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CLIENT ALERT

Clarifications on EU Merger Control and Antitrust Rules applied to Complex Multi-Step Transactions

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AUTHORS

David Kupka | Sophie Mitouard | Doriane Lora Ronco

On March 19, 2026, the Court of Justice of the European Union (the "CJEU" or the "Court") issued two landmark judgments clarifying the concept of a "single concentration" under EU Merger Regulation (the "EUMR"). In Joined Cases C-171/24 P to C-177/24 P and Joined Cases C-178/24 P and C-179/24 P, the Court dismissed the appeals filed by several German municipal energy companies against the European Commission's (the "EC" or the "Commission") clearances of an asset swap between German energy companies, E.ON and RWE.

In its rulings, the Court provides crucial guidance on the conditions under which complex transactions consisting of multiple related transactions should or should not be treated as a single concentration under the EUMR and, as a result, require one or several EC merger filings. These clarifications are welcome especially for dealmakers considering complex and/or multi-step transactions, as they will benefit from additional predictability of merger control filing requirements.

Background

The circumstances of the Court's judgment relate to a complex asset swap between E.ON and RWE, leading broadly to RWE focusing on the upstream electricity generation and wholesale markets, and E.ON being active in the downstream power distribution and retail sector. The swap was structured as three distinct but interrelated transactions resulting in:

(i) RWE's acquisition of sole or joint control over certain renewable and nuclear electricity generation assets of E.ON, cleared by the EC in case M.8871.

(ii) E.ON's acquisition of sole control mostly over the distribution and consumer solutions business indirectly owned by RWE, cleared by the EC in case M.8870.

(iii) RWE's acquisition of a 16.67% shareholding in E.ON, not subject to EC review but cleared by the German and UK Competition Authorities.

The Commission considered that the first two transactions constituted separate concentrations under the EUMR and hence required separate reviews. It is worth noting that the first transaction was cleared unconditionally in February 2019, whereas the second transaction required remedies to secure a conditional clearance, which was ultimately granted seven months later, in September 2019. Both cases were challenged by third parties, German municipal energy companies who were opposed to the asset swap. Their appeals were, however, dismissed by the EU's General Court in judgments of 17 May 2023 (first concentration) and 20 December 2023 (second concentration).

The General Court rejected the appellants' arguments on both procedure, confirming that the three transactions did not constitute a single concentration under the EUMR, and on the merits, confirming that the remedies sufficiently addressed the impact of the second transaction on the distribution and retail energy markets. Thereafter, the appellants escalated the cases to the CJEU.

Two conditions required for several transactions to be considered as a single concentration under the EUMR

The Court confirmed that two cumulative conditions must be satisfied for multiple transactions to qualify as a single concentration under the Merger Regulation, leading to a single EC merger filing:

1. *The interdependence condition:* The transactions must be interdependent, meaning that they are linked by conditionality such that none would be carried out without the other(s). This condition is well-established in the Commission's Consolidated Jurisdictional Notice, which states that the conditionality may be either legal (de jure) or factual (de facto). While not itself in dispute, the Court clarified that interdependence, though necessary, is not sufficient on its own to establish a single concentration.

2. *The result condition:* The Court held that, pursuant to Article 3(1)(b) of the EUMR, two or more transactions can constitute a single concentration only if, beyond interdependence, they result in one company acquiring sole control, or two or more companies acquiring joint control, over one or more other companies.

   In the case at hand, the Court found that the three transactions did not satisfy this condition, considering that the acquirers differed (E.ON in the first transaction; RWE in the second and third transactions), as did the targets (an RWE subsidiary in the second transaction; certain E.ON assets in the first transaction and E.ON in the third transaction). The Court further confirmed that the combination of RWE's acquisition of E.ON assets and a 16.67% minority stake in E.ON did not confer decisive influence over E.ON, because E.ON had severed its connection with those divested assets.

As a result, the Court concluded that, apart from the interdependence deliberately created by the parties, there was no functional link between the three transactions—the overall arrangement was not a series of intermediate steps designed to achieve unified control by one or more acquirers over one or more undertakings.

Structural analysis of a concentration and application of the Antitrust rules

Beyond the EUMR-related discussion, it is interesting to note that the appellants argued that the asset swap amounted to a market-sharing arrangement between E.ON and RWE of different activities relating to the electricity market in Germany and that the Commission should have investigated it under the EU Antitrust rules, i.e., Article 101 TFEU.

Unsurprisingly, the Court, however, held that the review of a concentration meeting the filing requirements under the EUMR falls exclusively within the scope of the EUMR, precluding the EC from assessing the competitive effects of the concentration under another ground. The underlying reasoning behind this decision is that the EUMR was created specifically to put in place a structural and preventive control mechanism, which inherently assesses a concentration in light of EU Antitrust rules (Articles 101 and 102 TFEU), making a separate assessment under such Antitrust rules redundant. Citing the Austria Asphalt case (C-248/16, 7 September 2017), the Court recalled that the EUMR and Regulation No. 1/2003—which governs the enforcement of Antitrust rules—form part of "*a legislative whole intended to implement Articles 101 and 102 TFEU and to establish a system of control ensuring that competition is not distorted in the internal market of the European Union*". Therefore, the Commission did not err in law in relying exclusively on the Merger Regulation to review the asset swap.

Accordingly, Regulation No. 1/2003 does not apply to the structural review of a notified concentration. However, should there be a suspicion of any separate anticompetitive conduct, it could have been—and could still be—investigated separately under Regulation No. 1/2003, for example following a complaint.

This situation must be distinguished from the circumstances addressed in the landmark *Towercast* judgment (C-449/21, 16 March 2023), where the merger at issue fell below the EUMR's notification thresholds and was therefore not notified. In the absence of the EC's jurisdiction under the EUMR, the EC could have applied the Antitrust rules to the merger.

Practical takeaways for dealmakers considering complex multi-step transactions

- *Two cumulative conditions to qualify for a single concentration under the EUMR*. Interdependence alone does not make multiple transactions in a single concentration eligible for a single merger filing to the EC. The transactions must also result in a unified outcome in terms of control, meaning in practice that one acquirer (or group of acquirers) must obtain sole or joint control over one or more targets. If the multiple transactions provide for several acquirers, separate filings will be necessary if the filing thresholds are met.

- *Implications for complex multi-step transactions*. Mere economic or contractual conditionality between transactions does not, by itself, lead to a consolidated assessment under the EUMR because the transactions do not qualify as a single concentration under the EUMR. This is particularly significant for complex restructurings, asset swaps, and other multi-step deals in which different acquirers obtain control over different targets. This may have a material impact on timing, especially if one transaction raises substantive concerns and is cleared only several months later, or, in the worst case, is prohibited. Parties structuring such transactions should adapt accordingly, e.g., consider contractual provisions dealing with possible timing or substantive issues.

- *Separation of Merger Control and Antitrust enforcement.* Where a concentration requires an EC filing pursuant to the EUMR, it will be reviewed solely under the framework of the EUMR. The EC will be unable to review it under EU Antitrust rules pursuant to Regulation No. 1/2003. However, any conduct surrounding a concentration—such as alleged market-sharing arrangements—that does not form part of the notified concentration itself may be investigated by the EC separately under the Antitrust rules. In other words, a merger clearance decision is not a shield against standalone Antitrust enforcement for conduct falling outside the scope of the reviewed concentration.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

David Kupka	Sophie Mitouard	Doriane Lora Ronco
+32 2 290 1842	+33 1 53 43 45 82	+32 2 290 1846
dkupka@willkie.com	smitouard@willkie.com	dloraronco@willkie.com

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