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News

Commitments offered by Mastercard and Visa made legally binding by the Commission

In July 2015, the Commission addressed a Statement of Objections (“SoO”) to Mastercard in which it outlined competition-related concerns with regard to inter-regional multilateral interchange fees (“MIFs”). A supplementary SoO was sent to Visa in August 2017 on the same lines.

Inter-regional MIFs are applied to payments made in the European Economic Area (“EEA”) with consumer debit and credit cards issued outside the EEA.

Mastercard and Visa fix the level of MIFs applied by their licensee banks. In the absence of bilateral agreements between the banks, the MIFs fixed by Mastercard and Visa apply by default, and cannot be influenced by retailers or consumers.

The Commission expressed concerns that these inter-regional MIFs may increase prices for EEA retailers when accepting payments through cards issued outside the EEA, resulting in higher prices for consumer goods and services in the EEA.

These practices could amount to an infringement of Article 101 of the Treaty on the Functioning of the European Union (“TFEU”), which prohibits anticompetitive agreements and practices.

To address the Commission’s concerns, Visa and Mastercard have offered the following commitments: to reduce the level of inter-regional MIFs, to not disregard certain caps and to publish all inter-regional MIFs affected by the commitments in a transparent manner on their websites.

After consulting stakeholders, the Commission decided to make these commitments binding on the parties. If the parties were to breach these commitments, the Commission could impose on them a fine of up to 10% of their global turnover.

General Electric (“GE”) fined €52 million by the Commission for providing incorrect information in LM Wind takeover

Under the EU Merger Regulation, undertakings are required to provide correct and non-misleading information during a merger review.

In January 2017, GE notified its proposed acquisition of LM Wind. In this notification, GE stated that it did not have any higher power output wind turbine for offshore applications in development, beyond its existing 6 megawatt turbine.

However, through information collected from a third party, the Commission found that GE was simultaneously offering a 12 megawatt offshore wind turbine to potential customers. As a result, on 2 February 2017 GE withdrew its notification.

On 13 February 2017, GE re-notified the same transaction, this time including information on its future project. On 20 March 2017, the Commission approved the proposed acquisition.

In July 2017, the Commission addressed a Statement of Objections ("SoO") to GE alleging that it had breached its procedural obligations under the EU Merger Regulation.

The investigation confirmed that GE had actually been offering a higher power output offshore wind turbine to potential customers. As a result, GE was fined €52 million for providing incorrect information in its notification.

This decision had no impact on the Commission's approval of the transaction, as this was based on rectified information from the second notification.

Videogames publishers and a digital videogames distributor receive Statement of Objections ("SoO") from the Commission over geo-blocking concerns

The owner of the largest PC videogame distribution platform called "Steam", Valve, and five PC videogame publishers (i.e., Bandai Namco, Capcom, Focus Home, Koch Media and ZeniMax) have received an SoO from the Commission.

Valve digitally distributes PC videogames from the abovementioned videogame publishers and provides them with "activation keys". These keys permit consumers to access and play a number of PC videogames bought through other channels, such as DVDs.

The Commission is concerned that Valve and the five PC videogame publishers concluded agreements to prevent consumers from purchasing and using PC videogames outside their Member State of residence (i.e., "geo-blocking"), which is in breach of EU Competition Law.

In particular, the Commission suspects that Valve and the five PC videogame publishers agreed to geo-block activation keys to preclude cross-border sales, with the aim of preventing consumers from buying cheaper games available in other Member States.

In addition, with regard to Bandai Namco, Focus Home, Koch Media and ZeniMax, it is alleged that they impose contractual export restrictions in their agreements with distributors other than Valve.

According to the preliminary views of the Commission, these practices entailed market partitioning and restricted passive sales to consumers.

If the investigation confirms these concerns, the Commission could find the companies infringed Article 101 of the Treaty on the Functioning of the European Union ("TFEU"), which prohibits anticompetitive agreements.

The Commission addresses Statement of Objections ("SoO") to BMW, Daimler and VW for allegedly restricting competition in the development of clean emissions technology

Car manufacturers BMW, Daimler and VW have received a SoO from the Commission over concerns that they colluded in connection with the development of clean emissions technology for petrol and diesel cars. This practice is believed to have lasted from 2006 to 2014.

The Commission is concerned that collusion affected: (i) selective catalytic reduction ("SCR") systems, a technology used to reduce emissions of harmful nitrogen oxides in diesel cars, and (ii) the so-called "Otto" particle filters ("OPF"), which reduce harmful particle emissions in petrol cars.

If the investigation confirms the preliminary views of the Commission, the companies could be fined for breaching Article 101 of the Treaty on the Functioning of the European Union ("TFEU"), which prohibits agreements limiting or controlling production, markets and technical development.

The SoO follows the on-site inspections carried out by the Commission at the manufacturers' premises in October 2017.

The Spanish Competition Authority ("CNMC") fines the largest tobacco manufacturers and distributor Logista for exchanging commercially sensitive information

The CNMC has fined tobacco manufacturers Philip Morris, Atladis, JT Internacional Iberis and distributor Logista for exchanging information. The distributor, with the manufacturers' approval, provided competitors' sales data, thereby eliminating competition. The fines amount to €57,7 million.

The CNMC's investigation found that Logista has been providing the manufacturers, with which it had entered into distribution agreements, with daily and free information regarding sales to kiosks. This data was broken down by brand and province.

This information allowed manufacturers to know in real time precise consumption patterns in the market, including the reaction of consumers to price changes in each province and in respect of each of the brands and categories, as well as to be aware of the release of new products.

This data was accessed by the manufacturers through an application of Logista. The companies agreed to give access to competitors to their data subject to reciprocity.

The effect of these practices was the elimination of competition. Since 2008, the market share of the main tobacco manufacturers has remained stable.

On this basis, the CNMC has found the existence of a single and continuous infringement of Article 1 of the Spanish Competition Act and Article 101 of the Treaty on the Functioning of the European Union ("TFEU"), which prohibits anticompetitive agreements and practices.

The infringement consisted in the exchange of commercially sensitive information from 2008 until at least 2017 by Philip Morris Spain, Atladis, JT International Iberia and Logista.

The Spanish Competition Authority ("CNMC") fines 15 companies and 14 executives for bid rigging in the railway infrastructure sector

The CNMC has fined 15 companies and 14 executives for bid rigging in the railway infrastructure sector (electrification and electro-mechanic systems for conventional and high-speed trains).

The investigation revealed that the companies had set up three cartels to distort competition in public tenders launched by ADIF (the Spanish railway infrastructure manager), namely: (i) a cartel to share the public tenders' market for the construction, supply, installation and maintenance of the electrification systems for high-speed railways; (ii) a cartel to manipulate tenders for the maintenance of electrification systems for high speed railways, and (iii) a cartel to allocate, between the cartel members, public and private tenders for the construction, supply, installation and maintenance of electro-mechanic equipment for high speed railways.

The fines imposed on the companies total €118 million and the fines against the executives amount to €660,000. In addition, the CNMC has triggered for the first time the prohibition to bid in public invitations to tender.

Thanks to a leniency application, Alstom Transporte, its parent company and its executives have been exempted from payment of a €8,9 million fine; and, Siemens and its parent have benefited from a 45% reduction of their fine.

Currently at GA_P

The European Commission publishes a study co-authored by Ricardo AEA and GA_P

The European Commission has published the “Study on employment and working conditions of aircrews in the EU internal aviation market”. The study is co-authored by British consultancy Ricardo AEA and GA_P’s EU/Competition Law and Employment Law departments.

The study is publicly available at the Commission’s website: https://publications.europa.eu/en/publication-detail/-/publication/97abb7bb-54f3-11e9-a8ed-01aa75ed71a1