

# European Competition Law Review

2016 Volume 37 Issue

12

ISSN: 0144-3054

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#### **Is EU competition law shining a light on application of sanctions rules? 475**

The EU competition law notion of control has often attracted criticism and remains a movable feast. It is therefore rightly a cause for concern that it is now being applied in relation to EU sanctions where there is a need for certainty about who is, or is not, subject to sanctions. Till Vere-Hodge reviews the cases and considers issues arising.

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This article considers the legal inconsistencies in competition law applicable to rebate programmes by dominant companies, contrasting the case law of the Court of Justice with the European Commission's Article 102 Enforcement Priorities Guidance. This article asks whether there is room for a practical approach to rebates and attempts to offer a workable solution to a number of questions that often arise when advising on rebates.

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#### **The rise of behavioural discrimination 485**

The increased personalisation of our online environment has been noticeable in recent years. Firms track us, collect data about us, and target us with the right ad at the right time—all to transform our web environment into a personal space. Some welcome this personalisation. The advertisements and promotion are tailored to our particular interests. In timely receiving this relevant information, we can save time shopping. Yet, this personalised shopping experience may come at a cost. It increases the risk of a biased, distorted environment in which we, as users, are manipulated. Such an environment can pave the way for behavioural discrimination—the ability of sellers to induce us to buy things we otherwise wouldn't, at the highest price we are willing to pay. The new paradigm affects not only our pocketbook but our social environment, trust in firms and the marketplace, privacy, personal autonomy, and ultimately well-being.

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The administrative fines in individual cases have grown drastically since the Chinese Anti-Monopoly Law came into force in 2008. Nevertheless, a sharp increase in fines may not necessarily mean that the pecuniary sanction has become an effective tool to deter and remedy violations of the AML, because there are a certain number of deficiencies in the fine setting procedure. On 17 June 2016, the National Development and Reform Commission released “the Draft Guideline on Calculating Illegal Gain and Setting Fines for Monopolistic Conduct by Undertakings” for public review. The deficiencies in the fine-setting procedure under the AML may not be wholly resolved by publishing the Draft Fining Guideline. There are at least six aspects which deviate from the basic doctrines of a sound fine setting procedure. Furthermore, these aspects have not been rectified or even addressed in the Draft Fining Guideline, which may give rise to further enforcement problems. This article seeks to explore these six aspects in detail with reference to the enforcement experience of EU competition law, and certain possible solutions will be discussed.

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#### **Pay-for-Delay settlements in the EU: did the Commission go too far? 506**

Pay-for-delay settlement agreements have been described as agreements in which an originator pharmaceutical company compensates one or more generic companies to “delay” the introduction of a generic product on the market. In this article, the author inter alia sets out to critically analyse the factors relied on by the Commission, when concluding such agreements to violate competition law.