Articles

YI SHIN TANG AND CAROLINE HEIDE-JØRGENSEN

Second Tobacco Products Directive: proportionality of public health measures against potential competition distortions 1

This article discusses the CJEU's reasoning in case C-547/14, as well as its potential impacts on EU competition policy. By affirming the validity of Directive 2014/40, the Court's decision allowed the prohibition of the labelling and packaging of tobacco products from including information that promotes their consumption, while also allowing Member States to introduce further requirements on this matter.

BILL BATCHELOR, HIROSHI SHERATON, FIONA CARLIN AND MELISSA HEALY

Lundbeck raises more questions than answers on "Pay-for-Delay" settlements; creates damaging divergence from US law 3

Lundbeck—Europe's first judicial foray into so called "pay-for-delay" patent settlement agreements between originator and generics—is at best a muddle, and at worst a litigators' charter. It confuses patent and antitrust concepts. It offers no clear counselling standard. This article critically digests the judgment, contrasts the divergent US legal position and draws tentative conclusions for practitioners advising on patent settlement agreements.

DR ANNA KINGSBURY

Media mergers: is competition law enough? 8

This article is about generic competition law as a regulatory framework for media mergers, with reference to a recent merger application between two major New Zealand newspaper companies. It argues that generic competition law is proving to be an insufficient framework in the media industry context.

FARRUKH NAWAZ KAYANI

An overview of Myanmar's forthcoming competition law 18

In an era of political transformation and considerable economic uncertainty, it is imperative for foreign investors to study and analyse the business environment of Republic of the Union of Myanmar. Myanmar faced 50 years of military rule and 60 years of civil war until the year 2011. The military and the bureaucratic regime were fully dominant in this closed and planned economy. The worst law-and-order situation kept foreign investors away from Myanmar. The Government followed an ultranationalist-Buddhist discourse and discriminated against other ethnicities and minorities for decades. Myanmar opened its borders to foreign investors with the introduction of the Foreign Investment Law in 2012. The Foreign Investment Law would provide a more secured legal environment to investors in the quasi-virgin market of Myanmar. Furthermore, on 21 December 2015, the Office of the President of the Republic of the Union of Myanmar announced that Myanmar's Competition Law will come into force from 24 February, 2017. So it would be prudent, sagacious and sensible for firms to understand the Competition Law of Myanmar well in advance of its implementation.

ANNA ARGENTATI AND RITA COCO

Antitrust scrutiny over regulations: results and effectiveness in the Italian experience 23

This article contains a comprehensive review of competition advocacy powers and interventions adopted by the Italian Competition Authority over recent years with their relative success rates. Namely, the article first describes the set of traditional advocacy tools available to the Authority in order to fight the public restrictions of competition, and notes that it has been strongly strengthened in recent years as a result of important legislative innovations. Secondly, it analyses and elaborates on the success rates of advocacy decisions issued over the period 2013–2014. In this analysis, outcomes are considered positive (or partially positive) when the public administrations or legislators, national or local, have decided to comply (fully or partly) with the advice given in the opinions. On the whole, the analysis shows levels and figures of success rates outperforming the negative responses, especially when the Authority intervenes while the decision processes—of administrative or legislative acts—are ongoing, in particular when the Authority is asked for opinions, rather than issuing guidance on its own. A consultative role in competition matters can be clearly drawn for the Authority, which can provide interesting cues for competition advocacy policies in the future. Thirdly, the article pays special attention to the new competences introduced by the legislature in 2011 and 2012, with regard respectively to art.21 bis of the Law No.287/90 which assigned to the Authority the power to take legal action against general administrative provisions, regulations or measures of any public administration which unreasonably restrict competition; and to art.4 of the Decree-Law No.1/2012 under which the Authority can issue opinions to the Presidency of the Council of Ministers with respect to regional laws that unduly restrict competition, aimed at challenging them before the Constitutional Court. Also in this case, the success rates of the implementation of such articles show results encouraging the Authority to continue its pursuit of this goal.

OLGA GURGULA

Anti-competitive patent acquisitions in the pharmaceutical industry 35

Pharmaceutical companies use various strategies to protect their market monopoly. One such practice is an acquisition of a patent developed by a third party. Such acquisitions allow pharmaceutical companies to strengthen their market power by extending the life of the product; for instance, by acquiring patents that cover alternative non-infringing versions of the monopolist's own product, or acquiring the patent that covers an improvement of its current product. Both the US and EU case law condemn such practices as an abuse of monopoly power. This article discusses patent acquisitions in the pharmaceutical industry, focusing on two recent EU and US cases investigated by the competition authorities.

AGUSTIN WAISMAN

Is the analysis of SEP-related injunctions on the right track? 39

The most controversial competition issue of the last ten years is, perhaps, under which circumstances standard essential patent (SEP) licensing practices amount to an infringement. One of the conducts that has triggered heated discussions in this context involves the request of injunctions during licence negotiations: as a result of the market power that SEP holders acquire after their patent is included in a standard, implementers of standards may accept licensing terms that they would not otherwise accept. But should this conduct be considered illegal? This article argues that all the arguments support the conclusion that they are.

National Reports

Austria

ANTI-COMPETITIVE AGREEMENTS
Distribution networks N-1

Channel Islands

MERGER CONTROL
Merger regimes N-1

Czech Republic

LEGISLATION
Competition Act N-3

Denmark

ANTI-COMPETITIVE PRACTICES
Pharmaceuticals N-5

Netherlands

PROCEDURE
Infringements N-6

Slovenia

ANTI-COMPETITIVE AGREEMENTS
Prescription medicines N-7

Sweden

ANTI-COMPETITIVE AGREEMENTS
Building materials N-8

Switzerland

ANTI-COMPETITIVE AGREEMENTS
Construction and civil engineering N-8

Turkey

ANTI-COMPETITIVE AGREEMENTS
Financial services N-9