

2013 Volume 34 Issue 5
ISSN: 0144-3054

European Competition Law Review

Table of Contents

Articles

MATTHEW COLE

Pharmaceuticals and Competition: First strike to the Commission? 227

This is an article examining the approach of the Commission and courts in seeking to engender greater competition within the pharmaceutical industry. It will consider the enforcement measures that have been taken, in particular those relating to the *AstraZeneca* decision, including the final judgment delivered by the Court of Justice.

PROF DR WERNHARD MOESCHEL

Vertical Price Fixing: Myths and Loose Thinking 233

The interdiction of resale-price-maintenance (RPM) is strictly applied in many countries, e.g. in Germany. This is in contrast to the United States, where the Supreme Court in 2007 has transformed the former per se interdiction into a rule of reason-standard. Today there is wide consensus that the RPM can have, in a competition perspective, positive effects. Guidelines of the EU Commission are based on this view. Negative effects are much harder to detect, as a cartel or monopoly problem is at stake. A specific regulation of the RPM is not necessary. Little was heard about vertical price fixing in Germany for a long time, but recent decisions and Guidelines have reopened the debate, which is shaped by the reliance on a number of myths and loose thinking.

PAUL K GORECKI AND SARAH
MAXWELL

Sentencing in Criminal Cartel Cases in Ireland: the Duffy judgment 239

Despite 33 convictions of individuals and firms for criminal cartel offences in Ireland since 1996, there is only one reported judgment. The paper examines the *Duffy* judgment concerning a member of the Citroen motor vehicle cartel. The judgment provides some guidance on sentencing: cartels are pernicious and jail sentences are to be expected in future cases. However, no guidance is provided as to how the jail term for an individual will be determined or the fine for an individual or a firm. Despite the statement that cartels are pernicious, the fine levied on Duffy Motors was 1.3 per cent of the maximum fine under competition legislation and 1.1 per cent of the likely increase in profits due to the firm's participation in the cartel. An alternative approach to sentencing is suggested which utilises a well-developed methodology and is consistent with the view that cartels are pernicious, while at the same time leaving considerable judicial discretion in determining the ultimate sentence.

IOANNIS IGLEZAKIS

Competition and Antitrust Issues with regard to e-books 249

In this article, the competition issues are dealt with which may arise from the proliferation of e-books. In the nascent market for e-books new distribution models are evolving that give publishers more freedom but provoke concern, as they may not be in line with competition rules. In particular, price-fixing agreements between publishers and online distributors of e-books may inflict violations of antitrust rules, as these could eliminate competition and result in higher prices for consumers. Similar concerns arise from the fact that technical restrictions are put in place by some developers regarding the format of e-books, which fragment the relevant market.

FLORIAN NEUMAYR

New Competition Rules for Austria 256

This article addresses changes brought about by an amendment to the Austrian competition rules entering into force on March 1, 2013. In particular, hardcore restrictions no longer qualify as de minimis, collective market dominance is widely presumed, both public and private enforcement are strengthened and transparency is enhanced.

KATRI PAAS-MOHANDO

Do Small Economies Need Specific Rules for Substantive Aspects of Merger Control? 260

This article explores the implications of smallness of economy on the substantive aspects of merger control, questioning whether small economies can and should be led by the same substantive standards as large economies upon performing merger control assessment. It discusses aspects such as the market definition process, theories of harm, substantive test, specific assessment criteria of mergers and countervailing defences.

JENS PETER SCHMIDT

Book Reviews

DR ALEXANDR SVETLICINII

National Reports

Australia

Denmark

France

Germany

Spain

Spain

Spain

Spain

Spain

Spain

Spain

Switzerland

UK

UK

US

Prevention of Antitrust Violations: Which Role for Compliance Programmes? 267

This article analyses the current debate at European level on antitrust compliance programmes and on their impact in establishing matters of corporate guilt. It will be argued that antitrust law systems require subjective liability as a precondition for the imposition of fines: thus, it seems reasonable to take compliance programmes into account when assessing company responsibility for an antitrust violation.

Antitrust Developments in the Food Sector in the EU 274

This article provides an overview of the recent antitrust developments in the food sector. It sets out the relevant political context (1), the activities of the European Commission (2) and Member States (3), selective legal issues relevant in the context of such activities (4), and ends with a conclusion (5).

Competition Law in the BRICS Countries 280

ANTI-COMPETITIVE PRACTICES

Essential facilities access N-69

ABUSE OF DOMINANCE

Post-Danmark A/S N-70

ANTI-COMPETITIVE AGREEMENTS

Cosmetics N-71

PROCEDURE

Fines N-72

ANTI-COMPETITIVE AGREEMENTS

Motor vehicle distribution N-73

ANTI-COMPETITIVE AGREEMENTS

Office stationery N-74

ABUSE OF DOMINANCE

Mobile telephony N-74

ANTI-COMPETITIVE AGREEMENTS

Road transportation N-75

LEGISLATION

Retail trade N-75

GENERAL

Annual report N-76

ANTI-COMPETITIVE AGREEMENTS

Maritime transport N-76

ABUSE OF DOMINANCE

Publigroupe N-77

ANTI-COMPETITIVE PRACTICES

Current banking accounts N-79

PROCEDURE

Private enforcement N-80

MERGERS

HSR requirements N-83