

G A \_ P

Gómez-Acebo & Pombo

July | 2020

# Brussels G A \_ P Newsletter

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Brussels Office



# Contents

|  |          |
|--|----------|
| <b>News.....</b>   | <b>3</b> |
| — Commission adopts guidance for national courts when handling disclosure of confidential information .....                          | 3        |
| — Commission prolongs certain State aid rules and adopts adjustments to tackle COVID-19 impact .....                                 | 3        |
| — Commission adopts new exceptional support measures for the wine sector .....   | 3        |
| — Commission launches a public consultation on the Postal Services Directive.....  | 4        |
| — CNMC initiates two sanctioning proceedings against Atresmedia for undercover advertising and product placement on television ..... | 4        |
| — The Andalusian Competition Agency initiates proceedings against 38 driving schools in Cordoba .....                                | 5        |
| <b>Case law.....</b>   | <b>5</b> |
| — The General Court annuls the decision taken by the Commission regarding the Irish tax rulings in favour of Apple .....             | 5        |
| — Court of Justice invalidates the EU-U.S. Privacy Shield .....  | 6        |

## News

### **Commission adopts guidance for national courts when handling disclosure of confidential information**

After a public consultation launched last year, the European Commission has adopted a Communication on the protection of confidential information by national courts in proceedings for the private enforcement of EU competition law. Even though national laws may differ largely as regards access to and protection of confidential information, national courts must strike the right balance between the claimants' right to access relevant information and the right of a party to protect confidential information. To support national courts in this task, the Commission has adopted this Communication. In it, the Commission presents a number of measures national courts may, depending on their procedural framework, order to protect confidential information throughout and after the closing of the proceedings. It is important to note that, since there is no harmonisation at the EU level of procedural rules applicable to civil proceedings, this Communication is not binding for national courts.

### **Commission prolongs certain State aid rules and adopts adjustments to tackle COVID-19 impact**

Last 2 July, the European Commission extended the date of validity of certain State aid rules that would otherwise expire at the end of this year. While some of them have been prolonged for one year (for example, the Guidelines on regional State aid for 2014-2020 and the Communication on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union [TFEU] to short-term export-credit insurance), others have been extended for three (that is the case for, among others, the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty and the Regulation declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 TFEU). Furthermore, in this context and to take the effects of the current crisis into due consideration, the Commission, after having consulted the Member States, has also decided to make some specific adjustments to the rules in force relating to undertakings in difficulty and job relocations to mitigate the economic and financial impact of the COVID-19 pandemic on businesses.

### **Commission adopts new exceptional support measures for the wine sector**

Considering that the wine sector has been specially affected by the COVID-19 crisis due to the rapid changes in demand and the closure of restaurants and bars across the EU, the European Commission has adopted an additional package of measures to support the sector. Among others,

these measures include the temporary authorisation for a maximum period of 6 months for operators to self-organise market measures, the increase by 10% of the EU's contribution for wine national support programmes and the introduction of advance payments for crisis distillation and storage. These advances can cover up to 100% of costs. Other sector that will benefit from an increase of the EU's contribution will be the fruit and vegetable sector, in this case for programmes managed by producer organisations.

## **Commission launches a public consultation on the Postal Services Directive**

The consultation aims to assess the impact of the Postal Services Directive, which was last revised in 2008, and better understand the needs of the postal sector, especially in the light of the growing e-commerce economy. The Postal Services Directive guarantees the postal universal service, that is to say, that everyone in the EU receives minimum service at a reasonable price and that postal service operators can provide their services abroad. Since the last revision of the Directive, the sector has undergone major challenges due to digitalization and e-commerce, so this evaluation is an opportunity to assess whether the Directive still achieves its original aims. Stakeholders can submit their views until 9 November 2020. On the basis of the feedback received and further research, the European Commission aims to adopt an evaluation of the Postal Services Directive in 2021.

## **CNMC initiates two sanctioning proceedings against Atresmedia for undercover advertising and product placement on television**

The Spanish Competition and Markets Authority (CNMC) has initiated two sanctioning proceedings against Atresmedia for possible practices contrary to the Audiovisual Communication Act (LGCA) and which occurred in different programmes of its channels LaSexta and Antena 3. On the one hand, the CNMC investigates the possible violation of Article 18(2) LGCA, which concerns the broadcast of undercover advertising. This allegedly occurred during one broadcast of the program "Viajeras con B" of LaSexta. More precisely, during this program, the office of a well-known travel agency was showed, where a folder with the name of the agency with the documentation of the itinerary of a trip was delivered. Even though the viewer was not warned of the advertising nature of the content, during the broadcast the name of the company was repeated in the presentations of the different trips. On the other hand, Antena 3 could have committed an infringement of Article 17(2) LGCA, for having placed a product during one broadcast of the programme "El Contenedor". Indeed, during one broadcast, even though the public had not been informed about the product placement, the names of different removal companies appeared on numerous occasions.

## The Andalusian Competition Agency initiates proceedings against 38 driving schools in Cordoba

The Andalusian Competition Agency (ACREA) decided on 17 February 2020 to initiate proceedings against 38 driving schools in Cordoba, for alleged restrictive practices contrary to Article 1 of the Spanish Competition Act LDC). The agency considers that there are indications of a practice contrary to Article 1 LDC, allegedly carried out by certain driving schools in Cordoba, consisting of the agreement of commercial conditions for the type B driving license. The proceedings followed a complaint presented by a driving school in the city of Cordoba, which revealed an alleged price agreement between numerous driving schools, leading to the intimidation of the driving school that did not respect its compliance. It is not the first time that the regional agency faces an anti-competitive infringement in the driving school sector, since it already investigated such practices in the Proceedings S 10/2019 *Autoescuelas de Huelva*.

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## Case law

### The General Court annuls the decision taken by the Commission regarding the Irish tax rulings in favour of Apple

In 2016 the Commission adopted a decision concerning two rulings issued by the Irish tax authorities in favour of Apple Sales International and Apple Operations Europe, companies which were not tax resident in the country. Since the Commission believed that these rulings constituted State aid incompatible with the internal market, it ordered the recovery of the allegedly 13 billion euro that Apple had unlawfully received in tax advantages. In its judgment, the General Court criticised the Commission's decision, considering that the Commission had not demonstrated that there was an advantage in favour of Apple, which is one of the conditions for the application of the State aid rules. The Commission had considered that the advantage granted by the tax authorities consisted in the failure to allocate the Apple group intellectual property licences and, consequently, the trading income of Apple Sales International and Apple Operations Europe. Furthermore, the Commission had not demonstrated, in its subsidiary line of reasoning, methodological errors committed by the tax authorities that would have resulted in a reduction in chargeable profits of Apple companies in Ireland. However, the General Court points out that it regrets the incomplete and sometimes inconsistent nature of the contested tax rulings, but it adds this is not in itself sufficient to prove the existence of a competitive advantage.

## Court of Justice invalidates the EU-U.S. Privacy Shield

After having annulled a similar system (“Safe Harbor Decision”) in 2015 (“the Schrems I judgement”), the Court of Justice of the European Union has denounced again the framework for international data transfers between the European Union and the United States, considering that it does not provide the adequate level of data protection guaranteed by the EU General Data Protection Regulation (GDPR). It should be noted, on a preliminary basis, that, by virtue of the annulled agreement, the US company processing personal data of EU origin must be registered in the US Department of Commerce and must respect certain commitments if it intends to transfer such data to third parties. The Court recalls first that the data protection clauses in such agreements must ensure a level of protection essentially equivalent to that guaranteed within the EU. In its analysis of the validity of the system in the light of the requirements of the GDPR, the Court considers that the principles of proportionality are not complied with, in so far as the surveillance programmes based on the decision are not limited to what is strictly necessary since, for example, sometimes there are no guarantees for non-US nationals who are potentially the subject of such programmes or that the data subjects are not granted actionable rights before the courts against the US authorities.