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VBB on Competition Law

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Merger Control

EUROPEAN UNION LEVEL

European Commission and national competition authorities crack down on misleading information provided during merger reviews

On 8 October 2026, the Commission fined Kingspan € 40 million for providing incorrect and misleading information during its review of the company's planned acquisition of Trimo. The decision serves as a reminder that the Commission views a failure to provide accurate information as a serious offense.

Kingspan notified the acquisition of Trimo to the Commission in March 2021. Both companies produce and distribute mineral fibre sandwich panels used in the construction and insulation of buildings. The parties ultimately abandoned the transaction in April 2022 after the Commission raised competition concerns in an in-depth investigation. The Commission subsequently opened a separate investigation into the information Kingspan had supplied.

The Commission found four distinct infringements, committed at least negligently, in Kingspan's merger notification and its replies to requests for information. These concerned how Kingspan tracked penetration rates for mineral fibre sandwich panels; the availability of records of bids won and lost; board members' involvement in the Trimo transaction, other planned acquisitions and matters relating to industry trends and business strategy; and Kingspan's research and development activities.

The Commission considered the infringements serious because they obstructed its investigation and made it difficult to assess the transaction properly. In particular, the Commission indicated that Kingspan had asserted that key documents did not exist, misrepresented facts or claimed that it could not provide information which only it was in a position to supply. The Commission imposed € 10 million for each infringement. Under the EU Merger Regulation, intentionally or negligently providing incorrect or misleading information can attract fines of up to 1% of total turnover.

This is the fourth Commission decision imposing fines for providing incorrect or misleading information under the current EU Merger Regulation. Previous decisions concerned Facebook's acquisition of WhatsApp (€ 110 million fine imposed in May 2017), General Electric's planned acquisition of LM Wind (€ 52 million fine imposed in April 2019) and Merck's acquisition of Sigma-Aldrich (€ 7.5 million imposed on Sigma-Aldrich in May 2021).

Ensuring accurate information in merger proceedings remains an enforcement priority at both EU and national levels. This October the Commission has also issued a Statement of Objections to KKR concerning its acquisition of NetCo, cleared unconditionally in May 2024. The Commission provisionally considers that KKR supplied incorrect or misleading information about whether its existing long-term wholesale access agreements could be changed unilaterally, allowing it to raise prices post-transaction.

At national level, the Norwegian Competition Authority fined SLB NOK 30 million (approximately € 2.9 million) on 7 October for incorrect information in its notification of the acquisition of ChampionX. The information concerned the parties' rankings in production chemicals tenders and equipment used in SLB's drilling services.

Taken together, these recent cases underline the importance of carefully verifying factual submissions, including statements about data availability, internal projects and contractual protections. Merging parties should not assume that transaction clearance or abandonment would bring scrutiny of their submissions to an end.

Court of Justice confirms that a concentration is only "made known" under Article 22 EUMR once sufficient information has been actively transmitted

On 8 October 2026, the Court of Justice of the European Union ("CJEU") dismissed the appeal brought by Brasserie Nationale against the General Court's judgment of 2 July 2025 (Case T-289/24), which had upheld the European Commission's ("Commission") decision to accept a referral request from the Luxembourg competition authority ("ACL") under Article 22 of the EU Merger Regulation ("EUMR"). The judgment is the first from the Court of Justice interpreting when a concentration is "made known" to a Member State authority for the purposes of the 15-working-day time limit for a national authority to request an Article 22 referral.

Brasserie Nationale, a Luxembourg brewer, and its subsidiary Munhowen, a wholesale beverage distributor, completed the acquisition of Boissons Heintz, a Luxembourg wholesale beverage distributor, on 31 January 2024. The transaction fell below the EUMR notification thresholds, and since Luxembourg has no national merger control regime, a filing in Luxembourg was also not required. Brasserie Nationale had informed the ACL of the intended acquisition on 22 December 2023 and met with the ACL on 10 January 2024. However, it was only from 17 January 2024 that third parties began supplying the ACL with substantive information concerning the transaction, leading a third party to request on 25 January 2024 that the ACL refer the transaction to the Commission under Article 22 EUMR. The ACL submitted its referral request on 7 February 2024, which the Commission then accepted.

Brasserie Nationale challenged the referral from the ACL to the Commission before the General Court on several grounds, including that the referral was not timely. Under Article 22(1) EUMR, a request must be made within 15 working days of when the Member State receives the merger notification or, where none is required, within 15 working days of the concentration being "made known" to the Member State. The parties argued that the ACL was sufficiently informed before 17 January 2024 – notably due to the 10 January meeting, the ACL's long-running sector inquiries, and press coverage of the transaction from 9 January – and that, once aware a deal exists, it is for the authority to seek further information itself.

The General Court disagreed. Applying a literal, historical, contextual and teleological analysis, it held that a concentration is "made known" to a Member State competition authority only once information has been actively transmitted to the authority that is sufficient to allow a preliminary assessment of whether the Article 22(1) conditions are met. An authority's mere awareness that a deal exists does not suffice, and authorities have no duty to seek out further information themselves, as this would impose a considerable administrative burden and undermine the

efficiency of the referral mechanism. The General Court found that the information given to the ACL before 17 January 2024 did not meet that threshold, and so the Commission was right to treat that later date as the trigger for the 15-working-day window for a referral request to be made.

On appeal to the CJEU, the appellants argued that the General Court wrongly equated the “made known” trigger with a formal notification requirement and wrongly endorsed a “right to passivity” for national authorities, contrary to sound administration and legal certainty. The applicants further argued that this error led to the miscalculation of the time limit for the ACL to make the referral request. According to the appellants, on a correct reading the 15-working-day period should have started on 10 January 2024 at the latest.

The CJEU upheld the General Court’s judgment in full. Reading the two subparagraphs of Article 22(1) together, it agreed that “made known” requires sufficient information to allow the authority to assess the referral conditions within the unusually short 15-working-day window and found that a contrary reading would force authorities to mobilise significant resources at short notice and undermine the mechanism’s practical effect. Rather than creating a “right to passivity” for the national authority, requiring an identifiable act of active transmission instead ensures the start of the time limit is predictable and judicially reviewable. The argument that the General Court conflated “communication” with “notification” was also rejected as unfounded.

The practical effect of this judgment favours the Commission and referring authorities: parties to a transaction cannot assume that a brief or informal contact with a national competition authority – even one actively investigating the sector – itself starts the referral clock. The judgment resolves a procedural question that, following the outcome of *Illumina/Graïl* (see [VBB on Competition Law, Volume 2024, No. 9](#)), is of admittedly limited application. All EU Member States other than Luxembourg have merger control regimes and so would require a formal notification (either because the transaction meets the notification thresholds or through the exercise of their call-in powers) to start the referral timeline. This means that even in below-threshold transactions it is likely the national authority’s timeline for the use of its own call-in powers that will determine how long the authority has to require a domestic notification, the receipt of which would then kickstart the authority’s timeline to make an Art. 22 referral.

NATIONAL LEVEL | AUSTRIA

Austrian Supreme Court increases gun-jumping fine tenfold

On 23 September 2026, the Austrian Supreme Court, sitting as the Cartel Court of Appeal (the “Court”), increased the fine imposed on Kiesel GmbH for gun-jumping from € 240,000 to € 2.4 million (Case 16 Ok 6/26g), upholding an appeal by the Austrian Federal Competition Authority (“FCA”).

Kiesel acquired stakes in Vemcon GmbH and Suncar HK AG before obtaining merger clearance, breaching the standstill obligation under Austrian merger control law. The Austrian Cartel Court imposed a fine of € 240,000 for the two infringements, which the FCA challenged as insufficient.

The Court weighed the two separate, long-running infringements and Kiesel’s more-than-minor fault against the limited market scope, Kiesel’s voluntary self-notification and its cooperation. The Court nevertheless held that effective deterrence required a substantially higher fine than that

which was initially imposed. It also confirmed that reliance solely on an in-house lawyer with basic merger control knowledge, without external competition law advice or specialised internal structures, was insufficient to exclude more-than-minor fault.

The Court further clarified that even modest Austrian turnover of the target can establish a domestic effect under section 24(2) of the Austrian Cartel Act. This assessment is distinct from the materiality threshold relevant to notification under section 9(4)(4).

The judgment reinforces the need for companies to conduct appropriately specialised merger control assessments before implementation. Limited Austrian activities, self-reporting and cooperation may mitigate a penalty, but do not shield companies from substantial gun-jumping fines. The tenfold increase underscores the Court's insistence on genuinely deterrent sanctions.

Abuse of Dominant Position

EUROPEAN UNION LEVEL

Sanofi avoids European Commission fine despite making derogatory statements regarding rival's flu vaccine

The European Commission ("Commission") announced on 14 October 2026 that it had accepted commitments offered by Sanofi to stave off a possible finding of infringement over public statements made in France and Germany regarding an influenza vaccine of rival CSL Seqirus ("Seqirus") (see [press release](#)). Seqirus is the marketing authorisation holder ("MAH") of Fludac®, an MF59-adjuvanted influenza vaccine, while Sanofi is the MAH of Efludac®, a high-dose influenza vaccine. Although the evidence for the efficacy of these vaccines differed, the European Centre for Disease Prevention and Control ("ECDC") and the German Standing Committee on Vaccination ("STIKO") each confirmed in 2024 that both products presented the same level of evidentiary certainty.

Since October 2024, STIKO has recommended annual vaccination with either Efludac® or Fludac® 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 came in the Commission's crosshairs (see [Van Bael & Bellis Life Sciences News and Insights of 2 October 2025](#), [29 June 2026](#), and [9 July 2026](#)) because it made three types of possibly misleading and/or disparaging statements in its dealings with healthcare professionals ("HCPs"):

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

The Commission considered that making these statements could give rise to an abuse of a dominant position in breach of Article 102 of the Treaty on the Functioning of the European Union. In order to undo the possibly negative market impact of its statements, Sanofi has now agreed to abide by several behavioural principles while avoiding an adverse finding of infringement and the associated legal responsibility. Sanofi will:

- not use statements in its promotional materials directed at HCPs or in its communications with key opinion leaders ("KOLs") that: (i) criticise, cast doubt upon or contradict national vaccination recommendations; (ii) highlight negatively Fludac® or suggest that Efludac®

is safer or more effective; or (iii) imply that the evidence supporting Fludad® is weaker than that underpinning Efluelda®;

- publish a statement acknowledging that the applicable national vaccination recommendations treat Fludad® and Efluelda® as equivalent in protecting elderly people against influenza and send such a statement to both HCPs and KOLs in Germany;
- accept the oversight of a monitoring trustee who will report to the Commission on a regular basis.

The case against Sanofi continues a trend which at the European level began with the Commission's decisions concerning disparagement of competitors in the *Vifor* case (see [Van Bael & Bellis Life Sciences News and Insights of 22 July 2024](#)) and the *Teva* case (see [Van Bael & Bellis Life Sciences News and Insights of 31 October 2024](#)). At national level, mainly in France, there has been for years an established administrative practice of tackling such conduct.

During her 14 October press conference, Teresa Ribera, the Commissioner in charge of competition policy, prided herself on the “very fast and effective outcome, with immediate effects for healthcare systems, within a year of [the Commission’s dawn raid] carried out in October 2025” (See “[opening remarks](#)”). Commissioner Ribera added that competition policy forms an important part of the Commission’s efforts to bolster the pharmaceutical sector as a “strategic sector for Europe”.

Cartels and horizontal agreements

EUROPEAN UNION LEVEL

Court of Justice confirms Commission's broad discretion to take over antitrust investigations from national competition authorities

On 1 October 2026, the Court of Justice of the European Union ("CJEU") delivered two related judgments, *Crown Holdings and Crown Cork & Seal Deutschland Holdings v Commission* (Case C-855/24 P) and *Silgan Holdings and Others v Commission* (Case C-845/24 P), dismissing in their entirety appeals brought by Crown and Silgan against the General Court's judgments of 2 October 2024 (Cases T-587/22 and T-589/22). Both cases concern the same underlying cartel decision and raise a common issue, namely the extent to which the European Commission ("Commission") may, under Article 11(6) of Council Regulation 1/2003, take over an antitrust investigation already being conducted by a national competition authority ("NCA").

Background

In March 2015, the German Federal Cartel Office ("FCO") opened a cartel investigation against several companies in the metal packaging sector, including entities belonging to the Crown and Silgan groups. In the course of its investigation, the FCO identified a loophole under German competition law under which undertakings could escape effective sanction if they were dissolved or reorganised before the investigation was concluded. In June 2017, concerned that Crown and Silgan might escape effective sanction on this basis, the FCO informed the Commission of the issue and requested that the Commission take over the investigation. Approximately ten months later, in April 2018, the Commission adopted a decision formally initiating proceedings under Article 11(6) of Regulation 1/2003 against entities of the Crown and Silgan groups.

Following a settlement procedure, the Commission adopted an infringement decision in July 2022, finding that entities of the Crown and Silgan groups had participated in exchanges of competitively sensitive information relating to the metal packaging sector in Germany between March 2011 and September 2014 and had thereby infringed Article 101 TFEU. As a result, the Commission fined the Crown group € 7.67 million and the Silgan group € 23.85 million.

Both Crown and Silgan subsequently challenged the Commission's decision before the General Court, not on the merits of the cartel finding, which they had already acknowledged under the settlement procedure, but rather on the question of whether the Commission had been entitled to take over the case from the FCO. The General Court dismissed their actions, and both Silgan and Crown appealed to the CJEU.

CJEU findings

The CJEU first confirmed that the Commission's 2004 Notice on cooperation within the Network of Competition Authorities ("Cooperation Notice") is binding on the Commission. By publishing the Cooperation Notice and announcing that it would apply it, the Commission has limited its own discretion and cannot depart from the Notice without risking a breach of the principles of equal treatment or the protection of legitimate expectations. Nonetheless, responding to the appellants' arguments, the CJEU confirmed that the Cooperation Notice's indicative two-month period for

resolving case allocation issues is not a binding deadline, and that the reasonableness of any delay in re-allocating a case must be assessed on a case-by-case basis.

As regards the evidentiary threshold for re-allocation, the CJEU clarified the requirements that the Commission must meet to re-allocate a case after the two-month indicative period has elapsed. Rejecting the appellants' argument that the Commission had to demonstrate that the FCO had become literally unable to impose an effective sanction, the CJEU found that information indicating that a corporate restructuring was capable of reducing the FCO's ability to enforce EU competition law effectively was sufficient for the Commission to proceed with the re-allocation outside the two-month period, as this represented a material change in the facts known about the case.

On the question of whether the EU law principle of subsidiarity constrains the Commission's power to re-allocate a case under Article 11(6), the CJEU did not rule definitively. Instead, the CJEU resolved both appeals on the assumption that the appellants' own, stricter reading of subsidiarity applied, and found that this standard was satisfied in any event, since the General Court had confirmed that the Commission could duly consider itself better placed to act than the FCO.

Moreover, the CJEU confirmed that undertakings have no individual right to have their case handled by a particular competition authority, since the allocation of cases between the Commission and NCAs is a matter of institutional cooperation in the public interest, rather than an individually enforceable right.

Key takeaways

The judgments confirm that the Commission enjoys considerable discretion to take over a cartel (or other antitrust) investigation from an NCA, including after its own indicative two-month allocation period in the Cooperation Notice has lapsed, on the basis of evidence showing that national enforcement may otherwise be undermined. This gives the Commission additional flexibility when considering whether it is better placed to act than an NCA.

The broad discretion confirmed by the CJEU in relation to case allocation is an important factor for companies and their advisers to take into account, particularly when considering leniency applications in cartel case and in deciding which competition authorities to approach for leniency. Since there is no EU-wide "one-stop shop" for leniency, companies and their advisers need to consider applying to every authority that is, or might become, competent. This case illustrates the importance of considering in such assessments whether a particular Member State has a known enforcement gap and it is therefore possible that the Commission could ultimately take on the case (in which case, parallel applications to the relevant NCA and to the Commission may be advisable).

Digital Regulation

NATIONAL LEVEL | UNITED KINGDOM

UK CMA proposes to designate Microsoft with strategic market status in business software

On 16 October 2026, the UK Competition and Markets Authority (“CMA”) launched a consultation on its proposed designation of Microsoft as having strategic market status (“SMS”) with respect to its business software ecosystem. SMS designation empowers the CMA to impose tailored regulatory measures on designated providers of digital services that it considers have substantial and entrenched market power and a position of strategic significance in a UK digital activity. Interventions may take the form of binding conduct requirements or targeted pro-competitive interventions. The CMA has a statutory period of nine months to reach a decision on SMS designation, following the opening of an SMS investigation.

Scope of designation

The proposed designation of Microsoft would cover its Word, Excel, Outlook, PowerPoint, Teams and Copilot products, as well as security software, database management and operating systems. As such, it would be much broader in scope than the CMA’s previous designations under the UK’s digital markets regime of Google search/search advertising services and Google and Apple’s mobile platforms.

Although the CMA’s proposed designation decision acknowledges the dynamism of the business software sector, it notes that “Microsoft has been able to retain its significant position of strength for decades, reflecting the limits on customers’ ability to switch and rivals’ ability to enter and scale”, which the CMA considers indicates an entrenched position. Specifically, the CMA has provisionally found that Microsoft has a strong position across five areas of digital activity: personal computer operating systems, productivity software suites, security software, server operating systems and relational database management systems. The CMA also found that customers face barriers when switching to other business software providers, thereby limiting their choice and strengthening Microsoft’s position, and that there are also commercial practices and integration advantages that make it difficult for other software developers to compete. Notably, Microsoft’s Azure cloud computing service is not included.

Status of cloud services

The Microsoft SMS investigation was launched in May 2026 and followed on from a wider market investigation into cloud services that the CMA had originally opened in October 2023, following a market study by communications regulator Ofcom, which itself dated back to October 2022.

As far as the CMA’s wider work on cloud services is concerned, the CMA also announced on 16 October 2026 that it would not be opening a separate SMS investigation into either Microsoft or Amazon’s cloud services (where each company holds an estimated UK market share of around 40%), citing the “several steps” that both Microsoft and Amazon have taken to “lower the barriers customers face”. These changes include reducing the cost of moving data between clouds, introducing new interoperability mechanisms, and building connections between their own data

centres and their rivals. The CMA noted that it is monitoring the progress that has been made on these measures and will review the situation in Spring 2027.

The CMA's accompanying 'roadmap' sets out three areas for further investigation and possible intervention, assuming its SMS designation of Microsoft is confirmed: (i) the way in which Microsoft bundles and integrates its security products; (ii) whether customers can freely choose the best AI tools and whether alternative AI providers can compete on a level playing field with Microsoft's Copilot; and (iii) whether customers can freely choose the cloud on which they deploy their Microsoft software.

The consultation is open until 5 November 2026. The CMA has confirmed that it will publish its final decision by the statutory deadline of 13 February 2027.

EU comparison

The proposed SMS designation of Microsoft by the CMA has some parallels with the position in the EU, although it has wider scope. On 5 September 2023, the European Commission designated Microsoft as a 'gatekeeper' under Article 3 of the EU Digital Markets Act ("DMA") in respect of its Windows PC operation system and LinkedIn social networking 'core platform services'. Conversely, on 12 February 2024, the Commission decided that Microsoft would not be designated as a gatekeeper in relation to its Bing search engine, Edge browser or online advertising business. The DMA designation thus does not extend to Microsoft's security software, relational database management or Copilot AI tools.

In contrast, Microsoft's cloud services are set for a higher level of regulation in the EU than in the UK, based on the Commission's indication on 25 June 2026 that it intends to designate Microsoft's Azure cloud service as a core platform service under the DMA, in parallel with a proposed designation of Amazon's AWS cloud service.

As far as AI is concerned, the Commission's first review of the DMA concluded in May 2026 that there was no need to expand the scope of the DMA expressly to cover concerns relating to AI services, on the basis that these could be addressed via existing tools, including specification of services under existing DMA categories of core platform service and general competition law. The former approach was demonstrated in the Commission's recent specification decisions requiring Google to provide rival AI assistants with equivalent interoperability with Android to that enjoyed by its own Gemini assistant and to provide search data to rival AI chatbots that provide 'search functionalities'. The Commission has to date not made any such specification decisions relating to Copilot. The latter approach was demonstrated by the Commission's recent interim measures decision from June 2026 requiring Meta to provide access for rival AI assistants to its WhatsApp messaging service, under Article 102 TFEU, as well as the Commission's ongoing investigation into whether Google's use of publisher and video content for AI Overviews and other AI services, as well as its terms and conditions for publishers and content creators, unfairly place developers of rival AI models at a disadvantage, compared with Google's own models. Time will tell whether it is possible for the Commission to address all potential concerns through these alternative routes to adding AI services to the list of core platform services provided by the DMA.

The regulatory status of Microsoft thus differs materially under the EU and UK digital regimes, in both scope and mechanics, meaning that Microsoft is set to be subject to divergent requirements going forward. The rights available to competitors and customers under the respective regulatory regimes will thus also diverge.



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