

Brussels **GA&P**

Gómez-Acebo & Pombo, Brussels
November 2015



Content

News	2
— Antitrust	2
▶ The Spanish competition authority opens a formal investigation against Nokia for a possible abuse of dominance	2
▶ The European Commission sends a statement of objections to manufacturers of electrolytic capacitors	2
— Mergers	2
▶ The Spanish competition authority fined media company Atresmedia €2.8 million for non compliance with remedies imposed to authorise a merger	2
Case-law & Analysis	3
▶ The General Court of the EU confirms the recovery of the aid granted to operators of digital terrestrial TV in Spain	3
Currently at GA&P Brussels	3



News

Antitrust

The Spanish competition authority opens a formal investigation against Nokia for a possible abuse of dominance

Following a complaint submitted by Kapsch Carriercom España, S.L.U., the Spanish *Comisión Nacional de los Mercados y la Competencia* (CNMC) has initiated formal proceedings against Nokia Solutions and Networks Spain, S.L for a possible abuse of dominant position contrary to Article 102 of the Treaty on the Functioning of the EU (TFEU) and Article 2 of the Spanish Competition Act.

The potential abusive conduct would be operated in the market for the supply of technical information and spare parts for GSM-R equipment of Nokia, which could be considered as an essential facility for the railway network managed by ADIF in Spain. The CNMC fears that Nokia could have applied discriminatory prices.

The authority has now a deadline of 18 months to deliver a final decision.

The European Commission sends a statement of objections to manufacturers of electrolytic capacitors

The Commission suspects that ten Asian manufacturers of electrolytic capacitors could have participated in a cartel from at least 1997 to 2014.

Electrolytic capacitors are used to store electricity and constitute key components of a large variety of electronic products such as cameras, televisions, games consoles or mobile phones.

The Commission has formally accused the addressees of the statement of objections of engaging into multilateral meetings in Japan to discuss future market trends, prices and share customer information. These meetings could have been supplemented with additional discussions between two or three of the companies in Europe.

Mergers

The Spanish competition authority fined media company Atresmedia €2.8 million for non compliance with remedies imposed to authorise a merger

The CNMC has fined the media company Atresmedia €2.8 million for failure to comply with certain conditions imposed by the authority to clear the merger between the TV channels Antena 3 and La Sexta in 2012.

The infringed conditions concern, on the one hand, the market for TV advertising and, on the other hand, the markets for the acquisition and commercialization of content.

As for the first one, the new entity undertook not to develop commercial practices that could limit the freedom

of advertisers or that could exclude third operators of free-to-air TV from the advertising market. However, it has been evidenced that between October 2012 and February 2014 Atresmedia tied the advertising offer of the different channels and did not comply with the obligation of ensuring a sufficient offer so as to allow advertisers to combine among the channels of the Atresmedia group.

Regarding the second part of the infringement, between September 2012 and November 2014 the merged entity did neither ensure that its acquired content was periodically offered to the market nor informed about its behavior in the affected markets.

Atresmedia has already announced its intention to appeal this decision before the competent court.



Case-law & Analysis

The General Court of the EU confirms the recovery of the aid granted to operators of digital terrestrial TV in Spain - *Cases T-461/13 (Spain v Commission); T-462/13 (Comunidad Autónoma del País Vasco and Itelazpi v Commission); and Joined Cases T-463/13 and T-464/13 (Comunidad Autónoma de Galicia v Commission and Retegal v Commission); and in Cases T-465/13 (Comunidad Autónoma de Cataluña and CTTI v Commission); T-487/13 (Navarra de Servicios y Tecnologías v Commission); and T-541/13 (Abertis Telecom and Retevisión I v Commission)*

In order to boost the transition from analogue to digital television in Spain, the authorities divided the territory in three areas (I, II and III). In Area I (representing 96% of the population), the cost of the transition was supported by both public and private broadcasters; in Area II, comprising remote and less urbanised areas (2.5% of the population), the Spanish authorities granted public funding; and in Area III (1.5% of the population), the topography excluded terrestrial digital transmission so the choice was taken to use a satellite platform.

The satellite operator SES Astra filed a complaint before the European Commission which ultimately led to a decision in June 2013 declaring that the aid granted to the operators for the deployment, maintenance and operation of the digital terrestrial TV (DTT) network in Area II was incompatible

with the internal market (with the sole exception of the Autonomous Community of Castille-La Mancha) and had to be recovered.

The aid granted reached almost €163 million from the central budget, which was distributed by means of soft loans, and around €60 million from regional budgets. In addition, municipalities funded an extension of around €3.5 million and €32.7 extra million were granted for the later operation and maintenance of the network.

Spain and certain Autonomous Communities challenged the Commission's decision before the General Court, which has dismissed the action.

First, the General Court has considered that the Commission did not commit an error in declaring that the Spanish authorities have not entrusted the DTT network operators with clearly defined public service obligations and that, therefore, any public compensation received by such operators may be considered as state aid.

Second, the General Court has agreed with the Commission in that the aid did not respect the principle of technological neutrality since no study submitted by the Spanish authorities could justify the choice of the terrestrial platform over a satellite platform.

Currently at GA&P Brussels

Last November 26th, our Lisbon office hosted the conference "Issues on Competition Law & Policy in Portugal" with the intervention of Antonio Ferreira Gomes, President of the Portuguese Competition authority and followed by a panel with the participation of the following GA&P lawyers: Íñigo Igartua (GA&P Barcelona), Mário Marques Mendes (GA&P Lisbon), Miguel Troncoso Ferrer

(GA&P Brussels), Eduardo Gómez de la Cruz (GA&P Madrid) and Alexandra Dias Henriques (GA&P Lisbon). Among the different topics addressed, special focus was placed on the Damages Directive and its current implementation procedure in both Portugal and Spain as well as on the leniency and settlement procedures both at EU level and in Portugal.

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

Barcelona | Bilbao | Madrid | Valencia | Vigo | Brussels | Lisbon | London | New York