

G A _ P

Gómez-Acebo & Pombo

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Contents

News	3
— The European Commission fines Google EUR4.34 billion for abuse of dominance	3
— The European Commission updates its investigation against Qualcomm over UMTS baseband chips	4
— The European Commission fines Philips, Asus, Pioneer and D&M for fixing online resale prices	4
— The Spanish Competition Authority fines companies for participating in a cartel in the market for purchase of used car batteries	5
Case-law & Analysis	6
— The General Court of the EU annuls cartel fine due to lack of sufficient motivation in Commission's fine calculations (<i>Judgment of the General Court of the EU of 13 July 2018 in Case T-58/14, Stührk Delikatessen Import v Commission</i>)	6
Currently at GA_P	7
— Mind the GA_P at Rock and Law Madrid	7

News

The European Commission fines Google EUR4.34 billion for abuse of dominance

The European Commission has found that Google has been imposing illegal restrictions on Android device manufacturers and mobile network operators to consolidate its dominant position in general internet search since 2011.

In particular, the Commission has concluded that Google abused its Android market dominance in three key areas:

1. Google has been bundling its search engine and Chrome apps into the operating systems used in Android phones and has set Google as the default search engine. It has also ensured that Google's search app and its mobile browser are pre-installed on practically all Android devices sold in the European Economic Area ("EEA").

The Commission has highlighted that pre-installation usually creates a status quo bias as users tend to use the pre-installed search and browser apps that they find in their devices. According to the Commission, this conduct has reduced the incentives of manufacturers to pre-install competing search and browser apps while deterring users from downloading such apps.

2. Google has given financial incentives to large phone manufacturers and mobile network operators to exclusively bundle the Google search app to their devices.

When assessing these incentives, the Commission has referred to the Intel judgment (C-413/14 P) to indicate that it has taken into account, amongst others, the conditions under which the incentives were granted, their duration, their amount and the share of the market covered by them.

3. Google has prevented phone manufacturers from creating or selling smart mobile devices running on alternative versions of Android that were not previously approved by Google. In particular, the Commission has found evidence that Google's conduct has precluded several manufacturers from developing and selling devices based on Amazon's "Fire OS".

Google has 90 days to put an end over its illegal conduct in an effective manner. The decision also requires Google to refrain from any measure that has the same or an equivalent object or effect as these practices.

According to the Commission, the fine of EUR 4,342,865,000 takes into account the duration and gravity of the infringement and has been calculated following the Commission's 2006 Guidelines. This fine establishes a new record and it nearly doubles the previous record fine, i.e., EUR 2.4 billion

imposed on Google last year. It is interesting to note that this figure only represents two weeks of revenue for Google's parent Alphabet Inc.

The European Commission updates its investigation against Qualcomm over UMTS baseband chips

Qualcomm has received an additional Statement of Objections ("SoO") from the European Commission within the framework of a predatory pricing investigation involving the sale of the so-called UMTS baseband chips at below costs to edge out competitors. These chips are core components of mobile phones that allow the transmission of data and voice in 3G communication.

A first SoO was sent to the chip manufacturer in 2015, when the Commission expressed its concerns that Qualcomm was abusing its market power to push its competitor Icera out of the market between 2009 and 2011. The investigation started following a complaint from Icera itself, which was bought by Nvidia Corp in 2011.

According to the Commission, this supplementary SoO focuses on certain elements of the "price-cost" test to assess the extent to which UMTS baseband chipsets were sold by Qualcomm at prices below cost.

Qualcomm was already fined EUR 997 million in a separate case in January 2018, when the Commission considered that Qualcomm infringed EU Competition Law by paying iPhone Apple to use only its chips in an effort to foreclose the market to its competitors.

The European Commission fines Philips, Asus, Pioneer and D&M for fixing online resale prices

On 24 July 2018, the European Commission fined, by means of four separate decisions, consumer electronics manufacturers Asus, Denon & Marantz, Philips and Pioneer for imposing fixed or minimum resale prices on their online retailers.

The fines exceeded EUR110 million and were in all four cases reduced on the basis of the companies' cooperation with the Commission.

The decision follows a 17-month investigation, where the four consumer electronics manufacturers were found to have engaged in minimum resale price maintenance by restricting the ability of their online retailers to set their own retail prices for widely used consumer electronics products (e.g., kitchen appliances, computer notebooks and hi-fi products).

According to the Commission, the practices mainly concerned online retailers who sold the manufactures' products at low prices. If the retailers did not follow the prices requested by the manufacturers, they faced threats or sanctions such as the blocking of their supplies.

An interesting point of the case is the use by the manufacturers of sophisticated monitoring tools to track the resale prices set in their distribution networks, which enabled them to intervene if prices decreased. The Commission has been paying special attention to this kind of monitoring tools since the Final Report on the e-commerce sector inquiry, published in May 2017, suggested an increase in the use of these types of software to monitor and set prices.

The Commission has concluded that the conduct limited effective price competition between retailers and led to higher prices, which had an immediate impact on consumers.

The Spanish Competition Authority fines companies for participating in a cartel in the market for purchase of used car batteries

Two companies (Exide Technologies, SLU and Recuperación Ecológica de Baterías SL) have been fined for their participation in a cartel between 2008 and 2012. The companies were found to have followed a common strategy to fix prices in the market of purchase of used car batteries.

In 2015, the Spanish Competition Authority carried out several inspections at the premises of a number of companies active in the market for purchase of used car batteries, following concerns about a potential breach of Article 101 of the Treaty of the Functioning of the European Union ("TFEU") and Article 1 of the Spanish Competition Act.

Subsequently, the authority initiated a formal investigation against Azor Ambiental SL, Exide Technologies SLU and its parent company Exide Holding Europe SAS; and Recobat-Recuperación Ecológica de Baterías SL, and its parent company Layro SA.

The authority has concluded that the companies (i) exchanged sensitive information with the aim of coordinating and aligning the purchase prices of the used car batteries; and, (ii) maintained contacts to develop a common pricing strategy.

Fines have been set at EUR 3.37 million (Recuperación Ecológica de Baterías) and at EUR 2 million (Exide Technologies). Their parent companies are jointly liable for the payment of the fines. In the case of Azor Ambiental, the Spanish Competition Authority considered that its participation in the cartel is time-barred.

The decision may be appealed before the *Audiencia Nacional* within two months.

Case-law & Analysis

The General Court of the EU annuls cartel fine due to lack of sufficient motivation in Commission's fine calculations (*Judgment of the General Court of the EU of 13 July 2018 in Case T-58/14, Stührk Delikatessen Import v Commission*)

In November 2013, the European Commission fined Stührk Delikatessen Import ("Stührk") and three other European North Sea shrimp traders a total amount of EUR 28.7 million for price fixing, in breach of Article 1 of the Treaty of the functioning of the European Union ("TFEU").

More precisely, the Commission found that Stührk was involved in a cartel in the North Sea shrimp market from 2003 to November 2007.

Stührk challenged the Commission's decision and alleged that the latter had not explained adequately how the fine had been calculated. In particular, Stührk considered that the Commission had failed to clarify how it had applied paragraph 37 of its 2006 Fining Guidelines when calculating the fine. This paragraph allows the Commission to depart from the 2006 Fining Guidelines when the particularities of the case or the need to achieve deterrence justify so.

The plaintiff also claimed that if these guidelines had been correctly followed a greater reduction in the total fine would have been granted. Indeed, Stührk pointed out that other cartelists that had played a more prominent role in the infringement were awarded higher reductions.

In its judgment, the General Court of the EU has concluded that the motivation provided by the Commission in its decision does not allow the Court itself or Stührk to assess whether the company has been treated in a comparable manner to the rest of the cartel members. In this sense, the General Court has annulled the article of the contested decision imposing the fine to Stührk, on the grounds of lack of sufficient motivation.

Currently at GA_P

Mind the GA_P at Rock and Law Madrid

Our band (Mind the GA_P) participated on Thursday 5 July in the annual event Rock and Law hosted in Madrid. This initiative was created in Lisbon in 2009 and has been held in Spain since 2010. The concert included 8 bands formed from lawyers of different top law firms and institutions in Spain and all profit will be donated to a charity cause, in this case, to the Association “Debra Piel de Mariposa”, an initiative to improve the lives of the families affected by the disease Epidermolysis bullosa (“Piel de Mariposa”). More info at: www.rockandlaw.org