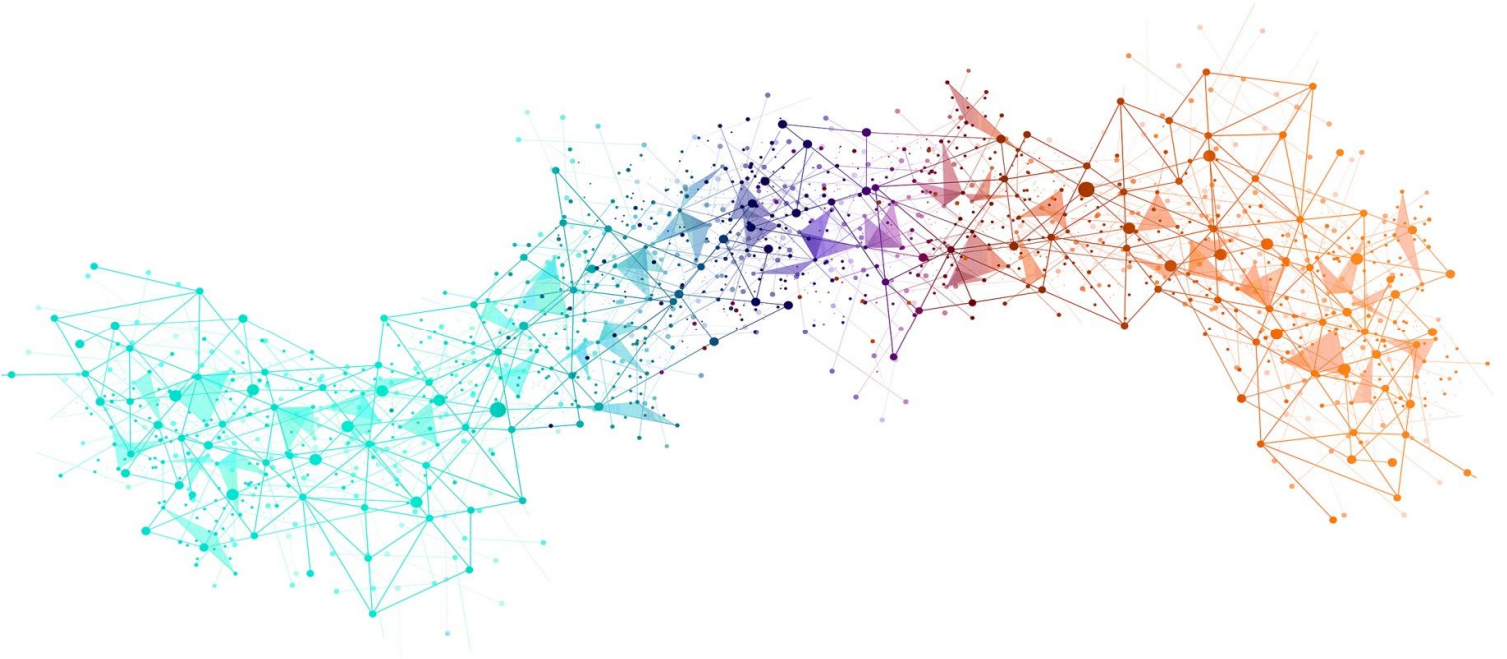


# ALLEN & OVERY

---

EU ANTITRUST | SEPTEMBER 2019

---



## *Margrethe Vestager : Five more years as Competition Commissioner, with a focus on “Digital Age”*

---

Normally the European Commission’s Competition portfolio alternates between a Commissioner from a large Member State and a small Member State. Thus it had been widely assumed that the Competition portfolio in the new Commission would go to Sylvie Goulard from France or Paolo Gentiloni from Italy, since the Presidency was occupied by a German (President-elect Ursula von der Leyen) and Spain’s Josep Borrell had secured the external relations position. The decision to reappoint Denmark’s Margrethe Vestager as Competition Commissioner breaks this precedent.

It is also the first time that the Competition Commissioner has been reappointed for a second mandate. However, Mrs Vestager has also been appointed as one of three Executive Vice-Presidents, with a brief to co-ordinate the Commission’s whole digital agenda. In fact the title more prominently used in the customary mission letter is “Executive Vice-President for a Europe fit for the Digital Age.”

This will avoid what might have otherwise been a turf war between a separate Competition Commissioner and a Commissioner for the Digital Economy.

Mrs Vestager will enter her second mandate as Competition Commissioner at an interesting time. She will continue to face numerous challenges in plotting the course of EU competition policy and enforcement. First there is the growing trade war across the world. President Juncker had already managed to get legislation adopted towards

the end of his mandate that will put a foreign investment screening regime in place as soon as 2020. This will mean that any merger that might endanger the ownership of critical infrastructure will have to be vetted by the Commission. The Commission will issue an opinion if the Member State concerned does not already have in place a trade defence mechanism. This will only be advisory, but experience shows that in most cases advisory measures soon become mandatory in competition policy.

Commissioner Vestager has shown boldness in her treatment of mergers, which coincided with a growing debate about the need to relaunch a strong European industrial policy. That debate came to a head in the Siemens / Alstom case. This prompted a call by France, Germany and Poland for a rethink of merger procedure, with the possible introduction of a public interest procedure, and some even calling for the Council or a new outside body controlled by the Member States to get involved in the process of whether or not to block a merger on purely competition grounds.

Together with this demand for a major rethink of EU merger control there is a wide and intense debate going on about the role of antitrust in the EU. Should it focus on the maximisation of consumer welfare or include other goals?

The consumer was not always at the centre of the most important antitrust decisions in the recent past. The Google decisions highlight how the Commission has shifted towards a perceived need to protect budding rivals and make sure that across the EU start-ups are given a chance to compete against the likes of Apple, Facebook, Google and Amazon. Indeed, Mrs Vestager has already suggested that there should be new competition rules and procedures to tackle the digital economy. With her strong position as Executive Vice President in charge of the “Digital Age” as well as continuing as Competition Commissioner Mrs Vestager will be likely to press for adopting these new rules.

Mrs Vestager will now have a basic choice to stick to traditional enforcement using the established competition tool box or to espouse a new wave of reform. Nor must it be forgotten that there will also be a new Director General for DG Comp to be announced in the coming weeks.

Demanding topics that will need to be tackled by Mrs Vestager are numerous and pressing: subjects ranging from a review of vertical restraints policy, changing the scope of block exemptions on motor vehicles, to reviewing the Payment System Directives.

There will also be the need to take account of climate change issues given the importance accorded to this in the new Commission under the strong guidance of Executive-Vice President Timmermans. Mrs Vestager will also need to interact closely with the other Executive Vice-President Valdis Dombrovskus who has overall responsibility for financial services and co-ordination of an “economy that works for the people”, which presumably means consumers.

In the President’s mission letter to Mrs Vestager dated 10th September, a number of priorities are stressed. As far as the digital sector is concerned, these include:

- working on a new long-term strategy for Europe’s industrial future;
- ensuring good cross-fertilisation between civil, defence and space industries;
- co-ordinating work on a European approach to AI (within the first 100 days).

As regards Mrs Vestager's Competition mandate, the priorities set by the mission letter are fairly anodyne and generic. They include:

- strengthening competition enforcement in all sectors;
- evaluating and reviewing Europe's competition rules;
- working with Member States to ensure making the most of Important Projects of Common European Interest;
- developing tools and policies to better tackle the distortive effects of foreign state ownership and subsidies in the internal market;
- proactively sharing any relevant general market knowledge within the Commission, notably in the digital sector.

Interestingly, Commissioner Vestager is specifically invited to use the tool of sector inquiries into new and emerging markets in the first part of her mandate.

It remains to be seen whether the industrial policy objectives lead to an inherent conflict with competition enforcement in Mrs Vestager's new combined role.

Mrs Vestager will need to be re-confirmed in hearings before the European Parliament.

She can expect close questioning especially on the merger control issues raised by the Siemens / Alstom prohibition and on her proposal to introduce new rules and procedures to tackle the digital economy. However, she has wide political backing in the Parliament and with her established track record and previous experience coupled with her enhanced status as Executive Vice-President, Mrs Vestager will be a powerful force in the new Commission and on the international stage.

***Michael Reynolds***



## ABOUT MICHAEL



Michael Reynolds

Of Counsel

Tel +32 2 780 29 50

[michael.reynolds@allenovery.com](mailto:michael.reynolds@allenovery.com)

Michael is a well-known name in the global legal profession and the world of competition law. A founding member of our antitrust team, he set up our Brussels office in 1979 and is an important figure in the international antitrust community. He has worked for a wide range of high-profile European, Asian, U.S. and Latin American clients.

Michael has been a key figure in the International Bar Association (**IBA**) since 1979 and was President of the IBA for the term 2013-2014. Prior to becoming President, he held a number of senior positions, including that of Chair of the IBA's Antitrust and Trade Law Committee, and is now an Advisory Board member of that committee.

