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# VBB on Competition Law

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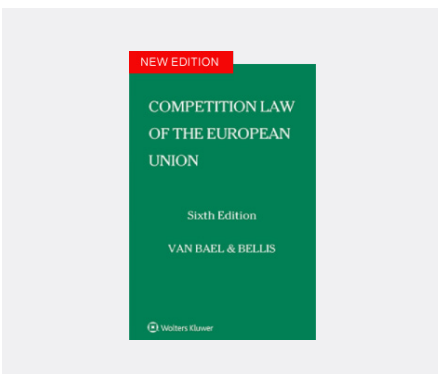
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## MERGER CONTROL

European Union level

### Media Freedom – New EU legislation and Dutch merger decision

On 8 August 2025, the European Media Freedom Act (“EMFA”) became fully applicable across the EU. The EMFA requires EU Member States to implement a framework for the assessment of concentrations in the media sector. It remains unclear, however, whether Member States will perform this assessment as an additional, political step in the clearance process or as part of a traditional merger control assessment. The recent clearance by the Dutch Authority for Consumers and Markets (“ACM”) of *DPG Media / RTL Nederland* may serve as a blueprint for how some competition authorities may seek to fold the assessment of media plurality into their existing evaluative framework and what remedies may be imposed to address plurality concerns in media sector mergers.

#### *The EMFA*

The EMFA aims to protect plurality in the media, which the European Commission views as central to the functioning both of democracy and a market economy. The EMFA establishes a framework to safeguard media pluralism through a variety of means, including by protecting editorial independence and journalistic sources, enhancing transparency surrounding media ownership, and ensuring that EU Member States assess the impact on media pluralism and editorial independence when reviewing concentrations in the media sector.

Article 22 of the EMFA requires Member States to lay down substantive and procedural rules to assess media market concentrations that could have a significant impact on media pluralism and editorial independence. The EMFA requires that Member States designate the national regulatory bodies responsible for such an assessment, but leaves open to each Member State which specific body to put in charge of this exercise. The EMFA also specifies that the assessment of media market concentrations “shall be distinct from Union and national competition law assessments,” which appears to imply that even if a competition body were assigned the

responsibility to conduct the evaluation, it would need to do so as a distinct step in the clearance process.

#### *The ACM’s Decision*

On 27 June 2025, i.e. after the EMFA had been adopted but before it became fully applicable, the ACM announced that it had conditionally cleared the acquisition of media company RTL Nederland (“RTL”) by its Belgium-based competitor DPG Media (“DPG”), following an in-depth investigation. In an unusual move, the ACM followed the media plurality test outlined in the EMFA closely but incorporated the test into its traditional merger control assessment, rather than performing it as a second step.

The transaction was notified to the ACM on 7 February 2024, and an in-depth Phase II investigation was opened on 17 May 2024. Both parties are media companies active across the Dutch media landscape, including television, video streaming, radio, newspapers and online news. As part of its competitive assessment, the ACM conducted an examination of the merger’s effect on “media plurality” and “opinion power”. “Media plurality” is defined by the ACM as the ability of the public to access a variety of media services and media content reflecting a diversity of opinions, voices and analyses, while “opinion power” refers to the degree of influence exerted by media outlets on collective opinion formation. These concepts echo the concepts elaborated in the discussion of media concentrations put forward in Article 22 of the EMFA. The ACM noted that while its use of media plurality as a theory of harm was inspired by the EMFA, it performed its analysis within the context of a traditional merger control test based on whether the transaction resulted in a substantial lessening of competition. It is notable that the ACM took the lead on ensuring media plurality as part of its competition analysis, even though broader concerns relating to the media and its role in democracy usually fall within the remit of the government rather than a competition authority.



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### European Union level

The ACM found that the transaction was likely to have a negative impact on the online news market and particularly within the segment for free general online news – in which competition is highly concentrated and the parties are close competitors. Specifically, the ACM found that reduced competitive pressure between the parties would likely harm media plurality by reducing investment by the merged entity in news quality (e.g., as the result of budget reductions or the elimination of diverse news offerings) and decreasing competition for news stories on factors like speed and depth of reporting. The ACM considered that the transaction could also lead to the parties having greater incentives to exercise political or commercial influence over news content, further undermining news quality and plurality. This risk would increase if the parties' opinion power were high and if news editors were not able to operate with sufficient independence. Finally, the fact that the transaction would give DPG access to RTL's data (including data from other media platforms such as television and streaming services) raised concerns that this strong data position might lead the merged entity to limit the diversity of its news offering, particularly if this data were used to provide consumers with narrowly personalised news and other content across the media landscape. The ACM, however, found that the transaction did not raise concerns with regard to advertising markets or the procurement of journalistic or press agency services.

The parties proposed a package of structural remedies to address the ACM's concerns, which provide that:

- independent foundations will be established with a supervisory role and will take stakes in the parties' news outlets RTL Nieuws and NU.nl; they will be equipped with veto power over decisions such as hiring and firing of the editor-in-chief and changes to the mission or identity of the two news outlets;
- RTL Nieuws and NU.nl will remain freely accessible and continue to operate independently, each maintaining its own newsroom with no possibility of content sharing;
- the Democracy & Media Foundation, an organisation supporting journalistic media plurality, will have expanded shareholder rights within DPG to prevent the sale or closure of national news brands without the Foundation's consent;
- DPG will strengthen editorial independence across its news brands through tightened statutes and binding procedures for editorial budget disputes;
- DPG will develop a DPG Media Charter requiring all directors, supervisors, and shareholders to commit to upholding editorial independence and media diversity; and
- RTL Nederland will fall under the national oversight of the Dutch Media Authority.

Notably, these conditions are set to remain in place indefinitely, even if DPG is acquired by another competitor in the future.

### Key Takeaways

This decision is unusual insofar as the ACM chose to incorporate public policy concerns regarding media plurality and editorial independence into a classical merger control assessment. By incorporating the concepts outlined in the EMFA into its analysis, the ACM provides a blueprint as to how concentrations in the media space can be analysed in light of these concepts. On the other hand, the ACM's approach appears to indicate that it considers that these issues can be effectively handled using traditional merger control tools rather than public policy ones.

When Member States begin to implement the EMFA's requirements to task a national body with the evaluation of media concentrations, it remains to be seen how each country will coordinate the roles of this body with those of the national competition authority. This could create some friction, particularly where a competition authority (such as the ACM) feels it can handle this assessment



## MERGER CONTROL

### European Union level

as part of its ordinary analysis, while the EMFA specifies that the evaluation should occur as a second step. This could also lead to potentially divergent outcomes within the same country (if both the authority and a second body examine these issues as part of an application for merger clearance) or between Member States depending on the composition of the different national bodies.

In parallel, the European Commission is currently consulting on the revision of its Merger Guidelines, explicitly questioning whether the effects of transactions on broader public interest objectives such as media plurality are given adequate weight during merger reviews. It remains to be seen to what extent other competition authorities will incorporate these objectives into their merger assessments, or whether they will consider the Dutch approach an overreach of their transaction review powers.



## MERGER CONTROL

### National level

#### GERMANY

##### **German Federal Court of Justice clarifies scope of the transaction value threshold**

On 17 June 2025, the German Federal Court of Justice (“FCJ”) ruled on the question of whether Meta’s 2022 acquisition of customer relationship management (“CRM”) service provider Kustomer was notifiable under German merger control rules. It is the FCJ’s first decision on the scope of the transaction-value based German merger control threshold that was introduced in 2017.

The FCJ upheld the assessment of the Federal Cartel Office (“FCO”) that *Meta/Kustomer* indeed required notification under German law due to Kustomer’s significant domestic activities, particularly its processing of data from German end-customers. The FCJ emphasized the competitive relevance of data access in digital markets.

The proceedings concerning Meta’s acquisition of Kustomer involved multiple jurisdictions over the course of four years. In spring 2021, Meta initially notified the planned acquisition to the Austrian Federal Competition Authority, which referred the case to the European Commission. Belgium, Bulgaria, France, Iceland, Ireland, Italy, the Netherlands, Portugal and Romania joined Austria’s referral request, and the Commission accepted jurisdiction. Following this referral, the merger was formally notified to the Commission in June 2021.

Parallel to the Commission’s review, the German FCO determined that the transaction was also subject to notification in Germany in December 2021. The German FCO found that Meta’s acquisition of Kustomer should have been notified pursuant to the transaction-value threshold under section 35 (1a) of the German Act against Restraints of Competition (“ARC”). This threshold had been introduced into the German ARC to tackle killer acquisitions and is applicable where, among other things, the transaction value exceeds €400 million and the target conducts “significant domestic activity” in Germany, which was the contentious condition in the present case.

Meta appealed the FCO’s decision but notified the acquisition without prejudice to its appeal in early January 2022 and the transaction was cleared. In the same month, the European Commission approved the acquisition subject to conditions. In February 2022, the FCO informed the parties that the merger did not satisfy the substantive criteria for prohibition but requested payment of the administrative costs in the amount of €25,000. Meta appealed this cost decision to the higher Regional Court of Düsseldorf in April 2022.

In its judgment of 23 November 2022, the Higher Regional Court of Düsseldorf ruled that Meta had not been required to notify its acquisition of Kustomer, reasoning that Kustomer lacked significant domestic activity.

The FCJ, however, upheld the FCO’s decision upon further appeal, rejecting Meta’s appeals in their entirety. In doing so, the Court clarified that the threshold for establishing significant domestic activity is relatively low, thereby broadening the FCO’s authority in merger control. Specifically, the FCJ stated that domestic activity under section 35 (1a) no. 4 ARC is not limited to cases where a target company is physically present in Germany or maintains assets there. It is sufficient that the target provides services to German customers or that the effects of the target’s activities are felt on German markets. The FCJ held that processing end-customer data of German users by Kustomer (via contracts with its German business clients) constitutes domestic activity, even though Kustomer has no direct contractual relationship with the German end customers, the decisive point being that the data processing activities of Kustomer are integral and essential to the CRM-SaaS service and the possibility of accessing German end-customer data is competitively relevant because it could strengthen Meta’s market position in German advertising markets.



## MERGER CONTROL

### National level

With regard to the significance of the domestic activity, the FCJ stated that only marginal domestic activities are excluded from the scope of the provision, which requires only that there be a noticeable, more-than-minimal domestic effect. Valid indicators are criteria like the number of German end customers, the scope of data processed, or the level of user activity. Low revenue ratios (domestic vs. global sales) or market shares do not rule out domestic effect under § 35 (1a) no. 4 ARC.

In summary, the FCJ found that the large number of German end-customer data sets processed by Kustomer demonstrated a substantial domestic activity, which is significant within the meaning of the relevant provision because the processing of end-customer data in Germany provides relevant competitive potential.

There are two key takeaways from the FCJ's judgement with respect to what constitutes "significant domestic activity" of a target company in Germany:

Domestic activity exists if a company's services or their competitive effects are directed at or occur in Germany – even without a physical presence in Germany. Processing data of German end customers is a domestic activity because it forms an essential part of the service and may impact competition in German markets.

For this domestic activity to be significant, it suffices that the domestic activity is more than marginal. This must be assessed by in-country user/data metrics, not by revenue ratios. Kustomer's domestic data-processing activities were therefore deemed significant, making the *Meta/Kustomer* merger subject to German merger control filing and approval.

### GREECE

#### **Greek competition authority prohibits merger for the first time in nearly thirty years**

On 24 July 2025, the Hellenic Competition Commission ("HCC") adopted Decision 887/2025, by which it prohibited Alphabet's acquisition of sole control over Delta in the market for vocational training services.

The parties to the transaction are the two largest providers of vocational training schools in the regions of Attica, Thessaloniki and Volos. The HCC considered that the transaction would result in a very high combined market share in these geographic markets, leading to the creation of a dominant or hyper-dominant position. The HCC also considered the significant discrepancy between the combined market share of the new entity and the share of the next largest competitor, the direct competitive proximity of the merging parties to one another, their brand, reputation and established position compared to their competitors, as well as the absence of sufficient competitive pressure in the market. The HCC concluded that the concentration would raise the barriers to market entry and market expansion and would provide the new entity with the ability to increase prices and to lower the quality of its services. The HCC refused to clear the transaction, despite behavioural and structural commitments offered by the acquiring party.

# ABUSE OF DOMINANT POSITION

European Union level

## European Commission accepts Corning's commitments addressing alleged anti-competitive exclusivity agreements for cover glass used for electronic devices

On 18 July 2025, the Commission accepted commitments offered by cover glass producer Corning, ending its investigation into the alleged abusive exclusivity agreements for the supply of cover glass. Corning's commitments are legally binding for nine years with a worldwide scope of application.

### Background

Corning is a U.S.-based producer of alkali-aluminosilicate glass ("Alkali-AS Glass"), mainly marketed under the "Gorilla Glass" brand and predominantly used as cover glass that protects the screens of handheld electronic devices, such as mobile phones, smartwatches and tablets. Corning also produces clear glass ceramics, a potential substitute for Gorilla Glass.

The Commission's preliminary assessment considered Corning to be dominant in the worldwide market for Alkali-AS Glass (excluding products developed for Apple, which have special compositions and are only used by Apple). The alleged abusive practices involved certain clauses in agreements with original equipment manufacturers of handheld electronic devices ("OEMs") and finishers (who are responsible for processing raw glass), which may have excluded other Alkali-AS Glass producers from large segments of the relevant market.

The allegedly anti-competitive agreements with OEMs involved three types of contractual clauses: exclusive sourcing obligations, exclusivity rebates and so-called English clauses (which obliged OEMs to report to Corning on competitive offers and allowed OEMs to accept that offer only if Corning failed to match the price). The allegedly anti-competitive clauses with finishers under scrutiny were exclusive purchase obligations and no-challenge clauses (precluding the finisher from challenging Corning's patents).

### Accepted Commitments

The final commitments apply to both Corning's Alkali-AS Glass and clear glass ceramics used as cover glass in handheld electronic devices, as the Commission determined that clear glass ceramics are likely to be used more widely by OEMs in the future.

Corning agreed to remove all problematic clauses in agreements with OEMs and finishers and not to include such clauses in future agreements.

With respect to handheld devices sold in the EEA, Corning agreed not to require OEMs to purchase any quantity of Alkali-AS Glass and clear glass ceramics or offer price advantages on meeting such sourcing requirements.

On a worldwide basis, Corning also agreed not to require OEMs to purchase more than 50% of their (i) combined demand for Alkali-AS glass and clear glass ceramics, and their (ii) demand of lithium aluminosilicate glass ("LAS glass", a subtype of Alkali-AS Glass) or clear glass ceramics, from Corning. In addition, Corning agreed not to condition price advantages on such purchases exceeding 50% of OEMs' demand.

With regard to finishers, Corning agreed not to require them to purchase more than 50% of their combined worldwide demand for Alkali-AS Glass and clear glass ceramics for handheld electronic devices, not to implement purchase requirements for any segments of these markets, nor to provide price advantages for meeting such purchasing requirements.

To address concerns relating to patent enforcement, Corning agreed to base claims concerning patents related to break-resistant cover glass solely on patent infringement grounds and not on breach of contract, and equally agreed not to bolster such patent claims by using any other contractual mechanisms (such as penalties).

# ABUSE OF DOMINANT POSITION

European Union level

## AG Medina reignites the dwindling *Bronner* flame in *Lukoil* opinion

On 10 July 2025, Advocate General (“AG”) Medina handed down her opinion in the *Lukoil* preliminary reference proceedings, opining that the *Bronner* test (established by the Court of Justice of the European Union (“Court of Justice”) to assess whether a decision by a dominant company to not deal with competitors may constitute an abuse) can also apply in the context of a refusal to give a competitor access to former State-monopoly infrastructure which was purchased by way of privatisation.

The *Bronner* criteria are intended to ensure that dominant companies may not restrict access to essential facilities without justification, yet also protect the dominant company’s freedom of contract and right to property and incentives for investment and innovation. With respect to infrastructure that could also be used by competitors, in order to impose an obligation on a dominant company to provide access, the *Bronner* criteria require that the infrastructure in question be “*indispensable*” for the requestor of access to be able to carry out their business, and that the refusal of the dominant company to provide access be likely to eliminate “*all competition*” in the relevant market and be incapable of being objectively justified.

In recent judgments, such as *Android Auto* (see [VBB on Competition Law, Volume 2025, No. 2](#)), the scope of application of the *Bronner* test appears to have been restricted. While the *Lukoil* case concerns different facts, AG Medina’s opinion, if followed by the Court of Justice, would reinvigorate the importance of the test and remind authorities and courts that the applicability of the *Bronner* criteria is context-specific and cannot be mechanically sidelined in all circumstances.

### *Background*

The Bulgarian competition authority (“BCA”) found that Lukoil had abused its dominant position in the market for storage of automotive fuels by refusing to give importers and producers of motor fuels access to Lukoil’s tax warehouses and pipelines, and by restricting imports by sea by blocking the tax warehouses of Rosenets and Varna port terminals. Importantly, the BCA held that the high bar of the *Bronner* test did not need to be satisfied to prove an abuse in this case because (i) the infrastructure which Lukoil was alleged to have refused to give access to was built with public funds, and (ii) as an authorised warehouse keeper, there was a legal obligation on Lukoil to make part of its capacity available to its competitors. The BCA imposed a fine of approximately €100 million on Lukoil.

Lukoil challenged the BCA decision, and among other questions, the Administrative Court (Sofia province) asked the Court of Justice whether the *Bronner* test should in all circumstances be excluded on the above basis.

### *AG Medina opinion*

First, the AG confirmed that the *Bronner* criteria are intended to apply where the dominant company “owns” and/or “controls” the relevant infrastructure. The dominant company should have “*developed [the infrastructure] for the needs of its own business by means of its own investments*”. This does not mean that the infrastructure must necessarily have been constructed by the dominant company itself; it can also have been acquired by the dominant company through a commercial transaction with a private third party, by way of private financing.

# ABUSE OF DOMINANT POSITION

## European Union level

Secondly, the AG confirmed that for the *Bronner* criteria to apply, the dominant company must have “*full decision-making autonomy*” regarding access to the infrastructure and should not be subject to a regulatory obligation to grant such access (in which case, access cannot be refused).

More specifically, with regard to the referring court’s question, AG Medina found that excluding the applicability of the *Bronner* criteria in all cases where the construction of the infrastructure was financed with public funds and/or originated from a State monopoly (as opposed to the dominant company’s own funds) would be “*reductive*”. Indeed, for the purposes of Article 102 TFEU, “*a privately owned, ex-State infrastructure is, legally, akin to a purely private infrastructure provided that the dominant [company] owns that infrastructure and exercises full decision-making autonomy over it.*” What actually matters is whether the infrastructure was acquired by the dominant company at a fair price, whether the company invested in it, and whether the company can act as its owner.

The AG opinion also specifically considered the Rosenets port terminal, which is owned by the Bulgarian State, but for 35 years has been made available to Lukoil under a concession. Again, here, the mere fact that Lukoil does not “own” the terminal, does not preclude the applicability of the *Bronner* test – “control” over the terminal (that is comparable to ownership, and provides full decision-making autonomy, including the ability to exclude third-party access without Lukoil’s consent), and paying a fair price for use of the terminal, would be sufficient for *Bronner* to apply.

The AG also explored whether the concession contract – under which Lukoil was required to give access to its port services and not to engage in an abuse of dominant position in the context of granting such access – could be treated as analogous to a regulatory obligation to grant access, such that the *Bronner* test could be excluded.

The AG stated that the core question was whether the concession contract (or privatisation contract, or other related measures imposed by a competent State authority exercising its powers under the relevant regulatory provisions) limits the decision-making autonomy of the dominant company to the extent that it is not able to freely decide to refuse access to the infrastructure (even if it can freely decide on the conditions of such access). Where this is the case, an analogy with a regulatory obligation can be drawn and the *Bronner* test can be excluded.

# ABUSE OF DOMINANT POSITION

## National level

### FRANCE

#### **Abusive promotional and regulatory activities - French Supreme Court reinstates €444 million fines on Novartis, Roche and Genentech**

In 2020 the French competition authority (“AdC”) imposed fines on Novartis, Roche and Genentech for alleged abusive activities in relation to treatments for wet age-related macular degeneration (“AMD”) (see [VBB Life Sciences News and Insights of 9 September 2020](#)). The decision found that the parties held a collective dominant position on the relevant market, and abused this position through the following actions:

- *Denigration Campaign to HCPs.* Novartis allegedly mounted a communication campaign targeting ophthalmologists and key opinion leaders, seeking to explain that Avastin® should not be used for treating eye diseases at the expense of Lucentis®. According to the AdC, this campaign did not amount to a *bona fide* presentation of Avastin® in the interest of public health, but was rather a self-serving tactic to protect the revenues received by the parties from the supply of the higher-priced Lucentis®.
- *Blocking Tactics and Misleading & Alarmist Messages to Public Authorities.* According to the AdC, Roche delayed the supply of samples necessary for a study to evaluate the use of Avastin® for AMD. In addition, Novartis, Roche and Genentech allegedly directed a series of “misleading and alarmist” messages at various public authorities, thus delaying a critical head-to-head trial comparing Avastin® and Lucentis® and at one point securing the prohibition of the off-label use of Avastin®.

On appeal, the Paris Court of Appeal annulled the AdC’s decision in February 2023, holding that the AdC had failed to properly take into account the relevance of the French *Bertrand* Law, which limited the ability of doctors to prescribe Avastin® off label for AMD, in competition with Lucentis®. The *Bertrand* Law was introduced during the period of the alleged infringement as a result of the

(unrelated) Mediator scandal where a medicine prescribed off label had been found to have caused significant health problems. In its judgment, the Paris Court of Appeal also indicated that the parties had the right of freedom of expression, and it was allowable for them to contribute to the public debate (in a accurate and measured manner) concerning the off-label use of Avastin® for the treatment of AMD.

On further appeal, the French Supreme Court (*Cour de Cassation*) has now annulled the judgment of the Paris Court of Appeal, reinstated the AdC’s decision, and remanded the case back to the lower court for further proceedings. The French Supreme Court and the Paris Court of Appeal reached different conclusions on three central issues:

- *Did Avastin® (potentially) compete with Lucentis®?* Following the introduction of the Bertrand Law, the Paris Court of Appeal found that Avastin® could not lawfully be prescribed off label for AMD in competition with Lucentis®, and thus the parties alleged activities to prevent off-label use of Avastin® were not capable of harming competition. On appeal, the French Supreme Court held that the lower court erred by failing to also consider whether Avastin® was a *potential competitor* of Lucentis® (e.g. due to the ongoing efforts to generate data and authorize use of Avastin® for AMD), and thus whether the parties alleged anticompetitive activities were capable of harming such potential competition.
- *Freedom of expression.* In its judgment, the Paris Court of Appeal cited the European Convention of Human Rights (“ECHR”) and noted that the parties had the right to exercise their freedom of expression. Consistent with this right, the Paris Court held that Novartis, Roche and Genentech could legitimately

# ABUSE OF DOMINANT POSITION

## National level

contribute to the public debate concerning the off-label use of Avastin® in an accurate and measured manner, particularly in the context of scientific uncertainty (as Avastin® had not been systematically studied or approved for the treatment of AMD).

On appeal, the French Supreme Court held that the lower court applied the incorrect legal standard. While the ECHR provides significant protections for freedom of expression on political matters, the Court noted that governments have significant margin to regulate freedom of expression in the commercial field. The Supreme Court clarified that the issue of whether the parties acted in violation of the law on abuse of dominance should be assessed solely based on the terms of that law, and the lower court should thus have investigated whether Novartis' communications pursued an anticompetitive objective. If the court finds an abuse, the defending parties may then seek to avoid sanctions if the activities fall within their rights of freedom of expression under the terms of the ECHR.

- *No actual harm to competition, but still an abuse.* The Paris Court of Appeal held that Roche's delay in providing samples necessary for a study to evaluate the use of Avastin® for AMD did not constitute an abuse because it would not have had any anticompetitive effect due to the later introduction of the *Bertrand* Law. On appeal, the Supreme Court held that the lower court erred in considering the impact of the *Bertrand* Law, as it should have instead assessed whether, at the time of Roche's delay in providing samples, such delay was capable of harming competition, even if anticompetitive effects ultimately did not occur due to the later introduction of the *Bertrand* Law.

The French Supreme Court thus annulled the judgment of the Paris Court of Appeals, and sent the case back to the lower court for further assessment in line with its judgment.

## Key Takeaways

While the case is not yet final, the present judgment highlights the strict legal standards faced by companies holding a dominant market position.

- *Extreme caution is required for any statements about competing products.* The present judgment, together with the recent decision by the European Commission finding against Teva, indicates that any statements about competing products to HCPs, payors or public authorities could face strict competition law scrutiny. Care is required to ensure that all such statements are correct, complete, measured, adequately supported and (when relevant) solely addressed to the appropriate regulatory authority.
- *Actions impacting potential competition may also constitute an abuse.* The present judgment reflects a broader trend of competition authorities and courts expanding the application of the competition laws beyond just competition between marketed products. Authorities and courts are increasingly focused on competition for innovation as well as competition from potential entrants still in development or awaiting approval. Companies assessing future plans and strategies for competition law compliance should also carefully consider any impact on potential competition.
- *Exceptions to the competition laws may be defined narrowly.* In this case, the French Supreme Court annulled the lower court's judgment because the lower court attributed too much importance to the introduction of the *Bertrand* law and the parties' fundamental rights of freedom of expression under the ECHR. The Supreme Court instead narrowly interpreted the relevance of these other laws, and held that they did not eliminate the possibility that the parties' activities violated the competition laws.

## CARTELS AND HORIZONTAL AGREEMENTS

### European Union level

#### The European Commission provides guidance on three collaboration agreements between competitors

The European Commission (“Commission”) issued two guidance letters under the Informal Guidance Notice and one opinion under Regulation 1308/2013 establishing a common organization of markets in agricultural products (“CMO Regulation”) on whether the agreements at issue between competitors comply with EU competition law.

##### *Informal Guidance letters*

On 9 July 2025, the Commission published its first two informal guidance letters under the 2022 Informal Guidance Notice. Under that instrument, individual undertakings may seek informal guidance from the Commission where cases give rise to genuine uncertainty because they present novel or unresolved questions for the application of Articles 101 or 102 TFEU. According to the Commission, guidance letters reflect the Commission’s observations on the facts presented by the applicants in the request and do not create any rights or obligations for the applicants or any third party. The guidance letters are conditioned on the accuracy and truthfulness of information provided by the applicants and do not prejudice the assessment of the same questions by the EU Courts.

In the first guidance letter, the Commission considered that the creation of a joint licensing negotiation group (“LNG”) which consists of a group of automotive manufacturers seeking to negotiate SEP licences collectively does not raise concerns under Article 101 TFEU, provided that (i) the relevant standard is not specific to the automotive sector and that the LNG members’ combined market share does not exceed 15 % of total demand for the SEPs or standards concerned; (ii) the joint LNG is open to other interested companies in the automotive sector; (iii) participation by SEP holders in negotiations with the joint LNG is voluntary; and (iv) no commercially sensitive information is exchanged between LNG members.

In the present case, the Commission concluded that, in view of the content and objectives of the proposed joint LNG, including the safeguards foreseen in its operating

rules, the joint LNG does not restrict competition by object.

Notably, the joint LNG members had already received an informal guidance letter from the German Federal Cartel Office in June 2024, clearing the LNG under similar conditions (see [VBB on Competition Law, Volume 2024, No. 6](#)).

In the second guidance letter, the Commission considered that an agreement concluded by port terminal operators seeking to jointly purchase and jointly set minimum technical specifications of battery-powered port straddle and shuttle carriers did not violate Article 101 TFEU provided that (i) participating operators retain the ability to purchase straddle and shuttle carriers independently; (ii) the volume of demand that is pooled through the agreement is capped; and that (iii) the exchange of competitively sensitive information between participating terminal operators is limited to what is strictly necessary. The Commission also stated that the guidance remains applicable for five years and is limited to the territory of the European Economic Area.

##### *Opinion under CMO Regulation*

On 15 July 2025, the Commission issued its first opinion under the CMO Regulation regarding an agreement between producers and buyers of sustainably-produced wine to set indicative prices for bulk transactions.

The Commission found that the sustainability agreement between producers and sellers of sustainably-produced wine, which established indicative prices for bulk wine, qualifies for exemption under Article 210(a) of the CMO Regulation. That provision exempts agreements from Article 101(1) TFEU where they involve agricultural producers, concern agricultural products, aim to achieve sustainability objectives beyond legal requirements, and restrict competition only insofar as is indispensable to those goals.

## CARTELS AND HORIZONTAL AGREEMENTS

### European Union level

Applying the indispensability test, the Commission concluded that (i) individual producers lack the bargaining power to raise wholesale prices to sustainable levels; (ii) a vertical agreement is the most effective and appropriate mechanism to achieve higher sustainability standards; (iii) price coordination is the least restrictive tool available through which the parties are able to obtain wholesale prices for their products that ensure sufficient return to continue producing sustainably; (iv) indicative prices are less restrictive than fixed or minimum prices; and (v) the agreed price level satisfies the indispensability test, as lower prices would not provide adequate incentives for continued sustainable production.

#### *Key takeaways*

The Commission is showing willingness to rely on its underutilised power to issue guidance on potentially anti-competitive agreements where they advance EU's strategic objectives, such as sustainability and industrial policy. In the present cases, the Commission found that the LNG strengthens the competitiveness of the EU's automotive sector and that the licences sought by the LNG on digital technology expected to support decarbonisation and the transition to net-zero emissions. With respect to these agreements, the Commission explicitly stated that letters reflect the Commission's observations on the facts presented by the applicants in the request, do not create any rights or obligations for the applicants or any third party, and do not prejudge the assessment of the same questions by the EU Courts. These letters nevertheless provide some reassurance for the interested parties that the envisaged agreements comply with competition law. Likewise, interested parties will find comfort in the opinion delivered by the Commission under the CMO Regulation that the agreement among terminal operators is expected to accelerate the shift from diesel to electric equipment in EU ports, thereby reducing CO2 emissions.



## VERTICAL AGREEMENTS

### National level

#### ITALY AND POLAND

##### **Restriction of online sales: Fines on bicycle distributor Scott Sportech in Poland and ongoing investigation of Morellato in Italy**

On 21 July 2025, the Polish Competition Authority (“UOKiK”) issued a decision imposing a fine of PLN 4.3 million (€1 million) on the company Scott Sportech Poland for imposing unlawful online sales restrictions on bicycle dealers in Poland. The UOKiK found that Scott Sportech’s requirement that dealers personally hand over a fully assembled bicycle to the consumer in practice acted as a ban on online sales. In parallel, the Italian Competition Authority (“AGCM”) is investigating Morellato for prohibiting its distributors selling Morellato’s products over platforms.

##### *The UOKiK’s decision in Scott Sportech*

The UOKiK found that the documentation governing Scott Sportech’s relationship with its dealers did not contain an explicit ban on online sales. However, the UOKiK determined that the requirement to personally deliver fully assembled bicycles to customers was a *de facto* restriction of online sales as it meant that, in practice, sales could only occur at traditional stores. Furthermore, although dealers were permitted to present Scott Sportech’s products online, this was for purely informational purposes. The UOKiK also noted that dealers were prohibited from selling through third party platforms such as Allegro and eBay.

Scott Sportech was found to have ensured compliance with these requirements by sending emails with threats of sanctions to dealers that attempted to sell bicycles online with delivery to the place chosen by the consumer. Dealers themselves monitored compliance and complained to Scott Sportech when others did not comply with this prohibition. The UOKiK concluded that the prohibition of online sales prevented competition among Polish dealers and limited access to customers from other EU Member

States, thereby infringing both Article 101 TFEU and the Polish law equivalent. In the same sector, in 2023 the UOKiK fined Merida Polksa for prohibiting online sales of bicycles and is currently investigating Kellys Bicycles for suspected resale price maintenance.

Looking beyond Poland, the decision is one of a series of cases in which companies that have prohibited online sales by mandating in store services at the time of sale have been found to infringe Article 101 TFEU. In *Pierre Fabre* (C-439/09), answering questions referred by a French court, the EU Court of Justice found that Pierre Fabre had imposed a *de facto* ban on online sales by requiring that its cosmetics and personal care products only be sold in a space with a qualified pharmacist. The Court found this to be a hardcore restriction under the Vertical Agreements Block Exemption (“VBER”) and strongly suggested to the referring court that it should be considered a by-object restriction of Article 101 TFEU, which was the conclusion subsequently reached by the referring court. In *Ping*, the UK Competition and Markets Authority (subsequently upheld by the Court of Appeal) found in 2017 that the complete ban imposed by Ping on internet sales of its golf clubs was not justified by Ping’s legitimate objective of facilitating face-to-face custom-fitting of its clubs in store. The French Competition Authority in *Stihl* (subsequently upheld by the Court of Appeal of Paris) found in 2018 that Stihl’s requirement that its outdoor power tools (including potentially dangerous chainsaws) be delivered in-person by authorized dealers to their customers (to provide a full demonstration of the machine, including an explanation of the precautions to be taken for optimal safety) was an unjustified *de facto* ban of online sales.

## VERTICAL AGREEMENTS

### National level

#### *The investigation into Morellato by the AGCM*

The matter of online sales restrictions in distribution agreements is also being assessed by the AGCM in its investigation of Morellato, a company that operates under its own brand in the jewellery and watch sector. The investigation started with a dawn raid in March this year.

Morellato apparently entered into selective distribution agreements expressly prohibiting authorised retailers from selling its products on online marketplaces and third-party platforms, while retaining the right to do so itself. According to the AGCM, by prohibiting the use of third-party platforms in its distribution agreements whilst using such platforms itself, Morellato may be preventing its distributors from effectively using the Internet to sell products to particular customers or territories, which it suggests would be contrary to the VBER, presumably implying that it would be considered a hardcore restriction. This would be a controversial view as it is clear from the Court of Justice's ruling in *Coty* as well as from the Commission's Vertical Guidelines that a prohibition on sales over platforms is not treated as a hardcore restriction, suggesting that the discriminatory application of such a restriction would potentially be caught by Article 101 TFEU only where the VBER did not apply for other reasons. The AGCM has recently extended the proceedings in this case by 60 days.

#### *Key takeaways*

As highlighted in the above cases, it is important for companies to ensure not only that their distribution agreements do not explicitly ban online sales, but also that the conditions they impose on dealers in relation to how sales are made, in particular a requirement to provide face-to-face in-store services at the time of sales, do not result in practice in the restriction of online sales. In addition, the Morellato case seems to risk reopening the issue of whether platform restrictions are necessarily exempted under the VBER, which could generate significant uncertainty.

## STATE AID

## European Union level

**Clean Industrial Deal State Aid Framework (CISAF):  
The EU's new State Aid framework driving competitive  
decarbonisation**

On 25 June 2025, the European Commission adopted the [Clean Industrial Deal State Aid Framework](#) ("CISAF"), setting out the rules under which Member States can grant aid to accelerate the EU's transition to a low-carbon economy. Replacing the Temporary Crisis and Transition Framework ("TCTF"), CISAF will remain in force until 31 December 2030 and provides a long-term policy structure aligned with the Clean Industrial Deal.

*CISAF: Unlocking Capital, Clean-Tech Growth, and EU Competitiveness*

CISAF expands the instruments available to support clean technologies, renewable energy production, and low-carbon fuels. It funds investments in production, storage, and distribution, alongside measures to integrate these sources into the energy system. Aid under CISAF will be generally awarded through open, competitive procedures, with varying aid intensities based on project type, company size, and location, offering higher aid thresholds in assisted regions to support territorial cohesion. Importantly, aligning with the Draghi report on EU competitiveness and the Net-Zero Industry Act, CISAF extends support beyond finished products to include components and critical raw materials. By doing so, the Commission aims to strengthen the entire value chain and reduce Europe's reliance on third-country imports.

Beyond energy production, CISAF envisages new funding opportunities for energy-intensive industries exposed to international competition, enabling Member States to grant temporary electricity cost relief, provided beneficiaries commit to reinvesting part of the aid in decarbonisation measures.

Furthermore, recognising that public funding alone is insufficient, CISAF introduces de-risking mechanisms designed to attract private investment. Member States may establish funds or special purpose vehicles ("SPVs") to pool eligible projects, offering equity, loans, or guarantees with structured risk-sharing mechanisms to reduce perceived risks and unlock financing.

To safeguard the EU industrial competitiveness, CISAF also envisages the matching aid mechanism, allowing Member States to counterbalance foreign subsidies by providing ad-hoc aid in certain instances. Although this mechanism provides an effective tool for Member States to compete in the global market for industrial investments, strict caps remain applicable. The matching aid mechanism must in fact be limited to the lower of either: (i) the subsidy demonstrably available in a comparable third country, or (ii) the minimum funding gap necessary to keep the investment in the EU.

*Conclusion*

By replacing an emergency-driven regime with a predictable, long-term policy architecture, CISAF equips Member States with a comprehensive framework to support investments in clean technologies. Its success will depend on effective implementation and coordinated planning, as well as the ability to navigate its interaction with other frameworks such as the CEEAG, GBER, and IPCEIs. Careful assessment will be essential to manage potential overlaps between different aid instruments, ensure compliance with EU competition rules, and respect aid limits. If applied strategically, CISAF has the potential to transform Europe's green transition into a global competitive advantage.

## STATE AID

## European Union level

**The Court of Justice delivers its final judgment in the case concerning the Spanish tax scheme for acquisitions of shareholdings in foreign companies**

On 26 June 2025, the Court of Justice of the European Union (“Court of Justice”) delivered its judgment in [Joined Cases C 776/23 P to C 780/23 P](#), by ruling once again on the Spanish scheme granting a tax benefit for the acquisitions of shares in foreign companies. Following almost two decades of litigation, the last chapter of this complex and long-standing State aid saga is now finally closed.

*A long judicial story*

The matter discussed in the case at hand dates back to 2001, when Spain introduced a tax scheme granting companies that were tax residents in Spain the possibility to deduct from their taxable income the financial goodwill (i.e., the difference between the accounting value and the price actually paid) of the shareholdings acquired in non-Spanish companies carrying out economic activities, provided that certain conditions were respected (“measure”).

Following questions over its lawfulness, the Commission initiated a formal State aid investigation in 2007 and, four years later, found that the measure amounted to incompatible State aid, since it provided a selective advantage to companies investing in foreign companies compared to those investing in Spanish companies (“2011 Decisions”). Despite ordering recovery of the illegal aid, the Commission limited the scope of the recovery due to the existence of legitimate expectations of the beneficiaries. In particular, the Commission allowed the beneficiaries to amortize the benefit accrued by means of shareholdings acquired before the initiation of the investigation, over the entire amortization period established by the aid scheme – hence, also after the publication of the 2011 Decisions. In essence, beneficiaries could continue to benefit from the tax benefit, even though the measure was considered to be illegal.

The 2011 Decisions were challenged by Spain and various companies before the EU Courts, paving the way to seminal cases – such as, *Commission v World Duty Free Group and Others*, C-20/15 P and C-21/15 P – that were eventually decided in favour of the Commission. The Court of Justice agreed in fact with the Commission in considering the measure as providing a selective advantage to its beneficiaries. In parallel to these proceedings, the 2011 Decisions also gave rise, however, to another set of proceedings before the EU Courts, as described in the section below.

*The litigation over the 2012 administrative interpretation on indirect shareholdings acquisitions*

Following the 2011 Decisions, in 2012, the Spanish tax authority, Dirección General de Tributos (“DGT”), issued – in reply to a request for a tax opinion – an administrative interpretation by which it clarified that the legal basis of the measure had to be interpreted as applying to both direct and indirect shareholdings acquisitions (“DGT interpretation”). In other words, the tax benefit under the measure could arise from direct investments in operating companies, as well as from indirect investments in their holding companies. The DGT interpretation immediately prompted doubts in the Commission, which swiftly opened an in-depth investigation and, in 2014, adopted a negative decision (“2014 Decision”). Indeed, the Commission considered that the DGT interpretation expanded the scope of the original measure by including indirect acquisition of shareholdings – thus, resulting in new non-notified aid.

Spain and several companies brought a judicial action against the 2014 Decision, and the proceeding eventually led the General Court to annul it. In the relevant judgments, the General Court dismissed the Commission’s arguments and found that the 2011 Decisions appeared to cover both

## STATE AID

## European Union level

direct and indirect acquisitions of shareholdings. The DGT interpretation could not, thus, broaden the scope of the measure, as argued instead by the Commission. The General Court also observed that the DGT interpretation could not have effectively modified the scope of the measure even in theory, as the Spanish law did not allow an administrative interpretation as the one under consideration to have that effect. The General Court, thus, held that the Commission erred in its findings, by failing to take due account of the Spanish law. In addition to the above, the 2014 Decision was also found to be illegal because – in the General Court’s view – its adoption amounted to a *de facto* replacement of the 2011 Decisions, in so far as indirect shareholdings acquisitions were concerned. Indeed, as recalled by the General Court, the retroactive withdrawal of a lawful administrative act that conferred individual rights or benefits is contrary to the general principles of law.

Following the appeal brought by the Commission, the Court of Justice finally upheld in its recent ruling the General Court’s judgment, by dismissing all the grounds of appeal submitted by the Commission. While the Court of Justice did not rule out that an interpretation provided by an administrative body could – in principle – result in new and incompatible State aid, the Court confirmed that the 2011 Decisions clearly covered both direct and indirect shareholding acquisitions. Consequently, the DGT interpretation could not expand the scope of the measure, as claimed by the Commission. In the Court of Justice’s view, the General Court was therefore necessarily bound to consider that the principles of legal certainty and legitimate expectations regarding the exceptions to the recovery obligations in the 2011 Decisions also covered the indirect shareholdings acquired before the initial investigation.

In light of these findings, the Court of Justice dismissed the Commission’s appeal, confirmed the annulment of the 2014 Decision, and finally closed this almost-20-year-long State aid saga.

*Conclusion*

In conclusion, from a legal perspective, the Court of Justice has not definitely expressed itself on whether an interpretation provided by a public administration could – *in abstracto* – result in new aid. While this could not be the case in Spain under Spanish law (at least according to the General Court), in theory it seems possible that in other Member States such interpretations could have a binding effect and, thus, be able to create new aid.

Another interesting conclusion of this case is that, when a benefit arises from a legitimate Commission decision, this benefit cannot be withdrawn retroactively. By applying this principle to State aid decisions, it appears evident that assessing the exact scope of the decisions – as well as of potential exceptions to recovery obligations, like in the case at hand – becomes of primary importance for potential companies involved, since aid that was not explicitly investigated by the Commission could later be recognized as entirely lawful.

**European Commission launches call for evidence on Foreign Subsidies Regulation**

On 21 August 2025, the European Commission launched a call for evidence to prepare its first review of the Foreign Subsidies Regulation (“FSR”), effective since 13 July 2023. The FSR allows the European Commission to investigate financial contributions from non-EU governments that distort the EU’s internal market, similar to the State aid rules applicable for EU Member State subsidies. Under Article 52(2) FSR, the Commission must review its practice of implementing and enforcing the Regulation by 14 July 2026 and every three years thereafter.

The review report, scheduled for publication in Q3 2026, will assess the European Commission’s enforcement practice to date, including the assessment of distortive subsidies on the internal market, the application of the balancing test (an assessment which weighs the

## STATE AID

## European Union level

negative effects of a foreign subsidy against any positive effects it may have on the development of the relevant economic activity in the EU's internal market), *ex officio* investigations, and the functioning of notification thresholds for concentrations and public procurement. It will also consider the complexity and administrative costs of the FSR, particularly for SMEs, and examine developments in international subsidy control regimes.

The consultation strategy includes a 14-week public consultation open until 18 November 2025 (in all 24 EU languages via the *Have Your Say* portal), targeted meetings with Member States and key stakeholders, and a study by an external contractor on case practice and implementation challenges.

Depending on the review's findings, the Commission may propose legislative amendments, potentially covering notification thresholds or review timelines. The initiative is not accompanied by an impact assessment, as it is intended to evaluate implementation rather than introduce substantive policy changes at this stage.

# LEGISLATIVE, PROCEDURAL AND POLICY DEVELOPMENTS

## European Union level

### **The Commission launches public consultations on antitrust procedural rules and the DMA**

On 10 July 2025, the European Commission (“Commission”) launched a revision process of Regulation 1/2003 and its Implementing Regulation 773/2004, which form the procedural framework for the enforcement of Articles 101 and 102 TFEU. The Commission aims to adapt the Regulations to new market realities, particularly those arising from digitalisation. In parallel, on 3 July 2025, the Commission opened a public consultation on the first review of the DMA.

#### *Revision of EU antitrust procedural rules*

The review of the EU antitrust procedural framework begins with a public consultation that seeks input in two main areas.

First, the Commission is assessing the effectiveness of its investigative procedures. The issues under consideration include the possible extension of investigative powers to remote inspections, the conditions for adopting interim measures or commitment decisions, as well as rules on access to files and the rights of third parties.

Second, the Commission is evaluating the parallel enforcement of EU competition law alongside national competition authorities. In particular, it is considering policy options to address risks of fragmentation that may arise from stricter national rules on unilateral conduct.

The consultation runs until 2 October 2025.

#### *Public consultation on the DMA*

The DMA consultation is intended to take stock of the regulation’s effectiveness since it became fully applicable in March 2024. The Commission is seeking feedback on the list of core platform services, the obligations imposed on gatekeepers, the enforcement and procedural framework, and the impact of the DMA on both business users and end users.

The consultation is open until 24 September 2025.

### **The EU Court of Justice holds that awards rendered by the Court of Arbitration of Sport (CAS) must be reviewable by EU national courts to determine whether they are consistent with EU public policy rules**

On 1 August 2025, the Grand Chamber of the Court of Justice of the European Union (“Court of Justice”) confirmed the right for individuals and sports clubs to have effective judicial review of arbitral awards rendered by the Court of Arbitration of Sport (“CAS”), insofar as such awards implicate principles and provisions which form part of EU public policy (Case C-600/23, *Royal Football Club Seraing*).

The procedural background of the case is the following: in 2015, a Belgian football club, Royal Football Club (“RFC”) Seraing, concluded agreements with Maltese company Doyen Sports pursuant to which Doyen Sports became the owner of some economic rights held by RFC Seraing over four players in exchange for financial compensation. That same year, FIFA, with support of the Belgian football association (URBSFA), initiated disciplinary proceedings against RFC Seraing, asserting that these agreements violated the prohibition on third parties holding players’ economic rights. FIFA imposed a number of sanctions on the club, which were subsequently upheld on appeal by the CAS and by the Swiss Federal Supreme Court.

In parallel, RFC Seraing brought proceedings against FIFA and the URBSFA before Belgian courts. However, the claims were dismissed for lack of jurisdiction because, according to the Belgian courts, the CAS award was final and had the authority of *res judicata*. On appeal, the Belgian Supreme Court stayed proceeding and referred preliminary questions to the Court of Justice. In essence, the referring court asked whether the provisions of Article 19 TEU (requiring EU Courts to ensure the uniform interpretation and application of the EU Treaties), read in conjunction with Article 267 TFEU (empowering the Court of Justice to issue preliminary rulings) and Article 47 of the Charter (which guarantees the right to an effective remedy), precludes the application of national provisions which confer on final arbitral awards the authority of *res judicata* in the relations between the parties and probative value vis-à-vis third parties.

# LEGISLATIVE, PROCEDURAL AND POLICY DEVELOPMENTS

## European Union level

In its judgment, the Court of Justice recalled, under the *International Skating Union* case law (Case C-124/21), that individuals were allowed to conclude an agreement that subjects any disputes relating to that agreement to an arbitration body. The recourse to arbitration may be justified by the pursuit of legitimate objectives by an international sports association, such as the uniform handling of disputes relating to the sporting discipline or the consistent interpretation and application for the sporting rules applicable to that discipline. In *European Superleague Company* (Case C-333/21), the Court of Justice accepted that a mandatory arbitration mechanism, such as the one implemented by FIFA, could be validly imposed on individuals provided that these individuals could rely on the rights and freedoms conferred on them by EU law which form part of EU public policy. EU public policy includes EU competition rules (Articles 101 and 102 TFEU) and provisions relating to the freedom of movement for workers, the freedom to provide services and the free movement of capital (Articles 45, 56 and 63 TFEU).

According to the Court of Justice, sports associations could ensure that an award issued in the context of a dispute relating to the pursuit of a sport as an economic activity within the EU complies with the principles or provisions which form part of EU public policy by putting in place an arbitration mechanism that is subject to a direct legal remedy, such as an appeal to an EU national court having jurisdiction which can effectively carry out a judicial review of that award.

Where there is no direct legal remedy, however, it must be possible for the individual to indirectly obtain effective judicial review by an EU national court to determine whether the award at issue is consistent with the principles and provisions which form part of EU public policy. In that case, the EU national court must not only assess whether an award may be inconsistent with these principles or provisions, but it must also be able to draw the appropriate legal conclusions where such an inconsistency is found to exist, such as bringing to an end the conduct amounting to an infringement or granting

interim measures. It follows that, according to the Court of Justice, the national court must disapply any rule of a Member State or, *a fortiori*, of a sports association, that prohibits the individuals concerned from requesting that a court reviews an award or grants interim relief, insofar as such awards implicate EU public policy rules.

Applying the above rules to the present case, the Court of Justice found that, in respect of the CAS award at issue, the individuals concerned must have the possibility of obtaining effective review from any court of a Member State competent to examine whether the award at issue is consistent with the principles and provisions which form part of EU public policy.

The Court also held that national provisions which confer on arbitral awards the authority of *res judicata* in the relations between the parties and probative value in the relations between the parties and third parties, must not be applied without that arbitral award having first been subject to a review by a Member State court that will effectively ascertain whether that award is consistent with EU public policy.

### Main takeaways

The discussion concerning the relationship between the arbitration mechanism and EU public policy rules is not new. It was addressed first in the landmark *Eco Swiss* judgment (Case C-126/97) in which the Court of Justice held that EU competition rules constitute fundamental provisions of EU law of a public policy nature, and that national courts must annul an arbitral award if it is found to be contrary to these rules. The relationship between the arbitration mechanism and EU public policy rules was further discussed in the more recent *Achmea* (Case C-284/16), *International Skating Union* (Case C-124/21) and *European Superleague Company* (Case C-333/21) cases. While some doubt remained as regards the legality of the arbitration mechanism under EU law, and in particular the Court of Arbitration of Sport (“CAS”), these doubts have been lifted in the *Royal Football Club Seraing*



## LEGISLATIVE, PROCEDURAL AND POLICY DEVELOPMENTS

### European Union level

case (Case C-600/23). Thus, the *RFC Seraing* case brings welcome confirmation that sports associations are able to refer disputes to arbitration, including to the CAS, provided that an EU national court has the possibility to review the consistency of the award at issue with EU public policy. If the dispute at issue before the CAS concerns purely sporting issues, the award should be safe from EU challenges.

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