

Competition update: Digital sector, provisional measures and competition law revision



At EU level, a number of developments took place over the summer regarding potential competition law infringements in the digital sector.

On 27 June 2019, the European Commission opened a formal investigation into exclusivity practices of Broadcom in the market for components for TV set-top boxes. Interestingly, the Commission also issued a statement of objections in view of imposing interim measures on Broadcom to protect competitors against further competitive harm during its investigation, a rarely used competition law tool. On 17 July 2019, the Commission opened a formal investigation into Amazon's practices regarding the use of sensitive data from independent retailers who sell on Amazon's online marketplace. The Commission examines Amazon's practices from the perspective of a potential violation of both the prohibitions on restrictive agreements in Article 101 TFEU and of abuse of dominance Article 102 TFEU. The focus is on Amazon's dual role as a marketplace for sellers and a retail seller competing with its customers. In addition, in a decision of 18 July 2019, the Commission imposed a fine of 242 million euros on Qualcomm for predatory pricing practices in the market for 3G baseband chipsets involving the sale below costs of chipsets with the aim of forcing a competitor out of the market.

At Luxembourg level, in decision 2019-MC-01 of 3 July 2019, the Competition Council ("Council") rejected a request for imposing provisional measures on Amazon Services Europe S. à r.l. introduced by a seller of goods via the Amazon web portal. The request was formulated in a complaint alleging that Amazon abused its dominant position on the market for online distribution platforms through certain conditions imposed on the complainant and the subsequent closure of his sales account. The Council applied the conditions for granting provisional measures set out in Article 12 of the Law on Competition of 23 October 2011 ("Law"). In particular, the Law requests proof that the contested practice creates a risk of serious and irreparable harm to the economic public order or the complainant undertaking. The case law of the Council further clarified that interim measures can only be granted if a company's behaviour constitutes at first sight an infringement of competition law. The Council found that that standard of proof was not met by the complainant's request.

The conditions for interim measures and other organisational and procedural aspects of competition law enforcement will be further clarified and the legal status of the Competition Council will be redefined through Bill N° 7479, submitted to Parliament on 1 October 2019. The Bill implements Directive (EU) 2019/1 of 11 December 2018 to empower the competition

authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market. Further details on this new regime will be provided in future publications.