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**COMMISSION'S RECOMMENDATION
ON COMBATING ONLINE PIRACY OF
SPORTS AND OTHER LIVE EVENTS**

**REVISED HORIZONTAL BLOCK
EXEMPTION REGULATIONS ON
RESEARCH AND DEVELOPMENT AND
SPECIALISATION AGREEMENTS**

**COURT OF JUSTICE JUDGMENT IN
PRESTIGE AND LIMOUSINE**

**COURT OF JUSTICE JUDGMENT IN
SUPER BOCK BEBIDAS**

**GENERAL COURT JUDGMENT IN
REGIÃO AUTÓNOMA DA
MADEIRA/COMMISSION**

& MORE



**COUR DE JUSTICE
DE L'UNION
EUROPÉENNE**

FOREWORD

Environment and competition: a sustainable balance?

Climate change is one of the biggest challenges of our time. In this regard, it has already been stated that all sectors of society and of the economy must contribute to halting global warming. Regulation 2021/1119 (“European Climate Law”) sets a binding target of climate neutrality within the Union by 2050 and an interim target of reducing net greenhouse gas emissions (i.e. emissions after the deduction of removals) by at least 55% by 2030.

The promotion of a sustainable development, including the fight against climate change, and the “high level” of environmental protection are objectives of the European Union, which must be integrated into the definition and implementation of the Union's policies and activities (Article 3(3) of the Treaty on the European Union – hereinafter “TEU” - and Article 11 of the Treaty on the Functioning of the European Union – hereinafter “TFEU”). Among these policies is, inter alia, competition policy. In this regard, the European Green Deal outlines a growth strategy for the European Union, which involves transforming it into an equitable and prosperous society with a modern, resource-efficient and competitive economy.

It is true that competition policy is not at the forefront of the fight against climate change and environmental protection, and other instruments such as regulation (e.g. the emissions trading system) or tax policy are more efficient in achieving these goals. However, competition policy can contribute to aligning business incentives with the need to protect the environment (note that state aid rules already help incentivise investments in green technologies and renewable energy).

Nonetheless, the contribution of environmental considerations to the analysis of antitrust cases remains unclear.

The recently published Commission Guidelines on the applicability of Article 101 TFEU to horizontal co-operation agreements aim at filling this gap. The document contains a section on the assessment of agreements between competitors aimed at achieving sustainability objectives (“sustainability agreements”). The principle is – of course – that such agreements are not immune from the application of competition rules. However, environmental objectives will be taken into account, inter alia, to determine whether an agreement restricts competition by object, and to verify whether a positive economic balance has been achieved. Furthermore, while companies should first self-assess whether their behaviour is compatible with Union law, the Commission is willing to provide guidance on new or unresolved questions on individual agreements.

These guidelines are undoubtedly an important contribution not only to the pursuit of environmental policy, but also to legal certainty for companies wishing to improve the sustainability of their operations through collaboration with other companies or even in the context of industry associations.

Still, given the relative novelty of the topic and that the integration of non-economic objectives into competition analysis does not come without difficulty (nor debate) and since sustainability agreements will eventually cover several jurisdictions and not only the EU territory, the application of these guidelines to future cases is awaited with interest. The best advice to businesses is prevention: careful and qualified assessment of all agreements before they are put into practice.

Rita Leandro Vasconcelos
Partner



COMMISSION'S RECOMMENDATION ON COMBATING ONLINE PIRACY OF SPORTS AND OTHER LIVE EVENTS

On 4 May 2023, the European Commission adopted a Recommendation on how to combat commercial scale online piracy of sports and other live events. The recommendation encourages Member States, national authorities, holders of rights and providers of intermediary services to take effective, balanced and appropriate measures to fight unauthorised retransmissions of such streamings, in full compliance with fundamental rights and personal data protection rules. Emphasising that sports and other live events such as concerts contribute to fostering a diverse European cultural scene, the Recommendation highlights the sophisticated means through which piracy takes place, including illegal IPTV, apps, and websites, recommending measures that Member States and market players are encouraged to take.

REVISED HORIZONTAL BLOCK EXEMPTION REGULATIONS ON RESEARCH AND DEVELOPMENT AND SPECIALISATION AGREEMENTS

The European Commission adopted, on the 1st of June, revised Horizontal Block Exemption Regulations on Research and Development and Specialisation Agreements ('HBERs'), accompanied by revised Horizontal Guidelines, following a thorough evaluation and review of the current rules. The revised HBERs and Guidelines provide businesses with clearer and up-to-date guidance to help them assess the compatibility of their horizontal cooperation agreements with EU competition rules. The revised rules introduce, *inter alia*, the following changes: expand the scope of the Specialisation Block Exemption Regulation to cover more types of production agreements concluded by more than two parties; increase clarity and flexibility as regards the calculation of market shares and a new section on Mobile Telecommunications Infrastructure Sharing Agreements



Source: website of the European Commission

COMMISSION TAKES ACTION ON 5G NETWORK CYBERSECURITY

EU Member States, with the support of the European Commission and the EU Agency for Cybersecurity, published a second progress report on the implementation of the EU Toolbox on 5G cybersecurity. The Commission also adopted a Communication on the implementation of the toolbox by Member States and in the EU's own corporate communications and funding activities. The progress report records that 24 Member States have adopted or are preparing legislative measures giving national authorities the powers to perform an assessment of suppliers and issue restrictions. Given the importance of the connectivity infrastructure for the digital economy and dependence of many critical services on 5G networks, Member States should achieve the implementation of the Toolbox without delay.

COMMISSION-DESIGNATED LIST OF VERY LARGE ONLINE PLATFORMS AND SEARCH ENGINES

On 14 July 2023, the European Commission published a [list](#) of 'Very large online platforms and very large search engines designated pursuant to Article 33(4) of [Regulation \(EU\) 2022/2065](#) on a Single Market For Digital Services (Digital Services Act)'. The list includes, among others, Google, Facebook, TikTok, Youtube, and Wikipedia. These very large online platforms and search engines are online services with over 45 million users per month in the European Union which must comply with the most stringent rules of the Digital Services Act.



Source: website of the European Commission

COMMISSION ADOPTS NEW RULES TO ENSURE STRONGER ENFORCEMENT OF THE GDPR IN CROSS-BORDER CASES

On 4 July 2023, the European Commission proposed a new law to streamline cooperation between data protection authorities when enforcing the [General Data Protection Regulation](#) ('GDPR') in cross-border cases. The new regulation will set up concrete procedural rules for the authorities when applying the GDPR in cases which affect individuals located in more than one Member State. For individuals, the new rules will clarify what they need to submit when making a complaint and ensure that they are appropriately involved in the process. For businesses, the new rules will clarify their due process rights when a DPA investigates a potential breach of the GDPR.

COMISSÃO FINES ILLUMINA AND GRAIL FOR IMPLEMENTING THEIR ACQUISITION WITHOUT PRIOR MERGER CONTROL APPROVAL

The European Commission has fined Illumina and GRAIL approximately €432 million and €1,000 respectively, for implementing their proposed merger before approval by the Commission, in breach of EU merger control rules. EU merger rules require that merging companies not to implement mergers until approved by the Commission ("the standstill obligation"). It is the cornerstone of the European merger control system, that enables the Commission to carry-out its role before structural changes modify the competitive landscape. In this decision, the Commission confirms its preliminary view that Illumina and GRAIL intentionally breached the standstill obligation during the Commission's in-depth investigation. The Commission found that by closing the transaction Illumina was able to exercise a decisive influence over GRAIL and it actually exercised it.

CJEU JUDGMENT IN CASE *PRESTIGE AND LIMOUSINE*

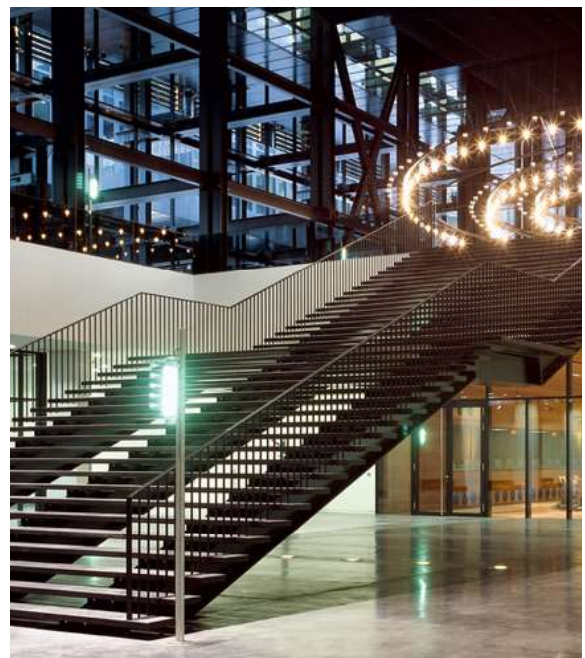
In *Prestige and Limousine* (C-50/21), the Court of Justice has rendered its judgment concluding that the administrative regulation of the Barcelona Metropolitan Area that sets out several limitations to private hire vehicle ('PHV') licences violates European Union law. Although the objective of sound management of transport, traffic and public space in a conurbation, first, and the objective of protecting the environment in such a conurbation, secondly, are capable of constituting overriding reasons in the general interest, the objective of ensuring the economic viability of taxi services must also be regarded as a purely economic reason which cannot constitute an overriding reason in the general interest capable of justifying a restriction on a fundamental freedom guaranteed by the Treaty. As regards the proportionality of the requirement of a second licence for the exercise of the activity of PHV services and the limitation of the number of PHV service licences to one thirtieth of the number of taxi service licences, the Court concluded that the first can be justified if that specific licence is based on objective, non-discriminatory criteria which are known in advance, and that the limitation of the number of PHV service licences to one thirtieth of the number of taxi service licences does not fulfil the objectives of transport, traffic and public space in a conurbation and environmental protection.

GENERAL COURT JUDGMENT IN *REGIÃO AUTÓNOMA DA MADEIRA V COMMISSION*

On the 21st of June, the General Court delivered its judgment in case *Região Autónoma da Madeira v Commission* (T-131/21), in which Região Autónoma da Madeira had challenged the European Commission's decision to annul certain articles of the aid scheme implemented by Portugal in favor of the Madeira Free Trade Zone. In its judgment, the General Court points out that the Commission rightly concluded that the tax reduction scheme applicable to undertakings in the Madeira Free Zone infringed the decisions of that institution. The amounts of aid that are to be recovered by Portugal are estimated at €1 billion. Undertakings covered by the recovery are those that have received more than €200,000 under the Madeira Free Trade Zone aid scheme and cannot demonstrate that their taxable income or jobs created are linked to activities actually carried out in the region.

CJEU JUDGMENT IN CASE *SUPER BOCK BEBIDAS*

The Court of Justice rendered, on 29 June 2023, its judgment in *Super Bock Bebidas* (C-211/22), a case concerning a preliminary reference from the Lisbon Court of Appeal, seeking clarification on the interpretation of Article 101(1) TFEU, within the context of exclusive vertical distribution agreements, the purpose of which is to fix the minimum prices of resale. In this judgment, the Court of Justice clarifies certain notions, within the meaning of Article 101 TFEU, regarding the vertical fixing of resale prices, namely the concepts of 'restriction of competition by object', 'agreement' and 'effect on trade between Member States'.



Source: website of the CJEU

CJEU JUDGMENT IN CASE *META PLATFORMS AND OTHERS*

On 4 July, the Court of Justice delivered its judgment in case *Meta Platforms and Others (General terms of use of a social network) (C-252/21)*, where it held that a national competition authority can find an infringement of the GDPR, within the context of examining competition concerns relating to an abuse of dominant position, and it clarified the extent to which it might do so. Bound by the duty of sincere cooperation, a national competition authority must nonetheless take into consideration any decision or investigation by the competent supervisory authority pursuant to Regulation (EU) 2016/679. Furthermore, when the national competition authority identifies a breach of the GDPR, it does not replace the supervisory authorities established in that regulation. In fact, the assessment of compliance with the GDPR is limited solely to finding an abuse of a dominant position and imposing measures aimed at ending that abuse in accordance with the rules of competition law.

CASE OF *SEMENYA v. SWITZERLAND*

In the case of *Semenya v. Switzerland*, a high-performance athlete, specializing in middle-distance races, claimed that certain regulations of the International Athletics Federation (World Athletics) were discriminatory and infringed her self-determination by requiring her to undergo hormonal treatment to decrease her natural testosterone level in order to be able to take part in international competitions in the female category. The European Court of Human Rights found that there had been a violation of the prohibition of discrimination and that the applicant had not been afforded sufficient institutional and procedural safeguards in Switzerland to allow her to have her complaints examined effectively and that the domestic remedies available could not be considered effective in the circumstances of the case (violation of effective judicial protection). This is another case in which the opposition between, on the one hand, the margin of appreciation granted to international sports organizations and, on the other, the fundamental rights of citizens is at stake.



Source: website of the Court of Justice

LATEST NEWS ON OUR WEBSITE

ARTICLE BY MARIANA TAVARES DISTINGUISHED BY CONCURRENCES

Mariana Tavares, senior counsel at CVA, received the "Concurrences Antitrust Writing Award 2023" for the "Best Academic Article on Cross-Border Issues" with the article "Considerations for a top-to-bottom review of the ICN: Legitimacy, effectiveness and efficiency", written in co-authorship with Chris Townley and Mattia Guidi. Read the article [here](#).

RITA LEANDRO VASCONCELOS TAKES PART IN ADVOCATUS SUMMIT 2023

Rita Leandro Vasconcelos, partner at CVA, was one of the guests at the panel dedicated to the topic "Corporate Governance - European myth or national reality? From Brussels to our street", promoted by Advocatus Summit 2023. Watch the video [here](#).



Fonte: website do Hospital da Luz

RITA LEANDRO VASCONCELOS LECTURES MODULE ON COMPETITION IN THE HEALTH SERVICES MARKET

Rita Leandro Vasconcelos was invited to teach the module "Competition in the private health services market", in the III Advanced Course in Health Law, promoted by the Institute of Legal and Political Sciences and the Centre of Research in Public Law of the Faculty of Law at Lisbon University.

"HOME-GROWN PLAYERS" RULE AND EU LAW

In May 2023, CVA published in its website a [newsletter](#) in which it analyses Advocate General Maciej Szpunar's Opinion in case *Royal Antwerp Football Club* (C-680/21) delivered on 9 March 2023. Regarding the same topic, principal associate Mariana Martins Pereira and junior counsel Inês Domingues Alves published an [article](#) in PUBLICO daily newspaper.

FRANCISCO COSTA-CABRAL PRESENTS A REPORT TO A GROUP OF THE EUROPEAN PARLIAMENT ON HOW COMPETITION POLICY COULD TACKLE THE COST-OF-LIVING

Francisco Costa-Cabral, senior consultant at CVA, personally presented to the Socialists & Democrats group of the European Parliament a report on how competition policy could contribute to tackling the cost-of-living crisis caused by inflation in house prices energy, food, and services. Read the report [here](#).

THE METADATA CONTROVERSY & EU LAW

CVA published, on its website, a newsletter in which it analyses the metadata controversy, surrounding the declaration of disconformity with the Portuguese Constitution of rules contained in Law No. 32/2008 of 17 July by the Portuguese Constitutional Court on 19th April 2022. Read the newsletter [here](#).

LATEST NEWS ON OUR WEBSITE

PAULO SANDE MODERATES A DEBATE BETWEEN DAVID CAMERON AND CARLOS MOEDAS

On 15 June, CVA partner Paulo de Almeida Sande moderated a conversation between former UK Prime Minister David Cameron and Lisbon Mayor Carlos Moedas at a conference organized by communications firm Cunha Vaz & Associados to celebrate its 20th anniversary.

PAULO SANDE INVITED TO GIVE AN "INSPIRATIONAL TALK"

On the 21st of June, Paulo de Almeida Sande participated in the meeting of the Courts of Auditors of the European Union, where he gave an "Inspirational Conference". Under the title "EU: challenges and opportunities", the CVA partner analyzed some of the challenges that Europe is facing and stressed the importance of the role of the Courts of Auditors.

CVA PRESENT QSP SUMMIT

CVA was present at the QSP SUMMIT, a Conference on Management and Marketing that has been held for several years in the city of Porto. CVA was represented by partner Paulo de Almeida Sande, as a lawyer and specialist in European affairs, who participated in a debate with Ângelo Correia, moderated by journalist Mário Crespo, on the theme "Decoding the future of world leadership".

JOSÉ LUÍS DA CRUZ VILAÇA IN A DEBATE WITH MARIO MONTI

José Luís da Cruz Vilaça, founder of CVA, was one of the speakers at the commemorative session of the 25th anniversary of Affordable Medicines Europe, which took place on the 21st of June in Brussels and had the participation of Mario Monti, former Italian Prime Minister and former European Commissioner. The session also commemorated the 30th anniversary of the European Single Market. See more information [here](#).

PAULO DE ALMEIDA SANDE AT LANTIA CONFERENCE

On July 13, Paulo de Almeida Sande closed the LANTIA Conference, making an analysis of the current situation in Portugal, from an economic, political and social point of view, and as an investment destination, having addressed issues such as justice, regulation and bureaucracy, productivity and the use of European funds, before an audience of about eighty people.