



Newsletter

Weeks XXI - XXII: 22nd May to 2nd June 2023

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All times are 9:30
unless otherwise
stated.

Don't forget to
check the diary
on our website
for details of
other cases.



Week XXI – 22nd to 26th May

Wednesday 24th May

General Court

[Judgment in Cases T-451/20 Meta Platforms Ireland v Commission & T-452/20 Meta Platforms Ireland v Commission](#)

(Competition)

Suspecting anti-competitive behaviour by the Facebook group in its use of data and in the management of its social networking platform, the European Commission sent a request for information to Meta Platforms Ireland Ltd, formerly Facebook Ireland Ltd, by decision of 4 May 2020.

This decision, adopted under Article 18(3) of Regulation 1/2003, obliged Meta Platforms Ireland to provide the Commission with all documents prepared or received by three of its managers during the relevant period which contained one or more of the search terms defined in the annexes. Failure to provide the requested information was subject to a potential daily penalty payment of € 8 million.

The decision of 4 May 2020 replaced an earlier similar decision, which provided for broader search criteria. Following discussions between the Commission and Meta Platforms Ireland, the new decision sought to reduce the number of documents requested by refining the search terms and limiting the number of officials involved.

On 15 July 2020, Meta Platforms Ireland brought an action for annulment of the decision of 4 May 2020 and an application for interim measures.

By an interim order of 29 October 2020, the President of the General Court ordered a stay of execution of the decision of 4 May 2020 until a specific procedure for the production of the requested documents, which are not related to the commercial activities of Meta Platforms Ireland and which, moreover, contain sensitive personal data, is put in place.

Following this order, the Commission adopted an amending decision stipulating that these documents will only be placed on the investigation file after they have been

examined in a virtual data room in the manner specified in the interim order. Meta Platforms Ireland adapted its application for annulment to take account of this amending decision.

[Background Documents T-451/20](#)

[Background Documents T-452/20](#)

There will be a press release in this case.

Wednesday 24th May

General Court

[Judgment in Case T-268/21 Ryanair v Commission \(Italy, Aid Scheme, COVID-19\)](#)

(State Aid)

In October 2020, the Italian Republic notified the European Commission of an aid measure consisting of subsidies to certain Italian licensed airlines through a compensation fund of € 130 million. This measure was aimed at remedying the damage suffered by the eligible airlines as a result of travel restrictions and other containment measures taken in the context of the COVID-19 pandemic.

In accordance with the eligibility conditions laid down in the measure, only airlines applying a remuneration equal to or higher than the minimum remuneration set by the national collective agreement applicable to their employees whose base of assignment is in Italy and to employees of third companies involved in their activities were eligible for the measure.

Without opening the formal investigation procedure under Article 108(2) TFEU, the Commission decided not to raise objections to the measure at issue, on the grounds that it was compatible with the internal market.

An action for annulment was brought by the airline Ryanair.

[Background Documents T-268/21](#)

There will be a press release in this case.

Wednesday 24th May

General Court

[Judgment in Case T-2/21 Emmentaler Switzerland v EUIPO \(Emmentaler\)](#)

(Intellectual Property)

Emmentaler Switzerland obtained from the International Bureau of the World Intellectual Property Organisation (WIPO) the international registration of the word sign EMMENTALER for goods corresponding to the description "cheeses with the protected designation of origin 'emmentaler'".

This international registration was notified to the European Union Intellectual Property Office (EUIPO), but the examiner rejected the application. Emmentaler Switzerland therefore filed an appeal, which was subsequently rejected by the Second Board of Appeal of the EUIPO on the grounds that the mark applied for was descriptive.

Emmentaler Switzerland is challenging this decision of the Second Board of Appeal before the General Court.

[Background Documents T-2/21](#)

There will be a press release in this case.

Thursday 25th May

[Judgment in Case C-575/21 WertInvest Hotelbetrieb](#)

(Environment)

Extract from AG Collins' Opinion of November 2022:

Vienna is a city with a rich historical, cultural and architectural heritage. What began as a Celtic settlement became the strategic Roman garrison town of Vindobona. In 1857, the walls and other defences that had been erected around the city in the 13th century were razed and replaced by the Ringstraße, which opened in 1865 and along which many large public buildings were erected in an eclectic historicism style, sometimes called Ringstraßenstil, using elements of Classical, Gothic, Renaissance and Baroque architecture. UNESCO has designated the historic centre of Vienna, including the Ringstraße, as a World Heritage Site.

A private company seeks to carry out the 'ICV Heumarkt Neu – Neubau Hotel InterContinental, Wiener Eislaufverein WEV' (New ICV Haymarket – rebuilding of the InterContinental Hotel, Vienna Ice Sports Club; 'the New Haymarket project') approximately 250 m from that part of the Ringstraße named Schubertring. (2) The New Haymarket project involves demolishing the existing InterContinental Hotel and replacing it with several new structures, including a 19-storey tower building for hotel, commercial, conference, residential and office use with an underground ice rink, a sports hall, a swimming pool and a car park with 275 parking spaces. It is anticipated that the New Haymarket project will occupy around 1.55 ha with a gross floor area of around 89 000 m².

The project has given rise to some controversy due to its proximity to the centre of Vienna, a UNESCO World Heritage Site, and the alleged impact of the height of the proposed tower building on the city skyline. This reference for a preliminary ruling from the Verwaltungsgericht Wien (Administrative Court, Vienna, Austria) essentially asks whether a Member State, which chooses to determine that projects are to be subject to an environmental impact assessment by reference to thresholds or criteria that it has adopted may be required to make that determination by way of an individual examination of a project that does not meet those prescribed thresholds or criteria but is likely to have significant effects on the environment.

[Background Documents C-575/21](#)

There will be a press release in this case.

Thursday 25th May

[Judgment in Case C-290/21 AKM \(Provision of Satellite packages in Austria\)](#)

(Intellectual Property)

The applicant in the main proceedings, Staatlich genehmigte Gesellschaft der Autoren, Komponisten und Musikverleger Reg. Gen. mbH (AKM), is an Austrian copyright collective management society. It is the holder of an exploitation licence for musical works, entitling it to exercise, on a fiduciary basis, broadcasting rights on Austrian territory.

Canal+ Sàrl, established in Luxembourg, is a television operator, which offers, via satellite, packages of coded programmes of several broadcasting organisations located in other Member States in high definition or standard definition in Austria. The introduction of each of the programme-carrying satellite signals into the communication chain (uplink) is mostly carried out by these broadcasters themselves, sometimes by Canal+, in these other Member States.

A beam containing the entire programme in high definition quality and additional information, such as audio and subtitle data, is transmitted. After being "bounced" by the satellite, this beam is picked up by satellite reception facilities within a coverage area. This beam is then split and the user can access each of the programmes on a terminal by means of a decoder. The satellite packages provided by Canal+ contain both pay and free TV programmes. In contrast to the pay-TV programmes, the latter are not encrypted and can be received by anyone in standard quality in Austria.

Taking the view that Canal+ was infringing the rights which it administers, AKM brought an action before the Austrian courts seeking, in substance, the cessation of

the broadcasting by Canal+ of the satellite signals in Austria and the payment of compensation, arguing that, in the Member States in which the act of broadcasting or communicating to the public by satellite takes place, no authorisation had been obtained for such exploitation and that it had not authorised that broadcasting in Austria.

AKM considered that the broadcast served an additional category of Canal+ customers which would not be covered by the authorisations obtained for the communication to the public of the works in question by satellite and that Canal+ should have obtained authorisation from AKM to broadcast the satellite signals in Austria.

The Oberster Gerichtshof (Supreme Court, Austria), hearing appeals on points of law against a judgment of the Oberlandesgericht Wien (Higher Regional Court, Vienna), which had held, inter alia, that the satellite packages in question reached a new audience, that is to say, an audience different from that targeted by the free-to-air transmissions of the broadcasting operators, decided to refer a question to the Court of Justice for a preliminary ruling on the interpretation of Directive 93/83 and, in particular, Article 1(2)(b) thereof.

According to that article, communication to the public by satellite takes place only in the Member State in which, under the control and responsibility of the broadcasting organisation, the programme-carrying signals are introduced into an uninterrupted chain of communication leading to the satellite and returning to earth.

[Background Documents C-290/21](#)

There will be a press release in this case.

Thursday 25th May

[Opinion in Case C-750/21 P Pilatus Bank v ECB](#)

[Opinion in Case C-256/22 P Pilatus Bank v ECB](#)

(Economic Policy)

C-750/21 P

Pilatus Bank is appealing the General Court Order of the 24 September 2021 (T-139/19). By that Order, the General Court had dismissed Pilatus Bank's action for annulment of the ECB's decision of 21 December 2018 declaring to that it was no longer competent to ensure its direct prudential supervision and to take measures concerning Pilatus Bank.

[C-256/22 P](#)

Pilatus Bank is appealing the General Court Judgment of the 2 February 2022 (T-27/19). By that Judgment, the General Court had dismissed Pilatus Bank's application seeking annulment of the decision of the ECB of 2 November 2018 withdrawing the authorisation of Pilatus Bank to take up the business of a credit institution.

[Background Documents C-750/21](#)

[Background Documents C-256/22](#)

Week XXII – 29th May to 2nd June

The Court is in recess for the Whit Sunday break for this week.

HEARINGS OF NOTE*

Monday 22nd May: 09:30 – [T-216/21 Ryanair & Malta Air v Commission](#) (State Aid)

Monday 22nd May: 09:30 – [T-494/21 Ryanair & Malta Air v Commission](#) (State Aid)

Tuesday 23rd May: 09:30 – [C-465/20 P Commission v Ireland and Others](#) (State Aid)

Wednesday 24th May: 09:30 – [T-248/22 Mordashov v Council](#) (Ukraine Restrictive Measures)

* This is a non-exhaustive list and does not include all the hearings over the next two weeks.