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QUICK LINKS

General Court reduces Intel fine for "naked restrictions"

On 10 December 2025, the European General Court (GC) upheld a 2023 European Commission decision fining Intel for having abused its dominant position by paying computer manufacturers to halt or delay the launch of certain products containing a competitor's x86 central processing units (CPUs). The GC nevertheless reduced the amount of the fine to €237 million.

Background

In 2009, the Commission fined Intel a then-record €1.06 billion for abusing its dominant position in the market for x86 CPUs by implementing exclusivity rebates and paying computer manufacturers HP, Acer and Lenovo to halt or delay the launch of specific products containing competitor AMD's x86 CPUs (known as the "naked restrictions").

The GC upheld the Commission's findings in 2014, but in a much-anticipated judgment in 2017 the European Court of Justice (CJ) overturned the GC, rejecting the approach taken by the Commission and the GC and remitting the case back to the GC for reconsideration (see our previous briefing for more detail).

In its second ruling in January 2022, the GC annulled the Commission's 2009 decision insofar as it related to exclusivity rebates, due to "*incomplete*" analysis on the Commission's part. The Commission appealed this aspect of the judgment to the CJ, which in October 2024 upheld the GC's findings (as reported in a previous edition of this newsletter). In the same 2022 judgment, the GC confirmed that Intel's naked restrictions amounted to an abuse of dominant position contrary to EU antitrust rules. Ultimately though, the GC considered it was not in a position to identify the amount of the fine relating solely to the naked restrictions and therefore annulled the fine in full (see our previous briefing for further detail).

In September 2023, the Commission adopted a new decision reimposing a fine of over €376 million on Intel in respect of the naked restrictions (as reported in a previous edition of this newsletter). Intel appealed this new decision to the GC.

The GC's judgment

The GC's findings on the Commission's jurisdiction and reasoning

The GC first considered Intel's arguments that the Commission had failed to establish jurisdiction in respect of the naked restrictions and had provided inadequate reasoning in the 2023 decision.

As regards jurisdiction, Intel argued that the single and continuous infringement in the Commission's 2023 decision was "*radically and fundamentally different*" to that in the 2009 decision, such that the Commission could not simply refer to the 2009 decision as the basis for jurisdiction.

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The GC rejected this, holding that the 2009 decision had become final as regards the Commission's finding of an infringement relating to the naked restrictions. Since that finding of infringement had become final, including as regards the question of the Commission's jurisdiction to make that finding, the Commission did not need to define a new infringement or re-establish jurisdiction - it only had to recalculate the fine based on the conduct that remained at issue.

As regards the adequacy of the Commission's reasoning, the GC dismissed Intel's argument, which it said was based on the incorrect premise that the contested decision concerned a new single and continuous infringement. Moreover, the court considered that the Commission's decision, along with its prior letter informing Intel of its intention to adopt a new decision (which included a step-by-step explanation of the proposed method for calculating the fine) provided sufficient reasoning, particularly "*in a context which was particularly well known*" to Intel. The court also considered that Intel's rights of defence had been fully respected, with no new statement of objections necessary given the Commission was not alleging a new infringement but rather recalculating and reimposing the fine.

Fine reduction

Regarding Intel's arguments as to the level of the fine, the court largely endorsed the Commission's methodology and dismissed Intel's arguments that the fine was disproportionate and unlawful. Nonetheless, notwithstanding that the level of the fine was lawful, the court considered that it would be "*possible, fair and appropriate to take account of other parameters, relating to both the infringement and its gravity*", in order that the amount be set "*with increased precision*" - in other words, to determine "*from a number of possibilities which comply with EU law, the one which, in the General Court's assessment, sets that amount with greatest relevance*".

In this respect, the GC noted that a 12-month gap separated the naked restrictions imposed on HP from those imposed on Lenovo. As regards the gravity of Intel's infringement, the court thought the infringement's "*limited material scope*" should be measured more accurately, beyond its "*intrinsic harmfulness*" - in particular, the number of units affected by the naked restrictions was modest. Taking these considerations into account, the court concluded that the fine imposed by the Commission was "*not the most appropriate possible, in light of the temporal and material scope of the infringement at issue*". It concluded that it was appropriate to reduce the fine by 37%, to just over €237 million.

Conclusion

The judgment is the latest in the long-running saga between the Commission and Intel, in which the Commission has also suffered hefty defeats.

While the court ultimately agreed with the Commission's findings, the judgment demonstrates the courts' willingness to exercise their jurisdiction to refine the level of the fine to account more precisely for the actual context of the infringement.

OTHER DEVELOPMENTS

FOREIGN INVESTMENT

The Non-Stop Shop: Council and European Parliament reach provisional agreement to harmonise FDI screening

The Council of the European Union and the European Parliament have reached a provisional agreement on the revision of the foreign direct investment (FDI) screening regulation. EU trade chief Maroš Šefčovič said: "*This is an important step toward reinforcing Europe's economic security, and ensuring that foreign investment supports, rather than threatens, our long-term interests*".

The amended regulation takes steps towards harmonising the various screening regimes of the 27 Member States and improved cooperation between them. The key changes involve setting minimum requirements that the screening regimes of all Member States must meet; enabling a Member State or the European Commission to require a Member State to explain how a foreign investment in its territory has been considered; and changes to how parallel filings work when notifying a single transaction in more than one Member State. However, significant differences remain, including with respect to the time available for Member States to review transactions.

Background

In 2019, the EU introduced a common framework for Member States to enact their own national FDI screening regimes as well as establish an EU-wide cooperation mechanism. All Member States have since passed laws to introduce national FDI screening regimes, with Croatia and Cyprus being the last Member States to do so in November 2025.

The expansion of EU FDI screening has been driven by ongoing concerns about the potential for certain foreign investors to gain control of technologies, infrastructure or inputs that are critical to the security or public order of the EU. At the same time, there have also been calls to ensure that the EU remains open to foreign investment by ensuring that national screening regimes are business-friendly, including by introducing greater harmonisation of the rules.

The adoption of the amended regulation follows extensive trilogue discussions between the Parliament, the Council and the Commission to strengthen the existing regime. In particular, the debate regarding the amended regulation has raised important issues like how to balance the sovereignty of the Member States with the need to establish an FDI framework that is more uniform across Europe. Achieving the right balance has been especially difficult given the close connection between FDI screening and national security, which has traditionally been a responsibility of the individual Member States. Other key battlegrounds in finalising the text have included the extent to which the list of sectors and activities triggering FDI screening should be broadened and whether to introduce mandatory screening for large greenfield investments.

The reforms

The provisionally agreed amended regulation introduces the following key changes:

- ***Setting minimum requirements for national screening regimes***: All Member States must ensure that investments in any of the following sectors within their territory are subject to FDI screening: dual-use items and military equipment; hyper-critical technologies, such as artificial intelligence, quantum technologies and semiconductors; critical raw materials; critical entities in energy, transport and digital infrastructure; electoral infrastructure (e.g. voter databases, voting systems, electoral management systems); a limited list of financial system entities, comprising central counterparties, central securities depositories, operators of regulated markets, operators of payment systems (excluding central banks) and systemically important institutions.
- ***Extending EU screening to cover investments made by EU-based investors that are ultimately controlled by individuals or entities from non-EU countries***: This was a key demand of the Commission in light of the judgment of the CJ in *Xella*, which has been criticised for creating an enforcement gap (see our previous briefing).
- ***Enhanced cooperation***: Member States will continue to have full discretion over whether to authorise an investment within their territory. However, where comments from other Member States or an opinion from the Commission have been issued, the screening Member State will have to explain how these were considered, including reasons for any disagreement, without prejudice to sensitive national security considerations. This falls short of the “own initiative” procedure proposed by the Commission that would have allowed a Member State or the Commission to open an investigation into a foreign investment in the territory of another Member State. Although the Commission will now be able to assist a Member State in gathering information.
- ***Changes to parallel filings***: The EU will introduce a new shared database to prevent circumvention and make it easier to exchange experience between authorities. Provided at least nine Member States request it, an optional single portal for the electronic filing of foreign investments will also be introduced.

- ***Transparency improvements***: Member States will be required to publish guidance on the scope of their screening mechanisms and annual reports. The EU will also introduce filtering criteria to help ensure only potentially sensitive investments are reviewed by authorities.

The provisionally agreed text has not yet been published, meaning that there may also be further changes of interest to foreign investors. For example, it is currently unclear whether the amended regulation will introduce mandatory screening for large greenfield investments, as advocated by the European Parliament.

Next steps

The amended regulation is expected to enter into force in the first half of next year, following endorsement by the Council and the European Parliament. It will then have an implementation period of 18 months, which will allow the Member States time to make the necessary changes to their domestic regimes.

Practical impact

Like EU merger control, foreign investment control is typically suspensory, which can present challenges when seeking to complete transactions involving foreign investors. It is increasingly important to build the assessment of FDI filings into deal processes from an early stage to ensure that transactions can close promptly.

National FDI screening regimes can involve a lower degree of transparency and less predictable processes than parties may be accustomed to from their involvement in merger control processes. Whilst the amended regulation goes some way towards addressing these shortcomings, it does not appear to include any uniform obligation or deadline for Member States to issue their screening decisions. Foreign investors will therefore remain subject to timing uncertainty when seeking to complete multi-jurisdictional transactions that require FDI screening.

Court of Appeal confirms no additional compensation required for a forced sale under NSIA

On 28 November 2025, the Court of Appeal dismissed LetterOne's appeal in relation to the sale proceeds received from its forced divestment of Upp, a UK fibre broadband startup, pursuant to the UK's National Security and Investment Act 2021 (NSIA). After the Russian-backed company acquired Upp in January 2021, the Secretary of State ordered its full divestment on national security grounds, resulting in its sale to Virgin Media O2 in September 2023 at a price which LetterOne considered to be far below its true value. In dismissing the appeal, the court held that receiving the actual market proceeds from an open market sale, even where the timing was compelled by the government, maintained a "*reasonable relationship of proportionality*" in the national security context, and that the absence of additional compensation beyond the sale proceeds did not breach Article 1 of the First Protocol (A1P1) to the European Convention on Human Rights.[1]

LetterOne argued that the government-mandated nature of the sale depressed the price below fair market value and that A1P1 required that compensation should be granted. The Court of Appeal unanimously rejected that contention. It emphasised that the classification of the forced sale as either a deprivation of property or control of use of it was not determinative but the key question was proportionality, assessed by asking whether there was a "*reasonable relationship of proportionality*" between the value of the property and the compensation provided. In circumstances where the appellant conducted an open market sale, retained the proceeds and could select a buyer (subject to national security suitability), the fact that the sale was compelled and at a time not of the appellant's choosing did not, in itself, mean that there was no such reasonable relationship of proportionality.

The court further held that Parliament and the executive have a wide margin of judgment in national security matters, including on whether to legislate for compensation (as it chose not to do in the NSIA, in contrast to other statutes). Also relevant to the proportionality assessment was the fact that the executive had decided not to award financial assistance despite its ability to do so under section 30 of the NSIA. The court further noted the

[1] The case is cited as *L1T FM Holdings Ltd and LetterOne Core Investments Sàrl v Chancellor of the Duchy of Lancaster* [2025] EWCA Civ 1528.

practical difficulties in assessing the "fair market value" of a company as distinct from realised price, a lengthy process which could impede the public interest aims of the NSIA. Finally, the court observed that there is no Strasbourg authority directly requiring governments to compensate for any diminution in value arising from a forced sale. On that basis, A1P1 did not require additional compensation beyond the sale proceeds in this case.

This judgment has broader relevance for all investors active in the UK. The NSIA's reach is deliberately wide: it applies across the economy with mandatory notification in 17 sensitive areas and a broad call-in power running for five years post-completion that can capture share and asset deals as well as certain intellectual property. The case highlights the risks inherent in investing in areas that could potentially threaten national security, confirming that in the event of a forced sale the seller may be entitled to the proceeds and nothing more. As the third case to be heard since the NSIA regime came into force, it also confirms the deference shown once again by the UK courts to the government in relation to the regime.

MERGER CONTROL

European Commission unconditionally clears Mars/Kellanova following in-depth review

The European Commission has unconditionally cleared Mars' $36 billion proposed acquisition of Kellanova following an in-depth review. Both manufacture and supply well-known food brands worldwide, with Mars' portfolio including chocolate products such as Mars, Twix and Snickers as well as chewing gum, rice and pet food brands, and Kellanova primarily active in the EEA through its Pringles and Kellogg's brands.

The Commission concluded that although both companies have a degree of market power across several product categories, the evidence did not show that the transaction would increase Mars' bargaining power in relation to retailers or otherwise harm competition in the EEA. In particular, the Commission found that adding Kellanova's brands to Mars' already broad portfolio would not enable the merged entity to extract higher prices from retailers.

In reaching its decision, the Commission assessed whether the combination would strengthen Mars' negotiating position by allowing it to link multiple "must-have" products across confectionery, snacks and cereals in discussions with retailers. The investigation confirmed that:

- Although the breadth of Mars' portfolio could in principle facilitate cross-category leverage in negotiations, the characteristics of Kellanova's products as long-shelf-life items bought infrequently and often on impulse made them unlikely to strengthen Mars' bargaining power;

- Consumers were not significantly more likely to change supermarkets if both Mars and Kellanova's products were unavailable, compared to a situation where only Mars or Kellanova's products were individually missing;

- There was insufficient support for a "basket effect" theory under which consumers would switch to another supermarket to purchase their entire shopping basket should Mars and Kellanova's products be missing from the primary retailer.

This outcome is relevant for suppliers engaged in wholesale negotiations with retailers, particularly in fast-moving consumer goods and food products. It signals that, even where merging parties hold strong brands across multiple categories, the Commission will test portfolio-leverage and bargaining-power theories against robust evidence on product substitutability, purchasing patterns and retailer switching risks. Parties contemplating similar transactions should assess these dynamics early and consider the relevant data on shopper loyalty and retailer negotiation outcomes to address any leverage-based concerns during review.

Competition Commissioner Teresa Ribera said in a statement: "*We looked very carefully at this deal to make sure that Mars would not gain extra power over retailers, power that could lead to for example higher prices*

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for shops and, ultimately, for consumers. Our review found no evidence that this risk exists, so we have decided to approve the acquisition. We will continue to make full use of our powers under the Merger Regulation to ensure that competition keeps food prices affordable".

SAMR publishes three typical merger review cases under normal procedure

On 4 December 2025, the State Administration for Market Regulation (SAMR) published its latest set of practical guidance on China's merger control regime, in the form of commentary on three "typical cases" which had been unconditionally cleared under the normal procedure. The selected cases span multiple sectors and include both horizontal and vertical mergers. A summary of the "typical cases" and the key takeaways is provided below.

Case 1: Hangzhou Capital's acquisition of joint control of Zhejiang Yingde Holding Group	
Relevant market	Horizontal overlap in the on-site / pipeline supply market of atmospheric gases in China.
Market shares	Combined shares: 25-30% (participated tenders), 30-35% (awarded tenders).
Competitive assessment	No competition concerns, because of: (1) strong competitive constraint from many competitors (as the parties' tender win rate was <50% in the past 5 years); (2) lack of close competition between the parties (as they mostly bid in different projects); and (3) significant buyer power (as downstream customers are large enterprises with in-house supply capabilities).
Significance of the case	This case highlights SAMR's approach to assessing mergers active in "tender markets", including the types of evidence which may inform the competitive assessment (e.g. the parties' historic bidding data and customer contracts).

Case 2: Cowell Health's acquisition of sole control of Tianji Pharmacy, etc.	
Relevant markets	Horizontal overlap and vertical relationships in the: (a) drug wholesale market in China; (b) online drug retail market in China; and (c) pharmacy drug retail market in specific Chinese cities.
Market shares	Combined shares: generally under 15%, with the exception of the pharmacy drug retail market in Xiangyang in which the target had a 40-45% share (but the acquirer was not active).
Competitive assessment	The parties' market shares will generally not give rise to anti-competitive effects. In respect of the vertical link between the acquirer's upstream wholesale business and the target's downstream retail business in Xiangyang, there is no concern of customer foreclosure, because: (1) the target's Xiangyang business procures only <1% of China's wholesale drug supply (notwithstanding its high downstream share in Xiangyang city); (2) barriers to entry are low in the downstream market,

	with strong competitive constraint from other supply channels (e.g. online platforms); and (3) upstream competitors are large pharmaceutical groups with a high degree of vertical integration and stable distribution channels.
Significance of the case	This vertical merger demonstrates that market shares is only one of several factors in SAMR's competitive assessment. In examining potential foreclosure effects, SAMR will also consider the parties' procurement share, the diversification of distribution channels, and the level of vertical integration of upstream suppliers.

Case 3: Ouyeel Lianjin acquisition of joint control of Hebei Ge Rui En	
Relevant markets	Horizontal overlaps and vertical relationships in the: (a) recycled steel raw materials market in China; and (b) crude steel market in China.
Market shares/Herfindahl-Hirschman Index (HHI)	In both markets, the combined shares are 15-20%, HHI is <1000, and ΔHHI is <200.
Competitive assessment	The transaction will not give rise to unilateral effects, given the parties' limited market shares and the low level of concentration in these markets, with the presence of numerous competitors. As the parties lack the ability to control the relevant markets, it is also presumed that they will not have the ability to engage in input or customer foreclosure post-transaction.
Significance of the case	This case is a practical example of how SAMR may rely on presumptions based on market shares and HHI levels in finding that the transaction will not give rise to competition concerns, without conducting a detailed assessment.

As unconditional approval decisions are not typically published by SAMR, these "typical cases" are intended to offer businesses a glimpse of SAMR's approach to the competitive assessment of "no issue" mergers and help improve the predictability and transparency of China's merger review process.

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