

Post-Illumina/Grail: General Court Clarifies Article 22's Reach and Timing

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In a recent judgment, the General Court of the European Union (the “GC”) upheld the European Commission’s broad discretion in accepting referral requests from national competition authorities (“NCAs”) to review transactions. The judgment provides helpful guidance on certain questions that were left unanswered by the Court of Justice of the European Union (the “CJEU”) after it rendered the Commission’s policy for policing below-threshold mergers unlawful last September in its ruling on Illumina/Grail.

The GC’s judgment of 2 July 2025 concerns Brasserie Nationale’s acquisition of Boissons Heintz following a referral to the Commission by Luxembourg’s Competition Authority (the “LCA”) under Article 22 of the EU Merger Regulation (the “EUMR”).

The GC confirmed that Article 22 EUMR remains available to Member States without national merger control regimes (Luxembourg currently being the only Member State without its own merger control regime), provided the referral is based on sufficient information and made within the prescribed 15-working-day period. Importantly, the GC clarified that this deadline is triggered not by mere awareness of the deal (e.g., from a press release or even by the parties informing the authority) but by the transmission of information adequate to allow a preliminary competitive assessment.

This judgment reinforces the Commission’s ability to scrutinize transactions referred by Member States, provided procedural requirements are satisfied. It provides important clarification regarding the procedural obligations for both notifying parties and NCAs, highlighting the need for comprehensive and accurate information to trigger referral deadlines. It also forms part of what is fast becoming a wider body of caselaw. Further guidance is expected later this year from Nvidia’s challenge of the Commission’s decision to review its acquisition of Israeli start-up Run:ai.

Article 22 EUMR: A Shifting Tool in Merger Control

Article 22 permits one or more Member States to request the Commission's review of a concentration that falls below EU thresholds where it affects trade between Member States and threatens to significantly affect competition within the referring state(s). Originally conceived for jurisdictions lacking merger control regimes, Article 22 saw limited use until 2020, when the Commission encouraged referrals of competitively significant transactions—even from Member States that had their own merger control regime in place but lacked jurisdiction over the specific transaction. This policy shift was motivated by growing concerns about “killer acquisitions”, especially in innovation-led sectors, where targets may not generate significant turnover but nonetheless possess considerable strategic value.

However, the Commission's expansive approach was curtailed by the CJEU in *Illumina/Grail*, where the CJEU held that the Commission lacked jurisdiction to review transactions referred by Member States without national competence under their national merger control regime. The judgment reasserted the importance of legal certainty, annulling the Commission's prohibition decision and invalidating its broad reinterpretation of Article 22 (see our Client Update on the CJEU's *Illumina/Grail* decision [here](#)).

Brasserie Nationale Case: Procedural Clarity from the General Court

Key Facts

- **22 December 2023 and 10 January 2024:** Brasserie Nationale (a Luxembourg-based producer of beer and mineral water) notified the LCA of its acquisition of Boissons Heintz via its subsidiary, Munhowen. Munhowen is a wholesale beverage distributor operating in Luxembourg, France and Belgium, while Boissons Heintz is also a Luxembourg-based wholesale distributor of beverages.
- The transaction did not meet the EU or any national notification thresholds, so it was not notifiable to the European Commission, Luxembourg (which lacks a merger control regime) or any other EU or EEA Member State.
- **7 February 2024:** The LCA referred the transaction to the Commission under Article 22 EUMR following a complaint from a third party, citing concerns that the merger could restrict access to the Luxembourg market for foreign beverage suppliers.
- **14 March 2024:** The Commission accepted the referral.

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- Brasserie Nationale and Munhowen challenged the referral before the GC, arguing it was submitted out of time and did not meet the 15-working-day deadline from when the transaction was allegedly “made known” to Luxembourg, i.e., on 10 January 2025. Moreover, they contended that the transaction would not affect trade between Member States and Luxembourg.

The Findings of the General Court

- **Trigger for the 15-Day Deadline:** The GC clarified that a concentration is “made known” only when the relevant Member State authority receives sufficient and specific information to assess its competitive impact. Mere awareness of the deal’s existence is not enough.
- **Standard of Information:** The 15-working-day deadline for an Article 22 referral is triggered only by the active transmission of information from the merging parties, third parties or any other source sufficient to allow the relevant authority to conduct a preliminary assessment of the transaction’s potential impact on trade between Member States and competition within its territory. NCAs are not required to seek out such information themselves and may remain passive recipients.
- **The Commission’s Discretion:** The GC confirmed that the Commission had the discretion to accept the referral request and acted appropriately in doing so. The GC emphasized that Article 22 allows Member States without national merger control regimes—Luxembourg being the only remaining Member State—to request Commission review of transactions that may adversely impact competition within their territory and affect trade between Member States.
- **Application to This Case:** The GC found that information provided by Brasserie Nationale in December 2023 and January 2024 was insufficient to trigger the referral deadline. The 15-day clock began only on 17 January 2024, when more comprehensive information was submitted by third parties. The GC rejected Brasserie Nationale’s argument that this interpretation effectively creates a notification obligation, noting that there is no penalty for not supplying the information and that a simple, concise communication containing the necessary details—such as the parties involved, relevant markets, and potential competitive effects—would suffice. The GC found that the Commission properly exercised its discretion, for the merger threatened intra-EU trade by hindering access for foreign beer producers to the wholesale distribution market in Luxembourg.

Implications for Businesses

The legal landscape for cross-border transactions remains fluid. Legislative reform of the EUMR—such as introducing alternative jurisdictional thresholds—remains a complex and politically sensitive issue requiring Member State unanimity. In the meantime, merging parties must navigate an evolving enforcement landscape and ensure timely, strategic engagement with national and EU authorities.

The GC's decision provides welcome procedural clarity on Article 22 referrals, but it also places significant burden on the parties involved in the transaction:

- **Referral Deadline Management:** Where an Article 22 referral may be relevant, the onus for starting the 15-working-day review clock largely lies with the merging parties themselves. Those seeking procedural certainty should consider proactively providing sufficient information to the relevant NCAs to enable them to make a preliminary assessment as to whether the transaction affects trade between Member States and threatens to significantly affect competition within its territory.
- **No Active Duty for Authorities:** The judgment makes clear that NCAs are under no obligation to actively seek out information about transactions. Instead, they may remain passive recipients of information, with no requirement to monitor or investigate deals that might otherwise escape their attention.

In summary, while the GC's ruling clarifies the procedural framework for Article 22 referrals, it also underscores the importance for parties to the transaction to take a proactive approach in managing referral deadlines and ensuring that the relevant authorities are adequately informed.

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Please do not hesitate to contact us with any questions.



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