

Articles

CENTO VELJANOVSKI

Cat Awards Triple Damages, Well Not ReallyReally—Cardiff Bus, and the Dislocation Between Liability and Damages for Exclusionary Abuse in Follow-on Damage Actions 47

In *Cardiff Bus* the UK Competition Appeal Tribunal (CAT) awarded compensatory and exemplary damages in a predation case. The CAT's view of causation was narrow and looked at the conduct of the infringer instead of the effect on competition. Since 2 Travel Group would have exited the market in the absence of the impugned conduct there was no adverse effect on competition. The award of exemplary damages, the first by the CAT, is not explained, and sends a perverse signal that small firms not fined by the OFT will be "fined" by the courts.

TJARDA VAN DER VIJVER AND
STEFAN VOLLERING

E.ON v Commission: Wave of Liberalisation Sinks Franco-German Market Sharing 50

The General Court's ruling in *E.ON v Commission* focuses on a 1975 geographic market sharing agreement between energy giants GDF Suez and E.ON Ruhrgas. The Court affirms the Commission's decision finding the agreement contrary to EU law. The judgment contains particularly noteworthy observations on the relationship between (the level of) liberalisation and the application of competition law.

JOHN M. CONNOR

Cartel Fine Severity and the European Commission: 2007–2011 58

This article analyses the first 22 cartel decisions of the European Commission under its 2006 revised Fining Guidelines. The author finds that the severity of the cartel fines relative to affected sales is about double that of the fines decided under the previous 1998 Guidelines. Severity varies only modestly across companies in the same cartel. A large minority of EC fines now disgorge the monopoly profits accumulated by cartelists. Yet, the new fine guidelines are no more severe than contemporaneous US DOJ criminal fines.

NATALIE HARSDORF ENDERNDORF
AND NATHALIE MAIERHOFER

The Road After Pfleiderer: Austrian Preliminary Reference Raises New Questions on Access to File by Third Parties in Cartel Proceedings 78

In *Pfleiderer* the European Court of Justice (ECJ) conducted to some extent a balancing act between having successful leniency schemes in place and the private interest in being able to claim damages. The ruling was of limited scope and many questions on how to reconcile public with private enforcement still remain. Now, a second preliminary reference has been brought before the ECJ.

DR MICHAEL SALLER

Digital Evidence Gathering in German Cartel Investigations 84

The article gives an overview of digital evidence gathering from the perspective of a national authority, the German Bundeskartellamt. It describes the BKartA's standard approach for digital evidence gathering and discusses typical problems related to digital evidence gathering, such as destruction of evidence, presence of lawyer during the sifting, incidental evidence, search terms or legal privilege.

PIERRE MOULLET

How Should Undertakings Approach Commitment Proposal in Antitrust Proceedings? 86

This paper provides useful guidance to undertakings in order to enhance their ability to decide whether or not to enter into a commitment procedure, and to gain command of effective negotiation strategies. It will strive to present the driving forces and available tools in order to better understand both strengths and weaknesses of the parties involved in the procedure. Undertakings may indeed get to a stronger position while mastering the rules of the game as well as the gearing mechanics of a successful proposal to commit.

Interoperability Remedies, FRAND Licensing and Innovation: A Review of Recent Case Law 101

This article provides an analysis of recent merger and antitrust case law in Europe, the United States and China concerning the use of interoperability and open interface obligations as a competition law remedy. There have been several high-profile cases in high-tech industries that lead us to doubt whether the right balance has been found between the promotion of competition and innovation. We identify effects on incentives to innovate that relate to the duration of an interoperability remedy, the monitoring required to ensure compliance and the commercial terms (such as FRAND and royalty-free) associated with the licensing of information.

Case Note

ROBERT MIKLÓS BABIRAD

Case Note: UPM-Kymmene Oyj v Commission 112

Discusses when participation by an undertaking in the subgroups of a cartel operating at EU level will sufficiently establish its liability for the prohibited art.101(1) TFEU actions of the cartel as a whole. Assesses when an undertaking's awareness of the prohibited conduct of a cartel operating at EU level is adequate for purposes of establishing liability.

Book Reviews

TJARDA VAN DER VIJVER

Competition Regulation in the Airline Industry: Puppets in Chaos by S. Truxal 117

National Reports

European Institutions

MERGER REGULATIONS

Prior notifications of concentrations N-15

Czech Republic

ABUSE OF DOMINANCE

Telephony services N-17

Denamrk

LEGISLATION

Competition Act N-18

Finland

LEGISLATION

Competition Act N-19

France

ABUSE OF DOMINANCE

France Telecom N-20

Germany

ANTI-COMPETITIVE AGREEMENTS

Infringement N-21

Greece

ABUSE OF DOMINANCE

Infringement N-22

Ireland

MERGERS

Information technology N-24

Netherlands

ABUSE OF DOMINANCE

Complaint N-25

Spain

ANTI-COMPETITIVE AGREEMENTS

Penalties N-26

Spain

ANTI-COMPETITIVE AGREEMENTS

Price-fixing N-26

Spain

ANTI-COMPETITIVE AGREEMENTS

Communication services N-27

Spain

ANTI-COMPETITIVE AGREEMENTS

Hotel prices N-27

Spain

LEGISLATION
Railway freight N-27

Spain

ANTI-COMPETITIVE PRACTICES
Automotive fuel N-27

Turkey

LEGISLATION
Horizontal co-operation N-28

Turkey

ANTI-COMPETITIVE AGREEMENTS
Ready-mixed concrete N-28

Turkey

ANTI-COMPETITIVE AGREEMENTS
Banking services N-29

Turkey

ABUSE OF DOMINANCE
Microsoft N-30

UK

PROCEDURE
Guideline N-30

UK

PROCEDURE
Market investigation N-31

US

MERGERS
Settlement N-31

US

MERGERS
Post-merger challenge N-32

US

MERGERS
Universal Health Services Inc N-33

US

PROCEDURE
FTC Investigations N-33