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02 October 2017

Guidelines and Technical standards

MiFID – Secondary Markets

The European Securities and Markets Authority (ESMA) has issued today the [official translations](#) of its Guidelines on transaction reporting, order record keeping and clock synchronisation under the Markets in Financial Instruments Directive (MiFID II).

National Competent Authorities (NCAs) to which these Guidelines apply must notify ESMA whether they comply or intend to comply with the Guidelines, within two months of the date of publication by ESMA of the Guidelines in all EU official languages.

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## **Antitrust: Commission fines Lithuanian Railways €28 million for hindering competition on rail freight market**

Commissioner Margrethe **Vestager**, in charge of competition policy said: *“Lithuanian Railways used its control over the national rail infrastructure to penalise competitors in the rail transport sector. The European Union needs a well-functioning rail freight market. It is unacceptable and unprecedented that a company dismantles a public rail infrastructure to protect itself from competition.”*

Lithuanian Railways is the incumbent state-owned rail company in Lithuania. The company is vertically integrated, meaning that it is responsible for both railway infrastructure and rail transport.

AB Orlen Lietuva (“Orlen”) is a fully owned subsidiary of PKN Orlen, a Polish oil company.

In 2008, Orlen, a major commercial customer of Lithuanian Railways, considered redirecting its freight from Lithuania to Latvia by using the services of another rail operator. In October 2008, Lithuanian Railways dismantled a 19km long section of track connecting Lithuania and Latvia, close to Orlen’s refinery. The removal of the track meant that Orlen would need to use a much longer route to reach Latvia. Since then the dismantled track has not been rebuilt.



The Commission's investigation found that these actions hindered competition on the rail freight market by preventing a major customer of Lithuanian Railways from using the services of another rail operator. Lithuanian Railways failed to show any objective justification for the removal of the track. Such behaviour is in breach of Article 102 of the Treaty on the Functioning of the European Union (TFEU) which prohibits the abuse of a dominant market position.

The EU's rail freight market was liberalised in 2007. Since then, the Commission has been working to complete the single market for rail services, including by ensuring the independent management of rail infrastructure and fostering investment in tracks that interconnect Member States. In this context, the enforcement of EU competition rules is important to ensure that regulatory barriers are not replaced by anti-competitive behaviour of dominant rail companies that would prevent the EU from achieving its ultimate goals for rail transport.

## Fines

The fines were set on the basis of the [Commission's 2006 Guidelines on fines](#) (see [press](#) release and [MEMO](#)). Regarding the level of the fine, the Commission took into account, in particular, the value of sales relating to the infringement, the gravity of the infringement and its duration.

In addition to imposing a fine, the Commission's Decision requires Lithuanian Railways to bring the infringement to an end and refrain from any measure that has the same or an equivalent object or effect.

## Background

[Article 102 of the Treaty on the Functioning of the European Union](#) (TFEU) prohibits the abuse of a dominant market position which may affect trade between EU Member States and prevent or restrict competition. The Antitrust Regulation ([Council Regulation No 1/2003](#)) sets out how the Commission and the national competition authorities apply this provision.

Following a complaint by Orlen, the Commission carried out [inspections](#) at the premises of Lietuvos geležinkeliai in 2011 and opened [formal antitrust proceedings](#) in March 2013. The Commission sent [Statement of Objections](#) to the company in January 2015.

More information will be made available under the case number [39813](#) in the public case register on the Commission's [competition](#) website once any confidentiality issues have been resolved. A periodic compilation of antitrust news is available in the [Competition Weekly News Summary](#).

### Action for damages

Any person or firm affected by anti-competitive behaviour as described in this case may bring the matter before the courts of the Member States and seek damages. The case law of the Court and Council Regulation 1/2003 both confirm that in cases before national courts, a Commission decision constitutes binding proof that the behaviour took place and was illegal. Even though the Commission has fined the companies concerned, damages may be awarded without being reduced on account of the Commission fine.

The [Antitrust Damages Directive](#), which Member States had to implement in their legal systems by 27 December 2016, makes it [easier for victims of anti-competitive practices to obtain damages](#). More information on antitrust damages actions, including a practical guide on how to quantify antitrust harm, is available [here](#).

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## [Daily News 02 / 10 / 2017](#)

### Be cyber aware – start of the European Cybersecurity Month

The 5<sup>th</sup> edition of the [European Cybersecurity Month](#), taking place during the entire month of October 2017 across Europe, aims at raising awareness of cybersecurity threats and promoting cybersecurity among citizens and organisations through education and sharing of good practices. This year's campaign follows up on Commission's proposals to [scale up EU's response to cyber-attacks](#) and will carry further the message that cyber-hygiene needs to be embedded in our daily practices. Commission Vice-President for the Digital Single Market, Andrus **Ansip**, said: *"Cybersecurity is the basis for the digital world; it is our shared responsibility, of everybody, every day. I welcome these joint efforts to promote awareness and concrete actions for cybersecurity and cyberhygiene across Europe."* The annual awareness campaign is organised by the [European Union Agency for Network and Information Security](#) (ENISA), the European Commission and over 300 partners, including local authorities, governments, universities, think tanks, NGOs and professional associations. Around 300 activities will take place in October throughout Europe. During this month, in order to tackle the need of smarter authentication ways, the European Commission has launched a new [Horizon](#)

[prize](#): “Seamless authentication for all”. €4 million are available to the innovators who contribute to inventing secure, privacy-friendly and affordable authentication methods for everyone and their smart objects. You can find out more about what is happening in your country during the Cybersecurity Month by checking [the interactive map](#). Tips and advice in 23 languages, videos, online quizzes and awareness raising material are available on [the dedicated website](#). You can find more information in the ENISA press release [here](#) as well as a factsheet on [stepping up cybersecurity](#) as proposed by the European Commission on 13 September 2017. *(For more information: Nathalie Vandystadt – Tel.: +32 229 67083; Julia-Henriette Bräuer – Tel.: +32 229 80 707; Inga Höglund – Tel.: +32 229 50698)*

### **Are European schools making the most of digital technologies? – Trial of a new tool for self-assessment**

Following the [Digital Summit](#) of European heads of state or government in Tallinn on 29 September, the European Commission is launching the trial version of a new tool to support schools in using digital technologies. The tool called “Self-reflection on effective learning by fostering innovation through educational technology” (SELFIE) will help schools assess their strengths and weaknesses in order to help them make the most of digital technologies in their teaching activities. 600 schools from 14 countries have the opportunity to try the new SELFIE tool in this pilot phase, before it is finalised and made available to interested schools in Europe in early 2018. Commissioner for Education, Culture, Youth and Sport, Tibor Navracsics, said: *“The new SELFIE tool will support European schools who want to see how well they are using digital technologies for better learning outcomes. Digital knowledge is indispensable in today’s world. In the future, 9 out of 10 jobs will require digital skills. Moreover, digital skills are vital to ensure people can use new technologies confidently and safely and be fully engaged members of society. That is why schools need to be prepared to equip their pupils with the right set of skills from the very beginning.”* The SELFIE tool is being developed by the Commission’s Joint Research Centre (JRC) in collaboration with the [Directorate General for Education, Youth, Sport and Culture](#) (DG EAC) and supports the EU policy goals of improving [digital skills and learning](#) as well as the [Initiative on school development and excellent teaching for a great start in life](#). You can find out more about the SELFIE tool [here](#); more general information on the EU’s efforts to boost digital skills is available in a [brochure](#) published in the context of the Digital Summit in Tallinn. *(For more information: Nathalie Vandystadt – Tel.: +32 229 67083; Joseph Waldstein – Tel.: +32 229 56184; Julia-Henriette Bräuer – Tel.: +32 229 80707)*

### **Antitrust: Commission fines Lithuanian Railways €28 million for hindering competition on rail freight market**

The European Commission has fined Lithuanian Railways (*Lietuvos geležinkeliai*) €27 873 000 for hindering competition on the rail freight market, in breach of EU antitrust rules, by removing a rail track connecting Lithuania and Latvia. In 2008, AB Orlen Lietuva (“Orlen”), a major commercial customer of Lithuanian Railways, considered redirecting its freight from Lithuania to Latvia by using the services of another rail operator. In

October 2008, Lithuanian Railways dismantled a 19km long section of track connecting Lithuania and Latvia, close to Orlen's refinery. The removal of the track meant that Orlen would need to use a much longer route to reach Latvia. Since then the dismantled track has not been rebuilt. The Commission's investigation found that these actions hindered competition on the rail freight market by preventing a major customer of Lithuanian Railways from using the services of another rail operator. Lithuanian Railways failed to show any objective justification for the removal of the track. Such behaviour is in breach of Article 102 of the Treaty on the Functioning of the European Union (TFEU) which prohibits the abuse of a dominant market position. Commissioner Margrethe **Vestager**, in charge of competition policy said: *"Lithuanian Railways used its control over the national rail infrastructure to penalise competitors in the rail transport sector. The European Union needs a well-functioning rail freight market. It is unacceptable and unprecedented that a company dismantles a public rail infrastructure to protect itself from competition."* A full press release is available in [EN](#), [DE](#), [FR](#), [LT](#), [LV](#), [PL](#). (For more information: Ricardo Cardoso – Tel.: +32 229 80100; Maria Sarantopoulou – Tel.: +32 229 13740; Yizhou Ren – Tel.: +32 229 94889)

#### **Mergers: Commission clears acquisition of joint control over Linden Foods by ABP Food Group and Fane Valley**

The European Commission has cleared unconditionally under the EU Merger Regulation the proposed acquisition of joint control over Linden Foods by ABP Food Group and Fane Valley. ABP, Fane Valley, and Linden are active in Ireland and the UK in the purchase and slaughter of live cattle, sheep and lambs, as well as the processing of their meat. The companies also have overlapping activities in the market for sale of fresh and processed meat, and the markets for animal by-products. ABP already holds a non-controlling interest in Linden and proposes to increase its shareholding to 50% with the effect that, following the transaction, Linden will be jointly controlled by ABP and Fane Valley. The Commission concluded that the transaction would not adversely affect competition in the EU Single Market. A full press release is available in [EN](#), [FR](#) and [DE](#). (For more information: Ricardo Cardoso – Tel.: +32 229 80100; Maria Sarantopoulou – Tel.: +32 229 13740)

#### **Mergers: Commission clears acquisition of Scott Safety by 3M**

The European Commission has approved under the EU Merger Regulation the acquisition of Scott Safety by 3M Company, both of the US. Scott Safety manufactures personal protective equipment designed to protect users from injuries or illnesses resulting from contact with radiological, chemical, physical, mechanical, electrical, or other hazards. 3M Company is a diversified technology company active in several business areas, including personal protective equipment. The two companies' activities overlap in the supply of respiratory protection, in particular powered and non-powered reusable respirators, constant flow airline systems, hearing protection and head, eye and face protection. The Commission concluded that the proposed acquisition would raise no competition concerns, in particular because of the



companies' moderate combined market positions resulting from the proposed transaction in the European Economic Area, the presence of a number of strong players in all relevant countries and the possibilities of market entry and expansion. The transaction was examined under the normal merger review procedure. More information is available on the Commission's [competition](#) website, in the public [case register](#) under the case number [M.8486](#). *(For more information: Ricardo Cardoso – Tel.: +32 229 80100; Maria Sarantopoulou – Tel.: +32 229 13740)*

### **Mergers: Commission clears acquisition of MIP by IFM and PSA**

The European Commission has approved, under the EU Merger Regulation, the acquisition of Mersin Uluslararası Liman İşletmeciliği A.Ş. ("MIP") of Turkey by IFM Investors Pty Ltd ("IFM") of Australia and PSA International Pte Ltd ("PSA") of Singapore. MIP operates and manages the Mersin International Port in Turkey. IFM is a global investment company, managing assets across infrastructure, listed equities, private capital and debt investments. PSA is a global operator of shipping terminals mainly active in the provision of stevedoring services at ports with a particular focus on providing terminal services for container liner ships. The Commission concluded that the proposed acquisition would raise no competition concerns since MIP is only active in Turkey. The transaction was examined under the simplified merger review procedure. More information is available on the Commission's [competition](#) website, in the public [case register](#) under the case number [M.8631](#). *(For more information: Ricardo Cardoso – Tel.: +32 229 80100; Maria Sarantopoulou – Tel.: +32 229 13740)*

### **Eurostat: Le taux de chômage à 9,1% dans la zone euro**

Dans la zone euro (ZE19), le taux de chômage corrigé des variations saisonnières s'est établi à 9,1% en août 2017, stable par rapport à juillet 2017 et en baisse par rapport au taux de 9,9% d'août 2016. Cela demeure le taux le plus faible enregistré dans la zone euro depuis février 2009. Dans l'UE28, le taux de chômage s'est établi à 7,6% en août 2017, en baisse par rapport au taux de 7,7% de juillet 2017 et à celui de 8,5% d'août 2016. Il s'agit du taux le plus faible enregistré dans l'UE28 depuis novembre 2008. Ces chiffres sont publiés par Eurostat, l'office statistique de l'Union européenne. Un communiqué de presse est disponible [ici](#). *(Pour plus d'information: Christian Wigand– Tel.: +32 229 62253; Mélanie Voin – Tel.: +32 229 58659)*

### **Commission launches new system for traders to deal with customs procedures in the EU**

The European Commission today launched a new pan-EU electronic system to make it easier for businesses to get permission to import goods. In turn, this means faster delivery and cheaper prices for consumers. The new [Customs Decision System \(CDS\)](#) will allow traders to handle up to 22 different types of customs applications online through the [EU Trader Portal](#). Access to the CDS is more secure than current procedures and importers in all Member States can use the same portal with applications being exchanged between all relevant customs authorities. The new system is one of the first outcomes of the [new Union Customs Code](#) (UCC), a major overhaul of existing EU customs

legislation which came into force on 1 May 2016. Modern IT systems are at the heart of the new regime so that customs systems can work efficiently to facilitate the flow of more than €3 trillion worth of goods in and out of the EU each year. More information is available on the [DG TAXUD website](#). (For more information: Vanessa Mock – Tel.: +32 229 56194; Patrick McCullough – Tel.: +32 229 87183)

## ANNOUNCEMENTS

### **Commissioner Thyssen attends the 10th European Regional Meeting of the International Labour Organization, Turkey\***

Marianne **Thyssen**, the Commissioner for Employment, Social Affairs, Skills and Labour Mobility, attends today the [10<sup>th</sup> European Regional Meeting](#) organised by the International Labour Organisation (ILO) about the future of work which takes place in Istanbul, Turkey. Discussions will focus on the opportunities and challenges for decent work in Europe and Central Asia. Commissioner Thyssen will also attend the Informal Ministerial Meeting which takes place in the margins of the 10<sup>th</sup> European Regional Meeting and which will focus on *fair and effective access to labour markets for migrants and refugees*. The aim is to discuss in particular good practices for integration, the role of social partners, approaches to address irregular migration and how to improve cooperation across Europe and Central Asia. (For more information: Christian Wigand– Tel.: +32 229 62253; Mélanie Voin – Tel.: +32 229 58659)

[Upcoming events](#) of the European Commission (ex-Top News)

\*corrected name of event, 02/10/2017 at 13:05 CET

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## **Statement on the events in Catalonia**

Under the Spanish Constitution, yesterday's vote in Catalonia was not legal.

For the European Commission, as President Juncker has reiterated repeatedly, this is an internal matter for Spain that has to be dealt with in line with the constitutional order of Spain.

We also reiterate the legal position held by this Commission as well as by its predecessors. If a referendum were to be organised in line with the Spanish Constitution it would mean that the territory leaving would find itself outside of the European Union.

Beyond the purely legal aspects of this matter, the Commission believes that these are times for unity and stability, not divisiveness and fragmentation.

We call on all relevant players to now move very swiftly from confrontation



to dialogue. Violence can never be an instrument in politics. We trust the leadership of Prime Minister Mariano Rajoy to manage this difficult process in full respect of the Spanish Constitution and of the fundamental rights of citizens enshrined therein.