

European Competition Law Review

2014 Volume 35 Issue 5

ISSN: 0144-3054

Table of Contents

Articles

VALERIO COSIMO ROMANO

Data scraping and abuse of dominance in travel services: story of an antitrust guerrilla 207

An airline's refusal to grant access to its database and booking procedures to a travel agency and its claim to prevent any commercial intermediation in the sale of its flights amount to an abuse of dominant position in the downstream market of travel and touristic services.

MOHAMED EL FAR

Enforcement Policy of the Egyptian Competition Law: Vertical Relations 209

This article intends to identify the enforcement policy of the Egyptian Competition Authority in relation to vertical agreements in general and those related to distribution in particular. This will be through highlighting the enforcement policy of the ECA in relation to vertical agreements, dominance and in regulated markets.

DR RICHARD BURNLEY AND
KONSTANTINA BANIA

Co-operation between broadcasters in the new media age: Rethinking national competition policy 216

The authors focus on the scope for EU broadcasters to enter commercial tie-ups to launch new media services. Highlighting the divergences between the European Union and national approaches, the authors propose that national competition authorities need to adopt a bolder and more international perspective in the interests of EU broadcasters and their consumers.

FRANCES MURPHY

EU Commission proposes new measures re private actions for damages and collective actions 223

The European Commission has published a series of measures aimed at advancing private actions for damages and collective actions in national courts in the European Union. Included is a proposed directive which is subject to approval by the European Parliament and the Council, and some non-binding proposals the Commission will need to persuade Member States to adopt. Nevertheless, the package demonstrates a commitment by the Commission to promoting a right of recourse to a national court for compensation by those harmed by a violation of competition law.

PHEDON NICOLAIDES

The legal differences and economic similarities of the various methods of supporting green electricity under State Aid rules 227

State aid law makes an important distinction between PreussenElektra-type support of green electricity and Essent-type support. The latter results in transfer of state resources while the former does not. This paper shows that despite these legal differences, the economic effects of the two types of support are identical. The paper grounds its analysis on a recent judgment of the Court of Justice of the European Union, which appears to indicate that the Court too believes that the economic effects of the two types of support are different.

ROGER THOMI, PHILIPPE M. REICH
AND PETER REINERT

Swiss Court confirms Switzerland's aggressive stance on parallel trade 232

In the first judicial challenge to the Swiss Competition Commission's aggressive, and controversial, series of enforcement actions on parallel trade restrictions, the Swiss Federal Administrative Court upheld the authority's 4.8 million Swiss franc fine on Gaba International for unlawfully preventing its Austrian licensee selling Elmex toothpaste into Switzerland. The Court found absolute territorial restrictions illegal by their nature regardless of "quantitative" considerations such as intra-brand/inter-brand competition or market shares. The Court offers little comfort for practitioners hoping for a more nuanced view of territorial restrictions.

Software Interoperability Information Disclosure and Competition Law 235

Software interoperability information is indispensable in establishing connections among the parts of a program and to applications and users. According to the concepts of copyright and expression dichotomy and to the prevailing consideration that the function of software interoperability information has a bottleneck effect in restricting competition, the conceptual portions of software interoperability information are not protected under copyright, and software interoperability interfaces are subject to reverse engineering. This scope of copyright protection and the actual restriction on competition due to the refusal to disclose software interoperability information have convinced authorities and courts to grant a duty to disclose. However, in examining the compulsory disclosure of interoperability information and the competition situation in the software market, this study perceived that although the compulsory disclosure of software interoperability information is alleged to have certain benefits, it harms the copyright holder and, as a competition remedy, helps secondary market players at the expense of primary market players. This remedy in effect protects competitors, not competition throughout the entire market. Further, this study observes that when enlarging the scope of the compulsory disclosure of software interoperability information acts to create competition, it exceeds the function of competition law as an ex post remedy.

IESTYN WILLIAMS AND SIMON
BISHOP

Streamlining regulatory and competition appeals: a reasonable basis for change? 253

In June 2013, the UK Government set out options for change to the regulatory and competition appeals regime. This article comments on those proposals from an economic perspective. In particular, it considers the evidence put forward to support the case for change and the potential impact of the proposals on the scope for effective scrutiny of regulatory decisions.

Comment

ROBERT BABIRAD

Cisco Systems and Messagenet v Commission 256

Discusses the General Court's interpretation of when the art.296 TFEU obligation to state reasons has been breached. Considers whether a summary response by the Commission, which fails to address all of the competition law related arguments advanced by an applicant, will be adequate for purposes of meeting this requirement.

Book Reviews

HERBERT HOVENKAMP

Competing Through Innovation: Technological Strategies and Antitrust Policies 261

RICCARDO SCIAUDONE

EU Electronic Communications Law: Competition and Regulation in the European Telecommunications Market 263

National Reports

Germany

PROCEDURE

Civil claims N-35

Slovenia

ABUSE OF DOMINANT POSITION

Telecommunications N-37

Sweden

ANTI-COMPETITIVE CONDUCT

Public entities N-38

UK

GENERAL

Competition enforcement N-39