



Luther.

Newsletter EU Law

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

Issue March/April 2023

Legal and Tax Advice | www.luther-lawfirm.com



Commission approves state aid to microchip venture

On 28 April 2023 the Commission approved the French measure to support STMicroelectronics (ST) and GlobalFoundries (GF) to set up a new microchips plant.

France notified the Commission of its plan to support ST and GF's project to build and jointly operate a front-end semiconductor production facility in France. The project will enable mass production of energy-efficient and secure chips addressing current and future key European markets from automotive to industrial, 5G/6G roll-out, security, defence, and space industries. The project builds on technologies developed as part of the Important Project of Common European Interest (IPCEI) for research and innovation in microelectronics that was approved by the Commission on 18 December 2018. The grants to ST and to GF will support their investments worth EUR 7.4 billion.

The Commission found that the measure facilitates a first-of-a-kind mass-production facility in Europe. It has an incentive effect, has limited impact on competition and trade within the EU and will have wide positive effects for the semiconductor ecosystem. The measure will strengthen Europe's security of supply, resilience and digital sovereignty in semiconductor technologies, in line with the objectives set out in the European Chips Act Communication.

Merger simplifications package adopted

On 20 April 2023 the Commission adopted a package to simplify its procedures under the EU Merger Regulation.

The package includes a revised Notice on Simplified Procedure which identifies two new categories of cases that can benefit from simplified treatment. These are cases where the individual or combined upstream market share of the merging parties is below 30% and their combined purchasing share is below 30%; and the individual or combined upstream and downstream market shares of the merging parties are below 50%, the market concentration index is below 150 and the company with the smallest market share is the same in the upstream and downstream markets.

The Notice also grants the Commission discretion to treat certain cases under the simplified procedure even if they do not fall under any of the default categories for such treatment,

for example for joint ventures with turnover and assets between EUR 100 million and EUR 150 million.

As part of the package, the Merger Implementing Regulation introduces a new notification form for simplified cases, which includes primarily multiple-choice questions and tables. It also reduces and clarifies the information requirements in the notification form. Finally, the Communication on the Transmission of Documents introduces electronic notifications by default. The new rules will be applicable as of 1 September 2023.

Motor Vehicle Block Exemption Regulation prolonged

On 17 April 2023 the Commission prolonged the Motor Vehicle Block Exemption Regulation and updated the Supplementary Guidelines for five years, i.e. until 31 May 2028. This is to help companies in the automotive sector assess the compatibility of their vertical agreements with EU competition rules, while ensuring that aftermarket operators, including garages, continue to have access to vehicle-generated data necessary for repair and maintenance.

Vertical agreements are agreements between undertakings operating at different levels of the production or distribution chain, and relating to the conditions under which the parties may purchase, sell or resell certain goods or services. The updated Supplementary Guidelines clarify that data generated by vehicle sensors may be an essential input for the provision of repair and maintenance services. Authorised and independent repairers should have access to such data on an equal footing. The existing principles for the provision of technical information, tools and training necessary for the repair and maintenance services have been extended to explicitly cover vehicle-generated data. In addition, vehicle suppliers must apply the proportionality principle when considering whether to withhold inputs on the basis of potential cybersecurity concerns.

The Commission's evaluation revealed that the regime had been useful and remained relevant for stakeholders. It showed that the competitive environment in the motor vehicle markets had not significantly changed since the Commission last evaluated these markets in 2010, but that the sector was now under intense pressure to adapt in line with the green and digital transformation.

Objections to Broadcom's acquisition of VMware

On 12 April 2023 the Commission sent Broadcom a Statement of Objections that its proposed acquisition of VMware may restrict competition in the market for certain hardware components which interoperate with VMware's virtualisation software.

Broadcom is the global leading supplier of Network Interface Cards (NICs), Fibre Channel Host-Bus Adapters (FC HBAs) and storage adapters. It has recently started expanding into software markets, mainly for security and mainframe applications. VMware is the global leading supplier of server virtualisation software in the on-premises and private cloud environments which interoperates with a wide range of hardware, including FC HBAs and storage adapters. The companies' portfolios are largely complementary.

As a result of its in-depth investigation the Commission is concerned that Broadcom may restrict competition in the global markets for the supply of FC HBAs and storage adapters by foreclosing competitors' hardware by delaying or degrading their access to VMware's server virtualisation software. The markets are very concentrated. If the competitors of Broadcom are hampered in their ability to compete in these markets, this could lead to higher prices, lower quality and less innovation.

Further state aid exemptions for green and digital transition

On 9 March 2023 the Commission amended the General Block Exemption Regulation (GBER) to further facilitate and speed up the green and digital transition.

The GBER declares specific categories of state aid compatible with the Treaty on the Functioning of the EU, provided that they fulfil certain conditions. It therefore exempts these categories from the requirement of prior notification to and approval by the Commission, enabling Member States to grant the aid directly and informing the Commission only ex-post.

The amendment grants Member States more flexibility to design and implement support measures in sectors that are key for the transition to climate neutrality and to a net-zero industry. It will help speeding up investment and financing for clean tech production in Europe, in line with the Green Deal Industrial Plan. In particular, the revised rules increase the possibilities for aid in the area of environmental protection and energy, e.g. the rollout of renewable energy, decarbonisation projects, green mobility

and biodiversity. It also facilitates the implementation of Important Projects of Common European Interest (IPCEI), in the research and development field, by increasing the aid intensities as well as the notification thresholds. The GBER will extend the possibilities for training and reskilling, the regulation of energy prices and the increase of notification thresholds for environmental aid.

ECJ rules Commission must record any interview

On 9 March 2023 the European Court of Justice (ECJ) set aside in part the judgments of the General Court and annulled the decisions of the Commission ordering inspections at French undertakings in the distribution sector on account of suspicions of anticompetitive practices.

In 2017 the Commission adopted decisions ordering several undertakings to submit to inspections. In those inspections the Commission visited the premises of the companies and took copies of data on computers. The companies brought actions before the General Court seeking annulment of the Commission decisions. As in 2020 the General Court upheld the decisions in part, the undertakings appealed to the ECJ.

The ECJ observed that the Commission is required to record any interview which it conducts in order to collect information relating to the subject matter of an investigation. The ECJ found that the General Court erred in law in holding that the obligation to record did not apply to interviews conducted by the Commission with suppliers of the undertakings in question, on the ground that no investigation had yet been formally opened in respect of those undertakings. That obligation applies irrespective of whether the interview in question was conducted before the formal opening of an investigation, in order to collect indications of an infringement, or afterwards, for the purpose of collecting evidence of an infringement. The ECJ adds that the Commission may record the interviews in any form, thereby ensuring the effectiveness and speed of the investigation.

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

Photo credits: Cover, Grecaud Paul/Adobe Stock

**Luther, EU Law Center
Avenue Louise 326, 1050 Brussels, Belgium
Phone +32 2 6277 760, Fax +32 2 6277 761
helmut.janssen@luther-lawfirm.com**

Luther.

**Bangkok, Berlin, Brussels, Cologne, Delhi-Gurugram, Dusseldorf, Essen,
Frankfurt a.M., Hamburg, Hanover, Ho Chi Minh City, Jakarta, Kuala Lumpur,
Leipzig, London, Luxembourg, Munich, Shanghai, Singapore, Stuttgart, Yangon**

You can find further information at:

www.luther-lawfirm.com

www.luther-services.com

