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Newsletter EU Law

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Acquisition of Nuance by Microsoft cleared

On 21 December 2021 the Commission unconditionally approved the acquisition of Nuance by Microsoft.

Nuance is a transcription software company headquartered in the US with a focus on the healthcare sector and customer engagement solutions. Its health-related speech and artificial intelligence solutions help physicians conduct administrative tasks more efficiently.

The Commission found that the acquisition by Microsoft would not significantly reduce competition in the markets for transcription software. Nuance offers mostly out-of-the-box solutions to end-users while Microsoft provides application programming interfaces as part of its Azure Cognitive Services that developers can use to integrate speech recognition technology into their programmes. The investigation indicated that competing transcription service providers in healthcare do not depend on Microsoft for cloud computing services. The combined entity would not have the ability and/or incentive to foreclose its competitors in the relevant markets and will continue to face strong competition from other players. The access to data transcribed with Nuance's software data does not provide an advantage that would allow Microsoft to shut out competing healthcare software providers.

Veolia's acquisition of Suez approved

On 14 December 2021 the Commission approved the acquisition of Suez by Veolia subject to conditions.

Veolia and Suez, both based in France, are global leaders in the water treatment and waste management sectors offering services to municipal and industrial customers. The Commission's investigation revealed that the transaction would lead to significant horizontal overlaps in specific markets in Europe. To address these concerns Veolia offered a substantial package of divestments: almost all of Suez's activities in the non-hazardous and regulated waste management markets and the municipal water market in France; almost all of Veolia's activities in the mobile water services market in Europe; a vast majority of Veolia's activities in the French segment of the industrial water management market; part of Veolia's and Suez's hazardous waste landfill activities, and all Suez's activities in the incineration and physico-chemical treatment of hazardous waste. The proposed transaction did not raise competition concerns in the other markets in the water and waste management sectors.

The transaction also creates vertical and conglomerate links, which, however, do not raise competition concerns.

Abengoa fined EUR 20 million

On 10 December 2021 the Commission fined the former ethanol producer Abengoa EUR 20 million for participating in a cartel concerning the wholesale price formation mechanism in the ethanol market.

Abengoa, formerly one of the biggest ethanol producers in the EU, referenced the large majority of its ethanol sales contracts to the monthly average of ethanol benchmarks published by S&P Global Platts (Platts). For establishing its benchmarks Platts takes the trading activity into account in its assessment process named 'Market on Close' ('MOC'). Therefore, the level of the ethanol benchmarks could influence directly the revenues that Abengoa received from its ethanol sales. The Commission's investigation revealed that between 2011 and 2014 Abengoa coordinated its trading in the form of chats with other trading companies, during and after the so-called Platts 'MOC Window', i.e. between 16:00 and 16:30 London time. Abengoa's aim was to artificially increase, maintain and/or prevent from decreasing the levels of Platts' ethanol benchmarks. It also limited the supply of ethanol delivered to the Rotterdam port, in order to reduce volumes available for delivery in the MOC Window.

Abengoa claimed the inability to pay under the 2006 Guidelines. After assessing the financial situation and restructuring plans of Abengoa, the Commission reduced the fine.

Foreign Exchange trading cartel fined EUR 344 million

On 2 December 2021 the Commission fined UBS, Barclays, RBS, and HSBC a total fine of EUR 261 million under the settlement procedure and Credit Suisse EUR 83 million under the ordinary procedure.

The Commission's investigation focused on the trading of the most liquid and traded currencies worldwide (G10 currencies). Some traders in charge of the Forex spot trading of G10 currencies, acting on behalf of the fined banks, exchanged sensitive information and trading plans, and occasionally coordinated their trading strategies through an online chatroom called Sterling Lads. It enabled the traders to make informed market decisions on whether and when to sell or buy the currencies. Occasionally, these exchanges also allowed the traders to identify opportunities for coordination, for

example whereby some of them would temporarily refrain from trading.

UBS received full immunity for revealing the existence of the cartels, thereby avoiding a EUR 94 million fine. The Commission applied a reduction of 10% to the fines imposed on four banks in view of their acknowledgment of the cartel. Credit Suisse did not cooperate under the settlement procedure, but the Commission granted a reduction of 4% to reflect that Credit Suisse was not held liable for all aspects of the case.

The decisions complete the wider Commission's Forex investigation whereby two other infringements were concluded with settlements in 2019.

Conserve Italia fined in canned vegetable cartel

On 19 November 2021 the Commission fined Conserve Italia EUR 20 million for participating in a canned vegetables cartel.

For over 13 years Conserve Italia participated in a cartel for the supply of certain types of canned vegetables to retailers and/or food service companies in Europe. The cartel participants fixed prices, agreed on market shares and volume quotas, allocated customers and markets, exchanged commercially sensitive information and coordinated their replies to tenders. The infringement comprised separate agreements covering private label sales of canned vegetables and canned sweetcorn in Europe, as well as both own brands and private label sales to retailers and to the food service industry specifically in France.

In 2019 the Commission fined Bonduelle, Coroos and Groupe CECAB a total of EUR 32 million for participating in the same cartel. Conserve Italia decided not to settle with the Commission and was now fined EUR 20 million. In the canned mushrooms cartel, the Commission fined in 2014 Bonduelle, Lutèce and Prochamp a total of around EUR 32 million and in 2016 Riberebro EUR 5.2 million.

General Court upheld EUR 2.42 billion fine on Google

On 10 November 2021 the General Court largely dismissed Google's action against the decision of the Commission of 27 June 2017 that Google had abused its dominant position on the market for online general search services in 13 countries in Europe.

The Commission found that the results of product searches made using Google's general search engine were positioned and displayed in a more eye-catching manner when the results came from Google's own comparison shopping service. Competing comparison shopping services appeared as simple generic results and were also prone to being demoted by adjustment algorithms in Google's results pages.

The General Court considered that the practice at issue was liable to lead to a weakening of competition because of three specific circumstances: namely (i) the importance of the traffic generated by Google's general search engine for comparison shopping services; (ii) the behaviour of users, who typically concentrate on the first few results; and (iii) the large proportion of 'diverted' traffic in the traffic of comparison shopping services and the fact that it cannot be effectively replaced. The Court noted that even if the results from competing comparison shopping services were more relevant, they could never receive the same treatment.

Google did subsequently enable competing comparison shopping services to enhance the quality of the display of their results by appearing in its 'boxes' in return for payment. The Court concluded this would require the comparison shopping services changing their business model by ceasing to be Google's direct competitors and becoming its customers instead. The Commission also had a sufficient basis for showing that traffic could not be effectively replaced by other sources such as advertising or mobile applications.

However, the Court ruled that the Commission did not establish that Google's conduct had had – even potentially – anticompetitive effects on the market for general search services and therefore annulled the finding of an infringement in respect of that market alone. Regardless it upheld the EUR 2.42 billion fine.

This publication is intended for general information only. On any specific matter, specialised legal counsel should be sought.

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