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European Competition Law Review

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The CCI recently approved the largest investment in the Indian aviation sector. The decision provides guidance on future competitive assessment of airline mergers in India, besides being a rare instance where the Commission has analysed collaborative ventures and the concept of "joint control" under Indian competition law. The decision is also the first to have been challenged in appeal (on merits).

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This article focuses on the current state of the law in relation to bodies acting at the public-private interface. It is suggested that the law has not been left in a satisfactory position: there are conflicting lines of case law which lead to competition authorities giving guidance that each case turns on its facts. The absence of any clear legal test makes it hard for both those operating at the interface and potential complainants to properly assess their rights and duties. A prime example of this interface is in the provision of healthcare services. The position in the United Kingdom is examined in particular detail, but the problems arise throughout the European Union. A simplified approach is proposed.

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Almost 15 years ago, the EU Commission decided to prohibit General Electric's acquisition of Honeywell, despite US approval of the transaction. Although US and EU merger control proceedings remain distinct, dialogue between the agencies has come a long way. Enhancing cross-border co-operation grows ever more critical with the emergence of powerful Chinese and Indian merger control regimes.

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The discussion of "pass-on" usually assumes that an overcharge may have been passed on "either entirely or in part"; for example, this is assumed in the context of the recent initiatives put forward by the European Commission to facilitate the involvement of indirect purchasers of a cartelised good in damage compensation cases. However, both economic theory and empirical evidence indicate that, in some cases, the degree of "pass-on" can be above 100 per cent. In the context of a cartel damages case where both the direct and indirect purchaser of the cartelised good ultimately claim damages, the existence of more than full "pass-on" can give rise to non-trivial difficulties concerning who has to pay what.

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Silence is Golden: Belgian Competition Council imposes fine for abuse of standard setting process 194

On August 30, 2013, the Belgian Competition Council imposed fines on three cement producers, their trade association and one of the Belgian standard setting bodies for concrete. The Council considered that they had abused the process of standard setting in an attempt to delay the acceptance of ground granulated blast-furnace slag (GGBS) as a substitute of cement in concrete production.

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This article examines a decision of the EFTA Surveillance Authority to impose a fine on the carrier Color Line for concluding an anti-competitive agreement with the Strömstad harbour authority in contravention of art.53 EEA and art.54 EEA. The agreement granted exclusive harbor access to Color Line and precluded competing companies from operating in the harbour.

BILL BATCHELOR AND MELISSA HEALY

Overview of EU Commission Decision in respect of J&J/Novartis Co-promotion Agreement 200

Though commonly entered into between potential competitors, co-promotion agreements are generally pro-competitive—allowing pharmaceutical companies to scale rapidly and outsource resource intensive detailing activity. The *J&J/Novartis* case is the first EU challenge to a co-promotion arrangement. The EU takes a hardline approach. The agreement was presumed illegal—without examination of market context or its benefits—and branded as equivalent to a market sharing agreement, alongside alleged "pay-for-delay" agreements. Though the facts may be sui generis, the case raises the profile of co-promotion agreements and the need to ensure that they receive appropriate antitrust review, especially where entered into around loss-of-exclusivity.

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