

The Competition Law Risks of Public Statements: Lessons from the Michelin Judgment

One of the most significant rulings of the summer from the Court of Justice of the European Union (CJEU) was the Michelin case, which marks the beginning of a new era in the enforcement of EU competition law. The Court confirmed that public investor communications do not enjoy any special protection but may themselves carry competition law risks. This means that when preparing public communications, companies must address both capital markets and competition law concerns together.

From secret meetings to public statements

Traditionally, competition law enforcement has focused on secret meetings and confidential exchanges of information. The Michelin case, however, made clear that authorities will now also scrutinize public statements, insofar as they can reduce market uncertainty and facilitate alignment among competitors. This is not an entirely new direction: the Commission had previously taken a similar approach in the container shipping sector, when it examined advance announcements of price increases that could be flexibly adjusted. The same lesson applies today: the difference between legitimate investor disclosure and a coded message to competitors often lies in timing and flexibility.

A glimpse into the Commission's new tools

The judgment is particularly notable for the insight it provides into the Commission's increasingly sophisticated investigative methods. The authority reviewed hundreds of thousands of earnings call transcripts and investor presentations using algorithmic tools, searching for hundreds of keyword pairs that might point to future strategic decisions or competitor-related remarks. The filtered material was then assessed manually, with particular attention to language hinting at future pricing intentions. Tire manufacturers were singled out because such patterns appeared unusually frequently in their communications.

What the Court decided

The Court did not yet rule on whether Michelin had actually breached competition law. Instead, it considered whether the Commission's dawn raid was lawful. The Court partially sided with the company, noting that the Commission had failed to substantiate its suspicions for all the periods under investigation. At the same time, it held that public investor communications alone may justify suspicion and validate the ordering of an inspection. The key takeaway: compliance with disclosure obligations does not exempt a company from competition law scrutiny.

Practical implications

In practice, this means that public communications must be prepared with both securities law and competition law risks in mind. Senior management and investor relations teams need to exercise particular caution when making statements about future strategies, pricing intentions, or market focus. Even an apparently harmless remark can be misconstrued if competitors can use it to adjust their own

conduct. The greatest risks may not come from carefully drafted presentations but from spontaneous answers to analyst and investor questions, where unplanned comments can easily slip out.

Two clear lessons for companies

The judgment delivers two important messages for businesses:

1. The Commission now has the tools, including data-driven methods and AI-based analysis, to systematically monitor market communications.
2. The requirement of public disclosure does not shield companies from competition law liability: every statement counts, and every public remark must also be vetted from a competition law perspective.

This demands a new level of discipline and a fresh approach to risk management across all forms of corporate public communication.