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Gómez-Acebo & Pombo

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News

Commission fines Spanish hotel group Meliá €6.7 million for including anti-competitive clauses in its agreements with tour operators

The European Commission has imposed a €6.7 million fine on hotel group Meliá for imposing anti-competitive clauses in agreements with tour operators that resulted in a discrimination between consumers based on their country of residence.

The investigation, launched three years ago following a number of complaints, revealed that Meliá entered into agreements with tour operators that restricted active and passive sales for hotel accommodation, in breach of Article 101 of the Treaty on the Functioning of the European Union (“TFEU”), which prohibits agreements between companies that prevent, restrict or distort competition within the EU's Single Market.

In particular, Meliá's standard terms and conditions for contracts with tour operators included clauses establishing that such contracts were valid only for reservations of consumers who were resident in specific countries.

Thus, tour operators were deprived from freely selling hotel accommodation across the European Economic Area (“EEA”) and from responding to direct requests from consumers who were residents outside the defined countries.

The infringement was found to have had a duration of two years, covering 2014 and 2015.

Since Meliá cooperated with the Commission beyond its legal obligation, and acknowledged the facts and the infringement, it benefited from a 30% fine reduction.

Commission announces extension of Spanish airport state aid investigation

In October 2013, an airline lodged a complaint with the European Commission arguing that certain agreements between Ryanair and two Catalan airports (Girona Costa Brava and Reus) could constitute incompatible State aid.

As a consequence, an investigation was opened to determine if such agreements, and other arrangements entered into between Spanish public authorities and a number of airlines could be in breach of state aid rules.

While the probe is still ongoing, the European Commission has now announced the decision to broaden its scope so as to cover some additional marketing agreements. All these agreements,

together with the ones that were already covered by the probe, resulted since 2004 in payments in the form of “marketing incentives” to Ryanair and other airlines.

The preliminary view of the Commission is that the marketing support received by Ryanair and other airlines from Spanish authorities may constitute State aid within the meaning of Article 107(1) TFEU.

This extension provides all interested parties with an opportunity to comment on the measures concerned.

Commission publishes strategies for data and artificial intelligence

The Commission has announced its digital transformation plans and confirmed that, over the next five years, it will focus on (i) technology that works for people, (ii) a fair and competitive economy, and (iii) an open, democratic and sustainable society.

In this context, the Commission presented a Communication on a European strategy for data and a White Paper on Artificial Intelligence.

With regard to the data strategy, the Commission has unveiled its intention to put a European data space in place and, for this purpose, there will be a regulatory proposal on data governance, access and reuse. This will involve, inter alia, the creation of incentives to share data.

Stakeholders willing to provide feedback on the strategy are able to do so by means of the survey made available by the Commission on its website.

Concerning artificial intelligence, the Commission stated it intends to support the acceleration of its deployment, in partnership with the private and public sector. A public consultation on the White Paper is open until 19 May 2020.

CNMC opens formal investigation against ATM network “Euro 6000” for potential anticompetitive practices

The Spanish Competition and Markets Authority (“CNMC”) has announced the opening of a formal investigation against ATM network “Euro 6000” for a potential infringement of Article 1 of the Spanish Competition Act (“LDC”) and Article 101 TFEU. These provisions prohibit anticompetitive practices and agreements.

The practices under investigation concern a potential systematic refusal to provide ING with access to the Euro 6000 ATM network in Spain under the same conditions applied to other financial entities.

The probe was triggered by a complaint lodged by ING with the CNMC, which was followed by on-site inspections in September 2019. Based on the data collected during the dawn raids, the CNMC believes there are reasonable indicia of the implementation of anticompetitive practices by Euro 6000.

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

CNMC launches public consultation on draft guidance on competition law compliance programmes

The CNMC has released a draft guidance on compliance programmes in the field of competition law and has invited stakeholders to provide their feedback thereon. The deadline to submit comments expires on 29 February 2020.

Compliance programmes are tools aimed to prevent and identify unlawful conduct, such as anti-competitive practices, which can entail liability and reputational damage for companies.

The CNMC has had the opportunity to examine compliance programmes in the context of several proceedings. Some of these programmes had been implemented prior to the identification of the infringement (i.e., “ex ante”), whereas others had been deployed or amended while the proceedings were already ongoing (i.e., “ex post”).

This has allowed the CNMC to draw a list of conditions that a compliance programme must meet in order to be considered effective, which will determine whether it can be taken into account as (i) a mitigating factor for the fine resulting from a competition law infringement or (ii) as a self-cleaning measure that would avoid exclusion from public procurement.

The aim of the draft guidance is to provide further transparency on the basic criteria that will determine the effectiveness of a competition law compliance programme.

According to the draft guidance, an effective compliance programme shall:

- i. show the commitment of its management and executives;
- ii. provide training for all company employees, and such training shall be tailored to the field of activity in question and to the position of the addressees;
- iii. implement an anonymous whistleblowing channel;
- iv. provide for the appointment of a person in charge of the design and control of the programme;



- v. include a system to identify risks and protocols to limit the materialization of such risks;
- vi. provide internal procedures to manage complaints and to identify infringements; and
- vii. establish a disciplinary system that is transparent and efficient.

CNMC closes an investigation into Adidas with commitments

In November 2018, following a complaint lodged by a franchisee of Adidas, the CNMC opened an investigation into the company. The CNMC was concerned that Adidas had engaged in anticompetitive practices, in breach of the LDC, in the retail market for clothing and footwear in Spain.

In the course of the probe, Adidas proposed a series of commitments with the aim of addressing the competition concerns identified by the CNMC. In particular, Adidas has committed to (i) delete the post-contractual non-compete clauses that were included in some of its franchise agreements, (ii) clarify the requirement of prior approval of websites used by distributors, and (iii) remove the prohibition of cross-sales between distributors, in general, and franchisees, in particular.

The CNMC has expressed its satisfaction with these commitments, as it believes they properly address the concerns identified. The infringement of such commitments would constitute a very serious infringement.

Closing a probe with commitments, as provided under Article 52 LDC, is an atypical way to put an end over formal antitrust proceedings. This way to conclude a probe entails no finding of infringement and no fine for the company concerned. To date, only 9 cases have been concluded on the basis of Article 52 LDC.

CNMC opens an investigation into seven companies related to the real estate intermediation market

The CNMC has announced the opening of formal proceedings against seven companies following concerns over potential anticompetitive practices in the real estate intermediation market in Spain. This step follows the dawn raids conducted by the CNMC last September.

The conduct in question would consist in coordination of prices and other commercial conditions by real estate intermediaries. Such coordination would have been implemented through software and applications provided by IT specialist companies.

These practices would be in breach of Article 1 LDC and Article 101 TFEU, which prohibit anticompetitive agreements and practices.

In particular, the investigation concerns the following companies: CDC Franquiciadora Inmobiliaria SA; Look & Find primera red inmobiliaria SA; Aplicaciones Inmovilla SL; Idealista SA; Witei Solutions SL; Anaconda Services and Real Estate Technologies SL; and Servicio Multiple de Exclusivas Inmobiliarias SL (MLS).

The CNMC now has 18 months to adopt a decision on the case. The opening of an investigation does not mean that a definitive finding of an infringement will be made.

Currently at GA_P

GA_P Madrid hosts a breakfast seminar to discuss main developments in competition law over the course of 2019 and predictions for 2020

On 26 January 2020, our Madrid office hosted the seminar “What happened in competition law in 2019 and what to expect from 2020”.

Our lawyers Ricardo Alonso Soto, Eduardo Gómez de la Cruz, María Czestochowa Martínez and Jesús Urriza analysed key competition developments during 2019, at the EU and Spanish level, and shared their views on the trends they expect in 2020.

The session was followed by a networking breakfast that allowed the audience to mingle and informally continue the discussion.