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GT Newsletter | Competition Currents | January 2025

A monthly newsletter for Greenberg Traurig clients and colleagues highlighting significant recent developments in global antitrust and competition law.

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United States

A. Federal Trade Commission (FTC)

1. *Competitor collaboration guidelines withdrawal.*

On Dec. 11, 2024, the FTC and DOJ Antitrust Division withdrew the Antitrust Guidelines for Collaborations Among Competitors. The agencies determined the Collaboration Guidelines, issued in April 2000, no longer provide reliable guidance on how enforcers assess the legality of collaborations involving competitors due to the subsequent development of Sherman Act jurisprudence, rapid evolution of technologies and business combinations, and reliance on outdated policy statements and analytical methods. The FTC voted 3-2 to withdraw the guidelines. Commissioners Andrew Ferguson and Melissa Holyoak issued separate dissents highlighting the absence of replacement guidance.

2. *Trump names Andrew Ferguson as next FTC chair.*

President-elect Donald Trump has named FTC Commissioner Andrew Ferguson as the next FTC chair. Sworn in on April 2, 2024, Commissioner Ferguson was one of two Republican FTC Commissioners

[1] Due to the terms of GT's retention by certain of its clients, these summaries may not include developments relating to matters involving those clients.

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President Biden appointed. He previously served as Virginia solicitor general, chief counsel to U.S. Sen. Mitch McConnell, and U.S. Senate Judiciary Committee counsel. Ferguson earned undergraduate and law degrees from the University of Virginia before clerking for the D.C. Circuit and U.S. Supreme Courts. The president-elect also announced his intention to nominate Mark Meador, a partner at law firm Kressin Meador Powers and former antitrust counsel to U.S. Sen. Mike Lee, as an FTC Commissioner to fill current FTC Chair Lina Khan's seat.

B. U.S. Litigation

1. *Borozny v. RTX Corp., Case No. 3:21-CV-01657 (D. Conn.).*

On Jan. 3, 2025, the Honorable Judge Sarala V. Nagala initially approved a $34 million settlement for a nationwide "no-poach" class action against several aerospace companies. The proposed $34 million settlement from the principal defendant, RTX, settles claims that RTX entered into agreements with several suppliers and competitors to not hire one another's aerospace engineers—a highly skilled profession. This civil suit ran parallel to the DOJ's criminal case, which was dismissed by another court. If approved, the $34 million settlement from RTX would augment the $26.5 million settlement previously negotiated with other alleged conspirators.

2. *2311 Racing LLC, et al. v. National Association for Stock Car Auto Racing, LLC, Case No. 3:24-CV-886 (W.D. N.C.).*

On Dec. 20, 2024, defendant National Association for Stock Car Auto Racing, LLC (NASCAR) sought to stay a preliminary injunction that prevents NASCAR from barring various racing teams who initiated an antitrust lawsuit from competing in the 2025 season. Initiated by 2311 Racing, the lawsuit alleges that NASCAR exercises monopoly power over racetracks and requires all NASCAR teams not to participate in competing events. According to 2311, NASCAR then barred its participation in the upcoming 2025 season because, among other things, 2311 would not sign contracts that require the teams to relinquish all rights to bring antitrust claims. The Honorable Judge Kenneth D. Bell granted 2311's preliminary injunction requiring NASCAR to allow the teams to compete, which NASCAR intends to appeal in the Fourth Circuit.

3. *SmartSky Networks, LLC v. Gogo Inc., Case No. 3:24-CV-01087 (W.D. N.C.).*

On Dec. 17, 2024, airplane technology company SmartSky Networks, LLC brought a $1 billion lawsuit against competitor Gogo, Inc. and Gogo Business Aviation, LLC (collectively, Gogo). SmartSky alleges Gogo unfairly blocked it from selling its in-flight Wi-Fi services to private aircraft customers. According to the lawsuit, Gogo engaged in a systematic campaign to create "fear, uncertainty and doubt" about SmartSky's allegedly superior services while falsely promoting a future Gogo alternative that never launched. As a result of this campaign, SmartSky claims it failed after nearly 10 years of trying to enter the market.

Mexico

A. COFECE discovers possible collusion in radiological material sales to the government.

COFECE's Investigating Authority has issued a Probable Liability Opinion against several companies and individuals accused of rigging public tenders for radiological material, an illegal act under the Federal Economic Competition Law.

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In Mexico, public health institutions perform more than 20 million x-rays a year. The Mexican Social Security Institute conducts approximately 19 million of these studies annually, while the Institute of Security and Social Services for State Workers conducts an additional 1.6 million.

In its announcement, COFECE highlighted that when companies agree not to compete in tenders, they not only affect public finances, but also compromise Mexicans' access to essential medical services. COFECE further emphasized that transparency, equity, and efficiency are fundamental principles that should govern government procurement, especially in the health sector.

A trial will follow.

B. COFECE investigates lack of effective competition in live entertainment events.

COFECE's Investigating Authority (AI) has initiated an investigation into live entertainment markets to determine if there are obstacles that limit competition in these markets, which could negatively impact the millions of live entertainment event consumers.

Between 2023 and 2024, half of adults in Mexico attended live entertainment events, such as concerts, live music or dance performances, plays, and art or history exhibitions. In 2023 alone, Mexicans spent more than MEX 7 billion on online tickets for music events. This positions Mexico as the largest Latin American market for the sale of tickets to musical events and the 16th largest market worldwide.

Through its investigation, the AI seeks to identify and eliminate the barriers that prevent competition in these markets. If the AI identifies barriers to competition or essential inputs, the COFECE Plenary may order eliminating those barriers, issue recommendations and guidelines for their regulation, and/or order divestment to improve efficiency.

The Netherlands

Dutch ACM Statement

Further investigation into KPN joint venture's acquisition of DELTA needed.

The Dutch Authority for Consumers and Markets (ACM) has decided that further investigation is required for Glaspoort's (a joint venture of KPN and APG) acquisition of a portion of Delta Fiber Nederland's fiber optic network. KPN is the incumbent telecommunications operator in the Netherlands, while Delta is currently KPN's largest competitor in the fiber optic market.

According to the ACM, the acquisition may significantly reduce competition in the areas where KPN and Delta operate, potentially leading to higher prices for consumers. The ACM also points out that KPN already has a substantial market position, and the acquisition could further strengthen this position, putting smaller providers at a disadvantage. Finally, while each individual small acquisition may have a limited impact, the cumulative effect of KPN's multiple, small acquisitions could significantly undermine competition in the long term, which may weaken smaller providers' negotiating positions.

Before the acquisition can be finalized, Glaspoort and Delta must apply for an acquisition license – the equivalent of a Phase II or in-depth investigation in other jurisdictions – after which the ACM will continue its investigation.

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Poland

A. The UOKiK President questions consortium agreements and other competitor practices accompanying tenders.

The Polish Office of Competition and Consumer Protection (UOKiK) has fined 11 geodesy and cartography companies PLN 1.8 million (approximately EUR 422,000 / USD 436,000) for bid-rigging in cartographic services contracts with the Geodesy and Cartography Agency.

The investigation found that these companies engaged in anticompetitive practices through several coordinated actions. The companies formed unnecessarily large consortia, submitted coordinated bids, and divided awarded contracts among themselves. Some participating companies performed no actual work, serving only as nominal consortium members. UOKiK determined that smaller consortia could have completed the projects independently, indicating the larger groups were formed solely to eliminate competition.

In a separate case, UOKiK has initiated antitrust proceedings against seven laundry service providers suspected of bid-rigging in hospital service contracts. The investigation uncovered evidence of potential price-fixing across multiple provinces and coordinated withdrawal of bids. During court-approved searches conducted with police assistance, investigators discovered mobile app communications showing companies exchanging specific price information to influence tender outcomes. The investigation revealed that participants strategically withdrew lower bids to ensure higher-priced bids would win, likely resulting in increased costs for hospitals and patients. This investigation remains ongoing.

Companies found engaging in bid-rigging face severe penalties under Polish law. Organizations can be fined up to 10% of their annual turnover, while individual managers may face personal fines up to PLN 2 million. These regulations apply regardless of company size, as there are no exemptions for companies with small market share. Any anti-competitive provisions in contracts are automatically void under law. Furthermore, affected parties retain the right to seek damages through private antitrust litigation. Notably, bid-rigging stands as the only form of competition-restricting agreement that may result in criminal penalties, including imprisonment.

B. The UOKiK President investigates ENEA Group's potential abuse of dominant position in renewable energy market.

The Polish Office of Competition and Consumer Protection (UOKiK) has launched an explanatory investigation into the ENEA Group, a major Polish energy conglomerate responsible for electricity generation, distribution, and trading. The investigation focuses on ENEA Operator, the group's distribution arm, which holds a natural monopoly in its regional distribution network.

The investigation stems from allegations that ENEA Operator may have provided unfair advantages to renewable energy installation (OZE) applications from its own group companies and select third-party businesses. Following these concerns, UOKiK conducted searches at three ENEA Group facilities. Complaints UOKiK received indicate that ENEA Operator may have shown preferential treatment by issuing connection approvals to certain entities that failed to meet formal requirements or by disregarding the chronological order of application submissions. These practices allegedly resulted in other entities being unfairly denied network connections for their renewable energy installations.

UOKiK suspects that this preferential allocation of connection capacity may have depleted available capacity at crucial balancing nodes, leading to the rejection of other companies' connection requests due

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to claimed technical limitations. This issue is particularly significant because network access is fundamental for participation in the electricity trading market.

The investigation is examining whether these actions constitute an abuse of dominant market position, particularly regarding the selective restriction of access to essential infrastructure, discriminatory access conditions, or intentional delays in providing access. Additionally, UOKiK is investigating potential illegal agreements between ENEA Operator and the entities receiving preferential treatment for renewable energy installations.

Should the investigation yield sufficient evidence, UOKiK may initiate formal antitrust proceedings against the involved parties. Under Polish law, companies found to have abused their dominant position face fines of up to 10% of their previous year's turnover. This penalty may extend to entities exercising decisive influence over the company engaged in such practices. Furthermore, any anti-competitive contractual provisions are automatically void, and affected parties maintain the right to pursue damages through court proceedings.

Italy

Italian Competition Authority (ICA)

1. *ICA launches investigation into alleged cartel in copper cable manufacturing industry.*

On Dec. 3, 2024, ICA opened an investigation against the Italian main copper cable producers for an alleged restrictive competition agreement aimed at coordinating prices and commercial conditions for producing and selling low-voltage copper cables in violation of Article 101 TFEU.

The proceeding started after a company submitted an application for leniency that disclosed the cartel to benefit from a reduced penalty.

The leniency applicant provided evidence to ICA about price coordination between the different parties. According to the applicant, this coordination started in 2005 when the parties aligned their list prices and initial discounts. Later, in 2008, they created a shared system within their association to adjust prices when copper costs changed. The system included a common way to calculate copper prices. This made the copper component a fixed price that was the same for all producers in the association.

2. *Investigation against Booking.com (Italy) closed for allegedly abusing dominant position.*

On Dec. 17, 2024, ICA closed its investigation against Booking.com S.r.l. (Italy), Booking.com B.V., and Booking.com International B.V. (Booking) for alleged abuse of dominant position after it accepted Booking's proposed commitments.

ICA had initiated the proceedings because of Booking's potentially abusive conduct that allegedly limited Italian hotel facilities' autonomy to differentiate their rates between Booking.com and other online sales channels by adhering to certain programs Booking promoted, such as the Partner Preferiti and Preferiti Plus programs, which give search result visibility advantages in exchange for higher commissions, and the so-called Booking Sponsored Benefit, which allows Booking to apply - without the hotels' consent - a discount to align the offer on its platform with the best among those available online.

The group submitted a commitment package that would seek to ensure that prices facilities charge on online sales channels, other than booking.com, would not be taken into account at any stage of its operation and program promotions. In addition, greater transparency around the Preferred Partner,

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Preferred Plus, and Booking Sponsored Benefit program operations allows facilities to make informed decisions regarding the costs and benefits of participating in them. According to ICA, Booking's commitments are suitable both for removing competitive concerns and for ensuring the commercial autonomy of Italian hotel facilities.

3. *ICA imposed penalties exceeding EUR 2 million on Hera S.p.A. and ComoCalor S.p.A. for excessive and unjustified district heating prices.*

Between May and June 2023, ICA initiated three proceedings into the networks of Ferrara (operated by Hera S.p.A.), Como (operated by ComoCalor S.p.A.), and Parma and Piacenza (operated by Iren Energia S.p.A.) to investigate whether and to what extent the three companies had passed on an excessive and unjustified burden to the users of district heating networks between 2021 and 2022, when there had been natural gas price increases.

On Nov. 26, 2024, ICA stated that the conduct that Hera S.p.A. and ComoCalor S.p.A. engaged in from Jan. 1-Dec. 31, 2022, consisting of applying unjustifiably burdensome prices to district heating users, constitutes abusive conduct of their dominant position.

ICA imposed a penalty of EUR 1,984,736 on Hera S.p.A. and EUR 286,600 on ComoCalor S.p.A., arguing that the companies prevented consumers from benefiting from available and affordable renewable sources to produce an essential good (heat), and imposed prices that were unfair in relation to costs (including a fair return on investment).

ICA found no violations related to the Parma and Piacenza networks that Iren Energia S.p.A. operates.

European Union

A. European Commission

1. *European Commission fined Pierre Cardin and Ahlers EUR 5.7 million for limiting cross-border clothing sales.*

The European Commission fined Pierre Cardin and its licensee Ahlers EUR 5.7 million for violating EU antitrust rules. Pierre Cardin, a French fashion house, licenses its trademark to third parties for producing and distributing clothing branded with its name. Ahlers was Pierre Cardin's largest licensee of clothing in the EEA during the relevant period. Between 2008 and 2021, both companies participated in anti-competitive agreements and coordinated practices that safeguarded Ahlers from competition within its licensed EEA area. This included preventing other licensees from selling Pierre Cardin clothing outside their territories or to low-price retailers. The Commission calculated the fines based on the severity, geographic scope, and duration of the infringement, with Pierre Cardin receiving a EUR 2,237,000 fine and Ahlers being fined EUR 3,500,000.

2. *European Commission approves Nvidia's acquisition of Run:ai.*

The European Commission has unconditionally approved Nvidia's below-threshold acquisition of Run:ai, concluding that it raises no competition concerns. This decision follows a referral by the Italian Competition Authority under Article 22 of the EU Merger Regulation (EUMR), which allows member states to request deal reviews that fall below national turnover thresholds, following concerns about Nvidia's potential "super-dominance" in the advanced GPU market.

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A recent ruling from the European Court of Justice influenced the European Commission's review; the case invalidated its previous approach to Article 22 EUMR. In its recent assessment, the European Commission determined that the acquisition would not impair competition, as Nvidia would not have the incentive to make its GPUs less compatible with competitors' software. The European Commission also found Run:ai's position in the software market for GPU orchestration to be not significant, with sufficient alternative providers available.

B. ECJ Decision

Preliminary CJEU ruling in ongoing proceedings between Tallinna and KIA Auto.

The Court of Justice of the European Union (CJEU) provided a preliminary ruling on the interpretation of Article 101(1) TFEU (the EU's cartel prohibition provision), following questions from the Administrative Regional Court of the Republic of Latvia. The case involved Tallinna Kaubamaja Grupp AS and KIA Auto AS, which were fined for a vertical agreement that imposed restrictions on car warranties. The national competition authority determined that this agreement hindered access to the Latvian market for independent repairers and restricted independent spare parts manufacturers. The CJEU stated that Article 101(1) TFEU should be interpreted to mean that a national competition authority does not need to demonstrate the existence of concrete and actual competition-restricting effects when investigating an agreement that imposes restrictions on car warranties. It is sufficient to establish the existence of potential competition-restricting effects, provided they are sufficiently appreciable. Now the proceedings shall resume, and the national court will have to evaluate if the Latvian competition authority's decision demonstrated sufficiently appreciable effects on competition.

Read previous editions of GT's Competition Currents Newsletter.

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