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## EU Competition Policy in 2025: A Vision of a European Internationalist Future?

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## I. INTRODUCTION

This is a view of future EU competition policy through looking at the way cases could be decided taking into account current trends.

I would argue that there are three trends that are already making themselves felt. The first is the dominance of the European model of antitrust over that in the United States. Articles 101 and 102 as well as the Merger Regulation are overwhelmingly the antitrust models adopted by the world's competition agencies. As major antitrust regimes develop around the world the impact of that choice will become much more pronounced. Antitrust agencies will look first to European case law and procedures and not to the United States. This will provide DG Competition with the potential of obtaining enormous influence and "soft power" across the globe. However, for that influence to be maximized, DG Competition has to be ready to learn and adapt to what will be increasingly intellectually sophisticated and original centers of antitrust thought located far from Europe.

Furthermore, the failure of the U.S. economic model and the limitations of the classic Chicago School in antitrust economics are likely to further boost that influence. I personally doubt that we will have the development of a neo-ordo liberalist school in Europe, but we are likely to end up with a broader antitrust assessment standard. That standard is likely to include assessments as to supply security and systemic risk as well as a greater concern for the social impact of competition. The European Union case law, being far less fixated on Chicago economics and with an alternative quasi-ordo liberalist narrative within its case law to draw upon, will be able to more easily respond to the intellectual and economic challenges of the twenty-first century.

The second major trend is international co-operation. As more sophisticated antitrust agencies develop in the major twenty-first century centers of business in and beyond Brazil, Russia, India, and China ("BRICS"), international co-operation will become a dominant feature of major antitrust cases. International co-operation is, of course, already a feature of many merger and cartel cases. However, for the moment there are very few really significant international co-operation procedures. What is likely to happen over the next 15 years is that those procedures will develop, permitting greater direct co-operation in cartel cases, joint remedies in merger cases and case selection, and prosecution delegation in abuse of dominance cases.

The third major trend will be the adoption of quasi-criminal procedures in price-fixing cases. This will be in part because of the demand for corporate executives to be held personally accountable and in part because of the European Court of Human Rights ("ECHR") standards

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imposed by the Lisbon Treaty. Despite the corporate demands for greater ECHR compliance the irony is that the greatest victor out of a more quasi-criminal procedure is the Commission. Notwithstanding Commissioner Kroes' tenure, DG Competition underplays its hand in relation to price-fixing cases by running the cases behind closed doors. A quasi-criminal procedure would open up the cases to the public, increasing public understanding and support for DG Competition (and probably generating political careers for some DG Comp officials). It would also make guilty settlement pleas the majority choice of most corporate price-fixers as only the most desperate firms would choose a public trial.

Below I have not mentioned damages actions. This is because I am focusing on DG Competition's operations. Nevertheless, one of the major trends of the next fifteen years will be the development of antitrust damages litigation in all the major centers of antitrust practice across the planet. By 2025 a damages litigation culture is likely to have made itself felt in Europe, and will be beginning to appear in other major jurisdictions. In Europe by 2025 one would expect a number of centers to be established with a functioning antitrust litigation bar such as Amsterdam, London, Warsaw, Istanbul and Dusseldorf—and almost all major antitrust cases to have a significant damages component.

## **II. THE TRIUMPH OF BRUSSELS: A DAY IN THE LIFE OF DG COMPETITION-MONDAY 23 JUNE 2025.<sup>2</sup>**

### **4:00 AM, Monday June 23, 2025: International Communications Suite; DG Competition, Rue Leon Brittan, Brussels:**

“Hallo, Moscow are you there?”

“Good Morning Dmytry, Moscow is here, is Shanghai online yet?”

“Alica Lee of the All-China Competition Authority is here along with her team.”

Dmytry Gorenko, the Ukrainian Director of DG Competition's Cartels Directorate looked on with satisfaction as the Brazilian, Indian, Australian, and American cartel teams came online.

“Ladies and Gentlemen I am glad that you are now all here and my apologies to those of you who like us had to get up rather early! To be brief, following the Global Multi-State Leniency Application by Scottish firm Scramjets International disclosing evidence of a long running price-fixing cartel in respect of both global passenger and cargo services. This is now the final briefing session before the raids begin at 6:00 AM Brussels time. Can we now do a tour of the agencies as to our final state of readiness?”

“Moscow here again Dmytry, we have the FSB anti-price-fixing team on standby and ready to go against our Scramjet defendant. We do not expect any resistance in Skolkovo.”

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<sup>2</sup> I would be interested to hear any comments or views on my imagined future for DG Comp on the Rue Leon Brittan.

“Alica here. I can also confirm that in Shanghai, as we have three of the major scramjet players on the pacific routes, we have our price-fixing investigation teams primed and ready with the support of the police of the Central Economic Crime Unit in the 10 major facilities of Scramjet Airlines Shanghai (SjAS).”

“Now turning to Brazil and India, gentlemen, how are the preparations going for your raids?”

“Dmytry, as you know in Brazil we have two major scramjet global cargo businesses. They are both based in San Paulo so it has been relatively easy for us to prepare the agency operation and organize the police support for the raid. We are also ready.”

“Thanks Martine, finally let’s turn to the Indian Competition Agency. India is home to three of the major competitors to SjAS on the Pacific and Atlantic routes. What’s the status of your operations in Delhi, Sanjay?”

“I am glad to say, Dmytry, that we obtained ex parte search warrants last night from the Central Economic Crime Court in Delhi. In all we expect to raid over 70 premises.”

“To brief you on our European operations. The Cartel Directorate has over 500 EU and national agents ready to go across the Member States. We are focusing on the two European passenger services which dominate the lucrative Atlantic trade and the two cargo service operations linking European with Asia. In all we will be entering 20 corporate facilities and a dozen private dwellings.”

Dymtry then turned to the Antitrust Division officials who were also online.

“I know the U.S. is not a player in the international scramjet market but I understand that there are a number of support facilities in the continental U.S.?”

“Yes, Dmytry, that’s right. We will be assisting the main operation with raids along the west coast at the data processing facilities of some of the major players in the cartel”

“Thank you Steve. Happy hunting ladies and gentlemen.”

**8:00 AM: Notification Centre: Microsoft/Apple Joint Venture. Press Release by the Commission IP/25/848.**

“This morning the Commission received a notification for an exemption under Article 101(3) TFEU. Microsoft and Apple seek to combine their high-level smartphone computer operations. The Commission will consider the notification in the light of the competitive pressures in the global smartphone market, notably the number of other providers and competitors in the market across the world, and seek to establish the benefit that arises for consumers from the joint venture.”

*MLex Analysis:* This JV should receive a full exemption under Article 101(3) given the scale of Chinese, Indian, and Russian competition. There is very little market power left in these hollowed-out American companies. Arguably keeping an American in the market would provide the dominant players with some additional competition. And surely there is a place in the market left for firms who produce retro “smartphones” for Western pensioners?

**10:00 AM: Commission Prohibits Acquisition of U.S. Batteries by ChinaLongLife. Commission Press Release IP/25/849.**

The Commission this morning prohibited the acquisition by ChinaLongLife of U.S. Batteries. Following an extensive phase II investigation undertaken under Regulation 1/2020 the Commission came to the conclusion that the acquisition would threaten the supply security of the Union and no commitments or disposals that could potentially be offered by the parties could remedy that fundamental concern.

*MLex Analysis:* This is the fourth prohibition decision of 2025. Since the Ordoliberalist amendments in 2015 and 2020 to the Merger Regulation the number of outright prohibitions in EU merger cases has increased significantly. If, as in this case, competitors can raise a credible supply security issue then the Commission will have no hesitation in blocking the deal. In this case the parties would have had a very difficult time persuading the Commission in any case. U.S. Batteries is one of only five companies in the world that produces the lightweight long life batteries used in most modern transport. The likelihood of clearing a deal, which would take the global market from 5 competitors to 4, through modern merger procedures through Shanghai, Delhi, or Moscow, never mind Brussels, is very limited. However, one can see why ChinaLonglife tried to do the deal. Acquisition of U.S. Batteries would have given Chinalonglife rapid access for their high end battery technology into Western markets, giving them a major lead over their principal Indian and Chinese competitors.

**12:00 PM: Mario Monti Lecture Theatre, Sutherland Building, DG Competition: Professor Angus Rodger, Walter Eucken Chair of Competition Law University of Chicago-Lecture Title: Modern Neo-OrdoLiberalism: Theory and Practice. Commission Press Release IP/25/850.**

Professor Rodger, one of the leading proponents of Neo-Ordo Liberalism based at Chicago Law School, gave a compelling and thoughtful lecture on the revival of ordo liberalism from the economic crisis at the end of the first decade of the twenty-first century to modern times. His essential point was that the global dominance of neo ordo-liberalism can be dated from the collapse of the Lehman investment bank in 2008, and with the so-called consumer welfare economics of the United States and Europe during the late twentieth and early twenty-first centuries. Modern antitrust theory rejects the arguments of Bork and his European intellectual fellow travellers. The core antitrust principles of Eucken and the ordo liberal school are: a focus on access to markets for commercial operators; a focus on ensuring a variety of market operators; a suspicion of the behavior of dominant firms—and willingness to intervene to limit their market power; and an emphasis of ensuring supply security and preventing firms becoming too big to fail. These principles trump arguments of economic efficiency in modern competition policy and result in many more abuse of dominance cases as well as many more merger prohibitions.

Thankfully, from a European perspective the impact of the economic crisis and the folly of the Bork model ensured that most of the then emerging markets antitrust regimes adopted the European approach, making it the dominant approach to competition law across the world. Following the landmark 2019 Supreme Court ruling in *China Rockefeller v United States* even American antitrust fell into line with the global consensus.

**3:00 PM: Joint State Statement of Objections issued against 3D China. Commission Press Release 23rd June 2025. Joint State Statement of Objections against 3D China, IP/25/851. Abuse of Dominance in China, EU, and India.**

In a joint statement of objections against 3D China today, the three most influential antitrust agencies on the planet alleged abuse of dominance by 3D China of its operations in the 3D computer market and ancillary markets across all three jurisdictions. The JSO alleges market foreclosure against competitors for 3D services, leveraging on to secondary business markets, in particular the feature-rich high end specialized business tools market.

3D China is one of the most valuable companies in the world. It has a 90 percent market share of the 3D ordinary computer platform (“OCP”) market. It has approximately a 35 percent market share of the 3D business package market. Following on allegations and evidence from a number of Chinese, European, and Indian competitors a series of co-ordinated raids were launched against 3D China’s operations worldwide. After further evidence gathering and an international review meeting between the three authorities a JSO was agreed and drafted.

Under the international common procedural regulation the case will be led by the All-China Competition Authority with an open tribunal hearing taking place in Shanghai.

**4:00 PM: Commissioner Kajaia announces a Sectoral Inquiry into the Biofuels Sector. Commission Press Release: Statement by Commissioner Kajaia on Biofuels Sector, IP/25/852**

Following a series of complaints from a number of small European biofuel undertakings and a follow up investigation by DG Competition into those complaints the Commission has decided to launch an investigation into the European biofuels market.

This morning the Commission distributed 5,000 questionnaires to all industry participants and stakeholders as the first step of the investigation. The Commission’s initial concerns focus upon market access for new entrants into the market and the relationships between the main biofuel suppliers and the biofuel distribution companies across the Union.

In her statement, Commissioner Kajaia said:

“Biofuels is crucial to the modern European economy. Over the last year we have had a series of credible complaints from small biofuel undertakings each of which have alleged difficulties in accessing the European market, even when their product was cheaper and of better quality than rival producers and when they had access to the capital to significantly increase capacity. The mounting number of complaints has led the Commission to undertake an initial investigation into these complaints. That investigation has led us to the conclusion that there are credible concerns regarding market access and pricing across the entire sector. Given the vital nature of the sector to the European economy we have no alternative but to launch a full sectoral inquiry.”

*MLex Analysis.* The biofuels industry should be alarmed at the prospect of a full sector inquiry. The ferocious Georgian Commissioner Arianna Kajaia, “the modern Neelie Kroes” has already, in her first full year of office, sought to increase the personal fines and disqualification terms for price-fixing. Kajaia will now be seeking what she calls a “premium penalty” in price-fixing cases against culpable executives which she defines as one which “really teaches price-fixers a lesson.” The biofuels sector provides another platform for Kajaia. So much of modern

European industry depends on biofuels for heating and transport that if the allegations made by the second tier firms turn out to be substantiated, the biofuels industry will find itself on the wrong end of Kajaia's wrath and her arsenal of corporate punishments with very little public sympathy or political support to protect them.

*MLex Update:* We are receiving reports that the eight principal biofuel producers were raided early this morning along with the four main EU distribution network companies. We are expecting regulatory announcements by all 12 companies later today.

**5:00 PM: Opening of the Specialised Food Cartel case. David Edward Building, Rue Leon Brittan. Commission Press Release: Opening Statement of Chief Cartel Prosecutor in Specialised Foods, IP/25/853**

Goksu Cop, the Chief Cartel Prosecutor of the Commission opened the case for the European Union in the oral hearing before Chief Competition Justice Wils:

“Your honour, in this action we allege that the five defendants undertakings conspired between January 2015 and our dawn raids of September 2024. In those nine years the defendants fixed the price of specialised foodstuffs for children across the entire territory of the Union from Kyiv to Lisbon, from the Scottish highlands to the plains of Anatolia. Given the nature of the product, the impact on European consumers, and, more specifically, low income families the Union will be looking for the maximum fines based on profit obtained by the cartel compounded by a series of aggravating factors. We will also be seeking to carve out a number of particularly culpable executives to be fined and disqualified for 10 years from being company directors or participating in the management of a company anywhere within the territory of the Union.”

*MLex Analysis:* The Chief Cartel Prosecutor Goksu Cop got off to a good start in her oral hearing in what the Commission's deadpan title refers to as the Specialised Food Cartel, but is more damningly dubbed by the media as the “baby food cartel.” CNN, BBC, EUNewsCorp, RTL, and other major news organizations in the room were beaming her opening statement into living rooms and offices across Europe. It remains remarkable that the cartel members, given the nature of the product and the quality of the evidence against them, did not file a guilty plea out of the media spotlight. The evidence presented by Cop during the first day of the hearing was damning. Wall to wall 3D recordings of the cartel agreeing to raise the prices of a range of pre-nursery baby foods went down very badly with the media and, more importantly for the progress of the case, the all-EU jury of 35. It is understood that the willingness of the cartel to defend itself in such a high profile case is due to the very heavy damages claims the cartel could face due to the length of time the cartel may have been in operation. So far every Chief Cartel Prosecutor has left the Commission to take up high political office in their own country. On this performance Cop will be soon be able to follow them into a top Ministerial job in Ankara.