



# Brussels GA\_P

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Brussels Office

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## News

### **Commission publishes final report on consumer Internet of Things sector inquiry**

The European Commission ('the Commission') published the findings of its competition sector inquiry into the consumer Internet of Things<sup>1</sup> ('IoT') identifying potential competition concerns in the rapidly growing markets for IoT related products and services in the European Union. Comments include input from stakeholders such as leading consumer IoT players, smart device manufacturers, creative content service providers, associations, or telecommunication operators. The main findings of the sector inquiry on the Consumer IoT cover the following points also covered in the preliminary report: (i) the characteristics of consumer IoT products and services: confirming the trend towards the increasing availability of voice assistants as user interfaces that enable interaction with other smart devices and consumer IoT services; (ii) the features of competition in these markets: indicating that one of the main barrier to entry or expansion in the sector is the cost of technology investment - which is particularly high in the market for voice assistants; but also the presence of vertically integrated companies that have built their own ecosystems within and beyond the consumer IoT sector (e.g. Google, Amazon or Apple); and (iii) the main areas of potential concern raised by stakeholders in relation to the current functioning of consumer IoT markets:

for instance exclusivity and tying practices in relation to voice assistants, practices limiting the possibility to use different voice assistants on the same smart device, the intermediary position of voice assistants and smart device operating systems between users and smart devices or consumer IoT services, the extensive access to data by providers of voice assistants, or the lack of interoperability in the consumer IoT sector. The information collected in the context of the sector inquiry on the consumer IoT will provide guidance to the Commission's future enforcement and regulatory activity implementing its digital strategy. In particular, the findings of this sector inquiry will also contribute to the ongoing legislative debate on the Commission's proposal for the Digital Markets Act.

### **Commission approves EUR 20 million Spanish scheme under Recovery and Resilience Facility to support deployment of intelligent transportation systems**

The Commission has approved a EUR 20 million Spanish scheme made available through the Recovery and Resilience Facility ('RRF') supporting the deployment of intelligent systems that will provide enhanced communication and information services for motorways and tunnels of the Spanish State roads network. The measure will

<sup>1</sup> [https://ec.europa.eu/competition-policy/system/files/2022-01/internet-of-things\\_final\\_report\\_2022\\_en.pdf](https://ec.europa.eu/competition-policy/system/files/2022-01/internet-of-things_final_report_2022_en.pdf)

improve road safety in Spain and contribute to making road traffic more sustainable, through the deployment and enhancement of advanced digital technologies, in line with the EU's strategic objectives relating to the digital transition, while limiting possible distortions of competition. The scheme will run until 31 December 2024 and the support will take the form of direct grants. It will be awarded, following a competitive selection procedure, to concessionaires and operation and maintenance ('O&M') companies active in the State roads network. The measure pursues two main objectives: (i) improving traffic safety, efficiency, interoperability, energy efficiency and innovation in motorways and tunnels managed under concession regime; and (ii) improving safety in road operation and maintenance. Intelligent systems projects will be eligible to receive support under the scheme, including projects such as: automatic incident detection systems, systems for monitoring atmospheric conditions on roads, intelligent lighting control systems, cooperative systems to make the national transport network more interoperable, and systems to enable remote and automatic operation in maintenance works through drones and digitalized machinery. The Commission assessed the measure under Article 107(3)(c) of the Treaty on the Functioning of the European Union ('TFEU'), concluding that: (i) the aid will facilitate the digitalization of certain economic services linked to road infrastructure; (ii) the aid is necessary and proportionate for investors to carry out these projects, and (iii) the positive effects of the measure outweigh any possible negative effects in terms of distortions of competition. On this basis, the Commission concluded that the Spanish scheme is in line with EU State aid rules.

## **Commission prohibits proposed acquisition of Daewoo Shipbuilding & Marine Engineering by Hyundai Heavy Industries Holdings**

The Commission has prohibited the acquisition of Daewoo Shipbuilding & Marine Engineering CO., Ltd ('DSME') a South Korean company that is mainly active in shipbuilding, manufacturing a range of commercial vessels and offshore facilities, including large liquefied gas ('LNG') carriers, and which majority shareholder is the Korea Development Bank ('KDB'); by Hyundai Heavy Industries Holdings ('HHIH') a privately held South Korean company, also active in shipbuilding producing a range of commercial vessels, marine engines and offshore facilities used to explore, produce and process oil and gas under the sea, including LNG carriers of all sizes. Providing that both companies are global leaders in the construction of large LNG carriers, and two of the three largest players in this very concentrated market, during its in-depth investigation the Commission found that the transaction would have resulted in (i) the creation of a dominant position by the merged company in the market for LNG carriers, (ii) a reduced choice in suppliers and (iii) higher prices for EU customers and ultimately for energy consumers as well, since large LNG carriers are an essential element in the supply chain of LNG energy - they are highly sophisticated vessels that can carry large quantities of LNG (145 000m<sup>3</sup> and above) at a temperature of minus 162 degrees Celsius. Over the past five years, the worldwide market for the construction of large LNG carriers represented up to €40 billion, with European customers accounting for almost 50% of all orders. DSME/HHI was the fourth

consecutive merger in industrial manufacturing, following Tata Steel/ThyssenKrupp, Alstom/Siemens and Schwermetal/Aurubis/Wieland prohibited since 2019 and the first since 2004 with no remedy offer made by the parties addressing the Commission concerns.

### **Commission fines Telefónica and Pharol EUR 79 million in re-adopted decision**

The Commission has fined Telefónica and Pharol (formerly Portugal Telecom), a total of EUR 79m for entering into a non-compete agreement in a re-adopted decision. In January 2013, the agency fined Telefónica and Portugal Telecom for agreeing not to compete with each other on the Iberian telecommunications markets. A penalty of EUR 66,894,000 was imposed on Telefónica and of EUR 12,290,000 on Portugal Telecom. In June 2016, the General Court annulled the fines after finding that the Commission used incorrect figures (i.e. the Commission should have examined the parties' arguments that there was no potential competition between them in certain markets and that those markets should have been excluded from the value of the sales on the basis of which the fines were calculated). That judgment was confirmed by the European Court of Justice in December 2017. This second Commission decision takes full account of the General Court's judgment and excludes those services from the value of sales for which insurmountable barriers to entry were found and for which the parties were thus not in potential competition with each other. The Commission re-imposed a fine of EUR 66,894,000 on Telefónica and of EUR 12,146,000 on Pharol.

### **Commission opens investigation into licensing and distribution practices of fashion house Pierre Cardin and its licensee Ahlers**

The European Commission has launched a formal antitrust investigation to assess whether Pierre Cardin and its licensee the Ahlers Group (the largest licensee of Pierre Cardin products in the European Economic Area) may have breached EU competition rules by restricting the ability of Pierre Cardin's licensees to sell Pierre Cardin-licensed products cross-border, including offline and online, as well as to specific customer groups. More specifically, the Commission will investigate whether Pierre Cardin and Ahlers have developed a strategy against parallel imports and sales to specific customer groups of Pierre Cardin-branded products by enforcing certain restrictions in the licensing agreements. As part of its own-initiative investigation of suspected anti-competitive practices covering the EU, the Commission carried out unannounced inspections in the manufacturing and distribution of garments sector on 22 June 2021. The Commission will now carry out its in-depth investigation as a matter of priority. An opening of a formal investigation does not prejudice its outcome.

### **CNMC publishes 2021 State aid report**

The Spanish Competition Authority ('CNMC') has submitted to Parliament the Annual Report on State Aid 2021<sup>2</sup>, which presents an analysis of the aid granted by Spain in 2019 (the last year for which data are available), as well as including information on the impact of State aid to address

the effects of the Covid-19 pandemic. Regarding the first of the objectives, the report notes that (i) in the EU-28, the granting of aid increased by 0.85% compared to previous years, with the northern and central European countries granting the most aid - Spain is the third Member State with the least public aid granted as a percentage of national GDP (after Ireland and Luxembourg); (ii) during 2019, aid granted in our country accounted for 0.37% of national GDP, down from 0.40% of GDP in 2018, with - the largest decrease occurring with regard to horizontal aid, i.e. aid that is not restricted to specific economic sectors, while sectoral aid continued to maintain the same weight in total national GDP; and (iii) aid was granted to a greater extent to individual consumers, followed by aid to support the ecological and energy transition. Regarding the second objective, the report notes that it is still too early to carry out a detailed analysis of the impact of the March 2019 EU Temporary Framework on state aid measures to support the COVID-19 economy. However, it does note that Germany was the leader in terms of the volume of aid approved, while Italy was the country with the most aid used. In the case of Spain, the aid system focused mainly on granting aid in the form of guarantees and guarantees rather than subsidies.

### **CNMC initiates disciplinary proceedings against SGAE for possible abuse of dominant position**

The CNMC has begun disciplinary proceedings against Sociedad General de Autores y Editores ('SGAE') for possible anticompetitive practices arising from a possible abuse of a dominant position, specifically concerning the design and application of averaged availability tariffs in the television and radio markets, as well as for licensing its catalogue to users on the basis that it is allegedly universal. This conduct might have the aim and the effect of reinforcing SGAE's monopolistic position, preventing both competitive pressures from other management organizations and the entry and expansion of new operators into the market. The investigation was initiated following complaints from several entities such as Derechos de Autor de Medios Audiovisuales, Entidad de Gestión and Unison Rights, S.L. The initiation of these proceedings does not prejudice the final outcome of the investigation and the CNMC will now have a maximum period of 18 months to investigate and resolve the case.

### **CNMC approves the conditions for creating a joint venture between Boyacá and SGEL**

The CNMC authorized, with conditions, the creation of a joint venture between Boyacá (65%) and SGEL (35%). The new company will take over the venturers' businesses involving the distribution of periodical publications and Boyacá's periodicals transport business. The conditions imposed by the CNMC for authorizing the concentration

<sup>2</sup> [https://www.cnmc.es/sites/default/files/3857699\\_5.pdf](https://www.cnmc.es/sites/default/files/3857699_5.pdf)

comprise: (i) to extend the commitments to the distribution of daily newspapers as a means of offsetting the risks to competition in the daily newspaper distribution market and, specifically, the impact of the transaction of newspaper publishers, on other daily distributions, and on points of sale; (ii) to stipulate that the new company cannot worsen conditions with traditional points of sales; (iii) the joint venture may renegotiate trading and economic conditions with publishers if sales fall by more than 15%; (iv) the national transport and wholesale distribution of periodical publications businesses must be separate and there may be no link to Boyacá and SGEL's publisher lists; (iv) local transport structure sharing agreements must be under objective, transparent and non-discriminatory market conditions, and (v) a guarantee shall be given whereby, if Boyacá and SGEL and the joint venture offer the point of sale the possibility of selling alternative products (publishing and non-publishing), that point of sale will not be obliged to expand its offering if it does not deem it appropriate to do so.

### **Spanish court confirms Telefónica, DTS football rights collusion fine**

The Spanish appeal court has confirmed EUR 15.5m in fines that the national competition authority imposed on Telefónica and Distribuidora de Television Digital ('DTS') for colluding in the market of audiovisual football rights. The ruling came from two CNMC decisions imposing a EUR 10m fine on Telefónica and a EUR 5.5m penalty on DTS for colluding on the acquisition, resale and exploitation of audiovisual football rights for the seasons between 2012-13 and 2014-15.

The behavior happened through two August 2012 agreements between Telefónica and DTS, which managed the Canal+ satellite pay television platform, for the commercialization of Canal+ Champions League and Canal+ Liga. At the time of the infringement, Telefónica held a 22% stake in DTS, which gave it access to its board meetings. Telefónica used the privileged information on DTS's plans to commercialize the football channels, which favoured its business above other pay-tv operators. Telefónica and DTS appealed the decision. However, the Audiencia Nacional agreed with the agency that there was a concerted practice and dismissed Telefónica's argument that both companies acted independently. It concluded that there was an alignment of both companies' business strategies, which exerted important control in the market of pay-tv, precluding the entry of third-party operators, while DTS favoured Telefónica in the conditions of the offers for broadcasting of football content. The Audiencia Nacional Court did not find any "economic reasoning" that can justify the "privileged treatment" given to Telefónica as against third-party operators, while the latter's entry would have allowed more competitive negotiations for the market and consumers.

### **Basque authority fines three concrete suppliers for boycott agreement**

The Basque Competition Authority ('LEA/AVC') has issued a decision fining the companies Hormigones Vascos, S.A., Hormigones Santullán, S.A. and Hormigones de Zamudio, S.L. with fines of EUR 47,999, 40,983 and 25,246, respectively, for a boycott agreement to jointly refuse to supply

concrete to the company AMHUDE, S.A. in connection with the work on the Hotel Catalonia Gran Vía Bilbao. Following the termination of the contract signed by AMHUDE with BYCO to carry out the excavation, foundations and structure, AMHUDE, a construction company belonging to the Catalonia group, undertook with its own means the work necessary to complete the structure of the hotel building, for which reason it requested, through the usual channels in the sector, the supply of concrete from manufacturers and/or distributors to finish the work, but was unable to obtain the supply from any of the suppliers. These facts were denounced by AMHUDE to LEA/AVC, which, from the inspections and investigative actions carried out, has concluded that Hormigones Vascos, Hormigones Santullán and Hormigones de Zamudio have infringed Article 1(1) of the Competition Act, through the joint refusal to supply concrete to the company AMHUDE, which constitutes a joint decision to boycott and, therefore, a collusive agreement that has been sanctioned by LEA/AVC with a global amount of 114,230 euros.

### **Portuguese Competition Authority announces competition policy priorities in 2022**

Portuguese Competition Authority ('AdC's') announces<sup>3</sup> competition policy priorities for 2022, which are: (i) to continue defending the Portuguese economy from anticompetitive behaviour, prioritizing the most harmful behaviour, such

as cartels. Keep a strong focus on investigating behaviour which, in current circumstances, has a more detrimental impact to households and firms, (ii) to investigate, through the AdC's digital task force, strong evidence of abuse, namely by exclusion, and collusion in digital ecosystems; (iii) to consider current tensions and disruptions in supply chains, contribute to their normal flow, namely by combating anticompetitive behaviour; (iii) to embed competition considerations in current efforts by policymakers, so as to contribute to a resilient and innovative economic recovery; (iv) to promote open labour markets which convey more opportunities to workers and which preserve incentives to innovate; and (v) to continue to communicate the benefits of competition policy to stakeholders, prioritizing outreach initiatives with a stronger.

### **Portuguese prohibition on hotel booking MFN clause enters into force**

A Portuguese legal provision prohibiting clauses by online platforms such as Booking.com from seeking to ensure that they offer the lowest possible prices for their accommodation partners – known as 'most-favoured nation' ('MFN') clauses entered into force on January. The Decree-Law<sup>4</sup> explicitly addresses the touristic accommodation market, seeking to establish a competitive sector, free of commercial practices that imbalance economic relations and "purged of abusive clauses contrary to good faith". According to the text, the role of companies that act as intermediaries

<sup>3</sup> [https://www.concorrenca.pt/sites/default/files/Priorities%202022\\_0.pdf](https://www.concorrenca.pt/sites/default/files/Priorities%202022_0.pdf)

<sup>4</sup> <https://dre.pt/dre/detalhe/decreto-lei/108-2021-175506671>

is crucial to boost the economic activity of their partners and the economy in general. However, the importance of those intermediaries has grown exponentially, in many cases assuming a larger weight than the partners they represent and ending up with commercial and financial power over them with which it is difficult to com-

pete, the document noted. The government must guarantee fair and balanced market conditions for companies and avoid dominant companies becoming even more powerful at the expense of others that, intending to succeed, have no alternative but to accept the contract conditions dictated by the dominant entity, the item added.

## Case law

### GC overturns EUR 1.06bn Intel fine in partial decision annulment

The EU General Court ('GC') partially annulled<sup>5</sup> a 2009 Commission ('EC') abuse of dominance decision against chipmaker Intel, quashing the EUR 1.06bn penalty. The EC fined Intel for abusing its dominant position on the market for x86 CPU computer chips between 2002 and 2007. In June 2014, the GC ruled that the agency sufficiently demonstrated the abusive nature of Intel's conditional rebates. But, in September 2017, the EU Court of Justice ('CJ') judges sent Intel's appeal back to the lower court to assess whether the company's rebates were capable of restricting competition and instructed the GC to re-examine Intel's arguments concerning the 'as-efficient competitor' test applied by the EC in the infringement decision. The GC ruled that the analysis carried out by the EC is incomplete and does not

make it possible to establish to the requisite legal standard that the rebates at issue were capable of having, or were likely to have, anticompetitive effects - while a system of rebates set up by an undertaking in a dominant position on the market may be characterized as a restriction of competition and may be assumed to have restrictive effects on competition, in this case it is a mere presumption which does not relieve the EC of the obligation to conduct an effects analysis. Moreover, the GC found at the outset that the EC erred in law in concluding that the AEC test, which it nevertheless carried out, was not necessary to enable it to establish that Intel's rebates at issue were abusive, according to the release. Therefore, the GC decided to partially annul the decision, adding that since it is not in a position to identify the amount of the fine which relates solely to the naked restrictions, it has also annulled the fine of EUR 1.06bn, the item added.

<sup>5</sup> <https://curia.europa.eu/juris/document/document.jsf?text=&docid=252762&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1537148>