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VBB on Competition Law

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Merger Control

EUROPEAN UNION LEVEL

General Court upholds European Commission's "reverse leveraging" theory in Booking/eTraveli prohibition

On 9 September 2026, the General Court of the European Union dismissed in its entirety the action brought by Booking Holdings Inc. ("Booking") against the 2023 decision of the European Commission (the "Commission") prohibiting Booking's proposed acquisition of eTraveli Group ("eTraveli"). The judgment upholds a conglomerate merger prohibition built on a theory of harm that relies on "reverse leveraging" and the entrenchment of a strong market position. It offers important guidance on the role of the Commission's guidelines in its competitive assessment, the analysis of ecosystem-based competitive harm in digital markets, and the continued challenge in bringing an efficiencies defense in merger cases.

Background

Booking holds a dominant position in the EEA hotel online travel agencies ("OTAs") market. eTraveli is a Swedish flight OTA. The Commission blocked Booking's planned acquisition of eTraveli in 2023 on the theory that, even though eTraveli is not a leading player in flight bookings, adding eTraveli's flight offering would strengthen Booking's existing dominance in hotel bookings by giving Booking a new channel through which to attract and retain hotel customers. This in turn would strengthen the network effects in Booking's favour, making it harder for competing hotel OTAs to compete. As a consequence, the Commission found that the transaction would produce a quantified – although, based on the Commission's own estimate, relatively small – increase in Booking's hotel OTA market share, and hotels and consumers were likely to be harmed as a result.

Booking challenged the Commission's decision on several grounds. Among other things, Booking argued that the Commission's analysis departed from the approach taken toward the assessment of conglomerate mergers in the Commission's own Non-Horizontal Merger Guidelines, and that the Commission failed to meet the standard of proof necessary to establish a significant impediment to effective competition ("SIEC"), including by failing to take into account the efficiencies Booking presented.

Reverse-leveraging and the Horizontal Guidelines

In its analysis, the Commission relied on a novel approach to assessing a conglomerate merger involving several adjacent OTA markets. Typically, a competition authority's concern is that a company already dominant in one market will leverage that dominant position to foreclose competition in a second market where it is not as strong. In this case, the Commission's leverage argument ran in the opposite direction. It concluded that owning a flight OTA, even one with a modest market share like eTraveli's, would make Booking's existing dominance in hotel bookings even harder to challenge. Booking argued that the Commission's Non-Horizontal Guidelines did not support such a "reverse-leveraging" analysis. The Court disagreed, noting that the Guidelines do not specify that foreclosure in the non-dominant market is the only type of harm that can result

from a conglomerate merger, and that it would undermine the effectiveness of merger control if the Commission could assess leveraging only where it strengthens a non-dominant position, but not where it strengthens an already dominant one.

The SIEC standard and network effects

Perhaps the most consequential part of the judgment concerns just how small the Commission's estimated impact on competition can be while still crossing the legal threshold to constitute a SIEC. The Commission's analysis had revealed that the transaction was only likely to strengthen Booking's hotel OTA market share by a small amount. On review, the Court found a series of errors in how the Commission had calculated the likely resulting increase in Booking's market share, concluding that the true increase could be limited to a few tenths of a percent.

Nevertheless, the Court still upheld the Commission's finding that the deal would give rise to a SIEC. While the Court reaffirmed there is no automatic link between a finding of dominance-strengthening and a finding of SIEC, it also held that the EU Merger Regulation does not require the Commission to show a *reduction* in the current (already low) level of competition on a market. Rather, the *consolidation and perpetuation* of an already low level of competition can be sufficient to establish a "significant" impediment under Article 2(3) of the Regulation and to satisfy the requirement that a "sufficient fraction of market output" be negatively affected as outlined in the Non-Horizontal Merger Guidelines.

The Court referred to two notable features of this case when justifying its conclusion. First, because the hotel OTA market already displays strong network effects (the more customers and hotels a platform has, the more valuable it becomes to both) and there is a wide gap between Booking and its rivals, even a small increase in Booking's market share could meaningfully reinforce those network effects. Second, the increased traffic to the Booking ecosystem would come specifically through flights, one of the few channels for attracting hotel customers in which Booking did not already have a strong presence. This would disproportionately affect a set of rival OTAs that, despite their currently modest market shares, play an important role in keeping the market competitive. Based on this overall assessment, the Court concluded that the Commission had proved a SIEC to the requisite legal standard.

Booking argued that the Commission improperly relied on "qualitative" factors to overcome the minimal quantitative increment. The Court confirmed that distinguishing qualitative from quantitative evidence is often artificial, and that the Commission may rely on qualitative elements, whether or not supported by quantitative elements, provided the evidence is sufficiently cogent and consistent, contains all relevant considerations, and is capable of substantiating the conclusions drawn from it.

Takeaways

- **The General Court's judgment affirms the Commission's approach to the assessment of conglomerate mergers.** The Commission's new Merger Guidelines (expected in late 2026) in any event formalize the Commission's "ecosystem" and network-effects-driven entrenchment analysis (including reverse leveraging) used in this and other digital cases.

- **A negligible market share increment is not a safe harbor in a conglomerate merger.** A finding of a SIEC does not require proof that competition will noticeably deteriorate. Consolidating or perpetuating an already weak competitive dynamic (e.g., due to strong network effects and a wide incumbency gap) can satisfy the legal threshold for blocking a merger. It remains unclear to what extent the Commission will extend this view beyond digital markets cases to any acquisitions made by dominant companies where there are non-negligible network effects.
- **The Commission's bad math is not necessarily grounds for an annulment.** The Court will conduct its own assessment of whether the totality of established facts suffices for a SIEC finding, rather than annulling a decision merely because certain calculations contained errors.
- **Efficiencies are still an uphill battle.** Although Booking argued that the deal would give rise to efficiencies that would offset any potential harm to competition, the Court upheld the Commission's historically high bar when analyzing this defense. While the Commission has recently encouraged companies to be more proactive in presenting efficiency arguments, and efficiencies feature prominently in the Commission's forthcoming Guidelines, there is little indication that it will relax its stance when evaluating their merits.

NATIONAL LEVEL | BELGIUM

Belgian Competition Authority closes Live Nation / Pukkelpop investigation on commitments

On 11 September 2026, the Belgian Competition Authority ("BCA") indicated that it had closed its investigation into Live Nation's acquisition of Pukkelpop, one of the largest annual music festivals in Belgium, following commitments offered by Live Nation to preserve Pukkelpop's operational independence (see [press release](#)).

The BCA had opened its investigation on 12 November 2025 at the instruction of the Minister for Economic Affairs (see [VBB Belgian Antitrust Watch of 13 November 2025](#)).

As the transaction fell below Belgium's merger notification thresholds, it was not subject to standard merger control review. In the absence of a notifiable concentration, the BCA instead relied on the rules prohibiting abuse of a dominant position under Article IV.2 of the Code of Economic Law ("CEL") and Article 102 of the Treaty on the Functioning of the European Union.

In doing so, it applied the *Towercast* case law of the Court of Justice of the European Union under which Member State competition authorities may scrutinise non-reportable concentrations on the basis of the abuse of dominance provisions.

Key competition concerns

The BCA's inquiry focused on three areas of potential concern arising from further consolidation of large-scale music festival ownership in Belgium:

1. the impact on quality and pricing of adding Pukkelpop to Live Nation's existing festival portfolio, which already includes Rock Werchter and Graspop Metal Meeting;
2. whether Live Nation's position in artist booking services could give it the ability and incentive to restrict (a) the access of competing festivals to artists, or (b) the access of competing artist booking providers to Live Nation's own festivals; and
3. the broader effect of the transaction on the live music entertainment value chain in Belgium, given Live Nation's large footprint across adjacent activities.

In assessing these areas of potential concern, the BCA gathered input from a broad range of industry stakeholders during the investigation.

Commitments

Once informed of the BCA's preliminary findings, Live Nation offered commitments to structurally separate Pukkelpop's operations from its other Belgian activities, allowing the case to close without a prolonged procedure.

The commitments provide for the following:

1. Live Nation will retain formal ownership of Pukkelpop, but the festival's operations and related assets will be transferred to an entity controlled by festival founder Chokri Mahassine, who may in turn pass the operating rights to an independent third party.
2. This operator of Pukkelpop will have full autonomous decision-making authority over all artistic, commercial and operational matters, including artist and booking agent selection, programming, pricing, suppliers, staffing, venue, dates, capacity, and staging.
3. Live Nation may continue to supply standalone services to the festival, but only on market terms and on a non-exclusive basis.

The commitments have a duration of ten years, with the possibility of an extension of up to five additional years if market conditions so warrant. An independent monitoring trustee will oversee their implementation.

Having tested the commitments with selected market participants, the BCA considered them sufficient to address its concerns and made them binding, closing the file without a finding of infringement or an admission of liability by Live Nation or its affiliates. Significantly, the BCA has indicated that it "*will nonetheless continue monitoring closely the developments in the Belgian live music and entertainment sector*".

Comments

While the BCA did not initiate the case of its own motion, the outcome illustrates once more the authority's readiness to draw on its expanding toolbox to address perceived market failures and secure concrete results without resorting to a full-fledged procedure.

The approach is reminiscent of that in the *Tiense Suikerraffinaderij/Raffinerie Tirlemontoise* (“TS/RT”) case, which was similarly closed without a finding of infringement after TS/RT offered commitments to address the BCA’s concerns. That case rested on a different legal basis, namely the prohibition of abuse of economic dependence under Article IV.2/1 CEL, and was notable as the BCA’s first decision on abuse of economic dependence (see the Abuse of Dominance section of this newsletter, as well as [VBB Belgian Antitrust Watch of 8 September 2026](#)).

The BCA’s decision comes against the backdrop of mounting antitrust pressure on Live Nation in the United States. On 15 April 2026, a federal jury in Manhattan found that Live Nation and its Ticketmaster subsidiary had unlawfully monopolised several live entertainment markets, concluding that the group had exploited its combined strength in concert promotion, venue ownership, and ticketing to shut out competitors. The action was initiated by 33 US states and the District of Columbia. The Department of Justice subsequently reached a separate settlement during the trial. The plaintiff states contended that the behavioural remedies contemplated by that settlement would be insufficient to restore competition, given the structural advantages flowing from Live Nation’s vertically integrated business model. Live Nation has challenged the verdict through post-trial motions and has [indicated](#) that it intends to appeal any unfavourable rulings.

Cartels and horizontal agreements

NATIONAL LEVEL | POLAND

Polish Competition Authority fines supermarket and transport companies for labour market collusion

On 14 September 2026, the Polish Competition Authority (UOKiK) imposed fines totalling over €132 million on the owner of the Biedronka supermarket chain, Jeronimo Martins Polska, as well as 29 transport companies and eight individuals, for anti-competitive coordination relating to the employment of truck drivers working at Biedronka distribution centres.

The Authority found that, between June 2017 and February 2024, transport companies serving Biedronka distribution centres had agreed that, where a driver had not obtained their existing employer's consent before switching to another employer, the driver was to be prevented from working for another transport company at the same distribution centre until a specified period had elapsed. This period lasted several months, the exact time depending on the distribution centre concerned. The Authority found that this would discourage one transport company from hiring drivers from other transport companies, as the waiting period made hiring significantly more difficult.

The Authority determined that the conduct restricted competition for the employment of drivers, reduced the risk of transport companies losing their drivers to another company at the same distribution centre, and may also have had an adverse effect on drivers' wages and working conditions because transport companies were less likely to try to entice the employees of competitors with higher wages. The Authority also considered that the agreement had a significant impact given the market context, in which a shortage of skilled drivers meant recruiting and retaining employees was particularly challenging for transport companies.

According to the Authority, Jeronimo Martins Polska played a central role in the coordination, enforcing the agreed terms and acting as an intermediary between the transport companies. Jeronimo Martins Polska also kept track of employees who had changed jobs without asking for permission and prevented them from entering distribution centres. The Authority further found that Jeronimo Martins Polska itself benefitted indirectly from the arrangement, as it resulted in lower rates charged by the transport companies for their services due to the lower wage costs for drivers. Jeronimo Martins Polska has since announced that it intends to appeal against the Authority's decision.

The Authority's decision is noteworthy for several reasons. First, the decision was submitted to the European Commission (the "Commission") for its opinion prior to publication, underscoring the novelty and significance of labour market infringements in competition enforcement. Second, it is the latest in a growing body of enforcement action targeting no-poach agreements in the EU. The Commission's own first punishment of a cartel involving conduct affecting labour markets was its June 2025 decision, imposing fines totalling €329 million on Delivery Hero and Glovo for, *inter alia*, no-poach agreements and the exchange of commercially sensitive information (see [VBB on Competition Law, Volume 2025, No. 5](#)). In addition, in April 2026, the Court of Justice of the EU gave its first preliminary ruling on the application of Article 101 of the Treaty on the Functioning of the European Union to no-poach agreements, confirming that such agreements

will normally be regarded as “by-object” restrictions, without a need to show anti-competitive effects (see [VBB on Competition Law, Volume 2026, No. 4](#)). This growing focus on labour market practices by both the European Commission and national competition authorities further underscores the importance for companies of reviewing their existing practices and internal compliance policies.

Polish Competition Authority fines medicine wholesalers for illegal information exchange

On 21 September 2026, the Polish Competition Authority (UOKiK) imposed fines of over PLN 900 million (approximately €207 million) on four pharmaceutical wholesalers for sharing confidential business information, including non-public medicine prices and other commercial terms offered to pharmacies. The detailed pricing information that was exchanged concerned the dealings of wholesalers with individual pharmacies and was generated by IT tools that connected the wholesalers with thousands of pharmacies across the country.

The Authority found that the intelligence gathered and exchanged by the wholesalers gave them a comprehensive picture of the market and allowed them to replace the normal uncertainties inherent to a state of competition with a precise and granular image of the procurement practices of each of the pharmacies at issue. According to the Authority, pharmacies and patients lost out by paying higher prices for their medicines.

The four fined wholesalers had colluded with a fifth wholesaler, which avoided a fine because it brought the cartel to the Authority’s attention under its leniency programme and was therefore granted immunity.

Abuse of Dominant Position

EUROPEAN UNION LEVEL

European Commission's final Article 102 Guidelines on exclusionary conduct - Implications for market participants

On 9 September 2026, the European Commission (the “Commission”) published its [Guidelines](#) on the application of Article 102 of the Treaty on the Functioning of the European Union (“TFEU”) to abusive exclusionary conduct by dominant firms (the “Guidelines”). This marks the first time that the Commission has adopted formal guidelines in this important area of competition law, which continues to be an enforcement priority for the Commission and Member State competition authorities.

Earlier drafts of the guidelines have been criticized for being little more than a compilation of four decades of case law of the European Courts, as interpreted by the Commission (an interpretation with which other stakeholders frequently disagreed), without a coherent, principles-based framework. Many raised concerns that this highly legalistic approach would provide little guidance to market participants and therefore have limited value for their compliance strategies.

The Commission has, to some extent, addressed these concerns in the final version of the Guidelines, which feature a more extensive discussion of the concept of “dominance,” a clearer reference to key economic concepts, and a fuller explanation of the parameters governing objective justifications and an efficiency defence. Nevertheless, the Commission has maintained the overall goal of promoting a “workable” effects-based approach, which favours a form-based approach and legal tests whenever the case law allows the Commission to treat the – typically more challenging – analysis of economic concepts and evidence as discretionary and not outcome determinative.

This note provides a short overview of the Guidelines’ main elements, focusing on the role that the Guidelines can play in a firm’s compliance efforts.

When is a firm considered “dominant?”

The Guidelines include a detailed discussion of factors used to determine whether a firm can be considered to hold a dominant position, summarising the extensive case law on this topic and referring to the standard factors used in dominance analysis, including a firm’s market position, entry barriers, and countervailing buyer power. In an important change from earlier drafts, the Guidelines confirm that the Commission will continue to respect existing case law whereby the finding of dominance is unlikely where a firm’s market share is below 40%.

Interestingly, the Guidelines include a separate discussion of dominance in aftermarkets, recognizing that scenarios where a firm supplies products in a primary market and complementary products or services in an aftermarket frequently raise challenging questions from a competition law compliance perspective, for example when a firm develops strategies to protect its aftermarket supplies against generic entrants. Unfortunately, the Commission’s discussion is essentially a summary of well-known case law and the multi-factor analysis it has developed, thus providing little additional insight for the development of compliance strategies.

The Guidelines also include a dedicated section on collective dominance by two or more firms. Collective dominance is a (controversial) concept that, although recognized in case law, has played a very limited role in Article 102 enforcement practice. Nevertheless, the Guidelines' discussion is a useful reminder that in very specific situations this concept should be taken into account when developing compliance strategies.

How to identify conduct that “distorts effective competition?”

The core of the Guidelines is dedicated to a discussion of how the Commission interprets case law on whether potentially exclusionary conduct can be considered “abusive.” This chapter has seen some improvements from the much criticised earlier draft, toning down formalistic presumptions and trying to synthesize the case law into a more systematic framework.

The Guidelines identify two avenues to assess whether conduct can be considered abusive: (i) a general, two-step analytical framework assessing whether conduct departs from “competition on the merits” and is capable of producing exclusionary effects, and (ii) a list of types of conduct where the case law has developed specific legal tests which, in the Commission's view, already incapsulate the general analytical framework and make its application redundant. In practice, this approach means that a firm considering a particular conduct or strategy from a compliance perspective must first identify whether the conduct/strategy falls into a “specific type of conduct” category and, if so, use the relevant legal test in a risk assessment. Only if there is no readily identifiable “pigeonhole,” the assessment must rely on the generally applicable framework. This approach also means that a theory of harm must be part of an initial framing of Article 102 cases, as identifying the mechanism that leads to exclusion concerns will help to determine the relevant legal test or analytical framework.

The specific conduct categories include predatory pricing, margin squeezes, conditional rebates and exclusive dealing, access restrictions and refusals to supply, self-preferencing, and conduct that is “by its nature harmful to competition” (essentially, conduct that makes no economic sense but for its capability to harm rivals). Whenever supported by case law, the Guidelines indicate that the Commission will rely on presumptions of unlawfulness, for example in the case of pricing below average variable costs or exclusive dealing arrangements.

For conduct that cannot be pigeonholed, the Guidelines' framework would have the Commission assess whether conduct departs from competition on the merits and is capable of having exclusionary effects. This naturally raises the question of what constitutes “competition on the merits”. Although there are frequent references in the case law to “competition on the merits”, the exact contours of this concept remain elusive. The Guidelines do suggest that “competition on the merits” is linked to creating consumer benefits in the short and long run, creating a vague connection to the “consumer welfare” standard. Yet, the Guidelines also refer to a dominant firm's “special responsibility” not to distort effective competition and its obligation to protect its interests only with “reasonable and proportionate” steps. Overall, the Guidelines' discussion demonstrates that, regardless of what terms are used to describe it, the “competition on the merits” concept as a whole lacks analytical discipline. Unless specific conduct is already identified as “meritless” in case law, the concept provides little guidance from a compliance perspective.

More meaningful is the Guidelines' discussion on how to identify whether conduct is capable of producing exclusionary effects. In particular for conduct where pricing is the principle potential exclusion mechanism, the Guidelines recognize the relevance of the "as efficient competitor" ("AEC") test, a much-discussed price cost test according to which a pricing strategy could be considered unlawful only if it is capable of excluding a hypothetical rival that is as efficient as the dominant firm. At the same time, the Guidelines highlight that an AEC test will be less (or not at all) relevant if the principal exclusion mechanism is not price based, reflecting case law that has rejected attempts by defendants to establish a more prominent role for the AEC test beyond clear pricing strategy scenarios.

In this context, the Guidelines also discuss the role of causation and counterfactual analysis, recognising the relevance of these tools in principle, while highlighting situations where the case law allows the Commission to disregard them as relevant evidence or apply them with greater flexibility.

Are there effective defence arguments?

The Guidelines dedicate an entire chapter to defence arguments that a dominant firm may submit, distinguishing between "objective necessity" arguments and more traditional efficiency arguments modelled after an Article 101(3) analysis. Objective necessity arguments comprise commercial considerations (such as protecting against customer orders that are out of the ordinary), technical arguments (such as improvements to the performance of the dominant firm's products), and public interest objectives (such as product safety considerations). Each of the potential arguments is referenced to case law, although a closer analysis of the case outcomes also shows that while such arguments may be potentially relevant, they will rarely succeed. Similarly, while the Guidelines formally recognise an Article 101(3)-type efficiency defence in Article 102 cases (which is not reflected in the text of Article 102), experience suggests that using an efficiency defence to overcome an initial finding of distortion of competition will remain a steep challenge in practice.

Observations

The Guidelines provide a useful compilation of Article 102 case law, legal tests, analytical frameworks, and evidentiary requirements, and they are the most authoritative statement on how the Commission would interpret case law when framing its investigations in exclusionary abuse of dominance cases. They also show what factors the Commission would likely take into account in an investigation and where the Commission would have discretion to decide which evidence it considers relevant and sufficient to establish an Article 102 infringement. It is highly likely that Member State competition authorities and courts will follow a similar path in abuse of dominance cases before them.

But beyond this, the Guidelines provide no new insight into Article 102 analysis and no additional guidance that firms can use to shape their compliance strategies. For compliance efforts and competition law risk assessment, standard practices will remain relevant, comprising a careful and realistic assessment of market positions, an identification of a credible business rationale for business strategies and conduct, an assessment against outcomes in case law, and documentation of credible justifications, including benefits for consumers.

NATIONAL LEVEL | BELGIUM

Belgian Competition Authority issues historic first decision on abuse of economic dependence

On 7 September 2026, the Belgian Competition Authority (“BCA”) announced its very first decision in a case of abuse of economic dependence.

Case and commitments

In February 2026, the BCA sent a Statement of Objections to Tiense Suikerraffinaderij/Raffinerie Tirlemontoise (“RT”) and its parent company Südzucker (see [VBB Belgian Antitrust Watch of 6 February 2026](#)). The BCA found that sugar beet growers in Belgium are economically dependent on RT and took issue with contractual provisions governing the prices of sugar beet and beet pulp that RT had imposed on these growers. According to the BCA, these provisions gave rise to uncertainty regarding the growers’ income prospects and placed a “disproportionate share” of the sugar value chain’s commercial risks on them.

In response, RT offered commitments that addressed the BCA’s concerns and thus secured the closure of the case without a finding of infringement. While the decision is not yet public, the [BCA’s press release](#) described these commitments as follows:

- RT will amend several contractual provisions governing the purchase price of sugar beet and beet pulp and the exceptional adjustment of planned procurement volumes;
- RT will remove several contractual clauses making payment of part of the price of the beet subject to obligations pertaining to the following harvest year and transferring specific costs to the growers; and
- RT will annually negotiate specific procurement terms with the growers “with a view to achieving a contractual balance following consultations characterised by dialogue, transparency and the effective consideration of the interests of the growers”.

These commitments will apply from the 2027 harvest year for “a minimum period” of five years (which suggests that the commitments may be extended or renewed).

Comments

While the BCA’s choice for commitments instead of an infringement decision may result from the specific facts of the case, it may also reflect the specific difficulties associated with enforcing the Belgian rules on abuse of economic dependence, which entered into force in 2020. The concept is vague and demandingly requires proof that the alleged abuse of the economic dependence affects the Belgian market as a whole (or in substantial part). While the law prohibiting the abuse of economic dependence sought to bridge a perceived gap between competition law and fair market practice rules, it is sitting awkwardly between the two sets of rules. With this in mind, a negotiated solution between the BCA and the party under investigation makes complete sense.

It remains to be seen whether the BCA will seek to develop a fully-fledged decisional practice on abuse of economic dependence, or whether it will instead focus on the existing and well-established antitrust tools at its disposal. Indeed, the cases of abuse of economic dependence

most likely to satisfy the condition of affecting the Belgian market are those involving a dominant company. It may therefore prove more efficient for the BCA to rely on Article 102 of the Treaty on the Functioning of the European Union (“TFEU”) (and its Belgian-law equivalent, Article IV.2 of the Code of Economic Law (“CEL”)) to tackle such cases.

Article 101 TFEU (and its Belgian-law equivalent, Article IV.1 CEL) could be applied if the company suspected of abusing economic dependence is not dominant, provided there is some form of contractual link between the allegedly abusive company and the firm being abused (the BCA does not necessarily impose fines on all parties to an anticompetitive agreement, as the resale price maintenance cases show). From this perspective, the rules on abuse of economic dependence will remain relevant only in cases in which the allegedly abusive company is neither dominant nor contractually linked to its victim.

Belgium is not the only EU Member State to prohibit abuses of economic dependence. Similar laws exist in France, Germany and Italy, for example. There is no such prohibition under EU competition law, the enforcement of which is limited to cases where there is either an abuse of a dominant market position (Article 102 TFEU) or, conceivably, an anticompetitive agreement or concerted practice (Article 101 TFEU).

Digital Regulation

EUROPEAN UNION LEVEL

European Commission adopts four decisions against Google under Digital Markets Act

The European Commission (the “Commission”) adopted four separate decisions against Google under the Digital Markets Act (“DMA”) within the same week. On 16 July 2026, the Commission adopted [two measures](#) against Google: first, regarding artificial intelligence (“AI”) interoperability with Android and, second, regarding the scope of Google search data shared with third-party search engines. On 23 July 2026, the Commission adopted [two more decisions](#) against Google concerning non-compliance with its DMA obligations, resulting in total fines of €890 million. These four decisions, taken within a single week, illustrate the Commission’s continued dedication to strong DMA enforcement.

Interoperability of AI systems with Android devices

Under DMA Article 6(7), Google must provide third-party developers with free and effective interoperability with hardware and software features controlled by the Google Android operating system. The Commission previously opened specification proceedings to clarify how Google should grant third-party AI service providers access to Android features equivalent to that enjoyed by Google’s own AI services, including Gemini. This was adopted as a specification decision, setting out the specific measures Google must implement to comply with its Article 6(7) interoperability obligations.

The Commission found that competing AI assistants obtained only restricted access to Google Android operating systems’ key functions and that this hindered their ability to compete with Google’s own AI services, which had full access to the key functions mentioned. Due to this limitation, the Commission concluded that third-party AI assistants were limited in the innovative assistive services they could bring to their clients, meaning they were less attractive to Android users.

To comply with this decision, Google must give third-party AI assistants and AI-powered services effective access to 11 Google Android features, relating to invocation, context, actions on apps and operating systems and access to resources. These features will be available to third-party AI assistants, free of charge, throughout the Google Android ecosystem and these measures will be implemented in the next major Android release on 1 August 2027 (Android 18).

Google search specification

Under DMA Article 6(11), Google is obliged to share anonymised search data – comprising ranking, query, click and view data – with eligible third-party online search engines on fair, reasonable and non-discriminatory (“FRAND”) terms. Data sharing of this kind is intended to help third-party search engines to develop and optimise their services, thereby creating a level playing field.

The Commission’s specification proceedings on this issue led to the conclusion that Google’s initial data sharing offer would not be adequate to achieve the goals envisaged in the Article and

that further measures were needed to improve the user experience of third-party services and thereby enhance user choice of search engine.

Therefore, with its decision of 16 July 2026, the Commission provided Google with specific guidelines to ensure effective enforcement of data sharing obligations, confirming that chatbots offering search functionalities are eligible beneficiaries, and required Google to share the same categories of data that it uses to optimise its own search services.

Data shared by Google must be anonymised. Eligible beneficiaries must have provided online search engine services for at least two years or have received a capital investment of at least €50 million. They must also have had at least 50,000 monthly average EU users of their search engine services in the past year.

Non-compliance decision regarding self-preferencing and anti-steering

Under Article 6(5) DMA, gatekeepers must not treat their own services more favourably in ranking than those of third parties, and must apply transparent, fair and non-discriminatory ranking conditions.

In its decision, the Commission found that Google acted against the DMA's self-preferencing prohibition by giving preferential treatment to its own services. The services owned by Google were considerably more visible in comparison to the third-party services, being displayed at the top of the search results page or enhanced with visuals and filters. For this violation, Google was fined €460 million.

In addition, under DMA Article 5(4), businesses are permitted to communicate and promote offers to the end users of alternative purchasing options without charge, regardless of the purchase platform. In other words, a gatekeeper must allow businesses to direct their clients to other websites or purchasing platforms to conclude purchases there.

The Commission found that Google failed to comply with this obligation. App developers who distribute their apps via Google Play were prohibited from communicating freely, promoting offers and concluding contracts with the end users. While Google is allowed to charge a fee for facilitating a developer's initial acquisition of a new customer through its platform, the Commission found that the level and the length of the steering-related fees charged by Google constituted a breach of Google's DMA obligations.

The Commission imposed a fine of €430 million for this violation. Apple was subjected to a [similar anti-steering decision](#) in April 2025 for the same type of violation, resulting in a fine of €500 million. Meta was fined €200 million in the same April 2025 decision, but for a separate breach of DMA Article 5(2) concerning its "consent or pay" advertising model. (see [VBB on Competition Law, Volume 2025, No. 4](#)).

In addition to the total fines of €890 million, Google was ordered to put an end to its breaches within 60 days; otherwise, it risks being subjected to periodic penalty payments of up to 5% of its total worldwide turnover.

Key takeaways

Within a week, Google was subjected to two different enforcement mechanisms envisaged in the DMA: first, specification proceedings where the Commission gave guidance for effective enforcement and second, non-compliance decisions and monetary fines for the gatekeeper's failure to comply with its obligations arising from the DMA.

These two different methods allow the Commission to adjust according to market needs: specification proceedings serve to steer the ever-changing digital world into a more balanced and competitive direction, while the non-compliance decisions ensure the measures are effectively implemented by the gatekeepers. Overall, these decisions illustrate the Commission's efforts to translate the DMA's general obligations into concrete requirements in order to promote fairer competition, greater contestability, and increased choice for businesses and consumers in digital markets.

On 28 September 2026, Google filed appeals at the General Court of the European Union against the two specification decisions.

NATIONAL LEVEL | UNITED KINGDOM

UK CMA imposes first conduct requirements on Google following SMS designation

Following its June 2026 decision to impose three conduct requirements on Google's general search operations, concerning [data portability](#), [fair ranking](#) and [publishers](#), the UK Competition and Markets Authority ("CMA") launched a new consultation on 23 September 2026 on updated proposals concerning [user choice](#).

Under the UK's digital markets regulatory regime, the CMA may designate a firm as having strategic market status ("SMS") if it has substantial and entrenched market power and strategic significance. Such a designation allows the CMA to impose conduct requirements, ensuring fair competition and cultivating innovation in digital markets. The imposition of these conduct requirements follows the CMA's [decision](#) of 10 October 2025 to designate Google as having SMS in general search and search advertising (see [VBB on Competition Law, Volume 2025, No. 10](#)). That designation covered Google Search and Google's search advertising services, as well as AI-integrated features, such as AI Overviews and AI Mode. It notably excluded Google's standalone Gemini AI assistant, which the CMA found was not sufficiently substitutable for general search at that time. The consultation on the updated user choice requirements is open until 9 October 2026.

Publisher conduct requirement

The CMA imposed its publisher conduct requirement by formal decision on 3 June 2026. In what was heralded by the CMA as a 'world first', the decision requires Google to provide publishers with effective tools to prevent their content being used in Google's generative AI features, such as AI Overviews. This requirement (i) allows publishers effective control over the use of their content to enhance Google's generative AI features; (ii) obliges Google to provide the publishers with clear, comprehensible and user-friendly information on how their content is being used within AI tools and on the metrics of engagement with their content; and (iii) ensures that content is

adequately attributed to the source. Publishers may exercise control not only over the use of their content in generative AI search features, but also over its use in the “fine-tuning” of AI models, a requirement that the CMA added in direct response to feedback received following the public consultation.

According to the CMA, this requirement will allow publishers to have a stronger negotiating stance with Google. The majority of changes will be implemented within six months of the decision (by 3 December 2026). Google will be given a longer period of nine months (until 3 March 2027) to implement one specific obligation, namely the requirement to implement page level controls for the grounding of search generative AI features, given the need for extra development time.

Fair ranking requirement

The CMA imposed its fair ranking conduct requirement on Google by a decision of 17 June 2026, with the aim of improving transparency and fairness in search results. Following a consultation, the CMA concluded that Google’s search results rankings were not sufficiently transparent and that the rules related to the rankings were amended by Google without sufficient notice, preventing businesses from developing innovative strategies in digital marketing. Further, the CMA found that businesses lacked effective means of raising concerns when amendments to the ranking system affected them.

For these reasons, the CMA’s decision requires Google to: (i) rank organic search results using objective and non-discriminatory criteria; (ii) provide greater transparency to businesses about how rankings work and give advance notice of significant changes; and (iii) introduce clear processes for businesses to raise concerns about ranking outcomes and have them addressed effectively. Google has until 17 December 2026 (six months from the CMA’s decision) to comply with this requirement.

Data portability requirement

On the same day as it issued its decision on Google’s fair ranking conduct requirement, the CMA issued its final decision on data portability. This introduced a legal requirement on Google to allow consumers who use Google’s general search services to port their data directly to authorised third party firms. This application was already in place, via Google’s UK Data Portability Application Programming Interface, which allowed users to share their data with third-party firms in order to benefit from personalised advertisements and offers. With the CMA’s decision, this voluntary program becomes a legal requirement, providing greater legal certainty for businesses to invest in this area to expand services provided to users. The CMA decision acknowledged that Google may comply with this requirement by extending to the UK its European data portability API, which was developed to comply with the EU’s Digital Markets Act. This decision thus brings the rights of UK Google search users into line in this respect with those available to EU users. This requirement came into force within three months of publication of the conduct requirement, on 17 September 2026.

User choice conduct requirement consultation

In addition to consulting on conduct requirements relating to publishers, fair ranking and data portability, the CMA’s January 2026 consultation also proposed a conduct requirement to improve

the way Google presents choices to consumers and the related impact on decision-making. Following that consultation, the CMA published updated and strengthened proposals regarding user choice for further consultation on 23 September 2026. The CMA consultation document notes the rapidly changing context, with UK consumers increasingly searching for information online using various methods, including AI-based services such as ChatGPT, as well as feedback received from publishers, search providers and consumer groups during the earlier consultation. Google's own improvements to its [search functionality](#), including introducing a new, intelligent AI-powered Search box, were also taken into consideration.

Under the updated proposals, Google would be required to give Android and Chrome users a choice of search services on their first use of an Android phone or Chrome browser, with an annual prompt to confirm their default provider. The choice screens presented to users must be clear, accurate and balanced, allowing consumers to make a fair choice. Google must implement a clear, fair, robust and transparent process for approving alternative search providers (including AI assistants) for the choice screen. Finally, Google must ensure that any search provider featured on a choice screen fairly attributes publisher content, so that users can access source content and identify where results originate. This fair attribution criterion is intended to address publishers' concerns about the uncredited use of content by AI models. The CMA consultation on the updated requirement is open until 9 October, with a final decision expected by the end of 2026.

Key takeaways

These measures demonstrate the CMA's intention to use its regulatory powers to address competition concerns relating to Google's position in internet search, notwithstanding concerns that the authority may be reluctant to do so in the face of political pressure. Notably, the CMA revisited and strengthened the user choice proposal after Google's announcement of new features and AI powered Search modifications, demonstrating that the CMA regime will take account of developments in the underlying technology in a dynamic manner, rather than according to a fixed regulatory timetable. In particular, the measures show the extent to which the CMA is willing to take on board concerns raised by publishers. The alignment of the data portability conduct requirement with the parallel requirements imposed in the EU by the Digital Markets Act also shows a welcome willingness to reduce regulatory divergence between the EU and UK regimes, despite their different legal bases.

Foreign Subsidies Regulation

NATIONAL LEVEL | BELGIUM

Belgian Council of State suspends €750 million casino concession award on Foreign Subsidies Regulation grounds: a first for Belgian public tendering litigation

On 31 August 2026, the Belgian Council of State suspended the decision by the city of Brussels of 17 July 2026 to award the concession to operate the Brussels casino to E.C.K. SA (“ECK”), a member of the Napoleon Games group. The judgment, given in extreme urgency proceedings, turns in significant part on the EU’s Foreign Subsidies Regulation (“FSR”). This is the first judgment in Belgium in which non-compliance with FSR procedures has led to the successful challenge of a public procurement or concession award.

Background

On 19 January 2026, the city of Brussels adopted the terms of a services concession for the operation of the Brussels casino for a 15-year term, with an estimated value of €750 million. The city of Brussels did not publish the estimated value of the award and did not mention the notification obligation under Article 29 of the FSR in the Official Journal or national notices. Only Casinos Austria filed a declaration under Article 29(1) of the FSR; the other tenderers, including ECK, did not. On 17 July 2026, the city of Brussels awarded the concession to ECK, ranking it ahead of the incumbent concessionaire, Casinos Austria International Belgium (“Casinos Austria”), which then sought a suspension of the award decision before the Council of State.

FSR plea

Casinos Austria argued that the city of Brussels had awarded the concession without verifying whether the successful tenderer had complied with its notification or declaration obligations under the FSR, and that its tender was therefore irregular.

The Council of State agreed. Reading Articles 28(1) and 29(1) of the FSR together, it held that once the estimated value of a public contract or concession reaches €250 million, every participating operator must either notify its foreign financial contributions to the contracting authority or submit a declaration listing all contributions received and confirming that they are not notifiable. That obligation arises by operation of law and does not depend on demonstrating the existence, amount, or distortive effect of any foreign financial contribution. According to the Council of State, it was therefore irrelevant that Casinos Austria had not shown that ECK had received any such contribution.

The Council of State rejected the argument of the city of Brussels that the FSR imposes obligations only on economic operators, and not on the contracting authority. Article 29(2) of the FSR requires the contracting authority to transmit notifications and declarations to the European Commission (the “Commission”) without delay, and Article 29(3) of the FSR obliges it, after giving the operator ten working days to produce the missing document, to declare the tender unaccompanied by a notification or declaration as irregular, and therefore reject it and inform the Commission.

Article 29(3) of the FSR leaves the contracting authority no discretion: once the ten-working-day cure period has expired without the missing document being produced, the tender must be declared irregular and rejected. A concession or public contract may therefore not be awarded to an operator whose tender lacks the required notification or declaration, irrespective of how that tender scores on the substantive award criteria.

The consequence is stark: an economic operator failing to submit a notification or declaration under the FSR is not merely non-compliant with a formality; its tender is irregular by operation of law. The Council of State also rejected the argument that compliance could be deferred until conclusion of the concession. Reading Articles 29(3), 29(4) and 32(1) of the FSR together, the Council of State held that a contracting authority must ensure FSR compliance before adopting the award decision. This is because Article 32(1) of the FSR allows every other step of the tendering procedure to continue during the Commission's review, but not the award itself. Notably, the city of Brussels had not even availed itself of the discretion existing under Article 29(3) of the FSR to grant the tenderers a ten-working-day cure period to produce the missing documents. Instead, it had proceeded directly to the award without engaging with the FSR at all. That wholesale omission, and in particular the non-compliance with Articles 28 and 29 of the FSR, affected the regularity of both the tendering procedure and the award decision. The plea was held to be well founded, and the Council of State ordered immediate suspension.

National Courts, not the Commission, police FSR compliance of the tendering procedure

The judgment is a useful reminder of how the FSR's enforcement architecture interacts with national public procurement remedies. The FSR gives the Commission exclusive competence to assess, once notifications or declarations are transmitted, whether foreign financial contributions made it possible to submit an unduly advantageous tender or distorted the tendering procedure. The Commission is then in a position to exercise its powers of preliminary review, investigation and decision.

By contrast, the Commission has no power under the FSR to compel a national contracting authority to rescind or reopen an award made in breach of Articles 28 and 29 of the FSR. It is national law, and national courts, that provide the remedy: an unsuccessful tenderer can challenge the regularity of the award before the competent national court, as Casinos Austria did here. The Belgian Council of State confirmed this division of competences: it examined whether the city of Brussels had complied with Articles 28 and 29 of the FSR as a matter of the regularity of the award decision, noting that it was not for it to rule on the regularity of individual tenders. Practically, a competitor's ability to invoke an FSR breach depends on timely recourse to national judicial review, since failing to challenge an irregular award within the applicable time limits may leave no further remedy.

Why this matters for private entities participating in tender procedures

The judgment carries a clear practical lesson. The obligation to notify or declare foreign financial contributions under Articles 28 and 29 of the FSR arises automatically once the €250 million threshold is met, regardless of whether the contracting authority raises the issue in the tender documents.

For private businesses, this has a double implication. First, tenderers cannot assume that silence from the contracting authority means that the FSR does not apply: a failure to file a notification or declaration risks having their tender declared irregular and rejected, even at a late stage. Second, competitors have a direct interest in monitoring whether other tenderers and the contracting authority have complied with their FSR obligations. A missing notification or declaration, if they become aware of it, provides them a ground on which to challenge an award.

Businesses should therefore build FSR compliance into their tender strategy and exercise due diligence on public contracts and concessions above the €250 million threshold, rather than relying on the contracting authority to raise the issue.

Foreign Direct Investment

NATIONAL LEVEL | BELGIUM

Belgium Issues first-ever prohibition of foreign direct investment

In early August 2026, Belgium's Interfederal Screening Committee ("ISC") issued its first-ever prohibition of a foreign direct investment (FDI), marking a significant milestone in the application of Belgium's FDI screening regime.

The proposed transaction would have seen GD Helicopter Finance ("GDHF"), a company based in Dublin, Ireland, acquire a controlling stake in NHV Group ("NHV"), a leading provider of business-to-business helicopter services with operations focused on offshore renewable energy, oil and gas, and helicopter maintenance. NHV is headquartered in Ostend, Belgium, and is currently controlled by the French private equity firm Ardian. GDHF is itself controlled by GDAT Group ("GDAT"), a company headquartered in Shanghai, China, and engaged in general aviation services.

The ISC's decision has not been made publicly available. In a [terse statement](#) issued on 5 August 2026, NHV confirmed that it had been the subject of an ISC decision and that, as a result, the proposed acquisition would not proceed.

According to press reports, the transaction was considered problematic on two distinct grounds. First, a substantial portion of NHV's activities involves transporting personnel to offshore wind farms and oil and gas platforms in the North Sea — facilities that constitute critical energy infrastructure. Concerns arose that control over NHV could afford GDAT access to sensitive information relating to that infrastructure. Second, and even more delicate, was the prospect of NHV participating as a subcontractor in the maintenance of Airbus H145M helicopters ordered by Belgium for its armed forces and federal police. The indirect involvement of a Chinese entity in such activities was deemed unacceptable from a national security perspective.

Belgium's military intelligence service, *ADIV/SGRS*, is understood to have played a decisive role in the review procedure and, ultimately, in bringing about the prohibition of the transaction.

Prior to this case, Belgium's FDI screening mechanism had given rise to remedial action on only the rarest of occasions. As the ISC's most recent activity report makes clear, no transaction had previously been blocked, and the few transactions considered to raise concerns resulted in only limited corrective measures (see [VBB Belgian Antitrust Watch of 16 September 2025](#)). It will be instructive to see whether the forthcoming report — covering the period from 1 July 2025 to 30 June 2026 and expected to be published in September 2026 — reflects a more vigilant and rigorous approach to screening. Both the current geopolitical climate and the entry into force of Regulation 2026/1386 on the screening of foreign investments in the European Union would appear to signal a trend in that direction (see [VBB Belgian Antitrust Watch of 26 June 2026](#)).

State Aid

EUROPEAN UNION LEVEL

Court of Justice provides guidance on actions for damages against European Commission in State aid proceedings

On 3 September 2026, the Court of Justice of the European Union (the "CJEU") delivered its judgment in Case C-145/24 P, *BdM Banca SpA v Commission*, partially setting aside the General Court's ("GC") judgment dismissing an action for damages brought against the European Commission (the "Commission") in connection with its 2015 Tercas State aid decision. While the CJEU found that the Commission had committed a sufficiently serious breach of Article 107(1) of the Treaty on the Functioning of the European Union ("TFEU"), it ultimately dismissed the damages claim for lack of a causal link between that breach and the alleged damage.

Background

In 2014, Banca Popolare di Bari (now BdM Banca SpA, "BPB") acquired Banca Tercas ("Tercas"), a bank that had been placed under special administration by the Bank of Italy. As part of that rescue, the Interbank Deposit Protection Fund ("FITD"), a private consortium of Italian banks, granted financial support measures in favour of Tercas covering its negative equity and certain credit and tax risks. On 23 December 2015, the Commission adopted a decision finding that those measures constituted State aid incompatible with the internal market, ruling that they were imputable to the Italian State and involved State resources.

The Tercas decision was challenged by Italy, the FITD and BPB. By judgment of 19 March 2019, the General Court ("GC") annulled the Commission's decision, a ruling upheld by the CJEU on appeal on 2 March 2021. Both courts found that the Commission had made two conceptual errors in classifying the FITD's intervention as State aid. First, the Commission had conflated the separate conditions of imputability to the State and the use of State resources. Second, it had assessed imputability by applying the same test used for aid granted by a public undertaking, even though the measure had in fact been granted by a private entity. In short, the annulment turned on the Commission's flawed legal and factual analysis of whether the FITD's intervention could properly be imputed to the Italian State.

Following those annulment judgments, BPB brought an action for damages before the GC under Article 268 and the second paragraph of Article 340 TFEU, seeking compensation for the harm it claimed to have suffered as a result of the Commission's (unlawful) Tercas decision. By judgment of 20 December 2023, the GC dismissed the action in its entirety, holding that part of the claim was time-barred and that, for the remainder, the Commission's conduct did not amount to a "sufficiently serious breach" of EU law to justify the award of damages and that, in any event, no causal link had been established between that conduct and the alleged damage.

The CJEU's judgment

BPB appealed on three grounds, one of which is of particular interest. Under settled case-law, the European Union incurs non-contractual liability under the second paragraph of Article 340 TFEU only where three cumulative conditions are met: (i) a sufficiently serious breach of a rule of

law intended to confer rights on individuals; (ii) actual damage; and (iii) a causal link between the breach and the damage.

As regards the first condition, the applicable test varies depending on the discretion enjoyed by the EU institution concerned. Where the institution exercises a genuine margin of discretion, only a manifest and grave disregard of the limits on that discretion will be deemed “sufficiently serious” for damages to be awarded. Conversely, where the institution has considerably reduced discretion, or none at all, the mere infringement of EU law may suffice to establish a sufficiently serious breach. The CJEU confirmed that, because “State aid” is an objective legal concept, the Commission merely enjoys considerably reduced discretion when classifying a measure as such under Article 107(1) TFEU, so the reduced-discretion limb of the test applied.

However, the CJEU clarified that this does not remove the evaluation of the complexity of the case from the analysis altogether. Even where the rule infringed leaves the institution no discretion, the absence of discretion does not necessarily mean the breach is “sufficiently serious”. Complexity remains a factor that can, in principle, excuse an error of law made in a difficult attempt to apply a correctly-understood legal test. What is not excused, however, is the use of a conceptually wrong test for the basic criteria of State aid. In the case at issue, since the Commission's error in the Tercas decision had been characterised as a conceptual error in choosing the applicable test – rather than a difficult factual assessment carried out within a correctly-identified legal framework – that particular category of error was judged to be *per se* “sufficiently serious”.

On that basis, the GC's judgment was partially set aside, but only on the specific point concerning the existence of a “sufficiently serious” breach. As regards the third condition, the CJEU upheld the GC's assessment that BPB had failed to establish a sufficiently direct causal link between the Tercas decision and BPB's claimed losses. For this reason, the CJEU concluded that BPB had not shown the Tercas decision to be the decisive cause of its alleged damage and accordingly dismissed the claim for damages in its entirety.

In conclusion, the CJEU's judgment supports the view that, in the field of State aid, while the complexity of a case is relevant to assessing the Commission's potential non-contractual liability for erroneous decisions, the Commission remains under an obligation to correctly identify and apply the legal test appropriate to the case at hand. A failure to do so may, in itself, amount to a sufficiently serious breach of the State aid rules and – provided the other conditions for liability are satisfied, in particular that of a causal link between the breach and the harm caused by the claimant – give rise to an obligation for the Commission to pay damages.



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