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# EU Competition Law Newsletter

## Highlights

- The Commission Publishes a Roadmap for the Upcoming Public Consultation on the Vertical Block Exemption Regulation
- The Commission Consults on Commitments Offered by Disney in Pay-TV Investigation
- The Commission Approves *Daimler/BMW* Mobility Services Joint Venture Subject to Access Remedies

## The Commission Publishes a Roadmap for the Upcoming Public Consultation on the Vertical Block Exemption Regulation

On November 8, 2018, the Commission published an “evaluation and fitness check roadmap” (“Roadmap”) for the Vertical Block Exemption Regulation (“VBER”),<sup>1</sup> setting out its plans to launch a 12-week public consultation in early 2019 on whether the VBER is still fit for purpose. This consultation is intended to help the Commission determine whether the VBER, which will expire on May 31, 2022, should be revised, replaced, or maintained in its current form against the background of “the increased importance of online sales.”<sup>2</sup>

### Background

First introduced in 2010, the VBER is designed to give parties to vertical agreements increased certainty about the compatibility of their

agreements with Article 101(1) TFEU through the introduction of certain “safe harbors.” Broadly speaking, a vertical agreement will be exempt from application of Article 101(1) provided that neither party’s market share exceeds 30% and the agreement does not contain any so-called hardcore restrictions, including resale price maintenance and territorial restrictions.

The years following the introduction of the VBER have been characterized by a significant increase in online sales and considerable growth of high-volume e-commerce and online retail platforms, prompting concerns about the suitability and relevance of the VBER to address this new market reality. The Commission’s recent e-commerce sector inquiry and resulting enforcement actions have contributed to the need for reform.

<sup>1</sup> Commission Regulation (EC) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices, OJ 2010 L 102/1.

<sup>2</sup> EU Competition Rules on Vertical Agreements, Evaluation Roadmap: [https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-5068981\\_en](https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-5068981_en).

## Purpose and Scope of the Public Consultation

Among the topics the Commission is expected to assess is the extent to which manufacturers can prevent resellers within a selective distribution system from selling through online retail platforms, such as Amazon and eBay. While the Vertical Guidelines suggest that manufacturers can impose such absolute bans,<sup>3</sup> national authorities have adopted different approaches—with some labeling such bans, *e.g.*, preventing resale of products through non-approved third-party platforms in the context of a selective distribution system, as hardcore restrictions. The Court of Justice of the EU (“Court of Justice”) helpfully clarified in its December 2017 *Coty* judgement<sup>4</sup> that such bans were permissible within a selective distribution system under certain conditions. Shortly after this judgment, the German Federal Court of Justice found a prohibition imposed by the sporting brand ASICS that prevented distributors within its selective distribution system from participating in price comparison tools to be a hardcore restriction.<sup>5</sup> The Commission is expected to reflect on these developments as part of the upcoming VBER consultation.

Another development in light of which the Commission may want to review the VBER is the suitability of market share thresholds. Under the current VBER, companies with market shares in excess of 30% in a given market will generally not be able to benefit from the safe harbor for, *e.g.*, exclusive distribution agreements. With respect to online sales, however, the Commission may want to examine whether market shares remain the correct metric for assessing market power, in particular where large platforms, such as Amazon, could be found to have market power for reasons unrelated to market shares for the resale of a specific product. The Commission is currently investigating, for instance, to what extent Amazon

may have a competitive advantage on the basis of the data it collects from resellers and consumers. The German Federal Cartel Office is conducting a parallel probe into Amazon’s dual role as the “largest retailer and largest marketplace.”<sup>6</sup>

## Initial Feedback

The invitation to submit feedback on the Roadmap by December 6, 2018 represented the first opportunity for interested parties to provide high-level comments about the scope and methodology of the upcoming consultation. The Commission has published 24 responses, the vast majority from business associations based throughout the EU, including those representing luxury brands (*e.g.*, the Fédération Européenne des Parfumeurs Détaillants and Fédération Française de la Parfumerie Sélective).

The feedback received so far is not intended to take exhaustive positions on whether the VBER should be changed or to what extent, but rather to provide preliminary observations ahead of the upcoming public consultation and to comment on the proposed methodology for that consultation. On that point, many respondents have commented that the 12 week consultation period envisaged by the Commission may not be sufficient to conduct a thorough investigation and have suggested extending it.

As regards the limited substantive feedback to date, several respondents have underlined the importance of the VBER as a vital piece of legislation that forms the foundation on which many companies in the EU develop their business plans, as well as the crucial importance of providing manufacturers with legal certainty and the ability to self-assess their practices. Respondents have commented that the VBER should be retained, but that it should be revised to better reflect changes in the market, most notably the increased digitalization discussed above. Finally, respondents also emphasized

<sup>3</sup> Guidelines on Vertical Restraints, OJ 2010 C 130/1 (“Vertical Guidelines”).

<sup>4</sup> *Coty Germany* (Case C-230/16) EU:C:2017:941 (“*Coty*”).

<sup>5</sup> See Federal Court of Justice case KVZ 41/17, December 12 2017: <http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&Datum=Aktuell&Sort=12288&nr=80673&pos=25&anz=515>.

<sup>6</sup> See Bundeskartellamt Press Release, Bundeskartellamt initiates abuse proceeding against Amazon, November 29, 2018: [https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Pressemitteilungen/2018/29\\_11\\_2018\\_Verfahrenseinleitung\\_Amazon.pdf?\\_\\_blob=publicationFile&v=2](https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Pressemitteilungen/2018/29_11_2018_Verfahrenseinleitung_Amazon.pdf?__blob=publicationFile&v=2).

the need to update the Vertical Guidelines in parallel with any changes made to the VBER,

as the Vertical Guidelines also have significant influence on decisions taken by national enforcers.

## The Commission Consults on Commitments Offered by Disney in Pay-TV Investigation

On November 9, 2018, the Commission invited interested parties to submit feedback on commitments offered by The Walt Disney Company (“Disney”) to address concerns relating to an alleged restriction on the cross-border sale of pay-TV services in a license agreement between Disney and Sky UK (“Sky”).<sup>7</sup> The restriction required Sky to block consumers situated outside its licensed territory (the UK and Ireland) from accessing the licensed films through its online pay-TV services. Disney’s commitments follow the Commission’s decision to accept commitments from Paramount Pictures (“Paramount”) in the same case in July 2016.<sup>8</sup> In a related development, in December 2016, Groupe Canal+ challenged the Paramount commitments decision before the General Court, which rejected the appeal on December 12, 2018.<sup>9</sup>

On July 23, 2015, the Commission issued a Statement of Objections against six U.S. film studios (Disney, NBCUniversal, Paramount, Sony, Twentieth Century Fox, and Warner Bros.) and Sky.<sup>10</sup> The Commission took the preliminary view that certain contractual provisions in license agreements between the studios and Sky restrict trade between Member States. These provisions were said to prevent or limit Sky from responding to unsolicited requests from consumers located in the EEA but outside the UK and Ireland (“broadcaster obligation”), or to require the studio to prohibit or limit broadcasters located elsewhere within the EEA from responding to unsolicited requests from consumers in the UK and Ireland (“studio obligation”). The Commission

maintained that these obligations have as their object the restriction of competition within the meaning of Article 101(1) TFEU, and do not qualify for exemption under Article 101(3) TFEU.

In response, Disney offered, applicable for five years: (1) not to (re)introduce any broadcaster or studio obligation in pay-TV license agreements; (2) not to enforce any broadcaster obligation before a court or tribunal in an existing agreement; and (3) not to act upon any studio obligation to which it is subject in an existing agreement.<sup>11</sup> The commitments apply to agreements licensing Disney’s entire future output of defined films on an exclusive basis, for exhibition on a premium tier pay-TV service and any on-demand service included in the same subscription. The commitments cover both satellite broadcast and online transmission.

Disney’s commitments are comparable to those offered by Paramount in 2016. Unlike the Paramount commitments, however, Disney expressly preserves its rights under copyright law, as well as its right to unilaterally employ geo-filtering measures to limit access to its own retail pay-TV services.

Finally, on December 20, 2018, the Commission invited interested parties to submit feedback on commitments offered by NBCUniversal, Sony Pictures, Warner Bros, and Sky in this case.

<sup>7</sup> Commission Press Release IP/18/6346, “Antitrust: Commission seeks feedback on commitments offered by Disney in pay-TV investigation,” November 9, 2018.

<sup>8</sup> *Cross-border access to pay-TV* (Case COMP/AT.40023), Commission decision of July 26, 2016.

<sup>9</sup> *Groupe Canal+ v. Commission* (Case T-873/16) EU:T:2018:904. The General Court dismissed Groupe Canal+’s appeal on all grounds on the basis that the Commission had properly identified preliminary competition concerns and the commitments were appropriate to address these concerns.

<sup>10</sup> Commission Press Release IP/15/5432, “Antitrust: Commission sends Statement of Objections on cross-border provision of pay-TV services available in UK and Ireland,” July 13, 2015.

<sup>11</sup> Communication from the Commission published pursuant to Article 27(4) of Council Regulation (EC) No 1/2003 in Case AT.40023 – Cross-border access to pay-TV, OJ 2018 C 403/17.

# The Commission Approves *Daimler/BMW* Mobility Services Joint Venture Subject to Access Remedies

On November 7, 2018, the Commission conditionally approved the creation of six mobility services joint ventures (“JVs”) by Daimler and BMW.<sup>12</sup> The JVs are intended to bring together the parties’ mobility services, *i.e.*, free-floating car sharing services DriveNow (BMW) and car2go (Daimler), ride hailing services, parking services, charging services, other on-demand mobility services, and brand and license management.

The Commission identified significant overlaps between the parties’ free-floating car sharing services, which allow customers to pick up and drop off a car anywhere within a defined city area, and found that competition concerns could arise in Berlin, Cologne, Düsseldorf, Hamburg, Munich, and Vienna. The Commission assessed competitive restraints exerted by alternative means of transport, including public transport and station-based car sharing (*i.e.*, where drop off is limited to specific stations), and noted that its market investigation suggested that a number of competitors, including OEMs and car rentals, were planning to commence operations in these six cities.

The Commission also assessed vertical relationships between the parties’ free-floating car sharing services and Daimler’s “moovel” integrator app. Integrator apps allow users to plan their trips by displaying many different transport options, including public transport, taxi services, and car sharing. The Commission found that the parties would have the ability and incentive to foreclose: (1) other providers of integrator apps by restricting or limiting access to DriveNow and car2go; and (2) rival providers of

car sharing services by restricting or limiting their ability to appear on the parties’ integrator app.

In an effort to address the Commission’s concerns, the parties offered behavioral remedies by which they committed to give rival integrator app providers access to application programming interfaces (“APIs”) to allow them to re-direct users to Daimler and BMW’s car sharing services, and to give rival providers of car sharing services access to Daimler’s integrator app to enable effective competition on the platform. Both commitments are limited to the six relevant cities.

The Commission approved the commitments, noting that they would both reduce entry barriers for new providers of free-floating car sharing services and ensure that rival providers of integrator apps are able to display DriveNow and car2go to their customers.

The Commission has accepted remedies in the form of granting access to key technology in a number of recent cases, with the aim to prevent companies that own the rights to key technology from foreclosing competitors that depend on such technology as an essential input for their own activities. These include *Microsoft/LinkedIn*,<sup>13</sup> where the parties committed to make Outlook’s APIs available to competing professional social network providers, *Qualcomm/NXP Semiconductors*,<sup>14</sup> where the parties committed to provide detailed interoperability information to third parties, and *Broadcom/Brocade*,<sup>15</sup> where the parties committed to keep providing technical support to competing host bus adaptor suppliers to insure continued interoperability with the parties’ fibre channel switches.

<sup>12</sup> *Daimler/BMW/Car Sharing JV* (Case COMP/M.8744), Commission decision of November 7, 2018.

<sup>13</sup> *Microsoft/LinkedIn* (Case COMP/M.8124), Commission decision of December 6, 2016.

<sup>14</sup> *Qualcomm/NXP Semiconductors* (Case COMP/M.8306), Commission decision of January 18, 2018.

<sup>15</sup> *Broadcom/Brocade* (Case COMP/M.8314), Commission decision of May 12, 2017.

# News

## Commission Updates

### **The Commission Unconditionally Clears Four-to-Three Telecoms Merger T-Mobile NL/Tele2 NL Following Phase II Investigation**

On November 27, 2018, following a Phase II investigation, the Commission unconditionally cleared the acquisition of Tele2 Netherlands by T-Mobile NL, a subsidiary of Deutsche Telekom.<sup>16</sup> Despite having already issued a Statement of Objections, the Commission concluded on the basis of its market investigation that no competition concerns would arise as: (1) the combined market position of T-Mobile and Tele2 (around 25%) is limited and the increment (around 5%) small; (2) the merged entity will continue to be the smallest mobile network operator in the national retail mobile market post-transaction; (3) Tele2 did not appear to constitute an important competitive force; and (4) the likelihood of coordinated effects between mobile network operators would not increase due to different business strategies employed by the other two operators.

The transaction, which reduces the number of mobile network operators in the Netherlands from four to three, may at first sight appear to be in contrast with past four-to-three transactions in the telecoms sector, which the Commission has either prohibited or cleared subject to asset-heavy divestiture remedies. The present case however deviates from previous “four-to-three” mergers, which involved higher combined market shares and increments,<sup>17</sup> resulted in the creation of a market leader,<sup>18</sup>

and/or eliminated an important competitive force in the market.<sup>19</sup> The present Commission decision signals that there is no magic number of operators on a given market and that four-to-three mergers in the telecoms sector can be approved depending on the specificities of each case.

### **The Commission Sends Supplementary Statement of Objections to Canon for Possible Gun Jumping**

On November 30, 2018, the Commission issued a Supplementary Statement of Objections (“SSO”) to Canon with respect to its ongoing investigation into Canon’s 2016 acquisition of Toshiba Medical Systems.<sup>20</sup> The Commission is investigating whether Canon implemented the acquisition before notifying it to and obtaining approval from the Commission, in breach of the EU Merger Regulation. The acquisition was structured as a so-called warehousing two-step transaction, whereby, as a first step, an interim buyer acquired 95% of the share capital for a small amount (€800) and Canon acquired the remaining 5% stake and an option to subsequently acquire the interim buyer’s stake for €5.28 billion. This first step was effected upon signing and was not notified to the Commission. As a second step, Canon exercised its share option and acquired full ownership of the target, but did so only after having obtained approval from the Commission. While the Commission unconditionally cleared the transaction in August 2016,<sup>21</sup> it issued an initial Statement of Objections (“SO”) to Canon in July 2017, where it preliminarily concluded that the structure constituted

<sup>16</sup> *T-Mobile NL/Tele2 NL* (Case COMP/M.8792), Commission decision of November 27, 2018.

<sup>17</sup> See, e.g., *Hutchison 3G Italy/Wind/JV* (Case COMP/M.7758), Commission decision September 1, 2016; and *Hutchison 3G Austria/Orange Austria* (Case COMP/M.6497), Commission decision December 12, 2012 (the combined share of the parties by number of subscribers and revenue was 20-40% and the increment was 10/20%).

<sup>18</sup> See, e.g., *Hutchison 3G UK/Telefonica Ireland* (Case COMP/M.6992), Commission decision May 28, 2014; and *Telefonica Deutschland/E-Plus* (Case COMP/M.7018), Commission decision July 2, 2014 (post-transaction, the merged entity would be the largest or one of the two largest MNOs at national level by number of subscribers).

<sup>19</sup> See, e.g., *Hutchison 3G UK/Telefonica UK* (Case COMP/M.7612), Commission decision May 11, 2016 (the transaction involved Three, which was the latest market entrant and an important driver of competition/maverick in the UK mobile market).

<sup>20</sup> Commission Daily News MEX/18/6636, “Mergers: Commission sends Supplementary Statement of Objections to Canon for possible early implementation of acquisition,” November 30, 2018.

<sup>21</sup> *Canon/Toshiba Medical Systems Corporation* (Case COMP/M.8006), Commission decision of September 19, 2016.

early implementation of the transaction.<sup>22</sup>

The SSO follows a flurry of EU-level enforcement activity in the area of gun jumping, with a number of decisions and judgments having been issued between the initial Canon SO and the subsequent SSO. These include the General Court's judgment in October 2017 upholding the Commission's decision to fine Marine Harvest €20 million for early implementation of its acquisition of Morpol,<sup>23</sup> the Commission's decision to fine Altice €124.5 million in April 2018 for early implementation of its acquisition of PT Portugal,<sup>24</sup> and the Court of Justice's preliminary ruling in the KPMG case in May 2018 providing useful guidance on the scope of the gun jumping prohibition.<sup>25</sup> In issuing an SSO to Canon, the Commission may have elected to take account of these developments in an effort to strengthen its upcoming decision in the event of a subsequent appeal.

### **The European Parliament Formally Adopts the ECN+ Directive**

On November 14, 2018, the European Parliament formally adopted at first reading the draft directive to empower national competition authorities to be more effective enforcers and to ensure the proper functioning of the internal market (known as the ECN+ Directive). The Directive is intended to provide minimum guarantees and safeguards for optimal enforcement of competition rules by national competition authorities ("NCAs"), and to ensure that NCAs are provided with adequate independence, powers, and resources. In addition, the Directive will facilitate coordination of national leniency application programs and establish a framework for cooperation between NCAs for the conduct of investigations, notification of decisions, and enforcement of fines.

The Directive is expected to bring about more homogenous antitrust enforcement by NCAs. While Member States with more

established competition regimes may see fewer changes resulting from the Directive, those with less developed capabilities are expected to see their NCAs being reinforced.

### **The Commission Opens a Formal Investigation into Airline Ticket Distribution Services**

On November 23, 2018, the Commission opened an investigation into agreements between booking system providers Amadeus and Sabre, airlines, and travel agents. The Commission will investigate whether the agreements restrict competition in the market for airline ticket distribution services.<sup>26</sup> Amadeus and Sabre are leading worldwide suppliers of global distribution systems ("GDS"), which aggregate information about flight schedules, seat availability, and ticket prices from multiple airlines. Travelport, another prominent GDS supplier, appears to have not been named in the probe. GDS enable travel agents and travel management companies to compare airline services and make reservations for travelers. The Commission is concerned that certain terms in Amadeus's and Sabre's agreements may restrict airlines' and travel agents' ability to use alternative suppliers of ticket distribution services, which may restrict market entry and increase airlines' distribution costs.

The probe comes more than two years after the Commission issued information requests to stakeholders in the sector inquiring about certain provisions in agreements between GDS suppliers and airlines. This 2016 preliminary investigation primarily concerned "content parity" (*i.e.*, airlines agree not to provide more fare content to any reservation outlet than the content they provide to their GDS supplier) and "no surcharge" clauses (*i.e.*, airlines agree not to charge additional fees for bookings made via a GDS). The focus of the pending formal probe remains to be seen.

<sup>22</sup> Commission Press Release IP/17/1924, "Mergers: Commission alleges Merck and Sigma-Aldrich, General Electric, and Canon breached EU merger procedural rules," July 6, 2017.

<sup>23</sup> *Marine Harvest v. Commission* (Case T-704/14) EU:T:2017:753; and *Marine Harvest/Morpol* (Case COMP/M.7184), Commission decision of July 23, 2014.

<sup>24</sup> *Altice/PT Portugal* (Case COMP/M.7993), Commission decision of April 24, 2018.

<sup>25</sup> *Ernst & Young* (Case C-633/16) EU:C:2018:371.

<sup>26</sup> *Airline ticket distribution (Amadeus)* (Case COMP/AT.40617) and *Airline ticket distribution (Sabre)* (Case COMP/AT.40618), decisions not yet issued. See Commission Press Release IP/18/6538, "Antitrust: Commission opens investigation into airline ticket distribution services," November 23, 2018.

## The Commission Opens a Phase II Investigation in *Aperam/VDM*

On November 29, 2018, the Commission opened an in-depth, Phase II investigation into Aperam's proposed acquisition of VDM.<sup>27</sup> Both parties are producers of nickel alloys, which are highly alloyed steels used predominantly in highly corrosive or hot environments with applications in a range of industries, including the automotive, oil and gas, chemical process, and electronics and electrical industries. In addition, Aperam's largest shareholder, the Mittal family trust, is also the largest shareholder of Industeel, another important nickel alloy-based supplier in Europe.

Following its initial market investigation, the Commission is concerned that the proposed transaction may reduce competition in the supply of nickel alloys, as Aperam and VDM are the two leading nickel alloy producers in Europe, while VDM is already the market leader whose position would be further strengthened. The Commission has until April 16, 2019 to decide on the proposed transaction.

## Courts

### ASL Seeks Damages from the Commission Following the Annulment of the *UPS/TNT Express* Prohibition Decision

On November 5, 2018, the EU Official Journal published details about an action brought by Aviation Holdings DAC and ASL Airlines Ltd (together "ASL") against the Commission before the General Court seeking damages in the amount of €263.6 million (plus interest).<sup>28</sup> ASL claims the Commission is liable for losses it suffered as a result of the Commission's 2013 decision to prohibit the proposed acquisition of TNT Express NV by UPS.<sup>29</sup> This reportedly frustrated its plan to acquire TNT Airways and Pan Air

Líneas Aéreas, both of which were proposed as remedies at the time. Relatedly, UPS appealed the prohibition decision to the General Court, which annulled it in 2017,<sup>30</sup> and an appeal is currently pending before the Court of Justice.<sup>31</sup>

ASL alleges that the Commission's prohibition decision was unlawful and failed to follow proper merger control procedures in violation of ASL's right to sound administration, which ultimately precluded it from realizing the benefits associated with the agreement to acquire TNT Airways and Pan Air Líneas Aéreas. ASL signed a conditional purchase agreement with TNT in November 2012. As part of the agreement, ASL would have taken over all flights performed by TNT Express's airlines to become a third-party provider of the combined UPS-TNT Express group.

This claim for damages comes despite ASL having successfully bought the TNT airline three years later when Fedex acquired TNT following a Phase II merger control proceeding leading to an unconditional clearance decision. ASL's action follows UPS's December 2017 action against the Commission in which it is seeking €1.7 billion in damages.<sup>32</sup> While it is settled case law that actions can be brought against the Commission for non-contractual liability arising from its merger decisions, this is the first time a proposed buyer of a remedy brings an action for damages against the Commission. The standard of proof in non-contractual liability claims against the EU institutions is high. In an action against the Commission, Schneider was awarded only €50,000 of the €1.66 billion claimed for losses incurred by the Commission's (subsequently annulled) decision to prohibit Schneider's acquisition of Legrand—the only case where damages have been awarded in relation to an annulled merger prohibition decision.<sup>33</sup> The high standard of review is not exclusive to merger

<sup>27</sup> *Aperam/VDM* (Case COMP/M.8907), decision not yet issued.

<sup>28</sup> *ASL Aviation Holdings and ASL Airlines v. Commission* (Case T-540/18).

<sup>29</sup> *UPS/TNT Express* (Case COMP/M.6570), Commission decision of January 30, 2013.

<sup>30</sup> *United Parcel Service v. Commission* (Case T-194/13) EU:T:2017:742.

<sup>31</sup> *Commission v. United Parcel Service* (Case C-265/17 P).

<sup>32</sup> *United Parcel Service v. Commission* (Case T-834/17).

<sup>33</sup> *Commission v. Schneider Electric SA* (Case C-440/07 P) EU:C:2010:324. See also Nicholas Levy and Christopher Cook, European Merger Control Law, Ch. 20, *Judicial Review*, § 20.06[4] (Matthew Bender & Co., 2017).

cases. The Court of Justice has only recently reduced a damages award against the Commission in a cartel case to only a few thousand Euros, a fraction of the amount initially claimed.<sup>34</sup>

## Upcoming Events

Date	Conference	Organizers	Location
January 15 (2019)	Implementation of Repeated and Single Infringement	Concurrences	Paris
January 17 (2019)	Shaping Competition Policy in the Era of Digitisation	DG Competition	Brussels
January 28 (2019)	Request for Information in Merger Control: Where is the Corporate Risk?	Concurrences	Paris
January 29 to 30 (2019)	Competition Law Nordic	Knect365	Stockholm
January 31 to February 1 (2019)	14 <sup>th</sup> Annual Conference of the GCLC: Remedies in EU Competition Law: Substance, Process & Policy	GCLC	Brussels

<sup>34</sup> See, e.g., *European Union v. Gascogne Sack Deutschland and Gascogne* (Joined Cases C-138/17 P and C-146/17 P) EU:C:2018:1013



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