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July 2021



## Bird & Bird & Competition & EU

# Competitive edge

Keeping you up to date on Competition & EU law developments in Europe and beyond

Dear readers,

This month's InFocus article recently won the 2021 Antitrust Writing Award. We hope you enjoy the read, together with our short updates on key competition law developments from various jurisdictions.

Best wishes,

The Editorial Committee

### In focus



#### Badmouthing Your Competitor's Products: When Does Denigration Become an Antitrust Issue?

In this article, published in the American Bar Association's *Antitrust Source*, authors Morten Nissen and Frederik Haugsted explore a new form of developed competition authorities across Europe in the past decade, and examine the evolving case law in addressing claims that dominant firms can violate Article 102 of the Treaty on the Functioning of the European Union through **'denigration'** - disseminating negative information to consumers about their competitors' products. [Read more >>](#)

This article recently **won the 2021 Antitrust Writing Award**, instituted by leading competition law publisher *Concurrences* and *The George Washington University Law School*, in the category 'Business Articles – Unethical Conduct'.

### EU

The European Commission publishes draft revised Vertical Block Exemption Regulation ("VBER") and Vertical Guidelines

On 9 July 2021, the European Commission published its long-awaited drafts of the updated Vertical Block Exemption Regulation ("VBER") and the accompanying Guidelines. The drafts are the result of an in-depth evaluation process that started in October 2018. The evaluation showed... [Read more >>](#)

For more information contact [Pauline Kuipers](#)

Members of the European Competition Network argue in favour of stronger role in enforcement of the DMA

NCA's of EU Member States call for a more active role in the enforcement of the DMA under the supervision of DG Comp. The joint position paper stresses that the fundamental goals of the DMA would be better reached if its enforcement had the possibility to make full use of the know-how and resources of the national authorities that have accumulated the most expertise within the digital economy... [Read more >>](#)

For more information contact [Hein Hobbelien](#)

### Belgium

Belgian Competition and Telecoms authorities disagree over acquisition of Mobile Vikings by Proximus

The Belgian competition and telecoms authorities disagree over whether the acquisition of Mobile Vikings by Proximus raises competitive concerns on the Belgian market... [Read more >>](#)

For more information contact [Hein Hobbelien](#) or [Baptist Vleeshouwers](#)

### Czech Republic

An alternative approach to resolving a potential competition law issue

The Office for the Protection of Competition has applied an alternative approach to a potential competition issue concerning vertical resale price agreements and customer restriction agreements... [Read more >>](#)

For more information contact [Vojtech Chloupek](#)

### Finland

FCCA calls for expanding the obligation to notify mergers

According to the Finnish Competition and Consumer Authority ("FCCA"), the current national turnover thresholds allow harmful merges to escape scrutiny by the authority. The FCCA suggests that Finnish turnover thresholds be lowered and that the authority be granted the right to require a notification when the primary thresholds are not met... [Read more >>](#)

For more information contact [Päivi Tammilehto](#)

### France

New tools for the French watchdog as ECN+ Directive is now fully implemented

On 28 May this year, a presidential ordinance (the *Ordinance*) perfected the transposition into French law of the ECN+ European Directive of 11 December 2018, which aims to strengthen the powers of national competition authorities and increase their effectiveness... [Read more >>](#)

For more information contact [Thomas Oster](#) and [Elliott Costel](#)

### Germany

German Federal Cartel Office queries "50 + 1" rule

The German Federal Cartel Office ("FCO") voiced concerns that the so-called "50 + 1" rule, implemented by the German Football League ("DFL") to prevent majority takeovers of German clubs by investors may be in violation of the German & EU competition rules. The FCOs assessment of the rule existing since 1999 was self-initiated by the DFL... [Read more >>](#)

For more information contact [Dr. Stephan Waldheim](#) or [Maren Steiert](#)

### Italy

AGCM dismisses allegations against the "formula club system" in the Italian patented seedless grapes market

On 25 May 2021, the Italian Antitrust Authority ("AGCM") issued a landmark judgment in a proceeding for unfair commercial practices in the distribution and selling of patented seedless grapes in Italy. The proceeding represents one of the few of its kind, not only for the close interlink between IP and competition law, but also because it was initiated under Article 62 of Italian Decree Law n.1/2012, which gives the competence to the AGCM to investigate commercial practices specifically related to the selling and distribution of agricultural and agri-food products... [Read more >>](#)

For more information contact [Federico Marini Balestra](#)

### Poland

UOKiK's 2020 report shows a stricter approach to competition breaches

At the end of June, the Polish Competition Authority (UOKiK) published its annual activity report for 2020. Last year was particularly notable for UOKiK as it imposed the highest fine in its history, as well as gained new powers. There are many more interesting report findings which show UOKiK's approach towards competition law matters and the possible direction of its intensified works... [Read more >>](#)

For more information contact [Piotr Dynowski](#) or [Marcin Alberski](#)

### Spain

Amazon and Apple once again under antitrust scrutiny

This month, the Spanish Competition Authority ("CNMC") has opened formal proceedings against Amazon and Apple for their alleged participation in a conduct prohibited by Articles 1 of the Spanish Competition Act and 101 of the TFEU related to the sale of Apple products in Amazon's marketplace... [Read more >>](#)

For more information contact [Candela Sotés](#)

### Sweden

The Swedish Competition Authority, Konkurrensverket, ("the SCA") has developed a new method for determining the size of fines for infringements of competition law

The revision of the method for determining the size of fines has inter alia happened as a result of the recent implementation of the ECN+ Directive, which has increased the decision-making powers of the SCA, including providing the SCA with the power to impose fines on companies on its own... [Read more >>](#)

For more information contact [Morten Nissen](#) and [Alexander Bröchner](#)

### The Netherlands

Highest Dutch Court upholds annulment of €41 million abuse of dominance fine imposed on railway incumbent

On 1 June 2021 the Dutch Trade and Industry Appeals Tribunal ("CBT"), which is the highest administrative court in the Netherlands, upheld the annulment of the nearly € 41 million abuse of dominance fine imposed by the Authority for Consumers and Markets ("ACM", the Dutch competition authority) on the railway incumbent Nederlandse Spoorwegen ("NS")... [Read more >>](#)

For more information contact [Piet-Hein Eijssen](#) and [Matteo Stainer](#)

### The UK

UK Vertical Agreement Block Exemption Order (VABEO): A cautious refresher

The long-awaited consultation document setting out the CMA's proposals on the future treatment of vertical (supply chain) agreements in the UK is finally out. As expected, the CMA will recommend that the rules inherited from the EU following Brexit will be replaced, on their expiry in 2022... [Read more >>](#)

For more information please contact [Ariane Le Strat](#)

## Webinars & Events

### Bird & Bird & World Competition

Interview with MEP Andreas Schwab on the Digital Markets Act

Read the article [here >>](#)

José Rivas recently interviewed German MEP Andreas Schwab (EPP), the Rapporteur for the proposed Digital Markets Act (DMA), on the goals and challenges of the DMA. The interview was the first guest editorial for *World Competition* and also the first time the publication invited a member of the European Parliament to give their insights, indicating the changing nature of the legislative process and the importance of the European Parliament in competition law.

The two discussed technical elements of the proposal, including ex-ante versus ex-post control of competition law, the scope of application, tipping markets and transparency obligations. Mr Schwab also responded to questions regarding the DMA's impact on innovation, collaboration with national authorities, enforcement and whether the DMA stands to affect the Transatlantic relationship. The interview concluded with the MEP's thoughts on the ambitious timeline and potential roadblocks in passing the DMA.

Watch the full interview [here >>](#)



### EU Competition Law Summer School 2021 - Cambridge, UK

Covering all areas of competition law, this residential, all-inclusive event is tailored to the needs of professionals and provides a firm understanding of EU competition law to help them shape their practical

strategies. Each day builds on a key theme in competition law, through a combination of lectures, practical discussions, Q&As and case studies - ensuring that delegates are proficient in both the fundamentals, as well as currently developing hot topics, which include extended sessions on the digital economy, innovation, sustainability and FDI.

Instructed by top competition law minds, including regulators, in-house counsel, private practice lawyers and economists, each day will provide ample opportunities to network with peers and experts - establishing a pool of invaluable contacts for future business opportunities. Bird & Bird experts [Anne Federle](#) and [Saskia King](#) will present on **Hard Core Cartels and Merger Proceedings**. 29 CPD hours and a certificate are awarded on completion.

Find out more and receive a 20% discount when registering through this [link >>](#) (or use VIP code **FKW63328BB** when booking).

For more information contact [Hein Hobbelien](#) or [Baptist Vleeshouwers](#)

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