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News

Commission orders interim measures for the first time in 18 years

On 16 October 2018, the European Commission announced that, in the framework of its investigation into possible anticompetitive practices by Broadcom, it had imposed interim measures on the American company.

This is the first time in 18 years that the Commission uses the power enshrined in Article 8 of Council Regulation (EC) No 1/2003. This provision empowers the Commission to adopt, in cases of urgency due to the risk of serious and irreparable damage to competition and on the basis of a prima facie finding of infringement, decisions ordering interim measures.

Margrethe Vestager explained that the decision here had been adopted to prevent serious and irreparable harm in the markets affected by the practices engaged in by Broadcom.

According to the Commission, at first sight, Broadcom is dominant in the systems-on-a-chip markets for (i) TV set-top boxes; (ii) fibre modems; and (iii) xDSL modems.

Broadcom would be abusing its prima facie dominant position by including anticompetitive clauses in its contracts with manufacturers of modems and TV set-top boxes, in breach of Article 102 of the Treaty on the Functioning of the European Union (“TFEU”).

On the one hand, Broadcom would be strengthening its prima facie dominance in systems-on-a-chip for TV set-top boxes, fibre modems and xDSL modems by imposing exclusive (or quasi-exclusive) purchase obligations and by offering certain advantages on the condition that the customer in question purchases such products exclusively (or quasi-exclusively) from Broadcom.

On the other hand, Broadcom would be using such dominance to gain market power in another market: the market for systems-on-a-chip for cable modems. To this end, Broadcom would be granting customers in these markets commercial advantages on the condition that the customer in question purchases such products exclusively (or quasi-exclusively) from Broadcom.

After analysing different samples of clauses, the Commission concluded that, if Broadcom's ongoing conduct were allowed to continue, it would likely affect a number of tenders that would be launched in the future. More precisely, Broadcom’s competitors could be excluded or expelled from the market, which could cause serious and irreparable harm to competition.

On the basis of the foregoing, Broadcom has been ordered to (i) cease to apply the clauses identified as anticompetitive by the Commission and to inform its customers accordingly; and (ii) refrain from introducing new clauses that have a similar or equivalent effect as that identified by the Commission.

Broadcom has a 30-day deadline to implement the interim measures. The measures apply for the earlier of (i) 3 years or (ii) the conclusion of the investigation. With regard to the latter, it should be noted that EU antitrust investigations are not subject to legal deadlines.

Since this decision is the first of its nature to be adopted in 18 years, it was described by Vestager as a special occasion. The Commissioner also noted that if the Commission were to identify other cases involving serious and irreparable harm, then, interim measures could start to be used on a more regular basis.

CNMC opens two formal investigations over bid rigging concerns in the road transport sector and the provision of library-related services

In October 2019, the Spanish Competition and Markets Authority ("CNMC") announced the opening of a formal investigation concerning 25 companies engaging in the provision of public passenger road transport services in Cantabria, with a special emphasis on school transport. Two industry associations are also under investigation.

This move follows a complaint by the taxi sector and the dawn raids conducted by the CNMC in February 2019 in the premises of several companies and associations.

The CNMC is investigating potential anticompetitive practices by these undertakings, namely, price fixing, customer allocation and/or bid rigging within the Region of Cantabria.

Also in October 2019, the CNMC started to formally investigate whether a number of companies have engaged in bid rigging in the provision of (i) library services and (ii) archives and document management services between 2016 and 2019.

These practices could be in breach of Article 1 of the Spanish Competition Act, which prohibits anticompetitive agreements and practices.

The CNMC has 18 months to conduct the preliminary investigations on these cases and adopt the appropriate decisions.

The opening of these investigations does not predetermine their outcome.

In line with its recent activity, the CNMC recalls in the press releases related to the two investigations that exclusion from bidding in public tenders, which is a measure that can be adopted against companies that have infringed competition law, would not apply to companies that benefit from leniency.

CNMC fines 19 companies and 8 executives for participation in a cartel in the industrial assembly and maintenance sector

The CNMC has dismantled a cartel in the industrial assembly and maintenance sector. According to the CNMC, the practices in question were conducted with the aim of increasing prices in the services provided, mainly, to energy and petrochemical clients.

The cartel members engaged in client allocation and bid rigging, exchanged commercially sensitive information, submitted fake tenders and fixed prices. These practices were found to be in breach of Article 1 of the Spanish Competition Act and Article 101 TFEU.

The CNMC's investigation has revealed that, at least, 18 meetings between companies active at the national level or with business activity in several parts of Spain were held to coordinate the cartel. Contacts between companies grew over the years and included faxes, phone calls, WhatsApp messages and emails.

The anticompetitive practices started in January 2001 and were brought to an end in July 2017, after the CNMC had conducted on-site inspections at the premises of several companies.

The fines imposed on the 19 companies involved amount to EUR 54.2 million and the 8 executives concerned were fined EUR 280,000.

In addition, the CNMC has triggered the procedure to exclude all infringing companies, with the exception of those that benefited from leniency, from bidding for public procurement contracts.

The State's Advisory Board on Public Procurement, which is attached to the Spanish Tax Ministry, will decide on the scope and duration of the potential exclusion following the procedure legally provided to this effect.

Telefonica fined 1.5 million by the CNMC for a merger commitment breach

The CNMC has fined Telefonica 1.5 million for breaching one of the commitments attached to its acquisition of DTS.

The merger was cleared in 2015 by the CNMC on the condition that Telefonica fulfilled a number of commitments in the pay TV market. This included, among others, making Telefonica's yearly wholesale offer of contents for premium channels available to competitors. The aim was to allow Telefonica's competitors to replicate the company's retail offer.

Monitoring such commitments, the CNMC found that Telefonica failed to adequately assign the fixed costs related to football TV channel “Movistar Partidazo”, which was part of its wholesale offer of premium channels for the 2016/2017 season.

As a consequence, the other competing operators interested in hiring the “Partidazo” channel (Vodafone, Orange and Telecable) had to bear higher costs. This resulted in an advantage for Telefonica.

CNMC opens formal investigation into 14 companies active in film distribution following concerns over potential anticompetitive practices

The CNMC has opened a formal investigation into 14 film distributors following concerns over anticompetitive practices.

In particular, the CNMC suspects that large film distribution companies and the company specialising in digital solutions for the film industry, Ymagis, colluded to harmonise their commercial strategies. In addition, the CNMC will examine whether the film distributors exchanged commercially sensitive information, with the help of Rentrak, a company providing audience measurement services.

The companies under investigation are: (i) The Walt Disney Company Iberia, SL, and jointly and severally its British parent, The Walt Disney Company Limited; (ii) Sony Pictures Entertainment Iberia, SL and jointly and severally, its British parent, Columbia Pictures Corporation LTD; (iii) Warner Bros Entertainment España, SL and jointly and severally its Dutch parent Warner Bros Entertainment Nederland, BV; (iv) Hispano Foxfilm, SAE; (v) Universal Pictures International Spain, SL; (vi) Paramount Spain, SL and jointly and severally its British parent Paramount Pictures International Limited; (vii) Ymagis Spain, SL and jointly and severally its French parent Ymagis SA.; and (viii) Rentrak Spain, SL and jointly and severally its Dutch parent Rentrak BV.

These undertakings could have engaged in conduct that is contrary to Article 1 of the Spanish Competition Act and Article 101 TFUE, which prohibit anticompetitive agreements and practices.

The CNMC has 18 months to conduct its preliminary investigation and adopt a decision on the matter. The opening of this investigation does not predetermine its outcome.

Currently at GA_P

GA_P sponsors Spanish National Day reception organised by Spanish Embassy in Belgium

GA_P sponsored the Spanish National Day reception organised by the Spanish Embassy in Belgium. The event took place on 9 October 2019 at Palais des Académies in Brussels. GA_P was the only law firm among the sponsors.