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Gómez-Acebo & Pombo

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News

Margrethe Vestager announces upcoming review of Market Definition Notice

On 9 December 2019, the Commission's Executive Vice-President Margrethe Vestager announced the Commission's intention to launch the review of the Commission Notice on the definition of relevant market for the purposes of Community competition law ('the Notice').

The Notice dates back from 1997 and still guides the Commission today. The review can help adjust the Notice to the changes brought by digitisation and global trade, which have had an impact on the geographic scope of markets.

Reviewing the Notice can also be an opportunity to take into account the techniques developed by the Commission over the years to delineate markets.

Ms Vestager said that the aim is to ensure that the guidance provided by the Notice is accurate, up to date and fit to provide a consistent approach to antitrust and merger cases.

Commission opens preliminary investigation against Google and Facebook in relation to data-gathering practices

The Commission has opened a preliminary investigation into potential anticompetitive data-gathering practices, addressing requests for information to Google and Facebook.

The probe would concern the way such companies collect, process, use and monetise data (for example, via advertising).

The Commission's move follows a series of investigations and fines against Google, namely, the cases concerning Shopping search, Android and AdSense. The decisions on these cases are currently on appeal before the General Court of the EU.

This summer, Margrethe Vestager also referred to a potential scrutiny of Google's job search services, although no formal investigation has been announced yet.

As for Facebook, it has been reported that the Commission is looking into on-line classified advertising practices and would have sent questionnaires on the matter.

CNMC opens investigation into potential anticompetitive practices in maritime transport of passengers and vehicles in the South of Spain

The Spanish Competition and Markets Authority, CNMC, is investigating whether a number of companies active in maritime transport between Algeciras and Ceuta may be in breach of article 1 of the Spanish Competition Act ('LDC') and article 101 of the Treaty on the Functioning of the EU ('TFEU'). These provisions prohibit anticompetitive agreements and practices.

The conduct under investigation may have consisted in agreements and/or concerted practices, which would have included price fixing, market sharing and exchanges of commercially sensitive information with the aim of coordinating prices and timetables.

The anticompetitive practices could have had an impact on public tenders launched for the provision of maritime transport services between Ceuta and Algeciras.

In 2011, several maritime transport companies were fined for similar practices (Case S/0241/10). The fining decision in this case was confirmed by the Spanish *Audiencia Nacional*.

The CNMC then opened surveillance proceedings to ensure that the anticompetitive practices at issue were brought to an end and that the companies concerned would comply with the CNMC's decision.

In the context of such surveillance proceedings, on 17, 18 and 19 December, the CNMC dawn raided the premises of several maritime transport providers active in the routes between Algeciras and Ceuta.

The on-site inspections are a preliminary step in the investigation and do not determine the outcome thereof.

CNMC launches inquiry on inter-city bus transport

The CNMC has announced the launch of an inquiry on the competition conditions in the inter-city bus sector in Spain.

The first phase of the inquiry includes a public consultation, which aims at obtaining input from operators, regulators, consumers and sector experts. This consultation is currently open and will close on 7 February 2020.

Once the consultation phase is completed, the CNMC can consider organising meetings or sending requests for information to different stakeholders. Based on the collected information, a document including the conclusions drawn will be published.

The action plan of the CNMC for 2019 included the commitment of the authority to conduct studies which can have a direct impact on citizens' welfare, such as transport.

The recently launched inquiry follows a number of actions undertaken by the CNMC over the years in sectors such as passenger transport, transport of light commercial vehicles or commercial railway transport services.

The study seeks to analyse the inter-city bus services in Spain and to assess the impact of the current concessions on competition and consumers' welfare. The CNMC will also evaluate the experiences of other Member States, which have liberalized the sector, and explore the potential application of such a system in Spain.

CNMC imposes gun-jumping fine on fruit-wholesaler

NUFRI, Sociedad Agraria de Transformación, has been fined by the CNMC for implementing a merger prior to its notification.

In the beginning of the year, NUFRI acquired fruit-based products' manufacturer Grupo Indulleida. The transaction was only pre-notified on 15 April 2019 and, subsequently, notified on 21 June 2019. The CNMC approved the merger on 11 July in Phase I without conditions.

The CNMC found that the concentration reached the 30% market share threshold provided under the LDC and thus, it should have been notified prior to its implementation in early 2019.

The CNMC concluded that the lack of notification had not been intentional, as NUFRI had filed the notification as soon as it became aware of the potential infringement. Based on this, NUFRI benefited from a reduction in its fine, which was brought down to EUR 12,800.

Currently at GA_P

GA_P Competition team wishes our readers a Happy New Year!