ABUSE OF DOMINANT POSITION

– MEMBER STATE LEVEL –

FRANCE

Paris Court of Appeal reduces the fine imposed on Orange and SFR for abusive rate differentiation

On 19 May 2016, the Paris Court of Appeal upheld the decision of the French Competition Authority ("FCA") imposing a fine on the French telecoms operators Orange and SFR for having abused their dominant position in the mobile call termination market. The Court nevertheless granted the operators a 20% reduction of the fine on account of the complexity and novelty of the test applied by the FCA when calculating the price differentiation that underlie the finding of an abuse.

In its decision of 2012, the FCA imposed a fine of € 183 million on Orange and SFR on the ground that they had applied rates that excessively differentiated between calls to telephone numbers within their network ("on net calls") and calls to telephone numbers linked to a competitor's network ("off net calls") (*see VBB on Competition Law, Volume 2012, No. 12*).

The FCA found that the operators had marketed abusive offers allowing subscribers to make unlimited "on net" calls during certain hours or towards specified numbers for the flat-rate subscription cost only. In contrast, "off net" calls did not benefit from these advantages.

Although the prices per minute for both "on net" and "off net" calls were subject to the same flat-rate subscription and therefore identical, when the FCA calculated the "on-net" price per minute it took into account the advantages that applied to these calls compared to the "off net" price per minute. Following this test, the FCA found that the price of "on net" calls, which included the advantages, amounted to price differentiation which negatively impacted the mobile telephone market.

Orange and SFR sought the annulment of the FCA's decision. One of their claims was that the FCA did not find any below-cost sales. The Court however held that the FCA was not required to establish whether the offers proposed by Orange and SFR were below costs. Rather, the test carried out by the FCA to compare the price differentiation between "on net" and "off net" calls was considered appropriate to assess the potential negative effects on competition.

The Court nevertheless followed the claimants' argument that the test applied by the FCA was new and therefore lacked predictability. According to the Court, past case-law on abusive price differentiation was based on an explicit difference in prices between "on-net" and "off-net" calls. The test applied by the FCA, however, which considered the benefits granted to subscribers making "on-net" calls was found to be very complex and novel. The Court held that the complexity and novelty of the test should give rise to a 20% reduction of the fine of each of Orange and SFR.

CARTELS AND HORIZONTAL AGREEMENTS

– EUROPEAN UNION LEVEL –

European Commission imposes a fine of approx. € 6.2 million in steel abrasives cartel case

On 25 May 2016, the European Commission announced its decision to fine Italian steel abrasives producer Pometon € 6.197 million for coordinating prices of steel abrasives in the entire EEA for almost four years. Steel abrasives are loose steel particles used for cleaning or enhancing metal surfaces in the steel, automotive, metallurgy and petrochemical industries.

The recent decision follows the Commission's April 2014 settlement decision against four other steel abrasive producers, Eisenwerk Würth, Ervin, Metalltechnik Schmidt and Winoa, for their involvement in the same cartel (*see VBB on Competition Law, Volume 2014, No. 4*). As Pometon chose not to settle with the Commission, the present decision was issued pursuant to the Commission's standard procedure.

– MEMBER STATE LEVEL –

GERMANY

German competition authority fines food and drink retailers € 94 million for hub-and-spoke cartel

In its decisions of 16 May 2015, 30 December 2015 and 28 April 2016, the German Federal Cartel Office ("FCO") found that food and drink retailers and the brewery Anheuser Busch InBev Germany Holding ("AB InBev") engaged in a hub-and-spoke cartel by fixing prices for the sale of beer products.

Around 2006, AB InBev concluded a basic agreement with a number of retailers, according to which the retailers agreed to comply with a minimum retail price level for beer products and AB InBev coordinated the price levels among all retailers, which were all significant competitors. Between 2006 and 2009, AB InBev and the retailers mutually exchanged information on the timing and the level of retail price increases. Most retailers were offered cash-backs and discounts for complying with the minimum retail price levels and, as a result, the agreed minimum retail prices were widely implemented.

Following its investigation, the FCO imposed a fine totalling € 94 million on nine retailers, namely A. Kempf Getränkegroßhandel, five regional branches of EDEKA, Kaufland Warenhandel, METRO and NETTO Marken-Discount. The FCO did not fine AB InBev or REWE-Zentral-Aktiengesellschaft ("Rewe") because AB InBev had enabled the FCO to prove the illicit behaviour of all the retailers besides Rewe, and because Rewe had extensively cooperated with the FCO before the initiation of the proceedings in August 2011.

The nine companies involved in the infringement made a settlement with the FCO, which led to a 10% reduction of their fines. The FCO's decision imposing fines of April 2016 can still be appealed to the Higher Regional Court of Düsseldorf.

HUNGARY

Hungarian competition authority imposes fines for rigging bids for the rental of mobile broadcasting vehicles

On 29 April 2016, the Hungarian competition authority ("GVH") imposed a fine totalling HUF 81.97 million (approximately € 262,000) on five companies offering mobile broadcasting vehicles for rent.

The companies were found to have committed bid rigging in two public procurement tenders conducted by Hungary's Media Service Support and Asset Management Fund. The tenders in question consisted of a first pre-selection round and a second round in which only the four best-placed undertakings from the first round could participate. The GVH found that the undertakings concerned had colluded to win the first four places in the first round, thereby excluding their competitors from the second round of the tenders. Once selected, the first four undertakings would then identify the same company, LIGA TV, as a sub-contractor, ensuring LIGA TV's selection in the tenders.

LITHUANIA

Lithuanian Supreme Court confirms travel agencies cartel

On 4 May 2016, the Lithuanian Supreme Administrative Court ("Lithuanian Supreme Court") confirmed that 29 travel agencies had breached antitrust rules when using an online booking system to limit discounts for travel packages.

This judgment follows the ruling handed down by the Court of Justice of the European Union ("ECJ") in January 2016 (*see VBB on Competition Law, Volume 2016, No. 1*) in response to questions referred to it by the Lithuanian Supreme Court on whether travel agents infringed competition law rules by agreeing on common discounts via a specific online booking system.

The Lithuanian Competition Council ("CC") had found that the director of the online booking system had sent an email to several travel agencies asking them to vote on whether their discount rates should be reduced from 4% to 1-3%. As a result of this email, a notice was sent via the internal online booking system messaging service announcing that discounts to customers were to be capped at 3%, followed by a technical restriction implementing this cap, in breach of competition law. The travel agencies, as well as the Lithuanian CC, then lodged an appeal to the Lithuanian Supreme Court which referred two questions to the ECJ for a preliminary ruling.

The Lithuanian Supreme Court's first question was whether the online booking system notice relating to discount caps sent to the travel agencies would be enough to establish their participation in a concertation. The ECJ replied that the circumstances of the case were capable of justifying a finding of a concertation between those travel agencies that were aware of the content of the notice at issue. However, if the awareness of the content of that notice by a travel agency could not be established, its participation in a concertation could not be inferred from the mere fact that a discount restriction was implemented in the online booking system. The ECJ stated that companies which were aware of the content of the notice but did not take any action to distance themselves from the proposed discount restrictions had also participated in the cartel.

On the basis of the ECJ judgment, the Lithuanian Supreme Court subsequently upheld most of the Lithuanian Competition Authority's decision imposing fines totalling € 1.5 million, but nevertheless dropped charges against several of the travel agents involved due to lack of sufficient evidence proving that the companies were aware of the discount restrictions within the online booking system in question. This was the first Lithuanian competition law case in which questions were referred to the ECJ.

| VERTICAL AGREEMENTS

– MEMBER STATE LEVEL –

SLOVENIA

Hyundai offers commitments regarding vehicle warranty contracts in Slovenia

On 5 May 2016, the Slovenian Competition Protection Agency ("CPA") closed proceedings against Hyundai Avto Trade ("HAT"), the authorised importer and distributor of Hyundai motor vehicles in Slovenia, after HAT accepted commitments relating to its policy on warranties.

HAT had entered into selective qualitative distribution agreements with its authorised repairers which made warranties conditional upon maintenance work being carried out only by authorised repairers and using spare parts and materials supplied only by HAT. In addition to ceasing this conduct, HAT offered to explicitly inform its authorised repairer network and car owners that the warranty is not conditional on the vehicle having been repaired or maintained by authorised repairers or the spare parts having been purchased from HAT, as long as the work has been carried out in accordance with Hyundai's instructions. This includes instructions which car owners need to provide to independent repairers to ensure the traceability of the operations performed on the vehicle. Moreover, HAT's authorised repairers committed not to mislead car owners regarding the warranty terms and not to discriminate against car owners who had repaired their vehicles elsewhere. Lastly, HAT introduced an interface on its website through which car owners could check whether their vehicle is subject to a recall campaign, since it was found that silent recall and manufacturer service campaigns may put car owners who maintain their car elsewhere at a disadvantage.

This development is one in a series of proceedings before the EU's national competition authorities which involve similar commitments on warranty policies (*see VBB on Competition Law Volume 2015, No. 3, No. 9* and *No. 12* and *Volume 2016, No. 1*).

UNITED KINGDOM

Refrigerator supplier fined for retail price maintenance

On 24 May 2016, the UK's Competition and Markets Authority ("CMA") fined ITW Limited, a supplier of refrigerators, £ 2,298,820 for retail price maintenance on online sales. From 2012 to 2014, ITW required dealers to adhere to its minimum advertised price policy for Foster commercial fridges and threatened sanctions, including imposing higher prices and stopping supply, if the dealer advertised the products below the requested minimum price. The initial fine was reduced by 10% because ITW set up a comprehensive internal competition law compliance programme and by a further 20% under the CMA's settlement process.

The CMA's decision follows another one adopted by it on 26 April 2016 where it imposed fines on Ultra Finishing Limited, a supplier of bathroom fittings, for retail price maintenance (*see VBB on Competition Law, Volume 2016, No. 4*). On 10 May 2016, the CMA announced that it had reduced the fine on Ultra Finishing by a further 5% in response to the company's agreement to put in place a competition law compliance programme within the business and among its staff. The CMA's position regarding competition law compliance programmes contrasts with that of the European Commission, which does not recognise the putting in place of a compliance programme as a factor for reducing the fine to be imposed on a company.

In the present case, the CMA also stated that it had sent warning letters to 20 other businesses in the commercial catering equipment sector which it suspects may have been involved in similar internet sales practices. Earlier in May, similar letters were sent to other suppliers of bathroom fittings suspected of engaging in restrictive sales practices.

STATE AID

– EUROPEAN UNION LEVEL –

General Court clarifies notion of state resources in 2012 German renewable energy law case

On 10 May 2016, the General Court of the European Union ("Court") handed down a judgment in a case concerning the German law on renewable energy of 2012 (the *Erneuerbare-Energien-Gesetz 2012* - "EEG 2012") (case T-47/15, *Germany vs. Commission*).

The EEG 2012, which was replaced by a new law in 2014, laid down a scheme to support firms producing electricity from renewable energy sources and mine gas ("EEG Electricity"). Network operators at all voltage levels were obliged to buy EEG Electricity at a price determined by law, which was higher than the market price. This electricity was then resold to the transmission system operators ("TSOs"). The TSOs had to sell the EEG Electricity on the spot market of the electricity exchange. If the selling price did not cover the financial burden resulting from the purchase obligation, the TSOs were entitled to impose an "EEG Surcharge" on their supplies to the final customers. In practice, therefore, the EEG Surcharge was borne by the final customers. However, specific firms, such as energy intensive manufacturers, were eligible for a cap on this (passed on) surcharge in order to be able to maintain their international competitiveness.

In its decision of 25 November 2014, the European Commission ("Commission") found that (i) the support for firms producing EEG Electricity constituted compatible state aid and that (ii) the reduction in the EEG Surcharge for specific electricity-intensive manufacturers constituted state aid, which was for the most part also compatible with EU law. Even though the Commission had largely approved the aid, Germany brought an action for annulment of the Commission decision before the Court.

Germany mainly contested the Commission's finding that the EEG 2012 involved state resources. In support of its position, Germany referred to the judgment of the Court of Justice of the European Union ("ECJ") in *PreussenElektra* (case C-379/98, *PreussenElektra v Schleswag*) in which the ECJ had held that the previous German law on renewable energy did not constitute state aid because no state resources were involved.

However, the Court rejected Germany's argument. According to the Court, the Commission was correct in taking the view that the EEG 2012 involved state resources, since, first, the funds generated by the EEG Surcharge and administered collectively by the TSOs remained under the dominant influence of the public authorities. Second, the amounts in question, generated by the EEG Surcharge, were obtained by means of charges ultimately imposed on private persons and which could be assimilated to a levy whose revenue was allocated to the financing of the aid. Third, it followed from the powers and tasks given to the TSOs that they did not act freely and on their own behalf, but as administrators of aid granted through state funds.

As regards the PreussenElektra judgment, the Court stressed that the EEG 2012 was substantially different from the previous German law. Unlike the EEG 2012, the funds at issue in that case could not be considered to be state resources since they were not at any time under public control and there was no mechanism, established and regulated by the state, for offsetting the additional costs arising from the obligation to purchase the electricity.

The Court also rejected all other arguments which Germany had put forward to have the Commission's decision annulled. Accordingly, the Court dismissed the action in its entirety.

This case is interesting as it applies the criterion of state resources to a case very similar to a landmark case on this subject, i.e. the Preussen Elektra case. It shows which facts can lead the Commission and the Court to reach a different conclusion.

– OTHER DEVELOPMENTS –

EUROPEAN UNION: On 27 April 2016, the European Free Trade Association ("EFTA") Surveillance Authority issued new guidelines on the state aid assessment of public financing of important projects of common European interest. The guidelines aim at encouraging EFTA states to channel their public spending to large projects that make a clear contribution to economic growth, jobs and the competitiveness of Europe, e.g., trans-border transport projects. The guidelines correspond to the European Commission's guidelines on this topic.

EUROPEAN UNION: On 19 May 2016, the Commission published a revised Notice on the notion of state aid. The Notice gives guidance on the Commission's understanding of all aspects of the definition of state aid, including the notions of undertaking and of economic activity, state origin, advantage, selectivity and the effect on trade and competition. It does so by systematically summarising the case law of the EU courts and the Commission's decision-making practice. Given the strategic importance of public funding of infrastructure, the Commission gives specific guidance on when such funding may constitute state aid.

LEGISLATIVE, PROCEDURAL AND POLICY DEVELOPMENTS

– EUROPEAN UNION LEVEL –

Commission appoints new Chief Economist of DG Competition

Professor Tommaso Valletti, an Italian citizen, will be the next Chief Economist of the Directorate General for Competition. He holds a degree in engineering from Turin (*Politecnico di Torino*) as well as a MSc and a PhD in Economics from the London School of Economics, where he also taught until 2001. He is currently Professor of Economics at Imperial College Business School (London) and Professor of Economics at the University of Rome Tor Vergata (Italy). He is also an Academic Director of the Centre for Regulation in Europe (CERRE) in Brussels, a Fellow of the Centre for Economic Policy Research (CEPR) and of the Economics Network for Competition and Regulation (ENCORE). He is a member of the panel of academic advisors to the UK communications regulator (Ofcom) and held a similar position with the UK Competition Commission.

Professor Tommaso Valletti will replace current Chief Economist Massimo Motta, appointed in 2013. He will take up his duties on 1 September 2016. The role of Chief Economist is one of assisting in the evaluation of the economic impact of the Commission's actions in the competition field and providing independent guidance on methodological issues of economics and econometrics in the application of the EU competition rules.

| PRIVATE ENFORCEMENT

– MEMBER STATE LEVEL –

UNITED KINGDOM

CMA publishes guide to competition law redress

On 3 May 2016, the UK Competition and Markets Authority ("CMA") published guidance entitled "Competition law redress: A guide to taking action for breaches of competition law". The guide is intended to help consumers and businesses to understand how to obtain effective redress when they have suffered harm from breaches of competition law. It thus provides an outline for individuals and businesses of their rights to bring private actions for such redress.

The guide reflects changes in the law made by the Consumer Rights Act 2015 (which make it easier for individuals and businesses to seek redress for breaches of competition law) and those due to be introduced by the European Damages Directive (which are intended to make it easier to claim for compensation when there has been a breach of European competition law).

In a press statement, the CMA indicated three areas of change. First, the Competition Appeal Tribunal ("CAT") will be allowed to hear standalone competition claims where previously it could only hear cases where there was an existing infringement decision. When bringing a claim before the CAT, individuals and SMEs can also benefit from a new fast-track procedure, allowing simpler cases to be resolved more quickly at a lower cost. Second, there are enhanced collective actions and settlements. Third, the guide introduces a new power enabling the CMA or a sector regulator to approve voluntary redress schemes.

The guide is available here.

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