2013 Volume 34 Issue 12
ISSN: 0144-3054

European Competition Law Review

Table of Contents

Articles

ROGER GAMBLE

Whether neap or spring, the tide turns for private enforcement: the EU proposal for a Directive on damages examined 611

On June 11, 2013 the European Commission published a number of measures designed to facilitate effective private enforcement of EU antitrust rules. Its broad objectives are to optimise the interaction between the public and private enforcement of competition law and to ensure that victims of infringements of the EU competition rules can obtain full compensation. The focus of the article is the proposed Directive to establish common EU rules on actions for private damages. After briefly considering the various rules designed to facilitate damages claims, the article considers the central issue of access to evidence and asks whether the proposed Directive strikes the correct balance between the interests of the regulator (in protecting its immunity programme by ensuring evidence provided to it by immunity applicants remains confidential) and the rights of claimants (to gain access to that information in order to be able to fully exercise their rights under the Treaty to claim compensation for loss suffered at the hands of the cartel).

MARIA HELD AND UTE ZINSMEISTER

Pay-for-delay or reverse payment settlements — a war of roses between competition and patent law in Europe and in the United States? European Commission fines Lundbeck and other pharma companies for delaying market entry of generic medicines 621

Competition authorities worldwide have long been concerned about so-called "pay-for-delay" or "reverse payment" settlements involving a value transfer from an originator to a generic pharmaceutical company in exchange for the latter's agreement to postpone its generic product's market entry. In 2013, both the US Supreme Court and the European Commission have issued landmark decisions on the subject. The article summarises and analyses the background, the differences and the potential future impact of the two authorities' decisions.

DR JĀNIS NEIMANIS

Case law of the Supreme Court of Latvia about abuse of dominant position in retail trade 631

This article presents an overview of recent case law of the Supreme Court of Latvia about abuse of dominance in retail trade. The concept of abuse of dominance is used in competition law, but in retail trade we can speak about fair or unfair trade provisions. However, in Latvia, the concept of dominant position and obligations of such market player is used to regulate retail trade. That was the legislator's reaction to the high concentration of market power in the hands of big retail chains. The article focuses on two cases which are very closely connected with problems of concentration in the retail market. The third case deals more with procedural issues – the form of operative part of the national competition authority and principles of legal security.

QIANLAN WU

China's Merger Regulation: in search of theories of harm 634

Behind the convergence with global merger regulation investigations, China has started to develop its own theories of harm. The article analyses selected Chinese decisions on horizontal, vertical and conglomerate mergers. It aims to reveal an emerging pattern in the ideas on theories of harm in China and analyse its impact on China's merger regulation.

PEDRO CALLOL GARCIA

Ever doubted the "convergence" of competition and regulation? Spain integrates its sector regulators and the Competition Authority under a single agency roof 642

If convergence of competition and regulation is happening anywhere, of all places it would be in Spain. This is certainly the case on the enforcement side of things, given that the Spanish Legislature has merged the Competition Authority with the energy, telecoms, media, postal, railway and airport NRAs, creating a super regulator that surpasses, in ambition and scope of action, comparative law precedents such as the German Bundesnetzagentur or the Dutch Authority for Consumers and Markets. This super regulator, the CNMC, has been born amidst considerable controversy, nationally and internationally.

KIRAN DESAI

Public hospital mergers: a case for broader considerations than competition law? 646

Public hospitals have particular characteristics: providing services of general economic interest (art.106 TFEU) that need not be subject to competition law, the services are credence goods, product and geographic market definition has proved contentious, and the many stakeholders have interests, many not pecuniary, that do not wholly overlap. These elements raise the question addressed in this article of whether the ultimate decision on hospital mergers would be better taken by the government on broader considerations than competition law.

VASILIKI BRISIMI AND MARIA IOANNIDOU

Stand-Alone Damages Actions: Insights from Greece and Cyprus 654

While the debate at the EU level focuses mainly on follow-on actions for damages, the reality at national level in the case of Greece and Cyprus suggests that stand-alone actions indeed exist, or there is scope to be further promoted. This realization could be further used as a springboard in order to raise awareness and advocate higher levels of competition litigation both of the stand-alone as well as the follow-on type.

Comment

DR PAT MCCLOUGHAN

Balancing Regulation and Competition—The Case of Irish Banking 658

Banking markets are genuinely special owing to their influence on the rest of the economy. They demand a mix of competition and regulation to function effectively. Balancing the mix is generally difficult and this has come into sharp relief in the context of Ireland's dramatic banking sector collapse in 2008. This commentary reviews developments to date and identifies a role for competition policy to ensure users' interests are served and that Ireland's rebuilding of its banking sector is not designed solely with the banks in mind.

Book Reviews

DR PINAR AKMAN

EU Competition Law Handbook 2013 Edition 660

MARK FURSE

Broberg on the European Commission's Jurisdiction to Scrutinise Mergers, 4th edn 661

National Reports

Channel Islands

MERGERS
Enforcement activity N-155

Slovenia

LEGISLATION
Procedures N-157

Switzerland

PROCEUDRE
Economic expert opinions N-158