

# European Competition Law Review

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2019 was an active year for competition law in Ireland despite a 52 per cent decrease in merger notifications to the Competition and Consumer Protection Commission (“CCPC”) compared to 2018. A range of structural and/or behavioural commitments were given to obtain merger approval in four cases, the frequency of merger notifications increased in the latter part of 2019, there was ongoing enforcement activity in a number of sectors and there were a number of competition law-related cases in the Courts. In addition to possible effects as a result of Brexit, this points to an active 2020 for competition law in Ireland.

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Coining a workable standard of proof for the EU antitrust enforcement, the article builds upon the presumption of innocence and the respective case law of the ECtHR. On top, a comparative overview of the applicable standards across the EU serves as a further cornerstone. The current EU antitrust enforcement practice is then critically analysed under the thus derived standard.

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Before any national support measure is examined as to its compatibility with the internal market, it has to be demonstrated that it falls within the State aid definition of art.107(1) TFEU. One of the four criteria that need to be fulfilled is that the aid be “granted by a Member State or through State resources”. While it is well-established case law that this requires both the involvement of resources under State control and the imputation of the measure to the State, the precise interpretation and demarcation of these two concepts can often prove difficult. This article argues that for resources to be State-controlled, the State must both identify these resources and determine the purpose of their use. A measure is attributable to the State, on the other hand, when the State, using its legislative power, prescribes certain actions which may or may not mention any specific resources to be used for the achievement of the objectives of the prescribed actions. Particular focus is placed on jurisprudence in the energy sector. In light of this, the most recent judgment of the Court of Justice on the German EEG 2012 is critically assessed.

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