

European Union: Keep your C-suite out of hot water — Public comments and competition law

In brief

Last week's General Court judgement¹ provides a reminder for executives and senior management that their public statements regarding pricing strategies can attract significant antitrust scrutiny. We have distilled the judgement into key tips for staying on the right side of competition law when making public statements about future pricing and strategy. These tips are timely when industries or sectors feel united by some common cause – e.g., trade wars, tariffs, geopolitical risks, supply chain disruptions, regulations etc.

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Mastering public speaking and competition law

The case focused on disclosures made by companies in the tyre sector during earning calls. But there is nothing special in competition law terms about disclosures during earnings calls, and the principles that can be derived from the judgement confirm that competition law risks apply to any statements, whether made publicly or in secrecy. The judgement also shows that scripting your executives and senior management will have clear limitations; instead, embedding a culture of compliance based on a key set of principles is more likely to mitigate risk especially in the context of unprepared Q&A sessions with investors or the press. Focus on the What, Why and When.

What: Pricing intentions and price strategies are off limits and should be avoided. Commentary on business strategy should be general and limited to what is necessary for the particular audience. References to specific competitors or what they should do are also off limits. Avoid any appeals for collective action, industry discipline or speculation on what companies will or should do if certain events unfold. Phrases that the Commission searched for are incredibly broad and raised sufficient suspicions to trigger dawn raids (e.g., 'we want to send a signal', 'we strive to stick to', 'we will do our best to', 'not our intention to go for', 'we would react by').

Why: Companies should only make a public announcement if there is a legitimate underlying reason for making it – e.g., to inform customers or investors. The statement needs to be tailored to that legitimate audience, e.g., aimed at reassuring investors about volatile markets, and should not go beyond that. Commentary on pricing intentions or price strategies is likely to go beyond what is necessary in most circumstances and calls should never be used to signal commercial strategy or intentions to competitors.

¹ *Judgement of the General Court dated 9 July 2025 in Case T-188/24*

When: If prices are revealed, they should be prices at which the company is already bound to sell – for instance after customers have been already informed of the specific price increases. Otherwise, an announcement could suggest an ulterior motive, such as signaling. The timing must not be driven by how much time would be needed by competitors in order to align their prices.

Ex officio data crunching to increase enforcement

It is well known that the European Commission (like other competition authorities) is keen to persuade companies that it can detect competition law infringements on its own and is not overly reliant on companies self-reporting or issuing formal complaints. We learn from the judgment that the Commission has invested significant resources to bring this case:

- The Commission compiled a database consisting of hundreds of thousands of earnings calls obtained from a financial data provider.
- It used search terms to screen for potential collusive practices and then conducted a manual examination for potential collusion.
- It found price announcements on similar dates and language which it argues was used to publicly announce conduct which had just been adopted or was about to be implemented, or to suggest to competitors that they adopt such conduct.
- It did not matter that the relevant statements were not part of the prepared presentations by the relevant companies and instead were made during Q&As with investors.

The ease with which transcripts can now be generated, shared and scrutinised means that training of those talking in public settings is prudent. Risk assessment and compliance audits need to be broad enough to cover these types of statements, while AI-assisted reviews are able to ensure that these are run in a cost-effective and targeted manner.

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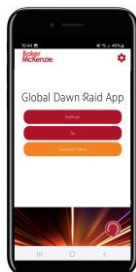


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