

# COMPETITION & REGULATION REPORT

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## HIGHLIGHTS

- Competition
- Mergers
- State Aid
- Energy
- Electronic Communications
- Transport

- C-815/21 P - Amazon.com and Others v Commission
- C-394/21 - Bursa Română de Mărfuri
- C-127/21 P - American Airlines v Commission
- T-142/21 - Wizz Air Hungary v Commission
- Commission further cuts red tape for merging businesses.
- Commission prolongs Motor Vehicle Block Exemption Regulation and updates the Supplementary Guidelines.
- 2022 Scoreboard shows that in 2021 State aid levels remained high to tackle economic effects of the pandemic.

# Editorial

**CJ, Case 449/21, Towercast: A concentration below EU and national thresholds can constitute an abuse of dominance pursuant to article 102 TFEU.**

Before the adoption of specific EU legislation on the control of concentrations (Regulation 4064/1989, consequently repealed and replaced by Regulation 139/2004), under the landmark case Continental Can (Case 6/72) it was admitted that under specific conditions the takeover of an undertaking by a dominant firm can constitute an abuse of dominance on behalf of the latter. However, after the adoption of the first EU Regulation on the control of concentrations, which laid down an ex ante (preventive) control of concentrations, we used to believe that Continental Can was as simple as that set aside in essence by referring to the ne bis in idem principle and the fact that ex ante and ex post control of one and the same operation were by concept mutually exclusive. In the same vein, if an operation was qualified as a notifiable concentration only ex ante provisions were applicable. And not only this, but furthermore the decision adopted by the competent authority (Commission or National Competition Authorities – NCA's) on the concentration examines and also encompasses the additional restrictions that are necessary for the implementation of the operation (the so-called “ancillary restraints”).

Nevertheless, not all concentrations are notifiable to the Commission or to the NCA's. That depends on whether they meet some quantitative criteria (thresholds) in terms of the turnover generated by the participating undertakings (pursuant to detailed and often not straightforward rules of calculation). Thus, some operations lawfully pass below the ex-ante assessment powers of competition authorities. Interestingly, the Court by its commented judgment ruled that EC Regulation 139/2004 does not preclude NCA's from applying article 102 TFEU on abuse of dominance on concentrations that have no Community dimension, have not been referred to the Commission under the referral rules and do not meet the national thresholds for notification to the NCA in question. This is an important judgment that clarifies and updates the Continental Can precedent and contributes to the effective application of competition rules to behaviors that could otherwise pass below the spectrum of the radar.

In order to see the Press Release of the Court, [click here](#).

In order to read the full judgment of the Court, [click here](#).



# Antitrust

## **C-682/20 P Les Mousquetaires and ITM Entreprises v Commission**

The Court in its judgment of 9 March 2023 in **Les Mousquetaires** (C-682/20 P) sets aside in part the judgments of the General Court and therefore annuls the decisions of the Commission ordering inspections at the premises of a number of French undertakings in the distribution sector ordered due to suspicions of anticompetitive practices.

To read the full judgment, [click here](#).

## **C-815/21 P Amazon.com and Others v Commission**

The Court in its judgment of 20 April 2023 in **Amazon.com** (C-815/21 P) dismissed Amazon's appeal against the General Court's order in Case T-19/21 in its entirety. The General Court in T-19/21 dismissed an action for annulment against the Commission's decision to carve Italy out of the scope of its investigation into Amazon's business practices.

To read the full judgment, [click here](#).

## **C-25/21 - Repsol Comercial de Productos Petrolíferos**

In a preliminary reference procedure, the Court of Justice in its judgment of 20 April 2023 in **Repsol** (C-25/21) ruled on the binding effects national competition authorities' decisions have on private enforcement actions for damages. While the applicability of the Damages Directive (Directive 2014/104/EU) was examined and was found to be inapplicable, the Court ruled that national competition authorities' decisions provide sufficient proof of infringement if its facts coincide with the facts of the civil enforcement action on the basis of the principle of effectiveness. It is noteworthy, that the Court reached this conclusion by drawing on the "material, personal, temporal and territorial scope" criteria, shifting the burden of proof on the defendant.

To read the full judgment, [click here](#).

## **Commission announces Guidelines on exclusionary abuses and amends Guidance on enforcement priorities.**

The Commission published a Call for Evidence with a view to adopting Guidelines on the application of Article 102 TFEU to exclusionary conduct.

To read the full press release, [click here](#).

## **Commission confirms unannounced inspections in the fashion sector.**

To read the press release, [click here](#).

## **Commission prolongs Motor Vehicle Block Exemption Regulation and updates the Supplementary Guidelines.**

To read the press release, [click here](#).

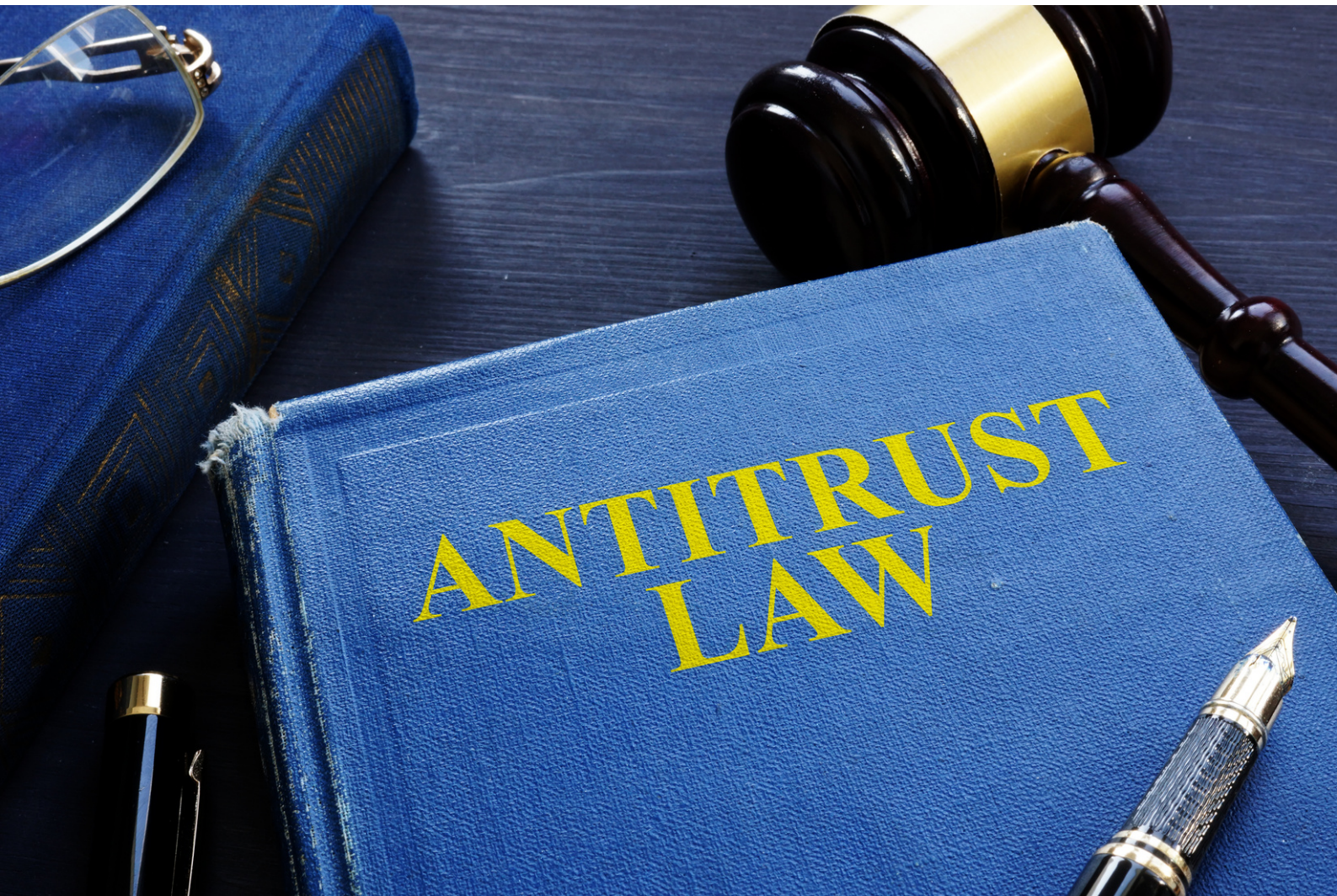


**EU-US hold third Joint Technology Competition Policy Dialogue.**

To read the full press release, [click here](#).

**HCC : Press Release - Dawn raids in the market for currant**

To read the press release, [click here](#).





# Mergers

## **Commission further cuts red tape for merging businesses.**

The Commission's package to simplify its procedures for reviewing concentrations under the EU Merger Regulation is expected to bring significant benefits for businesses and advisers in terms of preparatory work and related costs, especially for unproblematic mergers. The new rules will be applicable as of 1 September 2023.

To read the full press release , [click here](#).

## **Commission clears acquisition of Borealis NITRO by AGROFERT.**

To read the press release, [click here](#).

## **Commission clears the acquisition of VOO and Brutélé by Orange, subject to conditions.**

To read the press release, [click here](#).

## **Commission clears acquisition of Photomath by Google.**

To read the press release, [click here](#).

## **Commission opens in-depth investigation into the proposed transaction between Orange and MasMovil.**

To read the press release, [click here](#).

## **Commission sends Broadcom Statement of Objections over proposed acquisition of VMware.**

To read the press release, [click here](#).

**HCC : Clearance of the notified concentration concerning the acquisition by the company under the name «PIRAEUS BANK S.A.», on the basis of a mandatory public offer, of sole control over the company under the name «MARFIN INVESTMENT GROUP HOLDING COMPANY S.A.», currently «MIG INVESTMENT GROUP HOLDING COMPANY S.A.»**

To read the full press release, [click here](#).



# State Aid

## C-492/21 P - Casa Regina Apostolorum della Pia Società delle Figlie di San Paolo v Commission

The Court of Justice dismissed an appeal in **Casa Regina Apostolorum della Pia Società delle Figlie di San Paolo** against the previous General Court decision, confirming that using social security contributions of the members of a Member State and state resources to finance its' health insurance scheme does not fall within the scope of state aid.

To read the full judgment in French and Italian, [click here](#).

## Commission amends General Block Exemption rules to further facilitate and speed up green and digital transition.

To read the press release, [click here](#).

## Commission: Temporary Crisis and Transition Framework Factsheet

To download the Factsheet, [click here](#).

## 2022 Scoreboard shows that in 2021 State aid levels remained high to tackle economic effects of the pandemic.

To read the full press release, [click here](#).



# Energy

## C-394/21 - Bursa Română de Mărfuri

The judgment of the Court in **Bursa Română de Mărfuri** clarifies EU law on the discretion of Member States in organizing and operating electricity markets. More specifically, EU law does not prohibit national legal monopolies for intermediation services in respect of offers to sell and bids to buy electricity concerning the day-ahead and intraday wholesale markets under certain conditions.

To read the full judgment, [click here](#).

## Commission adopts Temporary Crisis and Transition Framework to further support transition towards net-zero economy.

To read the full press release, [click here](#).

## Commission updates guidance for measures to support the green transition.

To read the full press release, [click here](#).

## Commission approves €2 billion French guarantee scheme to support energy-consuming companies in the context of Russia's war against Ukraine.

To read the press release, [click here](#).

## Commission extends in-depth investigation into Germany's plans for early closure of lignite-fired power plants.

To read the full press release, [click here](#).

## Commission approves €1 billion Finnish scheme to support companies in the context of Russia's war against Ukraine.

To read the full press release, [click here](#).

## Commission approves €450 million Italian scheme to support the production of renewable hydrogen to foster the transition to a net-zero economy.

To read the full press release, [click here](#).

## Commission approves €158 million Polish measure to support LOTOS Green H2 in the production of renewable hydrogen.

To read the full press release, [click here](#).

## Commission approves €1.4 billion Dutch scheme to support energy-intensive companies in the context of Russia's war against Ukraine.

To read the full press release, [click here](#).

## Commission approves prolonged and amended Spanish and Portuguese measure to lower electricity prices amid energy crisis.

To read the full press release, [click here](#).

# Electronic Communications

## C-339/21- Colt Technology Services and Others

In accordance with the judgement of the Court in **Colt Technology Services and Others**, EU law does not preclude national legislation which does not require full reimbursement of the costs actually incurred by providers of electronic communications services when they assist national authorities in legal interception of communications, on the basis of the principles of non-discrimination, proportionality and transparency.”

To read the full judgment, [click here](#).

# Transport

## C-127/21 P - American Airlines v Commission

The Court of Justice in its judgment of 16 March 2023 in **American Airlines** (C-127/21 P) dismissed the appeal filed by American Airlines, upholding the General Court’s decision which dismissed their previous annulment action against a Commission decision granting grandfathering rights over Heathrow Airport slots to competitor Delta Air Lines.

To read the full judgment, [click here](#).

## T-142/21 - Wizz Air Hungary v Commission

The General Court in its judgment of 29 March 2023 in **Wizz Air Hungary** (T-142/21) dismissed an appeal filed by Wizz Air, against a Commission’s decision approving state aid granted by the Romanian state to Blue Air in the context of the Covid-19 pandemic, examining it under the lens of proportionality required in the application of Article 197(2)(b) TFEU.

To read the full judgment, [click here](#).

## Commission opens investigation into possible anticompetitive practices by Renfe in online rail ticketing.

To read the full press release, [click here](#)

## Commission opens in-depth investigation into Romanian support measures in favour of Blue Air.

To read the full press release, [click here](#).

## HCC : Press Release - Assessment of the effectiveness of ATTICA's commitments

To read the full press release, [click here](#).

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