

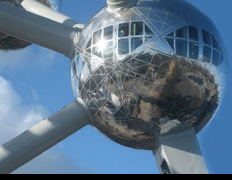
# Brussels GA&P

Gómez-Acebo & Pombo, Brussels  
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# News

## Antitrust

### **Online Platforms may face new EU legislation as from next year**

A draft communication by the European Commission on Online Platforms and the Digital Single Market has suggested that new legislation may be needed to ensure that fair trading practices are applied to small companies that become dependent on online platforms.

This draft policy paper indicates that smaller companies could be disproportionately exposed to unfair trading practices, which could threaten innovation even in the absence of established dominance by Competition rules. In this sense, the Commission suggests that these problems may be better addressed by an EU regulation rather than by Competition enforcement.

For the following six months the Commission intends to gather more information on this issue and to closely study the sector with a view to decide in spring 2017 whether further action is indeed necessary.

Five priorities have been identified: (i) potential unfair terms and conditions, especially if platforms effectively constitute the access point to important user or data bases; (ii) platforms acting as an authority in refusing or unilaterally modifying market access conditions; (iii) platforms unfairly promoting their own services to the disadvantage of other suppliers; (iv) the dual role of platforms, in scenarios where platforms carry out transactions for a supplier and at the same time compete with it; and (v) the potential lack of transparency on platform tariffs, use of data and search results.

### **The European Commission sends Google a Statement of Objections with regard to Android**

Google has been formally charged by the Commission for entering into restrictive agreements with smartphone manufacturers and mobile network operators using Android as operating system.

More concretely, the agreements would consist on pre-installing Google Search and/or Google Chrome and

set them as default or exclusive search service on most Android devices sold in the EU. This practice could have, on the one hand, closed off ways for competing search engines to access the market, and on the other hand, harmed consumers by restricting innovation in the wider mobile space. In the Commission's view, manufacturers could have been prevented from pre-installing competing search engines or even received financial incentives to install Google's applications.

This is not the only on-going investigation against the US-based multinational, since the Commission is also formally investigating the favourable treatment by Google in its general search results of its own other specialised search services; the copying of competitors' web content (known as 'scraping'), advertising exclusivity and undue restrictions on advertisers.

Google has now two months to reply to the Commissions' accusations.

### **The Spanish competition authority initiates a formal investigation against 11 companies active in IT services and applications**

The *Comisión Nacional de los Mercados y la Competencia* (CNMC) has opened a formal investigation against the following companies: Cibernos Consulting, S.A.; Software AG España, S.A.; Indra; Gesein, S.L.; IBM; Atos Spain, S.A.; Connectis; Informática El Corte Inglés, S.A.; Next Computer Services, S.A.; Axpe Consulting, S.L. and Everis Spain, S.L.

The companies may have incurred in concerted practices against Article 1 of the Spanish Competition Act and Article 101 of the TFEU with regards to procurement procedures of services for development and maintenance of systems and applications.

The practices could have involved market sharing, price fixing and exchanges of commercially sensitive information.

The CNMC has now 18 months to issue a final decision.



## Case-Law & Analysis

### **The Civil Service Tribunal to merge with the General Court at the end of summer**

Following the proposal for a Regulation on the transfer of jurisdiction at first instance in civil service disputes to the General Court (currently being examined by the EU legislature), all staff cases pending before the Civil Service Tribunal by 31<sup>st</sup> August 2016 will be transferred to the General Court.

These cases will be from then on subject to a right of appeal before the Court of Justice of the EU. As a consequence of this merger, it is expected that proposals to amend the Rules of Procedure of the General Court are submitted to the Council with the objective of achieving a more appropriate procedural framework for dealing at first instance with this type of disputes.

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## Currently at GA&P Brussels

### **ABA Antitrust Spring Meeting**

Our lawyers Iñigo Igartua (GA&P Barcelona), Mario Marques (GA&P Lisbon), Miguel Troncoso (GA&P Brussels) and Eduardo Gómez (GA&P Madrid) attended

the 64th Spring Meeting of the ABA Section of Antitrust Law, gathering 2,600 antitrust and consumer protection delegates from 55 countries. The event took place in Washington DC last 5-8 April.

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