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Introduction

This first edition of the journal offers readers a deeper dive into publications originating from the international area during the first semester of the 2025/2026 academic year. The entire collection is produced by the International Area of the Corporate Law Academy (CLA), a Bocconi student association specialising in commercial law. CLA equips its members with the knowledge they need through publications, events with professionals, moot courts and workshops at prestigious law firms.

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Editor Premises

The issue contains the work of the associates during the semester. Each article was reviewed and edited by Simone Colavecchia, the head of the area. The papers were then sorted and divided into several themes for easy searching. However, no changes were made to the ideas themselves, so the editor and the Association distanced themselves from any potentially controversial statements. The editing corrections were purely grammatical and stylistic

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International Journal of Corporate Law

The Beginner Brief

Editor Premises

Liam Smith and Sophia Sheldon, students in the Bachelor of Global Law, have created the Beginner Brief series. This series aims to equip students and early-career readers with essential corporate fundamentals. It translates complex concepts into concise, clear and accessible language, spanning just a few pages.

I. BONDS

By Sophia Sheldon

Recently, DLA Piper advised UBM on a $75 million green bond. Green bonds have seen a sharp rise in popularity in recent years, making transactions like these increasingly common in the work of major corporate law firms. But before exploring how green bonds are reshaping corporate finance to align with sustainability objectives, it's important to first understand what bonds are, more specifically, what corporate bonds are, and how they contribute to this growing area of sustainable finance.

What Is a Bond?

In essence, bonds function like loans between two parties: on one side you have the "issuer", who is borrowing money, and on the other is the "investor" who is lending it. The issuer promises to repay the principal, or face value – i.e. the total amount borrowed – on a specified maturity date, while making regular interest payments over time, usually twice a year. These stated interest payments are known as coupons. Bonds are therefore debt securities, meaning they represent money borrowed by an issuer that must be repaid with interest. They are issued by governments and corporations to raise funds for a variety of purposes, such as financing projects or managing debt. Because bonds typically make regular and predictable interest payments until maturity, they are often referred to as fixed-income securities.

A helpful way to think about a bond is as an "IOU" – literally, "I owe you.". In this case the government or corporation owes money to the bondholder. When an issuer sells a bond, they are essentially writing an IOU to investors, promising to repay the borrowed money in the future and to make regular interest payments in the meantime. The bond itself is the legal document that records this promise: it spells out how much is owed, when it will be repaid, and what interest the investor will receive. To better understand bonds, it helps to compare them to stocks. The main difference is that stocks give the investor ownership in a company. Bonds, on the other hand, do *not* represent ownership: rather, they represent a loan to the company or government, with a contractual promise of repayment plus interest. Because bondholders receive regular interest payments, bonds are generally regarded as a safer and more predictable source of income, while stocks carry higher risks but potentially higher rewards. The main situation in which bond investors might lose money is if the issuer becomes insolvent (i.e. unable to meet its debts). Even then, bondholders are repaid before shareholders, since debt ranks above equity in the order of repayment during liquidation. So, to understand bonds and interest rates in a more practical sense, here's an example: Imagine you invest in a two-year $1000 bond with a 5% fixed interest rate which is to be paid semi-annually. As the investor, you would earn $25 every six months, which totals to 100 dollars interest over the course of those two years. When the bond reaches maturity, you would also receive back your original $1000 principal.

Types Of Bonds

There are many different types of bonds, each serving a different purpose. The main categories are treasury bonds, municipal bonds, agency bonds, and corporate bonds. Treasury bonds, also referred to as government bonds, are issued by national governments to fund public spending operations or projects. They are generally considered the safest investment, often described as "risk-free", as governments have the power to raise taxes or print money to meet their debt obligations. The yield (i.e. the rate of return relative to the bond's current market price) is typically the lowest among bond types. Treasury bonds are also extremely liquid, meaning they can be easily sold or converted into cash. Municipal bonds, or "munis" are issued by states or local governments (i.e. municipalities) to finance public community services and infrastructure. They are also considered relatively safe because the issuer can raise funds through taxation, however they are still subject to default risks like municipal bankruptcies. Agency bonds are issued by certain government-related agencies, such as housing or mortgage authorities. These bonds are generally high quality and liquid, and some are fully backed by the federal government, making them almost as safe as Treasuries. They can, however, be sensitive to interest-rate changes, which may affect refinancing patterns and returns. Finally, corporate bonds – which will be the focus of the subsequent section – are issued by companies and generally pay higher interest rates than government bonds to compensate investors for taking on more risk. Another type that has become especially relevant today, is the green bond, which will be explored more later.

Corporate Bonds

Companies need money to run their businesses. Even if they generate sufficient funds through core operations, it is often financially prudent to raise additional capital from outside sources. Broadly speaking, companies have two ways to do this: equity financing and debt financing. Equity financing involves issuing shares (stocks), which gives investors ownership in the company, whereas debt financing involves issuing bonds, which, as we've just learned, create a contractual obligation to repay borrowed money with interest. So corporate bonds allow companies to raise capital without giving up ownership and to operate with more flexibility. They are debt obligations issued by corporations to fund operations, acquisitions, projects, or refinancing. Corporate bonds are one of the main forms of debt financing, alongside bank loans and credit facilities. For companies, issuing bonds provides an efficient way to access large sums of cash; for investors, it offers regular

interest payments and repayment of the principal at maturity. This creates a mutual benefit: corporations receive upfront capital to grow their business, while investors receive steady income at a fixed or variable rate. While most corporate bonds have fixed interest rates, some have floating rates, meaning the interest rate changes over time based on a benchmark (such as LIBOR1 or Euribor2). Others are zero-coupon bonds, which pay no periodic interest at all; instead, they are sold at a discount and repaid at face value at maturity. These different structures cater to the needs of both issuers and investors – for example, floating-rate bonds may help investors protect against inflation, while zero-coupon bonds allow issuers to delay cash payments. Compared to government bonds, corporate bonds carry higher risk because companies can default or go bankrupt. As aforementioned, to compensate investors for this additional risk, corporate bonds offer higher yields. Bonds issued by companies with lower credit ratings are often called high-yield or "junk" bonds, offering higher returns but greater risk. Because corporate bonds represent an investment in a company's debt, they depend on the company's solvency (i.e. its ability to meet financial obligations). From a legal and transactional perspective, each bond issue is governed by a prospectus (the public disclosure document) and an indenture (the legal contract defining the issuer's obligations). These documents include covenants – contract clauses that may restrict certain actions by the issuer, such as taking on additional debt – and outline what happens in case of default.

Green Bonds & Sustainably Linked Bonds

Green bonds are debt instruments whose proceeds are exclusively allocated to projects with positive environmental impacts. Typical eligible categories include but are not limited to renewable energy, energy efficiency, clean transportation, green buildings, and climate change adaptation. These types of bonds promote sustainability by channelling funds into climate-related initiatives such as sustainable agriculture and forestry, pollution control, and environmentally friendly technologies. Green bonds can be issued by public institutions, private companies, or multilateral organizations to raise capital for projects that deliver measurable environmental benefits. Over the last decade, the demand for green bonds has grown rapidly alongside increased concern about climate change and the adoption of sustainability-related regulation. In the European Union, for example, the share of green bonds in total bond issuance rose from 0.1% in 2014 to 6.9% in 2024. This expansion reflects both investor demand for sustainable finance and policy initiatives such as the European Green Deal and the EU Sustainable Finance Framework, which aim to redirect capital toward environmentally responsible activities and companies that meet ESG (Environmental, Social, and Governance) standards. Sustainability-linked bonds (SLBs) share similar sustainability goals but differ in structure. Unlike green bonds, which are tied to the use of proceeds, SLBs are performance-based instruments. Their financial terms, often the coupon rate, change depending on the issuer's success in meeting sustainability targets. For instance, if a company fails to reach its environmental goals, the coupon rate may increase; if it achieves them, the rate may decrease. This structure creates a tangible financial incentive for companies to fulfil their commitments. Another key difference is that SLBs allow proceeds to be used for general corporate purposes, rather than specific green projects. This flexibility encourages companies to embed sustainability goals, such as those defined by the UN Sustainable Development Goals (SDGs)and the Paris Agreement, into their overall corporate strategies. Both green bonds and SLBs illustrate how financial instruments can support corporate responsibility and environmental accountability, while still serving as tools for raising capital.

Green Bonds in Practice

Now that we've covered what bonds are – and, more specifically, what corporate and green bonds involve – it's useful to look at a real-world example. In November 2025, DLA Piper advised UBM Development AG on the issuance of a €75 million Green Bond, with all proceeds allocated to sustainability-based financing. This transaction followed UBM's earlier Green Bond issuances in 2023 and 2024, demonstrating the company's continued commitment to sustainable finance. UBM, one of Europe's leading timber-construction developers, focuses on creating green and smart buildings across major European cities. In this case, Wolf Theiss advised the banks involved, while DLA Piper's Vienna corporate team advised UBM. This recent transaction highlights how green bonds have become an increasingly relevant tool in today's corporate and regulatory environment, particularly in Europe, where initiatives such as the EU Green Bond Regulation and the European Green Deal encourage sustainable growth. At the same time, it shows why corporate lawyers need to understand not just what green bonds are, but how to facilitate them effectively – ensuring that the financing structure, documentation, and reporting align with sustainability standards. As succinctly put by Dr. Christian Temmel, partner at DLA Piper and lead on this transaction: "100% of proceeds allocated to sustainable projects underscores UBM's consistent ESG strategy and shows how capital-market instruments can effectively promote sustainability." This real-word example demonstrates how corporate law and sustainability are becoming increasingly intertwined. Lawyers advising on these transactions must understand ESG-related financial regulation, ensure accurate disclosure and compliance with sustainability frameworks, draft bond frameworks, prospectuses, and impact reports, and advise clients on ESG governance and investor communication. In this way, corporate lawyers help bridge the worlds of finance, regulation, and sustainability, showing that capital-raising and environmental accountability are not mutually exclusive, but can, and indeed must, work hand in hand.

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II. Credit Facilities

By Liam Smith

When browsing through the company site of any major corporate law firm, headlines such as "White & Case advises Huvepharma on €130 million credit facility" can be found. Major law firms advise their clients on complex financial transactions to enlighten them on the legal implications of these transactions. In the case, UK law firm White & Case advised Huvepharma, a global pharmaceutical company on a 'credit facility', with an unnamed lender. Before advising Huvepharma about the legal implications of this transaction, corporate lawyers at White & Case must understand the mechanics of credit facilities themselves.

What Are Credit Facilities?

A credit facility is a specific type of loan, which, like all loans, involves a 'borrower', a company or an individual, and a 'lender' also called a 'creditor', which is usually a financial institution. Credit facilities are distinguished from other loans as they allow the borrower to withdraw funds from a pre-determined 'pot' at any given time over a prolonged period. They are distinguished from other loans, in which the borrower must apply for a new loan each time they want to access new funds. This makes credit facilities beneficial to borrowers as they can access funds immediately and on a flexible basis, particularly to finance projects which will last over a longer period and do not have a clear pre-determined cost. Credit facilities can be compared to a consumer credit card. An individual may withdraw funds from a certain, capped quantity of 'credit' or money whenever they want. Eventually, the individual will be forced to repay the amount they have spent. In the case of credit facilities, repayment can be structured in various ways; the structure of repayment is to be decided by the parties and is an area in which corporate lawyers may advise either party.

What Are the Types of Credit Facilities?

In corporate law, three types of credit facilities are generally outlined: committed, uncommitted, and revolving. These three types differ with respect to several aspects, but most notably, in the obligations of the creditor and in the intervals of repayment. In a **committed credit facility**, the creditor and the borrower agree on specific conditions that the borrower must meet before the creditor makes a credit facility available. These conditions may include the proof of 'existing indebtedness', requiring the borrower to prove that all existing debts have been paid off, or anti-money laundering guarantees *inter alia*. Once the borrower has met the 'conditions precedent' the creditor is legally bound to extend the credit facility. In committed credit facilities, the borrower can terminate the facility at will, while the creditor is only able to terminate the facility if the borrower fails to meet predetermined obligations. In most committed credit facilities, it is agreed upon beforehand that the creditor can terminate the facility in the case of 'default' in repayment by the borrower, though the parties may agree on other grounds for termination by the creditor. By contrast, in an **uncommitted credit facility**, the creditor has no obligation to lend to the borrower and may terminate its contributions to the facility at any time on a case-by-case basis. Pursuant to this, the borrower is also not under any obligation to borrow from the facility and like the creditor can terminate the facility at any time. Because the creditor's contributions to uncommitted credit facilities are not guaranteed, they are often negotiated on a short-term basis, serving as a temporary source of additional funds for the borrower. **Revolving credit facilities** are a subcategory of committed credit facilities, meaning the creditor is obliged to extend the facility if the borrower continues to meet the predetermined conditions. However, revolving credit facilities vary significantly in their repayment structure. While most facilities involve repayment upon the expiration of the facility, revolving credit facilities allow the borrower to borrow and repay on a regular basis. For this reason, revolving credit facilities typically do not have a fixed expiration date, as the creditor continues to pay into the facility, while the borrower continuously repays at regular intervals. The job of corporate lawyers is to advise their clients on the type of credit facility which best suits their needs and on how they can secure their specific interests throughout the period of the facility's activity.

What Are the Elements and Interests of The Parties Within Credit Facilities?

Credit facilities include a set of **'covenants,'** or promises made by the borrower to the creditor. These may include promises to do something, 'positive covenants', such as guaranteeing to maintain insurance throughout the duration of the credit facility, but also promises not to do something, 'negative covenants', such as committing not to undertake any mergers or acquisitions without the consent of the lender. Credit facilities may also include additional **fees**, like withdrawal fees which are applied every time funds are taken out by the borrower. Corporate lawyers must negotiate these fees and covenants between the parties to protect separate interests. The goal of a borrower is typically to make covenants easy to comply with, as they want to secure their access to the funds of the facility and want to reduce compliance costs. Moreover, borrowers aim to negotiate fees attached to the facility as low as possible. Conversely, the creditor strives to negotiate covenants which provide sufficient protection, perhaps allowing them to more flexibly terminate the facility and to ensure the borrower repays on time. In addition to positive and negative covenants, the parties to the credit facility may negotiate **'financial covenants'**, which require the borrower to remain within specified financial parameters. Financial covenants may include requiring the borrower to maintain a certain net worth or a certain 'gearing ratio', the ratio of debt to net worth. Financial covenants are essential to the creditor, serving as a health check that allows the creditor to assess the risk of default as well as the value of the borrower's assets should default occur. Financial covenants help enable the creditor to make safer choices when choosing whether to continue contributing to a credit facility. Another element, which is often negotiated into credit facilities to make the creditor resistant to defaults in repayment by the borrower are **securities**. Securities for credit facilities are assets of the borrower, like physical or intellectual property, or shares in a company, which serve as a guarantee for the repayment of a loan. The creditor will take 'title' of the asset for the duration of the facility. If the borrower fails to repay the loan the creditor may have the power to sell the asset to regain the value lost. When the borrower repays all their debts, usually upon the expiration of the credit facility, the borrower will regain control over their assets. While securities offer benefits for both parties, allowing the borrower to negotiate access to larger amounts in the credit facility and reducing overall financial risk of default for the creditor, they also pose certain risks. For example, as the borrower risks losing key assets and may experience reduced autonomy, as they may be restricted from selling or reorganising assets under security. Moreover, securities can lead to the borrower incurring costs, like the costs of enforcing a security, and assets taken under security may ultimately be difficult to sell. For this reason, corporate lawyers must negotiate terms which balance risks and benefits for both parties.

How Do Credit Facilities Play Out in Practice?

Returning to the initial headline, "White & Case advises Huvepharma on €130 million credit facility" the steps which lawyers at White & Case need to take to advise Huvepharma can be examined chronologically. Firstly, and most importantly, White & Case will need to recommend the type of credit facility Huvepharma should request. This will depend on the purpose of the facility, as well as the financial stability of the Huvepharma in the eyes of the borrower. Huvepharma plans to use the funds to research veterinary pharmaceuticals; research is often long-term and costs may change over time. Therefore, Huvepharma may want to negotiate a committed credit facility to guarantee secure funds over a longer period, however, this will require Huvepharma to meet certain conditions and have financial documents in order. Alternatively, if the lender wishes to impose an overly stringent conditions precedent on Huvepharma, White & Case may advise Huvepharma to propose a revolving credit facility, which would provide protections to the creditor against default, while securing access to the credit facility over a longer duration. Additionally, White & Case will need to advise Huvepharma on how to go about covenant negotiations with the creditor. Advising lawyers should aim to protect Huvepharma interests in making covenants as easy as possible to comply with, while being realistic about the inevitable demands the creditor will make. Overall, the goal of lawyers in negotiating credit facilities is to strike a balance between the converse financial interests of the borrower and the creditor to ensure stability for both parties.

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Tech & Law

Editor Premises

Tech & Law explores how emerging technology is driving real-time legal evolution. We analyse tokenisation of assets as a shift in ownership and risk representation, high-profile acquisitions as a test of governance valuation and market power, digital-era antitrust as the new standard for platform strategy and OpenAI's restructuring as a governance blueprint or warning for AI institutions. A consistent takeaway across these topics is that technology alters market structures first, with law then catching up through enforcement and institutional design. Our focus is on the consequences: compliance architecture, deal risk, competitive exposure and accountability mechanisms.

I. Tokenising the Future: How Digital Assets Are Redefining Ownership and Law

By Faye Setiawan & Francesca Mafrici

Over the past years, it has become increasingly clear that we are accelerating toward the advent of a new technological era. Some call it the world-domination of robots and autonomous systems; others refer to it as 'Web3'; a decentralised version of the internet built on blockchains which are communally controlled and maintained by participants. At the centre of the phenomenon that is Web3 lies the legal sphere, an industry that is indispensable to and most challenged by these daily-occurring technological advancements. Legal systems, traditionally grounded in precedent and slow adaptation, now must face the test of adapting to new innovations that evolve in real time. The key components shaping this new digital ecosystem are: blockchain networks, smart contracts, and digital assets. It is the last of these, tokenisation, that we will focus on within this exploratory article.

Importance

You may be thinking to yourself - *tokenisation, sure, like Bitcoin or those NFTs of monkeys that have made people millionaires overnight?* They appear to be non-fungible, intangible assets which have no traditional stores of value in banks or gold reserves. To many, they seem like fools' gold or a hype destined to fade over the next few years. Unfortunately for the sceptics, the evidence tends in the opposite direction: digital assets are here to stay. As previously touched upon, we are undergoing a transition from a Web2 structure dominated by large tech corporations' control over transactions, content and data, to Web3: with increasing power for users to create control and influence actions on the internet without intermediaries. At the heart of this transition is tokenisation as a digitalisation process to make assets more accessible by turning them into digital representations that can be traded or owned through blockchain networks. While most associate tokens with cryptocurrencies or NFTs, tokenisation's potential extends far beyond that. It enables cybersecurity, fraud prevention, and verifiable ownership on a previously unimaginable scale. Imagine you're buying a pair of sneakers from a seller online. When using a traditional Web2 marketplace, you relied on the platform to mediate trust. You paid for the sneakers through the platforms but the sneakers either never arrived, or worse, were a fake pair. When using a Web3 platform built on blockchain for the same purchase, every product has a verifiable digital certificate proving authenticity and ownership. Before the payment is released, the blockchain automatically confirms that the seller owns the authentic sneakers and that the transaction meets the verified conditions. Once the authenticity and funds are confirmed, the payment and ownership transfer happen instantly, without middlemen, dupes, or mistrust. You receive your sneakers, the seller receives payment and both receive an immutable, transparent record of the sale via blockchain. Additionally, it is notable that although both cryptocurrencies and digital assets exist in the form of blockchain and hold a certain nominal value in their respective markets, assets tokens are backed by the economic value of the underlying assets, while the same is not always necessary for cryptocurrencies. From a legal perspective, tokenised assets present a fascinating challenge and opportunity. Unlike traditional assets, they can exist either solely digitally or simultaneously digitally and physically, blurring the lines between tangible property and virtual ownership. These assets can range from NFTs, cryptocurrencies, stablecoins to art, sneakers, properties, and stocks. These possibilities could potentially completely redefine the world of capital markets to gain the benefits of digital access, such as 24/7 operations and availability, faster transaction settlement, high degrees of automation, and many more futuristic potentials which we will delve into further later. At this point in time, $120 billion in tokenised cash is already in circulation, with a McKinsey analysis pointing toward a growth to $2 trillion by 2030. For aspiring lawyers, this transformation signals a new legal frontier. Legal ownership must be redefined; smart contracts could potentially complement and even replace traditional contracts; regulators must come up with new guidelines in uncharted territory; new legal mechanisms are demanded for recovery, inheritance, and dispute resolution; and cross-border transactions will even further blur national legal boundaries to create an even more connected global digital economy where law and technology must coexist and evolve together.

Benefits And Risks

As we venture deeper into the rapidly evolving world of Web3, it becomes essential to understand not only what tokenization is but also the implications it carries. Like any technological breakthrough, tokenization is a double-edged sword. One that offers tremendous potential while posing new challenges for markets, regulators, and investors alike. By replacing or enhancing current ownership validation methods, such as titles or copyrights, asset tokenization introduces a range of advantages across industries. Perhaps the most transformative upside of these is its ability to increase liquidity and accessibility through fractional ownership. In essence, tokenization allows multiple investors to own portions of a single asset, whether physical or digital. This might seem counterintuitive at first, after all, it is hard to imagine a house or a painting "cut into pieces" while still retaining value. Yet by converting ownership rights into digital tokens on a blockchain, even traditionally illiquid or indivisible assets can be represented as millions of tradeable units. The result is a drastically expanded pool of potential investors to customers with relatively low capital. High-value and high-upside assets that were once out of reach for the average person can now be owned in fractions. For example, A €1 Million property represented by a company or trust could be tokenized into 1'000'000 tokens worth €1 each. Each token holder owns a verified share of the property and can receive proportional benefits such as rental income. Importantly, this accessibility extends beyond financial means to geography itself. Because tokenized assets are traded digitally around the clock and around the world, they eliminate geographical barriers, fostering true global accessibility and global liquidity. Investors

can now participate in opportunities halfway across the world without relying on intermediaries or conventional banking systems. Beyond accessibility, fractional ownership also enables greater portfolio diversification, allowing investors to spread risk across multiple asset types and markets that were previously inaccessible. Another major benefit of tokenization lies in the integration of smart contracts. In Web3, smart contracts are cryptographically secure digital agreements written in computer code and stored on the blockchain. Crucially, they are self-executing, meaning they automatically perform an action once certain predefined conditions are met. Think of them as "if - then" statements: "if X happens, then do Y". Returning to our earlier example, a smart contract could automatically distribute the rental income from the tokenized property to its investors, minimizing human error, operational costs, and delays. In this way, smart contracts enable trustless, transparent, and efficient transactions rather than relying on intermediaries. A final key benefit is the previously mentioned immutability, the principle that once data or a transaction is recorded on the blockchain, it cannot be altered or deleted. Each block within the blockchain contains a list of verified transactions, a timestamp, and a unique cryptographic identifier known as a hash. Each block is further linked to the previous one using further cryptographic hashes, forming an unbroken and tamper-resistant chain. If even a single character in the data were changed, for instance, altering a single transaction amount, the block's hash would change completely, breaking the connection to the rest of the chain. Because every copy of the blockchain is simultaneously validated and stored by thousands of independent computers, called nodes, the network would immediately detect and reject any attempt at manipulation. To picture it more simply, imagine trying to secretly edit one page of a book that exists in thousands of identical copies stored all over the world. You'd have to replace every copy at once - a near-impossible task. This built-in design ensures data integrity, permanent proof of ownership, and protection against fraud, making immutability the foundation of trust in tokenization and a leading reason why investors and institutions are beginning to see blockchain as more than just a tech trend, but as the next layer of financial infrastructure. On the flipside, the sharp blade of our double-edged sword, asset tokenization also carries certain risks and challenges, many of which are deeply intertwined with the very benefits that make it so promising. While we have seen that blockchain is celebrated for its security, this safety isn't immune to vulnerabilities. As with any technological advancements, tokenization platforms face the ever-present risks of hacking or cyberattacks, as well as more specific risks like smart contract bugs or key management failures. Because smart contracts are self-executing and immutable, even a single line of faulty code can have irreversible consequences once deployed. On the human side, there is the risk of loss of private keys, which function as digital proof of ownership. If an investor loses their private key, their tokens and, by default the assets they represent, may be unrecoverable. This is the blockchain equivalent of losing the only key to a safe that cannot be replaced. So, as tokenization becomes more mainstream, building robust cybersecurity standards, custody solutions, and independent audits will be critical to maintaining trust in the system. Another emerging challenge relates to the environmental impact of tokenization. Early forms of blockchain technology have been criticized for their high energy consumption and carbon footprint. The issue became particularly visible during the rise of non-fungible tokens (NFTs). The carbon cost of minting and transacting NFTs led to widespread backlash, a warning of the creation of an unstable digital economy, consequently leading to a loss of the craze surrounding them. As tokenization expands into mainstream finance and industry, balancing innovation with environmental responsibility will be critical to ensuring its long-term viability and social acceptance. The biggest challenge tokenization currently faces is the lack of clear and consistent regulation. Because tokenized assets sit at the crossroads between traditional finance and blockchain innovation, governments and regulators are still debating how to classify them. Beyond debates about the legal validity of smart contracts. A main question thereby concerns whether they are securities, commodities, or something entirely new. A security generally represents ownership, debt, or investment rights in a project. It includes stocks or shares, bonds, or investment contracts with an expectation of profit. Buying tokens that represent shares in a real estate project, like our €1 Million House example, would likely be treated as a security, since the buyer expects profits based on the project's management. Commodities, by contrast, refer to basic goods or raw materials used in commerce. A token backed by a bar of gold would then likely be considered a commodity, because its value derives directly from the price of the material, rather than human management or performance. However, in digital markets, this distinction becomes blurred. The same token can take on the characteristics of both categories, depending on how it is structured, marketed, and traded. Global legislators are still refining their definitions to determine which regulator has jurisdiction and what legal obligations apply to both issuers and traders, affecting how tokens are issued, traded, and taxed. The U.S continues to rely on case-by-case interpretation under the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC), while the EU is introducing a clearer framework. However, cross-border harmonization is still far from reality. The result is an environment where investors and institutions must remain cautious due to the lack of understanding of regulations. Without greater education, standardization, and integration with traditional finance, tokenization will likely not be able to reach its full potential.

Regulatory Landscape

One of the most significant risks mentioned surrounding asset tokenization is regulatory uncertainty. As noted, tokenization is here to stay, but for it to operate effectively and sustainably, a clear and consistent regulatory framework is essential. Given these challenges, particularly around regulation, many jurisdictions have started developing frameworks to bring clarity and trust to tokenized markets. The EU and the United States will function as examples to show regulatory evolution globally. In Europe, regulations have taken a proactive approach in fostering experimentation and harmonization through the Digital finance package and various local initiatives. *The Digital Finance Package* is a comprehensive policy initiative introduced by the European Commission to modernize and unify the Union's approach to digital finance and innovations. The digital finance package contains the main legislative pillars like the *DLT pilot regime*, *MiCA,* and *DORA*. *The DLT pilot regime* (2023) provides the legal framework for trading and settlements of transactions in crypto-assets that qualify as financial instruments under the "*Markets in Financial Instruments Directive II" (MiFID II)* of 2018. It allows financial institutions to test blockchain-based trading infrastructure under controlled regulatory conditions. *The Markets in Crypto-Assets regulation (MiCA, 2023)* aims to harmonize EU market rules for crypto-assets, focused on transparency, disclosure, and supervision of transactions. It requires issuers of crypto-assets to publish a *whitepaper* detailing information about their token, and mandates that service providers, such as trading platforms, obtain a license and comply with *anti-money laundering (AML)* obligations. Finally, the *Digital Operational Resilience Act (DORA, 2023)* regulates cybersecurity, data integrity, and risk management in financial entities. It ensures that digital financial participants can withstand cyberattacks and operational disruption, directly addressing one of the main vulnerabilities of

blockchain infrastructure. Together, these measures form the legal backbone for the evolving asset tokenization ecosystem in Europe. Across the Atlantic, the regulatory environment in the United States has also undergone an important shift. Prior to 2024, the U.S. digital asset landscape was characterized by a patchwork of outdated regulations. These frameworks, while foundational for traditional finance, were not built to accommodate blockchain-based assets. The result was considerable ambiguity and inconsistency. This mosaic of rules and regulations that may or may not need to be adhered to also led to limited innovation. A lack of clear regulations deters potential businesses from entering the market, hindering the overall growth of the industry. While asset tokenization is still not automatically identified as either a security or a commodity, recent changes in legislation show an important commitment to this advancement. The turning point of 2024 is characterized mainly by t*he Lummis-Gillibrand Responsible Financial Innovation Act,* which sought to establish the Commodity Futures Trading Commission as the primary regulator for the digital asset market and the SEC to regulate security tokens using a multitude of rules and restrictions governing securities like the *Securities Act of 1933*. The bill also introduced clearer definitions and tax guidance, showcasing a major step towards modernizing the U.S. digital asset regulation. Proposals for a *Digital Commodity Exchange Act* focus on transparency and a federally regulated framework for digital commodity exchanges. Together, these developments in the EU and U.S. demonstrate that regulators now recognize tokenization as a permanent feature of modern finance rather than a passing trend. By introducing frameworks that enhance transparency and legal certainty, both jurisdictions are helping to minimize the risks associated with unregulated markets. Businesses and investors now enjoy clearer guidance on compliance expectations, which encourages innovation, institutional participation, and market growth. So, while we see an evolving regulatory landscape for asset tokenization both in the US and the EU, a global consensus has not yet been found. Definitions, jurisdictional boundaries, and compliance requirements still vary widely from one country to another. International cooperation will therefore be crucial in establishing a unified approach that protects investors, ensures fair markets, and enables cross-border innovation, ultimately allowing tokenization to reach its full potential in a connected global economy.

Future Outlook

Although it is still in its early stages, the trajectory innovation within asset tokenisation will take is becoming increasingly clear. Tokenised finance is set to sit at the heart of the next-generation financial system, removing gatekeepers and intermediaries, reducing friction in transactions and making assets more accessible, liquid and transparent. From a legal standpoint, this progression will depend on collaboration between institutions, regulators and tech providers to build trusted, interoperable frameworks to allow asset tokenisation to deliver on its promises while addressing its risks. However, significant legal unknowns remain. How will anti-money laundering (AML) and know-your-customer (KYC) obligations adapt to these decentralised systems? To what extent will central banks and other traditional custodians partake in or resist the shift? Could tokens form a new legal category of property distinct from traditional intangible assets? How can courts reconcile conflicts when the blockchain records and physical realities diverge? What constitutes legal ownership of a tokenised asset? How can global cooperation be fostered to create interoperable legal standards for tokenised assets? Should international frameworks be developed for blockchain related disputes? As tokenisation continues to blur the boundaries between technology and law, these unanswered questions will not only shape the future of finance but also the very definition of ownership, accountability and trust in the digital age.

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II. The Acquisition and Privatization of Electronic Arts

by Carl E. Bengelsdorff & Matteo A. Cannella

In September 2025, a group consisting of Saudi Arabia's Public Investment Fund (PIF), Silver Lake Partners, and Affinity Partners, a private equity firm led by Jared Kushner, decided to acquire and take private the American video game giant Electronic Arts (EA).

Financial Aspect

The deal, valued at roughly $55 billion, represents one of the most significant leveraged buyouts (LBO) (when a company buys another company mostly using borrowed money instead of own cash) in the history of both the entertainment and technology sectors, exceeding the 2022 acquisition of Twitter by Elon Musk, now X ($44 billion). With this transaction, according to EA's official statement and the consortium's joint press release, shareholders will be provided, with $210 per share in cash, representing roughly a 25 percent premium over EA's share price prior to the announcement and almost 15 percent above its 2025 annual average. The consortium decided to offer this meaningful premium to incentivize shareholders to sell their shares. Despite market fluctuations and the slowdown in the global gaming industry, this premium, combined with the all-cash structure, reflects investors' confidence in EA's long-term growth potential. The all-cash structure was chosen, over the all-stock structure or the mixed structure, because it gives shareholders immediate and guaranteed value, making it easier to win shareholders' approval, especially when the target's stock has been volatile, avoiding fluctuations in the stock prices. Once the deal is approved by shareholders and regulators, EA, after nearly forty years as a publicly traded firm, will be delisted from the NASDAQ stock market. In 1989, EA became publicly listed and has since grown into one of the most profitable video game publishers worldwide. Its delisting and shift under the management of private equity and sovereign capital, will mark a crucial point for the gaming industry.

FIFA (currently FC 26), Madden NFL, The Sims, Battlefield, Apex Legends, and Need for Speed, are some just some examples of EA's portfolio of intellectual properties (IP) which is internationally acknowledged. These franchises, combined, generate billions in annual revenue from total game sales, live-service models, and microtransactions. In 2024, EA achieved net revenue exceeding $7.4 billion, with almost 75% coming from ongoing digital income streams. EA, thanks to its reliable cash flow, became particularly appealing to private investors seeking consistent returns in a decelerating global economy.

The LBO selected by the consortium, aimed at creating value through operational optimization instead of drastic restructuring, involves approximately $36 billion in equity and $20 billion in debt, arranged by JPMorgan Chase Bank, of which $18 billion is expected to be funded at closing.

With cross-platform growth, media integration, and innovative monetization strategies, the investors are confident that EA's current intellectual property can generate significant returns. The Public Investment Fund's participation aligns with Saudi Arabia's Vision 2030, aiming to diversify the country's economy and reduce its reliance on oil by making significant investments in technology, entertainment, and sports. With the acquisition of major stakes in Activision Blizzard, Take-Two Interactive, and Nintendo, PIF became a leading global entity in digital culture and esports. EA, with its globally dominant sports franchise and extensive presence in both Western and Asian markets, fits perfectly with this approach. So far, the antitrust regulators haven't intervened in PIF's acquisitions because it spreads its investments across different companies and industries without taking control or limiting competition. Even though PIF owns parts of Activision, Take-Two, and Nintendo, it doesn't control them or coordinate their actions.

Since the companies still compete freely, there's no antitrust violation; PIF is simply seen as a passive investor, not a market consolidator. Silver Lake Partners, a private equity firm experienced in technology and media investments, will provide financial oversight and strategic guidance, while Affinity Partners willfocus on bringing regional partnerships and international licensing opportunities. This collaboration aims to unlock the next generation of digital entertainment, combining capital depth, global reach, and long-term strategic focus. Under the new structure, EA will be reorganized as a private company headquartered in California, maintaining its current CEO, Andrew Wilson, and most of its senior management team. A new private board of directors responsible for overseeing corporate strategy, capital allocation, and long-term investment planning, will be appointed by the members of the consortium. The publication of quarterly earnings reports, filing 10-K (annual report containing a detailed overview of the company's financial performance and operations over the past year) and 10-Q (quarterly report and lighter version of the 10-K) disclosures with the SEC (the U.S. Securities and Exchange Commission) or complying with Sarbanes–Oxley (SOX) internal control certifications (to prevent fraud and ensure accurate financial reporting), will no longer be of EA's concern, thanks to its privatization. This will grant management greater strategic flexibility but also remove many transparency safeguards, such as the 10-K and 10-Q disclosures and SOX certifications. One of the most important governance challenges EA faces in the years ahead will be the trade-off between operational autonomy and public accountability. EA, with the private ownership, will be allowed to pursue long-term investments such as building proprietary gaming engines, expanding into VR/AR (virtual reality/augmented reality), or acquiring emerging studios, without being penalized by short-term market expectations. However, a substantial leverage risk will be introduced by the $20 billion in debt. The company could face financial strain if cash flows weaken or if interest rates rise, forcing cost reductions, workforce downsizing, or intensified monetization strategies. Furthermore, the involvement of a sovereign wealth fund introduces both political and regulatory considerations. Due to potential national-security implications, the U.S. Committee on Foreign Investment (CFIUS) is expected to review the transaction, especially given EA's control over user data, esports infrastructure, and online social platforms. The case will likely test how American law reconciles foreign capital participation with domestic regulatory oversight in the digital economy. Critics are concerned about creative independence under private-equity ownership. The seeking of faster returns by the investors could be intensified due

to EA's past reliance on controversial monetization practices, such as loot boxes and micro-transactions. As industry analysts indicate, comparable LBOs in the gaming sector frequently prioritized short-term profitability over innovation. The shift of its cultural role, from a creative studio balancing innovation and artistry to a data-driven entertainment conglomerate focused primarily on revenue optimization, concerns EA's transformation into a privately held entity.

Legal Aspect

The acquisition faces review by the Federal Trade Commission (FTC) and the Department of Justice (DOJ) under the Hart-Scott-Rodino Antitrust Act, as well as by the Committee on Foreign Investment in the United States (CFIUS). The competitive effects and national-security risks will be assessed by these agencies, given the PIF's foreign-government ownership. The leveraged buyout structure, as analysts warn, will expose EA to debt risks, especially if interest rates rise. Labor unions and consumer advocates have voiced concern about transparency and creative independence once EA becomes private. From a corporate-law perspective, the EA acquisition exemplifies key foundational principles Delaware corporate law and U.S. securities regulation. Under the Delaware General Corporation Law (DGCL § 251), mergers require both board and shareholder approval. Directors owe fiduciary duties of care and loyalty, reaffirmed in cases such as Smith v. Van Gorkom (1985) and Revlon v. MacAndrews & Forbes Holdings (1986). Directors, once a public company is being taken private, must demonstrate that the process was informed, independent, and fair to shareholders, particularly to minority investors who may lack bargaining power. Since the deal involves taking a public company private, EA must comply with the Securities Exchange Act of 1934, Rule 13e-3, and Regulation 14A, which require full disclosure of all material facts and the fairness of the transaction to minority shareholders. This includes independent fairness opinions by financial advisors and a description of the valuation methods to determine the purchase price. Such rules aim to prevent self-dealing and ensure that public investors receive adequate information before approving a going-private transaction. The antitrust and national-security oversight dimensions stem from the Hart-Scott-Rodino Act and the Defense Production Act (§ 721, CFIUS review), which empower the FTC, DOJ, and U.S. Treasury Department to evaluate whether foreign investment could threaten competition or national interests. Given the PIF's status as a sovereign wealth fund, CFIUS will scrutinize the transaction for potential influence over data privacy, strategic content, and technology access. Once private, EA will no longer be subject to Sarbanes-Oxley or Dodd-Frank compliance requirements or to NASDAQ governance rules. This represents a significant shift from a regime of public accountability, where corporate actions are constrained by reporting standards, board independence requirements, and shareholder voting rights, to a regime of private autonomy, where managers and investors enjoy greater discretion over strategy, disclosure, and long-term planning. Private autonomy enables faster decision-making, confidential R&D investments, and operational flexibility without the pressure of quarterly earnings targets. However, it also reduces transparency for stakeholders such as employees, consumers, and the public. In this sense, EA's privatization raises the question of how much society should allow large, influential corporations to operate outside the public eye when they control major cultural and digital assets. This tension between private autonomy and public accountability lies at the heart of modern corporate law. Historically, corporate law, in the United States, evolved to balance two values: the freedom of enterprise to organize efficiently and pursue innovation, and the protection of the public from the abuse of economic power. Public accountability is maintained through disclosure rules, fiduciary duties, and regulatory oversight; private autonomy is protected through limited liability, contractual freedom, and managerial discretion. When a company like EA transitions from public to private status, the balance tilts sharply toward autonomy, raising concerns about reduced transparency in areas with broad social impact such as gaming ethics, data collection, and monetization models. From a broader corporate-governance standpoint, the EA transaction illustrates how private equity ownership interacts with traditional Delaware principles. Delaware courts apply a "business judgment rule" that generally defers to board decisions if made in good faith and with reasonable information. However, to ensure procedural and substantive fairness, in a leveraged buyout or going-private context, courts may apply "enhanced scrutiny," as in Revlon or Weinberger v. UOP, Inc. (1983). When existing insiders or foreign entities play a significant role in the buyout, independent board committees, fairness opinions, and disinterested shareholder votes are key safeguards against conflicts of interest. Ultimately, the EA acquisition and privatization mark a landmark moment in the evolution of corporate ownership. Financially, it demonstrates private equity's capacity to control large creative enterprises through highly leveraged transactions. Legally, it challenges the adaptability of corporate law doctrines, fiduciary duties, disclosure, fairness, and regulatory balance, in an age when capital is global and ownership structures blur the line between commerce and geopolitics. EA's case shows how Delaware law and U.S. securities regulations continue to shape, and be challenged by, the global, high-leverage world of digital entertainment.

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III. Antitrust in the AI Age

by Victoria Chiriches & Sophia Rin Kuhnke

Introduction

Over the past decade, the use of AI tools such as ChatGPT and Gemini has grown drastically, reflecting the rise of Big Tech dominance. In this industry, there are a few players: Google, Amazon, Apple, Meta, Microsoft and OpenAI, that significantly dominate the market, structuring it into an oligopoly. This concentration can be attributed to the fact that such operations require immense financing due to fixed costs and barriers to entry. Such costs are linked to the vast amounts of data that must be stored in datacentres, and the creation of specialised chips to train and run large-scale AI models efficiently. As such technologies advance and the market grows more concentrated, discussions around the need to address the overlap between AI and antitrust laws, particularly concerning competition, ethics and regulation, have intensified. These discussions led by regulators and legal scholars link to the fact that traditional antitrust has been built on regulating physical goods, such as oil and steel, and applies a focus on prices, revenue and clear market boundaries. The growth of AI serves as a contradiction to these traditions, placing focus on data and access to infrastructure, points which were not of consideration before this technological shift. The central question, therefore, is whether antitrust authorities should treat data monopolies and AI oligopolies in the same manner as classic resource monopolies and utilities, or whether such an approach would lack consideration for the ways in which data and AI differ from traditional resources.

The "AI Age": Data, Big Tech and LLMs

The words "AI age" may lead to some confusion, as the name seems to suggest a connection merely to AI models. However, it also encompasses Big Data, Big Tech platforms, and cloud infrastructure, all of which are deeply interconnected and serve as a backbone of what can be considered modern technology and the digital economy. The data collected and processed through these structures are often of high importance. They are expensive to acquire as they require expertise in web scraping and licensing agreements. They also use various devices and sensors that require large amounts of financing to store and process through large data centres, which demand substantial energy and specialised engineers. Data is highly useful in financial markets, where it is increasingly treated as an asset class. It can be used when launching new products or services or when identifying target audiences and trends. It allows businesses to make better decisions, which often leads to lower costs, higher efficiency and higher profits. Data is also essential for training AI models, including large language models (LLMs). LLMs are neural architectures (structural blueprint of a machine-learning model), trained on vast amounts of data to perform complex cognitive tasks like reasoning and content generation. These systems predict and generate language by internalizing semantics, statistical patterns, and "world knowledge." The evolution of LLMs has been made possible by the huge datasets and further understanding of computing power, together with modern infrastructure built by Big Tech firms. These ways of utilising data display its importance and volatility, as it plays into many mechanisms in the tech world and allows further growth and the acquisition of further knowledge. To collect and exploit data to be used in such processes, global server farms, specialised chips (GPUs/TPUs) and sophisticated software stacks are required. Due to the large amount of financing required for such infrastructure, a capital-intensive market is created, where only a few firms can realistically compete at a scale deemed competitive. It is due to this fact that the AI and data market naturally becomes concentrated and shapes itself into an oligopoly. Understandably, this raises classic antitrust questions in terms of market power in a new form, as an oligopolistic market would harm the principles of fair market competition.

Vertical Integration and The AI Value Chain

Another factor that is actively affecting the structure of the AI and data market is the AI value chains, which are described as all the steps that occur to create and deliver AI systems, and the vertical integration thereof. AI value chains are divided into layers beginning with the hardware, cloud and data centres, foundation models and LLMs, and finally applications and platforms through which AI can directly be reached by the customer. As Big Tech companies continue to grow, so does their reach and goals. Due to increasing competition, Big Tech companies aim to own or control multiple layers of the AI value chain, expanding their control of the industry through vertical integration techniques. This is done through heavily investing in AI startups, taking ownership of the cloud on, which AI models are run or embedding their own AI into their applications and platforms, for example, search engines and app stores, which all play heavily into mergers and acquisitions. These expansion goals are reflected through statistics showing the number of acquisitions Big Tech companies made in 2023. Apple was the leader, taking over as many as 32 AI startups, followed by Google with 21, Meta with 18 and Microsoft with 17 startups. And, within the last 2 years, such businesses' focus has shifted to the largest AI startups, leading to a large shift in power dynamics. For example, it is said that in June 2025, Meta invested $14.8 billion to acquire a 49% non-voting stake in Scale AI, which is known as a data-labelling and AI-infrastructure provider with a prominent position in the field. This chain of events, where startups are acquired by Big Tech companies, leads to one of two outcomes. Firstly, successful startups may be integrated into the giants' ecosystems, or they may be removed from the market entirely, once again reflecting an oligopolistic system with a few firms controlling the rest of the market across the entire AI value chain. This, again, raises concerns about antitrust laws and their connection to data and artificial intelligence, as traditional antitrust frameworks struggle to capture situations where data-rich companies acquire low-revenue AI startups.

Anti-Trust Concerns in The AI Age

The expeditious development of artificial intelligence has enabled a new set of emerging antitrust concerns to arise stemming from the concentration of data, computational resources, foundation models and expertise in the field of technology. As mentioned above, due to these factors being costly, only a few companies can afford them, creating a natural tendency towards monopoly. The purpose of antitrust law is to intervene when this concentration of assets and resources negatively impacts competition in a free

market. The first imperative issue is the increasing dominance of a few cloud providers (particularly Amazon, Microsoft and Google) controlling the massive computer power required to train and operate advanced AI systems. Due to these state-of-the-art AI models depending on extremely expensive GPU clusters, these companies possess institutional advantages, which unfortunately smaller competitors are nowhere near able to match. This launches a bottleneck or a gatekeeping point in the AI supply chain, entitling the most dominant cloud platforms to prioritise their own models and services, potentially disadvantaging or even sabotaging competitors through discriminatory pricing or by restricting access to critical resources. If cloud providers give better access to their own models and worse to their adversaries, this would be unfair self-preferencing. A second pressing concern is the surfacing of "foundation model monopolies". Only some companies have the resources to expand models on the scale of GPT-4 or Gemini, resulting in these systems potentially becoming essential frameworks for other businesses that rely on these prototypes to develop their own downstream applications (Notion or Grammarly's AI features). Like the cloud issue mentioned, if access to these basic models becomes exclusively restricted or suspiciously expensive, firms like OpenAI and Google, could control innovation across the entire AI eco-system due to a disproportionately unfair upper hand by refusing to license their models or charge immense prices. Partnerships between these massive corporations (Microsoft and Open AI is an example) are being inspected by antitrust legislators for fuelling this "upper hand", producing a perpetual influence over foundational technology. These risks are further intensified by data concentration. AI capabilities and effectiveness escalates as large firms scale their data and compute resources, which they already have a huge amount of (billions of user interactions, social media behaviour, search queries etc), creating high entry barriers, causing newcomer startups to not be able to match. New companies cannot replicate decades worth of this data advantage, therefore established firms could secure their dominant position even further through exclusive data deals, which can be considered a threat to competition. Moreover, a further problem area is algorithmic collusion, which can occur if AI systems learn to fix or coordinate prices to be very competitive without explicit human instruction, since they are already increasingly used for dynamic pricing. This is called "tacit collusion" and since they can price fix as explained, leaving no evidence, detecting or prosecuting this under current legal standards becomes exponentially difficult, leading to the undermining of market competition.

Are Existing Antitrust Laws Enough?

Despite existing antitrust laws such as the Sherman Act, Clayton Act, and FTC Act, delivering some authority to address anti-competitive risks in the technology sector, there is growing debate on whether these current policies are sufficient in regulating the challenges posed by advanced AI markets. Firstly, they are intentionally broad to adapt to new technologies, thus courts have flexibility in interpreting modern digital behaviour. It can be argued that the Sherman Act's prohibition of monopolization is not contingent on the type of industry, yet it centres the misuse of market power and exclusionary actions. Cases like United States v Microsoft demonstrate that courts can and have been effective in applying antitrust law to digital markets. Additionally, agencies such as the FTC (Federal Trade Commission) and DoJ (Department of Justice) have taken a more assertive position on tech markets, suggesting a will to challenge merging companies and the deals suggested above, involving AI firms. However, digital markets evolve far more rapidly than the historical antitrust laws anticipated. Traditional antitrust frameworks were designed for industrial era monopolies focusing on physical assets, production and distribution whereas AI markets are determined by data and computing infrastructures. In addition to this it is notable to argue that AI firms can expand or integrate entire technologies in months, but with current regulations it may take years to investigate cases of dubious behaviour, by then it being too late to preserve competition. Existing antitrust laws also struggle with the problem of algorithmic collusion, referenced earlier, since this can happen without human involvement, but the current legal standard requires evidence of intent, which cannot be provided under these circumstances. Although existing free market laws may be considered satisfactory or even adequate, under closer inspection it is undeniable that the unique characteristics of AI markets demand new interpretation and new regulations, such as data portability mandates, compute access rules and most importantly transparency rules, to contend with this ever-growing field.

International Approaches to Antitrust For AI

Considering the increased concerns about the regulation of AI and data, different countries have begun adapting frameworks that govern antitrust issues and the adaptation of competition in the market.

USA

To begin with, the United States places a heavy focus on the protection of competition across the AI ecosystem to ensure effective competition and equal treatment for both businesses and consumers. This is reflected through efforts made by international antitrust enforcers and the Department of Justice, Antitrust Division. A statement made in 2024 stressed the importance of focusing on the topic on a national level, while emphasising that questions in competition will be taken on a case-by-case basis. It was stated that a high value is placed on principles of fair dealing, interoperability and choice, which are all principles described as helpful in enabling healthy competition. The Federal Trade Commission has acknowledged that it is highly likely that cross-border antitrust issues may arise, but it has claimed that it will enforce US law from a sovereign and independent perspective, placing the protection of national consumers at the centre of its priorities.

EU

The EU has taken a slightly different approach, as they have combined antitrust with what is known as "ex ante" digital regulation. An ex-ante approach is one that focuses on prevention rather than punishment. Therefore, rather than creating solutions for when issues arise with antitrust, their goal is to create policies that will prevent such issues from arising to begin with. One example of this approach is the introduction of the Digital Markets Act (DMA), which was adopted by the European Parliament and the Council on the 14th of September 2022. The DMA lays a strong foundation and an objective set of criteria that supports the identification of "gatekeepers" or large digital platforms that provide core platform services. Under the

DMA, such gatekeepers are subject to laws and regulations that work in parallel to EU competition rules.

Latin America

Over the last decade, the focus on AI in Latin America has continued to grow. Reflecting this growth, research predicts that over the next 5 years, half of Latin American businesses will have implemented AI into their activities, reflecting a 30% overall increase in its use in corporate environments. Specifically, Chile released their first National Artificial Intelligence Policy in 2021 and has since updated it to reflect the modernisation and evolution of technological and regulatory needs over time. Though there is no specific law targeting AI in competition law, the Fiscalia Nacional Economica (National Economic Prosecutor's Office) has acknowledged the increasing importance of such regulations, as they find that the adoption of algorithms and AI-based technologies presents risks as well as efficiency. This understanding of the importance of addressing the overlap between AI and antitrust is also reflected in Peru's national competition authority, Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual (INDECOPI), which in 2024 published guidelines for the responsible and ethical use of AI. In these guidelines, competition law is mentioned alongside discrimination and coordination risks. In these ways, there is no one universal approach in terms of combating the challenge that arises where AI and antitrust overlap. Yet, organisations including OECD, which has recently worked on "Competition in artificial intelligence infrastructure" and cross-border AI supply chains, are actively attempting to create an international framework which may be applied to unify the regulation, particularly around AI infrastructure. Such frameworks are important due to the cross-border nature of AI.

Case Studies

Two recent partnerships, Microsoft's alliance with OpenAI and Amazon's investment in Anthropic clearly encapsulates the antitrust issues surfacing in the AI sector. The Microsoft-OpenAI collaboration illustrates how a leading cloud provider can capitalise on its infrastructure capabilities to induce advanced AI system developments. Microsoft is a major investor in Open AI (27% stake) and was its sole cloud provider (until very recently), allowing OpenAI to train and deploy its significant AI models, while investing billions into the company. In exchange, this deal enables Microsoft to gain privileged access to OpenAI's pioneering AI capabilities, granting them exclusive rights to their APIs, something that smaller competitors are unable to match, reinforcing Microsoft's position in cloud computing, software enterprise and now AI innovation. Commentators argue that this degree of vertical integration generates a risk of self-preferencing, where Microsoft can integrate OpenAI models, such as the Copilot assistant, into Windows, Office and Azure platforms, placing third-party platforms at a detriment, as they would be unable to compete with these tech giants' resources. Questions are also being asked about the lack of competition this results in due to more capital only being "concentrated in the same few companies". EU antitrust regulators have joined US and UK scrutinisers in evaluating this strategic alliance due to Microsoft gaining a disproportionate influence over foundational AI infrastructure. Similar concerns emerge from Amazon's multibillion dollar investment in Anthropic. Amazon Web Services, AWS, the world's dominant cloud provider, is instrumental in facilitating the training and deployment processes of Anthropic's powerful AI models. Through the integration of Anthropic systems into its cloud ecosystem, Amazon can strengthen AWS's appeal to enterprise clients, this constraining adversary cloud providers' capacity to even produce a similar challenge. Moreover, Amazon's leveraging of Anthropic's model development prompts queries into whether it might influence product design or pricing to further consolidate its market leadership in e-commerce, logistics and cloud services. While these partnerships boost the rate of innovation in the AI sectors, they also accentuate how dominance over compute infrastructure and exclusive AI model access augment supremacy in the market, exclude third party companies and decrease competition. In collaboration, these two cases highlight why these AI alliances between 'technology titans' are seen as potential risks to a competitive market structure.

Conclusion

As the extraordinary advancement of the AI sector reshapes the competitive market, empowering huge firms with the significant data, resources and integrated value chains advantages, one unsettling conclusion must be reached: without intentional intervention, the AI era is faced with the threat of being defined by severe market monopolisation. While existing antitrust laws provide a substantial foundation, they lack the agility and speed to address emerging challenges like algorithmic collusion, restricted platform access, and scale-based competitive advantages in AI. International regulators have started some form of attempt in controlling these problems, yet these approaches have been inconsistent, and implementation of measures is slow in catching up with technology. The Microsoft-OpenAI and Amazon-Anthropic partnerships evidently demonstrate how significant market powers can accelerate in gaining control of infrastructure, capital and advanced models. Antitrust in the AI age will not exclusively influence market dynamics but also the progression of technological progress itself. To maintain innovation, democratic control, and collective benefits in the age of artificial intelligence, ensuring fair unbiased competition is crucial.

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Pivot Stories: Restructuring & AI

The Transformation of OpenAI

by Louis Athmann & Simone Colavecchia

Since the recently expanded partnership between Microsoft and OpenAI was announced in late 2025, one question loomed large: how did a research lab founded on idealism become the engine of one of the most valuable AI companies in the world? The answer lies in a story of ambition, innovation, cost escalation, and structural transformation, all anchored in a bold mission.

Mission & Origins

OpenAI was founded in December 2015 with the aim of advancing digital intelligence in a way likely to benefit all of humanity, unconstrained by financial-return motives (**OpenAI**). Its founders, among them Sam Altman, Elon Musk, Greg Brockman, and Ilya Sutskever, envisioned a world where AI would enhance human potential rather than undermine it (**Montevirgen**). They built the organisation around two central pillars: open research and risk mitigation. As the introductory post of OpenAI put it, they wanted AI to be "an extension of individual human wills and, in the spirit of liberty, as broadly and evenly distributed as possible" (**OpenAI**). The non-profit status of the organisation reinforced the idea that profit should never eclipse public good. From the outset, OpenAI posed a radical question: Can you build the most powerful systems in existence and still ensure they serve humanity, not just shareholders?

The Product Path: Gpt-2 To Gpt-5 (And beyond)

That question became more urgent as OpenAI's models advanced. In 2019, the lab announced GPT-2, a natural-language model whose capacity to generate coherent text raised alarms about potential misuse (**OpenAI**). OpenAI, though, famously delayed its full release over safety concerns, without further study of potential misuse (**OpenAI**). Co-founder Jack Clark explained:***2*** "Due to our concerns about malicious applications of the technology, we are not releasing the trained model," reflecting the lab's early emphasis on responsibility and transparency (**OpenAI**). Instead, they released a much smaller model "for researchers to experiment with, as well as a technical paper" (**OpenAI**). The next leap came with GPT-3 in 2020, which opened the door to large-scale commercial applications: natural-language generation, translation, and even code synthesis. However, for much of this period, generative AI and OpenAI's language models were primarily known within the tech community and remained largely out of public view. This limited visibility was intentional. In 2019, OpenAI announced that it would take a cautious and staged approach to releasing powerful models, citing the need to study potential risks and misuse before full deployment (**OpenAI**). The organisation maintained this strategy through GPT-3, offering access only via a restricted API to balance innovation with safety oversight. Similarly, in its 2018 Charter, OpenAI wrote: "We commit to freely share our research and data to the extent that we can do so safely and securely," while simultaneously acknowledging that "safety and security concerns will reduce our traditional publishing in the short run" (**OpenAI**). Yet this cautious obscurity did not last long. With the release of ChatGPT in 2022, generative AI was thrust into the mainstream, gaining traction on social media, particularly on TikTok, and finding its way into schools and universities, triggering a wave of innovation and competition (**Cefa**). I still remember the first time I encountered ChatGPT. A friend leaned over during a German class in late 2022 and typed a few prompts into the screen, and within seconds, paragraphs appeared: perfect translations, crisp summaries, even essays that could have passed for a student's own. The precision and fluency were astonishing - it felt like witnessing a shift in what technology could do. At the time, few imagined it could advance much further. Yet only a few years later, it has become deeply woven into everyday life, shaping how we learn, communicate, and even think. Many students even admit they could hardly work without ChatGPT and would not know what to do without it (**Ettinghausen, The Guardian**). But this dependence carries risks. As educators have warned, overreliance on AI tools can keep students in their comfort zone, discouraging genuine skill development and critical thinking (**Schlott**). Alongside this cultural shift came deeper questions about safety and responsibility. Reports emerged of users turning to ChatGPT in emotionally vulnerable moments and receiving inappropriate or harmful replies, sparking public debate about the psychological and ethical boundaries of AI interaction (**BBC**). At the same time, the benefits were undeniable: the technology revolutionised accessibility tools, research assistance, and creative collaboration, embedding itself in how millions of people interact with information (**Washington Post**). The release of GPT-4 in March 2023 marked another critical milestone. The model demonstrated multimodal capabilities, accepting both text and image inputs, and showed remarkable***3*** improvement in reasoning and factual accuracy (**OpenAI**). GPT-4 also underpinned ChatGPT Plus, signalling OpenAI's shift toward premium, subscription-based access. With it came deep integration into Microsoft's ecosystem, powering Copilot features in Word, Excel, and Windows (**Microsoft**). This version was widely viewed as a turning point, bringing AI into everyday workflows and raising public awareness of both the potential and limits of the technology. However, GPT-4 also intensified debates about transparency, bias, and the environmental cost of AI training, setting the stage for the company's next leap. By August 2025, OpenAI unveiled GPT-5, described as a "significant leap in intelligence" across writing, coding, reasoning, and vision (**OpenAI**). Early testers noted its striking ability to sustain logical reasoning across long prompts and generate multi-step plans, edging closer to what many call artificial general intelligence. Industry observers compared its coherence and adaptability to human-like problem-solving, while OpenAI claimed it "delivers higher quality answers" and "thinks more thoroughly about complex tasks", achieving "expert-level results" (**OpenAI**). The launch of GPT-5 coincided with a clear escalation in competition across the generative AI industry. Anthropic released Claude 3 in March 2024, positioning it as a rival model capable of human-level reasoning (**Reuters**). Google DeepMind refined Gemini 2 in December 2024, integrating advanced multimodal reasoning and coding capabilities (**Google**). Meta, meanwhile, expanded its open-source approach with the release of LLaMA 3.1 in mid-2024, aiming to provide a transparent alternative to proprietary systems (**The Guardian**). Within this context, GPT-5 reinforced OpenAI's role at the centre of the AI

ecosystem, powering Microsoft's Copilot suite and OpenAI's own enterprise tools (**Microsoft**). Almost immediately, version 5.1 followed, enhancing speed, memory integration, and customization and creating "warmer" and more "personality" options: proof that iteration itself had become the defining rhythm of the AI race (**The Verge**). Each generation not only increased capability: it also magnified cost, infrastructure demand, and the scale of what 'safe, beneficial AGI' might mean in practice.

Why Structure Had to Change

As OpenAI's ambitions grew, so did the tension between its founding ethos and the practical realities of the AI arms race. To develop models like GPT-5 and deliver them globally requires massive computing power, proprietary data, and world-class talent: in short, huge capital. In 2019, OpenAI acknowledged this when it launched OpenAI LP, describing it as "a hybrid of a for-profit and non-profit", which they called a "capped-profit company" (**OpenAI**). The idea was to raise investment, attract top AI talent through equity participation, and scale rapidly while still***4*** safeguarding the original mission by limiting investor returns to a fixed multiple: initially up to 100× their investment (**OpenAI**). In essence, this "capped profit" model was a deliberate compromise between the ethos of a non-profit and the financial logic of Silicon Valley. It offered investors meaningful upside without surrendering full control or mission integrity to pure market incentives. The concept sparked debate in both legal and ethical circles: critics argued that any profit mechanism might dilute OpenAI's altruistic vision, while supporters saw it as a pragmatic innovation to finance AGI safely (**The Verge**). In practice, the model allowed OpenAI to raise billions in capital while claiming to retain moral oversight - a hybrid structure unprecedented in the technology industry and frequently described by scholars as a novel form of mission-focused corporate design" (**Collins-Burke**). Why did this matter? Because the cost of inference alone (running models in production) reached billions. According to leaked figures from TechCrunch, OpenAI spent approximately $8.65 billion in the first nine months of 2025 just on inference computing (**TechCrunch**). The company could no longer operate purely as a research non-profit.

Structure To Match the Mission (And Market)

To balance mission and market, OpenAI embraced a novel legal design. The non-profit parent would control the for-profit subsidiary, enforcing alignment. On its official website, OpenAI explains how in October 2025 it reorganised: the non-profit became the OpenAI Foundation and the for-profit became an OpenAI Group PBC: a public-benefit corporation required to consider broader stakeholder interests beyond shareholders (**OpenAI**). Equity stakes saw the Foundation holding 26 percent of OpenAI Group, Microsoft 27 percent, and the remaining 47% distributed among employees and investors (**OpenAI**). In other words: the company moved from pure idealism to idealism matched with industrial scale. The hybrid model offered a legal chassis enabling both large investment and declared mission orientation.

The Tensional Undercurrent: Open Research Vs. Commercialisation

This structure reveals a deeper tension: how do you remain transparent, open, and public-centric while building one of the world's most powerful commercial AI systems? OpenAI's evolution mirrors that of the broader AI sector: an early culture of openness giving way to selective publication, API-only access, and proprietary models. GPT-2's partial withholding, GPT-3's API-only release, and GPT-5's rapid commercial rollout each highlight those trade-offs.***5*** Moreover, OpenAI's partnership with Microsoft, which began in 2019 and deepened through multiple investment rounds epitomises this shift (**OpenAI**). The "Next Chapter" agreement of 2025 emphasised commercial scale and integration, binding the company's research direction to a major corporate partner (**OpenAI**).

A Prelude to Structural Governance

The evolution from mission-lab to market leader is more than a neat chronology; it forces hard questions about accountability, purpose drift, and who OpenAI ultimately answers to. When a research organisation becomes a platform provider embedded in operating systems, classrooms, and workplaces, what mechanisms ensure the founding promise, benefiting all of humanity, still constrains day-to-day commercial choices? Who adjudicates trade-offs between rapid deployment and safety, or between shareholder value and the public interest? Those questions now sit at the heart of OpenAI's hybrid chassis: a mission-driven foundation alongside a profit-seeking group company, linked by caps on investor returns and by formal oversight rights. They are not abstract. They colour debates about data access and transparency, pricing and availability (consumer vs. enterprise), safety disclosures, and the concentration of power created by deep partnerships with hyperscalers. Following this, we will unpack the legal wiring behind these tensions: how the nonprofit parent, OpenAI Foundation, relates to OpenAI Group PBC; how the capped-profit logic operates inside OpenAI LP and its successors; what Microsoft's minority stake confers; and how board oversight evolved around the 2023 governance crisis. Understanding that architecture is essential to evaluating the consequences that follow in law, tax, and ethics.

Legal Structure

OpenAI was founded in 2015, with the mission to achieve Artificial General Intelligence (AGI) as a no-profit entity, and this choice was genuine because OpenAI carried out research for the benefit of mankind. Later in 2019 due to devouring costs of R&D a profit subsidiary was born, OpenAI LP, this branch used a capped-profit model, so the investor could have a fixed maximum ROI, initially set at 100x, meaning that early investor could make at maximum profit of 100 dollar for each dollar invested; the cap was then gradually shrunk until reaching single digit***6*** numbers; additionally the LP was strictly overseen by the non-profit in order to ensure coherence and attract investors while maintaining control upon the project **(OpenAI)**. With the deployment of its biggest success ChatGPT 4.0, the company scaled up and the previous structure was deemed obsolete, thus in October 2025 Sam Altman announced a business reorganisation plan to simplify the corporate structure and to complete the recapitalisation. Therefore, today the entity is split in 2 companies: OpenAI

Foundation (non-profit) and OpenAI Group, a Public Benefit Corporation (PBC), which is the for-profit branch. OpenAI is not the only company that restructured using this strategy, in fact many other underwent similar transformation, some examples might include: - ***Anthropic (Claude.ai)*** - An Artificial Intelligence research company that was established by former OpenAI staff members, their organizational structure bears considerable resemblance to similar entities, with the primary distinction being that the Public Benefit Corporation (PBC) operates independently and is not subject to control by a non-profit organization or any other external entity **(Antropic). - *Patagonia Inc*** - An outdoor apparel business with an embedded mission, they also have a double structure, more specifically they are a Certified B Corporation that also operates under the PBC in the US **(Patagonia).** A Certified B Corporation is a for-profit company with a verified social mission, meeting high standards of social and environmental performance, accountability, and transparency as verified by B Lab **(B-corporation). - *Emerson Collective*** - A hybrid organization that blends philanthropy, social activism, and private investment under one umbrella. Structured as a Limited Liability Company (LLC), a structure that combines the liability protection of a corporation with the tax flexibility and operational simplicity of a partnership. So, rather than a traditional non-profit, Emerson Collective operates with the agility of a venture firm while pursuing mission-driven objectives in education, immigration reform, climate action, and technology. This setup allows it to fund both for-profit startups and charitable initiatives, effectively merging impact investing with advocacy **(Emerson Collective)**. The foundation directly controls the PBC through a 26% stake in the company. Additionally, special voting rights and warranties give the foundation the power to appoint or remove OpenAI Group's board members at any time.

Why Restructuring?

As mentioned earlier, in late October 2025, OpenAI decided to restructure to simplify its corporate structure, but what does this mean exactly?**7** First of all, the establishment of a for-profit entity provides OpenAI with the capability to access significantly larger amounts of capital from a broader range of investors and funding sources, while simultaneously allowing the organization to escape the various constraints and limitations that are typically associated with non-profit status, thereby enabling much faster and more aggressive scaling of operations and development efforts. Furthermore, the implementation of this dual organizational structure serves to significantly reduce the company's dependency on Microsoft as a primary financial backer and strategic partner, while also providing enhanced structural clarity and transparency in terms of governance and operational frameworks, which is absolutely key to successfully attracting a more diverse pool of investors and stakeholders who are interested in participating in the company's growth trajectory. However, the transformation allows for new tax burdens to arise. When such an entity is formed (Corporation or LLC) in the US, it doesn't directly qualify for federal tax exemptions governed by **IRS §501**. To gain such status, the corporation must apply to the Internal Revenue Service (IRS) using Form 1024, (due to the nature and scale of OpenAI) and pass strict operational and organisational assessments. On the other hand, if the entity is for-profit, the owner may prefer pass-through taxation without seeking nonprofit status, which can impose heavy constraints on governance. One legal workaround is to elect S-Corporation status (via IRS Form 2553) if eligible. An S-Corp is not tax-exempt, but it's a pass-through entity, meaning profits are taxed only once at the shareholder level, avoiding the double taxation of a C-Corp. S-Corp eligibility requires the for-profit to be a U.S. entity with fewer than 100 shareholders, all of whom must be individuals holding only one class of stock. Ultimately, OpenAI must pursue aggressive growth strategies to survive and thrive in such a highly competitive and rapidly evolving industry. Without this sustained and substantial growth, achieving its fundamental mission, which is to develop Artificial General Intelligence (AGI) and make it widely available for the benefit of all humanity, would be nearly impossible to accomplish.

Some important definitions:

- An **S-Corp** is a corporation that passes income, losses, deductions, and credits directly to shareholders for tax purposes, while a **C-Corp** is a standard corporation taxed separately from its owners, subject to corporate income tax **(Wolters Kluwer)**.
- **Pass-through taxation** means business profits and losses flow directly to the owners' personal tax returns, avoiding corporate income tax at the entity level (**LII**).

The PBC

Essence and Functioning of a PBC

In this case, the for-profit subsidiary of OpenAI is a PBC registered in the State of Delaware on October 28, 2025. The entity is regulated by the Delaware General Corporation Law (DGCL), specifically Subchapter XV (§§ 361–368), which governs Public Benefit Corporations (PBCs). The definition provided by § 362. Public benefit corporation defined, contents of certificate of incorporation. (b) "Public benefit" means a positive effect (or reduction of negative effects) on 1 or more categories of persons, entities, communities or interests (other than stockholders in their capacities as stockholders) including, but not limited to, effects of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific or technological nature. "Public benefit provisions" means the provisions of a certificate of incorporation contemplated by this subchapter. The Public Benefit Corporation (PBC) is distinct from a traditional non-profit organization in that it does not exclusively or solely pursue what might be considered a purely "charitable" or philanthropic mission. Rather, the PBC is structured to carefully balance and integrate three distinct and important objectives: the financial interests and returns of its stockholders and shareholders, the broader interests and concerns of stakeholders who are materially affected by the corporation's activities and decisions, and the specifically identified public benefit or social purpose that the corporation has committed to advancing.

Why in Delaware

Incorporating in Delaware isn't accidental, it's rather a deliberate strategic move. In fact, over two-thirds of Fortune 500 companies are incorporated there, primarily for its flexible corporate law, specialized courts, and predictable legal environment **(Delaware Corp)**. More specifically, in the legal side, the Delaware Court of Chancery is a highly specialised business court with expert judges and

no juries, with a rich case law record, therefore corporate disputes are resolved fast and predictably. Additionally, the presence of the business judgement rule, which protects corporate directors from liability for honest, informed, and good-faith decisions by presuming their actions serve the company's best interests unless proven otherwise, encourages risk taking. On the taxation side, incorporating in Delaware means there is no state corporate income tax on activities outside Delaware. If your company operates elsewhere, you pay no Delaware income tax, though franchise tax and federal obligations still apply. Delaware also has no taxation on intangible assets (trademarks, patents, etc.) held by Delaware entities, which is a major advantage compared to the IP tax burdens in other regions like Europe. Finally, Delaware law offers more flexible tax elections for C-Corp, S-Corp, or LLC pass-through options depending on your structure and investor profile.***9*** On the economical side it is worth noting that in Delaware, it's possible to have a one-person corporation. This feature can serve as an effective turnaround mechanism, as such an entity can, in turn, hold or control other corporations or businesses that employ their own workforce and directors. In this way, the controlling corporation avoids the need to maintain a broader internal management structure or payroll, thereby streamlining costs and operational complexity. Delaware offers a corporate-friendly environment through three key features. First, its flexible capital structure supports multiple share classes, investor-preferred terms, and convertible instruments as standard practice. Second, it maintains non-public disclosure of directors and shareholders, in fact only the registered agent's information appears on formation documents. Third, it imposes minimal reporting requirements, which is just a short annual report and franchise tax filing, far less burdensome than European disclosure requirements. However there are some setbacks, for instance there is the franchise tax, which is not unique to Delaware law, but it stands out because it applies to nearly all corporations incorporated there, even if they don't operate in the state, and this flat fee made for small entities can reach up to $200,000 for large authorized share counts. Lastly there is also the constraint of Dual compliance if the corporation operates elsewhere, qualifying there as a "foreign corporation," paying local taxes and fees too (**DGCL**).

Development Of the Mission

Alongside its structural evolution, OpenAI's mission has crystallized around three strategic pillars: advancing the frontier of AI research (driving capability development), ensuring alignment and safety (so that AGI remains beneficial and controllable), and promoting broad, equitable access, following the steps of what happened with the World Wide Web, preventing thus any benefits from concentrating within a narrow elite. In practice, this means that OpenAI has consistently positioned itself not merely as a builder of increasingly powerful models, but also as a steward of technology, by making deliberate choices about what to create, how to build it, and when or whether to deploy it. Furthermore, this entire process was guided by the broader interests of humanity rather than short-term commercial imperatives. This hybrid structure, blending nonprofit governance with a capped-profit subsidiary, stands in contrast to the approaches of traditional tech conglomerates such as Google and Meta, as well as mission-driven foundations like Wikimedia. Additionally with Microsoft holding a minority stake, OpenAI's model exemplifies a balance between capital-driven innovation and principled restraint. In a recent statement, the company underscored its broader vision by asserting that access to AI should be considered a universal right, not a privilege.

The Big Tech Loophole

As mentioned earlier, the restructuring of OpenAI enabled the corporation to reduce their dependency on Microsoft without losing capital, allowing thus other major players to acquire equity in the project. However, this is not an isolated strategy, matter of fact it's the most common way to survive in the Big Tech industry, and that's because each major player relies on overlapping infrastructures, such as data pipelines and clouds, acquiring stake in the other players gives them preferential access to the fundamental technologies. Some examples of that could be Microsoft's multi-billion-dollar stake in OpenAI or Amazon's investment in Anthropic or even Nvidia's collaborations with all major hyperscalers (**CTech**). This kind of vertical integration constitutes a self-reinforcing loop investment, where the profits are recycled into other players, consolidating thus the market toward an Oligopolistic market structure. Moreover, by structuring the investments as strategic partnership rather than M&A, the corporations avoid antitrust scrutiny, in fact by using financial instruments such as convertible equity deals, joint ventures, or licensing arrangements, they achieve quasi-control without triggering regulatory barriers. Finally, by using a portfolio approach to the Big Tech industry, by holding several stakes in the entire innovation spectrum, the corporations project confidence into the market forecast, creating attractive narratives that push investors to bet large amounts of capital in a seemingly risk-free industry.

Signs for a new bubble?

The compelling narrative and investor overconfidence suggest a potential new bubble, like the dot-com bubble of the early 2000s. The industry is highly speculative and thus it's important to consider this threat. Those concerns arise from the financial forecasters, which based their concerns on several factors: rapidly rising prices, overvaluations, widespread hype, and elevated indicators like the P/E ratio. The Price-to-Earnings (P/E) ratio measures how much investors pay for each dollar of company profit, indicating whether a stock is priced for growth or stability. In big tech, P/E ratios tend to be high because these companies combine growth, scalability, and monopolistic economics, which is a unique combination that distorts traditional valuation benchmarks. High P/Es in this industry reflect a market consensus that these firms are future infrastructure, not mere companies, so the investors aren't simply valuing current profits, they're however acquiring an oligopolistic position in the new digital economy. These companies operate on high fixed costs but near-zero marginal costs, allowing exponential scalability once infrastructure is built. Add to that the surge in AI-driven growth expectations, vast intangible assets like data and algorithms, and massive institutional inflows treating these firms as quasi-safe assets, and you get valuations that far exceed traditional industries.

Final Considerations

Being a non-profit organization does not necessarily mean being a charity, Rolex, for instance, operates as a non-profit entity within a highly commercial and competitive environment. Therefore, OpenAI's transition from a non-profit research laboratory to a Public Benefit Corporation should not be seen as a moral regression or ethical compromise, but rather as a structural adaptation to the unprecedented scale and substantial capital demands of contemporary artificial intelligence development. The organisational reorganisation reconciles mission and market imperatives, while preserving public-benefit oversight and accountability while simultaneously enabling sustainable financing mechanisms and industrial competitiveness in a rapidly evolving technological landscape. This strategic shift strengthens rather than weakens OpenAI's founding purpose and original mission. Building safe and broadly beneficial Artificial General Intelligence cannot realistically depend on traditional philanthropic models or donation-based funding alone, as exemplified by organizations like Wikimedia Foundation. It requires a sophisticated framework capable of mobilizing vast financial resources, substantial computational infrastructure, and extensive human capital while maintaining rigorous accountability to public-interest principles and societal benefit. The Public Benefit Corporation model, supervised and overseen by the OpenAI Foundation, represents precisely that necessary compromise, a legal vehicle through which idealism and industrial capacity can coexist productively and sustainably.

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International Finance

Editor Premises

This section examines international finance through its legal and institutional framework governing cross-border capital and payment flows. It explores the sources of authority and constraint including treaties, customary norms, domestic mandates with extraterritorial reach and soft-law standards like the IMF framework and Basel/FSB. These elements shape market outcomes such as liquidity funding access and crisis resolution.

I. China's Belt and Road Initiative in Africa

By Carolina Da Silva & Lia Dare

What Is The "New Silk Road" Of China?

China's Belt and Road Initiative (BRI) is one of the most ambitious global infrastructure programs ever launched. Infamously referred to as China's "New Silk Road", President Xi Jinping's economic project aims to connect China with Asia, Europe, Africa and beyond through major investments in infrastructure: roads, railways, ports and digital networks. Originally, the project was devised to link East Asia and Europe through physical infrastructure. Since then, the objective has substantially grown: the vast collection of development and investment initiatives has now expanded to Africa, Oceania, and Latin America. Consequently, China's economic and political influence was further pushed into the Western hemisphere, making some countries apprehensive towards Chinese expansion and the strengthening of infrastructure connections. The US given the complexity of its relations with China, has raised alarms of the possibility that the BRI initiative could be a Trojan horse for China-led regional development and military expansion. President Xi Jinping announced the BRI project in 2013, presenting the plan as based on two key parallel strategies: the overland Silk Road Economic Belt and the Maritime Silk Road. It is the latter we will subsequently focus on in our article. The leader of China announced plans for the 21st Century Maritime Silk Road at the 2013 summit of the Association of Southeast Asian Nations (ASEAN) in Indonesia. To achieve this objective, China would invest in port development along the Indian Ocean, from Southeast Asia all the way to East Africa and parts of Europe. Even though the project seems to be aimed at further integrating China into regional trade through the opening of economic corridors, the BRI is, in fact, a global and motivated by economic and strategic interests. Were BRI to fully succeed, it would allow China to more efficiently utilise excess savings and construction capacity, expand trade, consolidate economic and diplomatic relations with participating countries, and diversify 1China's import of energy and other resources through economic corridors that circumvent routes that are controlled by the US and its allies. The initiative enjoys broad support across the developing world, as many nations struggle with severe infrastructure deficiencies and financial hurdles. By providing substantial funds for infrastructure projects in diverse sectors, the BRI facilitates economic growth. Nevertheless, while developing nations generally welcome the initiative, as previously mentioned, the Western powers do not support this infrastructure initiative. Critics argue that the BRI lacks transparency and serves as a vehicle for promoting China's authoritarian governance model, substantially eroding democratic principles. In this regard, it is extremely difficult to get specific data from the government in Beijing about the size, scope and nature of China's foreign aid program aside from periodic announcements about the provision of emergency humanitarian relief. From observing China's investments in various countries, there can be observed five key points where BRI fails to provide necessary transparency: there is no justification for project feasibility; there is a lack of publicly available reports on environmental and social consequences; there are concerns surrounding the financial framework; no protection of the freedom of information through legislation; and in some cases there is insufficient governance and oversight over these investment projects. Furthermore, the commercial loan terms may trigger a new round of debt crises in the developing world. Lastly, the projects are criticised for supporting inadequate environmental and social safeguards. The article will focus on the implementation of BRI infrastructure projects in Africa, delving into the intricacy of legality raised by both corporate and international law in this context. In this regard, it should be noted that the African countries are diverse, and, therefore, the BRI may be observed from different perspectives and may yield different results.

Corporate Law Perspective

The appeal of BRI for African countries is mainly supported by the limited availability of Western aid. Developing countries necessitate funds to improve the quality of life of their citizens, consolidate economic stability and push towards further progress, in 2line with the more industrialised, modern and democratic states. Besides the limited funds, making a commitment to highly complex infrastructure projects with an institution like the World Bank is time-consuming and bureaucratic because of the extensive environmental and social regulations. Consequently, many developing countries in Africa prefer to use Western finance for issues like budget support, health, and education, subject matters of significance for democratic states, and more importantly, objectives in which the West believes and invests substantially. At the same time, these countries would rather turn to Chinese finances for big projects in transport and power. The terms may not be as generous as concessional lending from the World Bank; however, they are attractive compared to other alternatives. Now, China's growing port footprint covers 24 African seaports across 20 countries, amounting to 25.5 billion dollars invested in the BRI initiative. Faced with the challenges raised by the BRI's growing power, it is important to observe the implications for corporate law, specifically for cross-border ownership, financing structures, state participation, and regulatory alignment.

Investment Models and Their Legal Structures

Engineering, Procurement, Construction – EPC

Under the EPC arrangement, a contractor is obliged to deliver a complete facility to a developer who needs only to turn a key to start operating the facility. The facility must meet certain strict requirements, such as delivery by a guaranteed date for a guaranteed price, and it must

perform to the level agreed on by the parties at the time of the signing of the contract. Consequently, the responsibility falls on the contractor to perform all project activities from the design phase all the way through the construction phase: engineering, procurement of resources, construction, commissioning and handover activities for the project. In comparison, the owner only must turn the key at project delivery. Furthermore, EPC contracts do not necessarily represent long-term investments in African ports, as they are construction contracts that are paid for by the port authority or an African government. Their attraction is that they provide jobs for the workforce and 3therefore grow the working capital during the construction period, especially when milestone payments are included after each stage of work is completed. While this contractual relationship may appear unbalanced, it reflects the standard definition of EPC contracts for large-scale infrastructure. In the context of these complex operations, it is customary for the contractor to bear the responsibility of the development risk, from the early stages until completion. To mitigate the potential for substantial loss of revenue (in the case of non-payment by the host government or if the contract does not include strong protections such as arbitration clauses, sovereign guarantees, or milestone payments) contractors typically rely on comprehensive insurance policies to cover liabilities. Crucially, the BRI initiative provides an advantageous proposition for African governments through the EPC contracts. In normal circumstances, when a government hires a contractor, the delays and cost overruns create considerable financial risks. Nevertheless, in the EPC contracts with China, under the structure of the BRI project, those risks are shifted to the Chinese contractor, who must finish the project on time and within the agreed price as previously mentioned. This gives the host country more financial predictability and less exposure to unexpected costs. Moreover, they constitute a significant financing advantage as these projects are often supported by long-term loans from Chinese banks, which further facilitate African governments by allowing them to financially implement large infrastructure systems. The loans are typically connected to the same Chinese contractors handling the construction, thus creating a "package deal" of finance and engineering. EPC also allow for joint ventures that are mutually beneficial for both the Chinese contractor and the African workforce. China gains local knowledge and networks, while the African partner accesses Chinese capital and technology.

Engineering, Finance, Investment – EPC + F + I

The EPC + F + I mode is a variation of the EPC, which also includes finance and investment modalities that should be secured by the contractor. This is the most widely adopted entry mode in Africa, accounting for 33% of all operations. Why? 4First, African countries are developing countries. Now, their economies are growing rapidly, despite that many of the infrastructures are outdated. However, domestic funding in many African countries is inadequate to cover the cost of infrastructure projects. Consequently, the traditional EPC model previously introduced had become obsolete, as host governments became increasingly dependent on Chinese contractors to also provide financing and investment. Moreover, in recent years, as financing requirements have become more demanding, Chinese contractors have adapted to the new requirements, and to provide EPC + F + I contract, they have evolved from "single entities" to "cooperative entity groups". These clusters of Chinese companies help to solve the problems related to the lack of funds and of technologies or skills in the field of engineering, design and construction in the host African countries.

Public-Private Partnerships – PPP

The PPP is, in broad terms, a long-term contract between the government and the private sector in providing a specific public service. In this type of entry mode, there is more equality in the distribution of responsibility between the two parties: the government might provide the site of the construction and the necessary regulatory support, while the private partner will invest capital and will manage the actual construction or operation of the facility in question. With respect to seaport projects, they are rather costly investments and pose complex technological problems. Therefore, many governments in developing countries, as previously mentioned, lack the capital or the expertise to develop them without external aid. To ease the burden on the government's budget, many countries opt for PPPs, which have become a common model for port development worldwide, as they attract private investment but allow for public oversight. Aerts, Grage, Dooms, and Haezendonck went one step forward and devised a list of factors that are critical to assess the potential success of a PPP: the concreteness and preciseness of the PPP contract, the ability to appropriately allocate and share risk, the technical feasibility of the project, the commitment made by partners, the attractiveness of the financial package, a clear definition of responsibilities, the presence of a strong private consortium and a realistic cost/benefit assessment. 5In the case of the Chinese BRI project in Africa, there is uncertainty in the interpretation of the term "private". Usually, the private partner in these PPP contracts is in fact a state- owned enterprise, such as China Harbour Engineering Company or China Merchants Holdings. These firms, even though they may operate commercially and seem independent from national governance, are in fact owned and controlled by the Chinese government. Thus, when African countries enter a PPP with a Chinese company, the partnership cannot be truly categorised as being between a public and a private actor. A more accurate portrayal is a partnership between two state actors: the African government and the Chinese state through its enterprises.

Build, Operate, Transfer – BOT

BOT is only a common PPP type used in African post-development. The government or the port authority grants a private partner the right, also called a concession, to finance and build a specific project for infrastructure, and this right is defined in a legal agreement which prescribes what the company can do and for what period. In this contractual relationship, the private company not only builds the capital, but is also responsible for raising the capital. This implies that the project is not funded in a direct manner by the host government, a fact that adds to the attractiveness of the entry method. Like the EPC, the contractor bears the brunt of the commercial risk because, in the case of lower revenue, the private company is directly liable for the loss. At the end of the determined time, the ownership and control of the port are taken back by the government, and the infrastructure, now developed, returns as a public asset. From a legal perspective, BOTs require a stricter and more detailed contract which defines: the duration of the concession, tariff rights and revenue-sharing mechanisms, risk allocation and conditions of asset transfer back to the state.

Acquisitions and Equity Purchases

In the context of China's port investments in Africa, acquisition refers to the purchase of equity of already constructed ports by Chinese companies. The ports are operated and managed by a company which has previously obtained the legal right of concession (as introduced in an earlier paragraph). The company which holds the concession are usually 6Special Purpose Vehicles. They are a separate subsidiary formed by a parent company to isolate and manage financial risks: by operating independently, SPVs secure obligations even in the event of a parent company's bankruptcy. This mode of entry allows the acquirer – the Chinese companies – to implement economies of scale, diversify, grow the market share, increase synergy, reduce costs, or focus on niche offerings.

Why It Matters for Corporate Law

The entry models China employs in African port investments under the BRI framework reveal complex questions of ownership, liability, corporate governance, and regulatory oversight. Notwithstanding their diversification and varied consequences in application, all of them collectively reveal tensions between the interactions of Chinese state-owned entities and the African domestic corporate regulations. EPC contracts fall mostly outside of the corporate law scope, as they are instead covered by commercial contract principles. They do not delve deeply into issues of ownership or governance due to their limited timespan: once the construction is completed, the obligations on the part of China are met. Nevertheless, they pose their challenges with regards to arbitration clauses or enforcement issues. In comparison, the EPC + F + I touch upon key corporate law topics, such as profit distribution, transparency, equity. In the cases when Chinese state-owned enterprises (SOEs) hold a percentage of stakes which grant them substantial control powers in the operations of African ports, domestic corporate law must answer questions on minority shareholder protection, foreign ownership limits and capital repartition. Furthermore, the additional layer of financing and investment creates tension between commercial investments and funds addressed to sovereign states. As for PPPs, they raise concerns in broad governmental control on "private" Chinese companies, procurement of transparency (an issue raised numerous times for the whole BRI framework) and long-term accountability. Furthermore, BOT arrangements may trigger investor overreach considering the weak regulatory capacity of many African states. Finally, acquisitions engage M&A law, foreign investment screening and competition law. In this regard, the greatest concern is that the majority stakeholders have control of 7critical infrastructure, resulting in vulnerabilities for corporate governance and sovereignty itself, an issue we will also tackle in this article.

International Law Perspective Human Rights Law

The nature of the Belt and Road Initiative (BRI), involving massive, state-backed, cross-border infrastructure projects, intersects with fundamental legal principles across different domains. In the domain of Human Rights and Labour Standards, the BRI has increasingly been associated with areas of tension. To start with, research concerning Chinese firms operating in BRI-participating states, particularly in Africa, showcases a pattern of labour-related problems. These include allegations of low wages, precarious employment conditions, and insufficient safeguards for work, health, and safety in manufacturing, construction and mining sectors. Moreover, a Harvard study revealed that the Asian Infrastructure Investment Bank (AIIB) Environmental and Social Framework (AIIB Framework) lacks several key labour standards established under the International Labour Organization (ILO). Under International Human Rights Law, States have the duty to respect, protect and fulfil human rights. States must be proactive in facilitating and guaranteeing effective enjoyment of human rights within their national jurisdiction. The United Nations' Guiding Principles on Business and Human Rights states that it is the responsibility of states to "protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises" (OCHR 2011). Recent developments in international human rights law may create difficulties for governments participating in the BRI. It is worth noting that almost one-third of the BRI countries have not ratified the core ILO conventions on freedom of association and collective bargaining. This problem might be aggravated by their economic reliance on China's investments and grants. Such dependence can give China considerable leverage, potentially weakening initiatives aimed at raising labour standards in these countries. Consequently, host government may become reluctant to endorse trade unions or support collective bargaining efforts involving Chinese-funded enterprises. Consequently, China bears an even bigger responsibility to ensure that enterprises under its jurisdiction respect human rights, especially considering that labour practices with China have been shown to shape labour relations in Chinese firms overseas. To better illustrate this, one can look at the case of labour disputes in a Chinese-owned coal mine company in Zambia, which involved "military style" labour discipline, which resulted in the death and injuries of workers on strike. This lead, inevitably, to the revocation of the mine's license by the Zambian government.

International Environmental Law

In the environmental domain, there is the increasing fear that the BRI will enable Chinese companies to oversee infrastructure construction and operations in environmentally fragile or sensitive regions; this is a problem since Chinese firms are widely criticised for poor environmental practices. The current international environmental law is constantly evolving from the basic framework of the 1972 Stockholm Declaration of the UN Conference on the Human Environment and the 1992 Rio Declaration on Environment and Development. From this evolution, two key principles arose: the preventive principle (according to which states are required to take "all appropriate measures to prevent significant transboundary harm or at any event to minimize the risk thereof", along with being required to conduct an environmental impact assessment for all planned activities, presumed to have an impact on the environment), and the precautionary principle, (which affirms that environmental protection should be implemented, even if there is not clear evidence of a particular risk or when said risk remains uncertain). With time, it will be increasingly difficult for China to respect and apply both these principles, as there is a clear lack of strong policies and regulations that deal with environmental issues. What is more, there has been an absence of Environmental Impact Assessments (EIA) in many Chinese overseas investment projects (problem of incompatibility with international law). An example of this is the 2015 "Visions and Actions on Jointly Building the Silk Road Economic Belt and twenty-first Century Maritime Silk Road" plan. Even though, China-Russia-Mongolia made an extensive geographic outline and exposed infrastructural ambitions, they remained almost entirely silent on the environmental consequences of large-scale projects or measures to address them. Additionally, there is lack of transparency in

the planning of infrastructure projects along the BRI, which make it harder to avoid impacts on fragile ecologies. This problem can be better understood by looking at the new transportation corridors, especially the Pokrovka corridor, which will run through highly sensitive ecologies and critical habitats of many endangered species, and which will inevitably lead to a crucial environmental impact in those areas. Nonetheless, China has begun to adopt environmental policies for its overseas investment activities, as the 2013 publishment of the Guidelines for Environmental Protection in Foreign Investment and Cooperation, by the Chinese Ministry of Commerce and Ministry of Environment, 9shows. However, like human rights these efforts to regulate are non-binding "suggestions" without actual legal consequences in cases of non-compliance.

Prospects Of Dispute Settlement

Given its prioritization of the PPP model, the BRI facilitates trade, service and investment dealings between China (or its state-owned enterprises) and companies from other countries. If disagreements arise, parties can use current systems for solving disputes, such as the International Centre for Settlement of Investment Disputes (ICSID) or the World Trade Organization (WTO) to solve them. However, China has stressed that these mechanisms are unsuitable for the BRI. China criticises the existing dispute settlement mechanisms affirming that they are time- consuming, lacking enforcement efficiency, or creating inconsistencies in treaty interpretation. Opposedly, China highlights how the BRI is a special grant project involving more than 60 countries, but with only one source of investment from China. Having said this, any dispute settlement mechanism that emerges from the BRI, would have in consideration China's interests. This is relevant, considering that China has the interest of interpreting certain concepts and provisions differently from other countries. What is more, the International Academy of the Belt and Road released a "Blue Book" on the dispute resolution mechanism for the BRI in October 2016. This new document introduces a new set of procedural rules, and its scope of application will concern essentially three types of disputes: commercial, interstate and investor-State disputes. The dispute settlement means include conciliation, arbitration and appeal procedures. Conciliation is given particular emphasis, both to embody the so-called Asian values and to ease foreign parties' concerns about China's traditional litigation style. Consequently, conciliation is set as a mandatory step before any formal litigation can take place. Mediation is also recommended as the starting point for arbitration proceedings; however, mediators are not required to serve as arbitrators if mediation fails. Mediation sessions should be completely confidential, and the mediators are bound by a professional code of conduct.

Conclusion

The Belt and Road Initiative has become a defining feature of China's global economic strategy, and Africa stands at the centre of this transformation. As it was highlighted by 10this article the legal implications of the BRI are far-reaching touching upon multiple complex topics regarding both corporate legislation and international law principles. The different investment models adopted by Chinese actors demonstrate the multifaceted nature of China's economic engagement with African states. Yet these structures also reveal recurring tensions: the tenuous line between state and private enterprise, the challenges of regulatory oversight in host countries and the inherent risks of attributing ownership and control of critical infrastructures to foreign state linked entities. From an international law perspective, the BRI exposes significant gaps between China's growing influence on the global scenario and the respective responsibilities that accompany cross-border investment. The long-term credibility and efficiency of the initiative will depend on whether China, and its respective partners, adhere to established human rights, environmental, and dispute-resolution norms, rather than allowing economic ambition to superimpose legal accountability. Lastly, the BRI presents both opportunities and challenges. For African states, it offers infrastructures and investment, but at the same time introduces environmental and labour challenges. For the international legal order, it tests existing norms and raises questions about the future balance between global standards and state-driven development models.

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II. Consolidation in the Luxury Industry

By Mae Lucie Panzani

Consolidation in the fashion and luxury industry has accelerated in recent years, driven by strategic mergers and acquisitions. Major transactions, such as LVMH's $15.8 billion acquisition of Tiffany & Co. and Kering's €1.7 billion stake in Valentino, show how legal and corporate strategy now intersect in luxury. This article uses case studies, regulatory analysis, and industry examples to explore how law has become foundational to the way luxury groups are built, expanded, and sustained.

Legal & Regulatory Context

Competition Law

Large-scale luxury mergers today face more scrutiny than one would think, at least from competition authorities. In the EU, major mergers are reviewed by the European Commission under the EU Merger Regulation. When luxury groups seek to buy rivals or iconic brands, they must show regulators that the deal will not harm consumer choice or innovation. The Commission can, and very much has in the past, imposed conditions or even blocked deals if a merger threatens to undermine competition. Regulators in other jurisdictions have been equally careful. In 2024, for example, U.S. antitrust authorities sued to block Tapestry's $8.5 billion takeover of Capri Holdings. They argued the merger would give the combined company a dominant share of the accessible luxury handbag market by eliminating competition between Tapestry's Coach/Kate Spade and Capri's Michael Kors brands. A federal court agreed to halt the deal, which was ultimately abandoned.

Sustainability & Conduct Rules

At the same time, new EU legislation is imposing social and environmental duties that are directly shaping M&A strategy.

I. The Corporate Sustainability Due Diligence Directive (CSDDD), adopted in 2024, obliges large companies to conduct ongoing due diligence to detect and prevent human rights abuses/ environmental harm in their operations and supply chains. A luxury group acquiring another brand will inherit the same duties for the target company. This means robust pre-merger audits of suppliers, factories, and sourcing become necessary.

II. Likewise, the Corporate Sustainability Reporting Directive (CSRD) makes comprehensive sustainability reporting mandatory. This means any ESG shortcomings of an acquired brand will become public in the group's annual reports.

III. Another pillar is the EU's Taxonomy Regulation, which defines what counts as "environmentally sustainable" business activity. This regulation is already guiding banks and investors. Luxury groups are under pressure to align acquisitions with these criteria to maintain access to green financing and ESG-minded investors. Importantly, "greenwashing" is now treated as a legal risk. European regulators and courts have begun cracking down on misleading green marketing, with some national laws (notably in France and the UK) enabling fines up to 10% of annual turnover for serious offenses. This forces luxury acquirers to be truthful and precise about their ESG credentials. In short, any luxury M&A deal today must clear not only the traditional hurdle of antitrust approval but also meet a rising bar of compliance with sustainability obligations. Law has become a central driver and frankly, a true constraint as well, of consolidation strategy.

Transaction Design and Risk Allocation

Strategic Deal Structures

Recent luxury-sector M&A reveals a range of strategic motives and deal structures. Leading groups like LVMH, Kering, Richemont, and Tapestry have all pursued acquisitions to expand their brand portfolios and global reach. Diversification helps reduce creative and market risk. However, the overarching goal is often to strengthen corporate control over coveted brands. LVMH's acquisition of Tiffany & Co. (completed in early 2021) solidified the luxury group's dominance in luxury jewellery. The $15.8 billion deal took time and negotiation. LVMH delayed closing by invoking a material adverse change clause, and Tiffany sued to enforce the merger agreement. Here, legal leverage influenced the outcome of the deal: the dispute ultimately settled with a slight price reduction. Kering, by contrast, opted for a staged transaction with its 2023 investment in Valentino. By buying an initial 30% stake for €1.7 billion with an option to acquire the remainder later, Kering gained influence over the Italian house. Although their influence grew, full ownership was deferred, and not only once. In September 2025, under a revised agreement, the group postponed its option to 2029. This was done to address debt concerns and Valentino's performance. These deferrals are highly strategic. They allowed Kering gradual control with limited risk. Not every luxury giant is chasing big acquisitions. The Prada Group has focused on organic growth and vertical integration rather than major takeovers. It concentrates on developing its existing brands (ex. Prada and Miu Miu) and tightening control over its own supply chain. Consolidation of power can therefore also be achieved internally under company law, without buying outside firms. Similarly, Chanel, which is still privately held, has protected its creative heritage by acquiring many of its artisanal suppliers (embroiderers, feather-makers, etc.). By including the ateliers into its corporate structure, Chanel secures exclusive access to craftsmanship and IP. A third example would be Kering's €3.5 billion acquisition of niche fragrance house Creed in 2023. It was its first major foray into high-end beauty and mostly used the M&A deal to diversify into new product categories beyond fashion. These cases demonstrate that whether through horizontal mergers (brand acquisitions) or vertical integration, the common rationale is to build a more controlled business model.

Risk Allocation

Regardless of deal type, legal agreements are at the centre of every transaction. The Share Purchase Agreement (SPA) is the contract that transfers ownership. It defines the deal's value and allocates risk between buyer and seller. Luxury SPAs typically contain extensive representations and warranties. For instance, it guarantees that the target's trademarks and designs are valid and enforceable. It also assures that key contracts (ex. manufacturers, licensors, distributors) will remain in force after a change of control. It also confirms compliance with applicable laws and ethical standards. Any breach of these warranties can diminish the acquired brand's value and give rise to indemnity claims. To expedite negotiations, Warranty & Indemnity (W&I) insurance has become common in European deals. It backs some seller guarantees, giving the buyer protection without a large escrow or price holdback. This also makes deals close faster. Similarly, Material Adverse Change (MAC) clauses are now routinely included to protect buyers against severe downturns or shocks between signing and closing. Surprisingly, courts rarely allow a buyer to walk away by invoking a MAC, but the possibility of it can force renegotiation. This is seen in the Tiffany-LVMH deal mentioned above. Deal valuation itself can hinge on legal structuring. Increasingly, luxury acquisitions use earn-out provisions or contingent pricing if the target is an emerging brand or new category. These mechanisms tie part of the purchase price to the target's future performance, and make sure the original owners remain invested post-sale. In all cases, transaction design balances risk and reward. Put simply, a strong SPA helps a deal succeed without running into legal issues down the line.

Intellectual Property and Digital Expansion

Among all assets exchanged in a luxury merger, IP holds the most weight. Iconic brands derive their value primarily from the "intangibles." These can be names, logos, designs, and creative content. They allow the brands to set premium prices. IP rights turn creativity into capital by granting exclusive control over a brand's identity and products. In luxury M&A, due diligence starts by checking that the target's trademarks, designs, and copyrights are valid and fully owned. Any gap or defect in the IP portfolio can hurt the company's valuation. For example, when LVMH bought Tiffany & Co., a significant part of the $15+ billion price reflected Tiffany's century-old brand name and its portfolio of design copyrights. Those were assets that will generate revenue for decades in the future, whether it is via jewellery lines or licensing. In short, effective IP management is the foundation of a luxury acquisition since it ensures that the buyer truly owns the creative assets it is paying for. The definition of "luxury IP" is also evolving in the digital age. Fashion houses today are not only guarding logos and dress designs. They own digital assets and algorithms. The rise of artificial intelligence and non-fungible tokens (also referred to as NFTs) has expanded the creative output that brands monetize. This expands what needs legal protection. Lawyers now draft warranties and covenants in M&A deals for things like software code, digital design files, and AI-generated content. An example would be Nike when it acquired RTFKT in late 2021. RTFKT is a digital fashion start-up known for virtual sneakers and NFTs. Nike's acquisition gave it ownership of a portfolio of 3D shoe designs and tokenized "metaverse" assets. Today, major brands incorporate virtual goods and online presence as part of their marketing strategy. Many are acquiring companies to specifically gain this technology and IP. In the luxury sector, firms like Dolce & Gabbana, Gucci, and Balmain have similarly experimented with NFT collections and virtual fashion shows. This has heavily blurred the line between physical and digital luxury. As brands venture into these new technological worlds, the law is trying its best to catch up. Trademark protection now stretches into virtual marketplaces. Luxury houses are actively registering their names and logos in trademark classes covering digital goods and online retail services. Courts, too, are addressing novel disputes. Here, the high-profile Hermès v. MetaBirkin case can be mentioned. In early 2023, a U.S. jury found that an artist's sale of "MetaBirkin" NFTs (digital images of Hermès' Birkin bags covered in fur) infringed Hermès' trademarks and was not protected under free expression. A judge thereafter issued a permanent injunction stopping those NFT sales. The case ruled that intellectual property law applies with equal force to digital replicas of luxury products. Going forward, luxury groups must protect both the traditional IP of acquired brands and the new IP emerging from technology. This makes IP due diligence and integration more complex, and more critical, than ever.

Esg & Post-Merger Integration

After a deal closes, the goal is to integrate the new brand smoothly while protecting its creativity. Luxury groups balance this by running shared business systems but letting each brand stay independent in some way or another. Groups like LVMH and Kering merge back-office functions. These include finance, logistics, and legal compliance. They do grant their fashion houses a high degree of autonomy when it comes to brand identity and design. Many establish internal brand charters that formally limit corporate interference in artistic matters. For example, a couture house within a luxury group will retain its own creative director and distinct brand DNA. They will keep that while its budgeting, auditing, and compliance are handled centrally. Cross-border mergers add another layer of complexity to post-merger integration. Luxury deals often involve companies based in different countries, bringing different labour laws and corporate cultures under one roof. A great example is Estée Lauder's 2022 acquisition of Tom Ford. This acquisition combined a U.S. -headquartered brand with significant operations in Europe. Post-merger, the company had to reconcile U.S. "at-will" employment practices (where employees can be terminated relatively freely) with European systems that favour worker protections and collective bargaining agreements. Employment contracts, benefit plans, and HR policies had to be adjusted to comply with local labour laws and to prevent conflicts. Similar alignment issues can arise in areas like consumer protection rules or data privacy. For instance, the EU's strict GDPR will apply to customer data of an acquired brand once it becomes part of an EU-based group. Successful integration demands very careful legal planning to harmonize regulatory and cultural differences. Increasingly, ESG oversight has become a key part of post-merger governance. Closing a deal is only the beginning. The parent company must ensure the acquired business adheres to the group's (and legal) standards on sustainability, ethics, and transparency. Often, commitments to ESG goals are written into the transaction itself. For example, the SPA may oblige the seller to remediate certain supply-chain issues, or loan agreements financing the deal might tie interest rates to the combined company's carbon reduction targets. Under the EU's new directives, these obligations are binding. The acquired brand comes under the scope of the CSDDD's due diligence

duty and the CSRD's reporting requirements as soon as it joins the group. In practice, that means the acquirer must roll out its compliance programs across the new subsidiary as part of integration. If a company falls short of that, it may face legal consequences. These consequences can be fines, lawsuits, or even clawbacks in the deal price. Regulators now treat overstated sustainability claims as consumer deception, so companies must prove their ESG performance rather than simply state it. Companies need clear evidence and full transparency with consumers. Accordingly, modern integration teams include not only IT and finance experts, but also compliance officers and sustainability managers. True post-merger integration in 2025 means building a unified corporate culture that upholds both creativity and conscience. Only with strong governance and ESG integration can a luxury merger realize its full value without stumbling over legal and ethical pitfalls.

Finance & Long-Term Growth

Beyond deal valuation, a group's legal structure determines how that value lasts and grows. LVMH, worth over €400 billion by the end of 2023, and Kering, with nearly €20 billion in revenue, both rely on centralized ownership of brands, trademarks, and financing. This structure allows profits to be reinvested efficiently and assets to be used for funding new growth. Owning a brand's IP gives a group borrowing power and leverage for expansion. Good governance and compliance also build investor trust. Many luxury groups now use sustainability-linked loans, where meeting ESG goals reduces borrowing costs. As mentioned earlier under EU rules, transparency and strong due diligence are rewarded, while ESG failures can quickly harm reputation and share price. Law and finance now work together to keep brands exclusive, protect identity, and maintain investor confidence.

Conclusion

The luxury sector's merger wave shows no sign of slowing as we approach 2026, but the rules of the game are still evolving. Consolidation is reshaping the industry's legal foundations as much as its market structure. In the coming years, three forces are expected to drive luxury M&A:

Digitalization of creativity

Generative AI, virtual reality, and other technologies will continue to redefine what brands sell and how value is created. Legal frameworks for IP will need to stretch to cover AI-designed products and virtual goods. We may see more acquisitions of tech startups or digital platforms by luxury groups, so lawyers will be tasked with integrating those new assets (and their creators) into traditional brand portfolios.

Mandatory ESG commitments

Sustainability is becoming embedded in directors' duties. As the CSDDD and related laws fully come into force, boards of EU luxury companies will be legally obligated to oversee environmental and human-rights due diligence. This will influence deal-making: acquisition targets with poor ESG records will carry additional legal risk (or require a discounted price), while those with strong sustainability profiles will be in high demand. Post-merger, meeting ambitious climate and labour targets will be seen as essential to a successful integration.

Regulatory vigilance

Competition and consumer regulators will continue to closely monitor major luxury groups as they expand. Antitrust enforcement in the EU is unlikely to soften; any merger that threatens to dominate even a niche (like handbags or eyewear) could face lengthy review or required divestitures. Likewise, consumer protection regulators will keep an eye on issues like cultural appropriation or deceptive marketing as these luxury groups expand. The overall legal bar for consolidation may rise, meaning future deals will require even more thorough preparation and flexibility. For the luxury industry, law is the reason creativity can last. A design might begin in a brand's studio, but it is through contracts, governance, and compliance that it becomes a brand, grows across markets, and keeps its value over time. Behind every merger or acquisition, it is the legal framework that allows creativity and business strategy to come together.

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III. Germany is blocking UniCredit's purchase of Commerzbank

By Bjarne Fitschen & Konstantin Saalfeld

UniCredit has gradually increased its stake to 26% in Germany's second largest Bank, Commerzbank. The German Government holds a 12% stake and won't sell. Mr. Fitschen will argue as the Bull, while Mr. Saalfeld will take the Contrarian.

The Bull Why a Takeover of Commerzbank by Unicredit Makes Sense

A look at the European financial market, and particularly the banking market, in comparison to the United States reveals a clear imbalance. European banks are relatively small by international standards. While the ten largest US banks together have a market capitalisation of around six trillion US dollars, the ten largest European institutions together only reach around 514 billion euros. These differences in size have a direct impact on the competitiveness of the European financial sector. However, the problem extends far beyond the banking sector, as Europe faces enormous investment needs in the areas of energy infrastructure, innovation and defence. According to estimates by former European Central Bank President Mario Draghi, additional loans of around €750 to €800 billion are needed annually. This means that the productivity and growth of the entire continent depend crucially on the ability to finance these investments. This poses a structural problem for the financial system. It is highly fragmented, as capital markets and banks are largely organised at national level and lending is regulated by the respective Member States. As a result, banks lack incentives to expand across national borders or engage in cross-border mergers, even though this is precisely what is needed to keep pace with US competitors and support economic growth in Europe more effectively. A merger between two large banks from two of Europe's most important industrial nations would therefore be a significant and appropriate step in this direction.

Unicredit As the Acquirer

A closer look at the institutions involved highlights the potential of such a transaction. On the potential buyer side is Italy's largest bank, UniCredit. Under the leadership of Andrea Orcel, UniCredit has developed into a highly profitable financial institution with a strong capital base. With a capital ratio of around 16.2 per cent, it has the highest value among the major European banks and is therefore in a good financial position to acquire. Through its subsidiary HypoVereinsbank, the major Italian bank currently has a strong market position in Germany, particularly in the federal states of Bavaria and Hamburg. While HVB is better positioned in investment banking, its presence in the SME sector has been limited to date.

Commerzbank As a Takeover Target

Commerzbank is Germany's second-largest private bank and is considered one of the most important partners for small and medium-sized enterprises. It has close ties to domestic industry and a broad network in corporate banking. Through its international subsidiaries, particularly in Poland, a takeover could further expand UniCredit's geographical influence in Europe. At the same time, many economists view the German banking landscape as overly fragmented. Germany is home to almost half of all credit institutions in the eurozone, which is considered disproportionate given the country's economic importance. Consolidation could therefore lead to greater efficiency, stability and competitiveness. A takeover could also be beneficial for Commerzbank itself in the long term. The bank is considered a crisis-ridden financial institution: during the financial crisis of 2008/09, the government had to rescue the bank by becoming its largest shareholder and providing silent participations and guarantees worth billions to ensure its solvency. The fact that the bank remains partially state-owned 16 years later demonstrates the company's continuing weakness. A takeover by the highly profitable and successful UniCredit could therefore significantly strengthen Commerzbank.

Synergies And the Need for Adjustments

The merger would allow both institutions to combine their strengths and create synergies in corporate banking and investment banking. At the same time, it would increase the efficiency of the highly fragmented German banking market. Although cost savings would result in a considerable number of job losses within Commerzbank, Andrea Orcel emphasises that the bank would be unable to avoid such job cuts even if it remained independent. Commerzbank has a significant cost-income ratio, which means that its expenses are significantly higher than those of other large European financial institutions. With such figures, job cuts would be almost inevitable sooner or later.

Political And Strategic Significance

Such a merger would also send a political signal. It could serve as an impetus for the European banking union that has been called for years and trigger a new wave of mergers in the European financial sector. This would make it not only a strategic move for UniCredit, but also a significant contribution to a more integrated European banking system.

Germany Should Let Unicredit Takeover

Overall, a takeover of Commerzbank by UniCredit would be plausible and advantageous from both a strategic and economic perspective. It would strengthen the competitiveness of both institutions, create synergies in corporate banking and investment banking, and increase the efficiency of the highly fragmented German banking market. At the same time, such a merger could serve as a signal for greater European banking integration and promote the stability and innovative strength of the European financial system in the long term. For Commerzbank itself, the takeover would offer the opportunity to optimise its cost structure and consolidate its position in international competition in the long term. Such a transaction would therefore not only be a business move, but also a significant impetus for the further development of the European banking sector.

The Contrarian – They Are Not Wrong to Block It.

The vision of a "Bank of Europe" to rival U.S. financial giants is persuasive. Large banks reduce systemic risk, cut compliance costs, and can fund capital-intensive ventures. This logic enjoys wide support among European policymakers. And yet Berlin, holding a 12% stake in Commerzbank, has drawn a clear line. Why? The official reason is national interest: protecting the independence of Germany's second-largest bank from foreign control. Commerzbank is the primary lender to the *Mittelstand* (or as UniCredit recently misspelled it, "Mittlestand") the famously resilient backbone of German industry, composed of small and medium-sized, often family-owned firms. This is a conservative, relationship-based form of banking, and Commerzbank commands roughly 10% of that market. Many fear that placing this delicate ecosystem under foreign control could distort its focus and priorities. In fact, a recent customer survey conducted by Commerzbank found that 70% of respondents considered its independence important. These cultural and strategic concerns may appear less compelling than UniCredit's projected financial synergies. However, they point to a deeper issue UniCredit has yet to address.

If You Want a European Bank, Build A *European* Bank

Much of the resistance to UniCredit's advances is rooted in history. As mentioned, UniCredit already owns a German bank, HypoVereinsbank (HVB), acquired in 2005 with the help of a certain Andrea Orcel, then-Merrill Lynch investment banker. What critics say wrong went with that deal sheds light on why Germany and Commerzbank are wary today. Though the takeover was mostly friendly, many now regard it as naive. As one former HVB manager put it: "We thought we knew Italians from vacations, they're nice people." That sentiment soon faded. HVB effectively became "the sales department for UniCredit," a shift largely due to its own precarious financial position. Nonetheless, UniCredit's aggressive cost-cutting left deep scars, scars that influence current attitudes toward a Commerzbank acquisition. These concerns may not be as concrete as UniCredit's financial arguments, but they are precisely what's stalling the deal. Cultural friction, especially given the sensitive role of the German risk-averse *Mittelstand,* risks derailing the entire transaction. It's worth noting that German corporate law grants employees a special role in corporate governance, including participation in board votes. During UniCredit's acquisition of HypoVereinsbank, for instance, the employee representatives on the board voted in favour of the deal. Yet this tradition of transparency and consent makes UniCredit's recent tactics more controversial. UniCredit's covert accumulation of options to mask its stake has only deepened mistrust. A spokesperson for the German Finance Ministry recently called the further increase of the stake "once again uncoordinated and unfriendly." In response, Andrea Orcel has subtly threatened to sell his stake to a non-EU investor. If this deal is to go through, and there are good arguments for it, UniCredit and Germany must move beyond opportunism. They must collaborate to build a truly European bank, rather than simply conquer other European banks. Conclusion The proposed takeover of Commerzbank by UniCredit is a focal point of European banking: the tension between national sovereignty and European integration. On the one hand, consolidation promises efficiency, competitiveness, and the scale necessary to support Europe's economic ambitions, from green infrastructure to technological innovation. On the other, it exposes persistent national sensitivities, especially in countries like Germany, where banking remains deeply intertwined with industrial culture and regional identity. The dream of a continental banking champion has been whispered about for decades, yet every time it nears reality, national reflexes kick in. If Orcel and Berlin can somehow turn this tug-of-war into cooperation, they might finally give Europe the financial heft it's been missing. If not, UniCredit's gambit will fade into the long list of European what ifs.

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IV. France's Super Tax: When Tax Policy Collides with Corporate Governance

By Nikoloz Japaridze

What seemed like a one-year measure aimed at short-term budget relief has now evolved into a two-year governance and legal issue: the French Super Tax is forcing large companies, boards, and shareholders to reshape profit allocation and disclosure strategies.

Introduction

France has struggled with persistent fiscal challenges and a growing budget deficit. To strengthen public finances and protect smaller enterprises, France introduced a one-off exceptional contribution in early 2025. This was dubbed the "Super Tax" (officially, the contribution exceptionnelle sur les bénéfices des grandes entreprises). Initially intended as a short-term measure, it targets firms with annual turnover of €1 billion or more. Approximately 440 groups are expected to be affected, potentially generating around €7.8 billion in 2025. The Finance Act 2025 stipulated that the contribution would only apply to the first financial year ending on or after 31 December 2025. However, the 2026 Finance Bill extended the measure for an additional year, but with reduced rates of 10.3% and 20.6% respectively. This shift transformed the initial adjustment into a recurring burden for some of France's largest financial giants. Beyond its financial impact, the "Super Tax" quickly became a legal issue for the corporate sector. Large associations and their boards now face new challenges related to cash distribution, disclosure obligations and dividend policies. This regulation is currently reshaping how French companies allocate profits, interact with shareholders and structure their associations within the new framework of French corporate law. For example, LVMH and Bernard Arnault's stake in the company is currently at 40%, but there are discussions about lowering it further. It's clear that the "Super Tax" is not expected to be temporary.

Legislative Background

The Super Tax's legislative foundation reflects France's efforts to strengthen its tax policy without permanently altering the corporate income tax system. With this goal in mind, instead of raising the statutory rate, lawmakers opted for an exceptional contribution through the Finance Act 2025. It was intended as a temporary measure in response to ongoing fiscal issues. There was one clear intention: to capture additional revenue from the largest corporate groups during a period of budgetary pressure, while maintaining the international competitiveness of the French tax system. Parliamentary debates, explanatory statements, and other official publications placed strong emphasis on fairness and temporariness. The measure was tailored to large companies that could absorb the additional cost while contributing to short-term fiscal adjustment. However, the subsequent Finance Bill 2026 extended the measure for an additional year at reduced rates. This development suggested that the "exceptional" act was becoming a recurring practice — a component of France's fiscal toolkit. Despite the discussion it has provoked, the Super Tax sits comfortably within the framework of France's existing corporate tax system. The authorities have kept its administration straightforward, using procedures that large companies already know well. Updated BOFiP notes have spelled out the key deadlines and reporting steps, effectively weaving the levy into everyday corporate compliance.

Scopes And Mechanics of The Super Tax

The Super Tax applies to French companies with a corporate income tax (CIT) liability and an annual turnover of at least €1 billion. This threshold is assessed at the tax group level, meaning consolidation of subsidiaries under the French tax integration regime determines the group's total turnover and tax applicability. While targeting large companies, smaller entities indirectly affected by larger consolidated structures are also impacted. The Super Tax is based on the CIT due for the relevant and preceding financial years. The taxable base is the average CIT due over those two years, excluding tax credits or reductions. Companies with turnover between €1 billion and €3 billion face a 20.6% surcharge, while those with turnover above €3 billion face a 41.2% surcharge. For the following year, these rates are halved to 10.3% and 20.6%, respectively. The Super Tax contribution is non-deductible for corporate income tax purposes, meaning it doesn't reduce taxable profit. Payment follows the existing CIT timetable: companies prepay 98% of the estimated amount plus the final CIT instalment, while the remaining 2% is settled upon filing the tax return. This process mirrors CIT Filings, using the same filing form (2572-SD) and overseen by French tax authorities. Aligning the Super Tax with existing corporate tax procedures avoids creating a new compliance regime, ensuring it carries the same legal implications as other CIT compliance elements, including liability for errors or omissions, accuracy of reporting, and internal control obligations.

Corporate Law Implications

Now that the structure of the new tax has been discussed, we can turn to some corporate law implications and how it could affect several areas of the field.

Renewed Emphasis on the Board's Duties and Governance

With the Super Tax, renewed emphasis is placed on the board's duty of care and prudence under French corporate law (Article L.225-35 of the Code de commerce). Directors and the board must ensure that new decisions — dividends, share buybacks, and cash management — consider the company's increased tax burden. Despite the measure being temporary, it does not reduce this duty; rather, it requires the board and directors to plan more diligently and

carefully for liquidity and the allocation of capital across multiple financial years. Properly assessing the Super Tax and its financial impact therefore requires more information and dedicated board time before approving distributions or major expenditures.

Increased Disclosure and Market Communication

Companies affected by the Super Tax must address new disclosure considerations under the EU Market Abuse Regulation (MAR). If the Super Tax materially affects profit forecasts, cash flow, or dividend policy, inside information may need to be disclosed to the public. This regulation may also affect profit-guidance updates, management reports, and other financial disclosures. The board must therefore work closely with legal and financial teams to ensure precise and accurate communication with investors and regulators. Patrick Martin, MEDEF president - "There is growing anger in corporate France… those who can invest abroad will; those who can't are trapped."

Group Structuring and Internal Flows

As mentioned before, the €1 billion turnover threshold is assessed at the tax-group level. Reorganizations and transactions within these groups can influence whether a company falls within this threshold. Boards that oversee multi-entity groups should document any structural changes, upstream dividend flows, and cash-pooling arrangements. Furthermore, under the General Anti-Avoidance Rule (GAAR), restructuring aimed primarily at avoiding the tax could expose directors to scrutiny or sanctions by the French tax authorities.

Legal Risk

Since the Super Tax is handled through the existing corporate income tax system, companies face the same responsibilities: filing on time, reporting accurately, and keeping clear records. If a company miscalculates its liability or fails to make the proper disclosure, it could still face financial penalties, and directors might be held personally liable under Articles L.242-6 and L.225-251 of the Code de commerce. Because enforcement is strict, boards should make sure responsibilities are clearly assigned and that regular contact is maintained with tax and legal advisors. It's also good practice to keep detailed notes of how compliance decisions are made. In short, the Super Tax shouldn't be treated as a one-off technicality but as something that needs ongoing attention for as long as the measure remains in place.

Cross-Border and EU Law Dimensions

Even though the Super Tax may be seen as a one-off domestic measure, its actual impact extends into cross-border and European legal landscapes. Patrick Pouyanné (TotalEnergies CEO)- "The proposed supertax is not workable. It goes against the rule of law and international efforts to prevent double taxation." The Super Tax applies to all companies that are subject to the CIT in France, even if they are foreign-controlled. This suggests that the regulation is compatible with EU law principles of equal treatment (Articles 49 and 54 TFEU). Therefore, violations based on discrimination would be very difficult to prove, since the administration applies the tax across both resident and non-resident groups operating in France. Another relevant aspect of EU law is how State aid rules apply to the Super Tax. Under Article 107 of the TFEU, a measure can be treated as State aid if it gives certain companies an advantage that others do not get. Because the Super Tax is broad in scope and does not contain sector or company-specific exemptions, it is unlikely to be viewed as State aid. However, any future exemptions, payment deferrals, or reliefs could raise concerns for the European Commission. The Super Tax sits alongside the EU's minimum tax rules, particularly the EU rollout of Pillar Two. These rules aim to make sure large multinational groups pay at least a 15% effective tax rate (ETR) wherever they operate. Because the Super Tax cannot be deducted from regular corporate tax, companies will need to keep an eye on how it affects their overall ETR and whether any adjustments are required under the Pillar Two framework. When it comes to double taxation, the Super Tax works a bit differently from a normal tax on profits. Since it's a surcharge on the tax that's already been paid, it usually can't be credited under double-tax treaties. That means foreign parent companies could end up with a higher tax cost in France than they can offset elsewhere. Multinational groups should factor this into their cash planning, dividend decisions, and pricing between subsidiaries.

Final Considerations

In conclusion, the Super Tax was introduced as a temporary tool to strengthen public finances. Its implications, however, have gone far beyond basic budgetary policy. What was intended as a one-off measure has evolved into a lasting compliance concern for France's largest corporate groups. For the boards and directors of major companies, this measure highlights the need for better planning, transparency, detailed documentation, and overall care in financial decision-making. The Super Tax blurs the line between tax policy and corporate governance, making legal responsibility increasingly overlap with financial accountability. Even if the Super Tax remains temporary, the effects it has had will outlast its statutory life. Companies have already begun adapting their reporting, management, and tax-group structures to fit within the new regulations. Whether or not it is renewed in the coming years, the measure has already reshaped how companies operating in France approach profit allocation, risk, and disclosure. All of this leaves a lasting mark on the relationship between the financial world and corporate law.

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V. Impact of EU Sanctions against Russia on the Enforceability of Arbitral Awards

By Jessica Lörsch & Konstantin Saalfeld

Introduction

In recent years, the world has experienced a period of unique geopolitical uncertainty and instability. One of the most evident indications of this shift in global order has been Russia's invasion into Ukraine. The conflict had been brewing for years before it escalated into the first nation state conflict in years. Early - beginning in 2014 - the European Union reacted with an array of sanctions against numerous Russian individuals and entities. These sanctions gave rise to a considerable body of legal challenges, most notably within the domain of international arbitration and especially regarding the question of the enforceability of arbitral awards in the context of Russian Party proceedings. While arbitration proceedings would necessarily endeavour to preserve party autonomy, neutrality and enforceability of arbitral awards worldwide, EU sanctions entail mandatory public law restrictions on Member States that could limit access to justice or satisfaction of pecuniary obligations. This tension also raises fundamental questions about the boundaries to which arbitration proceedings and awards can be efficacious when a party is subject to sanctions and how Member States must reconcile their international obligations under the New York Convention with the binding effect of EU sanctions law. The following article outlines the general structure of EU sanctions under the law and address recent application thereof to the enforcement of arbitral awards and judgments in favour and against sanctioned parties.

General Legal Framework

EU sanctions (formally termed "restrictive measures") are imposed through Council decisions and regulations that are directly binding in member states. Since the start of Russia's full-scale invasion of Ukraine on 24 February 2022, the EU has imposed massive and unprecedented sanctions against Russia, extending the existing measures imposed on Russia since 2014 due to the annexation of Crimea and the failure to implement the Minsk agreements. The EU sanctions currently consist of 18 sanction packages with over 2,500 sanctioned individuals (including politicians, civil servants, oligarchs and entrepreneurs) and entities (including banks, state-owned and private companies, military and paramilitary organisations). A cornerstone of the sanctions relating to the enforcement of arbitral awards is Article 2 of the Council Regulation (EU) No 269/2014, which provides the freezing of assets. On a technical level freezing targets "all funds and economic resources belonging to, owned, held or controlled by any natural persons or natural or legal persons, entities or bodies associated with" the sanctioned parties. Freezing itself means that "no funds or economic resources shall be made available, directly or indirectly, to or for the benefit of [them]". And this last part "or for the benefit" creates numerous problems in enforcing arbitral awards. Notably, "funds" and "economic resources" are interpreted broadly and include not only cash or book money, but also, for example, money orders, securities and debt instruments, interest income and dividends. The freezing requirement applies to all types of "economic resources'", i.e. assets of any kind, regardless of whether they are tangible or intangible, movable or immovable, or represent real or potential value. The aim is to prevent them from being used as parallel or substitute currencies and from being used to circumvent the freezing of funds. Freezing aims at making valuables unavailable to the sanctioned party during the effect, essentially depriving them of their worth. However, prohibitions on disposal also apply not only to funds or economic resources owned by the sanctioned person, organisation or entity, but also to those controlled by them. The prohibition on making funds available therefore applies not only to the sanctioned party, but also to unlisted persons acting "on behalf of, under the control of or on the instructions of" a listed person. This means that even an EU company that is, for example, 51% owned by a sanctioned person can itself be treated as "frozen" unless it can prove its independence. In practice, this means that a sanctioned individual or entity is economically inaccessible within the European Union. Their bank accounts, securities and other economic interests are frozen, while no person or organisation in the EU may lawfully transfer or release money or property to them. And importantly: Even to fulfil a contractual obligation or to satisfy an arbitration award, such a transfer may only be made with the prior authorisation of the competent national authority. However, it should be noted that such authorisations are exceptional and subject to strict rules.

Enforcing Arbitral Awards in Favour of Sanctioned Parties

But what exactly are the potential difficulties in enforcing an arbitral award in favour of the sanctioned party? Imagine that a sanctioned Russian company has an arbitral award obliging a European trading partner to pay substantial compensation for breach of contract. Although the award is valid and enforceable under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958), its enforcement within the European Union is in direct conflict with the asset freezing regime introduced by Council Regulation (EU) No 269/2014. As explained in more detail above the "funds" and "economic resources" of the persons listed are frozen so that no payments, transfers or assets may be made available to them, either directly or indirectly. Accordingly, any attempt by an EU debtor to settle a claim in favour of a sanctioned creditor would constitute a prohibited act, whereby even a purely administrative transfer, such as depositing the amount with a bailiff, court or financial intermediary, would be treated as an illegal transaction. In practice, such payments are automatically blocked by

banks and national enforcement authorities are legally obliged to refuse or suspend enforcement measures that would violate the freeze. However, Article 5(1)(a) of Regulation 269/2014 allows the competent authorities of the Member States to authorise the release of certain frozen funds or economic resources if certain conditions are met. It is important to note, however, that a distinction is made between arbitral awards and court judgments. This is because, while court decisions can be enforced against frozen assets even if they were issued *after the party was added to the sanctions list*, arbitral awards are only enforceable if they were issued *before that date*. This distinction clearly disadvantages arbitration and exposes companies, arbitrators and arbitration institutions to considerable legal uncertainty. Furthermore, the enforcement of arbitral awards may also be restricted by the New York Convention itself. Under Article V(2)(b) NYC, recognition and enforcement may be refused if it would be contrary to the order public reservation. Ordre public concepts vary from country to country. For this reason, it is impossible to give a universally valid answer as to whether sanctions are considered part of order public concepts. However, there is a clear trend in the European Union to treat compliance with sanctions as an integral part of European public policy. Consequently, it is likely that arbitral awards that contradict or circumvent EU restrictive measures will not be enforced by national courts on grounds of order public. In conclusion these provisions show that enforcement in favour of sanctioned parties within the EU is subject to significant restrictions. Nevertheless, even in circumstances where the sanctioned party is the debtor and not the creditor, the enforcement process remains challenging.

Enforcing Arbitral Awards Against of Sanctioned Parties

One might assume that on the other hand enforcing a against a sanctioned party would not cause the same troubles. But nevertheless, freeze also halts any change to the assets, therefore making a transfer impossible. The Court of Justices has held in Bank Sepah that any change must be authorized by the government. This means that even that even if - and these are two big ifs - a claimant has an enforceable award and the respondent has seize-able assets, the success of enforcement ultimately depends on obtaining permission from the government. This permission underly strict conditions. These conditions are on the one hand anti-abuse measures (only satisfy the claim, do not benefit the sanctioned party) or formal (only awards before the sanctions took effect) and on the other hand open to the Member States own assessment (cannot contravene public policy). This means even if you clear all hurdles the final decision lies with the competent regulatory authority. Any enforcement in the EU of awards is therefore not preferable. The obvious questions are then: what about *outside* the EU. Awards under the New York Convention can be enforced in every signatory state (which might as well be synonymous with the world). While enforcement in Russia itself is impossible due to Russian sanctions, enforcement in third countries is possible. Example: If a French company obtains an award against a Russian oil company, it cannot enforce it in the EU, for example transfer money from the Russian company's accounts in Germany to its own accounts. But can it enforce against the Russian companies' assets in Brazil? Theoretically, yes. A more practical problem will be to find sufficiently large assets, which are not connected to EU or US financial systems. In practice this route of enforcement will probably yield limited results if at all. A pre-requisite remains assets outside the EU; any Russian company will have moved them from there.

Conclusion

When discussing sanction and the EU sanctioning a country such as Russia, one rarely considers the effects on hard fought arbitral judgements. But when it comes to enforcing awards against Russian entities, sanctions should be top of mind these days. Russian assets remain frozen until Russia stops its illegal invasion of Ukraine. Until then all awards will not be enforceable in EU. Ultimately, for many award creditors and debtors, enforcement within the EU is legally and practically obstructed, leaving asset seizure and recognition proceedings in non-EU jurisdictions as the only viable path forward.

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VI. Transparency vs Long-Termism in Trump's reporting reform Introduction

By Paola Dipierri

In 2018, then-president Donald Trump asked the U.S. Securities and Exchange Commission (SEC) to evaluate whether public companies should report semi-annually rather than quarterly. This proposal resurfaced in September 2025, reviving an older debate in corporate governance: would less frequent reporting help managers focus on long-term value creation or would it come at the cost of transparency and investor protection?

What The Law Says Today

Under the Securities Exchange Act of 1934, U.S. public companies must file: Form 10-Q (quarterly), Form 10-K (annually) and Form 8-K (current report for material events). According to the SEC, the aim of the quarterly system is to keep the market informed, reduce information gaps and protect investors.

The Core Trade-Off

on one hand, transparency brings clear advantages. Frequent, standardized disclosures help boards and investors detect deviations early, enforce accountability, and support accurate price discovery, often lowering a firm's costs. For retail investors especially, regular public reports are vital as they ensure access to up-to-date information and support decision-making in the market. On the other hand, too much disclosure may have downsides: the need to provide updates every three months may push managers to focus on short-term results, which could come at the cost of long-term investments like research, equipment or employee training. Furthermore, the burden of preparing interim reports diverts time, legal review, and managerial attention away from strategic tasks. The challenge lies in finding the right balance: regulators need to manage transparency and flexibility carefully to prevent encouraging short-term thinking or enabling opportunistic behaviour

Roots Of Short-Termism

For decades, research and policy discussions have linked short-term focus with under-investment in critical areas like R&D or human resources. Several experts, including Warren Buffett and Jamie Dimon argue that the real issue isn't quarterly reporting itself, but rather the frequent earnings-per-share (EPS) guidance that companies provide each quarter. For policymakers, this means that simply changing how often companies report isn't enough. Effective reform should also tackle incentives to managers and improve disclosure quality (such as clearer MD&A and capital-allocation explanations).

What Would Semi-Annual Reporting Change?

Shifting to semi-annual reporting could free management time and reduce costs. Accordingly, in 2013 the EU ended mandatory quarterly updates to reduce administrative costs and to support longer-term decision making, especially for smaller companies. At the same time, reducing the updates can widen information asymmetry between sophisticated investors, who can rely on alternative data and private channels, and retail investors. Moreover, fewer reports may encourage opportunistic earnings management that ordinary interim reviews might surface sooner. Finally, the impact would not be uniform, as fast cycle sectors, such as tech segments, may need more frequent updates than capital intensive businesses.

Impacts On Stakeholders

Long-horizon institutional holders may welcome semi-annual reports provided that key events are promptly announced. By contrast, retail investors are the most exposed if transparency fades. Small and mid-caps could save compliance costs, but they may also lose some analyst attention that quarterly reports help sustain. Finally, high-volatility sectors face a higher risk of higher market swings, which can raise financing costs.

Policy Options

A suitable approach could be allowing optional semi-annual reports with guardrails. Companies that choose it should publish a short quarterly KPI sheet (Key Performance Indicator), avoid quarterly EPS guidance, and file 8-K forms when significant events occur. Reporting could also be scaled by company type and size: lighter frequency for smaller reporting companies, heavier frequency for fast-moving or systemically important sectors. Furthermore, if reporting cadence is reduced, controls should be strengthened.

Conclusion

All things considered, semi-annual reporting can relieve short-term pressure and lower compliance costs, but it should not come at the expense of clear, timely information for investors. A practical solution is an opt-in model with clear safeguards, alongside longer executive pay horizons and stronger board oversight, to build a disclosure framework that preserves trust while supporting long-term investments.

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EU Market Regulation

Editor premises

This section presents EU market regulation as a toolkit to maintain effective competition and reliable consumer information. It views competition law as the foundational discipline governing coordination and market power while green marketing rules serve as safeguards for environmental claims and sustainability messaging. The focus is on how these frameworks translate into compliance obligations enforcement exposure and practical limitations on business conduct within the internal market.

I. Directive (EU) 2024/825 and the New Era of Green Marketing Regulation: The extension of the black-listed unfair commercial practices

By Alice Liberopoulos

The starting point: The Unfair Commercial Practices Directive (UCPD) 2005/29/EC Article 169 TFEU, concerning the specific objectives and powers in consumer protection law, explicitly defines consumer protection as part of the internal market's social dimension, and provides for minimum harmonization between Member States, allowing them to adopt stricter rules, always though compatible with EU law.

By contrast, *Directive 2005/29/EC* on unfair commercial practices in the business-to-consumers (B2C) relations, pursues *full harmonization* (see *Art. 4 UCPD)*, ensuring a specialized spectrum of unlawful business behaviours to all EU consumers - a nature consistent with the internal markets characteristic, given that, in practice, *Art. 114 TFEU* on the approximations of laws for the functioning of the internal market usually serves as the principal legal basis. *Directive 2005/29/EC* introduces a general prohibition *(Art. 5.1 UCPD)*, banning unfair commercial practices that disorient EU consumers, especially by misleading or harassing them.

Apart from the general clause, two subcategories are provided for: the first one concerns *misleading commercial practices* such as false claims or deceptive marketing *(Art. 6-7 UCPD),* and the second one concerns *aggressive commercial practices* such as harassment or coercion against consumers *(Art. 8-9 UCPD)*. Beyond these semi-general clauses, the true revolution in the protection of consumers from harmful business conduct is reflected in the so-called *Black List* of unfair commercial practices *(Annex I of the Directive 2005/29/EC),* a uniform catalogue of 31 at first *per se* unfair practices – meaning that they are automatically deemed unfair and therefore prohibited - , without requiring a case-by-case assessment of whether the practice is misleading or detrimental to consumers. *The digital modernization of EU consumer protection law: The Omnibus Directive (Directive (EU) 2019/2161)*

The *telos* of the *Omnibus Directive (Directive (EU) 2019/2161)* was not merely to modify the general framework on unfair commercial practices, but to modernize it, considering the developments that followed the first introduction of such prohibitions in 2005. With the continuous emergence of online marketplaces, new challenges for consumer protection law arose, creating the need to upscale not only the field of unfair commercial practices but also consumer rights, price indications rules, and the protection against unfair contract terms, especially through the introduction of detailed pre-contractual information obligations.

The main structure of the *UCPD* was not affected by the adoption of the *Omnibus Directive*; rather, the latter focused on upgrading its digital relevance. It expanded the definition of *product* (see *Art. 2.c UCPD as amended*) to include *digital content* and *digital services* and harmonized the sanctions Member States must impose in case of infringement. One of the main challenges to be addressed was the weak deterrence effect of national enforcements systems, since penalties for cross-border infringements had previously been left entirely to Member States. Accordingly, turnover-based fines were introduced (see *Art. 13.3 UCPD as amended*) for widespread or cross-border infringements - with a maximum fine of at least 4% of the trader's annual turnover in the Member States concerned, or two million euros where turnover data are unavailable – thus ensuring more harmonized and stronger sanctions to be enforced uniformly by Member States, while preserving their national discretion to adopt higher penalties. Following the amendment introduced by the *Omnibus Directive*, three new blacklisted unfair commercial practices were added to *Annex I of the UCPD*, namely: the publication of false consumer reviews, the display of hidden advertising within search results and the resale of tickets obtained by traders through automated means ("*bots*") (see *Art. 3.7 of Directive 2019/2161*).

The Empowering Consumers Directive: Directive (EU) 2024/825 Directive (EU) 2024/825 was adopted on 28 February 2024, as part of the EU's *Green Deal* and *Circular Economy* Agenda. Member States must transpose it into national law by 27 March 2026, while also appointing competent authorities to ensure its harmonized application *(Art. 4 of Directive 2024/825).* The purpose of this second amendment to the *UCPD*, as well as the *Consumers Rights Directive (2011/83/EU)*, is to further develop the consumer protection guaranteed by EU legislation to ensure transparency and verifiability of "*green"* marketing practices, strengthen consumer trust and support fair competition by penalizing businesses that rely on false sustainability statements. *Annex I of the UCPD*, which lists *per se* unfair commercial practices, has been extended to broaden the range of practices that are automatically deemed unfair and therefore prohibited. The scope of this legislative act is to address misleading commercial practices that prevent consumers from making sustainable choices, particularly in relation to premature obsolescence of products, deceptive or unverifiable environmental claims ("*greenwashing*") and misleading information concerning the social characteristics of products or businesses. It thus specifically targets commercial practices linked to environmental characteristics (e.g. "*eco-friendly*", "*carbon neutral*"), social characteristics (e.g. "*fair*", "*ethical*") and aspects of product durability, reparability, and recyclability.

New legal definitions (see *Art. 1.1.b of Directive 2024/825*) such as *environmental claim* and *sustainability label* are also introduced, converting marketing language and labelling practices into regulated – and potentially prohibited – forms of legal conduct.

The subcategory of misleading actions and omissions is expanded as well, to expressly include false, unverified or ambiguous environmental and social claims as misleading

commercial practices (see *Art. 1.2 of Directive 2024/825*). *Traders subject to the UCPD must ensure transparency regarding the expected durability, repairability and upgradeability of products, and practices such as planned obsolescence are directly targeted. Businesses must substantiate all environmental and social claims with credible, sufficient and publicly accessible evidence, and use third-party certification when displaying sustainability labels (see also Art. 1.3 of Directive 2024/825).* Thus, until the transposition and application of the rules introduced by the *Empowering Consumers Directive* on 27 March 2026, businesses are required to adopt green-based production processes and marketing techniques that promote sustainable choices for consumers. Non-compliance will result in substantial financial penalties, directly mandated by EU law and enforced by the competent national authorities, reflecting the EU legislators' view that Member States alone were previously insufficient to sanction such unfair commercial practices. Ultimately, the *Empowering Consumers Directive* not only empowers consumers to make *greener* choices but also ensures that a wider range of genuinely eco-friendly products is available for consumers to choose from.

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II. Competition Law in the European Union

By Magdalena Georgieva & Lou Celeste Belissent

The internal market is well-established as being one of the European Union's **(EU)** primary assets, and its proper functioning is essential to promoting prosperity of the European economy. An inevitable element of this internal market is competition. Perfect competition motivates businesses to innovate, improves quality, decreases consumer prices, and provides more choices for consumers (Whish and Bailey). However, unchecked competition and freedom of contact can increase inequalities between small and large businesses, promote monopolies and oligopolies, reduce business profit margins, and decrease innovation; over time leading to the deterrence of the European internal market (Whish and Bailey). Hence, the Union established competition rules. It started by regulating against cartels and merger controls in the European Coal and Steel 1951 Treaty and later developed these basic principles into a modern legal body (Basedow). Today, competition law in the Union is not only a protective measure but a fundamental block that ensures the Union's proper functioning and open markets.

Legislative Frameworks of European Competition Law

Primary legislative frameworks

Competition law can be defined as a body of law which regulates competition between private parties to prevent anti-competitive agreements, abusive behaviour, price-fixing, monopolies, public restrictions of competition, and market-sharing in an overall goal to maximise consumer welfare (Whish and Bailey; Office of Fair Trading). It is regulated in the Union's primary legislation: the Treaty on the Functioning of the European Union **(TFEU)** and the Treaty on the European Union **(TEU)**. In the TFEU, Title VIII Chapter I exclusively focused on competition rules (European Union). Article 101 TFEU outlines and prohibits practices which to their effect restrict competition. This represents the most obvious protection against deficient competition and price-fixing; however, the EU goes much further by condoning the abuse of dominant positions in a market (article 102 TFEU), and aid granted by a Member State which favour certain undertakings (article 107 TFEU) (European Union). Furthermore, article 3(3) of the TEU denotes the "high level of protection and improvement of the quality" of the internal market as a goal of the EU (European Union). And article 119(1) TFEU imposes on Member States an obligation to coordinate their economic policy to promote "open market economy with free competition" (European Union). Through this brief overview of the primary legislation, it is evident that the Union aims to prevent the undermining of the internal market, guarantee undistorted competition, and remove anti-competitive barriers which would threaten the free movement of goods, services, capital, and people.

Apart from regulating what should be banned in competition law in the Union, the TFEU grants powers to the European Council, European Commission, and European Parliament. In article 103 TFEU, the three institutions are vested with the powers to take appropriate measures through regulations and directives to give effect to the principles in articles 101 and 102 TFEU (European Union). Article 104 TFEU then delegates to Member States the responsibility of ensuring that such measures are respected and enforced (European Union). Hence, articles 103 and 104 TFEU ensure the practical effect of the treaty provisions and provide effective remedies to business through direct action. In the event of an alleged infringement, the Commission is tasked with investigating such breach, and if identified, propose remedy for the breach (article 105 TFEU) (European Union). Furthermore, the Commission shall review all systems of state aid to prevent aid which would favour certain undertakings (European Union).

In the TFEU, it is evident that the Commission assumes significant responsibility in legislating and investigating competition within the internal market. While this provides strong protections of the structural principle, it can lead to a rather heavy workload for the Commission, which therefore hinders efficiency of the system and undermines the functioning of the internal market.

Secondary legislative frameworks

As a response to some of the challenges arising from such significant responsibility on the Commission in the treaties, the EU enacted secondary rules which aim to operationalise articles 101 to 109 of the TFEU. The most important being regulation 1/2003 which delegated routine enforcement of competition law to Member States and their national courts, hence allowing the Commission to focus on serious infringements (European Union). This catalysed efficiency as it allowed businesses to find remedies for competition breaches through their national systems. National courts became the primary enforcers and defenders of competition law under the harmonized EU law, thus as each court was empowered with the same substantive power, divergent interpretations were reduced and the Commission could now focus exclusively on serious cross-border competition cases.

Competition Law in Application

While competition law has provided multiple benefits to the common market, it inevitably clashes with private law. In essence, private law vests private parties with the ability to create their own rights and obligations through contracts including how services should be remunerated and how business can grow through mergers or acquisitions. On the other hand, competition law aims to maintain an even playing field for businesses by setting limits to the exercise of private law rights. This positions competition law at "constant odds with the principle of freedom of contract" (Lambertz). As the Commission investigates infringements of competition law, it hinders on the private parties' freedom of establishment and freedom to provide services. Courts are then tasked with balancing these two fundamental principles, freedom of contract and the protection of competition on the internal market.

While competition law applies to all industries in the Union, it is more prevalently invoked by some. This encompasses those industries which are highly concentrated or have significant market power including telecommunications, financial services, media, energy, or transport (European Commission). This can be attributed to the fact that some industries are more prone to developing monopolies

and oligarchies such as airlines, or telecommunications and others are prone to closed agreements for the production, distribution and exhibition of services including creative industries.

Competition Law in Practice

Introduction to the case

This paragraph will focus more specifically on case law in front of the Court of Justice of the European Union **(CJEU)** in the sphere of competition law. On the 14th of October 2025, the Commission announced that it had fined three high-end fashion companies, Gucci, Chloé and Loewe, a combined 157 million euro. The investigations started in April 2023 when the Commission carried out unannounced inspections at the premises of Gucci (in Italy), Chloé (in France) and Loewe (in Spain), to investigate concerns that these companies had violated article 101 TFEU (and 53 of the European Economic Area agreement **(EEA)**). Following a preliminary investigation, the Commission then opened formal proceedings against the three brands in July 2024. The Commission's announcement of 14 October 2025 marks the conclusion of the proceedings.

Why were those three brands under the radar of the Commission? It should be noted that the three fashion brands engaged in resale price maintenance **(RPM)** by restricting the ability of independent third-party retailers to set their own retail prices for products designed and sold by the brands. The Commission determined that these activities impacted both online and offline sales channels, increasing their market-wide effect. The Commission's judgment follows decisions by national competition authorities, who have long sent unambiguous signals about RPM. Thus, high-end fashion's restriction is in direct violation of article 101 TFEU.

What is Resale Price Maintenance (RPM)

RPM happens when a supplier limits retailers' capacity to establish their own pricing, usually by setting fixed or minimum resale prices. Furthermore, according to the European Commission's 2022 Guidelines on Vertical Restraints, "includes indirect measures intended to induce the distributor to comply with a fixed or minimum resale price, such as fixing the distributor's margin, linking the distributor's resale price to the resale prices of competitors, threats, intimidation". Under EU law, especially the TFEU, RPM is regarded as a by-object limitation on competition. This implies that it is considered to impair competition without the necessity for comprehensive market research.

Facts, Legal Issue, and Assessment

To begin, the Commission determined that Gucci, Chloé, and Loewe applied RPM policies over very long periods of time: Gucci from April 2015 to April 2023, Chloé from December 2019 to April 2023, and Loewe from December 2015 to April 2023. These regulations included direct instructions to merchants on resale pricing, prohibitions on discounting, and promotional time limits. Retailers were not only obligated to follow suggested retail pricing, but they were even punished for deviations.

The conduct had an impact on practically every aspect of each brand's product line, including on clothing, leather goods, footwear, and accessories. The Commission noticed that the companies did operate separately but used comparable techniques to preserve pricing consistency and prevented completely their direct sales channels from competition from third-party merchants. Thus, the Commission's investigation concluded that those brands had limited the freedom of their independent resellers, both online and in physical stores, to set their own resale prices for nearly all products sold under the companies' brand names. Moreover, the Commission concluded that the infringement covered the whole EEA and stressed that the uniformity of conduct across brands indicated a sector-wide risk of RPM normalisation which will lead to complete de-harmonisation of the market.

To get into more details in the facts of the case, the fashion companies interfered with their retailers' commercial strategies by imposing restrictions on them, such as requiring them to not deviate from recommended retail prices or enforcing maximum discounts rates and determining specific periods for sales. Sometimes they even prohibited retailers from offering any discounts for a certain period. Gucci, Chloé and Loewe wanted their retailers to apply the same prices and sales conditions they applied in their own direct sales channels. To enforce these pricing rules, the companies monitored retailer pricing and took measures when retailers deviated from the rules. The investigation found that in most cases, retailers followed the pricing policies either immediately or after being pressured to comply. Additionally, Gucci imposed further online sales restrictions on one product line, instructing retailers to stop selling it through online platforms. According to the Commission, because the retailers did not have autonomy to set prices, the practices reduced competition among them which resulted in higher prices and reduced choice for consumers. The Commission found that Gucci's infringing conduct was the longest running, beginning in April 2015, followed by Loewe (December 2015) and Chloé (December 2019).

In fact, the fines imposed on the companies make those breaches by high-end fashion companies so significant because of the extent those fines were reduced: up to 50% for Gucci and Loewe established by the Commission's antitrust cooperation procedure. The practice is that companies which acknowledge their liability can cooperate to reduce the administrative burden on investigators and the duration of the probe in exchange for a reduction in any final sanction. Variations in the reduction reflect the timing and value of the cooperation by each company. For instance, Gucci's cooperation included revealing an infringement of European competition rules not yet known to the Commission, while Loewe's cooperation allowed the Commission to extend the timeframe of its infringement. In addition, each of the companies has since publicly pledged its commitment to compliance with antitrust rules.

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III. DSA as Reshaping Tool

By Luna Vakula

It may be argued that technology is reshaping the world as we know it. With its exponential development, several issues arise. Especially when we observe it through a legal lens, as law and policymaking necessitate a significantly longer amount of time. No or incomplete regulations create loopholes for various actors, some of which are large corporations or digital service providers, which can cause damage to individuals. Luckily, progress in this regard is becoming more tangible. Furthermore, another particularity with technology-related legislation is its phased or staggered application. This is due to its rapid pace of development, together with the need to leave room for potential further adjustments or improvements. Henceforth, not all provisions apply simultaneously, nor do they enter into force at the same time for all actors involved. Naturally, there are differences between jurisdictions as well, which further complicate the issue at hand; however, recent developments in the EU present hope and a shift from stagnation to action.

Digital Services Act

The new development or application which will be the focus of this article is the Digital Services Act (DSA). The DSA is part of the Digital Services Act package together with the Digital Markets Act (DMA), and they "aim to create a safer digital space where the fundamental rights of users are protected and to establish a level playing field for business". In other words, the idea is to set a framework which will govern how the world's largest tech companies behave. The DSA, which can also be characterised as one of the most ambitious and far-reaching regulatory frameworks in its focus area, was first introduced in 2020, while it entered into force in November 2022.[2] However, due to a staggered enforcement mechanism, it started applying to Very Large Online Platforms (VLOPs) in August 2023, while on 17th February for all other intermediaries. Enforcement for VLOPs is of relevance because of the recent preliminary finding by the European Commission. The finding revolved around Meta's and TikTok's breach of obligations to grant researchers adequate access to public data as is required by DSA under Article 40, as well as Meta's failure to notify users of illegal content[3] and not allowing them to effectively challenge content moderation decisions. This serves as proof that the EU is taking a more active approach to platform misconduct.[5] Furthermore, as the DSA imposes rules and obligations on, among others, VLOPs, there is an indication of expansion of its primary digital-platform regulation sphere to realms of corporate governance, market behaviour and economic regulation. Obligations in question resemble risk-management processes and corporate duties of care, while also mandating commercial transparency. Here, we see the interconnectedness and blurriness that the digital world brings with it.

Architecture And Objectives of The Dsa

The DSA updates the E-Commerce Directive (2000/31/EC) by replacing the liability-based model with a systemic, proactive and supervision-oriented approach.[6] It also builds on the Directive by harmonising the liability privileges for unlawful third-party content. Now, intermediary services, hosting providers, online platforms and VLOPs have horizontal obligations. Due diligence processes to identify, assess and mitigate systemic risks, including disinformation, public threats, illegal content, deceptive interface design, and risks to minors are required.

Vlops

The latter is particularly interesting when it comes to VLOPs that are defined as services with more than 45 million EU monthly users, especially because of the differences in regulation between the US, China and Europe, since many popular VLOPs are situated outside the EU. They are under the special category because, due to their scale, they can render public debate, minors and safety, be an essential communication, information, market and business gateway, and capable of causing significant harm if misused. They can be considered as critical nodes in a digital landscape. Hence, comparable to systemically important institutions such as banks, they must abide by stringent rules. This is even more relevant because DSA interconnects with other EU Regulations such as GDPR, emerging AI legislation and DMA, meaning that privacy and data carry a strong value and can be endangered. If we consider that data can be classified as a new currency, protecting it should be of prime concern. In case of breach, VLOPs need to pay a fine up to 6% of global turnover. [10] Important to note is the role of the Commission, as it has arguably high discretion regarding the decision of what exactly constitutes meaningful access to data under Article 40 of the DSA. This becomes even more complex when the Delegated Act on Data Access applies, which is now the case as it entered into force on 29 October 2025 because it grants researchers access to non-public data with the aim of enhancing accountability and identifying potential risks arising from VLOPs' activity. This is exactly what Meta and TikTok should be looking into due to the mentioned preliminary finding. The Act is yet another example of ambitious EU's steps to increase transparency and operation of powerful technological corporations.

Preliminary Finding: Tiktok and Meta

ON 24th October 2025, the Commission preliminarily found breaches in TikTok's and Meta's conduct. As they can be classified as VLOPs under the DSA, they must abide by strict rules and procedures when they provide services to EU users. The issues at hand are access for researchers, Notice and Action mechanisms – 'dark patterns and Content moderation.[12] vitally, they were making it more complicate for users to flag illegal content or challenge removal or suspension of users' content, and their interface can be seen as deceptive. in addition, their cooperation with researchers is not transparent, which is an obligation under the DSA. Nevertheless, since this is a preliminary finding, Meta and TikTok still have a chance to remedy their breaches as well as examine the investigation files and reply to the Commission in writing.[13] However, this can be a signal to other platforms to rethink their conduct and interface if they pursue the EU market or offer their service to EU users.

Critical Reflection & Connection to Competitiveness

A key question is how more stringent regulation will affect the EU's competitiveness. Some argue that heavy regulation slows down development, impedes scaling and discourages innovation. Compared to the US, in the EU, the

number of hurdles is significantly higher, especially for SMEs and start-ups. Enforcing even more rules may increase protection of individuals but can also block development. This is visible from the fact that the EU is lagging its rivals. Ironically, by imposing stricter rules, the environment where only the most powerful ones can survive, while others will pull back. Even though stricter rules primarily target to limit the power of those who dominate, the real victims are everyone else When it comes to VLOPs, the competitiveness issue is twofold. First, the DSA imposes strict rules and high compliance costs. While the requirements can be satisfied, they create strategic pressure – VLOPs must either adjust their global models to the EU standards, changing their default design standard overall or build a separate version just for the EU. The latter may posse challenges later as people migrate thereby changing jurisdictions they build on the complexity in case a breach occurs. Nevertheless, both options are timely, affect profitability and speed of innovation. Furthermore, VLOPs are facing potential losses regarding information gain and advantages that follow more 'open access' paradigm. While smaller platforms do not have to follow such strict rules, they can gain certain advantages. The advantages and gain of more power would also be true for regulators and private individuals because now they could have more control over their data, fundamental rights and it would be easier to alarm when the content is questionable. Furthermore, this can support long-term competitiveness at the system level. Especially if observed from institutional economic theory and OECD report[14] as they argue that predictable, transparent regulation can, indeed, increase resilience and long-term competitiveness because it builds trust and reduces risks. Ultimately, levelling the playing field could increase EU's competitiveness. Unfortunately, this should be taken with a grain of salt as it may complete VLOPs to reconsider key elements of their conduct and model or find alternative solutions through loopholes. The result is yet to be seen. It is indisputable that DSA profoundly reconfigures governance of digital platforms by merging elements of not only technology but also corporate compliance, economic regulation and commercial law. Exemplifying just how complex the landscape is. The recent preliminary ruling affirms the legal resilience of the regulatory framework and proves EU's seriousness. Yet, this ambition can expose tensions between innovation, market power and regulation, making the impact on competitiveness dependant on finding of perfect balance between rights-based regulation and investment in innovation and development.

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