

Q4 2025

EU Competition Law Newsletter

Editorial

Dear Readers,

This **Q4 2025** Quarterly edition of Cleary Gottlieb's EU Competition Law Newsletter provides a comprehensive analysis of significant regulatory updates, enforcement decisions, and judicial proceedings that have shaped the competition landscape in late 2025.

News: FSR Enforcement and Judicial Guidance on the *Bronner* criteria

First, we analyze the European Commission's Phase II decision in the *ADNOC/Covestro* FSR case, which sheds light on the Commission's developing remedial practice under the FSR, including its willingness to preserve transaction-related funding commitments while requiring measures that address guarantee concerns and access to sustainability-related technologies.

Second, we examine Case C-245/24 *LUKOIL Bulgaria* and *LUKOIL Neftohim Burgas*, a preliminary reference that raises fundamental questions about the application of the *Bronner* criteria to access refusal to physical infrastructure by previously state-owned entities.

Court Updates: Advancing Jurisprudence on Article 101 TFEU

The Court Updates section comprises the substantive core of this edition, featuring six significant cases related to Article 101 TFEU and cartel enforcement.

In *Laudamotion*, the General Court confirmed, in the context of the Commission's rejection of a complaint, that to sustain a finding of infringement under Article 101 TFEU based on alleged parallel conduct, there can be no alternative plausible explanation. The General Court's judgments in *Michelin* and *Red Bull* confirm that Commission dawn raids must be based on sufficiently serious indicia relating to the specific period under investigation. They also validate the Commission's reliance on detailed competitor complaints, digital tools for market monitoring, and extended off-site data reviews, as well as its broad discretion to opt for inspections rather than less intrusive investigative measures. Meanwhile, *Stichting Right to Consumer Justice v Apple* (C-34/24) addresses the intersection of competition law with consumer protection and collective redress mechanisms, an increasingly important area as enforcement actions translate into private damages claims.

The *Bategu Gummitechnologie v Commission* case (T-219/23) contributes to the evolving jurisprudence on cartel liability and the interaction between industry standards and

competition law. In that case, the General Court examined discussions between undertakings about the interpretation or application of industry standards and a collective refusal to purchase from a specific supplier. The Court held that the mere existence of such discussion does not, without more, constitute anticompetitive behavior; nor does such a collective refusal automatically constitute an anticompetitive boycott. The General Court's judgment in *Intel Corporation v Commission* (T-1129/23) revisits long-standing questions about abuse of dominance and the evidentiary standards required for Commission findings. In *Intel*, the General Court upheld the Commission infringement decision, but held that where several lawful parameters for setting the level of a fine are open to the Commission, it must choose the most relevant one. This led to a €139 million fine reduction. Finally, Case C-161/24 OSA addresses the balance between intellectual property rights

and competition law and may require Collective Management Organisations to re-assess their pricing practices.

Collectively, these court decisions reflect the dynamic nature of EU competition law and the ongoing refinement of legal standards through judicial review.

Looking Forward

We would like to thank all of the authors for their insightful contributions to this edition. We hope you enjoy reading this edition and that it fuels further debate on these exciting developments.

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Highlight

— Lukoil: Court of Justice Confirms Bronner Criteria Apply To Previously State Owned Infrastructure

Lukoil: Court of Justice Confirms Bronner Criteria Apply To Previously State Owned Infrastructure

Key Takeaways

In *Lukoil*, the Court of Justice confirmed that the Bronner essential facility doctrine criteria apply to previously state-owned and subsequently privatized infrastructure, provided the dominant undertaking acquired the facility at a competitive price and retains genuine decision-making autonomy over it.

Background

On December 18, 2025, the Court of Justice delivered its preliminary ruling in a case concerning an appeal by Lukoil against a Bulgarian competition authority decision which had imposed a fine on Lukoil for its refusal to grant access to third parties to essential infrastructure (fuel storage facilities, port terminals, and pipeline networks), originally constructed with public funds and subsequently privatized by Lukoil.¹

The Court of Justice found that the *Bronner* essential facility doctrine criteria are applicable to former state-owned facilities that have subsequently been privatized, as long as the undertaking refusing to grant access (i) paid a competitive price when it acquired the facilities and (ii) has decision-making autonomy over the facilities.

Prior case law on access refusal

The *Bronner* criteria originate from the 1998 judgment in *Oscar Bronner v. Mediaprint*,² which established a stringent test for determining when a dominant undertaking's refusal to grant access to an essential facility constitutes an abuse under Article 102 TFEU. The Court of Justice held that a refusal to supply is abusive only where (i) the facility is indispensable for competing in a related market (meaning there are no actual or potential substitutes); (ii) the refusal is likely to eliminate all competition in that market; and (iii) there is no objective justification for the refusal. Subsequent judgments substantially narrowed the scope of this test.³

The Court of Justice's recent *Android Auto* judgment⁴ marks a substantial departure from the traditional *Bronner* framework for digital platforms that are designed to enable third-party use. Rather than requiring indispensability, it suffices that access refusal hinders a competitor's growth or makes its business less attractive to consumers. This reflects the Court of Justice's acknowledgment that the stringent indispensability criterion may be ill-suited to protect competition in digital markets characterized by network effects.

¹ *Lukoil Bulgaria EOOD and Lukoil Neftohim Burgas AD v. Commission for Protection of Competition* (Case C-245/24) EU:C:2025:987 (“*Lukoil*”).

² *Oscar Bronner v. Mediaprint* (Case C-7/97) EU:C:1998:475.

³ In particular: *IMS Health v. NDC Health* (Case C-418/01) EU:C:2004:257; *Microsoft v. Communities* (Case T-201/04) EU:T:2007:289M; *Slovak Telekom v. Commission* (Case C-165/19 P) EU:C:2021:239; and *Lietuvos geležinkeliai AB v. Commission* (Case C-42/21 P) EU:C:2023:12.

⁴ *Alphabet v. Autorità Garante della Concorrenza e del Mercato* (Case C-233/23) EU:C:2025:110 (“*Android Auto*”).

The applicability of the *Bronner* test to Lukoil

The Court of Justice confirmed the applicability of the *Bronner* criteria to formerly state-owned and subsequently privatized facilities, where the infrastructure was originally developed by the state and was later acquired and upgraded by a private undertaking.

The Court of Justice first recalled a general principle that any undertaking has the right to choose its trading partners and to dispose freely of its property. The *Bronner* criteria established a high threshold for finding that access refusal violates Article 102 TFEU⁵ because an obligation to allow third-party access to facilities may undermine investment incentives and encourage competitors to free-ride rather than invest in their own infrastructure. The *Bronner* criteria aim to strike a balance between undistorted competition and freedom of contract.⁶

The Court of Justice repeated its language in the *Android Auto* judgment, stating that an undertaking “in a dominant position” must continue to “have an incentive to invest in developing high-quality products or services, in the interest of consumers” which justifies applying the *Bronner* conditions where that undertaking (i) has developed the infrastructure for the needs of its own business and (ii) moreover, owns that infrastructure.⁷ In *Android Auto*, the Court of Justice found that Android Auto was not developed by Google solely for the needs of its own business, because access to that digital platform was open to third parties, so the *Bronner* indispensability condition did not apply “for the purpose of examining whether the refusal, by an undertaking which has developed a digital platform, to allow access to that platform by a third-party undertaking which has developed

an app, by ensuring that platform is interoperable with that app, constitutes an abuse of a dominant position within the meaning of Article 102 TFEU”.⁸

In the present *Lukoil* judgment, however, the Court of Justice considered that even if the infrastructure was previously developed and owned by the state (*not* by the dominant undertaking), that does not automatically exclude the applicability of the *Bronner* criteria if two conditions are met:⁹

- **The undertaking acquired the facility at a competitive price.** The infrastructure must not necessarily be constructed by the undertaking itself—the use of the term “developed” (stemming from *Android Auto*) may also mean “acquired with the aim of fitting it into the undertaking’s business strategy”.¹⁰ However, the privatization process of a former state-owned facility must have taken place with competitive price conditions.¹¹
- **The undertaking must have decision-making autonomy over the facility.** While an equivalent degree of control (instead of ownership as set out in *Android Auto*) can suffice, the *Bronner* criteria do not apply where decision-making autonomy is “limited by prerogatives or obligations, imposed by legislation, regulations or contracts, which prohibit that undertaking from refusing third parties access to that infrastructure”.¹² In other words, the *Bronner* criteria apply where there is no regulatory or legislative condition preventing the undertaking from allowing third-party access to its facilities.

⁵ *Lukoil*, paras. 45–47.

⁶ *Lukoil*, para. 48; with reference to *Deutsche Telekom v. Commission* (Case C-152/19 P) EU:C:2021:238, para. 47, and *Slovak Telekom v. Commission* (Case C-165/19 P), EU:C:2021:239, para. 47.

⁷ *Lukoil*, para. 49, referencing *Android Auto*, para. 43.

⁸ *Android Auto*, para. 49.

⁹ Opinion AG Medina in *Lukoil*, para. 49.

¹⁰ *Lukoil*, para. 55; Opinion AG Medina in *Lukoil*, para. 45.

¹¹ *Lukoil*, para. 55.

¹² *Lukoil*, paras. 50, 51, and 56.

Takeaways

The *Android Auto* judgment limited the application of the *Bronner* indispensability requirement to digital platforms that were developed with a view to enabling third-party use, meaning access refusals can be abusive even where the platform is not strictly indispensable.¹³ By contrast, the *Lukoil* judgment expands the protection afforded by the *Bronner* test compared to previous case-law, clarifying that former state-owned infrastructure can still benefit from *Bronner*'s full protection (including the indispensability requirement) where

the dominant undertaking acquired the facility with the aim of fitting it into its business strategy and retains genuine decision-making autonomy.

This represents a divergence in the Court's approach: while *Android Auto* narrows *Bronner* protection for platforms designed for multi-party use, *Lukoil* preserves *Bronner* protection for traditional infrastructure with state origin, even if it was developed with multi-party use in mind, thus creating a divide between digital platforms and physical infrastructure in terms of access obligations.

News

Commission Adopts Second FSR Decision with Remedies in ADNOC Acquisition of Covestro

On November 14, 2025, the Commission conditionally cleared Abu Dhabi National Oil Company's ("ADNOC") c. €15 billion acquisition of German chemicals company Covestro AG ("Covestro") under the Foreign Subsidies Regulation ("FSR"),¹⁴ following a Phase II review.¹⁵

This marks only the second-ever FSR conditional clearance decision, following the conditional approval of Emirates Telecommunications Group Company PJSC's ("e&") acquisition of PPF Telecom Group ("PPF") in September 2024.¹⁶ The decision provides insight into the Commission's developing remedial practice under the FSR, in particular its willingness to accept commitments that address concerns around an unlimited guarantee and post-closing competitive effects without prohibiting the capital support underpinning the transaction.

Transaction Background and Foreign Subsidies

ADNOC, the UAE state-owned oil and gas producer, announced its intention to acquire all outstanding shares in Covestro on October 1, 2024. Covestro is a global leader in polymer materials production, particularly polyurethane foam and polycarbonate used in household appliances, insulation, and the automotive industry. The deal valued the Frankfurt-listed polymer materials company at €14.7 billion, with an offer price of €62 per share, representing a substantial 54% premium over Covestro's pre-announcement share price. ADNOC has committed to fully supporting Covestro's "Sustainable Future" strategy, including with a cash injection of approximately €1.17 billion upon deal completion.

The Commission's Concerns

The FSR review took 13 months, in part due to several stop-the-clock periods, and was concluded around six months after Commission's unconditional merger control approval.¹⁷ The Commission identified two principal FSR concerns:

¹³ *Android Auto*, para. 43.

¹⁴ *ADNOC/Covestro* (Case FS.100156), Commission decision of November 14, 2025 ("*ADNOC/Covestro*"). See Commission Press Release IP/25/2687, "Commission conditionally approves ADNOC's acquisition of Covestro under the Foreign Subsidies Regulation," November 10, 2025, available [here](#) ("EC *ADNOC/Covestro* Press Release").

¹⁵ See *ADNOC/Covestro*, Commitments to the European Commission (non-confidential version), November 14, 2025 ("*ADNOC/Covestro* Commitments").

¹⁶ *Emirates Telecommunications Group/PPF Telecom Group* (Case FS.100011), Commission decision of September 24, 2024 ("*e&/PPF*"). See Cleary Gottlieb Alert Memorandum, "First Merger Commitments Adopted Under the EU Foreign Subsidies Regulation," October 4, 2024, available [here](#).

¹⁷ *ADNOC/Covestro* (Case COMP/M.11771), Commission decision of May 12, 2025.

— **An unlimited guarantee from the UAE and other advantageous tax measures.**

In line with its findings in the *e&/PPF* case, the Commission noted that the UAE provides exemptions from standard bankruptcy law for companies “wholly or partially owned by the federal or local government,” leading investors to assume that the UAE State would step in and help financially if the company faced financial distress.¹⁸

— **A committed capital increase by ADNOC into Covestro.** The substantial financial commitment (c. €1.17 billion) may constitute a foreign subsidy that facilitates the transaction under non-market conditions.

All in all, the Commission considered that the measures at issue may have enabled ADNOC to bid for Covestro under financial terms not aligned with market conditions and adopt investment strategies that would “impact competitive conditions” in the internal market by artificially improving its capacity to finance its activities and increasing its indifference to risk.¹⁹

The Commitments Offered by ADNOC

To address the Commission’s concerns, ADNOC offered two commitments valid for 10 years:

— **Unlimited Guarantee Commitment.** ADNOC agreed that its Articles of Association shall expressly state that ADNOC is subject to the UAE insolvency legislation applicable to commercial companies and should contain no provisions that conflict with or may allow it to circumvent such legislation.²⁰ This effectively removes the unlimited guarantee, which the Commission considered to be one of the subsidies “most likely to distort the internal market.”

— **IP Commitment.** ADNOC agreed to (i) maintain existing R&D cooperation agreements with competitors; and (ii) license Covestro’s present and future sustainability-related patents (c. 200 patents) to certain market participants—not competitors—using pre-established transparent terms and conditions.

The Unlimited Guarantee Commitment is in line with the (only) precedent in *e&/PPF*. The IP Commitment is novel and appears to be based on Article 6 FSR, which allows the Commission to balance out the negative effects of a foreign subsidy against the positive effects of that subsidy on the “development of the relevant subsidized economic activity on the internal market” but also “in relation to the relevant policy objectives, in particular those of the Union.” Put simply, the Commission extracted broader sustainability-related benefits from ADNOC that do not appear to be linked to any specific theory of harm under the FSR but are deemed to overall outweigh the identified negative effects of the transaction on the internal market.²¹

Importantly, while in *e&/PPF*, the commitments included a prohibition for e& and the Emirates Investment Authority to finance PPF’s activities in the EU, subject to exceptions (*e.g.*, emergency funding), and a requirement that other transactions be on market terms,²² the *ADNOC/Covestro* decision does not prohibit ADNOC’s planned immediate cash support of €1.17 billion and long-term capital or other funding support of Covestro. This is likely because the capital injection is a key element of the transaction rationale as the European (and global) chemical industry continues to face weak demand, persistent overcapacity, and high energy costs.²³

¹⁸ Article 2 of the United Arab Emirates 2016 Bankruptcy Law. See *ADNOC/Covestro*, paras. 330-374. See also *e&/PPF Telecom Group* (Case FS. 100011), Commission decision of October 24, 2024 (provisional non-confidential version), para. 78.

¹⁹ *ADNOC/Covestro*, para. 533.

²⁰ *ADNOC/Covestro* Commitments, para. 2. See also *ADNOC/Covestro*, paras. 586-587.

²¹ Communication from the Commission, Guidelines on the application of certain provisions of Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market, C(2026) 43 final, January 9, 2026, paras. 110 *et seq.* See also Cleary Gottlieb, “The Commission Publishes its Guidelines on the EU Foreign Subsidies Regulation,” January 26, 2026, available [here](#).

²² Cleary Gottlieb, “First Merger Commitments Adopted Under the EU Foreign Subsidies Regulation,” October 4, 2024, available [here](#).

²³ Covestro Press Release, “ADNOC takeover offer for Covestro successful,” December 19, 2024, available [here](#).

Broader Implications

For future deals that could raise substantive concerns, parties could consider opportunities for innovative and creative commitment packages

that may go beyond the strict remit of subsidy-related concerns, particularly if benefits of such commitments align with key EU objectives such as sustainability and innovation.

Court Updates

Article 101 TFEU and Cartels

Court of Justice

European Court Of Justice Confirms

National Courts' Territorial Jurisdiction Over Collective Actions Against Digital Platforms Based On Their Tailored Country Offering

On December 2, 2025, the European Court of Justice issued its ruling in *Stichting v Apple*,²⁴ clarifying that any competent national court in the Member State whose app store was used for the purchase of products can hear collective actions²⁵ on behalf of users of digital platforms for damages caused by anticompetitive conduct, without the need to individualize alleged victims or determine the exact location of their alleged harm.

Background

App developers wishing to sell apps on the Apple App Store must enter into an agreement with Apple, which sets the applicable commission tiers (typically, 15–30% of sale prices).²⁶ When purchasing apps, Apple users are automatically directed to the local version of the App Store linked to their Apple ID (which is required to access the App Store). While theoretically possible to change to another local App Store, doing so

requires the user to change the country setting, accept new local terms and provide a valid local payment method.²⁷

Stichting Right to Consumer Justice and *Stichting App Stores Claims*, two Netherlands foundations representing consumers,²⁸ brought collective actions before the Amsterdam District Court (Rechtbank Amsterdam) claiming that Apple abused a dominant position on the market for the distribution of apps for Apple devices and on the App Store payment system by charging an excessive commission of 30% of the price paid for app purchases in the App Store, in breach of Article 102 TFEU.²⁹ They sought compensation for the harm alleged to have been suffered by iOS app purchasers.³⁰

The Amsterdam District Court's Doubt Regarding Its Territorial Jurisdiction

The case concerned the application of Article 7(2) of Regulation 1215/2012 (“Brussels I bis”), which allows plaintiffs seeking compensation for damage caused by breaches of competition law to sue either (i) where the harmful act occurred or (ii) where the damage was suffered.³¹ Article 7(2) is a derogation from the general principle that jurisdiction lies with the courts of the defendant’s

²⁴ *Stichting Right to Consumer Justice and Stichting App Stores Claims v Apple Distribution International Ltd and Apple Inc.* (“*Stichting v Apple*”) (Case C-34/24) EU:C:2025:936.

²⁵ The Court of Justice ruling refers to “representative actions”. However, for clarity, this article uses the term “collective actions” which is also most similar to the Dutch law term (*collectieve actie*).

²⁶ *Ibid.*, para. 15.

²⁷ *Ibid.*, para. 17.

²⁸ *Ibid.*, para. 18.

²⁹ The claimants also alleged that Apple, by engaging in vertical price-fixing, also infringed Article 101 TFEU (*Stichting v Apple* para. 20). However, this was of minor relevance in the case for different reasons. First, regarding the location of the event causing the alleged harm, the Amsterdam District Court held that it could not assert jurisdiction in the context of Article 101 TFEU because no specific event had been identified in the Netherlands where either the alleged restrictive agreement was concluded or the harm-causing arrangement occurred (*Ibid.*, para. 24). Second, the Court of Justice noted that the distinction between Article 101 and Article 102 TFEU claims was irrelevant when determining the location of the alleged harm (*Ibid.*, para. 28).

³⁰ *Ibid.*, para. 19.

³¹ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), OJ 2012, L 351, pp. 1–32.

place of domicile.³² The interpretation of Article 7(2) was therefore central to Apple's position, who disputed the Dutch courts' jurisdiction on the basis that the alleged harmful event did not occur in the Netherlands, and, in particular, in Amsterdam, or, at most, that jurisdiction could extend only to claims relating to users who made purchases in Amsterdam via the Dutch App Store.³³

In line with the *flyLAL-Lithuanian Airlines* criteria, under which the place where the harmful event occurred is the market affected by the anticompetitive conduct and where the plaintiff claims to have suffered losses,³⁴ the Amsterdam District Court found that it had international jurisdiction over the alleged infringement of Article 102 TFEU in both respects:³⁵ (i) the harmful acts occurred in a market specifically targeting the Netherlands, as the Dutch App Store targets Dutch users, uses the Dutch language, and includes apps developed solely for that market;³⁶ and (ii) the damage consisted of allegedly excessively high prices paid in the Apple App Store by users residing in the Netherlands using Dutch bank accounts.³⁷

While it was able to establish international jurisdiction,³⁸ the Amsterdam District Court expressed uncertainty regarding its territorial jurisdiction within the Netherlands;³⁹ namely where the place of the event giving rise to the damage or the place where the alleged damage

occurred is located within the Netherlands.⁴⁰ According to *Volvo and Others*, the court having jurisdiction is that of the place of purchase of goods or, in the case of purchases made in several places, the place where the injured party's registered office is located.⁴¹ However, for online app purchases available for download worldwide, the place of purchase is less clear. Applying *Volvo*, arguably each local court would only have jurisdiction in relation to purchasers who reside or are established within that court's territorial jurisdiction. This would undermine the procedural economy of collective actions by preventing a unified collective action being brought before a single local court of a Member State.⁴² Accordingly, the Amsterdam District Court referred preliminary questions to the Court of Justice in this regard.⁴³

Territorial Jurisdiction in Digital Markets Based on "Virtual Spaces"

The Court of Justice found that the criteria established in *Volvo and Others* for the purchase of material goods, namely that territorial jurisdiction may be determined by the place of purchase or, where purchases occurred in multiple locations, by the injured party's registered office, do not apply *mutatis mutandis* to a collective action relating to the purchase of digital products, on an online platform, by an indefinite number of persons who were

³² *Stichting v Apple*, para. 44.

³³ *Ibid.*, para. 21.

³⁴ *flyLAL-Lithuanian Airlines* (Case C-27/17) EU:C:2018:533, para. 43.

³⁵ *Stichting v Apple*, paras. 25 and 31.

³⁶ *Ibid.*, para. 25.

³⁷ *Ibid.*, paras. 27–30.

³⁸ In civil or commercial disputes involving a cross-border element, 'international jurisdiction' concerns whether the courts of a given Member State have jurisdiction to hear that dispute. This is governed by *Brussels I bis*. International jurisdiction does not, however, determine which specific court within that Member State is competent.

³⁹ 'Territorial jurisdiction' determines which specific court within the competent Member State has jurisdiction. This matter is usually governed by domestic procedural law. However, there are instances where *Brussels I bis* establishes a connecting factor that localizes jurisdiction within the Member State. For instance, this is the case for Article 7(2) *Brussels I bis*, which confers directly not only international but also territorial jurisdiction.

⁴⁰ *Stichting v Apple*, para. 33.

⁴¹ *RH v AB Volvo and Others* ("**Volvo and Others**") (Case C-30/20) EU:C:2021:604.

⁴² *Stichting v Apple*, paras. 33–34.

⁴³ The Amsterdam District Court referred several preliminary questions to the CJEU on Article 7(2) of Regulation 1215/2012, including: (i) the place where the harmful act occurred when an online platform is globally accessible; (ii) whether the user's registered office is the sole connecting factor for the place of damage or if other factors apply; (iii) the relevance of claims brought by a legal person representing multiple users across different jurisdictions; (iv) whether national law can designate a single court when multiple domestic courts are competent; and (v) whether national law can refer all claims to a single court when multiple domestic courts are territorially competent over different users' claims. The Court of Justice considered it necessary to answer questions relating to the connecting factors and the role of a legal person representing multiple users, with the remaining questions being redundant once jurisdiction was already established.

unidentified but identifiable at the time the action was brought. Instead, the connecting factors in *Volvo and Others* must be adapted to preserve the effectiveness of Article 7(2) Brussels I bis and to promote the sound administration of justice.⁴⁴ In the present case, because the Dutch App Store is tailored to the Netherlands, the Court of Justice considered that the “virtual space” constituted by the Dutch App Store corresponds to the entire territory of the Netherlands. Consequently, damages from purchases made in such a virtual space can be considered to occur across the entirety of the Netherlands, regardless of where the users were located at the time of the purchase, and without the need to fragment collective claims across individual territorial jurisdictions of the local courts of a Member State.⁴⁵ Accordingly, the Court of Justice found that the inability to determine the precise location of damage for each individual alleged victim does not prevent the application of Article 7(2) Brussels I bis, as it is possible to identify a well-defined geographical area to which the market affected by the conduct belongs.⁴⁶

Key Takeaways

The judgment is demonstrative of the EU trend to facilitate collective redress for consumers in digital markets through private enforcement of competition law, by clarifying the application of rules relating to international and territorial jurisdiction to collective damage claims in digital markets. The Court of Justice’s recognition of a “virtual space” corresponding to an entire national territory, together with the absence of any requirement to individualize victims or determine the exact location of their harm,⁴⁷ facilitates collective actions against digital platforms by clarifying the territorial jurisdiction within Member States and avoiding the logistical

and procedural hurdles of fragmentation of collective claims across the individual territorial jurisdictions of the courts of a Member State.

OSA: Court of Justice Confirms That Royalties Charged To Hotels By Collective Rights Management Organizations Should Reflect Occupancy Rates

On December 18, 2025, the Court of Justice delivered a preliminary ruling in connection with an appeal by OSA, a Czech collective management organization handling copyright and collecting royalties (“CMO”), against an Article 102 TFEU infringement decision of the Czech Competition Authority.⁴⁸

The OSA judgment clarifies the application of Article 102(a) TFEU regarding the calculation of copyright royalties in the hospitality sector, specifically whether charging royalties for making televisions and radios available in unoccupied hotel rooms constitutes an abuse of dominance. The Court did not follow the opinion of the Advocate General⁴⁹ and found that a CMO’s refusal to reflect actual occupancy – and therefore economic reality – in its pricing may be abusive, provided that adjusting for occupancy is feasible.

Background

OSA was found to hold a dominant position on the collective management of copyright in the Czech Republic.⁵⁰ OSA charged hotels fixed royalty fees based on the total number of rooms equipped with television or radio sets, regardless of whether the rooms were actually occupied.⁵¹

The Czech Competition Authority found, in a 2019 decision (“the decision”), that hotels were forced by OSA to pay for a service that was not used in

⁴⁴ *Stichting v Apple*, paras. 60–61.

⁴⁵ *Ibid.*, para. 62.

⁴⁶ *Ibid.*, para. 67.

⁴⁷ *Ibid.*, para. 66.

⁴⁸ OSA (Case C-161/24) EU:C:2025:985 (“OSA judgment”), available [here](#).

⁴⁹ OSA (Case C-161/24) EU:C:2025:417 (“Advocate General Opinion”), available [here](#).

⁵⁰ OSA judgment, paras 12 and 27.

⁵¹ OSA judgment, para. 8.

vacant rooms between 2008 and 2014 without any objective justification. This amounted to unfair trading conditions on the national market for the granting of licenses for the use of copyrighted works and therefore an abuse of a dominant position.⁵² OSA was ordered to pay a €429,000 fine and to cease and desist from the conduct.

Following OSA's appeal,⁵³ the Czech court referred questions to the Court of Justice.⁵⁴

The Court of Justice's judgment

The Court of Justice found that OSA's pricing should be assessed under the excessive pricing doctrine, which involves a determination whether the price charged is excessive in relation to the economic value of the service provided.⁵⁵ It further found that the number of people who actually benefit from the TV and radio offering is relevant to the economic value of the service provided by hotels.⁵⁶ Consequently, CMOs must take account of occupancy rates (including seasonal reductions, renovations, or health crises), or at least of "*an estimation of the number of works protected by copyright actually used*" to avoid prices being found excessive in breach of Article 102 TFEU.⁵⁷ To ease the associated administrative burden, the Court of Justice noted that its finding is subject to two caveats: (i) a method for calculating fees based on occupancy can be implemented at reasonable cost, and (ii) this method results in a significant reduction in the total fees compared to a flat-rate model.⁵⁸ The Court insisted in particular on the fact that the national court has to make its assessment in light of the "*availability and reliability of the data*" and the "*technological tools in existence*" for CMOs.⁵⁹

Key takeaways and implications

Following the ruling, we expect that CMOs across the EU will need to assess their pricing to ensure alignment with the Judgment.

General Court

Laudamotion v. Commission—Case T-1026/23

On October 1, 2025, the General Court dismissed Laudamotion's application for annulment of the European Commission's ("Commission") decision rejecting a complaint that Lufthansa's concurrent acquisition of flight slots previously held by Air Berlin and conclusion of a wet lease agreement for 40 Air Berlin aircraft constituted an anticompetitive concertation in breach of Article 101 TFEU.⁶⁰ The General Court reconfirmed that to sustain an infringement finding, there can be no alternative plausible explanation for the alleged anticompetitive concertation.

Background

In 2016, as part of a substantial restructuring of its activities due to financial difficulties, Air Berlin relinquished flight slots at Vienna airport and entered into an agreement to lease 40 of its aircraft to Lufthansa. Around that time, Lufthansa took preparatory steps to deploy additional capacity at the Vienna airport, acquired the relinquished Air Berlin slots, and increased its activities to cover the routes that Air Berlin vacated.

In September 2018, Laudamotion filed a complaint to the Commission. It alleged that Air Berlin's decision to release its slots late in the slot-renewal process, and Lufthansa's parallel

⁵² OSA judgment, para. 9.

⁵³ OSA judgment, paras 11–13.

⁵⁴ OSA judgment, para. 21.

⁵⁵ OSA judgment, paras 28–29.

⁵⁶ OSA judgment, paras 30–31.

⁵⁷ OSA judgment, paras 33–34.

⁵⁸ OSA judgment, paras 35–36 and 40.

⁵⁹ OSA judgment, para. 35.

⁶⁰ Judgment of October 1, 2025, *Laudamotion v. Commission*, Case T-1026/23, EU:T:2025:928, paras. 54–55 ("*Laudamotion*").

capacity expansion and application for the Air Berlin slots constituted an anticompetitive coordination. This foreclosed rival carriers from competing for the Air Berlin slots and reinforced Lufthansa's dominant position on routes from or to Austria, Germany, and Switzerland.⁶¹

In August 2023, the Commission concluded that the likelihood of establishing the existence of an infringement “*appear[ed] limited*” because (i) there was another plausible explanation for the parallel behavior of Air Berlin and Lufthansa and (ii) the alleged agreement was unlikely to have restrictive effects on competition.⁶² On this basis, the Commission concluded that there were insufficient grounds to pursue the complaint.⁶³ Laudamotion appealed the Commission's rejection decision to the General Court.⁶⁴

The Judgment

The General Court dismissed Laudamotion's appeal.

The General Court first held that, when assessing a complaint, the Commission is not obliged to “assess the degree of probability of the different plausible explanations” for the conduct.⁶⁵ Instead, “the Commission was entitled to confine itself to considering that there was another plausible explanation beyond the alleged cartel”.⁶⁶ This is in line with the Court's case law that “parallel conduct cannot be regarded as furnishing proof of concertation unless concertation constitutes the only plausible explanation for such conduct”.⁶⁷

The General Court then ruled that the Commission made no manifest error of assessment in finding that “the existence of an alleged agreement was not the only plausible explanation for the conduct” because the conduct “could have resulted from normal conditions of competition owing to the restructuring and reduction of Air Berlin's operations”.⁶⁸ In particular, the General Court found that the Commission was entitled to find that:

- i. Lufthansa's decision to expand its operations at Vienna airport could reasonably be considered to be an independent commercial decision in view of the restructuring operations that Air Berlin publicly announced.⁶⁹
- ii. A series of uncertainties surrounding the restructuring of Air Berlin's activities, such as the German Competition Authority's pending approval of the lease agreement with Lufthansa, justified Air Berlin's decision to delay the return of slots.⁷⁰
- iii. The slot allocation process is handled by an independent coordinator, ensuring that slots are allocated in a fair, non-discriminatory, and transparent manner, and that competing airlines could have reasonably anticipated the return of slots in view of Air Berlin's announced restructuring.⁷¹

On this basis, the General Court concluded that there existed another plausible explanation for the alleged anti-competitive coordination and therefore the Commission lawfully rejected Laudamotion's complaint on this basis.⁷²

⁶¹ Commission decision of August 2, 2023, *Lufthansa—Air Berlin (routes from/to Vienna)*, Case AT.40612 (“Decision”), para. 75.

⁶² Decision, paras. 41–80.

⁶³ Decision, para. 81.

⁶⁴ *Laudamotion*, paras. 9–12, 43–45, and 76.

⁶⁵ *Laudamotion*, para. 91.

⁶⁶ *Laudamotion*, paras. 94–95.

⁶⁷ *Laudamotion*, para. 89, citing judgment of March 31, 1993, *Ahlström Osakeyhtiö and Others v Commission*, C-89/85, C-104/85, C-114/85, C-116/85, C-117/85 and C-125/85 to C-129/85, EU:C:1988:447, para. 71.

⁶⁸ *Laudamotion*, para. 148.

⁶⁹ *Laudamotion*, paras. 106–124.

⁷⁰ *Laudamotion*, paras. 128–135. The German Competition Authority ruled that the wet lease agreement did not constitute a reportable concentration under German merger control rules. *Laudamotion*, para. 3.

⁷¹ *Laudamotion*, paras. 141–144.

⁷² *Laudamotion*, paras. 148–149, 151.

Key takeaways

In *Laudamotion*, the General Court reconfirmed that to sustain an infringement finding, there can be no alternative plausible explanation for the alleged concertation.

Algorithmic Surveillance and Evidentiary Standards: Procedural Lessons from the EU’s Red Bull and Michelin Dawn Raid Judgments

In the past year, the General Court has ruled on several challenges to Commission dawn raids initiated against *Symrise*,⁷³ *Michelin*,⁷⁴ and *Red Bull*,⁷⁵ clarifying the limits of the Commission’s investigatory powers. In all three cases, the General Court upheld the legality of the inspections,⁷⁶ though refined the evidentiary and procedural standards governing dawn raids.⁷⁷ The most recent *Michelin* and *Red Bull* judgments, in particular: (i) clarified what constitutes “sufficient indicia” for the Commission to initiate a dawn raid; (ii) validated the Commission’s use of new digital tools to gather indicia for dawn raids and its practice of gathering information onsite and later reviewing that information over extended periods of time at the Commission’s premises (“extended inspection”); and (iii) confirmed the Commission’s margin of discretion in selecting the most appropriate investigative measure—such as dawn raids or requests for information—in antitrust investigations.

I. What constitutes “sufficiently serious indicia” to initiate a dawn raid?

The General Court confirmed that a Commission inspection must be justified by “sufficiently serious indicia” substantiating the possibility of an anticompetitive practice.⁷⁸ This standard does not require the Commission to prove that the suspected behavior exists, but only to demonstrate a reasonable “suspicion of an infringement.”⁷⁹ *Michelin and Red Bull have further confirmed* that (i) where a dawn raid covers distinct time periods during which anticompetitive conduct may have occurred, the Commission must adduce sufficiently serious indicia for each relevant period, and (ii) a market participant’s detailed complaint may, on its own, constitute indicia sufficiently serious to justify an inspection.

Sufficiently Serious Indicia for Each Period Under Investigation

In *Michelin*, the Commission initiated a dawn raid in relation to documents falling within two periods, the “main period” and an “earlier period.”⁸⁰ The General Court held that the Commission had not “sufficiently established” that it was plausible that *Michelin* had coordinated prices during the earlier period.⁸¹

In that case, to identify supporting “indicia” of anticompetitive conduct, the Commission conducted a detailed review of publicly available earnings call transcripts from both the main and the earlier periods.⁸² This review, in the General Court’s view, yielded sufficiently serious indicia of potential collusion only for the main

⁷³ *Symrise AG v. European Commission* (Case T-263/23) EU:T:2025:417 (“*Symrise*”).

⁷⁴ *Compagnie générale des établissements Michelin v. Commission* (T-188/24) EU:T:2025:686 (“*Michelin*”).

⁷⁵ *Red Bull GmbH and Others v. European Commission* (T-306/23) EU:T:2025:959 (“*Red Bull*”). *Red Bull* appealed the judgment, *inter alia*, on the grounds that evidence may not be sufficiently reliable if it originates from a single competitor and that the Commission’s decision was disproportionate as regards the continued inspection, *cfr.* Application (OJ) in *Red Bull v. Commission* (C-865/25 P). The matter is pending before the Court of Justice.

⁷⁶ In *Michelin*, the appeal succeeded in part. The General Court annulled the portion of the Commission’s inspection decision that related to one of the two periods under investigation.

⁷⁷ Out of more than 40 dawn raids conducted since 2015, only eight were appealed over the past 10 years. Notably, three of these eight appeals were lodged in the last couple of years, showcasing an upward trend in challenging dawn raid decisions.

⁷⁸ *Michelin*, para. 154.

⁷⁹ *Michelin*, para. 86; *Red Bull*, para. 61.

⁸⁰ *Michelin*, para. 6.

⁸¹ *Michelin*, para. 153.

⁸² *Michelin*, para. 95.

period. The General Court found that it “must take into consideration” the Commission’s inability to provide similar evidence that was contemporaneous to the earlier period, in circumstances where the Commission was able to provide such *indicia* for the main period,⁸³ and annulled the portion of the Commission’s decision that related to the earlier period.

Competitor Complaints as a Basis for Conducting Dawn Raids

In *Red Bull*, the General Court found that the Commission had collected sufficiently serious *indicia* across all three categories of suspected behavior in that case. The detailed 80-page complaint that a “well-informed” competitor submitted against Red Bull was central to this finding.⁸⁴ The General Court held that a “coherently formulated written complaint” from a market participant may, on its own, constitute *indicia* sufficiently serious to justify an inspection.⁸⁵ Moreover, the Commission did not simply rely on the informal complaint but repeatedly tested its plausibility by requesting successive rounds of supplementary information from the complainant: five detailed supplementary submissions covering market definition, market shares, de-listings, alleged anticompetitive strategies, corporate structure, turnover estimates, additional *indicia* and further clarifications through multiple emails and telephone calls with the complainant.⁸⁶ The General Court also confirmed that the Commission is not required to contact any third parties in order to verify the allegations made in the complaint prior to an inspection, as to do so would jeopardize the element of surprise essential to unannounced inspections.⁸⁷

II. Use of Digital Tools in Dawn Raids

Market-Surveillance Techniques to Gather *Indicia* of Anticompetitive Conduct

Michelin sheds light on the Commission’s digital market-surveillance techniques that served to gather *indicia* used to justify a dawn raid. To investigate anticompetitive coordination, the Commission established a system of market monitoring to analyze “several hundred thousand earnings calls in various sectors and in a number of geographical areas to identify suspicious behavior.”⁸⁸ The Commission first conducted algorithmic screening of these earnings calls, searching for specific two-word combinations (“bigrams”) on strategic decisions, price expectations, and references to competitors’ behavior.⁸⁹ The Commission designed these bigrams to identify potential signals of coordinated pricing intentions embedded in public investor communications. The Commission then performed a manual “qualitative” review of the results to identify statements that could be plausibly interpreted as price signaling, such as “we want to send a signal” or “the strategy is to focus on.”⁹⁰

The General Court accepted this screening methodology as lawful and adequate to gather *indicia* of anticompetitive conduct necessary to justify an inspection. *Michelin* contended that the “quantitative” algorithmic analysis was incapable of providing any indication of collusion, in essence, because the selected bigrams were frequently used by companies and their use could be justified by legitimate purposes, such as responding to analysts’ questions.⁹¹ The General Court rejected these arguments as (i) the quantitative analysis merely enabled the Commission to identify the tire manufacturing sector as potentially problematic, and (ii) the Commission’s subsequent qualitative

⁸³ *Michelin*, para. 143.

⁸⁴ *Red Bull*, para. 72.

⁸⁵ *Red Bull*, para. 77.

⁸⁶ *Red Bull*, para. 78.

⁸⁷ *Red Bull*, para. 81.

⁸⁸ *Michelin*, para. 95.

⁸⁹ *Michelin*, para. 92.

⁹⁰ *Michelin*, paras. 92–93 and 113.

⁹¹ *Michelin*, para. 100.

analysis was the “decisive factor” in identifying the suspicious statements justifying the dawn raid.⁹² This confirms that the Commission can rely on automated scans of publicly available information to search for *indicia* of potential anticompetitive conduct, although the General Court also appeared to lend weight to the Commission’s subsequent manual review to identify these materials.⁹³

Extended Inspections

In *Red Bull*, the General Court affirmed the Commission’s practice of gathering information onsite and later reviewing that information over extended periods of time at the Commission’s premises (so called “extended inspection”), relying on *Nexans*.⁹⁴ In *Red Bull*, the Commission seized five terabytes of data onsite, followed by a request for an additional 16.6 terabytes of information.⁹⁵ The Commission estimated that it would require at least six months for the analysis of this data.⁹⁶ *Red Bull* argued before the General Court that the decision was disproportionate in terms of the amount of data seized and the duration of the “extended inspection”. However, the General Court held that such offsite reviews, even when they extend over several weeks, are proportionate, particularly given the volume of electronic communications held by modern undertakings.⁹⁷ This “extended inspection” model is becoming the operational standard for dawn raids, affording the Commission the possibility to review data in unprecedented quantities.

Red Bull also lodged a separate appeal seeking reimbursement of the additional legal costs incurred as a result of the “extended inspection”

and relocating of the investigation from Austria to Brussels. In *Nexans*, the Court of Justice held that, if the continuation of the inspection through an “extended inspection” is liable to give rise to “additional costs for the undertaking under inspection solely as a result of that continuation,” the undertaking concerned may request the Commission to reimburse those costs.⁹⁸ *Red Bull* has argued, based on *Nexans*, that the “extended inspection” amounted to “a disproportionately lengthy and far-reaching continued inspection.”⁹⁹ The matter is pending before the General Court.

III. The Commission’s Discretion in Selecting Investigative Measures

Both *Red Bull* and *Michelin* reaffirm the Commission’s broad discretion to choose between the different instruments provided for in Regulation 1/2003,¹⁰⁰ such as a request for information under Article 18 and an inspection pursuant to Article 20(4).¹⁰¹

In *Michelin*, the General Court clarified that the Commission can legitimately opt for a dawn raid rather than a request for information if it considers that, without an unannounced inspection, relevant information might be compromised or destroyed.¹⁰² The choice of investigative measure depends on “the circumstances specific to the ongoing investigation, rather than on factors such as particular seriousness or extreme urgency.”¹⁰³ This choice may also legitimately reflect the Commission’s concern that potentially incriminating material would not be voluntarily provided.¹⁰⁴

⁹² *Michelin*, paras. 101–102.

⁹³ *Michelin*, para. 102.

⁹⁴ *Nexans France and Nexans v Commission* (T-449/14), EU:T:2018:456.

⁹⁵ Order of the President of the General Court of 29 September 2023, *Red Bull and Others v Commission* (T-306/23 R) EU:T:2023:590.

⁹⁶ *Red Bull*, para. 116.

⁹⁷ *Red Bull*, para. 127.

⁹⁸ *Nexans France and Nexans v Commission* (Case C-606/18 P) EU:C:2020:571, para. 89.

⁹⁹ Application (OJ) in *Red Bull v European Commission* (Case T-682/24).

¹⁰⁰ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJL1, 4.1.2003 (“Regulation 1/2003”).

¹⁰¹ *Red Bull*, para. 129; *Michelin*, para. 55.

¹⁰² *Michelin*, paras. 166–167 and 169.

¹⁰³ *Michelin*, para. 157.

¹⁰⁴ *Michelin*, para. 170.

Similarly, in *Red Bull*, the General Court rejected claims that the Commission should have pursued less intrusive means than a dawn raid.¹⁰⁵ It emphasized that inspections may legitimately be required where the information sought by the Commission reveals anticompetitive behavior and would not realistically be disclosed voluntarily through requests for information.¹⁰⁶ This was the case particularly in light of the high fines imposed for antitrust infringements compared to those imposed for the provision of inexact, incomplete, or misleading information.¹⁰⁷

IV. Main Takeaways

The *Michelin* and *Red Bull* judgments confirm and clarify the relevant standard for the initiation of dawn raids and the Commission's margin of discretion in selecting the most appropriate investigative measure in antitrust investigations.

- The “sufficiently serious *indicia*” standard requires the Commission to collect evidence of an infringement for every period under investigation, with a focus on evidence contemporaneous to each period.
- The Commission may obtain sufficiently serious *indicia* based exclusively on a market participant's complaint where it is detailed and coherently drafted, even absent third-party corroboration.
- The Commission may use new digital tools to gather *indicia* for dawn raids, such as the mass and automated review of publicly available information, and conduct “extended inspections” that allow the Commission to review larger volumes of information over a longer period of time at the Commission's premises.
- The Commission retains a margin of discretion in selecting the appropriate investigative measure—such as dawn raids or requests for information—in antitrust investigations.

The Commission can legitimately carry out an inspection if it has sufficient grounds to consider that relevant information could be compromised or concealed.

General Court Rejects Anticompetitive Collective Boycott Claim Over OEM Component Choices

On December 10, 2025, the General Court confirmed the Commission's decision to reject Bategu Gummitechnologie's antitrust complaint against certain train manufacturers for allegedly colluding to circumvent EU standards and abusing their alleged collective dominant position by boycotting Bategu's products.¹⁰⁸

Background

Bategu is a manufacturer of metal and rubber anti-vibration components for use in railway vehicle bogies. Bategu claimed that it had developed a technical solution that complied with EU standard EN 455452:2013, which sets out fire performance requirements for materials and components used in the manufacture of railway vehicles.

Bategu claimed that Siemens AG Österreich, Bombardier Transportation, Stadler Bussnang, Alstom Transport Deutschland, and Plasser & Theurer (the “OEMs”)—railway vehicle manufacturers that, according to the complainant, “dominated the relevant European market”¹⁰⁹—infringed Articles 101 and 102 TFEU by (i) colluding in arguing that there were no suitable components complying with the EU standard (and opting to choose other non-compliant components), and (ii) abusing their collective dominant position to boycott Bategu's components. The Commission formally rejected Bategu's complaint in February 2023 on insufficient grounds.

¹⁰⁵ *Red Bull*, para. 89.

¹⁰⁶ *Red Bull*, para. 110.

¹⁰⁷ Regulation 1/2003, Article 23(1). *Red Bull*, paras. 126–129.

¹⁰⁸ *Bategu Gummitechnologie v. Commission* (Case T-219/23) EU:T:2025:1095 (“the Judgment”). See [here](#) for the text in French/German.

¹⁰⁹ The Judgment, para. 10.

The Judgment

Bategu appealed the Commission's rejection decision to the General Court, which dismissed the appeal. The General Court noted that the Commission was required to examine whether there was unlawful coordination between OEMs to boycott Bategu's products (through a concerted practice aimed at disregarding the provisions of EU law on fire prevention in railway vehicles), but correctly concluded that the OEMs had provided other plausible explanations for their conduct.¹¹⁰ These included: (i) Siemens not contacting Bategu because of its past negative experience with Bategu in other projects;¹¹¹ (ii) Bombardier and Stadler not reaching an agreement with Bategu during the bidding stage of its projects *e.g.*, because Bategu asked for a downpayment before submitting an offer;¹¹² (iii) Alstom's purchasing division being unaware of Bategu's products;¹¹³ and (iv) Plasser & Theurer not manufacturing vehicles that had to comply with the EU standard at issue.¹¹⁴

In doing so, the General Court recalled that a company is free to determine its own commercial strategy,¹¹⁵ and that even if Bategu could prove that the OEMs violated the applicable EU standard by not using its components, such a violation could not in itself constitute anticompetitive behavior or establish an intention to boycott Bategu's products if there are other plausible explanations for a collective refusal to purchase.¹¹⁶

Key Takeaways

The case offers helpful clarifications on the interaction between industry standards and competition law. Notably, mere discussion between undertakings about the interpretation or application of industry standards does not,

without more, constitute anticompetitive conduct, while a collective refusal to purchase from a supplier does not automatically constitute a collective boycott if the prospective buyers have an alternative plausible explanation for their conduct.

Intel: General Court Confirms Previous Findings on the Merits but Reduces Fine

On December 10, 2025, the General Court delivered the latest judgment in the long-running *Intel* saga.¹¹⁷ The General Court upheld the Commission's 2023 decision to fine Intel for abusing its dominant position in the market for x86 central processing units ("CPUs") between October 2002 and December 2007 through 'naked restrictions,'¹¹⁸ but reduced Intel's fine from €376 million to €237 million to reflect the "temporal and material scope of the infringement".

Background

2004. The Commission initiated an investigation against Intel following complaints from AMD, Intel's competitor in the supply of x86 CPUs.

2009. On May 13, 2009, the Commission imposed a €1.06 billion fine on Intel for abusing its dominant position in the worldwide market for x86 CPUs, where Intel had a market share of c. 70%. The Commission's finding was based on Intel's exclusionary measures, including (i) conditional rebates and (ii) three naked restrictions (*i.e.*, payments made to original equipment manufacturers ("OEMs") on the condition that they limit, delay or in some other way restrict the commercialization of certain AMD-based products).

¹¹⁰ The Judgment, paras. 62 and 122.

¹¹¹ The Judgment, para. 95.

¹¹² The Judgment, para. 110.

¹¹³ The Judgment, para. 87.

¹¹⁴ The Judgment, para. 92.

¹¹⁵ The Judgment, para. 75.

¹¹⁶ The Judgment, para. 77.

¹¹⁷ *Intel Corporation v. Commission* (Case T-1129/23) EU:T:2025:1091 ("2025 Judgment").

¹¹⁸ *Intel* (Case COMP/C-3/37990), Commission decision of May 13, 2009 ("2009 Decision").

2014. Intel appealed the Commission’s decision to the General Court, alleging that the Commission had failed to demonstrate, through its as-efficient-competitor (“AEC”) test, that Intel’s rebates were capable of foreclosing equally efficient competitors. The General Court dismissed Intel’s appeal in its entirety without examining the Commission’s application of the AEC test, instead relying on the legal standard established in *Hoffmann-La Roche* in 1979.¹¹⁹

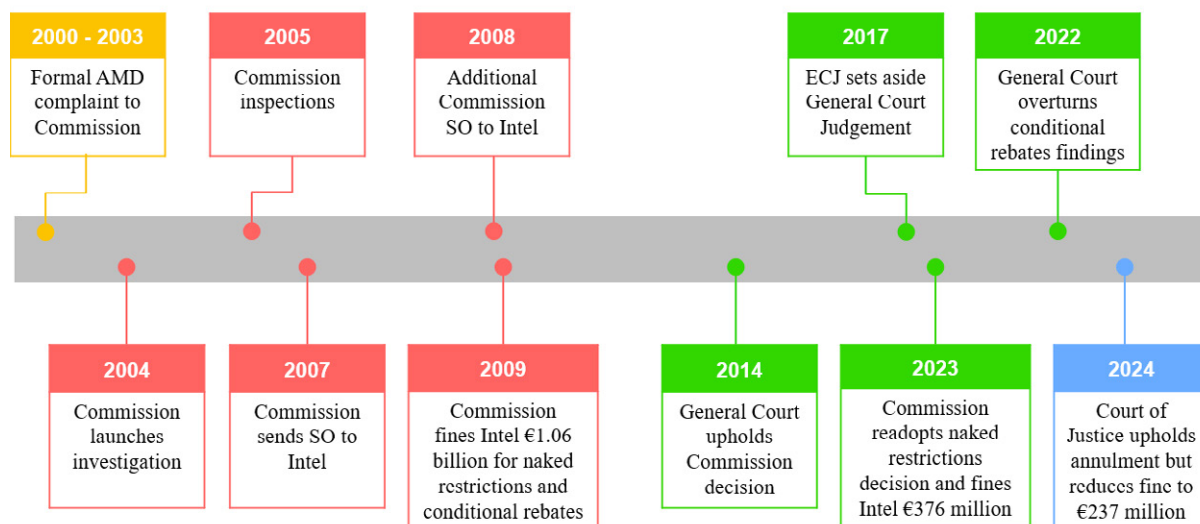
2017. Intel appealed to the Court of Justice, which ruled that exclusivity rebates by dominant companies are presumptively but not *per se* illegal under Article 102 TFEU.¹²⁰ The Court of Justice set aside the General Court’s 2014 Judgment and remitted the case, holding that the General Court had erred by failing to review the Commission’s effects analysis.

2022. On remittal, the General Court annulled the Commission’s €1.06 billion fine, marking a shift from formalism to effects-based analysis under Article 102 TFEU.¹²¹ The General Court held that the Commission erred in treating exclusivity

rebates as inherently abusive without assessing actual effects, and that the Commission’s AEC tests were flawed and failed to properly evaluate market coverage and the duration of the conduct. Whilst the General Court upheld the Commission’s findings on naked restrictions, it annulled the fine in its entirety because neither the Commission nor the General Court could isolate the portion of the fine attributable solely to those naked restrictions.

2023. On September 22, 2023, the Commission readopted its infringement decision insofar as it concerned the three naked restrictions, with a €376 million fine to reflect the narrower conduct scope.¹²²

2024. On October 24, 2024, the Court of Justice upheld the General Court’s annulment of the 2009 Commission Decision, reaffirming the requirement for a proper effects-based assessment of Intel’s rebate practices while referring limited residual issues back to the General Court.¹²³



¹¹⁹ *Intel Corporation v. Commission* (Case T-286/09) EU:T:2014:547 (“2014 Judgment”). See also *Hoffmann-La Roche v. Commission*, (Case C-85/1976) EU:C:1979:36. In *Hoffmann-La Roche*, the Court of Justice held that exclusive dealing and loyalty rebates constituted by object infringements, save for extraordinary circumstances in which they may be objectively justified.

¹²⁰ *Intel Corporation v. Commission* (Case C-413/14 P) EU:C:2017:632. The Court of Justice articulated the overarching principle that, where a dominant firm submits evidence that its rebates are not anticompetitive, the Commission must carry out an effects-based assessment of dominance, market coverage, the structure, duration and magnitude of the rebates, and any exclusionary strategy vis-à-vis equally efficient competitors.

¹²¹ *Intel Corporation v. Commission* (Case T-286/09 RENV) EU:T:2022:19 (“2022 Judgment”).

¹²² *Intel* (Case AT.37990), Commission decision of 22 September 2023 (“2023 Decision”). The fine was reduced by approximately 3/8 to account for the fact that five of the eight courses of conduct had been annulled.

¹²³ *Commission v. Intel Corporation* (Case C-240/22 P) EU:C:2024:915.

The 2025 General Court Judgment

Intel had sought an annulment of the contested decision, arguing that: (1) the Commission ought to have verified whether it had the jurisdiction to make findings in relation to the restrictions imposed on Acer and Lenovo; (2) the contested decision required a new, more detailed Statement of Objections (“SO”); and (3) the level of the fine was disproportionate and unlawful.

The Commission has jurisdiction to reimpose a fine for a previously established infringement

First, the General Court held that the Commission did not need to re-establish its jurisdiction to adopt the findings under review. Those findings were based on the three courses of conduct which formed the basis of the part of the 2009 Decision that had not been annulled.¹²⁴ Both the infringement findings and the Commission’s jurisdiction to make them had become final when Intel failed to appeal the General Court’s affirmation of those findings in the 2022 Judgment.¹²⁵ There was therefore no new finding of an infringement: the Commission was merely complying with the 2022 Judgment in resetting the amount of the fine.¹²⁶

The Commission does not have to issue a new SO where there is no new infringement

Second, the General Court confirmed that the Commission was entitled—and required—to rely on the part of the 2009 Decision that had not been annulled.¹²⁷ Contrary to Intel’s submissions, no new SO was warranted.¹²⁸ For the same reasons, the General Court found that

the contested decision was adequately reasoned, as the relevant context arising from the 2009 Decision “was known to the applicant”.¹²⁹ Lastly, the General Court held that Intel’s rights of defense and in particular, its right to be heard, were not infringed by this procedure, as the contested decision was based on a prior finding of single, continuous infringement.¹³⁰

The Court’s jurisdiction to alter a lawful and proportionate fine

Third, the General Court rejected Intel’s arguments seeking an annulment of the fine, holding that the amount set by the Commission was neither disproportionate nor unlawful.¹³¹ The General Court nevertheless exercised its unlimited jurisdiction under Article 261 TFEU and Article 31 of Regulation No 1/2003—which provide that the Court may review the legality of fines and may cancel, reduce or increase them—to substitute its own assessment for that of the Commission in determining the *level* of the fine.¹³² While emphasizing that the 2023 Decision was lawful and proportionate, the General Court held, that it was “possible, fair and appropriate to take account of other parameters, relating to both the duration of the infringement and its gravity... in order that [the fine] be set with increased precision”.¹³³ The General Court thus decided that, where several lawful parameters are available, it must select the one that “sets the amount with the greatest relevance”.¹³⁴

The General Court relied on two factors in assessing the proportionality of the fine in this regard. First, it found that the Commission had not sufficiently taken into account the 12-month gap

¹²⁴ See Article 1(f)-(h) of the 2009 Decision.

¹²⁵ See 2025 Judgment, para. 23.

¹²⁶ *Ibid.*, paras. 31–32.

¹²⁷ *Ibid.*, para. 31.

¹²⁸ *Ibid.*, paras. 52–53.

¹²⁹ *Ibid.*, paras. 44–45.

¹³⁰ *Ibid.*, paras. 59–60.

¹³¹ *Ibid.*, para. 97.

¹³² See Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (“Regulation No 1/2003”).

¹³³ See 2025 Judgment, para. 107. The General Court relied on Article 23(3) of the 2003 Regulation No 1/2003, which provides that in fixing the level of the fine “regard shall be had both to the gravity and to the duration of the infringement.”

¹³⁴ *Ibid.*

separating the naked restrictions imposed on HP from those applied to Lenovo.¹³⁵ While the General Court identified this temporal discontinuity as relevant to the assessment of the scope and gravity of the infringement, it did not expressly discuss how that omission affected the calculation of the fine or quantified the impact of the gap.¹³⁶ Second, although accepting that the Commission was in principle entitled to use all EEA sales of x86 CPUs in 2006 as the reference point, the General Court attached particular weight to the limited material scope of the infringement.¹³⁷ It noted that the naked restrictions covered only 8.2% of the units concerned.¹³⁸ In the General Court's view, this revealed a disconnect between the breadth of the sales base used for the fine calculation and the economic reality of the conduct, which was confined to a narrow subset of Intel's overall x86 CPU sales.¹³⁹ On this basis, the General Court exercised its unlimited jurisdiction and reduced the fine by 37%, rather than conducting a factor-by-factor fine recalculation.

Key takeaways

With this Judgment, the General Court reaffirmed its unlimited jurisdiction to alter a fine imposed by the Commission. In exercising that jurisdiction, the General Court is not bound by the Commission's fining guidelines, but is instead guided by the broader qualitative considerations of temporal and material scope of the infringement.

¹³⁵ *Ibid.*, para. 111.

¹³⁶ *See ibid.*, para. 110. *See also* the 2023 Decision, recitals 59–60.

¹³⁷ *See* 2025 Judgment, para. 113.

¹³⁸ *Ibid.*, para. 116.

¹³⁹ Commission itself had characterized the number of Acer units concerned as “modest” and that the General Court had similarly found the number of Lenovo units to be “modest”. *See ibid.*, para. 118.

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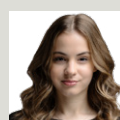
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