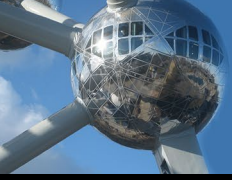


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News

Mergers

European Commission authorises the acquisition of Jazztel by Orange subject to conditions

The Commission has approved the acquisition of the UK company Jazztel plc (primarily active in Spain) by the French Orange. The authorisation is conditional upon the full implementation by Orange of a series of commitments applicable to two different technologies: (i) on optical fibre: the company has undertaken to divest an independent Fibre-To-The-Home (FTTH) network covering 700,000 to 800,000 buildings (equal to 13 urban districts) in Madrid, Barcelona, Valencia, Seville and Malaga; (ii) on copper: the company will grant the acquirer of the FTTH network wholesale access to Jazztel's ADSL network for up to 8 years. In addition, Orange will also grant to this acquirer wholesale access to its mobile network including 4G services, unless it already had access to a mobile network.

The Commission has considered that these commitments will allow a fourth operator to enter the Spanish market and to be able to exercise efficient competition in markets involving fixed internet access services.

European Commission approves subject to conditions the acquisition by SNCF of sole control of Eurostar

Prior to the notified transaction, Eurostar International Limited was controlled by the French railway operator SNCF Mobilities and the British Government. In addition, the Belgian SNCB held a minority share. In 2015, SNCF started negotiations in order to acquire the sole control of Eurostar.

The Commission preliminary assessment concluded that the operation as originally notified could impede the entry of competitors into the London-Paris and London-Brussels routes, where Eurostar is the only operator. More concretely, the Commission observed that access to train stations; to the services offered in such stations and to maintenance centres would become more difficult due to capacity limitations and the fact that Eurostar and its French and Belgian shareholders managed the infrastructure. Finally, the Commission feared that access to train paths at rush hours would be complicated since Eurostar has priority access due to its condition of incumbent operator.

Eurostar, SNCF and SNCB offered commitments in order to guarantee that any potential new entrant has fair and non-discriminatory access to: (i) standard and cross-channel areas and services in France; (ii) maintenance centres in France, the UK and Belgium (i.e. overnight storage, cleaning, etc.); (iii) train paths used by Eurostar at peak times, in case the new operator is not able to obtain such access through the usual procedure for path allocation by the infrastructure managers.

The Commission has been satisfied with the commitments offered and has therefore approved the transaction upon full compliance with the commitments.

This transaction paves the way to an increasing opening of the markets linked to railway transport to private operators.

Case-Law & Analysis

Cartel victims may claim damages against all members of a cartel, in the national court of any country in which one of the companies is registered

(Judgment of the Court of Justice of the EU of 21 May 2015 in Case C-352/13, Cartel Damage Claims (CDC) Hydrogen Peroxide SA v Akzo Nobel NV and Others).

In 2006 the European Commission declared that certain suppliers of hydrogen peroxide and sodium perborate had participated in an illegal cartel.

Cartel Damage Claims Hydrogen Peroxide (CDC) represented various companies active in the industrial pulp and paper

industry that allegedly had suffered damages in connection with the cartel.

Under Regulation 44/2201 (Brussels I Regulation), where there are multiple defendants, a claim may be brought where any one of them is based, providing that the claims are so closely related that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

In 2009, CDC brought an action for damages in Germany against six companies having participated in the hydrogen peroxide and sodium perborate cartel. Out of these



companies, only one was based in Germany. This German company reached a court settlement with CDC months later and therefore the claim against this defendant was withdrawn. The remaining defendants challenged the jurisdiction of the German court to hear the case. They argued that the supply contracts concluded with the companies affected by the cartel contained jurisdiction clauses designating the competent courts in the event of a dispute. In this scenario, the German court decided to make a reference to the Court of Justice of the EU.

The Court of Justice has reminded that the Brussels I Regulation allows for an action for damages to be brought before the courts of one single Member State against several defendants all domiciled in different Member States. In this sense, the withdrawal of the action against the

only defendant domiciled in that country does not, *a priori*, affect the jurisdiction of that court to hear and determine the case with regard to the remaining defendants. However the Court has pointed out that this principle shall not be abused: if, for example, CDC and the German defendant knowingly delayed their settlement in order to ensure that the case is heard by the German court, the latter may disregard this jurisdiction rule.

Finally, the Court has also confirmed that a cartel victim may choose between the following jurisdictions in order to bring a damage claim: (i) the place where the cartel was concluded or where the cartelists entered into a specific agreement which implied the existence of the cartel; or (ii) the place where the loss took place (i.e. the victim's domicile).

Currently at GA&P Brussels

Manuel Martín, managing partner of Gómez-Acebo & Pombo, has been selected as best managing partner in Spain in 2015 by the Spanish edition of the Forbes magazine.

The award was given at the Ritz Hotel in Madrid in a ceremony presided over by the Spanish Ministry of Justice, Rafael Catalá.

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