Competition Outlook 2025

Preface

Our Antitrust & Competition practice group has once again put together the main trends in antitrust and competition law in our Competition Outlook for 2025. While taking a look at both past and future developments, the Competition Outlook 2025 provides an easy-to-digest summary of the key topics.

In 2024, the enforcement of antitrust law on digital markets once again dominated the agenda both in Germany and at the EU level. While the European Commission and the General Court of the European Union issued their first decisions under the new Digital Markets Act, the topics of data and artificial intelligence are increasingly drawing the attention of the competition authorities and the legislature.

A report published by Mario Draghi, the former president of the European Central Bank, was among the factors making the EU's global competitiveness one of the key issues in 2024. The "Draghi Report" directly touches upon antitrust and competition law issues. It recommends that more consideration should be given to the strategic interests of the EU in relation to innovation, security and resilience in the field of European merger control. According to the report, European State aid law and the Foreign Subsidies Regulation ("FSR") should be strategically deployed in order to support the future of European competitiveness. When it comes to reviewing notification requirements for M&A transactions under the FSR, companies are now able to use the FSR Checker, a legal tech tool provided by Noerr.

All these tasks will especially be placed on the shoulders of the newly constituted European Commission in 2025. The Commission will also be overseeing the further legislative process for reforming the EU Screening Regulation in order to harmonise and tighten investment control by EU Member States. Our Competition Outlook 2025 provides an overview of these and many other topics, including the latest developments in the world of distribution-related antitrust law, antitrust proceedings and antitrust damages.

Content

Preface 2

Content 3

Contacts 4–5

1. EU digital antitrust law under the new European Commission 6–7

2. Germany's Federal Cartel Office gears up for the challenges of the AI age 8–9

3. One year of full enforcement of the EU Foreign Subsidies Regulation 10–11

4. Revision of the EU FDI Screening Regulation: Is EU-wide investment screening on the way? 12–13

5. Antitrust and abuse of dominance proceedings from A to Z 14–15

6. EU merger control in the "von der Leyen Commission 2.0" 16–17

7. German merger control – New powers of intervention and waiting for the federal elections ... 18–19

8. Further boost to private enforcement of antitrust law 20–21

9. Distribution-related antitrust law remains in the focus of competition authorities 22–23

10. State aid law – Securing competitiveness, shaping the future 24–25

Contact

Dr Fabian Badtke, LL.M.
Partner

Frankfurt
+49 69 9714 771 24
fabian.badtke@noerr.com

Dr Alexander Birnstiel, LL.M.
Partner

Munich
+49 89 2862 824 1
alexander.birnstiel@noerr.com

Sarah Blazek, E.MA
Partner

Munich
+49 89 2862 851 3
sarah.blazek@noerr.com

Dr Henner Schläfke
Partner

Berlin
+49 30 2094 207 9
henner.schlaefke@noerr.com

Dr Jens Peter Schmidt
Partner

Brussels
+32 2 2745 570
jens.schmidt@noerr.com

Pascal Schumacher
Partner

Berlin
+49 30 2094 203 0
pascal.schumacher@noerr.com

Peter Stauber, LL.M.
Partner

Berlin
+49 30 2094 217 5
peter.stauber@noerr.com

Dr Till Steinvorth
Partner

Hamburg
+49 40 3003 971 45
till.steinvorth@noerr.com

Dr Kathrin Westermann
Partner

Berlin
+49 30 2094 215 1
kathrin.westermann@noerr.com

Prof. Dr Karsten Metzlaff
Of Counsel

Hamburg
+49 40 3003 970
karsten.metzlaff@noerr.com

Markus Brösamle
Associate Partner

Berlin
+49 30 2094 206 7
markus.broesamle@noerr.com

Dr Fabian Hübener, LL.M.
Associate Partner

Brussels
+32 2 2745 572
fabian.huebener@noerr.com

Dr Lorenz W. Jarass
Associate Partner

Frankfurt
+49 69 9714 7712 4
lorenz.jarass@noerr.com

Robert Pahlen
Counsel

Berlin
+49 30 2094 217 5
robert.pahlen@noerr.com

Sven Betzendörfer, LL.M.
Senior Associate

Brussels
+32 2 274 559 0
sven.betzendoerfer@noerr.com

Jan-Hendrik Fitzl
Senior Associate

Hamburg
+49 40 3003 971 41
jan-hendrik.fitzl@noerr.com

Stefanie Gschoßmann
Senior Associate

Munich
+49 89 2862 835 4
stefanie.gschossmann@noerr.com

Dr Jochen Christoph Hegener, LL.M.
Senior Associate

Munich
+49 89 2862 851 3
jochen.hegener@noerr.com

Johanna Krauskopf, LL.M.
Senior Associate

Frankfurt
+49 69 9714 771 24
johanna.krauskopf@noerr.com

Annika-Kristin Stamer, LL.M.
Senior Associate

Munich
+49 89 2862 835 4
annika-kristin.stamer@noerr.com

Sebastian Wrobel, LL.M.
Senior Associate

Berlin
+49 30 2094 215 1
sebastian.wrobel@noerr.com

Jens Goblirsch
Associate

Berlin
+49 30 2094 206 7
jens.goblirsch@noerr.com

Paula Link
Associate

Munich
+49 89 2862 835 4
paula.link@noerr.com

Dr Bastian Müller
Associate

Brussels
+32 2 2745 594
bastian.mueller@noerr.com

Lucie Maja Schultz
Associate

Frankfurt
+49 69 9714 771 16
luciemaja.schultz@noerr.com

Carolin Schütte
Associate

Hamburg
+49 40 3003 971 40
carolin.schuette@noerr.com

Katharina Song
Associate

Munich
+49 89 2862 835 4
katharina.song@noerr.com

Nigina Zahedi
Associate

Brussels
+32 2 2745 570
nigina.zahedi@noerr.com

Dr Lucia Oegel
Associate

Frankfurt
+49 69 9714 771 86
lucia.oegel@noerr.com

Simon Staimer
Associate

Munich
+49 89 2862 826 11
simon.staimer@noerr.com

1. EU digital antitrust law under the new European Commission

The new European Commission will be judged by how successful it is in enforcing the Digital Markets Act (“**DMA**”). Another focus will be on artificial intelligence (“**AI**”) and data.

DMA enforcement

Since March 2024, Alphabet, Amazon, Apple, ByteDance, Meta and Microsoft have had to ensure DMA compliance for 22 platform services such as search engines, social networks and operating systems; Booking (and Apple’s iPadOS) have been subject to these rules since November (see on affected services Noerr Insights).

ByteDance challenged TikTok’s designation as a gatekeeper before the General Court of the European Union. In the first judicial review of the European Commission’s work under the DMA, the Court noted errors in assessing the gatekeeper status (such as insufficient consideration of EU turnover), but ultimately dismissed the action in its entirety (for details, see: Noerr Insights).

If the Court of Justice of the European Union upholds this ruling, it would be clear that once the thresholds required for gatekeeper designation are met, it becomes very difficult to successfully challenge the designation in court. However, during the designation process before the European Commission, companies have already succeeded with their arguments (e.g., X, Samsung, or partially Microsoft). The annulment actions of other gatekeepers (e.g., Apple in relation to iOS and AppStore and Meta in relation to Facebook Messenger and Marketplace) are still pending.

The outcomes of the European Commission’s non-compliance proceedings against Alphabet (self-preferencing in Google searches; Google Play steering rules), Apple (AppStore steering rules; iPhone default settings) and Meta (“pay-or-consent” model) are also highly anticipated (for details, see: Noerr Insights), along with their expected judicial reviews.

One thing is clear: The new European Commission will want to show that the DMA is an efficient instrument. An important factor for effective enforcement will be the extent to which it succeeds in involving companies affected by gatekeepers in the compliance process (information for app developers, online intermediary services and advertisers/publishers on Noerr Insights). This is because the companies affected are best positioned to assess whether compliance has been achieved.

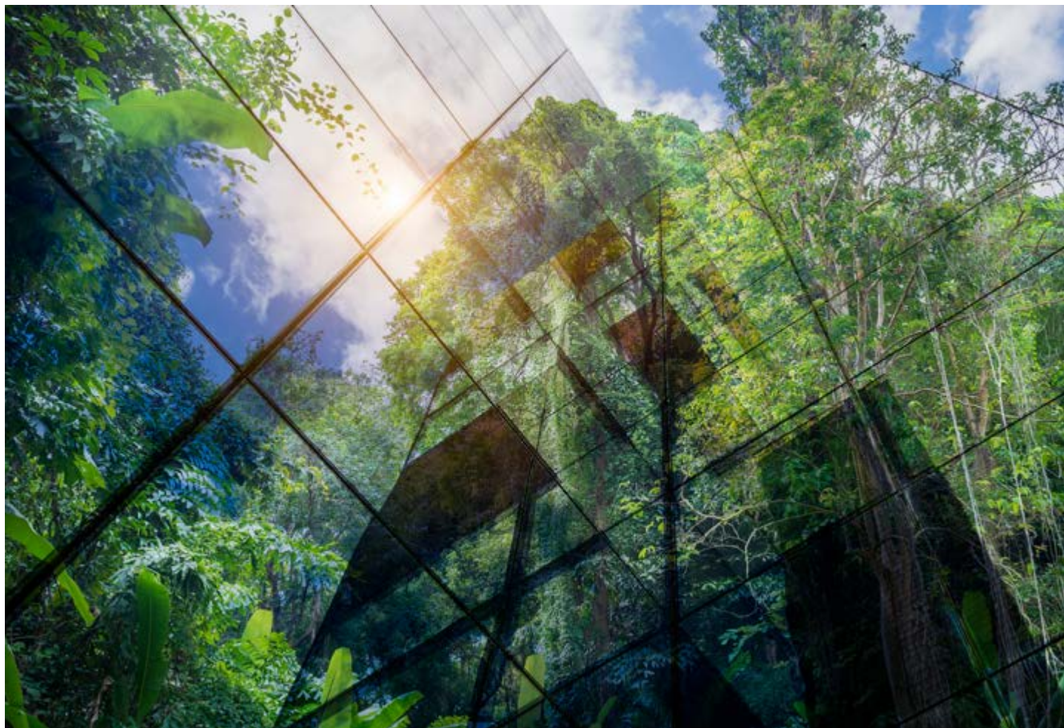
AI and virtual worlds

Given the disruptive nature of AI and the associated risks, the European Commission has announced that it will use all the tools at its disposal to ensure that these new markets remain competitive, contestable and fair.

A policy brief published in September 2024 examines market dynamics, entry barriers and anti-competitive concerns related to key inputs for these technologies, such as data, microchips, computing power infrastructure and cloud capacity. To address these concerns, not only the DMA but also antitrust law and merger control will play a role.

European data law as an antitrust law challenge

The EU also wants to further expand the cross-sectoral use of data to ensure innovation and competition. A large number of EU legal acts on the commercial usability of data have already been adopted, such as the Data Act, which forms part of the European data strategy. All of these regulatory frameworks have key intersections with antitrust law, presenting companies with the complex challenge of setting up comprehensive compliance systems.



2. Germany's Federal Cartel Office gears up for the challenges of the AI age

Germany's Federal Cartel Office (Bundeskartellamt) remains actively engaged in enforcing antitrust law within the digital sector, focussing particularly on large digital companies.

On 30 September 2024, the Federal Cartel Office designated Microsoft as having paramount significance for competition across markets. It had previously found this to be the case with other tech giants like Alphabet/Google, Meta/Facebook, Amazon and Apple. This designation subjects these companies to the stricter provisions for control of abusive practices under section 19a of the German Act against Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen, "**ARC**"), allowing the Federal Cartel Office to prohibit them from engaging in a number of activities that allegedly distort competition.

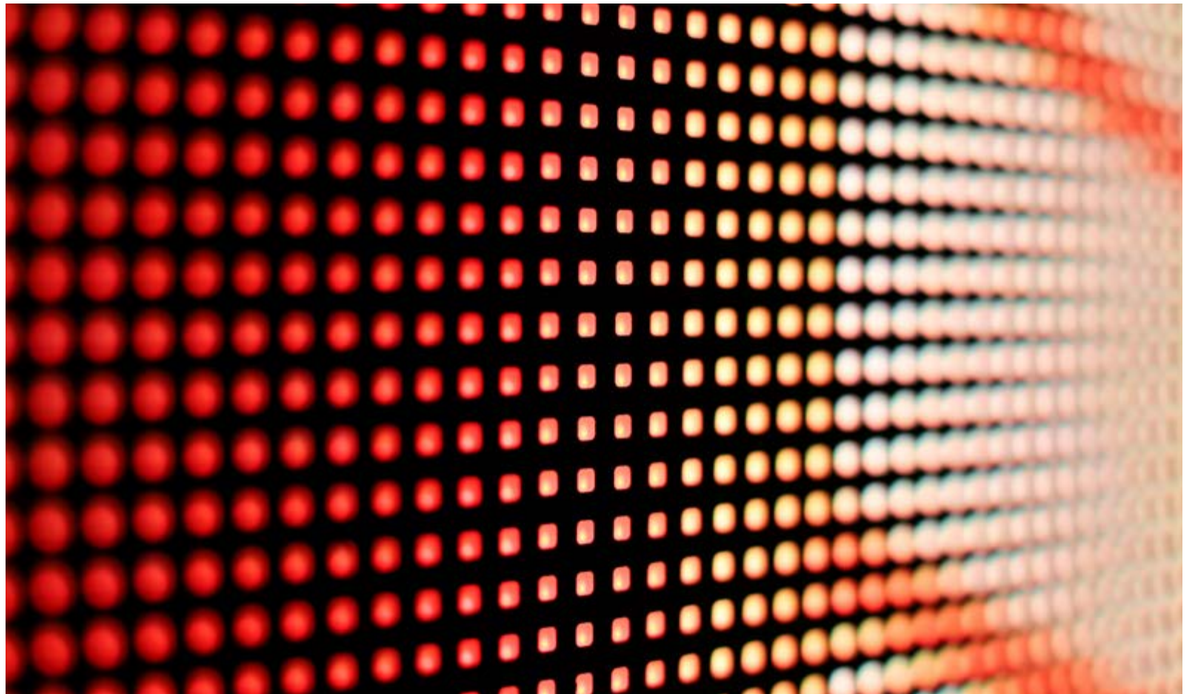
For the first time, the Federal Cartel Office has also received support from the German Federal Court of Justice (Bundesgerichtshof) in applying section 19a ARC. Following Amazon's appeal against the declaratory decision of the Federal Cartel Office, the Federal Court of Justice confirmed the legality of the authorities' decision with its ruling on 23 August 2024 (KVB 56/22).

Furthermore, on 10 October 2024, the Federal Cartel Office concluded its high-profile proceedings against Facebook, which had lasted over five years. At the heart of the proceedings was Facebook's practice of consolidating personal data from various sources without its users' consent, which the Federal Cartel Office considered a prohibited abuse of market power under section 19(1) ARC. After an extended legal dispute, Facebook eventually offered various remedial measures that were accepted by the Federal Cartel Office.

The Digital Markets Act ("**DMA**"), which is enforced centrally by the European Commission, will not change the active role of the Federal Cartel Office in the digital sector. On the one hand, this is because the DMA expressly provides the opportunity for the national competition authorities to support its enforcement, which the Federal Cartel Office is willing to do. On the other hand, section 19a ARC equips the Federal Cartel Office with its own tools in the digital sector, enabling it to prohibit behaviour that distorts competition beyond the rules applicable under the DMA. In fact, the Federal Cartel Office has announced its intention to continue to actively use these powers.

Another key issue for the Federal Cartel Office is the interface between artificial intelligence ("**AI**") and competition law. The competition authorities of the G7 countries, including the Federal Cartel Office, issued a joint declaration at their recent competition summit on 4 October 2024, addressing competition issues related to AI. The report highlights two problematic areas: first, the control of AI markets by only a few up-and-coming providers (who increasingly cooperate with large digital corporations); second, the risk of "new forms" of anticompetitive behaviour, such as price fixing or coordination via AI-supported algorithms. In response, the competition authorities of the G7 countries agreed that future efforts will require global cooperation, targeted regulatory measures and the development of technological capacities within authorities.

This shows that in 2024 the Federal Cartel Office maintained its focus on the digital sector, addressing in particular both current and future markets. In any case, it is to be expected that the Federal Cartel Office will continue to play a pioneering role in digital antitrust law moving forward.



3. One year of full enforcement of the EU Foreign Subsidies Regulation

For over a year now, the notification requirements for M&A transactions, public tenders and the option of ex officio initiation of investigations under the EU Foreign Subsidies Regulation ("FSR") have been in force. You can check whether an M&A transaction triggers the notification requirement by using the FSR Checker, one of Noerr's legal tech tools. The aim of the FSR is to create a level playing field to prevent foreign subsidies from distorting the internal market.

The European Commission set up the Directorate K within the Directorate-General for Competition to handle FSR matters. At the end of September 2024, there were more than 100 M&A transaction notifications and over 1,300 submissions in over 230 public tenders. These figures greatly exceed initial expectations as it is not subsidies that are relevant for the notification thresholds but financial contributions (including transactions at market terms). The European Commission has already initiated six in-depth investigations, two of them ex officio, including a dawn raid.

Although the FSR is applied regardless of third countries and sectors concerned, there was a focus on Chinese companies and on sectors of strategic importance to the EU's policy objectives, like infrastructure and energy. The European Commission is likely to continue to focus on Chinese companies. However, companies can influence this by proactively approaching the European Commission, as companies in the wind turbine sector and recently the French energy group EDF have done.

The first in-depth investigation into an M&A transaction has provided initial insight into the substantive test for M&A transactions, which, as expected, differs significantly from the test for merger control against the background of EU State aid law. This concerned the acquisition of the Portuguese telecommunications company PPF Telecom Group B.V. by the Emirates Telecommunications Group (a state-controlled telecommunications provider from the UAE), which was approved subject to conditions.

The European Commission examined whether third-country subsidies would (potentially) negatively affect competition in the market in which the combined entity operates post-transaction. It also became clear that the European Commission is particularly critical of unlimited third-country guarantees since these guarantees artificially improve the combined entity's ability to finance its activities in the internal market and may lead to a distortion of competition post-transaction. The guarantee therefore had to be dropped as part of the conditions.

However, given the lack of published decision-making practice so far, the European Commission's interpretation of the substantive test criteria is still vague. The guidelines are therefore eagerly awaited.

In 2025, it is likely that the European Commission will again make extensive use of its FSR instruments. Both the Draghi report by Mario Draghi and the mission letter to the new Competition Commissioner Teresa Ribera envisage the FSR being proactively enforced to support the future of European competitiveness. It remains crucial for companies to have the information required for FSR proceedings ready to ensure M&A readiness and to be prepared for possible dawn raids.

4. Revision of the EU FDI Screening Regulation: Is EU-wide investment screening on the way?

On 24 January 2024, the European Commission published a proposal to revise the EU FDI Screening Regulation (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 Union) to make the investment screening mechanisms of the EU Member States more effective by further harmonising them and closing loopholes.

The EU FDI Screening Regulation, which has been in force since October 2020, has already established certain minimum standards for screening foreign investments in EU Member States and forms the basis of the EU cooperation mechanism. The European Commission now plans to tighten the rules of the EU FDI Screening Regulation. In particular, changes in the political situation and national security since 2020, marked by the Covid-19 pandemic and the Russian war of aggression against Ukraine, have shown that a screening mechanism for investments from non-EU countries is an important regulatory tool.

Planned changes to the EU FDI Screening Regulation

Obligatory screening mechanism
The revised EU FDI Screening Regulation is intended to oblige all EU Member States to introduce their own national investment screening regime. At the time of publication of the European Commission's Fourth Annual Report on the screening of foreign direct investments in October 2024, only three EU Member States (Greece, Croatia and Cyprus) did not yet have their own investment screening regime; these countries would now be obliged to establish their own national regime.

EU FDI Screening Regulation to be extended to indirect foreign investments
The EU FDI Screening Regulation currently applies only to investments where the direct acquirer has its registered office outside the EU; acquisitions by EU companies whose parent company is based outside the EU are not covered. The European Commission's revision proposal aims to change this in order to close the loophole in the Regulation's scope of application.

Improvement of the procedure for the cooperation mechanism
The existing EU cooperation mechanism is to be made more effective, partly by introducing a uniform standstill obligation. The aim is to ensure that the EU cooperation mechanism is able to better identify investments critical for security in the future.

Harmonisation of critical sectors
Since there are currently still considerable differences between the existing investment screening mechanisms of the EU Member States in terms of their sectoral scope, a uniform minimum standard for critical sectors is to be established. Investments in the critical sectors must always be reviewed and are subject to a notification requirement.

Implications for German investment screening

If the European Commission's proposals are implemented, the greatest need for change in the current German investment screening mechanism is likely to arise with regard to the critical sectors (section 55a German Foreign Trade and Payments Ordinance (Außenwirtschaftsverordnung)). The sectors in which an obligatory review is envisaged are set out in detail in Annexes I and II of the revision proposal and in some cases go beyond the notification requirements in the German investment review. For example, the revision proposal would impose additional notification requirements on projects of Union interest, as well as through the comprehensive reference to goods covered by the Dual-Use Regulation, the Internet of Things, virtual reality and biotechnologies. Additionally, the planned standardisation of certain definitions and sectoral boundaries may require further amendments.

Regarding indirect acquisitions by foreign investors, the German investment screening regime already goes beyond the revision proposal. German investment screening covers indirect acquisitions by foreign investors above the relevant screening thresholds (from 10%, depending on the sector), whereas the planned revision requires an acquisition of control by an (indirect) non-EU based acquirer.

5. Antitrust and abuse of dominance proceedings from A to Z

An eventful 2024

While things were “quiet” during the Covid-19 pandemic, the European Commission increased its use of inspections to investigate alleged antitrust infringements again in 2024. Among other things, the Commission focussed on the distribution of financial derivatives, the tyres sector and most recently the data centre construction sector. Furthermore, the Commission completed several antitrust proceedings, fining Rabobank EUR 26.6 million (Euro-denominated bonds trading cartel), ethanol producers EUR 47.7 million (benchmarks cartel) and a railway services operator and Österreichische Bundesbahnen EUR 48.7 million (collusion to exclude a common competitor).

In the Banco BPN case, the Court of Justice of the European Union found that an exchange of information between competitors may already be sufficient to constitute a restriction of competition by object without requiring any coordination on pricing based on the information exchanged (for details, see: Noerr Insights). In the light of this decision, a stricter view by competition authorities can be expected in the future when assessing exchanges of competitively sensitive information between competitors.

Furthermore, the Court of Justice of the European Union has issued several important judgements for the sports sector, concerning the European Super League, the International Skating Union, the Royal Antwerp Football Club and, most recently, FIFA’s transfer regulations. The Court clarified, among other things, that all economic activities of sports associations must comply with competition laws. Sports associations may establish procedural rules. However, such rules must be transparent, objective, non-discriminatory, proportionate and, as a consequence, must not restrict competition even outside the relevant association.

In addition, the Court of Justice of the European Union supported the Commission’s standpoint on the abuse of a dominant position. In the Google shopping case, the Court confirmed that a dominant undertaking’s preferential treatment of its own products over those of competitors can constitute an anticompetitive abusive practice towards its competitors (for details, see: Noerr Insights). Soon, the Court may also have to deal with the Commission’s Meta decision where the Commission considered Meta’s tying of its online classified ads service to its social network Facebook and imposing various trading conditions on other online classified ads service providers as abusive. This resulted in a EUR 797.72 million fine for Meta.

The German Federal Cartel Office (Bundeskartellamt) imposed a fine in the construction sector. It also gave the green light for a reuse system to reduce plastic waste in the plant trade sector. In addition, the Federal Cartel Office discontinued proceedings in the e-bikes and copper production sectors after the parties involved had made concessions and stopped the practices concerned.

2025 will likely be an eventful year too

The Commission intends to issue new guidelines on abusive exclusionary conduct. Due to recent decisions of the Court of Justice of the European Union, there is reason to believe that the draft published in 2024 will have to be revised.

Labour markets are also increasingly becoming the focus of competition authorities. In a policy brief (for details, see: Noerr Insights), the Commission recently classified both no-poach agreements – i.e., agreements between employers not to solicit employees from each other – and wage-fixing agreements (outside of collective bargaining agreements between trade unions and employer associations) as restrictions of competition by object. If this classification is upheld in court, the Commission’s work would become easier as it would not be required to prove actual anti-competitive effects of such agreements on the market. In addition to inspections, the first proceedings have now been initiated in this sector (online food delivery sector).

6. EU merger control in the “von der Leyen Commission 2.0”

In the future, European merger control will be shaped by both the digital transformation and by measures to strengthen the EU’s competitiveness. The new Commissioner for Competition will have a key role in this. Spanish politician Teresa Ribera most recently served as her country’s Minister for Ecological Transition and Demographic Challenge. As Executive Vice-President for Clean, Just and Competitive Transition, she will have to bring her environmental and climate concepts into harmony with the overriding aim of strengthening competitiveness.

Strengthening the EU’s competitiveness – how will the recommendations of the Draghi report be implemented?

Among other things, the highly anticipated Draghi report from September 2024 (see: Noerr Insights) recommends taking future competition and potential for innovation more strongly into account when considering the impact of mergers. This approach is also intended as a means to tackle the growing market power of global tech giants. In addition, greater importance is to be given to security and resilience aspects. A “New Competition Tool” could even enable ex post analysis of mergers. In her hearing before the European Parliament, the new Commissioner for Competition, Teresa Ribera, announced a modernisation of competition law. While the launch of a New Competition Tool does not appear to be on the agenda yet, the Guidelines on the assessment of horizontal mergers will be revised to stay abreast of the developments in globalisation, digitalisation, sustainability, innovation and resilience.

“Acqui-hire” and artificial intelligence remain a focus

Acquisitions will remain a focus of the European Commission, as will partnerships and “acqui-hire” in the area of artificial intelligence. Acqui-hire means recruiting key employees to further develop areas such as innovative technologies at the new company. Microsoft’s hiring of two of the founders of AI developer Inflection (Microsoft/Inflection) is a well-known example for this. Seven EU Member States had referred the case to the European Commission, which found that the mere hiring of individuals may be subject to European merger control.

In the Illumina/GRAIL case (judgment of 3 September 2024, C-611/22 P), however, the EU Member States had to withdraw their referral requests following the judgment of the Court of Justice of the European Union. The Court of Justice of the European Union ruled that the European Commission may not examine transactions which are not subject to any notification requirement, whether under EU law or under any EU Member State law (see: Noerr Insights).

Teresa Ribera emphasised that “killer acquisitions” of innovative undertakings with low or no turnover should not slip through the EU merger control thresholds. As of now it is unclear whether this is to be achieved by using existing means, such as the ex officio investigative powers of national competition authorities, or by creating new possibilities through revising the EU Merger Regulation.

7. German merger control – New powers of intervention and waiting for the federal elections

The 11th amendment to the German Act against Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen, "**ARC**"), which came into force at the end of 2023, gave Germany's Federal Cartel Office (Bundeskartellamt) extended powers of intervention following sector inquiries (see our Noerr Insights and our Competition Outlook 2024). Since then, pursuant to section 32f ARC, targeted measures can be ordered under certain conditions following a sector inquiry in order to remedy identified distortions of competition. This reform continues to be at the centre of discussions about the role and effectiveness of German merger control.

Cautious application of new powers of intervention

The Federal Cartel Office recently conducted sector inquiries in the areas of municipal waste and e-charging infrastructure.

One of the reasons for the sector inquiry in the area of municipal waste was the risk that the increased turnover thresholds in section 35(1), no. 2 ARC would result in the uncontrolled takeover of numerous smaller companies by larger competitors in the waste disposal industry, which is characterised by small and medi-umsized companies. The sector inquiry revealed that the German Rethmann Group is the market leader both nationwide and regionally with considerable market shares. With publication of the final report, the Federal Cartel Office announced that, after evaluating comments from interested business circles, it would examine whether Rethmann should be obliged to notify planned mergers pursuant to section 32f(2) ARC. The Federal Cartel Office would have at least until 28 June 2025 to issue such an order.

In the area of e-charging infrastructure, on the other hand, the criteria for issuing such orders are not fulfilled, as the Federal Cartel Office noted in its press release on the final report.

These two examples indicate that the Federal Cartel Office intends to apply its new powers of intervention with caution. However, the practical use of these powers is still in its infancy. Only future sector inquiries will provide a clearer picture of how cautiously or aggressively the Federal Cartel Office will apply its powers.

Future issues in German merger control

Even before the collapse of Germany's "traffic light" coalition, it was reported in government circles that the 12th amendment to the ARC planned for 2025 would probably not be introduced. Apparently, the coalition partners' ideas were also too far apart in this area. However, the debate on how German merger control will evolve is set to continue. The direction and extent of possible legislative changes will not be assessable until we see the results of the federal elections scheduled for 23 February 2025 and it becomes clear which parties will form the next federal government.

It appears unlikely that the turnover thresholds of section 35 ARC will be generally lowered to also include acquisitions of smaller, innovative companies in German merger control. This would affect many otherwise non-problematic transactions and thus generally increase the administrative burden on companies. On the other hand, it would be conceivable to refine the transaction-value-based threshold in order to be able to better cover the acquisition of potentially highly competitive start-ups by large companies, known as killer acquisitions, and also other forms of cooperation such as the takeover of highly qualified personnel with special know-how, known as acqui-hires (more details on the Microsoft/Inflection case in our Noerr Insights).

8. Further boost to private enforcement of antitrust law

Case law in 2024 was characterised by a further boost to private enforcement of antitrust law. Based on Articles 101 and 102 TFEU and the principle of effective enforcement of European law, the Court of Justice of the European Union has deduced far-reaching implications for national law in some cases – including for the period before the Damages Directive came into force (Directive 2014/104/EU).

In the preliminary ruling proceedings on an action for damages brought by the Czech price comparison platform Heureka against Google (judgment of 18 April 2024, C-605/21), the Court of Justice of the European Union provided guidance on how to deal with the **statute of limitations**. The Court found that the knowledge-dependent limitation period for the antitrust damages claims at issue in the national proceedings due to an infringement of Article 102 TFEU can only begin when the infringement has ended and the injured party has obtained knowledge of the information necessary to bring the action. According to the Court of Justice of the European Union, the Czech law, which provided otherwise, breaches the principle of effectiveness and the requirements of the Damages Directive. This has led to an intensive debate regarding German law as well.

Issues of **international jurisdiction** are also still in focus: In the MOL decision (judgment of 4 July 2024, C-425/22, see: Noerr Insights), the Court of Justice of the European Union rejected the jurisdiction of the courts at the registered office of the only indirectly injured parent company, taking into account the existing case law on the "economic unit" as well (see also judgment of 11 July 2024, C-632/22 – Volvo on the international service of documents). By contrast, Advocate-General Kokott argues in her opinion in the Heineken proceedings (26 September 2024, C-393/23) in favour of assuming jurisdiction at the registered office of the parent company, too, in certain circumstances pursuant to Article 8(1) of the Brussels I Regulation.

From a German perspective, developments relating to **antitrust class actions** are relevant. In his opinion, Advocate-General Szpunar argues that effective antitrust enforcement in standalone actions requires access to collective redress. He finds that a fundamental prohibition of a class action debt collection model for antitrust damages claims is inadmissible (C-253/23 – ASG 2), although some questions remain unanswered (see: Noerr Insights). The judgment is eagerly awaited and scheduled to be delivered on 28 January 2025.

At the national level, the question of **damage quantification** remains in the spotlight. It will continue to occupy the trial courts in 2025. In the Trucks IV case (judgment of 9 July 2024, KZR 98/20), the Federal Court of Justice (Bundesgerichtshof) eased the requirements for those harmed by a cartel to substantiate their claims. The Federal Court of Justice ruled that the trial courts have broad discretion in principle under section 287 of the German Code of Civil Procedure (Zivilprozessordnung, "CCP") when determining damage. In order for a trial court to be able to determine the damage, the claimant must present (only) the tangible evidence it can easily provide. Depending on the individual case, this does not include submitting its own comparator-based market analysis. However, expert opinions remain relevant because in the Trucks V decision (judgment of 1 October 2024, KZR 60/23), the Federal Court of Justice upheld its previous case law. It made it clear that the trial judge is obliged, based on section 287(1) CCP, to comprehensively assess the expert opinions submitted by the parties in particular and has to consider on this basis whether a separate expert opinion needs to be obtained by the court.

9. Distribution-related antitrust law remains in the focus of competition authorities

In 2024, Germany's Federal Cartel Office (Bundeskartellamt) imposed fines in several cases of vertical price fixing. These concerned manufacturers of telecommunications and network technology as well as of protective clothing. In both cases, the Federal Cartel Office did not – like most – prosecute the (specialist) retailers involved.

The European Commission identified various practices by the chocolate and biscuit manufacturer Mondelez, such as restricting the sales territory of wholesalers, which jeopardised cross-border trade and thus the EU's objective of creating an integrated single market. Mondelez was fined EUR 337.5 million (for details, see: Noerr Insights). The European Commission also imposed a fine of EUR 5.7 million on Pierre Cardin and its largest distributor Ahlers in the apparel sector for inadmissible territorial protection granted to Ahlers.

Not only the competition authorities, but also the courts have taken action:

Non-compete clauses: The Dusseldorf Higher Regional Court (Oberlandesgericht Düsseldorf) found that non-compete clauses and exclusive purchasing agreements in supply contracts are not anti-competitive per se, even with market shares above 30%. However, non-compete clauses must be closely scrutinised especially when they lead to foreclosure effects. The judgment provides several aspects that may be relevant when assessing the impairment of market access (for details, see: Noerr Insights).

Price parity clauses: German courts have already ruled on price parity clauses in hotel booking platforms on several occasions (Competition Outlook 2022). A distinction must be made between (i) wide parity clauses, which generally prohibit hotels from offering their rooms anywhere cheaper than on the booking platform, and (ii) narrow parity clauses, which merely prohibit hotels from offering their rooms cheaper on their own website. In the Booking.com case, the Court of Justice of the European Union has now ruled that neither Booking.com's narrow nor its wide parity clause qualifies as a necessary ancillary restraint and therefore generally fall within the ban on cartels. The Court stated that in the case of ancillary restraints, it is not a matter of ensuring the economic success of the main operation, which is why mere negative effects on profitability do not suffice as justification.

While the Vertical Block Exemption Regulation (**"VBER"**) explicitly provides that wide parity clauses are not exempted by the VBER, the Court of Justice of the European Union did not rule out that narrow parity clauses could be covered by the VBER, but ultimately left the decision open.

Exclusivity rebates: The Court of Justice of the European Union annulled the EUR 1.06 billion fine imposed on Intel in 2009 for abusing its dominant market position in the field of microprocessors (allegation of market foreclosure), thereby ending the 15-year legal dispute. The Court emphasised that exclusivity rebates granted by a dominant company are not anti-competitive per se. The decisive factor is the effect on competition, which the competition authority can examine using the "as-efficient competitor test". In essence, this test involves analysing whether an equally efficient competitor could apply the same discount system as the dominant company in a way that covers its costs. The judgment contains important clarifications in this regard (for details, see: Noerr Insights); nevertheless, establishing rebate systems that comply with competition law remains an ongoing issue. You can find help with an initial assessment on: Noerr Insights.

10. State aid law – Securing competitiveness, shaping the future

The current trends in State aid law are still being shaped by the global competitiveness of the European Union. Recent discussions have focused on increased and targeted investments in strategic sectors, as well as reforms and simplifications of EU State aid law.

In April 2024, the former Italian prime minister Enrico Letta published a report on the future of the EU single market on behalf of the Council of the EU. In it, he proposed, among other things, a stricter implementation of EU State aid law and an increase of investments at EU level in order to promote innovation in the industry in a targeted manner and avoid fragmentation of the EU single market. Instead of further extending temporary frameworks under State aid law to overcome crises, the EU should make innovative concepts into permanent fixtures, he said.

In September, Mario Draghi, the former President of the European Central Bank, published a report on the future of European competitiveness on behalf of the European Commission, in which he cited effective State aid policy as a key means to overcome current challenges. In particular, Draghi singled out the energy sector, the semiconductor industry, digitalisation and artificial intelligence. Through harmonised rules, faster procedures, a reform of the so-called Important Projects of Common European Interest (“**IPCEI**”) and more projects at European level, Draghi wishes to strengthen the EU’s competitiveness and promote sustainable industries with investments worth hundreds of billions of EUR each year.

The EU made further progress in green tech in 2024, with two further IPCEIs launched to promote hydrogen technologies. In addition, further major State aid schemes for the transformation to a net-zero economy were approved under the Temporary Crisis Management and Transition Framework (TCTF), for example EUR 1.2 billion in State aid to promote electricity storage facilities in Poland. In addition, an Austrian State aid scheme worth EUR 2.7 billion was approved for projects for the reduction of greenhouse gas emissions stemming directly from industrial installations in accordance with the Guidelines on State aid for climate, environmental protection and energy (CEEAG). Large amounts of aid were also approved in the area of digital transformation, such as EUR 5 billion for an ESMC semiconductor factory in Dresden, Germany, and EUR 2 billion for an STMicroelectronics semiconductor factory in Catania, Italy.

The newly appointed European Commission is taking Letta’s and Draghi’s proposals to intensify strategic investments seriously. According to statements by new Commissioners, public investment could be increased via existing EU programmes and the establishment of a new “EU Competitiveness Fund”. Reforms to State aid law appear to be firmly on the agenda.

Whether the European Commission can achieve its ambitious goals through the measures already announced in times of geopolitical upheaval and growing nationalist tendencies remains to be seen. However, it is clear that large amounts of funding will play a central role and that EU State aid law will therefore continue to be key to Europe’s future viability.