



Update

Momentum



Europeu e Concorrência

18 de abril de 2017

CNMC FINES ACB FOR DISTORTING COMPETITION IN THE ACCESS TO THE LEAGUE

On the 12th of April 2017, the Comisión Nacional de los Mercados y la Competencia¹ (from now onwards “CNMC”) – fined the Asociación de Clubes de Baloncesto² (from hereunder “ACB”) on € 400.000,00 for a single and continuous infringement according to Spanish competition law, which defines as prohibited and collusive conduct:

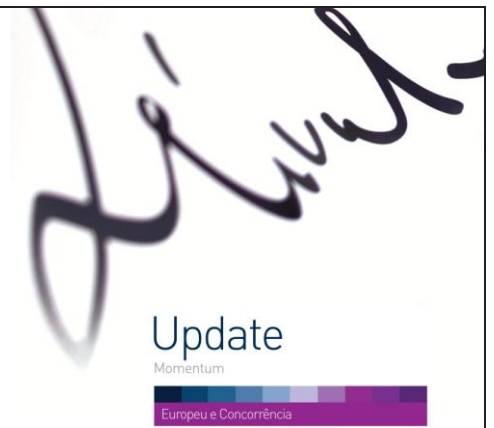
“1. All agreements, decisions, collective recommendations, concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition within the entire market or in part, and in particular those which consist in [...] application, in trading or service relations, of different conditions for equivalent provisions which put competitors in an unfair position *vis a vis* the others.

[...]

The issue at stake concerns the agreements celebrated since 1992 by means of which clubs which met the conditions to move up from the LEB Oro League to the ACB League and were not members of ACB at that time, were obliged to perform the payment of a) an entry fee (ACB *cannon*); b) a contribution for the ascents and descents of leagues (*Fondo de Ascensos y Descensos* - “FRAD”).

¹ The Spanish Competition Authority.

² The Basketball Clubs’ Association.



With regard to the entry fee, CNMC argued that it amounted to an expropriation scheme of future members, considering that the splitting of said amount only took place amongst the members of the association until that very date and did not translate into a better functioning of competition. Moreover, in light of the principle of proportionality, it found that ACB had been unable to claim a valid reason to justify the imposition of the fee; additionally, that the amount was, on the one hand, vastly superior to the annual average revenues of any of the clubs prior to becoming a member of ACB, and on the other, that it fell short when compared to the annual average benefits the new members drew from being part of the association. Furthermore, it noted that within a season (from 92/93 to 93/94) there had been an increase in the fee amount from € 601.012,00 (six hundred, one thousand and twelve Euros) to € 2.400.000,00 (two million, four hundred thousand Euros), without apparent justification or additional benefit.

Other concerted practices provided that 8 (eight) of ACB clubs had been exempt from paying both the fee and the contribution, even if they went to a lower league; and that there was another economic mechanism capable of allowing the payment of outstanding investments performed by ACB, notably, the participation in the capital of ACB. Thus, the measure was unnecessary and disproportional.

Regarding FRAD, the CNMC determined that its application was discriminatory, bearing in mind that 9 of ACB's clubs benefited from the fund without ever having contributed to it, since the establishment of the fund had taken place after their membership.

All things considered, the CNMC decided to fine the *Asociación de Clubes de Baloncesto* on € 400.000,00, imposing that it should refrain from adopting similar conducts in the future.

The practices under analysis amount to decisions by associations of undertakings, sanctioned in our legal system by Article 9(1) of Law no. 19/2012, of May 8th and article 101 of TFUE, in a similar wording to Spanish law as referred above.

The decisions by associations of undertakings are horizontal restrictions (between companies at the same market level - competitors) capable of limiting the commercial freedom of its members, for e.g. which may impact the conduct of companies in the market.



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The aforementioned measures restrict clubs access to the market to the extent that, on the one hand, they are capable of providing for the exclusion of teams from sports competition organized by ACB (due to inability to pay the amounts). On the other, they affect the competitiveness of the new members, which, due to money constrains caused by the payment of the entry fee and contribution, are not able to hire players and make investments lessens as those who do not fall under the scope of said agreements.

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