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VBB on Competition Law

Issue Highlights

Jurisdictions covered in this issue

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MERGER CONTROL

National level

GERMANY

German Federal Cartel Office exercises its call-in power for the first time

On 24 November 2025, the German Federal Cartel Office ("FCO") exercised its call-in power for below threshold acquisitions for the first time. The FCO has ordered the Rethmann Group, which is active in waste management, to notify all its acquisitions in the next three years provided that (i) the target is active in collecting non-hazardous household waste or processing of hollow glass, and (ii) the target has revenues in excess of € 100,000 in the relevant economic sectors.

The FCO has been empowered to call-in certain transactions for scrutiny even if the domestic turnover thresholds are not met since 2021, under Sec. 32f(2) of the German Act against Restraints of Competition (subsequently modified in 2023). (See, VBB on Competition Law, Volume 2023, No. 11 and Volume 2021, No. 1). The aim of the call-in power was to enable the FCO to prevent the creation of a dominant undertaking resulting from successive acquisitions of smaller competitors. Before using this power, the FCO must conduct a sector inquiry and provide objectively verifiable indications that an undertaking's future acquisitions will significantly impede the effective competition in Germany. If the sector inquiry indicates that this is the case, the FCO may order a company with more than € 50 million in domestic turnover to notify future concentrations in one or several specified sectors, provided that the domestic turnover of the target exceeds € 1 million. The initial notification order is valid for three years, but may be extended up to three times by the FCO.

The FCO exercised this power for the first time following a sector inquiry into the waste industry that was published in 2023. The FCO raised concerns that Rethmann, the nationwide market leader for non-hazardous household waste, could acquire smaller competitors. These smaller competitors are especially important for the local and regional competition, but often have low revenues not caught by the German turnover thresholds. The waste disposal sector has high barriers for new market entrants, and Rethmann's takeovers in the past have contributed to a continuous consolidation. In order to evaluate future acquisitions, the FCO issued an order requiring the prior notification of Rethmann's acquisitions of targets achieving revenues above € 100,000 in this sector.

The FCO's use of its call-in power follows the growing trend across the EU of Member State competition authorities seeking greater review powers over below-threshold transactions to close perceived enforcement gaps. While many national competition authorities have been granted wide discretion to call in transactions that come to their attention, the German call-in power can only be exercised at the conclusion of a lengthy procedure. Although the merger landscape in Germany consequently remains more predictable than in many other Member States, the transactional practice in the EU is evolving toward greater regulatory complexity, requiring companies to look beyond filing thresholds when evaluating closing risks.

GREECE

Greek merger control regime aligned more closely with EU Merger Regulation after recent legislative amendment

On 20 November 2025, Greece published Law 5255/2025, which introduced several amendments to the Greek Competition Act (Law 3959/2011) to improve the enforcement framework of the Hellenic Competition Commission ("HCC"). Notably, the Law abolishes the requirement that merger control notifications be submitted to the HCC within a 30-day deadline of the signature of a binding agreement. As a consequence, concentrations meeting the Greek notification thresholds may now be notified to the HCC at any time prior to their implementation and after the conclusion of the relevant agreement. This development brings the Greek merger control regime in closer alignment with the EU Merger Regulation.

FOREIGN DIRECT INVESTMENT

European Union level

Council of European Union and European Parliament reach political agreement on revisions to the EU's Foreign Direct Investment Screening Regulation

On 11 December 2025, the Council of the European Union (the "Council") and the European Parliament (the "Parliament") reached a provisional political agreement (the "Agreement") regarding the proposal for a revised Regulation on the screening of foreign investments in the Union and repealing Regulation (EU) 2019/452 (the "Proposed Revised FDI Regulation"). The Agreement was reached exactly six months after the Council adopted its common negotiating position on the Proposed Revised FDI Regulation, which followed approximately one month after the Parliament adopted its amendments to the Proposed Revised FDI Regulation (See, Client Alert of 18 June 2025).

The Proposed Revised FDI Regulation is part of five legislative initiatives, published by the European Commission (the "Commission") on 24 January 2024, which together form the "European Economic Security Package" (the "ESP"). The ESP as a whole aims to enhance EU economic security and preserve the EU's competitiveness, whereby the Proposed Revised FDI Regulation aims to strengthen and further harmonise the EU's current FDI screening framework. The other EPS initiatives concern export controls, outbound investment, as well as research and development (See, Client Alert of 14 February 2024).

The Agreement aims to strengthen the EU's existing FDI screening framework by establishing a common minimum scope, enhancing consistency across national systems, and reducing administrative burdens.

Mandatory FDI screening mechanisms

The Agreement provides that all 27 Member States will be required to establish a national FDI screening mechanism.

While under the existing framework Member States were not required to introduce a national FDI screening mechanism, they were encouraged to do so. Since then, many Member States have introduced their own screening mechanisms, with all Member States currently having adopted one and only Croatia and Cyprus being in the process of implementing their new mechanisms after adopting the supporting legislation over the past few months. The practical impact on the national level of this new requirement will consequently be reflected more in the enhanced minimum scope for screening.

Common minimum scope

The Proposed Revised FDI Regulation will provide for a common minimum scope to address inconsistencies between national screening mechanisms. The exact extent of the common minimum scope was a point of contention between the Council and the Parliament. The Agreement now contains clearly defined sensitive areas, including:

- dual-use items and military equipment;
- hyper-critical technologies, such as artificial intelligence ("AI"; aligned with the EU AI Act and focused on general-purpose AI with relevance to space or defence), quantum technologies and semiconductors;
- critical raw materials;
- critical entities in energy, transport and digital infrastructure, based on a risk-based assessment by the Member State where it is established;
- electoral infrastructure; and
- specific financial system entities.

FOREIGN DIRECT INVESTMENT

European Union level

Enhanced cooperation and accountability

While screening decisions remain the exclusive responsibility of the host Member State, the Agreement aims to enhance transparency and coordination between national authorities and the Commission. For this reason, the Agreement provides that when other Member States raise comments or the Commission issues an opinion, the screening authority of the host Member State will have to explain how these were considered, or provide its reasons for disagreement. In addition, the Commission will be enabled to assist with information gathering.

Operational improvements and interoperability

The Agreement aims to clarify and streamline specific operational aspects of the FDI screening framework, including:

- the creation of a shared database to prevent circumvention and facilitate the exchange of relevant experience between screening authorities;
- clarification of risk factors for assessing FDI; and
- an optional central portal for electronic filings (to be established at the request of at least nine Member States).

Next steps

The Agreement will now be formalised in the guise of a new draft Proposed Revised FDI Regulation which in turn will require formal approval by the Council and Parliament. Once adopted, the new rules will apply 18 months after the entry into force of the new Regulation.

The press release discussing the Agreement is available here.

EU considers additional regulatory approval requirement for foreign direct investments in draft Industrial Accelerator Act

Industrial Accelarator Act

On 26 February 2025, the European Commission adopted its communication on the Clean Industrial Deal, outlining concrete actions to turn decarbonisation into a driver of growth for European industries. This includes lowering energy prices, creating quality jobs and the right conditions for companies to thrive. It presents measures to boost production, with a focus on energy-intensive industries and the clean-tech sector.

Part of the Clean Industrial Deal involves boosting demand for EU-made clean products by introducing sustainability, resilience, and 'made in Europe' criteria in public and private procurement through a new "industrial decarbonisation accelerator act". Decarbonisation was later dropped from the title, reportedly to allow for a broader sectoral and technological scope.

The Industrial Accelerator Act (the "IAA") would introduce clean, resilient, circular, cybersecure criteria to strengthen demand for EU-made clean products and deliver clean European supply for energy-intensive sectors. It would facilitate faster permitting for certain modernisation and decarbonisation efforts and establish a low-carbon label.

Foreign investment contribution clearance

In January 2026, a leaked draft of the IAA (the "Draft IAA") revealed that the Act would also create an additional regulatory clearance requirement for specific types of foreign direct investment ("FDI") into as yet undefined emerging key strategic sectors. The additional clearance requirement would target FDI exceeding € 100 million through which a foreign investor would acquire or establish control in an EU target asset or entity. Foreign investors would be considered acquiring control if the FDI reaches 20% or more of the share capital or voting rights in an EU

FOREIGN DIRECT INVESTMENT

European Union level

target entity, or 20% or more of the ownership of an EU asset, leasehold or other rights conferring control over an EU asset. Such FDI would be subject to a prior notification requirement to an investment screening authority of the Member State of the target asset or entity.

Clearance would be subject to the FDI meeting conditions aimed at ensuring that FDI in these sectors adds value to the EU's economy and society. Because this objective differs from the EU's existing FDI screening framework, which is designed to safeguard national security, the additional clearance requirement under the IAA would operate alongside it. The conditions involve a variety of requirements that will apply under different sets of circumstances:

1. Not acquiring, holding or exercising ownership interests representing more than 49% of the share capital, voting rights, or equivalent ownership interests;

2. Joint-ventures with the foreign investor holding no more than 49% of the equity and structured to ensure genuine participation by the EU partner in the management, technology transfer and capacity building;

3. Mandatory intellectual property ("IP") licensing and know-how sharing causing the EU entity to own all IP or assets developed by it;

4. Commitment to direct at least 1% of gross annual global revenue of the EU target to research and development in the EU;

5. Employing at least 50% of EU workers across al categories of the workforce of the EU target, accompanied by appropriate training and capacity-building measures; and

6. Ensuring that products placed on the EU market by the EU target incorporate inputs of which at least 50% are manufactured within the EU.

Notifiable FDIs would only be approved if they satisfy the conditions (iv), (v), and (vi). Additionally, if an FDI concerns a sector for strategic reinforcement, it would only be authorised if it meets all of the above conditions. The Draft IAA also provides for the possibility for national investment screening authorities to exempt an FDI from maximum two of the above conditions, but subject to a veto by the European Commission.

The Draft IAA further includes specific timing requirements for notification and review. The European Commission would have the power to assess the transaction itself under specific circumstances.

Finally, the Draft IAA also provides for penalty payments for specific violations.

Interestingly, the Draft IAA was leaked approximately one month after the European Parliament and the Council of the European Union reached a political agreement on the revision of the EU Investment Screening Regulation (See, this Newsletter, Volume 2026, No. 1). The fate of the Draft IAA is still uncertain as it has met with strong Member State opposition regarding this area and other unrelated matters.

ABUSE OF DOMINANT POSITION

European Union level

Court of Justice holds that actual hotel room occupancy may be relevant for assessing whether royalty rates for copyright use are excessive

On 18 December 2025, the Court of Justice of the European Union (the "ECJ") handed down its judgment in *OSA v Úřad pro ochranu hospodářské soutěže*, holding – somewhat surprisingly, contrary to the Opinion of Advocate General Szpunar ("AG Opinion") (See, VBB on Competition Law, Volume 2025, No. 6) – that a collective management organisation ("CMO") may, depending on all the relevant circumstances, abuse its dominant position if it fails to take into account actual room occupancy rates when determining royalties payable for making available protected works on televisions and radios in hotel rooms.

Case Background

In a decision of 18 December 2019, the Czech competition authority found that during the period from 19 May 2008 to 6 November 2014, OSA (a Czech CMO) had abused its dominant position by charging royalties for use of copyrighted works via television and radio receivers in hotel rooms, without taking into account the actual occupancy rate of the hotel establishments, and thereby requiring payment for unoccupied rooms (in which the protected works could not be said to have been made available). A Czech regional court asked the ECJ whether a CMO could be considered to have imposed unfair trading conditions, including excessive prices, contrary to Article 102 TFEU in these circumstances, i.e., when royalties payable by hotels are based on the number of rooms and do not take into account actual occupancy rates.

ECJ Judgment

The ECJ observed that when the allegedly unfair nature of a CMO's conduct concerns the level of royalties (i.e., prices) charged and not other non-price conditions, the conduct must be assessed against the criteria for assessing excessive prices. Accordingly, it may constitute an abuse contrary to Article 102 TFEU if the CMO "*charges a price which is excessive in relation to the economic value of the service provided*." The assessment of whether royalties are excessive must take account of all circumstances, including not only the economic value of the CMO service as such, but also the nature and scope of the use of the works and the economic value generated by that use.

The ECJ noted that making available radio or television sets capable of picking up signals and broadcasting protected works in hotel rooms constitutes a form of communication to the public, enabling customers to access such works, irrespective of whether customers ultimately avail themselves of that opportunity. The ECJ added that the number of persons constituting the "public" is a relevant factor when assessing the scope of potential use of copyrighted works and the benefit which the hotel derives from the licence. Accordingly, the occupancy rate of hotel establishments is a factor that must be considered for the purposes of evaluating the scope of use of the works and the economic value which their use represents, and thus for determining whether royalties are "unfair" within the meaning of Article 102(a) TFEU.

According to the ECJ, it is not acceptable that a CMO may require royalties that do not take into account the fact that a significant proportion of rooms is inaccessible to customers, for example due to seasonal reduction in activity, partial closure for renovation or exceptional situations such as health crises. In addition, whilst royalties may be based on a flat rate, they must consider the number of copyright-protected works actually used.

Consistent with previous case law, however, the ECJ nonetheless cautioned that it was also necessary to assess whether it was actually possible for OSA, without a disproportionate increase in management and monitoring expenses, to take into account the foreseeable occupancy

ABUSE OF DOMINANT POSITION

European Union level

rate when setting royalties. If a method for calculation taking account of occupancy rates could be relied on at reasonable cost and entailed a substantial reduction in royalty amounts, OSA's current approach (which did not facto in occupancy rates) could be regarded as leading to excessive prices within the meaning of Article 102(a) TFEU.

The ECJ also indicated that a comparison between prices and costs is not mandatory, as other methods may also indicate whether prices charged are excessive. In that vein, the ECJ noted that when a CMO imposes royalties that are appreciably and consistently higher than those charged in neighbouring Member States (adjusting for purchasing power parity), that difference must be regarded as indicative of an abuse of dominant position.

Key Takeaways

The ECJ judgment helpfully clarifies that when examining allegedly unlawful pricing conduct, the relevant framework for assessment is that of excessive pricing rather than that of unfair trading conditions, which is a theory of harm that has been gaining traction in recent years at both EU and national levels. This is helpful because, although the standards in excessive pricing cases leave significant room for interpretation, the standards used to determine whether trading conditions can be considered to be "unfair" are even more vaguely defined.

By contrast, the ECJ judgment fails to give CMOs sufficient clarity on the factors which they must take into account when setting royalty rates without incurring competition law risks and this may be due to a tension between copyright law and competition law. Indeed, if the EU copyright law concept of "communication to the public" does not require customers to actually access the protected works, it is difficult to understand why the same factor (or a proxy such as actual room occupancy) should be relevant when assessing whether pricing for such service complies with Article 102 TFEU.

Court of Justice delivers Lukoil Bulgaria judgment on essential infrastructure clarifying the scope of *Bronner* and *Android Auto*

On 18 December 2025, the Court of Justice of the European Union (the "ECJ") delivered its judgment in *Lukoil Bulgaria*, concerning the refusal of access to essential infrastructure under Article 102 TFEU. Beyond its immediate relevance to fuel markets in Bulgaria, the judgment provides important clarifications with respect to the continued relevance of the *Bronner* criteria after *Android Auto*, which is an issue that has recently generated considerable debate. The ruling suggests not a retreat from established doctrine, but a reaffirmation of context-specific analytical discipline.

ECJ Judgment

The judgment, Case C 245/24, concerns Lukoil's alleged refusal to grant competitors access to fuel storage and pipeline infrastructure, much of which had been built with public funds and subsequently privatised or made available through long-term service concessions to Lukoil. The Bulgarian Competition Authority had considered that, in such circumstances, the strict *Bronner* criteria for finding an abuse of dominant position did not apply. Accordingly, a refusal to grant access could be unlawful regardless of (i) whether the infrastructure in question was "indispensable" for the requestor of access to be able to carry out its business, and (ii) whether the refusal of the dominant firm to provide access was likely to eliminate "all competition" in the relevant market and was incapable of being objectively justified. This position raised broader questions as to whether *Bronner* had been effectively sidelined in cases involving formerly public or regulated infrastructure.

The ECJ's judgment broadly aligns with the Opinion of Advocate General Medina ("AG") (See, VBB on Competition Law, Volume 2025, Nos. 7-8). It confirms that *Bronner* remains the relevant analytical framework when a dominant firm is alleged to have abusively refused

ABUSE OF DOMINANT POSITION

European Union level

access to infrastructure, provided that that firm enjoys full decision-making autonomy regarding access to the infrastructure in question. Crucially, the ECJ rejects a categorical exclusion of *Bronner* merely because the infrastructure was not originally built by the firm or was financed with public funds. What matters instead is whether the dominant firm exercises full decision-making autonomy comparable to ownership, including the ability to exclude third party access, and that the infrastructure (or the exclusive right over the infrastructure) was acquired by the dominant firm at a price and under conditions resulting from a competitive procedure.

At the same time, the ECJ sets out an important clarification (in line with the AG Opinion): when access conditions are determined by law or by regulatory obligations that substantially constrain the firm's autonomy, the logic underpinning *Bronner* may no longer apply, as in such cases the refusal cannot be characterised as a unilateral exercise of economic freedom. The assessment therefore turns on a fact-intensive inquiry into the degree of control actually exercised by the dominant firm.

Key Takeaways

This nuanced approach is particularly significant in light of *Android Auto*, where the ECJ declined to apply *Bronner* in the context of a digital platform developed also for use by third parties – and not solely for the needs of the dominant firm (See, VBB on Competition Law, Volume 2025, No. 2). The *Lukoil* judgment confirms that *Android Auto* should not be read as sounding the death knell for *Bronner* generally, but rather as reflecting the inapplicability of that framework in the specific context of platforms designed from the outset for third-party integration and "sharing". Indeed, the applicability of the *Bronner* criteria is context-specific and cannot be mechanically sidelined in all circumstances.

Intel: General Court lowers fine imposed by Commission for naked restrictions by € 140 million

On 10 December 2025, the General Court of the European Union ("GC") substantially reduced the fine imposed on Intel by the European Commission's 2023 decision in respect of the findings of abuse related to the three "naked restrictions" that had not been annulled by the 2022 GC judgment that quashed the € 1.06 billion imposed on Intel by the 2009 Commission decision. The fine imposed by the Commission in its 2023 decision was € 376 million, and the GC used its unlimited jurisdiction to reduce it to just € 237 million.

Background

The Intel case before the EU courts began in 2009, when the Commission fined Intel € 1.06 billion for infringing Article 102 TFEU by committing a single and continuous infringement aimed at excluding its competitor, AMD, from the x86 microprocessor market. That single and continuous infringement consisted of: (i) five practices consisting of exclusivity rebates granted to computer manufacturers covering a relatively significant share of the x86 microprocessor market and (ii) three practices consisting of so-called "naked restrictions" (two of which were implemented outside the EU) that limited the computer manufacturers' freedom to use AMD processors covering relatively limited market segments.

Following this decision, in a 2014 judgment, the GC found in favour of the Commission. However, in a seminal judgment delivered on 6 September 2017, the Court of Justice of the EU ("ECJ") overruled the GC and remitted the case to the GC, holding that the GC should have addressed Intel's arguments that the Commission's "as efficient competitor" analysis was vitiated by errors (See, VBB Article on 11 September 2017).

ABUSE OF DOMINANT POSITION

European Union level

Following the ECJ's guidance, the GC in January 2022 annulled the 2009 Commission decision insofar as it concerned exclusivity rebates (See, VBB News on 26 January 2022). In addition, while it upheld the finding of infringement regarding the naked restrictions imposed on Acer, HP, and Lenovo, it annulled Intel's € 1.06 billion fine in its entirety, holding that the Commission had not indicated how the fine should be apportioned in case of a partial annulment of the finding of abuse.

The Commission appealed the 2022 annulment to the ECJ, which in October 2024 dismissed the appeal, definitively confirming the partial annulment. However, because the findings of abuse for the three naked restrictions had not been annulled, the Commission adopted a new decision on 22 September 2023 (the "2023 Decision") imposing a fine of € 376 million for the single and continuous infringement set out in the 2009 decision limited to the three naked restrictions.

2025 General Court Judgment

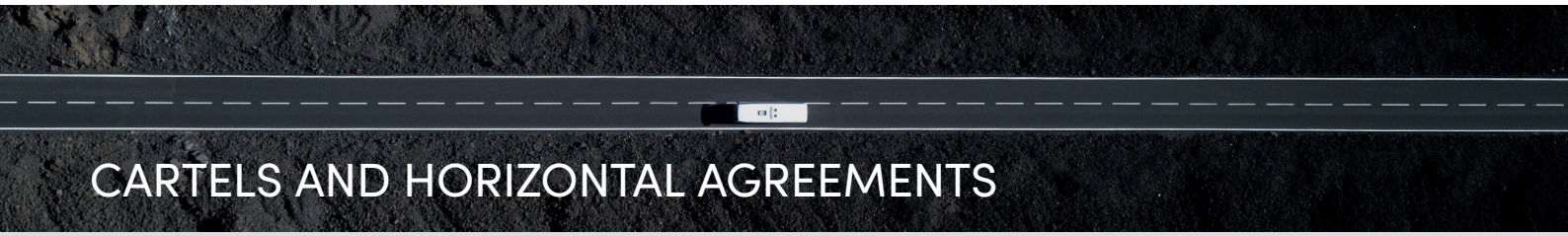
Intel challenged the fine imposed by the 2023 Decision on proportionality grounds and also argued that the Commission was not entitled to impose a fine for the single and continuous infringement set out in the 2009 decision as this infringement had become unsustainable following the annulment of its main and essential components, namely the findings of abuse for the five practices of exclusivity rebates. Intel claimed that the Commission was required to define a new infringement and reassess its jurisdiction with respect to the two naked restrictions that had been implemented outside the EU, namely in China.

The GC rejected Intel's argument finding that the single and continuous infringement set out in the 2009 decision had been definitively upheld by the EU Courts. According to the GC, the Commission was entitled to simply recalculate the fine based on the components of the single and continuous infringement that had survived annulment, namely the three naked restrictions.

The GC also dismissed Intel's arguments that the 2023 Decision's reasoning was insufficient, that the Commission ought to have issued a new statement of objections, and that Intel's rights of defence had been infringed.

However, while upholding the lawfulness of the 2023 Decision, including the Commission's fine calculation methodology, the GC nonetheless exercised its unlimited jurisdiction with respect to fines to reduce the fine by € 140 million.

The GC noted that the € 376 million fine corresponding to roughly three eights of the initial € 1.06 billion fine did not adequately reflect the more limited nature and impact of the three naked restrictions viewed in isolation. In particular, the GC found that the Commission should have given greater weight to two mitigating factors: (i) the relatively limited number of computers affected by the naked restrictions, and (ii) a 12-month gap separating two of the three naked restrictions. The GC concluded that the fine imposed in the 2023 decision "*is not the most appropriate possible, in light of the temporal and material scope of the infringement at issue, which is more limited than it was in the 2009 decision*". Accordingly, the GC set the fine at € 237 million. The GC judgment is a striking example of the use by the GC of its unlimited jurisdiction with respect to fines. Indeed, the reduction of the fine in this case was substantial: 37%.



CARTELS AND HORIZONTAL AGREEMENTS

European Union level

European Commission fines battery manufacturers and trade association € 72 million for participating in cartel in automotive starter battery sector

On 15 December 2025, the European Commission ("Commission") imposed fines totalling € 72 million on three automotive starter battery manufacturers, Exide, FET (including its predecessor Elettra) and Rombat, as well as industry trade association EUROBAT, for participating for over 12 years in a cartel in breach of EU competition law. A fourth manufacturer, Clarios (formerly JC Autobatterie), was also involved in the infringement but was granted immunity from fines for revealing the cartel to the Commission under the EU leniency programme. At the same time, the Commission closed proceedings against manufacturer Banner and the service provider Kellen.

Background

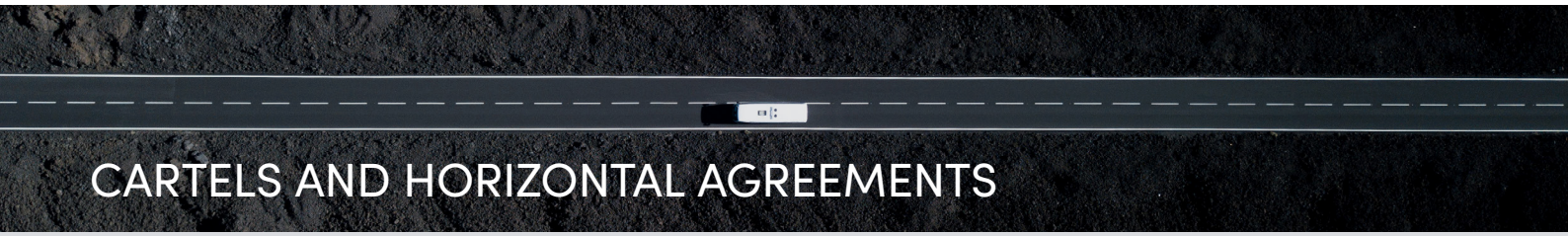
The case concerns automotive starter batteries sold in the European Economic Area ("EEA") for installation in new vehicles and as replacement batteries when sold through car manufacturers' authorised repair networks. The conduct came to the Commission's attention following a leniency application submitted by Johnson Controls International PLC and its subsidiary Clarios. On that basis, the Commission opened an investigation in September 2017. In the course of the Commission's investigation, further leniency applications were submitted by Resonac (and its subsidiary FET) and by Metair (and its subsidiary Rombat).

Findings

In its decision, the Commission found that, for more than 12 years, the four manufacturers, together with the trade association EUROBAT, had engaged in anticompetitive agreements and concerted practices relating to the sale of automotive starter batteries to automotive original equipment manufacturers ("OEMs") in the EEA. The Commission concluded that this conduct constituted a single and continuous infringement by object of Article 101 TFEU and Article 53 of the EEA Agreement.

The Commission found that the manufacturers, with the assistance of EUROBAT, had agreed to create and publish surcharges - known as "EUROBAT premiums" - for lead, the most important input material used in the manufacture of automotive starter batteries. These premiums, which were calculated on the basis of the companies' lead purchasing prices, were published in the industry journal *Metal Bulletin* and subsequently used by the manufacturers as a reference point in their price negotiations with OEM customers. The Commission found that the coordinated use of these premiums ensured that surcharges were maintained at levels higher than would have prevailed under normal competitive conditions. While surcharges may, in principle, constitute a legitimate mechanism for passing on fluctuations in raw material costs, the Commission emphasised that that it is illegal for competitors to secretly coordinate the introduction and level of such surcharges as an industry-wide standard.

The Commission imposed fines on the manufacturers ranging from € 6.11 million (Exide) to € 30 million (Exide). Trade association EUROBAT received a fine of € 125,000. Clarios, the leniency applicant, benefitted from immunity from fines.



CARTELS AND HORIZONTAL AGREEMENTS

National level

BELGIUM

Belgian Competition Authority informally authorises sustainability agreement to commercialise only compostable coffee pods

On 19 December 2025, the President of the Belgian Competition Authority ("BCA") gave his informal blessing to a joint commitment by suppliers of roasted coffee to commercialise only industrially compostable coffee pods as from 12 August 2026. The suppliers represent 90% of the market, while the agreement pushes forward a statutory deadline provided for by the Packaging and Packaging Waste Regulation (Regulation (EU) 2025/40 ("PPWR").

Applying the principles contained in the European Commission's Horizontal Guidelines as well as the BCA's draft Guidelines for Sustainability Agreements, the President of the BCA approved the joint commitment on the following grounds:

- The joint commitment is a sustainability agreement that reduces waste, decreases the contamination of the waste streams that are not supposed to contain coffee pods, and gives a boost to recycling efforts.
- The joint commitment allows waste management companies to adapt their systems to the new make-up of waste from coffee.
- The joint commitment does not restrict competition among roasted coffee suppliers because it (i) only moves forward by a year and a half a requirement already provided for by the PPWR; (ii) will not substantially reduce the choice of coffee pods because suppliers compete on a range of factors unaffected by the agreement, including price and quality of the coffee; (iii) will cause the cost of waste treatment to come down; (iv) does not involve the exchange of sensitive business information; and (v) has a limited scope which does not affect other competitive aspects of sustainability such as the method employed to produce the coffee.

ITALY

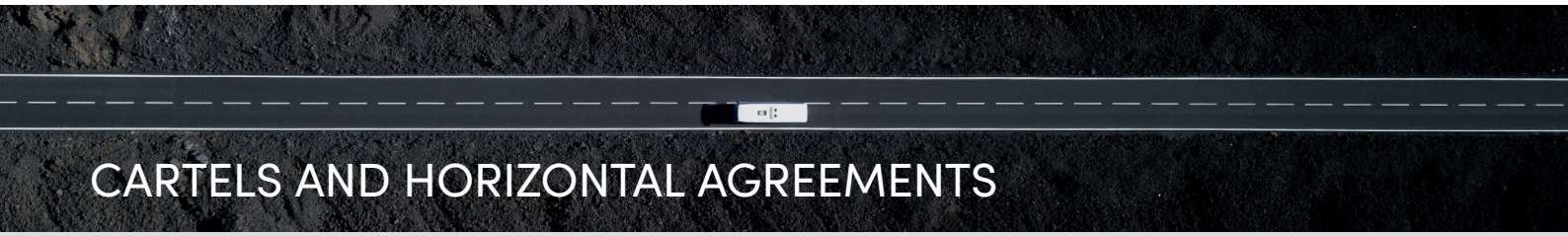
Italian Competition Authority fines iron foundries for coordination of prices through information exchange and price indexes

On 22 December 2025, the Italian Competition Authority ("ICA") imposed a € 70 million fine on several iron foundries - C2MAC Group, Fonderia Corrà, Fonderie Orazio and Fortunato De Riccardis, Fonderie Guido Glisenti and its subsidiary Lead Time, Pilenga Baldassarre Foundry and its parent company E.F. Group, Fonderie Mora Gavardo and its parent company Camozzi Group, Zanardi Fonderie, VDP Fonderia, Fonderie Ariotti, Ironcastings, Fonderia Zardo, ZML Industries and its parent company Cividale - as well as their trade association Assofond for anticompetitive practices in the Italian market for the production and sale of cast iron castings, which lasted for more than 20 years. The practices were implemented through extensive information exchanges as well as the creation and coordinated use of price benchmarks.

The ICA's analysis

According to the ICA, the parties engaged in conduct aimed at coordinating their commercial strategies and pricing policies in order to support price increases, strengthen their collective bargaining power, and preserve their profit margins. The ICA found that these objectives were pursued through two main channels.

First, the foundries exchanged commercially sensitive information via bilateral and multilateral contacts, including within Assofond. The ICA identified a continuous and structured pattern of exchanges between the foundries between 2004 and 2024, which intensified significantly between 2020 and 2024 in reaction to the COVID-19 pandemic and the war in Ukraine. The foundries engaged in frequent bilateral and multilateral contacts, often involving Assofond, in which they discussed competitively sensitive matters such as final prices, price-adjustment mechanisms, production levels, and capacity.



CARTELS AND HORIZONTAL AGREEMENTS

National level

According to the ICA, following such discussions, foundries implemented price increases and were able to maintain profitability despite adverse market conditions. The ICA also found that no party publicly distanced itself from the collusive conduct, confirming each party's full participation and awareness of the infringement's scope and duration.

Second, the foundries jointly developed and used three price-indexation mechanisms (the "Assofond Indexes"), which in practice functioned as benchmarks for price determination. The ICA did not challenge cost-monitoring or the existence of price-adjustment clauses as such, but rather the fact that, through the design, updating, and dissemination of these indexes, competitors shared common parameters for converting production costs into final prices. They therefore directly influenced pricing behaviour as they were often relied upon by foundries when determining their sales prices.

The ICA also fined the trade association Assofond for its dual role in the infringement, as it both facilitated coordination among competitors (by providing regular and structured forums in which competitors exchanged commercially sensitive information) and actively contributed to the anti-competitive conduct (by playing an active role in the design, updating and dissemination of the Assofond Indexes, as well as in issuing guidance and recommendations intended to influence members' pricing behaviour).

The ICA found that the parties' conduct was not justified by the alleged buyer power exercised by customers, nor the difficulties faced by the sector due to the COVID-19 pandemic and the war in Ukraine. However, the fine was reduced from approximately € 600 million to € 70 million in light of the prolonged sectoral crisis.

Key takeaways

The decision serves as a reminder that coordination between competitors may be established even in the absence of explicit price-fixing, when undertakings align their conduct through systematic exchanges of commercially sensitive information and the use of common reference tools, as was recently also seen in another ICA decision on the bio component of fuel prices, where several fuel companies were fined for direct and indirect information exchanges (See, VBB on Competition Law Volume 2025, No. 9).

The decision is consistent with settled EU case law, confirming that exchanges of sensitive information and coordination of competitive parameters remain prohibited even when adopted in response to economic hardship. The ICA found that the crises at issue intensified coordination rather than legitimising it, and that the widespread use of the Assofond Indexes eliminated competitive uncertainty and aligned pricing behaviour.

VERTICAL AGREEMENTS

National level

FRANCE AND POLAND

Polish and French competition authorities focus on territorial restrictions on the sale of agricultural machinery

Decisions of the Polish Competition Authority

On 8 December 2025, the Polish Competition Authority ("UOKiK") imposed fines totalling over PLN 170 million (approximately € 40 million) on Claas Polska, which manages the Polish distribution system for Claas agricultural machinery, and five of their dealers. Separately, on 18 December 2025, UOKiK imposed fines totalling almost PLN 340 million (approximately € 80 million) on CNH Industrial Polska, a manufacturer and distributor of New Holland, Case and Steyr agricultural machinery in Poland, and seven dealers of these brands.

According to UOKiK, in each of their distribution systems, the suppliers imposed territorial customer sharing and associated price fixing with the active participation of dealers. In both cases, dealers were assigned territories and were restricted from making passive sales to customers located outside their territories. When dealers were approached by customers located outside these territories, they either redirected the customers to the relevant local dealer (informing each other of such contacts) or quoted them higher prices, thereby preventing farmers from buying machinery at more favourable prices from dealers located outside their local area. In both cases, the conduct lasted for more than eleven years.

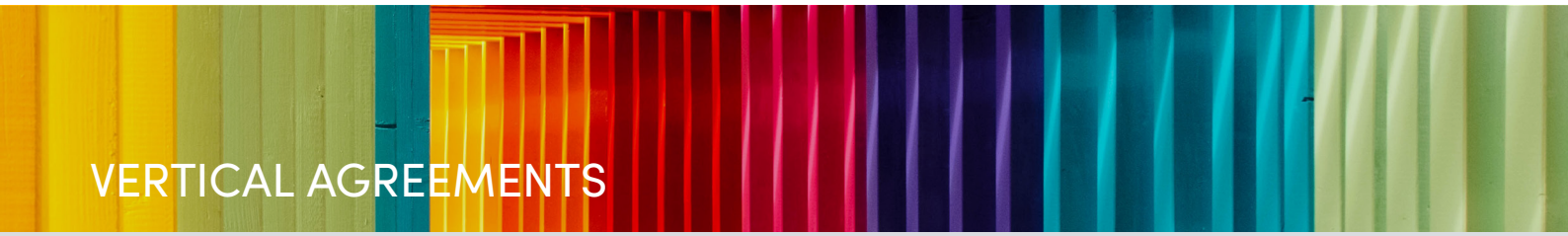
Furthermore, in both cases the suppliers actively coordinated the conduct and acted as a hub for information exchange between dealers, monitoring compliance and enforcing the territorial arrangements. As part of the enforcement mechanisms, CNH Industrial Polska made dealer discounts conditional on compliance with territorial limits, and direct instructions were issued by email to terminate sales contracts with customers located outside designated territories. For Claas machinery, dealers were required to pay financial compensation to one another where territorial limits were not respected.

Opinion of the French Competition Authority

Agricultural machinery was also the focus of an Opinion published by the French Competition Authority (the "FCA") on 18 December 2025. The Opinion, requested by the Economic Affairs Committee of the French Senate, examined the potential reasons behind rising agricultural production costs, focusing on agricultural machinery as it represents a significant share of such costs for French farmers.

The FCA found that the upstream markets for the production and marketing of tractors in France are oligopolistic, with the market being concentrated around four main players. It also noted that these markets are characterised by high barriers to entry and a high degree of transparency, suggesting that particular attention should be paid to the risk of anticompetitive information exchange.

As regards the downstream markets for the distribution and repair of tractors, the FCA observed that they are characterised by a strong requirement for proximity between customers and dealers, as dealers typically also provide after-sales services. Given that tractor distribution is generally organised through networks of exclusive distribution agreements, the FCA found that intra-brand competition in certain geographical areas is severely limited and largely confined to passive sales (including online sales). In its Opinion, the FCA assessed the impact on the markets of exclusive supply agreements, whereby members of the distribution network may only purchase from the supplier, as well as single-brand obligations preventing distributors from selling new vehicles of competing brands.



VERTICAL AGREEMENTS

National level

The Opinion also assessed contractual clauses that may restrict passive sales. According to a survey conducted by the FCA, 79% of dealers indicated that they could sell outside their territories, while 21% stated that they could not. The FCA considered that, although the distribution agreements did not formally prohibit passive sales outside contractual territories, they were potentially limited by some of the clauses in place, mainly:

- **Reporting of passive sales**. Dealers confirmed that they reported sales made outside their exclusive territories to manufacturers, which in some cases informed the relevant local dealer. The FCA found that such monitoring could have the effect of deterring dealers from responding to spontaneous requests from outside their territories;

- **Exclusion of passive sales from performance calculations**. Passive sales outside exclusive territories were not taken into account when assessing a dealer's performance, which served as the basis for calculating performance-based rebates or end-of-year bonuses;

- **Price revision clauses**. Clauses allowing manufacturers to adjust prices between the order and final delivery stages could, according to the FCA, be used to discipline dealers and discourage passive sales outside their territories.

The FCA concluded that, depending on the economic and legal context, such clauses could amount to *de facto* restrictions on passive sales. It therefore encouraged manufacturers to clarify certain contractual provisions and to inform distributors clearly of their rights and obligations in relation to passive sales so that distributors are not deterred from selling outside their territories.

Key takeaways

Although the Polish cases appear to concern classic infringements, the fines are strikingly high for cases brought at national level and illustrate the considerable financial risk of imposing passive sales restrictions.

The French Opinion highlights that, even if companies do not expressly restrict passive sales in their distribution agreements, they need to assess whether practices linked to passive sales may *de facto* or indirectly limit them.

INTELLECTUAL PROPERTY/LICENSING

European Union level

European Parliament sues European Commission over withdrawal of Proposal for a Regulation on Standard Essential Patents

On 25 November 2025, the European Parliament ("Parliament") voted in favor of bringing action against the European Commission ("Commission") regarding its decision to withdraw the Proposal for a Regulation on Standard Essential Patents ("SEP") of 27 April 2023 from the legislative process.

Proposed SEP Regulation

The proposed SEP Regulation was intended to reduce uncertainties in connection with SEP licensing negotiations and the determination of fair, reasonable and non-discriminatory ("FRAND") licensing terms. Disputes regarding SEP licences often lead to unpredictable court litigation. German courts have often taken a SEP-holder friendly approach (See, VBB on Competition Law, Volume 2025, No. 4), making Germany an attractive jurisdiction for SEP holders. The proposed SEP Regulation was expected to offer some balance to that approach.

The decision to withdraw the proposed SEP Regulation was eventually revealed in the Commission work programme for 2025, published on 11 February 2025. The Parliament had not given its consent. Already back then, the withdrawal led to controversies and criticism by industry stakeholders in both directions (See, VBB on Competition Law, Volume 2025, No. 2).

Parliament's annulment action

Normally, the Parliament takes the decision to litigate against the Commission via its Committee on Legal Affairs ("JURI") that endorsed the claim with a 14:8 vote. However, in an unprecedented move, the Parliament also affirmed the JURI decision in a public vote with a relative majority of 334 Members of Parliament ("MEP") against 294. The MEPs maintained that the SEP Regulation would have simplified SEP licensing that is required for technologies like 5G telecommunication and Wi-Fi.

In terms of procedure, the Parliament had already lodged the Case C-727/25 (OJ C, C/2026/89), on 14 November 2025, following the JURI committee decision prior to the open vote in the Parliament.

In the application to the Court of Justice of the European Union, the Parliament calls for the annulment of the Commission's withdrawal decision and puts forward the pleas that the withdrawal decision (i) breaches the principles of conferral of powers and of institutional balance, and (ii) is a violation of the duty of sincere cooperation between the institutions as laid down in Article 13(2) TEU. In particular, the Parliament claims that the Commission should have provided legitimate grounds supported by cogent evidence and arguments to terminate the legislative process. It adds that the Commission impermissibly short-circuited the legislative powers of the Parliament in the democratic process, and failed to clarify the reasons for its withdrawal decision.

STATE AID

European Union level

European Commission amends ETS State aid guidelines: An enhanced protection against carbon leakage

On 23 December 2025, the European Commission adopted an amendment to the Guidelines on certain State aid measures in the context of the system for greenhouse gas emission allowance trading post-2021 (the "ETS State Aid Guidelines"). The amendment responds to the increased risk of carbon leakage (i.e., the relocation of production to third countries with less stringent environmental regulation) currently faced by EU energy-intensive industries.

Overview of the most significant amendments

The ETS State Aid Guidelines, originally adopted on 21 September 2020, aim to prevent carbon leakage by allowing Member States to compensate sectors genuinely exposed to higher electricity costs resulting from ETS carbon pricing. Since their adoption, however, emission allowance prices have risen significantly, increasing carbon leakage risks and affecting industries that were not considered at risk in 2020.

Against this background, the Commission amended the Guidelines to strengthen the existing State aid framework while maintaining incentives for investments in decarbonisation. Among others, the following amendments are particularly noteworthy.

First, for sectors already eligible under the 2020 Guidelines, the Commission increased the maximum aid intensity by 5 percentage points, from 75% to 80% of eligible indirect emissions costs. Given the unusually high aid intensity under the 2020 framework, this further increase highlights the political priority attached to mitigating the heightened exposure of these sectors to carbon leakage.

Second, the Commission expanded the list of eligible sectors to include 20 additional sectors and two subsectors, notably in the manufacture of organic chemicals and in certain activities within the ceramic, glass, and battery sectors. For these newly included sectors, the aid intensity is capped at 75% of eligible indirect emissions costs, i.e. at the level previously applicable to all eligible sectors.

Third, and most notably, the amended Guidelines introduce a new option for Member States to notify sectors or subsectors not covered by the Guidelines, provided they can demonstrate that these sectors face a genuine risk of carbon leakage. This mechanism appears to grant Member States a significant degree of discretion to identify and support additional sectors that are supposedly considered to be at risk of carbon leakage.

Conclusion

By amending the ETS State Aid Guidelines, the Commission will enable higher levels of public support to mitigate the risk of carbon leakage. Indeed, these amendments provide Member States with enhanced tools to support energy-intensive industries, while further aligning State aid policy with the EU's broader objective of using the green transition as a driver of long-term competitiveness.

LEGISLATIVE, PROCEDURAL AND POLICY DEVELOPMENTS

National level

FRANCE

France extends legal professional privilege to in-house lawyers

On 14 January 2026, the French Senate approved a bill extending legal professional privilege ("LPP") to legal advice prepared by in-house lawyers, following adoption by the National Assembly on 30 April 2024.

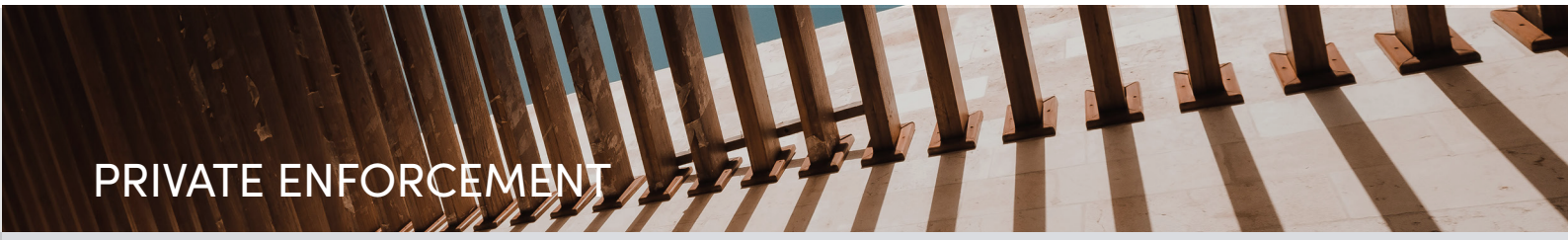
Pursuant to the bill, in-house legal advice must satisfy several cumulative conditions to benefit from LPP. First, it must be prepared by an in-house lawyer – or by a member of that lawyer's team acting under his/her authority – who holds a master's degree in law (or an equivalent qualification) and has completed ethics training. Second, the advice must qualify as a "legal consultation" defined as "*a personalised intellectual service aimed at providing an opinion or advice based on the application of a legal rule*". Third, the document must bear the label "*confidentiel – consultation juridique – juriste d'entreprise*". Finally, the advice must be addressed to the company's management, administrative, or supervisory bodies, or those of its group or subsidiaries.

The bill was approved by the Senate, but then challenged before the French Constitutional Council ("CC") which on 24 February 2026 confirmed the constitutionality of the rules establishing LPP for inhouse counsel. The CC held that creating such a confidentiality regime serves a general interest in that it enables management to obtain candid legal advice that helps the business to comply with the law. It did so in part on the ground that the law contains several safeguards against misuse and criminal activity.

The CC therefore rejected the supposed grounds of unconstitutionality which the applicants had put forward but issued nonetheless interpretative reservations ("*réserves d'interprétation*") in relation to the procedure for lifting confidentiality in specific cases. These are directions by the CC as to how the rules should be read to be compatible with the constitution.

The Bill became law when it was published on 25 February 2026. It will enter into force by 24 February 2027 on a date to be set by decree.

This legislative development arises against the backdrop of the ongoing revision of the EU competition procedural rules (Regulation 1/2003), in which the European Commission ("Commission") has resisted calls to also extend LPP protections to in-house lawyers in EU investigations. It would seem to contradict the Commission's stance in its recent "Policy Brief" that there is "no predominant trend" among Member States that LPP should be extended to in-house lawyers at EU level (See, VBB on Competition Law, Volume 2025, No. 11). Absent a change of direction, the Commission's restrictive approach to LPP risks undermining the objectives of the new French regime, as legal advice prepared by in-house lawyers will only be protected vis-à-vis the FCA, but will remain accessible to the Commission.



PRIVATE ENFORCEMENT

European Union level

Court of Justice confirms jurisdiction of Dutch courts over representative actions concerning alleged app store practices

In its judgment of 2 December 2025 in *Stichting Right to Consumer Justice and Stichting App Stores Claims* (Case C-34/24), the Court of Justice of the European Union ("ECJ") clarified the application of Article 7(2) of Regulation (EU) 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) to representative actions seeking damages for alleged anticompetitive conduct carried out through an online platform.

Background to the case

The proceedings arose from two representative actions brought before the District Court of Amsterdam (the "referring court") by two Dutch foundations against Apple's Irish and US corporate entities for the protection of the collective interests of users who purchased applications ("apps") created by developers on the Dutch version of the Apple App Store ("App Store NL"). The claimants argued, inter alia, that Apple had abused its dominant position by charging an excessive commission on the price of third-party apps sold via the App Store NL.

Apple contested jurisdiction, arguing that the alleged harmful event did not occur in the Netherlands and, in any event, that the referring court could only hear claims relating to purchases made in Amsterdam through the App Store NL. The referring court found that it had international jurisdiction on the basis of Article 7(2) of Regulation (EU) 1215/2012, but expressed doubts as to territorial jurisdiction, given that the apps were purchased online and that the claims were brought by means of representative actions on behalf of a large group of unidentified but identifiable users.

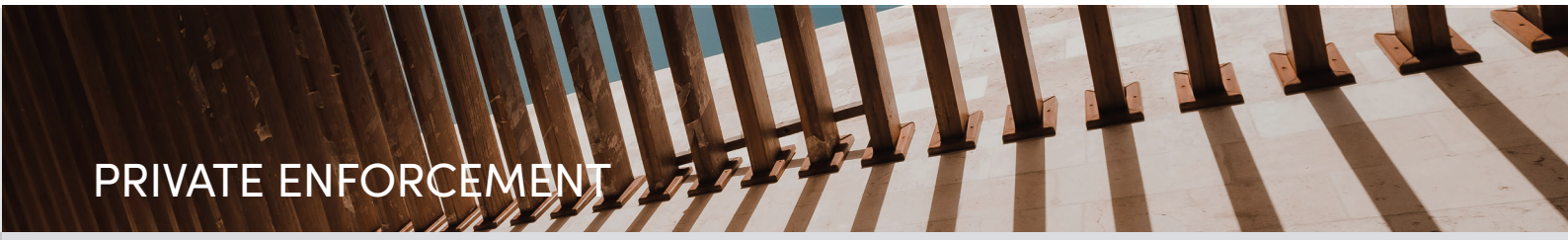
The Court's findings

Firstly, the ECJ referred to its case-law on Article 7(2) of Regulation (EU) 1215/2012, which allows a claimant to sue either before the courts of the place of the event giving rise to the damage or those of the place where the damage occurred.

Focusing on territorial jurisdiction, the ECJ considered that the App Store NL was designed specifically for the Dutch market, was accessible by default to users whose Apple ID was linked to the Netherlands, operated in Dutch, and offered apps some of which were created specifically for that market. On that basis, the ECJ held that the place where the damage occurred under Article 7(2) of Regulation (EU) 1215/2012 can be determined by reference to the virtual space constituted by the App Store NL which corresponds to the entire territory of the Netherlands. Therefore, according to the ECJ, the damage allegedly suffered through purchases made on the App Store NL occurred within the territory of the Netherlands, irrespective of the physical location of the users at the time of the relevant purchase.

In addition, given that the claimants defended the collective interests of a strictly defined group of unidentified but identifiable persons which may be located throughout the Netherlands and that the relevant Dutch rules established an opt-out system, the ECJ ruled that courts cannot be required to identify for each alleged victim the precise place where the alleged damage occurred.

Therefore, according to the ECJ, Article 7(2) of Regulation 1215/2012 confers both international and territorial jurisdiction to any Dutch court with substantive jurisdiction to hear a representative action in its entirety and for all allegedly affected users. The ECJ specified that this outcome satisfies the objectives of proximity, predictability and sound administration of justice.



PRIVATE ENFORCEMENT

National level

SPAIN

Madrid Commercial Court rules on limitation period and proof of harm in a follow-on damages action related to margin squeeze practices

On 7 January 2026, the Commercial Court No. 5 of Madrid ("Commercial Court of Madrid" or "Court") ruled in Judgment No. 4/2026 on a follow-on damages action that was based on a finding of abuse of dominance in the form of margin squeeze by the Spanish Competition Authority ("SCA"). The judgment addresses key issues, including the operation of limitation periods when the underlying competition authority decision was not final at the time of bringing of the action, the binding effect of SCA findings, and the standards applicable to the proof and quantification of damages.

Background to the proceedings

The case originated from a public procurement procedure launched in July 2014 by the Spanish railway infrastructure manager for the maintenance and renewal of GSM-R telecommunications systems.

In its decision of 8 June 2017, the SCA found that, in the context of that tender, Nokia Spain ("Nokia") had abused its dominant position in the relevant wholesale and retail markets by implementing a margin squeeze, in breach of Article 2 of the Spanish Competition Act and Article 102 TFEU. The infringement consisted in the pricing of indispensable wholesale support services at a level that made it impossible for competitors to submit a competitive bid.

That decision was subsequently confirmed by the Spanish High Court on 3 February 2025. The claimant brought a follow-on damages action in 2018, while the SCA decision was still subject to judicial review.

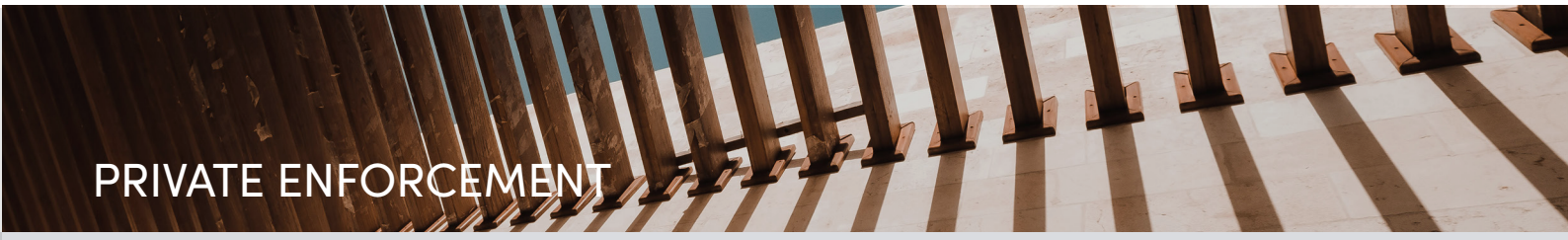
Limitation period and reliance on the SCA's decision

Nokia argued that the damages claim was time-barred because the SCA decision had not been final when the action was brought and by the time the decision became final the statute of limitations had run out. The Commercial Court of Madrid rejected that argument.

Relying on the ECJ's judgment of 4 September 2025 in Nissan Iberia (See, VBB on Competition Law, Volume 2025, No. 9), the Court held that the limitation period for a follow-on action cannot begin to run before the infringement decision has become final. Since the SCA's decision was not final in 2018, the Court concluded that the limitation period had not even begun to run at the time the action was brought.

Importantly, the Court confirmed that follow-on actions may validly be brought on the basis of a non-final competition authority decision, notwithstanding the possibility that such a decision could later be annulled. This reflects the procedural independence between administrative enforcement and civil damages actions.

As regards liability, the Court treated the SCA decision, as confirmed by the High Court, as full proof of the infringement, dispensing the claimant from re-establishing the existence of the abuse. However, it emphasised that this binding effect does not extend to the existence of damage or to the causal link, which must be proven by the claimant.



PRIVATE ENFORCEMENT

National level

Assessment of damages

The Court drew a clear distinction between actual damage and loss of profit. It accepted that Nokia's margin squeeze practice directly caused the claimant to withdraw from the tender, giving rise to concrete and identifiable costs. The Court therefore awarded € 542,011.18 in actual damage, covering redundancy payments and related legal costs, personnel costs linked to the tender and the SCA's proceedings, and legal fees incurred in the administrative complaint.

By contrast, the Court dismissed in full the claim for loss of profit of approximately € 26 million, which was based on the profits the claimant allegedly would have earned over the ten-year contract period. The Court identified deficiencies and speculative assumptions in the claimant's expert report and, more fundamentally, held that the claimant had failed to construct a robust counterfactual scenario, as required by the SCA's Quantification Guide. The Court also declined to resort to judicial estimation of damages, stressing that this exceptional mechanism cannot compensate for fundamental evidentiary shortcomings, particularly when actual damage has already been compensated.

Key takeaways

This judgment confirms that, in Spain, follow-on damages actions may be brought before the underlying infringement decision becomes final.

The judgment further suggests that Spanish courts might be willing to award actual damage when exclusionary conduct results in concrete losses, while subjecting claims for loss of profit to close scrutiny and rejecting them in the absence of a credible and well-substantiated counterfactual analysis. Finally, it shows the Court's reluctance to proceed to a judicial estimation of damages which cannot be used to compensate for evidentiary shortcomings.

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