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QUICK LINKS



# European General Court provides insight into European Commission's screening of earnings calls for "public signalling", and confirms their relevance in antitrust enforcement, as it partially annuls Michelin inspection decision

On 9 July 2025, the European General Court (GC) handed down its judgment (currently available only in French) on an action brought by Michelin seeking the annulment of a European Commission decision ordering Michelin to submit to an unannounced inspection or "dawn raid". The GC's judgment, which partially annulled the decision, sheds light on the sophistication of the Commission's tools to screen for and detect competition law infringements. It also confirms that businesses' public communications, including earnings calls, can be relied on as evidence for collusion.

## Background

On 30 January 2024, the Commission carried out a series of dawn raids at the premises of Michelin and several other tyre companies. The Commission's concerns prompting the raid related to potential price coordination in respect of new replacement tyres - in particular, the Commission had concerns that these companies had intentionally used public communications like earnings calls to signal their future pricing intentions and strategies, in order to influence each other's respective pricing policies. Following the raid, Michelin applied to the GC to challenge the Commission's authorisation decision, which had been provided to Michelin during the inspection, on the grounds that: (i) the decision was too succinct, generic, vague and ambiguous to satisfy the obligation to state reasons; and (ii) the Commission did not have sufficient evidence to justify ordering a dawn raid.

## The Commission's extensive surveillance and analysis of earnings calls revealed

The judgment sheds new light on the Commission's extensive market surveillance function. It provides details of the database the Commission compiled of hundreds of thousands of earnings calls transcripts from businesses in various sectors and geographic areas (obtained from a financial data provider), which it quantitatively analysed using the following categories of key search terms:

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- 100 two-word terms related to relevant strategic business decisions; and
- 400 two-word terms aimed at identifying statements about how competitors were behaving or would behave in the future.

When this initial quantitative analysis identified the tyre sector as characterised by a high number of suspicious public communications, the Commission carried out a qualitative or "manual" analysis, trawling the earnings calls of the main tyre manufacturers (including calls which had not been flagged as suspicious by the quantitative analysis). This manual analysis revealed a number of statements which the Commission considered could be evidence of price signalling, such as "*we want to send a signal*"; "*we have a plan to*"; "*the strategy is to focus on*"; and "*we are able to*" – prompting the Commission's decision to investigate further via a dawn raid.

### No hiding in plain sight – earnings calls can be used to identify anticompetitive conduct

The GC ruled that the Commission was entitled to suspect that it was at least plausible that the statements identified in these earnings calls might have been intended to signal Michelin's future pricing strategy to competitors. It dismissed Michelin's argument that these statements were usual and regular both in the tyre industry and elsewhere, on the basis that even if that were the case, the Commission was still entitled to verify its suspicions arising from those statements. It also dismissed Michelin's argument that, as the statements identified by the Commission were all taken from the Q&A part of the earnings calls, Michelin was simply fulfilling its duty to respond to analysts' questions as well as its financial transparency obligations, ruling again that even if that were the case, the Commission's interpretation of events was still plausible.

The GC did however rule that the Commission could not use earnings calls from a later period to evidence its suspicions of collusion in an earlier period, given that its market scanning and analysis spanned the earlier period too and had not identified any relevant contemporary evidence.

### Conclusion

The judgment reveals the scale and sophistication of the Commission's active market scanning, and confirms that all public statements by companies, including investor communications, are at risk of scrutiny for signalling pricing or strategy intentions – and that these can be relied upon to justify dawn raids. Particularly given the post-Covid resurgence in dawn raids across Europe and the UK, businesses should be cautious about the information they disclose in public meetings, and should ensure their investor relations and public communications teams are aware of what phrases may or may not carry antitrust risk.

## OTHER DEVELOPMENTS

## MERGER CONTROL

### SAMR imposes first gun-jumping fine under new merger penalty guidelines on Guangzhou Municipal Construction Group

On 25 June 2025, the State Administration for Market Regulation (SAMR) imposed a RMB 1.75 million (approximately £182,000) gun-jumping fine on state-owned Guangzhou Municipal Construction Group, after an investigation lasting over 10 months. This marks the first gun-jumping fine imposed after China's new trial guidelines on Benchmarks for Discretion of Administrative Penalties for Illegal Implementation of Concentrations (Guidelines) was released in March 2025 (see our previous briefing here).

On 15 December 2023, Guangzhou Construction signed a share purchase agreement to acquire a 51 per cent interest in Guangdong Hongye Investment Development Group, a wholly-owned subsidiary of Hongye Electric Power. The transaction was notified to SAMR on 20 December 2023, but the equity transfer and registration of ownership took place one day later, on 21 December 2023, before SAMR had even accepted the filing. SAMR found this constituted gun-jumping and violated Article 30 of the Anti-Monopoly Law (AML), while separately

determining the transaction did not produce exclusionary or restrictive effects on competition in the relevant market.

In its decision, SAMR noted that Guangzhou Construction and its affiliated companies: (i) had not previously been subject to administrative penalties for gun-jumping; (ii) actively cooperated with the investigation; (iii) truthfully stated the facts of the violation and proactively provided evidence; and (iv) established and effectively implemented an antitrust compliance programme. These mitigating factors led SAMR to apply a 30 per cent reduction to the baseline fine as specified in the Guidelines, resulting in the final penalty of RMB 1.75 million.

This is the first enforcement case after the introduction of SAMR's Guidelines, effective from March 2025, which establish a framework for administrative fines in merger control violations. Under the Guidelines, the baseline fine for gun-jumping cases without anticompetitive effects is RMB 2.5 million, subject to incremental reductions for first-time offences, cooperation with SAMR and compliance efforts, provided that the final amount is no less than 40 per cent of the baseline fine (i.e. a maximum reduction of 60 per cent).

The revised AML, which took effect in August 2022, significantly increased the maximum fines for gun-jumping from RMB 500,000 to RMB 5 million (approximately £52,000 to £520,000) for transactions that do not raise competition concerns. This decision highlights the improved transparency and predictability the Guidelines offer for businesses facing a potential gun-jumping fine.

## ANTITRUST

### European Commission consults on revisions to the EU antitrust enforcement framework

On 10 July 2025, the European Commission launched a call for evidence and public consultation on the EU antitrust procedural rules. Regulation 1/2003 and Regulation 773/2004, which have been in force for over 20 years, establish a procedural framework aimed at ensuring the effective and consistent application of Articles 101 and 102 TFEU, which concern anti-competitive agreements and abuse of dominance.

The Commission conducted an evaluation of Regulation 1/2003 and Regulation 773/2004 last year, concluding that while the Regulations have been largely effective, digitalisation and the increase in data have resulted in certain aspects of the Commission's procedures – which were designed for paper-based investigations - no longer being as effective or efficient as they should be. The evaluation also raised questions as to whether the current system, whereby Member States may apply stricter national laws on unilateral conduct (also known as abuse of dominance), is still working well.

The Commission is consulting on a number of preliminary policy options, including adapting its inspection powers for the digital age (including the ability to inspect/seize documents remotely without entering physical premises and the ability to order preservation of electronic evidence), making it easier to impose interim measures, speeding up the commitments process by introducing a deadline for parties to submit binding commitments offers and adapting the access to file framework to reduce the burden on the Commission.

The call for evidence and public consultation will be open for 12 weeks, until 2 October 2025. The Commission will publish the results of the consultation and plans to hold a stakeholder workshop to analyse the key issues identified in the feedback. The Commission intends to publish an Impact Assessment Report by September 2026.

## CONSUMER PROTECTION

### CMA consults on draft guidance on 'drip pricing'

On 3 July 2025, the Competition and Markets Authority (CMA) launched a consultation on its draft guidance for businesses on the price transparency provisions of the Digital Markets, Competition and Consumers Act 2024.

The DMCC Act came into force on 6 April 2025, overhauling the UK's consumer protection regime (see our previous briefings here and here). Amongst the reforms, the Act made substantive changes to the UK consumer

protection rules aimed at making the regime fit for the digital age, with the focus on regulating fake reviews and pricing practices, including drip pricing – where companies show consumers an initial headline price and subsequently introduce additional mandatory charges as consumers proceed with a purchase or transaction. While the CMA published its final guidance on unfair commercial practices earlier this year, it pledged to run a further consultation over the summer on the aspects of the drip pricing guidance that businesses had flagged, in response to an earlier consultation, as being unclear.

The draft guidance therefore illustrates how the price transparency provisions may apply in practice, to support businesses in complying with their obligations. The DMCC Act requires businesses to disclose material information in all invitations to purchase, subject to limited exceptions – failure to include this information is prohibited, with there being no need under the new rules to show that consumers were misled by the failure to include the information. The draft guidance outlines what constitutes an invitation to purchase and specifies the pricing information that must be included in an invitation to purchase in order to avoid drip (and 'partitioned') pricing. It also sets out how the new requirements apply to specific types of charges and pricing practices and the steps that traders can take to ensure they are complying with the new requirements.

During the consultation period the CMA is also encouraging further stakeholder engagement and participation through a series of interactive sessions in July, including webinars and roundtables. The consultation closes on 8 September 2025.

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