



The Dual Nature of Interim Measures in European Antitrust Enforcement: Administrative Implementation and Judicial Oversight

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ABSTRACT

The European legislature established interim measures as a crucial protective mechanism to avert the impending harm. These measures are applied by various institutions, including European courts and the European executive authority, highlighting their critical role in addressing diverse conflicts, particularly the violation of competition regulations. Antitrust activities constitute a delicate domain where dangers threaten both the common market (public interest) and competitors (private interests). Consequently, offering this tool will prevent further deterioration of injuries.

Nonetheless, despite their reputation, interim measures are challenging to obtain, rendering it nearly impossible to benefit from their advantages, prompting scrutiny of the legal frameworks upon which their efficacy relies.

This article seeks to elucidate the applications of interim measures in accordance with pertinent European legislation and clarify the context that has resulted in their infrequency in competition disputes, emphasizing their legal nature as a vital element in their effectiveness in preventing or deterring violations of competition rules.

INTRODUCTION

The concept of interim measures was initially introduced into the European legal framework in 1980 by the European Court of Justice (ECJ) through the judgment of *Camera Care*. In this context, interim measures were characterised as “indispensable for the effective exercise of the European Commission’s functions and, in particular, for ensuring the effectiveness of any decisions requiring undertakings to cease identified infringements”.¹ The field of competition law appears to be the first to address the application of interim measures, as the primary issue involved the invocation of Article 3 of Regulation No. 17 of 1962. This regulation was the first to enforce Articles 85 and 86 (now Articles 101 and 102) of the TFEU concerning antitrust practices.²

In 1992, the ECJ further clarified the scope of interim measures in case N C-261/90, stating, “Provisional, including protective, measures are designed to maintain a factual or legal situation to safeguard rights whose recognition is sought from the court with jurisdiction over the substance of the matter”.³

The preceding definitions clearly demonstrate that the fundamental purpose of interim measures is to provide an appropriate remedy, thereby facilitating the execution of the final decision by the competent authority.

Despite their critical function in averting harm, interim measures in European antitrust enforcement are notoriously difficult to obtain and are infrequently applied, particularly by the European Commission. Concerns arise regarding the effectiveness of current legal frameworks in protecting undistorted competition and the adequate use and understanding of existing tools.

While existing scholarship often details the legal basis, there is a gap in comprehensively analysing practical implementation challenges and the divergent approaches of administrative bodies versus judicial oversight, especially in light of recent developments in the field.

This study aims to address the following question: How may interim measures serve as effective remedies in competition disputes?

This article contends that, despite their essential protective function, the existing legislative framework and actual implementation of interim measures by both the Commission and European courts are riddled with contradictions and obstacles, eventually undermining their efficacy. We assert that a major reassessment of the procedural and substantive criteria is essential to realise the complete potential of their dual nature in competition conflicts.

METHODOLOGY

This study employs a doctrinal legal research methodology, systematically analysing primary sources by interpreting relevant EU Regulations and Treaty articles both textually and contextually to uncover their legislative intent and evolution. It also examines judgments from the ECJ and General Court within a precedential framework, emphasising how interpretations have influenced the understanding and application of interim measures over time. Additionally, it critically reviews secondary sources to contextualise legal developments and identify prevailing scholarly debates concerning practical implementation challenges. Specific attention is paid to recent landmark cases, such as *Illumina/GRAIL* and *Broadcom*, and the implications of new legislative instruments like the Digital Market Act (DMA).

To identify patterns, challenges, and discrepancies, the study employs a comparative analytical framework, juxtaposing the administrative implementation of interim measures by the Commission with their judicial oversight by the European courts. This comparison will high-

1 Court of Justice. (1980). Case 792/79 R, *Camera Care Ltd v. Commission of the European Communities*, EU:C:1980:18. Luxembourg, p 129.

2 Burnside, A. J., Kidane, A. (2018). Interim measures: An overview of EU and national case law. *E-Competition Antitrust Case Laws e-Bulletin*. N 86718, p. 2. <<https://www.concurrences.com>>.

3 Chocron Giraldez, A. M. (2016). Interim measures and EU legislation. *E-Revista Internacional de la Protection Social*, 1(1), p. 137.

light divergences in application criteria (*prima facie*, urgency, proportionality). Furthermore, a critical legal lens will be applied to assess the efficacy and fairness of the current legal frameworks to uncover ambiguities.

Interim measures, by their very nature, are designed to provide rapid relief. This study will evaluate whether the current legal and practical frameworks truly facilitate swift intervention and achieve their protective objectives. To address this enquiry, this article is structured as follows: Section 1 delves into the implementation of interim measures by the Commission, focusing on their applications in merger control and antitrust enforcement. Section 2 shifts to the judicial implementation of interim measures, scrutinising the European Courts' role in enacting them.

1. THE ADMINISTRATIVE IMPLEMENTATION OF INTERIM MEASURES

The Commission, which serves as the executive authority for EU competition legislation, has jurisdiction to enforce these measures in two specific contexts. The first pertains to merger control, which is executed prior to the market entry of a new entity. The second context arises when competitors enter the market, introducing varying degrees of economic risk.

1.1 The use of interim measures in regulating mergers

The Commission is authorised to enact interim measures to protect the competitive environment from threats arising from a merger or acquisition project by invoking Article 8(5) of Regulation No. 139/2004,⁴ particularly concerning the risk of abuse of a dominant position, in accordance with Article 102 of the TFEU.

⁴ Regulation (EC) No 139/2004. (2004). On the control of concentrations between undertakings (merger control Regulation). OJEU L 024.

1.1.1 Achieving effective competition

Effective competition is a core objective of competition policy, as established in the European Economic Community Treaty (EEC).⁵ Although this purpose is attained by outlawing any restrictive practices that do not qualify as exemptions (Article 101 TFEU) or that distort market structure through the actions of abusive dominant enterprises (Article 102 TFEU), a satisfactory description of this notion is still lacking.

For instance, although the ECJ delineated effective competition in the *Metro-SB-Grossmarkte* case as the requisite level of competition to ensure adherence to fundamental principles and the attainment of treaty objectives,⁶ it remained ambiguous. Regarding the Commission, Veljanoski explicitly articulated that: "It's rare to find in EC antitrust texts, or in statements by the Commission, a clear expression of the nature of effective competition".⁷ Article 8 of Regulation 139/2004 explicitly articulates the concept of effective competition by delineating the objective of interim measures to maintain or restore it. The Commission has not yet provided further elaboration on this matter.

To further understand this concept, it is crucial to reference John Maurice Clark's theory of effective competition, which is described as a dynamic process that includes a sequence of subtle competitive actions and reactions that are constantly changing. This theory asserts that the short-term financial health of firms is paramount.⁸

Effective competition necessitates a specific market structure characterised by moderate concentration and a loose oligopoly, indicating the earlier existence of dominant enterprises. This structural focus helps explain why Article 8 of Regulation 139/2004, designed for merger control, explicitly articulates the concept of

⁵ Baskoy, T. (2005). *Effective Competition and EU Competition Law*. *Review of European and Russian Affairs*, 1(1), p. 2.

⁶ *Ibid.*, p. 4.

⁷ Veljanovski, C. (2004). *EC Merger policy after GE/Honeywell and Airtours*. *The Antitrust Bulletin*, 49(1-2), p. 179.

⁸ Baskoy, T., *op. Cit.*, pp. 7-8.

effective competition, unlike Article 8 of Regulation 1/2003, which addresses ongoing infringement.⁹

The Commission's objective in this case is to prevent these corporations from exploiting their dominant position through antitrust actions, such as unfair, exclusive, or predatory tactics. Consequently, the use of interim measures appears suitable, as they correspond with the fundamental nature of this notion.

1.1.2 *The reality of achieving effective competition in the Illumina/Grail case*

After several member states asked for a referral (notification), the Commission decided to start proceedings because it found that the acquisition raised "serious doubts" owing to the creation of vertical integration between two different supply chain companies. The merger in question is characterised as a "killer acquisition", typically involving a huge corporation acquiring a creative startup, which often has minimal or non-existent turnover, as is the case with GRAIL. This form is exempt from the merger control criteria established in Article 4 of Regulation 139/2004, complicating the identification of the appropriate body, whether the Commission or National Competition Authorities. This prompted the Commission to adopt an expansive interpretation of Article 22 to incorporate flexibility into the regulatory standards. Consequently, subjecting mergers below-thresholds within its jurisdiction.¹⁰

While the Commission was still conducting its investigation, Illumina publicly announced the finalisation of its acquisition of GRAIL, constituting a clear violation of the standstill obligation as stipulated in Article 7 of Regulation 139/2004. Over two months later, temporary steps were implemented in response to Illumina's "gun jumping" conduct. A year later, the

Commission enacted a second interim measure due to the issuance of an incompatible decision and failure to comply with the initial measures.

– Substance of applied interim measures

In both decisions, the Commission ensured that certain changes were implemented to prevent the formation of a new company, which helped keep Illumina separate from Grail, the primary goal they wanted to achieve. Additionally, it prepared Grail for a potential divestment to disrupt market dominance by introducing a new competitor, thus averting the risk of market power abuse by Illumina.¹¹

Furthermore, the commission implemented a behavioural remedy characterised by limitations on information exchange. Ezrachi believes that pursuing behavioural treatments is more adaptable, beneficial, and cost-effective than structural solutions for expanding markets, such as the European Union.¹² The resolution of the issue through an appropriate remedy relies on the Commission's discretionary authority, which is determined by the nature of the infringement. Despite elevated expenses and purchaser difficulties, structural remedies are considered the most effective temporary options in merger cases because they immediately tackle anticompetitive behaviour by altering the market structure to promote competition.

These commitments arose from prima facie, urgency, and proportionality considerations, despite Article 8(5) of Regulation No. 139/2004 not explicitly referencing them. This is due to the regulation's distinct structure, which necessitates a more comprehensive evidentiary presentation prior to decision-making, aimed at averting premature and potentially detrimental interventions in mergers that may ultimately be approved.¹³

9 Council Regulation (EC) No 1/2003. (2002). On the implementation of the rules on competition laid down in Article 81 and 82 of the Treaty, OJEU L 1/1.

10 Bagnoli, V., Faraone, M. F. N. (2025). Illumina/Grail: the "new normal" of killer acquisition and below-threshold acquisitions in search of reconsideration. *Market and competition law review*, 9(2), pp. 117, 121.

11 Decision C (2024) 6433 final. (6 September 2024), Withdrawal decision Regulation (EC) 139/2004, pp. 2-4.

12 Ezrachi, A. (2006). Under and over-prescribing of behavioural remedies. Centre for Competition Law and Policy, University of Oxford. Working paper No. L 13/15, p. 4, 5. <<https://doi.org/10.2139/ssrn.913773>>.

13 Mergers Overview. Competition. European Union.

Nonetheless, accomplishing this is challenging when temporary measures necessitate a swift response, which may mislead the Commission.

– **Legal ambiguities inherent in the implemented interim measures**

Notwithstanding the Commission's efforts to ensure effective competition throughout the transaction, the protracted nature of the Illumina/GRAIL proceedings, culminating in identical obligations across multiple decisions, raises serious questions regarding the timeliness and effectiveness of the Commission's interim measures. This protracted process deviates significantly from the ideal of swift, decisive intervention aimed at preventing irreversible harm, suggesting that the measures functioned more as an extended market test rather than a rapid protective mechanism.

First, the interim measure decisions from October 2021 and 2022 display identical obligations, notably highlighting structural separation, financial discovery, autonomous management, and information restriction. This outcome indicates that either the transaction did not affect competition during the second instance (effective competition remains intact, so restoration is unnecessary) or that the Commission failed to recognise the alleged antitrust infringement because reinstating previously overlooked interim measures is irrational. This outcome is connected to the Commission's ambiguity regarding its findings, as making a timely decision could compromise the interests of the merger initiators, thereby elucidating Illumina's swift response. Schweitzer cautions that when the data is less extensive, we should approach temporary solutions with greater prudence.¹⁴

Illumina is confident that vertical integration with GRAIL will enhance efficiency by expediting the introduction of GRAIL's blood test within the European Economic Area (EEA). Fur-

thermore, there were no existing competitors to Grail in the downstream market, only potential ones that may or may not materialise in the future, attributable to the creation of the "Gallery" cancer screening test. Moreover, Illumina is not the sole provider of next-generation sequencing systems in the upstream market; other rivals offer analogous services that match Illumina's price and functionality, rendering the foreclosure action ineffective for the company.¹⁵

Second, the Commission's restorative measures. According to the press release dated April 12, 2024, the restorative measures will follow the interim measures, as explicitly stated: "As regards the transitional measures ... They will replace the interim measures adopted by the Commission on October 22, 2022, which are currently in effect". This affirms that "restoration" is not a temporary measure within merger control, which contradicts Article 8(5).

Lastly, the Commission was mistaken in accepting the referral. The Commission overstepped its power by interpreting Article 22 TFEU as a remedial mechanism because it lacked the jurisdiction to review below-threshold mergers. This misapplication of the law resulted in ineffective interim remedies because Illumina halted the unwinding of Grail in June 2024 after the Commission accepted its planned commitments in April 2024.¹⁶ Illumina invoked Article 9 of Regulation 1/2003 to modify the remedial measures to its advantage.

1.2 The use of interim measures in halting antitrust acts

When the enquiry demonstrates to the Commission the presence of anticompetitive practices, and the impact of these actions poses a

<https://competition-policy.ec.europa.eu>.

14 OECD. (2022). Interim measures in antitrust investigations. OECD Competition Policy Roundtable Background Note, p. 14. <https://oecd.org>.

15 Illumina/Grail. (2021). Briefing paper on the competition case and benefits of the transaction for EEA patients. Paras. 3.4, 4.3, pp. 4-6. <https://appliedantitrust.com>.

16 European Commission. (2024). Commission approves Illumina's plan to unwind its completed acquisition of Grail. Press-release, p. 1. <https://eu.europa.eu>.

genuine threat, the nature of the interim measures will shift to serve as a deterrent to further obstructing competition. However, such metrics are associated with the fulfilment of specific criteria that distinguish between a conventional and digital market, such as the following:

– The impact of the assessment factors on the efficacy of interim measures

Article 8 of Regulation 1/2003 explicitly stipulates that in cases of urgency, where there is a threat of significant and irreversible damage to competition during investigations, the Commission may impose interim remedies based on a *prima facie* determination of the infringement. Nonetheless, only anticompetitive activities that exhibit “serious doubts of infringement at first glance” and cause “serious and irreparable harm” to competition are subject to these proceedings. Moreover, it is widely acknowledged that the principle of proportionality significantly influences the permissible scope of interim measures in each instance to provide an equitable balance among the various interests involved. This arises from the potential confrontation with the undertakings’ rights, including property rights in the context of structural remedies and business rights in the context of behavioural remedies.¹⁷

These remarks are seen as a double-edged sword, as they provide extensive interpretation that may lead to adverse consequences, exemplified by the IMS Health case in 2001. The General Court’s ruling suspended the Commission’s temporary actions. Consequently, this resulted in the Commission’s inertia in implementing them.

Frinhas attributes the limited application of Article 8 of Regulation 1/2003 to the Commission’s decision to implement a retrenching policy, which facilitated the emergence and economic development of firms, particularly in the early 2000s, by refraining from ordering

interim measures due to concerns about potential errors,¹⁸ referring to the widespread understanding that interim measures are excluded if the case raises new or complex matters of law or fact.¹⁹

This apprehension clearly reflects the Commission’s challenges in addressing the legal framework of interim measures, rendering success nearly unattainable, particularly when complainants lack the right to request such measures. While this may alleviate some of the Commission’s burdens, it is not universally beneficial.

In its ruling on *Broadcom*, the Commission seemingly achieved its *prima facie* case but did not fulfil the urgency requirement. The commission determined, via a market test, that there was an abuse of dominance characterised by “exclusivity-inducing provisions” in the chipset market for TV set-top boxes and modems that raised “serious doubts”.²⁰

The Commission has acknowledged that the final decision will not rectify the irreversible damage, aside from eliminating competitors or marginalising others.²¹ The Commission’s delay in the *Broadcom* case, where it did not fulfil the urgency requirement, undermines the predictability and reliability of interim measures. If the very criterion of urgency, fundamental to the nature of interim relief, is inconsistently applied, it creates uncertainty for both complainants and undertakings, thereby diminishing the system’s overall effectiveness as a deterrent and protective tool.

Nevertheless, the Commission took four months to order *Broadcom* to fix its actions by agreeing to end the exclusivity clauses with the companies it worked with and avoid using such

17 Leandro Vasconcelos, R. (2021). The adoption of remedies under Regulation 1/2003: between success and coherence. *Market and competition law review*, 5(2), p. 158.

18 Farinhas, C. (2025). Interim measures in digital markets: interaction between the DMA and Regulation 1/2003. *Utrecht Law Review*, 21(2), p. 29. DOI:10.36633/ulr.1118.

19 Farinhas, C. (2023). Are interim measures under Regulation 1/2003 excluded in new or complex cases? *Journal of European Competition Law & Practice*, 14(8), p. 16.

20 Decision C (2019) 7406 final. (16 October 2019). Case AT.40608-Broadcom, p. 17.

21 *Ibid.*, p. 98.

unfair terms with them in the future.²² This time, the Commission implemented only behavioural remedies owing to the changeable character of interim measures, particularly when the purported anticompetitive behaviour arises from the contractual relationship between the enterprise and the economic entities,²³ as in the case of Broadcom.

The Commission's interim measures seek to avert the occurrence of exclusivity provisions in the future while also terminating them. Nonetheless, the success of the case was attributed not to the Commission's efforts but to proactive engagement in proposing alternative commitments. In response to interim remedies, Broadcom offered pledges to alleviate the Commission's concerns, concluding the probe after a full year, in July 2020.²⁴

The Broadcom case, where commitments were ultimately preferred, illustrates that shifting the application from Article 8 to Article 9 of Regulation 1/2003 is regarded as the optimal approach for the Commission, particularly in terms of resource allocation. However, this change could potentially harm interim measures, reducing their importance compared to other enforcement mechanisms. This may have motivated the European legislator to reassess these norms when incorporating them into the DMA.

– The relationship between Article 8 of Regulation 1/2003 and Article 24 of DMA

By extrapolating Article 24 of the DMA,²⁵ it indicates that it has the same legal structure as Article 8 of Regulation 1/2003 regarding the assessment process: prima facie findings and urgency. This is also related to the provisional, renewable, and reversible attributes of these

measures. Nonetheless, three deviations are present: the evaluation of pertinent elements, the aim of enacting these measures, and the legal tools used for their implementation.

The DMA assessment pack indicates that the EU legislator has rendered the evaluation of prima facie and urgency more adaptable for applications. Demonstrating a “prima facie infringement” of Articles 5, 6, and 7 of the DMA will be unproblematic, particularly when the obligations of the gatekeeper are explicitly articulated and defined, in contrast to Article 8 of Regulation 1/2003, which necessitates a comprehensive examination of competition cases through two articles (101 and 102 TFEU).²⁶ These obligations are meant to target specific gatekeepers or core platform providers, consequently diminishing the necessity for context-dependent individual evaluations.

Analogous to prima facie, demonstrating “serious and irreparable damage” is also unproblematic. The effect evaluation indicates that damage is significant when the gatekeeper is larger, a scenario readily observable as markets frequently move swiftly in favour of a singular gatekeeper that possesses a distinct advantage over its rivals. Consequently, gatekeepers are well-positioned to perpetrate anticompetitive actions.

The term “irreparable damage” denotes the adverse consequences anticipated in the future, while interim remedies serve to avert the purported violation of responsibilities aimed at halting damage that cannot be rectified by a final ruling. Specific signs of this disadvantage have been noted, especially concerning previous competition procedures in which the Commission implemented interim remedies such as market departures, marginalisation, consumer unhappiness, and a reputation for inefficiency.²⁷

Article 8 of Regulation 1/2003 offers direct competition protection, necessitating compliance with a broad and intricate criterion,

22 Ibid., p. 118.

23 OECD, *op. Cit.*, p. 24.

24 Summary of Commission decision. (2020). Relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union and Article 54 of the EEA Agreement, p. 03. OJEU C 81/9.

25 Regulation (EU). (2022). On contestable and fair markets in the digital sector. EU Parliament and the Council. OJEU L 265/1.

26 Commission staff working document. (2020). Impact assessment report, para. 13, p. 4.

27 Farinhas, C. Interim measures in digital markets, *op. Cit.*, p. 22.

whereas Article 24 of the DMA establishes interim measures to safeguard both enterprises and end-users, delineating a straightforward threshold. These two objectives are fundamental components of core platforms, as they constitute an effective framework for the success of the gatekeeper. Mistreatment of both parties indicates a shifting power imbalance favouring the gatekeeper.

The DMA recognised the Commission's unilateral authority in its implementation, although it did not inhibit the provision of assistance to the Commission, particularly as the DMA functions as a system of ex-ante regulation, in comparison to the Regulation 1/2003 system that depends on the ex-post regulation.²⁸ Consequently, it is important to recognise the implicit acknowledgement of the involvement of both businesses and end users in the effective execution of Article 24 by assisting the Commission through the provision of evidence or testimony, in contrast to Article 8 of the Regulation, which unequivocally affirms the Commission's ex officio authority.

The gatekeeper's duty encompasses various legal aspects, including anticompetitive practices, unfair competition, and consumer protection issues. Article 8 of Regulation 1/2003 explicitly pertains to anticompetitive behaviour. This discrepancy arises from the Regulation's adherence to Articles 101 and 102 TFEU, in contrast to the DMA, which seeks to govern the digital market across all aspects, including preventing violations of Articles 101 and 102 TFEU.

Multiple claims pertain to the practical execution of the system within the digital market context, which is crucial because the DMA's function is limited to ex-ante regulation, while ex-post regulation falls under Regulation 1/2003.²⁹ However, the extent to which the for-

mulation of Article 8 addresses the alteration of anticompetitive conduct in the market remains ambiguous.

A crucial aspect is that the Commission might mandate temporary measures through an implementing act that must be adopted following advisory procedures.³⁰ The transition from a decision to an implementing act is significant as it signifies a modification of the Commission's unilateral power to impose interim measures.

The Commission typically enacts such measures to ensure the consistent application of EU legislation in all member states. Unlike decisions that demonstrate the Commission's discretionary authority, the implementing act entails a cooperative procedure between the Commission and the Committee, known in this context as the "Digital Market Committee".³¹

This advisory approach entails initiating discussions on prospective provisional actions within the Committee by providing opinions without delineating a specific methodology. However, the article did not clarify if this opinion was obligatory for the Commission, although the phrase "taking utmost account of the conclusions...and of the opinion delivered",³² demonstrates that this was not the situation. Nonetheless, this collaboration negates the "initiative" aspect present in Article 8 by rendering interim measures a collective endeavour.

The Commission has not yet enforced these remedies against gatekeepers. The Commission continues to favour pursuing promises to address competition disputes despite efforts to enhance the reliability of interim measures in the digital market. In its case against Google, the Commission determined that the corporation exploited its dominance in the AdTech industry and chose to pursue commitments rather than

28 Skara, G., Muçollari, O., Hijdini, B. (2024). Adopting the competition policy for the digital age: Assessing the EU's approach. *Laws*, 13(5), p. 13.

29 Farinhas, C. (2025). The Commission's evaluation of Regulation 1/2003 and Regulation 773/2004: implication for interim measures proceedings in competition law. *European Competition Journal*, p. 5. <<https://doi.org/10.1080/17441056.2025.2499331>>.

30 Regulation on contestable and fair markets in the digital sector, op. Cit, Art. 50.

31 Ibid, Art 50(1).

32 Regulation No 182/2011. (2011). Laying down the rules and general principles concerning mechanisms for control by Members States of the Commission's exercise of implementing powers. EU Parliament and Council. OJEU L 55/13, Art. 4(2).

implement interim measures.³³ This suggests the Commission's reluctance to act to prevent prolonging the procedures unnecessarily.

2. THE JUDICIAL OVERSIGHT THROUGH INTERIM RELIEFS

According to Article 279 TFEU, the European Courts possess the authority to mandate interim measures in any matter presented to them if deemed necessary. Despite the absence of a definition of those provisions, it is plain that they maintain their urgent character, as shown by the phrase Necessary interim measures. In nature, interim measures are purely procedural centralised orders, issued by the presiding judge of the pertinent court. The procedural rights of the parties are elucidated, and equitable procedures are guaranteed, rather than assigning substantive rights and obligations, as it embodies strategic methods for conflict resolution.³⁴ The scope of the problems addressed by these methods is extensive, including competition disputes. Nonetheless, the judicial power of the European Courts subsequently affects the execution of these proceedings from the judge's viewpoint, which is clarified as follows:

2.1 Criteria for suspending the contested act

In accordance with Article 160(1) of the Rules of Procedure of the Court of Justice³⁵ and Article 156(1) of the Rules of Procedure of the General Court,³⁶ an application for interim measures

to suspend the contested act must pertain to ancillary litigation to be accepted, which means that actions for annulment and appeals are the main actions that resolve disputes on their merits. Accordingly, the necessity of interim measures becomes apparent when the appellant's interests are jeopardised by the ongoing consequences of disputed acts.³⁷

European courts use the same assessment criteria as the Commission. The sole distinction is that the appellant is responsible for invoking them by demonstrating a prima facie case, urgency, and proportionality of the disputed EU action.

Farinhas asserts that a prima facie cause for judicial interim relief is formed when the circumstances present enquiries that existing case law does not definitively address, or when the applicant's arguments introduce "serious doubts" regarding legal theories affirmed in prior judgements.³⁸ An illustration of the latter is the IMS Health case, which exemplifies the interplay between competition law and intellectual property rights. In implementing interim remedies, the Commission based its decision on a broad reading of the Magill judgment, recognising an extraordinary case in which the refusal to licence intellectual property rights constitutes an abuse of dominance.

Through a General Court order, the corporation successfully suspended the Commission's interim decision, which the ECJ affirmed following the Commission's appeal. This fact raised doubts about the difficulty of applying interim measures when innovative approaches to Articles 101 and 102 are considered.³⁹

Nonetheless, the ECJ determined that a refusal to grant a licence constitutes abuse of dominance. Nevertheless, the exercise of exclusive rights may pertain to abusive dominance, particularly when abusive conduct obstructs the introduction of a new product sought by

33 European Commission. (2025). Commission fines Google 2.95 billion euro over abusive practices in online advertising technology. Press-release. <https://ec.europa.eu>.

34 Šadl, U., Zurita, L. L., Brekke, S. A., Naurin, D. (2022). Law and order: the orders of the European court of justice as a window in the judicial process and institutional transformations. *European Law Open Journal*, 1(3), p. 561.

35 Rules of procedure of the Court of Justice. (2012). OJEU L 265/1.

36 Rules of procedure of the General Court. (2015). OJEU

L 105/1.

37 Chocron Giraldez, A. M, op. Cit, p. 6-7.

38 Farinhas, C. Are interim measures under Regulation 1/2003 excluded in new or complex cases? op. Cit, p. 21.

39 Ibid., p. 27.

consumers.⁴⁰ This did not apply to the Commission, which failed to adhere to the stipulations of a new product, mandating IMS to compulsory licence its proprietary brick structure encompassing 1860 market segments that IMS had developed and safeguarded by copyright, to furnish analogous regional sales reports to pharmaceutical companies, contending that the industry was accustomed to this format and rejected data presented in any other manner.⁴¹

The Commission did not establish *prima facie* based on the actual facts of the case; instead, it relied on precedent without assessing the two cases' contestability. This reliance subjects the Commission's *prima facie* to criticism, particularly as it articulated its interim measures in a definitive manner that contradicts their temporary nature.⁴² Furthermore, the Commission failed to examine the remaining two reasons, as such a licence would inflict significant and irreparable harm to IMS copyrights and alter the equilibrium between private and public interests regarding the protection of innovations.

The IMS case demonstrated the extensive discretion of the European Courts in implementing interim measures, allowing them to not only exercise judicial authority but also to establish the criteria for interim actions by the Commission. This led to a decrease in the scope of the Commission's application. Nevertheless, temporary actions under the DMA provide a novel viewpoint for achieving the objectives of both the Commission and European courts by shifting towards regulatory theory.

2.2 Transition from competition law to regulatory theory

The last case relevant to this issue was the ByteDance case in 2024.⁴³ Following its designa-

tion as a gatekeeper by the Commission through decision C (2023) on 5 September 2023 under the DMA, ByteDance submitted an application to the General Court for interim measures on 16 November 2023, seeking to suspend the Commission's decision owing to the assertion of serious and irreparable harm threatening its marketplace and innovation.⁴⁴ The judge of the General Court remained unconvinced and consequently rejected the request due to insufficient demonstration of urgency or *prima facie* evidence, wherein the applicant must establish the existence of serious and irreparable harm resulting from the contested decision that cannot await resolution until the final decision is rendered.

ByteDance's action was to assert allegations lacking *prima facie* infringement evidence. The main accusation was that there was a breach of confidentiality by revealing how TikTok profiles its users based on the Commission's use of Article 15 of the DMA. Nonetheless, the judge endorsed the Commission's assertion that Article 15 aims to improve transparency and clarify profiling procedures, aligning with the DMA's objective of consumer protection, while not encompassing the concept of consumer harm. This indicates that the DMA serves to enhance competition law through specific requirements.⁴⁵ Among these, privacy is highlighted by ByteDance in its assertion, as it is not regarded as a goal of competition legislation, but rather as a concern addressed by the DMA.⁴⁶

Since Article 15 does not necessitate publication or disclosure of trade secrets, but rather offers a mere report. This does not pose a risk to ByteDance, as competitors and third parties lack access to information classified as confidential by the company.⁴⁷

Case T-1077/23R ByteDance v. European Commission (interim relief). Luxembourg, paras. 2-6.

40 Ibid., p. 29.

41 Art, J. Y. (2015). Interim relief in EU competition law: A matter of relevance. *Italian antitrust Review*, 2(1), p. 63.

42 Ibid., p. 69.

43 Order of the president of the General Court. (2024).

44 Ibid., para. 17.

45 Colangelo, G., Martinez, A. R. The metrics of the DMA's success. *European Journal of Risk Regulation*, 16(3), p. 1027.

46 Iacovides, M. C., Stylianou, K. (2024). The new goals of EU competition law: Sustainability, labour rights and privacy. *European Law Open Journal*, 3(3), p. 607.

47 Order of the president of the general court, op. Cit, para. 17.

This case illustrates that, while seeking interim measures in a legal setting is considered a right to trial, it does not guarantee that this right will be granted to the accused.⁴⁸ The Court highlighted that the DMA is not conventional competition legislation but a regulatory mechanism intended to impose duties on major digital platforms prior to the onset of harm.

The General Court's methodology in the Bytedance case was formalistic and threshold-oriented, utilising the regulatory framework of gatekeeper designation under the DMA. The DMA operates on assumptions and quantitative criteria, allowing minimal opportunity for platforms to contest their designation unless they present persuasive counter evidence. This signifies a distinct shift from the effects-based rationale of competition law to a rules-based regulatory paradigm.

CONCLUSION

Interim remedies are justified when there is a threat of significant and irreparable harm to competition that cannot be rectified by the decision made by the pertinent body. Failing to implement interim measures in a timely manner may negatively impact competitiveness. The Commission is tasked with executing its interim measures judgments, while the European Courts provide judicial oversight, ensuring that such circumstances do not worsen, thus affirming the dual nature of these procedures. Nevertheless, the subsequent results were derived from this research.

- The Commission does not implement interim measures efficiently, as the interaction between these measures and the assessment elements transforms their character from swift and provisional to lengthy and burdensome. The lack of an objective standard to differentiate between "serious doubts" and "mere uncertainties", coupled with the extensive spectrum of urgency and the need to

balance interests, incentivises the Commission to maintain those measures in the background.

- The challenges faced by the Commission, particularly in cases such as Broadcom and Illumina/GRAIL, suggest that the application of interim measures often functions more as an extended market test than as a rapid, temporary solution. This protracted process, as evidenced by frequent recourse to commitments, indicates a divergence from the intended swiftness and provisional nature of such measures.
- The Commission's interim measures may receive minimal acknowledgement from the undertakings, as the factual and legal determinations could be predicated on erroneous evaluations or legislative deficiencies, thereby resulting in litigation before the European Courts in defence of the right to a fair trial.
- Judicial interim measures exert greater influence than those of the Commission despite the shared assessment criteria because of the extensive discretionary authority held by European Courts in their issuance. Furthermore, European courts possess greater influence over the Commission by imposing stringent criteria for adopting interim measures, which may be deemed excessive.

These conclusions necessitate legislative modifications to establish a contemporary, adaptable, and equitable framework for interim measures between the Commission and European Courts.

⁴⁸ Chocron Giraldez, A. M, op. Cit, p. 137.

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