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COMMISSION CLEARS JUST EAT TAKEAWAY.COM ACQUISITION BY PROSUS (NASPERS), WITH REMEDIES ADDRESSING MINORITY SHAREHOLDING CONCERNS

The European Commission’s recent decision to **fine** Delivery Hero (DH) and Glovo marked its first-ever sanction of the anticompetitive use of a minority shareholding. Unlike some jurisdictions such as Germany and the UK, the acquisition of a minority shareholding without conferring the ability to exercise “decisive influence” does not require notification to the Commission under the EU Merger Regulation. However, the Commission’s recent appraisal of the acquisition of Just Eat Takeaway.com (‘JET’) by Prosus shows that minority shareholdings in competitors are high on its radar, not only in antitrust enforcement but also in its substantive merger control assessment.

The Commission’s concerns

On 11 August 2025, Prosus (a Euronext listed company ultimately controlled by Naspers) launched a recommended all-cash tender offer valuing JET at approximately €4.1 billion. The proposed transaction was notified to the Commission on 20 June 2025.

JET and Prosus do not compete horizontally. However, the EC took issue with Prosus’ 27.4% stake in DH, a large global food delivery platform and JET’s competitor in five EU Member States (where DH operates under its Glovo brand). The structural link that the transaction would have created between JET and DH triggered concerns that it could become a channel for the exchange of competitively sensitive information and for potential coordinated and non-coordinated effects.

The EC emphasised that Prosus’s financial interest in DH could lead to a softening of competition between JET and DH. Despite Prosus not having formal control over DH and taking a passive role regarding its investment, the EC considered that its stake gave Prosus (the largest shareholder in DH) the ability to influence DH’s conduct and created incentives for tacit coordination between DH and JET, including on potential market exits and entries.

After defining the market for online platform food delivery services, as national in scope with significant local features, the EC took note of various aspects of the food delivery sector that would have warranted a more in-depth investigation at phase 2 (in the absence of remedies). These included:

- the limited number of competitor platforms in each Member State,
- risks of further consolidation,
- close competition between JET and DH in the markets where they overlap (with restaurants being a weaker – out of market – constraint).

Remedies

To secure approval, Prosus committed to a remedy package with multiple layers, to be monitored by an independent trustee:

- **Sell-down:** Prosus has agreed to divest the majority of its 27.4 % stake in DH within 12 months, reducing it to a single-digit percentage and no longer being DH's largest shareholder.
- **Governance and rights waiver:** Post-divestment, Prosus must waive voting rights, board representation, and information rights in DH for a "specified considerable period" (the exact length not publicly disclosed).
- **Non-appointment of connected persons:** Prosus also committed not to propose or recommend any persons connected to Naspers/Prosus to DH's governing bodies.

These remedies aim not only to reduce the shareholding level but to constrain the influence that a non-controlling stake might continue to exert. The EC confirmed that these remedies fully address its concerns. Prosus must now execute the sell-down swiftly while integrating JET.

The DH/Glovo precedent

The Commission's conditional approval in this case is significant in that it is the first Phase I decision in recent years to require a substantial dilution of the acquirer's minority stake in one of the target's competitors as a condition for deal clearance. In this regard, the EC's position was influenced by its DH/Glovo investigation and subsequent fining decision for a breach of Article 101 TFEU.

On 2 June 2025, a few days before the Prosus/JET transaction was notified, the Commission had fined DH and Glovo for participating in a cartel in the online food delivery sector involving no-poach agreements, geographic market allocation and the exchange of commercially sensitive information. According to the Commission, these practices were facilitated by DH's minority shareholding in Glovo (which only later became a controlling stake). The Commission's investigation in this matter heightened its vigilance towards minority shareholdings, a stance subsequently underscored in Naspers/JET. That said, owning minority stakes in competitors is not just on the EC's radar but also a growing priority for other EU competition authorities such as those in [Germany](#) and, more recently, [Italy](#), which only ended their respective cartel proceedings after the targeted companies agreed to remove structural corporate links between themselves.

DIGITAL MARKETS ACT: FIRST REVIEW BY THE EUROPEAN COMMISSION AND FOCUS ON AI

In July and August, the European Commission launched the first formal review process of the Digital Markets Act (DMA). The review takes place amid active application of the DMA, illustrated by several non-compliance decisions and fines in 2025. It marks a key milestone in assessing the effectiveness of the regime in ensuring the fairness and contestability of digital markets, including in the artificial intelligence (AI) sector where the growth of AI-powered services has introduced new competitive challenges. The Commission is required to conduct a review of the DMA by 3 May 2026, and subsequently every three years.

Review process and timeline

The review of the DMA started on 3 July 2025 with a public consultation open to all citizens, businesses and organizations, with a particular focus on professional users, including SMEs, and end-users of gatekeepers' services. On 27 August 2025, the Commission complemented this process with a call for evidence and a questionnaire dedicated to AI, aimed at collecting sector-specific feedback. The submission period closed on 24 September 2025, with the Commission now analysing the contributions. The feedback will feed into a review report expected in May 2026, which will be presented to the European Parliament, the Council and the European Economic and Social Committee. The report will assess the achievement of the DMA's objectives, its impact on professional and end-users, and consider possible adaptations to the scope or content of obligations under the DMA, in particular with regard to interoperability and the list of core platform services.

Specific challenges for AI

The Commission has explicitly sought input on the ability of the DMA to support a fair and contestable AI sector in the EU. The questionnaire in particular aims to understand the obstacles to developing competing models or AI products and services. The issues raised include access to key inputs and distribution channels for AI and how obligations under the DMA (for example, relating to data access, use and portability, interoperability and self-preferencing) apply or could be adapted to AI – including whether the DMA's list of core platform services should be updated to include AI and related services.

Interplay between DMA and GDPR: upcoming Joint Guidelines

Separately, on 9 October 2025, the European Commission and the European Data Protection Board launched a public consultation on draft guidelines on the interplay between the DMA and the General Data Protection Regulation (GDPR). The aim of the guidelines is to help companies navigate the two sets of rules on the points on which they intersect. This includes provisions in the DMA on the combination and portability of users' data, which involve processing personal data and therefore require compliance with GDPR. In addition, the DMA foresees alternative app stores and distribution channels for apps, for which gatekeepers may put in place strictly necessary and proportionate measures that must also comply with GDPR.

The consultation is open until 4 December 2025, with final guidelines to be adopted in 2026.

EUROPEAN COMMISSION ACCEPTS MICROSOFT’S COMMITMENTS ON TEAMS TYING

On 12 September 2025, the European Commission announced that it had accepted [commitments](#) offered by Microsoft to resolve concerns over the bundling of its Teams platform with Microsoft’s Office 365 productivity applications including Word, Excel, PowerPoint and Outlook.

The investigation

The Commission opened its formal investigation in July 2023, following a complaint by Slack Technologies in 2020. A further complaint was received in June 2024 from alfaview.

In the statement of objections issued in June 2024, the Commission found that, since at least April 2019, Microsoft had abused its dominant position in the Software-as-a-Service (SaaS) productivity market by tying Teams with its market leading productivity software in breach of Article 102 TFEU. In particular, the Commission was concerned that this tying conduct granted Teams an unfair distribution advantage caused by interoperability limitations between Microsoft’s productivity applications and Teams’ rivals.

The Commission also considered that Microsoft’s initial changes to the way it distributed Teams, announced after the opening of the investigation, fell short of adequately addressing these concerns.

Microsoft’s commitments

In response to the Commission’s findings, Microsoft submitted an initial commitments package that included:

- Supplying customers in the European Economic Area (EEA) with versions of Office 365 and Microsoft 365 suites without Teams, priced significantly below comparable suites including Teams. In addition, to ensure fairer competition, Microsoft committed not to offer discounts on Teams or on suites including Teams higher than those offered for suites without.
- Granting EEA customers regular opportunities to switch to suites without Teams and allow for such suites to be deployed in datacentres globally.
- Allowing Teams’ rivals and certain third parties interoperability with certain Microsoft products and services, as well as allowing them to embed Office Web Applications in their own products and integrate their products in Microsoft’s core productivity applications.
- Enabling EEA customers to export Teams messaging data for use in rival products.

Following market testing earlier in 2025, Microsoft made further amendments to its offer – increasing the price differential between some Microsoft Office 365 and Office 365 suites - with and without Teams - by 50%.

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Outcome

The Commission concluded that the amended commitments, applying for seven years (and for ten years in respect of interoperability and data portability measures), were sufficient to address its competition concerns. A monitoring trustee will oversee Microsoft's compliance with the commitments.

By offering commitments, Microsoft has avoided both a formal infringement decision and a potentially significant antitrust fine. Notably, Microsoft has also chosen to extend the commitments globally.

While Commissioner Ribera welcomed this "*soft enforcement*" approach as well-suited to digital markets, she also noted that the Commission will not shy away from hard enforcement where necessary.

TECHNOLOGY-DRIVEN COLLUSION: RECENT ENFORCEMENT DEVELOPMENTS

Competition authorities are increasingly examining how companies deploy pricing algorithms and other software tools, amid growing concerns that these technologies may facilitate anticompetitive behaviour.

The Spanish Competition Authority (CNMC) investigated ride-hailing platforms and their use of pricing algorithms in its 12 March 2025 decision [Uber - Cabify - Bolt](#). This investigation was initiated following complaints by two taxi associations and a group of 137 taxi drivers, who accused the platforms of: (i) fixing prices among themselves through their algorithms and facilitating a hub-and-spoke cartel among their own drivers as prohibited under Article 101 TFEU and Article 1 of the Spanish Competition Law (LDC); (ii) abusing their alleged dominant positions by imposing abusive prices and disproportionate conditions on drivers under Article 102 TFEU and Article 2 LDC; and (iii) engaging in unfair practices (for example, setting prices below cost) that affected the public interest under Article 3 LDC. The CNMC dismissed all complaints, finding no evidence to support them.

Regarding the accusations of collusion among these platforms, the CNMC reviewed how said platforms determine their prices and found that they use different pricing systems, which indicated a lack of concerted pricing behaviour. Furthermore, assessment of the submitted price data revealed noticeable variations among platforms for identical routes and times, further ruling out a systematic pattern of collusion. Considering the above, the CNMC rejected this allegation.

The CNMC also established that price-fixing is beyond individual drivers' control, implicitly rejecting the notion that these platforms could facilitate horizontal collusion among drivers in a hub-and-spoke scheme. It also examined price-fixing from a vertical perspective and found that while platforms impose a resale price for journeys, this practice is an ancillary restriction of competition, as it is necessary for the inherent functioning of these platforms and is proportionate to that aim. This conclusion aligns with the position of other European authorities towards ride-hailing platforms. For example, the Luxembourg Competition Authority's decision of 7 June 2018 [Webtaxi](#), analysed this sector and concluded that vertical price-fixing created efficiency gains, which meets the exemption criteria under Article 101(3) TFEU.

The CNMC's decision to dismiss the case against Uber, Cabify, and Bolt highlights the complexity of the activities carried out by digital intermediaries. At the same time, it reflects a broader trend: competition authorities are increasingly scrutinising how digital tools may give rise to anticompetitive concerns. For example, the Polish Competition Authority is currently conducting several investigations in this area, including an [investigation](#) into drug wholesalers on the suspicion that they could be using software systems to access information on competitors' prices, discounts, and margins. Moreover, the authority has started a [preliminary investigation](#) into the use of a customer credit information database that may facilitate anticompetitive collusion and information sharing among financial market participants. Outside Europe, the U.S. Department of Justice (DOJ) has filed a [civil lawsuit](#) against RealPage, a rental pricing software provider, alleging an algorithmic price-fixing scheme. The DOJ claims RealPage obtained non-public, competitively sensitive rental data from competing landlords and used it to generate pricing recommendations that reduced competition among them.

The outcome of these investigations will provide important guidance on when certain practices involving digital tools may be considered anticompetitive.

ITALIAN COMPETITION AUTHORITY OPENS INVESTIGATION INTO META FOR ALLEGED ABUSE OF DOMINANT POSITION RELATING TO ITS AI SERVICE

On 22 July 2025, the Italian Competition Authority (Authority) issued decision no. 31634 (Opening Decision) initiating **proceedings** against Meta for an alleged abuse of dominant position in breach of Article 102 TFEU. The proceedings concern the introduction and operation of the Meta AI service, a general-purpose AI assistant designed to provide answers to a broad range of user queries.

Starting in March 2025, Meta made the AI service available both via a dedicated website (meta.ai) and within WhatsApp, accessible through a dedicated chat and the search bar. The Authority notes that the AI service was pre-installed in users' WhatsApp applications and prominently displayed on the main screen, without "any prior request from users".

The Authority intends to investigate whether Meta's conduct may constitute a tying strategy between WhatsApp and Meta AI, intended to leverage Meta's position in the consumer messaging market to gain a foothold in the emerging market for general-purpose AI assistants. The Authority alleges that this strategy provides Meta with an unfair competitive advantage by transferring its large WhatsApp user base into potential users of Meta AI.

The Authority further observed that the conduct could enhance Meta AI capabilities by using data and interactions collected from WhatsApp users, thereby improving the accuracy and relevance of its responses over time and fostering user lock-in or functional dependence. This could give Meta an advantage that rival providers may find difficult to replicate, lacking comparable datasets and integration opportunities.

The Opening Decision found that - if established - Meta's conduct might constitute a potential infringement of Article 102 TFEU, which prohibits practices aimed at extending or leveraging dominance into neighbouring markets.

The proceedings are expected to be concluded by 31 December 2026, although extensions are possible.

NO SUCH THING AS A FREE LUNCH? – GERMAN COURT DECIDES WHETHER DATA-COLLECTING APPS CAN STILL BE ‘FREE OF CHARGE’

In its [judgment](#) of 23 September 2025, the Higher Regional Court of Stuttgart addressed whether an app that collects users’ personal data can still be labelled “free of charge” (Case no. 6 UKI 2/25).

The case before the Court

German grocery chain Lidl offers a loyalty program whose registered users receive personalised advertising and can benefit from discounts and offers. To participate, users must register on the Lidl Plus app and provide personal data such as name, date of birth, and contact details. Lidl’s terms and conditions describe participation as “free of charge”, while explaining that personal data will be collected and processed. The Bundesverband der Verbraucherzentralen und Verbraucherverbände, a consumer association, argued that the provision of personal data constituted a form of consideration. Therefore, according to the association, Lidl was required to include the personal data in the “total price” they are obliged to disclose under Section 312d(1) of the German Civil Code (BGB), which implements Article 6(1)(e) of the EU Consumer Rights Directive (2011/83/EU). Furthermore, the association claimed, labelling the app as “free” was an unlawful misleading practice under the German Unfair Competition Act (UWG).

The decision

The Higher Regional Court of Stuttgart rejected the claim. Essentially, it held that the provision of personal data did not qualify as a “price” within the meaning of the EU Consumer Rights Directive. The court held that “price”, under the Directive, encompassed only monetary payments or quantifiable monetary equivalents. This followed, in the court’s view, from the Directive’s wording, its legislative history, and the later Digital Content Directive (2019/770/EU), which explicitly defines “price” as money or a digital representation of value. The court further underlined that the German Civil Code provisions at issue were not intended to regulate consumer protection in relation to data processing. Instead, this was comprehensively governed by the GDPR. Therefore, the court concluded, Lidl neither infringed § 312d(1) of the German Civil Code nor other consumer protection provisions.

The court then turned to unfair competition law. Referring to the Unfair Commercial Practices Directive (2005/29/EC) as well as its guidelines, the court acknowledged that labelling products as “free”, although they come with the collection of personal data, can be misleading if there is no adequate disclosure of the data collection. However, the court held that, here, Lidl’s terms and conditions sufficiently informed users about the data practice. In addition, Lidl did not use “free” as a standalone marketing hook, but only included it in the terms and conditions, alongside detailed information on the data collection.

Outlook

While the court’s ruling is clear, the case is likely to continue: the consumer association has already announced that it will likely appeal the decision before the German Federal Court of Justice (BGH). In September, the German Federal Court of Justice referred a similar case – concerning the statement “*Facebook is and remains free*” (Case no. I ZR 11/20) – to the European Court of Justice (ECJ) by way of a preliminary reference, asking whether advertising services as “free” or “without charge” can be misleading under the Unfair Commercial Practices Directive when the provision of personal data is involved. The ECJ’s answer may ultimately also decide the case at hand.

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