

CLIENT ALERT

New EU Competition Commissioner-designate

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In the aftermath of the European Union (the “**EU**”) elections in June 2024 and the end of the current European Commission’s (the “**EC**”) mandate, it was confirmed that Margrethe Vestager will not serve another term as the EU Competition Commissioner. The re-elected EC President Ursula von der Leyen has chosen Teresa Ribera Rodriguez, a seasoned Spanish lawyer and politician, to succeed “the world’s most famous regulator”.¹

If confirmed by the European Parliament (the “**EP**”), Commissioner-designate Ribera will inherit a wide portfolio for a “Clean, Just and Competitive Transition”, which will include oversight of both the competition policy enforcement and the implementation of the EU Green Deal for the next five years.

The confirmation hearing before the EP on 12 November, 2024 clearly showed the risk related to the broad portfolio of Ms Ribera as most of the hearing concerned environmental and energy matters. On competition matters, Ms Ribera provided more general responses, emphasizing the objective to have a fair and efficient competition policy.

After the hearing, a coordinator of the EP’s largest group, the centre-right European People’s Party, commented that he was “rather disappointed” with Ms Ribera’s hearing, considering it to constitute “a heavy burden for the new Commission”. He expressed hope that EC President von der Leyen will provide assurances that her new Commission will focus more on competitiveness. There is also speculation among the media that the final approval of the left-wing Ms Ribera may depend

¹ The New York Times, *Who Strikes Fear Into Silicon Valley? Margrethe Vestager, Europe’s Antitrust Enforcer*, 5 May, 2018.

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on the performance of other, right-wing, Commissioners-designate: if certain of these do not get the EP's backing, political groups may engage in a tit-for-tat approach aimed at replacing some of the Commission candidates.²

Ribera's background and experience

A Spanish national, Ms Ribera graduated with a degree in Constitutional Law and Political Science. Before engaging in politics, she was a senior civil servant and an Associate Professor of Public Law and Philosophy of Law in Madrid.

Her political engagement is clearly anchored in environment, sustainability and climate change policies. As a member of the left-wing Spanish Socialist Party, she held various positions linked to "green" policies since 2004, both in Spain and in international organisations. Since 2018, she has served as Environment Minister in Spain and acted as Deputy Prime Minister.

She is considered one of the most influential figures on the left of the Spanish political landscape. She oversaw the closure of Spain's coal industry, organized its phase-out of nuclear power and became known in the EU as the negotiator of Spain and Portugal's carve-out from the EU's single market for electricity during the gas crisis.

In the new EC, Ms Ribera is to assume a role of the Executive Vice-President for Clean, Just and Competitive Transition. Entering EU politics as a strong politician at national level, Ms Ribera presents a similar profile to Ms Vestager 10 years ago.

The New Competition Commissioner's responsibilities

The Mission Letter from EC President Ursula von der Leyen to Ms Ribera sets out the approach she asks the Commissioner-designate to implement during her mandate, consisting of the need to "modernize the EU's competition policy to ensure it supports European companies to innovate, compete and lead world-wide and contributes to the EU's wider objectives on competitiveness and sustainability, social fairness and security".³

In summary, the Mission Letter gives significant weight to EU State Aid policy and emphasizes the need to simplify and speed up the approval of national public support, specifically to "green" projects. All other areas of EU competition law are mentioned in the Mission Letter but – at least optically – to a lesser extent, with specific mention of the need (i) to address risks of "killer acquisitions" involving foreign investors taking over innovative European companies, and (ii) to allow EU companies to grow bigger through mergers and acquisitions to be more competitive on global markets.

² Le Soir, *Raffaele Fitto, proche de Meloni, met la majorité européenne à l'épreuve*, 11 November, 2024.

³ Ursula von der Leyen's Mission Letter for Teresa Ribera Rodriguez, 17 September, 2024 (available [here](#)).

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Ms Ribera expanded on how she intends to implement this agenda forward in the written responses to questions from the EP's leadership⁴ and, to a lesser extent, during her confirmation hearing that took place on 12 November, 2024.

1. State Aid: strong emphasis on simplification of rules

Ms Ribera is tasked with developing and simplifying the State Aid rules framework concerning the implementation of the EU Green Deal. Particular areas of interest relate to accelerating the rollout of renewable energy, deployment of industrial decarbonisation, and ensuring sufficient manufacturing capacity for clean tech. There is also a proposal to revise State Aid rules to enable housing support measures, notably for energy efficiency and social housing.

In her responses to the EP, Ms Ribera emphasised her commitment to ensuring a level playing field throughout the EU. She intends to promote sustainable industrial ecosystems and continue to foster the economic development of less-developed areas in the EU by providing incentives for productive investments promoting European cohesion.

2. Merger control: strategies for addressing “killer acquisitions” and supporting EU companies to scale up

With regard to merger control in general, the Mission Letter calls for a review of the Horizontal Merger Control Guidelines, giving adequate weight to the EU economy's “more acute needs in respect of resilience, efficiency and innovation, the time horizons and investment intensity of competition in certain strategic sectors, and the changed defence and security environment.” Between the lines, the Commissioner-designate is tasked with making merger control more business-friendly, especially with regard to allowing EU companies to grow bigger through mergers and acquisitions.

Particular attention is paid to killer acquisitions. In the wake of the recent decision by the EU Court of Justice to quash the EC's recent prohibition of such a transaction, Ms Ribera is asked to address the risk of some acquisitions flying under the radar of the EU's merger review. The Commissioner-designate indicated to the EP that she will look for a solution allowing an EU review of this type of transactions, without “any unnecessary additional administrative burden or legal uncertainty for companies”.

During her hearing, she also referred to cooperation with national competition authorities. This is in line with the adaptation of certain national merger control rules now providing the power for national authorities to review transactions falling below filing thresholds. Note that on 31 October, 2024, the EC has accepted Italy's referral of such a transaction, consisting of the acquisition by a US acquirer of an Israeli graphics processing units software supplier. This transaction fell below both EU and Italian filing thresholds, but the Italian competition authority used its “call in” powers to request a filing.

⁴ Questionnaire to the Commissioner-designate Teresa Ribera (available [here](#)).

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3. Review of foreign subsidies: continue vigorous enforcement

While the Foreign Subsidies Regulation (the “**FSR**”) recently marked only its first year of implementation, the EC received more than 100 merger notifications and more than 1,000 public tender notifications.

Ms Ribera stated that her intention is to give high priority to the “vigorous” enforcement of the FSR to tackle distortions caused by subsidies from non-EU governments to companies active in the EU Single Market. She intends to strongly push for a global level playing field for European companies, alongside other EC Commissioners and EU Member State agencies responsible for the review of foreign direct investments.

4. Digital Market Act: need for more efficiency

As far as digital markets are concerned, the new Commissioner has been tasked to look at the challenges and dynamics of these markets and ensure that the EC takes swift and effective enforcement action under the Digital Markets Act (the “**DMA**”). Ms Ribera pledged to ensure that new tools such as the DMA are effectively applied and bring real added value to EU consumers and businesses.

She stressed the need to increase efficiency, in particular by assessing the features of a possible update of the procedural rules, an effort similar to the ongoing evaluation of the procedural framework for antitrust investigations. In addition, to ensure that gatekeepers operate fairly and competitively, Ms Ribera intends to open up closed ecosystems in order to give smaller innovative businesses the opportunity to propose new services to consumers and enable them to challenge entrenched gatekeepers on their own terrain. Ms Ribera also wants to give consumers choice and ensure that data belongs to those who generate it.

Other hot topics to watch: the Draghi & Letta Reports

On 9 September, 2024, Mario Draghi, the former Italian Prime Minister and former European Central Bank President, published a report on the future of European competitiveness⁵ (the “**Draghi Report**”).

This report emphasises the urgent need for Europe to boost its competitiveness, and warns that failure to do so could lead to a slow economic decline in Europe. The report presents a list of (at times highly specific) recommendations that may have a significant impact on EU competition enforcement in the near future, including:

⁵ Report on the future of European competitiveness, Part B | In-depth analysis and recommendations, Mario Draghi, 9 September, 2024 (available [here](#)).

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- **Emphasise the weight of innovation and future competition in EC antitrust and merger decisions.** A reform of the way the EU Merger Regulation is applied would likely be required to allow, in particular, for an “innovation defence” for merging parties, as a counter-weight to anti-competitive effects of a merger.
- **State Aid control as a competition tool.** EC State Aid decisions should better reflect EU-wide industrial policies to allow more support for priority projects of EU-wide strategic significance.
- **Incentivising the adoption of open access, interoperability, and adherence to EU standards through State Aid and other competition tools (such as the DMA).** The Draghi Report calls for strong and swift enforcement of the DMA, with a focus on open access and interoperability in order to support positive network effects and to limit barriers to entry related in particular to data accessibility.
- **Increase the predictability of decisions, notably with regard to merger control that need to be streamlined.** The Draghi Report notes that assessing merger control considerations has become increasingly complex and uncertain, in particular considering (i) the use of Article 22 of the EU Merger Regulation to cope with non-notifiable mergers, and (ii) the application of Articles 101 and 102 TFEU to review non-notifiable mergers. A simple improvement on these two points could be made by introducing a new filing threshold under the EU Merger Regulation based on the value of the transaction, as already implemented in certain jurisdiction, such as Germany and Austria.
- **Introduce a “New Competition Tool”,** empowering the EC to impose a wide range of remedies to structural competition problems after such concerns have been identified by the EC following a market investigation.
- **Concerns relating to non-competes and no-poach clauses.** Non-compete agreements and clauses affect labour mobility by preventing employees from joining a competing company. There is a growing concern that these clauses are being used to stifle job mobility and competition. One of the short-term and mid-term innovation proposals by the Draghi Report is to address practices such as these.

In addition, a recent report prepared by Enrico Letta, another former Italian Prime Minister, for the EC in April 2024, emphasises an urgent need to do more to strengthen the EU’s Single Market by reducing regulatory fragmentation and using competition tools to address commercial and contractual restrictions of parallel trade within the EEA.

In light of these ambitious plans, it will be important for companies and their advisors to follow closely the development of these policies in the early stages of the new Commission, once its appointment has been confirmed by the EP.

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