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News

The European Commission finds the International Skating Union's ("ISU") rules, which foresee significant penalties for athletes who participate in speed skating competitions that are not authorised by the ISU, to be in breach of EU Competition Law

The ISU is the only body recognised by the International Olympic Committee ("IOC") in charge of managing figure skating and speed skating on ice. The ISU is formed by national ice skating associations and is competent for organising and generating revenues from speed skating competitions.

The Commission has found that, under the ISU eligibility rules, in place since 1998, speed skaters who participate in competitions that are not approved by the ISU may be imposed very significant penalties, including a lifetime ban from all major international speed skating events.

According to the Commission, these rules hinder competition and enable ISU's commercial interest to prevail over the interest of athletes and organisers of competing events. More precisely, the Commission has concluded that the rules in question diminish the freedom of athletes by preventing them from participating in independent skating events, which may ultimately have a negative impact on their income.

In addition, the ISU eligibility rules harm independent organizers in so far as they are not capable of attracting top athletes to their events. This entails a barrier for the development of alternative and innovative speed skating competitions.

Although the ISU slightly amended its eligibility rules in June 2016, the Commission has concluded that the system of penalties is still disproportionate and precludes the emergence of independent international speed skating competitions.

On these grounds, the Commission has established that the ISU eligibility rules violate Article 101 of the Treaty on the Functioning of the European Union ("TFEU"). The ISU has now 90 days to stop its conduct and shall repeal or amend the existing rules so as to ensure that penalties pursue legitimate objectives and are proportionate to these objectives. If the ISU does not comply with the Commission's decision, it could be penalized with fines of up to 5% of its average daily turnover.

The European Commission sends Statement of Objections ("SoE") to AB InBev for an alleged abuse of dominant position on the Belgian beer market

AB InBev is the world's biggest beer manufacturer and holds a very strong position on the Belgian beer market. AB InBev's most popular beer brands in Belgium are Jupiler and Leffe, which are also sold in the Dutch and French markets. The Commission's investigation has revealed that these brands are sold at a cheaper price in the Netherlands and France, due to the significant competition AB InBev faces in these markets.

In the SoE, the Commission has identified AB InBev as dominant in the Belgian beer market. According to the Commission, AB InBev would have abused its dominance by preventing supermarkets and wholesalers from buying Jupiler and Leffe at lower prices in the Netherlands and France, with the aim of ensuring that these beers are not imported into Belgium.

The Commission's concerns relate to several practices that have been in place since 2009. On the one hand, the packaging of Jupiler and Leffe cans that are sold in the Netherlands and France has been modified so as to hinder their entry to the Belgian market. On the other hand, AB InBev has limited Dutch retailers' access to key products and promotions, with the aim of preventing that less expensive beer is brought into Belgium.

In the Commission's view, these conducts would be in breach of Article 102 of the Treaty on the Functioning of the European Union ("TFEU"), which prohibits abuse of dominance. As usual and required by Regulation 1/2003, the conclusions included in the SoE are without prejudice to a final decision of the Commission.

Case-law & Analysis

The Court of Justice of the EU finds that luxury goods' suppliers can prevent authorized distributors from selling such goods on third-party platforms *(Judgment of 7 December 2017 in Case C-230/16 Coty Germany GmbH v Parfümerie Akzente GmbH)*

Coty Germany ("Coty") is a luxury cosmetic goods' supplier in Germany. Coty preserves the luxury image of its products by marketing certain brands through a selective distribution network. The authorized distributors which are part of the network are asked to observe certain requirements concerning environment, décor and furnishing. Authorized distributors can sell Coty's products on-line as long as they employ their own electronic shop window or non-authorized third-party platforms. The latter is only permitted if the use of such platforms is not discernible to the consumer. Selling through a third-party platform which is discernible for the consumer is expressly banned in the network.

In this context, Coty brought an action before German courts against one of its authorized distributors, Parfümerie Akzente, in order to prevent the latter from using amazon.de to sell

Coty's products. The German Court decided to refer a preliminary question to the Court of Justice of the EU in order to ascertain whether such a contractual prohibition is allowed by EU Competition Law.

In its judgment, the Court of Justice of the EU starts by stating that selective distribution for luxury goods, intended to preserve their image and quality, does not violate the prohibition of agreements, decisions and concerted practices laid down in article 101(1) of the Treaty of the Functioning of the European Union ("TFEU"), provided that (i) the choice of resellers is based on objective criteria of a qualitative nature, such criteria are laid down uniformly for all potential resellers and not applied in a discriminatory way; and (ii) the criteria in question do not go beyond what is necessary.

The Court of Justice of the EU also emphasizes that the quality of luxury goods is not merely the result of their material characteristics, but also of the allure and prestigious image which grants them an aura of luxury. This aura is an essential aspect of those goods in as much as it enables consumers to distinguish them from other similar goods.

In addition, the Court of Justice of the EU finds that article 101(1) TFEU does not preclude a contractual clause, which prohibits authorized distributors of a selective distribution network of luxury goods from using, in a discernible manner, third-party platforms for internet sales of the goods in question, as long as: (i) the clause is aimed at preserving the luxury image of the goods concerned; (ii) it is laid down uniformly and not applied in a discriminatory manner; and (iii) it is proportionate in the light of the objective pursued.

The referring court will have to assess whether these conditions are met in the case at issue. If the clause in question falls under article 101(1) TFEU, it is possible that the said clause might benefit from a block exemption established in Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices, as pointed out by the Court of Justice of the EU.

In this regard, the Court of Justice remarks that, in circumstances such as those of the main proceedings, such a prohibition does neither constitute a restriction of customers nor a restriction of passive sales to end users. This type of restrictions would be automatically excluded from the benefit of a block exemption in view of its anticompetitive effects.

Currently at GA_P

GA_P's Competition Law partners Iñigo Igartua and Mário Marques Mendes included as lawyers of the year in 2018 "Best Laywers" ranking

Our Barcelona-based partner Iñigo Igartua and our Lisbon-based partner Mário Marques Mendes have been included as lawyers of the year for Competition/Antitrust Law in the 2018 edition of "Best Lawyers" for Spain and Portugal.

More details are available at: https://www.bestlawyers.com/