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News

Antitrust

Commission sends letter of formal notice to 21 Member States for failing to transpose the EU Damages Directive within deadline

The European Commission has sent a letter of formal notice to 21 Member States, including Spain, for failing to meet the December 2016 deadline to transpose Directive 2014/104/EU on antitrust damages actions (the "EU Damages Directive").

The recipients of such letter are: Latvia, Spain, Estonia, the UK, Belgium, Czech Republic, Slovenia, Cyprus, Malta, Italy, Romania, Poland, Germany, France, Bulgaria, the Netherlands, Austria, Greece, Portugal, Ireland and Croatia. This means that, to date, only seven Member States have fully transposed the said Directive, namely, Denmark, Finland, Hungary, Lithuania, Luxembourg, Slovakia and Sweden.

The EU Damages Directive, which was adopted in November 2014, sets out the minimum standards that should govern antitrust damages litigation in EU Member States. Nowadays, rules on the evidence that needs to be presented by victims of cartels before national courts to obtain damages from cartelists are quite strict and make it difficult for victims to succeed in such cases. The EU Damages Directive ensures that victims can obtain access to certain evidence and that deadlines to bring a lawsuit are reasonable.

EU Member States affected by the letters normally have two months to reply to the EU Commission. If replies are not deemed as satisfactory, the Commission could go one step further and send reasoned opinions. After receiving a reasoned opinion, there is a two month deadline for Member States to reply. The Commission would then analyze the replies and decide whether Member States' legislation is in line with EU rules. If that is not the case, an action for infringement of EU Law may be brought before the Court of Justice of EU.

Commission opens three investigations into alleged anticompetitive practices in the e-commerce sector

The European Commission has opened three investigations to assess whether online sales practices prevent consumers from enjoying cross-border choice and from buying consumer electronics, video games and hotel accommodation at competitive prices.



The main issues pursued by the investigations are retail price restrictions, discrimination on the basis of location and geo-blocking. Under certain circumstances, such practices may hinder cross-border shopping online and ultimately harm consumers by preventing them from enjoying greater choice and lower prices in e-commerce. This type of practices may be in breach of article 101 of the Treaty on the Functioning of the European Union.

With regards to consumer electronics manufacturers, the Commission is investigating Asus, Denon & Marantz, Philips and Pioneer. In particular, the Commission is assessing whether these companies have infringed EU Competition Law by restricting the ability of online retailers to set their own prices for widely used consumer electronics products (e.g. household appliances, notebooks and hi-fi products). The Commission has started this investigation on its own initiative.

In the video games sector, the investigation concerns bilateral agreements concluded between Valve Corporation, owner of the Steam game distribution platform, and five PC video game publishers: Bandai Namco, Capcom, Focus Home, Koch Media and ZeniMax. Concretely, the Commission is analyzing geo-blocking practices, which prevent consumers from purchasing digital content because of their location or country of residence. In some cases, these practices may violate EU Competition Law, for example, by reducing cross-border competition as a result of restrictions on parallel trade within the EU internal market or by preventing consumers from buying cheaper games that may be available in other Member States. This investigation has also been started on the Commission's own initiative.

Finally, as a result of customers' complaints, the Commission has engaged in an investigation on hotel price discrimination. In particular, the Commission is analyzing hotel accommodation agreements entered into by the largest European tour operators (Kuoni, REWE, Thomas Cook, TUI) and hotels (Meliá Hotels). These agreements may contain clauses that discriminate on the basis of nationality or country of residence, resulting in customers not being able to see the full hotel availability or to book hotel rooms at the best prices. Such agreements can amount to partitioning of the EU internal market and, consequently, constitute a breach of EU Competition Law.

There is no legal deadline for the Commission to conclude these investigations. The duration will depend, *inter alia*, on the complexity of the case, the cooperation of the companies with the Commission and the exercise of the rights of defense.

Commission imposes fines totaling EUR 68 million on three car battery recycling companies for their participation in a purchase price fixing cartel

The European Commission has imposed EUR 68 million fines on Campine, Eco-Bat Technologies and Recylex for fixing prices for the purchase of scrap automotive batteries, which constitutes



an infringement of EU antitrust rules. The fourth participant of the cartel, Johnson Controls, was exempted from the payment of the fine because it disclosed the existence of the cartel to the Commission.

The investigation of the Commission showed that, from 2009 to 2012, the four companies participated in a cartel to fix the purchase prices of scrap lead-acid automotive batteries in Belgium, France, Germany and the Netherlands.

Whereas the majority of the cartels involve price fixing of sales prices, the present case concerned collusion to reduce the purchase price paid to scrap dealers and collectors for used car batteries. By coordinating to lower the prices they paid for scrap batteries, the normal functioning of the market was distorted and competition on price was prevented. The practices were aimed at lowering the value of used batteries sold for scrap, which harmed used battery sellers. The companies that borne most of the consequences of the cartel were mainly small and medium-sized battery collectors and scrap dealers.

Most of the contacts between the cartelists took place bilaterally and mainly through phone calls, e-mails, or text messages. The Commission has found that the parties were aware of the illicit nature of their conduct since, for example, they sometimes used coded language to signal price levels.

Mergers

Siemens files EU notification of planned merger
with Spanish wind-turbine maker Gamesa

Siemens has filed the notification of its planned merger between its wind-power business unit and the Spanish wind-turbine maker Gamesa before the European Commission. The parties had already announced the transaction in June 2016, when they expressed that, as a result of the merger, a leading global wind-power operator would be created.

The companies have stated that their businesses are complementary “in terms of global footprint, existing product portfolios and technologies”. In addition, while Siemens has significant presence in North America and Northern Europe, Gamesa is well positioned in the South of Europe, India and Latin America.

The notification has been effected through the filing of a full Form CO. This means that the European Commission will engage in a full market investigation, which includes requesting input from customers and competitors of the parties.



The European Commission's deadline to decide on the transaction has been set on 13 March 2017. However, if competition concerns lead the parties to offer remedies, the deadline of the Phase I investigation will be extended by 10 working days.

The parties have already received the clearance of the Brazilian Competition Authority and they expect to complete the transaction within the first quarter of 2017.

Currently at GA&P

GA&P recognized as "Elite Law Firm" in the area of Competition Law

GA&P has been awarded with the "Elite Law Firm" award of the 17th edition of the Global Competition Review 100. This ranking includes the top 100 law firms in the area of Competition Law at international level. Once again, GA&P maintains its position as "Elite Law Firm" together with a special mention to our Competition Law partner Mário Marques Mendes (GA&P Lisbon).

For further information please visit our website at www.gomezacebo-pombo.com or send us an e-mail to: info@gomezacebo-pombo.com.

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