



GLOBAL ANTITRUST HOT TOPICS: EU, US & GLOBAL PERSPECTIVES

KEY TAKEAWAYS

BRUSSELS, SEPTEMBER 25TH, 2025

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ATTENDEES

INSTITUTIONS / AGENCIES

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Belgian Competition Authority
Chamber of Progress
DG COMP
Mission of Japan to the European Union
Mission of the Republic of Korea to Belgium

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PROGRAM

12:00 REGISTRATION & LUNCH

12:50 FIRESIDE CHAT:
A QUICK FIRE ROUND ON WHAT IS GRABBING THE HEADLINES - HOTTEST ANTITRUST TOPICS OF THE YEAR AND WHAT LIES AHEAD

Mathew HEIM | Senior fellow, George Washington Competition & Innovation Lab, Madrid

Natalie McNELIS | Senior Correspondent, MLex Market Insight, Brussels

Presenter: Catriona HATTON | Partner, Baker Botts, Brussels

13:45 #1 ABUSE OF DOMINANCE & MONOPOLIZATION: LANDMARK CASES AND DEVELOPMENTS

Mette ALFTER | Director, Frontier Economics, Brussels

Oliver BETHELL | Director, Legal, Google, London

Angélique DE BROUSSE | Senior Legal Counsel, Competition, Johnson&Johnson, Brussels

Cristina SJODIN | Deputy Head of Unit, DG COMP, Brussels

Christopher WILSON | Partner, Baker Botts, Washington D.C.

Moderator: Paul LUGARD | Partner, Baker Botts, Brussels

15:00 COFFEE BREAK

15:30 #2 MERGERS: EU, UK & US PERSPECTIVES

Paul CUOMO | Partner, Baker Botts, Washington D.C.

Joan DE SOLÀ-MORALES | Partner, RBB Economics, Brussels

Beatriz SANZ FERNANDEZ-VEGA | Director of Competition, Telefonica, Madrid

Annemiek WILPSHAAR | Head of Unit, Mergers, DG COMP, Brussels

Moderator: Matthew LEVITT | Partner, Baker Botts, Brussels

16:45 #3 KEEPING UP WITH THE ENFORCERS: IN-HOUSE COUNSEL PERSPECTIVE

John BECKETT | General Counsel specializing in strategic leadership and risk management, Rotterdam

Hanna DANWALL | Head of Competition, Marketing & ESG, VKR Holding, Copenhagen

Santos MIGUEL LEYVA RUBIO | Antitrust Legal Counsel, ABB, Madrid

Moderator: David CARDWELL | Partner, Baker Botts, Brussels

17:45 COCKTAIL



OPENING FIRESIDE CHAT

A QUICK FIRE ROUND ON WHAT IS GRABBING THE HEADLINES- HOTTEST ANTITRUST TOPICS OF THE YEAR AND WHAT LIES AHEAD

Catriona HATTON (Partner, Baker Botts, Brussels) moderated the discussion.

Ed Duffy

Partner, Baker Botts, Washington D.C.

Political Turbulence in U.S. Antitrust

- The removal of FTC Commissioners Slaughter and Bedoya signaled presidential power over independent agencies, with Supreme Court backing.
- This precedent may extend to other independent bodies, raising concerns about broader institutional stability.
- Senior DOJ antitrust officials were also removed over internal dissent, showing the politicization of enforcement decisions.
- Staffing shortages across the FTC and DOJ have left agencies stretched thin despite heavy caseloads.
- Political influence has shaped merger reviews, with remedies tied to broader policy goals such as diversity or media commitments.
- Labor markets remain a key enforcement focus, with investigations expected to be increasingly conducted and antitrust used to complement immigration policies such as the new \$100,000 visa fee.

Remedies and Enforcement Strategy

- With limited resources, agencies are favoring negotiated settlements and behavioral remedies over full litigation.
- Remedies have included unusual commitments, such as unbiased news reporting or limits on DEI policies.
- While structural remedies remain the norm, behavioral remedies are increasingly accepted in sensitive or politically relevant industries.
- Agencies are open to compromise in close cases, reflecting a pragmatic approach under current constraints.

 Nina Trinic drafted the following synthesis for Concurrences. The views expressed in this presentation are those of the speakers and do not necessarily represent those of the institutions to which they are affiliated.



Innovation and Merger Policy

- Efficiency arguments, largely dismissed under the previous administration, are now being reconsidered, though skepticism remains.
- Authorities recognize the role of acquisitions in fostering startup growth, noting that firms are far more likely to be acquired than to go public.
- At the same time, enforcers remain alert to acquisitions of nascent competitors, such as in the Visa/Plaid case.
- The FTC appears more open than the DOJ to arguments linking mergers and innovation benefits, though differences remain modest.
- Negotiated remedies are increasingly used to preserve pro-competitive benefits while addressing overlaps.

State Enforcement, International Cooperation, and Politics

- State enforcers have become more active, increasing the risk of antitrust actions diverging from those of federal agencies.
- Some relief has been introduced through early termination of certain HSR waiting periods, though expectations on compliance remain strict.
- International collaboration on complex cases, such as the Synopsys deal, has strengthened, driven partly by U.S. resource constraints.
- Political pressure has influenced enforcement choices, but agencies continue to pursue structural remedies in areas like ad tech, aligning with European counterparts.

Gregor Langus

Vice President, Cornerstone, Brussels

Context of the Draghi Report and Competitiveness

- Europe faces a significant investment gap compared with the U.S. and China, especially in private and venture capital.
- The single market remains fragmented, limiting scale and commercialization of innovation.
- Draghi's recommendations emphasized massive investments and adapting competition tools to foster long-term resilience and innovation.
- Allowing greater tolerance for integration in strategic sectors was suggested, though this risks politicizing enforcement.
- Narrow, technocratic antitrust enforcement is seen as a safeguard against goal overload and politicization.

Efficiencies and Innovation in Merger Control

- Efficiencies can and have influenced European Commission assessments when credible claims were presented, even if not always reflected in decisions.
- The main challenge is the imbalance: speculative theories of harm are accepted more easily than efficiency arguments.
- Innovation should be treated as a key efficiency, particularly relevant in sectors like AI, semiconductors, defense, and biotech.
- The European Commission's consultation shows openness to recognizing pro-innovation efficiencies, provided strong economic evidence is offered.
- A modest lowering of the evidentiary bar for efficiencies is expected, but solid proof will still be required.



Enforcement Approach: EU vs. Global Pressures

- Enforcement should remain focused, evidence-based, and technocratic, avoiding political pressures.
- Past cases like Siemens/Alstom highlight the risks of overly cautious enforcement when global competitors scale rapidly.
- Europe risks falling behind global players like China's CRRC if efficiencies and scale benefits are ignored.
- A balanced approach is needed: rigorous harm analysis paired with greater faith in efficiencies.

Broader Regulatory Environment

- New instruments such as the FSR and FDI filings risk compounding Europe's already heavy regulatory burden.
- Excessive red tape may discourage foreign investment and run counter to competitiveness goals.
- Europe's role as a consistent, "anchor" enforcer contrasts with the UK's ability to step aside and rely on others.

Natalie McNelis

Bureau Chief, Mergermarket, PaRR, Brussels

Draghi Report and European Commission Response

- Implementation of Draghi's recommendations has been slow, creating frustration in Brussels.
- The UK CMA has reacted quickly, clearing deals early and stepping aside where possible.
- The European Commission's plan to revise guidelines stretches into 2027, widely seen as too late to address urgent competitiveness concerns.
- Within DG COMP, there remains strong confidence in past merger control, leading to caution about reforms.
- The *Alstom/Siemens* case illustrates the dilemma: clearing the merger could have raised prices in Europe without ensuring global competitiveness.
- Competitiveness is viewed as best safeguarded by maintaining strong competition rules rather than hasty political fixes.

UK CMA vs. European Commission Approaches

- The UK's CMA has reversed its previous stance and accepted behavioral remedies, as seen in *Vodafone/Three*.
- The CMA is willing to move quickly, while Brussels remains tied to slower processes.
- The CMA can sometimes defer, knowing other regulators will step in, whereas the European Commission must play a central, anchoring role.
- Divergence in enforcement culture is evident: pragmatism in the UK versus caution in the EU.



Innovation, Killer Acquisitions, and European Startups

- Innovation is increasingly central in merger cases, used both as a defense and as a concern.
- Many cases involve large US firms acquiring smaller rivals, raising fears of “killer acquisitions.”
- European champions rarely appear as buyers, limiting opportunities for innovation-based defenses in Europe.
- Policy promises to ease the path for startups are less relevant; smaller firms are more concerned about regulators blocking sales to big US acquirers.
- The Commission shows little appetite to relax scrutiny on killer acquisitions, as that would not align with protecting European innovation space.

Politics and Regulatory Burden

- New layers of regulation—FSR, FDI, and merger filings—add significant red tape, undermining competitiveness.
- Cases like ADNOC/Covestro illustrate how the FSR may deter foreign investors by signaling Europe is a difficult market to enter.
- These burdens conflict with calls to simplify the framework and foster growth.
- Political interference is visible in enforcement, as seen in the delayed Google Ad Tech fine due to transatlantic sensitivities.
- Internal tensions within the European Commission highlighted the impact of external political pressure on decision-making.
- Ribera’s public commitments to act “fast, fair, and without fear or favor” are positioned as a rejection of outside political influence.



#1 ABUSE OF DOMINANCE & MONOPOLIZATION: LANDMARK CASES AND DEVELOPMENTS

Paul LUGARD (Partner, Baker Botts, Brussels) moderated this discussion.

Cristina Sjodin

Deputy Head of Unit for antitrust case support and policy, DG COMP, Brussels

Recent Enforcement Actions under Article 102 TFEU

- The European Commission has recently adopted two important decisions in the tech sector, namely Google AdTech and Microsoft Teams.
- In the *Google AdTech* case, the Commission found that Google self-preferenced its display advertising technology services, leading to a €2.95 billion fine, and ordered Google (i) to bring these self-preferencing practices to an end and (ii) to implement measures to cease its inherent conflicts of interest along the adtech supply chain..
 - The Commission had already previously signaled a possible need for a structural remedy, which could require Google to divest part of its display advertising technology services.
 - In the *Microsoft Teams* case, the Commission identified preliminary competition concerns related to the tying of Microsoft Teams with Microsoft's productivity applications. To remedy the concerns, Microsoft offered commitments that require it, inter alia, to maintain a meaningful price difference between the productivity suites with Microsoft Teams and the suites without it.
- In the *Meta Marketplace* case, the Commission fined Meta for tying *Facebook Marketplace* with its social network and for imposing unfair trading conditions on online classified advertisement providers.
- In the *Apple App Store* case, the Commission found that Apple imposed unfair trading conditions on app developers by preventing them from informing consumers of alternative and cheaper subscription options outside the app.
- In the pharmaceutical sector, the Commission adopted two important decisions:
 - In the *Teva Copaxone* case, it intervened against practices that involved disparaging rival products and misusing patent procedures.
 - In the *Vifor* case, it accepted commitments addressing preliminary concerns regarding possible disparagement of competing products.



Growing Trend to Unfair Terms Cases – Article 102(a) TFEU

- The Commission has also pursued exploitative abuses, though less frequently:
 - *Gazprom* (2018 commitments) and *Aspen* (excessive pricing).
 - Recent cases such as *Facebook Marketplace* and *Apple App Store* also illustrate intervention against exploitative practices. This shows that the Commission is willing to use its full enforcement toolkit when justified.
 - While the legal test for unfair trading conditions is different to that of exclusionary abuses, this does mean that the standard is lower.
 - Both recent exploitative abuse decisions have been challenged in court, and the Commission will await judicial review while defending its approach.

Work on New Article 102 TFEU Guidelines

- The Commission is also continuing its work on guidelines on the application of Article 102 to exclusionary abuses, following a public consultation with stakeholders.
- One area of reflection that emerged from the consultation concerns the use of presumptions to establish an abuse. While stakeholders generally consider presumptions a suitable tool to promote an effective enforcement the debate concerned inter alia which types of practices should be subject to the use of presumptions. Recent court cases have also confirmed that presumptions apply to some forms of practices, such as the ECJ's *Intel* judgment concerning exclusivity rebates.
- Another area under debate is the exact role of the efficiency of competitors in the analysis of whether unilateral conduct by a dominant undertaking is abusive. The case law shows that the issue is complex.
- The Commission is reflecting on how to address the extensive feedback from stakeholders, as the public consultation attracted over 100 submissions. The consultation was also followed by a workshop.

- It is also keeping an eye on important upcoming judgments, such as the ECJ ruling in *Android*.
- The Commission aims to strike a balance, incorporating both case law and consultation feedback, before publishing a revised version of the guidelines.

New Technologies, Predictability, and Article 102 TFEU Enforcement

- Recent decisions demonstrate that the Commission is attentive to new market developments and new types of practices by dominant undertakings.
- Article 102 is an open and flexible clause, allowing enforcement against new products, practices, and theories of harm (unlike the DMA's closed list of conduct).
- This flexibility also entails a need for predictability, which the new Article 102 guidelines aim to provide, to the benefit of companies and also national competition authorities. It is important to keep in mind that those are the first Commission guidelines systematising the law on exclusionary abuses (as the 2009 Guidance Paper did not state the law on Art. 102, but the Commission's enforcement priorities in applying Art. 102).
- Furthermore, the draft guidelines continue to maintain an economics- and effects-based approach. They promote a workable effects-based approach, which is firmly grounded in economic thinking and conducive to a robust and effective enforcement of Article 102.



Olivier Bethell

Director Legal, Google, London

Lessons from Google's Landmark Article 102 TFEU Cases

- Three major cases remain central:
 - *Shopping case*: Focused on integrating first-party services and fair treatment of third-party services.
 - *Android case*: Addressed contractual terms with OEMs and obligations to prevent fragmentation in an open platform.
 - *Android Auto case*: Examined interoperability and third-party access in the automotive version of *Android*.
- A first lesson is that launching an open platform creates obligations. Freedom of contract alone is no longer sufficient; companies must manage the responsibilities that come with openness.
- A second lesson is the need to distinguish between integration of a new technology and the addition of a new service or product. This distinction is central in *Shopping* and *Android*, and it is highly relevant under the Digital Markets Act (DMA).

Regulatory Outlook and Engagement under the DMA

- There are clear overlaps between Article 102 enforcement and the DMA:
 - Self-preferencing in *Shopping* relates to DMA Article 6.5.
 - Choice screens in *Android* correspond to DMA Article 6.3.
 - Interoperability in *Android Auto* connects to DMA Article 6.7.
- Engagement with the Commission under the DMA has been encouraging. It allows for more technical dialogue and potentially more constructive outcomes than traditional adversarial proceedings under Article 102.
- Ecosystem differences matter:
 - *Android* is an open ecosystem built in partnership with OEMs like Samsung, which shapes contracts, product design, and compliance strategies.
 - Apple operates a closed ecosystem, making it inappropriate to apply identical rules or assumptions across both systems.

Enhancing Predictability in Regulatory Engagement

- Companies can use a range of regulatory tools to encourage dynamic, back-and-forth discussions with regulators, improving predictability for product launches under Article 102 or the Digital Markets Act (DMA).
- The rapid pace of technology, particularly AI, means that product decisions are made quickly, often outpacing rules drafted years earlier, which can delay launches if teams wait to assess regulatory implications.
- Engaging proactively with regulators can accelerate understanding and decision-making, reducing the risk of holding back product launches unnecessarily.
- Effective predictability requires courage on both sides:
 - Companies must be open and transparent in their disclosures.
 - Regulators must provide guidance, make decisions, and adapt as facts evolve.
- Workshops and ongoing engagement are means to an end, with the ultimate goal of creating a more predictable regulatory environment that supports timely innovation.

AI, Market Dynamics, and Regulatory Implications

- AI is moving rapidly, contributing to productivity gains and generating significant consumer welfare benefits, with estimates of substantial global GDP impact over the next decade.
- The AI space is dynamic and expanding, with decreasing costs, new entrants, and rapid adoption of services such as ChatGPT, which grew to 700 million users far faster than early social media platforms.
- AI integration affects market behavior and competitiveness, challenging traditional presumptions about market dominance and enforcement approaches.
- Digital markets are evolving quickly, with changing demand-side behaviors and services, requiring regulators to adapt their assessment of compliance with Article 102 and the Digital Markets Act (DMA).
- Effective regulatory oversight relies on dynamic engagement with companies and the courage to provide timely guidance and decisions in a rapidly changing environment.



Angélique De Brousse

Senior Legal Counsel Competition, Johnson&Johnson, Brussels

Evolution of Pharma Enforcement under Article 102 TFEU

- The European Commission and national authorities remain highly focused on the pharmaceutical sector, with investigations becoming increasingly complex.
- Earlier enforcement centered on pay-for-delay cases, such as Servier, which still raises important questions on market definition and continues before the courts.
- Authorities later turned to excessive pricing cases, including Aspen and several national-level investigations, which provided new frameworks for assessing exploitative abuses.
- More recently, there has been a wave of disparagement cases:
 - National authorities, including the French Competition Authority, pursued early cases such as *Sanofi* and *Janssen-Cilag*.
 - The *Novartis–Roche–Genentech* case raised novel issues, including theories of collective dominance.
 - At EU level, the Commission pursued *Vifor* (commitments) and *Teva Copaxone* (prohibition), both concerning disparagement of rival products.
- This has raised questions around how to distinguish between misleading practices and the legitimate use of facts and factual statements.

Emerging Theories of Harm and Next Steps

- In the *Teva Copaxone* case, the Commission also found an abuse in the misuse of regulatory procedures, particularly in relation to secondary patent protections (divisionals game). Although filing and withdrawing divisionals is legitimate under IP law, the Commission considered Teva's strategy of filing and then withdrawing its patents to be an abuse, as the intention was to delay market entry of a competing product.

- Authorities are showing growing interest in IP-related practices:
 - Both the Commission and the Swiss Competition Authority investigated Novartis for potentially using a “*blocking patent*”, which refers to patents that are used to prevent a competitor from entering a specific market but closed the cases after concluding the conduct stayed within normal IP protection.
- A new area of focus for antitrust authorities seems to be “product hopping”, where companies shift demand toward newer versions of medicines to weaken the competitive position of new entrants and generics of the older version. A recent case against Boehringer Ingelheim by the Romanian Competition Authority illustrates this trend.
- Going forward, patent strategies and product hopping are likely to attract closer scrutiny at both EU and national levels.

Key Pharma Cases: Disparagement and Patent Practices

- *Vifor* case:
 - It is a unique case as it is the first one to involve two branded/originator products for iron deficiencies.
 - Furthermore, although it was a commitment decision, the Commission still issued a very detailed framework for the assessment of disparagement cases.
 - *Vifor* engaged in a communication campaign targeting healthcare professionals and regulatory agencies to raise doubts about the safety and efficacy of its competitor's competing product, *Monofer*.
 - The abusive behaviour related to *Vifor* creating a false perception of *Monofer*'s material characteristics, in particular characteristics related to its safety and efficacy, while also exaggerating the health risks. The finding of the abuse, however, did not relate to the use of false statements or allegations against the competing product. Instead, the abuse was the misrepresentation, misleading and omission of actual studies and facts to discredit the competitor's product.



- This case established the legal test for disparagement at EU level:

1. Did the practice consist in the dissemination of objectively misleading information (i.e. inaccurate or incomplete information) capable of confusing its recipients and discrediting the competing product?
2. Was the practice capable of producing exclusionary effects?
3. Could the conduct be objectively justified?

- *Teva case:*

- While this case concerned the prevention of market entry of a generic drug, Teva engaged in similar practices as CSL Vifor regarding communications aimed at healthcare professionals and reimbursement authorities when a competing product entered the market.

- Teva used medical studies selectively to explicitly and implicitly question the safety and efficacy of its generic competitor and was found to have objectively misled stakeholders as a result.

- *Teva's Patent practices (divisional patents):*

- Divisionals are patents derived from a main patent, protecting different innovative aspects of a drug. Since these divisionals relate to distinct and usually narrower innovation than the parent patent, they are more often challenged for invalidity. Consequently, companies that wish to enter the market may need to challenge a divisional patent. Conversely, the patent owner may sue a prospective generic entrant.

- In order to protect its drug, Teva engaged in a strategy where it filed scattered divisional patent applications and filed complaints against market entrants for infringing its divisional patents, which created obstacles to market entry. Moreover, Teva would withdraw

its divisionals before a final decision from the patent office could assert that Teva's patent was invalid.. This prevented the generic entrant from relying on a decision to challenge Teva's other divisional patents from a same family (I.E. with very similar claims as the withdrawn patent).

- The Commission held that such practice was abusive as it was part of a strategy to delay generic market entry and imposed a heavy fine.

AI in Healthcare and Potential Competition Implications

- AI is expected to accelerate research and development in healthcare, enabling faster market entry for new products, improving clinical trial processes, patient selection, and identifying adverse effects faster. These developments are highly positive for the healthcare sector, improving efficiency and outcomes.
- Competition concerns in pharma, related to AI, are likely limited because pricing is usually not fully transparent as it is negotiated at hospital level, and there are other constraints such as regulatory approvals as well as market access considerations making algorithmic collusion less likely.
- A more likely potential risk of AI in the pharma sector relates to the exchange of sensitive information, as AI systems collect and process data that could inadvertently increase market transparency or coordination among competitors.



Mette Alfter

Director, Frontier Economics, Brussels

Key Priorities in the Abuse of Dominance Space

- Two main issues are currently top of mind: the revision of the Article 102 guidelines and the interplay between Article 102, GDPR, and the DMA in relation to data.
- The draft guidelines have drawn extensive commentary, especially on the vague concept of “*no competition on the merits*” which contrasts with the clearer principle that abuse equates to anticompetitive foreclosure.
- Several improvements would strengthen the guidelines:
 - Remove presumptions in tying and bundling cases.
 - Eliminate the artificial distinction between refusal to supply and constructive refusal to supply.
 - Introduce clear thresholds under which exclusive dealing and exclusivity rebates are not presumed abusive.
- While some changes may be considered, the underlying philosophy of the draft guidelines seems unlikely to shift away from “competition on the merits.”

Insights from the *Meta Marketplace Case*

- The *Meta* case was framed as a standard tying theory of harm, with Marketplace tied to Facebook as a separate tab that users could not access independently.
- The Commission argued that this practice harmed other online classified ad service providers, such as eBay, by leveraging Facebook’s dominance.
- However, the case did not focus on foreclosure analysis. Instead, it reflected the broader philosophy of the draft guidelines: if a dominant firm gains an advantage that is not equally accessible to rivals, this alone can be considered an abuse.
- In practice, the Commission treated Meta’s distribution advantage as abusive, even without detailed economic analysis or engagement with contrary evidence.
- It appears that the Commission is deviating from the previous Art. 102 guidance paper, which itself was developed to signify a move away from a formalistic approach to an effects-based approach.
- This case is currently under appeal and the outcome is likely going to test the approach to assessing abuse of dominance cases under the draft Art. 102 guidelines.



Interplay between Article 102 TFEU, GDPR and DMA

- When it comes to data in the digital space, the distinction between Art. 102, GDPR and DMA becomes unclear, with many being about exploitative abuses. Interestingly, the Meta class action case in the UK concerns unfair terms.
- It is likely that, in the future, there will be more cases of that nature.

Assessing AI in Digital Platforms and Competition

- AI is increasingly integrated into digital platforms, often enhancing functionality, efficiency and user experience, but it also introduces new competitive dynamics.
- Assessing AI requires analyzing how AI affects existing platform competition. The current economic toolkit remains adequate, but special attention is needed to understand AI's impact on market power and competitive interactions. This will require analysis of AI as an additional competition dimensions besides others such as distribution, data and user engagement. It may get more complicated in that one needs to take into account additional feedback loops or perhaps strengthened feedback loops. For instance, AI may provide stronger feedback loops by improving a platform's functionality which in turn translates into more users, developers and so on.
- However, the addition of an AI component to a platform, that already has a degree of market power, does not automatically reinforce market power. It is still necessary to assess the effects on competition. In some cases, it may increase competition by enabling rivals to innovate or offer differentiated services.
- To assess AI in competition, an effects-based and evidence-based approach is essential to determine whether AI is being leveraged to exclude competitors, entrench dominance, or enhance competition.

Christopher Wilson

Partner, Baker Botts, Washington D.C.

Antitrust Challenges and Patent Thickets in the U.S. Pharma Sector

- Antitrust law in the United States interacts with the statutory monopoly conferred by patents, creating tensions around drug pricing and market entry.
- Patent thickets—overlapping patents within the same product family—can be used strategically to block competition, as seen in the Humira litigation, which combined pay-for-delay and abuse of dominance claims.
- Courts have generally dismissed cases based solely on the existence of valid patents, recognizing that petitioning the federal government is protected by the First Amendment.
- The FTC's efforts to delist overprotective patents (Orange Book patents) have had limited success, with minimal impact on reducing the number of patents protecting a single product.
- Recent bipartisan legislative proposals aim to limit the enforceability of patent thickets, allowing only one patent in a family to be asserted against generics, raising both policy and practical concerns.
- The current environment is marked by unpredictable legislation and evolving antitrust enforcement, suggesting that future interpretations could allow more novel approaches to limiting statutory monopolies in the pharma sector.



#2 MERGERS: EU, UK & US PERSPECTIVES

Matthew LEVITT (Partner, Baker Botts, Brussels) moderated this discussion.

Paul Cuomo

Partner, Baker Botts, Washington D.C.

Efficiencies and the Challenge of Proof

- Early case law in the US has created skepticism toward efficiency defenses, making it hard for merging parties to rely on them.
- Introducing efficiency arguments too late in the process risks signaling that a merger is problematic. Companies often hesitate to present efficiencies at the outset, fearing regulators will interpret them as admissions of competitive harm.
- Despite this, efficiencies are central to explaining deal rationales and should not be dismissed.
- Regulators on both sides of the Atlantic face the same challenge: how to integrate efficiencies into the assessment without lowering evidentiary standards too far.
- The burden of proof remains on merging parties, but the imbalance with the proof of anticompetitive effects creates practical difficulties.
- Ultimately, most mergers are benign, which raises the question of how efficiencies should matter in the large majority of unproblematic cases.

Presumptions and Structural Indicators

- In the US, presumptions exist in merger guidelines, but they rarely drive real-world outcomes. Market-share thresholds, such as the 30% presumption of concern, are well known but seldom decisive in practice.
- The competitive analysis usually focuses on dynamics such as entry, efficiencies, and closeness of competition rather than simple concentration measures.
- Over-reliance on structural presumptions risks deterring pro-competitive or neutral mergers.
- Thresholds can serve as a screening device but should not substitute for full substantive analysis.
- In practice, most significant enforcement debates focus on industry dynamics, not concentration ratios. Presumptions have some value at the margins but should not be seen as determinative evidence of harm.
- An overly rigid application could lead to false positives and discourage beneficial transactions.

US Enforcement Under the New Administration

- Current leadership in the US has emphasized strong merger enforcement but rejected a blanket anti-merger stance.
- Agencies are granting early termination again for deals without competitive issues, restoring predictability. There is greater transparency in reviews, with agencies providing focused questions rather than broad fishing expeditions.
- While settlements are “back,” challenges remain where competitive concerns cannot be resolved.



- The overall climate is less hostile to mergers than under the prior administration, but vigilance continues. Four merger litigations are currently pending in the US, showing continued willingness to pursue cases.
- The expectation is for balanced enforcement: openness to transactions but readiness to litigate where necessary.

Transatlantic Cooperation and Case Experience

- Coordination with the EU and UK continues, but the US is showing restraint, limiting cooperation to cases where it is substantively necessary.
- This reflects a shift toward focusing strictly on domestic law and avoiding unnecessary duplication.
- The Liberty Media / Dorna (F1–MotoGP) case illustrates the importance of factual evidence and deal rationale in overcoming precedents.
- Engagement with broadcasters, internal documents, and consumer data were critical in showing broader sports competition rather than narrow head-to-head rivalry.
- The outcome demonstrates that differentiated markets and careful advocacy can change outcomes even against unfavorable precedents.

Joan De Sola-Morales

Partner, RBB Economics, Brussels

Efficiencies in Merger Control

- Efficiencies are recognized in theory as a central rationale for mergers but remain marginal in practical assessments. The existing framework—verifiability, merger specificity, and consumer benefit—is sound but applied too rigidly.
- Current practice demands near-certainty for efficiencies, creating a higher evidentiary burden than for anticompetitive effects. A balance of probabilities approach would align the standard of proof for harms and benefits.
- Merger specificity is often tested against theoretical alternatives, but the relevant benchmark should be the likely counterfactual.
- Consumer benefits are mostly assessed in the short term, neglecting longer-term innovation and productivity gains which are often the most relevant ones. If we consider harms in the long run (e.g. when assessing potential competition), we should be prepared to do the same for benefits. A more balanced approach would consider both harms and benefits over similar time horizons.
- Greater openness to efficiency arguments could encourage parties to provide more meaningful evidence.

Risks of Structural Presumptions

- Proposals for rebuttable presumptions based on market shares or concentration pose analytical risks.
- Structural indicators vary widely in probative value across industries and cannot capture all competitive dynamics. Over-reliance on such presumptions risks elevating structural measures over substantive analysis of entry, closeness, and buyer power.
- Shifting the burden to merging parties for factors like entry and repositioning would be inappropriate, as agencies have better investigatory tools.
- Uniform thresholds may ignore sectoral differences in innovation, investment cycles, and optimal market structures.



- Introducing presumptions could reignite excessive debates on market definition, reminiscent of pre-2004 practice. Presumptions might be acceptable only at very high thresholds (e.g., 75–80%), but lower levels would be problematic.
- The risk is a regression toward a form-based system, reducing flexibility and accuracy in enforcement.

Balancing Benefits and Harms

- Current assessments are heavily one-sided, focusing almost exclusively on identifying significant impediments to competition. Explicit integration of benefits into the analysis could allow for a more accurate, rounded assessment.
- Overly strict treatment of efficiencies discourages merging parties from raising them, fearing they will signal competitive concerns. A more welcoming stance by agencies could correct this signaling problem and foster fuller submissions.
- Parties should remain responsible for substantiating efficiencies, but authorities can adopt a more open, balanced engagement. Considering both harms and benefits under the same evidentiary standard would improve the quality of merger control.

Beatriz Sanz Fernandez-Vega

Director of Competition, Telefónica, Madrid

Broadening the Concept of Consumer Welfare

- Merger analysis has historically focused too narrowly on prices, overlooking dimensions such as quality, innovation, and consumer choice.
- A more complete understanding of consumer welfare should capture resilience, competitiveness, sustainability, and investment intensity. Sustainability qualifies as a parameter of competition when firms actively compete on environmental performance.
- Considering non-price factors aligns with the Commission's mandate to assess broader objectives beyond short-term price effects. A broader welfare framework would provide a fairer reflection of consumer interests in dynamic industries. The static focus on price impacts risks underestimating long-term benefits to consumers.
- Properly integrating wider welfare measures avoids politicizing merger control, keeping the analysis technical.

Dynamic vs. Static Assessment

- Traditional merger assessments rely on static models assuming perfect competition and homogenous products.
- A dynamic efficiency approach better reflects sector realities, focusing on innovation, investment cycles, and productivity gains. Dynamic theories emphasize how firms expand the “size of the cake,” not just how it is divided.
- Investment cycles in sectors like telecoms span 8–12 years, far beyond the two-to-three-year horizons often used in assessments.
- Closer engagement with financial and industry experts could improve understanding of sector-specific dynamics.
- Dynamic frameworks align more closely with how businesses perceive competition and make strategic investment choices. Incorporating dynamic efficiency reduces bias toward negative merger outcomes by considering long-term effects.
- A forward-looking perspective provides a stronger basis for assessing mergers in capital-intensive industries.



Efficiencies and Remedies

- Efficiencies should not be limited to price outcomes; out-of-market and qualitative benefits also deserve consideration.
- Current burdens of proof are disproportionate: authorities must show anticompetitive effects while merging parties must prove efficiencies.
- Authorities could play a more active role in recognizing efficiencies, potentially even assessing them ex officio. A holistic efficiency analysis would strengthen the balance between positive and negative competitive effects.
- Investment remedies can address concerns about ability to invest, as illustrated by recent UK telecom decisions. Remedies that directly commit parties to future investment can align regulatory goals with business incentives. Properly designed remedies represent a “win-win,” ensuring consumer benefits while enabling industry investment.
- Failing to account for investment abilities risks undermining long-term competitiveness and innovation.

Telecom Sector Specificities

- Scale is critical in telecom markets because higher customer take-up directly lowers network costs. Fragmented markets with too many operators reduce profitability and weaken investment capacity.
- Europe faces a significant telecom investment gap compared to the US and China, particularly in 5G rollout. European operators invest heavily relative to revenues but achieve lower efficiency due to smaller scale.
- Excessive fragmentation in fixed networks, with hundreds of wholesale operators in some markets, undermines returns.
- Allowing consolidation under the right conditions could strengthen investment ability and competitiveness in global markets.

Annemiek Wilpshaar

Head of Unit, Mergers, DG COMP, Brussels

Review of EU Merger Guidelines

- The ongoing review covers both the horizontal and non-horizontal merger guidelines, with broad consultation involving around 200 submissions.
- Stakeholders emphasized the need for guidance on innovation, dynamic effects, digitalization, and efficiencies. The Commission will now need to translate high-level principles into clear, predictable rules for businesses.
- Case law and past practice remain a foundation, but new principles must also address future challenges.
- At the Commission, we are well aware of the need to have draft Guidelines as soon as possible and we are working to advance the initial planned date of release.
- In parallel to the review, current merger regulation and case-by-case assessment continue to apply.

Innovation and Dynamic Effects

- We looked at the impact of mergers on innovation from many different angles in innovation driven markets, for instance assessing potential competition and foreclosure in nascent markets.
- We also have a track record of cases where we considered dynamic effects, for instance potential entry and expansion, incentive of alternative operators to react or planned participation in future spectrum auctions.
- On all these points, we can give further guidance based on our past case practice.
- Beyond our past case practice, we need to provide solid principles for all future cases.
- An economic study has been commissioned to evaluate mergers’ dynamic effects on innovation, investment, and productivity.



Scale, Investment and Efficiencies

- Certain companies are strongly advocating that scaling up within their own national market is “necessary” to invest.
- Scaling up is important, but there are several different ways to scale up, such as scaling up of start-ups or expanding beyond borders. Scaling up through consolidation in national markets generally leads to an increase in market power and such mergers do not provide “scale on a European basis” to be able to compete globally.
- The consultation is trying to come up with appropriate factors, metrics and evidence that may help identify those cases that may bring qualitative efficiencies.
- The level of competition remaining post-merger is critical in the assessment of (i) whether or not the efficiencies will (likely) be passed on to consumers and (ii) the significance of the harm to be compensated.
- We need to strike the right balance between immediate price effects and long-term non-price benefits.
- Investment plans that are not accepted at the stage of efficiency assessment are unlikely to resolve the same competition concerns simply because they are labelled as “remedies”. The objective of any remedy is to maintain incentives to compete rather than to regulate companies.

Digitalization and Killer Acquisitions

- Stakeholders expressed great interest in the Commission’s enforcement in digital markets in the consultation, in particular as regards acquisitions by large digital platforms with an ecosystem of products where the acquisition of complementary assets can lead to the possible strengthening or entrenchment of dominant position without any foreclosure conduct.
- The Court’s judgement in Booking/eTravli will be critical for the Guidelines. We will need to provide more guidance on the potential framework and its limiting principles.
- Stakeholders raised the problem of underenforcement in relation to killer acquisitions.
- As access to finance is a key constraint of start-ups, it is important to provide predictability when it comes to their exit strategies.



#3 KEEPING UP WITH THE ENFORCERS: IN-HOUSE COUNSEL PERSPECTIVE

David CARDWELL (Partner, Baker Botts, Brussels) moderated this discussion.

Hanna Danwall

Head of Competition Law, Senior Director, VRK Holding, Copenhagen

Updating Compliance Programs in a Changing Enforcement Landscape

- Compliance programs must be continuously updated, as new risks constantly emerge, such as HR practices, sustainability cooperation, data access, price signaling, and disparagement.
- If compliance programs are not maintained, they quickly become stale and outdated, leaving businesses exposed to unexpected risks.
- Unusual cases, such as the *French BPA case* where non-competing companies were involved in a cartel, show that some risks are difficult to anticipate but still need to be addressed.
- Enforcement is expanding globally, with authorities in Asia and the Middle East moving beyond traditional cartels, such as bid rigging, and increasingly scrutinizing technology markets, following Europe's lead.

Managing Regulatory Uncertainty and Legacy Risks

- Businesses face regulatory uncertainty in the US, where enforcement priorities may shift depending on political administrations.
- Despite temporary dips, enforcement thresholds have trended upwards over time, and companies should not assume lasting leniency.
- Companies must remain attentive to legacy risks, as past practices may still create exposure.
- Adopting and maintaining a high compliance standard, such as the EU benchmark, is safer than lowering frameworks to match less stringent jurisdictions, as adapting to the “lowest common denominator” can leave companies exposed to legacy risks and significant liabilities.

Dawn Raids, Price Transparency, and Compliance Risks

- Recent developments have made it more viable to challenge national dawn raids, offering greater clarity and potential for positive outcomes compared to past experiences.
- Some national authorities, such as in Portugal, have issued dawn raids without proper court authorization, highlighting the importance of legal oversight and procedural compliance.
- The Norwegian *Price Hunter case* illustrates the risks of inter-competitor price transparency: sharing or collecting competitors' pricing data—even if publicly accessible—can be considered anti-competitive and result in significant fines, confirming that public availability does not provide a safe harbour when it reduces uncertainty between competitors.
- Companies should regularly review and adapt internal processes that create price transparency among competitors to ensure they do not inadvertently facilitate collusion or other prohibited practices.



Challenges in AI Tools and Compliance Implementation in Complex Acquisitions

- Current AI and compliance tools are not yet mature or reliable enough, and budget constraints further limit deployment; companies should avoid rushing into untested solutions and ensure that any adoption is fit-for-purpose, though there is no immediate risk to in-house or external legal roles.
- Implementing compliance solutions in newly acquired, family-owned European subsidiaries—especially in markets with relative market power—is highly challenging due to organizational immaturity and varying dependency dynamics.

John Beckett

General Counsel, Freelance, London

Navigating Increasing Regulatory Scrutiny in Transactions

- Businesses face heightened complexity and unpredictability in clearance timelines and outcomes due to expanded regulatory powers, with enforcement authorities exercising greater scrutiny, including interventions in below-threshold deals and through retroactive interventions
- These developments require earlier and deeper engagement with regulators, starting from deal structuring and due diligence through to execution.
- Robust internal information management is essential, with clear communication lines, improved storage protocols, audit procedures, and ongoing staff training to avoid risky language in documents and correspondence.
- Companies should conduct quarterly internal audits, scenario-based exercises, and cross-functional competition risk assessments to anticipate regulator concerns, especially in sensitive sectors like tech and life sciences.
- Proactive measures include advocating for economically grounded enforcement limits and engaging in sector-specific consultations or coalitions to seek greater regulatory clarity.



The Need for Robust and Scalable Compliance Programs

- Regulatory approaches can change quickly due to shifts in government, scandals, or global events, creating uncertainty for companies.
- For multinationals, reputational risks must be managed globally, since a single local issue can damage the entire organization.
- Companies need compliance programs that are broad, scalable, and adaptable to local nuances, ensuring resilience across jurisdictions while preventing penalties, remediation costs, and reputational harm.

Communicating Safely and Compliance Awareness in the Digital Age

- The *Michelin* investigation highlights the need for businesses to carefully manage all communications, including WhatsApp messages, investor presentations, and quarterly reporting, as they may fall within regulatory review.
- In-house legal and compliance teams should conduct comprehensive training and simulations, including dawn raid exercises, for all staff involved in communication processes.
- Companies must review digital communication channels and repositories to manage risks associated with informal exchanges, competitive *intelligence*, and benchmarking.
- Clear policies should be established and communicated regarding what constitutes lawful market commentary versus price signaling.

Leveraging AI for Legal and Compliance Functions

- AI is an essential tool for legal and compliance teams, offering opportunities to improve daily operations and risk management.
- Oversight mechanisms, such as AI committees, should review tools for privilege, cybersecurity, and risk detection before deployment.
- AI-based solutions can support antitrust compliance through pattern detection, risk flagging, and multi-jurisdictional monitoring.
- Legal teams must thoroughly vet AI tools to ensure they mitigate risks while supporting business processes.
- While AI can enhance efficiency and insights, the primary goal for legal is preventing risks and ensuring compliance, not directly driving revenue.
- Selecting AI solely because it appears impressive leads to high failure rates, as many tools cannot be adapted to a company's specific business model or legal needs.
- The increase in dawn raids requires legal teams to closely monitor cloud records and ensure employees understand risks related to their devices, platforms, and internal or external communications.



Santos Miguel Leyva Rubio

Antitrust Legal Counsel, ABB, Madrid

Adapting Compliance to Global Antitrust Enforcement

- Companies face increasing enforcement across multiple jurisdictions, not only in Europe and the US but also in APAC regions such as China, Japan, and Indonesia.
- This requires continuous training and upskilling to ensure that business teams understand both general global antitrust principles and the specific rules applicable in their jurisdictions.
- Close cooperation with local counsel and proactive engagement with colleagues in different regions are essential to stay aligned with evolving enforcement practices.
- Secondments have proven effective, allowing staff trained in Europe or the US to work temporarily in local offices, share expertise, and learn directly from colleagues on the ground.
- These efforts help ensure that global compliance programs remain consistent while being tailored to local enforcement realities.

Compliance and Pricing Oversight in Corporate Operations

- The *Michelin* judgment underscores the need for in-house teams to engage proactively with communications, HR, and public affairs departments to review all materials that could attract antitrust scrutiny. Early collaboration ensures messaging is clear and avoids regulatory triggers.
- Vertical pricing practices, particularly in sectors like electrification and distribution networks, require careful monitoring. Agreements with distributors to set recommended or maximum prices are not inherently illegal, but enforcement authorities evaluate their actual effect on market prices, as legality depends on market outcomes rather than the contractual form of the arrangement.
- Businesses must stay informed about regulatory developments and assess whether practices risk crossing legal boundaries, maintaining vigilance to avoid inadvertent antitrust violations.

Preparing for AI Integration in Legal and Antitrust Work

- Companies should proactively explore available AI tools and assess how they can support both general business and legal functions.
- Legal teams must evaluate AI tools for appropriateness and tailor their use to meet specific legal and antitrust needs.
- Preparing for AI requires organizing and categorizing existing data, advisory materials, and guidance to ensure it can effectively feed future AI systems.
- Developing internal AI capabilities, such as a customized antitrust chatbot, depends on structured and comprehensive data management.
- Continuous monitoring of AI developments is essential, as tools and capabilities evolve rapidly, requiring ongoing adaptation.

Monitoring Non-Controlling Minority Investments in M&A

- Non-controlling minority investments, even small stakes of 2–3%, require careful antitrust scrutiny, especially when investing in competitors.
- Recent enforcement decisions, such as in the food delivery sector, highlight that minority stakes can raise competition concerns if used to reduce competitive pressure.
- Companies must have a clear strategic purpose for any minority investment and assess whether it may lead to future full acquisitions.
- Every deal, regardless of size, should involve antitrust review to ensure compliance with Article 22 and other regulatory obligations.
- Maintaining ongoing involvement of the antitrust team in all transactions helps identify potential risks and ensures proper guidance to business units.