

Kluwer Competition Law Blog

A small charitable donation for gun-jumping

Sinead McGarrigle, Philip Andrews (McCann FitzGerald) · Thursday, April 11th, 2019

After an 18 month investigation involving officials from both the Competition and Consumer Protection Commission (“CCPC”) and Ireland’s Director of Public Prosecution, and a first-ever criminal prosecution, a company that gun-jumped Irish merger control rules avoided criminal conviction by agreement to donate €2,000 to charity, following a guilty plea.

Irish competition law renders it a criminal offence to put a transaction into effect without prior CCPC approval, if that transaction satisfies certain turnover thresholds. This offence deems the non-notified deal void and carries an initial fine of between €3,000 and €250,000 for the company, or for the person controlling the company if they knowingly and wilfully authorise or permit the breach.

In what was viewed by many as an important test case, the CCPC’s decision to take this case arose from an investigation into Armalou Holdings’ acquisition of a Ford car dealership in 2015, which the parties failed to notify to the CCPC in breach of competition law. Having learned of the transaction from a third party in 2017, the CCPC required the parties involved in the deal to formally notify the transaction (which it later cleared unconditionally), and launched an extensive investigation into the suspected infringement before referring the file to the Director of Public Prosecutions.

In its judgment this week, the District Court noted that Armalou’s breach was inadvertent rather than wilful, and applied the Probation Act 1907 in conjunction with an order to donate €2,000 to the court’s “poor box”. Such orders are commonly imposed by the District Court to avoid criminal convictions for less serious offences.

The District Court’s response to the infringement suggests an unwillingness to criminally convict companies for gun-jumping offences in Ireland. However, the court was likely influenced by the facts that the breach allegedly arose due to a misunderstanding on the applicable notification thresholds and the CCPC had not identified any competition concerns with the deal itself. Even so, the donation required appears insignificant in light of Armalou’s turnover, which reportedly amounted to €157 million in 2015.

In contrast, although not a criminal offence under EU law, failures to notify transactions to the European Commission have resulted in large fines. For example, last year the Commission fined Altice €125 million for gun-jumping.

Armalou’s co-accused, Airfield Villas Limited, had its hearing adjourned until 3 May 2019.

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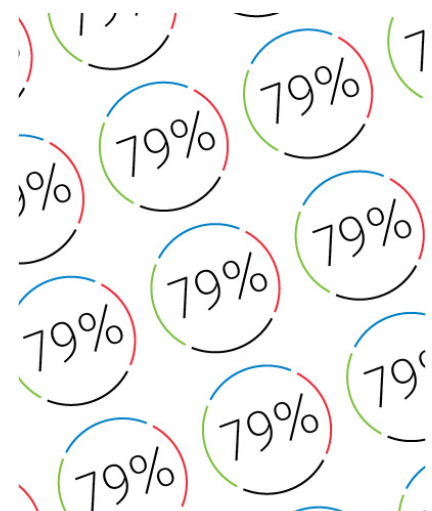
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