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— News —

Antitrust

Five envelope producers fined EUR 19.4 million in cartel settlement

In September 2010, the European Commission started an investigation on its own motion concerning several envelope manufacturers. The Commission concluded that the companies Bong (Sweden), GPV and Hamelin (France), Mayer-Kuvert (Germany) and Tompla (Spain) had set up a cartel to coordinate their responses to tenders launched by major European customers; to agree on price increases and to exchange commercially sensitive information. According to the Commission, the infringement lasted from October 2003 (except for Hamelin, only since November 2003) until April 2008.

The Commission has imposed fines totaling EUR 19,485,000.

All affected companies except from the Swedish Bong benefited from fine reductions under the Commission's Leniency Notice for cooperating during the investigation: Tompla 50%; Hamelin 25%; Mayer-Kuvert 10% and GPV 10%. In addition, all undertakings received a further 10% reduction since they agreed on a settlement with the Commission.

Mergers

The Commission opens Phase II of the merger control procedure as regards the planned acquisition of Jazztel by Orange

The acquisition of the UK telecommunications company Jazztel p.l.c, mainly active in Spain, by rival French company Orange was notified to the European Commission on 16 October 2014. The Spanish Competition Authority requested a referral of the case on 5 November 2014 and insisted later on taking the case. However, this request is still pending.

The Commission's initial investigation has shown that the planned acquisition may negatively affect competition in the retail market for fixed Internet access, as it may reduce the new entity's incentive to exert competitive pressure on the remaining two competitors (Telefónica and Vodafone).

In Spain, Orange operates mobile and fixed telecommunications networks whereas Jazztel operates a fixed telecommunications network and offers mobile telecommunications services using Orange's network. The merger between both companies would reduce the number of providers of fixed telecommunications services in Spain from four to three.

Even tough the new entity would not enjoy a dominant position, the Commission has concerns that the transaction may lead to a significant loss of competitive pressure for fixed Internet access services and fixed-mobile multiple play offers, as well as eventual price increases for these services in Spain.

In addition to assessing whether the aforementioned competition concerns are confirmed, the Commission will also examine the impact of the transaction on the Fibre-to-the--Home (FttH) deployment operated by Orange and Jazztel and whether it could reduce their FttH footprint as compared to a stand-alone scenario.

On 13 November 2014, Orange submitted to the Commission possible commitments with the objective of addressing the competition concerns identified. However, the Commission considered these commitments insufficient and did not market test them.

The deadline for the Commission to adopt a decision expires on 24 April 2015.

— *Case-law & Analysis* —

The General Court of the EU confirms the Commission's rejection of a complaint on the ground that a national competition authority was already dealing with the case *(Judgment of the General Court of 17 December 2014, Si.mobil telekomunikacijske storitve v Commission, case T-201/11)*

In 2009, Si.mobil telekomunikacijske storitve, a Slovenian mobile telephone company owned by Telekom Austria Group, filed a complaint before the European Commission against Mobitel for ousting competitors on the retail mobile telephone market and the wholesale mobile access and call origination services market. Mobitel was the historical operator in Slovenia before its acquisition by Telekom Slovenije, a company mainly owned by the Slovenian State.

By decision of 2011, the Commission rejected Si.mobil's complaint on the following grounds: (i) as for the retail mobile telephone market, the Commission indicated that the Slovenian competition authority was already dealing with the case; (ii) as for the wholesale mobile access and call origination services market, the Commission considered that there was not a sufficient degree of EU interest for further investigating.

In this scenario, Si.mobil brought an action for the annulment of the Commission's decision before the General Court of the EU which now has upheld the rejection of such complaint.

The Court has indicated that pursuant to Regulation 1/2003, the Commission may reject a complaint if a national competition authority is already dealing with the case. However, for such a case, two conditions must be satisfied: (i) a competition authority of a Member State shall be dealing with the case that has been referred to the Commission and, (ii) the case shall relate to the same agreement, decision of an association or restrictive practice.

Given that the Slovenian competition authority was already actively dealing with the case, the Court has agreed that the Commission was not required to carry out an assessment as to whether the approach adopted by the authority was well founded. The same conclusion is established with regard to the second condition, as the procedure before the Slovenian authority concerned the infringement alleged before the European Commission.

Finally, regarding the wholesale mobile access and call origination services market, the Court has rejected Si.mobil's claims, concluding that the Commission did not make a manifest error of assessment by finding that the alleged infringement lacked of EU interest, since it effectively had no more than limited significance as regards the functioning of the internal market.

The Court of Justice of the EU partly annuls one of the judgments of General Court in relation to the marine hoses cartel *(Judgment*

of the Court of Justice of 18 December 2014 Parker ITR Srl and Parker-Hannifin Corp. v Commission, case C-434/13 P)

The Court of Justice of the EU has overturned the judgment of the General Court of May 2013 in case T-146/09 concerning the marine hose cartel. In its judgment, the General Court reduced the fine imposed by the European Commission to Parker ITR Srl from EUR 25.61 million to EUR 6.4 million.

The marine hose cartel involved eleven companies that colluded to rig bids and fix prices in the market for marine hoses –products used to move petroleum products offshore- from 1986 to 2007.

In January 2002, the company Parker-Hannifin Holding (a subsidiary within the Parker Group), acquired ITR Rubber Srl from ITR SpA – at that time owned by Saiag SpA- and renamed it Parker ITR. In its decision, the Commission concluded that Parker ITR was liable for infringements from April 1986 to May 2007 and Parker-Hannifin was held jointly and severally liable from January 2002 (the date of the acquisition) until 2007.

Parker ITR and Parker-Hannifin challenged the Commission's decision before the General Court. In its judgment, the latter considered that the Commission had erred in attributing liability for the infringement to Parker ITR and Parker-Hannifin and not to the legal person managing ITR when the infringement was committed, that is to say ITR SpA and its parent company Saiag SpA.

More concretely, the General Court stated that the principle of personal liability cannot be questioned by the principle of economic continuity in cases where, as in the case at stake, a company involved in the cartel (Saiag SpA and its subsidiary ITR SpA), transfers a part of its business to an independent third party and there is no structural link between the transferor (Saiag SpA) and the transferee (Parker-Hannifin).

The Commission appealed this judgment before the Court of Justice of the EU arguing that the General Court erred in law by incorrectly applying both the case law on intra-group economic continuity and the case law on the transfer of liability between consecutive undertakings.

The Court of Justice has upheld the Commission's claims and ruled that the General Court erred when applying the case law on economic continuity.

Firstly, the Court has stated that economic continuity can exist in cases where a transfer of a business is operated. More precisely, the Court indicated that such an economic continuity may take place when (i) the transfer has been operated during the infringement period and structural links between the transferor and the transferee occur during that period; and (ii) when the transfer is carried out after the infringement, provided that the structural links between transferor and transferee existed at the time of that business transfer.

In addition, the Court of Justice has indicated that the General Court also erred in law by failing to examine, for the purpose of verifying whether the Commission had correctly applied the principle of economic continuity, the evidence submitted by the parties concerning the lack of real links in the form of a decisive influence exercised by ITR SpA over ITR Rubber.

Based on this, the Court of Justice has partly annulled the judgment and has referred it back to the General Court.

— *Currently at GA&P Brussels* —

On 26 November 2014, the European Commission has published the "Study on the operation of the system of access to vehicle repair and maintenance information (RMI)", elaborated with the contribution of G-A&P Brussels. To access this study please see below:

http://ec.europa.eu/enterprise/newsroom/cf/itemdetail.cfm?item_id=7940

Sara Moya Izquierdo and Isabela Crespo Vitorique have recently published the article «*Los motores de búsqueda y el "derecho al olvido":*

cuando la tecnología avanza más rápido que el Derecho» in the legal magazine Revista Aranzadi Unión Europea (October 2014). In this article the authors analyse the recent judgment of the Court of Justice of the EU of 13 May 2014, case C-131/12, Google Spain SL, Google Inc. v Agencia Española de Protección de Datos, Mario Costeja González.