

Kluwer Competition Law Blog

Setting up the 2019-2024 competition policy agenda

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Following the political shake-up in Europe and the severance of the EPP and S&D combined majority, horse-trading with other political parties within the European Parliament over the next 5 years is inevitable. In addition, the upcoming new Commission President and the new College of Commissioners are expected to establish the political priorities that will shape the European agenda until 2024 and beyond.

Furthermore, earlier in May, EU27 leaders met in Sibiu and agreed on the need to work towards a more competitive Europe with a fully modernized single market, focusing on R&D, climate challenges, increase of investments and development of digital capabilities and Artificial Intelligence.

Below we present the main competition related policy areas of focus for the European Commission, either on the basis of already launched initiatives or due to political proposals.

European Industrial Policy: reform of merger control?

Will political principles guide competition policy? The prohibition of the Siemens/Alstom merger has triggered the ire of the French and German governments. A few days ago, the French Minister of Economy, Bruno Le Maire, presented a proposal on the possible review of EU's competition rules in order to address Chinese competition.

Le Maire has now proposed that the European Commission:

- takes a broader view before blocking potential mergers within Europe, and examines their benefits more closely.
- extensively reviews state aid rules for R&D so that the implementation of aid in this area can be done, as systematically as possible, without ex ante European control.
- examine how to prevent so-called killer acquisitions^[1].
- promotes, in the context of EU merger control, the more systematic use of behavioural remedies to better adapt to the rapid evolution observed in many markets and encourage companies to merge.
- introduces a more long-term review of the potential entry of foreign competitors.
- takes into account in the assessment the public support that a third country competitor receives.

The German Chancellor, Angela Merkel, has publicly expressed her support for Le Maire's proposal, underlining that the reform of rules is necessary to counter China's rising economic power.

In Brussels, the EPP has remained the largest political party in the European Parliament, with the German CDU being one of its major political pillars. Despite the defeat of Macron's *La République en Marche* in the EU elections, the party's contribution to ALDE — the third-largest group within the European Parliament — could give the French President both further influence, and support for the French position in order to change the European competition network.

In this context, a possible centrist coalition (EPP, D&D and ALDE) could lead to political convergence in line with the Franco-German proposal. In conjunction with the possible appointment of Vestager at one of the EU's top jobs, this might heat up the political debate about the EU's future competition framework.

New Competition Commissioner

The new European Commission President is expected to allocate the Commissioners' portfolios in August 2019. Taking into account that the competition Commissioner is a political appointee, it will also be up to him/her to give priority to certain cases.

Upon her appointment, Commissioner Vestager had emphasized that DG COMP would pay close attention to Commission President Jean-Claude Juncker's "10 most important priorities", including the Digital Single Market and the Energy Union. Indeed, probes against Apple, Google or Gazprom, allowed her to raise her political profile running currently the race for EU's top job.

The aforementioned policy areas are expected to attract DG Competition's scrutiny over the next 5 years. It remains however to be seen whether the new political priorities of the European Commission will shift the focus to new areas.

Digital economy

Setting the basis for competition enforcement in the digital sector will be one of the main drivers of competition policy for the next 5 years.

Competition enforcement in a rapidly developing digital sector has been a key priority for the current European Commission. Commissioner Vestager appointed three academics, Jacques Crémer, Yves-Alexandre de Montjoye and Heike Schweitzer to put in place a Report to explore how competition policy should evolve to continue promoting pro-consumer innovation in the digital age.

The [Report](#), published on 4 April 2019, recommends further scrutiny and close supervision of the behavior of dominant online platforms, and revisiting certain established concepts of antitrust law that may need to be recalibrated for the digital environment. Along the same lines, speaking at the OECD's conference on competition and the digital economy on 3 June, Commissioner Vestager warned that digital platforms which adopt strategies that undermine interoperability and foreclose

small players from the marketplace will be subject to scrutiny. In addition, she emphasized the importance for regulatory reform rather to prevent anticompetitive behaviors when it comes to role of online platforms (e.g. platform-to-business regulation).

Furthermore, Member State Governments, e.g. the Dutch Minister of Economy, have called for increased powers and new EU rules that will allow national regulators to tackle emergent digital challenges. In particular, there is an ongoing dialogue between Member States to pressure Brussels to initiate new rules on the supervision of digital platforms, the *ex-ante* evaluation of digital environments, and the enhanced application of competition rules in the area of mergers and acquisitions given the importance of data and the so-called killer acquisitions.

Review of State aid legal framework

DG COMP has recently announced a number of public consultations in the field of state aid with respect to the possible revision of the legal framework that was put in place and adopted with the 2012 reform (SAM). The General Block Exemption Regulation (GBER) and the sectoral guidelines, which initially were planned to expire in 2020, have been extended until 2022 to allow the Commission to better evaluate whether they are still fit for purpose. The extension will also give the Commission time to establish if the guidelines have contributed to achieving the EU 2020 policy objectives and they are in line with the new policy priorities.

For instance, in the context of the Energy Union, the design of electricity markets, the promotion of renewables via investments and new installations, the climate-neutral economy by 2050 targets are issues which, together with more anticipated decisions in the pipeline concerning state aid, will put pressure on the European Commission to review its state aid rules. In addition, state aid rules are expected to be tailored to help Member States to boost finance projects of strategic importance for the European competitiveness. Already, in December 2018, the European Commission approved French, German, Italian and British public support of €1.75 billion to joint research and innovation project in microelectronics, which could enable R&D in a key economic sector of strategy and unlock an additional €6 billion in private investments in the microelectronics sector.

In this context, it can be said that Le Maire's proposal that the EU should loosen aid rules on R&D might find room in the ongoing review of the EU's state aid framework and the overall discussion about how the Commission and its Member States can empower the European industrial policy.

Rules on Horizontal and Vertical agreements

Over the last few years, there have been major developments in business strategies and consumers' behavior as regards e-commerce, distribution practices, direct sales by manufacturers to consumers in competition with distributors, online price transparency, and restrictions in distribution contracts.

The Commission had little experience in the application of the Vertical Block Exemption Regulation (VBER) to vertical agreements until the adoption of the [Final Report on e-commerce sector inquiry](#) published in 2017, which identified that many distribution strategies and business models do not comply with the European competition rulebook. On the basis of the report and of

several investigations relating to e-commerce, the European Commission is now questioning whether the Vertical Block Exemption Regulation (VBER), which exempts agreements between companies operating at different levels in the production from the prohibition of Article 101(1) TFEU, fits its purpose and remains effective.

It is thus likely that there will be a change in the current EU rules following the completion of the ongoing review. The results of the review will be announced at some point in 2020.

Moreover, agreements between companies operating at the same level in the production (horizontal agreements) are also expected to be reviewed by the European Commission, as recently announced by Commissioner Vestager. Among others, the Horizontal Cooperation Guidelines include rules that guide companies active in R&D on how not to distort competition rules. Given the importance that R&D plays for European competitiveness and the growth of technology-driven markets, the announced consultation will be critical to the preservation of innovative growth.

[1] Firms have incentives to acquire innovative targets to discontinue the development of the targets' innovation projects and pre-empt future competition.

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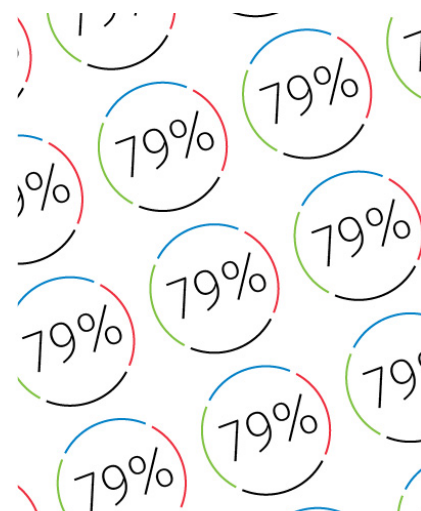
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