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News

Antitrust

Spanish Competition authority urges Spanish Ministry to remove restrictions on competition in Uber-type transportation

The Spanish competition authority (*Comisión Nacional de los Mercados y la Competencia* or CNMC) has submitted to the Ministers' Council a request to remove certain articles of the Royal Decree 1057/2015 modifying the Road Transport Regulations for considering them restrictive to competition and innovation. Concretely, the issues identified by the authority would be as follows:

- The Public Administration is allowed to deny private hire vehicles ("PHV") authorizations if an imbalance situation exists between taxis and PHV (i.e. when there is more than one PHV authorization for every thirty taxi licenses an imbalance is presumed).

- PHV services have to be booked in advanced mandatorily; PHV cannot carry passengers without a contract and cannot offer their services in the street hail market.
- PHV shall mainly provide services in the territory of the Autonomous Community where the authorization has been issued, establishing a maximum percentage of services which can be performed outside that territory.
- Finally, the requirement related to minimum fleet size, maximum vehicle age and other technical aspects, which would be deemed unjustified.

In the event that this request to the Ministry is not attended, the CNMC will challenge the Royal Decree before the competent court in order to get the restrictions from the regulatory framework removed.

Case-Law & Analysis

Fine imposed to Portuguese oil company Galp is reduced €900,000 by the Court of Justice of the EU. (*Judgment of the Court of Justice of the EU of 21 January 2016, Case C-603/13 P, Galp v European Commission*)

In 2007, the European Commission fined various oil companies more than €183 million for operating a market sharing and price fixing cartel in the market of bitumen (used in asphalt) in Spain between 1991 and 2002.

Galp Portugal challenged the decision before the General Court and received a fine cut in September 2013 for considering that the Commission had incorrectly assessed the degree of the company's involvement. The General Court determined that there was not enough proof to hold that Galp Energía's subsidiaries (Galp Energia España S.A. and Petróleos de Portugal) were liable of two specific infringements in relation to the compensation mechanism and the monitoring system. Thus, the

General Court reduced the fines for Galp Energia España and Petróleos de Portugal from €8.7 million to €6.4 million and from €8.3 million to €6.2 million respectively.

In appeal, the Court of Justice of the EU has granted an extra global reduction of €900,000 due to the fact that the General Court would have committed an error in declaring that these companies were aware of the participation of other members in one of the two disputed infringements. The rest of the arguments put forward by the applicant have been rejected. The Court has confirmed the participation of the companies in the cartel and has indicated that the above mentioned infringements are ancillary to the cartel.

The Court of Justice of the EU gives guidance on exchanges of sensitive information between competitors through an online travel booking system (*Judgment of the Court of Justice of the EU of 21 January 2016, Case C-74/14, E-TURAS*)



The Court of Justice of the EU has delivered a judgment answering a preliminary reference related to a case of alleged coordination of discount policies between competing travel agents. Such infringement would have taken place through an online travel booking system known as E-TURAS and owned by the company of the same name.

The national competition authority considered that the agents did not publicly distance themselves from a discount initiative shared via this system. In this context, the higher court in Lithuania, which deals with the case in last instance, has enquired the Court of Justice whether a message such as the one shared is sufficient to declare that the addressees were (or should have been) aware of its content, and that by not distancing themselves they acquiesced in a way that would make them liable.

The Court has indicated that whereas there is a presumption that companies take into account the info exchanged with others for determining their behavior, in the case at stake, where the national Court has doubts as to whether the companies became aware, then the presumption of innocence applies. In this sense, the fact of sending the information through such a system cannot by itself determine that the companies were aware of its

content. However, this could be used together with other objective indications in order to establish a presumption of awareness.

In addition, the Lithuanian court enquired about the elements to be taken into account in order to establish that the companies involved in a system such as E-TURA participated in a concerted practice.

The Court of Justice has considered that travel agents that were indeed aware of the content could be presumed to have participated while travel agents whose awareness cannot be established cannot be presumed to have participated. Also, such presumption can be rebutted if the companies had publicly distanced themselves. In this sense, the Court added that, in a case like the one at stake, where it was not possible to identify all addresses of the message, it cannot be required that a company distances itself in the eyes of all other addressees. It would be enough that a clear and express objection is sent to the administrator of E-TURAS.

Finally, the Court has indicated that the systematic application by one of the companies of a discount exceeding the cap would also be a way to rebut the presumption in this case.

Currently at GA&P Brussels

Carlos Rueda new Managing Partner of GA&P

Carlos Rueda, former head of our Lisbon office and partner in the area of Banking and Capital Markets since 2001, has been appointed new Managing

Partner of the firm. Manuel Martín, Managing Partner of GA&P during the last 15 years, will remain in the firm as Senior Partner.

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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