G A _ P
Gómez-Acebo & Pombo
50 Aniversario

March | 2021

Brussels G A _ P Newsletter

Brussels Office

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News

Commission announces evaluation results and follow-up measures on jurisdictional and procedural aspects of EU merger control

The European Commission has published a **Staff Working Document** that summarises the findings of the evaluation of procedural and jurisdictional aspects of EU merger control. The evaluation focused on two topics in particular: (i) the effectiveness of the turnover-based jurisdictional thresholds in capturing concentration, and (ii) the effectiveness of simplification measures introduced in 2013.

As regards the jurisdictional thresholds, the evaluation results showed that the turnover-based jurisdictional thresholds, complemented with the referral mechanisms, have generally proved effective in capturing significant transactions in the EU internal market. Therefore, encouraging and accepting more referrals under Article 22 of the Merger Regulation could give Member States and the Commission the flexibility to target concentrations which merit review at EU level (i.e. concentrations involving nascent competitors and innovative companies with significant competitive role in the markets but escaping competition review since they generate little or no turnover at the moment of the concentration).

As regards the simplification measures, the evaluation has shown that the 2013 simplification package has been effective in increasing the application of simplified procedures to unproblematic mergers and in reducing administrative burden, both for businesses and the Commission, while ensuring effective enforcement of the merger rules.

Following the results of the evaluation, the Commission decided to adopt a communication providing guidance on the application of the referral mechanism of Article 22 between Member States and the Commission (i.e. describing the categories of cases which may constitute suitable candidates for a referral and setting out the criteria that the Commission may take into account in exercising its discretion to accept such referrals). It also launched an **impact assessment** on exploring policy options for further targeting and simplification of merger procedures (i.e. to analyse whether there is a gap which should be addressed and the possible options and tools to address it). Stakeholders are invited to submit their views on the Commission's consultation website until 18 June 2021.

Commission opens formal investigation into possible anticompetitive conduct of Teva in relation to a blockbuster multiple sclerosis medicine

The European Commission has opened a formal investigation in order to determine whether Teva has abused a dominant position by blocking or delaying the market entry of competitors

to its blockbuster drug Copaxone. Copaxone is used for the treatment of multiple sclerosis and contains glatiramer acetate.

The Commission is going to investigate whether following the expiration of Teva's basic patent covering glatiramer acetate in 2015, the company artificially extended the market exclusivity of Copaxone by strategically filling and withdrawing divisional patents, thus delaying entry of its competitor who was obliged to file a new legal challenge each time. Divisional patents are patents which originate from a "parent" patent company and which sometimes allow the patentee to multiply the patent barriers that a competitor needs to overcome to enter the market.

Furthermore, the Commission will examine if Teva carried out a campaign to create a false perception of health risks associated with competing glatiramer acetate products, even following the approval of these medicines by competent public health authorities. The Commission has declared that it has indications that this campaign was primarily directed at healthcare institutions and professionals.

Commission opens investigation into possible abuse of dominant position by the power exchange EPEX Spot

The European Commission has opened a formal investigation to assess whether the power exchange EPEX Spot SE has been taking advantage of its dominant position to hinder the activities of competitors on the market for electricity intraday trading facilitation services in at least six Member States (Austria, Belgium, France, Germany, Luxembourg and the Netherlands).

The Commission is concerned that EPEX Spot may have restricted competition in the intraday markets (i.e. markets where sellers and buyers of electricity can trade power in the last hours before being injected into the network). The Commission has concerns that EPEX Spot may have adopted behaviors foreclosing competitors by curtailing the ability of their customers to access the entire liquidity of the intraday market. These behaviors may have distorted the prices of trading services, and may have led to higher electricity prices for consumers/ slowdown in the greening of the electricity system.

Commission clears acquisition of GrandVision by EssilorLuxottica, subject to conditions

The European Commission has approved the proposed acquisition of GrandVision by EssilorLuxottica. The approval is conditional on full compliance with commitments offered by EssilorLuxottica.

EssilorLuxottica is the largest supplier of ophthalmic lenses and eyewear, both worldwide and in Europe, as well as an active eyewear retailer operating some of the largest optical chains

throughout Europe. EssilorLuxottica, was active in the retail sale of optical products, notably in Italy and the UK, selling its products to optical retailers, including GrandVision.

The transaction was notified to the Commission on 23 December 2019, followed by a Phase II investigation on 6 February 2020. The Commission's in-depth investigation focused on competition concerns that could arise from the combination of EssilorLuxottica's strong market position in the wholesale supply of optical products and GrandVision's leading presence in the retail distribution of these products. In particular, the Commission concerns were related to rival opticians' restricted access to EssilorLuxottica's products in Belgium, Italy and the Netherlands.

To address the competition concerns, EssilorLuxottica offered in each of the following countries to divest part of its retail operations. In Belgium, the GrandOptical chain and its 35 stores will be sold without the brand name. In Italy, the merged entity will divest a total of 174 stores - including the whole of EssilorLuxottica's VistaSi chain and 72 stores from the "GrandVision by" chain. Besides, the VistaSi brand will be transferred and the "GrandVision by" stores will be rebranded. In the Netherlands, 142 stores from the EyeWish chain will be sold, together with the brand name. The remedy package also contains additional safeguards to ensure the smooth transfer of the divestment business to the purchaser, including transitional supply and support arrangements.

Commission issues comfort letter for COVID-19 vaccine-related cooperation

The Commission has issued a **comfort letter** addressed to the organisers of an online event ("Matchmaking Event – Towards COVID-19 vaccines upsale production") held on 29 and 31 March 2021 and bringing together more than 300 parties from 25 Member States involved in the production and supply of COVID-19 vaccines. The aim of the event was to expand vaccine production capacities across Europe to speed up connections between vaccine producers and service companies such as contract development and manufacturing organizations, fill and finish service providers, equipment producers and others, and to improve planning for current and future vaccine production in Europe. The participating companies were able to schedule meetings online and discuss possible partnerships during 20 minutes time slots under the condition of full confidentiality.

The comfort letter was in line with the temporary framework that the Commission published on 8 March 2020, relating to business cooperation during the COVID-19 crisis. The framework provides guidance on the application of Article 101(1) of the Treaty on the Functioning of the European Union to possible forms of cooperation between undertakings to ensure the supply and adequate distribution of essential scarce products and services during the COVID-19 outbreak. The Commission believed that the event did not raise any concern provided that: (i) in relation to matchmaking meetings between any companies, any exchange of confidential busi-

ness information would be limited to what it is indispensable for effectively resolving the supply challenges linked to COVID-19 pandemic and (ii) in relation to any matchmaking meetings between direct competitors, companies would not share any confidential business information regarding their competing products (in particular information relating to prices, discounts, costs, sales, commercial strategies, expansion plans and investments, customers list, etc.) and direct competitors would keep a record of discussed topics.

Commission launches a public consultation on competition rules and collective bargaining agreements for the self-employed

It is settled case law of the Court of Justice of the European Union that collective bargaining with workers falls outside the scope of the application of EU Competition rules. However, according to EU competition law, self-employed are considered "undertakings" and agreements they enter into such as collective bargaining may therefore be captured by the EU competition rules. Consequently, and taking into account that the Commission has committed to improve the working conditions of platform workers during this mandate (who usually have no other option than to accept a contract as a self-employed worker), the Commission is analysing if it is necessary to adopt measures at EU level in order to address the issues raised by this situation and improve the conditions of these workers.

Consequently, between 6 January and 8 February 2021, the Commission published for feedback an inception impact assessment, where it set out four initial options concerning this subject. The options range from covering only platform work to covering all solo self-employed workers. Following that feedback, the Commission has launched a detailed public consultation in order to gather further information about the current situation of solo self-employed workers, and to identify the added value of EU action in this area, the likely impact of the policy options and the preferences of stakeholders, who are invited to submit their views until 28 May 2021.

Commission publishes Notice on tools to fight collusion in public procurement and on guidance on how to apply the related exclusion ground

The notice aims to provide a concise tool for national authorities and procurement officers to help minimise the risk of collusion and address suspected cases.

The characteristics of public procurement markets make them more vulnerable to collusion compared to other markets – contracting authorities usually follow relatively stable purchasing patterns, with frequently repeated award procedures. This predictably of demand facilitates market sharing among operators.

Noting this, the two aims of this Notice are: (i) to support Member States and contracting authorities in building capacity to address the problem, especially by incorporating methods to deter, detect and address collusion in the Commission's on-going professionalisation initiatives for public procurement, and (ii) to foster cooperation between national central procurement and competition authorities to ensure efficient and continuous support to contracting authorities.

Commission publishes a summary of contributions to motor-vehicle block exemption consultation

As part of its evaluation of the functioning of the motor vehicle block exemption rules, the Commission launched a public consultation on 12 October 2020, which lasted 15 weeks. The Commission has now published a summary of the 84 contributions to that public consultation. The majority of them believes that the objectives of the motor vehicle block exemption rules are still relevant today and that they have achieved legal certainty.

The majority of the stakeholders have explained in their contributions that as a result of the motor-vehicle block exemption rules, competition has intensified and, among others, the number of brands of motor vehicles in the EU market and the product variety have increased. To the Commission's question on any other possible elements (besides the current threshold criterion) on which the exemption should be made conditional, while some stakeholders (motor-vehicle associations) argued that adding more conditions would create legal uncertainty, the majority of respondents identified conditions that could be added for agreements to benefit from the exemption (for example, to make access to technical information as a condition to benefit from the exemption). The respondents also identified practices as vertical restrictions that should be considered as hardcore: (i) direct or indirect quantitative criteria on the access to authorised networks, (ii) restrictions on access to technical information and in-vehicle data for aftermarket operators, (iii) bundling sales and aftersales markets, (iv) refusing to license certain rights necessary to allow suppliers to offer spare parts to the independent channel, (v) restrictions on the sale of brands from different suppliers and (vi) including terms in warranties that require the use of motor vehicles' brands of spare parts in respect of replacements that are not covered by the terms of the warranty.

Furthermore, the majority of stakeholders indicated that the current hardcore restriction relating to resale price maintenance ("RPM") should no longer be classified as such. They consider that it is justifiable in cases where new products or innovative services are launched. Some of them also considered that the non-compete/single-branding obligation and the restriction of sales of particular competing suppliers by members of a selective distribution system should no longer be considered as "excluded restrictions".

Commission forms a Multilateral Working Group with leading competition authorities to exchange best practices on pharma mergers

The Commission has created, together with the US Federal Trade Commission (FTC), the US Department of Justice, three Offices of Attorneys General, the Canadian Competition Bureau and the UK's Competition and Markets Authority, a Multilateral working group to analyse the effects of mergers in the pharmaceutical sector. The working group, which will bring together the expertise of the competition authorities as well as other stakeholders, aims to identify concrete steps in order to update the analysis of pharmaceutical mergers and to ensure the most effective enforcement in a crucial sector.

Court of Justice publishes statistics of judicial activity for 2020

The Court of Justice of the European Union has declared that it has managed to maintain a high level of activity in 2020, despite the measures adopted to mitigate the pandemic and, specially, the suspension of hearings between 16 March and 25 May 2020. According to the Court, the continuity of the service has been made possible by the pre-existence of crisis structures and plans, the introduction of strict health protocols and an early strategy of providing staff with equipment for telework.

The Court affirms that, inevitably, the lockdown measures have had an impact in the activity of the courts of the Member States, thereby leading to a reduction in the number of new cases brought to the two Courts of the European Union: 1582 (in 2019, 1905 cases were brought before the Courts). A similar trend can be observed as regards completed cases, which total 1540, a reduction of 11% compared to 2019. The duration of the proceedings of cases disposed in the two Courts in 2020 is a historical low average of 15.4 months.

On the one hand, the majority of cases brought to the Court of Justice of the European Union (735) are requests for preliminary rulings (556), followed by appeals (131) On the other hand, the General Court had a total of 847 new cases in 2020, the majority of which concerned intellectual property (282), followed by Staff Regulations (120), law governing the institutions (65) and State aid (42).

Commission approves modification of Spanish schemes to support the economy

The Commission has found the modification of three Spanish schemes to support the economy in the context of the COVID-19 outbreak to be in line with the State aid Temporary Framework.

The first Spanish umbrella scheme, which had been amended 5 times, is prolonged until 31 December 2021. The scheme, which allows granting undertakings guarantees on loans, subsidised loans and support for uncovered fixed costs, has been now modified in order to include a €10 billion

increase in the budget for limited amounts of aid, from €3,65 billion to €13,65 billion. In addition, the amounts of aid are increased to €225,000 per company active in the primary production of agricultural products, €227,000 per company active in the fishery and aquaculture sector, and €1,8 per company active in all other sectors. Furthermore, guarantees can be granted up to 8 years on newly issued subordinated debt instruments and authorities will be allowed to convert payable aid instruments granted under the existing schemes, including guarantees issued by ICO on senior loans, into more favorable instruments such as grants until 31 December 2022, under the conditions of the Temporary Framework.

The second Spanish umbrella scheme and the Spanish recapitalisation fund have been prolonged until 31 December 2021. From now on, micro and small enterprises will be eligible for aid related to research, development and innovation even if they were in difficulty on 31 December 2019.

CNMC approves Bankia and CaixaBank merger subject to conditions

The Spanish Competition and Markets Authority (CNMC) has cleared the proposed concentration between Bankia and Caixabank in phase I, subject to conditions. By virtue of the transaction, Caixabank will absorb Bankia, therevy becoming the leader in Spain in the market for banking services.

The CNMC has concluded that the merger will not pose a threat to effective competition in the markets for corporate banking, investment banking, factoring, cards, POS, insurance production and distribution, and fund and pension scheme management. However, the transaction can be a risk to effective competition in certain areas of the retail banking market. The CNMC has carried out an analysis of market shares and number of competitors in the most affected areas, where 86 areas were identified as problematic (the resulting entity will either be in a monopoly situation or in a duopoly situation subject to weak competitive pressure). Furthermore, the CNMC paid attention to the ATM market and discovered that there was a risk for the customers of third parties that had agreements with Bankia that they will be unable, after the transaction, to access Bankia's ATM network under the same conditions.

In order to address the CNMC's concerns, Caixabank has agreed to: (i) not leave, except in exceptional cases subject to prior authorisation from the CNMC, any municipality in which one of the parties is present and has no competing branches; (ii) in the 21 postal codes in which Caixabank will be left in a monopoly situation, maintain, for at least a period of 3 years, the same conditions and terms for Bankia's customers that they currently have for their products; (iii) for three years, in the 65 remaining postal codes identified as problematic, offer its products under conditions that are substantially the same as or not worse than those offered by Caixabank in the three postal codes where it is subject to the greatest competitive pressure; (iv) not charge for 3 years, in any of the identified problematic postal codes, fees to customers from Bankia for a

teller service when that transaction would have been free under the conditions offered by Bankia on the merger authorisation date; (v) inform Bankia customers both of the completion of the merger and of the potential changes in products that could affect them; (vi) identify Bankia customers who satisfy the eligibility requirements for Caixabank's social account and inform them of the possibility of benefiting from the conditions of said account; and (vii) offer the customers of third parties that had agreements with Bankia access to the ATMs that were owned by Bankia for a period of 18 months under the same economic conditions and in those cases where Bankia's ATMs are closed as the result of the transaction, giving access to the customers of third parties to the Caixabank ATM nearest to the closed Bankia ATM.

Resolution of the CNMC disciplinary proceedings against Amarres de Algeciras

Considering that there were indications of a breach of Article 1 of the Spanish Competition Act and of Article 101 of the Treaty on Functioning of the European Union, the CNMC initiated proceedings against the Federation of Citizen Services of the trade union CC.OO., the State Federation of Services, Mobility and Consumption of the trade union UGT, the Association of Service Firms of the Algeciras Bay (AESBA) and the Confederation of Employers' Associations. The CNMC believed that certain points of the "Stabilisation Agreement of the Mooring and Unmooring Sector in the Algeciras Bay Port" signed by employers and trade unions in 2016, contained anticompetitive clauses.

The relevant clauses established that any mooring and unmooring services company that needed to hire new workers in the Port of Algeciras should preferentially hire workers who had terminated their employment relationship with Marítima Algecireña and were listed in its labour exchange. They stipulated as well that companies had to employ such workers indefinitely, pay them a remuneration of 300 euros a month and a performance bonus of 450 euros per month when the company reached a market share of 30% or higher. The CNMC considered that the clauses at issue could restrict the companies' freedom to hire. In this case, however, the agreement did not cause any effects since no company has been forced to hire new workers.

The parties agreed to the following conditions in order to settle the case: (i) eliminate the requirement to hire workers from the labor exchange; (ii) eliminate the 300-euro salary supplement for expert dockworkers; (iii) eliminate the 450-euro salary supplement for companies that reach a 30% quota; (iv) refrain from signing agreements in the future that contain equivalent or identical clauses; (v) inform the associates of the conventional settlement agreement; and (vi) approve a new agreement incorporating all the modifications. Given the fact that parties agreed to a settlement, no fines are imposed.

CNMC initiates disciplinary proceedings against Funespaña for gun jumping

On November 2020, the CNMC required, *sua sponte*, Fuenespaña to notify its acquisition of Alianza Canaria since it considered that the market share threshold established by the Spanish Competition Act had been exceeded. More specifically, the thresholds were met at least in the retail market for funeral services in San Bartolomé de Tirajana, in accordance with the market definitions that were in force at the time concerning the funeral sector. The operation was cleared in phase I without commitments.

Now, the CNMC has initiated disciplinary proceedings against Funespaña for failing to notify the purchase of Alianza Canaria. The failure to notify a concentration that meets the thresholds established by the Spanish Competition Act violates the requirement of companies to notify the CNMC of a merger before carrying it out. In such cases, companies can be sanctioned with a fine of up to 5% of their turnover. The CNMC has now a maximum period of 3 months to resolve the case.

CNMC introduces a new informant system

The CNMC has created the "*Sistema de Informantes de Competencia Anónimos*" ("SICA"), a new system that allows citizens to report anticompetitive practices. The CNMC already had two other channels for citizen collaboration to identity anticompetitive practices: a telephone (+34 671 483 741) and an email box **(buzoncolaboracion@cnmc.es)**.

The functioning of the SICA is very simple and is similar to what other competition authorities use (for instance, the European Commission or the German Bundeskartellamt). When citizens enter information into the system, they receive an alphanumeric code, which will be the only way to access those conversations. In order to access the system, the informant will not have to provide any type of personal information. All communications between the CNMC and the informant will always be confidential and if the defendant does not want to be anonymous, his personal data will only be available to the Economic Intelligence Unit. This Unit is in charge of managing the SICA and will analyse the plausibility of the facts and, if advised by its analysis, it will initiate an investigation.

The Catalan Competition authority considers that the tender for the urban public transport service for day and night passengers in Barcelona and other municipalities in the northern area is restrictive of competition

On 23 February 2021, the Metropolitan Council of the AMB (Metropolitan Area of Barcelona) approved the procurement for the service of collective daytime and night-time urban passenger transport service in Barcelona and other municipalities in the northern area of the AMB, for a maximum period of 10 years and with an estimated contract value of 997.241.220 euros (VAT excluded).

The Catalan Competition Authority considers that the tender limits the ability of interested operators to bid for the contract. More particularly, AMB has brought together in a single contract services which until now were governed by two different contract titles (on the one hand, daytime services and, on the other hand, night-time services). The subject matter of the contract has become very important, with a price of almost 1 billion euros excluding VAT. Furthermore, the solvency requirements, specially technical and professional, have become real entry barriers for operators since only large operators are able to demonstrate that they meet the required experience (to have driven 7,826,732 kilometers)

The Galician competition authority opens disciplinary proceedings against two companies that provide university equipment

The Galician competition authority (*Comisión Gallega de la Competencia/Comisión Galega da Competencia*, "CGC") has initiated sanctioning proceedings against Monteverde Equipamientos and Elías Jadraque and their sole directors for possible engagement in anticompetitive practices in the public tender organised by the University of Santiago de Compostela for the acquisition for its laboratory of structural wood engineering equipment.

The CGC has initiated proceedings after the Galician public contract administrative tribunal referred the case to the authority.

Case law

The Court of Justice sets aside the judgment of the General Court by which the Commission's decision classifying as State aid the tax scheme of four Spanish professional football clubs had been annulled

A Spanish law adopted in 1990 obliged all Spanish professional sports clubs to convert into public limited sports companies, with the exception of professional sports clubs that had achieved a positive financial balance during the financial years preceding the passage of that law. Fútbol Club Barcelona (FCB), Club Atlético Osasuna (Pamplona), Athletic Club (Bilbao) and the Real Madrid Club de Fútbol (Madrid) came within that exception and continue operating in the form of non-profit legal persons enjoying, in that capacity, a special rate of income tax - below the rate applicable to public limited sports companies.

On 4 July 2016 the Commission concluded that by introducing a preferential corporate tax rate for the four clubs concerned, Spain granted an unlawful and incompatible State aid, it ordered to discontinue and recover the individual aid provided.

On 26 February 2019 the General Court of the European Union annulled the previous decision on the ground that the Commission had not proved to the requisite legal standard the existence of an economic advantage. In particular, the General Court found that the Commission had not sufficiently assessed whether the advantage resulting from the reduced tax rate could be offset by the less favourable relief for reinvestment of extraordinary profits applicable to clubs operating in the form of non-profit legal persons compared to that applicable to entities operating in the form of public limited sports companies.

On 4 March 2021, the Court of Justice sets aside the previous judgment. The Court finds, in the first place, that the General Court erred in law when it found that the decision at issue was to be construed as a decision relating both to an aid scheme and to individual aids. In the case of an aid scheme, a distinction must be drawn between the adoption of that scheme and the aid granted on the basis of it. Individual measures which merely implement an aid scheme constitute mere measures implementing the general scheme, which do not, in principle, have to be notified to the Commission. The Court observes that in the present case the measure at issue concerns such an aid scheme, since the specific tax provisions applicable are capable of benefitting, by virtue of that measure alone, each of the eligible football clubs, for an indefinite period of time and an indefinite amount, without further implementing measures being required and without those provisions being linked to the realisation of a specific project. Therefore, the mere fact that, in the present case, aid was granted individually to the clubs on the basis of the aid scheme at issue does not have any bearing when determining the existence of an advantage.

In the second place, the Court finds that the General Court erred in law when drawing on the Commission' obligations as regards proving the existence of an advantage. That erroneous premise led the General Court to consider that the Commission ought to have taken into account, for the purpose of its analysis, not only the advantage resulting from the reduced tax rate, but also the other components of the tax regime at issue such as the possibilities of relief. The Court recalls that, despite the Commission being required to carry out a global assessment of the aid scheme, (i.e. taking into account all the components that might constitute its specific features), the examination of the existence of an advantage cannot depend on the financial situation of the beneficiaries at the time of the subsequent grant of individual aid. In particular, the Court observes that the impossibility of determining, at the time of the adoption of an aid scheme, the exact amount per tax year of the advantage actually conferred on each of its beneficiaries, cannot prevent from finding that scheme as capable of conferring an advantage on those beneficiaries. In the present case, from the time of its adoption, the aid scheme allowing certain professional football clubs to benefit from a reduced tax rate was, from the time of its adoption, liable to favour clubs operating as non-profit entities over clubs operating in the form of public limited sports companies, thereby conferring on them an advantage capable of falling within the scope of Article 107(1) TFEU. It follows that, to demonstrate to the requisite legal standard that this aid scheme conferred an advantage, the Commission was not required to examine the effect of relief for reinvestment of extraordinary profits or that of the possibilities of deferral in the form of a tax credit or whether that relief or those possibilities would neutralise the advantage

resulting from the reduced tax rate. Therefore, it must be held that the General Court erred in law in ruling that the Commission was obliged to carry out such an examination, if necessary, by requesting relevant information.

That being stated, the Court considers that the state of the proceedings is such that it may give final judgment in the matter and ruled in accordance with the Commission, not considering that the measure at issue was justified by the internal logic of the tax system, and of the rules applicable to the recovery of existing aid. Consequently, the Court dismisses the action brought by FCB and set aside the judgment of the General Court of 26 February 2019.

Audiencia Nacional quashes cement cartel fines for lack of evidence

In several judgements given on 21 December 2020, the *Audiencia Nacional* quashed the CNMC's decision of 5 September 2016 sanctioning 23 cement and concrete producers and mixers for operating four different cartels between 1999 and 2014.

One of the cartels consisted in the exchange of commercial sensitive market and share of the national market in 2013 and 2014 between cement companies, whereas the three other concerned the exchange of information, the share of the market and price fixing in three different areas. The CNMC considered that the common plan of the sanctioned parties consisted in setting up a common strategy to share the concrete market in each area. In order to arrive to that conclusion, the CNMC had considered that the behaviour of the different companies took place simultaneously as part as a common plan. For that, it had relied on tables and spreadsheets found in unannounced inspections, internal emails exchanged with certain companies and, in certain cases, WhatsApp contacts.

The Court has agreed with the cement operators and concluded that the CNMC did not provide sufficient evidence of a cartel and failed to demonstrate a common plan of the fined operators, as required by EU case law. In order to prove a common plan, complementary behaviour of the undertakings is needed (unity of common objectives, identity of products and services affected, identity of methodologies used, temporal coincidence or identity of undertakings concerned). In addition to the complementarity of behaviour, the Court notes that all concerned undertakings have to know that they are participating in the common plan. The *Audiencia Nacional* criticizes that it cannot deduce from the CNMC's decision what the common objective of the concerned undertakings is. According to the Court, the CNMC had carried out an "artificial and wilful construction" of the data obtained from dawn raids to conclude that the companies acted on the basis of a pre-conceived plan, without "solid and properly argued evidence". These documents may prove individual infringements but are not enough evidence for a single and continuous infringement.

Currently at GA_P

GA_P's Competition Law Practice hosts webinar on price fixing

The third event on the series of debates on current competition issues organised by GA_P's Competition Law Practice took place last 24 March 2021. Miguel Troncoso, Brussels' managing partner, Eduardo Gómez de la Cruz, Of Counsel and Andrea Díez de Uré, senior associate, discussed recent cases and perspectives of price fixing. Iñigo Igartua, head of GA_P's Competition Law Practice, moderated the debate.

The next webinar will deal with the Amazon case and the use of third parties data and will take place on 26 May 2021.

Mário Marques Mendes ranked in Chambers & Partners Europe 2021

Our Lisbon based partner Mário Marques Mendes has been ranked Band 1 in Competition/ European Law – Portugal, Iñigo Igartua, head of GA_P's Competition Law Practice, has been ranked Band 2, and our Lisbon based associate Alexandra Henriques has been ranked as a "star associate". GA_P's Competition Law Practice has been ranked Band 3 in Portugal and Band 4 in Spain.

GA_P is nominated for IFLR Europe Awards 2021

GA_P has been included in IFLR's shortlist for the 2021 IFRL Europe Awards in the following categories: Spanish Firm of the year, M&A deal of the year: global blue – far point and restructuring deal of the year: Codere. The winners will be revealed on 29 March via a virtual awards presentation.