

# Kluwer Competition Law Blog

## Critical Raw Materials and EU Competition Law

Jay Modrall (Norton Rose Fulbright, Belgium) · Wednesday, April 23rd, 2025

European Commission Executive Vice-President Teresa Ribera has her work cut out for her. As Commissioner for a Clean, Just and Competitive Transition, she is not only responsible for steering the European Commission's competition policy through 2029 – a formidable task in itself – but also for coordinating the Commission's [Clean Industrial Deal](#) alongside commissioners responsible for industrial strategy and climate. According to her September 2024 [Mission Letter](#), EVP Ribera is charged with “modernis[ing] the EU's competition policy to ensure it supports European companies to innovate, compete and lead world-wide and contributes to our wider objectives on competitiveness and sustainability, social fairness and security.” This new approach “should also reflect the growing importance of resilience in the face of geopolitical and other threats to supply chains and of unfair competition through subsidies.”

Clues as to how EVP Ribera will juggle these tasks may emerge from a newly announced [consultation](#) on promoting industry cooperation to procure and recycle critical raw materials in line with EU competition rules. Announcing the consultation, EVP Ribera stated, “We want to hear from European industry and beyond about access through recycling of these materials. Together, we can build sustainable supply chains and transform challenges into opportunities for prosperity, innovation and resilience.” More specifically, the Commission is inviting stakeholders, particularly companies involved in the extraction, processing and recycling industries) to share insights on challenges in sourcing, processing, recycling and re-using critical raw materials and on collaboration opportunities to address these challenges.

Indeed, although the Commission has recently updated its guidelines on the assessment of cooperation agreements under Article 101 TFEU, these guidelines provide limited insight on how companies can cooperate to improve access to critical raw materials. The Commission's 2023 guidelines on horizontal cooperation guidelines ([Horizontal Guidelines](#)) include an entire chapter on sustainability agreements and mention the potential for cooperation in recycling to be pro-competitive, but they also highlight the risk of such projects. The Horizontal Guidelines indicate that an agreement among small undertakings to collect used mobile phones to recycle valuable raw materials such as gold, silver and copper by agreeing to a common maximum purchase price per phone would be illegal even if the participants accounted for only 12% of the market.

The Commission's 2022 guidelines on vertical restraints (the Vertical Guidelines) do not delve deeply into sustainability considerations. However, they acknowledge that sustainability objectives, such as limiting the use of natural resources, can serve as qualitative criteria suppliers may require when implementing selective distribution systems, for instance by requiring

distributors to provide recycling facilities in their outlets. Nonetheless, the Vertical Guidelines did not explore how stakeholders in a complex supply chain could collaborate to improve access to critical raw materials through recycling. Neither the Horizontal nor the Vertical Guidelines explore whether, and if so how, broader EU policy imperatives such as resilience and security affect the assessment of cooperation agreements.

And yet the need for broad-based cooperation to further EU policy objectives is increasingly clear. The 2024 Draghi report on European competitiveness (the [Draghi Report](#)) recommends that the Commission provide “clear guidance, templates, and ease of access” for “companies working together [in the Critical Raw Materials Space] . . . to jointly procure the materials or stimulate new production and increased output.” Similarly, in its Clean Industrial Deal communication, the Commission committed “to provide informal guidance to companies on the compatibility of cooperation projects contributing to the achievement of EU priorities with antitrust rules in particular those related to innovation, decarbonisation and economic security in the EU,” following “a fact-finding exercise . . . on how European companies currently procure and recycle the most important raw materials.”

The EU has already created a legislative framework for cooperation at the governmental level with the adoption of the 2024 Critical Raw Materials Act ([CRMA](#)), which aims to secure a sustainable and diversified supply of critical raw materials. Pursuant to the CRMA, the Commission [adopted](#) 25 Strategic Projects in March 2025 to boost domestic strategic raw material capacities in relation to 14 critical raw materials. These projects include several covering lithium, nickel, cobalt, manganese and graphite, which will particularly benefit the [EU battery raw material value chain](#), as well as magnesium and tungsten. But the CRMA focuses on cooperation among EU and non-EU governments and does not clearly define a role for industry cooperation.

Further to the new consultation, the Commission will initially focus on 14 raw materials of critical importance for sectors such as renewable energies, digital technologies, aerospace and defence technologies, presumably those covered in the CRMA Strategic Projects. Based on feedback received from the consultation, the Commission is expected to dig deeper into the potential for cooperation in specific areas. By 2026, the Commission should be ready to publish guidance of the type called for in the Draghi Report, discussing in detail how companies can cooperate to improve the resilience and security of the EU’s critical raw material supply chains.

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