Game Over?

Ignoring Antitrust Is a Costly Mistake

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While digital ex ante regulation, such as the DMA, is all the rage lately, traditional cartel and abuse of dominance enforcement in the video games industry is more alive than ever with eye-watering fines for offenders, or remedies aiming to improve market conditions for studios and publishers. For developers, publishers, hardware manufacturers, platform operators, and any other business active in the video games industry, cartel and abuse of dominance prohibitions are not abstract legal theory. They directly shape how games are developed, published, distributed and monetised across the EU. Getting it wrong can mean serious trouble with competition authorities. This briefing zooms in on antitrust basics and their significance for gaming companies active in Europe.

Back to the roots, pt. I: cartels

Agreements and concerted practices between companies that restrict competition, such as price-fixing, market sharing or restricting cross-border sales, are illegal and subject to substantial fines – in some jurisdictions outside the EU even criminal sanctions. Any assessment typically begins with identifying the markets, on which companies actually compete (or don't compete). In the gaming sector, this can include distinct markets for (i) video game development and publishing, (ii) video game distribution, (iii) markets for PC games, console games and mobile games, and even (iv) gaming hardware (see our briefing on gaming mergers). What plays into the complexity of the competitive landscape is that many businesses operate simultaneously as developers, publishers and distributors, and may even have an entire gaming ecosystem (e.g. Microsoft with Windows, Azure and the Xbox catalogue).

In practice, gaming companies must be vigilant regarding several high-risk areas:

- No-poach: Agreements between companies not to hire each other's developers can be a serious infringement, as it restricts competition for talent, especially in a talent-driven industry such as gaming.

- R&D cooperation, such as joint development of game engines, AI tools or emerging technologies (e.g. cloud gaming infrastructure), is generally allowed but must adhere to certain basic rules where competitors cooperate and must, in any event, be carefully structured to avoid spillovers into unlawful coordination.

- **Information exchange** among competitors can constitute an infringement even absent a formal agreement: Discussing pricing strategies, release timing, or user data must be avoided by all means. Note that anticompetitive information exchange is a particular risk at industry network events, or trade fairs, such as the 'Gamescom'. Even a casual discussion in an informal setting can result in an antitrust infringement if it concerns sensitive commercial information!

- Please note that not only coordination among competing publishers or platforms on prices, territories, or output is risky. You must also avoid certain arrangements between players on different levels of the value chain, e.g. when setting up distribution models. Resale price maintenance, for example, is a hard-core antitrust infringement: Prices charged by the distributor must not be dictated by the publisher or developer. 'Geo-blocking' is also prohibited. A landmark illustration of an antitrust infringement in the gaming sector is Valve's geo-blocking practice on its popular platform 'Steam'. In 2021, the European Commission (*Commission*) fined Valve and five game publishers (Bandai Namco, Capcom, Focus Home, Koch Media and ZeniMax) a total of EUR 7.8 million for restricting cross-border sales of certain PC video games on Steam on the basis of the geographical location of users within the EEA. The Commission's decision was upheld by the EU General Court in 2023, confirming that this practice constituted a restriction of competition. An appeal before the Court of Justice is pending. This case reinforces the need for robust antitrust compliance when structuring distribution agreements and platform rules. Companies should regularly review their commercial arrangements in order to ensure that they are compliant.

Back to the roots, pt. II: abuse of dominance

Unilateral conduct by dominant firms that distorts competition, such as imposing unfair pricing or exclusionary practices, is the second main focus. In the gaming sphere, major platforms or console manufacturers (e.g. Sony, Apple, Google, Microsoft) may face scrutiny where they impose restrictive terms on developers or leverage their strong market position to foreclose competitors. Notably, dominance is not anti-competitive per se. An abuse only occurs if dominance is leveraged in a way that makes life difficult for the rest of the market.

So far, the gaming sector has not seen any decisions by the Commission or the German FCO under abuse of dominance laws. The lack of enforcement reflects the difficulty of establishing dominance in this dynamic and fast-moving industry in the first place. At this stage, studios and developers would likely benefit from abuse of dominance enforcement aimed at major platform operators or large console manufacturers, rather than become the target of such investigations. This dynamic is already visible in other countries: Last year, the French Autorité de la Concurrence fined Sony over EUR 13 million for abusing its dominance in the supply of PlayStation 4-compatible controllers. The authority found that Sony had infringed competition law by (1) implementing technical measures that affected the proper functioning of third-party controllers, and (2) implementing an opaque licensing policy, which prevented rival controller manufacturers from obtaining access to the OLP partnership programme and hence from obtaining an official licence to carry PS4-compatible controllers. This decision illustrates that competition authorities are increasingly willing to scrutinise neighbouring markets, such as those for gaming accessories, rather than focusing solely on primary hard- and software markets.

In 2020, Epic Games sought injunctive relief against both Apple and Google in the U.S. for restrictions they had placed on app developers regarding in-app payment methods and app distribution. In essence, both Apple and Google required app developers to use Apple's/Google's own payment processing services for in-app transactions, respectively, in addition to charging the developers a 30% fee. Furthermore, Google prohibited third-party app stores to be distributed through the 'Play Store' (Google), thereby restricting app distribution to its own app store. In the Apple case, while the final ruling largely sided with Apple, the courts granted and upheld the injunction that ultimately allows app developers to steer users to non-Apple payment methods. In order to address the injunction, Apple allowed developers to steer to alternative payment methods but charged a 27% commission on developers for purchases made on third-party payment systems. The court was not happy with these measures and found Apple to be in contempt of court. Apple appealed and maintained that it would have only been in contempt if specific court orders were circumvented, not the general tenor of a decision. The U.S. Supreme Court will hear Apple's appeal later this year. In the Google case, the jury first ruled in favour of Epic Games, then the appellate court granted an injunction before the parties ultimately settled. Most recently, in July 2026, the settlement was withdrawn and Google has begun distributing third-party app stores through its Play Store. These cases reflect the broader global trend of increased scrutiny of big tech platforms. This is even more true against the background that U.S. courts have generally taken a very narrow approach to regulating big tech power and do not usually grant sweeping or structural remedies that extend beyond addressing very specific anticompetitive conduct. It is therefore no coincidence that Epic Games was a vocal advocate for the adoption of rigorous enforcement of the DMA in the EU.

In practice, this means that major platform operators, console manufacturers or, indeed, any other company that may hold or is getting close to holding a dominant position needs to scrutinise its access and licensing policies for elements of self-preferencing or otherwise disadvantaging game studios. The key message here is that market power in gaming is not static and can be reached very quickly. Holding a dominant position carries proactive responsibilities, not only under the DMA (see our briefing on the impact of the DMA on the gaming sector) but also under general antitrust laws. For studios, publishers and other smaller players affected by the conduct of large players, increased appetite for curbing the adverse effects of market dominance can be welcome developments.

Game on?

In the gaming context, the war against cartels and abuse of dominance seems to be just getting started. Competition authorities around the globe, particularly the Commission and the German FCO, are ramping up and impose multi-million-euro fines under the respective legal frameworks. Their enforcement efforts tend to pay particularly close attention to multi-layered gaming ecosystems, app store owners, game distribution platforms, but also providers of technical services and follow-on markets. As the line between legitimate conduct and anticompetitive behaviour can be nuanced, European gaming companies are advised to monitor legal developments closely and seek legal advice where necessary.

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BLOMSTEIN will closely monitor further developments and keep you informed. If you have any questions on antitrust enforcement in the European gaming industry, Leonard von Rummel, Anna Blume Huttenlauch, Philipp Trube and the entire team are ready to assist you.

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