

Articles

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Pharming at the Frontier: Competition/IP interface: the next frontier 309

Lundbeck, Servier, Teva, Astra-Zeneca: where do we stand today in abuse of dominance cases in the pharma sector and what is the next frontier? Looking back at the main pay-for-delay and abuse of patent process cases, and taking into account the recent entry on the market of biosimilars, this article explores what dreams may come in a brave new world of pharma antitrust enforcement.

Clean teams for dirty business: A practitioner's view on the use of clean teams under competition law rules 314

Clean teams are widely used in M&A transactions and other forms of co-operation between competitors to enable the disclosure of sensitive information necessary to achieve the transactional or business goal in a framework that ensures compliance with antitrust rules. Although many competition authorities across the globe acknowledge that there can be a valid interest in exchanging sensitive information and recognise clean teams as a safeguard, there is, with very limited exceptions, no guidance on the FAQs that parties negotiating a clean team usually face: who is admissible as a clean team member? What information can be disclosed? Should a cooling-off period be provided? The lack of guidance is exacerbated by the—in some cases—contradictory statements made by authorities in decisions and other publications. The authors of this article will present their views on the above questions and argue that competition authorities, and in particular the European Commission, should provide greater legal certainty for transacting parties by issuing dedicated guidance on the assessment of clean team arrangements.

“Cut off one Hydra head, two more would grow back in its place”: Challenges in combating concealed state aid to airlines and regional airports 321

Combatting illegal State aid to airlines (and to a lesser extent to airports) disguised in the form of various State-airport-airline agreements poses a constant challenge to the EU State aid control system as these relationships evolve and adapt to improving enforcement efforts. In this context, this article seeks to determine whether—despite significant progress that has been made following the adoption of the 2014 Aviation Guidelines—a potential gap exists in the EU State aid control system. The analysis will focus on whether, and under what conditions, granting authority can disassociate itself from a measure by using intermediaries so it will no longer be formally imputable to the State. Then, the focus will shift to the Market Economy Operator Test with the goal of finding deficiencies in the current approach, possibly compounded by sector-specific circumstances. The article will conclude with *de lege lata* and *de lege ferenda* recommendations. Although the discussion has a clear sectoral focus, the major findings and conclusions will be of more general relevance.

Competition law enforcement in Portugal: Recent trends and future challenges 331

Over the past four years, there has been a material step-change in competition law enforcement in Portugal. Indeed, since 2016, fines have totalled nearly €1 billion. This article gives an overview of recent enforcement activity in Portugal and attempts to provide some insight into future developments. Some suggestions on how the regime can be reformed are also provided.

A tale of two enforcement trends in Egypt: lessons from enforcement in the school uniforms market 338

The ECA in a number of cases tried to assess the legality of agreements entered between schools and school uniform suppliers. The enforcement policy of the ECA has developed over the years. The ECA started by advocacy efforts and finally imposed infringement decisions. This article intends to explore the various lessons that may be drawn from this experience.

Contracting authorities asking firms to enhance transparency through infringements of article 101(1) TFEU 343

Legislation on public procurement empowers contracting authorities with the possibility to call on competitors to describe their businesses and the markets they operate in. This is understood, in that piece of legislation, as an instrument to promote and enhance equal treatment, non-discrimination and transparency. However, if competitors are called to provide sensitive or strategic information, this would invariably represent an infringement of art.101(1) TFEU. In fact, dialogue with contracting authorities with reference to sensitive or strategic issues can be considered allowed under EU competition law only to the extent that it does not involve contacts or communication with competitors.

Comment

VINAY SHUKLA & VISHAL RAJVANSH

Data localisation and utilisation: Emerging antitrust concerns 348

Consumer data has always been an integral part of the advent of digitalisation. Although digitalisation has brought ease in our lives, such ease comes at the cost of huge amounts of consumer data. The companies who enjoy a huge consumer base thus have huge databases of process data to bring data-driven advancements, which in turn attract more users, thus creating a network effect.

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