

## Insights

# THE NEW EUROPEAN COMMISSION – TERESA RIBERA TAKES CHARGE OF COMPETITION

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## SUMMARY

The new European Commission, under Ursula von der Leyen for a second term, kicked off on 1 December 2024. Teresa Ribera is the new head of European Competition Policy. After Margrethe Vestager's ten year tenure, there is a strong prospect of a change in focus at DG COMP. From a structural perspective, Ribera's formal title - Executive Vice President for a Clean, Just and Competitive Transition - breaks from the past, highlighting that her remit extends beyond competition to encompass environmental and social policy. Von der Leyen's instructions to Ribera emphasise this shift: *"Europe needs a new approach to competition policy – one that is more supportive of companies scaling up in global markets, allows European businesses and consumers to reap all the benefits of effective competition and is better geared to our common goals, including decarbonisation and a just transition."*

In this article, we outline our early views on what to expect from Ribera, analysing her upcoming policy priorities, discussing how she might approach key international relationships and evaluating the extent to which real change may be seen in practice.

## BIG PICTURE - WHO IS TERESA RIBERA?

A left-leaning politician from Spain's Socialist Workers' Party and a lawyer with experience in sustainability, environmental protection and climate change matters, Ribera was, until recently, Spain's Deputy Prime Minister and Minister for Ecological Transition. She oversaw the closure of Spain's coal industry and led negotiations to reform the EU electricity market through mechanisms such as price control agreements.

Ribera does not have a background in competition law or policy. Consequently, her key staff at DG COMP are expected to influence her initial policy directions, as will the mandate from her Mission Letter from von der Leyen and the initiatives recommended in the Draghi Report. DG COMP's staff will remain largely the same as before, so we anticipate the continued strenuous enforcement of

competition law. This approach, though tough, would offer consistency and predictability – with notable exceptions from the possible new approaches to abuse of dominance investigations and below-threshold merger reviews. These new approaches could undermine legal certainty for those doing business in Europe, and go against the Draghi Report’s plea for regulators to encourage investment on the continent. Ribera will have to juggle these competing policy agendas, plus the other aspects of her portfolio, as she sets the direction for the next five years.

In the sections below, we offer a deep-dive into what to expect from Ribera’s DG COMP across a range of key policy and enforcement areas.

## **A NEW APPROACH TO COMPETITION POLICY?**

Ribera’s Mission Letter from President von der Leyen, drawing from the Draghi Report, emphasises a “new approach” to EU Competition Policy. There is little firm detail on what this “new approach” will look like in practice, but the underlying ambition is to recalibrate towards a greater emphasis on innovation and resilience when exercising competition powers, alongside an enhanced alignment of competition with other policy areas that many felt was lacking during Vestager’s ten years leading DG COMP.

This shift in approach comes against a backdrop of several years of poor economic performance across the EU compared to other major economies. Calls for EU merger control to support the creation of European Champions are certainly not a new phenomenon – these concerns intensified in 2019, when 19 Member States called for a fundamental reform in the Commission’s approach to competition analysis, following the prohibition of a merger between French and German rail companies – but those voices are getting louder.

## **INTERPRETING RIBERA’S JUGGLING ACT**

Ribera’s broad mandate indicates that sustainability and social goals could be intertwined with competition policy. The Mission Letter makes energy, poverty and affordable housing key areas of her portfolio. It also indicates that DG COMP’s priorities could include enforcement in the food and farming sectors, as well as markets with a sustainability and energy transition dimension. We have written extensively on [sustainability and competition law](#) previously.

Competition policy cannot be viewed in isolation, but given the scope of her Mission Letter and calls from around Europe for a more joined-up approach, we expect Ribera may seek to do more than her predecessors to integrate EU competition policy and enforcement with other policy areas – delighting some and muddying the waters for others. Intermixing competition, industrial policy, trade and digital regulation presents opportunities for Ribera to find novel and holistic policy solutions, as well as challenges. Managing such an extensive portfolio with competing and sometimes unrelated priorities will be administratively difficult and demands a nuanced approach, balancing immediate economic and social needs with long-term sustainability and fairness.

Given her lack of competition experience, we expect that Ribera will rely heavily on the expertise of her team at DG COMP to manage the competition aspects of her portfolio. Who she chooses for the top jobs at DG COMP, including importantly the next Director-General and the Deputy Directors for Mergers and for Antitrust, will be key indicators of where Ribera will go in policy terms as she starts her mandate. Linsey McCallum, the sitting Deputy Director-General and a previous Deputy Head of Cabinet, is the current front-runner to be the next Director-General.

## CHANGES IN MERGER CONTROL

Ribera's initial merger control priorities are likely to include reviewing the Horizontal Merger Control Guidelines and possibly amending the EU Merger Regulation's jurisdictional rules to enhance the Commission's powers to review certain "below threshold" transactions.

### AMENDING THE HORIZONTAL MERGER CONTROL GUIDELINES

A key aspect of the Mission Letter and Draghi Report is that innovation should be given greater weight in merger control reviews. The Commission has never approved a transaction otherwise judged to be anticompetitive on the basis that the efficiencies generated outweighed the potential harms (the so-called "Efficiencies Defence"). More guidance – and potentially greater flexibility – can be expected with regard to the Commission's evolving approach to innovation-related efficiencies. There is also the possibility that Ribera may support some of the more radical amendments suggested in the Draghi Report, notably the proposal for a new "Innovation Defence". This would represent a fundamental shift in how some problematic transactions are reviewed.

### MOVING ON FROM *ILLUMINA*

The European Court of Justice ("ECJ")'s recent judgment in the long-running *Illumina/Graill* saga was a significant rebuke of the Commission's 2021 policy that sought to expand its ability to review transactions that fall below jurisdictional thresholds in the EU. The ECJ ruled that the Commission does not have jurisdiction to review transactions referred to it under Article 22 of the EUMR where a referring Member State does not itself have jurisdiction.

There are a few ways Ribera could look to implement her mandate to scrutinise potentially problematic transactions that lack an EU dimension and which cannot presently be referred under Article 22.

One option is to change the EUMR's jurisdictional rules, such as by introducing a deal value threshold (similar to that used in Germany and Austria) or expanding the scope of Article 22 to capture transactions which fall outside a referring Member State's jurisdictional competence. The latter approach could, in theory, allow the Commission to review any potentially harmful transaction. However, changing primary legislation would be complex and time-consuming.

Another approach, apparently preferred by some in DG COMP, is to encourage more Member States to adopt “below threshold” call-in powers. This could provide Member States with the jurisdiction needed, in DG COMP’s view, to refer cases safely to the Commission following *Illumina*. Currently, eight Member States have this ability (with several gaining such powers recently) in addition to two with fairly discretionary “market share” threshold tests, and DG COMP may wait to see if more follow the same call-in path. Such powers would enhance a Member State’s own jurisdictional competence, and thus expand the potential scope of the Commission’s Article 22 capabilities. Indeed, in October 2024 the Commission accepted Italy’s referral of an acquisition that fell below both EU and Italian filing thresholds, but which was referred using the new Italian call-in powers. Such an approach, however, risks undermining legal certainty for transactions in Europe.

## RENEWED FOCUS ON STATE AID AND FOREIGN SUBSIDIES

Ribera is expected to establish a new state aid framework, developing rules to (i) accelerate the roll-out of renewable energy, (ii) encourage industrial decarbonisation, and (iii) ensure sufficient manufacturing capacity of equipment relevant for the transition towards a net-zero economy.

The Mission Letter also instructs Ribera to implement tougher enforcement of the Foreign Subsidies Regulation (“FSR”), which aims to remedy perceived distortions of competition in the EU caused by foreign subsidies. See our previous [in-depth article on the FSR](#).

## SHARPENING DG COMP’S ENFORCEMENT TOOLS

The Mission Letter and the Draghi Report stress the need to simplify, strengthen and speed up the enforcement of competition rules, including cutting “red tape” in the EU. In her confirmation hearing, Ribera hinted at a possible review of the underlying procedural rules and confirmed that digital markets would remain a key enforcement priority.

A key feature of Ribera’s term will be the review of, and any amendments to, Regulation 1/2003, which sets out the rules relating to enforcement of EU competition law. The fairness and speed of investigations were criticised during Vestager’s term. However, there is currently no clear timeline as to when the Commission will present a new proposal for the revised Regulation. Procedural issues have resulted in the Commission losing a number of landmark cases in court in recent years, including in 2023 when the [ECJ annulled dawn raids on a number of French supermarkets](#).

New Guidelines on the Commission’s approach to exclusionary abuses by dominant companies are also under review. These may be adopted during Ribera’s first year. The draft Guidelines, published for consultation in August 2024, propose a shift away from an effects-based approach to investigations to a presumption-based approach in which companies engaged in certain conduct will have the burden of disproving the presumed anticompetitive effects of their actions. It will be hard to align the drive to cut red tape and promote growth - which underlies the Draghi Report and

Mission Letter – with the extra burden that would be placed on businesses under investigation as currently proposed by the draft Guidelines.

Finally, there is the possibility that Ribera's DG COMP will look to introduce a New Competition Tool, in line with one of the recommendations of the Draghi Report. This ex-ante market investigation instrument could address sector-wide structural competition problems without having to establish any individual wrongdoing. Such tools are already available in Germany and the UK.

## RIBERA THE DIPLOMAT

Ribera's appointment coincides with leadership changes in many jurisdictions. How she approaches her new relationships with counterparts in the UK, China, India and, significantly, the US, will have an impact on how multinational businesses engage with competition law worldwide. Upcoming meetings of international organisations such as the International Competition Network (ICN) and UN Trade & Development (UNCTAD) will be early tests to see how Ribera and her team approach their role in the global arena, in particular as regards case cooperation and the degree to which they strive for convergence or divergence with their peers abroad.

DG COMP and the US agencies have been largely, but not completely, aligned over the last four years - an example of divergence being their respective approaches to the antitrust and sustainability intersection. However, for the first time in recent memory, the outgoing Biden administration was seen by many as more progressive, interventionist and politically to the left of the Commission in many respects regarding competition policy and enforcement. The Trump administration may revert "back to form" by shifting the US agency policy back to the right of the Commission, as has been the case under recent administrations before Biden. There may be bumps on the road for Ribera when working with the Trump administration, although this does not necessarily mean complete misalignment, as both the US and EU may continue to take tough stances in similar areas, such as big tech.

Our colleagues in the US have written about the new Federal Trade Commission and Department of Justice administrations:

- ["Trump Controlling the FTC? Picks for FTC Chair and FTC Commissioner Signal Significant Changes"](#)
- ["President-elect Trump's Pick to Lead DOJ's Antitrust Division Signals Continued Aggressive Big Tech and Agriculture Enforcement"](#)

## SO WHAT SHOULD WE EXPECT?

While we can identify some of Ribera's likely priorities for the competition law part of her portfolio, we will learn more from her first few major actions. She will initially need to rely on the expertise of existing DG COMP staff, and her appointments for the leadership roles will be key indicators of her

future intentions. Ribera will also have to navigate a tricky political path between the competing priorities of promoting robust competition domestically and ensuring European competitiveness globally – while simultaneously leading Europe’s energy transition and developing her relationships with strategic allies (notably in the US), finding consensus where possible. What is for sure – with reforms started during Vestager’s term moving ahead early in Ribera’s (in mergers, dominance, procedural fairness, state aid and foreign subsidies to name a few) – we will expect to see the regulatory changes continue apace in Brussels during the start and likely throughout her time atop DG COMP.

If you would like further information on how current and forthcoming EU competition policies might affect your business – or if you have any questions more generally on EU competition law – please contact Dave Anderson, Paul Culliford or Tom Wright.

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*This article was prepared with assistance from BCLP trainee solicitor Sanjay Lohano*

## **RELATED PRACTICE AREAS**

- Antitrust

## MEET THE TEAM



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