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Court Judgment Reveals the Extent of European Commission Market Surveillance via Earnings Calls:

Key Takeaways from *Michelin v Commission* (T-188/24)

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The General Court's 9 July 2025 judgment in a case concerning the strength of evidence required to justify an unannounced inspection (or "dawn raid") by the European Commission (Commission) has offered an insight into the Commission's market surveillance techniques, including its screening of "hundreds of thousands" of earnings calls to identify potentially anticompetitive conduct.

The judgment endorses the Commission's use of large-scale data analysis to uncover evidence of price signalling and other illegal conduct in companies' public statements, and highlights the antitrust risks associated with earnings calls and other capital markets communications.

Background: The *Michelin* Appeal

The case in question concerned Michelin's attempt to overturn the Commission's decision to approve a dawn raid of the company's premises in 2024. The Commission was investigating suspicions that Michelin and other tyre companies may have coordinated their pricing strategies in relation to new replacement tyres, including through the intentional use of public communications to inform each other of their respective future pricing intentions and strategies (i.e., price signalling). Having submitted to the inspection, Michelin applied to the General Court to have the decision approving the dawn raid annulled on the grounds that the Commission's reasoning was too brief, generic and imprecise, and that the Commission lacked sufficiently serious indications to suspect that an infringement had taken place to justify a dawn raid.

The court upheld the Commission's decision insofar as it related to a period in which the Commission's suspicions were supported by adequate evidence but annulled the part of the decision that related to an earlier period for which the Commission lacked contemporaneous evidence of a suspected infringement. In particular, the court held that subsequent statements that referred to earlier events did not constitute sufficient evidence of wrongdoing during the prior period.

Since the case only concerned the legitimacy of the Commission's dawn raid decision, the court did not opine on the substantive issue of whether the public statements made by Michelin and others amounted to anticompetitive price signalling. That question remains the subject of the Commission's ongoing investigation, which must determine whether the evidence it has uncovered is sufficient to prove an infringement of competition law.

The Commission's Market Surveillance

The judgment is especially noteworthy for shedding light for the first time on the extent to which the Commission proactively monitors markets and searches for evidence of anticompetitive conduct, as well as the tools it uses to do so. Indeed, it reveals that the dawn raids and subsequent investigation into the tyre sector – involving not only Michelin but five other companies – were based on evidence from routine market surveillance rather than a customer complaint or any other indication of wrongdoing.

In order to demonstrate to the court that, when it approved the Michelin dawn raid, the Commission had sufficiently serious indications to support its suspicions and justify the inspection, the Commission described how it had established a market monitoring tool "in order to analyse several hundred thousand earnings calls in various sectors and geographical areas", with the aim of uncovering anticompetitive coordination through public channels. The Commission compiled a database of earnings calls obtained from a financial data provider and analysed it using key search terms – specifically, a first category of nearly 100 two-word terms related to strategic business decisions (e.g., "price discipline") and a second category of more than 400 two-word terms related to how competitors were behaving or would behave in the future (e.g., "industry following").

The results of the Commission's quantitative analysis revealed that while around half of all the earnings calls it analysed did not contain any of the two-word search terms, the earnings calls of the main tyre manufacturers yielded a significant number of hits. The Commission then carried out a qualitative analysis, i.e., it reviewed the tyre companies' earnings calls "manually", to understand the context in which the responsive terms were used. It was this qualitative analysis that, in the Commission's view, provided sufficient indications of potential price signalling and collusion to justify dawn raids. The General Court affirmed the Commission's right to rely on such indications in its judgment.

Implications for Earnings Calls and Other Public Statements

The court's ruling highlights that investor communications, such as earnings calls, analyst briefings and shareholder updates, give rise to competition law risks. Specifically, to the extent that a company's future-looking statements might reduce uncertainty about its strategy or invite coordinated responses from competitors, this could amount to price signalling or other unlawful behaviour.

This is the case irrespective of whether the company in question is obliged to make public statements by financial disclosure laws or other compliance requirements, or if it does so in response to questions from analysts. Indeed, in Michelin's case, all of the "suspicious" statements that the Commission had cited to had been made during the question-and-answer session of its earnings calls – hence, Michelin argued, it was obliged to respond and the way it did so could not be used as evidence of attempted collusion. The court dismissed this argument and endorsed the Commission's right to consider that "neither the need to answer analysts' questions nor any legal obligation of financial transparency" were a defence against allegations of price signalling.

Key Takeaways for Businesses

The judgment in *Michelin v Commission* is a strong reminder that antitrust risks are not confined to the boardroom or to illicit communications between competitors, and that making a statement in public does not make it "safe" in competition terms. Given the increased focus of European competition authorities on public statements, businesses should train their investor relations and communications teams, executives and anyone that makes such statements on their potential risks. Particular attention should be paid to avoiding language that could imply strategic alignment or signalling to competitors, which should be replaced with antitrust-sensitive phrasing.

The judgment also highlights the evolution of antitrust enforcement, including the use of mass data screening and sophisticated techniques that allow vast quantities of information to be analysed quickly. This modernisation of competition authorities' toolkits enables them to apply increasing scrutiny across industries and sectors despite rising pressure on their resources. Businesses should ensure that their compliance programs keep pace with this evolution and are fit for purpose in an environment where the risk of inadvertent lapses being detected, investigated and potentially punished continues to grow.

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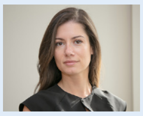

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