

**Recent Developments in EU and UK Competition Law**

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**ARTICLE 101 TFEU: ENFORCEMENT AT EU LEVEL**

1. *Horizontal agreements*

**PENDING ARTICLE 101 HORIZONTAL CASES BEFORE THE COMMISSION**

Current investigations of horizontal agreements:

- *Special glass*
- *Flexible alternating current transmission systems*
- *Rail freight*
- *Piston engines*
- *Oil and biofuels - benchmarking*
- *Spot trading of precious metals*
- *Rail passenger transport in Austria*
- *Rail passenger transport in several Member States*
- *Motor car insurance in Ireland: SO sent to Insurance Ireland 18 June 2021*
- *Online access to bank account information*
- *Metal packaging*
- *Styrene monomer purchasing*
- *French grocery retail sector*
- *Canned vegetables: SO sent to Conserve Italia 5 October 2020; this case has already been settled with three other undertakings (fines of €31.6 million)*
- *Wood pulp: unannounced inspections, 12 October 2021*

**Cartel decisions**

- ***Teva/Cephalon: modafinil***

Commission decision of 26 November 2020 imposing fines of €60.5 million in relation to a pay-for delay agreement in the pharmaceutical sector. Note the following:

- This was **not** a settlement decision

- Teva acquired Cephalon: it is therefore liable for both parties' fines
  - Cephalon offered Teva 'a package of commercial side-deals that were beneficial to Teva and some cash payments'
  - The restriction was by object **and** effect
  - The Commission says the agreement harmed innovation as well as keeping prices high
  - The infringement lasted from December 2005 until October 2011, when Teva acquired Cephalon
  - Teva's fine set under point 37 of the *Fining guidelines* as it had no turnover in the relevant market
  - This decision 'completes the cycle of pay-for-delay agreements' (Commission Press Release)
  - On appeal to the General Court Case T-74/21, not yet decided
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- ***Cross-border rail cargo***

Commission decision of 20 April 2021 imposing fines of €38 million in relation to a customer allocation cartel for transport services on block trains on key rail corridors between the ports of Rotterdam, Antwerp and Hamburg and large industrial sites in Germany and Austria. Note the following:

- Settlement decision
  - ÖBB was the whistleblower and given immunity, avoiding a fine of €37 million
  - Deutsche Bahn and SNCB received reductions of 45% and 35% respectively for cooperation
  - The cartel ran from 2008 to 2014
  - Deutsche Bahn's fine was increased by 50% for recidivism
  - This is the 35<sup>th</sup> settlement
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- ***SSA bonds trading***

Commission decision of 28 April 2021 imposing fines of €28 million for collusion on trading strategies, the exchange of sensitive pricing information and coordination of prices. Note the following:

- This was **not** a settlement decision
  - Deutsche Bank was the whistleblower and given immunity, avoiding a fine of €21 million
  - Bank of America Merrill Lynch, Crédit Agricole and Credit Suisse fined
  - The traders were in touch with one other through chatrooms on Bloomberg terminals
- 
- ***European Government bonds trading***

Commission decision of 20 May 2021 imposing fines of €371 million for collusion: traders exchanging commercially sensitive information, informing each of their prices and volumes in the run up to auctions of bonds. Note the following:

- This was **not** a settlement decision
  - NatWest was the whistleblower and given immunity, avoiding a fine of €260 million
  - Bank of America and Natixis not fined as outside limitation period
  - Nomura, UBS and UniCredit fined
  - Portigon (WestLB) not fined as no relevant turnover in the last business year
  - UniCredit, Bank of America and Portigon have all appealed, Cases T-453/21, 456/21 and 462/21 respectively
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- ***Yen interest rate derivatives***

Commission decision of 28 May 2021 re-adopting a decision against ICAP and imposing a fine of €6.45 million on ICAP

- ***Euribor***

Commission decision of 28 June 2021 readopting a fine against HSBC; however the fine, was reduced from €33.6 million to €31.7 million. HSBC has appealed the decision, Case T-561/21 *HSBC v Commission*, not yet decided

- ***Car manufacturers: nitrogen oxide cleaning***

Commission decision of 8 July 2021 imposing fines of €875 million for colluding on technical development in the area of nitrogen oxide cleaning in diesel cars. Note the following:

- This was a settlement decision: the 36<sup>th</sup> settlement to date
- Daimler not fined as it was the whistleblower
- Volkswagen Group (including Audi and Porsche) fined €502 million; BMW fined €372 million
- The manufacturers colluded on ‘product characteristics relevant for the customers’
- This was a restriction of competition by object
- Guidance provided on legitimate cooperation; the Commission dropped its case in relation to petrol cars

## **GENERAL COURT**

- ***Speed skating***

- Case T-93/18 *International Skating Union v Commission*, judgment of 16 December 2020, EU:T:2020:610

Unsuccessful appeal against the Commission’s decision *International Skating Union*. On appeal Case C-124/21 P, not yet decided

- ***Aluminium electrolytic capacitors***

- Cases T-341/18 etc. *NEC v Commission*, five judgments of 29 September 2021

Unsuccessful appeals in the *Electrolytic capacitors* cases

## COURT OF JUSTICE

- ***Power cables***

- Case C-595/18 P *The Goldman Sachs Group Inc v Commission*, judgment of 27 January 2021, EU:C:2021:73

Unsuccessful appeal in the *Power cables* case

- ***Heat stabilisers***

- Case C-823/18 P *Commission v GEA Group AG*, judgment of 25 November 2020, EU:C:2020:955

Ongoing litigation relating to the fines in the 2009 decision of the Commission on heat stabilisers; General Court judgment annulled and the case remitted to it for further consideration

- ***High voltage electricity transmission lines***

- Case C-450/19 *Eltel v Finnish Competition and Consumer Authority*, judgment of 14 January 2021, EU:C:2021:10

Judgment on when a cartel comes to an end for the purposes of a limitation rule in relation to fines

- ***Steel abrasives***

- Case C-440/19 P *Pometon SpA v Commission*, judgment of 18 March 2021, EU:C:2021:214

Judgment in a case in which the hybrid staggered settlement procedure was used. The original fine of €6.1 million is eventually reduced to €2.6 million

- ***Citalopram***
  - Case C-591/16 *P H. Lundbeck A/S v Commission*, judgment of 25 March 2021, EU:C:2021:243

Judgment dismissing Lundbeck's appeal in a pay-for-delay case in the pharmaceutical sector; the appeals by the generic manufacturers also failed

- ***Car batteries***
  - Case C-563/19 *P Recyclex SA v Commission*, appeal rejected 3 June 2021

Judgment dismissing Recyclex's appeal against the fine in the *Car battery* cartel

## 2. *Vertical agreements*

### COMMISSION INVESTIGATIONS

#### PENDING ARTICLE 101 VERTICAL CASES BEFORE THE COMMISSION

- *Airline ticket distribution services*

The Commission opened an investigation into the agreements between Amadeus and Sabre with airlines and travel agents, 23 November 2018; investigation closed July 2021

- *Chocolate, biscuits and coffee*

The Commission opened an investigation into possible cross-border restrictions of trade in chocolate, biscuits and coffee by Mondelēz, 28 January 2021 (the Commission is looking into possible infringements of both Article 101 and 102)

## **COMMISSION DECISIONS**

- *Videogames*

Commission decision of 20 January 2021 imposing fines of €7.8 million on Valve and five publishers of videogames for ‘geo-blocking’ of videogames, preventing their activation in certain Member States. Note that this was a hybrid settlement case with the settlement and the contentious decisions adopted on the same date. On appeal Case T-172/21, not yet decided



**ARTICLE 102: ENFORCEMENT AT EU LEVEL**

**PENDING ARTICLE 102 CASES BEFORE THE COMMISSION**

- *Ceské dráhy, a.s.* – formal investigation commenced 10 November 2016 into possible predatory pricing in rail passenger transport services in the Czech Republic. Statement of objections sent 30 October 2020
- *Qatar Petroleum* – formal investigation opened 21 June 2018 into possible restrictions to the free flow of LNG
- *Amazon* – formal investigation opened 17 June 2019 in relation to Amazon's use of data from independent retailers. Statement of objections sent 10 November 2020.
- *Amazon* – formal investigation opened 10 November 2020 into 'Buy Box' and Amazon Prime/logistics. The AGCM is also proceeding against Amazon, and there is a jurisdictional dispute about this: Case T-19/21 *Amazon.com v Commission*, declared inadmissible, 15 October 2021
- *Apple* – formal investigation in relation to Apple Pay launched 16 June 2020
- *Apple* – formal investigation in relation to Apple's App Store rules launched 16 June 2020
- *Teva* – formal investigation in relation to possible abuses of patent procedures and exclusionary disparagement of competing products in the pharmaceutical sector launched 4 March 2021
- *Public Power Corporation of Greece* – formal investigation of Greek wholesale electricity market launched 16 March 2021
- *EPEX Spot* – formal investigation of possible foreclosure of the market for intraday trading of electricity launched 30 March 2021
- *Facebook* – formal investigation of Facebook's use of advertising data opened 4 June 2021
- *Google* – formal investigation of Google's behaviour in online advertising technology services opened 22 June 2021
- *Animal health sector* – the Commission carried out unannounced inspections at a pharmaceutical company in Belgium because of possible abuse of a dominant position

**GENERAL COURT**

- ***Baltic Rail***

- Case T-814/17 *Lietuvos geležinkelai AB v Commission*, judgment of 18 November 2020, EU:T:2020:545

Judgment upholding the Commission's finding of abuse of dominance, but reducing the fine from €27 million to €20 million. On appeal to the Court of Justice, Case C-42/21, not yet decided

## COURT OF JUSTICE

- ***Slovakian local loop***

- Cases C-152/19 P and C-165/19 P *Deutsche Telekom AG and Slovak Telekom AG v Commission*, judgments of 25 March 2021, EU:C:2021:238 and 239

Judgments dismissing appeals against the Commission's finding of abuse contrary to Article 102

- ***Copyright collection agencies***

- Case C-372/19 *SABAM*, judgment of 25 November 2020, EU:C:2020:959

Judgment on whether SABAM was charging abusively high prices to music festivals

NB in France the decision of the French Competition Authority, 9 September 2020, imposing fines on €444 million for collective abuse of collective dominance by Roche, Novartis and Genentech in the pharmaceutical sector for action taken to protect a higher priced drug, Lucentis, from a lower priced one, Avastin



## PRACTICE AND PROCEDURE AT EU LEVEL

### GENERAL COURT

- ***Roof windows and brackets***
  - Case T-515/18 *Fakro sp. Z oo v Commission*, judgment of 16 December 2020, EU:T:2020:620

Judgment rejecting the Commission's rejection of a complaint against Velux that it was abusing a dominant position; on appeal, Case C-149/21, not yet decided

### COURT OF JUSTICE

- ***Hotel booking***
  - Case C-59/19 *Wikingerhof GmbH & Co KG v Booking.com*, judgment of 24 November 2020, EU:C:2020:950

Judgment considering whether a dispute between a hotel and Booking.com related to contract or tort for the purposes of Article 7(2) of the Brussels Regulation

- ***Hollywood film studios***
  - Case C-132/19 P *Group Canal v Commission*, judgment of 9 December 2020, EU:C:2020:1007

Judgment reversing the conclusion of the General Court's conclusion on the commitments offered by Paramount in the Hollywood Film Studio case: the Court of Justice concluded that the Commission had failed to take into account the effect of the commitments on the rights of third parties (eg Group Canal). The Court of Justice annulled the Commission's decision rather than remitting it to the General Court. The Commission withdrew the commitments decision of 7 March 2019 of various studios and Sky on 31 March 2021

- ***Retail food market in Romania: limitation periods***

- Case C-308/19 *Consiliul Concurenței v Whiteland Import Export SRL*, judgment of 21 January 2021, EU:2020:C:47

Judgment providing for the possibility of the non-application of a Romanian limitation period if its application would undermine the *effet utile* of Article 101

- ***UMTS chipsets***

- Case C-466/19 P *Qualcomm Inc v Commission*, judgment of 28 January 2021, EU:C:2021:76

Judgment dismissing Qualcomm's appeal against the Commission's RFI in the predatory pricing case against it

- ***Slovakian telecommunications***

- Case C-857/19 *Slovak Telekom v Slovakian Competition Authority*, judgment of 25 February 2021, EU:C:2021:139

Judgment on the principle of *ne bis in idem*

- ***Trucks***

- Case C-30/20 *Volvo and others*, judgment of 15 July 2021, EU:C:2021:604

Judgment on the scope of Article 7(2) of the Brussels Regulation

- Case C-882/19 *Sumal SL v Mercedes Benz Trucks*, judgment of 6 October 2021, EU:C:2021:800

Judgment on the right to sue the subsidiary of a parent addressee of an Article 101 infringement decision

## **COMMITMENT DECISIONS**

*Aspen Pharma*, Commission decision of 10 February 2021 accepting commitments from Aspen concerning the prices of six critical cancer medicines. Decision published

*Mobile CZ, CETIN and O2 CZ*: commitments being market tested in the case of network sharing arrangements in the Czech Republic between mobile operators

## **CONSULTATION ON MARKET DEFINITION**

The Commission announced on 26 June 2020 that it has published a public consultation on its Market Definition Notice; the consultation was open until 9 October 2020. A 'Support study' was published by DG COMP in June 2021; Staff Working Document published 12 July 2021

## **COLLECTIVE BARGAINING FOR SELF-EMPLOYED WORKERS**

The Commission launched a process on 30 June 2020 into collective bargaining by self-employed workers: is this prevented by Article 101? Inception Impact Assessment launched 6 January 2021; public consultation initiated 5 March 2021

## **SECTOR STUDY ON THE INTERNET OF THINGS**

The Commission launched a sector inquiry into the *Internet of Things for consumer-related products and services in the EU* on 16 July 2020; a preliminary report is expected in the spring of 2021 and a final report in the summer of 2022. Initial findings published 9 June 2021

## **REFORM OF THE VBER**

The Commission published its final report on its evaluation of the VBER on 26 May 2020; the Staff Working Document was published on 8 September 2020; formal consultation launched 18 December 2020. Draft revised VBER and Guidelines published 9 July 2021

### **REFORM OF THE HORIZONTAL REGIME**

The Commission is formulating its reform of the horizontal cooperation agreement regime: it published the findings in its evaluation of the rules on cooperation on 6 May 2021

### **REFORM OF THE MOTOR VEHICLE BLOCK EXEMPTION**

The Commission launched a consultation of the reform of the motor vehicle block exemption on 12 October 2020; findings of evaluation published 28 May 2021

### **DG COMPETITION MANAGEMENT PLAN 2020**

The Commission published its Management Plan in November 2020

### **BREXIT GUIDANCE**

The Commission published guidance on the effect of Brexit on competition enforcement on 2 December 2020

### **DAMAGES**

The Commission published a report on implementation of the Damages Directive on 14 December 2020

### **DIGITAL MARKETS ACT**

The Commission published its proposals on 15 December 2020

**PENDING ARTICLE 267 REFERENCES**

- Case C-819/19 *Stichting Cartel Compensation v KLM* and others: Article 267 reference concerning the temporal application of Article 101 TFEU in the air transport sector: AG Opinion 6 May 2021
- Case C-117/20 *bpost SA v Autorité belge de la concurrence*: the principle of *ne bis in idem* where similar facts may be covered both by sector-specific regulation and competition law; AG Bobek Opinion 2 September 2021
- Case C-142/20 *Analisi G. Caraccioco s.r.l. v Regione Siciliana*: does Regulation 765/2008 create a monopoly contrary to Article 102? (Article 4(1) of the Regulation provides that each MS will appoint only one national accreditation body)
- Case C-151/20 *Bundeswettbewerbsbehörde v Nordzucker AG*: the principle of *ne bis in idem* where the same cartel is investigated in Germany and Austria; AG Bobek Opinion 2 September 2021
- Case C-267/20 *Volvo and DAF Trucks*: reference concerning the limitation period in Spanish *Trucks* litigation; AG Rantos Opinion 26 October 2021
- Case C-306/20 *Visma Enterprise*: a question about the prohibition of active sales in an exclusive distribution agreement for software
- Case C-377/20 *Servizio Elettrico Nazionale SpA v AGCM*: Article 267 reference raising a series of questions about the scope of application of Article 102 TFEU; Opinion of AG Rantos due 18 November 2021
- Case C-680/20 *Unilever Italia Mkt. Operations Srl v AGCM*: Article 267 reference on the single economic entity doctrine and on the use of the as-efficient competitor test in Article 102 cases
- Case C-25/21 *ZA etc v Repsol*: Article 267 reference concerning the burden of proof and voidness of a vertical agreement following a decision of the Spanish competition authority
- Case C-57/21 *RegioJet a.s.*: Article 267 reference on various aspects of the Damages Directive
- Case C-128/21 *Lietuvos notaru rumai v Lithuanian Competition Authority*: Article 267 reference on whether notaries are undertakings
- Case C-163/21 *AD and others v PACCAR and others*: Article 267 reference on the Damages Directive, and specifically about the rules on disclosure



- Case C-182/21 *Nokia Technologies Oy v Daimler AG*: Article 267 reference on FRAND and SEPs; withdrawn 24 June 2021
- Case C-252/21 *Facebook v Bundeskartellamt*: Article 267 reference on the relationship between the GDPR and (German) competition law
- Case C-261/21 *Hoffmann-La Roche*: Article 267 reference in relation to the Italian Council of State's interpretation of the ECJ's judgment in Case C-179/16
- Case C-??\*/21 *Epifanio Campe v Renault*: did the Commission's decision in *Trucks* extend to dumper trucks?
- Case C-312/21 *Tráficos Manuel Ferrer v Daimler AG*: questions about costs and the quantification of damages arising from the *Trucks* decision
- Case C-333/21 *European Super League v FIFA and UEFA*: did the latter infringe competition law in their reaction to the proposed formation of a European Super League?
- Case C-??\*/21 *Energias de Portugal v ADC*: can a non-compete clause violate Article 101 when entered into between non-competing undertakings?
- Case C-??\*/21 *towerCase v Autorité de la Concurrence*: can Article 102 TFEU apply to a merger below the EUMR turnover thresholds?
- Case C-385/21 *Zenith Media Communications SRL v Consiliul Concurentei*: a reference on how to calculate fines under national competition law in the light of EU principles
- Case C-??\*/21 *Royal Antwerp FC v Royal Belgian FA*: a reference on the compatibility with Article 101 of the 'home player' rule of the RBFA

**COMPETITION ACT 1998 AND ARTICLES 101 AND 102:**  
**ENFORCEMENT AT UK LEVEL**

**CURRENT CMA/SECTORAL REGULATOR CIVIL INVESTIGATIONS**

- Statement of objections sent to four pharma companies for horizontal market sharing in relation to [prochlorperazine](#), 23 May 2019
- Statement of objections sent to two suppliers and a wholesaler of pharmaceuticals in relation to [nitrofurantoin](#), 25 July 2019; case closed 8 October 2021
- Statement of objections sent to PayPoint plc by OFGEM 30 September 2020 in relation to exclusivity clauses that may infringe Article 102 TFEU and the Chapter II prohibition; commitments offered 11 August 2021
- Statement of objections sent to Mastercard and four others by the PSR 31 March 2021 in relation to market sharing and customer allocation
- Google's Privacy Sandbox: commitments offered by Google 11 June 2021
- Statement of objections sent to Pfizer and Flynn 5 August 2021 for excessive pricing of [phenytoin](#)

**TABLE OF CMA AND SECTORAL REGULATION DECISIONS AND APPEALS**

<i>Paroxetine</i>	12 February 2016	<b>Fines of £44.99 million imposed for pay-for-delay agreements and abuse of dominance</b>	On appeal Cases 1251-1255/1/12/16 <i>Generics (UK) Ltd etc v CMA</i> : appeal rejected on substance but fines reduced to £27 million, 10 May 2021, [2021] CAT 9
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<p><i>Royal Mail</i> <b>NB: OFCOM</b></p>	<p>14 August 2018</p>	<p><b>Fine of £50 million for abuse of dominance</b></p>	<p>On appeal Case 1299/1/3/18 <i>Royal Mail plc v OFCOM</i>: appeal rejected 12 November 2019, [2019] CAT 27</p> <p>Appeal to the Court of Appeal rejected 7 May 2021, [2021] EWCA (Civ) 669</p>
<p><i>Concrete drainage products</i></p>	<p>23 October 2019</p>	<p><b>Fines of £36 million for price fixing and market sharing</b></p> <p><b>NB: hybrid settlement</b></p> <p><b>Non-confidential version of the infringement decision published 20 December 2019</b></p>	<p>On appeal Case 1337/1/12/19 <i>FP McCann v CMA</i>. Appeal on the level of the fine rejected 22 December 2020, [2020] CAT 28</p>

<p><i>Nortriptyline</i></p>	<p>4 March 2020</p>	<p><b>Fines for infringing the Chapter I prohibition and Article 101</b></p> <p><b>Two decisions:</b></p> <p><b>(i) market sharing by King Pharmaceuticals (fined £75,573) and Auden Mckenzie/ Accord-UK Ltd (fined £1,882,238). Auden/Accord also agreed to pay the NHS £1 million</b></p> <p><b>(ii) exchange of Information by King Pharmaceuticals (fined £75,573), Lexon (UK) Ltd (fined £1,220,383) and Alissa Healthcare Research Ltd (fined £174,912). Non-confidential decision published 25 June 2020</b></p> <p><b>All parties settled except for Lexon which is appealing</b></p> <p><b>NB: director disqualification</b></p>	<p>Upheld on appeal Case 1344/1/12/20 <i>Lexon (UK) Ltd v CMA</i>, 25 February [2021] CAT 5</p> <p>Case 1348/2/12/20 <i>Patel v CMA</i> – appeal withdrawn</p>
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<i>Roland (UK) Ltd – electronic drums</i>	29 June 2020	<b>Fine of £4 million for online rpm</b>  <b>NB: settlement</b>	Appeal dismissed, Case 1365/1/12/20 <i>Roland (UK) Ltd v CMA</i> , 19 April 2021, [2021] CAT 8
<i>Rolled lead</i>	4 November 2020	<b>Fines of £9 million for price fixing, customer allocation and information exchange</b>  <b>NB: settlement</b>	
<i>ComparetheMarket</i>	19 November 2020	<b>Fine of £17.9 million for imposing wide ‘most favoured nation clauses’ on home insurers using the CTM price comparison website</b>	On appeal Case 1380/1/12/21 <i>BGL Holdings) Ltd v CMA</i> , not yet decided
<i>Groundwork products</i>	17 December 2020	<b>Fines of £15 million for information exchange and coordination of commercial behaviour</b>	
<i>Essential Pharma</i>	18 December 2020	<b>Commitments decision: Essential Pharma will continue to supply Priadel at affordable prices for 5 years</b>	

<i>Hydrocortisone</i>	15 July 2021	<b>Fines of £266 million for abusive prices that were excessive and unfair; also for market-sharing agreements</b>	On appeal Cases 1407/1/12/21 etc. <i>Allergan plc v CMA</i> , not yet decided
<i>Liothyronine</i>	29 July 2021	<b>Fines of £101 million for abusive prices that were excessive and unfair</b>	On appeal Case 1411/1/12/21 <i>Advanz Pharma Corp v CMA</i> , and Case 1412/1/12/21 <i>Cinven SARL v CMA</i> , not yet decided

### MISCELLANEOUS PUBLIC ENFORCEMENT MATTERS

- Company director disqualifications
  - Three directors disqualified for 6.5, 4 and 3 years in them **Rolled lead** case; NB order made in this case 13 May 2021
  - Two directors disqualified for 12 and 11 years in the **Concrete drainage products** case
  - Three directors disqualified for 6<sup>1/2</sup>, 4 and 3 years in the **Roofing materials** case, 10 and 18 March 2021; some variations made to these orders to permits the individuals to act as directors in defined circumstances
- The CMA has issued revised guidance on Competition Act cases, 4 November 2020
- The CMA has published its State of Competition Report, 30 November 2020

- The CMA has issued advice to Government on the design and implementation of the new pro-competition regime for digital markets, 8 December 2020
- The CMA has published *Algorithms: How they can reduce competition and harm consumers*, 19 January 2021
- The CMA has published an information sheet on its approach to sustainability agreements, 27 January 2021; see also the Dutch Authority's second draft version of its guidelines, 26 January 2021 and Holmes, Middelschulte and Snoep *Competition Law, Climate Change and Environmental Sustainability*, Concurrences, 2021. See also that the CMA is now consulting on environmental sustainability, 29 September 2021
- The CMA is reviewing the retained Vertical Block Exemption Regulation, 10 February 2021; consultation launched 17 June 2021
- Penrose Report published 18 February 2021
- The CMA has published its Annual Plan for 2021/2022, CMA137, March 2021
- The CMA has published its latest Annual Concurrence Report, 22 April 2021
- CMA/ICO blueprint for cooperation in digital markets published 19 May 2021; the CMA responded to the Government's proposals for a pro-competition regime for digital markets on 29 September 2021
- Subsidy Control Bill introduced into Parliament 30 June 2021
- The CMA has published draft guidance on penalties, CMA73CON, 2 July 2021
- A Framework Agreement between the CMA and BEIS has been published, 13 July 2021
- The CMA has published its Annual Report, 15 July 2021

- Consultation launched by BEIS on the reform of competition and consumer policy, 20 July 2021; CMA response 4 October 2021, CMA149con
- The CMA is consulting on proposed revisions to its settlement procedures, 31 August 2021
- The Office for the Internal Market was launched on 21 September 2021
- *Downstream Oil Protocol*, 26 September 2021 (Schedule 3(7) Competition Act 1998)
- *CO2 Industry*, 1 October 2021 (Schedule 3(7) Competition Act 1998)
- The Competition Act 1998 (Football Broadcasting Rights)(Public Policy Exclusion) Order 2021, SI 2021/1148: order permitting the extension of existing broadcasting agreements for football matches without the need for a further competitive tender process
- The Competition Act 1998 (Carbon Dioxide)(Public Policy Exclusion) Order 2021, SI 2021/1169: order permitting certain agreements between producers and distributors of commercial carbon dioxide

#### **DAMAGES ACTIONS IN THE CAT UNDER THE COMPETITION ACT 1998**

- ***DSG/MasterCard***
  - Case 1236/5/7/15 *DSG Retail v MasterCard*; Case 1265/5/7/16 *Dixons Carphone plc v MasterCard*, Case 1268/5/7/16 *Europcar UK Ltd v MasterCard*: **follow-on actions** in relation to the *MasterCard* decision
    - Permission given to serve out of the jurisdiction 22 April 2015, [2015] CAT 7
    - Judgment on limitation of actions, 14 February 2019, [2019] CAT 5: MasterCard's applications dismissed. Permission to appeal on one ground given, 9 April 2019, [2019] CAT 10
    - Appeal allowed 22 May 2020, [2020] EWCA Civ 671



- Action currently stayed
  
- **Trucks**
  - Case 1282/7/7/18 *UK Trucks Claim Ltd v Fiat Chrysler Automobiles Ltd* and Case 1289/7/7/18 *Road Haulage Association Limited v Man SE and Others*: applications for CPOs in **follow-on actions** in relation to the *Trucks* cartel
    - Main hearing of the CPO applications 3 June 2019 for five days: judgment on a preliminary issue on funding of 28 October 2019, [2019] CAT 26; on appeal to the Court of Appeal. Appeal rejected 5 March 2021, *Paccar Inc v RHA etc.*, [2021] EWCA Civ 299
  
  - Cases 1284/5/7/18 *Royal Mail Group Ltd v Daf Trucks N.V. etc.*: **follow-on action** for damages in relation to the *Trucks* cartel (transferred from the High Court 13 June 2018); this case has been joined with Case 1290/5/7/18 *BT Group v Daf Trucks N.V.* and several others
    - Case management conference 6 February 2020
    - Judgment on preliminary issue: the binding effect of the Commission's decision, 4 March 2020, [2020] CAT 7; partial permission to appeal granted 26 March 2020, [2020] CAT 10; appeal dismissed 11 November 2020, [2020] EWCA Civ 1475
    - Judgment on costs 23 June 2020, [2020] CAT 14
    - Judgment on expert evidence and mitigation 13 May 2021, [2021] CAT 10
  
  - Note that further cases arising from the *Trucks* cartel have been transferred from the High Court to the CAT
  
- **Boundary zone fares**

- Cases 1304 and 1305/7/7/18 *Gutmann v South Western Trains etc.*: applications for CPOs in **standalone cases** claiming damages for excessive prices for certain train tickets
- Application for CPO successful, [2021] CAT 31
  
- ***Multilateral interchange fees***
  - *Merricks v MasterCard*: Supreme Court judgment on Merrick's application for a CPO in a **follow-on claim**, 11 December 2020, [2020] EWSC 51: remitted to the CAT for re-hearing
  
- ***Forex***
  - Case 1329/7/7/19 *Michael O'Higgins v Barclays Bank plc etc.*: application for a CPO in a **follow-on action** following the European Commission's *Forex* decision
  - Case 1336/7/7/19 *Phil Evans v Barclays Bank plc etc.*: application for a CPO in a **follow-on action** following the European Commission's *Forex* decision
    - Judgment on 6 March 2020 on the 'carriage dispute': this will not be heard as a preliminary issue: [2020] CAT 9
  
- ***Power cables***
  - Cases 1340/5/7/20 *SP Power Systems Ltd v Prysmian; National Grid Electricity Transmission plc v ABB Ltd etc.*: **follow-on action** for damages in the *Power cables* case
    - Some of National Grid's claims withdrawn or stayed, 7 September 2020, 20 October 2020, 10 November 2020, 20 August 2021
    - Expert economists to give 'concurrent expert evidence' ('hot tub')
  
- ***Sports data***

- Case 1342/5/7/20 *Sportradar AG v Football DataCo Ltd*: [standalone action](#) objecting to the exclusive grant of exclusive rights to use 'live league match data' to the second and third defendants in the action by the first defendant
  - An application to have this case transferred to the High Court was rejected on 2 December 2020, [2020] CAT 25
  
- ***RoRo Services***
  - Case 1339/7/7/20 *Mark McLaren Class Representative v MOL (Europe Africa) Ltd*: application for a CPO in [follow-on action](#) following the European Commission's *Maritime Car Carriers* decision
  - Cases 1346/5/7/20 and 1347/5/7/20 *Volvo and Jaguar v MOL (Europe Africa) Ltd*; the *Volvo* case was withdrawn on 23 June 2020
  
- ***More multilateral interchange fees!***
  - Case 1349/5/7/20 *Westover Group and others v MasterCard Inc.*
  - Case 1350/5/7/20 *Westover Group and others v Visa Europe Ltd*
  - Etc!
  - Judgment on applicable law 7 June 2021, [2021] CAT 12
  
- ***Academic dress***
  - Case 1351/5/7/20 *Churchill Gowns Ltd v Ede & Ravenscroft Ltd*: [standalone action](#) complaining about exclusivity agreements with a number of UK universities
  
- ***Bearings***

- Case 1357/5/7/20 *Stellantis NV v NTN Corporation*: [follow-on action](#) following the Commission's *Bearings* decision
- Judgment on mitigation 18 June 2021, [2021] CAT 14
  
- ***Specialty footwear***
  - Case 1359/5/7/20 *Rest & Play Footwear LTD V George Rye & Sons Ltd*: [standalone action](#) in which a retailer complains about the imposition of rpm by an online supplier. Case not suitable for fast-track procedure: [2021] CAT 18
  
- ***Video games/Fortnite/App Store/Google Store***
  - Case 1377/5/7/20 *Epic Games Inc v Apple Inc* and Case 1378/5/7/20 *Epic Games Inc v Alphabet Inc and Google*: [standalone actions](#) claiming, in essence, that Epic's Fortnite has been made unavailable to users of iPhones, iPads and Android devices
  - Judgment of 22 February 2021, [2021] CAT 4 on jurisdiction: permission to serve some of the defendants refused on *forum non conveniens* grounds
  
- ***Tantalum, tin and tungsten***
  - Case 1379/5/7/29 *Kerilee Investments Ltd v International Tin Association Ltd*: [standalone action](#) against the ITA claiming that Kerilee has been wrongfully excluded from the ITA/International Tin Supply Chain Initiative
  
- ***Residential landline services***
  - Case 1381/7/7/21 *Le Patourel v BT Group plc*: application for a CPO in a [standalone action](#) claiming that BT has charged excessive prices for certain residential landline services
  - Application for CPO successful, [2021] CAT 30; permission to appeal rejected by the CAT 19 October 2021

- ***LTE-enabled Apple and Samsung smartphones***
  - Case 1382/7/7/21 *Consumers' Association v Qualcomm Inc*: application for a CPO in a **standalone action** claiming that Qualcomm charged excessive prices for chipsets contrary to the Chapter II prohibition and, until 31 December 2020, Article 102 TFEU
  - Order to serve Qualcomm out of the jurisdiction on 15 March 2021
  
- ***Wholesale supply of soft drinks***
  - Case 1401/5/7/21 *Forrest Fresh Foods Ltd v Coca-Cola European Partners Great Britain Ltd*: standalone action claiming that Coca-Cola European has abused a dominant position contrary to the Chapter II prohibition
  - Claim struck out in its entirety 7 September 2021, [2021] CAT 29; indemnity costs awarded to Coca-Cola 7 October 2021
  
- ***Premier League football***
  - Case 1402/5/7/21 *St James Holdings Ltd v The Football Association Premier League Ltd*: standalone action claiming that the Premier League infringed competition law by blocking a proposed takeover of Newcastle United FC
  
- ***iOS devices***
  - Case 1403/7/7/21 *Dr Rachael Kent v Apple Inc and Apple Distribution International Ltd*: application for a CPO in a **standalone action** claiming that Apple has abused a dominant position contrary to the Chapter II prohibition and, until 31 December 2020, Article 102 TFEU in relation to its iOS devices
  
- ***London-Brighton rail services***

- Case 1404/7/7/21 *Boyle and Vermeer v Govia Thameslink Railway Ltd*: application to a CPO in a **standalone action** claiming that Govia has charged excessive prices on the London to Brighton rail route contrary to the Chapter II prohibition

- ***Multilateral interchange fees***

- *Sainsbury's Supermarket Ltd v MasterCard*, [2018] EWCA Civ 1536 etc.

Judgment deciding that the MIFs of MasterCard and Visa do infringe Article 101(1) and remitting the matter to the CAT for an Article 101(3) analysis; appeal to the Supreme Court mostly rejected 17 June 2020, [2020] UKSC 24. The cases are now in the CAT

- *Asda Stores Ltd v Mastercard Inc*, [2021] CAT 16, 28 June 2021
- Permission to appeal refused [2021] CAT 21, 23 July 2021
- *Sainsbury's Supermarket Ltd v Visa Europe Services LLC*, [2021] CAT 17, 28 June 2021
- Permission to appeal refused [2021] CAT 22, 23 July 2021
- Settlement announced between Sainsbury's and Mastercard 6 August 2021

- ***Play Store***

- Case 1408/7/7/21 *Elizabeth Helen Coll v Alphabet, Google etc*: application for a CPO in a **standalone action** claiming that Alphabet is guilty of a series of exclusionary abuses in its operation of its Play Store

### **OTHER HIGH COURT LITIGATION**

- ***Perindopril***

- *Secretary of State for Health v Servier*, [2019] EWHC 1004 (Ch)

Judgment on the effect of the General Court's judgment in *Servier* on the damages claims in the High Court; appeal rejected by the Court of Appeal, 27 June 2019, [2019] EWCA Civ 1096 and by the Supreme Court, 6 November 2020, [2020] UKSC 44

- ***Testing kits***

- *Preventx Ltd v Royal Mail Group Ltd*, [2020] EWHC 2276 (Ch), 20 August 2020

Judgment granting an injunction to restrain the Royal Mail Group from denying certain services to Preventx; case settled 11 February 2021

**ENTERPRISE ACT 2002: MARKET INVESTIGATIONS**

**TABLE OF MARKET INVESTIGATION REFERENCES**

<b>Title of report</b>	<b>Date of reference</b>	<b>Date of Report</b>	<b>Outcome</b>
<i>Funerals</i>	28 March 2019	18 December 2020	Finding of adverse effects on competition; various remedies to be imposed <i>Funerals Market Investigation Order 2021</i> published 16 June 2021
<i>Mobile radio network for the police and emergency services</i>	25 October 2021		

Note:

- Review of the CMA *Legal services market* study launched 9 September 2020; report with recommendations published 17 December 2020
- CMA market study of the *Electric vehicle charging sector* launched 2 December 2020; progress update 26 May 2021: the CMA does not intend to make an MIR. On 22 July 2021 the CMA launched an investigation of possible infringements of the Competition Act 1998 in relation to the supply of electric vehicle chargepoints on or near motorways
- CMA market study of *Provision of social care for children* launched 12 March 2021; there will not be a market investigation – 9 September 2021; interim report 22 October 2021
- CMA market study of *Apple's and Google's mobile ecosystems* launched 15 June 2021



- Consultation on possible market investigation of *Emergency services network* launched by the CMA 8 July 2021; referred 25 October 2021 (see table above)
- Announcement that the CMA will launch a market study of *Music streaming*, 19 October 2021

**EUROPEAN UNION MERGER REGULATION**

**RECENT AND CURRENT PHASE II INVESTIGATIONS**

Name of case	Cleared?	Cleared with commitments?	Prohibited?
Case No COMP M.9162 <i>Fincantieri/Chantiers de l'Atlantique</i> <b>NB: notification withdrawn 2.2.21</b>			
Case No COMP M.9343 <i>Hyundai Heavy Industries/Daewoo Shipbuilding &amp; Marine Engineering</i>			
Case No COMP M.9569 <i>EssilorLuxottica/GrandVision</i>		Yes (23.3.21)	
Case No COMP M.9730 <i>Fiat Chrysler Automobiles NV/Peugeot SA</i>		Yes (21.12.20)	
Case No COMP M.9564 <i>London Stock Exchange Group/ Refinitiv</i>		Yes (13.1.21)	
Case No COMP M.9638 <i>LAG/Air Europa</i>			
Case No COMP M.9660 <i>Google/Fitbit</i>		Yes (17.12.20)	
Case No COMP M.9820 <i>Danfoss/Eaton Hydraulics</i>		Yes (18.3.21)	
Case No M.9829 <i>Aon/Willis Towers Watson</i>		Yes (9.7.2021)	
Case No M. 9938 <i>Kingspan Group plc/Trimo</i>			

Case No M. 9987 <i>Arm/NVIDIA</i>			
Case No M. 10078 <i>Cargotec/Konecranes</i>			
Case No M. 10188 <i>Illumina/Grail</i> <b>NB: Article 22 request from France, Belgium, Greece, Iceland, the Netherlands and Norway</b>  <b>NB: interim measures adopted 29 October 2021 to restore and maintain competition following Illumina's breach of the standstill obligation</b>			
Case No M. 10262 <i>Facebook/Kustomer</i> <b>NB: Article 22 request from Austria, Belgium, Bulgaria, France, Iceland, Ireland, Italy, the Netherlands, Portugal and Romania</b>			

### GENERAL COURT

- Case T-430/18 *American Airlines Inc v Commission*, judgment of 16 December 2020

Judgment dismissing an appeal against a Commission decision in relation to commitments given in a merger case, *US Airways/AMR Corp* in 2013; on appeal Case C-127/21 P, not yet decided

- Case T-691/18 *KPN BV v Commission*, judgment of 27 January 2021, EU:T:2021:43

Judgment dismissing an appeal by KPN against the Commission's clearance of the *Liberty Global/Ziggo* merger

- Case T-425/18 *Altice Europe NV v Commission*, judgment of 22 September 2021, EU:T:2021:607

Judgment dismissing an appeal by Altice that it has infringed Articles 4 and 7 of the EUMR but slightly reducing the fine

## **OTHER ISSUES**

Note also:

- Sigma-Aldrich fined €7.5 million for providing misleading information during the Merck/Sigma-Aldrich merger investigation: Commission decision of 3 May 2021
- Statement of objections sent to Telefónica 22 February 2019 for breach of commitments given in the *Telefónica Deutschland/E-Plus* case
- Commission decision of 18 February 2021 imposing measures under Article 8(4)(b) EUMR on Novelis relating to its sale of part of the Aleris business as required in an earlier decision of the Commission
- Commission Press Release of 26 March 2021 on the evaluation of jurisdictional and procedural aspects of merger control
- Draft Regulation on distortions caused by foreign subsidies proposed on 5 May 2021

**UK MERGER CONTROL**

**PHASE 2 MERGER REFERENCES TO THE CMA  
 UNDER THE ENTERPRISE ACT 2002**

<b>Title</b>	<b>Date of reference</b>	<b>Date of publication</b>	<b>Finding of substantial lessening of competition?</b>	<b>Remedy</b>
<i>Sabre/Farelogix</i>	2 September 2019	9 April 2020	Yes	<p><b>Prohibition</b></p> <p>Upheld on appeal                      Case 1345/4/12/20  <i>Sabre Corporation v CMA</i>, [2021] CAT 11</p> <p><b>Fine of £20000 imposed on Sabre for failing to respond to an RFI</b></p>
<p><i>JD Sports Fashion plc/ Footasylum plc</i></p> <p><b>Completed merger</b></p>	1 October 2019	6 May 2020	<p>Yes</p> <p>Second provisional finding of an SLC, 2 September 2021</p>	<p><b>Divestiture required</b></p> <p>On appeal                      Case 1354/4/12/20  <i>JD Sports Fashion plc v CMA</i>; appeal partially successful 13 November 2020, [2020] CAT 24; application for permission to appeal rejected 17</p>

				December 2020, CAT 27  <b>Fine of £300,000 imposed on JD Sports Fashion plc and Pentland Group Ltd for failing to comply with an IEO 2020; withdrawn 15 October 2020</b>
<i>FNZ (Australia) Bidco Pty Ltd/ GBST Holdings Ltd</i> <b>Completed merger</b>	8 April 2020	5 November 2020	Yes  Second finding of SLC, 4 June 2021  Final undertakings accepted 25 August 2021	<b>Divestiture required</b>  On appeal Case 1375/4/12/20 <i>FNZ (Australia) Bidco Pty Ltd v CMA</i> , not yet decided  Finding of SLC quashed and case remitted to the CMA, 21 January 2021
<i>TVS Europe Distribution Ltd/3G Truck and Trailer Parts Ltd</i> <b>Completed</b>	12 June 2020	12 January 2021	Yes	<b>Divestiture required</b>

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<b>merger</b>				
<i>PUG (viagogo)/ StubHub</i> <b>Completed merger</b>	25 June 2020	2 February 2021	Yes	<b>Divestiture required</b>
<i>Yorkshire Purchasing Organisation/Findel Education Ltd</i> <b>Transaction abandoned</b>	30 June 2020		Yes (provisional decision 16.10.20)	
<i>Crowdcube/Seedrs</i> <b>Fast track reference Transaction abandoned</b>	12 November 2020		Yes (provisional decision 24 March 2021)	
<i>Virgin Media/O2</i> <b>Fast track reference</b>	11 December 2020	20 May 2021	No	
<i>Facebook/GIPHY</i> <b>Completed merger</b>	25 March 2021		Yes (provisional decision 12 August 2021)	
<i>Cargotec Corporation Konecranes plc</i>	13 July 2021			
<i>Cellnex/CK Hutchison Networks Europe</i> <b>NB: the Commission is conducting a Phase 2 investigation in this case</b>	27 July 2021			

## OTHER INTERESTING DEVELOPMENTS

NB also:

- Case 1366/4/12/20 *Facebook Inc v CMA*: appeal against the CMA's refusal to grant derogation from an IEO made by the CMA on 9 June 2020 in the *Facebook/GIPHY* case. Appeal rejected 13 November 2020, [2020] CAT 23; appeal to the Court of Appeal rejected 13 May 2021, [2021] EWCA Civ 701
- *Facebook*: CMA decision of 20 October 2021 imposing a fine of £50.5 million for breach of an IEO and for changing its Chief Compliance Officer without first seeking consent
- The CMA has published revised *Mergers: Guidance on the CMA's jurisdiction and procedure*, CMA2revised, December 2020 and *Guidance on the CMA's mergers intelligence function*, CMA56revised, December 2020
- The CMA has published *Merger and Market remedies – guidance on reporting, investigation and enforcement of potential breaches*, CMA136, 29 January 2021
- The CMA has published *Merger Assessment Guidelines*, CMA 129, 18 March 2021
- *NVIDIA Corp/ARM Ltd*: PIIN issued by the Secretary of State for Digital, Culture, Media and Sport on national security grounds, 19 April 2021; competition concerns identified 20 August 2021
- National Security and Investment Act 2021 granted Royal Assent, 29 April 2021
- *Cobham Ultra Acquisitions Ltd/Ultra Electronics Holdings plc*: PIIN issued by the Secretary of State for Business, Energy and Industrial Strategy on national security grounds, 16 August 2021



- *Taurus International Ltd/Perpetuus Group*: PIIN issued by the Secretary of State for Business, Energy and Industrial Strategy on national security grounds, 5 September 2021
- *Parker-Hannifin Corporation/Meggitt plc*: PIIN issued by the Secretary of State for Business, Energy and Industrial Strategy on national security grounds, 18 October 2021