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Industry Update

Is Coordination Between Competitors Sustainable Under EU Antitrust Law?

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Many expected EU Commissioner Teresa Ribera, whose remit extends to enforcing competition law and implementing the goals of the European Green Deal, to be proactive in managing the coordination between competitors through sustainability arrangements.

As predicted, the European Commission (EC) has indeed been active in July 2025 with respect to efforts and guidance relating to sustainability arrangements. It notably released [a new state aid framework](#) supporting the Clean Industrial Deal, which is aimed at enabling EU Member States to advance clean energy, industrial decarbonization and clean technologies, as well as issued separate guidance letters analyzing the competition law issues and potential implications of three specific sustainability-focused business arrangements.

Ports

In the ports-related letter, the EC [provided informal guidance](#) on a sustainability agreement between port terminal operators for the joint purchasing and setting of technical specifications for battery-electric container-handling equipment. The EC notes that the partnership aims to accelerate the shift from diesel to electric carriers in EU ports, thereby reducing CO₂ emissions.

The agreement proposed by APM Terminals involves pooling future demand and jointly setting minimum technical specifications for electric straddle and shuttle carriers, which are currently underused due to high costs and lack of interoperability of charging equipment from different suppliers. The EC found the initiative acceptable provided the following safeguards are implemented: (1) terminal operators must retain the ability to purchase independently; (2) pooled demand must be capped to avoid distorting competition; and (3) the exchange of competitively sensitive information must be limited to what is strictly necessary.

The EC's guidance marks the first such action under the 2022 revised Notice on Informal Guidance¹, which allows businesses to seek the EC's input on complex or novel EU competition law issues. In situations where the application of these rules is unclear due to new market developments, innovative business models, or complex factual or legal circumstances, the EC may issue informal guidance letters to clarify its enforcement priorities and interpretation of the law. This initiative aims to foster innovation and competition. Guidance letters are nonbinding and do not provide immunity, but they give insight into how the EC views certain practices, especially in relation to digital technologies and sustainability agreements.

Automotive — Licensing Negotiation Group

The EC also issued [an informal guidance letter](#) regarding the creation of the Automotive Licensing Negotiation Group (ALNG), a proposed platform through which automotive companies can jointly negotiate licenses for standard essential patents (SEPs). This initiative is part of the EU's broader strategy to strengthen the competitiveness of its automotive industry, in line with the [Industrial Action Plan](#) presented in March 2025.

In its assessment, the EC found that the ALNG does not infringe Article 101 of the Treaty on the Functioning of the European Union, which prohibits anticompetitive collusions, provided it adheres to key safeguards: (1) maintaining openness to other automotive companies; (2) ensuring voluntary participation by SEP holders; and (3) strictly limiting information exchange to what is objectively necessary for the negotiations. The EC concluded that the ALNG neither restricts competition by object nor is it likely to produce anticompetitive effects upstream in the SEP licensing market or downstream in the vehicle and component markets. By improving the efficiency of SEP licensing related to digital technologies, the EC expects the ALNG to support EU decarbonization goals under the Clean Industrial Deal and contribute to the broader energy transition.

French Wine Producers

In the context of the Common Agricultural Policy reform for 2023-27, the European Parliament and the Council of the European Union adopted an exclusion for agricultural products from Article 101 prohibition. The EC issued [its first positive opinion](#) under the Common Organization of Markets in Agricultural Products (CMO) Regulation, analyzing an agreement among French organic wine producers and buyers to set annual indicative bulk wine prices covering the costs associated with producing wine in accordance with either the organic or the “*Haute Valeur Environnementale*” standard, plus up to 20% profit. The agreement aims to support sustainable wine production amid market challenges such as oversupply, inflation and declining profitability for organic producers, helping them remain competitive without having to revert to conventional production methods. The EC found that the agreement promotes sustainability standards higher than legally required and concluded that “any possible restriction of competition stemming from the agreement” was indispensable for the attainment of the sustainability standards.

Conclusion

Contrary to the wine producers' opinion, the guidance letters are nonbinding. All three nevertheless signal the EC's willingness to promote sustainability-related outcomes and “accept” some types of partnership between competitors under certain conditions. Companies envisaging partnerships with their competitors should be aware of this positive flexibility while remaining cautious not to engage in unlawful activities notwithstanding the sustainability focus of their arrangements.



If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:

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¹ Commission Notice on informal guidance relating to novel or unresolved questions concerning Articles 101 and 102 of the Treaty on the Functioning of the European Union that arise in individual cases (guidance letters), ref. 2022/C 381/07.