

Competition & Regulatory Newsletter

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Quick Links

[Main article](#)
[Other developments](#)
[Antitrust](#)

Von der Leyen nominates new European Commission

On 10 September European Commission President-elect Ursula von der Leyen **presented** her list of nominees for the next College of Commissioners. The new Commission is due to take office on 1 November, but must first be approved by the European Parliament, before formal appointment by the European Council.

New structure

The new Commission will have eight Vice-Presidents (the current Commission has five), who will be responsible for steering and coordinating the Commission's work on the most important issues. Of the eight Vice Presidents, three will be Executive Vice-Presidents with a dual function - meaning they will be both Vice-Presidents, responsible for core elements of von der Leyen's agenda, and Commissioners, managing a policy area with a Directorate-General under their authority.

The new Commission reflects the priorities and ambitions set out in von der Leyen's '**Political Guidelines**'. These focus on a "*Union that strives for more*", setting out ambitious targets such as making Europe the first climate-neutral continent, strengthening the social market economy (with a focus on strengthening small and medium-sized enterprises), achieving "technological sovereignty" in critical technology areas, protecting the "European way of life", protecting Europe's democracy and strengthening its "*brand of responsible global leadership*".

Von der Leyen has also **stated** that she wants to preside over a Commission that understands Europe and listens to what Europeans want. To this end, she has outlined a number of immediate goals:

- All members of the College will visit every Member State in the first half of their mandate;
- Meetings of the College of Commissioners will be paperless and digital; and

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[Main article](#)
[Other developments](#)
[Antitrust](#)

- To make life easier for European citizens and businesses, when the Commission creates new laws and regulations, it will apply the ‘One-In, One-Out’ principle - in other words, every legislative proposal creating new burdens should relieve people and businesses of an equivalent existing burden at EU level in the same policy area.

A second term for Margrethe Vestager

One of the nominees for an Executive Vice-President role is the current Commissioner for Competition, Margrethe Vestager. In a surprising move, not only has Vestager been nominated to continue as Commissioner for Competition for a second term (unheard of in recent times), she has also been appointed as Executive Vice-President for a Europe fit for the Digital Age.

In her [mission letter](#) to Vestager, von der Leyen explains that as Executive Vice-President, Vestager will be tasked with ensuring that Europe “*fully grasps the potential of the digital age and strengthens its industry and innovation capacity*”. Amongst Vestager’s responsibilities will be coordinating the work on a European approach to artificial intelligence, and coordinating the work on upgrading liability and safety rules for digital platforms, services and products.

As Commissioner for Competition, Vestager must continue to “*ensure [European] competition policy and rules are fit for the modern economy, vigorously enforced and contribute to a strong European industry at home and in the world*”. As part of this, Vestager is asked to consider sector inquiries into new and emerging markets. She is also asked to look at “*the ongoing evaluation of merger control*” - likely a reference to recent calls to reform EU merger control rules following the Commission’s [prohibition](#) of Siemens/Alstom earlier this year.

Von der Leyen has described Vestager’s dual role as “absolutely a perfect combination”, given Vestager’s role to date in bringing competition enforcement cases against digital players. There is no doubt that this dual mandate will keep Vestager very busy for the next five years - Vestager herself has [stated](#) that she is “*humbled by the task ahead*”.

Gender balance

Not only is von der Leyen the first female President of the Commission, her College is also notable in its gender balance, with 13 of the 27 nominees being female. Von der Leyen has also encouraged her nominees to strike the “*appropriate balance in terms of gender, experience and geography*” when setting up their own Cabinets, and called for all public Commission events to feature gender-balanced panels and a broad range of perspectives.

Next steps

Before the new Commission can take office on 1 November, the candidates need the approval of the European Parliament, before formal appointment by the European Council. Ahead of this the candidates will attend hearings in the relevant Parliamentary committees.

The process may also be complicated by Brexit - if the UK is granted a further extension and does not leave the EU on 31 October, von der Leyen has said it will be required to nominate a Commissioner, who will need to be given a portfolio and approved as part of the new College.

[Main article](#)
[Other developments](#)
[Antitrust](#)

Other developments

Antitrust

European Commission invites comments on roadmap for the evaluation of rules on horizontal agreements

The European Commission [announced](#) on 5 September 2019 that it is consulting on the roadmap for the evaluation of the Horizontal Block Exemption Regulations which exempt certain horizontal agreements from EU rules that prohibit anti-competitive agreements between companies (the Block Exemptions). This is the first step in the review process of the Block Exemptions and the accompanying guidelines on horizontal cooperation agreements (the Guidelines).

The two Block Exemptions for horizontal cooperation agreements under evaluation are the Commission Regulation with regard to research and development agreements, and the Commission Regulation with regard to specialisation agreements. The Guidelines assist in the interpretation and application of these Block Exemptions. The impetus for their evaluation stems from the Commission's need to determine whether the Block Exemptions should lapse, be extended or amended when they expire on 31 December 2022.

The Commission also intends to launch a public consultation on the functioning of the Block Exemptions and the Guidelines by the end of the year, with a staff working document planned for early 2021. Stakeholders now have until 3 October 2019 to [submit their comments](#).

CMA publishes blog “Working with us to tackle cartels”

In August 2019 the Competition and Markets Authority (CMA) published a blog post from Sean McNabb, Director of Cartels, entitled “[Working with us to tackle cartels](#)”. The aim of the blog is to explain the CMA's investigation process and the measures it takes to protect whistleblowers.

The blog explains how the CMA has made reporting cartels easier by making key information easily available. In particular, the blog directs readers to an online reporting form, case studies, a reporting video, an online quiz and a “cartel checker”. These tools are all designed to help people understand what a cartel looks like in practice and how to then report their suspicions.

The blog also outlines the CMA's processes once a report of suspected cartel behaviour has been made, along with details of how it protects the identity of a whistleblower.

The blog represents another initiative to encourage those not involved in a cartel to report suspicious behaviour and reminds them of the financial incentives of reporting suspected cartel activity - a reward of up to £100,000 in exchange for information. In 2018 the CMA launched its “Stop Cartels” campaign to educate people about unlawful practices and encourage reporting. Since the launch of that campaign, the CMA reports that tip-offs of suspected cartel behaviour have risen by over 30 per cent. The blog also sets out the CMA's immunity and leniency protections available for those reporting a cartel in which they participated.

[Main article](#)
[Other developments](#)
[Antitrust](#)

Three out of five respondents prepared to admit liability in Hong Kong Competition Commission's third case

In one of the current cases before the Hong Kong Competition Tribunal (the Tribunal), three out of the five respondents are preparing to admit liability in the matter and the Tribunal is suggesting the adoption of a procedure commonly used for settlement with the city's securities regulator, the Securities and Futures Commission (SFC).

The case in question, *Competition Commission v. Kam Kwong Engineering Company Limited, Goldfield N & W Construction Company Limited, Pacific View Engineering Limited, Chan Kam Shui and Lam Po Wong CTEA1/2018*, is the third case brought by the Hong Kong Competition Commission (the Commission) to the Tribunal. Similar to other cases in the same sector, the Commission is alleging that the respondents (which include three decoration contractor companies and two individuals) engaged in cartel conduct, whereby they allocated customers and coordinated pricing in relation to the provision of renovation services at a subsidised housing estate in Hong Kong. In addition to seeking fines against all the respondents, the Commission is also seeking a director disqualification order against one of the individuals allegedly involved.

Two of the decoration companies and one of the individuals have agreed to admit liability and to apply for a consent order to the Tribunal, acknowledging they contravened the Competition Ordinance. This may not be surprising given that the Tribunal has earlier this year found a contravention based on very similar conduct by decoration companies (and in relation to which the individual in question was called as a witness).

In terms of procedure and in view of these defendants' willingness to admit liability, the Tribunal suggested the relevant parties make use of the "carecraft procedure", which is commonly used as part of the settlement mechanism with the SFC. It involves submitting to the Court the agreed facts in relation to the regulator's allegations against the parties and the agreed period of disqualification (in the case of the director) for the Court's determination of the appropriate outcome based on the information submitted alone. The hearing date for the settling parties is set in February 2020, whereas the remaining two respondents will proceed to trial in September 2020.

Brussels	London	Hong Kong	Beijing
T +32 (0)2 737 94 00	T +44 (0)20 7600 1200	T +852 2521 0551	T +86 10 5965 0600

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