GT Newsletter | Competition Currents | July 2024

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

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United States

A. Federal Trade Commission (FTC) and Department of Justice (DOJ)

Justice Department and Federal Trade Commission seek information on serial acquisitions, roll-up strategies across U.S. economy.

In late May 2024, the FTC and DOJ Antitrust Division initiated a public inquiry to identify and address serial acquisitions and roll-up strategies that lead to harmful economic consolidation. They are requesting public input on acquisitions where companies, including private equity firms, buy multiple smaller firms within the same or related sectors, often without federal reporting, thereby gaining significant control over markets and allegedly stifling competition.

This inquiry seeks information across all industries, aiming to gather insights from a wide range of stakeholders to guide future enforcement actions. This effort aligns with ongoing government initiatives to scrutinize consolidation in health care markets and propose changes to premerger notification

[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.

requirements to better capture firms' acquisition histories. The public can submit comments on this matter until July 22, 2024, via Regulations.gov.

B. U.S. Litigation

1. *North American Soccer League LLC. v. U.S. Soccer Fed., Inc. and Major League Soccer, LLC, Case No. 17-cv-5495 (BMC) (E.D.N.Y.)*

On June 12, 2024, the U.S. District Court for the Eastern District of New York granted in part and denied in part defendant Major League Soccer (MLS)'s motion for summary judgment against plaintiff North American Soccer League (NASL). NASL asserted claims under Sections 1 and 2 of the Sherman Act against U.S. Soccer Federation (USSF) and MLS, alleging the defendants conspired "to exclude NASL and others from competing against MLS in the market for top-tier men's professional soccer leagues in the U.S. and Canada."

Founded in 2009 as a Division II league and sanctioned by U.S. Soccer, the NASL played its first season in 2011. However, NASL did not receive its U.S. Soccer sanction for the 2018 season and could no longer compete as a Division II league. NASL claimed that USSF unfairly applied the standards for sanctioning leagues, and offered circumstantial evidence of "parallel conduct by defendants." Defendants argued that "there is no document reflecting any such agreement" to unfairly apply the standards.

In denying summary judgment as to NASL's unreasonable restraint of trade claim, the court found that "a reasonable jury could find that defendants acted in concert or unilaterally" to apply the standards in a discriminatory manner, acknowledging "that is the whole point of circumstantial evidence, as unlawful conspirators rarely commit their plan to writing."

The court dismissed NASL's claim that the USSF standards for becoming a sanctioned league in and of themselves caused the league injury, and that because NASL lacks antitrust injury, it lacks antitrust standing because "each of the harms claimed by NASL are 'attributable' to defendants' application of the Standards, not the Standards themselves."

The court considered six Daubert motions, plaintiff's motion for partial summary judgment, defendants' cross-motion for partial summary judgment, and five motions to seal. The Daubert motions were granted in part and denied in part. The trial on NASL's Section II claim is scheduled for Sept. 9, 2024.

2. *Jessica Jones v. Varsity Brands, LLC, et al., Case No. 2:20-cv-2892-SHL-tmp (W.D. Tenn.)*

On June 20, 2024, the U.S. District Court for the Western District of Tennessee granted preliminary approval for an $82.5 million settlement between a class of cheer parents and the largest players in the American cheer industry.

The settlement stems from a class action brought in 2020 against athletic apparel giant Varsity Brands (Varsity), its founder Jeff Webb, two private equity investors, and U.S. All Star Federation (USASF), among others, to artificially inflate the price of cheer participation. Plaintiffs alleged anticompetitive conduct in cheer competition enrollments and apparel purchases, including (1) requiring participants to attend a Varsity-run cheer camp to be eligible for Nationals; (2) implementing a first-dollar rebate program to establish exclusive dealing arrangements that effectively foreclosed competition from the relevant markets; (3) implementing a "stay to play" policy that required teams participating in Varsity cheer competitions to stay at hotels pre-selected by Varsity that were more expensive than where participants might otherwise choose to stay; and (4) colluding with USASF to establish attendance limits for competitions and obtaining confidential information from USASF regarding rival programming so that Varsity could effectively "counterprogram" the competitions and lower their attendance levels below the required thresholds.

In addition to the monetary relief, the preliminarily approved settlement includes prospective injunctive relief addressing the anticompetitive conduct alleged.

3. *Prevent U.S.A. Corp. v. Volkswagen, AG, et al., Civil Action No. 2:22-CV-00506-JRG-RSP (E.D. Tex.)*

On June 24, 2024, the U.S. Court of Appeals for the Sixth Circuit issued a report recommending the court grant Volkswagen's motion to dismiss Prevent U.S.A.'s claims accusing Volkswagen of illegal restraint of trade, tortious interference, civil conspiracy, and monopolization. The recommendation to dismiss follows a Fifth Circuit order granting a writ of mandamus, overruling the magistrate's denial of Volkswagen's first motion to dismiss, and remanding the motion for a full *forum non conveniens* analysis. This case is the third iteration of ongoing litigation that began in and remains ongoing in Germany.

To analyze the motion on *forum non conveniens* grounds, the court first considered whether "an alternative forum was both available and adequate." The court found that Germany would be an available and adequate alternative forum, "as Prevent had made no showing" to the contrary. The court next considered whether "private interest factors" weighed in favor of dismissal. The court found that they overwhelmingly weighed in favor of dismissal, as "the heart of this action is Germany," where the sides have been engaged in litigation for several years and where the documents and witnesses (several of whom are already involved in similar litigation in Germany) are located. Because the case centers around allegation of anti-competitive conduct occurring primarily in Europe and Brazil, the court found it was "clear that the nexus of this action is German activity, and any U.S. activity would be similar and a subpart of the German activity for which evidence would come from Germany and Europe where Germany would be the clearly more convenient forum."

The court also relied on a Sixth Circuit ruling in a very similar action between the same parties in Michigan. There, the court found that because much of the evidence would "be in German . . . the German courts will be able to access these documents and witnesses far more conveniently than American courts could." Prevent USA Corp. v. Volkswagen AG, 17 F.4th 653, 660 (6th Cir. 2021). Finally, the court considered whether public interest factors weighed in favor of dismissal. While the court found these factors to be largely neutral, given that there is a similar action already being litigated in Germany, continuing the litigation in the United States "runs the risk of a conflicting ruling on the same basic set of facts." Based on his analysis, the magistrate judge recommended dismissing the action.

Mexico

A. COFECE identifies barriers affecting competition in federal passenger transportation.

The Investigative Authority (IA) of the Federal Economic Competition Commission (COFECE or Commission) has preliminarily identified barriers that allegedly hinder effective competition. CEFECE indicates that it considers federal passenger transportation to be the most popular means of transportation in Mexico. This service is divided into six types, determined by the characteristics of the vehicles, the amenities they offer, and how the service is provided: i) luxury, ii) executive, iii) first-class, iv) economy, v) mixed, and vi) land passenger transportation from and to seaports and airports.

The IA has concluded that there is not enough competition in first-class, luxury, executive, and transportation to and from ports and airports categories in any region of the country. In the economy category, the IA identified a lack of competition in the northwest region, which includes the states of Baja California, Baja California Sur, Sinaloa, and Sonora.

Six potential barriers to competition and free trade that could be affecting these markets have been identified. The first two are related to the alleged existence of various links between competitors in the federal passenger auto-transport service.

1. *Existence of relationships between competitors.*

The IA notes there are multiple partnerships, joint investments, and horizontal relationships between competitors in the passenger motor transportation service. Almost all of the country's large transportation companies have a relationship or business in common with someone else. This reduces rivalry and incentives to compete among them, facilitating anti-competitive behavior, as happened in 2022.

2. *Cross directories and contact spaces between competitors.*

Some individuals are part of management bodies of competing companies. In addition, the IA identifies multiple instances where executives from competing companies interact, especially in the management bodies of passenger terminals and in the National Chamber of Passenger and Tourism Auto Transport (CANAPAT). This can facilitate the exchange of sensitive information between competitors, encourage anti-competitive agreements, and harm market competition.

The four remaining barriers relate to the regulation in place for several decades.

3. *Regulatory obligation to have origin and destination passenger terminals provide passenger transport service.*

The current regulation requires the use of terminals for passenger boarding and disembarkation. However, the IA concluded that by meeting certain safety criteria in these processes, this service could be provided in places other than passenger terminals, diversifying passenger access to this service.

4. *Limited permitting of specific routes for providing passenger auto-transportation service.*

The restriction to a single authorized route for auto-transportation permits makes it difficult for companies to adapt to market changes to better serve passengers. This reduces their competitive responsiveness and reduces market dynamism.

5. *Discretion, opacity, and lack of transparency in passenger terminal operations.*

The lack of clear operational requirements hinders new businesses' ability to enter the market but helps established companies.

6. *Regulatory restriction against using vehicles other than buses to provide passenger auto-transport service.*

Companies wishing to offer passenger auto-transport services in the economy, first-class, luxury, and executive types must use buses with a capacity of more than 30 passengers. However, the use of other smaller vehicles could reduce operating costs and allow companies to serve a wider variety of routes and passengers.

In this context, the IA preliminarily states that these barriers to competition could be eliminated if the competing companies end their co-investments in auto-transport services and prevent the same individuals from making decisions for several different companies. Furthermore, it proposes that large companies and CANAPAT implement compliance programs to prevent violations of the Federal Economic Competition Law.

Likewise, in the preliminary opinion, the IA proposes a series of measures consisting of recommendations directed to the Ministry of Infrastructure Communications and Transport, the Chamber of Deputies, and the Senate, to modify the regulation and give greater dynamism to the passenger road transport service market.

Once the preliminary opinion has been issued, any person with legal interest can present arguments and evidence so that the Commission's Plenum can ultimately decide the outcome of the procedure and the measures that, if applicable, correspond.

B. COFECE finds indications of illegal agreements in medical test for newborns.

The IA has initiated an ex officio investigation to verify possible bid-rigging in the public acquisition of materials required to perform neonatal metabolic screening tests.

Neonatal metabolic screening is a clinical analysis carried out on newborns to identify congenital and hereditary diseases that, if detected early, can be timely treated. Since 1998, this test has been mandatory in Mexico for all newborns. COFECE alleges that the existence of collusive pacts in the acquisition of these tests could negatively impact the population, affecting the quality of life of children and potentially increasing the infant mortality rate in Mexico.

The IA has up to 120 business days from the start of the investigation which can be extended up to four times, to complete its inquiry. If investigators confirm the existence of illicit pacts, the implicated parties would be summoned to a trial-like procedure to present their defense.

If the proceeding confirms the existence of these illicit pacts, the companies could face fines of up 10% of their income, and the individuals involved could be sentenced to up to 10 years in prison.

C. COFECE sanctions a company and three people for manipulating the price of marine diesel.

The IA has sanctioned Combustibles Puerto de Abrigo Dzilam de Bravo, S.A. de C.V., as well as three individuals, for manipulating the selling price of marine diesel at service stations in Dzilam de Bravo, Yucatan. The imposed fines total 3,417,895 pesos.

Boats and other vessels use marine diesel, which is sold at gas stations near the coast or at the mouth of rivers. This fuel is critical for moving goods and products both within and outside the country, and it is also vital for tourism in coastal areas.

Once the matter is resolved and the parties notified, the sanctioned company and individuals have the right to petition the Federal Judiciary to review the legality of the Commission's actions.

The public version of the resolution can be found on the opinions and resolutions portal of the COFECE website within the legal deadline established in article 47 of the Regulatory Provisions of the LFCE.

The Netherlands

A. Dutch ACM decisions, policies, and market studies.

ACM approves merger between hospitals Maastricht UMC+ and St. Jans Gasthuis Weert

The Dutch competition authority (ACM) has approved Maastricht UMC+'s acquisition of St. Jans Gasthuis Weert. After an investigation, the ACM concluded that this acquisition would not adversely affect competition among hospitals or impact the bargaining power of health insurers.

The ACM's analysis concluded that the merger would enhance the quality and accessibility of services in the region without creating monopolistic conditions. The decision seeks to balance collaboration among health care providers and preserve market dynamics that benefit patients.

United Kingdom

A. UK Digital Markets, Competition and Consumers Act 2024

The Digital Markets, Competition and Consumers Act 2024 (DMCC) received Royal Assent on May 24, 2024. This long-awaited act, described by the CEO of the Competition and Markets Authority (CMA) as "flagship" legislation creating a "watershed moment," makes a number of important changes to the UK competition law landscape.

Although now on the statute books, the DMCC is not expected to take effect until the autumn of 2024, after secondary legislation has been passed – although the UK election announced for July 4, 2024, may cause some delay.

1. *A new UK digital markets regulatory regime.*

CMA's Digital Market Unit will administer a new digital markets regime, which has been active in shadow form for over three years. The CMA will have the power to designate firms as having strategic market status (SMS) in respect to digital activity linked to the UK. The formal designation process is likely to take several months and the designation itself will last five years, unless revoked. SMS status will apply only where the CMA estimates a firm's global group turnover as exceeding £25 billion or the firm's UK group turnover as exceeding £1 billion and establishes that the firm's digital activity gives it substantial and entrenched market power and a position of strategic significance.

Designated firms will be subject to conduct requirements, where the CMA considers these proportionate for the purposes of fair dealing for actual and potential customers, open choices for consumers of services and content, and sufficient information to create trust and transparency. Conduct requirements will include positive obligations relating to terms of service, complaint handling processes, information clarity and accessibility, and explanation and notice of changes to services and options and default settings. The designated firms must also meet obligations preventing them from discriminating unfairly, favoring their own products, shoring up their power and influence through other activities, tying other products to the digital activity that gives them SMS, restricting inoperability, restricting use of their services, using data unfairly, and restricting users' ability to use other firms' products.

The CMA can also stage pro-competitive interventions in the form of orders requiring designated firms to remedy any adverse effects on competition it finds they have caused and recommendations to public bodies regarding steps the CMA considers they should take to address these effects. It may also investigate and impose penalties.

2. *Changes to UK competition law.*

The UK competition law prohibition on anti-competitive agreements currently covers only those agreements implemented, or intended to be implemented, in the UK. The DMCC extends the prohibition to agreements implemented outside the UK and having, or being likely to have, an immediate, substantial, and foreseeable effect on trade in the UK.

Enhanced evidence-gathering powers will resolve some of the issues the CMA has faced in recent years:

- Power under warrant to seize and sift evidence at domestic (not just business) premises.
- Power to request firms under CMA investigation or with a UK connection to provide access to and copies of documents and information held outside the UK.

- Obligation on third parties to preserve evidence where they know or suspect the CMA is investigating or likely to investigate.
- Power to compel third parties such as competitors, customers, or suppliers of a firm under investigation to submit to interview and/or provide evidence.

The maximum penalty the CMA may impose on firms that fail to provide evidence will rise to 5% of global daily turnover.

3. *Changes to UK merger control.*

The UK merger control regime currently empowers the CMA to investigate any change of control in a business (acquisition of a shareholding of approximately 15% or more can be treated as a change of control) and when a transaction exceeds one of two alternative quantitative thresholds: either the target must have generated UK turnover exceeding £70 million in its last complete financial year, or the merger must involve two or more parties whose combined share of the UK supply of any product or service is at least 25%.

The DMCC will make three changes to these thresholds:

- An additional threshold: The CMA will have the power to investigate transactions involving one party that has an existing share of 33% of the supply of any products or services in the UK, or a substantial part of the UK and UK turnover exceeding £350 million, and another party that has a UK connection, meaning that it is established or carries on activities in the UK, or supplies goods or services to customers in the UK.
- Target turnover threshold: The £70 million turnover threshold will increase to £100 million.
- Small mergers exemption: A transaction involving parties whose groups generate less than £10 million will be exempt from investigation.

4. *Changes to consumer protections.*

For the first time, the CMA will have the power to take direct action against businesses that have infringed UK consumer protection laws, rather than having to apply to the courts. It will be able to investigate suspected infringements, issue infringement decisions and orders, accept undertakings, and impose penalties up to 10% of the infringer's annual group turnover or £300,000, whichever is higher.

There will be a new prohibition on commissioning or submitting fake reviews or publishing fake reviews without taking reasonable and proportionate steps to ensure they are authentic. It also strengthens consumer protections against hidden fees and drip pricing. A new regime for subscription contracts will take effect in the first half of 2026 to protect consumers against automatic contract renewal. Firms will be required to provide information on the content of the contract, including how to terminate the subscription, give a 14-day cooling-off period, issue reminders of the right to terminate before the end of a free or discounted trial period and allow consumers to terminate their subscription simply by communicating a clear statement of their intention to do so.

B. Competition Litigation

1. *Walter Hugh Merricks CBE v. Mastercard Incorporated and others [2024] CAT 41*

In this long-running set of collective proceedings, it is alleged that UK consumers paid higher prices in shops between 1992 and 2008 due to multilateral interchange fees set by Mastercard.

On June 19, 2024, the Competition Appeal Tribunal (CAT) issued a judgment on further issues of limitation, the effect of which is that the English law claims in this case are time-barred in respect of any loss suffered before June 20, 1997.

The CAT rejected the claimant's case, brought under section 32 of the Limitation Act 1980. In doing so, it found that Mastercard had not deliberately concealed relevant facts or deliberately committed a breach of duty, meaning the first five years of the Merricks' class action is time-barred.

2. *Advanz Pharma Corp. Limited and others, Cinven Capital Management (V) General Partners Limited and others, Lexon (UK) Limited and another and Alliance Pharmaceuticals Limited and another v. Competition and Markets Authority [2024] CAT 36.*

On June 14, 2024, the CAT refused a CMA application for a deadline extension to apply for permission to appeal the tribunal's judgment.

Under the CAT rules, an application for permission to appeal must be made within three weeks of notification of a CAT decision. The CMA applied for a two-week extension, which the other parties opposed. The lack of prejudice to the other parties was not determinative; it was for the CMA to show there were special reasons to justify the departure from the normal three-week deadline. However, CMA did not explain its efforts to comply with the deadline or the obstacles preventing timely compliance. Exercising its discretion, CAT refused CMA's extension request.

3. *PSA Automobiles SA and others v. Autoliv AB and others [2024] EWCA Civ 609*

On June 5, 2024, the Court of Appeal published its judgment upholding the CAT's earlier rulings that gave the defendants permission to rely on only one joint expert in the field of competition economics.

The court and the CAT held that the tribunal has a duty to restrict expert evidence to that reasonably necessary to decide the case. The Court of Appeal found the CAT's reasoning in favor of restricting the expert evidence of the defendants to a single joint expert on competition economics compelling. The judges deciding the case would otherwise be faced with a multiplicity of economic models and parameters.

The Court of Appeal, therefore, concluded that the CAT was right in finding no material conflict of interest between the defendant groups and made no error of law in reaching the conclusion that a single joint expert should be appointed between them.

Poland

A. UOKiK Investigates Garmin Polska for Potential Price-Fixing

The President of the Office of Competition and Consumer Protection (UOKiK) initiated searches conducted with police assistance at Garmin Polska's headquarters and at three additional companies. Garmin Polska produces smartwatches and other electronic devices, particularly devices built with GPS. After receiving information from third-party sources, UOKiK suspected price-fixing practices for smartwatches and other devices within Garmin's distribution network. Moreover, according to UOKiK, initial analysis revealed that prices for Garmin products in online stores were consistently similar, further raising suspicions of price-fixing.

Formal proceedings have not been initiated against Garmin or any other company involved. According to UOKiK, initiation of formal antitrust proceedings and bringing charges against the implicated entities will depend on the evidence collected during the searches.

Under Polish law, a company involved in competition-restricting practices may be fined up to 10% of its turnover in the preceding year. Moreover, fines may also be imposed on the entity exercising a decisive influence on the infringing party (e.g., its shareholder). At the same time, individual managers responsible for carrying out the collusion may 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.

B. UOKiK approves joint ventures by beverage producers for the new deposit return system for plastic bottles and metal beverage containers.

UOKiK unconditionally approved the creation of joint ventures by beverage producers, to operate the new deposit return system (DRS) and take effect Jan. 1, 2025. The DRS aims to increase plastic bottle and metal container recycling by imposing a refundable deposit when purchasing beverages in plastic bottles, glass bottles, and cans.

The first decision concerns a transaction involving non-alcoholic beverage producers, including household soda and soft drink brands. The second decision approves the creation of a joint venture by the beer producers Carlsberg Polska, Kompania Piwowarska, and Grupa Żywiec.

Unlike most countries, which have a single deposit system operator created by beverage producers and sometimes the state, Poland has opted for a different model with multiple operators. These operators, referred to as representative entities, will be established by beverage producers or importers. Their responsibilities will include collection and transport of beverage packaging, etc., from stores. Beverage producers and importers must meet specific collection targets for packaging waste. Failure to meet these targets will result in an additional fee being imposed.

According to UOKiK, creating a DRS operator is crucial for beverage producers to meet recovery targets. In the merger proceedings UOKiK found no competition concerns, considering that other deposit system operators will also be active in the market as well as the fact that other beverage producers and importers can join the deposit systems under equal terms. Moreover, UOKiK found that the nonprofit nature of the JVs and the fact that the deposit amount will be regulated by law provide additional arguments mitigating the risk of harm to competition.

In addition to UOKiK merger approval, the JVs must also obtain a permit from the climate minister to operate within the DRS.

Italy

Italian Competition Authority (ICA)

1. *ICA opens investigation for suspected anticompetitive behavior in local tender procedures.*

On June 4, 2024, the ICA opened an investigation into an alleged breach of Article 2 of Law No. 287/1990 (i.e., the Italian antitrust law that prohibits anticompetitive agreements) in relation to some tender procedures by AMA S.p.A. for the granting of maintenance and spare-parts-supply contracts for the vehicles it uses to provide cleaning and waste collection services in Rome.

According to the ICA, seven companies, all of which are currently being investigated (Autofficina F.lli Pennesi - Società in nome collettivo, MFM S.r.l., Autofficina Pontina S.r.l., Drive Line Service S.p.A., Italmeccanica S.r.l., Pagliani Service S.r.l., and Raggruppamento Officine Meccaniche AR.MA. S.r.l.), allegedly avoided reciprocal competition in awarding three tenders called by AMA between March and May 2023, as well as in one called in December 2023, through an instrumental and anti-competitive use of "Raggruppamento Temporaneo di Imprese" (i.e., an ad hoc tendering consortium), biasing them in an anti-competitive way.

According to the ICA, the proceedings will conclude by Dec. 31, 2025.

2. *ICA investigates eight pharmaceutical companies for alleged restriction of competition in market for active substance ranibizumab.*

On June 6, 2024, ICA announced an investigation into eight pharmaceutical companies relating to an alleged agreement restricting competition in the market for the active ingredient ranibizumab, used to treat major eye diseases.

According to ICA, the companies coordinated commercial strategies in order to delay entry into the Italian market of a biosimilar drug based on the active ingredient ranibizumab. This alleged conduct limited the possible savings for purchases by the National Health Service and harmed patients and taxpayers through limited supply and lower prices.

On May 28, 2024, ICA officials carried out inspections at the premises of several entities under investigation. In parallel, the Dutch Competition Authority carried out inspections at the Dutch premises of one company.

3. *ICA fines DR Automobiles €6 million for unfair commercial practices for misleading communications identifying Italy as the production place of the vehicles and for inadequate supply of spare parts and after-sales assistance services.*

On June 20, 2024, ICA fined DR Automobiles S.r.l. and its subsidiary DR Service & Parts S.r.l. €6 million for having implemented two unfair commercial practices.

First, according to ICA, DR Automobiles, in its messages and commercial communications beginning December 2021, referred to Italy as the origin and place of production of the cars marketed under the DR and EVO brand, while the vehicles were in fact produced in China, except for marginal finishing and completion work. ICA highlighted that the deceptive practice coincided with a period of strong increases in sales of DR and EVO branded cars on the Italian market.

Second, ICA found that DR Service & Parts S.r.l. and DR Automobiles S.r.l., at least as of 2022, did not guarantee an adequate supply of spare parts or even proper after-sales assistance, for instance by not providing appropriate technical training to its network of authorized dealers and/or workshops.

The authority ruled that the two companies should, within 60 days of the notification of the measure, communicate the steps they have taken to stop this unlawful conduct. The companies may challenge the decision before Lazio Administrative Tribunal within 60 days.

European Union

A. European Commission

1. *EU launches first foreign subsidies probe into major telecom acquisition.*

On June 10, 2024, the European Commission launched its first in-depth investigation under the Foreign Subsidies Regulation (FSR). This probe examines Emirates Telecommunications Group Company PJSC (e&)'s acquisition of PPF Telecom Group's non-Czech businesses. The European Commission is concerned that e& may have benefited from foreign subsidies, such as an unlimited guarantee and loans from UAE-controlled banks, potentially distorting competition within the EU market.

The European Commission's in-depth investigation will determine if the alleged foreign subsidies provided to e& had negative effects on the acquisition of PPF Telecom's non-Czech businesses. Specifically, it will assess whether these subsidies allowed e& to deter or outbid other potential buyers and whether they impacted the internal market activities of the merged entity.

This is the first such probe under the new regulation, whereas previous probes focused on public procurement subsidies, resulting in scrutinized companies withdrawing from tender procedures.

2. *EU Commission investigates Alchem International for alleged cartel participation.*

The European Commission issued a Statement of Objection to Alchem International Pvt. Ltd. and its subsidiary Alchem International (H.K.) Limited based on preliminary findings that they allegedly violated EU competition laws, in particular Article 101 of the Treaty on the Functioning of the European Union, by participating in a long-term cartel. Alchem, a manufacturer of the pharmaceutical ingredient N-Butylbromide Scopolamine/Hyoscine (SNBB), purportedly collaborated with other industry participants to fix a minimum sales price for SNBB and allocate sales quotas among themselves. Additionally, there are accusations that Alchem shared sensitive business information with competitors. These concerns arise from evidence indicating that these actions could potentially restrict competition.

3. *European Commission carries out additional unannounced antitrust inspections in tire sector cartel investigation.*

The European Commission conducted unannounced inspections at a consultancy firm's offices in two EU member states. The European Commission suspects the firm may have violated EU competition laws by potentially facilitating or encouraging price coordination among tire manufacturers. These manufacturers allegedly used public communication channels to engage in collusion. National competition authorities accompanied European Commission officials during the inspections, which are part of an ongoing investigation that began earlier in 2024. The inspections are at a preliminary stage and do not imply guilt or prejudge the investigation's outcome.

B. European Decisions

ECJ upholds ruling for default interest payment to Deutsche Telekom Despite Commission's appeal.

The European Court of Justice (ECJ) ruled against the European Commission's appeal to avoid paying default interest to Deutsche Telekom on a partially annulled antitrust fine. In 2022, the EU General Court ordered the European Commission to pay €1.75 million in interest to the German telecom company, which it had provisionally collected alongside a penalty. The ECJ upheld this decision, emphasizing that such interest is necessary to compensate companies for the loss of use of the disputed funds and to ensure compliance with court rulings.

This ruling could set a precedent for similar cases pending before EU courts, including disputes with airlines over default interest on antitrust fines. The underlying case involved fines imposed on Deutsche Telekom and its subsidiary Slovak Telekom for anticompetitive practices related to broadband access markets. Despite earlier arguments from the European Commission about the deterrent effect of such payments, the ECJ affirmed the need to apply interest in accordance with EU law.

Japan

A. JPY 93.96 million surcharge order issued against manufacturer and seller of woodworking drills.

On March 28, 2024, the Japan Fair Trade Commission (JFTC) issued a cease-and-desist order and surcharge payment order under the Antimonopoly Act to a manufacturer and seller of woodworking drills, which are steel cones used to drill holes in wood.

By jointly agreeing to increase the purchase price of woodworking drills, the two companies effectively restricted competition in sales of woodworking drills and their equivalents. JFTC issued a surcharge payment order of 93.96 million yen to the two companies that hold a large share of the woodworking drill market in Japan. The JFTC also ordered the two companies to confirm that their agreement to increase the purchase price of woodworking drills has expired and to take measures not to exchange information with each other or with other companies regarding the sales prices of woodworking drills and equivalent products manufactured in the future.

B. JFTC publishes names of 10 purchasers found to have kept their prices fixed as a result of individual survey.

To determine appropriate price shifting, JFTC has been conducting special surveys since May 2023 to ascertain the actual conditions of suspected cases of price fixing without consultation in transactions between contractors and purchasers. JFTC announced the results of the surveys on Dec. 27, 2023 (please see February Competition Currents).

Stemming from the publicity policy, since November 2023, JFTC has conducted on-site inspections and individual surveys, including reports and orders based on Article 40 of the Antimonopoly Act. As a result of the individual surveys, JFTC confirmed that a significant number of purchasers were found to be fixing transaction prices without consultation. As stated in press releases, JFTC seeks to encourage transparent promotion of price shifting and encouraging purchasers to actively consult with contractors about price shifting. In addition, making such information public is useful in expanding opportunities for contractors to request consultations. As a result, JFTC made public the names of 10 purchasers in accordance with Article 43 of the Antimonopoly Act.

Read previous editions of GT's Competition Currents Newsletter.

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