



Legal latest

Competition, EU and Regulatory newsletter

June 2017

Investigations

Nike, Sanrio and Universal Studios under investigation

The Commission has launched three separate investigations into whether certain licensing and distribution practices of Nike, Sanrio and Universal Studios illegally restrict traders from selling licensed merchandise cross-border and online within the EU.

The merchandising products include clothes, shoes, phone accessories, bags and toys, on which an image or text is applied during the manufacturing process.

Sports apparel manufacturer Nike is the licensor of rights for Fútbol Club Barcelona's merchandise, Sanrio is the licensor of rights for Hello Kitty and Universal Studios is the licensor of rights for the "Minions" and "Despicable Me".

The Commission will investigate whether the three companies, in their role as licensors of rights for merchandising products, may have breached EU competition rules by restricting their licensees' ability to sell licensed merchandise cross-border and online.

Commission investigates Guess

An investigation into the distribution agreements and practices of clothing manufacturer and retailer Guess has been opened by the Commission. The Commission will examine whether Guess illegally restricts retailers from selling cross-border to consumers within the EU.

The Commission will investigate information indicating that Guess' distribution agreements may restrict authorised retailers from selling online to consumers or to retailers in other Member States. Their distribution agreements may also restrict wholesalers from selling to retailers in other Member States.

Investigation into gas export restrictions from Romania

An investigation has been opened by the Commission to assess whether Romania's gas transmission system operator Transgaz has abused its dominant position by hindering gas exports from Romania to other EU Member States.

Romania is the third largest natural gas producer in the EU and Transgaz is the sole operator of the natural gas transmission system in Romania.

The investigation will focus on indications that Transgaz has devised a strategy to restrict gas exports from Romania to other Member States. This strategy may have been implemented through the use of:

- Interconnector transmission fees;
- Underinvestment or delays in the building of relevant infrastructure; and
- Un-founded technical arguments as a pretext to prevent or justify delays in exports.

Decisions

Commission fines three car lighting system producers €27 million in cartel settlement

Automotive Lighting and Hella have been fined €26,744,000 for participating in an automotive lighting cartel. Valeo was not fined as it revealed the cartel to the Commission. All companies admitted their involvement in the cartel and agreed to settle.

The Commission's investigation revealed that, for more than three years, Automotive Lighting, Hella and Valeo coordinated prices and other trading conditions for the supply of vehicle lighting systems across the EEA.

The 3 companies met at trade fairs, on the margins of supplier days organised by customers, during customer visits, but also independently of such events. During these meetings, the companies discussed quotes for tenders and negotiation strategies and exchanged information on the status of negotiations with customers regarding price increases, as well as other information. In addition, the parties agreed that they should aim for a price increase on spare parts after the end of mass production of specific car models, and coordinated how long after that they would end contractual availability of the spare parts in question.

Director sentenced for price-fixing

On 31 May 2017, the Central Criminal Court convicted and sentenced both Aston Carpets and Flooring and a director of the company for engaging in bid-rigging in the procurement of flooring contracts for major international companies between 2012 and 2013. Separately, the director in question was also convicted of impeding a criminal prosecution.

The court imposed a three-month suspended sentence and a fine of €7,500 on the director of Aston Carpets and Flooring as well as disqualifying him from acting as a company director for a period of five years. A fine of €10,000 was imposed on the company itself.

This decision comes after an investigation by the CCPC. For further information, please see the news bulletin on our website dated 22 May 2017.

Commission accepts commitments from Amazon on e-books

A decision has been adopted by the Commission that renders the commitments offered by Amazon legally binding. Such commitments are in response to the Commission's preliminary competition concerns in relation to a number of clauses in Amazon's distribution agreements with e-book publishers in Europe.

The clauses in question required publishers to offer Amazon similar (or better) terms and conditions as those offered to its competitors and/or to inform Amazon about more favourable or alternative terms given to its competitors. The clauses covered not only price but many aspects that a competitor can use to differentiate itself from Amazon, such as an alternative business (distribution) model, an innovative e-book or a promotion.

Following this decision, Amazon will no longer enforce or introduce these clauses in its agreements with publishers.

Practice Note

Amendments to German merger control thresholds

The German merger control thresholds have been amended.

A mandatory merger control filing is now required if either of the following two tests are satisfied:

Test 1

- the combined annual worldwide turnover of all the undertakings concerned exceeds €500 million;
- one of the undertakings concerned has an annual turnover in Germany of more than €25 million; and
- one other undertaking concerned has a turnover in Germany of more than €5 million.

Test 2

- the combined annual worldwide turnover of all the undertakings concerned exceeds €500 million;
- one of the undertakings concerned has an annual turnover in Germany of more than €25 million, but neither the target nor another undertaking concerned has a turnover in Germany of more than €5 million;
- the value of the consideration for the transaction exceeds €400 million; and
- the target undertaking is active in Germany to a significant extent.

Merger determination

Silvereed/Tombolo

This case involved the proposed acquisition by Silvereed Unlimited of Tombolo Limited and its wholly-owned subsidiary Faughan Foods Limited.

There was a horizontal overlap between the activities of the parties in the State as both parties were involved in the production and supply of cooked bulk beef and pre-packed beef products to wholesalers and retailers in the State.

The CCPC did not need to define the precise relevant product market in this instance as the competitive impact of the proposed transaction would be unaffected whether the product market was narrow (eg the production and supply of cooked bulk beef and pre-packed beef products) or broader (eg the production and supply of non-poultry cooked meats). However, in order to determine whether the proposed transaction might result in a substantial lessening of competition, the CCPC analysed its impact by reference to the narrowest potential relevant product market.

In relation to non-poultry cooked meats, the CCPC considered that the increase in market share following implementation of the proposed transaction would be minimal. Furthermore, the combined entity would continue to face competition from other competitors.

While the CCPC considered that both parties had a strong presence in producing cooked bulk beef and pre-packed products and supplying those products to major wholesalers, vertically integrated multiples and retailers in the State, the CCPC considered that post-transaction the combined entity would continue to face competition from branded cooked beef suppliers and competitors in relation to the production and supply of own-label cooked bulk beef and pre-packed beef products in the State.

The CCPC therefore concluded that the proposed transaction would not substantially lessen competition in any market for goods or services in the State.



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