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News

Commission fines canned vegetables cartelists EUR 31.6 million

Canned vegetables companies Coroos, Groupe CECAB and Bonduelle have been found to have participated in a cartel in the supply of canned vegetables to retailers and food service companies in the European Economic Area ("EEA").

In particular, the Commission's investigation showed that the infringement included agreements affecting sales of private label canned vegetables to retailers in the EEA and sales of branded canned vegetables to retailers and food service industry in France.

After having acknowledged their participation in the cartel and agreed to enter into a settlement, Coroos and Groupe CECAB were fined EUR 31.6 million by the Commission. This amount was the result of applying a reduction to the fine for their cooperation with the investigation.

Since Bonduelle disclosed the existence of the cartel and applied for leniency, it benefited from full immunity and escaped the fine.

A fourth company, Conserve Italia, was also concerned by the investigation. However, given that it is not covered by the settlement, it will be the addressee of a separate decision.

Vestager to remain as DG COMP's Commissioner

European Commission's President-elect Ursula von der Leyen has unveiled the team of Commissioners that will run the European Commission during the next 5 years. In an unprecedented move, the Danish Margherete Vestager has been proposed as Commissioner for Competition for a second mandate.

Vestager has been especially active in fighting abuses of dominance in the digital industry, by fining tech giants such as Google, Facebook or Qualcomm and opening investigations against Broadcom or Amazon.

During her second term as Competition Commissioner, Vestager will conclude the review of the EU rules on vertical restraints, which started during her current mandate. With regard to vertical anticompetitive practices, the Commission has recently fined companies, such as Guess or Sanrio, for including vertical restrictions in their contracts with distributors.

Commission publishes new State aid recovery Notice

In July 2019, the European Commission published a new Notice on the recovery of unlawful and incompatible State aid, which replaces a previous version of 2007.

The aim of the 2007 Notice was to help the recovery process that follows Commission decisions ordering Member States to recover unlawful and incompatible State aid from aid beneficiaries.

The reviewed Notice includes lessons learned by the Commission over the years as well as relevant case law.

The document provides further explanations on how to identify the State aid beneficiaries and the amounts of aid that need to be recovered. It also provides guidance on State aid implemented through tax measures, which has been a focus of the Commission in the past few years.

The adoption of the new State aid recovery Notice follows a public consultation launched by the Commission in February 2019.

CNMC opens disciplinary proceedings against 13 companies active in road exploitation and maintenance services for potential bid rigging

The Spanish Competition Authority ("CNMC") has opened an investigation into 13 companies over concerns that they could have engaged in bid rigging in the provision of operation and maintenance services for the Spanish highway network.

In particular, the CNMC suspects that the entities could have colluded in the context of tenders launched by the Spanish Ministry of Public Works and Transport ("*Ministerio de Fomento*").

In December 2018, the CNMC had inspected the premises of several companies active in the provision of the said services. The information collected by the CNMC has motivated the extension of the investigation so as to cover 13 entities.

The CNMC has 18 months to conduct a preliminary investigation and adopt a decision. The opening of an investigation does not prejudge the result thereof.

Another extension in the scope of a probe into potential bid rigging was announced in August 2019 by the CNMC. This probe follows concerns that consulting firms could be engaging in anticompetitive practices in the context of the provision of consultancy services to entities of the Spanish Administration.

In the press releases published by the CNMC on the two investigations, the Authority has reminded that exclusion from participation in public tenders, which is a measure that can be adopted against companies that have infringed competition law, would not be applicable against leniency applicants.

CNMC announces probes into potential anticompetitive practices in the access to ATM networks and the production, commercialization and distribution of chemical products

In September 2019, the CNMC made public that it was investigating potential anticompetitive practices consisting in unjustified refusal to provide access to an ATM network to certain banks under conditions similar to those offered to other financial entities.

The CNMC suspects such conduct could have been ongoing for several years with the aim of undermining the competitive position of certain companies in the market for the provision of payment services.

Between 25 and 27 September 2019, the CNMC dawn raided the premises of several companies active in the abovementioned market, including banks and ATM network managers. These inspections follow a complaint.

Also in September 2019, the CNMC announced an investigation into anticompetitive agreements and/or practices in the manufacture, commercialization and distribution of chemical products and disclosed that it had inspected the premises of several companies active therein.

The Authority indicated that the probe concerned both manufacturers and distributors and that its subject matter would relate to the imposition of quotas to distributors as well as market sharing.

The practices investigated in these two probes could be in breach of Article 1 of the Spanish Competition Act and Article 101 of the Treaty on the Functioning of the EU, which prohibit anticompetitive agreements and practices.

Dawn raids are a preliminary step in the investigation and do not prejudge the outcome thereof.

CNMC investigates potential gun jumping in a merger in the fruit and vegetables wholesale sector

In September 2019, the CNMC announced that it had opened disciplinary proceedings against NUFRI, *Sociedad Agraria de Transformación A.P.A*, an entity active in the wholesale of fruits and vegetables.

In particular, the CNMC is concerned that NUFRI could have violated the standstill obligation foreseen by Spanish merger control rules, in the context of its acquisition of INDULLEIDA Group, which gained the CNMC's clearance in July 2019.

Under Article 9 of the Spanish Competition Act, companies are obliged to refrain from implementing transactions that meet certain thresholds before obtaining the corresponding CNMC's approval.

The CNMC has 3 months to investigate and adopt a decision on the case. The opening of these proceedings does not prejudge its outcome.

CNMC clears Just Eat/Takeaway.com merger

On 19 September 2019, the CNMC cleared, in Phase I, the acquisition of exclusive control over Just Eat by Takeaway.com.

The transaction was subject to merger control in Spain because the turnover thresholds foreseen in the Spanish Competition Act were met.

This concentration will result in the creation of one of the largest online food delivery platforms in the world.

Case law & Analysis

The General Court of the EU annuls cartel fine imposed to HSBC by the Commission due to insufficient motivation *(Judgment of the General Court of the EU of 24 September 2019 in Case T-105/17 HSBC Holdings plc, HSBC Bank plc, HSBC France v Commission).*

In December 2016, the Commission adopted a decision establishing that financial entities Crédit Agricole, HSBC and JPMorgan Chase had participated in a cartel related to the Euro Interest Rate Derivatives ("EIRD") sector. In this context, HSBC was fined EUR 33.6 million by the Commission.

In its judgment, the General Court annuls the fine imposed on HSBC due to a lack of reasoning in the calculation of the fine.

In particular, the Commission had applied a 98.85 % reduction factor based on the complex nature of the market at issue. Normally, Commission's fines are calculated on the basis of the value of the sales of the company concerned. However, given that the Commission understood that interest-rate derivatives do not have sales' value as such, it relied on a proxy and used, as a basis, receipts generated from cash flows, to which it applied a very significant reduction.

The General Court considered that the Commission's fining decision did not provide an explanation of the reasons that led to a reduction factor of 98.85% rather than at a higher level. This resulted in the impossibility of conducting an adequate legal assessment of the fine.

Currently at GA_P

GA_P Madrid to hold seminar on the recent Commission decisions on distribution matters

On 30 October 2019, GA_P's Madrid office will host a seminar on "E-Distribution. Hot topics: the new decisions of the European Commission on distribution matters". The discussion will be organized by GA_P's Competition Law department and will start at 9h30.