July 2026

VBB on Competition Law

Issue Highlights

Merger Control

Belgian Competition Authority conditionally approves transaction creating a near-monopoly in Belgian French-language daily newspapers, subject to extensive remedies on title preservation, content sharing, journalist protections and independent oversight and, separately, authorises cooperation between for the roll-out of complementary fibre networks across Flanders, subject to broad third-party access commitments.

Abuse of Dominant Position

Court of Justice of the European Union issues landmark judgment upholding the General Court's *Google Android* judgment and thus confirming the fine of € 4.125 billion imposed by that court. The judgment also confirms that neither a counterfactual analysis nor use of the 'as efficient competitor' test is systematically required under Article 102 TFEU.

European Commission publishes preliminary assessment finding that Sanofi may have abused a dominant position by spreading misleading communications to healthcare professionals disparaging a rival vaccine, and invites comments on Sanofi's proposed commitments.

Cartels and Horizontal Agreements

Court of Justice of the European Union establishes that sports federations' internal rules fall within the full scope of EU competition law and delineates the conditions under which such bodies may legitimately regulate the market for football agent services provided by non-affiliated third parties.

Swedish Patent and Market Court sets aside a SEK 6.5 million fine imposed on digital healthcare provider Min Doktor, finding that its agreement with competitor Kry to refrain from bidding on each other's brand names in Google Ads does not constitute a restriction of competition by object.

Vertical Agreements

German Federal Cartel Office imposes fines totalling € 11.9 million on importer, two wholesalers and an individual for vertical price-fixing in the wholesale distribution of Maxxis and CST branded tyres in Germany.

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Digital Regulation

General Court dismisses various DMA-related challenges by Apple, confirming its designation as a DMA gatekeeper with respect to its App Store and iOS.

Legislative, Procedural and Policy Developments

Court of Justice of the European Union confirms that business emails may be seized in dawn raids without prior court authorisation, but access to data on seized personal devices requires prior review by a court or an independent administrative body.

UK Government published consultation document setting out significant reform proposals of competition law enforcement, opt-out collective actions and regulatory appeals.

Private Enforcement

UK Court of Appeal confirms in *JJH Enterprises Limited (trading as ValueLicensing) v Microsoft* that software copyright exhaustion principles also apply to ancillary copyright in used software and that the Competition Appeal Tribunal has jurisdiction to rule on copyright issues, where they arise in the context of a competition claim.

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Merger Control

NATIONAL LEVEL | BELGIUM

Belgian Competition Authority conditionally approves acquisition of press activities IPM Presse by Rossel

On 3 July 2026, the Belgian Competition Authority ("BCA") conditionally approved the acquisition by Rossel of the press activities of IPM Presse ("IPM"). The transaction creates a single owner of every French language printed daily newspaper in Belgium.

According to the press release, the BCA identified competitive concerns on several markets. On the market for French-language daily newspapers, it found that the merged entity would have both the ability and the incentive to reduce the quality and diversity of editorial content and, ultimately, discontinue newspaper titles. Additionally, on the market for journalistic services, the BCA concluded that Rossel would become the sole employer in the French-language print media sector, giving it the ability to worsen journalists' working conditions and weaken safeguards protecting editorial independence.

Despite the exceptionally high level of concentration resulting from the transaction, the BCA concluded that it could be approved subject to the remedies outlined below. In reaching that conclusion, the BCA considered that, absent the merger, IPM's competitive position was likely to deteriorate over time and that the combined entity would be better placed to accelerate the digital transformation of the French-language press in response to declining print readership and growing competition from large online platforms.

Remedies

The BCA's remedy package closely resembles the commitments accepted by the Dutch Authority for Consumers and Markets ("ACM") in its conditional clearance of DPG Media/RTL Nederland in June 2025 (See, VBB Belgian Antitrust Watch of 18 July 2025). That case served as a blueprint for how competition authorities may incorporate media pluralism considerations into their assessment of concentrations in the sector. Rossel/IPM merger was the first test case for the application of those principles. The BCA's commitments include:

- Preservation of newspaper titles (indefinite). Rossel must maintain the principal French-language daily newspapers currently on offer in Belgium – *Le Soir, La Libre, L'Avenir* and *La DH/Les Sports*. Each title must retain sufficient resources to operate and develop independently, preserve its own editorial identity, and continue to be governed by its own editorial charter.

- Restrictions on content sharing (indefinite). Sharing of content between the various titles is curtailed, subject to a carve-out for sports content.

- Mandatory divestiture mechanism (indefinite). Rossel may discontinue a title only if it demonstrates to the BCA that continuation is no longer economically reasonable. In that event, the title must be offered for sale under conditions designed to maximise the chances of acquisition by a purchaser approved by the BCA.

- Protection of journalists (seven years). Rossel commits to maintaining existing agreements governing journalists' working conditions, including safeguards protecting editorial independence and, remarkably, limiting excessive or mandatory use of artificial intelligence. A code of conduct for freelance journalists will also ensure transparent and fair contractual relationships.

- Independent oversight. Compliance with the commitments will be monitored by an independent monitoring trustee. In addition, a dispute resolution mechanism will be established in cooperation with the Association for the Self-Regulation of Journalistic Ethics (“AADJ”).

European Board for Media Services Non-Opinion

One day before the BCA's decision, the European Board for Media Services (the “EMFA Board”) issued a statement on the transaction. Pursuant to Article 23 of the European Media Freedom Act (EMFA), the EMFA Board may issue a formal opinion on media market concentrations “likely to affect the functioning of the internal market for media services”, including their impact on media pluralism and editorial independence.

The EMFA Board noted that the merged entity would control approximately 94% of the French-language daily print press and around 82% of online news platforms in the relevant Belgian market, giving Rossel a near-monopolistic position. It further pointed out that the transaction could significantly affect the diversity of media ownership, the plurality of editorial voices and the conditions of editorial independence. Nevertheless, it declined to issue a formal opinion. The EMFA Board considered that the transaction was essentially national in scope. Both parties are established in Belgium, the assets concerned consist primarily of French-language Belgian newspaper titles, and the transaction was not expected to produce material effects on media pluralism, audiences or cross-border media services in other EU Member States. Accordingly, it concluded that the conditions for issuing a formal opinion under Article 23 EMFA were not met.

Instead, the EMFA Board confined itself to issuing a statement emphasising the importance of the transaction for the French-speaking Belgian media landscape and encouraging careful scrutiny of any commitments offered by the parties, including their scope, duration, enforceability and monitoring. The BCA itself took due note of the EMFA Board's position and maintained that there was a high degree of convergence between the concerns expressed by the EMFA Board and those which it raised in its own assessment, noting that the commitments accepted by Rossel also appear capable of addressing the EMFA Board's concerns.

Belgian Competition Authority clears broad cooperation between telecommunications network operators for roll-out of fibre networks in Flanders

On 23 July 2026, the Belgian Competition Authority (BCA) authorised the cooperation between Proximus/Fiberklaar and Telenet/Wyre for the roll-out of fibre telecommunications networks in Flanders (See, attached press release). This concluded a two-year investigation (see, Van Bael & Bellis Belgian Antitrust Watch of 30 July 2024) that included a market test in the autumn of 2025 (see, Van Bael & Bellis Belgian Antitrust Watch of 16 October 2025) and was conducted in tandem with the sector regulator, the Belgian Institute for Postal Services and Telecommunications (BIPT).

Under the terms of the cooperation, the parties will build complementary Fibre-to-the-Home (“FTTH”) networks and provide reciprocal wholesale access for their partners in medium-density population areas (covering more than 2 million homes). In sparsely populated areas (covering 0.7 million homes), Proximus will offer service via the Hybrid Fibre Coax (“HFC”) network of Wyre. In large cities and densely populated zones, network competition will operate to the fullest extent, with both groups rolling out their own separate infrastructure.

In the course of the investigation, the regulators focused on the reduction of infrastructure competition between network operators and the possible negative effects on competition for third parties. These concerns gave rise to an extensive set of binding commitments, reportedly running to hundreds of pages, which have not yet been made publicly available

In its press release, the BCA highlighted its efforts to strengthen the position of third parties by requiring: (i) access to the passive fibre networks of Fiberklaar and Wyre in suburban areas on fair, reasonable, and non-discriminatory (“FRAND”) terms; (ii) access to Wyre's HFC network on FRAND terms; (iii) access to Wyre's fibre network in urban areas; (iv) access to the fibre and digital subscriber line (“DSL”) networks of Proximus; (v) access to the ducts of Proximus in urban areas on FRAND terms; and (vi) access to the fibre drop cables of Fiberklaar and Wyre. The BCA also announced that it had secured an expansion of fibre coverage to more than 2 million homes in medium-density population areas, with 75% of the additional coverage to be achieved by June 2029.

Separately, the BCA and the BIPT are continuing their review of a comparable joint venture between Orange and Proximus for the roll-out of fibre networks in Wallonia.

Abuse of Dominant Position

EUROPEAN UNION LEVEL

Court of Justice's Google Android judgment confirms the Commission's broad discretion when establishing exclusionary effects in Article 102 cases

On 2 July 2026, the Court of Justice of the European Union (the "CJEU") dismissed in its entirety the appeal brought by Google LLC and Alphabet Inc. ("Google") against the General Court's judgment in *Google Android* (Case C-738/22 P). In doing so, it confirmed the € 4.125 billion fine set by the General Court following its partial annulment of the Commission's 2018 Article 102 TFEU infringement decision (See, VBB on Competition Law, Volume 2022, No. 8 and 9).

The judgment provides important clarification on the analytical framework applicable to exclusionary abuses under Article 102 TFEU. In particular, the CJEU confirms that the Commission is not required to use a counterfactual analysis or an as-efficient competitor ("AEC") test in exclusionary conduct cases and endorses a contextual assessment of exclusionary practices.

Background

In its 2018 decision, the Commission found that Google had infringed Article 102 TFEU by imposing anticompetitive contractual restrictions on original equipment manufacturers ("OEMs") and mobile network operators ("MNOs") designed to protect and consolidate its dominant position on the national markets for general search services within the EEA.

First, under its Mobile Application Distribution Agreements ("MADAs"), Google required OEMs to pre-install the Google Search application as a condition for obtaining a licence for the Play Store and, separately, to pre-install the Chrome browser application as a condition for obtaining licences for the Play Store and Google Search. Secondly, under its Anti-Fragmentation Agreements ("AFAs"), OEMs wishing to obtain those licences were prohibited from selling devices running versions of Android that Google had not approved. Thirdly, under portfolio-based Revenue Share Agreements ("RSAs"), Google granted OEMs and MNOs a share of its advertising revenue on condition that they did not pre-install competing general search services on any device within an agreed portfolio of products.

The Commission considered that each of those restrictions constituted a separate abuse of dominance and that, taken together, they formed a single and continuous infringement of Article 102 TFEU. It imposed a fine of € 4.343 billion on Google.

On appeal, the General Court partially annulled the Commission's decision in so far as it concerned the portfolio-based RSAs. It found that the Commission's AEC analysis in respect of the portfolio-based RSAs was vitiated by four errors of reasoning and accordingly annulled the finding that those agreements constituted an abuse in themselves. It nevertheless upheld the three remaining abuses and maintained their classification as part of a single and continuous infringement, and set the fine at € 4.125 billion. Google subsequently appealed to the CJEU.

CJEU's findings

The CJEU dismissed all grounds of Google's appeal.

The CJEU first rejected Google's argument that the General Court had failed properly to establish a causal link between the MADA pre-installation conditions and their alleged exclusionary effects. Google argued that the Commission should have assessed the competitive situation that would have existed in the absence of those conditions. The CJEU confirmed that, although a causal link between the conduct and its exclusionary effects must be established, Article 102 TFEU does not require competition authorities systematically to conduct a counterfactual analysis.

The CJEU also confirmed that the General Court was not required to quantify precisely to what extent user preference of Google apps and Google's search engine was attributable to pre-installation (as opposed to preference for the superior quality of Google's apps), once the "status quo bias" generated by the tying arrangements had been established.

The CJEU also upheld the General Court's determination that the RSAs, even though they were not considered to infringe Article 102 TFEU, constituted relevant economic context for the Article 102 assessment of the MADA. In a similar vein, the CJEU rejected Google's argument that a proper counterfactual analysis should have required the General Court to find that the MADA did not have anticompetitive effects, as, in the absence of the MADA, the (lawful) RSAs would have had the same effects on rival search engines.

The CJEU also confirmed that Article 102 TFEU does not require every finding of abuse to be supported by an AEC test, i.e., proof that the conduct is capable of excluding a competitor that is as efficient as the dominant undertaking. Google argued that the Commission should have demonstrated that the MADA pre-installation conditions were capable of foreclosing competitors that were as efficient as Google. The CJEU rejected that argument. It confirmed that, while the AEC test remains a useful analytical tool, it is not mandatory in all circumstances. There can be situations in which it is not possible, nor does it make sense, to base the analysis of exclusionary effects of particular conduct on the question of whether an as-efficient competitor could replicate that conduct. This is particularly the case in markets where network effects and significant barriers to entry, together with the conduct in question, make the emergence of an as-efficient competitor practically impossible. In those circumstances, the Commission may establish exclusionary effects through an overall assessment of the relevant factual circumstances.

The CJEU also confirmed that the annulment of the RSA abuse did not affect the finding of a single and continuous infringement, as there was an overall strategy that covered the three remaining infringements, and that this constituted an overall plan. Lastly, the CJEU upheld the General Court's exercise of its unlimited jurisdiction in setting the fine at € 4.125 billion.

Key takeaways

This judgment confirms that there is considerable methodological flexibility to establish exclusionary effects under Article 102 TFEU. Counterfactual analysis and/or an AEC test can be ignored when establishing exclusionary effects. As a result, the Commission has considerable discretion selecting an analytical framework that it considers suitable in light of the nature of the conduct and the characteristics of the relevant market to establish an Article 102 infringement.

This approach facilitates enforcement by lowering evidentiary requirements and analytical discipline in Article 102 cases. But it confirms concerns that the currently prevailing interpretation of an "effects based approach" provides little guidance and predictability, and therefore undermines compliance efforts.

The CJEU's approach endorses the Commission's draft Guidelines on Exclusionary Abuses, which specifically make the point that a counterfactual analysis is not always necessary, *"in particular where the conduct of the undertaking has made it very difficult or impossible to ascertain the objective causes of observed market developments*" – the draft Guidelines identify *inter alia* the General Court judgment in Google Android as being the source for this approach. Similarly, the draft Guidelines also make the point that the AEC test does not need to be carried out each time an exclusionary abuse is assessed and the source cited for this is the General Court's Google Shopping decision (which however limits this lack of necessity to non-pricing abuse cases).

Ongoing disparagement investigation - European Commission discloses additional details of its case and Sanofi proposes commitments

In its ongoing investigation of Sanofi for the alleged disparagement of a rival vaccine (See, Van Bael & Bellis Life Sciences News and Insights of 29 June 2026), the European Commission ("Commission") published a communication on 8 July 2026 summarising its preliminary assessment that Sanofi may have abused its dominant position (the "Communication"). The Commission also published commitments proposed by Sanofi (the "Commitments") to seek to resolve the case. Interested parties have until 21 August 2026 to provide comments on the proposed Commitments. If ultimately accepted by the Commission, the Commitments will become binding on Sanofi and the Commission will close its investigation.

For companies operating in the pharmaceutical sector, this case demonstrates the significant risks that can arise if a company adopts a communication campaign that is found (even at a preliminary stage) to be misleading and capable of discrediting a competing product. While Sanofi would avoid any fine if the Commission accepts the Commitments, it would nevertheless have to conduct a communication campaign to resolve the alleged misleading statements. Sanofi would also be subject to ongoing commitments and monitoring by an external trustee of its external communications for the next four influenza seasons.

Factual background

Sanofi's Efluelda® is a high-dose influenza vaccine, which competes with Seqirus's Fluad®, an MF59-adjuvanted influenza vaccine. The types of evidence supporting the efficacy of each of these vaccines differed (e.g., randomised controlled trial data v. real-world evidence). Nevertheless, the European Centre for Disease Prevention and Control ("ECDC") and the German Standing Committee on Vaccination ("STIKO") confirmed in 2024 that both products had the same level of certainty of evidence. Since October 2024, STIKO has recommended annual vaccination with either Efluelda or Fluad for persons aged 60 and above, with no preference for one over the other. In France, the Haute Autorité de Santé ("HAS") similarly treats the two vaccines as equivalent and recommends both preferentially over standard-dose vaccines for persons aged 65 and over.

Sanofi's alleged misleading communications

According to the Commission's Communication, Sanofi may have spread misleading messages to healthcare professionals ("HCPs") that were capable of harming competition from Fluad and were not supported by any legitimate business justification. The Commission identified three categories of potentially problematic messaging:

- Disparaging Fluad's evidence base, by suggesting that Fluad was supported by weaker evidence than Efluelda, contrary to the assessments of the ECDC, STIKO and HAS.
- Misrepresenting national vaccine recommendations, by incorrectly suggesting that Efluelda was the only enhanced influenza vaccine recommended for the elderly, when Fluad had been recommended on equal terms.
- Undermining the STIKO recommendation, by suggesting that STIKO's recommendation of Fluad remained subject to unresolved scientific objections, when STIKO had reviewed and discarded those objections before adopting its recommendation.

Commitments offered by Sanofi

Without admitting any wrongdoing or agreeing with the Commission's findings, Sanofi has offered the following commitments, which would apply for the next four influenza vaccine seasons (until 31 March 2030):

- Corrective public communications. Sanofi will publish corrective communications on its German and French websites for 24 months, acknowledging the ECDC's, STIKO's and HAS's assessments and clarifying that both Efluelda and Fluad have been assessed as having equally robust evidence bases and are recommended on equal footing. In Germany, Sanofi will also send these communications directly to HCPs who were the subject of previous campaigns.
- Compliance obligations for future messaging. Throughout the commitment period, Sanofi's marketing and promotional communications in Germany and France will: (i) include a reference (in Germany) to the applicable STIKO recommendation in force; (ii) not criticise, cast doubt on or contradict recommendations issued by any national immunisation technical advisory group ("NITAG"); (iii) not negatively highlight Fluad or suggest Efluelda is safer or more effective unless supported by the relevant summary of product characteristics ("SmPC") or qualifying head-to-head studies; and (iv) not suggest that Fluad's evidence base is weaker, including through selective presentation of scientific studies. These restrictions extend to Sanofi's interactions with key opinion leaders ("KOLs") and require Sanofi to include a clause referencing the Commitments in new KOL contracts.
- External Monitoring Trustee & Internal Compliance Mechanisms. Sanofi will establish an internal review mechanism, conduct annual compliance training, and appoint a Monitoring Trustee (at Sanofi's expense) to oversee implementation. Seqirus may raise alleged breaches of the Commitments directly with the Monitoring Trustee, who will issue formal recommendations in case of disagreement.

While Sanofi's commitments are broadly similar to those implemented in the Commission's prior case against Vifor, several elements of Sanofi's commitments are significantly lighter. For example, Sanofi's commitment period is limited to 4 influenza seasons (until 31 March 2030), compared to Vifor's 10-year commitment period. Sanofi has also not committed to conduct the multi-wave mail and e-mail campaigns, medical journal publications, and in-person communications that are included in Vifor's commitments, or committed to allow competitors to use Sanofi's corrective communication. Sanofi's commitments do, however, contain an additional obligation to reference the Commitments in Sanofi's new KOL contracts.

Key takeaways

Ongoing competition law scrutiny of communication practices in the pharmaceutical sector. This investigation of Sanofi continues a trend which at the European level began with the Commission's decisions concerning disparagement of competitors in the Vifor and Teva cases. At national level, mainly in France, there is already an established administrative practice of tackling such practices.

Expansion of types of communications that may constitute an abuse. Beyond statements addressing Fluad, the Commission's preliminary assessment raises concerns about Sanofi's communications that only address Efluelda, such as statements implying that Efluelda was the only vaccine recommended for the elderly. This indicates that even a communication that solely mentions a company's own product could potentially constitute an abuse if it is misleading and unfairly harms a competing product.

Importance of providing training and guidance for all relevant teams (Sales force, Medical science liaisons (MSLs), Market access). The Commitments indicate that the allegedly misleading statements were not confined to Sanofi's sales field force. The compliance obligations and training requirements extend equally to MSLs and market access teams, reflecting the Commission's view that potentially problematic communications can originate from any team that interacts with HCPs, KOLs, payors or other stakeholders. Competition law compliance programs should therefore not focus exclusively on sales and marketing functions, but should instead cover all staff that communicate externally about the products of the company or its competitors.

Cartels and horizontal agreements

EUROPEAN UNION LEVEL

Court of Justice clarifies boundaries of sports federation regulatory power over football agents

In the course of July 2026, the Court of Justice of the European Union ("CJEU") delivered two important judgments, *RRC Sports* (Case C-209/23, 16 July 2026) and *ROGON and Others* (Case C-428/23, 9 July 2026) concerning the compatibility of football agent regulations with EU competition law. Both cases arose from preliminary references by German courts and address a similar issue, namely the extent to which a sports federation may, through rules formally addressed to its own members, regulate the market for players' agent services provided by non-affiliated third-party undertakings.

RRC Sports

In *RRC Sports*, the Landgericht Mainz referred preliminary questions to the CJEU in proceedings brought by RRC Sports GmbH ("RRC Sports"), a German players' agency, seeking injunctive relief against the Fédération Internationale de Football Association ("FIFA”). The proceedings concerned several provisions of the FIFA Football Agent Regulations ("FFAR"), which have been in force since 2023. The provisions challenged fall into five categories: (i) rules restricting multiple representation; (ii) remuneration rules, including fee caps, payment modalities, and anti-circumvention mechanisms; (iii) licensing conditions, including rules on the grant of licences and on limitations arising from criminal or disciplinary sanctions; (iv) solicitation and "approaches" rules (i.e., dealing with situations in which the agent "approaches" a new client); and (v) obligations to upload and publish transactional and personal data via FIFA's digital compliance platform. The reference concerned the compatibility of rules falling within these five categories with the EU competition rules (Articles 101 and 102), EU rules on the free movement of services (Article 56 TFEU), and the General Data Protection Regulation (“GDPR”).

Concerning the competition law aspects, the CJEU found that, under Article 101 TFEU, FIFA qualifies as an association of undertakings and that the FFAR constitutes a decision of an association of undertakings subject to the full competition law framework.

Examining the relevant provisions of the FFAR, the CJEU identified two categories of by-object restrictions, which did not require any effects analysis, namely (i) a remuneration mechanism that arbitrarily deprives an agent of fees still owed for a prior transfer and (ii) non-solicitation rules that exempt incumbent exclusive agents from their scope. In practice, the first rule automatically and arbitrarily deprives an agent of unpaid fees earned on a prior transfer whenever the player moves again, regardless of the agent's involvement in the subsequent transfer. The second rule restricts agents from soliciting players outside a two-month window before an exclusive representation agreement expires, while imposing no equivalent restriction on the agent benefiting from the exclusive representation. The Court treated both provisions as by-object restrictions since their anticompetitive nature was clear from the rules themselves, without the need to examine their effects.

By contrast, for the remaining provisions, the CJEU instructed the referring court to conduct a full effects analysis and, where applicable, assess the applicability of the *Wouters/Meca-Medina* conditions. Under that case law, a rule restricting competition may nonetheless fall outside Article 101(1) TFEU if: (i) it pursues one or more legitimate objectives in the public interest which are not per se anticompetitive in nature; (ii) the specific means used to pursue those objectives are genuinely necessary for that purpose; and (iii) even if those means prove to have an inherent effect of restricting or distorting competition, that inherent effect does not go beyond what is necessary. In the sporting context, this exception is particularly significant as it preserves space for sport governing bodies to adopt regulations that may incidentally limit economic freedom without such regulations falling within the scope of the EU competition rules.

In relation to Article 102 TFEU, the CJEU held that FIFA may be regarded as holding a dominant position on the markets for agent services relating to international transfers and for the employment of professional players and coaches, by virtue of the combination of its regulatory, supervisory, and sanctioning powers. The CJEU confirmed that an abuse may be established even where FIFA does not compete directly on those markets, provided that its regulatory conduct limits or steers competition in a manner aligned with its own interests or those of its affiliated clubs and leagues. The Court ruled that any such finding of abuse remains subject to the detailed factual assessment by the referring court.

ROGON

In *ROGON*, the Bundesgerichtshof ("BGH") referred two questions to the CJEU in proceedings brought by two football agent companies (ROGON GmbH & Co. KG and MVI Management GmbH) against the Deutscher Fußball-Bund e.V. ("DFB"), the German football federation, concerning the *Reglement für Spielervermittlung* (Regulations on player representation) ("RfSV"). The RfSV, which has been in force since 2015, imposes rules on the services provided by agents (such as registration obligations), requires agents to submit to DFB and FIFA jurisdiction, and prohibits certain commission arrangements for inward transfers and transfers of minors. All these rules are formally addressed to clubs and players rather than to agents directly.

The referring court asked the CJEU whether the *Wouters/Meca-Medina* exception to the prohibition laid down in Article 101(1) TFEU could apply to rules that also govern the activity of non-members, namely football agents acting as third-party service providers. The CJEU held that the exception is capable of applying to such rules, provided that they do not constitute restrictions by object and satisfy the three cumulative conditions of the *Wouters/Meca-Medina* exception outlined above.

On the second preliminary question, the CJEU held that the proportionality principle did not have to be assessed provision by provision but, rather, may be assessed with respect to a set of provisions pursuing a common objective or producing a common effect. The final determination of whether the RfSV provisions satisfy the conditions of the exception was remitted to the BGH.

Key takeaways

RRC Sports and *ROGON* together establish a framework for assessing the compatibility of football agent regulations with EU law, confirming that such sporting rules fall within its full scope regardless of whether they emanate from a national federation or the global governing body of football. A common feature of both cases is that the challenged regulations were formally addressed to federation members (i.e., clubs and players), yet produced direct and significant effects on the market for agent services, whose providers are not members of the regulating body. Both German referring courts thus faced the same central uncertainty: to what extent a sports federation may, through its internal rules, discipline the activity of non-affiliated third parties.

Against that background, the two judgments define the limits of that regulatory autonomy. Read together, they delineate the conditions under which any football federation - regardless of its place in the sport's governance hierarchy - may legitimately exercise regulatory powers over the market for football agents, while respecting the constraints imposed by EU competition law.

NATIONAL LEVEL | SWEDEN

Swedish Court finds that keyword bidding restrictions between competitors are not presumptively anticompetitive

On 4 June 2026, the Swedish Patent and Market Court (the "Court") set aside a SEK 6.5 million fine that the Swedish Competition Authority (the "SCA") had imposed on MD International AB ("Min Doktor") for agreeing with its competitor Kry Primärvård AB ("Kry") not to bid on each other's brand names as keywords in Google Ads search advertising. The Court found that the agreement did not constitute a restriction of competition by object. Since the SCA had not carried out an effects analysis, the Court annulled the SCA's decision.

In early 2020, Kry and Min Doktor, the two leading digital primary care providers in Sweden, agreed to stop bidding on each other's trademarks in Google Ads. The parties implemented the agreement in different ways: Min Doktor paused all its existing keywords containing "kry", whereas Kry added "min doktor" as a negative keyword using exact negative matching. Although the parties' express agreement was only for a three-month trial period, the Court upheld the SCA's finding that the agreement had effects for approximately eleven months. Kry, which had reported the arrangement to the SCA, was granted immunity from the fine.

The SCA characterised the agreement as a restriction of competition by object. It contended that the agreement deprived consumers searching for one party's brand name of the opportunity to become aware that the other party constituted an alternative digital healthcare provider and was thus designed to protect each party from competition. Min Doktor countered that the agreement did not concern any of the fundamental parameters of competition within primary care. Rather, its purpose was to reduce the parties' advertising expenditure on Google Search, thereby freeing up funds for more effective keyword marketing and preventing one party from free riding on the other's brand recognition.

Court's assessment

The Court noted that, while the agreement constituted horizontal cooperation between competitors to mutually refrain from a marketing practice, it did not involve the type of conduct typically regarded as particularly harmful to competition. The Court also found that there had been no prior similar cases assessed by EU competition authorities or courts. In this regard, it distinguished the case from the European Commission's Guess decision (AT.40428) which concerned restrictions on the ability of distributors to use the Guess trademark in Google Ads and therefore limited intra-brand competition. By contrast, the present case concerned a horizontal agreement between competitors relating to inter-brand advertising – a materially different setting in the Court's view.

The Court undertook a detailed assessment of the agreement's content, the economic and legal context, and its objective aims, in line with the framework established by the Court of Justice of the European Union in *Budapest Bank* (C-228/18), *Generics* (C-307/18), and *European Superleague* (C-333/21). The Court accepted that the agreement had an objectively anticompetitive aim. However, under the *Budapest Bank* framework, an anticompetitive aim alone is not dispositive, and there still must be a finding that, on the basis of all the circumstances, an agreement reveals a sufficient degree of harm.

Critically, the Court found that the evidence did not demonstrate that keyword advertising on a competitor's trademark constituted a significant competitive parameter. Whilst the search term "kry" ranked highly among terms generating impressions for Min Doktor's advertisements, the click-through rate for that term was only 3.36% and conversions as a proportion of impressions amounted to only 0.36%, compared with 59.54% and 12.69% respectively for Min Doktor's own brand name. The Court concluded that searches for "kry" were, to a significant extent, navigational searches – meaning that users typed the brand name as a shortcut to visit Kry's website, rather than to explore alternative providers. Furthermore, the conversions generated by the search term "kry" accounted for less than 0.2% of Min Doktor's total patient cases, and Min Doktor's advertising costs on Kry-related search terms amounted to less than 1% of its total marketing expenditure.

The Court also relied on economic literature suggesting that non-brand bidding agreements do not necessarily reduce consumer welfare, and may on the contrary have positive effects, such as counteracting free-riding and reducing brand confusion. They can also lower marketing costs, as the main beneficiaries of bidding competition are search engines. Overall, the Court found that the evidence was "not such as to support the conclusion that the agreement is, by its very nature, so harmful that it must be regarded as having the object of restricting competition."

Key takeaways

The judgment indicates that there may be a meaningful distinction between agreements that restrict bidding on a competitor's specific brand name (as in this case) and broader agreements that also restrict bidding on generic or combined search terms. It was important for the Court that the agreement between Min Doktor and Kry had a narrow scope and was limited to brand-only searches which are primarily navigational (and competitively insignificant), and had not prevented the parties from bidding on a large number of keywords, such as various symptoms (where searches would more likely aim at finding alternative service providers).

This distinction could be significant in future enforcement and compliance assessments. It should be noted, however, that the Court's findings were highly fact-specific, and are not necessarily predictive of outcomes in future cases. In particular, the Court in *Min Doktor* was willing, despite confirming that the agreement had an anticompetitive aim, to engage in a robust analysis of relevant circumstances, including economic evidence suggesting a lack of harmful effects, when determining whether the agreement constituted an object restriction. Decision makers in future cases may prefer analytical shortcuts and avoid this type of comprehensive, more demanding analysis.

The judgment is also notable for its attempt to distinguish the assessment of keyword bidding restrictions imposed within selective distribution systems. In *Guess* (AT.40428), the European Commission found that prohibiting a reseller from bidding on certain keywords on Google's advertising platform constituted a by object restriction – a finding reiterated by the French Autorité de la concurrence in *Google France*. By contrast, the Court treated a comparable restriction in a horizontal setting as less evidently anticompetitive. This could be seen as implying that keyword bidding restrictions may be less harmful to inter-brand competition than to intra-brand competition. Such a categorical distinction would, however, not be justified. Even in a vertical context, the scope of keyword bidding restrictions, the broader circumstances in which they are used, and evidence on whether the restrictions materially affect competitively meaningful consumer choice should be relevant when determining whether keyword bidding restrictions harm competition.

Vertical Agreements

NATIONAL LEVEL | GERMANY

German Federal Cartel Office fines Maxxis International and two wholesalers € 11.9 million for vertical price-fixing in tyre distribution

On 21 July 2026, the Bundeskartellamt (the Federal Cartel Office - "FCO") announced that it had imposed fines totalling € 11.9 million on the importer Maxxis International (“Maxxis”), two wholesalers Best4Tires Berlin and Reifen Müller, and an individual. The sanctioned anti-competitive conduct involved vertical price-fixing arrangements in the wholesale distribution of Maxxis and CST branded tyres in Germany.

Maxxis, the exclusive German importer of tyres manufactured by the Taiwanese company Cheng Shin Rubber, was found to have coordinated pricing with various wholesalers both by concluding margin guarantee agreements and by establishing a ‘price moderation’ system under which it monitored and influenced resale prices.

The arrangements dated back to late 2015 and early 2016, when Maxxis entered into margin guarantee agreements with Berlin Tyre (the legal predecessor of Best4Tires Berlin) and Reifen Müller following pressure from these wholesalers. The agreements guaranteed the wholesalers a specified profit margin on each Maxxis and CST tyre sold. In return, the wholesalers would avoid acting as price leaders and instead adopt a ‘defensive’ marketing strategy, particularly when selling on the Tyre24 online marketplace platform. In the following years, Maxxis concluded such agreements with nine additional wholesalers and initially around two thirds of Maxxis’s sales were tied to such arrangements.

In parallel, under the ‘price moderation’ system put in place by Maxxis to further control resale prices (and thereby limit the payments under the margin agreements), Maxxis first issued recommended resale price (“RRP”) guidelines to wholesalers, then monitored actual selling prices (especially on the Tyre24 platform) and intervened when it considered prices to be too low. Maxxis also persuaded wholesalers to take steps to control the pricing of their own customers on the platform, including by buying up tyres sold at excessively low prices.

The monitoring was facilitated by the Tyre24 platform's functionality at the time, which allowed registered companies to operate simultaneously as buyers and sellers, enabling participating companies, through buyer accounts, to view competitors' offers, inventories and prices, and thereby conduct close surveillance of market pricing.

In addition to imposing a fine on Maxxis, the FCO also imposed fines on the two wholesalers as they (in the case of Best4Tires Berlin through a legal predecessor) were the first to put pressure on Maxxis to conclude margin agreements and received high compensation payments. Maxxis and Reifen Müller agreed to a settlement.

Key takeaways

This decision offers a number of lessons for suppliers and distributors.

First, whereas margin guarantee agreements are not unlawful as they may be a legitimate means of incentivising distributors to promote a supplier's products, they nonetheless create a particular incentive for the supplier to try to prevent resale price erosion from occurring in order to limit the compensation it needs to pay its distributors under such arrangements. Even assuming the agreements themselves do not contain restrictions on resale pricing, where they are paired with RRPs, active price monitoring and corrective intervention by the supplier, there is a significant risk that the supplier may be found to engage in vertical price-fixing in violation of the competition rules, irrespective of whether the arrangement was initially requested by the distributors rather than the supplier (and in which case the distributors themselves also face the risk of sanctions). To establish that such steps amount to an infringement, it would still need to be demonstrated that there is a meeting of minds between supplier and distributor to restrict resale pricing, rather than unilateral expressions of discontent by either supplier or distributor which would fall outside the scope of Article 101 TFEU. Although the recent ruling of the Swedish Patent and Market Court of Appeal in the *Tapwell* case demonstrates that a meeting of minds should only be found after a rigorous analysis of all the available evidence, the existence of a margin agreement may increase the risk of this threshold issue being assumed to be met in relation to separate corrective measures.

Second, the enhanced level of market transparency provided by online marketplace functionalities may facilitate the detection by both suppliers and distributors of erosive resale pricing, both facilitating corrective measures which risk being considered to violate competition law and triggering pressure on suppliers to engage in them.

Finally, the case adds to the sustained wave of enforcement by national competition authorities across the EU in relation to practices limiting resale prices, emphasising the continuing need for suppliers and their distribution networks to conduct regular reviews of pricing policies and price-monitoring practices to ensure compliance with competition law.

Digital Regulation

EUROPEAN UNION LEVEL

General Court dismisses various DMA-related challenges from Apple, confirming (amongst other things) its designation as a DMA gatekeeper regarding its App Store and iOS

On 8 July 2026, the General Court of the European Union (the "Court") dismissed a number of challenges brought by Apple concerning its designation as a gatekeeper under the Digital Markets Act ("DMA"). In its judgment, which dealt with three separate appeals by Apple, the Court confirmed Apple's designation as a gatekeeper in relation to its App Store and iOS operating system core platform services ("CPSs"), whilst also finding that Apple's challenges of decisions by the European Commission ("Commission") to open and subsequently close a DMA market investigation into Apple's iMessage service were inadmissible.

Background

On 5 September 2023, the Commission designated Apple as a gatekeeper under the DMA in relation to its App Store online intermediation service, iOS operating system and Safari web browser. The Commission also decided to open a market investigation to determine whether Apple should be designated as a gatekeeper with respect to its iPadOS operating system, which led to the conclusion in April 2024 that the threshold for designation was not met for that CPS.

The Commission simultaneously opened a market investigation to examine whether Apple had managed to rebut the DMA's presumption that its iMessage service, which constituted a number-independent interpersonal communications service ("NIICS") and a core platform service ("CPS"), satisfied the requirements for gatekeeper designation on the grounds that it met the quantitative thresholds for designation in Article 3(2) DMA. Essentially, Apple argued that, although iMessage met the quantitative thresholds, it did not amount to "an important gateway in the Union for business users to reach end users" (one of the conditions for gatekeeper designation for a CPS). As a result, the presumption for gatekeeper designation arising from iMessage meeting the quantitative thresholds could be rebutted in this case.

On 12 February 2024, the Commission confirmed that it would not designate Apple as a gatekeeper in relation to iMessage, since Apple had successfully rebutted the presumption based on its meeting the quantitative criteria in Article 3(2) DMA. However, the decisions opening and closing the market investigation retained the classification of iMessage as an NIICS constituting a CPS.

Apple subsequently brought proceedings before the Court in order to challenge:

(i) its designation as a gatekeeper in relation to the App Store and iOS, on the basis that Article 6(7) DMA, pursuant to which gatekeepers are required to provide third parties with free access to the same operating system hardware and software features that are available to the gatekeeper, was illegal, as it infringed the principle of proportionality and Apple's right to property;

(ii) the Commission's assessment that the five different versions of the App Store – namely, the iOS App Store, iPadOS App Store, watchOS App Store, macOS App Store and tvOS App Store – together constitute a single CPS; and

(iii) the Commission's decisions to open and close the iMessage designation investigation, thereby challenging the classification in those decisions of iMessage as an NIICS.

Court's reasoning

The Court dismissed all of the challenges brought by Apple, on the following grounds.

- As regards (i), the Court found that Article 6(7) of the DMA constitutes neither the legal basis of the Commission's gatekeeper designation decision regarding Apple (which was instead based on Article 3 DMA), nor a rule having a direct legal connection with that decision. Accordingly, a plea of illegality regarding Article 6(7) cannot affect the lawfulness of the designation decision itself. As a result, this challenge was inadmissible and dismissed on this basis.

- As regards (ii), the Court confirmed the Commission's assessment, as set out in its designation decision, that the five different versions of the App Store together constitute a single CPS. In reaching this conclusion, the Court found that, irrespective of the devices in question, each store has the same purpose (namely, to connect app developers with end users, in order to facilitate the distribution of software applications). The Court also found that the differences alleged by Apple for finding that each store constituted a distinct CPS – on the basis of which only the iOS App Store met the thresholds required for designation – related primarily to the specific characteristics of the devices used and did not justify distinguishing between the associated app store services.

- As regards (iii), the Court dismissed the actions directed against the decisions opening and closing the market investigation regarding iMessage, on the basis that they were not by themselves capable of affecting Apple's interests by bringing about a distinct change in its legal position and could not therefore be challenged.

  The Court also ruled as inadmissible Apple's complaints regarding the designation decision's classification of iMessage as a NIICS constituting a CPS, concluding that such classification did not, by itself, produce binding legal effects that brought about a change in Apple's legal position. The DMA applies obligations with respect to the provision of an NIICS only if the service has been specifically listed as a designated CPS in a designation decision. The description of iMessage as an NIICS did not amount to such a designation and did not form part of the operative decision opening and closing the market investigation. Any future designation decision concerning iMessage would need to be based on new findings and could not rely on the terminology used in the challenged decisions. As such, the classification of the service as an NIICS had no concrete and binding effect and could not be challenged.

Key takeaways

The Commission has understandably welcomed the Court's judgment, as an endorsement of its approach to designation under the DMA. The Court's judgment nevertheless leaves open certain questions regarding the legality of the interoperability requirements under Article 6(7) of the DMA, since its finding on admissibility meant that it did not need to address the substance of Apple's arguments on this front. Indeed, the Court expressly noted that *"Apple retains the possibility of raising a plea of illegality in respect of [Article 6(7)] in the context of other proceedings"*.

It is worth noting that two separate ongoing actions brought by Apple, each of which challenges aspects of the Commission's technical specification decisions concerning certain substantive interoperability requirements imposed by Article 6(7) DMA, remain pending before the Court. It will be interesting to see how the Court ultimately decides those cases in due course. It also remains to be seen whether Apple will seek to appeal this judgment to the Court of Justice.

Legislative, procedural and policy developments

EUROPEAN UNION LEVEL

Court of Justice confirms that business emails may be seized in dawn raids without prior court authorisation, but access to data on seized personal devices requires prior independent review

On 16 July 2026, the Court of Justice ("Court") sitting as a Grand Chamber issued its judgment in Joined Cases C-258/23 to C-260/23, *IMI - Imagens Médicas Integradas and Others v Autoridade da Concorrência*, concerning the protection of the fundamental rights of individuals provided for in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union ("Charter") in the context of competition dawn raids.

Background

The cases arose from inspections carried out by the Portuguese Competition Authority (*Autoridade da Concorrência*) in three separate competition law investigations. The inspections were authorised in advance by the Portuguese Public Prosecutor's Office and resulted in the examination, copying and seizure of large volumes of emails and computer files from the premises of the undertakings concerned.

The applicants challenged the lawfulness of the seizures before the Portuguese Competition, Regulation and Supervision Court. The court stayed the proceedings and referred three questions to the Court of Justice: (i) whether business emails constitute "communications" within the meaning of Article 7 of the Charter, which provides for the right to respect private and family life, home and communications; (ii) whether Article 7 precludes the seizure of such emails in competition investigations; and (iii) whether Article 7 precludes such seizure where the authorising body is the Public Prosecutor's Office rather than a court.

The Court of Justice originally decided to give judgment without a hearing. However, following its October 2024 judgment in *Bezirkshauptmannschaft Landeck* (C-548/21), the Court took the exceptional step of reopening the oral procedure and convening a Grand Chamber to consider the issue. In *Landeck*, the Court had held that prior judicial or independent authorisation is required to access personal data stored on a mobile telephone in the context of criminal investigations. Advocate General Medina delivered her second Opinion in the case on 23 October 2025 (See, VBB Client Alert of 28 October 2025).

Court's judgment

Business emails constitute "communications" protected under Article 7 of the Charter

The Court of Justice held (drawing on its case-law on the protection of private life and correspondence under Article 8 ECHR) that Article 7 of the Charter must be interpreted as meaning that the concept of "communications" includes business emails exchanged between employees and managers of an undertaking by means of that undertaking's messaging service. This protection applies regardless of whether the emails have been read or deleted, whether they were sent from business premises or equipment, whether the sender or recipient address belongs to a legal person, and whether their content is private in nature. The Court also clarified that an employer's instruction prohibiting personal use of the company's messaging system does not affect the classification of those emails as protected “communications”.

The Court equally confirmed that the protection of Article 7 extends to “personal data generated by the traffic of business emails”, which is additionally protected by the right to the protection of personal data as set out in Article 8 of the Charter.

Seizure of business emails on the company’s IT systems or devices: prior court authorisation not required, but effective ex post judicial review is mandatory

The Court held that Articles 7 and 8 of the Charter do not, in principle, preclude national legislation under which a competition authority seizes business emails on the company’s IT systems or devices, in the context of a competition law investigation, without prior authorisation from a court. The Court noted that the seizure of business correspondence by a competition authority is generally subject to procedural safeguards intended to ensure the security, integrity and confidentiality of the data. Any investigation must be based on a duly reasoned inspection decision, resting on reasonable suspicions of infringement, and computer forensic searches must use keywords defined in relation to the predetermined subject matter of the investigation.

Crucially, however, where prior court authorisation is absent, the protection of individuals requires that there be a full and effective *ex post* judicial review of the legality and necessity of the inspection and seizure measures. This review must provide the data subjects with appropriate redress, and must allow the admissibility of the evidence gathered to be assessed. Where, as in the Portuguese proceedings, prior authorisation is granted by the Public Prosecutor's Office rather than a court, it becomes of paramount importance that such *ex post* judicial review proceedings are open to the data subjects and fully meet those requirements.

The operative part of the judgment accordingly states that Articles 7 and 8 of the Charter do not preclude the seizure of business emails without prior court authorisation, provided that a strict legal framework for the powers of the competition authority and adequate and sufficient safeguards against abuse and arbitrariness, such as effective *ex post* judicial review, are in place.

Personal devices require prior independent review

The Court expressed an important reservation regarding inspections leading to the seizure of mobile telephones, computers or any other computer storage medium belonging not to the company whose premises are being inspected, but to natural persons such as its managers and employees. The Court held that access to the data contained in those devices must, where appropriate after being sealed, be subject to prior review by a court or an independent administrative body.

The Court reasoned that such dual-use devices used for both professional and private purposes may contain not only traffic and location data but also photographs, internet browsing history and the content of private communications, and that data falling within special categories under Article 9 of the GDPR may also be present. Access to such a comprehensive set of data is liable to allow very precise conclusions to be drawn about the private life of the data subject, giving rise to a serious, or even particularly serious, interference with the fundamental rights guaranteed by Articles 7 and 8 of the Charter.

The Court followed the approach it had established in *Bezirkshauptmannschaft Landeck* and held that, where access to personal data carries the risk of such serious interference, prior review by a court or independent administrative body is essential to ensure that the principle of proportionality is observed in each specific case.

Key takeaways

The Grand Chamber judgment raises several practical and legal questions for competition law enforcement across the EU and the EEA.

<u>For inspected undertakings and their employees</u>**.** The requirement of prior court or independent review before access to personal devices belonging to employees and managers seized by a competition authority in the context of an inspection represents a meaningful new procedural protection. This applies to “dual-use” devices – those used for both business and personal purposes – which are commonly encountered during dawn raids. The judgment does not specifically address protocols for mobile phones owned by the company that contain a mixture of business and personal data, but it can be assumed that the same protections should apply to these as for work emails (*i.e.*, effective *ex post* judicial review must be available). Companies should consider whether their existing dawn raid guidelines and procedures adequately reflect these new requirements, noting that the rights in question belong primarily to individual employees rather than to the undertaking itself (and that therefore the various legal interests involved might not necessarily be aligned).

<u>For competition authorities</u>. The judgment will require competition authorities which seize personal devices in the context of an inspection to examine whether their inspection procedures adequately safeguard personal data therein, by providing for the requisite prior authorisation. It is not the practice of the European Commission to "seize" devices during inspections. As a result, this judgment would not appear to require any changes to their way of working. Nevertheless, it can be expected that the Commission and national EU/EEA competition authorities will thoroughly discuss the impact of the judgment in the European Competition Network, to ensure their inspection procedures are as robust as possible to challenges brought on grounds of personal data. It may be that some competition authorities will move away from seizure-based procedures towards those where data is searched and reviewed 'on the spot'.

<u>Broader application</u>. The principles established by the Court apply to all national competition authorities of EU (and EEA) Member States and, by analogy, to bodies conducting similar inspections under related regulatory frameworks such as the Foreign Subsidies Regulation.

UK government consults on significant proposed changes to (amongst other things) competition enforcement and opt-out collective actions

On 17 July 2026, the UK government's Department for Business and Trade ("DBT") published a consultation document setting out significant reform proposals covering three aspects of UK competition law: (i) competition enforcement under the Competition Act 1998 ("CA98"); (ii) opt-out collective actions; and (iii) regulatory appeals (largely aimed at simplifying the existing model). This article considers the proposed reforms in the first two areas.

CA98 enforcement

The proposed CA98 enforcement changes are framed as intending to facilitate faster and more efficient investigations, preserve procedural fairness, and ensure greater alignment with the new direct consumer enforcement powers introduced by the Digital Markets, Competition and Consumers Act 2024 ("DMCCA"). Key proposals include:

- Streamlining the Competition and Markets Authority's ("CMA") decision-making model, by removing the specific decision-making model for CA98 cases currently prescribed in the CMA Rules – which involves a Senior Responsible Officer and a separate case decision group – and instead allowing the CMA to define its approach in guidance (consistent with its new direct consumer enforcement powers). However, the existing two-stage process (proposed infringement decision followed by final decision and potential penalties) would be retained, and DBT nevertheless still expects the CMA to introduce input from some additional senior decision-makers for final/penalty decisions. DBT similarly proposes to also remove the prescribed model for settlement decision-making.

- Seeking views on the possibility of full immunity from civil litigation for Type A leniency candidates. The CMA operates a leniency programme, whereby the first business to report and provide evidence of a cartel where there is no pre-existing investigation will receive "Type A" leniency, thus granting that business immunity from potential CMA penalties – including fines, criminal prosecution and director disqualification – but such protection only applies in respect of the CMA's investigation, and does not currently provide immunity from private damages claims. In this context, DBT recognises that the growth of private actions may be deterring potential leniency applicants from coming forward (since doing so may ultimately expose them to follow-on litigation) – as perhaps reflected in the sharp recent decline in Type A immunity applicants. Against this background – and in order to incentivise such applicants, whilst balancing the impact on compensation and fairness, and enhancing public enforcement action against cartels – DBT is seeking views on the possibility of providing Type A leniency candidates with full immunity from civil litigation.

In addition, the DBT proposes the following targeted changes:

- more proportionate/flexible confidentiality requirements, allowing the CMA to define its approach in guidance (consistent with its approach in other areas, including consumer enforcement).

- more efficient settlement procedures;

- refinements to access to evidence and confidentiality ring processes;

- introducing a penalty cap of £300,000 for undertakings with no/unrepresentative turnover;

- amending aspects of the Competition Disqualification Orders ("CDOs") regime, by (i) clarifying that directors' overseas conduct can be considered when assessing fitness, and that prior competition law breaches can be taken into account; and (ii) expressly confirming that CDOs can be made against former (and not just current) directors, so a director cannot avoid disqualification simply by resigning; and

- removing the requirement to publish CA98 notices in the London, Edinburgh and Belfast Gazettes, a national daily newspaper and trade journals, with publication only on the online CA98 Public Register being sufficient.

Opt-out collective actions

The proposals in this area build upon the response to the Government's call for evidence that ran from August to October 2025, with the overall aim of balancing redress while protecting businesses from unmeritorious claims. Key proposals in this regard include:

- <u>Retaining the regime's existing scope (for now)</u>, by deciding to neither expand (e.g., to cover other areas beyond competition law claims) nor narrow it at this stage. However, as announced in April 2026, the UK government has nevertheless separately asked the Law Commission to assess the risks and benefits of a potential consumer protection law class action regime in the UK (which will presumably take into account relevant findings from the new DBT consultation).

- <u>Raising the bar for certification</u> - by (i) moving from a relative to an absolute suitability test, thus requiring the Competition Appeal Tribunal ("CAT") to evaluate not only whether a claim is better suited to collective rather than individual proceedings, but also whether it is proportionate for such claim to use the opt-out mechanism at all (including consideration of its merits); (ii) affording greater weight to the cost/benefit analysis, meaning claims likely to deliver only negligible returns for class members (relative to litigation costs) cannot proceed; and (iii) requiring the CAT to consider whether there is sufficient evidence to assess of damages on an aggregate basis, as a factor in certification.

- <u>Enhancing litigation funding options</u>, by (i) permitting damages-based agreements ("DBAs") for opt-out collective actions (including because the proposed amendments to the certification threshold would protect against the risks of speculative/unworthy claims brought using DBAs); (ii) requiring the CAT to give an indication of the reasonableness of the funder's return and order of payment at certification (with the CAT having discretion ability to revisit such assessment at the conclusion of the claim, should there be a notable change); (iii) introducing a presumption that funders receive their returns straight away on award/settlement, prior to distribution of funds to class members; and (iv) requiring mandatory budgets from both parties following certification, with potential cost sanctions for conduct that unduly increases costs or drains budgets.

- Increasing opportunities for alternative dispute resolution ("ADR"), settlement and voluntary redress, by (i) empowering the CAT to encourage/require mediation between parties, following exchange of expert reports; (ii) extending "Rule 45-style" settlement offers (which carry automatic cost-shifting consequences) to the opt-out regime; and (iii) enhancing the voluntary redress scheme model, which has never been utilised despite being introduced alongside the opt-out regime in 2015. DBT also seeks views on empowering the CMA to direct the establishment of redress schemes in appropriate cases (for instance, where the range of those impacted by an infringement could be established relatively clearly), which would be coupled with the removal of duplicative damages liability.

- Introducing filing fees for private litigation before the CAT, which would be linked to claim value and subject to a cap (to be reviewed within five years of introduction).

Next steps

The deadline for interested parties to respond to the consultation is 25 September 2026, after which the government will consider all responses before proposing draft legislation as soon as parliamentary time allows (and it is also worth noting that many of the proposals outlined in the consultation would likely require amendments to relevant CMA and CAT rules/guidance).

Given the breadth and significance of the proposals, and the fact that there is now a new UK Prime Minister – who has in turn appointed a new Secretary of State for Business and Trade – concrete changes seem unlikely to come into force until (at least) Q2 2027.

Private enforcement

NATIONAL LEVEL | UNITED KINGDOM

UK Court of Appeal dismisses Microsoft's appeals in used software dispute

On 7 July 2026, the Court of Appeal (Civil Division) handed down its judgment in *JJH Enterprises Limited (trading as ValueLicensing) v Microsoft Corporation and ors* [2026] EWCA Civ 872. The Court of Appeal has dismissed two appeals brought by Microsoft and confirmed that the used software market can operate on the basis of copyright exhaustion. The decision also confirms the Competition Appeal Tribunal's ("CAT's") jurisdiction to rule on copyright issues, where they arise in the context of a competition claim.

Background

JJH Enterprises, trading as ValueLicensing, sold second hand licenses for Microsoft software products, including Microsoft Windows and Microsoft Office. ValueLicensing claimed that, in breach of Articles 101 and 102 TFEU, corresponding provisions of the EEA Agreement, and of the Competition Act 1998, Microsoft stifled the supply of those licenses through the imposition of contractual restrictions and by moving customers away from perpetual licenses and onto a subscription-based model. Microsoft argued that ValueLicensing's claim depended on it having the right to resell the second-hand software licenses.

Jurisdiction

Microsoft argued that the issues of copyright fell outside of the CAT's jurisdiction, on the basis that i) they were anterior to VL's competition claim; and ii) because they comprised non-competition causes of action. The Court of Appeal held that any issue which it is necessary for the CAT to decide in order to resolve a claim for an alleged infringement of competition law falls within the CAT's jurisdiction under section 47A of the Competition Act 1998, regardless of the sequence of issues.

Issue 1: Non-program works

The first issue concerned the fact that Microsoft's products comprise not only computer programs, but also other copyright works, such as graphics and user interfaces. Microsoft argued that, even if its right to control resale of the software programs was exhausted on first sale, it retained separate copyright control over the non-program elements bundled within its products and that this would have the practical effect of blocking any resale altogether.

The Court of Appeal upheld the CAT's conclusion that the non-program works were ancillary to the computer program functionality for which the Microsoft products were purchased and used. Accordingly, the European Software Directive and its exhaustion doctrine applied to all of Microsoft's copyrights. The Court of Appeal also agreed with the CAT's view that Microsoft's approach would create a situation where all the software vendor would need to do to block the resale entirely would be to bundle the program with other, non-program copyright works.

Issue 2: Subdivision of volume licences

Microsoft relied on Case C-128/11 *UsedSoft GmbH v Oracle International Corp*, EU:C:2012:407, [2012] 3 CMLR 44, in which the Court of Justice of the European Union stated that a first acquirer cannot subdivide a multi-user licence and then resell only part of it. The Court of Appeal concluded that this rule applied only to software where the user rights were interdependent. Each copy of Microsoft Windows and Office operate independently and VL's customers downloaded and used copies directly. The Court of Appeal therefore held that this rule does not apply in this case. The Court of Appeal also agreed with the CAT that exhaustion takes effect at the point of first sale and operates by law, notwithstanding contract terms which might purport to prevent or undermine it.

Key takeaways

- The Court of appeal has provided some helpful clarity: once software is sold, the right to resell it extends to all elements of the product, including any ancillary non-program works. Furthermore, the *UsedSoft* prohibition on splitting licences applies only where user rights are interdependent, not where each copy operates independently.

- The CAT has full jurisdiction to rule on copyright issues necessary to resolve a competition claim. Businesses should therefore ensure they consider not only competition law risk, but also software licencing issues and intellectual property rights.

- Microsoft has indicated that it intends to seek permission to appeal to the Supreme Court. The legal position on the resale of second-hand software licenses in the UK therefore remains unsettled, pending the Supreme Court's decision on whether to grant permission to appeal.

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