

Editorial

DEREK RIDYARD

Editorial: Issue 6 263

Articles

PHEDON NICOLAIDES

The appropriateness of state aid and the principle of non-discrimination 264

Member States have granted very large amounts of state aid to counter the impact of COVID-19. The European Commission has approved close to 700 such aid measures between March 2020 and December 2021. Ryanair appealed 20 of those decisions. In the first half of 2021, the General Court delivered judgments on 10 of Ryanair's appeals. In all 10 cases, the General Court rejected the argument of Ryanair that its exclusion from national aid measures was discriminatory. This article argues that the criteria used by Member States to determine eligible beneficiaries were in fact discriminatory because they were not the most appropriate for achieving the purpose of the aid measures.

ERMAN EKINGEN

Most-Favoured-Nation clauses in online multi-sided platform markets and their impacts on consumer welfare standard 270

MFN clauses adopted in online multi-sided platforms (MSP) in their unique forms cause harm to consumers in terms of price, quality, choice and innovation criteria of consumer welfare standard. To analyse the consumer welfare aim of EU competition law, this article aims to explore how MFNs in EU competition law affect the consumer welfare standard in online MSP markets.

MARIA VOLOKH

Keeping up with the enforcement trends against digital platforms: Amazon takes yet another hit from the Commission 283

In November 2020, The European Commission sent a Statement of Objection to Amazon in relation to its reliance on non-public business data of third-party sellers, to the benefit of Amazon's own retail business. The Commission stated that this conduct allows Amazon to avoid the risks of competition and to leverage its market power in the market for the provision of marketplace services in France and Germany. In light of the recent enforcement trends against leveraging practices and the novelty of this particular conduct, the aim of this dissertation is to investigate whether Amazon's conduct is an expression of competition on the merits, assuming that it holds a dominant position in the market for the provision of marketplace services in France and Germany. This article first discusses the scope of art.102 TFEU in relation to leveraging practices and establishes that leveraging is not a separate category of abuse but may underline various abuses. It further determines that leveraging practices can amount to a violation of art.102 TFEU where they distort or are capable to distort competition. The article suggests that Amazon's conduct is a classic leveraging case that may fall under the abuse of discrimination or a new category of abuse that the Commission might rely on in this case provided the presence of actual or potential anti-competitive effects. Second, the article draws a dividing line between the concept of anti-competitive effects and the notion of competitive advantage and argues that Amazon's reliance on third-party sellers' data is the mere exploitation of its competitive advantage, which does not in itself constitute an abuse of dominance.

LAWRENCE B. LANDMAN

Nascent competition and transnational jurisdiction: the future markets model explains the authorities' actions 294

The US, EU, and UK competition authorities aggressively protect nascent competition. The author has previously derived the methodology the authorities actually use when they claim to protect competition to innovate. This article shows, first, that the authorities also use this methodology when protecting nascent competition, and, second, that these cases raise complex jurisdictional issues because the relevant products do not exist yet.

National Reports

Belgium

COMPETITION REFORM

Implementation of ECN+ Directive N-119

Canada

ANTI-COMPETITIVE PRACTICES

Investigation N-121

Croatia	ANTI-COMPETITIVE PRACTICES Infringement N-122
Denmark	ANTI-COMPETITIVE PRACTICES Infringement N-123
Denmark	ANTI-COMPETITIVE PRACTICES Investigation N-123
Estonia	ANTI-COMPETITIVE PRACTICES Judgment N-124
EU	MERGERS Merger control N-125
Greece	ANTI-COMPETITIVE PRACTICES Infringement N-126
Hungary	ANTI-COMPETITIVE PRACTICES Investigation N-127
Hungary	UNFAIR COMMERCIAL PRACTICES Investigation N-128
Latvia	MARKET INQUIRY Market inquiry N-128
Netherlands	ANTI-COMPETITIVE PRACTICES Restrictive business practices N-129
Portugal	ANTI-COMPETITIVE PRACTICES Enforcement N-130
Portugal	ANTI-COMPETITIVE PRACTICES Enforcement N-131
Portugal	ANTI-COMPETITIVE PRACTICES Investigation N-131
South Africa	ANTI-COMPETITIVE PRACTICES Competition Commission Guidelines N-132
Spain	FOREIGN DIRECT INVESTMENT Draft legislation N-134
Turkey	ANTI-COMPETITIVE PRACTICES AND UNFAIR COMPETITION Restrictive business practices N-137