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Newsletter EU Law

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Google statement of objections advertising technology

On 14 June 2023 the Commission sent a Statement of Objections to Google over abusive practices in online advertising technology. The Commission preliminarily finds that Google is dominant in Europe for publisher ad servers and for programmatic ad buying tools for the open web. Google would have abused its dominant positions by favouring its own ad exchange AdX in the ad selection auction and in the way its ad buying tools Google Ads and DV360 place bids on ad exchanges.

Acquisition of Lagardère by Vivendi cleared

On 9 June 2023 the Commission cleared the acquisition of Lagardère by Vivendi. They are large multi-media groups and the leading players in book publishing in French-speaking countries with activities throughout the book value chain.

The Commission had concerns that the transaction would harm competition in book publishing, especially on the markets for the purchasing of authors' rights for French-language books and the distribution, marketing and sales of these books to retailers. The Commission was also concerned that the transaction would harm competition in press magazines. There are only a limited number of credible players active and with the ability to compete with the merged entity. The transaction would also have reduced choice and increased prices for celebrity magazines in France. To address these concerns Vivendi offered a remedy package consisting of the divestment of Vivendi's publishing business, Editis and its entities, including well-known publishers such as Robert Laffont, Nathan, Le Robert and Pocket, as well as Vivendi's celebrity press magazine Gala published in France.

EUR 8.1 billion support for microelectronics and communication technologies

On 8 June 2023 the Commission approved up to EUR 8.1 billion of public support by 14 Member States for an Important Project of Common European Interest in microelectronics and communication technologies (IPCEI ME/CT).

The IPCEI ME/CT concerns research and development projects across the whole value chain from materials and tools to the chip designs and manufacturing processes. A total of 56

companies, including small and medium-sized enterprises and start-ups, will undertake 68 projects. The projects aim at enabling the digital and green transformation by creating innovative microelectronics and communication solutions, and developing energy-efficient and resource-saving electronics systems and manufacturing methods. They will contribute to the technological advancement of many sectors, including communications, 5G and 6G, autonomous driving, artificial intelligence, quantum computing and energy generation and distribution in their green transition.

Under its 2021 IPCEI Communication the Commission concluded that the total planned maximum aid amounts are in line with the eligible costs of the projects and their funding gaps. If large projects covered by the IPCEI turn out to be very successful, generating extra net revenues, the companies will return part of the aid received. The results of the project will be widely shared by participating companies benefitting from the public support.

Revised Horizontal Block Exemption Regulations

On 1 June 2023 the Commission adopted two revised Block Exemption Regulations on Research and Development and on Specialisation agreements, accompanied by revised Horizontal Guidelines, entering into force on 1 July 2023.

The revised Block Exemption Regulations and Guidelines aim at helping businesses to assess the compatibility of their horizontal cooperation agreements with EU competition law. They elaborate on the calculation of market shares for the purpose of applying the block exemptions and reflect the recent enforcement practice. Further topics are e.g. Purchasing Agreements, Commercialisation Agreements, Information Exchange Agreements, Standard-Setting and Sustainability Agreements. For detailed analysis see the series of articles published at www.luther-lawfirm.com.

Court clarifies market test and E.ON/RWE asset swap

On 17 May 2023 the General Court pointed out that an asset swap between independent undertakings does not constitute a single "concentration" as defined by anti-trust law.

In 2018 RWE and E.ON announced to engage in a complex asset swap by means of three concentration operations. The

first and second concentration operations were reviewed by the Commission, while the third concentration was reviewed by the German Federal Cartel Office. The German electricity producer EVH objected to the approval by the Commission of the acquisition of E.ON's assets by RWE. The General Court dismissed their case, as well as that of 10 other companies which sought the annulment of the Commission decision, either as inadmissible or on their merits.

As for the question whether the three concentration operations may be regarded as the components of a single concentration, the Court observed that two conditions must be met. First, the operations must be interdependent in such a way that none of them would be carried out without the others. Second, the result of those operations must consist in conferring on one or more undertakings direct or indirect economic control over the activities of one or more other undertakings. In the light of those conditions, the concept of 'single concentration' cannot apply when independent undertakings gain control of different targets, as is the case in an asset swap. As for the collective influence over E.ON the Court noted that EVH had not been able to identify indicative factors capable of establishing that the presence of the third company in question in the capital of RWE and E.ON amounted to evidence that there is already a tendency to collective dominance.

On the same day the General Court ruled that the action brought by the German municipal authority Enercity against the approval by the Commission of the acquisition of generation assets of E.ON by RWE was inadmissible. The General Court provides clarification in that context of the novel question of the burden of proof regarding the sending by the Commission of the questionnaire to conduct its market test.

Acquisition of Activision Blizzard by Microsoft

On 15 May 2023 the Commission cleared the acquisition of Activision Blizzard by Microsoft, subject to conditions.

Both companies are US headquartered developers and publishers of games for PCs, game consoles and mobile devices as well as distributors of games for PCs. On 8 November 2022 the Commission opened an indepth investigation (see [EU Law News November-December 2022](#)). In response of the investigation concerning the market for the distribution of PC and console games via cloud game streaming services, Microsoft offered two commitments with a 10-year duration. The first is a free licence to consumers in Europe that

would allow them to stream, via any cloud game streaming services of their choice, all current and future Activision Blizzard PC and console games for which they have a licence. The second commitment is a corresponding free licence to cloud game streaming service providers.

General Court annuls Lufthansa recapitalisation

On 10 May 2023 the General Court annulled the decision of the Commission to approve the EUR 6 billion recapitalisation of Lufthansa by Germany.

Without initiating the formal investigation procedure the Commission classified on 25 June 2020 the German measure as State aid compatible with the internal market, especially with Temporary Framework for State Aid measures to support the economy in the COVID outbreak. Airlines Ryanair and Condor brought actions for annulment. The General Court ruled that the Commission committed several errors, in particular, by considering that Lufthansa was unable to obtain financing on the markets for the entirety of its needs, by failing to require a mechanism incentivising Lufthansa to buy back Germany's shareholding as quickly as possible, by denying that Lufthansa held significant market power at certain airports, by insufficiently explaining a supposed requirement to pay for divestiture of Lufthansa's slots at Frankfurt and Munich airports, and by accepting various commitments that do not ensure that effective competition on the market is preserved.

On 24 May 2023 the General Court sided with Ryanair and annulled the Commission's decision to approve subsidies paid by Italy to Italian airlines in the context of COVID. The Commission failed to provide a statement of reasons for its finding that the measure at issue was not contrary to EU law provisions other than those governing State aid.

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

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