

Articles

NATACHA ESTÈVES

Apprehending patent pledges made outside of standard-setting-organisations through the lens of EU competition law 536

This article explores how patent pledges would be apprehended by EU competition law. Patent pledges are voluntary commitments made by patent holders to limit the enforcement of their patents and are mostly found in the ICT sector. They vary in features and objectives, and present some originalities compared to more typical licensing arrangements and classic patent pools. Pledges can be used by firms as part of a patent portfolio management strategy. Some pledges propose to offer freedom to operate in specific technology sectors by preventing potential litigation, others aim at encouraging the use of a specific technology. While patent pledges are much discussed in the US, it is much less the case in Europe. Hence, as American scholars have started to investigate the interaction between patent pledges and antitrust law, this article addresses, in a similar manner, the interplay between patent pledges and EU competition law.

DR BÜLENT GÖKDEMİR

Assessment on Turkish Competition Authority's approach towards tying practice of multi-sided digital platforms 548

The Turkish Competition Authority's approach towards tying practice of digital platforms seems to be debatable since it has radically changed its stance in a relatively short period without delivering any justification and assumed Leveraging Theory holds true in any case. The theory of Behavioural Economics has been referenced to substantiate this assumption. However, this approach is not consistent with the findings of the recent economic studies that tying practice may improve social welfare.

KRITHIKA RAMESH & RAVI GANGAL

Uncorking data bottlenecks and enabling competition through blockchain 555

The report on non-personal data commissioned by the government of India is a long-awaited (and expected) step towards equalising data access. This reactionary article is focused on one of the many aspects of data sharing that the report advocates—provision of data access to data proles. The article advocates that the government take a more collaborative approach with data businesses as opposed to the confrontational approach advocated by the report. Collaboration is proposed by automating the (i) data-sharing process, and (ii) adjudication of claims arising from breach of data-sharing agreements. The article also attempts to minimise the number of instances when regulatory intervention would be necessary. To this end, the article explores how blockchain could be used to create a “data buffet”. In a decentralised economy based on blockchain, end users would be able to share data seamlessly for a value without compromising on privacy. This would create incentives in the market for companies to “share” data for value, rather than “hoard”, thereby eventually reducing the number of instances where a regulator would have to enforce an order for mandatory data sharing. Regardless, online marketplaces and search engines in their cost analysis might find reasons to hoard some of the data they assimilate. Further, the success of the data-sharing paradigm that the article envisages is dependent on high participation in a data-sharing consortium of sorts. Even in a decentralised data-sharing consortium (where the end-user holds all the data), disputes regarding access to observed or inferred data remain intact. Recognising these shortcomings, we identify scenarios in which legal solutions can supplement the technological framework of data access. We propose two types of legal interventions. The first is a legislative exercise that could incentivise participation in the consortium by mandating dominant players in certain markets to join the consortium. The second is a residuary interventionist measure to uncork data bottlenecks. Based on a comparative view of institutional frameworks within which regulators work, the article ideates on a co-operative regulatory framework between the data regulators and competition regulators.

MOHAMED EL FAR

The assessment of non-compete clauses in mergers transactions under the Egyptian competition regime 573

The ECA has assessed non-compete clauses in merger transactions on a number of occasions. In addition, courts have shed more light and seem to have established an appraisal framework in similar competition cases. This article explores those developments and provides an outline of a suggested test for assessment of non-compete clauses based on those precedents in these transactions.

Blockchain challenges the legitimacy of antitrust law. Against this background, this article explores several blockchains and their transaction fees, whether transaction fee manipulation is possible, and how they engage in antitrust abuses. Based on this, this article draws a legal conclusion that includes policy measures for various actors in the field of antitrust and competition law.

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