

G A \_ P

Gómez-Acebo & Pombo

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# Brussels G A \_ P Newsletter

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Brussels



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## News

### **The Commissions dawn raids the styrene monomer purchasing sector**

On 5 June 2018, the European Commission carried out unannounced inspections at the premises of a number of companies active in styrene monomer purchasing in several Member States. The Commission was accompanied by officials of the relevant national authorities.

The investigation follows concerns about a potential breach of Article 101 of the Treaty of the Functioning of the European Union (“TFEU”) whereby cartels and restrictive business practices are prohibited.

Styrene monomer is a chemical product which is used in the production of a number of products (e.g. plastics, resins, rubbers and latexes) for different applications, such as insulation or packaging.

Dawn raids do not prejudge the result of the investigation.

### **The Commission starts an investigation into restrictions in the supply of gas by Qatar Petroleum to EEA importers**

The European Commission has opened a formal investigation into the supply agreements concluded between Qatar Petroleum companies exporting liquefied natural gas (LNG) and European importers. The Commission is assessing whether these agreements have hindered the free flow of gas within the European Economic Area (EEA) in breach of EU Competition Law.

Qatar Petroleum is the largest exporter of LNG worldwide and to Europe and it controls a number of companies that produce and export LNG to Europe. The Commission’s investigation aims to ascertain whether Qatar Petroleum’s long-term LNG supply agreements (normally 20 or 25 years) with EEA scope contain direct and/or indirect territorial restrictions.

The Commission is concerned that certain clauses of the agreements, directly or indirectly, restrict the EEA importers’ freedom to sell the LNG in alternative destinations within the EEA and, ultimately, result in a segmentation of the EU’s internal gas market.

If these practices are confirmed by the investigation, the Commission may conclude there was a breach of Article 101 of the Treaty on the Functioning of the European Union (“TFEU”) and/or an abuse of dominant position under Article 102 TFEU (and Article 53 and/or 54 of the Agreement on the EEA).

The launching of a formal investigation by the Commission does not prejudge its outcome.

## Case-law & Analysis

**The Court of Justice of the EU finds that EY did not breach merger rules in Danish merger** (*Judgment of the Court of Justice of the EU of 31 May 2018 in Case C-633/16, Ernst & Young P/S v Konkurrencerådet*)

On 13 December 2013, the proposed merger between Ernst & Young (“EY”) and KPMG DK (“KPMG”) was notified to the Danish competition authority, which cleared the transaction in May 2014. By decision of 17 December 2014, the Danish competition authority declared that the KPMG companies, by giving notice to terminate a cooperation agreement before the competition authority had approved the merger, breached the prohibition to implement a concentration prior to the authority’s approval.

EY then filed an appeal against this decision before the competent Danish Maritime and Commercial Court. Among others, EY argued that the competition authority had misinterpreted the scope of the prohibition of implementation prior to approval provided for under the Danish Competition Act. Given that Danish merger rules mirror Regulation No 139/2004, the Danish Court decided to refer a preliminary ruling on the matter to the Court of Justice of the EU.

In its judgment, the Court of Justice of the EU considered that EY did not unlawfully implement the acquisition of KPMG prior to obtaining clearance from the competition authority. According to the Court, EY did not violate merger rules when KPMG terminated the affiliation with its parent company since termination of a cooperation agreement does not amount to completing a merger.

This judgment follows several investigations into breaches of the stand still obligation in merger cases by the Commission (i.e. Altice, Facebook, Canon, General Electric and Merck).

**The General Court of the EU holds that the Commission’s mandate to dawn raid Czech rail operator was too wide** (*Judgment of the General Court of the EU of 20 June 2018 in Cases T-621/16 and T-325/16, České dráhy v Commission*)

The General Court of the EU has found that the Commission’s mandate to dawn raid Czech rail operator’s (České dráhy) premises in 2016 was too wide.

According to the Court, on the basis of the evidence in possession of the Commission at the time, the Commission was not entitled to raid the company’s premises for evidence on a potential abuse of dominance on any of the routes it operated. The Court has nevertheless upheld the substance of the inspections as well as subsequent dawn raids that were based on evidence collected during a first round of inspections.

The Court has found that, by contrast, the Commission had sufficient indicia to search for evidence with regard to predatory pricing in the Prague-Ostrava route from 2011 or earlier. The Court has concluded that evidence seized in this regard could be used for a second round of dawn raids, in particular, to seek evidence on potential collusion with other national rail incumbent operators.

The investigation that gave rise to the first raids analysed allegations that the rail operator was offering tickets at a loss so as to foreclose passenger-transport competitors as a result of a complaint filed by the latter.

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## Currently at GA\_P

### **GA\_P Madrid hosts International Friends Summit**

On 20-22 June 2018, GA\_P Madrid hosted an International Friends Summit to which representatives of a number of foreign law firms attended. A total of 11 jurisdictions were represented in the event. By means of round tables and panels, the attendants exchanged views on current issues such as foreign investment in Latin America; Spain and Portugal as investment platforms; challenges for law firms in a global world; and the impact of technology in the legal industry.