

Recent Developments in EU and UK Competition Law

1 December 2023 – 4 December 2024

© Richard Whish, KC (Hon)
Emeritus Professor of Law
King's College London

ARTICLE 101 TFEU

1. *Horizontal agreements*

PENDING ARTICLE 101 HORIZONTAL CASES BEFORE THE COMMISSION

Current investigations of horizontal agreements:

- *Atlantic farmed salmon*: unannounced inspections, 19 February 2019; statement of objections sent to six undertakings 25 January 2024
- *Recycling of cars*: unannounced inspections, 15 March 2022; CMA also investigating
- *Fashion industry*: unannounced inspections, 17 May 2022; case closed 5 April 2024
- *Online food delivery*: unannounced inspections, 6 July 2022; further inspections 21 November 2023, including no-poach agreements; formal investigation opened 23 July 2024
- *Fragrance industry*: unannounced inspections, 7 March 2023 (in conjunction with the US, UK and Switzerland); inspection decision on appeal, Cases T-263/23 (*Symrise v Commission*) and T-306/23
- *Fashion industry*: unannounced inspections, 18 April 2023
- *Synthetic turf sector*: unannounced inspections, 7 June 2023
- *Construction chemicals*: unannounced inspections, 17 October 2023 (in conjunction with the UK and Turkish authorities; the Commission has also been in contact with the DoJ)
- *Car starter batteries*: statements of objections sent to five producers and a trade association and its service provider for collusion on prices, 30 November 2023
- *New replacements tyres*: unannounced inspections, 30 January 2024. Possible price coordination, 'including via public communications'. Further inspections 18 June 2024 at a consultancy firm; inspection decision on appeal Case T-188/24 *Michelin v Commission*, not yet decided
- *Financial services*: unannounced inspections of two firms in the financial services sector, 23 September 2024 (understood to be Nasdaq and Deutsche Börse)

- *Data centre construction sector*: unannounced inspections 18 November 2024; in particular possible no-poach agreements

Cartel decisions

- ***Ethanol***

Commission decision of 7 December 2023 imposing a fine of €47.7 million on Lantmännen for manipulation of the wholesale benchmark for ethanol. Note the following:

- Abengoa had already settled this case with the Commission
- the Commission had closed the case against Alcogroup with no adverse finding
- the agreement involved the coordination of trading conduct; a limitation of the supply of physical ethanol in the Rotterdam area that could end up in the 'Market on Close' window; and the exchange of commercially sensitive information
- On appeal Case T-94/94 *Lantmännen v Commission*, not yet decided

- ***Prague-Vienna rail services***

Commission decision of 23 October 2024 imposing a fine of €48.7 million on České dráhy and Österreichische Bundesbahnen for collusion over the supply of used wagons to a competitor RegioJet for use on international rail services. Note the following:

- Österreichische Bundesbahnen given 45% reduction in its fine for leniency
- Collusion ran from 2012 to 2016
- Commission stresses rail transport as an environmentally friendly form of transport and the importance of competition in the sector

GENERAL COURT

- ***EIRD***

- Case T-106/17 *JP Morgan Chase v Commission*, judgment of 20 December 2023, EU:T:2023:832

Judgment upholding the Commission's decision in *EIRD*, except that the reasoning in the statement of objections was inadequate in relation to the level of the fine; the General Court assessed the level of the fine at the same amount as in the Commission's decision. On appeal Case C-160/24 P *JP Morgan v Commission*, not yet decided

- Case T-113/17 *Crédit Agricole v Commission*, judgment of 20 December 2023, EU:T:2023:83

Judgment substantially upholding the Commission's decision in *EIRD* except, apart from the inadequacy as in *JP Morgan*, as regards CA's contribution to the SCI; the General Court reduced the level of the fine by €4 million from the amount in the Commission's decision. On appeal Case C-191/24 P *Crédit Agricole v Commission*, not yet decided

- ***Canned vegetables***

- Case T-59/22 *Conserve Italia v Commission*, judgment of 4 September 2024, EU:T:2024:574

Judgment upholding the Commission's decision in *Canned vegetables*. On appeal Case C-762/24 P, not yet decided

- ***Supersovereign bonds***

- Cases T-386/21 and T-406/21 *Crédit Agricole SA and UBS Group AG v Commission*, judgment of 6 November 2024, EU:T:2024:776

Judgment dismissing appeals against the Commission's decisions of 28 April 2021

COURT OF JUSTICE

- ***European Super League***

- Case C-333/21 *European Super League v FIFA and UEFA*, judgment of 21 December 2023, EU:C:2023:1011

Judgment on the application of Articles 101 and 102 to the rules of FIFA and UEFA; note the judgment of the Spanish Court, Case n 69/2024 of 24 May 2024, finding that the rules of FIFA and UEFA on prior authorisation violate Articles 101 and 102 by object, that Wouters is inapplicable to object restrictions and that Article 101(3) was not satisfied

- ***Belgian Football League***

- Case C-680/21 *Royal Antwerp FC v Royal Belgian FA*, judgment of 21 December 2023, EU:C:2023:1010

Judgment on the application of Article 101 to the 'home player' rule of the URBSFA

- ***International Ice Skating***

- Case C-124/21 P *International Skating Union v Commission*, judgment of 21 December 2023, EU:C:2023:1012

Judgment confirming the Commission's finding that the rules of the ISU infringed Article 101, and reversing the judgment of the General Court on the submission of disputes to arbitration in Switzerland

- ***Notaries***

- Case C-128/21 *Lietuvos notaru rumai v Lithuanian Competition Authority* EU:C:2024: 49, judgment of 18 January 2024

Judgment on the application of Article 101 to decisions of the chamber of notaries in Lithuania fixing the methods of calculation fees. Supreme Administrative Court of Lithuania confirmed the findings of the Lithuanian Competition Authority that article 101 was infringed, 15 November 2024

- ***Bulgarian legal fees***

- Case C-438/22 *Em akaunt BG EOOD*, EU:C:2024:71

Judgment on the application of Article 101(1) TFEU in conjunction with Article 4(3) TEU to a national regulation fixing minimum lawyers' fees: obligation to disapply the regulation

- ***Trucks***

- Case C-251/22 P *Scania AB v Commission* EU:C:2024:103, judgment of 1 February 2024

Judgment rejecting Scania's appeal against the General Court's upholding of the Commission's decision

- ***Perindopril***

- Case C-176/19 P *Commission v Servier SAS*, judgment of 27 June 2024, EU:C:2024:549

Judgment setting aside some of the judgment of the General Court on Servier's agreement with KRKA, both in relation to Article 101 and 102 TFEU; case referred back to the General Court

- Case C-151/19 P *Commission v KRKA*, judgment of 27 June 2024, EU:C:2024: 546

Judgment setting aside the judgment of the General Court on Servier's agreements with KRKA; case referred back to the General Court

- Case C-198/19 *Teva UK v Commission*, judgment of 27 June 2024, EU:C:2024:551

Judgment rejecting Teva's appeal in the *Perindopril* case; see similarly Cases T-144/19 *Lupin v Commission*, T-164/19 *Niche Generics v Commission*, T-166/19 *Unichem v Commission* and T-197/19 *Mylan v Commission*

- ***Portuguese Banks***

- Case C-298/22 *Banco BPN/BIC Português and Others v AdC*, judgment of 29 July 2024, EU:C:2024:638. Fines of €225 million upheld by the Competition Court 20 September 2024

Judgment on whether the exchange of information between Portuguese banks could amount to a restriction of competition by object

- ***Football transfers***

- Case C-650/22 *Federation Internationale de Football Associations v BZ*, judgment of 4 October 2024, EU:C:2024:824

Judgment on the application of Article 101 to FIFA's rules on the transfer of footballers

2. *Vertical agreements*

COMMISSION DECISIONS

- ***Chocolate, biscuits and coffee***

Fine of €337.7 million imposed on Mondelēz for infringements of both Article 101 and 102 involving the restriction of cross-border trade, 23 May 2024

- ***Clothing***

Fines of €5.7 million imposed on Pierre Cardin and Ahlers for restricting cross-border trade in Pierre Cardin products, 28 November 2024

COURT OF JUSTICE

- ***Online reservation systems***
 - Case C-264/23 *Booking.com v 25hours Hotel Company Berlin*, judgment of 19 September 2024, EU:C:2024:764

Judgment on the application of Article 101 TFEU to price parity clauses and on the application of the VBER

ARTICLE 102

PENDING ARTICLE 102 CASES BEFORE THE COMMISSION

- *Public Power Corporation of Greece* – formal investigation of Greek wholesale electricity market launched 16 March 2021; statement of objections sent 7 February 2024; oral hearing 24 July 2024
- *EPEX Spot* – formal investigation of possible foreclosure of the market for intraday trading of electricity launched 30 March 2021; case closed 25 July 2024 following changes to the regulatory regime for intraday trading of electricity
- *Google* – formal investigation of Google's behaviour in online advertising technology services opened 22 June 2021
 - Statement of objections sent 14 June 2023
- *Natural gas in Germany* – the Commission carried out unannounced inspections at the premises of several companies in Germany active in the supply, transmission and storage of natural gas, 31 March 2022
- *Energy drinks*: unannounced inspections, 21 March 2023
- *Medical devices for cardiovascular applications*: unannounced inspections, 19 September 2023
- *Microsoft* – formal investigation of whether Microsoft is guilty of tying or bundling Teams with Office 365 and Microsoft 365
 - Statement of objections sent 25 June 2024
- *Animal health sector* – the Commission carried out unannounced inspections at a pharmaceutical company in Belgium, Zoetis, which is a global animal health company, because of possible abuse of a dominant position
 - Statement of objections sent 26 March 2024: acquisition of a late-stage pipeline product followed by termination of the development programme
- *EKO-KOM* – the Commission has sent a Letter of Formal Notice to Czechia that it may have infringed Article 106 in conjunction with Article 102 by appointing EKO-KOM as the only company authorised for the collection and recovery of packaging waste for over two decades, 11 June 2024

- *Cover glass* – formal investigation of possible violations of Article 102 by Corning – exclusive sourcing obligations, exclusivity rebates and ‘English clauses’; also patent no-challenge clauses
 - Commitments subject to market testing, 25 November 2024

COMMISSION DECISION

- ***Music streaming***

- *Apple*, Commission decision of 4 March 2024

Commission decision imposing a fine of €1.8 billion for unfair trading conditions in the form of anti-steering obligations imposed on music streaming services. On appeal Case T-260/24 *Apple v Commission*, not yet decided

- ***Chocolate, biscuits and coffee***

Fine of €337.7 million imposed on Mondelēz for infringements of both Article 101 and 102 involving the restriction of cross-border trade, 23 May 2024

- ***Copaxone***

Fine of €462.6 million imposed on Teva for abuse of a dominant position by misusing patent procedures and systematically disparaging a competitor's product, 31 October 2024

- ***Facebook Marketplace***

Fine of €797.2 million imposed on Facebook for abuse of a dominant position through tying and the imposition of unfair trading conditions

COMMISSION COMMITMENTS DECISIONS

- *Renfe*

The Commission has accepted commitments from Renfe to supply content and real-time data to rival ticketing platforms (and related matters), 17 January 2024

- *Apple 'tap and go'*

The Commission has accepted commitments from Apple to provide access to 'tap and go' technology on iPhones, 11 July 2024

- *Monofer*

The Commission has accepted commitments from Vifor in relation to the disparagement of Monofer, a competitor of Vifor's intravenous iron medicine, Ferinject, 22 July 2024. Summary of decision published 15 November 2024

GENERAL COURT

- *Google Adsense*

- Case T-334/19 *Google v Commission*, judgment of 18 September 2024, EU:T:2024:634

Judgment annulling the Commission's decision in Google Adsense

- *Qualcomm predation*

- Case T-671/19 *Qualcomm v Commission*, judgment of 18 September 2024, EU:T:2024:626

Judgment upholding the Commission's finding of predatory pricing on substance but reducing the fine slightly (€242 million to €238 million) due to an error as to the duration of the infringement. On appeal to the Court of Justice, Case C-819/24 P, not yet decided

COURT OF JUSTICE

- ***European Super League***

- Case C-333/21 *European Super League v FIFA and UEFA*, judgment of 21 December 2023, EU:C:2023:1011

Judgment on the application of Articles 101 and 102 to the rules of FIFA and UEFA

- ***Perindopril***

- Case C-176/19 P *Commission v Servier SAS*, judgment of 27 June 2024, EU:C:2024:549

Judgment setting aside some of the judgment of the General Court on Servier's agreement with KRKA, both in relation to Article 101 and 102 TFEU; case referred back to the General Court

- ***Google shopping***

- Case C-48/22 P *Google LLC v Commission*, judgment of 6 September 2024, EU:C:2024:726

Judgment upholding the General Court's decision in *Google Shopping* which upheld the Commission's decision

- ***Intel***

- Case 240/22 P *Commission v Intel*, judgment of 24 October 2024, EU:C:2024:915

Judgment rejecting the Commission's appeal against the General Court's *Intel* judgment

**COMMISSION INITIATIVE ON GUIDELINES AND GUIDANCE ON
EXCLUSIONARY ABUSES**

The Commission has amended its Guidance on Article 102 Enforcement Priorities and has launched a Call for Evidence in relation to Guidelines on the same topic, 27 March 2023

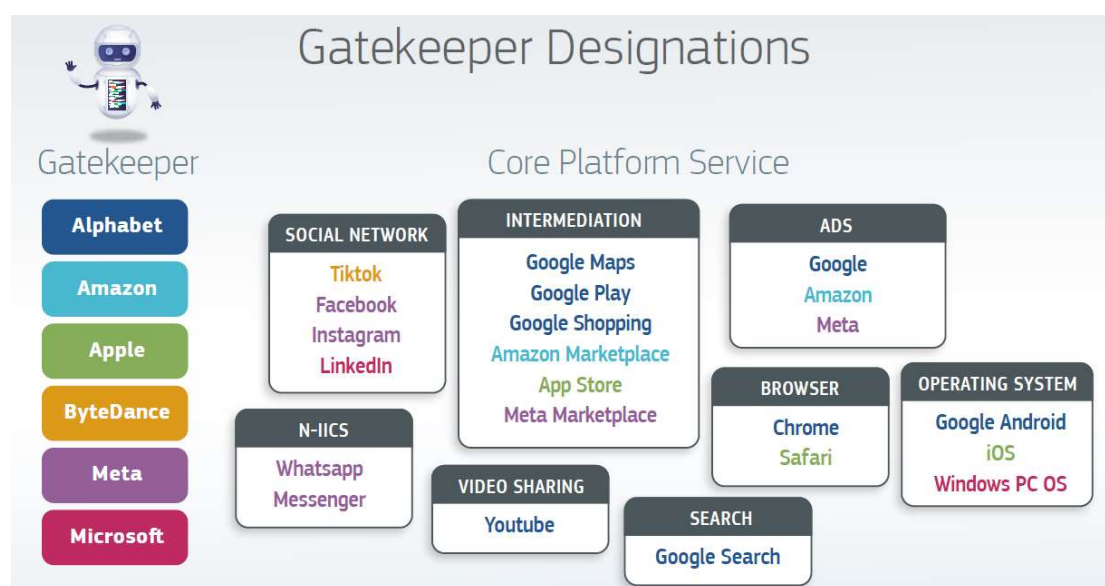
- Draft *Guidelines on the application of Article 102 of the Treaty on the Functioning of the European Union to abusive exploitative conduct by dominant undertakings* published 1 August 2024; consultation open until 31 October 2024

DIGITAL MARKETS ACT

COMMISSION

Gatekeeper designations

- **6 September 2023:** the Commission designated six gatekeepers in relation to 22 core platform services:



- Obligations become binding 7 March 2024
- Note that there are various appeals against designation:
 - Case T-1077/23 *Bytedance v Commission*
 - Application for interim relief to suspend designation dismissed for lack of urgency 9 February 2024, EU:T:2024:94
 - Appeal rejected, 17 July 2024, EU:T:2024:478
 - On appeal, Case C-627/24 *Bytedance v Commission*, not yet decided
 - Case T-1080/23 *Apple v Commission*, not yet decided
 - Case T-1078/23 *Meta Platforms Ireland v Commission*, not yet decided

Market investigations

- **5 September 2023:** the Commission opened four market investigations as to whether Microsoft and Apple should not be designated in relation to certain core platform services, despite meeting the thresholds in the DMA
 - 13 February 2024: the Commission adopted four decisions deciding that the following will **not** be designated:
 - Apple's **iMessage** (messaging service): NB this decision is on appeal, Case T-214/24, on the basis that it is wrongly predicated on the finding that iMessage is a number-independent interpersonal communications service
 - Microsoft's **Bing** (online search), **Edge** (web browser) and **Microsoft advertiser** (online advertising)
 - The Commission's decision not to designate Microsoft Edge is on appeal, Case T-357/24, *Opera v Commission*, not yet decided

- **6 September 2023:** the Commission opened a market investigation as to whether Apple should be designated as a gatekeeper in relation to iPadOS, despite not meeting the thresholds in the DMA
 - 29 April 2024: the Commission adopted a decision that designates Apple with respect to iPadOS

- **1 March 2024:** the Commission opened three market investigations as to whether Booking.com, Bytedance and X should be designated as gatekeepers
 - 14 May 2024: Booking.com designated in relation to its online intermediation service Booking.com; obligations become binding on 14 November 2024
 - X Ads and TikTok Ads not designated
 - Market investigation launched of online social networking service X; not designated **13 October 2024**

Gatekeeper non-designations

- **6 September 2023:** the Commission decided not to designate Alphabet/Gmail, Microsoft/Outlook.com and Samsung/Samsung Internet Browser, despite meeting the thresholds in the DMA

Templates

- **9 October 2023:** the Commission published a template for compliance reports as required by Article 11 DMA
- **12 December 2023:** the Commission published a template for reporting on consumer profiling techniques as required by Article 15 DMA
- **6 March 2024:** Commission Annual Report on the DMA, COM(2024) 106 final
- **7 March 2024:** the obligations on the gatekeepers designated on 6 September became binding
- **25 March 2024:** non-compliance investigations opened against Alphabet, Apple and Meta
 - 24 June 2024: the Commission has sent preliminary findings to Apple that it is infringing the DMA rules on steering
 - 1 July 2024: the Commission has sent preliminary findings to Meta that it is infringing the DMA rules on consumer's consent to use of their personal data
 - It has also commenced a further non-compliance investigation against Apple concerning its contract terms
- **30 April 2024:** whistleblower tool launched by Commission
- **19 September 2024:** the Commission has started two 'specification proceedings' under Article 8(2) DMA against Apple to assist it in complying with Article 6(7)

PRACTICE AND PROCEDURE AT EU LEVEL

GENERAL COURT

- ***Metal packaging***

- Case T-587/22 *Crown Holdings Inc v Commission*, judgment of 2 October 2024, EU:T:2024:661

Unsuccessful appeal against Crown's complaint that this investigation should not have been transferred from Germany to the Commission in Brussels

See also to the same effect *Silgan v Commission*, EU:T:2024:662

- ***Portuguese and Spanish telecommunications***

- Case T-181/22 *Pharol, SGPS, SA v Commission*, judgment of 2 October 2024, EU:T:2024:668

Judgment dismissal an appeal by Pharol (formerly Portugal Telecom) against the fine imposed in it in the Commission's second decision in the *Telefónica/Portugal Telecom* case

COURT OF JUSTICE

- ***Google search***

- Case C-605/21 *Heureka Group s.a. v Google LLC*, judgment of 18 April 2024, EU:C:2024:324

Judgment on limitation periods under Article 10 of the Damages Directive

- ***Trucks***

- Case C-425/22 *MOL Magyar Olaj- és Gázipari Nyrt v Mercedes-Benz Group AG*, judgment of 4 July 2024, EU:C:2024:578

Judgment on where the parent of a subsidiary can bring an action for damages where the harm was suffered by the subsidiary

- Case C-632/22 *Volvo AB v Transsaqui SL*, judgment of 11 July 2024, EU:C:2024:601

Judgment on the service of court documents on the subsidiary of a parent company defendant

- ***Gas***

- Case C-255/22 P *Orlen SA v Commission*, judgment of 26 September 2024, EU:C:2024:790

Judgment upholding the Commission's commitment decision in the *Gazprom* case

COMMISSION DECISION

- ***IFF***

Commission decision of 24 June 2024 for deleting WhatsApp message during a surprise inspection: fine of €15.9 million

EU COMPETITION POLICY

REVIEW OF REGULATION 1/2003

The Commission published its findings of the evaluation of Regulations 1/2003 and 773/2004 on 5 September 2024: SWD(2024) 217 final

SUSTAINABILITY AGREEMENTS IN AGRICULTURE

The Commission launched a public consultation on a draft proposal for guidelines on sustainability agreements in the agriculture sector on 10 January 2023 pursuant to Article 210a of Regulation 1308/2013 as amended by Regulation 2021/2117. The guidelines were adopted on 7 December 2023

GUIDELINES AND GUIDANCE ON EXCLUSIONARY ABUSES

The Commission has amended its Guidance on Article 102 Enforcement Priorities and has launched a Call for Evidence in relation to Guidelines on the same topic, 27 March 2023 (see Article 102 above)

- Draft *Guidelines on the application of Article 102 of the Treaty on the Functioning of the European Union to abusive exploitative conduct by dominant undertakings* published 1 August 2024

REFORM OF THE EXEMPTION FOR TECHNOLOGY TRANSFER

The Commission launched a consultation on the block exemption for technology transfer on 17 April 2023

- Findings of evaluation published 22 November 2024

EU-UK COOPERATION AGREEMENT

- Directives adopted for the Commission to negotiate an agreement on cooperation and the exchange of information in competition matters, 1 June 2023
- Technical negotiations completed 29 October 2024. Agreement now requires approval by the Council and Parliament

PHARMACEUTICAL SECTOR

- On 26 January 2024 the Commission published a report on enforcement of the antitrust and merger rules by the Commission and NCAs in the period 2018-2022

NOTICE ON MARKET DEFINITION

- The Commission has adopted its new *Notice on Market Definition Notice*, 8 February 2024, OJ [2024] C/2024/1645

ARTIFICIAL INTELLIGENCE

- See the Commission's Competition Policy Brief *Competition in Generative AI and Virtual Worlds*, September 2024

PENDING ARTICLE 267 REFERENCES

- Case C-142/20 *Analisi G. Caraccioco s.r.l. v Regione Siciliana*: does Regulation 765/2008 create a monopoly contrary to Article 102? (Article 4(1) of the Regulation provides that each MS will appoint only one national accreditation body)
- Case C-2/23 *FL and KM Baugesellschaft m.b.H. & Co KG*: reference from Austria concerning the sharing of leniency documents with criminal prosecutors. Opinion of AG Szpunar 24 October 2024, EU:C:2024:924
- Case C-233/23 *Alphabet v AGCM*: a reference from Italy on aspects of the refusal to deal doctrine in the context of the development of applications software. Opinion of AG Medina 5 September 2024, EU:C:2024:694
- Case C-253/23 *ASG 2 v North Rhine-Westphalia*: a reference from Germany asking whether a German rule restricting collective claims undermines the *effet utile* of competition law. Opinion of AG Szpunar 19 September 2024, EU:C:2024:767
- Case C-258/23 *IMI v AdC*: a reference from Portugal on the compatibility with Article 7 CFEU of the seizure of e-mails during surprise inspections. Opinion of AG Medina 20 June 2024, EU:C:2024:537
- Case C-209/23 *FT and RRC GmbH v FIFA*: a reference from Germany on the remuneration of footballers' agents
- Case C-393/23 *Macedonian Thrace Brewery v Athenian Breweries*: a reference from the Netherlands in relation to jurisdiction arising out of a decision of the Greek Competition Authority. Opinion of AG Kokott 26 September 2024, EU:C:2024:798
- Case C-428/23 *ROGON GmbH v Deutscher Fussballbund*: a reference from Germany on the application of *Wouters* and *Meca-Medina* to the rules in Germany on footballers' agents
- Case C-569/23 *Toplofikatsia*: a reference from Bulgaria on legal fees established by regulation there
- Case C-581/23 *Beevers Kaas BV v Albert Heijn België NV*: a reference from Belgium on the interpretation of Article 4(b)(i) of Regulation 330/2010
- Case C-133/24 *CD Tondela*: a reference from Portugal on the compatibility of an agreement on the (non)-hiring of footballers with Article 101 TFEU/*Wouters*
- Case C-161/24 *OSA*: a reference from Czechia on the lawfulness of fees/trading terms and conditions of a copyright collecting society in that country

- Cases C-510/23, 425/24 and 491/24 *Trenitalia SpA* etc.: references from Italy on Italian procedural rules/compatibility with the effet utile of EU competition law: Opinion of AG Pikamäe, EU:C:2024:705

COMPETITION ACT 1998 AND ARTICLES 101 AND 102:
ENFORCEMENT AT UK LEVEL

CURRENT CMA/SECTORAL REGULATOR CIVIL INVESTIGATIONS

- Draft commitments regarding Google Play's rules, 19 April 2023; case closed 21 August 2024
- The CMA has made provisional findings against five banks for exchanging sensitive information on UK bonds between 2009 and 2013, 24 May 2023
- *CMA v Another*: judgment of 6 November 2023, [2023] CAT 68 on 'closed' judgments; the judgment is published as [2023] CAT 62; see further *The King v Sika Ltd etc.*, 22 April 2024, [2024] EWHC 904 (Admin) reversing the judgment of the CAT – errors of law and exceeding its powers
- The CMA has provisionally found that Google has abused its dominant position in pen-display ad tech, 6 September 2024

TABLE OF CMA AND SECTORAL REGULATION DECISIONS AND APPEALS

Recent Developments in EU and UK Competition Law
The Law Society, 5 December 2024
 © Richard Whish, King's College London

<p><i>Hydrocortisone</i></p>	<p>15 July 2021</p>	<p>Fines of £266 million for abusive prices that were excessive and unfair</p>	<p>On appeal Case 1407/1/12/21 etc <i>Allergan plc v CMA</i>: decision on liability for abuse upheld, the fine on Allergan to be reduced, 18 September 2023, [2023] CAT 56</p> <p>The appeals against the findings of a cartel infringement in relation to ‘the 10mg Agreement’ were allowed on the basis of a failure of due process on the CMA’s part on 8 March 2024, [2024] CAT 17; this was reversed by the Court of Appeal on 6 September 2024, [2024] EWCA (Civ) 1023</p> <p>The CAT upheld the finding of a cartel in relation to the ‘20 mg Agreement’, 29 September 2023, [2023] CAT 57</p>
------------------------------	-------------------------	---	---

Recent Developments in EU and UK Competition Law
The Law Society, 5 December 2024
 © Richard Whish, King's College London

			The CMA's fines in relation to the 20 mg Agreement were upheld 29 April 2024, [2024] CAT 29
<i>Prochlorperazine</i>	3 February 2022	Fines of £35 million for infringing the Chapter I prohibition by agreeing to prevent competition in the relevant market	Decision annulled on appeal Cases 1432/1/12/22 etc <i>Advanz Pharma Holdings Ltd v CMA</i> , 23 May 2024, [2024] CAT 36
<i>Phenytoin sodium capsules</i>	21 July 2022	Fines of £70 million (£63 million on Pfizer, £6.7 million on Flynn) for infringing the Chapter II prohibition by charging excessive prices	Decision 'remade' on appeal Cases 1524/1/12/21 etc <i>Pfizer v CMA</i> , [2024] CAT 65; fines of £69 million
<i>BMW</i>	6 December 2022	Penalty on BMWAG for Failing to reply to an RFI	Decision annulled on appeal to the CAT, <i>BMW v CMA</i> [2023] CAT 7; judgment reversed by the Court of Appeal <i>CMA v BMWAG</i> [2023] EWCA Civ 1506, 17 January 2024

MISCELLANEOUS PUBLIC ENFORCEMENT AND POLICY MATTERS

- The CMA has consulted on environmental sustainability, 29 September 2021; advice to Government published 14 March 2022; *Green Agreements Guidance* published 12 October 2023
 - The CMA has given informal guidance to the Fairtrade Foundation on bananas, coffee and cocoa, 14 December 2023
 - The CMA has given informal green guidance in WWF-UK: WWF Basket – Climate Action, 19 March 2024
 - The CMA has published a *Submission guide* for stakeholders seeking informal guidance, 15 April 2024

- The CMA has consulted on whether the SoS should adopt a block exemption for liner shipping consortia; consultation on proposed amendments published 19 January 2023; provisional decision not to do so 17 November 2023; advice not to do so 9 February 2024

- CMA research report on labour markets, 25 January 2024 and speech of Sarah Cardell on the same day

- The CMA is reviewing the *Public Transport Ticketing Schemes Block Exemption Order*, 22 February 2024
 - 20 September 2024: the CMA is proposing to recommend to the Secretary of State that the block exemption should be continued

- The CMA is reviewing the *Rail, Road and Inland Waterway Block Exemption*, 11 March 2024

- The CMA has published its Annual Plan for 2023/2024, CMA171, 21 March 2024

- Digital Markets, Competition and Consumers Act received Royal Assent, 24 May 2024
 - Digital Markets, Competition and Consumers Act 2024 in effect from 1 January 2025: SI/1226

- Draft Guidance awaiting approval by the Secretary of State
- The CMA has called for inputs on the future of the block exemption for technology transfer agreements, 26 July 2024
- The CMA has published its *Annual Report and Accounts for 2023/24*, 30 July 2024
- The CMA is consulting on an updated version of its guidance on the CMA's investigation procedures in Competition Act 1998 cases, 2 August 2024
- The CMA has published its third *State of UK Competition Report*, 24 October 2024

DAMAGES ACTIONS IN THE CAT UNDER THE COMPETITION ACT 1998

- ***Trucks***
 - Case 1282/7/7/18 *UK Trucks Claim Ltd v Fiat Chrysler Automobiles Ltd* and Case 1289/7/7/18 *Road Haulage Association Limited v Man SE and Others*: applications for CPOs in **follow-on actions** in relation to the *Trucks* cartel
 - **Application for CPO successful**, 8 June 2022, [2022] CAT 25; the CAT preferred the RHA to the UKTC application and granted the CPO on an **opt-in basis**
 - Permission to appeal granted 28 October 2022, [2022] CAT 48; appeals rejected 25 July 2023, [2023] EWCA Civ 875
 - Cases 1284/5/7/18 *Royal Mail Group Ltd v Daf Trucks N.V.* etc: **follow-on action** for damages in relation to the *Trucks* cartel; this case was joined with Case 1290/5/7/18 *BT Group v Daf Trucks N.V.*
 - Judgment awarding damages 7 February 2023, [2023] CAT 6
 - Appeal rejected 27 February 2024, [2024] EWCA Civ 181

- Permission to appeal to the Supreme Court refused, 2 August 2024

- Note that further cases arising from the *Trucks* cartel have been transferred from the High Court to the CAT

- ***Boundary zone fares***
 - Cases 1304 and 1305/7/7/18 *Gutmann v South Western Trains etc.*: applications for CPOs in **standalone cases** claiming damages for excessive prices for certain train tickets
 - **Application for CPO successful**, 19 October 2021, [2021] CAT 31
 - The Court of Appeal gave permission to appeal, but rejected it: judgment of 28 July 2022, [2022] EWCA Civ 1077
 - Collective settlement approval given (*SSWT collective settlement*), 10 May 2024, [2024] CAT 42

- ***Multilateral interchange fees – Merricks v MasterCard***
 - *Merricks v MasterCard*: Supreme Court judgment on Merrick's application for a CPO in a **follow-on claim**, 11 December 2020, [2020] EWSC 51
 - **Application for CPO successful**, 18 August 2021, [2021] CAT 28; permission to appeal refused 3 December 2021, [2021] CAT 36
 - Judgment on consequential matters 9 March 2022, [2022] CAT 13; appeal dismissed 29 November 2022, [2022] EWCA Civ 1568
 - Judgment allowing an amendment to the claim allowed 14 October 2022, [2022] CAT 43
 - Judgment on four preliminary issues 21 March 2023, [2023] CAT 15; permission to appeal refused 25 May 2023, [2023] CAT 33; ruling on costs 9 August 2023, [2023] CAT 53
 - Judgment on limitation issues 26 July 2023, [2023] CAT 49 (also applicable to the MIF Umbrella proceedings)
 - Judgment on Pass-on, 5 October 2023, [2023] CAT 60 (also applicable to the MIF Umbrella proceedings)

- Judgment on Causation and the Value of Commerce, 26 February 2024, [2024] CAT 14
- Ruling on legal causation, 21 March 2024, [2024] CAT 21
- Judgment on limitation, 19 June 2024, [2024] CAT 41
- Trial on pass on November 2024 and March 2025

- **Forex**
 - Case 1329/7/7/19 *Michael O'Higgins v Barclays Bank plc etc.*: application for a CPO in a **follow-on action** following the European Commission's *Forex* decision
 - Case 1336/7/7/19 *Phil Evans v Barclays Bank plc etc.*: application for a CPO in a **follow-on action** following the European Commission's *Forex* decision
 - Applications stayed 31 March 2022, [2022] CAT 16
 - Permission to appeal granted 11 October 2022, [2022] CAT 42
 - Judgment of the Court of Appeal 9 November 2023, [2023] EWCA Civ 876
 - **Application by Evans for CPO successful**; **opt-out basis**; other grounds of appeal dismissed

 - Case 1436/5/7/22 *Allianz Global Investors GmbH v Deutsche Bank AG etc.*: **standalone action** in relation to the manipulation of Forex manipulation
 - Ruling declining a preliminary trial on issues of limitation 11 October 2022, [2022] CAT 44

- **RoRo Services**
 - Case 1339/7/7/20 *Mark McLaren Class Representative v MOL (Europe Africa) Ltd.*: application for a CPO in **follow-on action** following the European Commission's *Maritime Car Carriers* decision
 - **Application for CPO successful**, 18 February 2022, [2022] CAT 10; **opt-out basis**
 - Appeal rejected 21 December 2022, [2022] EWCA Civ 1701; remitted to the CAT for reconsideration of case management of the dispute on pricing

- Collective settlement approval given (*CSAV collective settlement*), 6 December 2023, [2023] CAT 75; ruling on costs 12 July 2024, [2024] CAT 47
- Trial January 2025

- ***Video games/Fortnite/App Store/Google Store***
 - Case 1377/5/7/20 *Epic Games Inc v Apple Inc* and Case 1378/5/7/20 *Epic Games Inc v Alphabet Inc and Google*: **standalone actions** claiming, in essence, that Epic's Fortnite has been made unavailable to users of iPhones, iPads and Android devices
 - Judgment of 22 February 2021, [2021] CAT 4 on jurisdiction: permission to serve some of the defendants refused on *forum non conveniens* grounds

- ***Tantalum, tin and tungsten***
 - Case 1379/5/7/29 *Kerilee Investments Ltd v International Tin Association Ltd*: **standalone action** against the ITA claiming that Kerilee has been wrongfully excluded from the ITA/International Tin Supply Chain Initiative

- ***Residential landline services***
 - Case 1381/7/7/21 *Le Patourel v BT Group plc*: application for a CPO in a **standalone action** claiming that BT has charged excessive prices for certain residential landline services
 - **Application for CPO successful**, 27 September 2021, [2021] CAT 30; **opt-out basis**
 - Permission to appeal rejected by the CAT 19 October 2021 but granted by the CAP; appeal rejected 6 May 2022, [2022] EWCA Civ 593
 - Judgment awaited

- ***LTE-enabled Apple and Samsung smartphones***

- Case 1382/7/7/21 *Consumers' Association v Qualcomm Inc*: application for a CPO in a **standalone action** claiming that Qualcomm charged excessive prices for chipsets contrary to the Chapter II prohibition and, until 31 December 2020, Article 102 TFEU
- **Application for CPO successful**, 17 May 2022, [2022] CAT 20; **opt-out for class members domiciled in the UK, opt-in for class members outside the UK**
- Strike-out ruling, 17 February 2023, [2023] CAT 9

- ***Apple App Store commissions***
 - Case 1403/7/7/21 *Dr Rachael Kent v Apple Inc and Apple Distribution International Ltd*: application for a CPO in a **standalone action** claiming that Apple has abused a dominant position contrary to the Chapter II prohibition and, until 31 December 2020, Article 102 TFEU in relation to its iOS devices. The class consists of approximately 20 million consumers
 - **Application for CPO successful**, 29 June 2022, [2022] CAT 28; **opt-out basis**
 - Ruling rejecting Apple's application for a preliminary trial on market definition and dominance 18 October 2022, [2022] CAT 45

 - Case 1601/7/7/23 *Sean Ennis v Apple Inc*: application for a CPO in a **standalone action** claiming that Apple has abused its dominant position in relation to App Store commission. The class consists of UK-domiciled app developers
 - **Application for CPO successful**, 18 October 2024, [2024] CAT 58; **opt-out basis**

 - **Note**: these actions will proceed independently of one another, 8 November 2024, [2024] CAT 64

- ***London-Brighton rail services***
 - Case 1404/7/7/21 *Boyle and Vermeer v Govia Thameslink Railway Ltd*: application for a CPO in a **standalone action** claiming that Govia has charged excessive prices on the London to Brighton rail route contrary to the Chapter II prohibition

- **Application for CPO successful**, 25 July 2022, [2022] CAT 35; **opt-out basis (opt-in for non-UK domiciliaries)**; published 5 October 2022
- Judgment on adjournment and case management, 24 March 2023, [2023] CAT 19
- Ruling on triability, 19 October 2023, [2023] CAT 63

- ***Thameslink, Southern and Great Northern rail services***
 - Case 1425/7/7/21 *Gutmann v Govia Thamesline Railway Ltd*: application for a CPO in a **standalone action** claiming that Govia has charged excessive prices on further rail routes
 - **Application for CPO successful**, 24 March 2023, [2023] CAT 18

- ***Google Play Store***
 - Case 1408/7/7/21 *Elizabeth Helen Coll v Alphabet, Google etc*: application for a CPO in a **standalone action** claiming that Alphabet is guilty of a series of exclusionary abuses in its operation of its Play Store. The class consists approximately 20 million consumers and businesses
 - **Application for CPO successful**, 31 August 2022, [2022] CAT 39; **opt-out basis**
 - Case 1673/7/7/24 *Rodger v Google LLC*: application for a CPO in a **standalone action** claiming exclusionary abuse. The class consists of app developers

- ***Meta/Facebook***
 - Case 1433/7/7/22 *Dr Liza Lovdahl Gormsen v Meta Platforms Inc*: application for a CPO in a **standalone action** claiming that Meta has infringed Article 102 TFEU and the Chapter II prohibition
 - Application stayed 20 February 2023 for six months, [2023] CAT 10
 - **Application for CPO successful**, 15 February 2024, [2024] CAT 11; **opt-out basis**

- ***Power cables***
 - Case 1440/7/7/22 *Clare Spottiswoode v Nexans France SAS*: application for a CPO in a **follow-on action** against members of the *Power cables* cartel
 - **Application for CPO successful**, 3 May 2024, [2024] CAT 31
 - Cases 1518/5/7/22 etc *London Array Ltd and others v Nexans France SAS*: **follow-on actions** arising from the *Power cables* cartel

- ***Musical instruments***
 - Case 1437/7/7/22 *Elisabetta Sciallis v Fender Musical Instruments*: application for a CPO in a **follow-on action** combined with **standalone actions** relating to Fender's imposition of rpm for its musical instruments
 - Note that several more cases have been brought by the same claimant, against Korg, Roland, Yamaha and Casio

- ***Multilateral interchange fees***
 - Case 1441/7/7/22 *Commercial and Interregional Card Claims I Ltd v MasterCard*: application for a CPO in a **standalone action** relating to MIFs
 - NB there are other similar claims
 - Certification refused 8 June 2023, [2023] CAT 38
 - Permission to appeal on the CAT's observations on 'suitability' refused by the Court of Appeal 7 March 2024, [2024] EWCA Civ 218
 - **Application for revised CPO application successful**, 7 June 2024, [2024] CAT 39

- ***Bitcoin***

- Case 1523/7/7/22 *BSV Claims Ltd v Bittylicious Ltd*: application for a CPO in a [standalone action](#) relation to the delisting of Bitcoin Satoshi Vision by various cryptocurrency exchanges
- Judgment (Strike Out and Collective Proceedings Certification) 27 July 2024: [Application for CPO successful](#) subject to conditions

- ***iPhones***
 - Case 1468/7/7/22 *Justin Gutmann v Apple Inc*: application for a CPO [on an opt-out basis](#) in a [standalone action](#) relating to the sale of iPhones with inferior battery quality
 - [Application for CPO successful](#), 1 November 2023, [2023] CAT 67

- ***PlayStation***
 - Case 1527/7/7/22 *Alex Neill v Sony Interactive Entertainment Europe Ltd*: application for a CPO in a [standalone action](#) relation to the Sony PlayStation
 - [Application for CPO successful](#), 21.11.23, [2023] CAT 73

- ***Google ad tech self-preferencing***
 - Case 1572/7/7/22 *Claudio Pollack v Alphabet Inc*: application for a CPO in a [standalone action](#) in relation to Google's conduct in the ad tech stack that harm publishers
 - Case 1582/7/7/23 *Charles Arthur v Alphabet Inc*: application for a CPO in a [standalone action](#) in relation to Google's conduct in the display advertising market
 - Claims consolidated 26 October 2023
 - [Application for CPO successful](#), 5 June 2024, [2024] CAT 38

- ***Payment services***

- Case 1581/5/7/23 *Utilita Energy Ltd v PayPoint plc*: **standalone action** claiming infringement of the Chapter II prohibition in relation to pre-payment services
- Case 1597/5/7/23 *GLOBAL-365 plc v PayPoint plc*: standalone action claiming infringement of the Chapter II prohibition by entering into exclusivity agreements with energy suppliers (the agreements in question were the subject-matter of a commitments decision of OFGEM in 2021)

- ***Google Shopping***
 - Case 1596/5/7/23 *Whitewater Capital Ltd v Google LLC*: **standalone** and **follow-on** actions arising out of the facts of the *Google Shopping* decision
 - There are other claimants, eg Kelkoo, Infederation

- ***Google Mobile Phones***
 - Case 1606/7/7/23 *Nikki Stopford v Alphabet*: application for a CPO in a **standalone** action claiming that Google secures itself the status of default search provider on practically all mobile devices sold in the UK
 - **Application for CPO successful**, 22 November 2024, [2024] CAT 67

- ***Amazon Marketplace***
 - Case 1568/7/7/22 *Julie Hunter v Amazon Inc*: standalone action in relation to Amazon's Buy Box, causing purchasers to be overcharged
 - Case 1595/7/7/23 *Hammond v Amazon*: application for a CPO in a **standalone** action claiming that Amazon acts abusively in relation to its Marketplace and Buy Box
 - **Application for CPO successful** [2024] CAT 8, 5 February 2024: carriage dispute heard as a preliminary matter and decided in favour of Hammond

- Case 1641/7/7/24 *BIRA Trading Ltd. V Amazon.com* etc.: application for a CPO in a **standalone** action claiming that Amazon has infringed Article 102 TFEU and the Chapter II prohibition of the Competition Act in various ways
- Case 1644/7/7/24 *Stephan v Amazon.com* etc. application for a CPO in a **standalone** action claiming that Amazon has infringed Article 102 TFEU and the Chapter II prohibition of the Competition Act in various ways
- Carriage dispute heard, November 2024; ruling awaited

- ***Running shoes and accessories***
 - Case 1615/5/7/23 *Up and Running (UK) Ltd v Deckers UK Ltd*: **standalone** action claiming that the defendant has infringed the Chapters I and II prohibitions by preventing online selling by Up and Running
 - Part of the claim subject to fast-track procedure, order of 1 December 2024
 - Cost capping order 20 February 2024
 - Judgment for Up and Running finding a restriction by object 31 October 2024, [2024] CAT 61

- ***Car financing***
 - Case 1598/7/7/23 *Taylor v MotoNovo Finance*: application for a CPO in a **standalone** action claiming that the 'relevant commission arrangements' in finance agreements for the purchase of cars distort competition and lead to higher prices for purchasers of cars; see also Cases 1599 and 1600 against *Black Horse* and *Santander Consumer (UK)* respectively

- ***Apple products***
 - Case 1602/7/7/23 *Reifa v Apple and Amazon Services Europe*: application for a CPO in a **standalone** action claiming that a distribution agreement between Apple and Amazon infringes Article 101 and the Chapter I prohibition

- ***Excessive pricing for sewerage services***
 - Case 1603/7/7/23 *Roberts v Severn Trent Water Ltd*: application for a CPO in a **standalone** action claiming that misinformation provided to OFWAT had resulted in higher sewerage charges for consumers
 - CPO application heard, judgment awaited

- ***Replica kit***
 - Case 1637/5/7/24 *SportsDirect.com Retail Ltd v Newcastle United Football Company Ltd*: **standalone** action claiming that Newcastle United FC have refused to supply football replica kit to it contrary to the Chapter II prohibition and that any exclusive agreements that NUFC may have with other retailers violate the Chapter I prohibition
 - Injunctive relief refused, 12 April 2024, [2024] CAT 24; appeal rejected 15 May 2024, [2024] EWCA Civ 532
 - Trial to commence 2 February 2026

- ***Atlantic farmed salmon***
 - Case 1632/5/7/24 *Asda Stores Ltd and others v Bremnes Seashore and others*: **standalone** action by a number of retailers against members of an alleged cartel in Atlantic farmed salmon
 - Case 1643/7/7/24 *Waterside Class Ltd v Mowi Holding SA etc.*: application for a CPO in a **standalone** action claiming that consumers have been harmed by an alleged cartel in the Atlantic salmon market

- ***Songwriters' royalties***
 - Case 1634/7/7/24 *Rowntree v Performing Right Society*: application for a CPO in a **standalone** action claiming that the PRS has infringed the Chapter I and II prohibitions and Articles 101/102 through unfair royalty distribution

- ***Citalopram***
 - Case 1415/5/7/21 (T) *Secretary of State for Health and Social Care v Lundbeck Ltd*: **follow-on** action for damages
 - Claim not time-barred: 21 June 2024, [2024] CAT 42
- ***Hydrocortisone***
 - Case 1671/5/7/24 *Scottish Health Boards v Accord etc.*: **follow-on** action for damages
- ***Bulk mail services***
 - Case 1639/7/7/24 *Bulk Mail Claim Ltd v International Distribution Services plc* (formerly Royal Mail plc): application for a CPO in a **follow-on** action following OFCOM's decision that Royal Mail was guilty of abusive pricing in the bulk mail market

OTHER HIGH COURT LITIGATION

- ***Retail of mobile phones***
 - *Phones4U (In Administration) v EE and others*, [2023] EWHC 2826 (Ch), judgment of 10 November 2023 rejecting an application for damages by the administrators of Phones4U; on appeal to the Court of Appeal
- ***LCD panels***
 - *Granville Technology Group Ltd (in liquidation) v LG Display Co Ltd*, [2024] EWHC 13 (Comm), judgment of 8 February 2024 upholding a damages claim in a follow-on action following the Commission's decision on *LCD panels*

ENTERPRISE ACT 2002: MARKET INVESTIGATIONS

TABLE OF MARKET INVESTIGATION REFERENCES

Title of report	Date of reference	Date of Report	Outcome
<i>Mobile radio network for the police and emergency services</i>	25 October 2022	5 April 2023	<p>Finding of an AEC: Motorola charging the Home Office prices above the competitive level for secure communications between the emergency services</p> <p>Price cap imposed until 2029, with a review in 2026: <i>The Mobile Radio Network Services Market Investigations Order 2023</i>, 31 July 2023</p> <p>Appeal dismissed Case 1593/6/12/23 <i>Airwave Solutions Ltd v CMA</i>, 22 December 2023, [2023] CAT 76</p>
<i>Cloud gaming and mobile browsers</i>	22 November 2022	Provisional findings 22 November 2024	<p>NB: Case 1576/6/12/23 <i>Apple Inc v CMA</i>, judgment of 31 March 2023, [2023] CAT 21: CMA decision to make a market investigation reference quashed; CAT judgment reversed on appeal to the Court of Appeal, 30 November 2023, [2023] EWCA Civ 1445</p>
<i>Cloud services</i> NB: reference by OFCOM	5 October 2023		
<i>Veterinary sector</i>	23 May 2024		

TABLE OF MARKET STUDIES

Recent Developments in EU and UK Competition Law
The Law Society, 5 December 2024
 © Richard Whish, King's College London

Title of report	Date of reference	Date of Report	Outcome
<i>Housebuilding</i>	28 February 2023	26 February 2024	Complex and unpredictable planning system and speculative private development responsible for persistent under delivery of new homes Investigation opened into suspected sharing of commercially sensitive information contrary to the Chapter I prohibition
<i>Wholesale data market: benchmarks, credit ratings data and market data vendors</i> FCA	2 March 2023	29 February 2024	No case for significant intervention FCA will consider steps needed to support access to wholesale data on fair, reasonable and transparent terms.
<i>Railway station catering</i> ORR	18 June 2023		No MIR; final report 12 June 2024
<i>Infant formula</i>	20 February 2024		No MIR: 16 August 2024 Interim report 8 November 2024

Note also the CMA's report of 18 September 2023 on *AI Foundation Models* proposing a number of principles in relation to competitive AI markets

- Further concerns expressed 11 April 2024

EUROPEAN UNION MERGER REGULATION

RECENT AND CURRENT PHASE II INVESTIGATIONS

Name of case	Cleared?	Cleared with commitments?	Prohibited?
<p>Case No M. 10188 <i>Illumina/Grail</i></p> <p>NB: Article 22 request from France, Belgium, Greece, Iceland, the Netherlands and Norway</p> <p>NB further:</p> <p>Case T-227/21 <i>Illumina v Commission</i>, EU:T:2022:447, set aside on appeal to the Court of Justice Case C-611/22 P <i>Illumina v Commission</i> and Case C-625/22 P <i>Grail v Commission</i>: 3 September 2024, EU:C:2024:677 and EU:C:2024:677</p> <p>Case No M. 10493: interim measures, decision of 29 October 2021, to restore and maintain competition (Article 8((5)(a)): on appeal Case T-755/21, not yet decided</p> <p>Case M. 10938: more interim measures, decision of 28 October 2022</p>			<p>Yes (6.9.22)</p> <p>On appeal Case T-709/22, not yet decided</p>

<p>(Article 8(5)(c)): on appeal Case T-5/23, not yet decided</p> <p>Case M. 10483: fine of €432 million for gun-jumping, decision of 12 July 2023, including a symbolic fine on Grail: on appeal Case T-591/23, not yet decided</p> <p>Case M.10939: restorative measures decision 12 October 2023 (transitional and divestment): on appeal Case T-1190/23, not yet decided</p> <p>Commission approval of Illumina's unwinding plan, 12 April 2024</p>			
<p>Case No M. 10149 <i>Korean Air/Asiana</i></p>		Yes (13.2.24)	
<p>Case No M. 10896 <i>Orange/MásMóvil</i></p>		Yes (20.2.24)	
<p>Case No M. 10920 <i>Amazon/iRobot</i> NB: transaction abandoned January 2024</p>			
<p>Case No M.11033 <i>Adobe/Figma</i> NB: transaction abandoned December 2023</p>			
<p>Case No M.11071 <i>Lufthansa/ITA Airways</i></p>		Yes (3.7.24)	
<p>Case No M.11109 <i>IAG/Air Europa</i></p>			

NB: transaction abandoned August 2024			
Case FS.100011 <i>Emirates Telecommunications Group/ PPF</i> NB: first in-depth investigation under the FSR		Yes (20.9.24)	

GENERAL COURT

- Case T-64/20 *Deutsche Telekom v Commission*, judgment of 13 November, EU:T:2024:815

Judgment dismissing DT's appeal against the clearance of *Vodafone/Certain Liberty Global Assets*

- Case T-692/20 *Iliad Italia SpA v Commission*, judgment of 13 November 2024, EU:T:2024:825

Judgment dismissing Iliad's appeal against the clearance of *Vodafone Italia/TIM/INVIT.JV*

- Case T-289/24 *Brasserie Nationale and Munhowen v Commission*, not yet decided: challenge to the Commission's taking of jurisdiction over BNM's acquisition of Boissons Heintz

COURT OF JUSTICE

- Case C-297/22 P *UPS Inc v Commission*, judgment of 21 December 2023, EU:C:2023:1027

Judgment dismissing UPS's appeal against the ruling of the General Court that the Commission was not liable in damages to UPS for prohibiting the *UPS/TNT* merger

- Case C-581/22 P *thyssenkrupp AG v Commission*, judgment of 4 October 2024, EU:C:2024:821

Judgment dismissing thyssenskrup's appeal against the General Court's ruling that the Commission was correct to prohibit the Tata Steel/thyssenkrup merger

OTHER ISSUES

Note also:

- Investigation opened by the Commission against Vivendi (a) for possible gun-jumping and (b) possible breach of the commitment not to complete its acquisition of Lagardère until the Commission had approved the buyer, 25 July 2023
 - Case C-470/24 *Vivendi v Commission*
 - Case C-569/24 *Lagadere v Commission*
- The Commission has sent a statement of objections to Kingspan for providing incorrect, incomplete and misleading information during a merger investigation, 19 March 2024
- See DG COMP's *Competition Policy Brief*, April 2024, on non-price competition in EU merger control
- Seven Member States withdrew their Article 22 EUMR request to review *Microsoft/Inflection AI*, 18 September 2024
- Italy has referred Nvidia/Run:ai to the Commission under Article 22 EUMR; the transaction was reviewable under the AGCM's call-in power, 31.10.24

UK MERGER CONTROL

**PHASE 2 MERGER REFERENCES TO THE CMA
UNDER THE ENTERPRISE ACT 2002**

Title	Date of reference	Date of publication	Finding of substantial lessening of competition?	Remedy
<i>Cérélia/Jus-Rol</i> Completed merger	15 June 2022	20 January 2023	Yes	<p>Divestiture required</p> <p>On appeal Case 1579/4/12/23 <i>Cérélia v CMA</i>: dismissed 1 September 2023, [2023] CAT 54</p> <p>Appeal rejected 11 April 2024, [2024] EWCA Civ 352</p> <p>Permission to appeal to the Supreme Court refused, July 2024</p>
<i>Copart/Hills Motors</i> Completed merger	28 November 2022	14 July 2023	No NB: there had been a provisional finding of an SLC	<p>Fine of £25000 on Copart for failing to comply with a section 109 notice, 11 August 2023</p> <p>Fines of £2.5</p>

Recent Developments in EU and UK Competition Law
The Law Society, 5 December 2024
 © Richard Whish, King's College London

				million for infringements of IEO, 19 December 2023
<i>Arçelik/Whirlpool Corporation</i>	11 October 2023	7 March 2024	No	
<i>T&L Sugars Ltd/ TUKI</i>	22 March 2024	3 September 2024	No	Fine of £25000 on Tereos for failing to comply with a section 109 notice, 26 September 2024 Judgment confidentiality, 25 October 2024, [2024] CAT 62
<i>Vodafone Group plc/ CK Hutchison Holdings</i>	4 April 2024		Yes (provisional decision, 13 September 2024) Remedies working paper published 5 November 2024	
<i>Spreadex Ltd/ Sporting Index Ltd</i>	17 April 2024	22 November 2024	Yes	Sale of Sporting Index

Recent Developments in EU and UK Competition Law
The Law Society, 5 December 2024
 © Richard Whish, King's College London

Completed merger				
<i>Lindab/HAS-Vent</i>	3 May 2024	15 October 2024	Yes	Sale of two sites in Nottingham and Stoke-on-Trent
<i>Global Business Travel Group/CWT Holdings</i>	12 August 2024		Yes (provisional decision, 6 November 2024)	
<i>Boparan Private Office/ForFarmers</i>	20 November 2024			

Other matters

- Speech by Sarah Cardell ‘20 Years of Merger Control’, 27 February 2024
- CMA consultation on revised merger procedures, 21 March 2024; *CMA rules of procedure for merger, market and special reference groups* published 25 April 2024, CMA17
- *CMA rules of procedure for merger, market and special reference groups*, 25 April 2024, CMA17
- CMA Guidance *Mergers: Exceptions to the duty to refer*, 25 April 2024, CMA64
- *Microsoft/Mistral AI partnership* – not a merger, decision of 17 May 2024
- *Microsoft/Inflection* – Microsoft has acquired Inflection, but there will be no SLC, 4 September 2024
- *Amazon.com/Anthropic PBC* – partnership agreement not a merger qualifying for investigation, decision of 27 September 2024: no decision on material influence as jurisdictional criteria not met
- *Google/Anthropic PBC* – partnership agreement not a merger, decision of 19 November 2024

- Fine of £1.5 million on Viatrix for breach of IEO, 22 November 2024