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News

Commission fines Canon €28 million for partial gun-jumping in the acquisition of Toshiba Medical Systems Corporation

The European Commission has fined Canon, the Japan-based imaging and optical products company, €28 million for its failure to fully respect notification and standstill obligations in the acquisition of Toshiba Medical Systems Corporation (“TMSC”).

EU merger rules require that merging companies notify to the Commission planned mergers of Union dimension for review prior to their implementation (so as to safeguard the Commission's ability to detect and investigate mergers) and do not implement them until notified to and cleared by the Commission (so as to prevent the potentially irreparable negative impact of transactions on the market pending the outcome of the Commission's investigation).

For the acquisition of TMSC, Canon used a two-step transaction structure, also known as “warehousing”. Firstly, an interim buyer acquired 95% of TMSC’s shares and Canon acquired the remaining 5 % and share options over the interim buyer’s stakes. Secondly, following approval of the merger, Canon exercised its share options, acquiring 100% of TMSC.

The notification was given after the first step had been completed, i.e. after the acquisition had been partially implemented.

Following two Statements of Objections setting out concerns over the structure of the merger, the Commission decided on 27 June 2019 to fine Canon.

The fine was calculated taking into account the gravity of the infringement, Canon’s intentionality, and the fact that, once analysed, the merger was cleared unconditionally.

The fine does not have any impact on the approval of the transaction.

Commissions fines Sanrio with €6.2 million for restricting cross-border sales of merchandising products featuring Hello Kitty characters

The investigation of the Commission has found that Sanrio banned traders from selling licensed merchandise of Hello Kitty and other characters outside their territorial coverage but within the European Economic Area (“EEA”).

Sanrio is a Japanese company that designs, licenses, produces and sells products featuring Hello Kitty and other characters. Sanrio's licensed merchandising products are extremely varied and are protected by intellectual property ("IP") rights. Through licensing agreements, third parties were allowed to use IP rights for some products. These agreements were usually non-exclusive.

In 2017, the Commission began investigating the company's licencing agreements over concerns that it was imposing illegal cross-border restrictions on its licensees.

The Commission's investigation has confirmed that Sanrio did impose a number of direct measures restricting out-of-territory sales by licensees, such as clauses explicitly prohibiting these sales or obligations to refer orders for out-of-territory sales to Sanrio, and indirect measures to encourage compliance with the restrictions, such as audits and the non-renewal of contracts if licensees did not respect the out-of-territory restrictions.

These anti-competitive practices were in force for approximately 11 years.

Sanrio was granted a 40% fine reduction in return for cooperating with the Commission beyond its legal obligation.

Commission fines Qualcomm €242 million for engaging in predatory pricing

After a long investigation, the European Commission has concluded that US chipmaker Qualcomm sold chipsets below cost to strategic customers Huawei and ZTE between 2009 and 2011. The objective was to force Qualcomm's competitor Icera out of the market.

The Commission's investigation has found that Qualcomm held a dominant position in the 3G baseband chipsets market, and that its practices stifled competition and innovation and limited the choice available to consumers.

On this basis, the Commission determined that Qualcomm had infringed Article 102 of the Treaty on the Functioning of the European Union (TFEU), which prohibits the abuse of a dominant position.

Concerns were first brought to the Commission's attention back in 2009, through a complaint lodged by Icera.

In addition to the above, in January 2018, the Commission fined Qualcomm €997 million for another abuse of dominant position consisting in the imposition of exclusivity clauses on Apple. The appeal against this decision is currently pending.

Commission opens investigation into possible anti-competitive conduct of Amazon

The European Commission has opened a formal antitrust investigation to assess whether Amazon's use of sensitive data from independent retailers who sell on its marketplace is in breach of EU competition rules.

The Commission will look into (i) the standard agreements between Amazon and marketplace sellers, with a special focus on whether and how the use of accumulated marketplace seller data by Amazon as a retailer affects competition and (ii) the role of data in the selection of the winners of the “Buy Box”. The “Buy Box” allows customers to add items from a specific retailer directly into their shopping carts.

If these anticompetitive practices are proven, the Commission may conclude that Amazon infringed Article 101 and 102 TFEU, which prohibit anticompetitive agreements and the abuse of a dominant position, and fine the company a substantial amount.

CNMC fines several companies active in the dairy industry for engaging in anticompetitive practices against farmers

The Spanish Competition and Markets Authority (“Comisión Nacional de los Mercados y la Competencia” or “CNMC”) has fined eight companies and two sectorial associations operating in the raw cow milk supply market €80.6 million.

The anticompetitive practices included exchanges of information that allowed companies to coordinate commercial strategies to the detriment of farmers’ interests, preventing them from setting their own prices.

The companies involved in these exchanges were able to adjust their behaviour and avoid offering better prices and trading conditions to farmers, thereby restricting competition in this particular market.

This investigation was prompted by a study on the dairy sector forwarded to the CNMC by the regional competition authority of Castilla y León. This study showed indicia of anticompetitive practices in the supply of raw cow milk and referred to a complaint lodged by the small farmers association “Unión de Pequeños Agricultores y Ganaderos” against milk processors.

The CNMC has not only confirmed that these practices were anticompetitive, but also that they produced negative effects in the market, with the livestock industry suffering the most.

CNMC fines twenty-six school transport providers and two associations for bid rigging and triggers procedure to exclude them from participating in public tenders

The CNMC has fined twenty-six school transport companies and two major industry associations for taking part in a public procurement cartel. Fines on companies amounted to €1.88 million and sanctions against the associations totalled EUR 75,000.

The cartel had been going on for at least 10 years. The investigation has shown that the practices started in 2009, with the signing of a regulatory agreement put in place by the two associations, and ended in 2018.

The companies engaged in bid rigging in public tenders launched by the Murcia Department of Education to provide school transport for students free of charge.

The proceedings were initiated by the CNMC after a complaint from the Murcia Department of Education. During the investigation, one of the companies gained immunity for its collaboration as a leniency applicant. Subsequently, two other companies also applied for leniency and, as consequence, their sanctions were reduced by 40% and 30% respectively.

In addition to the fines, the CNMC has triggered a procedure to exclude the cartel members from participating in public tenders. The companies that benefited from leniency are excluded from this measure.

Currently at GA_P

GA_P and ADEFAM agree to promote academic activities on the framework regulating family businesses

The family business association ADEFAM has entered a strategic agreement with GA_P. By means of this agreement, GA_P will become the exclusive legal partner of ADEFAM.

The aim of the agreement is to boost the development of family businesses in the region of Madrid. Both GA_P and ADEFAM have undertaken to put in place a set of educational and academic activities regarding the legal framework applicable to this type of business.

ADEFAM brings together 99 family businesses, with an aggregate turnover of €14,661 million.

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