SLAUGHTER AND MAY

Newsletter

22 July – 4 August 2026

Issue 15

Competition & Regulatory Newsletter

Quick links

For further information on any EU or UK Competition related matter, please contact the Competition Group or your usual Slaughter and May contact.

Square de Meeûs 40
1000 Brussels
Belgium
T: +32 (0)2 737 94 00

One Bunhill Row
London EC1Y 8YY
United Kingdom
T: +44 (0)20 7600 1200

European Court of Justice clarifies EU rules on the seizure of business emails during inspections

On 16 July 2026, the European Court of Justice (CJ) handed down a judgment clarifying that EU law does not require national competition authorities to obtain prior authorisation from a court before seizing business emails during an investigation. However, national law must provide sufficient safeguards and allow for full *ex post* judicial review. The full decision is available here.

Background

Between January 2021 and March 2022, the Portuguese Competition Authority carried out inspections at the premises of Imagens Médicas Integradas S.A. (IMI), Synlabhealth II S.A., and the SIBS group in connection with suspected anti-competitive conduct. The inspections, which were authorised by the Portuguese Public Prosecutor's Office as the competent judicial authority, resulted in the national competition authority seizing emails exchanged between employees of the companies.

The companies challenged the lawfulness of the inspections, arguing that the national competition authority's access and seizure of business emails infringed their right to the confidentiality of communications under Article 7 of the Charter of Fundamental Rights of the European Union (the Charter) and that authorisation should have been granted by an investigating judge rather than the Public Prosecutor's Office. The Portuguese court sought guidance from the CJ on whether business emails are protected by Article 7 of the Charter and, if so, whether national competition authorities may nevertheless seize such emails during inspections authorised by a judicial authority.

The CJ's findings

As a preliminary matter, the CJ confirmed that business emails exchanged between a company's employees and managers via the company's messaging system fall within the scope of the communications protected by the right to respect for private and family life under Article 7 of the Charter. The CJ noted that

Main article
Other developments
Merger Control
Antitrust

the classification of an email as business-related, whether by virtue of its content or form, does not deprive it of that protection.

The CJ then considered whether Article 7 of the Charter prevents a national competition authority from seizing business emails as part of an investigation where the seizure has been authorised in advance by a judicial authority. In this regard, the CJ observed that the seizure of emails at business premises constitutes an interference not only with the right to respect for private life under Article 7 of the Charter, but also with the right to protection of personal data guaranteed by Article 8 of the Charter. Such an interference is only possible if it is provided for by law, if it respects the essence of the rights concerned, if it meets objectives of general interest and if it is proportionate.

The CJ concluded that these criteria appear to be fulfilled in the present case. It noted, first, that the national competition authority's investigatory powers were grounded in national law and, second, that the authority's access to emails and electronic messaging services was confined to communications related to the investigation, rather than being unlimited or general. The CJ also emphasised that inspections and the seizure of communications in competition investigations serve the legitimate objective of ensuring the effective enforcement of EU competition law and the importance of that objective is capable of justifying an interference with the rights guaranteed by Articles 7 and 8 of the Charter. The CJ further noted that there are no alternative measures that would be equally effective while being less intrusive of these rights.

Finally, the CJ addressed the fact that the seizure of the business emails had not been authorised in advance by a court. It held that the EU competition law provisions do not require a court to grant prior authorisation for inspections carried out at business premises and that such seizures are generally subject to procedural safeguards ensuring the security, integrity and confidentiality of the data seized. The CJ nevertheless emphasised that, absent prior court authorisation, the protection of individuals against arbitrary interference by public authorities with their fundamental rights requires a legal framework and a strict limitation of the measures at issue, as well as safeguards in the form of full *ex post* judicial review. In the present case, the CJ considered the authorisation granted by the Public Prosecutor's Office as likely to contribute to the strict legal framework for the inspections and seizures carried out by the national competition authority.

Lastly, the CJ expressed an important caveat for inspections that may lead to the seizure of electronic devices used by employees for both private and professional purposes. Since access to retained data in such devices may give rise to serious interference with the fundamental rights guaranteed by Articles 7 and 8 of the Charter, the investigating authority *must* seek prior review by a court or an independent administrative body that has all the powers and provides all the guarantees necessary to reconcile the various legitimate interests and rights at issue.

Conclusion

The CJ's judgment is a timely reminder for in-house legal teams to review their dawn raid protocols and ensure employees understand that internal email and messaging systems are within the reach of national competition authorities during inspections. With the support of legal counsel, businesses should be ready to review the legal basis and scope of any inspection and ensure that appropriate procedural safeguards are observed. Maintaining an up-to-date record of the devices on site and their business or personal use can also help to quickly identify and assert any additional protections if investigators seek access.

Other developments

Merger control

European Commission's review of Airbus/Air France JV reflected "modernised approach" to efficiencies, according to Merger Brief

The European Commission has published a Merger Brief discussing its unconditional Phase I clearance earlier this year of the joint venture between Airbus and Air France for the provision of component maintenance services to A350 aircraft.

While the clearance rested on the continued presence of competitive constraints post-merger – such that it was not necessary for the Commission to reach a conclusion on any efficiencies arguments – the Merger Brief describes the case as a notable example of the Commission's willingness to engage with efficiency claims on a no-prejudice basis in Phase I, "consistent with its modernised approach to the assessment of efficiencies and dynamic competitive constraints". According to the Merger Brief, the case allowed the Commission to "expand its case practice on the assessment of efficiencies".

In particular, the Merger Brief notes that parties wishing to rely on efficiencies arguments should front-load the substantiation of those arguments during pre-notification. Moreover, internal documents "should be representative, reconcilable across data sets, and otherwise verifiable, such that the Commission can assess commercial plausibility without recourse to a full Phase II investigation". On this latter point, the evidence provided by the parties in Airbus/Air France was not sufficient to verify the claimed efficiencies, in part due to inconsistencies in some of the evidence (and in any event, as noted, the transaction was cleared on other grounds).

Antitrust

UK Court of Appeal upholds CMA's excessive and unfair pricing findings against Auden Mckenzie and Actavis UK

On 28 July 2026, the UK Court of Appeal (CA) upheld findings by the Competition and Markets Authority (CMA) and the Competition Appeal Tribunal (CAT) that pharmaceutical companies Auden Mckenzie and Actavis UK charged excessive and unfair prices for hydrocortisone tablets between 2008 and 2018.

In July 2021 the CMA found that Auden Mckenzie and Actavis UK (which took over Auden's business in 2015) had abused their dominant position through excessive pricing of hydrocortisone tablets, increasing the price from less than £1 per pack in 2007 to more than £70 per pack in 2016 (which resulted in NHS annual expenditure rising from approximately £500,000 to over £80 million). It also found that the companies had colluded with their competitors to stay out of the market and delay competition that could have brought prices down. The CMA imposed fines exceeding £260 million.

In 2023 the CAT agreed with the CMA that the companies had engaged in excessive and unfair pricing (as reported in a previous newsletter). The CA has now also agreed that none of the companies' arguments came close to displacing the CMA's and the CAT's conclusions on the infringements. Nevertheless, it held that the appeals relating to the fines should be remitted to the CAT for reconsideration, as the CAT had not adequately addressed certain arguments raised by the companies.

The CA's judgment follows its September 2024 ruling on the collusion elements of the case, in which it upheld the CMA's finding of market-sharing (see our previous newsletter). This means that all of the CMA's infringement findings against Auden Mckenzie and Actavis UK have now been upheld on appeal.

China's SAMR imposes a £570 million penalty on Trip.com for abuse of dominance

On 25 July 2026, China's State Administration for Market Regulation (SAMR) imposed a penalty of around RMB 5.2 billion (approximately £570 million) on Trip.com Group (Trip.com) for abusing its dominant position in the market for online hotel-booking platform services in China. The decision followed an investigation launched in January 2026 and identified two forms of abusive conduct that applied to each of Trip.com's three classifications of hotel operators: special, gold and unlabelled.

- **Exclusive dealing**: special-tier hotels were required not to offer their rooms on any other online platforms. Hotels that failed to comply faced warnings, reduced traffic exposure, withdrawal of promotional benefits and, in some cases, delisting from Trip.com.
- **Price parity**: gold-tier hotels had to give Trip.com better prices than competing platforms, while unlabelled hotels were not permitted to charge less on those platforms than on Trip.com. Compliance was monitored through various algorithmic tools, which automatically detected price discrepancies and prompted adjustments to the hotel price. Hotels that did not comply with these prompts were demoted in Trip.com's rankings, had their traffic restricted and were sometimes delisted. Trip.com required some hotels to pay a deposit to be listed on Trip.com, which was forfeited if they breached the price parity policy.

The sanctions imposed by SAMR comprised: (i) a cease-and-desist order, including an order to refund RMB 122.8 million (approximately £13.5 million) in security deposits forfeited by hotels for breaching the pricing policy; (ii) confiscation of RMB 1.7 billion (approximately £187 million), which SAMR found Trip.com had gained from its illegal conduct (the first confiscation order of its kind in a platform-economy case); and (iii) a fine of RMB 3.5 billion (approximately £386 million).

While the total penalty imposed on Trip.com (RMB 5.2 billion, approximately £570 million) was less than the RMB 18.2 billion (approximately £2 billion) imposed on Alibaba, it involved a higher proportion of revenue, with Trip.com receiving the highest fine-to-turnover ratio (7.5%) in a Chinese platform-economy abuse case to date – around double the ratios imposed on Alibaba (4%) and Meituan (3%) in previous exclusive dealing cases (see our previous newsletters in April and October 2021 for further details). This is also the first platform-economy case combining a cease-and-desist order, confiscation of gains and a fine.

SAMR said the conduct led to a "race to the bottom", exacerbating "involutionary competition", which it views as distorting market dynamics and generating inefficiencies. SAMR found that Trip.com's price parity requirement in particular constrained the hotel industry's ability to improve and differentiate their services, leading to reduced service quality and harm to consumers.

Finally, while SAMR brought this case under abuse of dominance rules, all platforms should be mindful that imposing price parity restrictions could be illegal in China - even without dominance. Smaller platforms remain subject to China's Rules on Pricing Conduct of Internet Platforms, which prohibits the platforms from imposing "lowest-price-across-the-internet" obligations on merchants or implementing automatic price-matching mechanisms (see our previous newsletter in April 2026 for further details).

London	Brussels	Hong Kong	Beijing
T +44 (0)20 7600 1200	T +32 (0)2 737 94 00	T +852 2521 0551	T +86 10 5965 0600
F +44 (0)20 7090 5000	F +32 (0)2 737 94 01	F +852 2845 2125	F +86 10 5965 0650