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May 2021



Competitive edge

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

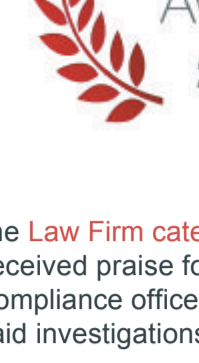
Dear readers,

Welcome to the May edition of our newsletter. Skies are clearing, both metaphorically with the roll out of vaccines and literally as summer approaches. This month, our In Focus article looks at the European Commission's Guidelines of the Article 22 EU Merger Regulation's referral mechanism. This long-existing provision is dusted off to enable the Commission to scrutinize transactions that do not meet national or EU thresholds but may nonetheless raise competition law concerns. We are also delighted to share the news that our competition law Compliance Toolkit has won the Concurrences 2021 Antitrust Compliance Award!

Best wishes,

The Editorial Committee

In focus



Pauline Kuipers
Partner
The Hague
[Contact](#)

EU merger control – new guidance brings uncertainty – particularly for tech and pharma acquisitions

A hot debate is triggered by the European Commission's controversial new Article 22 Referral Guidance. Is it really the Commission's game plan to claim jurisdiction over potential "killer acquisitions"? Should international companies in digital and pharma sectors worry that even small transactions face scrutiny by the Commission even if no domestic merger thresholds are triggered and even after completion? [Read more](#)

Updates from our jurisdictions

EU

Recent initiatives impacting the digital sector

Recent months have seen a flurry of legislative, regulatory and soft law initiatives and proposals that impact the digital sector. This article briefly answers some of the questions we regularly receive, putting the main elements of the most important recent initiatives together... [Read more](#)

For more information contact [Hein Hobbelein](#)

Czech Republic

Summary of 2020 and challenges for 2021 in Czech competition law

The Office for the Protection of Competition published an annual report summarizing its significant activities in 2020 and outlining the agenda for 2021. It seems that the electronic communications, pharmaceutical, transportation, construction and e-commerce industries will be... [Read more](#)

For more information contact [Vojtech Chloupek](#) or [Jiri Švejda](#)

Denmark

Danish Competition Appeals Tribunal upholds finding of dominance on the market for distribution of unaddressed mail

On the 27th April 2021, the Danish Competition Appeals Tribunal upheld a June 2020 decision by the Danish Competition Council. The DCC concluded that FK Distribution, as the biggest distributor of unaddressed mail (print circulars) in Denmark, had abused its dominant position... [Read more](#)

For more information contact [Morten Nissen](#) or [Frederik Haugsted](#)

Finland

A change of M.O. on divestments in merger control

For the first time in Finnish merger control history, parties to a merger committed to an upfront-buyer provision. On 19 April 2021, the Finnish Competition and Consumer Authority approved the merger between Altia Oyj and Arcus ASA subject to conditions... [Read more](#)

For more information contact [Päivi Tammilehto](#)

France

FCA keeps a close eye on BigTech entry into the payment industry

The French Competition Authority has recently issued an opinion closing the sector inquiry it launched in the payment sector in January 2020. The FCA's report mainly focuses on the disruption brought by new technologies and new market players in the sector, in particular BigTech... [Read more](#)

For more information contact [Florence Leroux](#) or [Elliott Costel](#)

Germany

German Federal Cartel Office against Facebook: now the European Court of Justice will decide

Is Facebook abusing its dominant position in the market by collecting data on its own platforms and on third-party websites and combining it in a large data pool? The Federal Cartel Office ("FCO") has decided that unless the users consent to the use of the data, Facebook is abusing its position... [Read more](#)

For more information contact [Maren Steiert](#)

Italy

Italian Competition Authority's wish-list for 2021: an overview of the recommendations for the Italian annual Competition Law

Alongside its enforcement powers, the Italian Competition Authority also has a legislative advisory role where it issues proposals to the Italian Government, in view of the annual competition law. The Authority's 2021 recommendations, issued on 23 March mostly relate to areas... [Read more](#)

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

Poland

UOKiK publishes new guidelines on fines

Earlier this year the Polish Competition Authority ("UOKiK") published its guidelines on the rules of imposing and calculating fines for companies breaching competition law. Although the New Guidelines provide for increased transparency of fining policy, the fact that UOKiK will... [Read more](#)

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

Spain

ECN+ Directive (finally) transposed into Spanish law

On 29 April 2021, the Spanish Royal Decree-Law 7/2021 entered into force, modifying the Spanish Competition Act ("LDC") due to the transposition of the Directive 2019/1 – known as the "ECN+ Directive" – which aims to achieve a more effective application of competition rules by the National Competition Authorities ("NCAs") and to improve the functioning of the... [Read more](#)

For more information contact [Candela Sotés](#).

The Netherlands

Dutch regulator publishes market study and guidelines to steer the roll-out of fibre-optic broadband

On 6 May 2021, the Netherlands Authority for Consumers & Markets ("ACM") published its updated market study into the roll-out in the Netherlands of fibre-optic broadband networks for households (Fiber-to-the-Home). The ACM started its FTTH market study in April 2019 in response to... [Read more](#)

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

The UK

Foreign Investments - UK National Security and Investment Act adopted

On 29 April 2021, the UK National Security and Investment Bill was granted Royal Assent and has therefore formally become law. The new National Security and Investment Act (NSIA), is not yet in force but it is expected to become effective later this year... [Read more](#)

For more information please contact [Anthony Rosen](#)

China



SAMR Imposed Administrative Penalties on Alibaba for Abusing its Dominant Market Position

On April 10, 2021, China's watchdog, the State Administration for Market Regulation ("SAMR") released its decision on imposing a RMB18.228 billion (USD \$2.8 billion equivalent) on the e-commerce giant Alibaba... [Read more](#)

This update was provided by our partner [Allbright Law Offices China](#).

Webinars & Events

Legal Privilege in investigations webinar series

Webinar 1: Legal Privilege in investigations – how does it differ across jurisdictions?

Thursday 3 June, 15:00 - 16:00 CEST

Join us for a lively panel discussion assessing the differences in the rules of legal privilege between jurisdictions around the world in the context of an investigation. During the discussion our international group of panellists, representing the UK, the EU, Middle East, the PRC and U.S., will dissect:

- why exactly legal privilege is so important,
- the different types of privilege,
- the public enforcement perspective,
- the key differences between civil and common law countries, and
- what legal professional privilege means to you in practice

Moderator: [Evelyn Tjon-En-Fa](#) (Partner, EU)

Panellists: [Sophie Eyre](#) (Partner, UK), [Pauline Kuipers](#) (Partner, EU), [Lucas Pitts](#) (Partner, Middle East), [Reid Whitten](#) (Partner, Sheppard Mullin, U.S.), [Sven-Michael Werner](#) (Partner, PRC)

We'll provide legal detail in addition to a high-level business summary overview.

Register for the event [here](#).

Webinar 2: Practical guidance when dealing with the issue of legal privilege in the event of an investigation

Wednesday 9 June - Additional details for this webinar will follow shortly

We will be hosting a second webinar on the practicalities of dealing with legal privilege during investigations. During the discussion our international group of panellists, representing the UK, the EU, Middle East, the PRC and U.S., will dissect:

- **Employment issues** - Internal Investigations and handling the employment aftermath, negotiating employee exits, the concept of "iniquity", and training and managing staff
- **Data issues** - How the data protection authorities approach legal privilege during investigations, and how legal privilege can help in the context of data subject access requests
- **Regulatory issues** - How the UK regulators/competition authorities approach LPP during investigations
- **Forensic Services** - Practices for privilege/protection are broadly used in litigations, disputes, regulatory inquiries/investigation and DSAR. Disclosing parties are responsible for supporting their claims of privilege

Bird & Bird news



Best Lawyers in Australia 2022

Congratulations to Sydney-based partner [Thomas Jones](#), who has been listed in [Best Lawyers in Australia 2022](#) in the following categories:

- Competition Law
- Telecommunications Law
- Media Law and
- Regulatory Practice.



Congratulations to Rome-based partner [Federico Marini Balestra](#) and our Italian [Competition & EU team](#) for being ranked in the "Best Lawyers" and "Best Corporate Law Firms" category by the business review [Milano Finanza](#).

Co-head of our Competition & EU Group [Pauline Kuipers](#) and partner [Janneke Kohlen](#), both based in The Hague, have been recognised by [The Legal 500](#) as "Leading individual" and "Next Generation Partner".



"Pauline Kuipers is a good strategic thinker - provides solid commercially tailored advice."

"Janneke Kohlen (...) combines her incredible legal knowledge with deep industry knowledge and is able to answer questions quickly and thoroughly."

Click [here](#) to read previous editions of this newsletter.

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