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Content update: March 2023

Highlights:
- Foreign subsidies focus
- *World Accounting Report* content categories
- Recently published and forthcoming articles
Focus on foreign subsidies

*Competition law practitioners will be aware that the EU Foreign Subsidies Regulation (FSR), which creates a new regulatory regime for companies that have received subsidies from non-EU countries, entered into force on 12 January 2023. For many, it “levels the playing field” by giving the European Commission broader investigative powers and the ability to reduce market distortion through merger control and other competition law enforcement tools. Competition Law Insight has an extensive archive of commentary on the FSR, including the articles below.*

Foreign Subsidies Regulation
Impacts on mergers and acquisitions activity
The FSR addresses what is perceived as a regulatory gap in the EU’s ability to control distortive foreign subsidies granted by non-EU governments. While subsidies granted by EU governments have long been strictly regulated under EU state aid rules, foreign subsidies currently escape scrutiny under EU competition rules, public procurement rules, and foreign direct investment control rules and are not subject to effective review or enforcement under international trade instruments.

Foreign subsidies – uncertainty ahead?
EU clears way for new regime with broad definitions and an additional layer of regulatory requirements
On 30 June 2022, the Council of the EU and European Parliament reached a political agreement on the text for the Foreign Subsidies Regulation that will give far-reaching powers to the EC to control subsidies provided by non-EU governments to businesses active in the EU. The FSR defines “foreign subsidy” widely, largely mirroring the EU’s state aid rules. A financial contribution will constitute a foreign subsidy if three cumulative criteria are met.

Recalibrating single market access
Traditionally the single market has been open to all players from around the world. Investors not just from the US, Japan and other democracies, but also from China, Russia and Saudi Arabia could broadly invest at will. This is now changing, first, with the adoption of the EU Foreign Investment Screening Regulation and the consequent member state expansion and creation of domestic foreign investment control regimes. And now with the enactment in June 2022 of the EU Foreign Subsidies Regulation, which will come into force in 2023.

One of a kind?
A regulatory tool to level the EU foreign subsidies playing field
On 30 June 2022, the EU co-legislators (the European Parliament and the Council) agreed on regulation to control foreign subsidies that distort the EU internal market. The regulation is unprecedented and one of a kind in the EU legislative order, combining elements of state aid, merger control, public procurement and trade defence rules.


Written by practitioners, for practitioners, Competition Law Insight provides expert analysis and technical coverage of the cases, regulatory policy and trends shaping global approaches to antitrust and competition law. For more information on editorial submissions and subject matter, contact kate.clifton@lloydslistintelligence.com

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Recently published

**Competition Law Insight**

**The new Digital Markets Unit**

What test should apply to appeals against its decisions?

The DMU has been established in shadow form since April 2021, but without any legislative powers. The UK Government is expected to bring forward legislation that will give the DMU power to administer a new ex ante regulatory regime for the largest tech companies, or so-called “strategic market status” firms.


**The intersection of antitrust and labour**

New Canadian legislation and guidance on wage-fixing and no-pooch agreements

In many jurisdictions there has been new attention on applying competition law to labour markets, including the issuance of new guidance and policy from competition regulators. In Canada, the impetus to ensure competition law applies to labour markets has even resulted in a change to legislation.


**BMW v CMA**

The CAT and High Court hit the brakes on the regulator’s extraterritorial powers

The UK Competition Appeal Tribunal and High Court have issued a single judgment in *Bayerische Motoren Werke AG v Competition and Markets Authority*, relating to applications by BMW AG and Volkswagen AG against decisions of the UK Competition and Markets Authority.


**Five minutes with... Dr Anca Cojoc**

The former CMA economist, competition litigation, investigations and mergers expert discusses her new role at Cornerstone Research, along with some of the trends and challenges to keep an eye on over the coming months.


**Farm Tax Brief**

**Mixed-use claims on small farms**

A spectrum of allowability

There have recently been two very different cases on the highly topical question of mixed-use Stamp Duty Land Tax (SDLT) relief. The Averdieck claim was disallowed and made the national press and then the Withers case allowed a claim for mixed-use SDLT.


**Where is the apart-hotel on the spectrum?**

The impact on farm diversification

This article considers the spectrum of trading assets to the holding of assets as an investment in the context of the world of farming. Succession planning for farmers has been very much in the news and the need to achieve Business Property Relief on diversified activities is very important.


**Finance Bill 2022 published**

Farm tax considerations

The Autumn Finance Bill 2022 and explanatory notes were published on 22 November 2022 and updated on 21 December 2022. The Bill had only 14 pages, 12 clauses and no schedules. It legislates for the key tax changes announced in the Autumn Statement.


**World Accounting Report**

**What to expect in the year ahead from the FRC**

Key focus areas for corporate reporting enforcement activities and audit inspections

The UK’s Financial Reporting Council has published a number of documents that give an idea of its focus for the coming year and beyond. This article provides an overview of its supervisory priorities, including its activities in the area of sustainability reporting.

[www.i-law.com/ilaw/doc/view.htm?id=433000](http://www.i-law.com/ilaw/doc/view.htm?id=433000)

**IASB: The year ahead**

A useful steer on the board’s priorities for 2023

In December 2022, IASB chair Andreas Barckow gave two speeches providing some insights into his priorities and concerns. These provide a useful steer about what to expect from the board in 2023. The first speech was given at a one-day conference held by EFRAG in Brussels, for which the theme was “where is corporate reporting heading?”

[www.i-law.com/ilaw/doc/view.htm?id=433002](http://www.i-law.com/ilaw/doc/view.htm?id=433002)

**Broader impacts of new sustainability reporting rules in Europe**

Building on existing requirements

The European Union’s latest directive on sustainability reporting builds on the existing non-financial reporting requirements, but goes much further and some new features mean that it will not only be companies in the EU that are affected by its provisions. This article sets out key areas covered by the legislation and asks what consequences the radical nature of the changes could have.

[www.i-law.com/ilaw/doc/view.htm?id=433003](http://www.i-law.com/ilaw/doc/view.htm?id=433003)

**EFRAG asks “where is corporate reporting heading?”**

Shaping the future

In December 2022, EFRAG held a conference to ask “where is corporate reporting heading?” The distinguished array of speakers included Commissioner Mairead McGuinness, whose words provided a high-level overview of how the European Commission is planning to shape the future of corporate reporting in Europe.

[www.i-law.com/ilaw/doc/view.htm?id=432997](http://www.i-law.com/ilaw/doc/view.htm?id=432997)

**The merry widow**

Two inheritance disputes involving spouses of the deceased

This claim by an elderly widow under the Inheritance (Provision for Family and Dependants) Act 1975 garnered significant media attention, but it also provides procedural guidance in claims where reasonable financial provision has clearly not been made for the claimant.

[www.i-law.com/ilaw/doc/view.htm?id=433004](http://www.i-law.com/ilaw/doc/view.htm?id=433004)

**The doctrine of lapse and section 33 of the Wills Act 1837**

Burns v Bean [2021] EWHC 838 (Ch)

In general terms, where a beneficiary of a will dies before the testator and there is no substitute beneficiary named in the will, the gift shall lapse. An important exception, however, to the doctrine of lapse is contained in s33 of the Wills Act 1837.

[www.i-law.com/ilaw/doc/view.htm?id=433006](http://www.i-law.com/ilaw/doc/view.htm?id=433006)
Hudson satisfied s53(1) of the Law of Property Act 1925.

Trusts and Estates
A golden ticket? Appealing multi-factorial judgments in the tax tribunals
This article discusses a case which is likely to have escaped the notice of most mainstream direct tax practitioners, above all those working in the private client sphere. At first sight, WM Morrison Supermarkets plc v HMRC [2023] UKUT 20 (TCC) seems to be about the fraught but niche question of whether cereal bars are “confectionary” and their consequential VAT treatment.

Modern formality: OMG, did I give my house away by email?
Amongst advocates’ stock anxiety dreams is that in which the Court of Appeal raises a novel, irresistible and devastating point. So it was for Lee Hudson. He and Jayne Hathway had engaged in an interesting and expensive trial and first appeal, arguing about the constituent elements of the common intention constructive trust, when, after a few minutes in the Court of Appeal, Lewison LJ asked why it had never been argued that emails sent by Mr Hudson satisfied s53(1) of the Law of Property Act 1925.

EU merger control trends 2022/2023
The year 2022 saw dealmakers feeling the pressure of having to navigate increasingly complex and unpredictable merger control environment globally including in the EU. The European Commission (EC) has stepped up scrutiny of mergers and acquisitions, adopting growingly aggressive approach in its merger control review. The divergence between competition authorities, in particular between the EC and the UK regulator, added yet another hurdle that transacting parties will likely continue to face going forward.