

COMPETITION & REGULATORY NEWSLETTER

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“*The world is not waiting for us*”: European Commission President Ursula von der Leyen unveils European Commission’s Competitiveness Compass

On 29 January 2025, European Commission President Ursula von der Leyen [unveiled](#) the Commission’s Competitiveness Compass.

Focusing on the three transformational imperatives identified by Mario Draghi in his 2024 report on “[The future of European competitiveness](#)” (namely (i) closing the innovation gap, (ii) decarbonisation and competitiveness, and (iii) reducing dependencies and increasing security), the Compass outlines the Commission’s approach for boosting the EU’s global competitiveness and securing sustainable prosperity over the next five years. It comes amid concerns about lacklustre EU economic growth and the growing innovation gap with the US and China. The Compass builds on Draghi’s recommendations and reinforces many of the points set out in von der Leyen’s [mission letter](#) to new EU Competition Commissioner Teresa Ribera (see a [previous edition](#) of this newsletter).

Key points for competition policy

The Compass recognises that competition policy has a key role in strengthening Europe’s competitiveness, noting the importance of “*rigorous and effective*” competition enforcement. Nevertheless, echoing Draghi and von der Leyen, it advocates a “*fresh approach*” that “*keeps pace with evolving markets and tech innovation*” and enables companies to “*scale up in global markets*” while still ensuring a level playing field in the Single Market. This suggests that the EU will continue its robust enforcement strategy but may place more weight on growth and innovation arguments. Simplifying, speeding up and better targeting competition enforcement will be central to the new approach. The Commission is proposing to take a range of specific actions, including:

- **Reviewing the Horizontal Merger Control Guidelines** to give adequate weight to innovation, resilience, and the “*investment intensity*” of competition in specific sectors. The current Guidelines have been in place since 2004. It remains to be seen whether the Commission will adopt some of Draghi’s more striking proposals, including the introduction of an ‘innovation defence’ that would allow transactions to be cleared on the basis that they would lead to increased innovation.
- **Enforcing the Digital Markets Act (DMA)** against large tech companies to “*open up closed ecosystems and enable innovative businesses to propose new digital services to customers*”. The Commission is investigating a number of companies for potential violations of their obligations under the DMA amid speculation as to the intensity with

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which it will continue to do so following criticism from US President Donald Trump that the EU is unfairly targeting US tech companies.

- **Reviewing the Technology Transfer framework** to ensure that companies have clear, simple and up-to-date rules for pro-competitive technology licensing agreements. On 31 January 2025, the Commission launched a call for evidence and a public consultation to seek feedback on possible revisions to the framework. The Commission is determined to incentivise research and development and foster a thriving tech sector.
- **Developing a new “flexible and supportive” State aid framework** to facilitate the switch to clean technologies and encourage investment for decarbonisation. Further detail is expected in the upcoming Clean Industrial Deal, with the development of the framework scheduled for the second quarter of 2025. The Commission is also seeking to promote wider use of an existing State aid policy that allows Member States to subsidise projects that benefit the EU.
- **Reviewing public procurement rules**, including proposing a “*European preference in public procurement for strategic sectors and technologies*”. This comes amid concern about the strength of the EU’s domestic supply chains and technological security.
- “[R]igorously enforcing” the **Foreign Subsidies Regulation (FSR)** to defend the Single Market from unfair competition. Since the introduction of the FSR in October 2023, over 100 deals have been notified to the Commission under the regime. The Commission also plans to continue implementing protective measures such as foreign direct investment screening.

More broadly, the Commission has committed to an “*unprecedented simplification effort*” aimed at streamlining procedures and reducing administrative burdens. Valdis Dombrovskis, the first-ever Commissioner for Implementation and Simplification, has been tasked with coordinating this effort.

Looking ahead

The Competitiveness Compass places growth and innovation at the heart of the Commission’s plans for the next five years. Yet, the Compass also stresses the need for robust competition enforcement. Regulators around the world are grappling with how to weigh these priorities (see previous editions of this newsletter [here](#) and [here](#)). The Compass is light on the substance of how the Commission will achieve this.

OTHER DEVELOPMENTS

ANTITRUST

CMA inquiry group provisionally recommends Amazon and Microsoft cloud services are scrutinised under UK digital markets regime

On 28 January 2025, the UK Competition and Markets Authority (CMA) independent inquiry group [published](#) its provisional findings in its market investigation into the supply of public cloud services in the UK. The inquiry group’s provisional view is that competition is not working as well as it could, and that improvements could make the cloud services market work better for UK businesses in terms of improved prices, quality and choice.

The CMA inquiry group has provisionally found that customers have limited choice on the cloud services market due to high levels of market concentration and barriers to entry and expansion, which have enabled Microsoft and Amazon Web Services (AWS) each to acquire significant unilateral market power in the market. There are technical and commercial barriers which make it difficult for cloud customers to switch between or use different providers. Customer choice is further limited by the significant barriers for new suppliers to enter the market, given the large upfront investments required. Furthermore, Microsoft is using its strong position in software to make it more difficult for competitors such as AWS and Google to compete effectively for cloud customers that want to use Microsoft software on the cloud. This reduces the competitive challenge that AWS and Google can provide in cloud services and to Microsoft’s position.

To address these concerns, the inquiry group has provisionally recommended that the CMA considers using its new powers under the Digital Markets, Competition and Consumers Act 2024 to designate Microsoft and AWS with

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strategic market status in relation to their digital activities in cloud services. This would allow the CMA to make interventions such as in relation to egress fees, technical barriers and Microsoft's licensing practices.

The CMA has until 4 August 2025 to make its final decision.

SAMR publishes antitrust guidelines for pharmaceutical sector

On 24 January 2025, China's State Administration for Market Regulation (SAMR) [published](#) its Anti-Monopoly Guidelines for the Pharmaceutical Sector. This follows a public consultation held in August 2024.

The Guidelines represent SAMR's first comprehensive framework for the entire pharmaceutical sector, covering aspects from research and development to manufacturing and marketing. They build on guidelines previously published for active pharmaceutical ingredients in 2021. By consolidating SAMR's enforcement experience in the sector, the Guidelines aim to provide essential guidance for pharmaceutical companies operating in the PRC.

The Guidelines specifically respond to a number of recent market developments in the pharmaceutical sector, including the rising popularity of 'pay-for-delay' agreements. These agreements typically involve a patent holder paying a generic drug manufacturer to defer its entry in the generic drug market. The Guidelines provide that such an agreement may be deemed anti-competitive if the payment manifestly exceeds patent litigation costs and the agreement effectively extends the duration of the patent holder's monopoly or restricts the marketing of generic drugs.

The Guidelines also address the issue of 'product hopping'. This practice involves applying for new patents after making minor changes to existing drugs to extend monopoly protections. The Guidelines provide that such behaviour may constitute an abuse of market dominance depending on several factors, such as the therapeutic advantages of the new drug, the marketing plans of generic drug manufacturers and the impact on patient/doctor choice.

Further, the Guidelines specifically recognise that developing new drugs may only be achieved through a collaborative process (for example, joint R&D agreements) and allow pharmaceutical companies to justify entering into such agreements by citing socio-economic benefits, such as easing the burden of consumers and maintaining a stable drug supply.

Overall, the Guidelines acknowledge the complexities involved in drug development while maintaining a competitive framework that fosters innovation. This marks China's effort to bring its antitrust framework in line with international standards.

GENERAL COMPETITION

New interim CMA chair to prioritise growth agenda

On 21 January 2025, the CMA [announced](#) that it has appointed Doug Gurr as its interim Chair to lead the CMA on its mission to boost growth and support the economy. As the former Country Manager of Amazon UK and President of Amazon China, Gurr's experience in the technology sector is expected to facilitate the UK Government's [Plan for Change](#), namely "*supercharging the economy with pro-business decisions that will drive prosperity and growth*". Gurr has taken over the position with immediate effect, replacing Marcus Bokkerink, who had been leading the CMA since September 2022. The process for recruiting a new permanent Chair of the CMA will be launched in the coming weeks.

On 29 January 2025, Gurr said in a [blog post](#) that in order to drive business investment, the CMA will have to make its investigations and processes "*as simple and rapid as possible*", with "*proportionality, predictability, process and pace*" all being critical areas of focus. He also emphasised the importance of business investment in driving economic growth, a top priority for the Government.

As part of the UK Government's pro-growth agenda, and its proposal to deepen the CMA's work with UK consumers and business, the CMA recently launched the Growth and Investment Council, which brings together representatives from a wide range of business groups, as well as from public and private organisations. As set out in its [terms of reference](#) published on 28 January 2025, the Council will regularly discuss actions to improve

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innovation and investment with key senior stakeholders from business and investor groups. It will provide expertise on how competition can support UK businesses and identify where and how competition and consumer protection can be strengthened, aiming to deliver “*lasting benefits*” to the UK economy. The Council, however, will only play a consultative role, providing insights from stakeholders and recommendations without making decisions that bind the CMA. The CMA held its inaugural Council meeting on 28 January to consult on its annual plan. For further details on the CMA’s consultation on its priorities for 2025/2026, see a [previous edition](#) of this newsletter.

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