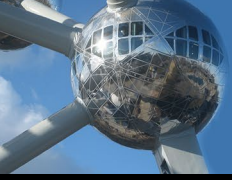


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News

Antitrust

The Spanish Competition Authority fines five oil companies €32 million

The *Comisión Nacional de los Mercados y la Competencia* or CNMC has imposed fines for more than €32 million to REPSOL, Compañía Española de Petróleos (CEPSA); DISA Corporación Petrolífera; GALP Energía España S.A. and MEROIL S.A. for price

fixing and sharing sensitive information. Out of the total amount of the fine, €30 million were imposed to REPSOL and CEPSA.

According to the CNMC, the five companies, active in the market of production and distribution of oil products, entered into the following bilateral agreements and exchanges of information:

| Companies | Date | Content |
|------------------|-------------------------|---|
| REPSOL and CEPSA | July 2013 | Agreement to coordinate their behavior with regard to certain gas stations in the region of Zaragoza |
| REPSOL and CEPSA | July-August 2011 | Non-aggression agreement (no interference into the stations branded by the other) |
| REPSOL and CEPSA | 2011, 2012 2013 | Exchanges of strategic information with regard to gas stations managed by one of them but branded and supplied by the other one |
| CEPSA and DISA | July and September 2011 | Non-aggression agreement with regard to prices |
| CEPSA and DISA | July 2013 | Agreement on prices applicable in Ceuta |
| DISA and MEROIL | 2012 | Exchanges of information about prices applied in certain gas stations in the region of Barcelona |
| DISA and MEROIL | 2013 | Exchanges of information on operating margins |
| GALP and MEROIL | May 2013 | Exchanges of information regarding a supply and branding contract |

REPSOL has received the highest fine (€20 million), followed by CEPSA (€10 million), DISA (€1.3 million), GALP (€800,000) and MEROIL (€300,000).

In the context of the same investigation, the CNMC also detected coordination between the above companies and their independent distributors of automotive fuel. This resolution is still pending.

€88.2 million fine to Spanish dairy processors for colluding on the price paid to livestock owners for raw milk

The CNMC has fined 9 dairies and two associations for, on the one hand, exchanging strategic

information on prices, volumes to be acquired from farmers and milk surplus stocks and, on the other hand, coordinating prices for acquiring raw milk and sharing markets.

According to the CNMC, the strategic information was exchanged in different forums and concerned different topics but it had the common objective of colluding and adopting a joint strategy to control the market of supply of raw milk.

In addition, these exchanges of information led in some cases to concrete agreements for (i) coordinating prices at which raw milk was acquired and (ii) sharing the market.



In this sense, dairy manufacturers shared information about prices offered to farmers, identity of the farmers; future prices and volumes. Moreover, they shared the identity of those farmers who were planning to change dairy manufacturer and the measures to avoid it.

Furthermore, the companies controlled the surplus stocks and their transformation into powdered milk which had an impact in the price of raw milk.

Out of the total €88.2 million fine, Danone S.A. and Corporación Alimentaria Peñasanta S.A. have received the highest fines (€23.2 million and €21.8 million respectively). They are followed by Grupo Lactalis Iberia (€11.6 million); Nestlé España S.A. (€10.6 million); Puleva Food S.L. (€10.2 million); Calidad Pascual (€8.5 million); Senoble Ibérica S.L. (€929,644); Central Lechera

Asturiana S.A.T. (€698,477) and Central Lechera de Galicia S.L. (€53,310).

Pursuant to Article 68 of the Spanish Competition Act, serious continuous infringements expire four years after the infringement ceases. In this sense, the infringement has been declared expired for five companies, i.e. Lácteas Asturianas S.A. (which last exchange of strategic information took place in January 2010); Forlactaria Operadores Lecheros S.A. (which participated in the cartel only in 2006); Grupo Leche Rio S.A.; Feriaco Lácteos S.L. and Leche Celta S.L. (which participated in the infraction in 2008 and 2009).

Finally, two associations have been fined for their role as facilitators of the infringement: Gremio de Industrias Lácteas de Cataluña (€200,000) and Asociación de Empresas Lácteas de Galicia (€100,000).

Case-Law & Analysis

Dawn raids in the Belgian travel sector declared illegal by the Brussels Court of Appeal

At the beginning of 2006, a series of dawn raids took place at the premises of several tour operators and travel agents in Belgium, mainly TUI Travel, Jetair, BCD Travel, Belgian Travel Organization and American Express Corporate Travel.

In 2011, the investigation division within the Belgian Competition authority sent reports to the decision-making body of the authority, but no decision was adopted at that moment, i.e. the case was left under review. On the basis of the transitional provisions of the new Belgian Competition Act, the reports drafted for cases pending at the time of the entry into force of the new Act (i.e. 2013) were automatically converted into statements of objections subject to the procedural provisions of the new Act. Based on these statements of objections, the companies challenged the legality of the inspections.

On 18 February 2015, the Brussels Court of Appeal delivered an important judgment where it was held that the dawn raids carried out in the premises of the companies abovementioned were unlawful. As a consequence, all the information seized during or as a result of the dawn raids must be taken

out of the file and returned to the parties who were raided.

On the one hand, the Court considered that the decision ordering the dawn raids issued by the Competition authority at its sole initiative did not constitute a sufficient means of protection under the Belgian constitution. A judicial warrant was therefore needed, even if in 2006 the Belgian Competition Act did not require such a judicial warrant for carrying out dawn raids (contrary to what is provided in the new Competition Act of 2013). On the other hand, the Court considered that, at that time, there was no possibility for the parties to challenge the lawfulness of the dawn raids before an independent judge on the basis of the Belgian Competition Act of 1999 -then into force-, which amount to a violation of Article 6 of the European Convention of Human Rights (right to a fair trial) and Article 47 of the European Charter of Fundamental Rights (right to an effective remedy and to a fair trial).

Recently, the lawfulness of other dawn raids carried out by the Belgian Competition authority has been challenged on the same grounds. One of these cases is related to cargo handling in the harbour of Antwerp and another one concerns the healthcare, hygiene and perfume sector in Belgium.



Currently at GA&P Brussels

On the occasion of the annual meeting of our Competition Law Group in Brussels, a Breakfast Meeting was held on 17th March 2015 in GA&P's premises. During the event, the guest of honour, Mr. Carles Esteva Mosso

(Acting Deputy Director-General for Mergers at DG Competition) gave a speech on recent developments and priorities of the European Commission in merger control policy and enforcement.

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

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