

Global Antitrust Update

IBA Annual Competition Conference 2025:
Seven themes from Florence

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Politics of antitrust: influence not interference

Florence seems a fitting place to explore the renaissance of industrial policy. It appears that a consensus has now emerged that industrial policy and competition policy can be integrated. But the unfolding challenge is how to support political goals without allowing political interference which would reduce predictability and transparency valued by investors.

When it comes to the substance of the law, it is openness, outreach and consultation that may prove to be key for antitrust agencies seeking to preserve trust and protect the rule of law. Many agencies are also working to improve how they apply the law. The UK CMA seeks to 'right-size their regulatory shadow' and exemplify the economic growth mindset being demanded of many antitrust agencies.

There are undoubtedly challenges ahead. But as Commissioner Ribera asserts, there is reason for hope and optimism. Competition law is a powerful horizontal enabler which boosts productivity, efficiency, and innovation.

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Exercising decisive influence over EU merger control

- The EU project to reform its merger control rules is truly ambitious. It seeks to modernise, integrate industrial policy considerations and simultaneously cut down the risk of over and under enforcement. The Commission has received more than 200 submissions from a broad range of stakeholders and is aiming for an Autumn 2026 draft, to be finalised by end of 2027.
- There is a clear desire to focus on the pro-competitive as well as anticompetitive effects of mergers. A keenness to understand better dynamic effects in high-innovation markets and to develop better tools for evaluating qualitative benefits such that the benefits of faster innovation can, for example, be weighed more confidently against short term price increases.
- The Commission is under time pressure. Dealmakers were expecting to see a clear shift with the new Commission following the Draghi report but the review still has a long way to go. Press reports following the Florence IBA event suggest that, following intervention of European Commission president Ursula von der Leyen, the Commission will now accelerate its review and publish the new guidelines earlier than first intended. Details of how it will achieve this and when they can now be expected are yet to emerge.
- The Commission needs to strike the right balance. Move too fast and it exposes itself to complaints about transparency and predictability. Move too slowly and patience runs out. A middle path might involve some flexing and discretion being exercised on current cases while the consultation continues in the background. This could signal the direction of travel in relation to issues which go to the heart of EU competitiveness, e.g. innovation, resilience or scaling up to create global champions – or display more pragmatism in relation to efficiencies as well as (investment) remedies.
- We continue to participate in the consultation and watch developments closely, aware that other antitrust agencies around the world are monitoring the Commission's efforts in this area too.

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Effective compliance – not headline grabbing EU fines

Antitrust agencies are keen to underline that soft enforcement tools have an important role to play. That includes commitments decisions and regulatory dialogue. Many are also delivering on their promises to help ensure that companies are not held back by legal uncertainty. The EU has published two pieces of useful informal guidance – in relation to competitor collaboration in the ports and the automotive sectors and other agencies are following suit.

Of course, the agencies will follow through with hard enforcement when necessary. This is evident from recent high profile EU fines, including for no-poach agreements (for the first time); self-preference in the tech sector and agreements not to compete on environmental product features. But the emphasis on the important role of softer tools instead of headline grabbing fines - including in digital markets – seems to imply a shift of direction compared to the previous Commission.

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Race to complete the EU Single Market: territorial under even closer scrutiny

EU agencies know the single market is a crown jewel, needed for competitiveness globally. The IMF numbers say it all: the barriers inside the single market are equivalent to tariff of around 45%.

The Draghi report was a wake-up call but many EU antitrust agencies are vocalising the view that it is now time for national European governments to step up and help to complete the single market. Agencies fear that EU capitals may not be committed to the kind of changes needed to allow cross-border consolidation, for example, in the banking and telecoms sectors. The agencies concede that there is an obvious need for them to move faster. But they point out that they cannot invent broader geographic markets. Market definition is not an exercise in magical thinking, the Commission warns. Changes are needed on the ground.

Ominously, the Commission is nevertheless aware that there are some things it can do. It is likely to come down hard on market partitioning practices which prevent the possibility of price arbitrage that is at the heart of the single market. It promises a reinvigoration of enforcement under abuse of dominance and other competition rules, mentioning that these sorts of cases will be "shooting up the Commission's enforcement agenda".

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Antitrust: rise of the machines

- Antitrust agencies remain very interested in the topic of collusion by algorithm. There now seem to be investigations and cases in various countries. Agencies appear to be most interested in the use of AI/algorithms to facilitate hub and spoke cartels. And it is the role of consultants offering price optimisation services to competitors which is attracting the most attention. Even the EU which has no public cases says it is looking at this area (noting that some service providers are very open about the advantages of using their service) and underlined the risks for companies that are aware (or should be) that competitively sensitive information from their competitors is being used to make pricing decisions.
- Now is the time for businesses to ensure they know how the pricing tools they buy are used. It's critical to assess under competition rules how pricing decisions are made, by examining the inputs, outputs and processes.

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Information exchange via signalling: an infringement in plain sight

- Agencies are clearly concerned about indirect information exchange, including through public statements. An ongoing EU investigation focussing on investor calls in the tyres sector has brought the dangers back into the spotlight.
- The Commission flags concerns about public statements which reduce uncertainty, and which don't seem to be necessary to inform investors– e.g. announcements about how to react to competitor pricing (“we will continue to act as a price follower”) or efforts to direct competitors to act in a certain way or predictions as to how rivals would react.
- The ease with which investor call transcripts can now be generated, shared and scrutinised means this area is now a key priority for training, especially when industries or sectors may feel united by a common pressure, such as trade wars and tariffs.

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A sustained focus on sustainability and antitrust

- Geopolitics seemed to have put this theme back in the shade but there are indications that the antitrust agencies retain a certain focus on this area. The EU (whose Competition Commissioner is also in charge of a Clean, Just and Competitive Transition) issued its first piece of informal guidance providing a green light for collaboration in the ports sector relating to greener product design. The UK and France have issued similar guidance, and the keynote speech of Japan's agency head underlined the importance of its green guidance and desire to help Japanese businesses with their transition efforts, pointing out that the JFTC had helped 20 businesses with proposed green projects in 2024.
- The EU Commission is also considering how to fold environmental issues into the next version of EU merger control. Not, it says, by broadening the law to catch non-competition issues but to internalise the goals of the EU – which are also commercial goals in fact. Comments by the Commission even suggest that it may be inclined to weigh environmental benefits against a merger's price increases before moving to an efficiency analysis.
- But businesses need to know where the boundary lies between legal and illegal green initiatives. Antitrust agencies remain committed to punishing cartel conduct which threatens environmental damage. Building on previous precedents, the EU and UK have both imposed high fines on car manufacturers who agreed not to compete with each other on environmental features.

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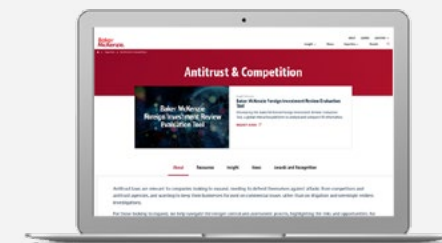
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