

**Articles**

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**The new UK subsidy control regime** 230

EU State aid rules no longer apply to Great Britain. The Government has started consulting on establishing a domestic subsidy control regime. However, under the UK–EU Trade and Cooperation Agreement a new interim domestic subsidy control regime is now already in force in the UK. This article explains its basis, what subsidies are caught, enforcement and likely future developments.

**A response to the Netherlands Authority for Consumers and Markets (ACM) report on sponsored ranking** 235

In February 2021, the Dutch competition authority ACM released a market study on sponsored ranking. Sponsored ranking is defined as the practice whereby an online platform, in exchange for payment, offers a supplier a more prominent position in the search result list. The ACM proposes two theories of harm: (1) sponsored ranking can result in higher prices and/or poorer quality, and (2) it can result in consumers buying suboptimal products. There are concerns in relation to both of the theories of harm presented.

**New horizontal guidelines and block exemptions—four chances for improved guidance** 239

The Commission is currently evaluating whether and how to amend the expiring Horizontal Block Exemption Regulations. The authors discuss and suggest solutions for several key areas that require more guidance, namely information exchange in corporate transactions, distinguishing lawful purchasing co-operations from unlawful purchasing cartels, sustainability collaborations, and co-ordination concerning common suppliers or customers in distress.

**Competition rules for B2B platforms and marketplaces—Guidance from Germany** 247

Industrial enterprises have made substantial investments to launch platforms for the Industrial Internet of Things (IIoT) and B2B marketplaces. During the past three years a growing number of B2B platforms was brought to the attention of the *Bundeskartellamt*, the German competition authority. In this contribution, the authors explain the informal case practice of the competition agency in this field.

**Testing for abusive refusals to supply in EU competition law: past, present and future** 256

In EU competition law, a dominant undertaking that refuses to supply its product or refuses access to its infrastructure may, in certain cases, be found to have abused its dominant position in breach of art. 102 TFEU. However, the circumstances where a dominant undertaking abuses its position through this conduct are not completely clear, because the tests used to assess whether the refusal is abusive have been applied somewhat haphazardly by the CJEU and the Commission. This article explores the tests currently being used and proposes the test that should be adopted when assessing refusals to supply existing and new customers. The notion of “objective justification” of such conduct is also considered in some detail within this context.

**Excessive pricing in the pharmaceutical industry: assessing the impact of new policy measures on the Indian competition landscape?** 269

It is undebatable that access to quality healthcare is one of the most basic needs and an unchallengeable right of every human being, yet around five million people in India die each year due to lack of proper quality healthcare and medicines. This article attempts to effectively develop an understanding, why quality healthcare and medicines are denied and are least affordable to the major population of India, the government’s unprogressive or failed regulations in drug pricing policy and the unaddressed key legislations in the Indian Competition Act 2002. The article also suggests some alternatives and recommendations necessary to have a level playing field in the pharmaceutical market with an objective of “making medicines and healthcare affordable to all”.

## Case Note

ROBERT MIKLÓS BABIRAD

### **Commission v Hungary (Higher Education) (C-66/18) 276**

Discusses a Hungarian national law requiring only higher education service providers from outside of the European Economic Area (EEA) to have to conclude an international treaty with the Hungarian government before being permitted access to its national marketplace. Considers whether this requirement constitutes anti-competitive conduct and whether it would potentially fall under one of the WTO's General Agreement on Trade in Services exemptions.

## Book Reviews

GAVIN MURPHY

### **Competition Inspections under EU Law: A Practitioner's Guide 280**

OLES ANDRIYCHUK

### **Competition, Effects and Predictability: Rule of Law and the Economic Approach to Competition 281**

## National Reports

**Austria**

### **MERGERS**

**Merger control N-49**

**Canada**

### **ANTI-COMPETITIVE PRACTICES**

**Competition Bureau guidance N-50**

**Channel Islands**

### **MERGERS**

**Jersey Competition Authority N-50**

**Denmark**

### **ANTI-COMPETITIVE PRACTICES**

**Judgment N-52**

**EU**

### **ANTI-COMPETITIVE PRACTICES**

**Judgment N-53**

**France**

### **ANTI-COMPETITIVE PRACTICES**

**Supreme Court ruling N-54**

**France**

### **ANTI-COMPETITIVE PRACTICES**

**National Competition Authority N-55**

**Germany**

### **ANTI-COMPETITIVE PRACTICES**

**Brewery sector N-55**

**Hong Kong**

### **ANTI-COMPETITIVE PRACTICES**

**Competition proceedings N-57**

**Italy**

### **ANTI-COMPETITIVE PRACTICES**

**National Competition Authority N-58**

**Latvia**

### **ANTI-COMPETITIVE PRACTICES**

**Infringement decision N-59**

**Poland**

### **MERGERS**

**National merger control N-60**

**Portugal**

### **NATIONAL COMPETITION POLICY**

**Competition Law and the Green Deal N-61**

**Portugal**

### **STATE AID**

**State aid approvals N-62**