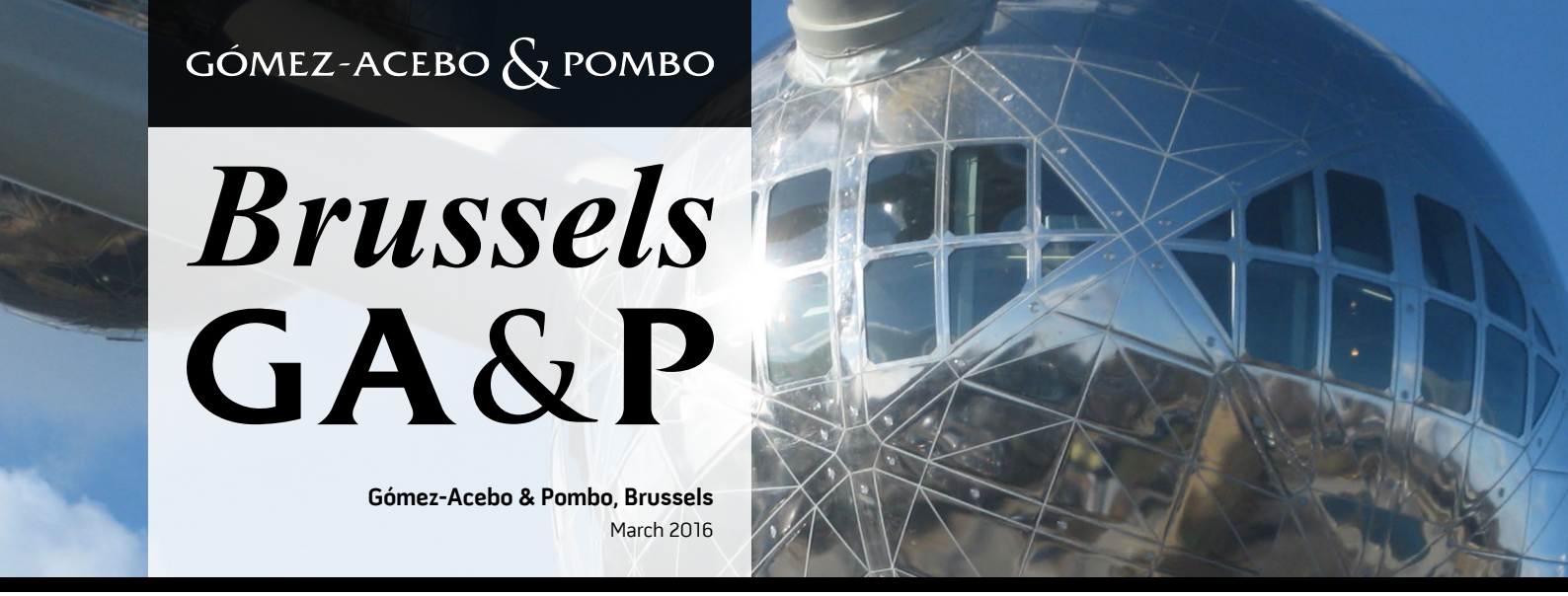

GÓMEZ-ACEBO & POMBO

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News

Antitrust

The European Commission publishes its initial findings on geo-blocking in the e-commerce sector.

Last 18th March, the Commission published an initial "Issues paper" on geo-blocking in the EU within the framework of the ongoing e-commerce sector inquiry. The findings are based on answers to questionnaires sent to more than 1,400 retailers and digital content providers

Go-blocking allows e-commerce sites to filter out users based on their location, which by itself, as a unilateral practice, is so far legal (as long as the retailer/provider is not in a dominant position), the problem could arise in the scenario of an agreement to geo-block.

The document has concluded that geo-blocking is considerably spread: 38% of retailers and 68% of content providers that responded to the questionnaire use geo-blocking in the EU. In the first case, up to 12% would be doing so a result of an agreement. The Commission has also suggested that focus will be placed on additional restrictions such as, for instance, (i) those preventing distributors/retailers selling online; (ii) those on passive sales into territories which have been exclusively reserved and (iii) those on authorised dealers in a selective distribution system.

The discussion over online content-based services is more delicate since these services are also regulated by copyright legislation, which is still national in scope. As indicated, the paper confirmed that 68% of service providers surveyed use geo-blocking to restrict cross border access, and from this, up to 59% would do so on the basis of an agreement.

The Commission will publish a more complete analysis this summer, which is deemed to explain in detail the concerns identified. Then, the final report is expected for early 2017. After this, enforcement measures against individual companies may follow.

The Spanish Competition authority opens formal investigation against producers of medium and low voltage power cables

The Spanish *Comisión Nacional de los Mercados y la Competencia* (CNMC) has initiated formal proceedings against several producers of cables and electrical and optical fabric conductors for a possible competition infringement in the market for manufacture and/or distribution of medium and low voltage power cables. The trade association *Asociación Española de fabricantes de cables y conductores eléctricos y de fibra óptica* (FACEL) is also being formally investigated.

The possible infringement could be related to the fixation of prices and commercial conditions as well as market sharing agreements in the framework of tender procedures in Spain.

The proceedings were initiated in July 2015 when the CNMC dawn raided different companies and their trade association. After this, the authority considered that there are indications of a possible infringement of Article 1 of the Spanish Competition Act and Article 101 of the TFEU.

Case-Law & Analysis

The Court of Justice of the EU annuls the Commission decisions relating to requests for information sent to cement manufacturers
(Judgments of 10th March 2016 in Cases C-247/14 P HeidelbergCement v Commission, C-248/14 P Schwenk Zement v Commission, C-267/14 P Buzzi Unicem v Commission and C-268/14 P Italmobiliare v Commission)

After a series of inspections, the Commission initiated formal proceedings at the end of 2010 against several cement companies. In the framework of

such investigation, the Commission requested the undertakings concerned to answer a questionnaire on the suspected infringements.

The German companies HeidelbergCement and Schwenk Cement and the Italian Buzzi Unicem and Italmobiliare brought an action before the General Court alleging, *inter alia*, that the Commission did not adequately explain the alleged infringements and imposed disproportionate burden due to the volume of information requested and its format. The General Court dismissed the actions and confirmed the lawfulness of the requests for information sent by the Commission.

The companies decided to bring an appeal before the Court of Justice of the EU, which has considered that the General Court erred in law in finding that the Commission decisions were adequately reasoned.

In this sense, the Court has reminded that the statement of reasons for measures adopted by institutions must, on the one hand, be appropriate to the measure at issue and, on the other hand, disclose clearly and unequivocally the reasoning followed so as to enable the persons concerned to ascertain the reasons for it and the EU Courts to review its legality.

In a scenario such as the one at stake, the Commission shall (i) set out the legal basis and purpose of the request; (ii) specify what information is required and (iii) indicate a deadline.

Based on these parameters, the Court of Justice has considered that hat the questions were considerably numerous and covered very different types of information. In addition, the decision did not disclose, clearly and unequivocally, the suspicions of infringement which justify the request and did not make it possible to determine whether the requested information was necessary for the purposes of the investigation. Finally, the Court has also indicated that the statement of reasons was too brief, vague and generic, especially when compared to the length of the questions.

Based on the above, the Court has concluded that the statement of reasons for the Commission decisions did not meet the required legal standards and has annulled both the judgments of the General Court and the Commission decisions.

Currently at GA&P Brussels

Competition Law seminar in GA&P Madrid

Last February 18th a seminar on "Spanish Competition Law 2015: fines, inspections, compliance and some surprises for 2016" was held at our Madrid office. Eduardo Gómez de la Cruz, senior associate at GA&P Madrid and Ricardo Alonso Soto, member of our academic council explained the most important novelties of 2015 through practical cases.