

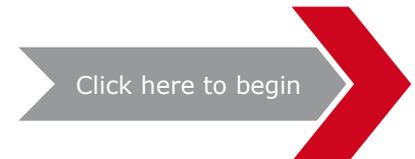


The winning move

Competition, Foreign Investment and Trade
Quarterly Bulletin

March 2021 to May 2021

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Executive summary



Our international Competition, EU and Trade team provides you with a compilation of recent key antitrust, trade and foreign investment regulatory and legal developments from the last quarter.

This edition covers updates for the three months up to May 2021 and is full of newsworthy items from some of our international colleagues. The European Commission published its evaluation of the Motor Vehicle Block Exemption Regulation, as well as the horizontal block exemption regulations and guidelines. It is also in the process of reviewing a number of EU State aid rules and launched a proposal to regulate foreign subsidies which distort the Single Market.

On foreign investment, the UK Parliament adopted the National Security and Investment Act 2021, which paves the way for the implementation of the new UK national security regime which is expected by the end of the year. In the last quarter, amendments were also made to the foreign investment regimes in Hungary, Italia and Russia.

The EU and US announced the start of discussions to address global steel and aluminium excess capacity which is posing a serious threat to the market-oriented EU and US steel and aluminium industries and their workers. This follows an announcement in March 2021 stating that the EU and US had agreed to suspend all retaliatory tariffs on EU and US exports imposed in an aircraft dispute for four months.

Please note that the information contained in this Bulletin is for guidance only and should not be regarded as a substitute for research or taking legal advice.

We hope that you enjoy reading this edition.

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Impact date key



Immediate impact



Impact in the near future

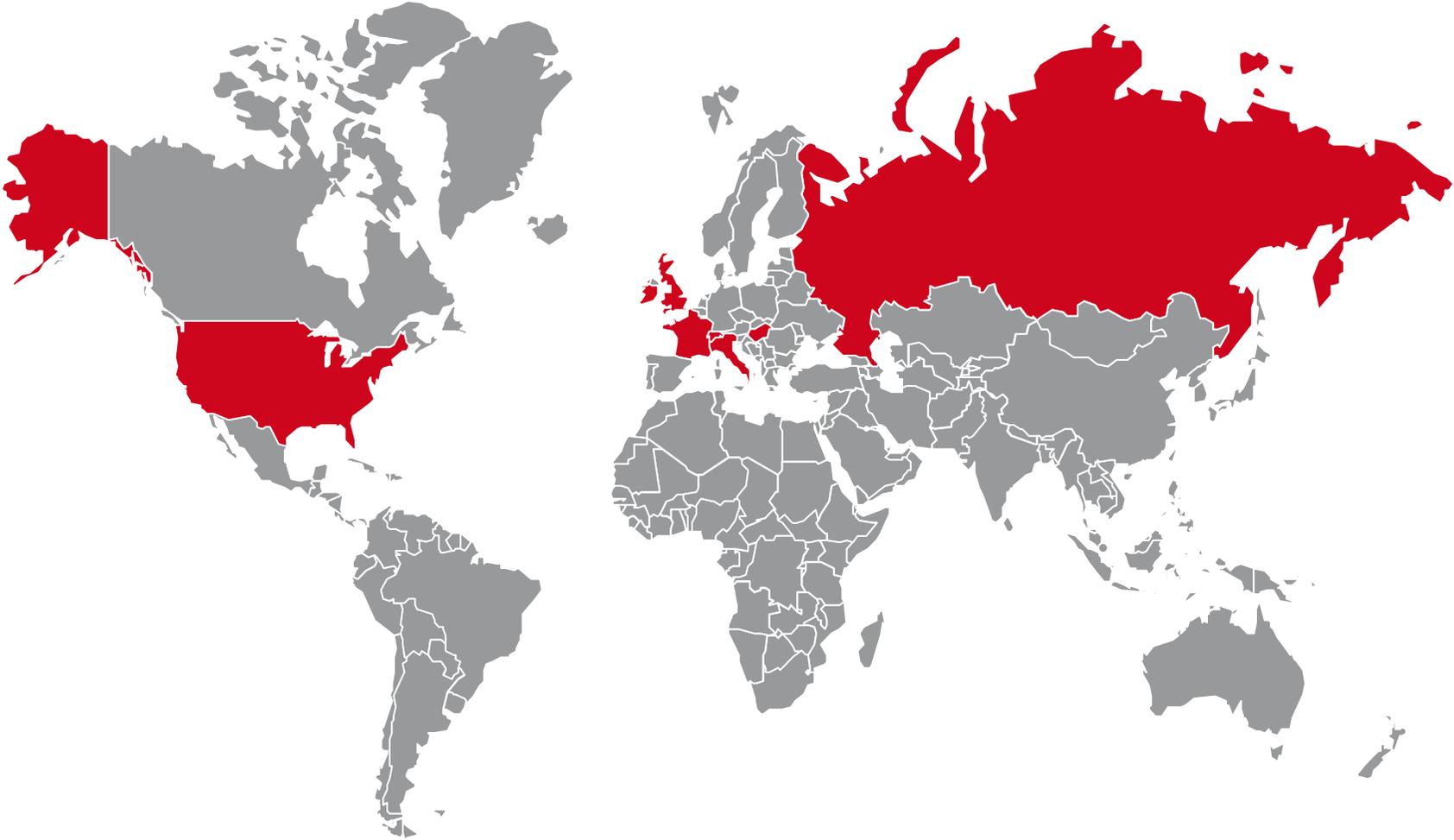


On the horizon

Global updates by country



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Antitrust

Development	Summary	Sector	Impact	Links
Commission re-adopts decision and fines Icap EUR 6.45 million for facilitating cartels in the Yen Interest Rate Derivatives trading market	<p>On 28 May 2021, the European Commission ("Commission") re-adopted a cartel decision against Icap plc (now NEX International Limited), ICAP Management Services Ltd and ICAP New Zealand Limited, imposing fines of EUR 6.45 million for facilitating five cartels in the Yen Interest Rate Derivatives ("YIRDs") trading market.</p> <p>In 2015, the Commission adopted a decision imposing fines on the same Icap entities for facilitating six bilateral infringements in the YIRDs sector. In November 2017, the General Court annulled one of the six infringements and shortened the duration of four infringements. The General Court also annulled the fines imposed on Icap for inadequate reasoning and held that the Commission had not provided sufficient reasons for its methodology in setting the fines (which departed from the general methodology in the 2006 Fining Guidelines). In July 2019, the ECJ dismissed the Commission's appeal.</p> <p>The Commission stated that its re-adopted decision addresses the procedural error identified by the General Court, and now includes a detailed reasoning on the fine calculation.</p>	Financial Services		Commission Press Corner Link
Commission consults on draft revised Guidelines on State aid to promote risk finance investments	On 21 May 2021, the Commission published for consultation draft revised Guidelines on State aid to promote risk finance investments (the " Revised Guidelines "). The Revised Guidelines make the following changes to the 2014 version of the guidelines	Financial Services Government and Infrastructure		Commission Press Release Link Consultation Page Link



Development	Summary	Sector	Impact	Links
	<ul style="list-style-type: none"> - reorder the provisions to increase readability and ease of application, in particular consolidating all requirements linked to Member States' ex ante assessment of aid measures. - clarify the specific content and level of evidence needed to demonstrate a specific market failure / other relevant obstacles in access to finance in line with existing case practice. The requirement to quantify a funding gap has been made more proportionate, and will only remain in place for schemes with the largest amounts of aid for individual beneficiaries. Overall, this proposal reduces the administrative burden for Member States but keeps the requirement of quantification in place for the schemes providing the largest aid amounts to individual companies. - streamline existing formulations and align definitions to increase consistency with the General Block Exemption Regulation. <p>The Commission invites comments by 16 July 2021 and plans to adopt the new Risk Finance Guidelines in the last quarter of 2021.</p>			
<p>Commission fines investment banks over EUR 370 million for participating in European Governments Bonds trading cartel</p>	<p>On 20 May 2021, the Commission issued a decision finding that several investment banks participated in a cartel in the primary and secondary market for European Government Bonds in breach of Article 101 of the Treaty on the Functioning of the European Union ("TFEU").</p> <p>The Commission found that the cartel took place during the financial crisis (between 2007 and 2011) and affected the entire EEA. The seven investment banks participated in the cartel through a group of traders who were in regular contact with each other mainly in multilateral chatrooms on Bloomberg terminals. In these chatrooms, the relevant traders exchanged commercially sensitive information about their prices and volumes offered, and provided updates on their bidding strategies and on trading parameters on the secondary market.</p>	<p>Financial Services</p>		<p>Commission Press Release Link</p>



Development	Summary	Sector	Impact	Links
Commission publishes evaluation results of State aid rules for agriculture and forestry sectors and for rural areas	<p>On 19 May 2021, the Commission published an evaluation of the Agricultural Block Exemption Regulation 702/2014 ("ABER") and related guidelines. It concluded that, although the current State aid framework for agriculture, forestry and rural areas has largely achieved its objectives, there is a need to adapt the rules to new challenges, in particular to the European Green Deal (notably, the 'farm to fork' and biodiversity strategies) and the future Common Agricultural Policy, including its enhanced environmental ambition. Regarding the guidelines, the Commission found that certain aspects raise interpretation problems or are otherwise difficult to apply.</p> <p>The Commission is conducting an impact assessment to consider the issues identified during the evaluation. It plans to publish a draft of the revised ABER and guidelines for consultation at the beginning of Q2.</p>	Government and Infrastructure		<p>Press Release Link</p> <p>Evaluation Report Link</p>
Commission adopts Recommendation for Council Decision authorising negotiations for EU-UK Competition Co-operation Agreement	<p>On 11 May 2021, the Commission announced that it adopted a Recommendation for a Council Decision authorising negotiations for an EU-UK Competition Co-operation Agreement, as envisaged by the EU-UK Trade and Co-operation Agreement. The Competition Co-operation Agreement may include conditions for the exchange and use of confidential information in the context of antitrust and merger control matters. The Council will consider whether and under which conditions to allow for the start of negotiations on an EU-UK Competition Co-operation Agreement.</p>	Cross-sector		Commission Press Corner Link
Multilateral Pharmaceutical Merger Task Force calls for public input	<p>On 11 May 2021, the Multilateral Pharmaceutical Merger Task Force ("MPM Task Force"), comprising the Commission's DG Competition, the US Federal Trade Commission ("FTC"), the Department of Justice ("DOJ") Antitrust Division and Offices of State Attorneys General, the Canadian Competition Bureau, and the UK Competition and Markets Authority ("CMA"), announced the launch of a joint consultation to seek public input.</p> <p>The MPM Task Force was established by its member competition agencies in March 2021 as a working group to analyse the effects of mergers in the pharmaceutical</p>	Health and Life Sciences		<p>Commission Press Release Link</p> <p>Consultation Link</p>



Development	Summary	Sector	Impact	Links
	<p>sector. It is intended to ensure that investigations by the MPM Task Force agencies include fresh approaches that fully analyse and address the varied competitive concerns that these mergers raise, including in light of rapidly changing drug development and manufacturing approaches. To that end, the MPM Task Force is seeking views by 25 June 2021 on:</p> <ul style="list-style-type: none"> – theories of harm that enforcement agencies should consider when evaluating pharmaceutical mergers; – effects of a pharmaceutical merger on innovation, and the challenges that arise when mergers involve proprietary drug discovery and manufacturing platforms – how the risks or effects of conduct such as price setting practices, reverse payments, and other ways in which pharmaceutical companies respond to or rely on regulatory processes, should be considered; – how to approach market definition, particularly in the context of new or evolving theories of harm; – evidence that may be relevant or necessary to assess, and if applicable, challenge a pharmaceutical merger based on any new or expanded theories of harm, and the types of remedies that would work; and – factors, such as the scope of assets and characteristics of divestiture buyers, that influence the likelihood and success of pharmaceutical divestitures to resolve competitive concerns. <p>The FTC will collect and publish all contributions and comments on behalf of and in close co-operation with the MFP Task Force members.</p>			
<p>Commission findings of evaluation of rules on horizontal agreements between companies</p>	<p>On 6 May 2021, the Commission published a Staff Working Paper setting out the results of its evaluation of the R&D Block Exemption, the Specialisation Block Exemption and the Horizontal Guidelines. The Commission found that, overall, the Block Exemptions and Horizontal Guidelines</p>	<p>Cross-sector</p>	<p></p>	<p>Commission Press Release Link Staff Working Paper Link Evaluation Study Link</p>



Development	Summary	Sector	Impact	Links
	<p>meet their objectives, but identified several areas where they could be strengthened to:</p> <ul style="list-style-type: none"> – adapt them to economic and societal developments such as digitisation and the pursuit of sustainability goals; – make some of the provisions of the Block Exemptions less rigid and complex, and clarify other provisions; and – improve the level of legal certainty provided by the Horizontal Guidelines for the different types of horizontal co-operation agreements covered. <p>The Commission has, therefore, concluded that the Block Exemptions, which expire on 31 December 2022, and the Horizontal Guidelines should be revised. The Commission intends to launch an inception impact assessment on possible revisions, with a consultation later in the year. It intends to consult on revised drafts in early 2022.</p>			
<p>Commission proposal for Regulation on foreign subsidies distorting the internal market</p>	<p>On 5 May 2021, the Commission issued a proposal for a Regulation on foreign subsidies distorting the Internal Market. This follows its June 2020 White Paper on levelling the playing field as regards foreign subsidies.</p> <p>The draft Regulation proposes the introduction of two notification-based tools:</p> <ul style="list-style-type: none"> – one to investigate concentrations involving a financial contribution by a non-EU government, where the EU turnover of the company to be acquired (or of at least one of the merging parties) is EUR 500 million or more and the foreign financial contribution is at least EUR 50 million; and – the other to investigate bids in public procurements involving a financial contribution by a non-EU government, where the estimated value of the procurement is EUR 250 million or more. <p>Under these tools, the acquirer or bidder will have to notify ex-ante any financial contribution received from a non-EU government in relation to concentrations or public procurements meeting the thresholds. Pending the</p>	<p>Cross-sector</p>		<p>Commission Press Release Link</p> <p>Proposed Regulation on distortive foreign subsidies Link</p> <p>Q&A Link</p> <p>Consultation Link</p>



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	<p>Commission's review, the concentration in question cannot be completed and the investigated bidder cannot be awarded the contract. Binding deadlines are established for the Commission's decision. Where a company does not comply with the obligation to notify a subsidised concentration or a financial contribution in procurements meeting the thresholds, the Commission may impose fines and review the transaction as if it had been notified.</p> <p>A third proposed tool will allow the Commission to investigate other types of market situations, such as greenfield investments or concentrations and procurements below the thresholds, when it suspects that a foreign subsidy may be involved. In these instances, the Commission will be able to start investigations on its own initiative and may request notifications.</p> <p>Enforcement of the Regulation will lie exclusively with the Commission. If the Commission establishes that a foreign subsidy exists and that it is distortive, it will, where warranted, consider the possible positive effects of the foreign subsidy and balance these effects with the negative effects brought about by the distortion. When the negative effects outweigh the positive effects, the Commission will have the power to impose redressive measures (structural and behavioural) or accept commitments from the companies concerned that remedy the distortion. Remedies can include the divestment of certain assets or the prohibition of a certain market behaviour. In the case of notified transactions, the Commission will also have the power to prohibit the subsidised acquisition or the award of the public procurement contract to the subsidised bidder.</p> <p>The Commission invites feedback on the proposed Regulation by 2 July 2021.</p>			
<p>Commission fines Sigma-Aldrich for providing misleading information during Merck/ Sigma-Aldrich merger investigation</p>	<p>On 3 May 2021, the Commission announced that it fined Sigma-Aldrich EUR 7.5 million for providing incorrect or misleading information during the Commission's merger investigation of Merck's acquisition of Sigma-Aldrich.</p> <p>In 2015, after a Phase I investigation, the Commission conditionally approved Merck's acquisition of Sigma-Aldrich, subject to divestment of certain Sigma-Aldrich assets.</p>	<p>Cross-sector</p>		<p>Commission Press Release Link</p>



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	<p>However, the Commission found that Sigma-Aldrich failed to disclose to the Commission an innovation project that was closely linked to the divested business and specifically developed for products included in the divestment business. In the Commission's view, Sigma-Adrich's supply of incorrect or misleading information was intended to avoid the transfer of the relevant project to the purchaser of the divestment business. The Commission, therefore, concluded that Sigma-Aldrich committed three distinct infringements by providing, deliberately or at least negligently, incorrect or misleading information in their explanatory submission describing the remedy package and also in their replies to two information requests.</p>			
<p>Commission sends Statement of Objections to Apple alleging abusive App Store rules for music streaming providers</p>	<p>On 30 April 2021, the Commission announced that it had sent a Statement of Objections to Apple alleging that Apple has breached Article 102 TFEU by abusing its dominant position for the distribution of music streaming apps through its App Store and distorting competition in the music streaming market by increasing the costs of competing music streaming app developers. The Commission launched this investigation following a complaint from Spotify.</p> <p>The Commission's allegations relate to the combination of two rules that Apple imposes in its agreements with music streaming app developers:</p> <ul style="list-style-type: none"> - mandatory use of Apple's own in-app purchase ("IAP") mechanism imposed on music streaming app developers to distribute their apps via Apple's App Store; and - the 30% commission fee imposed on all app developers on all subscriptions bought through the mandatory mechanism. This fee is generally passed on to end-users. <p>The Commission has also provisionally found that Apple applies certain restrictions on app developers preventing them from informing iPhone and iPad users of alternative, cheaper purchasing possibilities. The Commission is concerned that users of Apple devices pay significantly higher prices for their music subscription services or that</p>	<p>TMT</p>		<p>Commission Press Release Link</p> <p>Statement by Commissioner Vestager Link</p>



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	<p>they are prevented from buying certain subscriptions directly in their apps.</p> <p>In addition, Apple becomes the intermediary for all IAP transactions and takes over the billing relationship, as well as related communications for competitors. This means that Apple gains access to valuable data from the IAP and so gains insights e.g. the reasons for terminations of subscriptions that are not available to music streaming providers.</p>			
New Guidelines on Regional State Aid from 2022 published in Official Journal	<p>On 29 April 2021, a Communication setting out the new Guidelines on Regional State Aid ("Guidelines") applicable from 1 January 2022 was published in the Official Journal. The revised Guidelines set out the rules under which Member States can grant State aid to companies to support the economic development of disadvantaged areas in the EU. The revised Guidelines will be used to assess the compatibility of all notifiable regional state aid awarded or intended to be awarded after 31 December 2021.</p>	Cross-sector		Revised Guidelines Link
Commission publishes findings of evaluation on the Motor Vehicle Block Exemption Regulation	<p>On 28 May 2021, the Commission published its Evaluation Report and Staff Working Document summarising the findings of its evaluation of the Motor Vehicle Block Exemption Regulation ("MVBE"), which is due to expire on 31 May 2021. The aim of the evaluation was to gather evidence on the functioning of the rules applicable to vertical agreements in the automotive sector, in order to determine whether they should lapse, be renewed in their current form, or be revised.</p> <p>The evaluation concluded that the competitive environment in the motor vehicle markets has not changed significantly since the Commission last evaluated these markets in 2010, but that the sector is now under intense pressure to adapt in line with the green and digital transformation. For example, in relation to the motor vehicle repair markets, the Commission found that independent repairers will only be able to continue to exert vital competitive pressure if they have access to key inputs such as spare parts, tools, training, technical information and vehicle-generated data. The evaluation has shown that the current regime is suitable for these markets, but may require certain</p>	Consumer Industrials		Commission Press Release Link Evaluation Report Link Staff Working Document Link



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	<p>updating to take account of the increasing importance of data.</p> <p>Although the MVBE has shown itself to be suitable and adapted to diverse situations, some provisions and policy objectives may need updating in the light of the findings in the Evaluation Report. The Commission intends to reflect on the various findings in the coming year, while also taking account of the findings of the ongoing review of the Vertical Block Exemption Regulation.</p>			
Commission fines three EU railway companies EUR 48 million for customer allocation cartel	<p>On 20 April 2021, the Commission fined railway companies Deutsche Bahn ("DB") and Société Nationale des Chemins de fer belges / Nationale Maatschappij der Belgische Spoorwegen ("SNCB") EUR 48 million for participating in a customer allocation cartel. Österreichische Bundesbahnen ("ÖBB") received immunity from fines and all three companies agreed to settle under the Commission's cartel settlement procedure.</p> <p>The Commission found that the three railway companies co-ordinated by exchanging collusive information on customer requests for competitive offers and provided each other with higher quotes to protect their respective business. The cartel lasted from 8 December 2008 to 30 April 2014, with SNCB participating only since 15 November 2011 and only for transports by ÖBB, DB and SNCB. The cartel concerned conventional cargo transport sectors (except automotive transports).</p> <p>In July 2015, the Commission fined two other cargo train operators.</p>	Government and Infrastructure		Commission Press Release Link
AG Opinion considers subsidiaries may be held liable for the anti-competitive conduct of their parent companies	<p>On 15 April 2021, Advocate General Giovanni Pitruzzella handed down an opinion on questions relating to the concept of a "single economic unit" for the purposes of determining whether liability can be extended from the parent company to the subsidiary.</p> <p>The Advocate General considered that Article 101 TFEU must be interpreted as meaning that, in relation to a damages action, a national court can order a subsidiary to pay compensation for the harm caused by the anti-competitive conduct of its parent company in a case where</p>	Cross-sector		CJEU Press Release Link AG Opinion Link



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	<p>the Commission has imposed a fine solely on that parent company. However, in order for such 'top-down' liability to be incurred, the subsidiary must operate in the same area as that in which the parent company has engaged in anti-competitive conduct and must have been able, through its conduct on the market, to give effect to the infringement.</p> <p>It will be interesting to see if the ECJ follows the AG's Opinion. If so, it will be the first time that the ECJ will apply the economic unit theory to find that a subsidiary can be liable for damages caused by the conduct of its parent company.</p>			
Statement by Executive Vice-President Vestager on abandonment of Air Canada/Transat merger	<p>On 2 April 2021, the Commission published a statement by Executive Vice-President Vestager following the announcement by Air Canada and Transat that they would withdraw from their proposed merger, as the Commission would not approve the proposed acquisition based on the remedy package offered by the parties during Phase II of the merger investigation.</p> <p>Executive Vice-President Vestager commented that, while the COVID-19 pandemic has strongly impacted the airline sector, the preservation of competitive market structures is essential to ensure that post-pandemic recovery is swift and strong. The Commission's preliminary view was that, "in the long-run, Air Canada and Transat would likely remain actual or potential competitors on the majority of their routes between the EEA and Canada", despite the pandemic. Based on its market testing results, the Commission considered that the remedies offered by Air Canada were insufficient.</p>	Industrials	●	<p>Commission Press Release Link</p> <p>Air Canada Press Release Link</p> <p>Transat Press Release Link</p>
Commission withdraws 2019 decision making commitments binding on Disney, NBCUniversal, Sony Pictures, Warner Bros and Sky UK and closes proceedings	<p>On 31 March 2021, the Commission announced its decision to withdraw its March 2019 decision, under Article 9 of Regulation 1/2003, to make binding commitments given by Disney, NBCUniversal, Sony Pictures, Warner Bros. and Sky UK. These commitments addressed the Commission's competition concerns regarding certain clauses in the studios' film licensing agreements for pay-TV with Sky UK that prevented Sky UK from allowing EU consumers outside</p>	TMT	●	<p>Press Release Link</p>



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	<p>the UK/Ireland to subscribe to Sky UK's pay-TV services to access films via satellite or online.</p> <p>In 2016, the Commission issued a decision making similar commitments binding on Paramount Pictures, which was upheld by the General Court. However, in December 2020, the European Court of Justice ("ECJ") set aside the General Court's judgment and annulled the Commission's 2016 decision. It found that the commitments had disproportionately affected the contractual right of Groupe Canal+, a third party broadcaster. Consequently, the Commission decided to withdraw its commitments decision. The Commission also decided to close the proceedings in light of the ruling and the changes made to the agreements between the studios and broadcasters.</p>			
Commission opens formal investigation into possible abuse of dominance behaviour by EPEX Spot	<p>On 30 March 2021, the Commission announced that it had opened an in-depth investigation to assess whether the power exchange EPEX Spot SE ("EPEX Spot") has abused its dominant position to hinder the activities of competitors on the market for electricity intraday trading facilitation services in at least six Member States. As EPEX Spot is the biggest power exchange in several Member States, its behaviour may distort the prices of trading services, and could ultimately lead to higher electricity prices for consumers as well as a slowdown in the greening of the electricity system by preventing the cost-effective integration of renewable technologies into the electricity mix.</p>	Energy		<p>Press Release Link</p>
Commission publishes comfort letter relating to information exchange between vaccine producers at "Matchmaking Event"	<p>On 29 March 2021, the Commission published a comfort letter to provide reassurance that participation in a "Matchmaking Event" relating to the COVID-19 vaccine production, hosted by the Commission, would not raise competition law concerns. The aim of the event was to:</p> <ul style="list-style-type: none"> – increase the capacities to produce and supply COVID-19 vaccines; and – provide a platform for manufacturers of relevant raw materials, companies with relevant production capacities, or other key inputs for COVID-19 vaccines to engage with the vaccine developers and 	Health and Life Sciences		<p>Commission Press Release Link</p> <p>Comfort Letter Link</p>



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	<p>manufacturers who are seeking to match their demand with the supply of potentially scarce input.</p> <p>In the comfort letter, the Commission states that:</p> <ul style="list-style-type: none"> – any exchange of confidential business information should be limited to what is indispensable for effectively resolving the supply challenges linked to the COVID-19 pandemic; – companies should not share any confidential business information regarding their competing products (in particular information relating to prices, discounts, costs, sales, commercial strategies, expansion plans and investments, and customers lists) at such matchmaking meetings; and – direct competitors should keep a record of which topics they have discussed. <p>This is the second time that the Commission has issued a comfort letter under its Antitrust Temporary Framework adopted in April 2020 as a result of the COVID-19 pandemic.</p>			
<p>Commission publishes evaluation of procedural and jurisdictional aspects of EU merger control, and Article 22 Referral Guidance</p>	<p>On 26 March 2021, the Commission published a Staff Working Document setting out the findings of its evaluation of the procedural and jurisdictional aspects of EU merger control, which has been ongoing since 2016.</p> <p>In particular, the evaluation found that recent market developments have resulted in a gradual increase in transactions involving firms that play a significant competitive role in the markets despite generating little or no turnover, which have escaped review by the Commission or, in some cases, by any Member State. To address this, the Commission has adopted new guidance encouraging such referrals in cases where the referring Member State does not have initial jurisdiction over the case (but where the criteria of Article 22 are met). For example, where the undertaking:</p> <ul style="list-style-type: none"> – is a start-up or recent entrant with significant competitive potential that has yet to develop or implement a business model generating significant 	<p>Cross-sector</p>		<p>Commission Press Release Link</p> <p>Staff Working Document Link</p> <p>Merger policy package of 26 March Link</p> <p>Consultation Link</p> <p>Article 22 Referral Guidance Link</p>



Development	Summary	Sector	Impact	Links
	<p>revenues (or is still in the initial phase of implementing such business model).</p> <ul style="list-style-type: none"> - is an important innovator or is conducting potentially important research; - is an actual or potential important competitive force; - has access to competitively significant assets (such as for instance raw materials, infrastructure, data or intellectual property rights); and/or - provides products or services that are key inputs/components for other industries. <p>The Commission is also considering whether to expand/clarify the simplified procedure and has published an impact inception assessment for consultation setting out potential policy options. The Commission intends to issue a draft implementing regulation in the fourth quarter of 2021, with final adoption planned for the first quarter of 2022.</p>			
<p>ECJ dismisses appeals against Lundbeck "pay for delay" decision</p>	<p>On 25 March 2021, the ECJ handed down six judgments dismissing the appeals by Lundbeck and several manufacturers of generic medicines. The appellants challenged the General Court judgments and the Commission's decision, which found that the companies had breached Article 101(1) TFEU by agreeing to prevent the market entry of a generic antidepressant medicine. Lundbeck had entered into agreements with each of the generic medicine manufacturers under which they each agreed not to enter the market for the drug citalopram in return for payments by Lundbeck ('pay for delay' agreements).</p> <p>The ECJ held that:</p> <ul style="list-style-type: none"> - Lundbeck and each of the generic medicine manufacturers were potential competitors; and - "pay for delay" agreements constitute restrictions of competition by object. 	<p>Health and Life Sciences</p>		<p>H. Lundbeck A/S v Commission (Case C-591/16) Link</p> <p>Sun Pharmaceutical Industries Ltd and Ranbaxy (UK) Ltd v Commission (Case C-586/16) Link</p> <p>Generics (UK) Ltd v Commission (C-588/16) Link</p> <p>Arrow Group ApS and Arrow Generics Ltd (Case C-601/16) Link</p> <p>Merck KGaA v Commission (Case C-614/16) Link</p>



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				Xellia Pharmaceuticals ApS and Alpharma LLC v Commission (Case C-611/16) Link
ECJ dismisses abuse of dominance appeals by Deutsche Telekom and Slovak Telekom	On 25 March 2021, the ECJ dismissed the appeals by Slovak Telekom and its parent company Deutsche Telekom. They challenged a General Court judgment fining the companies for abusing their dominant position within the Slovak telecoms market regarding the unfair conditions which Slovak Telekom offered unbundled access to its local loop in Slovakia.	Government and Infrastructure TMT		Deutsche Telekom AG v European Commission (C-152/19 P) Link Slovak Telekom a.s. v European Commission (C-165/19 P) Link ECJ Press Release Link
ECJ reduces Pometon's fine but dismisses liability claims relating to hybrid cartel settlements	On 18 March 2021, the ECJ handed down its judgment on the appeal by Pometon SpA (" Pometon ") against the General Court finding that dismissed Pometon's appeal against the Commission's steel abrasives cartel decision. In April 2014, the Commission reached a settlement decision finding that four companies participated in an illegal cartel to coordinate steel abrasives prices in Europe. As Pometon did not settle, in May 2016 the Commission fined it EUR 6.2 million for its participation in the cartel. On appeal, the General Court upheld the Commission's decision but found the Commission had failed to state sufficient reasons when setting the fine, resulting in a reduced fine of EUR 3.9 million. On appeal to the ECJ, Pomerton claimed that references to it in the Commission's settlement decision infringed the presumption of innocence, and that the General Court had reversed the burden of proof in relation to periods lacking evidence of infringement. The ECJ noted that circumstances can arise where some parties under investigation settle and other parties do not, and while the Commission must take care not to attribute liability to non-settling parties in a settlement decision, Pometon was not an addressee, a footnote expressly excluded Pometon's guilt under the	Consumer		Pometon SpA v Commission (Case C-440/19 P) Link



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	<p>decision and the Commission had not categorised Pometon's conduct as anti-competitive nor used the word 'cartel' in the context of Pometon's conduct. The ECJ also noted that while there were periods lacking communication evidence, Pometon had confirmed its participation in cartel meetings and had not distanced itself from the cartel, allowing a conclusion of single and continuous infringement.</p> <p>On fines, however, the ECJ noted the General Court had applied the same 75% deduction for both Pometon and Winoa, despite also finding Pometon's infringement was less serious in nature and its turnover was only a fraction of Winoa's. The General Court's judgment did not set out why the ultimate reduction of 75% was the same for both parties. Therefore, the ECJ set the new reduction at 83%, resulting in a reduced fine on Pomerton of EUR 2.6 million.</p>			
Commission publishes notice on tools to fight collusion in public procurement and on guidance on how to apply the related exclusion ground	On 18 March 2021, the Commission published a notice on tools to fight collusion in public procurement and on guidance on how to apply the Article 57(4)(d) of Directive 2014/24 exclusion. This provides that a contracting authority may exclude or may be required by a Member State to exclude an economic operator from a tender procedure where the contracting authority has sufficiently plausible indications to conclude that the economic operator has entered into agreements with other economic operators aimed at distorting competition. The annex to the notice provides guidance on how to design award procedures to deter collusion, how to detect potential collusion when evaluating tenders, and how to react to suspected cases of collusion.	Cross-sector		Notice (OJ 2021 C91/1) Link
Commission opens Article 102 investigation into PPC's behaviour in the Greek wholesale electricity market	On 16 March 2021, the Commission opened a formal investigation to assess possible abusive behaviour by Public Power Corporation (" PPC ") in the wholesale Greek electricity sector. PPC is the largest supplier of retail and wholesale electricity in Greece, and is majority-owned by the Greek State. The Commission is concerned that due to PPC's position both at wholesale and retail levels, it may have adopted predatory bidding strategies, hindering the ability of PPC rivals to compete in the wholesale and related	Energy		Commission Press Release Link



Development	Summary	Sector	Impact	Links
	electricity markets. If proven, this behaviour may constitute an exclusionary predatory practice, in breach of Article 102 TFEU.			
BEREC issues opinion on proposed Digital Markets Act	<p>On 16 March 2021, the Body of European Regulators for Electronic Communications ("BEREC") published its opinion on the Commission's proposed Digital Markets Act ("DMA"). The DMA will introduce a series of rules for platforms acting as "gatekeepers" in the digital sector, seeking to address the Commission's concerns that its existing enforcement powers are insufficient to address competition concerns in digital markets.</p> <p>BEREC supports the DMA, but makes several recommendations to the Commission, including:</p> <ul style="list-style-type: none"> – considering whether the DMA proposal could be complemented with the integration of regulatory measures creating conditions for potential competitors to arise (enhancing inter-platform competition) and the inclusion of additional measures supporting intra-platform competition, as well as addressing end user-related concerns; – for highly complex regulatory measures, complementing the regulatory framework with remedies to be tailored on a case-by-case basis to be fit for purpose; and – establishing a dispute resolution mechanism to minimise negative effects on competition and innovation, and an Advisory Board of national independent authorities to support the EU competent authority in the effective enforcement of the DMA regulation. 	Cross-sector	●	<p>BEREC Press Release Link</p> <p>BEREC Opinion Link</p> <p>BEREC Draft Report Link</p>
Commission consults on roadmap on modification of GBER in response to EU's Green Deal, and the Industrial and Digital Strategies	<p>On 8 March 2021, the Commission announced it is consulting on a roadmap to modify the General Block Exemption Regulation ("GBER") to reflect the European Green Deal, the Industrial Strategy and the Digital Strategy. Based on the results of its "fitness check" evaluation of the State aid rules, the Commission is revising a number of State aid Guidelines (the Energy and Environmental Guidelines; Regional Aid Guidelines;</p>	Cross-sector	●	Roadmap Link



Development	Summary	Sector	Impact	Links
	<p>Research, Development and Innovation Framework; and Risk Finance Guidelines), where it appeared that changes are necessary, notably in light of new Commission priorities, the Green Deal, and the Industrial and Digital Strategies. GBER and these Guidelines have a complimentary nature, which means a parallel revision of the relevant provisions of the GBER is necessary. The Commission aims to hold a consultation on a draft regulation to amend the GBER before adoption by the end of 2021.</p>			



Trade

Development	Summary	Sector	Impact	Links
Joint EU-US statement on addressing global steel and aluminium excess capacity	<p>On 17 May 2021 the EU and US announced the start of discussions to address global steel and aluminium excess capacity which is posing a serious threat to the market-oriented EU and US steel and aluminium industries and their workers. Both sides agree that effective solutions to preserve critical industries are needed, and agreed to chart a path that would end the WTO disputes following the US application of tariffs on imports from the EU under Section 232 of the US Trade Expansion Act 1862. The EU and US have agreed to avoid changes on these issues that negatively affect bilateral trade and have committed to engage in discussions expeditiously to find solutions before the end of the year.</p> <p>This follows an announcement in March 2021 stating that the EU and US had agreed to suspend all retaliatory tariffs on EU and US exports imposed in an aircraft dispute for four months.</p>	Industrials		<p>Commission Press Release Link</p> <p>Joint Statement Link</p>
ECJ Opinion on EU Blocking Regulation – Bank Melli Iran v Telekom Deutschland	<p>On 12 May 2021, Advocate General Hogan gave his Opinion in Case C-124/20 Bank Melli Iran v Telekom Deutschland GmbH relating to Article 5 of the EU Blocking Regulation, following a referral to the ECJ from a German Court.</p> <p>Bank Melli Iran, which has a branch in Hamburg, claimed before the German Courts that the notice of ordinary termination given by the German telecommunication provider Telekom Deutschland with respect to their contracts for telecommunication services was invalid. According to the bank, the notice was motivated solely by Telekom Deutschland's desire to comply with US legislation prohibiting non-US undertakings from trading with Iranian undertakings subject to US primary sanctions, and providing for secondary sanctions against such non-US undertakings in case of breach. The bank maintained that Telekom Deutschland infringed the EU Blocking Regulation, which prohibits EU undertakings from complying with such extraterritorial US measures.</p>	Cross-sector		<p>Press Release Link</p>



Development	Summary	Sector	Impact	Links
	<p>The Opinion found that:</p> <ul style="list-style-type: none"> – EU operators are prohibited from complying with the US extraterritorial sanctions listed in the Annex to the Blocking Regulation, even if they have not been compelled expressly by a US court order or other directive to do so; – where an EU operator terminates a contract in compliance with the US sanctions listed in the Annex, this gives a right of action to the affected party to bring a claim and seek an injunction prohibiting termination (and effectively, therefore, requiring specific performance); – the EU operator being sued in such a situation has the burden of establishing that its acts were not motivated by compliance with the relevant US sanctions – even where, as a matter of express Member State contractual law, they would otherwise be permitted to terminate a contract with full discretion and without giving reasons; and – to avoid liability Telekom Deutschland would need to show that its decision was not motivated by compliance with the US sanctions, by demonstrating that it is actively engaged in a coherent and systematic corporate social responsibility policy which requires them, inter alia, to refuse to deal with any company having links with the Iranian regime. 			
<p>Commission publishes guidance note on Myanmar sanctions</p>	<p>On 12 May 2021, the Commission published a guidance note on the implementation of certain provisions under Council Regulation (EU) 401/2013, which establishes the EU sanctions regime in respect of Myanmar. The note explains that targeted financial sanctions and a travel ban apply to 35 listed Burmese individuals and 2 entities, and that limited sectoral sanctions are in place. The note seeks to address the questions most likely to arise in the implementation of the financial sanctions provided for in the sanctions regime, and includes information about the scope of the financial restrictions and their application. The note follows an announcement on 29 April 2021 confirming</p>	<p>Government and Infrastructure</p>		<p>Commission Press Release Link Guidance Note Link Commission Press Release (April 2021) Link</p>



Development	Summary	Sector	Impact	Links
	that the EU was going to extend sanctions against Myanmar for one year until 30 April 2022.			
EU Council adopts updated dual-use export control regulation	<p>On 10 May 2021, the EU Council adopted a new regulation which updates controls on the export, brokering, transit and transfer of dual-use goods and sensitive technologies. The regulation will be published in the Official Journal once it is signed by the EU Parliament and Council, and it will come into force 90 days thereafter.</p> <p>The new regulation strengthens controls on a wider range of emerging dual-use technologies, and the coordination between Member States and the Commission in support of the effective enforcement of controls throughout the EU. By introducing due diligence obligations for producers, the new rules also give companies an important role in addressing the risks to international security sometimes posed by dual-use items.</p>	Cross-sector		Press Release Link Regulation Link
EU-China Investment agreement suspended due to sanctions	<p>EU Trade Commissioner, Valdis Dombrovskis, confirmed that the ratification of the EU-China Comprehensive Agreement on Investment ("CAI") has been suspended due to the EU's human rights sanctions against China, and China's reciprocal measures, which include sanctions against members of the European Parliament.</p> <p>In an interview with French new agency AFP, Dombrovskis stated: "We have for the time being [...] suspended some efforts of political awareness on the part of the Commission because it's clear that, in the current situation, with the sanctions of the EU against China and the Chinese counter-sanctions, including against Members of the European Parliament, the environment is not conducive to the ratification of the agreement".</p>	Cross-sector		Press Release Link
Trade barriers: EU concludes two examinations on ceramic tiles and on Tequila	<p>On 4 May 2021, as part of international trade rules, the Commission concluded two examinations under the EU's Trade Barriers Regulation relating to Saudi Arabia and Mexico.</p> <p>1) Saudi Arabia: The Commission initiated an examination regarding Saudi Arabia's trade restrictive measures on EU ceramic tiles at the request of the European Ceramic Industry Association (Cerame-Unie). The industry</p>	Consumer		Press Release Link Saudi Arabia Report Link Mexico Report Link



Development	Summary	Sector	Impact	Links
	<p>complained that the implementation of new Saudi technical regulations were hindering 75% to 80% of EU exports, valued at EUR 120-150 million per year, and affecting many EU SMEs.</p> <p>The Commission concluded that many aspects of the regulations and their enforcement raised serious concerns of compliance with WTO rules. The next step is for the Commission to engage with Saudi Arabia to ensure that these barriers are removed in a swift and efficient way. If this cannot be achieved, the EU would bring the issue to the WTO.</p> <p>2) Mexico: The Commission initiated an examination regarding exports of Tequila from Mexico to the EU, at the request of Brewers of Europe. They argued that the refusal by Mexico to issue export certificates for Tequila was WTO incompatible, resulting in several hundreds of millions of euros of economic damage for EU industry.</p> <p>It was found that while the measure raises concerns on compliance with WTO rules, specifically the prohibition of export restrictions, it is subject to a number of pending administrative proceedings that may lead to the measure's revocation or modification. The next step is for the Commission to monitor the outcome of these proceedings and re-evaluate when necessary.</p>			
EU-Republic of Korea agreement ensures resilient trade despite the pandemic	On 29 April 2021, the EU and the Republic of Korea highlighted how their 10 year old free trade agreement remains a bedrock of their bilateral economic relationship and a strong foundation to help their economies recover and grow from the COVID-19 pandemic. Since the agreement entered into force in 2010, total bilateral trade in goods increased by 46% in 2020. The pandemic took a toll on global trade flows last year, but bilateral trade flows dropped only by 1.6%, compared to 11% globally, and bilateral trade in goods stood at around EUR 90 billion in 2020.	Cross-sector		Press Release Link
EU ratifies the UK-EU Trade and Cooperation Agreement and Security of	On 28 April 2021, the European Parliament plenary adopted by a large majority a legislative resolution formally consenting to the conclusion of the UK-EU trade and co-	Cross-sector		European Parliament Press Release Link



Development	Summary	Sector	Impact	Links
Classified Information Agreement	<p>operation agreement ("TCA") and the security of classified information agreement ("Security Agreement"), two of the three future relationship agreements. On 29 April 2021, the Council of the EU unanimously adopted a Decision on the conclusion of the TCA and the Security Agreement. This is the last step in the EU ratification process for the agreements. Both agreements have been applied provisionally since 1 January 2021.</p>			<p>Council of the EU Press Release Link</p>
Counterfeit remains top priority for EU's efforts in IP protection	<p>On 28 April 2021, the Commission published its biennial report on the protection and enforcement of IP rights in third countries. It is based on several reports, on discussions carried out with third countries, and on an EU public consultation which was carried out by the Directorate-General for Trade in the autumn of 2020. The report helps the Commission to update its list of "priority countries" and to focus its efforts and resources on the specific areas of concern, with the aim of improving IPR protection and enforcement worldwide.</p> <p>According to the report, China remains the Priority 1 country for the EU, because of the scale and persistence of problems in the area of IPR protection and enforcement. India, Russia, Turkey and Ukraine remain Priority 2 countries. Indonesia was removed from the group of Priority 2 countries and included in the group of Priority 3 countries, mainly due to the recent reform of its patent law. Argentina, Brazil, Ecuador, Indonesia, Malaysia, Nigeria, Saudi Arabia and Thailand remain Priority 3 countries.</p> <p>China remains at the origin of a dominant share of counterfeit and pirated goods arriving in the EU, in terms of both value and volume. More than 80% of the seizures of counterfeit and pirated goods by EU customs authorities originate from China and Hong Kong (China).</p> <p>The COVID-19 pandemic has also shown that criminals quickly adapt to the new trade environment and find ways to infiltrate legitimate supply chains with counterfeit and often dangerous products. Since the outbreak of the COVID-19 pandemic, counterfeit and falsified products such as unproven treatments, test kits, medical equipment, and</p>	Cross-sector		<p>Press release Link</p> <p>Report Link</p>



Development	Summary	Sector	Impact	Links
	supplies, e.g. masks, ventilators, or gloves, have flooded the European market.			
EU Trade Policy Day	On 26 April 2021, the EU Trade Policy Day was held to discuss the challenges facing global trade and the EU's role in developing common responses to them. It was held to mark the publication of the Commission's new Trade Strategy for promoting an open, sustainable and assertive EU trade policy.	Cross-sector		Press release Link Video link to the event Link
Commission reports on negotiating round with five Eastern and Southern African countries	On 22 April 2021, as part of its transparency commitment, the Commission published a report summarising progress made during the latest negotiation round to deepen the existing Economic Partnership Agreement with five Eastern and South African partners (Comoros, Madagascar, Mauritius, Seychelles and Zimbabwe). The round was held virtually from 13 to 16 April and on it the partners discussed food safety, plant and animal health standards, customs and trade facilitation, mutual administrative assistance, rules of origin, trade and sustainable development, trade in services, investment liberalisation and digital trade, and economic and development cooperation. The next round is scheduled in July 2021.	Cross-sector		Press release Link Report Link
Uzbekistan joins EU's GSP+ arrangement	<p>On 9 April 2021, the EU announced that it accepted the Republic of Uzbekistan as the 9th beneficiary country of the special incentive arrangement for sustainable development and good governance ("GSP+") under the unilateral Generalised Scheme of Preferences ("GSP"). The EU will start applying preferential tariffs for products imported from Uzbekistan under this arrangement from 10 April 2021.</p> <p>When joining the GSP+ arrangement, low and lower-middle income countries commit to effective implementation of the 27 core international conventions on human and labour rights, environmental and climate protection and good governance. The regulation provides for continuous monitoring of the beneficiaries' obligations.</p> <p>As a beneficiary, Uzbekistan will enjoy further economic benefits compared to the current Standard GSP arrangement. Two thirds of tariffs on product lines will be</p>	Cross-sector		Press Release Link GSP regulation Link



Development	Summary	Sector	Impact	Links
	<p>removed and will create opportunities for export growth and investment.</p> <p>The acceptance of Uzbekistan reflects the recognition of reforms undertaken by its government, in particular to improve the business climate, the judicial system, security services, labour conditions, and administrative accountability and efficiency. For example, there have been major efforts to eradicate systemic use of child labour in the cotton harvest and production processes in the country.</p> <p>The EU is paying close attention to two major legislative processes, in particular the revision of the Criminal Code and the Labour Code of the Republic of Uzbekistan. These legislative acts need to reflect Uzbekistan's international commitments, including under GSP+.</p>			
Commission publishes final Sustainability Impact Assessment on Mercosur-EU Association Agreement	<p>On 29 March 2021 the Commission published its final version of the Sustainability Impact Assessment ("SIA") on the potential impact of the trade part of the association agreement between the EU and the Mercosur countries (Argentina, Brazil, Paraguay and Uruguay). The SIA is an independent report and takes into account potential economic, social, environmental and human rights impacts.</p> <p>The SIA notes that the agreement will have a positive impact on economies and the EU agricultural sector. However, there are concerns regarding the environmental and human rights impact and recommends ways of minimising this.</p> <p>Before it can propose the agreement to the Council and Parliament, the Commission has made it clear that it needs meaningful results and engagement. It is currently engaging with Mercosur countries to seek real progress on commitments on the Paris Agreement and deforestation. The legal revision of the agreement is being finalised before it can be translated and submitted for signature and conclusion.</p>	Energy Government and Infrastructure		<p>SIA Report Link</p> <p>Press Release Link</p>
CETA to support EU-Canada pandemic recovery	<p>On 25 March 2021 the EU and Canada released a joint statement emphasising the importance of the Comprehensive Economic and Trade Agreement ("CETA"). Despite the challenges of COVID-19, bilateral merchandise</p>	Cross-sector		<p>Joint Statement Link</p>



Development	Summary	Sector	Impact	Links
	<p>trade in 2020 was still 15.2% higher than the pre-CETA level in 2016.</p> <p>The parties reviewed measures taken by both sides to facilitate the continuation of preferential trade during the pandemic, including increased flexibility and additional administrative cooperation on the verification of origin.</p> <p>Positive developments under CETA were highlighted, such as the implementation of the Trade and Sustainable Development chapters and the three recommendations adopted addressing trade and climate, trade and gender, and trade and SMEs.</p> <p>Both sides agreed to intensify efforts to ensure that all companies can take advantage of the opportunities offered by CETA. Special attention was given to helping SMEs exploit preferences given by CETA.</p>			<p>Commission Press Release Link</p>
<p>Commission introduces principles to increase transparency, reciprocity and proportionality for COVID-19 vaccine imports</p>	<p>On 24 March 2021 the Commission introduced the principles of reciprocity and proportionality as new criteria to be considered for authorising COVID-19 vaccine exports. The new regulation means that Member States and the Commission should assess whether the requested exports do not pose a threat to the security of supply of vaccines and their components in the EU, and consider:</p> <ul style="list-style-type: none"> – Reciprocity: Does the destination country restrict its own exports of vaccines or their raw materials, by law or other means? – Proportionality: Are the conditions prevailing in the destination country better or worse than the EU's, in particular its epidemiological situation, vaccination rate and access to vaccines? <p>The EU will continue to exclude vaccine supplies for humanitarian aid or destined to the 92 low and middle-income countries under the COVAX Advance Market Commitment list from this scheme.</p>	<p>Government and Infrastructure Health and Life Sciences</p>		<p>Regulation Link Commission Press Release Link</p>



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Antitrust

Development	Summary	Sector	Impact	Links
Adoption of Order No 2021-649 of 26 May 2021 on the transposition of the ECN+ Directive	<p>On 26 May 2021, Order No 2021-649 was adopted relating to the transposition of Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 ("ECN+"). ECN+ is aimed at providing Member States' competition authorities with the means to enforce competition rules more effectively and to ensure the proper functioning of the internal market.</p> <p>The French Competition Authority ("FCA") will now have the power to set its own priorities and to reject complaints that do not meet their priorities. This power, known as "prosecutorial discretion", will allow for a better allocation of resources, which can be fully devoted to the speedy resolution of the most important cases (including complex cases involving large digital platforms or algorithmic processes).</p> <p>The FCA will have the ability to consider cases ex-officio, not only following a request made by an undertaking which is incidental to an application on merits, and impose interim measures. The FCA welcomes this new opportunity to intervene without delay, on its own initiative, when it becomes aware of conduct that could harm competition, particularly in sectors where the positions of the players are changing very rapidly.</p> <p>The possibility for the FCA to issue structural injunctions as well as behavioural injunctions, in the context of litigation, is fully enshrined, thus aligning the FCA's powers with those of the Commission.</p>	Cross-sector		<p>Transposition ordinance of the ECN + Directive (in French)</p> <p>Link</p>



Development	Summary	Sector	Impact	Links
	<p>The leniency procedure, whereby a company that discloses a serious infringement of the competition rules to the FCA can apply for an exemption from the financial penalty incurred, is now fully enshrined in positive law. The new provisions harmonise this procedure at European level, largely taking over the terms of the leniency programme previously implemented by the FCA in a flexible law framework. The incentive for companies to uncover possible secret cartels is further strengthened since immunity from, or a reduction in, criminal penalties may also be obtained, subject to conditions, by natural persons belonging to the staff of the company that first applied for leniency.</p> <p>The possibility for the FCA to access the data of companies under investigation, wherever they are stored, and to access encryption keys, is fully enshrined, in order to preserve the effectiveness of the investigations currently being conducted. In addition, the new provisions subject the FCA's procedures to the so-called "freedom of evidence" standard, applicable in criminal matters, which will broaden the scope of admissible evidence.</p> <p>The system of financial penalties is now more dissuasive and better harmonised at European level. Organisations - henceforth "associations of undertakings" - are no longer subject to a specific penalty regime in the event of an infringement of the competition rules (they previously benefited from a penalty ceiling of EUR 3 million), but are now subject to a much higher limitation, equal to 10% of the total turnover of the undertakings belonging to the association. This will apply in particular to trade unions or professional orders.</p> <p>The criteria for determining the amount of penalties will now be unified and aligned with those used by the Commission, based solely on the traditional notions of seriousness and duration of the infringement, with the reference previously made in the law to the notion of "damage to the economy" being removed.</p> <p>Finally, European cooperation between national competition authorities is strengthened (mutual information obligations between authorities of the European competition network,</p>			



Development	Summary	Sector	Impact	Links
<p>ITM AI obtains protection of its business secrets in summary proceedings brought by the French Minister for the Economy on restrictive competition practices</p>	<p>extension of assistance between authorities, in particular for search and seizures operations, notification of procedural acts and recovery of penalties).</p> <p>On April 8, 2021, the Paris Court of Appeal, ruling in summary proceedings, overturned an order of the Paris Commercial Court from 19 March 2021 in a case between the French Minister of the Economy, and the retailer Intermarché (owned by ITM Alimentaire International ("ITM AI"), a subsidiary of the ITM company) and AgeCore, a joint referencing centre with five other European distributors, of which ITM AI is a 16% shareholder.</p> <p>The case relates to alleged practices consisting in obtaining advantages without consideration, in breach of Article L. 442-6 of the French Commercial Code. On 19 February 2021, ITM AI was summoned by the French Minister before the Commercial Court of unfair trade practices. The summons issued contained sensitive information and was also issued to AgeCore. ITM AI appealed on the basis that the summons contained confidential information relating to business secrets which could cause serious and irreversible damage. ITM AI contended that the documents were covered by business secrecy under the French Commercial Code, and it was thus necessary to redact confidential information.</p> <p>The Court of Appeal acknowledged that the powers of investigation prohibited ITM AI from invoking business secrecy as justification for refusing to communicate the requested elements to the Minister and investigators. However, the Court underlined that the Minister could not share business secrets between the parties because this would facilitate anti-competitive agreements.</p> <p>The Court concluded that AgeCore should receive a redacted version of all the confidential data, both as regards to the summons and the documents produced in support thereof.</p> <p>The Minister did not wait for the Paris Court of Appeal's ruling and has already sent the summons and the disputed documents to AgeCore. However, AgeCore has undertaken</p>	<p>Consumer Industrials</p>	<p></p>	<p>Ruling of the Paris Court of Appeal, 8 April 2021, No 21/05090 (in French) Link</p>



Development	Summary	Sector	Impact	Links
<p>French administrative courts have no jurisdiction over appeals against the FCA's requests to refer a deal to the Commission under Article 22 of the EU Merger Regulation</p>	<p>not to consult the full version of the summons during the course of the proceedings. As such, the Court has invited the Minister to provide AgeCore with a redacted copy of the summons, as proposed by ITM AI, without the documents alleged to be confidential or with the documents amended in accordance with ITM AI's requests.</p> <p>On 1 April 2021, the French State Council ("Conseil d'Etat") ruled that French administrative courts have no jurisdiction over an appeal against the FCA's request to refer a deal to the Commission under Article 22 of the EU Merger Regulation ("EUMR"). According to the Conseil d'Etat, the dispute on the referral is inseparable from the Commission's analysis of the merger and is under the CJEU's jurisdiction.</p> <p>In September 2020, Illumina, a US-based global genomics company and leading supplier of next generation sequencing systems for genetic and genomic analysis, announced its plans to acquire GRAIL, a US-based healthcare company focusing on multi-cancer early detection. The cash and stock consideration for the deal was USD 8 billion.</p> <p>In a decision on 9 March 2021, the FCA referred the review of the acquisition to the Commission based on Article 22 EUMR. Article 22 provides that one or more Member States may ask the Commission to examine any concentration that does not have a Union dimension but affects trade between Member States and threatens to significantly affect competition within the territory of the Member State(s) making the request.</p> <p>Subsequently, Illumina and GRAIL asked the Conseil d'Etat to order the suspension of the referral decision. Among their arguments, the firms claimed that the FCA committed an error in law and disregarded the principle of legal certainty by asking the Commission to review a transaction which does not reach the domestic turnover thresholds. According to the parties, such a referral should be reserved for cases in which the risk for competition is obvious and of particular gravity.</p>	<p>Cross-sector</p>		<p>Ruling of the French State Council, 1 April 2021, No 450878 (in French) Link</p>



Development	Summary	Sector	Impact	Links
<p>French Constitutional Council declares the second paragraph of Article L. 464-2, V of the French Commercial Code, which allows the FCA to impose sanctions in the event of obstructions, to be contrary to the Constitution. The effects of this decision however appear limited in practice.</p>	<p>The Conseil d'Etat held that whatever the effects of the FCA's request may be for the companies concerned, the administrative judge is not competent to hear the dispute concerning the referral and is instead a matter for the CJEU.</p> <p>On 26 March 2021, in a "priority preliminary ruling on constitutionality" in a case concerning the company AKKA, the French Constitutional Council ("Council") declared that the second paragraph of Article L. 464-2, V of the French Commercial Code ("FCC"), which allowed the FCA to impose sanctions in the event of obstructions to the FCA's investigations, was contrary to the Constitution. The Council ruled that such practices are in part already sanctioned by the offence of obstruction under Article L. 450-8 of the Commercial Code. This decision will nonetheless have limited effects in practice, for the following reasons:</p> <ul style="list-style-type: none"> - The Council's decision only targets the version of the second paragraph of Article L. 464-2, V FCC as applicable between 9 March 2017 to 3 December 2020. The text, in its versions applicable before and after this period, are not affected by the decision. It should however be noted, surprisingly, though some other provisions of Article L. 464-2 FCC may have changed across time; the provisions of paragraph V, second subparagraph, which are specifically targeted by the decision, have never been amended since their initial version dated 2008. - Second, and probably more importantly, the Council held that the declaration of unconstitutionality can only be invoked when the company being prosecuted has previously been the subject of penal proceedings on the basis of Article L. 450-8 FCC. Article L. 450-8 FCC sanctions oppositions to investigators' functions and applies not only for FCA's investigators but also to other authorities (such as agents of the French Directorate for Competition, Consumer Affairs and Prevention of Fraud). Yet, to date, obstructions to FCA's investigations have only lead to prosecutions 	<p>Cross-sector</p>	<p></p>	<p>French Constitutional Council, Decision n° 2021-892 QPC 26 March 2021 (in French) Link</p> <p>FCA Press Release in the Fleury Michon case (3 May 2021) Link</p> <p>FCA Decision 21-D-10 of 3 May 2021 (in French) Link</p>



Development	Summary	Sector	Impact	Links
	<p>under Article L. 464-2 FCC and never under Article L. 450-8 FCC.</p> <p>Following the Council’s decision:</p> <ul style="list-style-type: none"> – On 3 May 2021, just a couple of weeks after the Council's decision, the FCA used the second paragraph of Article L. 464-2, V FCC to sanction another company (Fleury Michon, decision 21-D-10) for obstruction to its investigations. In this case, Article L. 464-2 FCC applied in its version of 9 March 2017 to 3 December 2020, but no proceedings had been opened under Article L. 450-8 FCC. This may be confirmation from the perspective of the FCA that the Council’s decision will have no real effects in practice. – On 26 May 2021, the French Ordinance No 2021-649 implementing the EU “ECN+” Directive 2019/1 introduced amendments to Articles L. 464-2, V and L. 450-8 FCC to clearly state that proceedings cannot be opened under both these provisions for the same facts. 			
<p>French Competition Authority fines manufacturers of industrial sandwiches for anti-competitive agreement</p>	<p>On 24 March 2021, the FCA fined Roland Monterrat, La Toque Angevine ("LTA") and Snacking Services ("Daunat") for having devised and implemented, between September 2010 and September 2016, a plan to share volumes and customers and agree prices. All three companies manufacture own-brand label sandwiches for mass retail distribution under the retailer’s own brand label.</p> <p>The practices were revealed as a result of the leniency procedure. Given its contribution to the investigation, Roland Monterrat, was able to escape penalty and receive immunity as the first leniency applicant. LTA and Daunat were granted fine reductions of 35% and 30% respectively, in view of the added value of the information they provided when they applied for leniency, which made it possible to establish the existence of certain exchanges. LTA and Daunat were fined a total of EUR 24,574,000 - LTA received a fine of EUR 15,574,000 and Daunat received a fine of EUR 9 million.</p> <p>Mass-market food retailers and service stations generally use call for tender procedures to obtain supplies of</p>	<p>Consumer Industrials</p>		<p>FCA Press release Link</p> <p>FCA Decision 21-D-09 of 24 March 2021 (in French) Link</p>



Development	Summary	Sector	Impact	Links
	<p>industrial sandwiches sold under the retailer's own brand labels. In response to these calls for tender, the three manufacturers set up a system of secret consultation enabling them to distort competition.</p> <p>Having previously competed fiercely on price, to gain a market share for mass retail distribution, at the end of 2010 the parties agreed to a "non-aggression pact", to end what they described as a "price war". In practice, this anti-competitive agreement involved exchanging proposed prices by email before responding to calls for tender from mass-market retailers and, to a lesser extent, service stations. The companies then called each other to discuss the calls for tender, and if necessary, adjusted their offers before responding to the retailers. So as to not arouse suspicion from the retailers, the companies also submitted cover bids on references for which they had agreed that they should not win the call for tender. A "leader" was also appointed for each client, so as to better organise the exchanges between the members of the anti-competitive agreement. In addition, following telephone meetings, follow-up tables were often drawn up to group together the quotes given by each of the competitors and each of the references for the various calls for tender.</p>			



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Foreign Investment

Development	Summary	Sector	Impact	Links
Amendments made to the law on foreign investments in Hungarian companies engaged in certain strategic industries	<p>On 21 April 2021, Government Decree 189/2021 (21.IV.) was enacted, which introduced the following changes to the Hungarian law on foreign investments:</p> <ul style="list-style-type: none"> – extended the deadline for foreign investors in a strategic company to notify the Hungarian Minister of the Economy of certain transactions from 30 June 2021 to 31 December 2021; – extended the concept of "State interest" to include public interest related to fundamental economic strategic interests from the point of view of the national economy; and – amended the definition of a "strategic company" to include higher education institutions. Under the new definition, a limited liability company, private limited company, public limited company, or higher education institution domiciled in Hungary is a strategic company, where their main or additional activity as defined in the Government Decree relates to a sector of strategic importance, in particular, the energy, transport or communications sectors, and to a sector defined in the Article 4(1) (a) to (e) of Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the EU. <p>In addition, Government Decree 188/2021 (21.IV.) extended the scope of activities falling within a sector of strategic importance to include companies active in the</p>	Cross-sector		Client Briefing Link

Hungary



Development	Summary	Sector	Impact	Links
	<p>following: publishing, film, video or television production, sound recording and publishing, broadcasting, telecommunications, and higher education or activities ancillary to education.</p>			



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Antitrust

Development	Summary	Sector	Impact	Links
The Irish Competition and Consumer Protection Commission publishes 2020 Annual Report	<p>The Irish Competition and Consumer Protection Commission ("CCPC") published its annual report giving an overview of the M&A landscape in Ireland during 2020. The key points of the report include:</p> <ul style="list-style-type: none"> – a 13% decrease in merger notifications with the most active sectors being: information, communications and healthcare; – the CCPC issued 43 determinations; – the CCPC was involved in 15 extended Phase 1 investigations, five of which were carried forward from 2019; – the average time for a determination was 22.9 working days (for non-extended Phase 1 investigations); – formal commitments were required in one case; – the CCPC oversaw the implementation of two divestment remedies; and – the CCPC completed an internal review of 4 media merger. <p>The report also contains consideration of the merger remedies review, which commenced in 2003.</p>	Cross-sector		CCPC 2020 Annual Report Link



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Antitrust

Development	Summary	Sector	Impact	Links
Italian Competition Authority proposes new enforcement model	<p>On 23 March 2021, the Italian Competition Authority (“ICA”) published an advocacy report issued to the Government, suggesting amendments to competition law, along with recommendations for sweeping pro-competitive reforms in key sectors of the Italian economy.</p> <p>Among the proposals, the ICA recommended the introduction of a new provision in order to tackle competitive distortions in markets where digital gatekeepers are active. In the ICA’s view, the ICA should be empowered to issue a decision designating certain businesses as being of primary importance to competition in multiple markets. Such designation would last for five years and be based upon a list of non-exhaustive and non-cumulative factors, including:</p> <ul style="list-style-type: none"> – holding a dominant position in one or more markets; – degree of vertical integration and/or being active in adjacent markets; – access to competitively relevant data; – being a gateway to upstream or downstream markets; or – influence on the economic activity of third-parties <p>Such undertakings would be prohibited from carrying out conduct on a “black list” such as: (i) self-preferencing, (ii) preventing interoperability products, (iii) services or data portability, because it would be particularly distortive to competition.</p>	Cross-sector	●	<p>ICA Press Release of 23 March 2021 (in Italian) Link</p> <p>ICA Report of 23 March 2021 (in Italian) Link</p>



Development	Summary	Sector	Impact	Links
	<p>If found to have violated the prohibition, the undertaking concerned would have the opportunity to prove that its conduct is objectively justified. In the case of non-compliance, where the conduct is not objectively justified, the ICA could fine the undertakings concerned up to 10% of its turnover, by relying on the same powers under the national competition law (e.g. Art. 15, Law 287/1990), and/or impose behavioural or structural remedies to terminate the infringement and its effects or to prevent a repeat of the conduct.</p> <p>Further, the ICA proposed the introduction of a rebuttable presumption of economic dependence for digital platforms offering intermediation services when they represent a key gateway in reaching end-users or suppliers. The ICA also advocated for the introduction of a settlement procedure in competition law cases, mirroring the model applied by the EU Commission.</p> <p>Most importantly, for merger control, the ICA proposed replacing the dominance test with the substantive test (significant impediment to effective competition, focusing on what effects the merger has on competition rather than the company's position on the market. The note also proposed empowering the ICA to review merger transactions falling below the applicable thresholds in order to capture "killer acquisitions". Under this amendment, the ICA may require notification of a deal occurring up to six months before the notification, where the transaction meets one of the two applicable thresholds:</p> <ul style="list-style-type: none"> (i) combined turnover in Italy higher than EUR 511 million or turnover in Italy of at least two of the undertakings concerned higher than EUR 31 million; or (ii) worldwide overall turnover higher than EUR 5 billion. <p>Finally, the ICA proposed extending the Phase II review period from the current 45 calendar days to 90 calendar days to align with international best practices.</p>			



Foreign Investment

Development	Summary	Sector	Impact	Links
<p>Italian Government further extends the foreign investments "transitional regime" until 30 December 2021</p>	<p>On 30 April 2021, Law decree no. 56/2021 provided for a new extension to the Italian foreign investments transitional regime from 30 June to 31 December 2021.</p> <p>This is of key importance since the temporary regime introduced back in April 2020 with Art. 15 of Law decree 23/2021 (so called "liquidity decree") considerably extends the scope of application of the Italian FDI legislation, as it imposes an obligation to notify the Italian Prime Minister Office of:</p> <ul style="list-style-type: none"> i. all transactions entailing the acquisition of 'control' also by EU companies over Italian undertakings owning critical assets in the transport, communication, energy sector and those referred to in Art. 4 of Reg. (EU) 452/2019 as identified by the respective Italian implementing decrees; ii. all acquisitions by non-EU companies even of 'minority' stake starting from 10%, with a minimum investment of €1 million, in Italian companies with strategic assets in the sectors referred to under point i); and iii. resolutions or any other act entailing the sale of strategic assets to foreign companies - thus including EU companies - in the sectors referred above. <p>Considering the potential continuation of the Covid-19 pandemic over the coming months, a further extension of the temporary regime cannot be ruled out. In any event, what is certain is that the objective scope of application of the Italian FDI regime remains extremely broad and companies in every M&A transaction must pay close attention and be aware of the potential application of this piece of legislation.</p>	Cross-sector		<p>Law Decree 30 April 2021, no. 56 Link</p>



Trade

Development	Summary	Sector	Impact	Links
<p>Italian Foreign Ministry denies export authorisation for 200k doses of COVID-19 AstraZeneca's vaccines</p>	<p>On 4 March 2021, the Italian Foreign Ministry published a press release to inform the public of an export ban decision adopted on 26 February 2021 in relation to 200k doses of COVID-19 AstraZeneca's vaccines. The resolution was adopted under the regulatory framework granted by EU Commission's implementation of Regulation No. 2021/111 of 29 January 2021 making the exportation of vaccines against SARS-related Coronaviruses subject to export authorisation (the "Regulation").</p> <p>The importance and significant impact of the Regulation has been confirmed by the recent Commission's decision to extend the transparency and authorisation mechanism until 30 June 2021 by means of a further Implementing Regulation, which was adopted on 11 March 2021.</p> <p>The Ministry highlighted that, although in previous cases export authorisation for small quantities of AstraZeneca's vaccines had been regularly granted, the current request involves more than 200k doses. Therefore, the Ministry sent a non-authorisation proposal to the Commission. According to the Regulation, Member States shall notify the Commission of all authorisations granted or refused (Art. 3 para. 1).</p> <p>The reasons underlying the Ministry's decision were the following:</p> <ul style="list-style-type: none"> - the Country of destination of the supply (Australia) is considered "non-vulnerable" within the meaning of the Regulation (see recital No. 3 of the same Regulation); - the ongoing shortage of vaccines in the EU and in Italy, and the delays in the supply of vaccines by AstraZeneca; and - the large number of vaccine doses referred to in the request for export authorisation compared with the quantity of doses so far supplied to Italy and, more generally, to EU Member States. 	<p>Health and Life Sciences</p>		<p>Italian Foreign Ministry's press release (in English) Link</p> <p>Commission's press release on the extension of the export authorisation regime until June 2021 Link</p> <p>Draft Regulation on the export authorisation extension Link</p>



Development	Summary	Sector	Impact	Links
<p>Italian Government approves the Legislative Decree No. 13/2021 to implement EU Regulation No. 821/2017 on conflict minerals</p>	<p>Italy's proposal was immediately confirmed by the Commission. According to the press, this is the first case of a denial of export authorisation issued by an EU Member State pursuant to the Regulation. It confirms the EU's and Italy's strong efforts to limit the COVID-19 outbreak. It also confirms that Australia is considered a "non-vulnerable country", the definition of which had not been clarified by the Regulation previously and will now apply in theory, albeit on a case by case basis.</p> <p>On 3 March 2021, the Legislative Decree No. 13/2021 entered into force and introduced relevant provisions for the enforcement of EU Regulation No. 821/2017, of 17 May 2017, laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas.</p> <p>The EU Regulation introduced relevant obligations for importers of listed minerals from areas subject to conflicts and instability to be identified with the use of the criteria set by the Commission's Delegated Regulation No. 2019/429, although it is not binding.</p> <p>In particular, Regulation No. 821/2017 introduced supply chain due diligence and risk-management procedures to be adopted by European importers of minerals in order to curtail opportunities for armed groups and security forces to trade in one or more of them. The due diligence obligations should be carried out on the basis of the "OECD Due Diligence Guidance" and shall be duly communicated to suppliers and to the public. Furthermore, importers shall structure their respective internal management systems to support supply chain due diligence by assigning responsibility to senior management as well as establishing a grievance mechanism as an early-warning risk-awareness system or provide such a mechanism through collaborative arrangements with other economic operators or organisations. In addition, Art. 5 of the Regulation introduces relevant risk-management obligations to be put in place in cases of suspected trades with illegal armed groups.</p>	<p>Industrials</p>		<p>Legislative Decree No. 13/2021 Link</p> <p>EU Regulation No. 821/2017 Link</p>



Development	Summary	Sector	Impact	Links
	<p>In order to implement the Regulation and ensure its enforcement, the Italian Government has provided that the Italian Ministry of Economic Development shall be competent to impose monetary fines of up to EUR 20,000 for each violation of the Regulation.</p> <p>The Decree also imposes a requirement on economic operators to implement due diligence and risk-management mechanisms on a preventive basis in order to comply with international trade legislation.</p>			



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Antitrust

Development	Summary	Sector	Impact	Links
FAS fines Apple for abusing its dominant position	<p>On 27 April 2021, the Federal Antitrust Service of Russia ("FAS") fined Apple Inc. for abusive practices associated with its app store and internal rules which allow it to deny third-party developers (and their apps) access to the Apple app store even if their app is compliant with other requirements.</p> <p>The case was initiated by a complaint made by Kaspersky, a major Russian developer of antivirus software. FAS issued Apple with a warning and prescribed changing its internal protocols for its app store. As Apple did not comply with the mandatory requirement of the warning, FAS fined it RUB 0.9 billion for abusing its dominant position. This is one of the largest fines imposed by FAS in recent years. Not surprisingly, Apple is appealing the decision.</p>	Consumer TMT	●	FAS Press Release (in Russian) Link
FAS initiates investigation against Google in relation to YouTube blocking rules	<p>On 19 April 2021, FAS initiated an abuse of dominance case against Google in response to a complaint made by the regional NGO in the TMT sector. The rationale for the investigation is the alleged lack of transparency in YouTube rules on blocking and suspending videos and accounts, and the impact it has on content-makers and users of the platform.</p>	Consumer TMT	●	FAS Press Release (in Russian) Link
Russian Supreme Court adopts extensive guidelines on antitrust legislation and case law	<p>On 4 March 2021, the Russian Supreme Court published a Resolution of Plenary Session "On particular issues, concerning courts applying antitrust legislation" ("Resolution"). The Resolution provides extensive practical guidelines to assist Russian courts when applying and</p>	Cross-sector	●	Resolution (in Russian) Link



Development	Summary	Sector	Impact	Links
	<p>interpreting competition rules in antitrust cases. It partially replaces a similar document issued in 2008.</p> <p>The Resolution covers topics including abuse of dominance, anti-competitive agreements, and unfair competition, as well as some issues concerning the FAS' powers. Below are some of the key points:</p> <ul style="list-style-type: none">- The Supreme Court states that antitrust legislation applies to companies that do not receive profits directly from their core products or services but receive them by other means at a later stage e.g. a company providing equipment free-of-charge but receiving profits from selling compatibles or spare parts.- The Supreme Court clarifies that in terms of defining the market power of the seller in abuse of dominance cases, the balance of power between the sellers and buyers should be thoroughly considered.- The Supreme Court reinstates the principle similar to the 'rule of reason' in discrimination cases, stating that differentiating prices and commercial terms is not an abusive practice if it is justified and reasonable.- The Supreme Court states that joint purchasing agreements are not, in themselves, considered cartels unless it is established that they have restricted competition as their object or effect.- The Supreme Courts supports the FAS' approach to use the concealment of documents and evidence of cartel behavior against the company in an antitrust case.			



Foreign Investment

Development	Summary	Sector	Impact	Links
FDI clearance simplified for certain types of investments	<p>On 9 March 2021, the Federal Law No. 57-FZ dated 29 April 2008 was amended. This law prescribes the procedure when making foreign investments in companies which are of strategic importance for ensuring Russia's defence and State security.</p> <p>The amendments introduce a simplified clearance procedure for investments in strategic entities involved in activities concerning:</p> <ul style="list-style-type: none">– infectious agents and dangerous GMOs (except manufacturing drugs); and– water supply and some services of natural monopolies. <p>The simplified procedure applies if the assets of the strategic entity being acquired associated with the strategic activities do not exceed 1% of the book value of all assets for 3 years preceding the transaction.</p>	Cross-sector		Federal Law No. 40 (in Russian) Link



Trade

Development	Summary	Sector	Impact	Links
Russian Government is now entitled to issue compulsory licenses	<p>On 30 April 2021, the Federal Law on compulsory licensing that was in the pipeline for a long time was finally adopted. The law amends the Russian Civil Code and prescribes that, in exceptional cases, the Russian Government can issue a so-called "compulsory license" permitting the use of an invention protected by a patent without the patent-holder's consent. In such instances, a patent-holder is entitled to receive fair compensation for the license.</p> <p>The initiative which has undergone brutal discussions is largely associated with patents in the life sciences and healthcare sector. The bill was created and supported by the Russian antitrust regulator, who has been a vocal proponent for compulsory licensing as an effective tool to protect competition and security of the domestic healthcare industry. The new rules require manufacturers of generic drugs to seek a compulsory license and start commercialising generic products before the patent for the original drug has expired.</p>	Cross-sector		Federal Law (in Russian) Link



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Antitrust

Development	Summary	Sector	Impact	Links
Swiss Federal Supreme Court tightens Swiss Competition Law with regard to Recommended Resale Prices	<p>On 4 February 2021, the Swiss Federal Supreme Court concluded that recommended resale prices are anti-competitive agreements, in the form of concerted practices within the meaning of the Swiss Cartel Act. In particular, the Court stated that an unilateral information exchange can be sufficient if competitors adapt their market conduct in accordance therewith. Moreover, it held that no pressure or other elements in addition to price adherence are required for the assumption of a concerted practice. In addition, the Court based itself on two facilitations of proof: First, it is presumed that the companies involved took the exchanged information into account when determining their market conduct. Second, uniform behaviour indicates a concerted practice that shall be considered proven if it results in market behaviour that does not correspond to "normal market conditions".</p> <p>The decision relates to the use of electronically issued resale price recommendations to points of sale via an external database operator by pharmaceutical companies. The recommended resale price automatically appeared when the article was scanned. A deviation from the recommendations was possible, but required additional effort from the distributors (doing their own calculations and adjusting the software).</p> <p>The Court further held that the resale price recommendations qualify as illegal price maintenance which is subject to direct fines under the Swiss Cartel Act. The fact that the price recommendations were labelled as "non-</p>	Consumer Cross-sector		Summary of the decision (in German) Link



Development	Summary	Sector	Impact	Links
	<p>binding” was considered irrelevant, because the concerted practice was objectively capable of restricting competition, and there was a high degree of price adherence.</p> <p>This judgment raises the question of whether and how resale price recommendations are still admissible under Swiss Competition Law in the future. Companies with distribution activities or independent distributors in Switzerland should in any case review their practice regarding their resale price recommendations.</p>			
Swiss Federal Supreme Court clarifies that former directors may be interrogated as witnesses in investigation proceedings	<p>On 8 March 2021, the Swiss Federal Supreme Court clarified that the Swiss Competition Commission may, in investigations under the Swiss Cartel Act, interrogate former members/directors of companies being investigated as witnesses without restrictions. In particular, such witnesses are not entitled to rely on the company’s right not to incriminate themselves (principle of nemo-tenetur). Rather, only current members/directors may rely on this right on behalf of the company concerned.</p> <p>In summary, the Court stated that only current members/directors are authorized to act on behalf of the company and therefore to rely on the company’s rights such as the right no to incriminate itself. Former members/directors have to be interrogated as witnesses. Consequently, their statements cannot be attributed to the company. The company’s possibility of an effective defense is, according to the Swiss Federal Supreme Court, not limited, since the statements of the former members/directors may be refuted by the current members/directors.</p>	Cross-sector		<p>Summary of the decision (in German) Link</p>
Introduction of relative market power into Swiss competition law	<p>In the spring session 2021, the Swiss Parliament introduced the concept of relative market power into Swiss competition law. The forthcoming revision of the Swiss Cartel Act implies the following changes:</p> <ul style="list-style-type: none"> – Introduction of the concept of relative market power into Swiss competition law: Relative market power, and thus the question of whether a company has sufficient and reasonable alternatives, will be examined on a vertical level. If such dependence is 	Cross-sector		<p>Legal Compass Link</p>



Development	Summary	Sector	Impact	Links
	<p>established, the company in question will be deemed to have relative market power, regardless of the company's position on the horizontal level. Further, not only suppliers of goods and service providers, but also their customers may be considered to possess relative market power.</p> <ul style="list-style-type: none"> <li data-bbox="546 475 1301 730">– Extension of the existing provisions regarding the abuse of dominance to companies with relative market power: The non-exhaustive list of abusive behavior contained in the Swiss Cartel Act will apply, not only to dominant companies, but also to companies with relative market power, meaning that companies with significantly lower market shares may come under the scrutiny of Swiss competition law. <li data-bbox="546 746 1301 922">– Introduction of a new provision of abusive behavior in connection with the purchase of goods or services abroad: Pursuant to this provision, a company with relative market power or a dominant company will be subject to an obligation to supply and an obligation not to discriminate. <li data-bbox="546 938 1301 1193">– A ban on so-called geoblocking in online-commerce will also be enshrined in Swiss law. The purpose of this new provision is to prohibit geographical market foreclosure in e-commerce. Not only companies, but also end consumers are going to benefit from this new regulation. Unlike the provisions on relative market power outlined above, there is no case-by-case examination of dependencies when applying this new provision. <li data-bbox="546 1209 1301 1353">– It is expected that these new rules will enter into force without resistance possibly during 2021, but at the latest as of 1 January 2022. For further information regarding this topic, see our legal compass. 			



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Antitrust

Development	Summary	Sector	Impact	Links
CMA publishes second progress update on electric vehicle charging market study	<p>On 26 May 2021, the CMA published a second progress update on its market study notice into the supply of charging for electric vehicles in the UK. The CMA launched the market study in December 2020 to examine how competition is developing and whether there are any emerging issues that are arising in the electric vehicle charging sector.</p> <p>The CMA reports concerns relating to investment and competition in the overall electric vehicle charging sector, as well as issues around how consumers interact with both off-street home charging and public charging. It also notes specific challenges for charging in certain situations. The CMA has, however, decided that it will not make a market investigation reference, as it believes that these issues are likely to be more effectively and proportionately addressed through alternative outcomes, such as recommendations to the UK Government and the issuing of guidance. The CMA, therefore, intends to develop a package of remedies within the market study.</p> <p>The CMA expects to publish its final market study report in summer 2021.</p>	Consumer Government and Infrastructure		<p>Progress Update II Link</p> <p>CMA decision not to make a reference Link</p>
CAT dismisses Sabre's application for review of CMA's decision to prohibit Sabre / Farelogix merger	<p>On 21 May 2021, the Competition Appeal Tribunal ("CAT") dismissed Sabre Corporation's application for review of the CMA's final report on its Phase 2 investigation into Sabre's proposed acquisition of Farelogix Inc.</p> <p>Sabre claimed that the CMA's decision was unlawful in asserting jurisdiction over the proposed acquisition on the</p>	Cross-sector		<p>Sabre Corporation v CMA [2021] CAT 11 Link</p> <p>CMA Press Release Link</p>



Development	Summary	Sector	Impact	Links
	<p>basis of the share of supply test in section 23 of the Enterprise Act. The CAT's judgment confirmed that the application of the share of supply test is a matter of judgement for the CMA and that the CMA has a broad discretion in determining the criteria used.</p>			
CMA-ICO publish joint statement on competition and data protection law	<p>On 19 May 2021, the CMA and the Information Commissioner's Office ("ICO") published a joint statement setting out their shared views on the relationship between competition and data protection in the digital economy. It explains:</p> <ul style="list-style-type: none"> – the interactions between competition and data protection in the digital economy, highlighting the synergies and potential tensions between the two policy areas; – the way in which the CMA and ICO are working together to maximise regulatory coherence; and – the joint next steps the CMA and ICO will take, including through the Digital Co-operation Regulatory Framework ("DCRF") to understand and promote outcomes in the digital economy that simultaneously promote competition and enhance data protection and privacy rights. 	Cross-sector		<p>CMA Press Release Link</p> <p>CMA-ICO Joint Statement Link</p>
Court of Appeal dismisses Royal Mail's appeal challenging CAT's application of "as efficient competitor" test	<p>On 7 May 2021, the Court of Appeal dismissed the Royal Mail's appeal against the CAT judgment which upheld Ofcom's August 2018 decision fining Royal Mail £50 million for abusing its dominant position in the wholesale market for bulk mail delivery services. Ofcom found that Royal Mail had engaged in conduct that amounted to unlawful discrimination against postal operators competing with Royal Mail in bulk mail delivery by issuing contract change notices which introduced discriminatory prices, even though those notices were never implemented.</p> <ul style="list-style-type: none"> – Royal's Mail challenged the CAT's conclusion that Ofcom had not erred in its consideration of whether the price changes would foreclose an "equally efficient competitor" (the "AEC Test"). The Court of Appeal dismissed this and confirmed that Ofcom had given adequate consideration to the AEC Test. It 	Government and Infrastructure		<p>Royal Mail plc v Office of Communications [2021] EWCA Civ 669 Link</p>



Development	Summary	Sector	Impact	Links
	<p>held that: it was not necessary to conduct an AEC Test in all cases;</p> <ul style="list-style-type: none"> - in this case, the application of the AEC Test was problematic, because it did not fall easily into any of the categories of abusive pricing in which an AEC test had previously been considered in case law; - the CAT was entitled to find that the AEC test relied upon by Royal Mail was not persuasive in showing that the differential pricing was not anti-competitive; - Ofcom had established the abuse of Royal Mail's dominant position by other evidence; and - Ofcom had not been required as a matter of law to treat the AEC test as either determinative or highly relevant. 			
<p>Policy paper "Embedding coherence and cooperation in the fabric of digital regulators" published</p>	<p>On 4 May 2021, the DRCF, composed of the CMA, Financial Conduct Authority, ICO and Ofcom, published its response to the Department for Digital, Culture, Media and Sport ("DCMS") setting out the DRCF's views on how to achieve coherence in regulatory approaches across digital services.</p> <p>The DRCF considers that further measures to strengthen the existing voluntary cooperation between its member regulators could help ensure that the digital regulatory landscape is fit for purpose in the future. It recommends that the UK Government should:</p> <ul style="list-style-type: none"> - review information sharing gateways of digital regulators to ensure that they are suitable for expected cross-regulatory engagement in the future, and support the actions of the regulators in their functions with respect to digital markets; - adopt measures to incorporate regulatory coherence and co-operation in the duties of digital regulators, for example, by aligned supplementary duties (e.g. to promote benefits for consumers, data subjects and citizens), and duties to consult and duties to co-operate; and 	<p>Cross-sector</p>		<p>DRCF Response Link</p>



Development	Summary	Sector	Impact	Links
	<ul style="list-style-type: none"> consider mechanisms that allow it to provide input on its strategic priorities with respect to digital services and platforms. 			
European Scrutiny Committee reports on EU's proposed Digital Services and Digital Markets Acts	<p>On 27 April 2021, the cross-party parliamentary European Scrutiny Committee ("Committee") issued a report on the Commission's proposed Digital Services Act and Digital Markets Act. The Committee's report states that as well as impacting UK businesses trading in the EU, the proposals address many of the areas the UK government is tackling with its new Digital Markets Unit and planned Online Safety Bill. The Committee notes that the EU proposals are likely to influence international standards for the digital economy, but expresses concern that the UK government does not appear to be engaging with EU policy makers on the proposed legislation.</p> <p>The Committee has written to the Minister for Digital and Culture asking her to set out the government's plans for engagement with the EU proposals, which the Commission hopes will come into force in 2023.</p>	Cross-sector TMT		Report Link
Cartels in the construction industry	<p>On 28 April 2021, the CMA published a blog on "Cartels in construction", reminding the construction industry of the need to comply with competition law and company directors of their responsibility to lead by example, and be aware of how their organisation is operating. The CMA has fined construction firms £67 million in five cases in as many years, covering a range of construction products and services: concrete drainage, groundworks, office fit out services, galvanised steel tanks and roofing materials. It has disqualified 11 directors from acting as directors as a result of these cases. There have also been two criminal convictions.</p> <p>On 26 April 2021, the CMA also published case studies on two cartel investigations in the construction sector relating to rolled lead roofing materials and groundworks.</p>	Real Estate		CMA Blog Link Case Study: Rolled Lead Link Case Study: Groundworks Link
CAT dismisses Roland's appeal in CMA's RPM musical instruments	<p>On 19 April 2021, the CAT issued its judgment dismissing the appeal by Roland (U.K.) Limited and Roland Corporation (together "Roland") against the CMA's decision to impose a fine of just over £4m on Roland for</p>	Cross-sector		CAT Judgment Link



Development	Summary	Sector	Impact	Links
investigation and increases fine	<p>engaging in resale price maintenance ("RPM") with a single UK distributor. Roland originally settled with the CMA, admitting both the infringement and the maximum amount of the penalty.</p> <p>Roland appealed against the level of the penalty, but the CAT unanimously dismissed its appeal. The CAT held that: (a) RPM is a serious 'by object' infringement of the competition rules that needs to be deterred in the UK; and (b) it was reasonable for the CMA to set the leniency discount at 20%.</p> <p>Furthermore, the CAT granted the CMA's application to remove the settlement discount from the fine imposed. In signing a settlement agreement, Roland had agreed to the £4 million fine. It was in return for that agreement that the CMA had rewarded Roland by reducing the fine by 20%. As Roland had resiled from its agreement, the CAT held it was appropriate to revoke the settlement discount and increased the fine to just over £5 million.</p> <p>This case highlights that a company which agrees to end an investigation through settlement risks losing its settlement discount if it later appeals against the CMA's decision.</p>			<p>CMA Press Release Link</p>
Digital Markets Unit launched	<p>On 7 April 2021, the Department for Business, Energy and Industrial Strategy ("BEIS"), the DCMS and the CMA announced that a new Digital Markets Unit ("DMU"), established within the CMA, has begun work in shadow, non-statutory form. The DMU will oversee a new pro-competition regime for digital platforms with strategic market status. The UK government intends to consult on the design of the new pro-competition regime in the first half of 2021 and legislate to put the DMU on a statutory footing as soon as Parliamentary time allows. In the meantime, the DMU's work will focus on:</p> <ul style="list-style-type: none"> - Carrying out preparatory work to implement the statutory regime, including building teams with the relevant capabilities and preparing draft guidance. - Supporting and advising government on establishing the statutory regime. 	Cross-sector		<p>DCMS and CMA Press Release Link</p> <p>DMU Terms of Reference Link</p>



Development	Summary	Sector	Impact	Links
	<ul style="list-style-type: none"> Evidence-gathering on digital markets. The government has asked the DMU to begin looking at how codes of conduct could work in practice to govern the relationship between digital platforms and groups such as small businesses which rely on them to advertise or use their services to reach their customers. Engaging stakeholders across industry, academia, other regulators and government, as well as internationally. A forum will be established for the DMU to update government on its work. It will bring together officials from the CMA, DCMS, BEIS and HM Treasury, to agree a work programme for the non-statutory DMU on its advice to government, and monitor progress against this. The Information Commissioner's Office, Ofcom and the Financial Conduct Authority will also join this forum to inform the work programme on relevant areas as required. 			
Government response to CMA State of Competition Report 2020	On 1 April 2021, BEIS published the UK Government's response to the CMA's State of Competition report 2020 (" Report "), published on 30 November 2020. The government considers the Report (and future reports) valuable evidence to help inform policy. The government stated that the Report reaffirms the importance of ongoing reporting and invites the CMA to work with the government to confirm the regularity of future reports. The government also recommends that the CMA continue engaging with the wider academic community to refine the approach to future reports.	Cross-sector		Government Response Link
Code Committee of Takeover Code publishes response statement on conditions to offers and offer timetable	On 31 March 2021, the Code Committee of the Takeover Panel published its response statement, following its consultation on proposed changes to the Takeover Code (" Code ") relating to conditions to offers and the offer timetable. The key changes made to the Code include: <ul style="list-style-type: none"> removal of the special treatment given to conditions and pre-conditions relating to CMA/Commission clearance of an offer, and the introduction of an 	Cross-sector		Takeover Panel Press Release Link Response Statement Link



Development	Summary	Sector	Impact	Links
	<p>ability for an offeror or the offeree to request that the Panel suspends the offer timetable if one or more conditions relating to an official authorisation or regulatory clearance have not been satisfied by the date which is two days prior to Day 39;</p> <ul style="list-style-type: none"> - the introduction of a single date by which all of the conditions to an offer must be satisfied; - the introduction of acceptance condition invocation notices, with an offeror being required to serve such a notice if it wishes to invoke the acceptance condition and lapse its offer prior to the "unconditional date"; - a requirement for an offeror to set a "long-stop date" for a contractual offer; - ability of offeree company shareholders who have accepted an offer to withdraw their acceptance at any time prior to the satisfaction of the acceptance condition. <p>Changes to the Code will take effect on 5 July 2021 and will apply in relation to firm offers announced on or after that date unless that would give the amendments retroactive effect. Any ongoing firm offers that straddle the implementation date, and any offers announced on or after that date which are in competition with such ongoing offers, will continue to be subject to the provisions of the Code that were in effect before the implementation date.</p>			
<p>CMA publishes response on government's consultation on public procurement reform</p>	<p>On 31 March 2021, the CMA published its response to the government's consultation on its Green Paper "Transforming public procurement", which focuses on overhauling the public procurement regime as a result of the end of the UK-EU transition period. The CMA recommends changes intended to ensure that reforms to the procurement regime, and changes to procurement practice that may flow from them, harness the benefits of healthy, competitive markets to the benefit of taxpayers and public service users.</p> <p>The CMA notes that the Green Paper does not deal directly with the risks of bid-rigging and highlights the need for</p>	<p>Government and Infrastructure</p>		<p>CMA Response Link</p>



Development	Summary	Sector	Impact	Links
	<p>government procurers to be aware of the risk of illegal cartel activity in public procurement, and recommends that the proposed new procurement unit should be given the necessary training and expertise in this regard.</p> <p>The CMA also recommends that the list of procurement principles set out in the Green Paper should be expanded to include an "effective competition" principle, to the effect that procurement should promote healthy, competitive markets, which in turn drive better value for money and reduce the risk of illegal bid-rigging cartels.</p>			
CMA publishes Annual Plan 2021/22	<p>On 23 March 2021, the CMA published its Annual Plan for 2021/22, which sets out the CMA's planned work and priorities in relation to four themes:</p> <ul style="list-style-type: none"> – protecting consumers and driving recovery during and after the coronavirus pandemic, focusing in particular on protecting the vulnerable from breaches of competition and consumer protection laws and poorly functioning markets, as well as supporting the UK economy by fostering competition to promote innovation, productivity and growth; – CMA's place as a global competition and consumer protection authority as it assumes new responsibilities after the UK-EU transition period; – fostering effective competition in digital markets; and – supporting the transition to a low carbon economy. <p>The CMA also comments on its belief that legislative reform is necessary to bring about stronger, swifter and more flexible competition and consumer protection regimes, in particular to meet the challenges (including accelerating digitalisation and concerns about the strength and efficiency of the current consumer and competition systems) that are fundamentally changing the environment in which it operates.</p>	Cross-sector		<p>CMA Press Release Link</p> <p>CMA Annual Plan 2021/22 Link</p>
Commission refers UK to ECJ for failure to fully recover illegal tax exemption aid in Gibraltar	<p>On 19 March 2021, the Commission announced its decision, under Article 108(2) TFEU, to refer the UK to the ECJ for failing to fully recover unlawful State aid granted as a tax exemption for passive interest and royalties in Gibraltar.</p>	Cross-sector		<p>Commission Press Release Link</p>



Development	Summary	Sector	Impact	Links
	<p>Although the UK has left the EU, as the Commission's decision relating to the illegal aid was adopted before the end of the transition period, the UK is required to recover all unlawful aid granted in this case. Further, under Articles 95(1) and 87(2) of the UK-EU Withdrawal Agreement, the Commission is entitled to refer the UK to the ECJ for failing to implement a Commission decision taken before the end of the transition period.</p>			
CMA accepts director disqualification undertakings from two directors in relation to precast concrete cartel	<p>On 18 March 2021, the CMA announced that it accepted legally binding competition disqualification undertakings under section 9B of the Company Directors Disqualification Act 1986 from Mr Eoin McCann and Mr Francis McCann, former directors of FP McCann Ltd ("FPM"). In October 2019, the CMA issued a decision finding that FPM and Stanton Bonna Concrete Limited amongst others had infringed the Chapter I prohibition of the Competition Act 1998 ("CA98") and Article 101(1) TFEU by fixing/coordinating their prices, sharing markets by allocating customers and exchanging competitively sensitive information.</p> <p>Mr Eoin McCann and Mr Francis McCann attended regular cartel meetings on behalf of FPM. As a result of their involvement in the cartel, Mr Eoin McCann will be disqualified for 12 years and Mr Francis McCann for 11 years. These are the longest period for director disqualification secured by the CMA to date, reflecting the serious nature of the infringement and the extent of the directors' involvement in the cartel. The disqualifications will commence on 31 March 2021.</p> <p>As at 31 May 2021, the CMA had secured 25 director disqualifications following competition investigations.</p>	Cross-sector		<p>CMA Press Release Link</p>
CMA publishes revised mergers assessment guidelines	<p>On 18 March 2021, the CMA published the final revised version of its Merger Assessment Guidelines (CMA129) to bring them up to date with the CMA's evolving practices, case law, changes in the wider economy and types of mergers that it is now assessing, including those in digital and dynamic mergers. The revised guidelines also seek to address the recommendations of the Furman and Lear reports in relation to digital markets. The CMA has also</p>	Cross-sector		<p>CMA Press Release Link</p> <p>CMA Merger Assessment Guidelines (CMA129) Link</p>



Development	Summary	Sector	Impact	Links
	published a revised version of its Quick Guide on merger assessment to reflect its revised guidance.			Quick Guide to UK Merger Assessment (CMA18) Link
ORR opens Competition Act investigation into provision of training services	On 12 March 2021, the UK Office of Rail and Road (" ORR ") opened a competition investigation relating to the provision of certain training services in the passenger rail transport sector. The ORR indicates that the first decision point will be in June 2021.	Government and Infrastructure	●	ORR Press Release Link
CMA launches market study into children's social care provision	On 12 March 2021, the CMA launched a market study into children's social care provision in England, Wales and Scotland. The CMA intends to use this market study to examine concerns around high prices paid by local authorities and inadequate supply of appropriate placements for children in their care. The CMA intends, in particular, to consider the efficacy of the market in providing such important social services, including the role of private provision. It will also consider how well the current market is working and explore how it could be made to work better.	Government and Infrastructure	●	CMA Press Release Link CMA Case Page Link
CMA secures three director disqualification undertakings in roofing materials cartel	On 10 March 2021, the CMA announced that it had accepted legally binding competition disqualification undertakings from Mr Jocelyn Campbell, Mr Graham Hudson and Mr Maurice Sherling in relation to the roofing materials cartel. When the competition infringements took place, these men were directors of the infringing companies. Mr Campbell has given a disqualification undertaking not to act as a director of any UK company for six and a half years, with the disqualification beginning on 18 March 2021. Mr Hudson has given a disqualification undertaking for four years and Mr Sherling three years with their disqualifications commencing on 30 May 2021.	Cross-sector	●	CMA Press Release Link
CMA publishes blog on international cooperation in mergers	On 5 March 2021, the CMA published a blog post entitled "International co-operation in merger investigations". Since the end of the transition period, co-operation across jurisdictions is becoming more important for the CMA, as	Cross-sector	●	CMA Blog Link



Development	Summary	Sector	Impact	Links
<p>CMA opens abuse of dominance investigation into Apple for possible exclusivity and tying provisions in its application developer T&Cs</p>	<p>the mergers it investigates are increasingly global in nature. Also, some transactions that it investigates will be subject to parallel review by the Commission. The CMA advises companies that, to ensure the best possible chance of agencies aligning on timings of reviews, they should consider notifying their mergers for review in parallel across jurisdictions instead of sequential reviews, and ensure they continue to provide information to all agencies in a timely manner.</p> <p>On 4 March 2021, the CMA announced that it had opened an investigation into suspected breaches of the Chapter II prohibition CA98 by Apple (UK) Limited, Apple Europe Limited and Apple Inc ("Apple"). The investigation concerns exclusivity and tying T&Cs imposed on iPhone and iPad application developers, and follows on from the CMA's 2020 digital advertising market study. The CMA's concerns relate to:</p> <ul style="list-style-type: none"> - the fact that all apps on the App Store must be approved by Apple, and certain terms and conditions contain exclusivity provisions that mean developers can only distribute apps to iPhones and iPads via the App Store, and tying restrictions requiring developers who offer 'in-app' transactions to use Apple's payment system; and - Apple charges of up to 30% commission for these transactions and App purchases. <p>The CMA's investigation will consider if Apple has a dominant position in the distribution of apps on Apple devices in the UK, and if Apple imposes unfair or anti-competitive terms. The CMA will assess if this results in consumers having less choice or paying higher prices.</p> <p>As the Commission opened a competition investigation into Apple before the end of the UK transition period, the Commission and the CJEU will retain jurisdiction for any pre-transition period infringement. However, the CMA and UK courts will have jurisdiction over any ongoing infringement of UK competition law.</p>	<p>TMT</p>		<p>CMA Press Release Link CMA Case Page Link</p>



Foreign Investment

Development	Summary	Sector	Impact	Links
National Security and Investment Act 2021 published	<p>On 5 May 2021, the National Security and Investment Act 2021 ("NSI Act") was published. The NSI Act provides for a new, standalone regime enabling the UK Government to scrutinise and intervene in acquisitions and investments to protect national security in the UK. Unlike similar regimes already in force in other jurisdictions especially in the EU, the UK regime will apply to investors from any country.</p> <p>Certain types of transactions in 17 key sectors will be subject to mandatory notification to protect national security. Failure to notify such a transaction could result in severe penalties including criminal sanctions.</p> <p>The new regime has retroactive effect meaning that investments made and M&A transactions undertaken after 12 November 2020 could potentially be investigated (after the deal has been completed) once the new regime comes into effect later this year. Businesses undertaking M&A transactions and investments, therefore, need to be aware of the new regime and its implications on current and recent deals.</p>	Cross-sector		<p>Eversheds Sutherland Briefing Link</p> <p>Eversheds Sutherland Podcast Link</p>



Trade

Development	Summary	Sector	Impact	Links
UK prepares to launch new trade deal negotiations with Canada and Mexico	<p>On 18 May 2021, the DIT announced that it will begin negotiations to upgrade trade deals with Canada and Mexico this year. Building on the deals signed in 2020, which secured tariff-free exports on 98% and 88% of goods to Canada and Mexico respectively, this next generation of trade deals will be better tailored to the UK economy and provide the opportunity to set new benchmarks in areas like digital trade, climate and women's economic empowerment.</p> <p>Last year the UK exported goods and services worth over £2 billion to Mexico and over £11 billion to Canada. Overall trade with Canada and Mexico was worth £22.8 billion and £5.1 billion respectively in 2019. The UK Government stated that a new trade deal with Mexico will support jobs and opportunities across the UK in industries like digital, data and services, while an improved UK-Canada trade agreement will support British jobs in areas such as car manufacturing and food and drink. Forging stronger trade links with Canada and Mexico will also support the UK's ambition to join the Trans-Pacific Partnership (CPTPP), as they are both members.</p> <p>The DIT is consulting on the UK's trading arrangements with Canada and Mexico. The consultation closes on 12 July 2021.</p>	Cross-sector		Press Release Link Consultation Link
CMA consults on draft guidance on the Office for the Internal Market's functions	<p>On 27 May 2021, the CMA opened a consultation on draft guidance on the functions of the Office for Internal Market ("OIM"). The OIM was created pursuant to the UK Internal Market Act 2020 as an independent body within the CMA that will report to and provide impartial advice to the UK Parliament and the devolved administrations, following the return of powers from the EU to the devolved nations after Brexit. The draft guidance covers:</p> <ul style="list-style-type: none"> – details on the OIM's functions; – the types of analysis that the OIM expects to undertake - most of this will relate to the impact of 	Cross-sector		Press Release Link Consultation Link



Development	Summary	Sector	Impact	Links
	<p>divergent regulatory approaches within the internal market;</p> <ul style="list-style-type: none"> – the principles on which the OIM will decide which requests for advice to accept and what monitoring work to carry out; – procedural arrangements on how the devolved administrations can request advice from the OIM and what procedures the OIM will adopt for handling those requests; and – the OIM's information gathering powers. <p>The consultation closes on 23 July 2021.</p>			
UK Government launches consultation on trade negotiations with India	<p>On 25 May 2021 the Department for International Trade ("DIT") opened a consultation relating to possible negotiations for a new free trade agreement ("FTA") with India. The consultation asks respondents to provide input in relation to various areas that a future UK-India FTA might cover, including:</p> <ul style="list-style-type: none"> – trade in goods, including tariffs, rules of origin, customs procedures, trade remedies, sanitary and phytosanitary measures, and product standards, regulation and certification. Negotiations on tariff reductions are likely to be difficult as India has historically been reluctant to liberalise its tariff regime, particularly in relation to certain sensitive agricultural products; – trade in services and investment, including financial services, telecoms, recognition of professional and academic qualifications, and digital trade. India is expected to push for extensive commitments on the recognition of qualifications and on visa arrangements for business trips, while the UK is expected to prioritise the liberalisation of India's services sector, especially in relation to financial and professional services; and – other trade-related areas, including competition policy, subsidy control, government procurement, 	Cross-sector		<p>Consultation Page Link</p> <p>DIT Press Release Link</p>



Development	Summary	Sector	Impact	Links
	<p>intellectual property, and labour and environmental standards.</p> <p>The consultation closes on 31 August 2021.</p>			
UK consults on rebalancing measures in response to Section 232 tariffs by US on steel and aluminium imports	<p>On 24 May 2021, the UK Government launched a consultation on the UK's proposed rebalancing measures in response to Section 232 of the US Trade Expansion Act 1962 ("Section 232") tariffs by US on UK steel and aluminium imports. The consultation closes on 5 July 2021.</p> <p>The UK currently has measures in place on products like whiskey, motorcycles and tobacco in response to US tariffs. Originally brought in by the EU, these measures were rolled over by the UK at the start of the year. The purpose of the consultation is to ensure that the rebalancing measures are tailored to the needs of the UK economy and shaped to defend industries across the UK, including steel and aluminium manufacturers.</p>	Cross-sector		<p>UK Press Release Link</p> <p>Consultation Link</p>
House of Commons Library publishes report on UK-EU level playing field commitments	<p>On 20 May 2021, the House of Commons Library published a detailed report on the level playing field provisions in the UK-EU Trade and Co-operation Agreement, which include competition policy and subsidy control. The report describes the negotiating positions of the parties, the terms of the final agreement, and highlights relevant commentary on the provisions.</p>	Cross-sector		<p>Report Link</p>
Trade Act receives Royal Assent	<p>On 29 April 2021, the Trade Act received Royal Assent. This Act provides key measures that are required as the UK government develops its trade policy. These measures include:</p> <ul style="list-style-type: none"> – a power to ensure that the UK can implement procurement obligations that will arise from the UK acceding to the Agreement on Government Procurement ("GPA") in its own right. ember state of the EU. The GPA is a plurilateral agreement within the World Trade Organisation framework. It mutually opens government procurement markets and seeks to address trade barriers among its parties. This power will allow the Government and devolved authorities to use the negative resolution procedure to implement changes to domestic law which will be 	Cross-sector		<p>UK Government Press Release Link</p> <p>Trade Act 2021 Link</p>



Development	Summary	Sector	Impact	Links
	<p>necessary for the UK to meet and enforce obligations arising from its independent membership of the GPA;</p> <ul style="list-style-type: none"> - a power to assist with the implementation of UK trade agreements with partner countries with which the EU has existing trade agreements as at 31 January 2020. This power will allow the Government and devolved authorities to use the affirmative resolution procedure to implement changes to domestic law which will be necessary for the UK to meet obligations flowing from these agreements; - provisions establishing a new body, the Trade Remedies Authority ("TRA"), to deliver the new UK trade remedies framework, and to enable the TRA to provide advice, support and assistance to the Secretary of State in connection with the conduct of international disputes, other functions of the Secretary of State relating to trade and functions of the TRA. - a power for HM Revenue and Customs ("HMRC") to collect information on behalf of the government to confirm the number of exporters of goods and services there are in the UK, to enable the government to identify those exporters for trade promotion purposes; and - a power to establish a data sharing gateway between HMRC and other public and private bodies, so that those bodies, including the Department for International Trade, can discharge their public functions and access relevant data for research, monitoring and evaluation. 			
<p>New UK corruption sanctions regime</p>	<p>On 26 April 2020, the UK introduced a new global anti-corruption sanctions regime, and imposed sanctions on 22 people whom the UK government had reasonable grounds to suspect had been involved in serious corruption. Under the new Global Anti-Corruption Sanctions Regulations 2021 (SI 2021/488), those people will be subject to an asset freeze and travel ban.</p>	<p>Cross-sector</p>		<p>Press Release Link</p>



Development	Summary	Sector	Impact	Links
UK adds Myanmar Economic Corporation to its human rights sanctions list	On 1 April 2021, the UK added the Myanmar Economic Corporation (" MEC ") to its sanctions list pursuant to the Global Human Rights Sanctions Regulations 2020 (SI 2020/680). The sanctions will be enforced immediately for its involvement in serious human rights violations by making funds available to the military, as well as its association with senior military figures. Designating MEC will prohibit funds and economic resources being made available to any subsidiaries 'owned or controlled' by MEC as defined by the Global Human Rights sanctions regime. The MEC is described as a major conglomerate that is, in practice, owned and governed by, and for the benefit of, the Myanmar Ministry of Defence.	Government and Infrastructure		Press Release Link
UK and US designate Burmese military owned or controlled entities	On 25 March 2021, the UK and US governments designated the Burmese military-owned conglomerate "Myanmar Economic Holdings Ltd" (" MEHL "). It has been listed under the Global Human Rights Sanctions Regulations 2020 due to its alleged involvement in serious human rights violations against the Rohingya, and on the basis that it is owned by designated senior military personnel. MEHL is alleged to have assisted in raising funds that provided support for Tatmadaw personnel engaged in 'clearance operations' comprising ethnic cleansing and other human rights violations. The US Office of Foreign Assets Control (" OFAC ") has also listed "Myanmar Economic Corporation Limited" (" MECL "). Its press release states that MEHL and MECL dominate certain sectors of the Burmese economy, including trading and natural resources, and that the sanctions seek to target the military's economic resources.	Government and Infrastructure		The Global Human Rights Sanctions Regulations 2020 Link UK Financial Sanctions Notice Link US Press Release Link US Notice Link

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Italian company pleads guilty to violating US export controls	On 27 May 2021, GVA International Oil and Gas Services (" GVA "), an Italian company, pleaded guilty in the US District Court of the Southern District of Georgia, to violating the Export Control Act. GVA is the latest defendant to admit participating in a scheme to export a USD 17.3 million power turbine from the US to Russia for use on a Russian Arctic deep-water drilling platform, expressly prohibited by the US Department of Commerce without first obtaining a license.	Energy Industrials	●	Press Release Link
Texan company fined USD 55,000 for exporting rifle scopes to Russia and Ukraine	On 17 May 2021, the Bureau of Industry and Security issued an order stating that TeleDynamics LLP of Austin, Texas had agreed to pay USD 55,000 to settle allegations that it had caused, aided, or abetted violations of US export controls in respect of Russia and Ukraine. The allegations related to the export of unlicensed rifle scopes, valued at approximately USD 1,047, to Russia and Ukraine. At all times during the export of these items, an export licence was required. Further, TeleDynamics were aware of the export licencing requirements, having been notified by US Customs and Border Protection on a number of occasions that shipments were being detained due to TeleDynamics not having the required export licence.	Cross-sector	●	Final Order Link
OFAC removes Sudan from terrorism sanctions regulations	On 20 May 2021, OFAC amended the Terrorism List Governments Sanctions Regulations to reflect the rescission of Sudan's designation as a state sponsor of terrorism. One general licence has been removed, and another general licence has been amended to delete references to the Government of Sudan and Sudanese nationals. It is no	Cross-sector	●	Amendment Link

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Development	Summary	Sector	Impact	Links
	longer prohibited to transact with the Sudanese Government.			
US State Department agrees USD 13 million settlement with Honeywell International	<p>On 4 May 2021, the US State Department announced that an administrative settlement of USD 13 million had been reached with Honeywell International Inc of Charlotte, North Carolina, a US multinational technology and manufacturing company.</p> <p>The Department agreed to suspend USD 5 million of this amount on the condition that the funds will be used for Department-approved Consent Agreement remedial compliance measures to strengthen Honeywell’s compliance program. In addition, for an initial period of at least 18 months, an external Special Compliance Officer will be engaged by Honeywell to oversee the Consent Agreement, which will also require the company to conduct one external audit of its compliance program during the Agreement term as well as implement additional compliance measures.</p> <p>The settlement addressed 34 charges alleging that between 2011 to 2015, and in 2018, Honeywell exported/authorised the re-transfer of technical defence data controlled under the Arms Export Control Act.</p>	Government and Infrastructure Industrials		<p>Press Release Link</p>
US imposes new sanctions on Russia	<p>On 15 April 2021, the US announced a series of robust sanctions against the Russian government and businesses on the basis of its finding that Russia had engaged in a series of “harmful foreign activities,” including, among others, interference in free and fair US elections in 2020 and engagement in the broad-scope malicious cyber activities against the US and its allies (the “SolarWinds” hacking attack), and other “Russian malfeasance”.</p> <p>The White House issued an Executive Order (“Blocking Property with Respect to Specified Harmful Foreign Activities of the Government of the Russian Federation”) authorising the imposition of wide-ranging sanctions that prohibit dealings by US persons with parties designated by the US Department of Treasury on the basis of their operation in the technology or defense sectors of the Russian economy, or their participation in election</p>	Cross-sector		<p>Executive Order Link</p> <p>by the US Department of State Link</p> <p>Directive Link</p> <p>Chemical and Biological Weapons Control and Warfare Elimination Act Directive Link</p> <p>OFAC 50% Rule Link</p> <p>Executive Order</p>

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	<p>interference, cyber activities, and a range of other activities.</p> <p>The White House Fact Sheet and Treasury Press Release say the new Executive Order sends a signal that the US will “impose costs for Russian Government actions that seek to harm” the US. The actions highlight how multiple Russian officials, proxies and intelligence agencies coordinated to interfere with recent US elections.</p> <p>According to the press release, “private and public sector corruption facilitated by President Vladimir Putin has enriched his network of confidants, who used their illicit business connections to advance Russia’s campaign to undermine the 2020 U.S. presidential election—and to give Russia plausible deniability in its disinformation activities”.</p> <p>As a result of the Order, the US Department of State expelled 10 officials from the Russian diplomatic mission in Washington, DC.</p> <p>OFAC also designated:</p> <ul style="list-style-type: none"> – six (6) Russian entities pursuant to the Order for providing support to the Russian Intelligence Agencies’ malicious cyber operations, – thirty-two (32) entities and individuals for carrying out Russian government-directed attempts to influence the 2020 US presidential election, and – eight (8) entities and individuals associated with Russia’s ongoing occupation and repression in Crimea, <p>and issued a Directive that prohibits US financial institutions from participating in the primary market for ruble or non-ruble denominated bonds issued after 14 June 2021 by certain Russian Government mail entities.</p>			Link
<p>OFAC designates Burmese state-run gemstone enterprise</p>	<p>On 8 April, pursuant to Executive Order 14014, OFAC designated Myanmar Gems Enterprise ("MGE"), a Burmese state-owned entity, for being a political subdivision, agency or instrumentality of the Burmese government. MGE operates under the Ministry of Natural Resources and Environmental Conservation, and is responsible for all</p>	<p>Government and Infrastructure</p>		<p>Press Release Link</p>

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Development	Summary	Sector	Impact	Links
	gemstone-related activities in Myanmar, which are said to be a key economic resource for the Burmese.			
OFAC removes two Italian companies from the Venezuela sanctions list	<p>On 1 April 2021, OFAC delisted two Italian companies that were designated under Executive Order 13850 (Venezuela sanctions) on 19 January 2021, the final day of the Trump administration. They are: AMG S.A.S. di Alessandro Bazzoni & C. and Serigraphiclab di Bazzoni Alessandro, both of which are owned by Alessandro Bazzoni, an Italian restaurant owner.</p> <p>After receiving additional information following the designation, OFAC concluded that the companies were owned by a different Alessandro Bazzoni than the person designated.</p>	Government and Infrastructure		<p>Press Release Link</p>
US reaches settlement with Italian heating company over Iran exports	<p>On 26 March 2021, the OFAC announced that Nordgas has agreed to pay USD 950,000 (USD 650,000 of which will be suspended) to settle its liability for violations of the Iranian Transactions and Sanctions Regulations.</p> <p>OFAC agreed to the partial suspension of the settlement in view of Nordgas' financial circumstances, its cooperation with OFAC and its implementation of enhanced compliance commitments, including the submission of a report to OFAC on an annual basis for 5 years detailing how it is meeting those commitments.</p>	Energy Industrials		<p>Announcement Link</p>
US places sanctions on Myanmar's economic holdings companies which extend to all majority-owned subsidiaries	<p>In its effort to intensify international pressure on Min Aung Hlaing's military government, the US placed sanctions on two holding companies through which the US alleges that the Myanmar (Burmese) military controls significant segments of the country's various commercial sectors.</p> <p>Myanma Economic Holdings Public Company Limited (MEHL) and Myanmar Economic Corporation Limited (MEC) are designated as Specially Designated Nationals and Blocked Persons. The sanctions extend to entities that are 50% or more directly or indirectly owned by these companies. All persons (US and non-US) have until June 22 2021 to wind down their transactions with MEHL, MEC or their designated subsidiaries.</p>	Cross-sector		<p>Executive Order 14014 Link</p> <p>General License 1 Link</p> <p>General License 2 Link</p> <p>General License 3 Link</p> <p>General License 4 Link</p> <p>FAQs Link</p>

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Development	Summary	Sector	Impact	Links
<p>Xiaomi wins preliminary injunction enjoining enforcement of Trump-era securities trading ban</p>	<p>On March 12 2021, Beijing-based smartphone manufacturer Xiaomi Corporation won a preliminary injunction from the DC District Court, enjoining the US government from enforcing a Trump-era ban prohibiting US persons from purchasing or possessing Xiaomi’s publicly traded securities.</p> <p>The Court questioned the basis and authorities by which the Department of Defense placed Xiaomi on the list, more than 20 years after the statutory authority was enacted.</p> <p>The ruling is interesting because typically US government agency decisions are granted a great degree of deference in issues affecting national security. It opens the door to question whether other Trump-era sanctions designations were sufficiently substantiated.</p>	<p>Cross-sector</p>	<p></p>	<p>November 13, 2020 Legal Alert Link</p>

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