

Editorial

K.P.E. LASOK QC

Articles

AIDAN ROBERTSON QC

NISSIM MASSARANO

ALEXANDR SVETLICINII

NILS IMGARTEN

APURVA VATS

PHILIPPE RUTTLEY

Editorial 59

The common law doctrine of restraint of trade — will it rise up again unshackled by Brexit and reformed by the Supreme Court? 62

There have been two changes to the UK's restraint of trade doctrine. The end of the transition period for the UK's departure of the EU means that the doctrine is no longer limited by EU competition law. The UK Supreme Court judgment in *Peninsula Securities* has also revised its application to land agreements.

The unclear effects of the Budapest Bank experience 65

Although the Court of Justice's judgment in *Budapest Bank* advances our understanding of the roles of experience and effects in object cases, it falls short of providing a clear legal test. This article argues that the bones of an economics-driven framework is nevertheless apparent from *Budapest Bank* and other recent cases and provides a framework on this basis.

Economic nationalism during COVID-19: is the EU merger control ready? 69

During the post-COVID-19 economic recovery, competition authorities may come under pressure to consider public interest in their competitive assessment of notified concentrations, including those prompted by the state-supported recapitalisation and nationalisation measures. This article discusses how these emergency state aid measures are likely to affect the EU merger control, especially in cases concerning foreign and state-owned companies.

The presumption of innocence in cartel proceedings and issues of justiciability before the European Court of Justice: an analysis of the ICAP judgment of the General Court and its implications 75

The presumption of innocence as protected by art.48 CFR is important for competition proceedings. Consequences of a breach are nonetheless uncertain. The GC found in *ICAP* that it does not lead to nullity of a Commission decision. This standard of judicial review neglects the importance of the Charter under art.6 TEU and is inconsistent with art.263 TFEU.

Tax rulings and EU state aid: lessons to be learnt from the Apple-Ireland case 80

This article examines the controversies surrounding tax schemes in state aid cases in light of the *Apple-Ireland* state aid case. It argues that amidst the uncertainty surrounding the correct application of art.107 TFEU, it is up to the Commission to bring in international tax reforms for a simplified corporate tax regime.

Aviation, subsidies and unfair competition: the new EU Regulation for the Preservation of Competition in Air Transport 84

Regulation 2019/712 on safeguarding competition in air transport contains powers to investigate and counter third countries' unfair subsidies and discriminatory trade practices. Although adopted long before the COVID-19 pandemic, it has become particularly topical as states prop up their stricken aviation sectors. This survey analyses the Regulation in light of EU and WTO case law on subsidies and trade discrimination.

The indefinite boundary between a legal commercial contract and an anti-competitive agreement—the case of “pay for delay” agreements and their consequences 101

How do we delimitate between anti-competitive practices disguised in legal agreements, on the one hand, and normal commercial contracts, on the other? This question has led us to consider the case of “pay for delay” agreements, which may be seen as being on the boundary between intellectual property law and competition law. Therefore, the present article analyses the intricate European case law on “pay for delay” agreements, in order to distinguish between legal contracts, concluded for the protection of intellectual property, anti-competitive agreements prohibited by object and anti-competitive agreements prohibited by effects, when disguised in such a contract.

Comment

MARIE KRAIHAMMER & ANTHONY ZHANG

Economic analysis in the Three-O2 merger decision 106

The General Court’s decision to overturn the European Commission’s blocking of the Hutchison 3G and Telefonica merger in the UK raises fundamental questions in relation to the adequacy of the economic tools used, and what types of effects should be considered in merger control. This article investigates the balance of proof between assessing anti-competitive effects from upward pricing pressure tests and counterbalancing efficiency arguments. We argue that in the future, more weight should be attached to evaluating the long-term effects of mergers.

Opinion

PRATIBHA JAIN, PAYEL CHATTERJEE, VINAY SHUKLA, DIBYA PRAKASH BEHERA

Facebook EU tussle: lesson for big tech 111

The European Commission has been leading from the front in regulating the digital economy. However, given Facebook’s request for data of a highly sensitive and irrelevant nature, it seems to have encountered a stumbling block. With its Indian counterpart, the Competition Commission of India, lately tightening the noose around tech giants, it becomes pertinent to pre-empt the road forward for tech giants in such investigations.

Book Reviews

KATRI PAAS-MOHANDO

Firm Dominance in EU Competition Law: the Competitive Process and the Origins of Market Power 114

National Reports

Canada

INTERNATIONAL COMPETITION CO-OPERATION

Multilateral Mutual Assistance and Cooperation Framework N-9

Portugal

INVESTIGATION

Dawn raid N-9

Portugal

ANTI-COMPETITIVE PRACTICES

Financial services sector N-10

Portugal

ANTI-COMPETITIVE PRACTICES

Advertising sector N-11

Portugal

MERGER

Phase II in-depth investigation N-12

Turkey

ATTORNEY-CLIENT PRIVILEGE

Scope of attorney-client privilege N-12