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June 2021



Competitive edge

Keeping you up to date on Competition & EU law developments in Europe and beyond

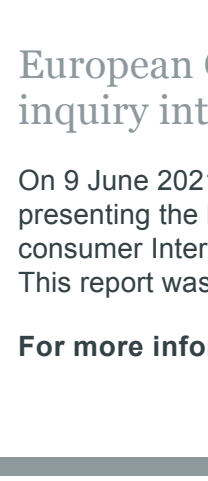
Dear readers,

The InFocus article in this edition of *Competitive Edge* addresses information exchange within the financial sector. Our experts help you identify red flags and provide practical tips to help you mitigate risk. Furthermore, we present you with an overview of this month's key competition law developments in Europe and beyond.

Best wishes,

The Editorial Committee

In focus



When talk isn't so cheap: information exchange and the Financial Sector in the EU/UK

Information exchange within the financial sector continues to be firmly on the EU and UK competition authorities' radar, with significant fines being imposed for illicit conduct. This article sets out an overview of the law on information exchange, identifies the main red flags that businesses should look out for and provides some practical tips on the sorts of procedures that can be put in place to help mitigate against unlawful information exchange. [Read more >>](#)

Saskia King
Legal Director
London
[Contact](#)

Updates from our jurisdictions

EU

Reference for preliminary ruling in the Nokia Daimler dispute falls as Daimler signs a patent licensing agreement

The reference for preliminary ruling made by the Düsseldorf Regional Court to the Court of Justice of the European Union (CJEU) will be withdrawn as Daimler has signed a global patent licensing agreement. The hope is that certain open issues from the Huawei/ZTE judgment have been dashed, at least in the context of these proceedings... [Read more >>](#)

For more information contact [Bróna Heenan](#) or [Louis Delvaux](#)

European Commission publishes initial findings of inquiry into consumer Internet of Things

On 9 June 2021, the European Commission released its preliminary report presenting the key findings of its competition sector inquiry into markets for consumer Internet of Things (IoT) related products and services in the EU. This report was published following a sector inquiry... [Read more >>](#)

For more information contact [Saskia King](#)

Australia

A costly cup of coffee

The ACCC has recently announced that it will bring civil proceedings against an Australian company and its director for alleged cartel conduct. According to ACCC's press release, the conduct related to a 2019 tender for the replacement of a smart building management system at the... [Read more >>](#)

For more information contact [Thomas Jones](#) or [Matthew Bovaird](#)

Competition in App marketplaces | ACCC Digital platform services inquiry – second interim report

Recently the ACCC released its second interim report as part of the five-year Digital Platform Services Inquiry, which examines the competition and consumer issues associated with the distribution of mobile apps to users of smartphones and other mobile devices. [Read more >>](#)

For more information contact [Emma Croft](#)

Belgium

Update on the Belgian Competition Authority's decisional practice

In the last few months, the Belgian Competition Authority adopted three important decisions in the life sciences and retail sectors. This month's update summarises the main points of each... [Read more >>](#)

For more information contact [Hein Hobbelen](#) or [Baptist Vleeshouwers](#)

Czech Republic

Pharmaceutical sector inquiry initiated by the Czech Competition Authority

In recent years, there has been an increase in the number of complaints from competitors in the pharmaceutical sector, associations of pharmaceutical companies and the public, especially in relation to the distribution of medicines. The pharmaceutical sector was also subject to... [Read more >>](#)

For more information contact [Vojtech Chloupek](#) or [Jiri Švejda](#)

Denmark

Sportswear producer fined for Resale Price Maintenance by Danish City Court

In 2017, a competitor to a Danish sportswear producer filed a complaint with the Danish Competition and Consumer Authority (DCCA) regarding resale price maintenance of said producer. The sportswear producer had put pressure on its distributors to respect the recommended... [Read more >>](#)

For more information contact [Morten Nissen](#) or [Frederik Haugsted](#)

Germany

Even "narrow" best price clauses are not narrow enough

On May 18, 2021, the Federal Court of Justice (FCJ) ruled that Booking.com's "narrow" best price clause violates Article 101 (1) TFEU (the cartel prohibition) as well. Thereby the FCJ overruled the Higher Regional Court of Düsseldorf which held that "narrow" best price... [Read more >>](#)

For more information contact [Dr. Stephan Waldheim](#) or [Maren Steiert](#)

Italy

Google fined EUR 102 million for abusing its dominant position in the Android Auto platform

On 13 May 2021, the Italian Competition Authority (ICA) fined Google for its refusal to publish an app developed by Enel X Italia ("JuicePass") on Android Auto allowing electric vehicle drivers to search and book an electric charging point while driving... [Read more >>](#)

For more information contact [Federico Marini Balestra](#)

Poland

UOKiK fines a CEO for changing an email password

In mid-May, the Polish Competition Authority (UOKiK) issued a decision imposing a fine on an individual for obstructing a dawn raid conducted by UOKiK's officials. Even though UOKiK rarely fines individuals... [Read more >>](#)

For more information contact [Piotr Dynowski](#) or [Marcin Alberski](#)

Spain

CNMC fines consulting firm € 6.3 million and grants reduction for the adoption of a compliance programme

On 11 May 2021, the Spanish Competition Authority (CNMC) fined 22 consulting firms and several of their executives a total of EUR 6.3 million for creating a cartel in violation of Article 1 of the Spanish Competition Act (LDC) and Article 101 of the Treaty of the Functioning of the... [Read more >>](#)

For more information contact [Candela Sotés](#).

The Netherlands

ACM publishes study into compliance culture at companies in regulated markets

On 25 May 2021, the Dutch Consumer & Market Authority (ACM) published its behavioural study into the compliance programmes and compliance culture at four companies in regulated industries which are under supervision of the ACM. In the study, the ACM not only examined... [Read more >>](#)

For more information contact [Pauline Kuipers](#)

The UK

When competition law and data protection overlap – Joint statement from the UK's CMA and ICO

The well-known (and somewhat over simplistic) paradox that data protection laws aim to keep personal data contained whilst competition law wants personal data to be more freely available is the premise behind the two UK regulators' latest collaboration. In the last two years, the UK... [Read more >>](#)

For more information please contact [Saskia King](#) or [Ariane Le Strat](#)

Webinars & Events



Florence Competition Summer Conference

Effective remedies vis-a-vis digital platforms

24 - 25 June - hybrid event

The European University Institute (EUI) has prepared an impressive programme that begins with a key-note speech by **Margrethe Vestager** and includes

participation of high profile academics, practitioners, officials from national competition and regulatory authorities, EU institutions, as well as industry representatives.

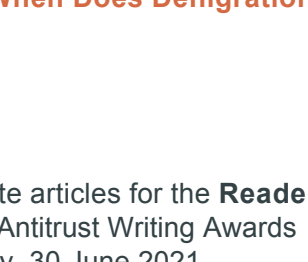
During the **hybrid event** the growing interaction of competition policy and sector regulation regarding possible remedies imposed on digital platforms will be discussed. Bird & Bird competition partner **Hein Hobbelen** will join the panel discussing **Data portability**.

See the programme and speakers [here >>](#)

Attendance is **free**. Find out more and register [here >>](#)

ERA Summer Course on European Antitrust Law

5 - 9 July 2021 - online event



This online course will provide participants with an in-depth understanding of the basics of EU antitrust law and a comprehensive update on the latest developments in each field.

Participants will be able to enhance their knowledge through case studies and workshops.

The course will be hosted on ERA's online training platform, making the most of the technical tools available to deliver an intensive, interactive training experience. You will be able to interact with top-quality speakers and other participants, break out into working groups and work collaboratively on case studies. Bird & Bird competition partner **Hein Hobbelen** and associate **Baptist Vleeshouwers** will be among the speakers, presenting **The Commission's leniency policy: a key tool in the fight against cartels**.

See the programme and speakers [here >>](#)

Find out more and register [here >>](#)



EU Competition Law Summer School 2021

16 - 20 August 2021 - Cambridge, UK

Covering all areas of competition law, this residential, all-inclusive event is tailored to the needs of professionals and provides a firm understanding of EU competition law to help them shape their practical

strategies. Each day builds on a key theme in competition law, through a combination of lectures, practical discussions, Q&As and case studies - ensuring that delegates are proficient in both the fundamentals, as well as currently developing 'hot' topics, which include extended sessions on the digital economy, innovation, sustainability and FDI.

Instructed by top competition law minds, including regulators, in-house counsel, private practice lawyers and economists, each day will provide ample opportunities to network with peers and experts - establishing a pool of invaluable contacts for future business opportunities. Bird & Bird experts **Anne Federle** and **Saskia King** will present on **Hard Core Cartels** and **Merger Proceedings**. 29 CPD hours and a certificate are awarded on completion.

Find out more and receive a **20% discount** when registering through this [link >>](#) (or use **VIP code FW8328BB** when booking).

Recordings of recent webinars on Legal Privilege now available

Webinar 1: Legal Privilege in investigations – how does it differ across jurisdictions?

3 June 2021

Watch the recording of the webinar [here >>](#)

In this 1-hour webinar, panelists from around the world assessed the differences in the rules of legal privilege between jurisdictions in the context of an investigation. The international group of speakers, representing the UK, the EU, Middle East, the PRC and U.S., discussed:

- why exactly legal privilege is so important,
- the different types of privilege
- the public enforcement perspective
- the key differences between civil and common law countries, and
- what legal professional privilege means to you in practice

Moderator: **Evelyn Tjon-En-Fa** (Partner, EU)

Panelists: **Sophy Eyre** (Partner, UK), **Pauline Kuipers** (Partner, EU), **Lucas Pitts** (Partner, Middle East), **Reid Whitten** (Partner, Sheppard Mullin, U.S.), **Sven-Michael Werner** (Partner, PRC)

Webinar 2: Practical guidance when dealing with the issue of legal privilege in the event on an investigation

9 June 2021

Watch the recording of the webinar [here >>](#)

The second webinar in our series looked at legal privilege during an investigation. This time panelists from across our network discussed the practicalities around legal privilege, offering practical tips on how to avoid being caught out by this complex issue in the event of an investigation.

- **Employment issues** - Internal investigations and handling the employment aftermath, negotiating employee exits, the concept of "iniquity", and training and managing staff
- **Data issues** - How the data protection authorities approach legal privilege during investigations, and how legal privilege can help in the context of data subject access requests
- **Enforcement issues**- How the UK competition authorities approach LPP during investigations
- **Forensic Services** - Technical possibilities for improving the privilege investigations and DSAR

Moderator: **Pauline Kuipers** (Partner, Netherlands)

Panelists: **Pattie Walsh**, (Partner, Hong Kong, PRC), **Gabriel Vörsin** (Partner, UK), **Saskia King**, Legal Director, London, UK, **Jakub Kur**, Head of Forensic Technology, Warsaw, Poland

Bird & Bird news & publications



Bird & Bird contributes to Concurrences e-Competitions Special Issue on Block exemption regulations

A team of Bird & Bird Competition lawyers from two jurisdictions authored the **Foreword** to the Concurrences e-Competitions special issue on Block exemption regulations. The article entitled **Block Exemption Regulations: An Overview of EU and National Case Law** covers:

- the aims of block exemptions
- the underlying legislative framework
- an overview of current block exemptions, recent developments and
- the national application of block exemptions.

Read the full article >> by **Pauline Kuipers**, **Morten Nissen**, **Alexander Brächner** and **Jost van Roosmalen** published on the **Concurrences website**.



Dutch regulator ACM publishes market study and guidelines to coordinate the rollout of fibre-optic broadband

On 6 May 2021, the Netherlands Authority for Consumers & Markets (ACM) published its updated market study into the roll-out in the Netherlands of fibre-optic broadband networks for households (*Fiber-to-the-Home*). In the annex to this report, the ACM provides guidelines on how the roll-out of fibre-optic networks could be coordinated within the applicable telecommunications and competition laws.

The FITH market study and attached guidelines describe – not only for market parties, but specifically for municipalities – how the further roll-out of fibre-optic broadband networks in the Netherlands may be stimulated, while preventing overbuild of fibre networks and reducing delayed roll-out, nuisance for citizens and competitive concerns.

Read the full article >> by **Pauline Kuipers**, **Hein Hobbelen** and **Matteo Steiner** published on the **Kluwer Competition Law Blog** on May 18 2021.

Two Bird & Bird articles shortlisted for Antitrust Writing Awards

The following articles authored by Bird & Bird lawyers have been shortlisted for the

Concurrences Antitrust Writing Awards.

- **Data Access Claims Under Competition Law and Data Privacy Requirements >>**
- by **Anne Federle** and **Benoit Van Asbroeck**
- **Badmouthing Your Competitor's Products: When Does Denigration Become an Antitrust Issue? >>**
- by **Morten Nissen** and **Frederik Haugsted**

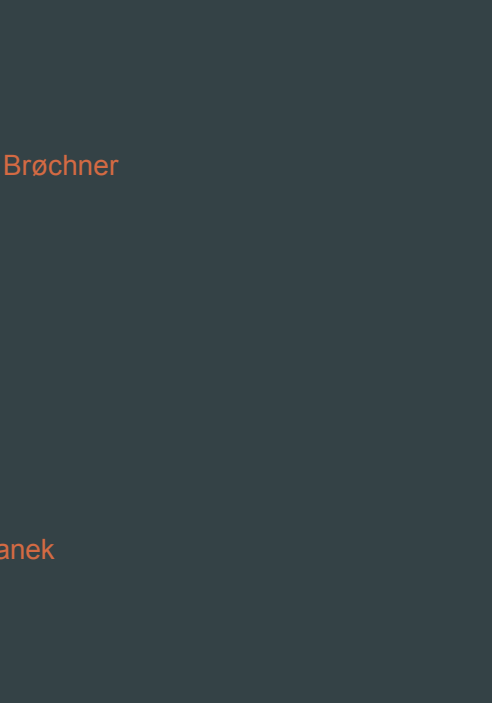
Read the articles by clicking on the titles above.

Concurrences invites readers to vote for their favourite articles for the **Reader's Choice Award**. All winners will be announced at the Antitrust Writing Awards Ceremony, which will take place online on Wednesday, 30 June 2021.

Bird & Bird's **Competition Compliance tools** win **Concurrences Antitrust Compliance Award**



Law Firm Award



Click [here](#) to read previous editions of this newsletter.

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