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MERGER CONTROL

– EUROPEAN UNION LEVEL –

Commission conditionally clears E.ON's acquisition of Innogy in Phase II

On 17 September 2019, the European Commission ("Commission") conditionally cleared E.ON's acquisition of Innogy from its parent company, RWE, following a second phase investigation. E.ON and Innogy are German energy companies active across the full energy chain, from generation to distribution. The transaction consisted of a complex asset swap through which E.ON would buy Innogy's distribution and consumer business and certain electricity generation assets from its parent company, RWE. Following the deal, E.ON would focus on distribution and the retail supply of energy and gas, while RWE would concentrate its activities on upstream electricity generation and wholesale markets. The Commission had already cleared RWE's acquisition of certain energy generation assets from E.ON as part of this swap in February.

The Commission opened a Phase II investigation, during the course of which it identified concerns across a number of national markets. Specifically, the Commission found that the deal would eliminate competitive constraints in the German markets for electricity for heating, for the supply of electric vehicle charging stations on German highways, for the retail supply of gas generally and the retail supply of electricity to households and small businesses in the Czech Republic, and for the supply of electricity to unregulated businesses in Hungary.

E.ON secured a clearance decision by offering a package of remedies that divested nearly all overlapping activities in the markets in which the Commission had identified concerns. While the divestments in the affected German and Hungarian markets will come from E.ON, the company will divest Innogy's entire business in the retail supply of electricity and gas in the Czech Republic.

Commission conditionally clears Novelis' acquisition of Aleris in Phase II

On 1 October 2019, the Commission conditionally cleared Novelis' acquisition of Aleris subject to commitments following an in-depth investigation. Novelis, a subsidiary of the Indian aluminum and copper supplier Hindalco Industries Ltd., and Aleris are both US-based manufacturers of semi-finished aluminium products. Novelis is the largest manufacturer of automotive body sheets globally, and Aleris is also a well-established supplier in that market.

During its Phase II investigation, the Commission found that automotive body sheets constitute a separate market from other types of aluminum, and that the merged entity would have high EEA market shares and would control a significant share of the manufacturing capacity for these sheets. The Commission concluded that this raised significant competition concerns, as smaller competitors would not be able to prevent a potential price increase following the transaction and because the merged entity would not have any incentive to increase capacity. To address these concerns, Novelis agreed to divest Aleris' full aluminum automotive body sheet business in Europe, removing the competitive overlap in this market.

– MEMBER STATE LEVEL –

UNITED KINGDOM

CMA blocks Ecolab-Holchem merger

On 7 October 2019, the UK's Competition and Markets Authority ("CMA") ordered Ecolab to divest Holchem, effectively blocking the merger of two of the largest cleaning chemicals suppliers in the UK. Ecolab bought Holchem in November 2018. The CMA launched a merger inquiry in February 2019, which led to the opening of an in-depth investigation in April 2019.

The CMA found that the merger would create a new entity much larger than any of its competitors and would leave only three competitors of significant size competing in the UK market. The CMA concluded that this would lead to higher prices and a lower quality of service for customers. Ecolab, however, has criticised the CMA's reliance on a small sample of customer responses in its decision, which conflicted in places with the data commissioned by Ecolab and Holchem.

Recently, the CMA has faced criticism over its use of customer questionnaires in other cases. The Swedish optical-technology maker Tobii is currently challenging the CMA's reliance on questionnaire data in its appeal against the CMA's decision to divest its acquisition of Smartbox Assistive Technology.

Paypal receives CMA's largest-ever fine for breaching merger control rules over its acquisition of iZettle

On 24 September 2019, the UK's Competition and Markets Authority ("CMA") fined Paypal £ 250,000 for breaching its freezing order that halted integration of the parties during its review of Paypal's completed acquisition of the Swedish start-up iZettle. Despite having approved the deal in June 2019, the CMA had decided to investigate the acquisition as it feared that it could lead to a substantial lessening of competition between suppliers of mobile point-of-sale devices in the UK.

CMA had given Paypal permission to market iZettle to customers in mainland Europe, but not to those in the UK. The CMA, however, discovered that Paypal had ultimately targeted customers in the UK as well. Paypal claimed that it had not deliberately disregarded the CMA's instruction, but the CMA has shown before that it is tough on businesses that flout its merger control rules. It previously fined Nicholls' Fuel Oils £ 146,000 in July 2019 (see VBB on Competition Law, Volume 2019, No. 7) and also fined Electro Rent £ 100,000 in June 2018 (see VBB on Competition Law, Volume 2018, No. 6) for breaching similar freeze orders.

CMA fines Sabre Holdings for failure to comply with document requests

On 11 October 2019, the UK's Competition and Markets Authority ("CMA") fined the airline technology company Sabre Holdings £ 20,000 for failing to comply with two Section 109 Enterprise Act notices during the CMA's in-depth investigation into its proposed acquisition of Farelogix, Inc.

Section 109 notices are used by the CMA to make a formal request to provide information or documents or to give evidence as a witness. The notices allow the CMA to issue fines of up to £ 30,000 to businesses that fail to respond to disclosure requests without a reasonable excuse. The fine on Sabre Holdings stemmed from the US Department of Justice's ("DOJ") parallel investigation of the same transaction. The DOJ's investigation revealed that Sabre had improperly withheld non-privileged documents. Sabre then realised that it had also withheld 444 documents from the CMA's investigation that were not in fact protected by legal privilege. The CMA concluded that Sabre had been negligent in failing to comply with the Section 109 notices.

In November 2017, the CMA fined Hungryhouse £ 20,000, in May 2019 AL-KO was fined £15,000 and in August 2019 Rentokil was fined £27,000 (see VBB on Competition, Volume 2019, No. 8) for breaching Section 109 notices.

ABUSE OF DOMINANT POSITION

– EUROPEAN UNION LEVEL –

European Commission imposes interim measures on Broadcom for abuse of dominance

On 16 October 2019, the European Commission adopted a decision ordering Broadcom to stop applying certain provisions contained in agreements with six of its main customers in the TV and modem chipset markets.

According to the Commission's press release, Broadcom was *prima facie* found to be dominant in the markets for systems-on-a-chip for: (i) TV set-top boxes, (ii) fibre modems and (iii) xDSL modems. Also, according to the Commission's press release, the Commission found a *prima facie* abuse of dominance by Broadcom in these markets through a series of clauses contained in agreements Broadcom concluded with six manufacturers of TV set-top boxes and modems, including: (i) exclusive and quasi-exclusive purchasing obligations and commercial advantages (i.e., rebates, early access to Broadcom technology and premium technical support) conditional on the customer buying systems-on-a-chip for TV set-top boxes, fibre modems and xDSL modems exclusively or quasi-exclusively from Broadcom, and (ii) price and non-price advantages conditional on the customer buying systems-on-a-chip for cable modems exclusively or quasi-exclusively from Broadcom.

The Commission's press release indicates that it believed the condition of urgency was satisfied in light of the risk of serious and irreparable harm to competition posed by Broadcom's abusive practices, bearing in mind the upcoming launch of a number of tenders and introduction of the new "WiFi 6" standard for modems and TV set-top boxes.

In light of the Commission's findings, Broadcom was ordered to, within 30 days, unilaterally waive the anticompetitive clauses in question and to refrain from agreeing the same or equivalent provisions in other agreements with the six affected customers. The order applies for three years or until the Commission's investigation is concluded or closed. Broadcom has announced it will comply with the Commission's decision but has also stated it will lodge an appeal before the European Courts contesting the measures.

The move follows the opening of proceedings in June of this year to determine whether Broadcom restricted competition by engaging in certain practices in these markets, including exclusivity, tying, bundling, interoperability degradation and abusive use of intellectual property rights.

This decision imposing interim measures is the first of its kind in the last 18 years, and also the first taken since the Commission was given the formal power to do so under Regulation 1/2003.

– MEMBER STATE LEVEL –

GERMANY

German Federal Cartel Office and Federal Network Agency publish joint guidelines on control of abusive practices in the electricity sector

On 27 September 2019, the Federal Cartel Office ("FCO") and the Federal Network Agency ("FNA") jointly published guidelines for the control of abusive practices in the electricity generation and wholesale sectors, which also address the interpretation of certain aspects of the Regulation on wholesale energy market integrity and transparency (REMIT) in connection with wholesale energy trading. In particular, the guidelines aim to provide legal certainty for market operators concerning price peaks, which are not prohibited market manipulation per se under wholesale energy trading law.

The issue of market power in electricity generation is expected to increase in importance as a result of the approaching shutdown of the last remaining nuclear power plants and the phasing out of coal in Germany. The guidelines are available on the website of the FCO (in German only).

CARTELS AND HORIZONTAL AGREEMENTS

– EUROPEAN UNION LEVEL –

In this section, we give a factual overview of significant case developments at EU level, and then provide a more detailed analysis of the developments addressed.

Summary of Significant Case Developments

General Court annuls fine imposed on HSBC in Euro interest rate derivatives cartel case

On 24 September 2019, the General Court issued a judgment on an appeal lodged by HSBC against the European Commission's (the "Commission") decision fining HSBC € 33.6 million for its involvement in the *Euro Interest Rate Derivatives* cartel case (Case T-105/17, HSBC v. Commission).

In its judgment, the General Court upheld the Commission's finding that HSBC had participated in a single and continuous infringement with the object of distorting the normal course of pricing on the market for Euro interest rate derivatives. In particular, the General Court concluded that the manipulation of Euribor, in which HSBC participated on 19 March 2019, was an infringement by object. However, the General Court found that the Commission had not established that two discussions, in which HSBC traders had exchanged information on their trading positions with traders from other banks, restricted competition by object (see below for a more detailed assessment on these points). Notwithstanding this, the General Court held that the errors made by the Commission in its assessment did not affect the validity of the finding that HSBC had breached Article 101(1) Treaty on the Functioning of the European Union ("TFEU").

However, the General Court annulled the fine imposed on HSBC due to the Commission's failure to explain sufficiently the methodology relied upon to determine the value of the sales used as the basis for calculating the fine. In particular, the Court found that the Commission had not provided a sufficient explanation of why it had set a reduction factor at a particular rate and, therefore, the Court was unable to properly review an element of the decision which could have had a significant effect on the fine imposed on HSBC.

General Court dismisses appeal against re-adopted decision in paper envelope cartel case

On 24 September 2019, the General Court dismissed the appeal lodged by Printeos (previously known as Tompla) against the re-adopted European Commission ("Commission") decision in the *Paper Envelopes* cartel case (Case T-466/17, *Printeos v. Commission*).

By way of background, the Commission re-adopted the *Paper Envelopes* decision in 2017 after the General Court annulled the original 2014 decision due to an inadequate statement of reasons given by the Commission (VBB on Competition Law, Volume 2016, No. 12). In particular, in its earlier judgment, the Court found that Tompla was not in a position to adequately understand or dispute the fining methodology followed by the Commission in its settlement decision in light of the principle of equal treatment and, in addition, the General Court was not fully able to exercise its powers of judicial review with regard to the Commission's compliance with that principle.

In the present judgment, the General Court dismissed Printeos' appeal in its entirety, holding, *inter alia*, that: (i) Printeos had not challenged the part of the original decision establishing its liability for the infringement in question so the General Court did not have jurisdiction to rule on this point; and (ii) the fines imposed on Printeos did not breach the principles of equal treatment and proportionality.

Analysis of Important Substantive and Procedural Developments

Euro Interest Rate Derivatives cartel case: General Court confirms high bar for finding of restriction of competition "by object"

It is settled case law that anticompetitive agreements are either categorised as "by object" infringements or "by effect" infringements. Agreements with an anti-competitive object are those which by their very nature have the potential of restricting competition. Such agreements are considered so serious that they are deemed anti-com-

petitive. Thus, where the anti-competitive object of the agreement is established, it is not necessary to examine the agreement's actual effects on competition. According to the case law, in order to determine whether an agreement between undertakings reveals a sufficient degree of harm to be considered a restriction of competition by object, regard must be had to the content of its provisions, its objectives and the economic and legal context of which it forms part. In the *HSBC* judgment, the General Court reaffirmed the high level of analysis that the Commission must conduct before finding an infringement by object.

In its judgment, the General Court agreed with the Commission that the manipulations of Euribor submissions on 19 March 2007, and in particular HSBC's role in the pricing cartel on the market for Euro interest rate derivatives linked to Euribor, constituted an infringement "by object". The General Court also agreed that certain exchanges of information between HSBC and traders from another bank were "by object" infringements because they related to "*trading positions*" and "*detailed not publicly available information on their pricing intentions and pricing strategies*" concerning the derivatives. In this respect, the General Court found that the Commission had conducted the necessary analysis by assessing the public availability of the information and the sensitivity of the information.

However, the General Court rejected the Commission's findings of a "by object" infringement for two instances of information exchange. The General Court found that, for these two discussions on trading positions between HSBC traders and traders at another bank, the Commission had not adequately established that the discussions gave the traders an informational advantage that may have allowed them to adjust their trading strategies as a result. The General Court considered that these discussions should have been categorised by the Commission as "by effect" infringements and so their competitive effects should have been analysed.

Thus, the Commission in assessing potential "by object" infringements must first identify whether an information exchange is inherently harmful and, secondly, must use contextual analysis to verify that fact.

Euro Interest Rate Derivatives cartel case: concept of single and continuous infringement

The concept of a single and continuous infringement was developed by the Commission to impute liability to undertakings which had not been involved in every single cartel contact or had not engaged in every aspect of the infringing conduct in question. This concept allows the Commission to treat a series of infringements by a number of undertakings as constituting one infringement. According to EU case law, there are several criteria that must be satisfied in order to establish an undertaking's participation in a single and continuous infringement. Specifically: (i) there must be an overall plan pursuing a common objective; and (ii) the undertaking must have been aware (actually or constructively) that they were contributing to that overall plan.

In its appeal, HSBC challenged its involvement in a single and continuous infringement in the interest rate derivatives sector. In particular, HSBC disputed the existence of an 'overall plan' with a single aim, arguing, in essence, that: (i) the discussions between traders on issues unconnected to the manipulation of reference rates could not have had the same single aim as discussions relating to the manipulation of those rates, and (ii) there was a lack of evidence that the various forms of collusive conduct formed part of an overall plan.

With respect to point (i), the General Court found that the manipulations of reference rates formed part of a single overall plan and that discussions on issues unrelated to the manipulation of reference rates did not form part of the single aim unless the purpose of those discussions was to distort the normal setting of the reference rates, which the General Court found to be the case here for HSBC. On whether the collusive conduct formed part of an overall plan, the General Court found that HSBC did not actually dispute the Commission's finding of an overall plan, but rather that the collusive conduct could not be imputed to HSBC, and thus rejected the argument.

With respect to point (ii), the General Court made a distinction between the manipulation of the reference rates on 19 March 2007 and the other anticompetitive conduct taken into account by the Commission in respect of the single infringement, which consisted of 'other practices' to restrict competition that may have had an influence on cash flows generated by Euro interest rate derivatives.

Concerning the manipulation of 19 March 2007, although HSBC argued that it had only a rough idea of the broad plan to manipulate the reference rates, it did not know which banks were participating in the scheme. The General Court disagreed and found that HSBC participated in the manipulation of the reference rates on that date and was aware of the participation of other banks. The General Court also held that HSBC discussed the prospect of repeating that manipulation.

However, regarding the "other practices" taken into account by the Commission, the General Court found that these forms of conduct were controlled or directed by the same group of persons as part of the "overall plan", but that none of HSBC's traders was in that group of persons. According to the General Court, HSBC traders received only very fragmented information and, as a result, HSBC was not aware of the offending conduct of the other undertakings and could not have reasonably foreseen it. Accordingly, the Court found that the Commission was wrong to have relied on these "other practices" for the purpose of finding that HSBC participated in a single and continuous infringement.

Notwithstanding the above, although HSBC was aware of the offending conduct of other undertakings for the manipulation of the reference rates that occurred on 19 March 2007, but was not aware of the conduct of the other undertakings for the "other practices", this was sufficient in itself to establish that HSBC was "aware" that it was contributing to an overall plan, and thus was found to have participated in the single and continuous infringement.

– MEMBER STATE LEVEL –

BELGIUM

Belgian Competition Authority imposes second fine on professional organisation of pharmacists in less than six months

On 15 October 2019, the Belgian Competition Authority ("BCA") imposed a fine of € 225,000 on the professional organisation of pharmacists (the "PO") for breaching competition law.

First Decision

In a first decision, the BCA imposed a fine of € 225,000 on the PO. This fine comes less than six months after that same body was, in May 2019, fined € 1 million for engaging in exclusionary conduct which hindered the development of MediCare-Market, a retailer of both medicines and other, less regulated health products (see VBB on Competition Law, Volume 2019, No. 6).

This time, the BCA found that several provisions of the PO's Code of Ethics and two of its communications unduly restricted the ability of pharmacists to advertise their business and non-pharmaceutical products, both online and offline.

In its current version, the Code of Ethics forbids any "solicitation" of patients. The BCA found this to be "almost identical" to a ban on advertising. The BCA also took issue with two communications of 2014 and 2017 that prohibited pharmacists from using Google AdWords or social media to advertise their products. Although the advertising of medicines is regulated in Belgium, no such regulation applies to non-pharmaceutical products. The BCA found that these provisions of the Code and the two communications, therefore, had as their object the restriction of competition. Interestingly, the BCA specified that "*it did not have any objections concerning medicines*" as advertising prescription medicines to end users is forbidden by law and advertising over the counter medicines is strictly regulated.

Compared to its May 2019 decision, the BCA imposed a modest fine of € 225,000. The BCA only fined the PO for its communications preventing pharmacists from using Google AdWords or social media to advertise non-pharmaceutical products, not for the infringements included in the Code of Ethics. Having regard to the principle that decisions must be adopted within a reasonable time, the BCA explained that the infringements included in the Code of Ethics had been investigated since 2010 and should therefore not give rise to a fine. As a result, the fine was based solely on the turnover of pharmacists for their online sales of non-pharmaceutical products. Moreover, since the PO accepted to settle the case, it obtained a 10% fine reduction in exchange for its acknowledgment of the infringement and its waiver of the right to appeal against this decision.

The PO also offered commitments to the BCA, which were mentioned as a reason for the BCA not to impose any fine for the infringements included in the Code of Ethics. These commitments were examined by the BCA in a separate decision.

Second Decision

In this second decision, the BCA decided to close the investigation partially without imposing a fine after the PO offered to: (i) adopt a new Code of Ethics allowing advertising and the solicitation of patients, including through paying referencing services and social media, by the end of 2019; (ii) adopt a commented version of the Code of Ethics complementing the Code of Ethics on advertising and commercial practices, which should notably distinguish between medicines and other products, by the end of 2019; (iii) review the commented version of the Code of Ethics on a regular basis with regard to the decisional practice of disciplinary bodies of the PO and to assess the need to review the Code of Ethics at least every five years; and (iv) make accessible to members on its website an anonymised version of the disciplinary decisions adopted pursuant to the provisions of the new Code of Ethics. The BCA considered that these commitments were sufficient to remedy the flaws which it had identified and therefore made them binding on the PO.

SPAIN

Spanish Competition Authority imposes fines totalling € 54 million on 19 companies for energy sector cartel

On 1 October 2019, the Spanish competition authority ("CNMC") imposed fines totalling € 54 million on 19 companies for participating in a cartel in the market for the provision of energy maintenance services, in breach of Article 1 of the Spanish Competition Act and Article 101 Treaty on the Functioning of the European Union ("TFEU"). In particular, the CNMC considered that the members of the cartel, which lasted for 17 years, had created a network to allocate customers and tenders, fix prices and exchange sensitive information.

The investigation was initiated by the CNMC following a leniency application filed by Navec. While Navec was granted immunity from fines, the CNMC decided not to grant this exemption to one of Navec's managers since he had failed to cooperate with the investigation. Cartel participant Enwesa also benefited from a 50% reduction under the leniency programme for providing additional evidence.

On top of the financial penalties imposed on the other participants, some of which exceed € 14 million, the CNMC's decision was sent to the National Public Procurement Board, which may decide to ban the fined companies (i.e., the companies which did not benefit from the leniency programme) from tendering for contracts with the public authorities for a pre-determined period of time.

VERTICAL AGREEMENTS

– MEMBER STATE LEVEL –

AUSTRIA

Austrian Cartel Court fines Bose € 650,000 for coordinating resale prices of consumer electronics

Following a request by the Austrian Federal Competition Authority, on 14 June 2019, the Austrian Cartel Court fined audio system manufacturer Bose a total of € 650,000 for coordinating resale prices of retailers in Austria. This vertical infringement concerned consumer electronics – including speakers and earphones – and lasted from November 2014 until March 2018. According to a press release dated 7 October 2019, Bose did not contest the decision which thus became final. The fine, although among the highest in recent years, could have been higher had Bose not admitted the infringement.

UNITED KINGDOM

UK competition authority issues Statement of Objections to Fender alleging online RPM

On 8 October 2019, the Competition and Markets Authority ("CMA") issued a press release announcing that it has issued a Statement of Objections ("SO") to guitar supplier Fender Musical Instruments Europe Limited ("Fender"). Based on the CMA's provisional findings, between 2013 and 2018, Fender engaged in online resale price maintenance ("RPM") by requiring resellers to sell guitars online above a minimum price, thereby restricting the resellers' possibility of discounting the product to the benefit of consumers. At present, the CMA's findings are provisional, and the CMA will consider Bose's response to the SO prior to reaching a final decision.

LEGISLATIVE, PROCEDURAL AND POLICY DEVELOPMENTS

– EUROPEAN UNION LEVEL –

The Von der Leyen Commission

As reported last month, Commissioner for Competition Margrethe Vestager has been nominated for a second term in the same role, as well as that of 'Executive Vice-President for a Europe fit for the Digital Age' (see VBB on Competition Law, Volume 2019, No. 9). On 8 October 2019, she was vetted by MEPs during a three-hour hearing, at the end of which she secured approval from the European Parliament committees on Industry, Internal Market and Economic Affairs. A final vote on the entire Commission was initially scheduled for 23 October 2019. However, due to the rejection by the European Parliament of three commissioners-designate, the date of the final vote on the entire Von der Leyen Commission has been tentatively scheduled for 26 November 2019, while the proposed start date of 1 November 2019 has been postponed until 1 December 2019.

– MEMBER STATE LEVEL –

BELGIUM, LUXEMBOURG AND THE NETHERLANDS

Belgian, Dutch and Luxembourg competition authorities advocate for easier competition law enforcement in the digital world

On 2 October 2019, the Belgian, Dutch and Luxembourg competition authorities took the unusual step of adopting a joint memorandum on the role of the competition authorities in a digital world. This joint memorandum discusses merger control issues, the need for guidance in fast-moving digital markets and the possibility of imposing *ex ante* remedies without the establishment of an infringement.

First, the national authorities call on the European Commission to order an economic study on merger control in the digital sector. This study would serve as a basis to "discuss policy options designed to address an alleged underenforcement of competition rules in the digital sector". These options concern notably: (i) how competition authorities "should assess the competitive potential of start-up companies"; (ii) whether a notification threshold based on market shares and/or on the value of the transaction should be added to the existing turnover-based thresholds; (iii) whether the burden of proof could be reversed (thereby obliging the acquirer "to show the pro-competitiveness of its acquisition, or the lack of competitive harm" instead of obliging the authority to demonstrate competitive harm before imposing any condition to, or prohibiting, the transaction); or (iv) whether competition authorities should be allowed to revise their assessment when young targets are being acquired at the early stage of their development, for instance by "imposing that acquirers keep assets and teams separate for a given period of time".

Second, the Belgian, Dutch and Luxembourg competition authorities advocate for offering guidance to the market "within a time period that meets the legitimate expectations of stakeholders". More specifically, competition authorities, especially the European Commission, "must develop the ability and willingness to offer *ex ante* guidance on specific issues, also before they (and the courts) [have] developed the relevant case law". In addition, the three competition authorities propose to develop the practice of providing informal opinions on specific cases, thus allowing competition authorities "to sidestep the infringement route in a much less formal and fast track commitment procedure". This would require "a change of culture" but, in return, would allow competition authorities to provide fast and specific guidance not only to the parties concerned but also to other stakeholders.

Finally, the three competition authorities consider that "there is a risk that ex-post enforcement comes too late to keep markets competitive and contestable" in a winner-takes-all digital environment. Therefore, they propose the introduction of an *ex ante* instrument that would allow both the European Commission and national competition authorities to impose non-punitive remedies without the need to demonstrate first an infringement of the competition rules. If given these powers, a competition author-

ity would be able to prevent competition problems from occurring and would thus be more effective in fast-moving technology markets. The competition authorities compared this proposed extension of their competences with the power of the Dutch competition authority to impose remedies following market studies and with the power of national regulatory authorities within the European Union to impose remedies on telecommunications operators with significant market power. According to the Belgian, Dutch and Luxembourg competition authorities, this new tool would allow them to address "recurring competition concerns" that can be "distilled from reports on the digital economy and online platforms".

THE NETHERLANDS

Dutch competition authority launches market study into the activities of large tech firms on the Dutch payments market

On 22 October 2019, the Dutch Authority for Consumers and Markets ("ACM") announced having launched, upon request of the Dutch Minister of Finance, a market study into the activities of large tech firms on the Dutch payments market. According to the ACM, these large tech firms include, *inter alia*, Apple, Google, Amazon, as well as Facebook. The market study will also assess whether large tech firms from China, such as Alibaba, are planning on entering the Dutch payments market.

The ACM indicates that its research will focus on whether the large tech firms are planning to become active competitors in the Dutch payments market, as well as identifying the nature of their plans, and what impact those plans would have on consumers and businesses.

The ACM wants to clarify what new payment options will become available and whether SMEs have sufficient opportunities to enter the payments market. In this regard, the ACM explains that large tech firms could potentially use their allegedly strong positions on a given market as leverage to dominate another market. Therefore, the ACM claims, their presence on – or even the mere announcement of their entering – the payments market could prevent other providers from also entering that market.

The ACM aims to send out a survey to large tech firms, financial tech firms, banks, as well as other market participants in the beginning of 2020.

On 11 April 2019, the ACM already published its market study into app stores, after which it launched an investigation of Apple's App Store due to the latter's potential abuse of dominance (see VBB on Competition Law, Volume 2019, No. 4).

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