

Articles

M.M. SHARMA

Should the CCI stop the Bayer/Monsanto merger? 201

The Competition Commission of India (CCI) is currently examining the Indian leg of the mega merger between Bayer and Monsanto. The proposed acquisition of Monsanto's entire shareholding by Bayer, which brings together two global giants in the seeds and agro-chemical markets, is drawing the attention of economists, lawyers and agricultural scientists globally. Like in India, the antitrust authorities in the US and EU are currently examining the merger and there is opposition amongst antitrust experts and economists for justifiable reasons, which also need to be discussed publicly in India.

PROFESSOR KEVIN A. DIEHL

Does the EU Competition Authority permit floors on legal fees? *CHEZ Elektro Bulgaria AD v Kotsev and FrontEx International EAD v Yanakiev* 205

In *CHEZ Elektro Bulgaria AD v Kotsev and FrontEx International EAD v Yanakiev*, the European Court of Justice recently decided that floors on legal fees could restrict internal competition. This ruling has ramifications well beyond the EU and should be of great interest to attorneys everywhere in setting their fees.

DR VINCENT J.G. POWER

Lithuanian Railways: Ambitious European Commission Decision that decommissioning infrastructure can be an abuse of dominance 208

On 2 October 2017, the European Commission imposed a fine of €27,873,000 on Lithuanian Railways for abusing its dominant position by hindering competition in the rail freight sector because it removed a stretch of railway line so as to thwart competition from a competing railway company. This article welcomes the principle in the decision but recognises that its application will prove difficult in practice.

VIRGÍLIO PEREIRA

Algorithm-driven collusion: pouring old wine into new bottles or new wine into fresh wineskins? 212

Competition enforcement reforms have already begun their journey of tackling the unorthodox dynamics of digital markets. Yet, shifting away from traditional enforcement tools and deeply rooted principles appears over-hasty. First, a call for change as regards the concept of concerted practice seems ill-founded. Secondly, the case law on direct or indirect competitor information sharing is sound and the ECJ is likely to have due regard to the inherent transparency of digital markets, thus endorsing a strict approach to it. Thirdly, the extent to which e-commerce facilitates tacit collusion remains disputable. A renewed discussion on parallel behaviour and tacit collusion is welcome and should lead to a fully fledged enforcement approach, thereby solving long-standing problems.

DR ROB VAN DER LAAN

Channel Islands' competition law enforcement in 2017: Merger control only 228

The funny thing about facts is that they can often be used to support widely varying and sometimes contradictory conclusions. The CICRA Channel Islands competition authority issued a small number of merger decision over 2017 that, on the basis of the evidence provided, also would allow for a different conclusion.

ANDREA PARZIALE

Competition law implications of off-label uses of medicines: *F. Hoffmann-La Roche Ltd and others v Autorità Garante della Concorrenza e del Mercato (AGCM)* 231

By judgment of 23 January 2018, the Court of Justice of the EU addressed the competition law implications of off-label uses of medicines concerning the definition of the relevant market, ancillary restrictions to licensing agreements, and the dissemination of misleading information on risks under conditions of scientific uncertainty.

Comment

DR FEDERICO MARINI-BALESTRA
AND DR NICOLA FARAONE

Did the EU Commission overstrain the boundaries of de facto sole control of minority shareholders? A comment on the Vivendi/Telecom Italia Merger Decision 237

This article points to a case where the Commission found sole control on a de facto basis, which may signal its departure from the approach consolidated in the same Commission's Consolidated Jurisdictional Notice, with possible increase of legal uncertainty in minority control scrutiny and of gun-jumping.

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