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VBB on Competition Law

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MERGER CONTROL

National level

THE NETHERLANDS

Dutch Competition Authority blocks acquisition of Delta's fibre-optic network

On 8 June 2026, the Dutch Competition Authority ("ACM") vetoed the acquisition by Glaspoort – a joint venture between Dutch telecommunications operator KPN and Dutch pension administrator APG – of parts of Delta Fiber Nederland's fibre-optic networks. The ACM found that the proposed acquisition would have reduced competition from three to two in fixed telecommunications networks in some parts of the Netherlands, with KPN and VodafoneZiggo being the only remaining competitors. According to the ACM, this would have likely led to a price increase for the 200,000 households concerned.

Additionally, the ACM found that KPN and Delta Fiber Nederland are the only telecommunications operators that offer access to their network to competing telecommunications services providers, since VodafoneZiggo's cable network is not open to other operators. Post-acquisition, telecommunications operators without their own fixed network, such as Odido and Budget, would therefore have become entirely dependent on KPN's network. The ACM also observed that the transaction was not necessary in order for KPN to compete in fibre-optic services. Although KPN only has a copper network in the regions concerned by the acquisition, it can offer fibre-optic services by relying on Delta's network, while also having the option to upgrade its own network.

For these reasons, the ACM considered that the proposed acquisition would likely increase prices and reduce quality of service for consumers and businesses alike and therefore prohibited the transaction. The ACM indicates in its press release that it examined whether "adjustments" to the proposed acquisition would solve its competition concerns, but the proposals submitted by the parties were deemed insufficient.

Key takeaways

There is an intense, ongoing debate within the EU on whether merger control should allow for the creation of national or EU "champions" or whether such consolidation should be curtailed to guard against higher prices at a time when inflation is a major concern for many Europeans. This discussion is particularly heated when it comes to the telecommunications sector, where the lack of an EU-wide market has resulted in numerous national deals failing to obtain merger control approval. With Mario Draghi and Enrico Letta's highly influential reports on the future of European competitiveness advocating for a more permissive approach to telecoms deals, and the recent publication of the European Commission's draft merger guidelines, as well as the recent decision of the UK's Competition and Markets Authority to clear a four-to-three mobile merger, there has been some optimism in the EU telecoms sector that deals might be viewed more positively than in the past. The ACM's prohibition in the present case challenges this optimism.

UNITED KINGDOM

UK regulator clears ABF's acquisition of Hovis, citing the failing firm defence

On 16 June 2026, the Competition and Markets Authority ("CMA") published its phase 2 decision clearing the acquisition by Associated British Foods plc ("ABF"), a food and retail group owning popular bakery brands including Kingsmill, Allison's and Sunblest, of Hovis Group Limited ("Hovis"), a rival UK breadmaker. In a shift from its interim report, which found competition concerns in Northern Ireland on the basis that the most likely counterfactual to the merger was the acquisition of ABF's Northern Ireland business by an alternative purchaser, the merger was ultimately cleared unconditionally, despite the affected market being highly concentrated, with post-merger shares of supply approaching 100% in some segments.

MERGER CONTROL

National level

This conclusion was based on the fact that further analysis by the CMA indicated that this was unlikely to happen.

This case turned on application of the 'exiting firm scenario' (also commonly referred to as the failing firm defence). The approval is a relatively rare example of such an analysis being applied to a situation where the *acquirer* would exit from the market in the absence of the deal, rather than the target.

The CMA's investigation centred around whether the merger would result in a substantial lessening of competition, as compared to the counterfactual scenario where the parties argued ABF would exit the market. The CMA found that ABF-owned Allied Bakeries had made significant losses over the last 14 years, due to an overall decline in demand for bread, a shift in consumer preferences towards supermarket own-label products with lower margins, and rising energy, wheat and distribution costs.

The failing firm defence required the CMA to consider whether, absent the merger (i) Allied Bakeries would have exited the market, and (ii) there would have been an alternative purchaser who would have operated as a competitive force against Hovis. Applying the first limb of this test, the CMA concluded that Allied Bakeries was not sufficiently important to the wider ABF business to justify its ongoing losses and would therefore likely exit the market, absent the merger. On the latter limb, none of the potential alternative purchasers that the CMA contacted indicated that they would be interested in purchasing Allied Bakeries and competing with Hovis in Northern Ireland. In fact, the CMA found that it would cost ABF materially more to accept the offers from potential purchasers than to close the AB Northern Ireland business down. On this basis, the most likely counterfactual was that, absent the merger, ABF would have simply closed down the Northern Ireland business (as the CMA had already established would have been the case for ABF's GB business). As a result, the exiting scenario applied and the transaction was cleared.

Key takeaways

- The CMA is increasingly willing to accept the failing firm defence in merger cases. 2025 saw two phase 1 clearances by the CMA based on the failing firm defence (Rundvirke Industrier AB / Calders & Grandidge (Boston) Limited and Sportradar Group AG / IMG Arena US Parent, LLC) and, similarly, this year, the CMA has approved the acquisition of business-related assets in LB Group Co., Ltd / Venator Materials UK Limited at phase 1 and the Constellation Developments Limited / ABVR Holdings Limited merger at phase 2 based on the failing firm defence. In this case, it was the acquirer's own subsidiary that would likely have exited the market had the merger not been cleared. The CMA accepted this approach, despite the fact that parent company ABF remained financially strong, on the basis that its ongoing financial support for Allied Bakeries' losses was unlikely.

- This was the first case in which the parties took advantage of the CMA's new 'fast track' procedure, under which a case can proceed rapidly to a phase 2 review, without the parties having to concede a competition concern at phase 1. It is also notable that the CMA's phase 2 analysis focused heavily on the availability of the failing firm defence and that the CMA was prepared to accept this defence notwithstanding the extremely high combined shares of supply. As such, it could be seen as further evidence of the CMA's increased willingness to adopt a pragmatic approach to merger reviews, consistent with its new '4Ps' policy.

ABUSE OF DOMINANCE AND UNILATERAL CONDUCT

European Union level

Complaint by Greek medicine wholesaler against switch to direct distribution dismissed by European Commission

On 12 March 2026, the European Commission ("Commission") adopted a decision rejecting a complaint by Profarm (a Greek wholesaler) alleging that the switch by pharmaceutical company Amgen to direct distribution, and subsequent refusal to supply wholesalers, amounted to an unlawful abuse of dominance. The Commission's rejection follows similar rejections by the Greek courts and the Hellenic Competition Commission ("HCC") and offers useful guidance for companies considering the reorganization of their distribution networks.

Background

Up until the end of 2012, Amgen distributed its products Neulasta (pegfilgrastim) and Aranesp (darbepoetin alfa) in Greece through a distributor. Wholesalers, including Profarm, purchased the products from the distributor and exported a significant proportion to higher-price EU Member States.

From 1 January 2013, due to Greek regulatory reforms, Amgen's products were placed on a list of 'expensive medicines' available to insured Greek patients exclusively through hospital and public pharmacies. In this context, Amgen's terminated its relationship with its distributor and it began to distribute its products directly to hospitals and public pharmacies, declining any new orders from wholesalers, including Profarm.

Prior Greek proceedings

Profarm filed a complaint to the HCC in Greece slightly before filing its complaint to the Commission. The HCC evaluated the complaint and issued a rejection decision in 2017. In those proceedings, the HCC determined that Amgen's switch to direct distribution was an objectively justified commercial response to the Greek regulatory reform that was applied uniformly to all wholesalers and was aimed at rationalising distribution costs, without having an adverse effect on patient supply. Importantly, the HCC recognised that even a dominant undertaking is entitled to change its distribution network, provided the change pursues a legitimate business interest, is proportionate and non-discriminatory, and is aimed at economic efficiency. Parallel proceedings brought by Profarm before the Athens courts also failed.

The Commission's assessment

The Commission dismissed Profarm's complaint concerning Amgen's conduct in Greece without any substantive assessment. Pursuant to Article 13(2) of Regulation (EC) No 1/2003, the Commission may reject a complaint where the conduct has already been addressed by a national competition authority. The Commission determined that the allegations had already been addressed by the HCC, which evaluated the same actions, same undertakings, same geographic market, and same timeframe. The Commission also noted that the HCC was well placed to assess the alleged conduct, including any effects on parallel trade.

The Commission also rejected Profarm's additional claim that the refusal to supply formed part of a wider pan-European infringement in other low-price Member States. On this point, the Commission determined that (i) Profarm lacked legitimate interest to raise a complaint as it had no commercial presence in the other low-price Member States where the alleged refusal to supply took place, and (ii) Profarm had failed to provide any concrete evidence of a refusal to supply in any other Member State.

ABUSE OF DOMINANCE AND UNILATERAL CONDUCT

European Union level

Key Takeaways

- **There is scope for even dominant pharmaceutical companies to amend existing distribution systems**. This case demonstrates that there are circumstances where a company may legitimately amend its distribution system and switch to direct supply, even if the change results in exclusion of existing wholesalers. In this case, the competition authorities recognized that Amgen's switch to direct distribution was justified in light of the regulatory changes in Greece, was implemented in a proportionate and non-discriminatory manner.

- **Caution is still required**. This case does not indicate that dominant pharmaceutical companies may change distribution systems at will. The legal principles established in the separate competition law case concerning GSK's switch to a direct distribution system remain in force. Thus, an unjustified refusal to supply the ordinary orders of existing wholesalers may constitute an abuse if a pharmaceutical company is dominant. Termination of distributors may also fall foul of more prescriptive national laws governing the cessation of business relationships. Nevertheless, this case concerning Amgen is positive, as it demonstrates that legitimate justifications may exist in practice (not just on paper), and companies may be able to successfully change to direct distribution.

- **Complainants do not get two bites at the apple**. The Commission's decision illustrates the Commission's broad discretion available under Article 13 of Regulation (EC) No 1/2003 to reject complaints where a national competition authority has already dealt with the same practice. The decision also makes clear that complaining parties cannot simply submit unsubstantiated claims about practices in other countries in order to try to get the Commission to consider a complaint that has already been rejected by a national competition authority.

ABUSE OF DOMINANCE AND UNILATERAL CONDUCT

National level

UNITED KINGDOM

Court of Appeal overturns Competition Appeal Tribunal anti-epilepsy drug decision

On 19 June 2026, the UK Court of Appeal ("Court") allowed parallel appeals by the Competition and Markets Authority ("CMA"), on the one hand, and Pfizer and Flynn Pharma on the other, against a judgment of the Competition Appeal Tribunal ("CAT") in a long-running excessive pricing case concerning the epilepsy medicine phenytoin sodium that dates back to 2012. This is the second time that the case has come before the Court, following an earlier appeal against a CAT judgment that overturned the CMA's original infringement decision in December 2016. In its new judgment, the Court has set aside the 2024 CAT judgment, in which the CAT annulled the CMA's July 2022 infringement decision (the "CMA Decision") and replaced it with a new 'remade' infringement decision of its own. The Court will now determine whether the CMA Decision should be reinstated and has invited the parties to make representations on this point.

Background

In 2012, Flynn Pharma acquired the UK marketing authorisation for Pfizer's phenytoin sodium capsules, an anti-epilepsy drug sold under the brand name Epanutin, and de-branded the product, thus removing it from the UK's price control regime for branded medicines. Following this de-branding, Pfizer and Flynn Pharma significantly increased prices by up to 2,682%, with the price for the most common pack of the medicine rising from £2.21 to £59.83. This led to the NHS's annual spend on the drug rising from around £2 million in 2012 to around £50 million in 2013.

Following a complaint by Department of Health, in December 2016 the CMA found that Pfizer and Flynn Pharma had abused their dominant positions (at the upstream and distribution level, respectively) by charging excessive and unfair prices, for which it imposed a fine of £84.2 million on Pfizer and of £5.2 million on Flynn Pharma. In June 2018, the CAT overturned that decision and remitted the matter back to the CMA for further consideration. Following the Court's 2020 judgment finding that the CAT had made a number of fundamental legal errors in its 2018 judgment, including misapplying seminal EU case law, the CMA reinvestigated the matters addressed by its earlier decision. In the new CMA Decision, the CMA restated its infringement finding but imposed revised fines totalling around £70 million. In its 2024 judgment, the CAT set aside the CMA Decision but 'remade' the infringement decision itself, imposing fines that were only slightly lower than those imposed by the CMA. The companies appealed the CAT's judgment, submitting that it was based on a procedurally unfair process and contained multiple substantive errors. In parallel, the CMA sought permission to appeal the CAT judgment on the basis that, if Pfizer and Flynn Pharma were successful in overturning the CAT's retaken decision, the original CAT Decision should be restored.

The Court's judgment

In dealing with the CMA's appeal, the Court found that the CAT was wrong to set aside the CMA Decision, since this outcome was based on the CAT having found errors in the CMA's decision which, on a fair reading, the CMA did not actually make. In particular, while the CAT had concluded that the CMA Decision was based on the premise that any price above a cost plus benchmark was per se unlawful, the Court found that this was actually a direct contradiction of what was stated in the Decision and that the CMA had in fact devoted a large amount of its judgment to analysing the point. Similarly, the Court found that the CMA had also carried out a granular and detailed analysis of comparator evidence that covered 70 pages and that the CAT had not engaged with this evidence and analysis. The Court also rejected the CAT's finding that the CMA had reviewed the evidence in a biased way to

ABUSE OF DOMINANCE AND UNILATERAL CONDUCT

National level

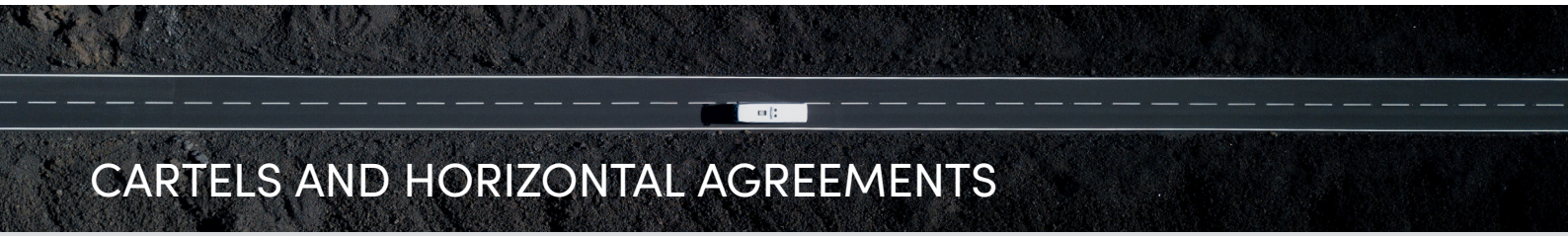
reach a predetermined outcome and criticised the CAT for treating the existence of what it saw as errors in the CMA's analysis as proof of bias.

The Court also agreed with the separate procedural unfairness challenge by Pfizer and Flynn Pharma, finding that the companies should have been given an opportunity to respond to the CAT's remade case, which was based on a novel and flawed theory of economic value that it had devised itself, without giving Pfizer and Flynn Pharma a fair chance to respond. The Court thus allowed both the CMA's and the companies' appeals and set aside the CAT's remade decision. The Court will now consider whether the CMA Decision should be reinstated.

Key Takeaways

- **De-branding strategies involve competition law risk**: The outcome of this case serves as a reminder that de-branding strategies coupled with significant price rises that are implemented to circumvent price control regimes carry a significant competition law enforcement risk, especially where the price increase is very large and the sector affected is politically sensitive.

- **Competition enforcement can be very slow**: Despite the fact that this case involved what the Court observed to be a 'stark reality' of extreme price rises of a well-established medicine by dominant undertakings with no objective justification, it has taken 14 years to reach this point, yet the matter has still not been finally resolved. It is also notable that, while the Court confirmed the CAT's jurisdiction to issue its own infringement decision to replace an overturned CMA decision, which avoids the need to remit a case to the CMA and incur further delay, the judgment confirms that issues can arise if the CAT's infringement decision strays too far from the methodological approach of the original investigation, given the need to give parties sufficient opportunity to make representations on the case against them.



CARTELS AND HORIZONTAL AGREEMENTS

National level

SPAIN

Spanish Supreme Court clarifies effect of temporal gaps in single and continuous cartel infringements

On 4 June 2026, the Spanish Supreme Court delivered its judgment in the *Cables BT/MT* case, in which it clarified the conditions under which intermittent cartel conduct may be classified as a single and continuous infringement. The judgment also addresses the consequences of that classification for limitation periods and the calculation of fines.

Background

In November 2017, the Spanish Competition Authority ("SCA") found that Productos Eléctricos Industriales S.A. ("PEISA") had participated in a single and continuous infringement of Article 1 of the Spanish Competition Act and Article 101 TFEU, by collusively agreeing to allocate low-voltage and medium-voltage ("LV/MV") cable supply projects in 2006, 2010, and 2013. PEISA was fined approximately €988,000 for the infringement.

On appeal, the High Court annulled the SCA decision. While it accepted that the collusive arrangements formed part of a common plan involving the submission of cover bids to allocate contracts, it found that PEISA's participation had only been established in relation to three individual projects. Because those episodes were separated by intervals exceeding three years, the High Court held that the continuity of the single and continuous infringement found by the SCA had been interrupted, with the result that the earlier conduct had become time-barred and the remaining conduct could not, in itself, constitute a single and continuous infringement. On the facts, the High Court accordingly found that SEIPA's conduct in relation to the 2006 and 2010 supply projects was time-barred, and that SEIPA could only be fined for its conduct in relation to the 2013 project.

The Supreme Court's reasoning

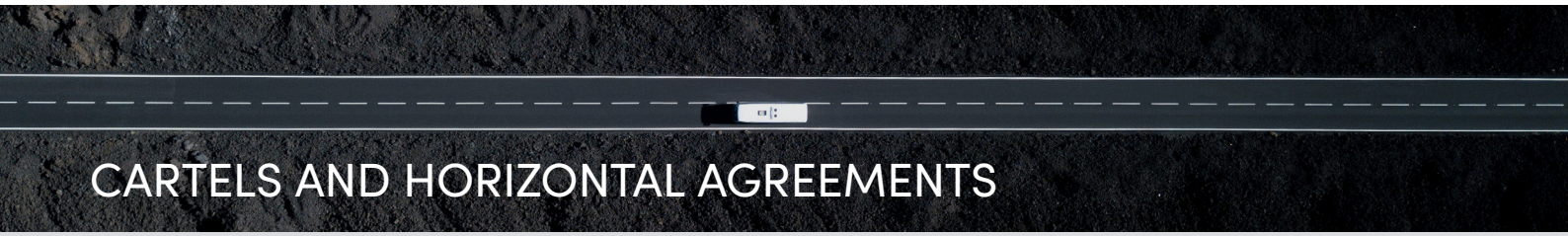
On appeal by the SCA, the Supreme Court disagreed with the High Court's approach and clarified three distinct consequences of the concept of a single and continuous infringement.

First, as regards the classification of the infringement, the Supreme Court held that the decisive criterion is the existence of a preconceived plan between the individual parts of the infringement. Once the existence of such a preconceived plan has been established, temporal gaps between conduct do not, in themselves, interrupt the continuity of that infringement. In the present case, this was evident from the fact that the collusive arrangements followed the same *modus operandi* throughout the relevant period and related to projects for the same customer which issued tenders every 3-4 years.

Secondly, the Supreme Court clarified the consequences of that finding for limitation periods. Because a single and continuous infringement constitutes a single legal offence, the limitation period under Article 68(1) of the Spanish Competition Act begins to run only from the *last* proven act of the continuous infringement.

However, the Supreme Court nevertheless noted that the concept of a single and continuous infringement cannot be relied upon indefinitely to postpone the commencement of the limitation period. Where the interval between two proven episodes exceeds the limitation period applicable to the individual infringement considered in isolation, the earlier episode must be treated as time-barred.

Thirdly, the Supreme Court distinguished the temporal scope of the infringement for the purpose of limitation periods from its duration for the calculation of fines.



CARTELS AND HORIZONTAL AGREEMENTS

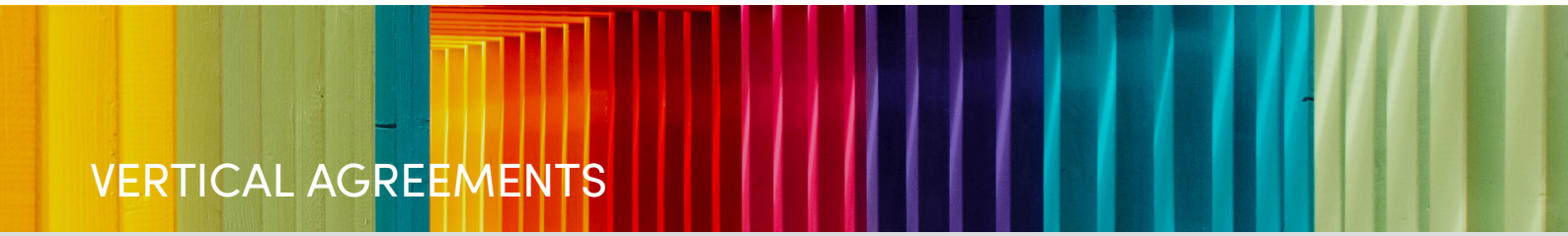
National level

Referring to the EU General Court's judgment in *Trelleborg*, the Supreme Court held that, although the infringement retains its single and continuous character, only periods of proven collusive activity may be taken into account when assessing the duration of the infringement to determine the amount of the fine. Periods during which no participation in the cartel has been established cannot automatically be treated as part of the infringement's duration for fining purposes.

Key takeaways

- The judgment confirms that intermittent cartel conduct may still constitute a single and continuous infringement where it forms part of a preconceived plan, even where periods of 3-4 years separate the proven episodes of collusion. At the same time, it limits the practical consequences of that qualification by distinguishing between the rules governing limitation periods and those applicable to the calculation of fines.

- The judgment may also have implications for follow-on damages actions. In particular, the Supreme Court's distinction between the legal duration of a single and continuous infringement and its duration for fining purposes may influence future debates concerning the temporal scope of the presumption of harm under Article 76(3) of the Spanish Competition Act. Whether the same proportionality considerations should also apply to the quantification of damages remains to be seen.



VERTICAL AGREEMENTS

European Union level

Commission evaluation of the MVBER confirms its continued relevance but indicates need for update

On 25 June 2026, the European Commission ("Commission") published its evaluation of the Motor Vehicle Block Exemption Regulation ("MVBER"), which is set to expire in May 2028, and its Supplementary Guidelines.

By way of background, vertical agreements in the motor vehicle sector are subject to a hybrid block exemption regime under which they are exempted where (i) they meet the requirements for exemption under the 2022 Vertical Agreements Block Exemption Regulation and, in addition, (ii) they do not contain any of the three hardcore restrictions listed in Article 5 of the MVBER. The Commission originally considered it necessary to identify additional hardcore restrictions to take account of the specific competition concerns associated with the motor vehicle aftermarket, with the result that the block exemption regime is in some respects more demanding for agreements related to the motor vehicle aftermarket than the primary market for vehicle sales.

A previous evaluation of the MVBER was published in 2021, which ultimately led in 2023 to the extension of the 2010 MVBER for a period of 5 years and very limited changes to the 2010 Supplementary Guidelines. This was recognised as a temporary arrangement as the Commission considered it premature to decide then on whether the radical changes which the industry was undergoing as part of the process of electrification and digitalisation would require longer term substantial changes to the regime.

The new evaluation finds that the MVBER has generally met its objectives providing legal certainty among market operators and being broadly effective in supporting inter-brand and intra-brand competition and cross-border trade in the motor vehicle sector. At the same time, it identifies digitalisation and electrification and the advantages they risk conferring on manufacturer-authorized networks as significant challenges and underlines the importance of access to vehicle-generated data and digital interfaces for independent operators.

Given that the evaluation reaffirms both the relevance of the MVBER's objectives and the need for a dedicated safe harbour, an updated regulation and sector-specific guidelines with a focus on the aftermarket appear to be the clear direction of travel. The key issue will be whether the Commission considers that manufacturers and other vehicle suppliers should be subject to additional obligations with a view to protecting competition from independent operators in the changing aftermarket. All sides of the industry can be expected to actively participate in this process to ensure their views are taken into account.

DIGITAL REGULATION

European Union level

General Court considers when a digital service amounts to a separate core platform service under the DMA

On 3 June 2026, the General Court ("Court") partially annulled the Commission's decision of 5 September 2023 ("Decision") designating Meta as a gatekeeper under the Digital Markets Act ("DMA"). While upholding the designation of Facebook Messenger ("Messenger") as a core platform service ("CPS"), the Court overturned the Commission's CPS designation of Facebook Marketplace ("Marketplace"). The judgment addresses the delineation of CPSs offered in an integrated way and confirms the high standard of proof required to rebut the Article 3(2) quantitative presumptions.

Background

Under Article 3(1) DMA, a company is designated as a gatekeeper if it has a significant impact on the internal market, provides a CPS that constitutes an important gateway for business users to reach end users, and enjoys an entrenched and durable position. According to Article 3(2)(b), these conditions are presumed to be met if a CPS has at least 45 million monthly active end users and at least 10,000 yearly active business users in the EU.

On 3 July 2023, Meta submitted its DMA notification to the Commission arguing that its Facebook, Messenger and Marketplace services constituted a single CPS. The Commission rejected that approach and found that Messenger and Marketplace were distinct standalone CPSs, separate from Facebook itself. It further found that each service met the Article 3(2)(b) thresholds, and rejected Meta's arguments seeking to rebut the Article 3(2)(b) presumption as insufficiently substantiated. Meta challenged the Decision before the Court.

Court's Reasoning

Messenger: classification as a standalone CPS. The Court upheld the Commission's finding that Messenger constituted a standalone CPS that was distinct from Facebook's online social networking service and could not be regarded as being merely its chat functionality. Three factors were central for the Court: (i) Meta had developed a standalone mobile application for Messenger, which was the entry point for the majority of users; (ii) users could access Messenger whether or not their Facebook account was activated or they were simultaneously active on the social network; and (iii) Meta provided and promoted tools specific to Messenger enabling businesses to engage in lead generation, customer service and customer re-engagement. The Court held that these factors justified a different conclusion than that reached in the *Booking.com* case, where users could access all relevant services without going through a separate, dedicated application, and the chat functionality was therefore ancillary to the broader platform.

Rebuttal of the presumptions: a high standard confirmed. Applying the approach established in the ByteDance case, the Court confirmed that the standard of proof required to rebut the Article 3(2) presumptions is high: arguments must be capable of showing, with a high degree of plausibility, that the presumptions are called into question. Meta's main argument - that Messenger represented only a tiny fraction of B2C communications traffic in the EEA - fell short, as the figure was derived from a methodology developed for competition law cases without any explanation of its relevance to the DMA rebuttal mechanism. Meta also argued that the Commission had failed to account for the wide range of competing messaging services (e.g., WhatsApp) and the fact that most end users use multiple messaging services. The Court dismissed that argument as insufficiently substantiated: the multi-homing figure relied upon covered only Germany in a single year (2021) and therefore did not suffice to assess the position across the EU as a whole.

DIGITAL REGULATION

European Union level

Marketplace: legal error and inadequate reasoning. The Commission had already repealed the Marketplace designation in 2025, after Meta demonstrated a substantial change in facts which meant the 10,000 yearly active business users threshold was no longer satisfied. Nevertheless, the Court annulled the Commission's original designation decision on two related grounds. First, it identified an error of law, as the Commission had conflated the timeframe applicable to the qualitative classification of a CPS under Article 2(2) of the DMA (which must be assessed on the basis of the facts as they stand at the time of the decision) and the quantitative threshold assessment under Article 3(2)(c) (which is confined to the last three financial years preceding designation). Second, the Court found that the Commission had failed to state adequate reasons for its finding that Marketplace continued to qualify as an OIS CPS, in light of the changes Meta implemented during the investigation. In particular, the Commission described those changes as "future limitations that Meta is in the process of implementing" and offered only a hypothetical assessment of their impact, without any specific analysis of the effect of those changes on its own proxy for identifying business users.

Key Takeaways

- **Integrated services and CPS delineation**. The Court confirmed that CPS classification is driven by functional reality rather than formal structure: each service must be assessed by reference to how it is accessed, marketed, and what tools it makes available to business users. Services offered in an integrated way can be treated as distinct CPSs if they fall within different CPS categories under Article 2(2), meaning embedded features such as messaging or marketplace functionalities can independently attract gatekeeper designation and trigger per-CPS obligations.

- **Obligation to consider facts arising during the designation procedure**. The judgment confirms that the Commission must actively assess any material factual changes communicated by the notifying party when classifying a service as a CPS, and cannot confine itself to historical data. Structural or operational changes during the notification period can therefore impact the designation decision.

European Commission announces preliminary view that AWS and Azure should be designated under the DMA

On 25 June 2026, the European Commission ("Commission") announced its preliminary view that Amazon and Microsoft should be designated as gatekeepers under the Digital Markets Act ("DMA") in relation to their respective cloud computing services, Amazon Web Services ("AWS") and Microsoft Azure ("Azure"). The Commission press release justified this preliminary conclusion on the grounds that each service amounts to "an important gateway between businesses and their customers in the EU", notwithstanding the fact that neither meets the DMA's quantitative thresholds for designation and the fact that the market is broadly competitive, with a number of suppliers. If confirmed, this will enable the Commission to regulate each company's cloud computing service as a Core Platform Service under the DMA. The third largest cloud computing provider, Google, has avoided such designation.

Reasoning

The DMA (EU Regulation 2022/1925) implemented a new, sector-specific form of regulation to make the European digital sector fair and more contestable, by setting strict rules for the provision of specified services by companies that it designates as gatekeepers.

Despite the fact that neither AWS nor Azure meet the DMA's quantitative thresholds for designation under Article 3(2) DMA, the Commission's market investigation has led it to the preliminary conclusion that the requirements for designation of Amazon and Microsoft for the provision of cloud computing services under

DIGITAL REGULATION

European Union level

Article 3(1) DMA (the undertaking has a significant impact on the internal market; the core platform service is an important gateway for business users to reach end users; and the undertaking enjoys an entrenched and durable position) were met by each provider. The Commission's press release cited each provider's significant turnover from cloud computing, and the fact that their operational capacity and investments seem to have significantly outpaced those of their competitors. The Commission also highlighted their "vast and entrenched user bases", benefits from high switching costs and lock-in effects, and the presence of captive AI demand within each of Amazon and Microsoft's ecosystem.

In the Commission's view, the fact that each company had already been designated as a gatekeeper for the provision of other services demonstrated their significant impact on the internal market. It is worth noting that cloud computing services are already defined as core platform services that are potentially amenable to regulation under the DMA, unlike for example AI large language models, so this outcome appears to have been envisaged by the legislation.

Notwithstanding this, and the Commission's view expressed in its November 2025 letters to the companies announcing the start of its market investigations that "the characteristics of cloud computing services are favourable to the emergence of gatekeeper positions", the decision has caused backlash: Amazon has criticised the Commission's decision, claiming that the Data Act already regulates switching, portability, and interoperability within the cloud services sector, whilst Microsoft has challenged the fact that Google Cloud has not been designated, citing its fast growth. While the Open Markets Institute Europe supported the Commission's preliminary designations, it has called upon the Commission to launch an investigation into Google Cloud, alleging that its omission risks giving Google an unfair advantage.

Through a spokesperson, the Commission has indicated that it does not currently consider that there are grounds to commence an investigation concerning Google's cloud computing services, stating that Google Cloud "does not appear to have the same sort of leading position in the EU cloud sector as Amazon Web Services and Microsoft Azure."

Next steps

Amazon and Microsoft may contest the Commission's preliminary findings before it reaches its final designation decision. If the designation is confirmed, then the companies will officially be designated as gatekeepers for their cloud computing services and will have six months to ensure full compliance with their obligations under the DMA.

Key takeaways

- The Commission's preliminary designations mark the first time cloud computing services have been brought within the scope of the DMA's gatekeeper regime. This demonstrates the flexibility of the DMA regime, which does not require there to be only a single gatekeeper on a market before ex ante regulation can be applied. The fact that Google has been omitted from designation, even though it is a gatekeeper for other services and also operates an important cloud service that arguably benefits from similar ecosystem advantages, demonstrates the somewhat arbitrary nature of this exercise.

- Assuming that the Commission confirms its preliminary view, it will be interesting to see how it subsequently applies the DMA's obligations to the companies' cloud computing services, given that the obligations are often drafted in general terms and are not specific to the characteristics of cloud computing.

- In contrast, in March 2026 the UK's Competition and Markets Authority announced that it would not proceed with Strategic Market Status investigations into Amazon and Microsoft's cloud services, despite

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finding that the market was not working well, and would instead accept voluntary commitments from both companies. In line with the EU's approach, Google's cloud services were omitted. It remains to be seen how far the commitments offered by Amazon and Microsoft address the concerns previously identified over the operation of the UK market and the extent to which they will align with obligations ultimately imposed in the EU under the DMA.

LEGISLATIVE, PROCEDURAL AND POLICY DEVELOPMENTS

European Union level

General Court confirms the Commission may require a business to provide communications stored on personal devices used for professional purposes

On 3 June 2026, the General Court dismissed actions brought by Vivendi (T-1097/23) and Lagardère (T-1119/23) challenging requests for information ("RFIs") issued by the European Commission (the "Commission") in the context of its investigation into the alleged early implementation of Vivendi's acquisition of Lagardère ('gun-jumping'). The judgments confirm that, under certain conditions, the Commission may require undertakings to produce documents, including business communications, stored on employees' personal communication devices and private email accounts where those devices or accounts have been used for professional purposes.

Background

Following the Commission's conditional approval of Vivendi's acquisition of sole control over Lagardère in June 2023, the Commission opened a formal investigation into whether Vivendi had implemented the transaction before obtaining merger control clearance.

In September 2023, relying on Article 11(3) of the EU Merger Regulation, the Commission required Vivendi to produce documents exchanged between 1 January 2020 and 19 September 2023 by 15 identified individuals. The requests covered emails, text messages and communications through messaging applications such as WhatsApp, Signal and Telegram, including communications stored on private email accounts and personal mobile devices where those had been used, even on a single occasion, for professional purposes. Similar RFIs were addressed to Lagardère. Both companies challenged those requests before the General Court.

The General Court's reasoning

The General Court rejected all the applicants' pleas and upheld the Commission's RFIs.

First, it confirmed that Article 11(3) of the EU Merger Regulation provides a sufficient legal basis for requesting documents stored on personal devices or private email accounts used for professional communications. The General Court found that the provision empowers the Commission to obtain all information necessary for the effective enforcement of the EU merger control regime, irrespective of the medium on which that information is stored.

Secondly, the General Court acknowledged that requiring an undertaking to collect and disclose communications stored on employees' private devices constitutes a serious interference with the right to respect for private life guaranteed by Article 7 of the Charter of Fundamental Rights. However, it concluded that the interference was justified. In particular, Article 11(3) provides a sufficiently clear and precise legal basis for such requests, the Commission was pursuing the legitimate objective of ensuring the effective enforcement of EU competition rules, and the essence of the right to privacy was respected.

The General Court further held that the requests complied with the principle of proportionality. It noted that the Commission had limited the RFIs to specifically identified custodians, a defined period and predetermined search terms, thereby ensuring that any collection of private information occurred only incidentally in the course of identifying relevant business communications. The General Court also attached importance to the procedural safeguards introduced by the Commission to protect sensitive personal data, legally privileged communications and journalistic sources, as well as to the availability of judicial review of the Commission's investigative measures.

LEGISLATIVE, PROCEDURAL AND POLICY DEVELOPMENTS

European Union level

Finally, the General Court observed that excluding documents stored on personal devices or private accounts used for professional purposes would risk undermining the effectiveness of the Commission's investigative powers, particularly given the increasing use of such devices and applications for business communications.

Key takeaways

- The judgments provide important clarification regarding the scope of the Commission's investigative powers under the EU Merger Regulation. They confirm that those powers extend beyond corporate IT systems and may encompass business communications stored on employees' personal devices and private email accounts where those have been used for professional purposes.

- At the same time, the judgments emphasise that such requests remain subject to strict proportionality requirements and must be accompanied by adequate procedural safeguards to protect fundamental rights, including privacy, legal professional privilege and, where relevant, journalistic sources.

- Privacy and data protection in competition inspections (dawn raids) has also recently been under scrutiny before the Grand Chamber of the Court of Justice in Joined Cases C-258/23, C-259/23 and C-260/23 *Imagens Médicas* (where judgment will be handed down on 16 July 2026). Together, these decisions will have broader significance for future merger control and antitrust investigations, where business communications increasingly take place through personal devices and messaging applications and/or contain personal data.

LEGISLATIVE, PROCEDURAL AND POLICY DEVELOPMENTS

National level

SPAIN

Spanish Competition Authority updates its Guidelines on Antitrust Compliance Programmes

Background

On 9 June 2026, the Spanish Competition Authority ("SCA") published updated Guidelines on Antitrust Compliance Programmes ("Guidelines"). This is the first update since the Guidelines were originally adopted in 2020. The Guidelines seek to assist companies operating in Spain to implement effective competition compliance programmes. They also provide incentives for effective programmes, including that the SCA may offer fine reductions and companies may rely on their programme to avoid or lift a public procurement ban. The 2026 update introduces separate assessment criteria and procedural requirements for each of these two scenarios.

Base Criteria

The 2026 Guidelines retain the same assessment criteria established to assess the effectiveness of a compliance programme. These include: (i) involvement of the company's administrative bodies and/or top management; (ii) effective training; (iii) existence of an internal whistleblowing system; (iv) independence and autonomy of the compliance officer; (v) risk identification and design of control protocols or mechanisms; (vi) design of internal procedures for information management and detection of infringements; and (vii) design of a transparent and effective disciplinary system.

Additional Requirements

As regards *fine mitigation*, the SCA may take the existence and implementation of a compliance programme into account as a mitigating factor where the company has actively and effectively cooperated with the SCA during the investigation or has adopted effective measures to bring the infringement to an immediate end. A causal link must be demonstrated between the compliance programme and the company's cooperative conduct. Importantly, the programme must be submitted to the SCA at the beginning of the investigative phase.

As regards *public procurement bans*, the assessment differs. In such a case, instead of addressing the ongoing infringement, the assessment focuses on the effectiveness and suitability of the compliance programme to prevent, detect and react to *future* anti-competitive conduct. The Guidelines also clarify that the assessment of the programme's effectiveness may be carried out at any time, either during the administrative proceedings leading to a ban or while the ban is in force. However, early submission is advisable as it may allow the SCA to propose an exemption from the ban in its decision, as the power to impose public procurement bans lies with contracting authorities, albeit on the basis of pre-determined limits set by the SCA.

Key Takeaways

The 2026 Guidelines have three main practical implications.

- First, timing matters: companies should present their compliance programme at the outset of the investigative phase, as this is a precondition for fine mitigation and also enables the SCA to propose a procurement ban exemption in its decision.

- Second, the assessment criteria differ depending on the benefit sought — fine mitigation requires a demonstrated link between the programme and the company's cooperative conduct, while procurement ban relief turns on whether the programme is capable of preventing future infringements.

LEGISLATIVE, PROCEDURAL AND POLICY DEVELOPMENTS

National level

- Third, companies that participate in public procurement should consider the Guidelines alongside recent Spanish Supreme Court case law on the scope of procurement bans in competition cases (previously reported in VBB on Competition Law, Volume 2026, No. 2).

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