

**Protectionist trends in cross-border mergers and acquisitions in Europe: national interest, FDI and other ingredients of the growing regulatory maze** 117

A new era of economic nationalism, already in the making prior to the Covid-19 crisis, has arrived. In the world of international corporate transactions, it implies a tightening of the foreign direct investment screening obligations, a re-thinking of key aspects of merger control law; new authorisation regimes also loom on the horizon. There is a growing regulatory maze where past experience with international merger control should be of use.

**Some thoughts on the revision of China's Anti-Monopoly Law** 130

It is around 12 years since the Anti-Monopoly Law of the People's Republic of China ("AML") came into effect in 2008, and China has made huge strides in AML enforcement. Both the experience and competence of the Chinese competition agency have been greatly improved. But with the increasing normalisation and further development of anti-monopoly enforcement, some provisions of the AML have proved unable to meet the current and future practical requirements. With competition policy playing a more important role in China's resource allocation today in comparison to the macro policy environment in place when the AML was enacted, industrial policy has taken a step back which allows more room for competition policy to come to the fore. Against this backdrop, China is on the point of revising the AML so as to strengthen the fundamental role of competition policy within it and prioritise those problems most urgently needing resolution. However, even if the amendment should keep abreast with the times, we argue that the Chinese legislator should be really cautious when considering introducing provisions which are not popular across widespread jurisdictions. Additionally, the process of China's economic reform and the status quo of the competition enforcement agency should also be taken into consideration.

**The European Commission's innovation spaces approach—a step into the unknowable?** 140

In an environment of rapid technological advancement, it is necessary for competition authorities to pay greater attention to the impact of mergers on innovation. However, following the adoption of the innovation spaces concept in *Dow/DuPont*, this article argues that the Commission has undermined certainty by broadening its analysis to early stage research and development efforts of undertakings, as opposed to the previous approach which retained harm to identified products as the paramount consideration. The author proposes an alternative four-stage test for the application of the innovation spaces approach, limiting it to situations where it is necessary to fill a potential gap in the Commission's enforcement powers. The test put forward thus seeks to strike a better balance between effective protection of competition in the EU and possible over-enforcement by the Commission. In addition, the article addresses the question of whether the increasingly interventionist approach of the Commission may be prone to error given the difficulty of making accurate long-term forecasts when markets are susceptible to shifting rapidly, and should be replaced by a more restrained outlook allowing for potential self-correction on markets which are subject to persistent change.

**Pay for delay agreements and antitrust law: where does India stand? 157**

Pay for delay agreements pose a major threat to competition in the Indian pharmaceutical sector. This article presents the evolution of the jurisprudence on these agreements in US and the EU. It analyses the approach India is likely to take while assessing such agreements and then moves to propose an ideal antitrust approach for assessing these agreements under Indian law. The pharmaceutical sector is an important pillar of an economy as its prosperity is perceived to provide affordable healthcare options. However, such an outcome is only ensured through regulation by the antitrust authorities of a State. It is crucial that while ensuring consumer welfare such regulation does not hamper cutting edge innovation. Pay for delay agreements or reverse payment settlements strike at the heart of this dilemma. These agreements serve as a shrewd option to extend market exclusivity where the patentee pays its potential competitors in exchange for abandoning patent infringement litigation. Naturally, such settlements raise several antitrust concerns and in this article the authors aim to discuss the same concerns and look for solutions to tackle them. The article attempts to arrive at a solution by analysing the evolving jurisprudence on the subject in major foreign jurisdictions like the US and EU. It proceeds to explain the position of these agreements under Indian antitrust laws. The article then explains the pitfalls of taking a per se approach as per the prevailing trend for treatment of anti-competitive agreements in India. Finally, it is posited by the authors that an effect-based approach is the ideal mode of assessment for pay for delay agreements.

**Comment**

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**CK Telecoms v Commission (Three/O2)—a new chapter on the standard of proof for unilateral effects in horizontal mergers 168**

The General Court has annulled the EU Commission's decision blocking the *Three/O2* merger in the UK mobile telecoms market due to errors of law and of assessment in the analysis of unilateral effects of the merger. The Commission's economic evidence was in particular insufficient to show that the merger would have eliminated an important competitive force and to establish a significant increase in prices.

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