

Competition Outlook 2026

EU Competition Law Briefing

Agenda

	Review of Regulation 1/2003 Malgorzata Urbanska
	Private Enforcement Tim Reher
	Review of the DMA and digital markets Szabolcs Szendrő
	Important cases at the ECJ Edmon Oude Elferink



Review of Regulation 1/2003

Malgorzata Urbanska

Review of Regulation 1/2003 – what to expect?

What is it about?

- 1 Regulation 1/2003**
 - EU antitrust procedural rules – cornerstone of antitrust enforcement framework
- 2 Why need to review?**
 - part of EC's response to Draghi's report
 - rules drafted when evidence was primarily in paper form, now over 20 years old
 - need to address new realities of the digital world

Current state of play

- 1 EC's evaluation (2022-2024)**
 - support study: over 250 expert interviews with external and in-house lawyers, desk research, analysing data from EC, NCAs and non-EU jurisdictions
 - results summarized in Staff Working Document
 - five (5) areas for the reform were identified
- 2 Public consultation (July 2025 – Oct 2025)**
 - EC sought the views of stakeholders on presented policy options
- 3 Reality check workshop in Brussels (15 Dec 2025)**
 - to further discuss with stakeholders their views

Review of Regulation 1/2003 – what to expect?

Potential Outcome 2026

- 1 The EC has identified five (5) areas for reform**
 - ✓ Need to adapt the EC's investigative toolbox
 - new powers to conduct fully remote investigations
 - new powers to summon individuals for interviews
 - ✓ Improve (fasten) decision making
 - by changing rules on interim measures and confidentiality undertakings
 - ✓ Improve access to file
 - by wider use of confidentiality rings instead of creating commitments files
 - ✓ Simplify the procedure for the participation of complainants and 3rd parties in antitrust investigations
 - ✓ Address inconsistent enforcement at national level
 - resulting from stricter approaches to unilateral conduct

Next Steps

- 1 Public consultation now finished**
- 2 Impact Assessment Report and draft legislative proposal expected by Sept 2026**
 - changes possibly to be not fundamental but significant
 - It will not be very soon – as new legislation required

EU Cartel Damages Claims: What's moving in 2026?

Tim Reher

Cartel damages in 10 minutes

What is it about?

- 1 Policy – Brussels**
 - ✓ DG COMP's current stock-take
- 2 Procedure – courts and pleading**
 - ✓ Hoge Raad reference C-426/25 – unitary framing: one infringement = one claim?
- 3 Quantum – damages estimation**
 - ✓ judicial estimation of harm/less extensive econometric expert

Current state of play

- 1 Directive “plumbing” is stable**
 - ✓ Gaps in collective redress in parts of the EU
 - ✓ DG COMP: focus on leniency/damages fine-tuning
- 2 Court cases take too long.**
 - ✓ Fact finding is very time consuming (e.g. invoice level)
 - ✓ Courts want to make damages litigation workable
- 3 Quantum: Economic analysis or structured judicial estimation?**

What to watch next

Potential outcomes (2026)

- 1 Major reform unlikely
 - “fine-tuning” rather than “re-building”
- 2 Outcome of C-426/25: unitary framing: “one infringement – one claim”
 - Application to damages cases?
- 3 OLG Stuttgart: simplified and structured approach to estimation/corridors:
 - zero to five percent,
 - five to twenty-five percent,
 - and above twenty-five percent as truly exceptional.

Next steps

- 1 Judicial law making instead of legislation
- 2 Unitary framing “one infringement – one claim”
 - More estimation less fact-finding?
 - one benchmark vs. invoice-level micro-benchmarks;
 - **representative sampling and market benchmarks** to the purchase portfolio and total volume;
 - pass-on as calibrated pass-through rate applied consistently across the portfolio
 - No estimation of facts!
- 3 Quantification: structured judicial estimation.
 - anchor, corridor, and fact-based adjustment
 - may work in suitable cases, but be oversimplified in more complex situations

Review of the DMA and digital markets

Szabolcs Szendrő

Review of digital markets and the DMA

What is it about?

Tools of promoting effective competition on digital markets:

1 Traditional competition law toolbox

- *Ex post* enforcement
- Based on Article 101-102 TFEU – restrictive agreements, abuse of dominance

2 DMA

- *Ex ante* regime
- Set of predefined obligations for designated gatekeepers (e.g., data access, interoperability, prohibition of self-preferencing)

Geopolitical relevance – rules have sparked global debate, drawing criticism from US, China

Current state of play

- 1 Antitrust enforcement – recent Article 102 cases**
 - **Self-preferencing:** Google AdTech – EUR 2.95 billion fine (2025)
 - **Tying & Bundling:** Microsoft Teams – commitments (2025), Facebook Marketplace – EUR 797.72 million fine (2024)
 - **Unfair trading conditions:** Apple Music Streaming – EUR 1.8 billion fine (2024)
- 2 DMA enforcement – cases affecting designated gatekeepers**
 - **Infringement decisions:**
 - Apple App Store Anti-Steering – EUR 500 million fine (2025)
 - Meta Pay or Consent model – EUR 200 million fine (2025)
 - **Specification decisions:**
 - Apple Connected devices (2025)
 - Apple Interoperability process transparency (2025)

Review of digital markets and the DMA

Potential Outcome 2026

1 Revival of Article 102?

- The Commission have launched a couple of new cases recently – **focus on AI**
- Pending cases:
 - Google AI and AI Overviews – unfair terms for AI development purposes
 - Meta WhatsApp AI – exclusion of competing AI assistants from WhatsApp

2 DMA – continued enforcement + legislative review

- Google specification proceedings – third-party AI interoperability and search data access
- Upcoming report and review of the DMA
 - Public consultation closed in September 2025
 - Commission review report to be presented

Next Steps

1 Parallel application of DMA and antitrust rules

- The Commission to select appropriate legal basis on a case-by-case basis – both tools to be relevant

2 Digital enforcement in the global spotlight

- Antitrust and DMA-style enforcement in the digital sphere is happening worldwide (*e.g.*, USA, Australia)
- Emerging AI and cloud markets are particularly under the microscope

3 Beyond Big Tech – rules that everyone can use

- DMA and similar rules do not only affect Big Tech
- *E.g.*, business partners, advertisers, customers, and new entrants can be empowered to rely on them
- AI access affects all the industries

Important decisions Court of Justice of the European Union

Edmon Oude Elferink

Court of Justice of the European Union

Recent developments

- 1 CJEU workload:**
 - 2024: 920 cases brought (+12%) and 863 closed
- 2 General Court workload:**
 - 2024: 786 cases brought (lowest in 10 years) and 922 closed
- 3 Preliminary reference cases forwarded to General Court (since 1 October 2024) (tax, customs, tariffs, greenhouse emission)**
 - 15 preliminary rulings
 - 25 cases pending
- 4 CJEU launched a new website!**

Important cases pending

- Joined cases C-37/22P, C-369/22P, C-3760/22P a.o. (**Aircargo**)
- Case C-738/22P (**Google Android**)
- Case C-209/23 (**RRC Sports**), case C-428/23 (**Rogon**) and case 133/24 (**CD Tondela**)
- Joined cases C-672/23 and C-673/23 (**Electricity & Water Authority of Bahrain**)
- Case C-160/24P and case C-91/24P (**Euro Interest Rate Derivatives**)
- Case T-260/24 (**Apple**)
- Joined cases C-424/24 and C-425/24 (**ZD and MI**)
- Case C-627/24P (**Bytedance**)
- Case C-347/25 (**Zapp**)