

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

### **Commission opens investigation into possible collusion by French retailers in a purchasing alliance**

On 4 November 2019, the European Commission announced the initiation of formal antitrust proceedings against French supermarket chains Casino Guichard-Perrachon ('Casino') and Les Mousquetaires ('Intermarché') following concerns of potential anticompetitive practices in connection with their purchasing alliance.

Casino and Intermarché are the two biggest groceries retailers in France. Since November 2014, they operate a joint venture for the joint procurement alliance of their branded products, INCA.

The Commission suspects that the companies have coordinated their activities on the development of their shop networks and their pricing policy towards consumers, thereby breaching Article 101 of the Treaty on the Functioning of the European Union ('TFEU'), which prohibits anticompetitive practices and agreements.

Buying alliances between retailers can bring lower prices to consumers, but such benefits can disappear if retailers use these alliances to collude on their sales activities.

Thus, the Commission will investigate whether Casino and Intermarché coordinated their activities in an anticompetitive manner.

There is no legal deadline for the completion of antitrust investigations by the European Commission. The duration of antitrust investigations at the EU level depends on a number of factors, including the complexity of the case and the cooperation of the investigated undertakings.

### **CNMC fines Vaillant Group for imposing anticompetitive vertical restraints on its technical repair services' network**

The Spanish Competition and Markets Authority, CNMC, has fined Vaillant Group EUR 859,763 for imposing anticompetitive restraints on its network of authorised providers of technical services for gas boilers.

The CNMC has found that Vaillant Group (i) prohibited providers to deliver its services outside of certain territories; (ii) set the prices that technicians should charge to final consumers; and (iii)

imposed an obligation on technicians to acquire spare parts exclusively from Vaillant Group or from operators authorised by the latter.

These restraints were included in clauses of the contracts entered into by Vaillant Group and its authorised technical services' providers.

Such obligations constitute vertical restrictions contrary to Article 1 of the Spanish Competition Act ('LDC'), which prohibits anticompetitive practices and agreements.

As of 2014, Vaillant Group replaced its contractual template. As a consequence, the anticompetitive clauses were no longer included in new agreements.

Vaillant Group breached Article 1 LDC from May 2004 to June 2018, when the last agreements that contained anticompetitive clauses were replaced.

The fines imposed by the CNMC on the entities of the Vaillant Group took account of the active cooperation of the infringing companies and of the fact that the infringement was stopped before the Statement of Objections was sent.

According to the CNMC's press release, the proceedings were triggered by a complaint lodged by an individual through the authority's whistleblowing mailbox.

The fined companies now have two months to appeal against the CNMC's Decision.

## **CNMC opens investigation into the Spanish postal operator Correos following concerns over potential abuse of dominant position**

In November 2019, the CNMC announced the initiation of formal proceedings against Correos concerning a potential infringement of Article 2 LDC and Article 102 TFEU.

Over the past five years, the decisions of the CNMC whereby it revises, as postal regulator, the prices of postal services provided as part of Correos' public services obligations, have revealed the application of high discounts to large clients. As a result of these discounts, unit revenue fell below cost. In addition, prices paid by these clients cannot be exclusively explained by generated cost savings.

According to the CNMC, the aim of such discounts would have been to ensure the loyalty of large clients and would have had an exclusionary effect in the market of traditional postal services at the retail level from, at least, 2015 and until 2019.

Correos has been the leading operator in the traditional postal sector, with market shares that, in 2017, amounted to 86.4% in the letters segment. A large share of Correos' turnover derives



from the clients to which the company applies high discounts. The second operator of that market, UNIPOST, which, in 2017, reached a market share of 11.6%, went into liquidation in 2018.

The opening of this investigation does not mean that a definitive finding of an infringement will be made. The CNMC has 18 months to conduct the investigation and adopt the appropriate decision.

### **CNMC opens preliminary investigation following concerns over potential anticompetitive practices in the real estate brokerage market**

The CNMC has opened an investigation into potential anticompetitive practices consisting in concerted practices and/or agreements to fix, directly or indirectly, prices and other commercial conditions in the real estate brokerage sector, as well as possible exchanges of commercially sensitive information, with special emphasis on the residential housing segment.

On 18, 19 and 20 November, the CNMC conducted on-site inspections of the premises of the undertakings concerned.

The CNMC suspects that certain companies and associations of the aforementioned sector at the national, regional and local level could have engaged in anticompetitive practices by fixing commissions related to the sale or renting of houses. The investigated practices could concern entities active in the national market of software and IT solutions. In particular, the CNMC is investigating whether the design of certain real estate software and its algorithms could have facilitated the direct or indirect fixing of commissions and commercial conditions.

The undertakings under investigation could have engaged in practices that are contrary to Article 1 LDC and/or Article 101 TFEU.

The opening of this investigation does not mean that a definitive finding of an infringement will be made.

### **CNMC opens investigation into potential abuse of dominant position in the Spanish market of combined hormonal contraceptive methods**

The CNMC has initiated formal proceedings against Merck Sharp Dome, S.A. and its European parent, MSD Human Health Holding, B.V.

The probe seeks to ascertain whether there has been an abuse of dominant position in the Spanish market for combined hormonal vaginal ring contraceptives, contrary to Article 2 LDC and Article 102 TFEU.

The opening of this formal investigation follows the dawn raids carried out by the CNMC in May 2019. In particular, on the basis of the information collected during those inspections, the CNMC suspects that the companies concerned may have used IP rights to delay and hinder the entry of competitors into the Spanish market.

The opening of this investigation does not mean that a definitive finding of an infringement will be made. The CNMC has 18 months to conduct the investigation and adopt the appropriate decision.

### **TV companies Mediaset and Atresmedia fined EUR 77.1 million by the CNMC for anticompetitive practices in the commercialization of adverts**

The CNMC has fined Mediaset and Atresmedia EUR 77.1 million for a breach of Article 101 TFEU and Article 1 LDC.

Mediaset and Atresmedia followed a commercial strategy which resulted in the consolidation in their channels of more than 85% of the entire advertisement market.

Their strategy limited the ability of other TV networks to collect advertising revenue. In particular, the companies required advertisers to engage in a minimum investment, which represented most of their advertisement needs. If that requirement was not fulfilled, penalties could be imposed.

Both networks gave monetary incentives to media agencies on the condition that they reached a certain investment volume or share of the whole package of Mediaset's and Atresmedia's advertisements. The income from the additional premiums was a significant part of the agencies' income accounts.

By means of these practices, the two networks led advertisers and agencies to consolidate much of their television advertising budget in Mediaset and Atresmedia.

In addition, the CNMC found that both companies usually commercialised ads by bundling one of the most popular channels with other channels from the same group which registered lower audiences.

The practices were reinforced by the simultaneous broadcasting of the ads in the different channels of the media group.

According to the CNMC, these behaviours resulted in the remaining TV operators having difficulties to compete and excluded alternative channels from the TV advertisement market.

The CNMC considered such practices to be vertical single-branding agreements that imposed minimum purchase obligations, within the meaning of the EU Guidelines on Vertical Restraints.

Each TV group engaged in these practices independently, although the commercial terms and conditions applied by both networks were very similar.

Besides imposing a fine, the CNMC's Decision requires the companies to change their behaviour within three months.

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## Currently at GA\_P

### GA\_P Madrid hosts seminar on geo-blocking and geo-filtering

On Thursday 28 November 2019, Iñigo Igartua, head of GA\_P's Competition Law Practice, and Eduardo Gómez de la Cruz, senior associate in this practice, discussed the dos and don'ts related to geo-blocking and geo-filtering.

Regulation (EU) 2018/302 of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market applies since December 2018.

The Regulation introduced a new framework for buyers of other Member States in the e-commerce world.

During the session, our lawyers exchanged with the audience interesting views on the scope and application of the Regulation.