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Competition outlook 2024

As 2023 draws to a close, we look ahead to the main competition trends that we expect to define 2024. Developments in competition law and enforcement are more dynamic than ever. Conventional competition law frameworks are being challenged with calls for revised theories of harm and new tools to address market failures. Big Tech in particular faces new regulatory and enforcement challenges, however there is also increasing attention for perceived market failures in other industries. Meanwhile, growing geopolitical rivalry and distrust is driving a more protective approach to inbound foreign direct investment, with transactions facing increased scrutiny. Add to this, the policy challenges of de-carbonisation and the cost-of-living crisis, and 2024 is likely to be another transformational year.

In this Competition outlook 2024, we identify the ten key competition trends to watch out for. We look back at recent developments and offer our predictions for the new year.

10 competition law trends to watch for in 2024

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1. Reinstalling competition: new tools to fix competition

2024 promises to be an interesting year with a renewed focus on competition law enforcement. In light of the debate about whether existing competition policy frameworks and enforcement are still fit for purpose, a global trend towards stricter merger control and the introduction of new competition tools has emerged at both national and EU level.

The global criticism that competition policy and enforcement have been too lenient is likely to continue in 2024. Many argue that markets have become too concentrated and insufficiently competitive and that, in short, the authorities have lost their battle against the Big Tech 'FAANG' companies. Over the past couple of years, policy makers and authorities have struck back with new tools and stricter enforcement; the renewed focus on competition law enforcement is here to stay.

In the EU, the 2022 Digital Services Package – comprising the Digital Markets Act (**DMA**) and the Digital Services Act (**DSA**) – was adopted. Applicable as from 2023, the DMA imposes new rules on large digital platforms - the "gatekeepers" - protecting interoperability and non-discrimination. The 2023 Foreign Subsidies Regulation (**FSR**) adds extra regulatory scrutiny for transactions where parties have received financial contributions from a country outside the EU.

Plans to introduce a New Competition Tool at EU level to allow the European Commission (the **Commission**) to tackle structural competition problems that cannot be addressed by the existing competition rules, remain shelved. Nonetheless, the Netherlands Authority for Consumers and Markets (**ACM**) is pushing for the introduction of such a New Competition Tool in the Netherlands. This tool would enable the ACM to investigate market failures in all economic sectors and to impose remedies to resolve such failures, thus reinstalling competition. The Dutch Ministry of Economic Affairs and Climate Policy seem to be in a hurry: it has stated that it aims to have a draft proposal ready before the new Dutch government is formed. Given the complexities and far-reaching effects of the proposal, and the uncertain political situation, such a swift adoption seems ambitious. But even if the New

Competition Tool were to be adopted, the question would remain whether the ACM would have the staff and resources to actively enforce it. In any case, the plan illustrates the direction of the authorities' thinking. This direction is also reflected in the suggestion put forward by the ACM's chair to be granted the power to review mergers below the filing thresholds of the Dutch Competition Act (*Mededingingswet)*. This would grant the ACM similar powers to those wielded by the Commission under the Dutch Clause in the EU Merger Regulation. We explore this idea further in the third section, *Under the Radar*.

2. Taming Big Tech

When it comes to regulating the digital market, the EU leads the pack. 2023 is poised to go down in history as a landmark year, setting the bar high for 2024. With the application of the DMA and the DSA, 2024 could very well exceed expectations.

The DMA aims to ensure fair and contestable digital markets. Its designation of Meta, ByteDance, Apple, Amazon, Alphabet and Microsoft as 'gatekeepers', in 2023, comes with various obligations to maintain fair and effective competition. By March 2024, these gatekeepers must have adjusted their businesses to comply with the DMA. So far, Meta, ByteDance and Apple have appealed this designation. More gatekeepers might be designated in 2024. The case law resulting from these procedures will shape the Commission's DMA enforcement in the coming years. Meanwhile, the DSA aims to foster safer online environments. It already applies to designated online platforms and search engines and will apply to all regulated entities from 17 February 2024 onwards. Zalando and Amazon have challenged their designation by the Commission. Again, these procedures are ones to watch, in particular as Amazon has put forward wide-ranging arguments which also challenge the very scope of the DSA. Further, now that European Parliament has reached an agreement on the Artificial Intelligence Act (**AIA**), the integration of AI in line with this regulation into Big Tech operations may also become one of the focal points of 2024. The AIA will introduce a risk-based categorisation of AI systems. If the political agreement reached in December 2023 is formally approved by the European Parliament, we may see the AIA have an impact from late 2024, as the Act's prohibitions are set to take effect six months after its entry into force.

The ACM is expected to increasingly use its enforcement tools to prevent undue market concentration in the Big Tech sector. In enforcing the DMA and DSA, the ACM will cooperate with other national regulators. Further guidance from both the Commission and the ACM is to be expected. Moreover, the ACM is likely to continue to pay particular attention to companies' use of algorithms and AI, as it seeks to strike a balance between technological innovation and regulatory safeguards.

3. Under the radar: tightening the merger control net

2023 is marked by two EU merger control cases that will have profound effects in 2024, namely *Towercast* and *Illumina/GRAIL*. In the same spirit, the ACM is seeking to extend its competence to review transactions falling below the turnover thresholds.

The *Towercast* case involved a transaction which escaped review under the EU Merger Regulation or the French merger control rules because it did not meet the relevant turnover thresholds and was not referred to the Commission by a Member State under Article 22 of the EU Merger Regulation (the '*Dutch Clause*'). A year later, a rival company complained to the French Competition Authority that the transaction amounted to abuse of dominance. It was commonly believed by lawyers that a merger could only be scrutinised under the merger control rules, and that scrutiny under the rules on abuse of dominance was excluded. Therefore, the case was referred to the Court of Justice of the European Union (**CJEU**). To the surprise of many, the CJEU ruled that national competition authorities and courts are competent to review acquisitions under the abuse of dominance rules in cases where acquisitions are not subject to notification under EU or national merger control laws. This creates not only significant legal ambiguities and risks for large companies, but also gives competitors the opportunity to challenge transactions.

Illumina/GRAIL concerned the acquisition of a US-based cancer detection company by another US-based biotechnology company. The parties did not notify the transaction to the Commission or in any Member State, as GRAIL had no turnover in the EU at the time. The parties completed the transaction despite the fact that the Commission objected to it. Consequently, the Commission imposed a record-breaking fine of EUR 432 million on Illumina (and a symbolic fine on GRAIL) for implementing the transaction in breach of the standstill obligation ('gun-jumping'). The case, which is currently before the CJEU, shows the Commission's commitment to increasing enforcement by tackling 'killer' acquisitions. It is a signal to companies to consider innovation as a factor in their initial assessment of a potential EU or national merger control review of their acquisitions.

These cases illustrate how merger control in the EU is becoming more multi-dimensional. The increasing use of the referral mechanism for concentrations that fall below the merger control thresholds means that parties wishing to enter into an M&A transaction must be increasingly wary of the effects of the concentration on the relevant markets, even if turnover thresholds are not met. EU Member States such as Italy, Ireland, Sweden, Iceland and Norway have already made it possible for their respective national competition authorities to review concentrations falling below turnover thresholds which may nonetheless have a negative effect on competition on the *national* market.

In this context, the ACM is seeking a call-in power to review mergers and acquisitions that remain below the turnover thresholds of the Dutch Competition Act. The chair of the ACM has argued that acquisitions which remain below notification thresholds such as 'killer' acquisitions, as well as the 'roll-ups' seen in sectors such as healthcare and childcare, can still cause competition problems. The call-in power would give the ACM the ability to investigate a transaction further, within a few (the Chair himself mentions three) months of the announcement of the acquisition. However, the

resulting uncertainty for companies could be an issue. Accordingly, companies could obtain clarity beforehand by voluntarily notifying the acquisition.

4. Accelerating the energy transition

For 2024 we see a looming subsidy war on a worldwide scale. Almost all countries are aiming for the most competitive position for their industries and a clean-tech race is in full swing. With its strategy towards a competitive and resilient European net-zero economy, the EU aims at a frontrunner position. The coming years will show whether this strategy also adequately addresses the challenges for the level playing field between the EU Member States.

Accelerating the energy transition is the linchpin of the Green Deal Industrial Plan (**GDIP**) presented by the Commission in February 2023. It is the EU's reaction to the US Inflation Reduction Act. The plan outlines a roadmap towards climate neutrality by 2050 while enhancing the competitiveness and resilience of the European economy. It's based on four pillars: (i) a predictable and simplified regulatory environment, (ii) faster access to funding, (iii) enhancing skills and (iv) open trade for resilient supply chains.

Under the first pillar of the GDIP, investments in sectors, technologies and raw materials that are crucial for the net-zero economy will be further enhanced through the simplification of the regulatory framework. The proposals for the Net-Zero Industry Act and the Critical Raw Materials Act are likely to be adopted and implemented in 2024. These Acts enable faster permitting processes and the instalment of a European Hydrogen Bank. The measures aim to attract investments by connecting renewable energy supply to demand and to ensure the security of the supply of critical raw materials and skilled labour. Moreover, the proposed reform of the electricity market design aims to ensure a secure, sustainable and affordable energy supply, accelerating the deployment and better integration of renewables in the energy system and to provide better protection against market abuse and manipulation.

The continued faster access to financial support under the second pillar of the GDIP serves as a catalyst for innovation and the deployment of green technologies and more sustainable energy sources. Besides the regular State aid frameworks, the extension of the State Aid Temporary Framework until December 2025 allows for national funding of investments in, for example, renewable energy production, energy efficiency and sustainable transportation.

Dutch State aid measures are focussed on the expansion of wind and solar power, innovation and research, and the transition towards a more circular economy. Substantial investments are also being directed towards cutting-edge technologies to enhance energy efficiency and to reduce carbon emissions across industries. The total 2024 budget for climate policy funding is almost EUR 7 billion.

For 2024 we see a looming subsidy war on a worldwide scale. The EU GDIP and Foreign Subsidy Regulation (see the fifth section) pursue the protection of the EU internal market against unfair trade practices and foreign subsidies. Enhanced possibilities to grant EU State aid for the accelerated

energy transition, however, also mean that similar support measures granted by third states cannot be considered to distort the level playing field. Finally, the major investments in the energy transition may weaken the internal market from within, as not all Member States have equally deep pockets to boost investment in net-zero technologies. Therefore, the European Sovereignty Fund, which is financing transnational Important Projects of Common European Interest (IPCEI) and the new REPower chapter in the Resilience and Recovery Fund, has an important role to play. In maintaining the level playing field between the Member States and in enhancing solidarity with less wealthy Member States.

5. Protecting the EU internal market in times of geopolitical disorder

Globalisation and geopolitical tensions are cause for a more cautious stance of the EU and its Member States. In 2024, we are likely to see the first decisions under the new Foreign Subsidies Regulation (FSR) and more scrutiny of direct investments and subsidisation from third countries.

Increasing geopolitical rivalry and distrust are also having an impact on competition law and enforcement. In the wake of the Siemens/Alstom prohibition decision, the Commission was accused of insufficiently defending European interests. Calls to introduce a political override mechanism in the Merger Regulation and to fundamentally revise merger review principles were successfully resisted. However, the EU did heed the call for action against subsidies from third countries that threaten to distort the internal market, and we are seeing increasingly vigorous foreign direct investment screening (**FDI**).

Meanwhile, the FSR now enables the Commission to review foreign subsidies and take action where it considers that such subsidies distort the internal market. Under the FSR, a foreign subsidy is deemed to exist where a third (i.e. non-EU) country provides a financial contribution which confers a benefit on an undertaking engaging in an economic activity in the internal market and which is limited to one or more undertakings or industries. A foreign subsidy is considered to be distortive if it is liable to improve the competitive position of an undertaking on the internal market and can negatively affect competition. For this purpose, the FSR introduces three screening instruments: (i) an obligation to notify certain concentrations, (ii) an obligation to notify certain bids in public procurement proceedings and (iii) an *ex officio* investigation tool, enabling the Commission to start an investigation on its own initiative. On 10 July 2023, the Commission adopted an implementing regulation with the relevant filing forms. The filing obligations became applicable on 12 October 2023.

In 2024 we are likely to see the first decisions under the FSR. An important question is how the Commission will apply the substantive test under the FSR. Will it be identical to the application of the EU State aid rules, or will there be subtle, or less subtle, differences? The first decisions in the next year will provide critical pointers. There are signs that the Commission will exercise its new powers with caution. At least one Commission official has stated that the FSR will not be used to

address distortions caused by the US Inflation Reduction Act, indicating that the Commission is mindful of the potential geopolitical impact of this tool.

Geopolitical tensions have also caused the EU to become more cautious where inbound foreign direct investment is concerned. The EU FDI Regulation encourages Member States to set up national FDI screening regimes. It also establishes a cooperation mechanism with a non-binding advice option for the Commission and introduces some procedural harmonisation. At present, all but one EU Member State have a national FDI screening mechanism in place. In Bulgaria, the remaining Member State, Parliament is expected to approve an FDI bill soon. The Commission has reported that 39 of the 1,444 transactions that were screened in the EU were either terminated or prohibited. There have since also been instances of national prohibitions that violated EU law (e.g. the 2022 Commission infringement decision in Case M.10494 - VIG / AEGON CEE and the 2023 judgment of the CJEU Case C-106/22, *Xella Magyarország*). Nevertheless, we do not expect an EU-wide one-stop-shop in the area of FDI anytime soon. It seems unlikely that Member States will agree to a one-stop-shop, as that would involve giving up control over 'national security' issues in favour of Brussels. Consequently, we anticipate that multinational transactions in sensitive sectors will continue to be subject to significant scrutiny, delays, remedies and possibly prohibitions for the foreseeable future.

6. A shift of focus in private enforcement – from full deck to Big Tech?

The Dutch court's focus regarding antitrust damages cases appears to be shifting from follow-on cartel damages cases to abuse of dominance damages cases. We expect the designation of big tech companies as 'gatekeeper' under the DMA may give rise to further developments in this regard.

In recent years, the Netherlands has emerged as one of the most popular hubs for follow-on and standalone antitrust damages actions. Numerous high-profile cartel damages cases including those related to airfreight, trucks, TV and computer monitor tubes, power cables, elevators, financial benchmarks, ethylene and the foreign exchange (forex) spot trading market, are being handled by the Dutch courts and there are more to come. Antitrust damages claims can be brought on an individual basis or as mass claims, the latter category either as a genuine class action by a foundation (*stichting*) or association (*vereniging*) or as a bundle of claims assigned and transferred by multiple injured parties to a special purpose vehicle. Dutch procedural law offers various options. Moreover, matters like disclosure of documents and determination of damages with the help of economists are clearly evolving in the Dutch courtrooms.

One of the other key factors that makes the Netherlands an attractive jurisdiction for claimants looking to initiate damages proceedings is the generally low adverse cost risk. The court fees are relatively low, and lawyer's fees are based on a court-approved scale of costs which covers only a very limited part of the actual costs incurred. In addition, the Dutch courts are known for their professional and pragmatic approach. Regarding antitrust damages, one might say that in recent years the Dutch courts have become more claimant-friendly, in keeping with the CJEU case law. These factors

combined make the Netherlands an attractive choice for claimants looking to initiate damages proceedings.

Dutch courts still seem to readily accept jurisdiction, even though the Dutch Supreme Court and the Amsterdam Court of Appeal have requested the CJEU for preliminary rulings on the extent to which a national court has to assess the doctrine of attribution of liability when determining whether it has jurisdiction. Would it suffice to (i) simply look for a Dutch entity within the group to which the actual infringing entity forms part and (ii) just state that those two entities constitute a single economic unit, so that the Dutch entity can serve as an anchor defendant simply on that basis? Or would it not be possible to rely on presumptions and unsubstantiated statements and does the claimant need to provide at least *prima facie* evidence of specific links between the economic activity of that Dutch entity and the subject matter of the infringement in which a group member directly participated and/or of economic, organisational and legal links between the two group entities? The answer to these important questions may be given in the course of 2024 but if the CJEU sets the bar relatively low, the Netherlands will likely become an even more appealing jurisdiction for damages cases.

Another striking point is that the Dutch court's focus in antitrust damages cases seems to be shifting from follow-on cartel damages cases to abuse of dominance damages cases, specifically in relation to Big Tech. Whereas most of the pharmaceuticals seem to escape unpunished, the Big Tech companies are being confronted with an increasing number of follow-on and standalone damages claims. This is not only competition law related as class actions are also on the rise with respect to privacy and data protection. The landscape is about to change even further with Big Tech companies that have been designated as 'gatekeeper' within the meaning of the DMA. As from March 2024 their core platform services will need to comply with a series of obligations, including prohibiting them from engaging in certain conduct. With all their competitors and users' eyes being on them, a new wave of private enforcement actions may therefore be expected soon.

7. Vertical distribution practices in the spotlight

Although 2023 saw an increase in case law and guidance on vertical distribution agreements, the line between legitimate and prohibited distribution practices does not yet seem clear. We may yet see further clarification on the boundaries of prohibition of vertical price fixing in 2024.

2024 is likely to give rise to some more interpretational questions and hopefully answers on the new Vertical Block Exemption Agreement (**VBER**) and Vertical Guidelines that have entered into force. Companies had until 31 May 2023 to bring their agreements in line with these new rules. In many respects, the VBER offers clarifications and improvements compared with its predecessor. However, a new feature that has prompted both questions and criticism is the treatment of information exchange in the context of dual distribution (i.e. where a supplier competes with its downstream buyer). This is now only exempted if the information exchange is directly related to the implementation of

the vertical agreement and necessary to improve the production or distribution of the contract goods or services. Further guidance to this rather vague notion would be highly appreciated in 2024.

Meanwhile, in the Netherlands, the ACM has persisted in its stricter enforcement of the prohibition against resale price maintenance (**RPM**). This began in 2018 with an investigation into RPM for the retail sale of televisions, resulting in fines being imposed on both Samsung (EUR 40 million) and LG (EUR 8 million). In November 2023, Samsung's fine was upheld by the Rotterdam District Court. A key question in the Samsung case was the extent to which an element of coercion must be proven to establish RPM. The District Court ruled that this is not a condition for proving a vertical restriction by object. This seems to run contrary to the JCB Services judgment of the General Court (Case T-67/01), which implies that a degree of coercion is required, and blurs the line separating prohibited RPM from permissible recommended resale prices.

The District Court also considered the 2023 CJEU judgment in *Super Bock* (Case C-211/22). In that judgment the CJEU held that an agreement on minimum resale prices can only qualify as a restriction by object if it is determined that that agreement presents a sufficient degree of harm to competition, taking into account the nature of its terms, the objectives that it seeks to attain and all of the factors that characterise the economic and legal context of which it forms part. Samsung interpreted this as meaning that the District Court should consider whether inter-brand competition had been sufficiently weakened. However, the District Court held that the *Super Bock* judgment did not require such an analysis as it concerned an analysis of effects rather than economic context. Should Samsung decide to appeal the District Court's judgment, we are likely to see further clarification of the doctrine of RPM.

8. Merger control in the healthcare sector at the cutting edge

The commercialisation and consolidation of public healthcare faces scepticism and opposition. However, following the annulment of two major merger control decisions by the court, it will be interesting to see how the ACM, boldened by the political climate, will apply its enforcement powers to the healthcare market in the coming year.

The privatisation of the Dutch healthcare industry, the subsequent ongoing consolidation and the increasing presence of private equity funds have led to intense ACM scrutiny of several intended takeovers in recent years. One of the most prominent cases was the intended acquisition of Mauritskliniek, an independent treatment centre with five locations, by Bergman Clinics, a chain of independent treatment centres. Although Mauritskliniek had a limited turnover that only just triggered the specific healthcare threshold for notification of the transaction, the ACM expressed concern that the merger would lead to price increases, and decided not to grant a permit in 2021. The ACM largely based its decision on an ex post price analysis of Bergman Clinics' price after a merger with NL Healthcare Clinics that the ACM had approved in 2019. This decision was annulled by the Rotterdam District Court in May 2023 on the basis that the ACM had not sufficiently demonstrated that Bergman

Clinics was indispensable to health insurers. The court ruled that the ex post price analysis was insufficient to justify the prohibition of a permit.

Two months earlier, in March 2023, the Rotterdam District Court had annulled the ACM decision prohibiting the takeover of Eurocept Homecare, a provider of medical home care, by the international healthcare company Mediq, on the grounds of errors in law in the ACM's market definition. The negative verdict for the ACM in not one but two major healthcare cases in one year prompted the ACM to commission an external evaluation of its working methods. Commenting on the report of July 2023, the ACM noted that it considers a more robust reasoning of its merger control decisions to be the main area for improvement. Interestingly, shortly after the ACM prohibited these acquisitions, the turnover threshold to notify transactions in the healthcare industry to the ACM was increased.

Healthcare consolidation also takes place in the general medical practices market. As general practitioners struggle to find a successor to their practice, private equity steps in. However, in November 2023 the Dutch Healthcare Authority (**NZa**) refused to approve the merger of two general practices by the commercial chain Co-Med for fear that the consolidation would put the continuity of care for all patients concerned at risk, referring to previous takeovers of the Co-Med group, in which the group could not guarantee the continuity of care.

The commercialisation of healthcare is a trend that also attracts political attention. In September 2023, the Dutch Parliament passed a resolution expressing its concern and encouraging the government to address this trend. Similarly, the chair of the ACM expressed scepticism about this practice in public healthcare. Following the twofold defeat in court, it will be interesting to see how the ACM, emboldened by the political climate, will apply its enforcement powers to the healthcare market in the coming year.

9. Fair treatment of suppliers and buyers and sustainability in the Agri & Food sector

Fair treatment of small scale suppliers in the food supply chain and leeway for sustainability initiatives and agreements under the competition law remain at the top of the regulatory agenda in the Agri & Food sector in 2024. In particular, we may see more enforcement action against unfair trading practices in the agricultural and food supply chain.

The Directive on unfair trading practices in the agricultural and food supply chain seeks to protect small-scale suppliers against the abuse of bargaining power by large buyers. The Dutch implementing Act entered into force in November 2021. The ACM has not been idle since, and published the results of a study conducted amongst agricultural suppliers on their familiarity with the Act in May 2023. The study showed that a large majority of three in four were not sufficiently aware of the Act, which prompted the ACM to launch an initiative to raise awareness, calling upon suppliers to report wrongdoings to the ACM.

December 2023, the ACM published its first draft decision applying the new Act. It concerns alleged unilateral price amendments imposed by Vion, a producer of meat and meat products, in the context of its pork meat purchasing contracts with suppliers. The draft decision imposes commitments, requiring that Vion can no longer make unilateral changes in the contracts and can no longer adjust its purchasing prices without the consent of the suppliers. It will be interesting to see whether this case will be followed by similar cases in other agri-food sectors in not only the Netherlands but throughout the EU. We anticipate further action from the ACM in 2024. Additionally, the Directive is under evaluation, which may lead the Commission to make amendments or clarify key concepts – such as the scope of what constitutes a unilateral change of contract.

Another key topic in Agri & Food is sustainability. In 2022, the Commission amended Regulation (EU) 1308/2013 to allow for cooperation between producers of agricultural products if the cooperation can be considered indispensable to achieving sustainability standards in the agriculture sector which go beyond EU or national mandatory standards. This exemption is set out in the new Article 210a. On 7 December 2023 the Commission adopted guidelines which provide more clarity on the scope of this exemption. Apart from the precedents, 2024 will hopefully show that Article 210a indeed allows for more room for sustainability initiatives than Article 101(3) TFEU in practice.

In the meantime, the ACM is also actively encouraging sustainability cooperation by agricultural producers. The ACM has for a longer time already supported sustainability agreements and provided guidance on the application of the exemption from the cartel prohibition of Article 101(3) TFEU in its draft guidelines on sustainability agreements. It is now joined in this respect by the Commission, which introduced similar, albeit less far reaching guidance with its new 2023 Guidelines on horizontal cooperation agreements. This caused the ACM to adjust its own guidance to bring it in line with the Commission standards: on 4 October 2023, it adopted the ACM Policy Rule on Monitoring Sustainability Agreements. Nevertheless, the ACM will not take enforcement action against initiatives, even if they are not within the Commission's safe-harbour, if the ACM believes that they don't violate the cartel prohibition based on the reasoning in its earlier draft guidelines.

10. Competition law and sports: is the game only just beginning?

Upcoming CJEU rulings on the application of European (competition) law to sports could have major implications for how sports competitions are organised in Europe. 2024 promises to be an exciting year for the intersection of competition law and sport.

Competition law has always played a role in professional sports, but there has been a particularly high level of activity in this respect in recent years. Several cases catch the eye. The spring of 2021 saw an attempt by twelve elite football clubs to introduce a new league that would compete with the UEFA Champions League and Europa League: the European Super League (**ESL**). The ESL was greeted with considerable scepticism, including by UEFA, which was ultimately able to block the initiative by threatening to exclude participating teams from UEFA tournaments. The ESL's initiators

took the case to court, alleging that UEFA's conduct amounted to an abuse of dominance. The CJEU is expected to issue an initial ruling on 21 December 2023. The outcome could have a significant impact on the future governance and regulation of European football. In parallel, the CJEU is likely to issue its judgments in the cases C-124/21 P (*International Skating Union / Commission*) and C-680/21 (*Royal Antwerp Football Club*).

The recent introduction of the FIFA Football Agents Regulation (**FFAR**) has not gone unnoticed either. This set of rules aims to regulate the activities of football agents in relation to transfers, introducing such matters as a licence system and service fee caps. However, the FFAR is currently being challenged in various jurisdictions. In March 2023, the CJEU took on preliminary questions from the German court on the conformity of the FFAR with EU competition law, the General Data Protection Regulation and the freedom to provide services. Meanwhile, in the Netherlands, the court rejected a claim to suspend the application of the FFAR on similar grounds, until the CJEU takes a stance on the merits of the case.

Another interesting development in the Netherlands revolves around the broadcasting rights of the Dutch premier league, the Eredivisie. The Eredivisie C.V. (**ECV**), the association of clubs that organises the league, was looking to sell the rights for a 5-year period from the 2025 season onwards. Interest came from the media giant ESPN, the current rights-holder, and a new player: a consortium of four Dutch TV operators – KPN, VodafoneZiggo, Odido and Delta Fiber. The consortium expressed willingness to pay EUR 900 million, however the ECV granted the rights to ESPN for the reported sum of EUR 750 million, in private negotiations. Consequently, the consortium submitted an enforcement request to the ACM arguing that a public, transparent and non-discriminatory tender procedure should have been organised. The Eredivisie is the only major football league in Europe whose broadcasting rights are not awarded through a tender procedure. It remains to be seen whether this constitutes a level playing field. For now, it's up to the ACM to play the ball.

Contacts

YVO DE VRIES
LAWYER | PARTNER
y.de.vries@houthoff.com

GERRIT OOSTERHUIS
LAWYER | PARTNER
g.oosterhuis@houthoff.com

RICK CORNELISSEN
LAWYER | PARTNER
r.cornelissen@houthoff.com

GREETJE VAN HEEZIK
LAWYER | COUNSEL
g.van.heezik@houthoff.com