HENGELER MUELLER

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Key Competition Law Developments to Watch After the Summer Break

Markus Röhrig, Philipp Heuser and Christoph Sielmann report on the latest developments from the European capital of competition law.

PART TWO: ANTITRUST & STATE AID

It's that time of year again: the squares and metros of Brussels are bustling, cafés and restaurants in the EU quarter have reopened, and the sun is setting over rue de la Loi a little earlier each day. *C'est la rentrée* – summer draws to a close, fall is almost here, time to get back to work. In keeping with our tradition, we present a roundup of the latest developments in competition law and a look ahead at what's on the horizon for the rest of the year.

After the first part of our *Rentrée* issue covered merger control and Foreign Subsidies Regulation, this second part addresses antitrust and State aid.

Antitrust

In Vino Veritas? – The Commission Decides on Sustainability Agreements

Over the summer, the talk of the town in antitrust seemed to be sustainability agreements. In July, the European Commission first issued an informal guidance letter to port terminal operators on the compatibility of sustainability agreements with EU competition law. Only days later, the Commission gave its opinion on the compatibility of a sustainability agreement in the French wine sector.

In one of the first informal guidance letters under the revised 2022 Notice on Informal Guidance, adopted on 9 July, the Commission assessed an agreement on the joint purchasing and joint setting of minimum technical specifications for electric container-handling equipment used in ports. Port operators sought to replace diesel equipment with electric equipment, but were reluctant to do so because of higher costs and a lack of interoperability.

The agreement sought to overcome these hurdles by pooling demand, providing suppliers with predictability, and agreeing on minimum technical standards. The Commission found that the initiative did not raise concerns, as long as

(1) the ability of the participating operators to each continue purchasing their own equipment remains independent,

(2) the volume of demand that is pooled through the agreement is capped, and

(3) the exchange of competitively sensitive information is limited to what is strictly necessary.

In its decision on a sustainability agreement in the French wine sector, adopted on 15 July, the Commission offered further guidance on Article 210a of the Common Market Organisation Regulation (CMO). The agreement between winegrowers from the French region of Occitanie and buyers set indicative prices (production costs plus a profit margin of up to 20%) for six grape varieties produced in accordance with the standards for organic and HVE (Haute Valeur Environnementale) wines. The agreement is intended to incentivize producers to continue producing sustainably, even if the current market situation is difficult due to oversupply and inflation.

The Commission assessed the agreement under Article 210a CMO, which, under certain circumstances, grants an exception to Article 101(1) TFEU for sustainability agreements in the field of agricultural products. The Commission found that the agreement met the requirements under Article 210a CMO. In particular, it

(1) involved agricultural producers,

(2) related to the trade of agricultural products,

(3) aimed at contributing to sustainability objectives and applied sustainability standards that are higher than those mandated by Union or national law, and

(4) only resulted in restrictions of competition that are indispensable for the attainment of those standards, parties to the agreement will benefit from the exception.

It will be interesting to see whether the Commission will apply similar considerations to sustainability agreements in other industries, in which Article 210a CMO does not apply.

A New Chapter? – EU-UK Competition Cooperation Agreement

In June, more than five years after the United Kingdom left the European Union, the Commission proposed to the Council to conclude an EU-UK Competition Cooperation Agreement.

The agreement, a supplementing agreement to the EU-UK Trade and Cooperation Agreement, allows for cooperation and coordination in competition matters between the Union and its member states on the one part, and the UK on the other. In particular, the agreement aims to safeguard the effective enforcement of competition rules, by, *inter alia*, postulating notification obligations for enforcement procedures affecting important interests of the other party, as well as providing the possibility to exchange relevant information between the respective authorities to better coordinate enforcement activities within the different jurisdictions.

When? As soon as both the EU and the UK have finalized their respective ratification procedures, the agreement will enter into force. As a next step, the Council will make a decision to formally sign the agreement. The European Parliament will also have to give its consent.

Best Price, Worst Outcome? – Class Actions Against Booking

In addition to the ongoing proceedings before the General Court, Booking may also face danger from another side: the company is confronted with a class-action suit in the Netherlands brought by more than 15,000 hotels from across Europe. These hotels are seeking compensation for Booking's so-called "best-price guarantees", a practice implemented by the company between 2004 and 2024. Under these "guarantees", Booking prohibited hotels from offering their rooms on their own websites (or via other OTAs) at a lower price than the corresponding offers on Booking's platform. In the fall of 2024, the Court of Justice confirmed that such a practice violates Art. 101(1) TFEU. By then, Booking had already abandoned the practice following its gatekeeper designation under the DMA.

When? The registration phase for claims supporting the class action ended on 29 August. Meanwhile, another class action against Booking is in preparation: the Dutch consumer rights group Consumentenbond is preparing its own mass claim on behalf of travelers, alleging "inflated prices" on the platform.

New Procedural Framework on the Horizon? The Revision of Regulation 1/2003

On 10 July, the Commission launched a public consultation for the revision of Regulation 1/2003. As you may recall, in September 2024, the Commission published the findings of its evaluation of the regulation (together with its Implementing Regulation 773/2004). Now, the Commission is seeking the public's views.

When? The public consultation runs until 2 October. According to the Commission, adoption of the revised regulations by the Commission is expected for the third quarter of 2026.

State Aid

State aid remains *en vogue*. Probably not only since the COVID-19 pandemic public funding schemes have also become the Commission's go-to instrument to address economic shocks – and the trend shows no signs of slowing. Whether it's decarbonization or reindustrialization, State aid still seems an important tool of choice when it comes to preparing the European economy for the challenges ahead. In addition, the Commission launched a call for evidence and a public consultation on 22 August to seek input on the scope and content of its revision of the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, to ensure that they remain fit to meet their objectives. For now, we are focusing on two other important developments.

Simple is Simply the Best – Next Round of GBER Update Underway

More than ten years after the General Block Exemption Regulation (GBER) was adopted in 2014, and just two years after its last amendment in 2023, the Commission has launched yet another public consultation on the scope and content of a fresh version. This time, the declared aim is to further reduce administrative hurdles and the time required to seek financial State aid.

Simplifying procedures has always been the GBER's core mission. As an exception to the notification obligation under Article 108(3) TFEU, its rules allow Member States to issue specific categories of State aid directly – provided certain conditions are met. In such cases, aid is presumed not to distort competition, hence no prior approval is required. Touted by the Commission as the "*most important part of EU State aid rules*", the GBER has served as the legal fast lane for financial aid in a broad range of areas such as research and innovation, environmental protection, or even culture and heritage conservation, to name just a few.

The current review follows the EU's Competitiveness Compass and the Clean Industrial Deal. Building on both initiatives, the Commission is especially keen to channel (more) public investments into sustainable sectors, such as climate-neutral energy transition and net-zero industries – already key objectives of the 2023 amendment. Still, the Commission seems to see further room for improvement. According to Commissioner Ribera, the envisaged revision is intended to further "*cut red tape*" on the regulatory framework and administrative requirements and – in a nutshell – simply "*make it easier* […] *to access support*". It remains to be seen how the consultation will shape the future design of the GBER – and how the Commission intends to balance simplicity with the need to preserve a level competitive playing field in sensitive and strategic sectors.

When? Interested parties can reply to the questionnaire until 6 October 2025. A summary of contributions will follow, and the results will feed into the ongoing revision of the GBER. The Commission expects adoption of the new GBER in the fourth quarter of 2026.

Green is the New Black – New State Aid Framework for Clean(er) Industries

But updating the GBER is not the only legislative way the Commission is trying to boost public and private investments into the green transition of Europe's industrial landscape. On 25 June, the EU watchdog adopted a new State Aid Framework to accompany the Clean Industrial Deal (CISAF) – the EU's latest "*roadmap for competitiveness and decarbonisation.*" The Clean Industrial Deal aims to bring the EU to net-zero emissions by 2050, while making European industry globally competitive.

CISAF is intended to provide guidance on how the Commission will assess State aid schemes in support of this dual objective. The 50-page framework seeks to streamline procedures and reduce barriers for public support targeting renewable energy, industrial decarbonization and clean tech manufacturing. It builds on – and will ultimately replace – the Temporary Crisis and Transition Framework (TCTF), which was initially adopted to address market

disruptions caused by Russia's war against Ukraine and the US Inflation Reduction Act. While the TCTF expires at the end of 2025, global crises are far from over. CISAF is here to stay, complementing the GBER and offering an additional, albeit different, path to simplified access to green aid.

Some funding has already taken off under the Clean Industrial Deal. Prior to the adoption of CISAF, the Commission approved, for example, a EUR 400 million Spanish scheme to support renewable hydrogen production. CISAF is now intended to provide a transparent and predictable framework for similar cases moving forward. At a glance, CISAF's key rules allow for: (1) fast-track procedures for clean energy roll-out, (2) new rules for integrating intermittent renewable electricity sources, (3) temporary reductions of electricity prices for energy-intensive users, (4) flexible support for investments in decarbonization and energy efficiency projects, (5) support for investments in new clean tech manufacturing, and (6) risk-reducing instruments (e.g. equity, loans, guarantees) to reduce risks of private investments in projects supporting the Clean Industrial Deal objectives.

The rules will be particularly interesting for companies in energy-intensive sectors and those working on the green transition. Whether they will actually benefit from "quick and easy" access to financial support will now depend primarily on the policy priorities of the Member States – and, above all, on their willingness to implement the aid schemes envisaged under CISAF.

When? After its adoption, CISAF will remain applicable until the end of 2030 to provide long-term predictability.

Until next time, enjoy the final days of summer before fall sets in – and follow us on LinkedIn for the latest updates on EU competition law.

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