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Brussels Monitor

Automotive

Car Parts

The European Parliament's Legal Affairs Committee has backed a proposal to amend the Designs Directive to open up the market for car spare parts.

At the moment, car manufacturers and their company suppliers enjoy significant market power in the car parts market as they can invoke the Design Directive to stop others from producing visible replacement parts. Under the proposed amendment to the Design Directive, independent part manufacturers would also be allowed to produce replacement parts and to market them throughout the EU for repair purposes. Car manufacturers, however, would retain exclusive rights over the use of designs for the production and sale of new cars.

Pending formal adoption by the Parliament and the Council, the proposal is not expected to enter into force before 2013.

Competition

Cartels

The European Commission has presented a package of measures that will introduce a new rapid settlement procedure for cartel cases. When companies are convinced that the Commission is going to prove their participation in a cartel, they will be able to reach an agreement with the Commission on the duration and their individual responsibility. In return, they will be granted a reduction of their fine. As yet the Commission has not provided any indication of the amount of the reduction in fines that may be available.

While this procedure aims to complement the leniency programme, which rewards companies that denounce a cartel and provide proof of an infringement, the leniency programme still remains more attractive for companies wanting to get a maximum reduction of fine. The level of reductions possible under the leniency procedure are higher and, after leniency has been granted, it will still be possible to make use of the settlement procedure to be awarded an additional reduction of fine.

A copy of the proposal is at:

<http://ec.europa.eu/comm/competition/cartels/legislation/settlements.html>

Confidentiality

The European Court of First Instance (CFI), in a recent judgment, has made it clear that the Commission may only name a company in its decision when it has found that this company has actually violated competition rules and this infringement is not time barred.

The case concerned an appeal against a Commission decision imposing fines on several undertakings for their participation in cartels on the market for organic peroxides. In its decision, the Commission took the view that the proceedings against one company – Pergan - were time barred and that, because of this, there was no need to refer to that undertaking's participation in the infringement in the operative part of the decision. However, it described the role of that undertaking in the grounds of the decision. The Commission refused Pergan's request to delete all references to it from the public version of the decision on the ground that the reference did not constitute business secrets.

The CFI annulled this refusal and held that the Commission is only entitled to disclose to the public the details of an undertaking's infringement in respect of which proceedings are time barred, if the infringement at least appears in the operative part of the decision and if the decision is addressed to the undertaking so that it may contest that infringement in court.

Golden shares

The European Court of Justice (ECJ) confirmed its longstanding case law on 'golden shares' by condemning the privileged status awarded to the German Federal State and the Land of Lower Saxony in the management structure of Volkswagenwerk GmbH (VW).

The VW law prevents any shareholder from acquiring more than 20% of voting rights and provides that important corporate decisions have to be backed by at least 80% of shareholders. Additionally, the law confers on the Bund and the Land a specific right of mandatory representation on the company's Supervisory Board, irrespective of the number of shares they hold. Traditionally, both the Bund and the Land held roughly 20% voting rights in VW, whereas nowadays the Land is its main shareholder, with roughly 20% voting rights and 2 mandatory members of the board. In the Commission's view the clauses of this law have an effect similar to "golden shares" held by governments in privatised companies, which have been outlawed by European courts. The ECJ confirmed this view by finding that the law was liable to deter direct investments by limiting the possibility for shareholders to participate in the effective management of the company.

This judgment will provide further encouragement to the Commission to pursue their zero-tolerance strategy on golden shares and may open the way for future cross-border takeovers.

Internal Market

Internal Market Policy

The Commission has set out a package of initiatives to modernise the European Single Market.

The most important measures proposed include a telecom reform package, a bundle of measures to ensure that retail financial markets work better, an improvement and simplification of European consumer protection law, the enactment of a 'Small Business Act' for European SMEs and a European private company statute to facilitate cross-border activities, the creation of a European framework for patent protection and initiatives to facilitate the use of electronic procedures in the EU.

A copy can be found at:

http://ec.europa.eu/citizens_agenda/index_en.htm

Services Directive

The Commission has published a handbook on the implementation of the Services Directive, which will apply as from 28 December 2009. The aim of the Directive is to create a free market for the services sector by removing the legal and administrative barriers that can hinder businesses from offering their services in another country. It will cover a wide range of businesses such as hotels and restaurants, car hire, construction, advertising services and estate agencies, as well as advice provided by professionals such as architects.

While the handbook, according to the Commission, is not legally binding it, however, will be of importance, as it will provide a benchmark for the proper transposition and application of the provision of the Services Directive in Member States.

A copy is at:

http://ec.europa.eu/internal_market/services/docs/services-dir/guides/handbook_en.pdf

Services of General Interest

The Commission has published guidance documents on how to apply the EC rules on state aid and public procurement to services of general interest. These two papers address the most frequent issues raised in this context and are of particular importance for all that are concerned with such services.

The Commission's working paper on state aid for services of general economic interest gives specific examples on how to make a distinction between economic and non-economic services and those not affecting trade between Member States. It also explains the conditions under which public financing is not considered as state aid and under which state aid is exempted from notification following the ECJ's Altmark case law.

The document on procurement outlines the principles applicable when a public authority decides to outsource a social service of general interest to the third party. It in particular highlights, based on examples, the flexibility of the rules laid down in Directive 2004/18, the possibility to define quality criteria as well as the conditions for tenders. It also clarifies the interplay of procurement and state aid rules

A copy of the guidance documents is at:

http://ec.europa.eu/services_general_interest/index_en.htm

Pharmaceuticals

TRIPS

The Council has adopted, on behalf of the EU, a protocol amending the WTO TRIPS Agreement in order to facilitate exporting countries' access to medicines. The amendment authorises countries without production capacity to import generic versions of medicines still under patent. The measure entered into force on 1 December 2007, after being ratified by two thirds of WTO members.

The amendment complements a regulation of 20 October 2006 which allows manufacturers of generic pharmaceuticals who wish to manufacture medicines for export to apply to national authorities for the grant of a "compulsory license" from a patent holder. The only requirement is that the destination country must have notified the WTO that it is seeking the medicine covered by the license.

Public Procurement

New Thresholds

The Commission has published new thresholds that will apply in the public sector and the utilities sector from 1 January 2008.

A copy of the new thresholds can be found at:

http://ec.europa.eu/internal_market/publicprocurement/key-docs_en.htm

Transport

Ports Policy

The European Commission has presented its much-anticipated communication on its ports policy, which follows the failure of its previous proposals to liberalise port services. While the communication provides some guidance on the interpretation of relevant rules of the EC Treaty it shows a very cautious approach to possible future legislative measures in this sector. While it suggests to adopt guidelines on state aid in ports, hardly any legislative proposals are proposed.

A copy of the communication is at:

http://ec.europa.eu/maritimeaffairs/pdf/EN_IMP_communication_draft_COM_575.pdf