Competition Outlook 2026

Preface

In this Competition Outlook, our Antitrust & Competition practice group once again presents a summary of the key developments in antitrust and competition law at national and European levels. In its tried and tested format, our Competition Outlook 2026 identifies and reviews the major issues from the past year and offers an in-depth preview of what to expect in the year ahead.

The year 2025 was again marked by significant progress and challenges posed by antitrust enforcement in digital and technology-driven markets. Fines imposed by the European Commission under the Digital Markets Act attracted considerable attention. German courts also delivered landmark judgments in proceedings against digital companies. Parallel to this, the competition authorities stepped up their efforts to address the competition law implications of artificial intelligence and the use of large amounts of data – prompted in part by several regulatory initiatives.

Shifts in the geopolitical landscape and increased attempts to achieve economic resilience have brought the topic of European competitiveness even more into the spotlight. Based on the recommendations of the Draghi report, 2025 saw the launch of targeted reforms to European merger control, with a strong emphasis on innovation-friendly, resilient and sustainable competition structures. Besides this, new legal structures have emerged in European state aid law that companies from a range of sectors will be able to proactively use, accompanied by more detailed guidance on how the Foreign Subsidies Regulation ("**FSR**") should be applied. New digital tools such as Noerr's FSR Checker can make it far easier to ensure compliance in international transactions. The European Commission will also be prioritising reforms to investment control law and promoting innovation and sustainability.

The year 2025 also brought important changes to the antitrust rules governing sales and distribution, including clearer rules for online retail and the application of block exemption regulations. Regarding private enforcement of competition law, the European Court of Justice set new standards for collective redress and limitation periods in preliminary ruling proceedings, while differing approaches to quantifying damages continued to dominate the trial courts' case law at the national level.

Our Competition Outlook 2026 contains a compact round-up of these and other developments, providing valuable guidance for the year ahead.

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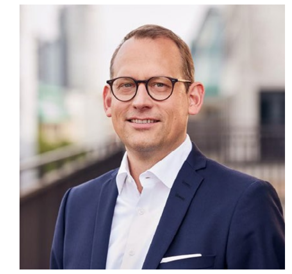

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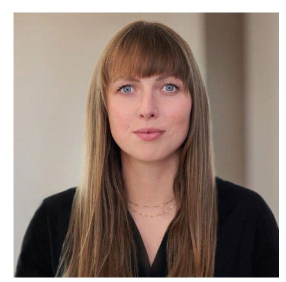

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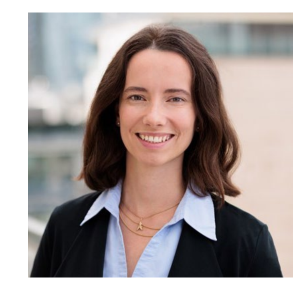

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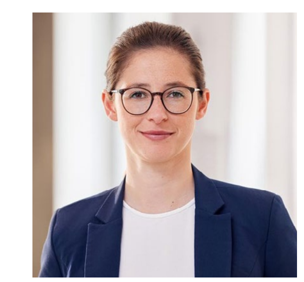

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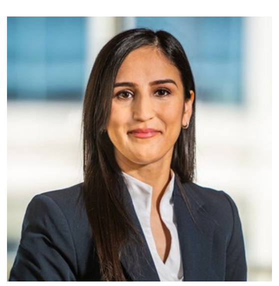

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1. EU merger control in changing times

In 2026, the revision of the European Commission's merger control guidelines, which have been in force since 2004, will proceed and an initial draft is likely to be made available for public consultation. One of the main points under consideration is the extent to which digital business models, innovations and security aspects can and must be taken into account in the context of merger control. Another focus will be in the area of defence and artificial intelligence. Furthermore, it is to be expected that post-Illumina/Grail questions relating to referrals of concentrations by (non-competent) national authorities under Article 22 of the Merger Regulation to the European Commission will arise, particularly in connection with new "call-in" powers of national authorities.

Revision of the Merger Control Guidelines

In 2025, the European Commission set out to modernise the guidelines on the assessment of horizontal and non-horizontal mergers, which have been in force since 2004 (together the "**Guidelines**"). The aim of the revisions is to pay more attention to new economic realities and innovations when assessing concentrations. One suggestion for simplifying merger reviews is to introduce presumptions for undertakings with certain market shares. The Guidelines will also be updated to reflect digital ecosystems and innovative business models such as platforms.

Defence and artificial intelligence in the spotlight

In its "White paper for European defence – Readiness 2030" (see our Noerr Insights) published in March 2025, the European Commission already addressed the strengthening of the European defence sector. When revising the Guidelines, it is also examining whether concentrations can contribute towards strengthening defence and security. At the same time, the European Commission has to ensure in relation to merger control that no problematic market concentrations and resulting price increases occur. In the coming year, the European Commission will also be dealing with topics involving artificial intelligence (see our Noerr Insights) such as the infrastructure of cloud computing services.

Case law in light of Illumina/Grail

It will be interesting to see how the considerations in the judgment of the Court of Justice of the European Union in Illumina/Grail (see our Noerr Insights) will be applied to the case of Nvidia vs Commission (action of 10 January 2025, T-15/25) in the coming year. The European Commission has accepted the Italian competition authority's request for a referral in relation to a proposed merger by Nvidia concerning an AI start-up. Due to the start-up's turnover, neither the thresholds of the Merger Regulation nor those of Italian merger control were met. However, the Italian authority nevertheless referred the merger to Brussels on the basis of national "call-in" powers. The action brought by Nvidia before the General Court of the European Union is primarily based on an allegedly unlawful interpretation by the European Commission of Article 22 of the Merger Regulation and on a violation of the principles developed in the Illumina/Grail judgment on the limits of the possibilities of national authorities without the required competence to refer cases.

2. Opposing tendencies regarding German merger control thresholds

In Germany, a concentration must be reported if the thresholds for European merger control are not met but the turnover thresholds under section 35(1) of the Act against Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen) ("**ARC**") are exceeded or the criteria for the transaction value threshold under section 35(1a) ARC are met. In this area of formal merger control, opposing tendencies have recently emerged: on the one hand, the Federal Court of Justice (Bundesgerichtshof) has significantly lowered the requirements for assuming substantial domestic operations, which means that more transactions are likely to be covered by the transaction value threshold. On the other hand, the federal government has announced that it will once again raise the turnover thresholds.

Federal Court of Justice on Meta/Kustomer: broad interpretation of "substantial domestic operations"

The transaction value threshold introduced in 2017 gives the Federal Cartel Office (Bundeskartellamt) the opportunity to examine concentrations even if the target company does not reach the second domestic turnover threshold. This becomes relevant, for example, in the case of so-called killer acquisitions or acqui-hires, which focus on innovation potential or key personnel rather than traditional company values, but which may also harbour the potential of jeopardising competition.

In the Meta/Kustomer case, the Federal Court of Justice dealt with the transaction value threshold for the first time and interpreted the criterion of "substantial domestic operations" extensively. The Court said that the mere technical possibility of accessing data of domestic end customers could trigger a notification requirement without the need for significant domestic turnover or a physical presence. It also stated that established criteria such as the ratio of domestic to foreign turnover of the target company would have to be given less weight than a market-based overall assessment. The Court's decision leads to considerable legal uncertainty. Further clarification could now be provided by the Adobe/Magento and Adobe/Marketo cases, which are to be heard by the Federal Court of Justice shortly (see our Noerr Insights on the decision of Düsseldorf Higher Regional Court (Oberlandesgericht Düsseldorf) on both cases).

Federal government to raise turnover thresholds

The federal government's coalition agreement vaguely stated that the goal was to "ensure effective application of antitrust and competition law" and to "make procedures faster and more efficient". As part of its modernisation agenda, the government then announced in October 2025 that it planned to raise the turnover thresholds by mid-2026, which had last been raised in 2021. The further details of this are not yet known, including whether the transaction value threshold for the value of consideration of currently €400 million will be adjusted at the same time. As a result, some competitively critical transactions would no longer be covered. To counteract this, adjusting the transaction value threshold would be one option. The alternative option of introducing a call-in right for the Federal Cartel Office is gaining increasing support.

Conclusion and outlook

Practitioners await the developments in German merger control in 2026 with interest. It is to be hoped that the transaction value threshold will be defined more closely by the courts or the legislature. Clear thresholds should continue to form a core element of German merger control in the future. Introducing a call-in right for the Federal Cartel Office could have a detrimental effect on transaction security and should therefore be seen critically.

3. Enforcement of antitrust law in the digisphere – now also with AI

The events of 2025 clearly indicate the competition authorities' new priorities, with recent court decisions playing into their hands.

Detecting breaches of EU competition law is made easier
In the Michelin case (Case T-188/24), the General Court of the European Union implicitly confirmed that the European Commission may legitimately initiate antitrust proceedings and conduct dawn raids on the basis of findings derived from AI-based screening of public information. This decision also highlights the risks of publicly disclosing strategic or sensitive information (see our Noerr Insights). The use of AI-assisted analysis tools is likely to become an integral part of competition authorities' investigative practice, for example in the large-scale review of companies' publications.

The Nuctech decision (Case C-720/24) by the Court of Justice of the European Union has further strengthened the European Commission's powers in dawn raids: competition authorities may inspect data even if it is stored on servers outside the EU, provided that the subsidiary concerned has access to the data and that access may lead to findings of an infringement of EU competition law.

Focus on no-poach agreements and exchange of information
The European Commission's €329 million fine imposed on Delivery Hero/Glovo attracted considerable attention. As already announced in its policy brief, the European Commission classified no-poach agreements as a restriction of competition by object. In view of the shortage of skilled workers, competition authorities' focus on labour market-related agreements will continue to increase. Targeted compliance training for HR staff is therefore essential (see our Noerr Insights).

The Banco BPN judgment (Case C-298/22) by the Court of Justice of the European Union has significantly increased the risk of breaching EU competition law through information exchange between competitors. Even a single exchange can constitute a restriction of competition by object, without any need for further coordination based on the information exchanged (see our Noerr Insights). Accordingly, the authorities' growing activity in this field is not surprising. Only recently, the European Commission opened an investigation into Deutsche Börse and Nasdaq (press release).

Digital issues dominate the enforcement regarding abuses of a dominant position
While the final version of the European Commission's guidelines on exclusionary conduct is still a long time coming, the European Commission has by no means been idle and has initiated proceedings against SAP and Red Bull on suspicion of abuse of market power.

In its Android Auto decision (Case C-233/23), the Court of Justice of the European Union lowered the threshold for successful claims to access digital platforms (see our Noerr Insights).

In addition, the Federal Court of Justice's (Bundesgerichtshof) "Steinbruch" decision (Case KZR-73/23) will predictably sharpen national controls on abuse of market power under section 20 of the German Act against Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen). The decision confirms that even companies without traditional market dominance can come under scrutiny if dependencies exist and customers have limited opportunities to switch.

What's coming in 2026?
What can be expected in 2026 are a closer integration of technological investigation instruments, strict standards for information exchanges and more refined controls on abusive conduct. Companies should scrutinise market communication, HR strategies and digital interfaces under EU competition law at an early stage and improve their compliance processes.

4. Private enforcement – news on damages estimates and from Luxembourg

In the field of private enforcement, 2025 in Germany was characterised by the continued diverging approaches taken by trial courts in estimating antitrust damages. At the same time, the Court of Justice of the European Union provided new impetus in preliminary rulings.

Damages estimates: diverging approaches and the need for uniform standards

In 2025, German courts once again took diverging approaches to estimating antitrust damages. There is a wide range of methods and percentages between the individual judgments, with no clear preferred path being apparent to date.

On the one hand, Stuttgart Regional Court (Landgericht Stuttgart, judgment of 27 February 2025 – 30 O 235/17) and Stuttgart Higher Regional Court (Oberlandesgericht Stuttgart, judgment of 20 November 2025 – 2 U 263/21) assume a broad scope for damages estimates and determine damages at their free discretion by referring to meta-studies. Stuttgart Regional Court even disregarded the results of its own expert witness proceedings by referring to minimum damages. Conversely, Munich I Regional Court (Landgericht München I) appears to place more emphasis on an empirical basis for damage assessment during its expert witness proceedings (see report on the expert witness proceedings). This divergence reveals a general problem: German trial courts are still looking for the right balance between judicial discretion and economic precision.

Germany's Federal Court of Justice (Bundesgerichtshof) did not set any new guidelines in 2025. Although its decisions to date have strengthened the trial courts' discretionary powers, they also require an assessment of the economic analyses presented. This increases the pressure to develop methodological standards that combine estimation leeway and economic robustness. It therefore remains to be seen in 2026 whether a more uniform practice on estimates will emerge.

Collective redress: while German courts take a critical approach, the EU level shows more openness

Diverging approaches have also emerged when it comes to collective redress. While German courts – such as Dortmund Regional Court (Landgericht Dortmund, judgment of 26 February 2025 – 8 O 35/22 (Kart)) – still take a critical view of assignment models in specific cases and thus continue to clarify the limits of permissible arrangements, a different trend is emerging at EU level. In the ASG 2 case (judgment of 28 January 2025 – C-253/23), the Court of Justice of the European Union ruled that the principle of effectiveness requires, under strict conditions, that injured parties can assert claims jointly in collective proceedings (see our Noerr Insight). At the same time, however, justified limits of national law remain valid in principle.

EU impulses regarding limitation periods

In the preliminary ruling proceedings Nissan Iberia (judgment of 4 September 2025 – C-21/24), the Court of Justice of the European Union set out requirements with regard to the knowledge-based start of limitation periods in Spanish limitation law. The Court of Justice of the European Union held that in the light of the principle of effectiveness, the knowledge-based limitation period in the case of a follow-on action only starts to run once the underlying decision by the competition authorities has become final. It is obvious that this will also trigger discussions on limitation periods under German law.

It therefore appears that 2026 will be a year in which methodological, substantive and procedural questions still need to be addressed.

5. EU digital competition law – first fines imposed on Gatekeepers

The Digital Markets Act ("DMA") has been in force since November 2022. The DMA is designed to limit the market power of core digital platforms, commonly referred to as "Gatekeepers", within the EU's digital single market and to foster fair competition in digital markets. To date, Alphabet, Amazon, Apple, Booking, ByteDance (TikTok), Meta and Microsoft have been named as Gatekeepers.

In April 2025, the European Commission, for the first time under the DMA, imposed fines totalling €500 million on Apple and €200 million on Meta. The proceedings against Apple concern violations of the anti-steering obligation with respect to app developers in its App Store. App developers are not granted sufficient access to alternative distribution channels outside the App Store. Meta is accused of employing a "consent or pay" model, whereby users of Facebook and Instagram are required to either consent to the processing of their data or to switch to a fee-based, ad-free version. The Commission also obliged Apple and Meta to immediately cease the identified violations and prevent their recurrence (see our Noerr Insights).

These cases demonstrate that the European Commission is prepared to exercise the enforcement mechanisms conferred by the DMA against identified violations – notwithstanding political opposition from the United States. However, Apple and Meta have filed an action for annulment against the European Commission's decisions. It remains to be seen whether the European Commission will prevail.

DMA's effectiveness under review

In addition to imposing fines under the DMA, the European Commission also engages in a "regulatory dialogue" with the Gatekeepers. In April 2025, it discontinued proceedings against Apple following Apple's commitment to revise their browser selection screen, thereby facilitating user choice of alternative default browsers.

In the course of 2025, the European Commission conducted a public consultation regarding the DMA. Companies, associations and EU citizens were granted until September to comment on the effectiveness of the DMA and the necessity for potential amendments. The results of this consultation, accompanied by the European Commission's assessment, are scheduled to be published in May 2026 in the first official review of the DMA. It is expected that the European Commission will then also comment on the application of the DMA in the field of artificial intelligence.

AI Office – will its significance increase?

In November 2025, the European Commission introduced a draft "Digital Omnibus" package aimed at simplifying and harmonising the European digital legal framework, particularly with regard to the GDPR, the DMA and the AI Regulation. The "AI Office" established within the European Commission by the AI Regulation is to play a key role in supervising the use of artificial intelligence. Whether the proposed legislation will require the AI Office to be considered as a regulatory authority in future transactions, given the increasing significance of AI, remains to be determined.

6. Private enforcement against digital companies in Germany on the rise

The German Federal Cartel Office (Bundeskartellamt) continued to be active in the digital sector in 2025. As part of its expert roundtable on the subject of "AI and competition" this June, it addressed the danger with selected stakeholders that key stages of the AI value chain are controlled by just a few big digital corporations, meaning that new dependencies could arise in cloud and data markets.

Parallel to this, the Federal Cartel Office is continuing to pursue its stricter monitoring of abusive practices under section 19a of the German Act against Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen). Google/Alphabet agreed, for instance, to abandon anti-competitive "tying" practices at Google Automotive Services and the Google Maps Platform and to allow more interoperability. In addition, the Federal Cartel Office expressed concerns about Amazon's non-transparent price control mechanisms on Amazon Marketplace and the possibly self-preferencing design of Apple's Tracking Transparency Framework, which governs the obligation of app providers to obtain consent to the collection of users' data.

However, it was mainly the courts that set new signals in the area of private enforcement in 2025. Mainz Regional Court (Landgericht Mainz) took on what could in some respects be described as a pioneering role by handing down a judgment in August (Case 12 HK O 32/24) regarding private enforcement of the Digital Markets Act (**"DMA"**) in Germany which attracted a lot of attention. In response to an action by 1&1 (which operates the email services GMX and Web.de), the court banned Google/Alphabet from giving undue preference to its own email service Gmail when its Android smartphones are set up and used. The decision is based directly on the DMA's prohibition of tying or linking services (Article 5(8) DMA) and obliged Google/Alphabet to adjust its business practices so that alternative email services can also be used effectively. It is noteworthy that the court (without waiting for an official decision by the European Commission) independently interpreted and applied the DMA.

Additionally, Berlin II Regional Court (Landgericht Berlin II) found on 14 November 2025 (Case 16 O 195/19 Kart (2)), that Google/Alphabet had to pay €465 million in damages to the price comparison portal Idealo. The ruling was based on Google's long-standing preferential display of its own comparison-shopping service in the general search results. The action was based on the European Commission's 2017 decision, which found that Google had abused its dominant market position in breach of Article 102 TFEU.

The courts' decisions show that Germany could develop into a central forum for the private enforcement of digital antitrust law in Europe, especially concerning the DMA. Private enforcement is likely to become a pivotal field of digital antitrust law in the future in which Germany is well positioned to take a leading role as a legal forum.

7. From Gucci to Temu: authorities' focus on vertical infringements

For some years now, the European competition authorities have consistently taken action against vertical price fixing and restrictions on cross-border trade. This trend is continuing. The authorities focus in particular on the fashion industry and on proceedings involving online marketplaces.

Pricing in online sales

The luxury fashion brands Gucci, Chloé and Loewe required their retailers not to deviate from the recommended retail prices, certain maximum discounts and season-end sales periods. The aim was to avoid discrepancies in prices and conditions between direct sales and indirect sales via own retailers. The European Commission considered this an unlawful restriction of retailers' freedom to set prices and imposed fines totalling €157 million. In return for their cooperation with the European Commission, the manufacturers received significant reductions in fines, in some cases by as much as 50 %. The authority is thus consolidating its practice of granting fine reductions in vertical cases, even though the leniency programme and the settlement notice only provide for reductions in the case of horizontal infringements.

In the consumer electronics sector, the German Federal Cartel Office (Bundeskartellamt) imposed a fine of €6 million on Sennheiser, Sonova and three responsible employees. The employees had urged retailers to raise their retail prices. The Federal Cartel Office continuously monitored retail prices via online price comparison services and special software to detect deviations from recommended retail prices and then intervened. When Sonova acquired the business divisions concerned from Sennheiser, the responsible employees continued the inadmissible practices. Here too, the companies received substantial reductions in fines for their cooperation.

The German Federal Cartel Office is also investigating whether the online marketplaces Temu and Amazon use control mechanisms to unlawfully influence retailers' pricing.

Stricter requirements for exclusive distribution systems

In its Beevers Kaas judgment, the Court of Justice of the European Union clarified the conditions for the block exemption of exclusive territorial allocations in exclusive distribution systems. It held that an exclusive distribution right for a territory requires an explicit agreement with all excluded distributors. The mere absence of active sales by foreign distributors is not sufficient. The Court of Justice of the European Union added that a tacit agreement is possible. However, this requires the supplier expressly to ask distributors not to actively sell into the exclusive territory. The supplier must then monitor compliance and sanction any infringements.

First proceedings regarding category management

"Category management" means that retail chains such as supermarkets entrust the management of a particular product category to a specific supplier (the "category manager"). The category manager's remit may also cover competing products. As a result, the category manager may influence the selection, placement and advertising of competing products. The European Commission is now relying on this theory for the first time in proceedings on the abuse of a dominant position, specifically against Red Bull. The company is alleged to have granted retailers monetary and non-monetary advantages if they delisted other energy drinks over 250 ml or gave them less favourable shelf positions.

2026: online trade and pricing

In 2026, we can expect the competition authorities to continue to scrutinise retailers' freedom to set prices, particularly in online sales via their own shops and platforms. Given the stringent requirements established in the Beevers Kaas judgment, competition authorities are also likely to examine exclusive distribution systems more closely.

8. FDI – comprehensive investment screening reform

2026 is likely to become a landmark year for investment screening – at EU and national level. With the revision of the EU Regulation establishing a framework for the screening of foreign direct investments into the Union ("EU Screening Regulation"), the first comprehensive amendment since the introduction of the regulation is about to be finalised. At the same time, the German government is planning a new Investment Screening Act that will implement the EU reforms and modernise the German investment screening regime.

Revisions of the EU Screening Regulation

Following the publication of the first reform proposal for the EU Screening Regulation in early 2024, the European Commission entered into trilogue negotiations. On 11 December 2025, the Council of the European Union and the European Parliament reached a provisional political agreement (Noerr Insights).

The reform aims to harmonise investment screening regimes across the EU, close security-related gaps and, at the same time, preserve openness to global trade and international investment. Under the agreement reached, exclusive responsibility for screening decisions will remain with the respective Member States. Another key element is the mandatory introduction of an investment screening mechanism covering, at a minimum, foreign investments in the following areas: (i) dual-use items and military equipment, (ii) hyper-critical technologies, (iii) critical raw materials, (iv) critical entities in the energy, transport and digital infrastructure sectors, (v) electoral infrastructure and (vi) certain financial system facilities. To prevent circumvention, the scope of application also extends to investments by subsidiaries of foreign investors based in the EU. In addition, the cooperation and information mechanisms between the member states and the European Commission will be further strengthened and operational procedural aspects will be streamlined.

The provisional agreement requires formal approval by the European Council and the European Parliament before being formally adopted.

German Investment Screening Act

After the last federal government unsuccessfully sought a new, independent investment screening act, the new government is planning to prepare a draft bill for 2026 which is intended to implement the reforms of the EU Screening Regulation. In addition, the rules on asset deals and atypical acquisitions of control are to be defined in more detail, intra-group restructurings are to be uniformly privileged, and case groups are to be removed or revised.

FDI enforcement in 2025

The cases discussed in public in 2025 illustrate the increasing relevance of investment screening for security of supplies and geostrategic stability:

Nexperia: In autumn 2025, the Dutch government temporarily took control of the semiconductor manufacturer – and relinquished it again following Chinese export restrictions in order to prevent supply shortages for the European automotive industry.

Covestro: After certain concerns were settled, the German Federal Ministry for Economic Affairs and Energy (the "BMWE") cleared the takeover of the leading polymer materials manufacturer Covestro by XRG, a subsidiary of the state-owned Abu Dhabi National Oil Company.

Open Grid Europe: In contrast, the investment by Italian grid operator Snam in the long-distance gas grid operator Open Grid Europe failed due to concerns of the BMWE regarding the indirect shareholding by Chinese grid operator State Grid.

2026 is therefore likely to become a year in which the framework for investment screening will be redefined.

9. Keep on keeping on: state aid law and EU competitiveness

During 2025, strengthening European competitiveness was once again a priority of many reform projects in the EU, accompanied by an increased focus on defence capabilities. As Mario Draghi suggested in his widely noted report from 2024, state aid law continues to play a major role in this process.

Improving competitiveness by decarbonising industry

In February 2025, the European Commission put forward the Clean Industrial Deal ("CID") – a kind of business plan for the EU intended to make European industry more competitive while driving decarbonisation.

In June 2025, the Clean Industrial Deal State Aid Framework ("CISAF") was then adopted to implement the CID, replacing the old Temporary Crisis and Transition Framework (TCTF). Two of the CISAF's objectives are to work towards strategically enhancing the EU's competitiveness and improving its carbon neutrality by 2050, including by promoting projects in the areas of industrial decarbonisation and clean technologies, and reducing the risks of private investment.

When it comes to clean technologies, some progress was in fact made towards implementing these targets in 2025. Under the CISAF, the European Commission approved initiatives such as a €11 billion French state aid scheme promoting offshore wind power projects and a €700 million Spanish state aid scheme intended to facilitate strategic investments in the expansion of cleantech manufacturing capacities.

Defence capabilities through investments by member states

At almost the same time as the CISAF, the European Commission published the Defence Readiness Omnibus, a package of measures aimed at strengthening the EU's defence capabilities and aligning the national security strategies of the member states on a common European footing. The European Commission assumes that investments of up to €800 billion will be needed over the next four years.

The Defence Readiness Omnibus examines possibilities for arranging funding without an approval procedure under state aid law. The European Commission draws particular attention to the exception for defence in Article 346(1b) TFEU allowing member states to also subsidise defence projects outside the strict requirements of state aid law.

2026 to feature further reform projects

Further revisions to state aid rules are eagerly awaited in 2026. These include updates to the "Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty", the term of which was recently extended until the end of 2026, and revisions to the General Block Exemption Regulation (GBER) intended to further simplify state aid procedures and reduce bureaucracy in the future.

2026 could also be another landmark year when it becomes apparent how far the reforms already implemented (including under the CISAF) will actually bear fruit and help the EU compete globally. In any event, it is clear that companies across a range of sectors will have valuable opportunities to claim state subsidies for their businesses.

10. Consequences from application of the Foreign Subsidies Regulation

Regulation (EU) 2022/2560 on the control of foreign subsidies (Foreign Subsidies Regulation – **"FSR"**) has now been in force for more than two years. The aim of the FSR is to prevent distortions of competition on the European internal market due to foreign subsidies. To achieve this, the FSR sets out notification requirements for M&A transactions and public procurement procedures as well as the possibility of ex-officio proceedings. You can check whether a notification requirement applies to your M&A transaction by using our "FSR Checker".

Decision-making practice

With more than 200 reported M&A transactions and over 2,000 declarations and notifications in connection with public procurement procedures, the FSR has increased the regulatory requirements for far more companies (including European ones) than what was assumed during the legislative process. Despite the large number of cases, only two transactions have been subject to an in-depth investigation in phase 2 to date: Emirates Telecommunications Group/PPF Telekom Group and ADNOC/Covestro. Both cases were cleared subject to conditions. However, three M&A transactions and several bids in tender procedures were abandoned during the investigation. In addition, the European Commission has opened an in-depth investigation on its own initiative against the Chinese state-controlled enterprise Nuctech.

In the only decision published up to now, Emirates Telecommunications Group/PPF Telekom Group (see our Noerr Insights), the orientation of the FSR to EU state aid law became apparent: the European Commission regarded exemptions from the general insolvency law of the United Arab Emirates as an unlimited state guarantee, referring to its communication on state aid. The investigation of ADNOC/Covestro also reportedly referred primarily to exemptions from national insolvency law – they had to be abandoned in each case. While Emirates Telecommunications Group was additionally banned from providing any financing for its European activities in the future, ADNOC had to undertake to grant competitors access to Covestro's patents.

Practical clarifications and first review of the FSR

The Directorate-General for Competition updates the Q&As on its website on an ongoing basis to include questions of practical relevance. The European Commission has now also published its FSR guidelines, which constitute a form of "soft law" and provide important clarifications for the practical application of the FSR. While this is welcome, legal uncertainty remains for companies, in particular in light of the European Commission's broad call-in powers and rules on cross-subsidisation (see our Noerr Insights).

Besides this, how the FSR is applied in practice is to be scrutinised for the first time by July 2026 and after that every three years. One of the findings during a public consultation was that the material standard of review is not sufficiently clear and predictable. The results of the review will be presented to the EU's legislative bodies, meaning that the FSR could subsequently be revised.

There would also be a need to adapt the formal criteria: To ensure their own M&A readiness, companies have to set up comprehensive systems for reporting all third-country contributions and transactions with state-controlled companies. The bureaucratic effort associated with this is at odds with the very few problematic transactions for many businesses, especially private equity companies.