GT GreenbergTraurig

GT Newsletter | Competition Currents | November 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)

1. *Statement on memorandum of understanding related to antitrust review of labor issues in merger investigations.*

On Sept. 27, 2024, the FTC announced it would withdraw from a memorandum of understanding with the Department of Labor and National Labor Relations Board formalizing information-sharing protocols and training between the agencies to assist in investigations into the impact of mergers and acquisitions on labor markets. The FTC noted that "[t]he agency will continue to closely scrutinize all issues related to mergers, including potential impacts on labor, in accordance with its merger guidelines."

2. *FTC order bans Hess CEO from Chevron board in Chevron-Hess deal.*

As part of its review of Chevron Corporation's acquisition of Hess Corporation, on Sept. 30, 2024, the FTC approved a proposed consent order prohibiting Chevron from appointing Hess CEO John B. Hess to its

[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.

board of directors, as called for in the merger agreement for the transaction. The FTC moved to disqualify him, alleging that Mr. Hess encouraged collusion among competitors regarding global oil output through the Organization of Petroleum Exporting Countries (OPEC). Under the proposed consent order, Mr. Hess is only able to serve as an advisor in discrete circumstances.

3. *FTC and Justice Department participate in summit with G7 enforcement partners on artificial intelligence competition challenges.*

Global competition authorities aim to play a key role in competition in artificial intelligence. In October, the FTC and DOJ participated in a G7 Competition Authorities and Policymakers Summit where the attending countries discussed ways to ensure competition in AI. At the summit's conclusion, the global competition authorities issued a paper outlining "potential competition concerns in AI-related markets and identifying guiding principles to ensure fair competition across AI markets."

4. *FTC finalizes changes to premerger notification form.*

As more fully described in this GT Alert, on Oct. 10, 2024, the FTC announced (with concurrence by the DOJ) that it had unanimously approved changes to the U.S. premerger notification form (Form) under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (HSR Act). These changes, effectuated through a new final rule, represent the most comprehensive overhaul and expansion of Form requirements in the history of the HSR Act. The changes will take effect in early 2025 (90 days after publication in the Federal Register, meaning only deals filed after that time will be required to submit the additional information).

5. *FTC, DOJ issue fiscal year 2023 Hart-Scott-Rodino notification report and announce corrected fiscal year 2022 report.*

On Oct. 10, 2024, the FTC and DOJ released their Hart-Scott-Rodino Annual Report for Fiscal Year 2023 (Oct. 1, 2022, through Sept. 30, 2023). In fiscal year 2023, 1,805 transactions were notified under the HSR Act, and the agencies filed a combined total of 28 merger enforcement actions.

B. Department of Justice (DOJ)

DOJ and Department of Transportation launch broad public inquiry into the state of competition in air travel.

The DOJ and Department of Transportation together announced an inquiry (through an RFI for public comments) into competition in the air travel industry, specifically seeking information on consolidation, anticompetitive conduct, availability and affordability of air travel, previous airline mergers, exclusionary conduct, airport access, aircraft manufacturing, airline ticket sales, pricing, and labor. Jonathan Kanter, assistant attorney general of the DOJ's Antitrust Division, stated of the public inquiry: "Competition in air travel is a vehicle for better quality, better fares and better choices for Americans… With this inquiry, we hope to learn more from the businesses and travelers at the center of this essential industry. Their feedback will ensure the Justice Department can continue to build on its historic efforts to protect competition in air travel."

C. U.S. Litigation

1. *Cangrejeros de Santurce Baseball Club, LLC v. Liga de Béisbol Profesional de Puerto Rico, Inc., No. 3:22-01341-WGY (D. P.R.)*

Cangrejeros de Santurce Baseball Club, LLC and Santurce Merchandising, LLC have appealed a district court decision dismissing their seven-count complaint against Liga de Béisbol Profesional de Puerto Rico, Inc. (League), various owners of other teams, and Impulse Sports Entertainment Corporation. In the complaint, the plaintiffs alleged that the defendants conspired with the Mayor of San Juan to permanently remove the plaintiffs' clubs from the League in violation of federal antitrust law. The district court dismissed the federal antitrust claims in June 2023, stating that the court was "boldly go[ing] where no lower court has gone before" by becoming the first to "appl[y] the Supreme Court's much criticized judicial exemption to the Nation's antitrust laws to a Puerto Rican professional baseball venture NOT associated with Major League Baseball."

The gravamen of plaintiffs' lawsuit stem from their assertions that after a new owner partially acquired the Cangrejeros in October 2019, the teams were met with "stiff resistance from the other teams who did not want to have to face such enhanced economic competition." On Oct, 12, 2022, defendants collectively moved to dismiss plaintiffs' complaint for lack of subject matter jurisdiction, arguing that the "business of baseball" is exempt from antitrust regulation under the Supreme Court's decision in *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs et al*.

In ruling on defendants' motion to dismiss, the district court acknowledged that no other federal court has ever expressly distinguished the Supreme Court's antitrust exemption afforded Major League Baseball from other professional baseball leagues that are non-MLB or its minor league affiliates. Therefore, the district court relied on the express wording of two cases that followed the *Federal Baseball* decision – *Toolson v. New York Yankees, Inc.* and *Curt Flood v. Bowie Kuhn* – as guidance for its decision that the antitrust exemption applies to all professional baseball.

The district court therefore dismissed the lawsuit for lack of subject matter jurisdiction, holding that professional baseball in its entirety – not just MLB – enjoys the benefits associated with an antitrust exemption afforded by the U.S. Supreme Court in *Federal Baseball*.

Plaintiffs are urging the First Circuit to overturn that district court decision, arguing that the exemption, which dates back nearly a century, was never intended to cover Puerto Rican professional leagues.

2. *Gibson v. Cendyn Group, LLC, No. 24-3576 (9th Cir.)*

On Oct. 24, the DOJ filed an amicus curiae brief urging the Ninth Circuit to overturn the district court's dismissal of plaintiffs' antitrust complaint, which alleged that defendant-hotel operators were relying on algorithmic pricing software to coordinate hotel room pricing on the Las Vegas Strip. In its dismissal, the district court stated that the alleged price fixing among the hotels was implausible because the hotels began using the software at different times, never exchanged non-public information, and were free to deviate from the software's pricing recommendation.

"If they all agreed to outsource their pricing decisions to a third party, and all agreed to price according to the recommendations provided by that third party, it would be plausible to infer the existence of a collusive agreement to fix prices," Judge Miranda M. Du wrote in her dismissal, siding with the hotel companies and the software provider. "But the allegations that could plausibly support that sort of inference do not exist in the [complaint]."

The DOJ is urging a reversal of this ruling, arguing that the mere use of price-setting algorithms among competitors (without more) should be deemed unlawful, even if the competitors don't use them to set final prices. According to the DOJ, because pricing algorithms "can process more information more rapidly than humans aided by prior communications technologies," algorithms can potentially amplify and expedite collusion among competitors. The DOJ goes on to argue: "Although the district court

identified several reasons for finding such an agreement implausible, the court mentioned numerous times that the hotels were not required to follow Cendyn's prices. That condition is not necessary for illegality, as an agreement among competitors to use certain pricing algorithms to generate default or starting-point prices is per se illegal even if there is no further agreement on final prices."

3. *CVB, Inc. v. Corsicana Mattress Co., No. 1:20-cv-00144-DBB (D. Utah)*

Based on plaintiff CVB, Inc.'s failure to plausibly allege an antitrust conspiracy, a federal judge has dismissed plaintiff's suit, releasing Tempur Sealy International Inc. and Corsicana Mattress Co. (among others) from claims that they maintained a monopoly in the mattress industry.

The lawsuit, part of a broader legal battle within the industry, accused the two mattress giants and others of unfairly limiting competition. However, the judge determined that CVB did not sufficiently prove that any deal restrained trade or violated antitrust laws.

The court explained that, while CVB continued to contend in its latest complaint that the manufacturers and distributors made false or misleading statements during regulatory proceedings that led the government to impose steep duties on mattresses imported from China and several other countries, the court had already dismissed claims based on this activity in previous rulings applying the Noerr-Pennington doctrine, which provides antitrust immunity to companies that petition the government for some form of action or relief.

Mexico

Federal Commission on Economic Competition, COFECE

1. *COFECE fines waterproofing companies over 220 million pesos for price manipulation.*

The Federal Economic Competition Commission (COFECE or Commission) fined two of the largest waterproofing companies in the country, Pinturas Thermicas del Norte, S.A. de C.V and Polímeros Adhesivos y Derivados, S.A. de C.V., as well as five of their executives, over 220 million pesos for price manipulation. Additionally, COFECE has disqualified the executives involved in this conduct from serving as executives or representatives of companies in the market for five years.

The sanction resulted from an agreement between executives and companies to manipulate waterproofing prices nationwide between January 2008 and April 2017. To do this, the executives and representatives communicated to coordinate prices, locations, and products, as well as monitored compliance with these agreements.

COFECE announced a new phase of competition policy, aiming to maximize its legal powers to benefit the public. Targeting housing construction costs, the Commission imposed the highest possible fines and disqualifications.

2. *Investigative Authority concludes that Gruma must sell five production plants to revive competition in Mexico's corn flour market.*

COFECE's Investigative Authority (IA) has preliminarily concluded that the nixtamalized corn flour market in Mexico is not competitive due to the actions of a leading supplier. Nixtamalization enhances the nutritional value of the corn and improves its flavor and aroma.

After identifying a constant increase in corn flour prices despite the stable prices of corn, the IA began its investigation. After dividing the country into eight regions to analyze total sales and installed capacity of companies from 2016 to 2022, IA concluded that Gruma has between 50% and 90% of sales in each region, with almost nine out of 10 kilos of flour being sold by Gruma in some regions; a market share between 22 and 80 times larger than its biggest competitor in each region; and an average price almost 10% higher than its competitors nationwide. As a result, the IA determined that Gruma has a significant and irreversible advantage over its competitors, allowing it to set high prices without sufficient competition. Additionally, IA determined that Gruma implemented strategies designed to make it difficult for tortilla makers to switch suppliers.

To address the structural market problems at play and to revive competition in the market, the IA's proposed corrective measures include the forced sale of five of Gruma's nixtamalized corn flour production plants, as well as the entire distribution fleet and sales force of these plants; the prohibition of any business practices designed to deter tortilla makers from changing suppliers; and the implementation of greater transparency and oversight mechanisms.

Gruma is not obligated to implement the IA's proposed corrective measures at this time. The IA's preliminary ruling on these issues is the first step in a multi-step process. Interested parties may now present arguments and evidence. Ultimately, COFECE will analyze all arguments and evidence and issue a final resolution, which may adopt, modify, or reject the IA's proposals.

3. *Plenary of COFECE appoints Juan Francisco Valerio Méndez as new head of technical secretariat.*

The Plenary of COFECE unanimously appointed Juan Francisco Valerio Méndez as its new technical secretary. Valerio Méndez has occupied various roles in COFECE since 2007, providing him with a deep understanding of the Commission's processes, including on the Planning, Liaison, and International Affairs Unit, as the liaison to the legislative branch and other federal public administration agencies, and as the leader of the Executive Directorate of Concentrations. Until Oct. 4, he served as general director of regulated markets.

4. *COFECE fines gas stations over 437 million pesos for price manipulation.*

The Plenary of COFECE has fined 52 gas stations, the Mexican Association of Gasoline Entrepreneurs, and 18 executives a total of 437,911,146 pesos for their alleged participation between 2014 and 2021 in an illegal conspiracy to fix regular and premium gasoline prices.

5. *Study of competition and free competition in digital financial services.*

COFECE has found that many Mexicans are still excluded from the financial system. Bank of Mexico data show that one in five citizens relies solely on cash, lacking access to other payment methods. The World Bank also ranks Mexico behind other Latin American countries in access to basic financial services.

Fintech platforms aiming to transform the way Mexicans manage their finances face development barriers, including limited options and high costs for users. To improve accessibility of financial services, COFECE has proposed several actions to enhance competition and inclusion. The recommendations include easing the transfer of bank accounts between institutions; promoting payroll portability; simplifying information about financial institutions; establishing a universal cancellation mechanism for financial products; promoting fintechs as digital correspondents; encouraging secure payment alternatives like instant transfers to lower costs for small businesses; and advocating for an open finance system to securely share financial data among institutions.

These measures aim to drive competition among financial institutions, encouraging them to offer better services tailored to users' needs.

6. *COFECE files first class-action lawsuit in history for manipulation in the supply and prices of medications.*

COFECE filed its first class-action lawsuit in October 2024 against drug distributors and an industry association, alleging that the defendants colluded over a 10-year period to coordinate the days medications were distributed, to limit the quantity of medications supplied to pharmacies, to manipulate medication prices, and to limit discounts to pharmacies. COFECE has demanded 2.316 billion pesos in damages from the companies, to be allocated to IMSS-Bienestar, a government ownerd and operated health organization that has been overcharged due to Defendants' price manipulation.

The Netherlands

Dutch Court Decisions

Dutch court holds Heineken liable for Greek subsidiary's abuse of a dominant position.

The Amsterdam district court determined that Heineken and its subsidiary are part of the same economic unit under Article 102 of the TFEU, making them jointly and severally liable. This follows a previous finding by the Greek Competition Authority against the subsidiary. The court will decide on the damages in a December hearing. Heineken is currently reviewing the judgment to decide on its next steps.

United Kingdom

A. Competition and Markets Authority (CMA) Policy

1. *CMA State of Competition Report*

On Oct. 24, the CMA released its third report on the state of competition in the UK. Commissioned by the government in 2020, the report found a modest decline in competition over 25 years, though effective policies have helped the UK fare better than other advanced economies, including the United States.

As competition strength cannot be directly measured, the CMA used three sets of indicators: (1) cost markups to assess firms' pricing power; (2) concentration to evaluate industry dominance by a few large firms; and (3) business dynamism to look at business entry and exit rates, job reallocation, and new firms' ability to grow and challenge established leaders.

Based on these findings, the CMA identified three initiatives. First, early analysis of rapidly changing markets, particularly digital) to prevent existing firms from cementing their dominance. Second, addressing barriers that hinder smaller, newer firms from competing with large incumbents. Third, maintaining effective merger control and competition enforcement to regulate market power. These broad insights will guide the CMA's future focus.

2. *CMA Microeconomics Unit*

On Oct. 24, the CMA's State of Competition report was released by its Microeconomics Unit (MU). Established in 2022, the MU supports the CMA and the government with research, analysis, and expertise on competition and consumer outcomes. Alongside the report, the MU's future work programme was also published. This programme aligns with the UK government's growth mission outlined in its *Industrial*

Strategy Green Paper, also released on Oct. 24. The MU's tasks include producing reports and analyses on growth-related issues, such as barriers to new technology adoption, supply chain resilience, policy measures to enhance business dynamism, and the role of competition in directing investment towards productive uses.

B. International Cooperation

On Oct. 29, the UK and EU concluded technical negotiations on a new agreement to supplement the UK-EU Trade and Cooperation Agreement.

The agreement aims to improve cooperation between UK and EU competition authorities and enhance dialogue between the CMA, the European Commission, and the national competition authorities of the 27 EU Member States. Its goal is to ensure more effective enforcement of competition laws and consumer protection across borders. It will particularly assist UK and EU regulators cooperating and sharing information during investigations of firms involved in similar anti-competitive practices across borders.

The agreement's text is to be submitted to the EU and UK parliaments and the EU national governments for approval. If approved, it is expected to come into effect in 2025.

C. CMA Market Study: Housebuilding

On Oct. 22, the UK government published its response to the CMA's 11 recommendations from its study of the housebuilding market in England, Wales, and Scotland, released in February 2024. The government recognises the severe and persistent housing crisis, marked by record levels of homelessness and children in temporary accommodation, and agrees with the CMA's finding that the housebuilding market has consistently failed consumers over the decades. The government accepted the CMA's recommendations to establish a new consumer code for housebuilders and a New Homes Ombudsman service to assist homeowners in addressing quality issues with developers. Additionally, it accepted in principle the recommendations for greater protection and cost transparency for households under private management arrangements. The CMA recommendation on wider planning reforms will be considered in a revised national planning policy framework, which will set mandatory housing targets for councils and require release of low-quality grey belt land for housing.

D. Merger control

1. *Lindab completed acquisition of HAS-Vent – Phase 2 remedies.*

Following a Phase 2 merger inquiry, on Oct. 15, the CMA ordered Lindab to divest two sites in local markets where it competed with HAS-Vent, a rival in the supply of circular vents and fittings for building ventilation systems. The CMA found that Lindab's acquisition of HAS-Vent, completed before the CMA's Phase 1 investigation, would reduce choice and increase prices in the local ventilation systems markets in Nottingham and Stoke-on-Trent. Lindab must sell not only the two sites previously operated by Has-Vent before but also its own two sites.

2. *Barratt completes acquisition of Redrow – Phase 1 remedies.*

On Oct. 4, the CMA accepted undertakings from Barratt to prevent a Phase 2 merger inquiry of its acquisition of the competing private residential housebuilder Redrow. The undertakings address the CMA's concern about a significant reduction in competition in Kingsbourne. Barrett agreed to divest Redrow's entire Kingsbourne site, approved for 324 houses. Additionally, Barrett committed to appointing a third-party agent to manage the sale of unsold houses, ensuring unbuilt houses meet

Redrow's quality standards and are completed promptly, and providing after-sales services that meet or exceed Redrow's quality standards.

3. *Macquarie interest in Last Mile – Phase 1 clearance.*

On Sept. 16, the CMA cleared Macquarie's planned acquisition of a 50% joint controlling interest in Last Mile Infrastructure (LMI). The CMA found that Macquarie and LMI are not competitors but have vertical relationships in two areas: Macquarie's interest in Cadent, a gas distribution network operator, and LMI's last-mile gas connections; and Macquarie's interest in Southern Water and LMI's last-mile water and wastewater connections. The CMA determined that these overlaps would not lead to reduced competition in gas connections due to existing gas regulations and Macquarie's minority stake in Cadent. Although the protection for water and wastewater connections is not as strong as for gas connections, the CMA concluded that Macquarie's acquisition would not incentivize Southern Water to disadvantage LMI's rivals. The high cost of foreclosure, potential detection by those rivals, and enforcement by water regulator Ofwat, which could lead to financial penalties deter such actions. Additionally, given the shareholdings in Southern Water and LMI, LMI would gain only half of the benefits while bearing most of the costs.

E. Consumer Protection

On Oct. 25, the CMA initiated court proceedings against Emma Group, a mattress manufacturer, seeking an enforcement order to change its selling practices. The action follows several communications from the CMA to Emma Group, culminating in a May 2024 letter before claim, requesting formal commitments from Emma Group to stop using urgency tactics, such as countdown clocks and false discount offers, which pressure shoppers into quick purchases. Emma Group did not provide the requested commitments, leading to the court action.

Poland

Office of Competition and Consumer Protection (UOKiK)

1. *Investigation into ABB Poland by UOKiK president.*

The UOKiK president has launched an investigation into ABB Polska and its five distributors. ABB Polska is a part of a global technology conglomerate specializing in products and technologies related to electricity, robotics, and industrial optimization.

The investigation focuses on suspected anticompetitive practices, including market sharing, price fixing, and exchanging sensitive information, potentially affecting public tenders. The UOKiK president, with court approval and police assistance, conducted searches at the headquarters of ABB Polska and its distributors. The collected evidence is currently under review.

At this stage, the inquiry is regulatory, aiming to assess the practices rather than targeting specific companies. If evidence confirm the suspicions, formal antitrust proceedings will be initiated, and charges brought against those involved.

Businesses found guilty of price-fixing can face fines of up to 10% of their revenue, and responsible managers may be fined up to PLN 2 million. Anticompetitive contractual provisions are void, and affected entities can seek damages in civil courts.

2. *UOKiK president's decision on KIA car-selling cartel.*

The UOKiK president fined KIA Polska and 11 dealers over PLN 405 million (EUR 94 million, USD 103 million) for price fixing and market sharing from 2013 to 2021. The dealers adhered to price lists and discount limits set by KIA Polska, which monitored compliance and warned those offering lower prices. Dealers reported any breaches.

Market sharing involved dealers selling only to local customers, with customers from other regions referred to designated distributors. Since 2017, KIA Polska and its dealers also divided the market for cars intended for driving schools, offering sales support only to dealers who won local tenders potentially limiting competitive offers.

KIA Polska received the highest fine of over PLN 331 million (EUR 77 million, USD 84 million). Five managers from KIA Polska Wrobud, Landcar, and Marvel were fined approximately PLN 1,5 million (EUR 340,000, USD 380 000) for their roles. This is part of a broader trend, as the UOKiK president has imposed nearly PLN 8 million in fines on managers in seven cases fines since 2000, including a recent case involving IVECO Poland.

Under Polish law, entities involved in anticompetitive agreements can be fined up to 10% of turnover, while responsible managers face penalties up to PLN 2 million. Anticompetitive contractual provisions are void, and affected entities can seek damages in civil courts.

Additionally, the UOKiK president fined Autocentrum Patecki and Auto-Centrum I.M. Patecki a total of PLN 70,000 (EUR 16,000, USD 18,000) and PLN 93,000 (EUR 22,000, USD 24,000), respectively, for failing to provide requested information. The maximum penalty for non-compliance is 3% of annual turnover.

These decisions are not final, and the fined entities may appeal to the Court of Competition and Consumer Protection.

3. *UOKiK president orders Dell to revise sales practices and imposes fine for false information.*

The president of UOKiK has issued a directive requiring Dell's Polish subsidiary, a leading producer of computers and related products, to revise its sales practices concerning the registration of transactions by authorized sellers. Additionally, a fine of PLN 6 million (approximately EUR 1.38 million / USD 1.52 million) has been imposed on Dell for providing false information during the investigation.

The UOKiK president raised concerns about Dell's sales system, which allowed authorized sellers to register transactions in a way that could potentially hinder other sellers from offering competitive prices. These practices involved selling Dell IT infrastructure products to businesses and institutions, including through public procurement. Products in question include computers, laptops, peripherals, and services related to building IT systems, such as servers, storage, disk arrays, and associated services like cloud and data protection.

In the decision, the UOKiK president required Dell to modify its sales system. The revised system must enable multiple sellers to compete without requiring Dell's approval or disclosing client names. It should also feature updated discount rules, allowing at least three sellers to receive discounts on the same transaction based on clear criteria. Additional discounts will depend on pre-sales efforts, assessed using transparent criteria. All authorized sellers should receive equal discounts for public procurement deals.

While no fine was imposed on Dell for the sales practice infringement, the UOKiK president fined Dell for providing false information during the investigation. Dell failed to provide requested information about entities to which it did not offer bids for public tenders and the reasons for such actions. Despite three requests, Dell repeatedly submitted false and misleading information. The UOKIK president noted that such actions could hinder effective competition law enforcement, delay proceedings, and obstruct the identification of violations.

Dell has six months from when the decision becomes final to implement the new sales rules and must report compliance to the UOKiK president. The decisions are not final, and Dell may appeal to the Court of Competition and Consumer Protection.

4. *UOKIK president updates guidelines on assessing JV impact in Poland.*

The UOKiK president has recently released updated guidelines outlining the criteria and procedures for notifying an intention of concentration. These updates address how to determine whether a joint venture (JV) will have an impact in Poland and, consequently, require a merger control notification.

The Polish Antimonopoly Act applies to concentrations that have, or may have, effects in Poland. Until now, the UOKiK president has maintained that the "effect in Poland" condition was satisfied whenever any party to the concentration achieved a certain turnover in Poland, provided that the general threshold conditions were met. This meant that any transaction meeting the general turnover thresholds in Poland required notification, even if there was no actual or potential effect in Poland. This was particularly problematic for extraterritorial joint ventures unrelated to Poland but that required notification because their parent companies met the threshold requirements.

This situation may now change. The revised guidelines introduce an additional test to evaluate whether a JV will have an effect in Poland. According to the guidelines, a JV must be assessed for potential effects in Poland based on its intended activities and market reach. If the markets where the JV will operate or the markets with vertical relationships between the JV and its parents do not include Poland or any part of its territory, the concentration will not have an effect in Poland and, therefore, will not require notification. This means that JVs with only a local or national dimension that do not cover Poland may not need prior merger clearance in Poland. However, each transaction will require a case-by-case analysis. It is also important to note that, under Polish law, even JVs that are not fully functional need to be notified.

Italy

Italian Competition Authority (ICA)

1. *G7 Competition Summit concludes in Rome, advocating for stronger enforcement and forward-looking policies by antitrust authorities.*

On Oct. 4, the G7 Competition Summit, chaired by ICA President Roberto Rustichelli, concluded in Rome. Antitrust and government delegations from G7 member states and the European Commission participated in a two-day discussion on artificial intelligence and related competition issues.

The discussion revolved around a technical paper presented by ICA, which focused on current and future perspectives, enforcement activities, policy, and regulatory issues. Additionally, a paper prepared by the OECD addressed enforcement and regulations concerning the market power of large platforms across multiple jurisdictions.

The joint closing statement (Communiqué) on digital competition emphasized both the societal risks posed by the emergence of AI and the significant opportunities for innovation and economic growth. National competition authorities particularly highlighted potential issues related to human innovation and copyright, consumer protection, privacy, and data protection, calling for "vigorous and timely antitrust enforcement." They also stressed the importance of adopting forward-looking policies based on a multidisciplinary approach, aligned with the continuous developments of AI.

2. *ICA investigates Spanish web platform for alleged deceptive practices in selling social media interactions.*

On Oct. 7, 2024, the ICA announced an investigation into a Spain-based company operating two websites offering "packages" of followers, likes, views, comments, listeners, and subscribers on major social media platforms. The websites were in Italian and targeted Italian users.

The ICA suspects that these purchased endorsements do not represent genuine user opinions. Entities buying such endorsements may use them to falsely enhance their popularity and credibility.

This practice may violate Article 23(bb-quater) of the Italian Consumer Code, which prohibits sending or instructing others to send false consumer reviews or endorsements, or providing false information about them on social media to promote products.

As SWJ could not be located at the registered address listed on its website, the ICA also published its information request to the company in the ICA Bulletin alongside the decree initiating the investigation.

European Union

A. European Commission

1. *European Commission approves JD Sports' acquisition of Courir with conditions.*

The European Commission has conditionally approved JD Sports Fashion Plc Group's proposed acquisition of Groupe Courir SAS. The investigation revealed that the acquisition could reduce competition in retail markets for (i) leisure and performance sports footwear and apparel in Portugal, and (ii) leisure sports footwear in certain local markets in France. To revolve these concerns, JD Sports and Courier agreed to sell Courir stores in Portugal and certain French regions to Snipes, a direct competitor.

The European Commission concluded that this remedy fully addressed its concerns, leading to the conditional approval of the acquisition.

2. *European Commission approves Eiffage's acquisition of EQOS with conditions.*

The European Commission has conditionally approved Eiffage's proposed acquisition of EQOS. Both companies operate in the construction, maintenance and optimization of infrastructure. The Commission's investigation raised concerns that the merger could reduce competition in the market for railway catenary installation and maintenance service in Belgium. To address these concerns, EQOS and Eiffage agreed to divest EQOS Belgium in entirely, including all assets, personnel, and future railway contracts. The European Commission concluded that with these conditions, the acquisition would no longer pose competition concerns.

3. *European Commission fines Czech and Austrian rail operators EUR 48.7M for antitrust violations.*

The European Commission has fined České dráhy (ČD) and Österreichische Bundesbahnen (ÖBB) a total of EUR 48.7 million for colluding to block competition in the rail passenger transport market. The companies prevented a new entrant, RegioJet, from buying used wagons, by (i) coordinating wagon sales timing wagon to hinder RegioJet from buying ÖBB's used wagons, (ii) manipulating sales procedures to enable ČD to acquire the wagons instead of RegioJet, (iii) agreeing on alternative buyers other than RegioJet for wagons ČD did not want, and (iv) sharing confidential information about bids and other bidders' interest levels. The European Commission determined that these actions violated Article 101 TFEU, which prohibits anti-competitive agreements.

B. ECJ decisions

FIFA transfer rules violate EU competition law.

The ECJ has ruled that key aspects of FIFA's player transfer regulations breach EU competition law. Specifically, the court found that Article 17, which requires player to pay compensation for terminating contracts without "just cause" and hold new clubs jointly liable, is incompatible with EU competition and freedom of movement principles. The ECJ highlighted the negative impact on players' rights and career longevity, noting that these rules create unnecessary employment barriers.

This ruling adds to FIFA's legal challenges worldwide, with its regulations under scrutiny. In July, Europe's top football leagues and players filed an antitrust complaint with the European Commission, accusing FIFA of lacking clear criteria for the international fixtures calendar. This decision may compel FIFA to revise its transfer system, ensuring changes are made transparently and in consultation with player unions.

Read previous editions of GT's Competition Currents Newsletter.

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