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CLIENT ALERT

The Belgian Competition Authority Continues to Pioneer the Review of Below-Threshold Transactions

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On 11 September 2026, the Belgian Competition Authority ("BCA") closed its investigation into Live Nation's acquisition of the Pukkelpop festival, one of Belgium's most prominent music events.[1] Although the transaction fell below both Belgian and EU merger control notification thresholds, the BCA—upon instruction of the Vice-Prime Minister and Minister for Economic Affairs—opened a formal investigation on 12 November 2025, concerned about the competitive effects of the operation. The investigation was conducted on the basis of Articles IV.2 of the Code of Economic Law and 102 of the Treaty on the Functioning of the European Union, which prohibit abuses of dominant position.

The BCA's legal basis derives from the *Towercast* judgment of the Court of Justice of the European Union ("CJEU"). In this landmark ruling of 16 March 2023, the CJEU established that below-threshold mergers may nevertheless be reviewed by national competition authorities under abuse of dominance rules.

* With the contribution of Albert Moyano Tarrason, Law Clerk.

1 BCA Press Release No. 37/2026, 11 September 2026.

The BCA is among the frontrunners when it comes to the implementation of the *Towercast* doctrine. This was in fact the third time it asserted its jurisdiction on this basis to review a merger falling under Belgium's notification thresholds. Note that none of these investigations have resulted in a formal infringement decision yet: one ended with the parties having abandoned the transaction, and the other two—including the present case—resulted in a settled outcome involving parties' commitment to implement structural remedies.

The Live Nation/Pukkelpop Investigation

In this case, the BCA examined the potential effects on quality and pricing from consolidating ownership of large-scale music festivals. The investigation also assessed whether Live Nation had the ability and incentive to foreclose competing festivals from accessing certain artists or to restrict competing booking services from accessing Live Nation's festivals.

The investigation closed after Live Nation committed to transfer operational control of the Pukkelpop festival to a separate entity, incidentally, controlled by one of its founders. These commitments will ensure the festival's operational independence for at least ten years (with a possible five-year extension), subject to oversight by a dedicated monitoring trustee.

The BCA also indicated that it will continue to closely monitor the developments in the Belgian live music and entertainment sector.

Procedural Differences from Merger Control

There are two main differences for parties to a transaction facing a review under abuse of dominance rules instead of the more traditional merger control:

1. ***Potentially longer timeline***. Unlike merger review proceedings, which are subject to defined review periods, abuse of dominance investigations are only bound by the general limitation period, corresponding to ten years, and they almost systematically tend to conclude only after several years of review. The BCA proved, however, sensitive to the need for speed when applying abuse of dominance rules to merges and prioritized staffing on those in all three *Towercast*-based investigations. Thanks to these efforts, the Live Nation/Pukkelpop proceedings lasted approximately ten months, similarly to what the parties could have envisaged in case of an in-depth merger control process. The risk of a potentially much longer review timeline is, however, high and consequently entails the difficulty for parties to plan and organize.

2. ***No standstill obligation, but interim measures are possible***. Because the transaction is not subject to merger control, there is no obligation to notify or to suspend implementation pending clearance. However, the BCA has demonstrated that it can stop the transaction's implementation by means of interim measures where it is considered urgent to prevent serious, imminent, and difficult-to-overcome harm. The parties would in any case be highly incentivized to avoid the implementation of the deal if an abuse of dominance review is pending, considering the risk of possible remedies needed or an infringement decision requiring them to divest all or part of the business concerned.

The two proceedings are, however, similar in terms of the competitive issues investigated (i.e., theories of harm), and possible outcomes: (i) closing of proceedings without finding of infringement, corresponding to a clearance merger decision, (ii) negotiated settlement, corresponding to a conditional clearance merger decision, or (iii) abandonment of the deal by the parties or infringement decision, corresponding to a prohibition merger decision.

In any event, the BCA is clearly establishing that below-threshold transactions by dominant companies may be reviewed by competition authorities in as efficient manner as if they required a merger control filing. This does not preclude the BCA from pleading in favour of the introduction of a call-in power in Belgium to capture all below-threshold transactions, including those conducted by companies which are not dominant.

Practical Implications

The BCA's willingness to apply the *Towercast* framework carries significant implications for M&A planning at the very least for acquirers who are dominant in a market:

1. ***Preliminary substantive assessment***. For transactions that fall below mandatory merger control notification thresholds and where companies hold a dominant position in the EU or at EU Member State level, it is no longer sufficient to conduct only a threshold analysis. A preliminary substantive competition assessment is advisable to evaluate the risk of the deal being picked up by a national competition authority for a post-closing abuse of dominance scrutiny. This assessment should consider the competitive dynamics of the relevant market, the parties' market positions, and the potential effects of the transaction on the structure of competition.

2. ***Sector-specific vigilance***. Not all below-threshold transactions will attract the same level of scrutiny. The risk is particularly acute in concentrated sectors or in industries that are subject to increased attention from competition authorities as part of their enforcement priorities.

3. ***Broader EU dimension***. The *Towercast* judgment applies across the EU, meaning that all national competition authorities may similarly review below-threshold concentrations as potential abuses of dominant position. This is not limited to Belgium, even if the BCA proves to be a frontrunner in this regard. Developments in other EU Member States shall continue to be monitored as the *Towercast* doctrine continues to evolve.

4. ***Transactional planning considerations***. The lack of a fixed statutory timeline introduces uncertainty as to the duration of any investigation, which parties must factor into their deal timetables and contractual arrangements. A proactive approach with carefully selected competition authorities may mitigate the risk related to post-closing investigations.

Accordingly, for any transaction in a concentrated sector—irrespective of whether mandatory filing thresholds are met—early and proactive engagement with competition counsel is critical to evaluate potential risks, anticipate regulatory scrutiny, and formulate an appropriate strategy, including consideration of any remedies that may be required.

Key Takeaways

The key takeaways from the BCA's enforcement practice include:

- *Below threshold does not mean off radar*. The *Towercast* framework enables national competition authorities to review mergers even when they fall below merger control thresholds. Competition authorities monitor the market and are likely to detect deals which involve competitive risks. Competitors or customers may also alert the authorities and trigger a review.

- *Antitrust settlements can match merger remedies*. The BCA's practice shows that abuse of dominance proceedings can yield both structural and behavioral commitments—such as operational separation and independent monitoring—functionally equivalent to conditional merger clearance but potentially more constraining (e.g., holding an acquired business under separate management for ten years).

- *Expect wider adoption across the EU*. Other national competition authorities may follow the BCA's lead, making *Towercast*-based reviews a cross-border consideration for M&A planning, especially by dominant companies.

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

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