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EU AND COMPETITION LAW

NEWS - COMPETITION LAW AND POLICY 4TH QUARTER 2017

Below, you will find the edition of the Competition Law and Policy Newsletter for the 4th quarter of 2017, which compiles the most significant news in this area.

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PORTUGAL

I. COURTS

Competition Court confirms judgment against Ford Lusitana for allegedly providing false, inaccurate or incomplete information

In its judgment of 13 October 2017, the Court of Competition, Regulation and Supervision (Competition Court) confirmed the full amount of the fine of €150,000 that had been applied by the Portuguese Competition Authority (PCA) to Ford Lusitana, for alleged provision of false, inaccurate or incomplete information in reply to a request for information by the PCA in the use of its supervisory powers.

The underlying proceedings brought by the PCA against Ford Lusitana, as well as against other car brands, in relation to the companies' car warranty clauses, was concluded following the presentation of commitments by the company, which were made compulsory by the PCA in 2015.

Court of Appeal confirms judgment against Firmo Papéis e Papelarias for alleged concerted practices in the office supplies sector

The Lisbon Court of Appeal decided, in a judgment dated 17 October 2017, that the company Firmo Papéis e Papelarias, S.A. and another four companies that produce and sell envelopes, acted in a concerted manner in the market (cartel), sharing clients, fixing prices and manipulating tenders to supply envelopes.

The Portuguese Competition Authority (PCA) had initially applied a fine of €160,000 to the company. The Court of Competition, Regulation and Supervision (Competition Court) then reduced this fine to €50,000 and it has now been confirmed by the Lisbon Court of Appeal.

The companies Copidata, S.A. and Tompla – Indústria Internacional do Envelope, Lda., which are part of the same economic group, achieved a 100% reduction in the fine (immunity) because they were the companies which, in October 2010, informed the PCA, under the leniency programme, of the existence of a concerted practice restricting competition.

In relation to Papelaria Fernandes – Indústria e Comércio, S.A., despite it being found to have committed the offence, it was not possible to set a fine because of its declaration of insolvency.

The company Antalis Portugal, S.A. had already been ordered, in May 2016, to pay a fine of €440,000 for its involvement in the same offence. The early conclusion of the proceedings in relation to this company was possible because of its cooperation under the leniency programme and settlement procedure, which allowed the company to benefit from a reduction in the fine applied to it.

The PCA had initially applied a fine of €160,000 to the company. The Competition Court then reduced this fine to €50,000

II. COMPETITION AUTHORITY

Council of Ministers approves draft law reinforcing competition rules and regulating actions for damages for infringement of Portuguese competition law

In the Council of Ministers meeting held on 19 October 2017, a draft law was approved transposing Directive 2014/104/EU, which regulates the possibility of having civil claims for damages based on violations of competition law.

Amongst others, the draft law amends the Portuguese Competition Act and the Portuguese Law of the Organisation of the Judicial System, attributing jurisdiction for civil actions for damages as a result of competition infringements to the Competition, Regulation and Supervision (Competition Court).

The draft law seeks to make it easier for anyone that suffers losses resulting from competition law violations to obtain compensation, and to provide a link between the public and private enforcement of competition law. It enacts Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 and was preceded by another draft and a period of public consultation organised by the Portuguese Competition Authority (PCA).

After the Council of Ministers' approval, the draft law was delivered at the Assembly of the Republic, where it is under consideration by the Committee on Economy, Innovation and Public Works.

Competition Authority's report identifies barriers to entry in the supply of natural gas to industry

In the report, issued on 25 October 2017, the Portuguese Competition Authority (PCA) identified barriers to entry and expansion in the supply of natural gas to industry that could reduce the competitive pressure in the market.

According to the PCA, the industrial customers' segment has a high degree of concentration, with the two largest operators in this segment, Galp and EDP, supplying more than 70% of the market. In addition, in the report the PCA identifies a number of other issues that are capable of jeopardising market efficiency. These include the insufficient integration of markets at an Iberian level and the duplication of transport network usage tariffs in cross-border trade between Portugal and Spain. Finally, the PCA has also established the existence of high costs of access to the liquefied natural gas (LNG) terminal in Sines for small operators.

The report on the sector-based inquiry into the supply of natural gas to industrial consumers can be consulted here.

According to the PCA, the industrial customers' segment has a high degree of concentration.

ASFAC and ALF offered a set of commitments, as an answer to the concerns of the PCA.

Competition Authority intervenes in the market for specialised credit to eliminate the restrictive potential of the information exchange system

On 23 April 2015, the Portuguese Competition Authority (PCA) opened proceedings against the Portuguese Association of Specialised Consumer Credit Providers (ASFAC) and the Portuguese Association of Leasing, Factoring and Renting (ALF), as well as against the respective associate members, because of indications of infringements of competition rules, specifically the existence of a system for the exchange of sensitive strategic information organised by the two associations and their associated companies.

ASFAC and ALF offered a set of commitments, as an answer to the concerns of the PCA, respectively, on 13 September 2017 and 26 October 2017. These commitments were accepted and made compulsory by the PCA.

The highlights among the set of commitments offered by ALF, which will be monitored by the PCA, are i) strengthening of requirements of age of the data exchanged between the associated companies, reducing its strategic value and, hence, its restrictive potential; ii) amending the reciprocity rules in the collection and dissemination of information.

The highlights among the commitments offered by ASFAC are i) strengthening of requirements of age of the data exchanged between the associated companies, reducing its strategic value and, hence, its restrictive potential; ii) the provision of full access to such data not only to the associated companies, but also to non-member companies which request it on the basis of their interest in preparing for entry into the market.

Under the Portuguese competition law, the PCA may accept commitments proposed by investigated companies if they are likely to eliminate the anticompetitive effects of the practices in question, and this leads to a dismissal of the ongoing proceedings.

Competition Authority signs memorandum of understanding with IMPIC

Through this memorandum of understanding signed on 15 November 2017, the Portuguese Competition Authority (PCA) will be granted direct and permanent access to the national public procurement databases of the Institute for Public Procurement, Real Estate and Construction (IMPIC), which is the entity that manages the Public Procurement Website (Portal Base) and the Public Works Observatory.

The access to this information will, on the one hand, make it easier for the PCA to detect bid-rigging in public procurement at its own initiative and, on the other hand, accelerate the investigation of such practices.

Since 1 November 2009, procurement procedures carried out under the Portuguese Code of Public Contracts are mandatorily processed on electronic platforms at every stage of the formation of a contract, from the date of the notice of invitation to tender is published to the date of the conclusion of the contract. This data is collected on the Public Procurement Website given its interoperability with all electronic platforms involved with public procurement procedures.

As of 1 January 2018, the PCA will be allowed to access all the information on contracts available on the electronic platforms, including the Public Procurement Website, directly without the need for an information request.

FUNDAÇÃO PLMJ

DIOGO PIMENTÃO
Fio de Ferro, 2004 *(detail)*
Grafite s/papel
70 x 100 cm
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Competition Authority fines Vallis Group for alleged non-notified merger

On 27 December 2017, the Portuguese Competition Authority (PCA) applied a fine of €38,500 to the companies Vallis Sustainable Investments I, Holding S.à.r.l., and Vallis Capital Partners, SGPS, S.A. for allegedly concluding a merger without prior notification to the PCA. The merger concerned the acquisition of sole control of 32 Senses, a network of dental care clinics.

The parties introduced a settlement submission during the proceedings whereby they admitted the facts of the case, for which they assumed responsibility.

The Portuguese Competition Act requires that merging companies notify transactions that meet certain criteria prior to their implementation ("the notification requirement"), and do not implement transactions unless and until they have been notified and cleared by the PCA ("the standstill obligation").

For the second time since 2014, the PCA has imposed fines on firms for failing to notify a merger subject to prior notification in accordance with the criteria established in the Portuguese Competition Act.

CTT offer commitments to the Competition Authority intended at opening their postal distribution network to competitors

CTT Correios de Portugal, S.A. offered a set of commitments, as an answer to the concerns of the Portuguese Competition Authority (PCA), regarding the access to CTT's standard mail delivery network by competing postal operators.

On 13 February 2015, the PCA opened proceedings against CTT, because of indications of infringements of competition rules, having issued a Statement of Objections on 12 August 2016.

The Portuguese Competition Act requires that merging companies notify transactions that meet certain criteria prior to their implementation.

The highlights among the set of commitments offered by CTT, which will be monitored by the PCA, are (i) availability of new postal services in the CTT's Postal Network Access Offer, including publishing, priority and registered mail services; (ii) availability of new access points in CTT's postal network, further downstream in the postal distribution chain, in particular, to the Inward Sorting Centres and to a wide range of CTT shops (except for standard mail weighing less than 50 g); (iii) faster delivery time for access at CTT shops concerning standard mail weighing more than 50 g and publishing mail; (iv) competing postal operators may carry out additional sorting tasks by sorting mail according to the delivery area of Delivery Offices and street name; and (v) access prices below retail prices for final customers, differentiated according to the access point, postal service and sorting tasks carried out by the competing postal operator.

The commitments were published on the PCA's website on 28 December 2017, are subject to public consultation for a period of 20 working days and can be consulted online here:

Portuguese Competition Authority publishes priorities for 2018

On 29 December 2017, the Portuguese Competition Authority (PCA) announced its Competition Policy Priorities for 2018. This year marks the Authority's 15th years of existence.

Sanctioning activity

After having intensified its investigative activity in 2017, the PCA intends to continue to reinforce its efforts to detect and sanction anticompetitive practices in 2018, thus maintaining the level attained last year, in particular to detect the most serious violation of competition law that have the greatest direct impact on the final consumer.

In the context of detecting the most serious violations of competition rules – including cartels – and in the wake of the actions it has been taking over recent years, the PCA has established the promotion of the Leniency Programme as a priority. This programme provides for exemption from or reduction in the fine for companies and individuals that report participation in cartels to the PCA.

The PCA intends to continue to reinforce its efforts to detect and sanction anticompetitive practices in 2018.

In 2018, the PCA will focus on promoting competition in sectors going through digital innovation, in order to raise awareness of technological barriers that can prevent the entry of new competitors or distort competition in different markets.

In addition, as of 1 January 2018, the PCA will have direct and full access to all the information available on the Public Procurement Website (Portal Base) and the Public Works Observatory. The access to this information will, on the one hand, make it easier for the PCA to detect bid-rigging in public procurement at its own initiative and, on the other hand, accelerate the investigation of such practices.

Supervision Activity

In terms of its supervisory powers, the PCA has established swiftness and efficiency as its priorities in the area of evaluating merger cases. It also intends to continue with its policy of detecting mergers which, in violation of the law, have not been reported.

Furthermore, in 2018, the PCA intends to go ahead with market studies and surveys by economic sectors and by type of agreements, in which possible restrictions on competition are identified. In the exercise of its regulatory and supervisory powers, the PCA establishes the following economic sectors as a priority:

- Banking, Financial Markets and Insurance
- Telecommunications and Media
- Energy and Fuels
- Health and Pharmaceuticals
- Education
- Distribution and Food
- Environment and Waste Management
- Liberal Professions
- Transport and Infrastructures
- Construction

Other Activities

In view of its mission to contribute to the consolidation of a competition culture in Portugal, the PCA plans to carry out events to promote good practices to detect collusion and to encourage efficiency in public procurement. All this is part of the campaign to combat collusion in public procurement that was mentioned above. The PCA also intends to raise awareness of the Guide to Promoting Competition for Associations of Companies, published in 2016.

In an effort to stimulate the debate and discussion on current competition issues, the PCA will organise the V Lisbon Conference, which will be attended by 300 representatives of competition authorities, as well as lawyers, economists, academics and international organizations.

The document is available here.

JORGE MARTINS
S/título, 1992 *(detail)*
Mista s/papel
130 x 100 cm
From the Collection of the PLMJ Foundation

EUROPEAN UNION

I. COURTS

General Court partially annuls the Commission decision against Icap Group for alleged participation in the derivatives sector's cartel

In its judgment of 10 November 2017, the EU General Court annulled in part the decision of the European Commission (EC) in which it fined the Icap Group for the alleged practice of six infringements relating to manipulation of the interbank reference rate London Interbank Offered Rate (LIBOR) and Tokyo Interbank Offered Rate (TIBOR) in the market of Yen interest rates derivative products.

Unlike the other banking institutions, the Icap Group, chose not to settle the case and it received a fine of €14.9 million from the EC. The Icap Group brought an action against this decision before the EU General Court.

The EU General Court judgment confirmed that the infringements were, in fact, competition restrictions by object. However, the General Court annulled part of the decision of the EC, in which it found that Icap had participated in the bilateral cartel between UBS and RBS in 2008, considering that the EC had not been able to prove the participation of Icap in that cartel.

Moreover, the General Court put the view that the evidence presented by the EC was insufficient to establish the duration of three of the cartels in which Icap was held to have participated. It therefore decided to annul the part of the decision which set the fines, because it was insufficiently reasoned.

Unlike the other banking institutions, the Icap Group, chose not to settle the case and it received a fine.

RICARDO ANGÉLICO
Things Happen, 2008 *(detail)*
Guache s/ papel
120 x 150 cm
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Court of Justice clarifies that agricultural producer organisations must comply with EU competition rules

The Court of Justice of the European Union (CJUE) issued a judgment, on 14 November 2017, determining that a concertation on price and quantities between several organisations of agricultural producers, and associations of such organisations, may constitute an agreement, decision or concerted practice for the purposes of EU competition law.

In 2012, the French Competition Authority imposed sanctions on practices considered to be anticompetitive in the endive production and marketing sector. Those practices, implemented by producer organisations (POs), associations of producer organisations (APOs) and various bodies and companies, consisted, in essence, of concertation on the price of endives and the quantities placed on the market, as well as the exchange of strategic information.

The penalised entities brought an action before the French courts contesting the fine of almost €4 million imposed on them. Since the national court (Cour de cassation) had doubts with respect to the interpretation of EU law, it made a reference for a preliminary ruling to the CJUE.

In its judgment, the CJUE began by noting, that, under the Treaty on the Functioning of the European Union (TFEU), the Common Agricultural Policy (CAP) has precedence over the objectives of competition, with the result that the EU legislature may exclude from the scope of competition law certain practices which, outside the scope of the CAP, would have to be regarded as anticompetitive. However, the Court also observed that the common organisations of the markets in agricultural products are not a competition-free zone.

The CJUE concluded that the practices established between several POs or APOs, and, all the more so, practices involving not only such POs or APOs, but also entities not recognised by a Member State in the context of the implementation of the CAP, in the sector concerned, cannot escape the prohibition of agreements, decisions and concerted practices.

With regard to practices agreed between producers that are members of the same PO or APO recognised by a Member State, the CJUE noted that only practices that are actually and strictly connected to the pursuit of the objectives assigned to the PO or APO concerned can escape the prohibition of agreements, decisions and concerted practices. That may be the case, among others, of exchanges of strategic information, the coordination of the quantities of agricultural products put on the market and the coordination of the pricing policy of individual agricultural producers, if those practices in fact seek to achieve, and are strictly proportionate to, the objectives assigned to the POs/APOs concerned.

Court of Justice considers that a European Commission commitments decision does not exclude scrutiny by national courts

The Court of Justice of the European Union (CJUE) issued a judgment, on 23 November 2017, ruling that a European Commission (EC) decision – which made the commitments proposed by companies to answer competition concerns identified by the EC binding – does not certify that the practice is in compliance with EU competition law.

This judgment was issued in answer to a preliminary ruling request made by the Spanish Supreme Court, in a case in which the petrol station Gasorba requested the annulment of a lease agreement with the company Repsol, in which the latter would, sometimes, communicate a maximum sale price for fuel in a given petrol station. The EC accepted the commitments presented by Repsol and ceased the investigation.

In its judgment, the CJUE held that the EC may carry out a mere "preliminary assessment" of the competition situation without the commitment decision taken on the basis of that article subsequently establishing whether there has been or still is an infringement. Therefore, one cannot exclude the possibility that a national court may conclude that the practice which is the subject of the commitment decision infringes EU competition law and that, in so doing, it proposes, unlike the EC, to find that an infringement of that law has been committed.

According to the CJUE, the principle of sincere cooperation and the objective of applying EU competition law effectively and uniformly require the national court to take into account the preliminary assessment carried out by the EC and regard it as an indication, if not prima facie evidence, of the anticompetitive nature of the agreement at issue in the light of the relevant competition provisions.

Therefore, the CJUE concludes that a commitment decision concerning certain agreements between undertakings, adopted by the European Commission under Article 9(1) of Regulation (EC) No 1/2003, does not prevent national courts from examining whether those agreements comply with the competition rules and, if necessary, declaring those agreements void pursuant to EU competition law.

Court of Justice clarifies scope of restrictions to the supply of luxury goods online

The Court of Justice of the European Union (CJUE), in its judgment of 6 December 2017, held that Coty Germany, a supplier of luxury goods in Germany, may prohibit its authorised distributors, such as Parfümerie Akzente, from selling those goods on a third-party online platform, such as Amazon.

In the context of this dispute, the *Oberlandesgericht Frankfurt am Main* (Higher Regional Court of Frankfurt) having doubts regarding the compatibility of the prohibition with EU competition law, sent the question to the CJUE by means of preliminary ruling.

In its judgment, the CJUE first clarified that a selective distribution system for luxury goods, designed primarily to preserve the luxury image of those goods, does not breach the prohibition of agreements, decisions and concerted practices laid down in EU law, provided that the following conditions are met: (i) resellers are chosen on the basis of objective criteria of a qualitative nature, laid down uniformly for all potential resellers and not applied in a discriminatory fashion; and (ii) the criteria laid down must not go beyond what is necessary.

Furthermore, the CJUE found that the prohibition of agreements, decisions and concerted practices, laid down in EU law, does not preclude a contractual clause, such as the one disputed, which prohibits authorised distributors of a selective distribution network of luxury goods designed, primarily, to preserve the luxury image of those goods from using, in a discernible manner, third-party platforms for internet sales of the goods in question, provided that the following conditions are met: (i) that clause has the objective of preserving the luxury image of the goods in question; (ii) it is laid down uniformly and not applied in a discriminatory fashion; and (iii) it is proportionate in the light of the objective pursued.

As the question was raised through the preliminary ruling procedure, the Higher Regional Court, Frankfurt am Main must assess whether the abovementioned requirements are met.

Court of Justice confirms decision against Telefónica and Portugal Telecom for an alleged illegal non-compete clause

The Court of Justice of the European Union (CJUE) confirmed, in its judgment of 13 December of 2017, the EU General Court's decision regarding the fines imposed by the European Commission (EC), on 23 January 2013, in the amount of €66.8 million on Telefónica and €12.3 million on Portugal Telecom for an alleged non-compete agreement covering the Iberian telecommunications market.

In July 2010, in the context of the acquisition of the Brazilian mobile operator Vivo by the company Telefónica, which were previously jointly controlled, these companies inserted a non-compete clause under which they undertook not to compete with each other in Spain and Portugal. Both parties ceased the non-compete agreement in February 2011, after the EC started antitrust investigations.

In its judgment, the CJUE noted that market-sharing agreements are serious competition infringements and concluded that the disputed non-compete clause amounted to a restriction of competition by object, which meant it was unnecessary to analyse the effects of that practice on the market. Furthermore, the CJUE considered that it had not been proven that the Portuguese Government had imposed the clause in question on the parties, as Telefónica had alleged. The latter was the only company that had lodged an appeal against the EC's decision and the EU General Court's judgment.

In the context of the acquisition of the Brazilian mobile operator Vivo by the company Telefónica, which were previously jointly controlled, these companies inserted a non-compete clause under which they undertook not to compete with each other in Spain and Portugal.

Court of Justice confirms that the electronic platform Uber is covered by services in the field of transport

The Court of Justice of the European Union (CJUE) judgment of 20 November 2017 states that the service establishing a connection between non-professional drivers and clients provided by Uber consists of a service in the field of transport. Therefore, Member States may regulate the conditions in which the service is offered.

In 2014, Elite Taxi – a professional organisation representing taxi drivers in the city of Barcelona – brought an action against the Spanish company Uber Systems Spain SL (Uber Spain) asking the court, among other things, to impose penalties on the latter for engaging in unfair competition towards Elite Taxi's drivers.

Indeed, neither Uber Spain, nor the owners, or drivers of the vehicles concerned have the licences and authorisations required under the city of Barcelona's regulations on taxi services. As the national court (Commercial Court of Barcelona) had doubts with respect to the interpretation of EU law, it made a reference for a preliminary ruling to the CJUE.

In its judgment, the CJUE held that an intermediation service, such as the one at issue, whose objective is, via a smartphone application and in return for payment, to connect non-professional drivers using their own vehicle with persons who wish to make urban journeys, must be regarded as being inherently linked to a transport service and, accordingly, must be classified as 'a service in the field of transport' within the meaning of EU law.

Consequently, such a service must be excluded from the scope of the freedom to provide services in general as well as the Directive regarding services within the internal market and the Directive regarding electronic commerce. It follows that, as EU law currently stands, it is for the Member States to regulate the conditions under which such services are to be provided in conformity with the general rules of the Treaty on the Functioning of the EU (TFEU).

Advocate General Wahl clarifies the concept of "competitive disadvantage" in the context of abuse of dominant position cases

In the Opinion presented by Advocate General Wahl on 20 December 2017, he considers that, absent an objective justification, a company in a dominant position charging higher prices to some of the licensees, in comparison with the price charged to other licensees, constitutes an abuse of dominant position, if that practice puts the first at a competitive disadvantage as regards the latter.

In 2014, PT Comunicações S.A. (now MEO), filed a complaint with the Portuguese Competition Authority (PCA) against GDA – Gestão dos Direitos dos Artistas (GDA), a collective copyrights management cooperative, for an alleged abuse of dominant position. MEO argued that the abuse arose from GDA engaging in excessive pricing regarding the rates applied to licensees, and of applying unequal conditions between MEO and another of its clients, NOS Comunicações S.A.

The PCA decided to reject MEO's complaint in 2016, on the ground that the described facts did not constitute sufficient evidence of an abuse of dominant position. MEO appealed against this decision to the Portuguese courts, arguing, among other things, that the decision had made a wrongful interpretation of Article 102(2)(c) of the Treaty on the Functioning of the European Union (TFEU). As the Court of Competition, Regulation and Supervision (Competition Court) had doubts regarding the interpretation of EU law, particularly regarding the interpretation to be given to the concept of "competitive disadvantage", it requested the CJUE to clarify the matter through the preliminary ruling procedure.

According to the Advocate General, the trading partners of a dominant firm are at a disadvantage when it comes to competition, within the terms of Article 102(2)(c) TFEU, when the application of unequal conditions to equivalent services harms the competitive position of some of these trading partners, in respect to others, and, when, as a consequence, it distorts competition between trading partners that are favoured and the ones that are not.

The Advocate General considers that identifying the existence of a competitive disadvantage requires confirmation of a distortion in competition between the affected parties in the relevant market that is different to the mere difference in treatment eventually confirmed. This analysis must not be simplified into a mere formal exercise of automatic deduction, based on assumptions, both in law or in fact. This is because, instead, it requires, an examination of the actual capability taking into consideration all of the circumstances of the case at hand. The circumstances to be taken into consideration may include, but not exclusively, the nature and importance of the difference in treatment being discussed and the cost structure of the involved companies.

RUI FERREIRA
S/título - Laranja s/Azul e Verde, 2002 *(detail)*
Acrílico s/tela
190 x 140 cm
From the Collection of the PLMJ Foundation

II. EUROPEAN COMMISSION AND OTHER AUTHORITIES

Ireland faces Court of Justice for allegedly not having reclaimed €13 billion of unpaid taxes from Apple

On 4 October 2017, the European Commission (EC) decided to take Ireland to the Court of Justice of the European Union (CJUE), for allegedly not having complied with the EC's decision, adopted on 30 August 2016, in which the latter ordered said Member State to recover €13 billion granted as illegal state aid to Apple.

Following an investigation started in June 2014, the EC concluded that Ireland had breached European state aid rules. According to the investigation carried out by the EC, Ireland granted tax benefits to Apple – so called "sweetheart tax deals" – thus allowing the company to pay substantially less tax than other companies in an identical situation.

Ireland had appealed the Commission decision of 30 August 2016 to the CJUE. However, such actions for annulment brought against CE decisions do not suspend a Member State's obligation to recover illegal aid. However, the Member State can, for example, place the recovered amount in an escrow account, pending the outcome of the EU court procedures. Ireland had 4 months from the date of the official notification of the decision of the EC, that is, until 3 January 2017, to recover the tax benefits granted to Apple.

European Commission considers that Luxembourg allegedly granted illegal tax benefits to Amazon worth around €250 million

After conducting a thorough investigation, which started in October 2014, the European Commission (EC) has concluded that a tax ruling adopted by Luxembourg in 2003 and extended in 2011, had allegedly reduced the tax paid by Amazon in Luxembourg, without having valid grounds to do so.

The tax ruling enabled Amazon to shift the vast majority of its profits from an Amazon Group company that is subject to tax in Luxembourg (Amazon EU) to a company which is not subject to tax (Amazon Europe Holding Technologies). In particular, the tax ruling endorsed the payment of a royalty from Amazon EU to Amazon Europe Holding Technologies, which significantly reduced Amazon EU's taxable profits.

The Commission's investigation showed that the level of the royalty payments endorsed by the tax ruling was inflated and did not reflect economic reality. On this basis, the Commission concluded that the tax ruling granted a selective economic advantage to Amazon by allowing the Group to pay less tax than other companies subject to the same national tax rules. In fact, the ruling enabled Amazon to avoid taxation on three quarters of the profits it made from all Amazon sales in the EU.

In order to reinstate equal treatment among companies, Amazon will have to pay €250 million to Luxembourg.

European Commission approves Portuguese aid to Novo Banco, completing resolution of Banco Espírito Santo

The European Commission (EC) approved, on 11 October 2017, the Portuguese restructuring plan and support for sale of Novo Banco under EU state aid rules. The measures will allow the new private owner, the private equity fund Lone Star, to launch its restructuring plan aimed at ensuring the long-term viability of the bank, while limiting distortions to competition.

In August 2014, Portugal decided to subject the bank Banco Espírito Santo (BES) to a resolution action under the Portuguese resolution framework and determined the strategy for its resolution. To enable an orderly resolution, Portugal designed a number of support measures, including state aid for the transfer of certain BES assets to a bridge bank – Novo Banco.

BES shareholders and subordinated debt holders contributed fully (almost €7 billion) to the costs of the resolution in line with burden-sharing requirements, limiting the amount of state capital needed by the bridge bank. Another issue that enabled the Commission to approve the aid was Portugal's commitment to sell the bridge bank Novo Banco to limit distortions to competition. This means that the sale of Novo Banco, which this decision concerns, completes the 2014 resolution of BES.

"There is a problem when successful companies, which dominate the market, decide to use their power to shut down competition, closing the door to innovation".

European Commission carries out dawn raids in the car sector in Germany

On 23 October 2017, the European Commission (EC) carried out investigations into possible anti-competitive practices at the premises of car manufacturers in Germany.

The aim of the EC investigations was to find out whether the current market operators have restricted competition in breach of EU competition law rules.

The EC was assisted in the investigations by the German Competition Authority (*Bundeskartellamt*).

European Commissioner for Competition speaks at the Web Summit about taxes, competition and innovation

The European Commissioner responsible for competition policy, Margrethe Vestager, addressed the subject of "fair play in tech" at the opening session of the Web Summit in Lisbon, which took place on 6 November 2017. On the following day, in a session on the topic "clearing the path for innovation", the commissioner emphasised that "competition is one of the drivers of innovation" and, for that reason, it is necessary to ensure that "all companies play by the rules and have the same opportunities".

"Who doesn't want to be the next Google?", asked Vestager during her intervention. "If a company succeeds in the market, it should be because it has the best products", she said. She also pointed out that "there is a problem when successful companies, which dominate the market, decide to use their power to shut down competition, closing the door to innovation", she said, attributing to players such as Google, for which she spared no criticism, a "special responsibility".

Regarding tax incentives, the European Commissioner stated that there is a need to "reinvent" the rules on taxing the digital economy. She promised that, by spring 2018, a new international agreement would be adopted, taking a new approach to the digital economy taxing system and creating fairer rules. "When a government offers unique tax conditions only to certain companies, something which is not available to most, that makes competition more difficult", she said, mentioning the state aid that was offered by Ireland to Apple amounting to €13 billion, which was found to be illegal.

In her speech, Vestager, recalled recent EC proceedings in which it applied fines to US tech companies, such as Apple, Facebook and Google. The EC applied an unprecedented fine of €2.42 billion to Google for an alleged abuse of dominant position in the market for search engines.

European Commission fines car safety equipment suppliers €34 million in cartel settlement

According to the European Commission (EC) decision, adopted on the 22 November 2017, the companies Tokai Rika, Takata, Autoliv, Toyoda Gosei and Marutaka, allegedly took part in cartels for the supply of car seatbelts, airbags and steering wheels to Japanese car manufacturers Toyota, Suzuki and Honda in the EEA. The five suppliers acknowledged their involvement in at least one or more of the four cartels, and agreed to settle the case.

Takata received full immunity for revealing three of the existing cartels to the EC, avoiding a fine of around €74 million. In turn, Tokai Rika received full immunity for revealing one of the cartels, avoiding a fine of around €15 million. The companies Tokai Rika, Takata, Autoliv and Toyoda Gosei benefited from reductions of up to 50% in their fines for having provided information of significant added value to the EC.

European Commission sends Statement of Objections to AB InBev for alleged abuse of dominant position in the Belgian beer market

According to the Statement of Objections adopted by the European Commission (EC), on 30 November 2017, AB InBev allegedly abused its dominant position in the Belgian beer market, by hindering cheaper imports of its Jupiler and Leffe beers from the Netherlands and France into Belgium.

Following an investigation, which started in June 2016, the EC concluded that, allegedly, AB InBev, hindered imports of its beer from neighbouring countries in which it is sold at lower prices into Belgium, thereby deliberately preventing parallel imports.

In its Statement of Objections, the EC shows concern at a number of AB InBev business practices, which have been in place since at least 2009. For example:

- AB InBev changed the packaging of Jupiler and Leffe beer cans in the Netherlands and France to make it harder to sell them in Belgium: for example, it removed French text from its cans in the Netherlands, and Dutch text from its cans in France, to prevent their sale in the French and Dutch speaking parts of Belgium, respectively.
- AB InBev limited access of Dutch retailers to key products and promotions, in order to prevent them from bringing less expensive beer products to Belgium. for example, it did not sell and/or limited the quantity of certain products sold to Dutch retailers and restricted the availability of certain promotions, if there was a chance that the Dutch retailers could import the products into Belgium.

Commission opens in-depth investigation into the Netherlands' tax treatment of IKEA Group

On 18 December 2017, the European Commission (EC) opened an in-depth investigation against Inter IKEA, one of the two groups operating the IKEA business, for alleged illegal tax benefits given by the Dutch authorities to the Swedish group.

The EC considers that two Dutch tax rulings, one adopted in 2006 and the other adopted in 2011, may have allowed Inter IKEA to pay less tax and given them an unfair advantage over other companies, in breach of EU state aid rules.

In 2006, a decision of the Dutch authorities endorsed a method to calculate an annual licence fee to be paid by Inter IKEA Systems in the Netherlands to another company of the Inter IKEA Group called I.I. Holding, based in Luxembourg, thus passing the revenues to a jurisdiction where they were free of tax.

In 2011, this scheme was declared illegal by the EC, but the company reached a new agreement with the Dutch State, which endorsed the price paid by Inter IKEA Systems for the acquisition of the intellectual property formerly held by I.I. Holding. To finance this acquisition, Inter IKEA Systems received an intercompany loan from its parent company in Liechtenstein, where it paid a substantially lower tax.

The EC considers that two Dutch tax rulings, may have allowed Inter IKEA to pay less tax.

German Competition Authority accuses Facebook of alleged abuse of dominant position in the collection and use of data from third-party sources

In its preliminary assessment, of 19 December 2017, the *Bundeskartellamt*, the German Competition Authority, considered that the model of "targeted advertising" of the social network Facebook, that is, the collection of personal data from third-party sources and merging it with the user's Facebook account (more than two million worldwide) amounts to an abuse of dominant position in the German market for social networks.

The regulatory authority opposes Facebook gaining access to third-party data when opening, for example, a WhatsApp or Instagram account, two platforms also owned by Facebook, and when the Facebook user visits other websites that contain the "like" button of the social network. The collection of information happens via the so-called Application Programming Interface (APIs). Furthermore, the German Competition Authority views as problematic the way in which Facebook monitors the webpages its users visit.

With the recent changes introduced in the German Competition Act, access to personal data has become a criterion to assess a company's market power. Furthermore, these changes allow the *Bundeskartellamt* to investigate questions relating to consumer protection.

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