



EU AND COMPETITION LAW

NEWS - COMPETITION LAW AND POLICY 4TH QUARTER 2018

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PORTUGAL

I. COMPETITION AUTHORITY

Portuguese Competition Authority publishes definitive version of Issues Paper on technological innovation and competition in the financial sector

On 3 October 2018, the Portuguese Competition Authority (PCA) published the definitive version of the Issues Paper “Technological Innovation and Competition in the Financial Sector in Portugal”.

The Issues Paper was approved following the public consultation process of the paper’s draft version, published in April 2018. The PCA received input from 11 entities, including regulators, associations, market players and law firms.

In the preliminary version of the Issues Paper, the PCA identified barriers to entry of new firms based on innovative technologies applied to the financial sector – known as FinTech – in Portugal. These barriers relate principally to the regulatory framework and the risk of market foreclosure of FinTech entrants by incumbent banks.

The PCA analysed the responses and weighed them in drafting the Issues Paper’s final version. The public consultation confirmed many of the conclusions of the analysis carried out.

The PCA reiterates the need to keep up with the challenges posed by innovation through an adequate and proportional regulatory framework. The PCA considers the implementation of the Second Payment Services Directive (PSD2) to be essential and urgent and warns of the risks underlying the implementation of the Directive and of the Regulatory Technical Standards (RTS).

For a summary of the main conclusions and recommendations of the PCA’s analysis, see the [summary sheet](#) that was published together with the Issues Paper.

The PCA analysed the responses and weighed them in drafting the Issues Paper’s final version. The public consultation confirmed many of the conclusions of the analysis carried out.

Portuguese Competition Authority carries out dawn raids at food retail sector association

On 8 October 2018, the Portuguese Competition Authority (PCA) confirmed that it carried out dawn raids at the premises of an association of the retail food sector, following suspicions of a concerted practice of price fixing, which in its view may substantiate anticompetitive conduct.

In the context of this investigation, the dawn raids were carried out in the district of Oporto, by PCA case handlers in cooperation with the Department of Criminal Investigation and Police officers.

The PCA ordered the infringement proceedings to be subject to secrecy because the interest behind the investigation would not be duly safeguarded should the proceedings be made public.

Portuguese Competition Authority carries out dawn raids at two advertising company associations

On 10 October 2018, the Portuguese Competition Authority (PCA) confirmed that it carried out dawn raids at the premises of two associations of advertising companies, following suspicions of concerted practices in procurement procedures launched by advertisers.

In the context of this investigation, the searches were carried out in two locations in the district of Lisbon, by PCA case handlers in cooperation with the Department of Criminal Investigation and Police officers.

The PCA ordered the infringement proceedings to be subject to secrecy because the interest behind the investigation would not be duly safeguarded should the proceedings be made public. In its press release, the PCA stated that the inspections are not related to the procurement procedure for outdoor advertising for Lisbon.

Portuguese Competition Authority publishes Annual Report on Competition Policy for 2017

On 17 October 2018, the Portuguese Competition Authority (PCA) published the Annual Report on Competition Policy for 2017, a year marked by the reinforcement of investigative activity, resulting in significant results in two of the indicators in this area: the number of proceedings opened and the dawn raids carried out.

In this context, raids were carried out in 16 proceedings at 35 premises of 44 entities across Portugal, in particular in the areas of driving education, tourist river transport, modern distribution, insurance and railway maintenance. This was a historic annual maximum.

Within the general framework of the investigation of anticompetitive practices, the PCA concluded seven cases, issuing seven final decisions. According to the PCA, the ability to detect restrictive practices at its own initiative should be noted, since 85% of the investigations opened corresponded to *ex officio* procedures.

The total amount of fines imposed was €38.8 million, in particular for breach of competition law regarding restrictive practices and a non-notified merger.

As regards judicial review of decisions, the courts applied or confirmed a total of €4.9 million in fines. Most of the court decisions were in favour of the PCA. In the PCA’s view, the high judicial success rates confirm increasingly effective control by the Authority.

With respect to merger control, the PCA adopted more than 50 decisions, with special focus on manufacturing industries, wholesale and retail trade, vehicle repair, transport and storage, insurance and financial activities.

During the year 2017, the PCA prepared a number of studies and opinions, which reflect its monitoring of markets and its interaction with sector regulators. Among these, it is worth stressing the economic studies with recommendations in the energy area and, more specifically, the AdC Impact 2020 Project (in collaboration with the OECD), which aims to support a more efficient and effective intervention of public entities in various sectors of activity of strategic importance to the Portuguese economy.

The PCA also carried out several initiatives to raise awareness of its activities, promoting dialogue and interaction between its stakeholders on competition policy. Examples provided by the PCA in its Report are: the monthly newsletter in Portuguese and English, podcasts with national and international experts (*CompCast – Competition talks*), the Complaints Portal, the campaign on Fighting Bid-Rigging in Public Procurement, the Guide on the Promotion of Competition for Business Associations and seminars promoted with sector regulators.

Portuguese Competition Authority carries out dawn raids at four telecommunications operators

On 21 December 2018, the Portuguese Competition Authority (PCA) confirmed that it carried out dawn raids at five locations of four telecommunication companies, following suspicions of antitrust practices harmful to consumers' freedom of choice.

The dawn raids were carried out with the authorisation of the Department of Criminal Investigation of Lisbon and are being monitored by the Criminal Investigation Division of the PSP of Lisbon.

The PCA ordered the infringement procedure to be subject to secrecy because the interest behind the investigation would not be duly safeguarded should the procedure be made public.

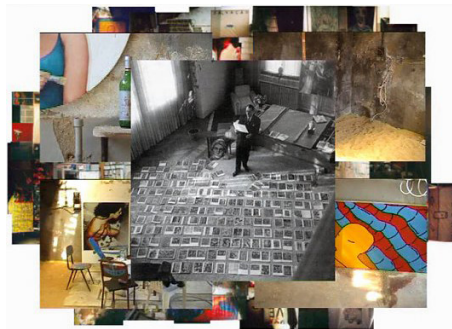
Portuguese Competition Authority accuses Sacyr Neopul, S.A. and its production manager of allegedly participating in a cartel in railway maintenance

On 21 December 2018, the Portuguese Competition Authority (PCA) imposed fines totalling €365,400 on Sacyr Neopul S.A. and its production manager for allegedly participating in anticompetitive practices that resulted in price increases in a public tender for railway maintenance services.

According to the PCA's investigation, five railway maintenance providers allegedly colluded to present bids above the base-price in a tender launched by Infraestruturas de Portugal, leading to an increase in the price paid by this public enterprise for maintenance services on its railway infrastructure. Furthermore, the PCA claims that, in a separate tender process, the same companies had colluded to share out the different lots in question, in a cartel that apparently lasted between 2014 and 2015.

The earlier conclusion of the proceedings against Sacyr Neopul, S.A. and its production manager was possible due to the cooperation provided by this undertaking, which admitted its participation in the cartel and abstained from litigating, under a settlement procedure.

The investigation is still on-going regarding the remaining four undertakings and their board members and managers, in relation to whom a Statement of Objections was adopted by the PCA on 13 September 2018.



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RODRIGO VILHENA

Condição Humana, 2004

Vídeo, cor, som estéreo, 13'03"

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Portuguese Competition Authority presents recommendations to improve competition in the ports sector

On the conclusions of the study presented on 27 December 2018, the Portuguese Competition Authority (PCA) recommends that the Government and port authorities adopt measures to promote competition in the market for port terminal concessions, the liberalisation of market access for towing and piloting services, and the redefinition of the port governance model.

The PCA considers that the adoption of the recommendations to promote competition and efficiency in port terminal concession contracts through new open tender procedures is a pressing issue given that 15 out of the 27 concession contracts analysed will expire by 2025 and two are currently undergoing renegotiation (the container terminals in the Port of Lisbon and the Port of Sines).

In order to take advantage of this window of opportunity to promote efficiency and competition in the Portuguese port sector over the next 5- to 10-year period, the PCA firstly puts forward recommendations to increase competition as regards the concession contract award and renegotiation processes, as well as to optimise port governance and the provision of port services.

With respect to the second recommendation, the liberalisation of towing and piloting services, the PCA considers, in line with the European Commission, that licensing generates higher benefits for consumers and the Portuguese economy when compared to the direct provision by port authority and concession models currently in use in Portuguese ports. Licensing regimes subject each provider to greater market discipline.

As regards the third recommendation, on the redefinition of port governance model, the PCA argues that a clear separation of the regulatory, port management and service provision and terminal operation activities is key to eliminating the conflicts of interest the current model may entail.

For more information on the PCA's recommendations, see the final version of the [Study on Competition in the Portuguese Ports Sector](#).

Portuguese Competition Authority imposes fines of €12 million on insurance companies Fidelidade and Multicare for market sharing

On 28 December 2018, the Portuguese Competition Authority imposed fines totalling €12 million on the insurance companies Fidelidade - Companhia de Seguros, S.A. (Fidelidade) and Multicare - Seguros de Saúde, S.A. (Multicare) for alleged market sharing. The anticompetitive conduct covered insurance contracts purchased by large corporate clients, in the segments of occupational, health and car accident insurances.

The earlier conclusion of the proceedings against Fidelidade and Multicare and the members of the boards and directors of those companies was possible due to the cooperation provided by these undertakings, which admitted their participation in the cartel, under a settlement procedure.

In setting the amount of the fines, the PCA took into account all the relevant factual and legal aspects, including the cooperation provided by Fidelidade and Multicare, and the fact that no specific advantages had been quantified in terms of potential supra-competitive profits arising from the anticompetitive agreement.

With regard to the three other companies investigated, against which the PCA adopted the Statement of Objections (SO) on 21 August 2018, the proceedings continue, as they do for nine of the fourteen managers and directors of the companies to which this SO was addressed.

Portuguese Competition Authority publishes priorities for 2019

On 21 December 2018, the Portuguese Competition Authority (PCA) announced its Competition Policy Priorities for 2019.

In 2019, the PCA's main will be priority the reinforcement of its activity in the detection and investigation of anti-competitive practices, namely cartels. The focus on collusive behaviour will, in the PCA's view, incentivise compliance with competition law and, simultaneously, the leniency programme, given the greater risk of detection by the PCA.

New methods of coordination between competitors and abuse of dominance will also be a focus of the PCA, in particular by deepening the PCA's understanding of the use, by undertakings, of algorithms or artificial intelligence which may facilitate anti-competitive practices.

Regarding merger control, the PCA will seek to be faster and more effective in fulfilling its mission, without overburdening companies and, simultaneously, without jeopardising the efficient functioning of markets.

By way of analyses targeted at sectors which present greater vulnerabilities in terms of competition issues, and, at the same time, which are central to a well-functioning economy, the PCA will contribute to reinforce competitiveness and productivity in Portugal and Europe. As such, the PCA will prioritise the implementation of the recommendations issued in 2018 regarding the liberal professions and the transportation sector.

Finally, in 2019, the PCA will continue to prioritise greater communication and transparency with society at large, so that the benefits of its mission and activity are well understood. The campaigns on Fighting Bid-Rigging in Public Procurement and raising awareness of the Guide for Business Associations will also be maintained.

EUROPEAN UNION

I. COURTS

General Court rejects dispute over commitments in telecoms merger

On 9 October 2018, the General Court (GC) rejected the action for annulment of a decision of the European Commission (EC) by 1&1 Telecom on the grounds that a communication from the Director-General of the EC's Directorate-General for Competition did not constitute a decision adopted by the EC.

In order to secure the approval of the merger which consisted in the acquisition of E-Plus by Telefónica Deutschland, the latter was ordered to send a self-commitment letter to all existing mobile virtual network operators and service providers with which E-Plus had agreements to provide network access.

In this regard, 1&1 Telecom received a letter from Telefónica Deutschland in February 2015, in which E-Plus waived the termination rights of 1&1 Telecom's agreement with E-Plus until the end of 2025. Six months later, Telefónica Deutschland sent a new letter to 1&1 Telecom clarifying certain conditions of its waiver clause.

In September 2015, 1&1 Telecom informed the EC that it doubted the legality of the amended waiver clause, arguing that the merger commitments required Telefónica Deutschland to unconditionally waive E-Plus's termination rights.

New methods of coordination between competitors and abuse of dominance will also be a focus of the PCA, in particular by deepening the PCA's understanding of the use, by undertakings, of algorithms or artificial intelligence which may facilitate anti-competitive practices.

On 19 November 2015, the Director-General of the EC's Directorate-General for Competition informed 1&1 Telecom by a letter that inserting the amended clause did not violate the commitments assumed by Telefónica Deutschland and that the sole purpose of this clause was to ensure the commercial balance of the agreement with E-Plus.

1&1 Telecom brought an action for annulment of the alleged decision contained in the letter of the EC of 19 November 2015 before the GC and called on the court to order the EC to request that Telefónica Deutschland issue a new self-commitment letter that is strictly limited to the obligation required from it.

In its judgment, the GC ruled that the EC communication did not constitute a formal decision and did not produce binding legal effects such as to affect the interests of 1&1 Telecom. As regards the request for a new self-commitment letter from Telefónica Deutschland, the GC agreed with the EC stating that it is not for the GC to issue directions to the EU institutions.

General Court rejects application to prevent publication of EURIBOR cartel decision

On 25 October 2018, the General Court (GC) rejected the application for interim measures by the banks Crédit Agricole and JP Morgan Chase which aimed to prevent the disclosure of confidential information concerning the alleged EURIBOR cartel.

By a decision of 7 December 2016, the European Commission (EC) imposed fines amounting to €485 million on Crédit Agricole, HSBC and JP Morgan Chase for their participation in alleged concerted practices with regard to the Euro Interest Rate Derivatives (EURIBOR).

Crédit Agricole and JP Morgan Chase appealed against that decision to the GC and entered into discussion with the EC in order to identify confidential information which should not be included in the published decision.

Following the rejection by the EC of the requests for confidentiality in April 2018, the banks appealed these decisions to GC in September of that year. Furthermore, the banks submitted applications for interim measures seeking suspension of the operation of those decisions and, in essence, for the EC decision finding the cartel not to be published until the end of the proceedings for annulment of that decision.

By order, the President of the GC concluded that there were no grounds for the parties' requests for confidentiality and accordingly rejected the interim measures. The President of the GC also stated that it would deliver its full judgment on the appeal against the EC's confidentiality decision at a later date.

General Court confirms Coveris' alleged liability in food packaging cartel

By a judgment of 6 December 2018, the General Court (GC) decided that the European Commission (EC) was entitled to hold Coveris Rigid France, a food packaging manufacturer, liable for its involvement in the food packaging cartel.

The EC fined eight manufacturers and two distributors of retail food packaging trays €115 million in 2015 for allegedly participating in at least one of five separate cartels between 2000 to 2008.

Coveris's parent company, Huhtamäki, was fined €4.7 million for its subsidiary's role in the cartel in France, because the EC found the companies jointly and severally liable.

Coveris claimed in its appeal that it should not have been held liable for the fine because rival ONO Packaging – which Coveris alleged was responsible for the cartel's decisions – had, in 2006, acquired shares in Huhtamäki's Portuguese subsidiary, as well as Coveris' assets for the manufacturing of polystyrene trays. Thus, Coveris argues that ONO Packaging should have been held liable for the conduct.

In its judgment, the GC recalled that an infringement of competition law is passed on to an acquirer of assets only in exceptional cases, i.e., where the legal entity that passed on the assets has ceased to exist or has ceased all economic activities.

Considering that Coveris continued to exist, both legally and economically, after transferring certain assets to ONO Packaging, the GC decided that the latter should not be held liable.

General Court partially annuls European Commission decision on restrictive practices in the perindopril market

By a judgment of 12 December 2018, the General Court (GC) annulled in part the European Commission's (EC) decision finding the existence of restrictive agreements and an abuse of a dominant position on the market for perindopril, a medicine used to treat hypertension and heart failure

Servier, which developed perindopril and holds the compound patent, entered into various settlement agreements with a number of generic companies, namely Niche, Unichem (Niche's parent company), Matrix (now Mylan Laboratories), Teva, Krka and Lupin, by which each of those companies was to refrain, in particular, from entering the market or challenging that patent.

On 9 July 2014, the EC adopted a decision in which it found that the contested agreements allegedly constituted restrictions of competition by object and by effect. It also found that Servier had allegedly implemented, in particular by those agreements, an exclusionary strategy which constituted an abuse of a dominant position.

In its judgment, the GC confirms that the agreements entered into by Servier with the generic companies constitute restrictions of competition by object, since those companies were potential competitors of Servier at the time the agreements were concluded.

However, the GC reduced by 30% the amount of the fine imposed on Servier in respect of the agreement concluded with Matrix. It considered, having regard to the links between that agreement and the agreement concluded by Servier with Niche and Unichem, that the EC ought to have applied a further reduction to Servier in addition to the reduction it had already applied in relation to the agreements as a whole on account of overlaps between the infringements. Furthermore, the GC annulled fines imposed on Servier and Krka in respect of the agreement entered into by those companies, since it concluded that there was no restriction of competition by object in that regard.

With respect to the possible abuse of a dominant position by Servier, the GC found that the EC made a series of errors in defining the relevant market such as to vitiate the result of its analysis. The GC considered that the EC has failed to show that the finished products market was limited to the perindopril molecule alone, when the latter could be exposed to non-price competitive pressures from other medicines of the same therapeutic class.

Therefore, the GC decided to annul the fine imposed on Servier for an abuse of a dominant position and thereby reduced from €330.99 million to €228.32 million the total amount of the fines imposed by the EC on Servier.

General Court reduces fines imposed on Slovak Telekom and Deutsche Telekom

By a judgment of 13 December 2018, the General Court (GC) largely upheld the European Commission's (EC) conclusion that the undertaking formed by Slovak Telekom and Deutsche Telekom, which operates in the Slovakian telecommunications market, had allegedly abused its dominant position through a margin squeeze scheme. However, it partially annulled the EC decision and reduced the amount of the fines imposed on Slovak Telekom and Deutsche Telekom.

In its decision of 15 October 2014, the EC found that the undertaking formed by Slovak Telekom and Deutsche Telekom had committed a single and continuous infringement concerning broadband services in Slovakia. According to the EC, the practices at issue sought to refuse the grant of unbundled access to the local loops of Slovak Telekom and to impose unfair tariffs on alternative operators in the form of a margin squeeze between the prices for retail broadband access and the prices on the wholesale broadband access markets.

Slovak Telekom and Deutsche Telekom appealed against this decision to the GC. In its judgment, the latter considered that, in order to establish the anti-competitive nature of Slovak Telekom's conduct, the EC was not required to demonstrate that access to that company's local loop was indispensable for potential competitors of that company.

With respect to the possible abuse of a dominant position by Servier, the GC found that the EC made a series of errors in defining the relevant market such as to vitiate the result of its analysis.

However, the GC held that in the present case, the EC had failed to demonstrate that the contested pricing practice had led to those exclusionary effects before 1 January 2006 and annulled the contested decision in so far as it is vitiated by that failure. In accordance, the GC reduced the amount of the fine imposed jointly on Slovak Telekom and Deutsche Telekom from €38.8 million to €38.1 million.

Finally, with respect to the additional fine imposed on Deutsche Telekom, the GC found that the status as a repeat infringer of the parent company, Deutsche Telekom, constitutes a factor which justifies an additional fine being imposed. By contrast, Deutsche Telekom's turnover is not capable of reflecting its individual conduct in the infringement at issue and therefore could not serve as a basis for the calculation of an additional fine imposed on the latter. For that reason, the GC decided to reduce the amount of the additional fine imposed from €31.1 million to €19.0 million.

II. EUROPEAN COMMISSION AND OTHER AUTHORITIES

European Commission closes investigation into Brussels Airlines and TAP codeshare agreement

On 30 October 2018, the European Commission (EC) decided to close the investigation for alleged anti-competitive practices arising from the codeshare agreement entered into between Brussels Airlines and TAP Air Portugal relating to the Brussels-Lisbon route, which the EC was carrying out on its own initiative.

The EC initiated this investigation in 2011 and adopted a Statement of Objections against the two airlines, raising preliminary concerns regarding this agreement.

Following a thorough analysis of all relevant evidence, including information received from the two airlines in their replies to the Statement of Objections and during an oral hearing, which took place in May 2017, the EC concluded that it had not been able to gather sufficient evidence to confirm its initial concerns. In accordance, it closed the investigation.

European Commission opens in-depth investigation into joint venture between Tata Steel and ThyssenKrupp

On 30 October 2018, the European Commission (EC) opened an in-depth investigation to assess the proposed creation of a joint venture by Tata Steel and ThyssenKrupp, which would create Europe's second largest steel producer.

Following the EC's initial market investigation, it considers that the merger could raise competition concerns in the markets for steel used for automotive applications, metal coated steel for packaging and grain oriented electrical steel used to produce engineering products.

The transaction was notified to the EC on 25 September 2018, which now has 90 working days (i.e., until 19 March 2019) to complete its analysis and take a decision. Tata Steel and ThyssenKrupp have decided not to submit commitments during the initial investigation to address the EC's preliminary concerns.

European Commission sends Statement of Objections to Siemens and Alstom

The European Commission (EC) has sent a Statement of Objections to Siemens and Alstom expressing concerns about the proposed acquisition by Siemens of a 50% stake in Alstom, which would create the largest European rail transport company.

The EC had decided to open an in-depth investigation into this proposed acquisition in July 2018, as it considered that the transaction could reduce competition in the supply of several types of train and signalling systems.

Both companies are global leaders in rail transportation and compete in tenders for high speed trains used both for inter and intra city transport, as well as in signalling markets.

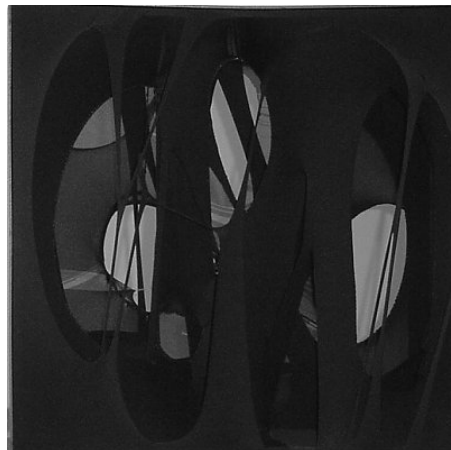
The EC has until 28 January 2019 to complete its analysis.

European Commission invites interested parties to submit comments on the commitments offered by several undertakings targeted in pay-TV investigation

In July 2015, the European Commission (EC) addressed a Statement of Objections to six major film studios (Disney, NBCUniversal, Paramount Pictures, Sony, Twentieth Century Fox and Warner Bros) and the pay-TV broadcaster Sky UK. The EC had concerns as to whether contractual clauses in certain bilateral agreements could eliminate cross-border competition between pay-TV broadcasters and partition the EU's Single Market.

In these agreements entered into by the film studios and broadcaster Sky UK, the studios license their output of films over a certain period of time for pay-TV to Sky UK.

According to the EC, these clauses appear to prevent Sky UK from allowing EU consumers outside the UK and Ireland to access pay-TV services available in the UK and Ireland. Some agreements also contain clauses requiring the studios to ensure that, in their licensing agreements with broadcasters other than Sky UK, these broadcasters are prevented from making their pay-TV services available in the UK and Ireland.



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CATARINA CÂMARA PEREIRA

Sem Título, 2002

Mista

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Disney, NBCUniversal, Sony, Warner Bros and Sky UK have decided to offer the following commitments to address the EC's competition concerns, which would apply for a five-year period:

1. When licencing its film output for pay-TV to a broadcaster in the EEA, each committing studio and Sky UK would not (re)introduce contractual obligations which prevent or limit a pay-TV broadcaster from responding to unsolicited requests from consumers within the EEA but outside the broadcaster's licensed territory.
2. When licensing its film output for pay-TV to a broadcaster in the EEA, each committing studio and Sky UK would not (re)introduce contractual obligations which require the studio to prohibit or limit a pay-TV broadcaster located outside the broadcaster's licensed territory from responding to unsolicited requests from consumers within the licensed territory.
3. Each committing studio and Sky UK would not seek to bring any action before a court or tribunal for the violation of the obligations under 1) and/or 2) above in an existing agreement licensing a film studio's output for pay-TV.
4. Each committing studio and Sky UK would not act upon or enforce the violation of the obligations under 1) and/or 2) above to which it is subject in an existing agreement licensing its output for pay-TV.

A summary of the proposed commitments has been published in the EU's Official Journal. Interested parties can submit comments within one month of the date of publication.

European Commission opens investigation into airline ticket distribution services

On 23 November 2018, the European Commission (EC) opened a formal investigation to assess whether agreements between booking system providers Amadeus and Sabre on the one hand, and airlines and travel agents on the other, may restrict competition.

Amadeus and Sabre are leading worldwide suppliers of Computerised Reservation Systems. These systems aggregate information about flight schedules, seat availability and ticket prices from multiple airlines. They enable travel agents and travel management companies to compare airline services and reserve and issue tickets on behalf of travellers.

The EC will investigate whether certain terms in Amadeus' and Sabre's agreements with airlines and travel agents may restrict the ability of airlines and travel agents to use alternative suppliers of ticket distribution services. This may make it harder for suppliers of new ticket distribution services to enter the market and increase distribution costs for airlines, which are ultimately passed on in the ticket prices paid by consumers.

European Commission clears T-Mobile NL's acquisition of Tele2 NL

On 27 November 2018, the European Commission (EC) approved the concentration consisting in the acquisition of Tele2 NL by T-Mobile NL, which reduces from 4 to 3 the mobile network operators in the Netherlands. The merged entity would be the third largest player on the Dutch market after KPN and VodafoneZiggo.

The EC's investigation found that the proposed merger was unlikely to lead to significant price increases because of the limited combined market position (around 25% market share) and the relatively small increment brought by Tele2 NL (around 5%).

Furthermore, the EC concluded that the transaction would not increase the likelihood of coordinated behaviour between mobile network operators, in particular because the other two mobile network operators, KPN and VodafoneZiggo, have different strategies and incentives largely based on cross-selling mobile services to their fixed customer base (i.e., selling packages of telecom services).

Finally, the investigation of the EC showed that any potential change in conditions for virtual mobile network operators due to the proposed merger would not have a serious impact on the level of competition in the Dutch mobile telecoms market.

European Commission invites interested parties to submit comments on the commitments offered by Visa and Mastercard in interchange fees investigation

The European Commission (EC) addressed a Statement of Objections to Visa and Mastercard in August 2017 and July 2015, respectively, in which it outlined its competition concerns with respect to inter-regional multilateral interchange fees (MIFs).

Inter-regional MIFs are MIFs applied to payments made in the European Economic Area (EEA) with consumer debit and credit cards issued outside the EEA. The Visa and Mastercard networks set the level of MIFs (including inter-regional MIFs) applied by their licensee banks between them. In the absence of bilateral agreements between the banks, the level of the MIFs set by Visa or Mastercard networks applies by default.

The EC is concerned that inter-regional MIFs established by Visa and Mastercard may anti-competitively increase prices for European retailers accepting payments from cards issued outside the EEA and, in turn, lead to higher prices for consumer goods and services in the EEA.

To address the EC's competition concerns, Visa and Mastercard have, each separately, decided to offer a set of commitments that would reduce the inter-regional MIFs by at least 40% and would apply for a period of five years and six months.

A summary of the proposed commitments has been published in the EU's Official Journal. Interested parties can submit comments within one month from the date of publication.

Council approves ECN+ Directive

On 4 December 2018, the Council of the European Union (Council) adopted the ECN+ Directive, which introduces new rules within the framework of the ECN (European Competition Network) to enable Member States' competition authorities to be more effective enforcers of EU antitrust rules. This adoption follows an agreement reached with the European Parliament at first reading.

The goals are the following: independence and impartiality of the national competition authorities, adequate financial and human resources available to carry out their enforcement activities and extension of admissible evidence (the authorities will be able to collect evidence from mobile phones, laptops and tablets).

Furthermore, the Directive seeks to introduce coordinated leniency programmes throughout the European Union and introduce new rules on parent company liability and succession to address loopholes in national laws, which currently allow companies to avoid or minimise fines.

After the publication of the Directive in the Official Journal of the European Union, Member States have two years to implement the Directive into their respective national law, taking into account the Directive's goals.

European Commission grants a 50% fine reduction to Guess for revealing anticompetitive agreements

On 17 December 2018, the European Commission (EC) fined the clothing company Guess €39.8 million for allegedly restricting retailers from online advertising and selling cross-border to consumers in other Member States ("geo-blocking").

Guess cooperated with the EC by revealing an infringement of EU competition rules not yet known to the EC, providing evidence with significant added value and expressly acknowledging the facts and the infringements of EU competition rules. Therefore, the EC granted Guess a 50% fine reduction in return for this cooperation.

The EC investigation has found that Guess' distribution agreements restricted authorised retailers from:

1. using the Guess brand names and trademarks for the purposes of online search advertising;
2. selling online without a prior specific authorisation by Guess. The company had full discretion for this authorisation, which was not based on any specified quality criteria;
3. selling to consumers located outside the authorised retailers' allocated territories;
4. cross-selling among authorised wholesalers and retailers; and
5. independently deciding on the retail price at which they sell Guess products.

The agreements allowed Guess to partition European markets. The EC observed that in Central and Eastern European countries, the retail prices of Guess products are, on average, 5-10% higher than in Western Europe.

European Commission sends Statement of Objections in alleged bond trading cartel

On 20 December 2018, the European Commission (EC) sent a Statement of Objections to Bank of America, Credit Suisse, Crédit Agricole and Deutsche Bank containing its preliminary view that the banks allegedly breached EU antitrust rules by colluding, in periods from 2009 to 2015, to distort competition in secondary market trading in the EEA of supra-sovereign, sovereign and agency (SSA) bonds denominated in US Dollars.

The alleged collusion took place between 2009 and 2015 and was primarily coordinated through online chat rooms, the EC said. The allegations concern trading on the secondary market where debt is bought and sold by investors.

Deutsche Bank brought the alleged collusion to the attention of the EC, thus hoping to obtain full exemption from a fine (immunity).

Guess cooperated with the EC by revealing an infringement of EU competition rules not yet known to the EC, providing evidence with significant added value and expressly acknowledging the facts and the infringements of EU competition rules.

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