

# European Competition Law Review

2019 Volume 40 Issue 3  
ISSN: 0144-3054

## Table of Contents

### Articles

PROF CHRISTIAN BERGQVIST

#### **Discriminatory abuse—The missing link in the more effect-based approach** 95

While art.102 indisputably covers discrimination, there has been limited appetite for pursuing cases that clear up its ambiguities. This not only contradicts the now-enshrined effect-based approach when it comes to exclusionary abuse, but also provides a foundation for misunderstandings. A troublesome situation, as the Commission has recently indicated renewed interest into discriminatory abuse. Much could be gained if the Commission delivered on its 2005 promise to issue formal guidance on discriminatory abuse, thereby completing the translation to a more effect-based process.

SOPHIE CHESTERTON

#### **Apple's acquisition of Shazam and the elusive "data advantage"** 102

This article discusses the European Commission's approach to assessing a potential "data advantage" in its recent decision to approve Apple's acquisition of Shazam. The article explains the framework with which the Commission assessed the value of data to the merger parties, and queries whether the approach can ever show a data advantage sufficient to give rise to a foreclosure risk.

ANNA KUBINSKA

#### **Part II: Critical analysis of the effects of competition law in the airline industry: price discrimination, big data and consumer welfare** 107

The current competition, data protection and consumer legal frameworks are lagging behind the advancements of the digital world. In order to protect a vulnerable consumer who possesses imperfect information, the co-operation of the three abovementioned legal frameworks is imperative. The relevant legal authorities are urged to pursue this objective.

MARIANA DE SOUSA E ALVIM

#### **A competition court for the European Union and the right to a fair trial: too much ado about nothing?** 114

This article revisits the proposal put forward by the Confederation of British Industry in 2006 to track down the advantages and the possible barriers to the implementation of a Competition Court in the EU. This reflection makes an assessment of the EU competition enforcement model and evaluates its compatibility with the fundamental right to a fair trial.

DEVDATTA MALSHE

#### **Essential Facilities: de facto; de jure** 124

Essential facility, criticized by Prof. Areeda and the US Supreme Court stating in *Trinko*, "we neither recognize nor repudiate", is present in all spheres of law in copyright as Abstraction-Filtration-Comparison and in patents as FRAND. With deepening of technology concentration, facility shall require/demand better appreciation of its ever-expanding ambit.

JOE GAFFNEY

#### **China's Antimonopoly Law at ten years old: a comparative review** 130

The Chinese Antimonopoly Law was enacted 10 years ago. Its content, while broadly familiar to the EU competition regime, includes language indicative of different policy goals. The enforcement of the Chinese competition regime is, moreover, tied closely to the protectionist fervour quintessential to China. A side-by-side assessment of the Chinese and EU competition regimes, even at a high level, can serve as a useful tool to measure the suitability of competition law for the pursuit of non-competition policy goals, as well as the (un)likelihood of an international competition regime.

### Comment

SIDHARTH CHAUHAN

#### **Artificial Intelligence—A Competition Law Perspective** 139

The advancement of technology has led to rapid changes in the digitalised economy. Taking this scenario into consideration, as in other fields of law and commerce, competition law is put to the test by new technologies in general and pricing algorithms in particular. This article discusses the issues in relation to dynamic pricing and competition law policy through a critical analysis of the legislative changes and the relevant law.

### National Reports Canada

#### **ANTI-COMPETITIVE AGREEMENTS**

**Auto-parts** N-25

**Canada**

**MERGER**

**Industrial gases N-25**

**Canada**

**MERGER**

**Agricultural products N-25**

**Denmark**

**MERGER**

**Insurance sector N-26**

**Germany**

**PRIVATE ENFORCEMENT**

**Exchange of confidential information N-27**

**Portugal**

**GENERAL**

**Portuguese Competition Authority N-28**

**Turkey**

**ANTI-COMPETITIVE AGREEMENTS**

**Retail banking N-29**