GT Newsletter | Competition Currents | January 2024

A monthly newsletter for Greenberg Traurig clients and colleagues highlighting significant recent developments in global antitrust and competition law.

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Competition Currents: 2023 Year in Review and 2024 Forecast Webinars

Jan. 30, 2024 | Part I (criminal and civil investigations, disputes, and enforcement: United States, Latin America, and Europe)

Jan. 31, 2024 | Part II (merger control trends, key deals, and significant regulations: United States, Latin America, and Europe)

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[1] Due to the terms of GT's retention by certain of its clients, these summaries may not include developments relating to matters involving those clients.

United States

A. Federal Trade Commission (FTC)

1. *FTC sues 7-Eleven for anticompetitive acquisition in violation of consent order*.

On Dec. 4, 2023, the FTC sued 7-Eleven, Inc. and its parent company, Seven & I Holdings Co., Ltd., in the U.S. District Court for the District of Columbia, alleging that by acquiring a certain fuel station in St. Petersburg, Florida without first notifying the FTC, 7-Eleven engaged in anticompetitive behavior, violated an existing consent order, and likely allowed for higher fuel prices at certain locations.

The FTC's consent order arose out of 7-Eleven's 2018 acquisition of over 1,000 fuel stations from Sunoco. 7-Eleven and Seven & I Holdings agreed to be bound by the 10-year consent order to settle FTC charges that the acquisition would harm competition for gas and diesel fuel in certain markets, and ultimately result in higher prices for consumers. Among other requirements, the order prohibited 7-Eleven from acquiring certain Sunoco stations. The FTC accused 7-Eleven of a "blatant and undisputed violation" because the consent order specifically listed the St. Petersburg location as one that 7-Eleven could not acquire without first notifying the FTC. The FTC also alleged that 7-Eleven had submitted false compliance reports related to the order. The FTC seeks civil penalties of over $77 million (the maximum civil penalty given when the alleged violation first occurred).

2. *FTC, DOJ, and HHS announce partnership to address competitive concerns in the health care market*.

On Dec. 7, the FTC, Department of Justice (DOJ), and Department of Health and Human Services (HHS) announced their joint effort to preserve competition and lower health care costs by partnering on various initiatives. One such initiative is a joint request for information designed to collect data on the effects of private equity and other corporations' increased stakes in health care. The press release issued listed the steps each agency has taken to advance these goals over the past couple of years (including last year's joint DOJ-HHS Memorandum of Understanding), explained that the Agencies are advancing a whole-of-government approach, and stated that they will engage in data-sharing to the extent possible, with each agency also naming its own health care competition officers.

3. *FTC seeks to block Sanofi's acquisition of exclusive license to Pompe disease drug from Maze Therapeutics; Sanofi subsequently terminates acquisition agreement*.

On Dec. 11, 2023, the FTC sued to block Sanofi's acquisition of an exclusive worldwide license to Maze Therapeutics Inc.'s developmental Pompe disease drug. Sanofi and Maze Therapeutics had announced the exclusive license agreement in May 2023. In its lawsuit, the FTC alleged that the acquisition would eliminate an emerging competitor to Sanofi's monopoly in the Pompe disease therapy market, thereby threatening to stifle innovation and deprive patients of lower drug prices. Several days after the FTC issued its administrative complaint and authorized a federal court lawsuit, Sanofi announced it would terminate its acquisition agreement, and on Dec. 13, given Sanofi's announcement, the FTC moved to dismiss its challenge. The FTC called Sanofi's decision to terminate the acquisition "a big win for patients and an important victory for the FTC" and said that Sanofi and Maze can now "continue to compete on the merits" and offer patients better treatment at better prices.

4. *FTC and California attorney general dismiss case challenging John Muir Health's proposed acquisition of San Ramon Medical Center after parties terminate deal*.

On Dec. 18, 2023, the FTC and the state of California moved to dismiss their case challenging John Muir Health's proposed deal to acquire sole ownership of San Ramon Regional Medical Center, LLC from current majority owner Tenet Healthcare Corporation following the announcement of the deal's termination by the parties. The FTC called the deal's termination "another major health care win," saying "John Muir's anticompetitive hospital takeover would have driven up health care costs for critical services like heart surgery, spinal surgery, and maternity care."

The FTC, along with the California attorney general, had sued, on Nov. 17, 2023, to block John Muir Health's proposed acquisition of Tenet's remaining interest in San Ramon Medical Center. The lawsuit sought a temporary restraining order and preliminary injunction in the U.S. District Court for the Northern District of California. However, on Dec. 15, John Muir announced the deal would be terminated.

5. *FTC and DOJ release 2023 Merger Guidelines*.

On Dec. 18, 2023, after months of public engagement, the FTC and DOJ jointly issued their 2023 Merger Guidelines, which describe the factors the agencies use when reviewing mergers and acquisitions. The new guidelines revise and replace all previous iterations of merger guidelines.

In response to release of the draft 2023 Merger Guidelines for public comment in July 2023, the agencies received over 30,000 comments reflecting the views of consumers, workers, farmers, organizations, attorneys, and many others. FTC Chair Lina Khan explained that these comments "directly informed" the new 2023 Guidelines, and that the Guidelines now "reflect the new realities of how firms do business in the modern economy and ensure fidelity to statutory text and precedent."

The 2023 Merger Guidelines set forth core principles that will impact merger review under the revised Guidelines, namely that "mergers raise a presumption of illegality when they significantly increase concentration in a highly-concentrated market," and that mergers can also violate the law when they: (a) eliminate substantial competition between firms; (b) meaningfully increase the risk of anticompetitive coordination; (c) eliminate or foreclose a potential entrant in a concentrated market (considering the reasonable feasibility and probability of entry); (d) create a firm that may limit access to products, services, or routes to market that its rivals use to compete; or (e) extend or entrench a dominant position.

Also, where an industry undergoes a trend toward consolidation, the agencies will consider whether that consolidation trend "increases the risk that a particular merger may substantially lessen competition or tend to create a monopoly." Similarly, the Guidelines also set forth the principle that when a merger is part of a series of multiple acquisitions, the agencies may examine the entire series of acquisitions and consider the "cumulative effect" of the pattern or strategy of acquisitions when applying the other guidelines to that merger.

Further, when a merger involves a multi-sided platform, the agencies examine competition "between platforms, on a platform, or to displace a platform." Therefore, the agencies make clear they will consider the distinctive characteristics of multi-sided platforms.

Additionally, where a merger involves competing buyers – including competing employers – the agencies will examine whether the merger may substantially lessen competition for suppliers, workers, or other providers.

When an acquisition involves minority interests, the agencies may still examine the acquisition's impact on competition and apply the Merger Guidelines to assess whether the acquisition may substantially lessen competition.

6. *FTC issues statement regarding Illumina's decision to divest Grail.*

On Dec. 18, 2023, the FTC issued a statement regarding Illumina Inc.'s decision to divest Grail, Inc. On Dec. 15, the U.S. Court of Appeals for the Fifth Circuit issued an opinion supporting the FTC's argument that the Illumina-Grail acquisition threatened competition in the market for cancer detection tests. The FTC, which originally challenged Illumina's acquisition of Grail in March 2021, called the divestment decision "a major win for the FTC as it works to protect competition in health care" and "a victory for patients who need affordable, high-quality quality cancer detection tests." The FTC also said that the Fifth Circuit ruling acknowledges the ways vertical combinations can threaten competition.

B. Department of Justice (DOJ)

1. *Antitrust assistant attorney general Kanter issues statement after Adobe and Figma abandon merger.*

On Dec. 18, 2023, Adobe, Inc. and Figma, Inc. announced that they were abandoning their proposed $20 billion merger, with Figma Co-Founder and CEO Dylan Field saying that 15 months into the regulatory review process, the companies no longer saw a path toward regulatory approval of the acquisition. Assistant Attorney General Jonathan Kanter said in response: "The decision to abandon this acquisition ensures that designers, creators, and consumers continue to get the benefit of the rivalry between the two companies going forward."

2. *DOJ Antitrust Division and FTC jointly issue Fiscal Year 2022 Hart-Scott-Rodino Notification Report.*

On Dec. 21, the FTC and the DOJ Antitrust Division jointly issued the Fiscal Year 2022 Hart-Scott-Rodino Notification Report, which provides data on the Hart-Scott-Rodino (HSR) program from Oct. 1, 2021, through Sept. 30, 2022.

The report showed that during this period 3,152 transactions were reported under the HSR Act, which, the FTC noted, is the second-highest number of reported transactions over the past 10 years. Of this total number, 47 (1.60%) were issued a second request (which is largely consistent with the average number of second requests issued over the last 10 years). The report also noted that during FY2022 the agencies received 74 post-consummation corrective filings and brought two civil penalty actions for non-compliance, resulting in $1.89 million in penalty fees.

During FY2022, the FTC and DOJ together filed 50 merger enforcement actions – the highest level of enforcement activity in more than 20 years. These actions aimed at numerous economic sectors. The DOJ Antitrust Division filed six cases that resulted in active litigation: (1) *United States v. Bertelsmann SE & Co. KGaA, Penguin Random House, LLC, ViacomCBS, Inc., and Simon & Schuster, Inc.*, 1:21-cv-02886 (D.D.C. filed Nov. 02, 2021); (2) *United States v. United States Sugar Corp., United Sugars Corp., Imperial Sugar Co., and Louis Dreyfus Co. LLC*, 1:21-cv-01644-UNA (D. Del. Filed Nov. 23, 2021); (3) *United States, State of Minnesota and State of New York v. UnitedHealth Group Inc., and Change Healthcare Inc.*, 1:22-cv-00481 (D.D.C. filed Feb 24, 2022); (4) *United States v. Grupo Verzatec S.A. de C.V., Stabilit America, Inc, Crane Co., and Crane Composites, Inc.*, 1:22-cv- 01401 (N.D. Ill. Filed Mar. 17, 2022); (5) *United States v. Booz Allen Hamilton Holding Corp., Booz Allen Hamilton Inc., Everwatch*

Corp., EC Defense Holdings, LLC, and Analysis, Computing & Engineering Solutions, Inc., 1:22-cv-01603-CCB (D. MD. Filed June 29, 2022); and (6) *United States v. ASSA ABLOY AB and Spectrum Brands Holdings, Inc.*, 1:22-cv-02791-ABJ (D.D.C. Nov. 03, 2022). The Antitrust Division also filed complaints and proposed settlements in four matters.

During the same period, the FTC initiated federal court litigation or administrative proceedings in six cases, and accepted for public comment and finalized consent orders related to 11 mergers.

C. U.S. Litigation

1. *Zillow Group, Inc. and ShowingTime.com, LLC v. Arizona Regional Multiple Listing Service, Inc., Multiple Listing Service, Inc., and MLS Aligned, LLC*, Case: 2:23-cv-02701-MTL (D. Ariz.) (Dec. 22, 2023).

Zillow Group, Inc. and ShowingTime.com, LLC sued real estate listing services Arizona Regional Multiple Listing Service, Inc., Multiple Listing Service, Inc. and MLS Aligned, LLC in Arizona federal court to stop them from allegedly attempting to monopolize the market for real estate management services in the geographic regions they control and from unlawfully conspiring to exclude or limit ShowingTime in those markets. ShowingTime, which Zillow acquired in 2021, provides software and services that help real estate agents automate and streamline the process of making appointments to show or tour listed properties. The lawsuit alleges that, through phasing out access to ShowingTime on their respective platforms, the MLSs seek to establish and maintain a monopoly and to steer users to their own rival product, Aligned Showings. Zillow and ShowingTime argue the MLSs have continued with this conduct despite many customers' preferences for ShowingTime's services. Zillow and ShowingTime seek an injunction to stop the allegedly anticompetitive behavior, a judgment that the MLSs' conduct violates Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1, 2, and compensatory and treble damages. They have requested a jury trial.

2. *Ohio, et al. v. NCAA*, Case No. 1:23-cv-00100, In the United States District of West Virginia.

On Dec. 15, the NCAA and the seven states that challenged the NCAA's transfer rules limiting the ability of a student athlete to play when transferring schools a second time agreed to turn the Court's Dec. 13 temporary restraining order into a preliminary injunction extending for the entire 2023-24 season, pending a full trial on the merits. The attorneys general for Ohio, West Virginia, and five other states had sued to block the NCAA's transfer rule, which prevented athletes who transfer a second time during their collegiate career from competing immediately absent an NCAA granted waiver. Under the NCAA's now-blocked rule, a player could receive immediate eligibility if they had a physical injury or mental health condition that pushed them to transfer from a school. The NCAA would also consider "exigent circumstances" that could force a player to leave an institution, such as sexual assault or abuse. The attorneys general argued that the rule was enforced arbitrarily, with some waivers approved and others denied for unclear reasons. The lawsuit also alleged that requiring athletes to sit out for a year after transferring could mean lost potential earnings from endorsement deals with their name, image, and likeness (NIL) or professional careers. The suit pointed to exposure from competing in national broadcasts, noting: "One game can take a college athlete from a local fan favorite to a household name." A trial is set after the spring season is completed.

Mexico

Cofece issues recommendations to promote free competition in card payment reception services.

In collaboration with the National Bank of Mexico (Banco de México or Banxico) and the National Banking and Securities Commission (Comisión Nacional Bancaria y de Valores or CNBV), the Plenary of the Federal Commission of Economic Competition (Cofece or Commission) issued to improve competitive conditions and free market access for card payment reception services.

Cofece indicated that, to accept card payments, businesses hire acquirers or aggregators who act as intermediaries between said establishments and the card issuers. Thereafter, each transaction has two types of commission: the exchange fee, covered by the acquirer to the card issuer when a payment is made in the business; and the discount rate, which the business pays the acquirer or aggregator, typically proportional to the value of the purchase and in accordance with the line of business.

According to Cofece, the opinion complements other Commission actions in the sector, among them, the September 2023 resolution establishing the lack of effective competition in the domestic transaction processing service market provided by clearing houses for card payments, consisting of routing, compensation, and settlement.

Regarding the services offered to businesses, Cofece identified areas of opportunity to promote competition in this market:

- Exchange fees that businesses pay are higher when they do not identify the business line they are engaged in. This means that businesses that do not register with their suppliers pay higher commissions.
- The information on exchange fees and discount rates published by Banxico may be difficult to access for businesses to consult and decide on the card payment reception provider that best suits them and fits the characteristics of their business.
- The legal framework establishes that contracts and agreements must contemplate a non-discriminatory dispute resolution process, expeditious and free of conflicts of interest, so these principles must be common knowledge and be observed in practice by all market participants.

Consistent with the above, Cofece recommended to Banxico and the CNBV, within the legal framework of their respective attributions, that

- the mechanism to implement the natural rate by exception be made more flexible, thereby allowing lower exchange fees that translate into lower discount rates for businesses. This recommendation complements Cofece's resolution on the regulation of exchange fees.
- they ensure that in practice the established mechanisms guarantee aggregators legal certainty vis-à-vis acquirers and other participants in the payment network in the event of a dispute.
- they generate mechanisms to disseminate information that makes it easier for businesses to make more informed decisions regarding the prices and benefits associated with the services offered by aggregators or acquirers, so that they can choose the service provider that best suits their needs.

The Netherlands

Dutch Authority for Consumers and Markets (ACM)

ACM issues fines on carrot companies.

The ACM fined four carrot companies more than EUR 2,5 million for dividing the production, processing, and sale of different types of carrots among themselves, thus restricting competition. The agreements between Laarakker, VanRijsingen, Veco and Verduyn had a 10-year term. All companies acknowledged the violation and cooperated in the procedure after the ACM conducted dawn raids.

Poland

A. Scott bikes distributor investigated for alleged anticompetitive practices.

The President of the Office of Competition and Consumer Protection (UOKiK President) has launched antimonopoly proceedings against Scott Sportech Polska sp. z o. o., an exclusive distributor of Scott bikes in Poland.

The company sells Scott bikes to independent retailers who then resell them to customers. The UOKiK President is concerned about the practice of prohibiting the retailers from reselling bikes online. Based on information provided in the UOKiK President's press release, retailers were only allowed to use their websites to present offers of the products, but a customer seeking to purchase a bike online had to be referred to a brick-and-mortar store. Additionally, according to the UOKiK President, retailers were prohibited from offering their products on third-party platforms, and Scott monitored whether retailers complied with the imposed restrictions.

In the UOKiK President's view, such arrangements could lead to the division of the market, as competition in particular territories was either restricted or entirely eliminated (where there was only one retailer in the given geographic area).

Under Polish law, a company involved in a competition-restricting agreement may be fined up to 10% of its turnover in the preceding year, while individual managers responsible for carrying out the collusion face a penalty of up to PLN 2 million. Anticompetitive provisions are null and void. Entities harmed by an anticompetitive agreement may also seek damages in civil court. Proceedings against Scott are pending.

Notably, this is not the UOKiK President's first intervention in the bicycle distribution sector. Earlier in 2023, a distributor of Merida bikes was fined (PLN 2.5 million, i.e., approx. EUR 0.6 million, USD 0.6 million) for restricting its resale partners' ability to sell bikes online.

B. UOKiK imposes PLN 87 million fine on Auchan Poland for unfair use of contractual advantage.

The UOKiK President issued a decision imposing a fine exceeding PLN 87 million (approx. EUR 19.9 million, USD 22.2 million) on Auchan, a large retail chain in Poland with over 100 super- and hyper-markets across Poland, for unfair use of contractual advantage in its relationships with entities supplying food and agricultural products to retail stores.

According to the UOKiK President, Auchan charged its suppliers with additional fees for transport of products from Auchan's main warehouse to particular retail stores.

The UOKiK President established that Auchan's model of distribution is centralized, meaning that suppliers deliver their products to a main warehouse, from which Auchan distributes them further to particular retail stores. According to the UOKiK President, such model is characteristic for large retail chains and works in their favor, as it improves their competitive position. Therefore, transport from a warehouse to retail stores is not an additional service provided to suppliers, but rather an essential element of the retail chain's business model. As a result, the UOKiK President assessed that Auchan's practices are prohibited, as they amount to financing Auchan's own business activities at its suppliers' expense. In addition to the fine, the UOKiK President ordered Auchan to cease such practices.

The UOKiK President's decision is not final, and Auchan may appeal from it within one month of receipt.

According to the press release, the UOKiK President currently is conducting proceedings regarding similar practices against another major retail chain in Poland – Carrefour – another example that retail chain business practices are under regulatory scrutiny.

Italy

A. Italian Competition Authority (ICA)

1. *ICA accepts Autostrade per l'Italia S.p.A. and AISCAT - Associazione Concessionarie Autostradali Italiane commitments regarding an alleged abuse of dominant position.*

On Dec. 14, 2023, the ICA closed its investigation into the alleged infringement of Article 102 TFEU in the national electronic toll system market, by accepting the commitment presented by Autostrade per l'Italia S.p.A. (ASPI), the leading motorway operator in Italy, and AISCAT - Associazione Concessionarie Autostradali Italiane (AISCAT), the association for the Italian motorway operators (mentioned in the November 2022 Competition Currents).

In 2022, UnipolTech S.p.A., which developed an electronic toll device to compete with the incumbent device, Telepass, filed a complaint with ICA. Upon review, ICA found that ASPI potentially exploited its leading role within AISCAT to hinder the entry of new competitors in the national electronic toll system.

In particular, according to ICA, ASPI diverted potential new market entrants toward the European Electronic Toll System (EETS) and the Interoperable Electronic Toll System for heavy vehicles; systems that are more burdensome than Telepass, both in terms of accreditation requirements and contractual conditions. Furthermore, ASPI was investigated for having presumably hindered the implementation of the EETS on Italian motorways.

Therefore, the investigated parties promised to eliminate discrimination between Telepass and Unipol's toll system technology via equal accreditation procedures, tariffs and contractual terms, and the renovation of motorway toll gates and signage. ICA deemed the commitments sufficient to address their competition concerns.

2. *ICA closes investigation into Telecom Italia S.p.A., finding the contested conduct does not constitute an abuse of a dominant position.*

On Dec. 18, 2023, ICA closed its investigation into Telecom Italia S.p.A. (TIM) regarding an alleged abuse of dominant position deriving from the refusal to provide competitor access to its mobile coverage maps in the context of a public tender. (See January 2023 Competition Currents for additional background.)

In fact, TIM, the former national telecommunication monopolist operator, allegedly rejected multiple requests by competitor Fastweb S.p.A. to access certain information concerning TIM's network, including its mobile coverage maps, which were deemed necessary by Fastweb to formulate offers in the context of a major tender run by Consip S.p.A., the central purchasing body of the Italian public administration, for the supply of public phone services.

According to ICA's most recent decisions, TIM's conduct did not constitute an abuse of dominant position since, among other things, the tender procedure was not awarded to TIM, but to the competitor Vodafone Italia S.p.A., with Fastweb in second place. TIM's denial of the information was deemed irrelevant for the outcome of the tender, as the relevant data would not have given Fastweb a significant advantage over the competing offers. ICA also acknowledged that the Italian Council of State (ruling on the appeal by Fastweb concerning ICA's denial of *interim measures* against TIM) had found that information on TIM's mobile coverage maps were to be considered commercial secrets.

TIM allegedly denied access to its coverage maps for reasons of confidentiality and proposed alternative methods, including the display of coverage rates at the municipal level, following the signing of confidentiality agreements, and the provision of the specific coverage maps directly to Consip, subject to third-party confidentiality, in the event of award by Fastweb. However, ICA found that TIM's conduct could amount on its face to an abuse of dominant position as the company, which for years had provided the service concerned by the tender, would be given a competitive advantage through its knowledge of the concrete needs of the public administrations to which the service would have to be provided. ICA has set a 60-day deadline for the parties to make requests for hearings.

3. *ICA fines Facile Ristrutturare S.p.A. and Renovars S.p.A. EUR 4.5 million for unfair and deceptive business practices*.

On Dec. 19, 2023, ICA closed the investigation into Facile Ristrutturare S.p.A. (FR) and its parent company, Renovars S.p.A., for unfair and deceptive business practices in the residential property renovation business.

According to ICA, the companies spread fake positive reviews via online review platforms Trustpilot and Opinioni.it. ICA traced the false reviews back to FR employees. Moreover, the message "98% satisfied customers" on FR's website was false. Such conduct sought to create the impression of a higher level of customer satisfaction than existed in reality.

In addition, the preliminary investigation revealed that FR applied a hidden cost to consumers in the event of a preferential VAT rate when the finishing materials for renovations were purchased by consumers through FR and from its partner suppliers. The VAT would normally be 22% but could be as low as 10% under the preferential rate. FR padded its prices to make it seem like the normal VAT rate applied, pocketing the extra revenue.

Therefore, according to the ICA, FR and Renovars violated Articles 20, 21 and 22 of the Italian Consumer Code and imposed a total fine of EUR 4.5. million to both companies jointly. The decisions can be appealed before Lazio Administrative Tribunal within 60 days.

4. *ICA fines Balocco S.p.A. Industria Dolciaria and several companies linked to Ms. Chiara Ferragni for alleged unfair commercial practice in relation to the advertising of Chiara Ferragni branded limited edition pandoro*.

On Dec. 14, 2023, ICA fined Fenice S.r.l. and TBS Crew S.r.l., which manage the trademarks and rights relating to the personality and personal identity of Italian influencer Ms. Chiara Ferragni, more than EUR 1 million, and Balocco S.p.A. Industria Dolciaria EUR 420,000 for unfair commercial practices.

According to the ICA, the companies led consumers to believe that by purchasing Balocco's Chiara Ferragni-branded "Pink Christmas" *pandoro* (a traditional Italian Christmas sweet yeast bread), they would contribute to a donation to the Regina Margherita Hospital in Turin for the purchase a new machine for the treatment of children suffering from Osteosarcoma and Ewing's Sarcoma. The donation, amounting to EUR 50,000, had instead already been made by Balocco alone months earlier. The companies traceable to Chiara Ferragni earned more than EUR 1 million from the initiative, as consideration for the license of Ms. Ferragni's trademarks and advertising content.

In particular, the unfair practice consisted in making consumers believe – in press releases, the products' packaging and in the posts and stories on Ms. Ferragni's social channels – that the price of the branded pandoro, which was much higher than that of the same ordinary product, would have contributed to the donation. In addition, consumers were led to believe that Ms. Ferragni directly participated in the donation, circumstances which proved untrue.

In light of the above, ICA found that the conduct considerably restricted consumers' freedom of choice by appealing to their sensitivity towards charitable initiatives, in particular those in aid of children suffering from serious illnesses, and was characterized by deceit, in violation of Articles 20, 21 and 22 of the Italian Consumer Code. ICA's decisions can be appealed before Lazio Administrative Tribunal within 60 days.

European Union

A. European Commission

1. *European Commission sends statement of objections to car battery cartel*.

The European Commission has informed five companies (Banner, Clarios, Exide, FET and Rombat) in its statement of objections of its preliminary view that they have breached EU antitrust rules by increasing the prices of automotive starter batteries sold to car producers in the European Economic Area. This conduct – which is suspected to have taken place from 2004 to 2017 – allegedly aimed to control a crucial part of the ultimate battery price. Furthermore, the European Commission suspects that a trade association (Eurobat) and its service provider (Kellen) were aware of and were actively involved in this practice.

2. *European Commission issues fines on ethanol producer*.

The European Commission has fined Lantmannen, the largest ethanol producer in the Nordic region, and its subsidiary, Lantmannen Agroetanol, EUR 47.7 million for participating in a cartel regarding the mechanism for wholesale price formation for ethanol in Europe. The European Commission's investigation showed a single and continuous infringement of Article 101(1) of the Treaty on the Functioning of the European Union between 2012 and 2014.

3. *European Commission conditionally clears Novozymes and Christian Hansen merger*.

The European Commission has approved the proposed merger between Novozymes and Chr. Hansen, subject to full compliance with the commitments offered by the parties. The offered divestment package addressed Commission concerns that the proposed merger would reduce competition in the market for the manufacture of lactase (one specific enzyme) using genetic modification technology. The divestment covers (i) Chr. Hansen's project to enter the market for the manufacture of lactase; (ii) Chr. Hansen's lactase distribution business; and (iii) Novozymes' lactase production facility.

B. European Court of Justice

ECJ finds FIFA and UEFA abused dominant position in Super League ruling.

The European Court of Justice (ECJ) has ruled in the highly anticipated Super League case that FIFA and UEFA abused their dominance when they banned football clubs from separating to form a European Super League. The rules that FIFA and UEFA had imposed requiring clubs to seek approval from FIFA and UEFA lacked a framework to ensure that the rules were transparent, objective, non-discriminatory and proportionate. The ECJ also found that the UEFA rules on home-grown football players could be anticompetitive and that further FIFA and UEFA rules relating to the exploitation of media rights would restrict competition.

The ECJ also noted that it can be permitted – and thus legitimate – to subject an organization and international professional football competitors to common rules, and that mechanisms of prior approval, such as those put in place by FIFA and UEFA to ensure compliance with these common rules, may be acceptable provided the rules and their application are predictable.

Japan

A. Business improvement order issued to non-life insurance companies.

On Dec. 26, 2023, the Japan Financial Services Agency (JFSA) issued a business improvement order based on the Insurance Business Act to four major non-life insurance companies for preadjusting premiums for corporate insurance. These companies are suspected of having adjusted in advance the level of premiums and group discount rates to be offered, mainly for joint insurance for major companies (a system in which insurance is underwritten by multiple companies to diversify risks). A total of 576 contracts for private companies and local governments were found to have been subject to this allegedly inappropriate behavior.

The JFSA has requested that the business improvement plan include clarification of management responsibility, improvement of the environment for conducting proper competition in the field of corporate insurance, including joint insurance, and drastic reinforcement of compliance and governance systems. The four companies will submit their business improvement plans to the JFSA by the end of February 2024.

B. On-site inspections conducted on four non-life insurance companies for suspicions of violations of the Antimonopoly Act.

On Dec. 19, the Japan Fair Trade Commission (JFTC) conducted on-site inspections of four major non-life insurance companies and their agents on suspicion of violating the Antimonopoly Act. As mentioned above, the JFSA also issued a business improvement order under the Insurance Business Act. These companies are suspected of violating the Antimonopoly Act by forming a cartel to agree in advance on premiums to be received from contracting companies through prior discussions for joint insurance.

In addition, the companies are suspected of engaging in bid-rigging to fix winning bids and prices in advance when bidding for insurance contracts with the Tokyo Metropolitan Government and independent administrative agencies.

The JFTC is expected to investigate the actual state of coordination among the four major companies, which account for 80% of premium income or sales in the non-life insurance industry, and to order the payment of a surcharge or other measures if violations are found.

Read previous editions of GT's Competition Currents Newsletter.

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