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ANTITRUST AND COMPETITION

The General Court Upholds Commission's Findings on Abusive Predatory Pricing

On 18 September 2024, the General Court of the European Union (General Court) largely upheld the fine imposed by the European Commission (Commission) finding that a global tech company had engaged in predatory pricing of its mobile chipsets. This judgment confirms that dominant companies' conduct consisting in pricing below cost can be hardly justified.

SANCTIONS

The General Court Confirms that the Prohibition on Providing Legal Advisory Services to the Russian Government and to Entities Established in Russia is Valid

While the court recognized the importance of the fundamental right of all persons to be advised by a lawyer in relation to judicial proceedings, it ruled that the EU sanctions prohibition on providing legal advisory services does not interfere with that right.

FINANCIAL AFFAIRS

European Supervisory Authorities (ESAs) and Joint Committee Announce 2025 Work Programs

The three supervisory authorities for European financial markets, as well as the Joint Committee uniting the three agencies, have published their working programs for 2025.

ENERGY

EU Energy Policy During the 2024-2029 Term

On 17 September 2024, Commission President Von der Leyen unveiled the list of the commissioners candidates for the 2024-2029 term, circulating Mission Letters to each candidate. The letter to Commissioner-Designate for Energy Dan Jørgensen, Denmark's former climate minister, reveals a long list of the regulatory and policy initiatives the Commission is expected to focus on in the next few years.

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ANTITRUST AND COMPETITION

The General Court Upholds the Commission's Findings on Abusive Predatory Pricing

On 18 September 2024, the General Court largely upheld the fine imposed by the Commission on a US tech company (Company), active in cellular and wireless technologies globally for abusing its dominant position in the worldwide market of slim and integrated baseband chipsets compliant with the Universal Mobile Telecommunications System (UMTS) standard.

Following a competitor's complaint, the Commission opened an investigation on 16 July 2015 against the Company for violating Article 102 of the Treaty on the Functioning of the European Union (TFEU), which prohibits a company from abusing its dominant position. The Commission found that the Company engaged in exclusionary practices such as predatory pricing consisting of deliberately pricing its products below costs to foreclose competitors or strengthen or maintain its market dominance. According to settled case law, prices below the average variable cost (AVC) set by a dominant company are presumed abusive. However, prices above the AVC but below the average total costs (ATC) can be considered abusive only if the Commission proves that they are part of an intended plan to restrict competition. In particular, the Commission found that the Company sold certain quantities of three of its UMTS chipsets below the ATC but above the AVC to two strategically important customers, with the intention of eliminating its main rival in the market. As a result, on 18 July 2019, the Commission imposed a fine of EUR 242 million on the Company.

The Company appealed the decision before the General Court on several substantive and procedural grounds. The General Court rejected all of the pleas in its judgment with the exception of the plea concerning the calculation of the amount of the fine. In particular, the General Court rejected the Company's claim that the Commission should have relied on its assessment on the “small but significant and non-transitory increase in price” test for the definition of the relevant market. The General Court clarified that this test is not the only one the Commission can use for the market definition. Moreover, the General Court held that, contrary to the Company's arguments, the Commission was not required to assess whether the share of the market covered by the contested practice is of sufficient magnitude for that practice to have anticompetitive effects. In addition, the General Court clarified that it was not necessary to apply the “as-efficient competitor” test in the context of a predatory pricing investigation. This is because the Commission's analysis of the prices charged by a company in a dominant position with its costs for the purposes of assessing whether that company priced below ATC but above AVC already includes an “as efficient” competitor analysis. With respect to the calculation of the amount of the fine, the General Court found that the Commission departed from the methodology laid down in its 2006 guidelines on the method of setting fines and, hence, partly reduced the fine to approx. EUR 238 million.

The judgment of the General Court provides further clarification that the “as efficient competitor test” can be carried out implicitly in a predatory pricing investigation and that the assessment of predatory pricing under Article 102 TFEU relies on comparing prices and costs of the dominant company. Moreover, the Commission does not need to examine whether the share of the market covered by the contested practice has sufficient magnitude to have anticompetitive effects. Finally, the General Court found that the Commission properly demonstrated—based on internal emails—that the Company had a strategy to exclude its main rival, thereby demonstrating the key relevance of the companies' internal documents in antitrust investigations.

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SANCTIONS

The General Court Confirms that the Prohibition on Providing Legal Advisory Services to the Russian Government and to Entities Established in Russia is Valid

The General Court has dismissed three actions by which a number of bar associations and individual lawyers sought annulment of the EU sanctions prohibition on providing legal advisory services to the government of Russia or to legal persons, entities, or bodies established in Russia. The claimants were in particular arguing that the prohibition infringes the fundamental rights guaranteeing access to legal advice from a lawyer, as well as the professional secrecy and duty of independence of lawyers.

The General Court reiterated that while the Charter of Fundamental Rights of the European Union guarantees everyone the right to effective judicial protection, including the right to be advised, defended, and represented by a lawyer in the context of existing or probable litigation, the EU sanctions prohibition in question does not undermine that right.

In this regard, the General Court noted that the general ban on providing legal advisory services to the Russian government or entities established in Russia does not apply to services related to judicial, administrative, or arbitral proceedings. The prohibition is limited to legal advice that is unrelated to judicial proceedings. The General Court also recalled that legal advice provided to individuals is not covered by the ban.

With respect to derogations to the prohibition (i.e., authorizations for specific types of activities that would otherwise be prohibited by EU sanctions), the General Court held that these do not interfere with the confidentiality between lawyers and their clients. However, EU Member States that are tasked with defining the arrangements for implementing the derogation procedures must ensure respect of the Charter of Fundamental Rights. Moreover, while the General Court emphasized the importance of lawyers' independence to ensure individuals' right to an effective remedy in legal proceedings, it concluded that since the prohibition does not apply to legal advisory services in relation to judicial proceedings, it does not interfere with lawyers' independence.

Finally, the General Court concluded that lawyers' fundamental role in upholding the rule of law can be subject to restrictions if these do not disproportionately interfere with the very essence of a lawyer's role in a democratic society. Since the prohibition in question does not interfere with the independence of lawyers or with the values of the rule of law, it also does not impair the very essence of the task performed by lawyers.

FINANCIAL AFFAIRS

ESAs and Joint Committee Announce 2025 Work Programs

On 30 September and 2 October 2024, the European Insurance and Occupational Pensions Authority (EIOPA), the European Securities and Markets Authority (ESMA), and the European Banking Authority (EBA) published their 2025 work programs. On 7 October 2024, the Joint Committee uniting the three ESAs also released its working program for next year. These plans outline key initiatives and regulatory priorities for the coming year.

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EIOPA —SUPERVISION OF INSURANCE AND PENSIONS

EIOPA's 2025 program maintains a strong focus on sustainable finance, particularly on the integration of environmental, social, and governance (ESG) factors into the regulatory framework for both insurance and pensions. Key priorities include improving catastrophe risk modelling and addressing protection gaps, such as underinsurance related to natural disasters. Digitalization is also a significant focus, with efforts to promote consumer-centric digital transformation across the insurance and pensions sectors. This includes supporting the implementation of the Artificial Intelligence (AI) Act, while ensuring the ethical use of AI and data, especially regarding consumer protection and inclusion. EIOPA will further strengthen cross-border supervisory cooperation and enhance prudential and conduct oversight, especially through the consistent application of the Solvency II Directive. Other priorities include addressing gaps in insurance guarantee schemes, improving oversight of Critical Third-Party Providers, and advancing work on internal models to ensure a level playing field across Europe.

ESMA—FINANCIAL MARKETS SUPERVISION

ESMA's 2025 work program builds on its recommendations for enhancing the efficiency of European capital markets. A significant portion of its focus will be on implementing new legislative mandates, including the European Green Bonds standards and the ESG Rating Providers Regulation. Following the adoption of EMIR 3.0, ESMA will develop technical standards related to the new Active Account Requirement. In 2025, ESMA will also select and authorize the first Consolidated Tapes Provider under the Markets in Financial Instruments Regulation. In relation to digital finance, ESMA will oversee the implementation of the Markets in Crypto-Assets Regulation (MiCA) and coordinate supervisory activities for Crypto Asset Services Providers across the European Union. Further initiatives include preparing technical standards for a potential shortening of the settlement cycle and new guidelines under the revised Alternative Investment Fund Managers Directive and the Directive on Undertakings for Collective Investment in Transferable Securities.

EBA—BANKING SUPERVISION

The EBA's work program for 2025 outlines several key priorities. These include implementing the EU banking package and enhancing the Single Rulebook, promoting risk-based financial stability, and strengthening data infrastructure. The EBA will also initiate supervisory activities under MiCA and the Digital Operational Resilience Act (DORA) for, respectively, crypto-assets issuers and information and communications technology third-party providers. Additionally, the agency plans to launch a new data portal aimed at improving financial reporting and supervisory data across the European Union. It will also play a key role in transitioning to a new anti-money-laundering framework and ensuring a smooth transfer of responsibilities to the newly established European Union Anti-Money Laundering Authority.

ESAS—CROSS-SECTORAL SUPERVISION

The Joint Committee of the ESAs has also published its work program for 2025, with a focus on enhancing cooperation and ensuring cross-sectoral regulatory consistency. The Committee will monitor key risks, including those related to inflation, geopolitical tensions, and economic stagnation. Its efforts will cover areas such as

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consumer and investor protection, digital operational resilience, financial conglomerates, and cross-sectoral risk analysis. The Committee will also contribute to further guidance on sustainability disclosures under the Sustainable Finance Disclosure Regulation. Other focus areas include financial education, supervision of financial conglomerates, and regulatory mapping for External Credit Assessment Institutions. Finally, the ESAs will work on initiatives such as the revision of the Securitization Regulation and the promotion of supervisory convergence across the European Union.

ENERGY

EU Energy Policy During the 2024-2029 Term

On 17 September 2024, Commission President Von der Leyen unveiled the list of the Commissioner candidates for the 2024-2029 term. She also published her mission letters to each candidate. The mission letters include key high-level initiatives and plans that the new Commissioners are expected to carry out in the next mandate. The letter to Commissioner-designate for Energy Dan Jørgensen, Denmark's former climate minister, reveals a long list of the regulatory and policy initiatives the Commission is expected to focus on in the next few years, including:

1. An update and modernization of the existing governance of the EU energy union, which sets rules both on high-level energy targets, as well as reporting obligations for Member States through National Energy and Climate Plans.
2. A new Action Plan for Affordable Energy Prices to help bring down prices for households and business and support industries and companies through the transition.
3. EU Electrification Action Plan, including measures on demand flexibility and energy storage.
4. A roadmap towards ending Russian energy imports.
5. A new legal framework for European grids with the aim to help upgrade and expand grids to support rapid electrification and speed up permitting.
6. Acceleration of the development and deployment of small modular reactors in Europe during the 2030s, building on the European Industrial Alliance on Small Modular Reactors.
7. Proposals to incentivize and increase the uptake of carbon capture utilization.
8. Adoption of a strategic roadmap for digitalization and AI in the energy sector.

On 5 November, Jørgensen will be grilled on these and many other topics by members of the European Parliament during the hearing of the Parliament's Industry and Energy Committee. If confirmed by the Parliament, Jørgensen will take up his position reporting to Teresa Ribera Rodríguez, Commission Executive Vice President for Clean, Just and Competitive Transition.

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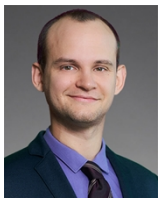
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