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United States

A. 1.*FTC secures $5.68M HSR gun-jumping penalty from 2021 deal.*
On Jan. 7, 2025, the FTC, in conjunction with the Department of Justice (DOJ) Antitrust Division, settled allegations that sister companies Verdun Oil Company II LLC and XCL Resources Holdings, LLC exercised unlawful, premature control of EP Energy LLC while acquiring EP in 2021. This alleged "gun-jumping" violation involved Verdun and XCL exercising various consent rights under the merger agreement and coordinating sales and strategic planning with EP during the interim period before closing. In settling, the parties agreed to pay a total civil penalty of $5.68 million, appoint or retain an antitrust compliance officer, provide annual antitrust trainings, use a "clean team" agreement in future transactions involving a competing product, and be subject to compliance reporting for a decade.

Further information about this settlement and the factual background can be found in our January GT Alert.

2.*2025 HSR thresholds took effect Feb. 21, 2025.*
On Jan. 10, 2025, the FTC approved updated jurisdictional thresholds and filing fees for the Hart-Scott-Rodino (HSR) Antitrust Improvements Act of 1976. These revisions are made annually, with the size-of-transaction threshold for reporting proposed mergers and acquisitions under the Clayton Act increasing from $119.5 million to $126.4 million for 2025. These changes took effect on Feb. 21, 2025. The adjustments are based on changes in the gross national product and consumer price index as mandated by the HSR Act and the 2023 Consolidated Appropriations Act.

3.*FTC releases staff report on AI partnerships & investments.*
In January 2025, the FTC issued a report under former Commissioner Khan examining several

partnerships among participants in the AI technology chain. Broadly, participants in the AI chain include (1) providers of specialized (and scarce) semiconductor chips used to provide the computational power to train and refine generative AI models, as well as generate the actual output (be it text, images, or data); (2) cloud service providers that enable access to computing infrastructure; (3) AI developers; and (4) AI application creators. The report highlights several areas of concern with respect to such partnerships, including traditional antitrust concerns around competitor access to important resources, increased switching costs for participants, and the exchange of sensitive technical and business information.

Current FTC Chairman Andrew Ferguson—then commissioner—issued a concurring and dissenting statement (joined by Commissioner Holyoak) shortly after the report's release. While signaling areas of disagreement and discouraging the Commission from "running headlong to regulate AI," the dissent does not appear to depart significantly from FTC views with respect to a focus on Big Tech when it comes to AI. According to Ferguson, "AI may [] be the most significant challenge to Big Tech firms' dominance since they achieved that dominance." He cautioned, however, that the Commission must strike a delicate balance, safeguarding against regulation that hinders U.S. AI technology development while ensuring that "Big Tech incumbents do not control AI innovators."

4. *FTC secures settlement with private equity firm in antitrust "roll-up" case.*

On Jan. 17, 2025, the FTC settled a second administrative case against private equity firm Welsh, Carson, Anderson, and Stowe and its affiliates for allegedly monopolizing certain local Texas anesthesiology markets through an anticompetitive "roll up" strategy. In May 2024, a federal judge dismissed Welsh Carson from a similar FTC action, but held that Welsh Carson's conduct could be challenged in federal court in the future if the FTC can allege specific facts that it controls a company actively engaged in ongoing violations or is otherwise directly involved in another attempt to violate the law, "beyond mere speculation and conjecture," and could still pursue an in-house administrative case against the private equity firm.

The FTC settled its in-house case, discussed in a May 2024 GT Alert, in a consent order designed to both limit Welsh Carson's investment in this space and identify future investment strategies in this or an adjacent space, which in the view of the Commission would risk becoming another anticompetitive "roll up." The order requires Welsh Carson to:

- freeze its investment in USAP at current levels and reduce its board representation to a single, non-chair seat;
- obtain prior approval for any future investments in anesthesia nationwide, as well as prior approval for certain acquisitions by any majority-owned Welsh Carson anesthesia group nationwide; and
- provide 30-days advance notice for certain transactions involving other hospital-based physician practices nationwide.

The Commission voted 5-0 to accept the consent agreement for public comment.

5. *Federal court denies Commission's bid to block Tempur Sealy's $4B Mattress Firm deal.*

On Jan. 31, a Texas federal court denied the FTC's challenge to preliminarily enjoin Tempur Sealy International Inc.'s planned $4 billion purchase of Mattress Firm Group Inc. The parties thereafter closed the merger, and the FTC then withdrew the matter from in-house adjudication, effectively ending its challenge. The FTC challenged the deal in July 2024, asserting that the combination of the world's largest mattress supplier, Tempur Sealy, with the largest retail mattress chain in the United States, Mattress Firm, would give the new firm the ability and incentive to suppress competition and

raise prices for mattresses by blocking rival suppliers from selling in Mattress Firm stores.

In September, Tempur Sealy offered to sell 178 stores and seven distribution centers to Mattress Warehouse, in an effort to alleviate the FTC's concerns. The companies offered to preserve 43% of premium "slots" in Mattress Firm stores for rival manufacturers, up from a previous offer of 28%. The FTC countered that the court should not give weight to this "unenforceable promise" that Tempur Sealy could break at any time. The judge did state that "the proposed acquisition won't substantially harm competition … [b]ut even if assumed to the contrary, Defendants' commitments to divest certain stores and to maintain going-forward slot allocations resolves any lingering concern."

6.*Daniel Guarnera named FTC Bureau of Competition director.*

On Feb. 10, Chairman Ferguson appointed Daniel Guarnera as director of the Bureau of Competition. Guarnera previously served as chief of the Civil Conduct Task Force at the DOJ Antitrust Division. During his tenure, the task force filed monopolization suits against certain Big Tech companies, as well as multiple cases involving agriculture and labor markets. Prior to that role, he was a trial attorney with the Antitrust Division during the first Trump administration. He also served as special counsel to U.S. Senate Judiciary Committee Chairman Charles Grassley during the confirmation of President Trump's Supreme Court appointee, Justice Neil Gorsuch.

The Commission voted 4-0 to approve Guarnera's appointment as director of the Bureau of Competition, with Chairman Ferguson stating "[h]e has tremendous experience litigating antitrust cases in critical markets, including agriculture and Big Tech" and "using the antitrust laws to promote competition in labor and healthcare markets—two of my top priorities."

7.*FTC chair clarifies 2023 merger review guidelines remain in effect.*

On Feb. 18, 2025, FTC Chairman Ferguson issued a public statement to FTC staff stating if "there is any ambiguity, let me be clear: the FTC's and DOJ's joint 2023 Merger Guidelines are in effect and are the framework for this agency's merger-review analysis." Ferguson explained that FTC should "prize stability and disfavor wholesale recission," to provide predictability for businesses, enforcement agencies, and the courts. In Ferguson's view, the guidelines reiterate prior policy statements, guidelines, and decisional case law.

8.*FTC launches inquiry on tech censorship.*

On Feb. 20, 2025, the FTC launched a public inquiry into how technology platforms deny or degrade users' access to services based on the content of their speech or affiliations. The Commission's press release said, in announcing the inquiry, "Censorship by technology platforms is not just un-American, it is potentially illegal. Tech firms can employ confusing or unpredictable internal procedures that cut users off, sometimes with no ability to appeal the decision. Such actions taken by tech platforms may harm consumers, affect competition, may have resulted from a lack of competition, or may have been the product of anti-competitive conduct." The FTC is requesting public comment on how consumers may have been harmed by technology platforms that "limited their ability to share ideas or affiliations freely and openly." Comments are open until May 21, 2025.

B. **Department of Justice (DOJ) Civil Antitrust Division**

DOJ sues to block Hewlett Packard Enterprise's proposed $14 billion acquisition of rival Juniper Networks.

On Jan. 30, 2025, the DOJ Antitrust Division sued to block Hewlett Packard Enterprise Co.'s proposed $14 billion acquisition of wireless local area network (WLAN) technology provider Juniper Networks Inc. The Division alleges that HPE and Juniper are the second- and third- largest providers, respectively, of enterprise-grade WLAN solutions in the United States and that the deal would "eliminate fierce head-to-head competition between the companies, raise prices, reduce innovation, and diminish choice." The Division says that the proposed transaction between HPE and Juniper would further consolidate an already highly concentrated market.

“HPE and Juniper are successful companies. But rather than continue to compete as rivals in the WLAN marketplace, they seek to consolidate — increasing concentration in an already concentrated market. The threat this merger poses is not theoretical. Vital industries in our country — including American hospitals and small businesses — rely on wireless networks to complete their missions. This proposed merger would significantly reduce competition and weaken innovation, resulting in large segments of the American economy paying more for less from wireless technology providers,” Acting Assistant Attorney General Omeed A. Assefi said. The Division asserted that Juniper has been a “disruptive force that has grown rapidly from a minor player to among the three largest enterprise-grade WLAN suppliers in the U.S.,” and that its innovation has decreased costs and put competitive pressure on HPE that HPE seeks to alleviate by acquiring Juniper.

C. **U.S. Litigation**

1.*Goldstein v. National Collegiate Athletic Association, Case No. 3:25-00027 (M.D. Ga. Feb. 20, 2025).*

On Feb. 20, 2025, the Honorable Judge Tilman E. Self III denied a college baseball player’s request for a temporary restraining order that would have prevented the National Collegiate Athletic Association (NCAA) from barring the student from the 2025 baseball season. The plaintiff filed a suit earlier this month that joins other similar suits seeking to invalidate the NCAA’s eligibility rule which gives college athletes no more than five years to play four seasons of college sports. In denying the temporary restraining order, Judge Tilman scheduled a follow-up hearing to allow for a more fulsome evidentiary hearing on a longer injunction.

2.*State of Arkansas v. Syngenta Crop Protection AG, Case No. 4:22-cv-01287 (E.D. Ark. Feb. 18, 2025).*

Federal Judge Brian S. Miller denied two large pesticide manufacturers’ motion to dismiss the State of Arkansas’ lawsuit alleging that the manufacturers conspired to prevent generic pesticides from gaining market entry. In the lawsuit, Arkansas alleges that these manufactures entered into “loyalty programs,” which pay distributers and retailers incentives if they limit or refuse to sell generic crop-protection products whose patents have expired. In allowing the lawsuit to proceed, Judge Miller noted that the State has sufficiently alleged that these loyalty programs foreclose generic competitors from entering the market successfully.

3.*Earth’s Healing Inc. v. Shenzhen Smoore Technology Co., Case No. 3:25-cv-01428 (N.D. Cal. Feb. 11, 2025).*

A Chinese-based vape manufacturing company and its U.S.-based distributors were sued in a putative class action, alleging that the defendants conspired to keep the price of marijuana vaping pens and cartridges high by limiting competition among distributors. The complaint alleges that Shenzhen Smoore Technology forced its distributors to enter into a horizontal conspiracy not to solicit each other’s retail customers and report any distributor who violated this non-solicitation policy. The proposed class includes any licensed cannabis business in the 24 states that have legalized marijuana for recreational use that have sold Shenzhen’s products since November 2016.

4.*Alliance of Automotive Innovation v. Campbell, Case No. 1:20-CV-12090 (D. Mass. Feb. 11, 2025).*

On Feb. 11, 2025, the Honorable Judge Denise L. Casper dismissed a lawsuit an automakers’ advocacy group brought that sought to block the State of Massachusetts’s “right-to-repair,” which allows customers and mechanics open access to vehicles’ “telematics” systems. These systems are used to electronically track a vehicle’s location, speed, fuel efficiency, and other metrics. The automakers claimed that applying this state law to automobiles violates the National Traffic and Motor Vehicle Safety Act and the Clean Air Act and raises the risk of impairing the cybersecurity protections installed in these systems. Judge Casper’s order dismissing the case was filed under seal, and the has automakers have already indicated an intent to appeal the decision to the U.S. Court of Appeals

for the First Circuit.

The Netherlands

A. **Dutch Competition Authority (ACM)**

Dutch commitments decision spotlights ACM's enforcement policy.

The Authority for Consumers and Markets (ACM) recently closed a cartel investigation into three chiropractic trade associations without imposing sanctions. The investigation concluded after the associations promised not to prohibit their members from offering discounts and free examinations. This decision was intended to promote competition, but critics raised concerns about transparency and the fair treatment of other companies that may have received harsher penalties for similar violations. Critics also pointed out that the ACM appears more reluctant to penalize the healthcare sector, leading to additional questions about its policy's fairness and consistency.

B. **Dutch Court Decision**

Rotterdam District Court confirms egg purchasing cartel violation.

The Rotterdam District Court confirmed the findings of the ACM against three egg-product manufacturers who were fined for price-fixing, supplier allocation, and sharing competitively sensitive information in the egg-purchasing market. In 2021, the ACM sent a statement of objections, concluding that the three companies had violated the cartel prohibition provisions of Article 101(1) of the Treaty on the Functioning of the European Union (TFEU) and Article 6(1) of the Dutch Competition Act. Coordinating purchasing prices leads to such a significant restriction of competition ("by object" violation) that the ACM was not required to analyze the effects of the practice. The court acknowledged the companies' objections to the amount of the fines and, since the proceedings exceeded the reasonable timeframe by a few weeks, all fines were reduced by EUR 5,000. The court set the fines at EUR 995,000, EUR 7,655,000, and EUR 15,736,500.

Poland

A. UOKiK president tightens the noose on price fixing agreements.

The president of the Office of Competition and Consumer Protection continues to focus on alleged price-fixing agreements, in particular those maintaining minimum prices (so-called RPMs) in online sales. Recent proceedings indicate an increased level of scrutiny on pricing practices, particularly around online distribution.

1.*Fines imposed on pet-food distributor, Empire Brands.*

The UOKiK president has imposed a fine on Empire Brands, a pet food distributor, for engaging in resale price maintenance practices in online sales channels (online stores and digital marketplaces). Resellers were required to set prices that were at least equal to those Empire Brands offered in its own online store. According to the UOKIK president, the company penalized resellers by sending warnings, altering payment terms, restricting access to promotions, and terminating business relationships. Following the investigation, the UOKiK president imposed a fine of approximately PLN 353,000 (approximately EUR 84,000/USD 87,000) on Empire Brands. In addition, the UOKIK president also penalized the company's managers, who received individual fines of PLN 82,000 (approximately EUR 20,000/USD 20,000) and PLN 39,000 (approximately EUR 9,000/USD 10,000), respectively.

2.*Charges brought against sanitary equipment distributor, Oltens.*

UOKiK president also announced charges against Oltens, a distributor of sanitary equipment, for allegedly fixing online resale prices. The UOKiK president suspects that Oltens has entered into a price-fixing agreement with independent resellers of its products. The company allegedly imposed minimum resale prices for online sales, preventing retailers from offering lower prices (including within promotional campaigns). According to the UOKIK president, Oltens may have ensured compliance by actively monitoring resellers and intervening against those who deviated from set prices, including by refusing to supply or terminating cooperation agreements. The proceedings are pending.

3.*Trend of enforcement.*

The Oltens and Empire Brands cases add to a growing list of resale price maintenance investigations the UOKiK president has conducted. In recent years, the competition authority has taken similar actions against multiple companies. For example, in 2024, Dahua Technology was fined PLN 3.7 million (approximately EUR 900,000/USD 900,000) for restricting the pricing policies of its distributors, and Kia Polska was fined PLN 3.5 million (approximately EUR 800,000/USD 900,000) for imposing minimum resale prices on its dealers. The UOKiK president considers RPMs to be particularly harmful to competition, given their capacity to restrict freedom of establishing prices, therefore negatively affecting market competitiveness and consumer interests. Infringing companies may be subject to significant financial penalties, which can be up to 10% of their annual turnover. The UOKiK president may also impose individual fines on managers of up to PLN 2 million. Moreover, anticompetitive contractual provisions would be void, and affected entities can seek damages in civil courts.

Italy

A. Italian Competition Authority (ICA)

1.*Mulpor and IBCM fined for repeatedly failing to comply with ICA ruling.*

In January 2025, ICA fined Mulpor Company S.r.l. and International Business Convention Management Ltd. (IBCM) EUR 3.5 million for repeated non-compliance with a 2019 prohibition decision on unfair trading. In ICA's view, the two companies sent allegedly deceptive communications to businesses and micro-companies, under the pretext of requesting business data verification, while in fact leading recipients to enter into multi-year contracts for advertising services. ICA considered these communications, resembling those that led to earlier fines in 2019 and 2021, to be disguised as updates to a database called the "International Fairs Directory." But by signing the forms, business and micro-companies committed to a three-year advertising contract.

ICA concluded that these communications were deceptive, causing recipients to unknowingly subscribe to unwanted services. IBCM also allegedly used undue pressure by threatening legal actions to collect payments for the unsolicited services.

2.*Radiotaxi 3570 fined for repeatedly failing to comply with ICA ruling.*

ICA imposed an approximately EUR 140,000 fine on Radiotaxi 3570 for repeated non-compliance with a June 2018 ruling, which found certain agreements in Rome's taxi service market to be anticompetitive. According to ICA, the company failed to eliminate allegedly restrictive non-compete clauses in its statutes and regulations that ICA believed hindered competition. Radiotaxi 3570 did not comply with the measures ICA required, including submitting a written report outlining corrective actions, nor did it pay the imposed fines. ICA is considering imposing further penalties, including daily fines, and may consider suspending the company's operations for up to 30 days in the event of persistent non-compliance.

3.*Redetermination of Imballaggi Piemontesi S.r.l.'s cartel penalty.*

In 2019, Imballaggi Piemontesi S.r.l. was fined more than EUR 6 million for its participation in an anti-

competitive cartel in the industry that produces and markets corrugated cardboard sheets. In 2023, after a Council of State ICA judgment– which involved a EU Court of Justice referral for a preliminary ruling on that matter (C-588/24) – ICA had to reassess the fine imposed on Imballaggi Piemontesi S.r.l. on the basis, inter alia, of the effective involvement in the cartel.

The company argued for a reduced penalty, but ICA determined that its participation was to be considered “full” in any case. As a result, ICA maintained the fine at EUR 6 million, which was equal to 10% of the company’s total turnover, within the legal limit.

European Union

A. **European Commission**

Commission sends Lufthansa supplementary statement of objections.

The European Commission has issued a supplementary statement of objections to Lufthansa, ordering the airline to restore Condor’s access to Lufthansa’s feed traffic to and from Frankfurt Airport as agreed in June 2024. This step follows an investigation into potential competition restrictions by Lufthansa’s transatlantic joint venture with other airlines. The European Commission has preliminarily assessed that this joint venture restricts competition on the Frankfurt-New York route and that interim measures are needed to prevent harm to competition on this market.

Previously, Lufthansa and Condor had special prorate agreements (SPAs) allowing Condor to access Lufthansa’s short-haul network to feed its long-haul flights. In 2020, Lufthansa notified Condor of the termination of their SPAs. The European Commission expressed preliminary concerns that without these agreements, Condor could struggle to operate sustainably on the Frankfurt-New York route, further undermining the competitive market structure. To ensure the effectiveness of any future decision, Lufthansa must reinstate the previous agreements. This case falls under Articles 101 of the TFEU and 53 of the EEA Agreement, which prohibit agreements that restrict competition.

B. **ECJ Decisions**

1.*CJEU addresses preliminary questions on the restrictive nature of technical specifications.*

The Court of Justice of the European Union (CJEU) ruled on the interpretation of Article 42 of the EU’s Public Procurement Directive (Directive 2014/24/EU) regarding technical specifications for public procurement. The case involves a dispute between DYKA Plastics, which produces plastic drainage pipes, and Fluvius, the Belgian grid operator for electricity and natural gas in all municipalities in Flanders. Fluvius required that only drainage pipes made of stoneware and concrete can be used. DYKA argued that this requirement violates the principles of procurement, leading to four preliminary questions addressed to the CJEU.

The CJEU ruled that technical specifications must describe the characteristics of the works, supplies, or services, and that contracting authorities may not make specific mentions of materials—like references to stoneware or concrete—that favor or eliminate certain companies. The CJEU also explained that unless the use of a specific material is unavoidable, references to that material must be accompanied by the words “or equivalent.” In conclusion, the CJEU stated that eliminating companies or products through incompatible technical specifications necessarily conflicts with the obligation to provide equal access to procurement procedures and not to restrict competition per Article 42 of Directive 2014/24.

2.*Beevers Kaas BV v. Albert Heijn België NV raises preliminary questions about parallel obligation.*

The case involves a dispute between Beevers Kaas, the exclusive distributor of branded dairy

products in Belgium and Luxembourg, and Albert Heijn, a distributor in other markets. Beevers Kaas alleges that Albert Heijn violated exclusivity arrangements by selling in Belgium, while Albert Heijn argues that it cannot be prohibited from actively selling and that the exclusivity agreement offers insufficient protection. The case was referred to the CJEU to address the application of Article 4(b)(i) of the former EU Vertical Block Exemption Regulation (Regulation (EU) 330/2010 - old VBER), which has since been replaced.

First, the CJEU asked whether the “parallel obligation” requirement (where a supplier granting exclusivity to one buyer in a territory must also restrict other buyers from actively selling in that territory) may be fulfilled merely by observing that other buyers are not actively selling in the exclusive territory. Advocate General Medina’s January 2025 opinion states that the mere observation that other purchasers are not actively selling in the area is insufficient.

Second, the CJEU was asked to clarify whether proof of compliance with the “parallel obligation” must be maintained throughout the entire applicable period, or only when other purchasers show their intent to sell actively. According to Advocate General Medina, the supplier must generally demonstrate that the parallel obligation is fulfilled for all its other buyers within the EEA during the entire period for which it claims the benefit of the block exemption.

Japan

A. **JFTC orders mechanical parking garage manufacturers to pay a surcharge of approximately JPY 520 million for bid-rigging allegations.**

In December 2024, the Japan Fair Trade Commission (JFTC) issued cease-and-desist orders to five manufacturers of mechanical parking garages and other facilities for bid-rigging allegations. The JFTC also ordered four manufacturers to pay a surcharge of approximately JPY 520 million in total.

According to the JFTC, the manufacturers repeatedly engaged in bid-rigging to determine which companies would receive orders from major general contractors, and at what price. The manufacturers are suspected to have engaged in bid-rigging, but one of them is also suspected of avoiding JFTC orders under the leniency program. The JFTC sent the proposed disciplinary measures to the manufacturers and will issue an order after receiving feedback from each.

B .**JFTC issues cease-and-desist orders to a cloud services company for the first time.**

In December 2024, the JFTC issued a cease-and-desist order to MC Data Plus, Inc., a company providing cloud services regarding labor management, for unfair trade practices that allegedly prevented customers from switching to other companies’ services. The order comes after the JFTC conducted an on-site inspection of MC Data Plus in October 2023.

According to the JFTC, starting in 2020, MC Data Plus refused to provide its clients with information on their employees, which the client registers on the cloud, in a form compatible with other labor safety services, due to the protection of personal information. The JFTC determined that such an act falls under the category of “interference with transactions (unjustly interfering with a transaction between its competitor),” which Japanese antimonopoly law prohibits.

This is the first time that a cease-and-desist order has been issued in connection with transactions regarding cloud services. MC Data Plus has filed a lawsuit to have the order revoked and has also filed a petition to suspend the order’s execution.

[1] Due to the terms of GT's retention by certain of its clients, these summaries may not include developments relating to matters involving those clients.

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