GT GreenbergTraurig

GT Newsletter | Competition Currents | April 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. *FTC staff reaffirms opposition to proposed Indiana hospital merger.*

On March 17, 2025, the FTC advised the Indiana Department of Health to deny the merger application of Union Hospital, Inc. (Union Health) and Terre Haute Regional Hospital, L.P. (THRH). According to the FTC's comment letter, this second attempt to merge under a proposed certificate of public advantage (COPA) has the same anticompetitive harms as their original application. The FTC warned that the merger poses substantial anticompetitive risks, such as higher healthcare costs for patients and lower wages for hospital workers. In September 2024, the FTC issued a similar letter opposing the same parties' proposed COPA, which the parties later withdrew in November 2024.

2. *FTC launches joint labor task force to protect American workers.*

A newly established Joint Labor Task Force as of Feb. 26, 2025, consisting of the FTC's Bureau of Competition, Bureau of Consumer Protection, Bureau of Economics, and Office of Policy Planning, will

[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.

focus on identifying and prosecuting deceptive, unfair, and anticompetitive labor-market practices that negatively impact American workers. The task force will also work on developing information-sharing protocols between the FTC's bureaus and offices to exchange best practices for investigating and uncovering such practices, as well as promoting research on harmful labor-market issues to guide both the FTC and the public. The FTC chairman created the Joint Labor Task Force to streamline the agency's law-enforcement efforts and ensure labor issues are prioritized in both consumer protection and competition-related matters.

3. *FTC approves final order requiring building service contractor to stop enforcing a no-hire agreement.*

The FTC, on Feb. 26, 2025, has finalized a consent order that mandates Planning Building Services and its affiliated companies to cease enforcing no-hire agreements. In January 2025, the FTC filed a complaint against Planned Building Services, Inc., Planned Security Services, Inc., Planned Lifestyle Services, Inc., and Planned Technologies Services, Inc., collectively known as Planned Companies (Planned). The complaint claimed that the companies used no-hire agreements to prevent workers from negotiating for higher wages, better benefits, and improved working conditions. Under the final consent order, Planned must stop enforcing no-hire agreements, both directly and indirectly, and must not inform any current or potential customer that a Planned employee is bound by such an agreement. The order also requires Planned to eliminate no-hire clauses from their customer contracts and notify both customers and employees that the existing no-hire agreements are no longer enforceable.

B. U.S. Litigation

1. *D'Augusta v. American Petroleum Institute, Case No. 24-800 (U.S. Mar. 31, 2025).*

On March 31, 2025, the U.S. Supreme Court refused to take up a putative class action alleging that the governments of Russia, Saudi Arabia, and the United States entered into an anticompetitive agreement in 2020 to cut oil production. According to the lawsuit, the multinational agreement arose during the height of the COVID-19 pandemic, when oil prices declined substantially due to decreased demand. In dismissing the case, the Ninth Circuit held that any alleged agreement between foreign nations and the U.S. government were matters of foreign policy and therefore outside of the judicial branch's jurisdiction. As is tradition, the U.S. Supreme Court did not issue a separate opinion explaining its reasons for refusing to consider the appeal.

2. *Dai v. SAS Institute Inc., Case No. 4:24-cv-02537 (N.D. Cal. Mar. 24, 2025).*

On March 24, 2025, the Honorable Judge Jeffrey S. White dismissed allegations brought against SAS Institute, Inc., the creator of an artificial intelligence algorithm that others allegedly used to fix hotel prices. According to the complaint, subsidiary IDeaS Inc. licensed SAS's software to various hotel chains, whom plaintiffs claim used the algorithm to set increased room rates nationwide. While Judge White did not issue an opinion regarding the remaining defendants' pending motions to dismiss, he stated that at least with respect to SAS, there is no allegation or proof of a direct contract between SAS as a parent company and these hotel chains, and the mere fact that SAS's software allegedly "powered" the anticompetitive activity was not enough to make it a defendant.

3. *State of Tennessee v. National Collegiate Athletic Association, Case No. 3:24-cv-00033 (E.D. Tenn. Mar. 24, 2025).*

Also on March 24, a federal district judge in the Eastern District of Tennessee approved the settlement of a class action that four states and the District of Columbia brought against the National Collegiate Athletic

Association (NCAA). The states brought the suit on behalf of their respective colleges and universities to challenge the NCAA's rule that prohibited those schools from marketing potential name, image, and likeness (NIL) compensation to prospective athletes as part of the school's recruitment. According to the settlement, the NCAA will cease enforcing its existing rules that prevent athletes from learning about or negotiating potential NIL contracts as part of college recruitment.

4. *Davitashvili v. Grubhub, Inc., Case No. 23-521 and 23-522 (2d Cir. Mar. 13, 2025).*

On March 13, 2025, a divided Second Circuit held that while food delivery service Uber Technologies Inc. could force customers to arbitrate "the arbitrability" of their antitrust claims, a court would decide if fellow defendant and competitor Grubhub Inc.'s antitrust claims were subject to the arbitration. The appeals arise out of allegations that both Uber and Grubhub require restaurants to agree not to sell food at lower prices than those offered on their platforms, which plaintiffs claim resulted in increased prices to consumers. According to the court, the differing results arise in part because Uber's terms of service more clearly state that the question of whether antitrust suits are subject to the arbitration clause is itself a question that is left to the arbitrator, whereas Grubhub's terms of service fail to sufficiently require an arbitrator to determine questions of arbitrability. In a dissenting opinion, the Honorable Judge Richard J. Sullivan disagreed with the majority's conclusion that claims against Grubhub were "unrelated" to consumers' use of the app, noting that "what gave Grubhub the market power to commit the alleged antitrust violations" was the very fact that consumers used the app.

Mexico

SCJN endorses COFECE's fine against Aeromexico; emails were key in the decision.

The Second Chamber of the Supreme Court of Justice of the Nation (SCJN) has ratified the investigative powers of the Federal Economic Competition Commission (COFECE), concluding more than five years of litigation Aeromexico initiated.

The airline had challenged a fine of MEX 88 million ($4.21 million) that COFECE imposed in 2019 for colluding to manipulate airline ticket prices on several routes, affecting more than 3 million passengers. The Second Chamber ultimately confirmed the sanction.

In this and other cases, much of the evidence against Aeromexico was obtained through surprise verification visits, a key tool of COFECE. These visits allow access to the offending companies' offices to collect crucial physical and electronic evidence that may otherwise be destroyed. During one of these visits, COFECE found emails between airline executives, where, using nicknames, codes, and false email addresses, they allegedly conspired to manipulate prices.

Aeromexico argued before the SCJN that these emails were "private communications" and, therefore, could not be used as evidence. However, the Second Chamber determined that these communications are not protected by the right to privacy and can be used to investigate and sanction monopolistic practices that affect consumers, especially when it comes to commercial communications between companies or their personnel.

The Netherlands

A. Dutch ACM Statements

1. *ACM provides guidance for car dealership concentrations.*

The Dutch competition authority (ACM) has issued a detailed guideline outlining its approach to assessing mergers and acquisitions within the car dealership sector. This guideline aims to provide clarity to the industry by offering a step-by-step overview of the information car dealerships must submit and the analyses they must conduct when filing merger notifications. The objective is to ensure an efficient and precise evaluation process for both the ACM and the companies involved.

To minimize administrative burdens on businesses, the guideline introduces threshold values. Companies operating below these thresholds need only provide a straightforward market share analysis. For companies exceeding these thresholds, further procedural steps are outlined. This approach is designed to support companies in complying with notification requirements efficiently.

2. *ACM may investigate possible violations under the Digital Markets Act.*

The ACM now has the authority to investigate compliance with the Digital Markets Act (DMA). This European legislation, in effect since May 2023, aims to foster competition in digital markets and provide better protection for consumers. The DMA imposes obligations on major digital platforms, known as "gatekeepers." Key obligations for gatekeepers include offering fair terms in app stores, providing businesses free access to their own data, and ensuring interoperability between apps and hardware. The ACM will work closely with the European Commission ("EC") through joint investigative teams to address these matters.

The ACM is authorized to investigate complaints from businesses facing access issues with these platforms and collaborates with the EC, which holds exclusive enforcement powers under the DMA. Since the Dutch implementation law took effect March 10, 2025, the ACM has gained investigative authority. The ACM encourages businesses to report any difficulties encountered with gatekeepers.

3. *ACM investigates the acquisition of Ziemann Nederland by Brink's and is advocating for a 'call-in power.'*

The ACM has initiated an investigation into the recent acquisition of Ziemann Nederland by Brink's, a leading player in the Dutch cash-in-transit sector. As a result of the takeover, Ziemann will exit the Dutch market, heightening the ACM's concerns regarding reduced competition.

Brink's has stated that the acquisition did not require prior notification to the ACM as the turnover thresholds were not met. However, the ACM is now examining whether the transaction may breach competition laws, including the prohibition on abusing a dominant market position. Furthermore, the ACM is advocating for a 'call-in power,' which would enable it to investigate smaller acquisitions that may have adverse effects, even if they fall below the turnover thresholds. Such a measure would enhance the ability to address market power and its associated risks, both at the national and European levels.

B. Dutch Court Decision

Dutch Supreme Court to rule on follow-on claims from a single, continuous breach of European competition law.

The central issue in this case concerns the determination of the applicable law for claims seeking damages resulting from a single and continuous infringement of the European cartel prohibition under Article 101 TFEU, known as follow-on claims. The dispute involves cartel damages stemming from an international cartel of airlines that coordinated prices for fuel and security surcharges between 1999 and 2006. The EC has previously issued fines to the airlines involved, while claims-vehicles Equilib and SCC are seeking compensation on behalf of the affected parties.

Both the lower court and the court of appeals ruled that Dutch law applies to these cartel damage claims under the Unjust Act Conflicts Act (WCOD). The court of appeals held that a single and continuous infringement gives rise to one damages claim per injured party, regardless of the number of transactions that party undertakes. It also noted that the WCOD contains a gap in cases where multiple legal systems could govern a single-damages claim. The court suggested that this gap may be addressed by allowing a unilateral choice of law, in line with Article 6(3) of the Rome II Regulation.

The case is now before the Supreme Court, which is questioning whether the concept of a "single and continuous infringement" should be defined under European Union law or whether this determination is left to the member states' national laws. The Supreme Court is considering referring a preliminary question to the Court of Justice of the European Union (CJEU). The proposed question seeks to establish whether EU law, particularly the principle of effectiveness, mandates that a single and continuous infringement be treated as a single wrongful act resulting in one damage-claim per injured party, or whether member states are permitted to classify each transaction as separate damages claim.

Poland

A. UOKiK Continuous Enforcement Actions Against RPM Agreements

In the March edition of Competition Currents, we reported on the continued interest of the President of the Office of Competition and Consumer Protection (UOKiK President) in resale price maintenance (RPM) agreements, and the actions taken in the last year. UOKiK's scrutiny of RPM remains strong and in recent weeks, UOKiK has taken further enforcement actions.

1. *Fines imposed on Jura Poland and retailers for coffee machine resale price maintenance.*

The UOKiK President has imposed fines exceeding PLN 66 million (approx. EUR 16 million/USD 18 million) on Jura Poland and major electronics retailers for engaging in a decade-long price-fixing scheme regarding Jura coffee machines. Additionally, a top executive at Jura Poland faces a personal fine of nearly PLN 250 thousand (approx. EUR 60 thousand/USD 65 thousand).

According to the UOKiK President, Jura Poland, the exclusive importer of Jura coffee machines, colluded with its retail partners to maintain minimum resale prices, preventing consumers from purchasing them at lower prices. The agreement covered both online and in store sales and extended to promotional pricing and bundled accessories.

Evidence gathered through on-site inspections revealed that Jura Poland was actively monitoring compliance, pressuring retailers to adhere to fixed prices under the threat of supply restrictions or

contract termination. The scheme's communication channels included emails, phone calls, messaging apps, and SMS messages.

The anti-competitive arrangement reportedly lasted from July 2013 to November 2022. The UOKiK President imposed fines of PLN 30 million (approx. EUR 7.1 million/USD 7.7 million) on the owner of one retailer, and of PLN 12.2 million (approx. EUR 2.8 million/USD 3.1 million) on Jura Poland. The other retailers received fines ranging from PLN 6.5 million (approx. EUR 1.5 million/USD 1.6 million) to PLN 10.5 million (approx. EUR 2.5 million/USD 2.7 million).

The decision is not yet final and can be appealed to the Court of Competition and Consumer Protection.

2. *UOKiK investigates alleged collusion in agricultural machinery sales.*

The UOKiK President has launched two antitrust investigations into potential collusion in the sale of agricultural machinery. The first investigation is focusing on major brands in the industry. The second investigation concerns the Claas brand. Allegations of market sharing and price fixing, which may lead to higher costs for farmers, have been made against 15 companies and two executives.

The UOKiK President suspects that dealers were assigned exclusive sales territories, restricting farmers from purchasing machinery outside the designated areas. Customers who attempted to buy from other dealers may have been redirected or offered less favorable prices. Additionally, businesses allegedly exchanged pricing information to discourage cross-regional sales.

If the UOKiK proceedings confirm competition-restricting agreements, the companies could face fines of up to 10% of their annual turnover, while managers risk penalties of up to PLN 2 million (approx. EUR 479 thousand/USD 517 thousand). Under Polish law, anticompetitive provisions in agreements are invalid. Entities suffering harm as a result of an anticompetitive agreement may also seek damages in civil court.

B. UOKiK imposes fines for obstruction of investigation and dawn raids

Companies failing to cooperate with the UOKiK President may face severe penalties. Under Polish law, non-disclosure of the required information may result in penalties of up to 3% of the company's annual turnover. Sanctions for procedural violations during proceedings, particularly for obstructing or preventing the conduct of an inspection or search, may be imposed on managers, with a financial penalty of up to 50 times the average salary (approx. PLN 430,000/EUR 103,000/USD 109,000).

Last month, the UOKiK President issued three decisions, imposing a total of PLN 1.1 million (approx. EUR 263,000/USD 284,000) in fines.

Another case concerned suspected bid-rigging in the supply of cooling and ventilation equipment. M.A.S. executives refused to grant UOKiK access to the work phones and email accounts of two employees involved in the case. One employee's data was submitted with a two-month delay, while the other's was never provided. As a result, the UOKiK President issued two decisions with fines: PLN 350,000 (approx. EUR 84,000/USD 90,000) on M.A.S. and PLN 50,000 (approx. EUR 12,000/USD 13,000) on its CEO. The fine imposed on M.A.S. was relatively high, amounting to approximately 2% of the company's turnover, while the maximum possible fine was 3%.

Italy

Italian Competition Authority (ICA)

1. *Update of turnover thresholds for concentration notifications.*

On March 24, 2025, the ICA increased the first of two cumulative turnover thresholds that determine when preventive notification of concentrations becomes mandatory. This threshold, which concerns the total national turnover generated by all companies involved in a transaction, was raised from EUR 567 million to EUR 582 million. The second threshold, which requires at least two of the involved companies to individually generate a national turnover of EUR 35 million, remains unchanged.

2. *New guidelines on applying antitrust fines.*

On March 10, 2025, following a public consultation, ICA adopted new guidelines on fines, aimed at enhancing the deterrent effectiveness of its sanctioning activities. The innovations include:

(i) the introduction of a minimum percentage, equal to 15% of the sales value, for price-fixing cartels, market allocation, and production limitation cartels;

(ii) the possibility of increasing the sanction by up to 50% if the responsible company has particularly high total worldwide turnover relative to the value of sales of the goods or service subject to the infringement, or belongs to a group of significant economic size;

(iii) the possibility of further increasing the fine based on the illicit profits the company responsible for the infringement made; and

(iv) the consideration of mitigating circumstances in a case of adopting and effectively implementing a specific compliance program, as well as introducing the so-called "amnesty plus," i.e., the possibility of further reducing the fine if the company has provided information ICA deems decisive for detecting an additional infringement and falling within the scope of the leniency program.

3. *New guidelines on antitrust compliance.*

On March 10, 2025, ICA adopted new guidelines on antitrust compliance. In particular, the ICA has introduced:

(i) a maximum reduction of penalties up to 10% - instead of the previous 15% - reserved for compliance programs that have proven to be effective (i.e. if the application is submitted before ICA launches an investigation);

(ii) a reduction of up to 5% -instead of 10%- in the case of compliance programs that are not manifestly inadequate, adopted before ICA launches an investigation, provided that the program is adequately integrated and implemented within six months;

(iii) a reduction of up to 5% for companies with manifestly inadequate programs or for programs adopted newly after the start of the investigation only in cases where substantial changes have been made after the proceeding's initiation;

(iv) no reduction for companies that repeatedly infringed and that had already benefited from a reduction of the fine for a previous compliance program. Moreover, no reduction will be granted to a repeat offender, already having a compliance program, involved in a subsequent proceeding.

4. *ICA investigates Rete Ferroviaria Italiana S.p.A.and Ferrovie dello Stato Italiane S.p.A. for potential abuse of dominant position.*

On March 18, 2025, ICA launched an investigation against Rete Ferroviaria Italiana S.p.A. (RFI) and Ferrovie dello Stato Italiane S.p.A. (FS) for an alleged abuse of dominant position, in violation of Article 102 TFEU. According to ICA, access to the national railway infrastructure has been slowed down, and in some cases obstructed, impeding the new high-speed passenger transport operator, SNCF Voyages Italia S.r.l. (SVI)'s entry.

The contested behaviors were implemented in the national railway infrastructure market, in which RFI holds a dominant position due to the legal concession granting (D.M. Oct. 31, 2000, No. 138), the company a legal monopoly over the national railway network. In this case, access primarily concerns the high-speed (AV) network. However, the infrastructure involved in the allegedly abusive conduct also includes part of the railway infrastructure intended for regional and medium-long distance transport services. From a geographical perspective, considering the widespread nature of the access conditions across the entire Italian railway network, the actions in question seem to have a national scope.

The alleged abusive conduct carried out in the upstream market of railway infrastructure appears to have hindered SVI's entry into the passenger railway transport market on the AV network, which is the downstream market where anti-competitive effects would have occurred. ICA carried out inspection activities at the offices of Rete Ferroviaria Italiana S.p.A., Ferrovie dello Stato Italiane S.p.A., and also at the offices of Trenitalia S.p.A. and Italo - Nuovo Trasporto Viaggiatori S.p.A., as they were considered to have information relevant to the investigation.

European Union

A. European Commission

European Commission drops interim measures proceedings against Lufthansa.

The European Commission has closed its interim measures antitrust proceedings against Lufthansa, concluding that the legal conditions for such measures under Article 8 of Regulation 1/2003 were not fully met. The proceedings aimed to require Lufthansa to restore Condor's access to feed traffic at Frankfurt Airport, as previously agreed between the airlines.

These interim measures were part of a broader investigation into potential competition restrictions on transatlantic routes involving the A++ joint venture between Lufthansa and other airlines. The investigation, launched in August 2024, examines whether the joint venture complies with EU competition rules.

While the interim measures proceedings have been closed, the European Commission continues its main investigation into the competitive impact of the A++ joint venture on transatlantic routes, including the Frankfurt-New York route.

B. ECJ Decision

A parent company can be sued in its home country for its subsidiary's antitrust violations in another EU member state.

On Feb. 13, 2025, the Court of Justice of the European Union (CJEU) issued a landmark ruling confirming that a parent company may be sued in its home country for antitrust violations its subsidiary

committed in another EU member state. The case concerned a Greek subsidiary, Athenian Brewery SA, which the Greek competition authority had sanctioned for abusing its dominant position. Macedonian Thrace Brewery SA subsequently filed a claim for damages before a Dutch court against both the subsidiary and its Dutch parent company, invoking Article 8(1) of the Brussels I bis Regulation. This provision allows for the joint adjudication of claims when they are closely connected.

The CJEU clarified that a parent company and its subsidiary may be regarded as forming a single "economic unit," thereby justifying both joint liability and international jurisdiction. Furthermore, the CJEU reaffirmed the existence of a rebuttable presumption that a parent company exercises decisive influence over its subsidiary if it holds nearly all of the subsidiary's shares. This presumption is significant for determining both liability and jurisdiction, provided the claims are substantively interconnected and the risk of contradictory judgments is mitigated.

This ruling carries implications for competition law enforcement within the EU. Aggrieved parties are now able to pursue damage claims in the parent company's jurisdiction, even if the subsidiary committed the antitrust infringement in another member state. However, national courts must ensure that the conditions for establishing international jurisdiction have not been artificially created, while also allowing the parent company the opportunity to rebut the presumption of decisive influence.

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