Eurojust supports 18 restrictive measures against tax fraud

The Hague, 12 June 2019

Eurojust helped the Italian national authorities to crack down on an organised crime group involved in large-scale tax fraud and other financial crimes. 17 people were placed under restrictive measures in Italy and 1 was arrested in the UK through the execution of a European Arrest Warrant. The estimated damage, caused by tax evasion and other criminal activities, amounts to over €80 million. Today's successful operation was the result of a highly complex and lengthy cross-border investigation, which would have not been possible without Eurojust's close cooperation.

The Public Prosecutor's Office (PPO) and Financial Police (*Guardia di Finanza*) of Udine today held a press conference on the crackdown of an organised crime group (OCG) suspected of VAT and excise tax evasion in Italy. The OCG was supported by various criminal cells in the UK and several other EU countries. The investigations into the OCG were initiated back in 2017.

In July 2017, Eurojust, the EU's Judicial Cooperation Unit, swiftly set up a coordination centre to facilitate the execution of Letters of Request (LoRs) towards 17 EU countries and the gathering of sufficient evidence to help national authorities advance their criminal investigations. Eurojust closely coordinated the national investigations, serving as a platform to efficiently exchange information and evidence, and agree on joint prosecutorial strategies and operational actions, including simultaneous searches carried out in several EU countries. Eurojust also assisted the Italian authorities in quickly issuing and safely transmitting 2 European Arrest Warrants towards the British authorities and 17 LoRs to the EU countries concerned.

The OCG, which was headed by UK nationals and composed of Italian nationals, expanded its criminal activities to numerous EU countries. The fraudsters were involved in a carousel scam involving real and fake alcoholic drink companies in Italy and the 17 EU countries involved. The OCG members took advantage of loopholes in tax regulation at EU level, such as the exemption from paying VAT or excise tax for transactions within the European Union, to evade taxes on the trade of alcohol. The criminals also benefitted from the possibility to justify the illegal distribution of alcohol, from almost anywhere in the EU countries concerned, by exploiting the EU's Excise Movement and Control System (EMCS).

The OCG members are accused of having participated in a criminal organisation to commit excise and VAT fraud, as well as large-scale money laundering, affecting the financial interests of the European Union, and other related crimes.

Photo © Eurojust

[Letter of congratulations from President Donald Tusk to President of Kazakhstan Kassym-Jomart Tokayev]

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[ESMA to address regulatory concerns over Frequent Batch Auctions]

FBAs have been rapidly gaining market share since the application of MiFID II. ESMA launched a call for evidence in November 2018 to better understand FBA systems and to assess whether and to which extent these systems are used to circumvent the double volume cap (DVC).

The Final Report presents ESMA’s assessment of four main characteristics of FBA trading systems: limited pre-trade transparency, short auction duration, price determination within the best bid and offer price, and self-matching features. ESMA, based on the evidence gathered, will focus on pre-trade transparency and the price determination process of FBAs.

- **Pre-trade transparency**

The call for evidence identified two types of FBA systems, detailed in the Final Report, resulting in a different application of the pre-trade transparency requirements. While ESMA agrees with the views expressed by stakeholders responses that market operators should be free to decide which type of system they intend to operate, ESMA considers it important that any auction system operated provides market participants with information that an auction has started to allow for genuine pre-trade transparency. ESMA intends to clarify this via supervisory guidance.

- **Price determination**

ESMA highlighted in its call for evidence three practices which may undermine price formation and/or require a reference price waiver: the use of pegged orders, the use of price band limitations to ensure that the uncross price is always within the EBBO/PBBO, and the practice of locking in prices at the beginning of the auction.

After assessing the feedback received, ESMA remains concerned that the three practices identified in the call may weaken the price determination process of FBAs and serve as a vehicle to circumvent the DVC. Therefore, to provide certainty to the market and contribute to regulatory convergence, ESMA intends to issue in the course of the following months supervisory guidance clarifying that FBAs should be genuinely price-forming in order to operate without a waiver from pre-trade transparency.

- **Auction duration and self-matching**

The call for evidence also highlighted ESMA’s concerns on two further characteristics of FBAs: short auction duration and self-matching. Following the assessment of the feedback received, ESMA does not consider it necessary to take further action on those characteristics of FBAs at this point. Concerning self-matching features of trading systems, ESMA will clarify through upcoming guidance that the use of self-matching should, for any trading system, be in no circumstances used to formalise pre-arranged trades.

Next Steps

ESMA will work on further guidance along the lines recommended in the report, covering the areas of price determination and pre-trade transparency. Furthermore, ESMA will look at the broader effects of the MiFID II transparency regime, including the general development of the market structure in the upcoming MiFID II review reports.

Indicative programme – Employment, Social Policy, Health and Consumer

Affairs Council of 13 and 14 June 2019

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Statement by Commissioner Vestager on the proposed joint venture by Tata Steel and ThyssenKrupp

* Check against delivery *

Today the Commission has decided to prohibit a proposed joint venture between two important steelmakers, Tata Steel and ThyssenKrupp.

Our investigation showed that the merger would have led to higher prices for steel products that are used as inputs by the packaging industry and car manufacturers. This would have harmed European competitiveness in these sectors and led to higher prices for consumers buying canned food or cars.

As the companies did not offer remedies that fully address our competition concerns, we had to block the merger.

Prohibitions are very rare – today's decision is only the tenth merger we have blocked over the past ten years. Over the same period, we have cleared more than 3,000 mergers, with over 90% cleared unconditionally. To give you an idea, we have approved over 100 mergers since I was here in February to inform you of two prohibitions.

We have seen a wave of mergers in the recent past. In fact, just last year the number of mergers notified to the Commission reached an all-time high of more than 400. Our principle when looking at all these mergers always remains the same: to ensure that European consumers are not harmed through higher prices, limited choice or less innovation.

A key sector

The European steel sector is a key industry in Europe. It employs some 360,000 people in more than 500 production sites all over Europe, manufacturing crucial inputs for many industrial customers.

Steel is an essential part of many products. The present case, for instance, would affect the cost of steel products used in canned food sold in supermarkets, as well as steel products used in the manufacturing of cars.

These industries employ millions of Europeans. They depend on competitive access to steel to keep their business viable. In particular, the food packaging industry gives work to over 60,000 people.

The price of steel is an important element for the competitiveness of companies in the food packaging or car industries and for the affordability of their products For instance, one company told us that a can may account for more than 50% of the cost of private label canned tomatoes. Steel is in turn the most important cost component for that can.

The steel sector has been consolidating in the face of overcapacity. However, this overcapacity is not the same for all steel types. There are often only a few competitive suppliers available for higher value or very specific steel products. This is the case for instance for tinplate and laminated steel used by the packaging industry. It is also the case for hot dip galvanised steel used by the automotive industry. All of these steel types would be affected by the proposed merger.

There are considerable volumes of steel imported into Europe. However, imports of particular higher value and more complex steel products, such as those used by the food packaging and automotive industries, have remained limited. This was the case even before recent safeguard and trade defence measures were introduced.

Our investigation

Now a few words about our investigation. The proposed merger between Tata Steel and ThyssenKrupp would have brought together the second and third largest flat carbon steelmakers in Europe, behind ArcelorMittal.

Last October, we opened an in-depth investigation into the merger, because we were concerned that it may reduce competition in the supply of various high-end steel products.

Our investigation took into account all types of businesses in the EU that rely on steel products. We collected and reviewed more than a million documents. We also received over 100 replies from customers of these steel products, as well as substantive feedback from the packaging industry and the car industry.

The merger would have created the largest manufacturer of metallic coated and laminated steel products used in the packaging industry. The merged company would have accounted for more than 50% of Europe's production capacity for these steel products and combined two of the three biggest players active in Europe.

The merger would also have removed an important player in the market for hot dip galvanised steel used by car manufacturers. This is a particularly demanding type of steel to produce and only a few suppliers can offer significant volumes at the required quality.

In these markets, the pressure from the remaining competitors in Europe would not have been enough to ensure effective competition. We found that the merger would have led to higher prices and reduced choice.

Our investigation also considered whether customers could have switched to importing non-European steel products to avoid potential price increases. However, industrial customers told us of several reasons why they could not resort to imports, in particular long lead times until delivery, security of supply issues and lower service quality.

Remedies

Last year we approved the purchase of the largest European single-site steel plant, Ilva in Italy, by ArcelorMittal, the largest flat carbon steelmaker in Europe.

We could approve the merger because the companies offered suitable remedies to address our competition concerns relating to three different specific steel types. As a result, competition was preserved on steel markets for these products, in the interest of European manufacturing industries and consumers.

Similarly, the Tata and Thyssenkrupp joint venture could have been approved, if the companies had proposed appropriate remedies.

However, the proposed remedies were limited in scale and scope and did not fully address our competition concerns on a lasting basis.

For steel products used in the packaging sector, Tata and Thyssenkrupp proposed to divest only a small part of the overlap between their activities. The assets proposed for divestment were largely located in the UK or depended on intermediate steel products from the UK. The merged entity would have retained the best production assets of both companies.

For automotive steel products, the companies proposed to divest only limited capacities, which were insufficient for any competitor to act as a real challenger in this market.

The remedy proposal did not include any upstream assets for intermediate steel products. These intermediate products are required to make the final steel products used by the packaging and automotive industries. As a result, the divested businesses would have been dependent on the merged entity for their supply of these intermediate steel products.

We were concerned that these limited divestments proposed by Tata and Thyssenkrupp would not have led to a viable and effective solution sufficient to maintain competition in these markets.

My services and I held a number of meetings with the companies to discuss potential solutions. We talked to market participants about the remedies, and the feedback we received was negative. This confirmed our view that the remedies were insufficient, and unlikely to provide a viable competitive force in those markets on a lasting basis.

Of course, it is always up to merging companies to decide whether to propose the remedies needed for a merger to be cleared.

In this case, in the absence of Tata and Thyssenkrupp submitting an appropriate remedy package, the Commission has blocked the merger to prevent higher prices and less choice for steel customers.

Conclusion / Steel industry

Our decision today is about protecting European industrial customers that depend on steel products and, ultimately, of course those who buy everyday products such as canned food or cars.

We are also equally concerned with protecting our steel industry itself from unfair trade distortions from third countries. My colleague Cecilia Malmström is leading our efforts to fully use the trade defence toolbox, including through imposing anti-dumping and anti-subsidy duties.

When we try to design the best strategy to support the future of European industry, we need to look at the entire economic ecosystem. In all its diversity, which is the most characteristic feature of the European economy, with millions of businesses of all sizes, including many SMEs.

The best way to promote the competitiveness of the whole system is to ensure that all European companies, whether they are making steel or using steel, whether they are big or small, have a fair chance to compete and grow on their merits.