

OPEN INNOVATION: HOW CAN COMPETITION RULES SUPPORT INNOVATION?

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Legal Briefings - By **Susan Black, Clemence Barraud, Joel Smith**

With innovation-driven industries increasingly swapping notes with peers, we ask how to stop competition rules being a barrier

Innovation is recognised as a ‘parameter of competition’ and so, as a basic principle, companies are encouraged to innovate in competition with other players in the market.¹ This has become particularly relevant for innovation-driven industries – such as the pharmaceutical and digital sectors for example where research and development activities are an important driver of competition.² However, some innovation-related projects cannot be achieved by one company on its own and it may be necessary to collaborate to achieve certain objectives. Open innovation is therefore becoming increasingly important.

In these situations, it is essential that competition rules do not ‘get in the way’ or slow down these innovation-related objectives – instead, collaborations should be defined in compliance with competition rules. For this purpose, this article sets out some practical steps to consider when embarking on open innovation projects.

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1. Communication from the Commission, Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements Text with EEA relevance OJ C 11, 14.1.2011, (“**Horizontal Guidelines**”) para 27. See also, CMA Guidance, Joint Venture Business Advice, 12 April 2018.

2. See Bundeskartellamt, Innovations – challenges for competition law practice, November 2017, p. 1.

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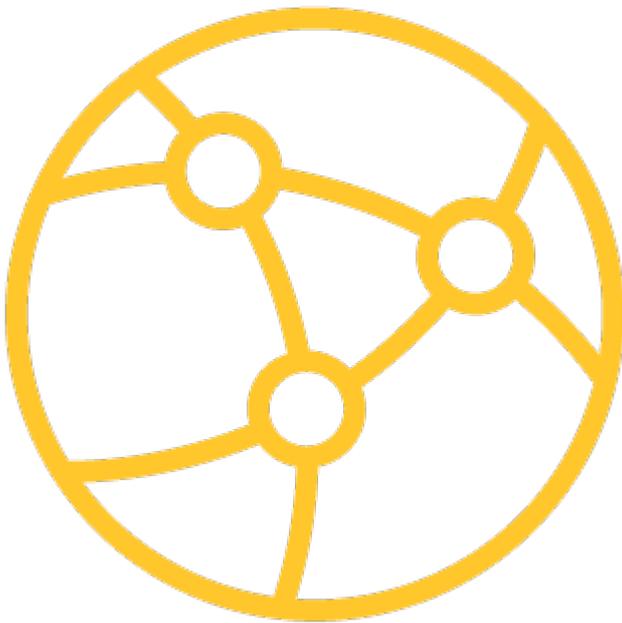
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