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A NEW APPROACH TO COMPETITION POLICY? REFLECTIONS ON RIBERA'S FIRST YEAR

Teresa Ribera's appointment last December as the EU's Competition Commissioner came in the wake of Mario Draghi's report, which advocated for a revamped approach to competition and merger reviews to boost growth and innovation in the EU, and with a clear mandate from European Commission President, Ursula von der Leyen, to implement "*a new approach to competition policy*" that achieves these goals. Ribera herself was eager to pick up the mantle, agreeing at the time of her appointment that EU merger control must "*evolve to capture contemporary needs and dynamics*", and competition rules and the DMA must be "*vigorously enforced*".

Only one year on, it is perhaps unsurprising that we are yet to see fundamental change, but Ribera has taken initial steps towards modernising European competition law, by consulting on whether a raft of European legislation and guidelines remain fit for purpose. Whilst these moves have faced criticism for being too slow (Ribera herself has acknowledged that reform efforts have been "*challenging*"), whether they will ultimately deliver the "*new approach*" that von der Leyen has called for remains to be seen. Meanwhile, Ribera's early vigour for DMA enforcement promptly encountered a US-sized bump in the road. Despite this, she has remained calm at the helm, publicly rebuffing political meddling and vowing to continue to implement European legislation alongside broader policy objectives, with a focus on sectors that "*affect people's everyday lives*". After a first year in office that Ribera herself describes as "*turbulent*", we reflect on what she has accomplished despite political pressure at home and abroad, and on what 2026 might hold.

Merger control to support European growth and innovation

Von der Leyen's mission letter to Ribera last December gave her a clear directive to develop a "*new approach to competition policy*" that is "*more supportive of companies scaling up in global markets*". At the same time as the CMA was clearing *Vodafone/Three* on the basis of behavioural commitments in reaction to similar pressures to support mergers of strategic importance to the UK, Ribera was selecting her own weapon of choice for effecting reform – pledging to update the Horizontal and Non-Horizontal Merger Guidelines.

The ensuing consultation has been a focal point of Ribera's first year, running from May to September and encompassing over 100 questions across seven topics. The Commission has received over 200 responses, which reflect a clear appetite for change. Key themes from the responses include:

(a) **Competitiveness and resilience:** calls for a more dynamic competitive assessment with clear guidance on how the Commission will consider the impact of a merger on more than just price, and instead consider also quality and choice; a firm's ability and incentives to invest and innovate; and resilience to economic shocks.

(b) **Market power:** market shares and structural indicators of market power should not give rise to a legal presumption that a transaction will impede competition. Rather, market power should be assessed case-by-case, on the basis of a forward-looking analysis.

(c) **Innovation and other dynamic elements:** support for dynamic, forward-looking counterfactuals and clearer guidance on how the Commission will assess loss of potential competition (e.g. from a product developed by

one of the merging parties that has not yet gone to market).

(d) **Sustainability and consumer benefits:** support for recognising sustainability as a parameter of competition (e.g. improved sustainability credentials could help the merged entity to compete effectively) and that sustainability benefits can manifest over the long-term, or impact markets or consumers beyond those directly affected by the merger.

(e) **Digitalisation:** calls for the guidance to better reflect market dynamics of digitalisation (e.g. network effects, customer inertia and data-driven competition) and related theories of harm (e.g. interoperability degradation and ecosystems).

(f) **Efficiencies:** calls for a more flexible approach to assessing efficiencies that captures innovation, investment and quality-related efficiencies.

(g) **Public policy:** views are divided on whether the guidance should explicitly recognise labour market effects (e.g. job losses or reduced bargaining power for workers) and public interest factors (e.g. security, defence, democracy and media plurality). Arguably, it is not for merger control to pursue these broader policy goals.

According to Ribera, the Commission is not planning on merely "*tweaking a few lines*", but on "*reshaping at record speed the structure of the Merger Guidelines themselves*". The revisions will focus on clarifying how to account for reasonably foreseeable market developments that have not yet manifested, and introducing dedicated frameworks for dynamic competition analysis and assessing dynamic (future) efficiencies. Whether these changes to the guidelines will go far enough to address calls from Member State governments for less intervention in European concentrations in strategic sectors remains to be seen. According to Guillaume Loriot, Deputy Director-General for Mergers at the Commission, the incorporation of dynamic factors will not usurp the importance of price competition. Following criticism from European leaders about the slow pace of the reforms so far, the Commission has expedited its revisions. The guidelines could now be adopted up to a year earlier than expected, in late 2026 / early 2027 (with a draft published in Spring 2026). In the meantime, Ribera has made clear that "*nobody needs to wait for the final publication to see how this more dynamic approach works in practice*" - the Commission will apply dynamic assessment to "*any applicable case that lands on [its] desk*".

Ribera will also be keen to deliver on her promise to find a way for the Commission to continue to scrutinise "killer acquisitions". Following the European Court of Justice's ruling in *Illumina/GRAIL* that the Commission's use of Article 22 to claim jurisdiction over deals falling neither within its jurisdiction nor the jurisdiction of any Member State was illegal, the Commission settled on Member State "call-in" powers as a way for it to review below-threshold deals. But that approach is also now being challenged before the European courts, following Italy's use of its call-in powers to refer Nvidia's acquisition of Run:ai to the Commission last year. If the ruling doesn't go the Commission's way, Ribera will either need to initiate legislative reform or leave scrutiny of below-threshold "killer acquisitions" largely to national regulators (using call-in powers or, post-*Towercast*, antitrust rules).

The FSR is also not exempt from the Commission's efforts to keep the European rulebook fit for purpose. Following a public consultation, the Commission will issue a report to "*take stock*" in mid-2026. In the meantime, active enforcement of the FSR continues on Ribera's watch - in only the second Phase 2 review since the FSR took effect in July 2023, the Commission recently cleared *ADNOC/Covestro* with remedies (including a sustainability patent licensing remedy). Its willingness to accept a sustainability remedy (unrelated to the distortive subsidy identified) because it will allow other companies to "*innovate and advance research in an area that is critical for Europe's future*" suggests welcome flexibility.

DMA enforcement: navigating EU/US politics

From the outset, Ribera has pledged "*vigorous enforcement*" of the DMA "*to ensure that European tech start-ups have a real shot at success*". But only weeks into her term, Donald Trump's return to the White House left the Commission walking a tightrope between its desire to be seen as a firm enforcer of a key piece of European legislation and the risk of retaliation from the US administration. Six of the seven gatekeepers are US companies or wholly-owned subsidiaries of US companies, leading to accusations from across the Atlantic that the Commission is "*weaponising the DMA against American companies*", and threats that Europe's stance on Big Tech could impact broader trade negotiations.

While Ribera has firmly pushed back on US interference, there are nevertheless signs that enforcement decisions against Big Tech may have been taken with one eye on the White House. Although the past year saw the first DMA non-compliance decisions, they came later than expected and with fines thought to have been calibrated to temper adverse reaction from the US. And a key fine against Google for breaching EU antitrust rules was stalled briefly amid concerns about its impact on EU-US trade relations. In other respects, Ribera appears undeterred, seeing it as her "*duty*" to "*stand up*" and "*defend*" enforcement of EU laws, even in the face of the "*weaponisation of trade*". In line with these sentiments, in November, the Commission opened a further investigation into possible DMA breaches by Google, and into whether certain cloud computing services should come within the rules.

This complex balancing act is likely to continue for the foreseeable future. Against this backdrop, a key question for 2026 will be the role of the DMA in addressing potential concerns in the AI sector (recently the subject of a consultation). And 2026 may also see other amendments to the DMA, following the Commission's first review of the rules since they took effect.

A busy year in antitrust enforcement

Ribera has continued to pursue the abuse of dominance cases against US Big Tech that she inherited from Vestager. However, in line with her mandate to "*strengthen and speed up enforcement of competition rules*", she has signalled that she is open to "*soft enforcement*", alongside robust fines, to provide "*agile and effective solutions*", particularly in digital markets. 2025 has indeed seen a combination of "hard" and "soft" enforcement against tech companies - the Commission issued a hefty fine against Google for its ad tech practices, but accepted binding commitments to close its investigation into Microsoft Teams.

The Commission continues to monitor emerging AI markets as a priority - it has announced new antitrust probes into whether Google and Meta are using their dominance to favour their own AI services and restrict competition.

However, Ribera's enforcement focus has extended beyond Big Tech into other sectors and has included European firms. For example, the Ribera Commission has opened Article 102 cases into Red Bull and SAP's software support practices, and fined fashion houses Gucci, Chloé and Loewe €157 million for resale price maintenance. Sectors targeted by dawn raids demonstrate a similarly broad lens, encompassing ski equipment, vaccines and non-alcoholic drinks.

Labour markets are also a key focus for Ribera, who is committed to "*uncovering anticompetitive practices that harm workers*". The Commission's decision to impose fines totalling €329 million on Delivery Hero and Glovo earlier this year for collusion became "*the first time the Commission is sanctioning a no-poach agreement, where companies stop competing for the best talent and reduce opportunities for workers*".

Ribera has made it no secret that she sees competition policy as offering a "*helping hand*" for public goals, such as "*facilitating a speedy and fair green economy*". It is therefore no surprise that Ribera's first year saw the Commission issue its first opinion on the compatibility of a sustainability agreement (relating to sustainability standards in the French wine sector) with competition law, and an informal guidance letter, also dealing with sustainability agreements, to the European ports.

Looking forward, we can expect continued focus from Ribera not only on Big Tech, but also on European firms from a broad cross-section of the economy. We can also expect continued focus on sustainability and sectors that impact the cost-of-living for European citizens (e.g. housing). Continuing the theme of updating and simplifying the competition toolkit, in 2026 the Commission will also progress its plans to revise its antitrust procedural rules.

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