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Table of Contents

Articles

ROGER GAMBLE

The European embrace of private enforcement: this time with feeling 469

Recent developments in the European Court of Justice and at the European Parliament confirm that the historical obstacles to private enforcement of cartel conduct are being dismantled. In recognition of the strong deterrent effect a damages claim may have (as well as its more obvious compensatory function) laws are being put in place that will facilitate private enforcement. This article examines these developments and concludes that the embrace of private enforcement should be welcomed.

OLIVER BRETZ, DANIEL GORE, AND
KATRIN SCHALLENBERG

A New Approach to the Failing Firm Defence? The Nynas/Shell Harburg merger 480

The European Commission's 2013 *Nynas/Shell Harburg* decision gave unconditional approval for a merger to monopoly in the European naphthenic base oil market. This article discusses the counterfactual arguments underpinning the Commission's clearance, and the role of the "failing firm defence" in the competitive assessment.

MIHAIL DANOV

Cross-Border Competition Law Cases: Level Playing Field for Undertakings and Redress for Consumers 487

A Directive on certain rules governing aspects of actions for damages was recently adopted by the European Parliament. The EU legislative reform aims to achieve the EU legislator's objective "to ensure a more level playing field for undertakings operating in the internal market and to improve the conditions for consumers to exercise the rights they derive from the internal market." (Recital 9 of the Directive on Actions for Damages.) However, given that numerous injured parties may often choose where to bring their EU competition claims, it is difficult to see how a level playing field could be achieved without addressing the complex jurisdictional issues at EU level. Since many of the pan-European business activities are often performed by corporate groups which consist of numerous subsidiaries, a level of uncertainty as to the liability of the legal entities (forming part of an infringing undertaking) will continue to exist. This poses the question as to whether there would be effective remedies for consumers in a cross-border context, and in particular how parallel collective redress proceedings would be co-ordinated insofar as harm may be caused to consumers in a number of jurisdictions.

SAMANTHA MOBLEY, DIMITRIS
MOURKAS AND GRANT MURRAY

Parent liability for joint venture parents: the Courts' "EI du Pont" and "Dow Chemical" judgments in conflict with optimal compliance incentives 499

This article examines the reasoning in the recent judgments by the General Court and the Court of Justice in "*EI du Pont*" and "*Dow Chemical*" concerning the imputation of liability to the parent companies in respect of the actions of a joint venture, and identifies a number of troubling legal and policy outcomes. The article also explores how compliance programmes are currently treated under EU competition law and makes suggestions as to what the optimal approach should be.

Comment

GIAN MARCO GALLETTI

A further step towards a "Proceduralisation" of the Market Economy Investor Test: Annotation on the judgment of the Court of Justice (Grand Chamber) of April 3, 2014 in *European Commission v Netherlands* (C-224/12 P) 509

The European Court of Justice's ruling in case *Commission v Netherlands and ING Groep NV* follows the way paved by *EDF* in framing Commission's discretion as to the application of the Market Economy Investor Test ("MEIT"). In particular, the two stages of the MEIT assessment – applicability and application – are singled out.

Book Reviews

DR JURIS TORE LUNDE

Sanctions in EU Competition Law: Principles and Practice 515

DR MARK FURSE

EU Competition Law Handbook 2014 517

DR MARK FURSE

Faull and Nikpay: The EU Law of Competition, 3rd edn 518

National Reports

Austria

LEGISLATION

Cartel Act N-83

Czech Republic

MERGERS

Consumer retail N-84

Denmark

ANTI-COMPETITIVE AGREEMENTS

Milk equipment N-85

Greece

ABUSE OF DOMINANT POSITION

Gas supply N-85

Moldova

ANTI-COMPETITIVE PRACTICES

Competition law N-86

Moldova

ABUSE OF DOMINANT POSITION

Telecommunications N-87

Moldova

ABUSE OF DOMINANT POSITION

Standards setting N-89