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Table of Contents

ANTITRUST MATTERS
03 The National Competition Commission (NCC) fines two of Spain’s biggest publishing groups for anticompetitive joint selling of advertising space.
03 The NCC closes proceedings against Apple for abuse of dominant position and unfair competition.
03 The NCC closes proceedings against Google for abuse of dominant position in relation to Adworks.
04 The NCC fines members of price-fixing and market-sharing cartel in the sector of plastic wrapping materials for fruit products.
04 The NCC fines the Artists and Performers Collecting Society for abuse of dominant position.
04 The NCC gets tough with Professional Associations.
05 The NCC fines Honda and Suzuki for exchanging commercially sensitive information.
05 The NCC fines members of price-fixing and market-sharing cartel in the sector of concrete, aggregates and mortars.
05 The NCC steps up its anti-gun jumping efforts.
06 The NCC fines Abertis Telecom for margin squeeze.
06 The NCC fines Endesa for abusing of its dominant position as electricity distributor.
06 The NCC fines shipping companies between the Iberian Peninsula and the Balearic Islands for price-fixing and market-sharing cartel.
07 The NCC fines Iberdrola for unfair competition.
07 The NCC fines a collecting society for abuse of dominant position.

MERGERS
08 The NCC authorises Verifone/Hypercom merger subject to commitments.
09 The NCC has approved the merger of Banco Sabadell and Banco CAM.

LEGISLATION AND CONSULTATION DOCUMENTS
09 NCC Memory of Activities 2010-2011.
09 NCC Study on the relationships between producers and distributors in the food sector.
10 The NCC strengthens its surveillance activity by creating an ad hoc unit.

EUROPE
11 The European Commission closes two antitrust probes into pharma companies.
11 The European Court of Justice clarifies the scope of European pharma patent extensions.
12 The European Court of Justice partially annuls the European Commission Decision on State aid granted to ING, easing the position of ING (and, eventually, of other banks that have benefitted from public aid throughout the financial crisis).

HOT TOPICS
12 The Spanish Government announces a merger of regulators, integrating the Competition Authority with the network industries agencies (telecoms, energy, postal sector amongst others).
13 The NCC opens disciplinary proceeding against AENA for exchanging commercially sensitive information (Press release published on 29 February 2012).

INTELLECTUAL PROPERTY
13 New measures against online copyright infringements.
Antitrust behavioural matters

THE NCC FINES ZETA AND PRISA PUBLISHING GROUPS FOR JOINT SELLING OF ADVERTISING SPACE CONTRARY TO COMPETITION LAW (DECISION ISSUED 24 NOVEMBER 2011).

Zeta and Prisa filed a merger notification for the creation of a sales joint venture for the joint marketing of advertising space in the Internet and written publications. The NCC considered that the notified transaction did not qualify as a concentration for merger control purposes.

On the other hand, the NCC did consider that the notified joint venture could contain clauses contrary to competition law. The NCC has found that the agreement amounts to price-fixing and also contains an obligation on purchasers to acquire advertising space simultaneously on various publications. The NCC has fined both Zeta and Prisa with 500,000 Euro.

THE NCC HAS DECIDED NOT TO CONTINUE PROCEEDINGS AGAINST APPLE FOR ABUSE OF DOMINANT POSITION AND UNFAIR COMPETITION (DECISION ISSUED ON 28 NOVEMBER 2011).

The NCC has decided not to pursue proceedings against Apple. The investigation by the NCC was prompted by a complaint from Nuevas Tecnologías y Energías Catalá, S.L. (NTEC). According to the complaint, Apple had initiated a criminal proceeding against NTEC, based on an infringement of industrial property rights, in order to block the import and commercialization in the Spanish market of certain electronic devices, preventing the entrance of other possible competitors. NTEC markets tablets competing with Apple’s tablet (Ipad) under the brand NTK.

NETC considered that these facts should be qualified as practices infringing Articles 2 and 3 of the Spanish Competition Act (SCA), for abusing a dominant position and on unfair competition grounds.

However, the NCC decided to close the proceedings since these facts derived from a very specific and limited dispute between two companies in relation to an industrial property regulation issue, affecting a very small number of devices (71 devices) that were customs banned. The NCC considered that these practices did not affect the public interest and Articles 2 and 3 SCA were, therefore, not infringed.

Prior to the NCC Decision, the Court of First Instance of Quart de Poblet had dismissed Apple’s complaint against NTEC.

According to several press releases, NETC is also seeking damages from Apple for an amount of € 10 Million because of the losses suffered due to the customs ban that blocked the batch of 71 NTK sample tablets that were addressed to interested buyers. Once Apple had lodged the complaint against NETC for infringing industrial property rights, many potential customers changed their mind and finally decided not to buy NTK tablets.

THE NCC HAS DECIDED NOT TO CONTINUE PROCEEDINGS AGAINST GOOGLE FOR ABUSE OF DOMINANT POSITION (DECISION ISSUED ON 1 DECEMBER 2011).

The NCC has decided not to pursue Google. The investigation by the NCC was prompted by a complaint from Compra Amiga SL. Compra Amiga markets steroids and it accused Google of refusing, without objective justification, to
render online Adworks advertising services to Compra Amiga.

The NCC considers that Google’s policy to refuse advertisers that do not comply with Google’s objective, transparent and non-discriminatory policies does not amount to an abuse of dominant position. Furthermore, Google does not compete in the market where Compra Amiga is active. Hence, there are no rational grounds to believe that the refusal to supply amounts to an abuse of dominant position of an exclusionary or discriminatory nature.

THE NCC FINES MEMBERS OF A CARTEL IN THE SECTOR OF PLASTIC WRAPPING MATERIALS FOR FRUIT PRODUCTS (DECISION OF 2 DECEMBER 2011).

This Decision is the result of a successful leniency application by means of which LINPAC and its subsidiary, INFIA, fined with 8.7 million Euro, were exempted from the fine.

In the course of the investigation the NCC carried out dawn raids both in Spain and Italy (in Italy with the aid of the Italian Autorità Garante della Concorrenza). Finally, the NCC found that the members of the cartel had been operating a price-fixing and market-sharing cartel.

The other members of the cartel, ILPA and Veripack were fined with 1 and 2.85 million Euro respectively.

THE NCC FINES AISGE FOR ABUSE OF DOMINANT POSITION (DECISION OF 19 DECEMBER 2011).

Based on a complaint by the association of exhibitors, the NCC considers that the Artists and Performers Collecting Society (AISGE), which has a dominant position in the collective management of rights of interpreters and authors, has abused its dominant position by raising the tariffs it charges to movie exhibition companies from 0.8% to 1.5% of box-office revenues. AISGE has been fined 0.6 million Euro. An aggravating circumstance is the fact that AISGE had already been fined for comparable facts back in 2000.

THE NCC HAS DECIDED TO CLOSE, SUBJECT TO COMMITMENTS, THE PROCEEDING INITIATED AGAINST THE SPANISH FEDERATION OF PROVINCES AND TOWNS AND A NUMBER OF PROFESSIONAL ASSOCIATIONS (DECISION ISSUED ON 28 DECEMBER 2011).

On 28 December 2011 the NCC decided to terminate a case with the Spanish Federation of Provinces and Towns and a number of Professional Associations.

The sanctioning proceeding was related to an alleged infringement of the prohibition on anticompetitive agreements. The facts of the case are as follows: in 2009 and 2010 the Spanish Federation of Provinces and Towns signed agreements with various professional associations in order to set up a series of services to be provided by the professional associations in connection with local licenses. In particular, the Federation of Provinces and Towns signed agreements with the architects and engineers professional associations.

The agreements had as their object the provision of regulatory and documentation compliance and verification services by professional associations to City councils. According to the NCC, as a consequence of the agreements under investigation the said services would be reserved to professional associations; whereas they should be open to competition.

To terminate the case in a negotiated manner, the Spanish Federation of Provinces and
The NCC fines concrete, aggregates and mortar producers more than Euro 11 million (Decision of 12 January 2012).

The NCC has imposed fines which combined amount exceeds Euro 11 million upon five concrete producers for operating a price-fixing and market-sharing cartel affecting the Northern Spanish region of Navarra during at least the June 2008 to 22 September 2009 period.

The NCC is lately rather active monitoring gun-jumping cases. In particular, since the beginning of 2010, the NCC has issued six gun-jumping Decisions (files SNC/0003/09, ABERTIS / TRADLA; SNC/0005/09, CONSEÑUR / ECOTEC; SNC/0006/10, BERGÉ / MARÍTIMA CANDINA; SNC/0008/10, TOMPLA; SNC/009/11, DORF KET AL and SNC/0015/11, GESTAMP/ESSSA BONMOR).

The NCC fines Montesa Honda and Suzuki Motor for anticompetitive exchange of commercially sensitive information (Decision of 28 December 2011).

The NCC has fined motorbike manufacturers Montesa Honda and Suzuki Motor for exchanging commercially sensitive information. Authority’s officials found evidence of collusion during the dawn raids conducted in the headquarters of both companies. Such evidence reportedly consisted of a series of emails exchanged between the parties containing information on motorbikes wholesale prices and recommended resale prices to be applied during 2009.

Montesa Honda has been fined 2,098,280 Euro and Suzuki Motor 1,881,570 Euro.
The NCC initiated formal proceedings against Abertis Telecom for an alleged abuse of dominant position consisting of preventing competitors from entering the market for digital terrestrial television (DTT) signal transport and distribution services.

Abertis, as an operator with significant market power in the relevant market, is obliged to allow access to its network of location and centres for broadcasting DTT signal, since this network is an asset that cannot be replicated and one that is essential for the provision of the DTT signal transport and broadcasting service. Moreover, Abertis also provides DTT transport and broadcasting services to television operators, where it also has a dominant position.

After an economic assessment of Abertis Telecom’s costs and incomes, the NCC considered that Abertis Telecom was responsible of applying a margin squeeze contrary to Articles 2 SCA and Article 102 of the Treaty on the Functioning of the European Union (TFUE).

This is not the first time Abertis Telecom is fined by the NCC for abusing its dominant position. In May 2009, Abertis Telecom was fined because the design of the contracts, in terms of duration and structure of discounts, led to a market foreclosure in the provision of the television signal transmission service.

The NCC has imposed fines to maritime transport companies totalling Euro 54 million for breaching the prohibition on anticompetitive agreements. According to the press release issued by the NCC, the cartel members shared markets and agreed prices regarding the shipping lines connecting the Iberian Peninsula and the Balearic Islands and the routes connecting the different Island, both regarding passengers and freight transportation.

THE NCC FINES SHIPPING COMPANIES EURO 54 MILLION (DECISION OF 23 FEBRUARY 2012).

The NCC has imposed fines to Endesa with two different fines (Euro 15 million and Euro 8.2 million) for two different offences, both related to the electrical installations market, which includes carrying out necessary works to connect the distribution grid to the reception facilities of end users.

Regarding the first offence, for which it was fined Euro 15 million, Endesa was found to have taken advantage of its position in the distribution market to distort competition in the related market for electrical installations that are not reserved to the distributors, in which it also operates. Endesa used information to which it had privileged access as distributor in order to carry out the electrical installation work for the largest customers in this market. Consequently, competitors could not compete under equal terms.

As for the second offence, for which it was fined Euro 8.2 million, the NCC found that Endesa had abused its dominant position by charging customers for carrying out linking and connection works for the installation. According to the regulation, the distributor must carry out the works at its own costs.

The investigations were triggered by the complaint lodged by the National Federation of Electrical and Telecommunications Installations businesses of Spain.

THE NCC FINES ENERGIA EURO 23 MILLION FOR ABUSING ITS DOMINANT POSITION AS ELECTRICITY DISTRIBUTOR (DECISION 22 FEBRUARY 2012).
Therefore, the Council has decided to impose on Iberdrola SA, Iberdrola CUR SAU and Iberdrola Generación S.A.U. a fine of 10,685,000 Euros.

NCC FINES THE SPANISH AUDIOVISUAL PRODUCERS COLLECTING SOCIETY (EGEDA) FOR ABUSE DOMINANT POSITION (DECISION OF 2 MARCH 2012).

The NCC fined Entidad de Gestión de Derechos de los Productores Audiovisuales (EGEDA), the audiovisual producers’ collecting society, with Euro 478,515, for abusing its dominant position in the market for granting authorizations and remuneration of audiovisual producers by hotel businesses for public communication acts in hotel rooms.

In 2005 EGEDA established, with effect since 2004, a general rate on a monthly basis for public communication in the hotel rooms, depending on the hotel category. The monthly amount to pay for a particular hotel would be obtained by multiplying the rate corresponding to the hotel’s category (five, four, three or less stars) by the hotel’s number of places. This overall rate was reported to the Ministry of Culture, according to the Spanish Copyright Act.

The NCC considers that the decision by EGEDA to charge, until 2011, a price depending on the places in the hotel, instead of using the information they had access to regarding the effective hotel room occupation representing the potential users, constitutes an unfair abuse.

Furthermore, the NCC considers that the disproportion between the general rates and rates agreed by EGEDA with various hotel associations or with individual hotels, which is not objectively justified, shows an abusing strategy consisting of unilaterally fixing a disproportionate general base price which, according to the law, will be applied in case of default of a specific agreement. Consequently, EGEDA would be distorting the mandatory

Trasmediterránea and Isleña Marítima de Contenedores operated a price-fixing and market-sharing cartel between 2001 and 2010 concerning the routes between the Iberian Peninsula and the Balearic Islands, as well as the routes between the islands of Majorca and Menorca and between Ibiza and Majorca. On the other hand, Balearia, Sercomisa y Mediterránea Pitiusa operated a cartel between 1995 and 2011 regarding the line connecting Ibiza and Formentera.

The biggest fines have been imposed to Transmediterránea (more than Euro 36 million) and Balearia (almost Euro 16 million).

THE NCC FINES IBERDROLA FOR UNFAIR COMPETITION (DECISION ISSUED 24 FEBRUARY 2012).

Iberdrola has been fined Euro 10,685,000 for unfair competition. The complaint was filed by Gas Natural SDG Services, and Unión Fenosa Comercial, S.L. against Iberdrola because the latter was transferring customers from the last resort electricity retailer to a free market electricity trader without obtaining the express consent of the customer, which is necessary as established in the sectorial regulation (Order ITC/1659/2009).

According to the sectorial rules, the consent of the customer is needed to change electricity supplier. From August 2009 to March 2010, Iberdrola proceeded to transfer customers without their consent, failing to comply with the applicable regulation.

The NCC stresses the fact that the changes took place when the liberalization of the retail market for electricity supply was going to deploy all its effects, that electricity supply is a basic input in the economy, and that small and medium companies were the ones affected by Iberdrola’s conduct. Consequently, the NCC considers that Iberdrola’s behaviour has affected the public interest.
negotiation imposed by the Copyright Law, as the party negotiating with EGEDA will finally settle for high prices, which are, even though, below the disproportionate general rate.

Therefore, the NCC finally fined EGEDA, taking into account, as an aggravating circumstance, that EGEDA had been fined for similar practices by the NCC in 2000.

Mergers

THE NCC AUTHORISES VERIFONE/HYPERCOM MERGER SUBJECT TO COMMITMENTS (DECISION OF 29 DECEMBER, CASE C-0410/11).

This is an interesting case and we are reporting it based on the publicly available (press) information. The merger Decision on the case is not public. We have consulted with the NCC the point and apparently there is a conflict regarding confidentiality, which would explain the delay in its publication. As soon as the Decision is public, we will revisit the matter.

Verifone Systems, Inc is a global leader in secure electronic payment solutions, and Hypercom Corporation, a high security electronic payment and digital transactions solutions provider. In 2010, Hypercom and Verifone announced an agreement under which Verifone would acquire Hypercom in an all-stock transaction.

The foreseen merger of the point-of-sale payment devices suppliers met the notification thresholds in Spain. In order to avoid such notification obligation, Hypercom divested its assets related to the marketing of electronic payment terminals in Spain (and UK) to US private equity firm Klein Partners, signing additional licence agreements, eliminating any overlap between Verifone and Hypercom in Spain. However, on July 2011, the Spanish National Competition Commission (NCC) announced that Verifone had to notify its planned acquisition of Hypercom for approval.

Verifone and Hypercom, along with rival Ingenico, were the three leading players in Spain. According to the NCC, while other smaller operators are present in the Spanish market, the merger of two of the three leading providers would appear to result in an unacceptable level of concentration.

In December 2011, the Verifone/Hypercom deal was finally notified to the NCC, and the latter considered that the Hypercom/Klein deal did not lead to a permanent change of the control structure of the Spanish market share of Hypercom, as Klein would not be able to maintain Hypercom’s competitive level on the Spanish market. The operation would give rise to problems for effective competition in the markets for the design and marketing of electronic payment devices, entailing a duopolistic market structure in Spain and at European level. Indeed, the Hypercom/Klein deal limited Klein’s actions in Spain and the UK, making it impossible to obtain sufficient economies of scale and scope to enable to remain as a competitive operator independent of Verifone.

Verifone presented commitments to eliminate the NCC’s doubts, accepting as binding the licence and technical assistance agreements already signed with Klein and undertaking to sign additional licence agreements that will enable Klein to market Hypercom’s products, during a period of five years, in a geographical area broader than just Spain and UK.

The NCC finally authorized the merger subject to the commitments presented by Verifone.
**CONSOLIDATION AND RE-STRUCTURING OF THE SPANISH BANKING SECTOR: THE NCC APPROVES THE GRUPO BANCO SABADELL / BANCO CAM MERGER (DECISION OF 8 FEBRUARY 2012, CASE C-0422/12).**

Unsurprisingly, the NCC approves this significant transaction in phase 1 since the transaction is not able to modify the competitive structure of the analyzed markets, given that the market shares of the new entity are moderate and there are bigger players.

Grupo Banco Sabadell consolidates itself as the fourth Spanish banking group by acquiring one of the Spanish banks benefitting from restructuring and support measures. The acquisition was approved by the Spanish Ordered Bank Restructuring Fund (FROB). However, the restructuring plan is still conditioned to the approval of the European Commission.

**Soft law and Studies**

**NCC: MEMORY OF ACTIVITIES 2010-2011.**

The NCC has issued its report of activities in the period 2010-2011 (Report). The Report has been signed by the exiting President of the NCC. In his introductory remarks, Mr. Berenguer takes pride on the accomplishments of the first few years of life of the NCC since the entering into force of the 2007 Competition Act. In particular, the exiting President underlines the success of the leniency programme (which entered into force in Spain in 2008 along with the implementing Regulation) and the fact that six punishing decisions in cartel cases have been owed to the leniency programme. The President also underlines the powers of inspection afforded by the 2007 Competition Act and the fact that 37 inspections have taken place under those powers.

On restrictive practices procedures, the Report underlines the emergence of the commitment decisions as an alternative form of termination that is gaining in importance. The Report also notes a slight decrease in the number of complaints, although the complaints received end up in formal initiation of proceedings in a larger percentage (the percentage of complaints that end up with opening of formal proceedings was of 34% in 2011 up from 16% in 2007). In the period considered (2009-2011) the fines for restrictive practices amounted to 155,734,027 Euro. The largest fines were imposed in the professional hair care products and the UNESA (energy sector) cases.

There has been an increase in the number of merger control procedures (113) initiated in the last year. This is somewhat counterintuitive since the economic crisis in Spain has aggravated. However, in our experience, the vigorous prosecution of gun-jumping by the Authority, coupled with the subsistence of the market share threshold (which as a result of a legal reform last year has been modified to make sure that acquisitions where the parties have slight turnover in Spain must not be notified) may have caused international companies to be more cautious with any deals that have market share in Spain. Most of the merger notifications (64%) were notified because the market share threshold was met and only three notifications required commitments.

The Report also underlines the increase in gun-jumping enforcement and the number of procedures and fines for failing to notify reportable transactions, which has been noteworthy.

**NCC – STUDY ON THE RELATIONSHIPS BETWEEN PRODUCERS AND DISTRIBUTORS IN THE FOOD SECTOR.**

The NCC has recently published a study on the relationships between manufacturers and distributors in the food sector (Study). The 160 page long Study, provides an interesting
Amongst other things, the Study focuses on the thorny issue of private label, which has severely affected many manufacturer brands in Spain. Numerous producers have publicly complained about the unilateral delisting of their products by some big supermarket chains selling private labelled products. The Study takes account of previous studies on similar topics in recent years by agencies such as the OFT or DG Enterprise of the European Commission and relies on evidence of interviews to market actors as basis for its conclusions.

The Study notes the following market trends: In the first place, there is a considerable increase in concentration on the distribution side. The NCC takes notice of the important evolution of the food distribution sector in Spain, which has undergone considerable consolidation and concentration; taking the entire territory of Spain as reference, the aggregated market share of the four top distributors has gone from 48.7% in 2002 to 58% in 2009.

Secondly, the bargaining power of distributors vis-à-vis manufacturers has increased. That is caused inter alia by a reduction of the commercial importance of traditional food stores in benefit of larger stores or supermarkets, the creation and adherence of more distributors to purchasing organisations or the vertical integration of operators.

Finally, the Study notes an increase in the importance of the private label. Private labels have enjoyed a phenomenal growth in Spain in the last few years, particularly in the years of the financial crisis. The Study points out some of the benefits of own-label products (in terms, for instance, of price competition) but also identifies some of the eventual risks that own label products may lead to, such as reduction of interbrand competition due to the progressive replacement of manufacturer brands by distributor brands and the reinforcement of the (leading) manufacturer brands in detriment of the weaker manufacturer brands. The NCC also considers that own-label brands may lead to a reduction in intrabrand competition because stronger distributors would have a competitive advantage vis-à-vis weaker distributors.

The Study engages into an extensive and relevant consideration of various types of conduct that reflect some degree of buyer power. These include the commercial rebates, “most favoured nation” clauses, category captain or unilateral delisting by distributors of manufacturer brands. The NCC considers that some of these commercial practices do not contribute to healthy competition in the market; and some practices evidence the increasing bargaining power of distributors.

In summary, this is an important and relevant effort by the NCC on the area of buyer power, which has been largely debated in Spain and the EU at large. In Spain at least, although many would have liked it, it has been difficult to establish the existence of dominant positions on the distributor side, a reason why various practices which have been controversial in the past (e.g., delisting) have not been litigated or complained about before the competition authorities on antitrust grounds. This Study provides some interesting clues in this regard.

THE NCC STRENGTHENS THE SURVEILLANCE OF COMPLIANCE WITH ITS DECISIONS.

On 10 February the NCC agreed to create a new Monitoring Unit to watch compliance with obligations, decisions and agreements foreseen in Article 41 SCA (including both conduct and merger cases). The functions of examining the procedures for
monitoring compliance were included in the SCA as a tool to ensure that the rulings of the NCC are fully effective.

Europe

THE EUROPEAN COMMISSION CLOSES TWO ANTITRUST PROBES INTO PHARMA COMPANIES.

The European Commission (EC) closed last week two antitrust investigations into pharmaceutical companies, related to illegally keeping a generic version of heartburn drug off the market and allegedly excluding generic alternatives to patented drugs.

Last Thursday 1 March, the EC ceased its antitrust investigation, into pharma companies AstraZeneca and Nycomed, focused on suspected individual or joint action to delay the market entry of generic versions of heartburn drug Nexium off the market. The EC did not find enough evidence to prove the companies had worked in tandem to delay the appearance of an alternative to Nexium.

Furthermore, on Friday 2 March, the EC closed an antitrust investigation, involving GlaxoSmithKline and generics company Synthon, where the issue at stake was the alleged exclusion or delayed entry of generic drugs onto the market, resulting from an abuse of a dominant position or anticompetitive agreements. The case is understood to concern a complaint by Synthon against GlaxoSmithKline over the drug paroxetine, an anti-depressant. Last October, GSK disclosed that there was also an antitrust probe in the UK looking into the supply of paroxetine. However, after the withdrawal of the complaint by an unnamed company, the regulator decided to administratively close its investigation.

The entry of generic drugs onto the European markets has been under considerable scrutiny by the commission and national regulators. As follow-up, the EC continues to regularly monitor potentially problematic patent settlements and opened antitrust investigations against Servier, Lundbeck, Cephalon and Johnson & Johnson for possible violation of EU competition rules, including practices involving generic companies.


In 2011, the English High Court asked the ECJ for guidance in a dispute between pharma companies Novartis and Actavis in relation to the scope of European patent protection certificates, and more specifically, regarding the scope of supplementary protection certificates (SPC).

SPCs were introduced to compensate for lengthy market authorisation proceedings, as well as discrepancies in patent regulation across the EU.

In this particular case, Novartis held the patent for the active ingredient Valsartan. This patent expired on February 2011, but Novartis had been previously granted a six-month extension SPC on this active ingredient.

The generic manufacturer Actavis indicated its intention to market a generic medicinal product comprising Valsartan in combination with hydrochlorothiazide, after the expiry of the patent, arguing that the SPC held by
Novartis is only for Valsartan as a sole active ingredient.

The ECJ has said that the SPCs confer on the holder the same rights as the basic patent. Therefore, if a patent-holder can oppose all use or certain uses of his product with the basic patent, he will be entitled to do the same if he holds an SPC on that same product. Consequently, the ECJ states that Novartis could block generics manufacturers from using Valsartan in conjunction with other substances until the expiry of the SPC.

THE EUROPEAN COURT OF JUSTICE PARTIALLY ANNULS THE EUROPEAN COMMISSION DECISION ON STATE AID GRANTED TO ING, EASING THE POSITION OF ING.

ING, like many other financial institutions since the demise of Lehman, has received State aid. The Commission classified the State measures (a capital increase subscribed by the State; cash applied to impaired assets in relation of a portfolio of subprime securities and guarantees given on ING’s liabilities) as restructuring aid. The Court, however, considers that the Market Economy Investor Principle test has not been rightly applied by the European Commission. In other words, a private investor may have invested in ING under the (allegedly advantageous) terms in which the Netherlands invested in ING.

The MEIP test relies on a very simple assumption that if a State measure amounts to an investment in market terms, the measure does not qualify as State aid. However, the assessment of the MEIP in practice can become extremely an extremely complex exercise. In any event, the financial sector should welcome this decision as a positive development.

The purpose of the NCMC would be to ensure, preserve and promote the proper functioning of the market and transparency and free competition in the sectors on which it exercises its oversight. More specifically, its functions

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**Hot Topics**

THE SPANISH GOVERNMENT ANNOUNCES A MERGER OF REGULATORS.

The Government has announced a merger of sector regulators. The information available indicates that the plan is to bring the competition energy, telecoms, gaming, airports and postal agencies under the umbrella of the antitrust agency, the National Competition Commission. According to the government this should imply cost savings and avoid discoordination. Indeed, the tensions and contradictions between the NCC and the telecoms regulatory authority have been remarkable. Most recently both authorities have clashed in connection with market definition of relevant markets for regulatory obligations and in connection with a price-squeeze case against Abertis in the TV signal transmission sector.

The preliminary draft law creating the new National Commission of the Markets and Competition (NCMC) establishes that the new body will combine the functions related to the proper functioning of markets and sectors previously supervised by the National Energy Commission, Telecommunications Commission, the National Competition Commission, the Committee of Rail Regulation, the National Commission on the Postal Sector, the National Gaming Commission, the Airport Economic Regulatory Commission and the State Board of Audiovisual Media.

The purpose of the NCMC would be to ensure, preserve and promote the proper functioning of the market and transparency and free competition in the sectors on which it exercises its oversight. More specifically, its functions
would include the oversight and control of the regulated markets, the investigation and resolution related to competition, arbitration and conflict resolution, advisory and other functions.

The draft law requires the NCMC to publish all issued reports, the report on annual activities and the annual or pluriannual plans. The Commission shall also make public the agreements and resolutions adopted by the Council and the organization and functions of each organs. Parliamentary control is effected through the, at least, annual hearings of the President to the Congress.

THE NCC OPENS DISCIPLINARY PROCEEDINGS AGAINST AENA FOR EXCHANGING COMMERCIAL SENSITIVE INFORMATION (PRESS RELEASE PUBLISHED ON 29 FEBRUARY 2012).

Following the dawn raids carried out in the framework of the investigation in the driverless car rental sector, the NCC has initiated a disciplinary proceeding against Aeropuertos Españoles y Navegación Aérea (AENA), the Spanish public entity that owns and operates the majority of the airports in Spanish territory.

As a result of the mentioned investigations, the NCC gathered reasonable evidences indicating that AENA has infringed Articles 1 SCA and 101 TFEU, by exchanging commercially sensitive information of driverless car rental companies renting commercial premises in airports all over the Spanish territory.

The exchange of commercially sensitive information is considered as a very serious infringement, which could result in a fine of up to 10% of AENA’s total turnover in the financial year immediately prior to the one in which the fine is imposed.

The Spanish Government published, on 30 December 2011, the new regulation concerning the Intellectual Property Commission (Regulation), which came into force on March 1st, 2012.

The Regulation grants new functions to the Intellectual Property Commission (Commission), which is divided in two Sections. The First Section has mediation and arbitration functions to deal with conflicts regarding rights which can be managed by collective copyright representation. The Second Section deals with online copyright infringements, deciding if the specific content of a website infringes copyright and, in case it does, ordering its removal by the Internet Service Provider (ISP). In the event that the ISP does not voluntarily fulfill such order, the Commission is entitled to force intermediary ISPs to disable access to the infringing content, provided it obtains a Court authorization to impose such measures.

The Commission is only entitled to act against online copyright infringements committed by service providers who act on a profit basis. Therefore, digital copyright infringements committed by final users exchanging protected files through “peer to peer” nets, are excluded from this regulation.

Due to the limited scope of its powers, and to the fact that the Commission can only act indirectly against intermediary ISPs (as a result of infringements committed by service providers), the efficiency of the Commission to fight online copyright infringements remains, today, uncertain.
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