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Gómez-Acebo & Pombo

October | 2018

Brussels G A _ P Newsletter

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News

Commission addresses Statement of Objections (“SoO”) to Slovak rail company ZSSK for alleged obstruction of investigation

In June 2016, the Commission dawn raided the premises of ZSSK, the Slovak incumbent rail operator. The dawn raids followed concerns that ZSSK may have entered into anticompetitive agreements with the aim of foreclosing the market of rail passenger transport to its competitors, in breach of Article 101 of the Treaty on the Functioning of the European Union (“TFEU”).

During this type of inspections, Commission officials are entitled to review and take copies of documents related to the company’s business. Undertakings are required to cooperate with the Commission during dawn raids. Failure to comply with this obligation can lead to fines of up to 1% of the undertaking’s annual global turnover.

The Commission is concerned that ZSSK may have obstructed the inspections by (i) providing incorrect information on where to find the personal computer of one of its employees; and, (ii) not submitting requested data from this laptop and allowing its re-installation, which resulted in irrecoverable loss of the data stored therein.

This behaviour may be a violation of the company’s obligations to: cooperate with Commission officials during inspections; to provide correct information; and, to give access to all the documents that are relevant to the investigation. These obligations are enshrined in Articles 20(4) and 23 of Council Regulation 1/2003.

Sending SoOs does not prejudge the conclusions of the investigation.

The EU Vertical Block Exemption Regulation and its Guidelines expected to be subject to review in 2019

The Commission expects to launch an evaluation of Regulation 330/2010 (the “Vertical Block Exemption Regulation”) and its Guidelines next year.

The Vertical Block Exemption Regulation will expire on 31 May 2022. In this context, the evaluation will be used to determine whether its current provisions remain effective, efficient, relevant, coherent with other EU legislation and still provide added value.

This legislation currently determines the extent of the controls that can be undertaken by manufacturers to monitor the resale of their products, both off-line and on-line. It also allows manufacturers to restrain their distribution networks when justified to guarantee the image of the brand or quality standards, if certain conditions are met.

Under the current Vertical Block Exemption Regulation, many disputes have arisen between brands and their preferred retailers, on the one hand, and on-line platforms and small resellers, on the other.

As part of the evaluation, a public consultation is to be launched during the first quarter of 2019.

The Spanish Competition Authority investigates consultancy services sector

The Spanish Competition Authority (“CNMC”) is investigating potential anticompetitive practices in the professional services sector. More precisely, the investigation focuses on practices in the consultancy services market, such as exchange of information and different market partitioning arrangements in Spain.

In October, the CNMC dawn raided the premises of a number of companies that are active in the area. The probes are part of the investigation that was opened after the Basque Competition Authority informed the CNMC about the potential existence of collusive practices in the sector.

Agreements among competitors constitute very serious infringements under the Spanish Competition Act. Sanctions for this type of violation can amount to up to 10% of the total turnover of the undertakings concerned.

Dawn raids by the CNMC do not prejudice the outcome of the investigation.

Case-law & Analysis

Application to prevent publication of EURIBOR’s cartel decision dismissed by the President of the General Court of the EU (*Order of the President of the General Court of the EU of 25 October 2018 in Cases T-419/18, R Crédit agricole and Crédit agricole Corporate and Investment Bank v Commission, and T-420/18 R, JPMorgan Chase and Others v Commission*)

On 7 December 2016, the European Commission adopted a decision whereby it fined Crédit agricole, JP Morgan Chase and another bank EUR 485 million for participating in the so-called EURIBOR cartel.

The investigation of the Commission revealed that the banks in question had colluded on certain elements of the price of derivatives and engaged in exchanges of sensitive information. These practices constituted a breach of Article 101 of the Treaty of the Functioning of the EU (“TFEU”), which prohibits anticompetitive agreements and practices.

The Commission's decision was appealed before the General Court of the EU by Crédit agricole and JPMorgan Chase. This appeal is still pending.

In parallel, both banks started discussions with the Commission with regard to the publication of the contested decision and the parts that should be kept confidential. While Crédit agricole asked for the whole description of the conduct not to be published, JP Morgan argued that publication should be kept on hold until the General Court decides on the pending action.

On 27 April 2018, the Commission adopted two decisions whereby it rejected the banks' requests for confidentiality. Crédit agricole and JP Morgan filed actions for annulment against these decisions and sought their suspension.

The President of the General Court has decided to dismiss the banks' applications for suspension. In his orders, the President has highlighted that interim measures, such as suspension, may only be adopted if the applicants' claims do not seem to be unfounded. Where confidential information is concerned, it is not sufficient to claim that the information at issue is confidential but is necessary to show whether, prima facie, confidentiality can be claimed.

The President of the General Court has explained that the interest of the infringing company in keeping the details of its conduct confidential is not enough to justify special protection, in particular, due to the public interest in the reasons that led the Commission to fine the company in question.

He has also stressed the importance of striking a balance between the need to protect business secrets and the relevance of providing the victims of the conduct with evidence that can be used to claim for damages.

The President has also dismissed the argument that the presumption of innocence should prevent decisions or the description of the unlawful conduct from being published.

On these grounds, the applications for suspension brought by the banks have been dismissed.

Case-law & Analysis

GA_P sponsors Spanish National Day's reception organized by the Spanish Embassy in Belgium

On Friday 12 October 2018, GA_P sponsored the Spanish National Day's celebration that the Spanish Embassy organized at the Brussels' Art and History Museum. GA_P Brussels' team attended to the event in representation of the firm.

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