

Articles

PHEDON NICOLAIDES & CLAIRE
SOUPART

State aid to combat Covid-19: it supports national economies but what is its impact on the internal market? 355

In this article we count the number of state aid measures to address the effects of Covid-19 and calculate the total amount of aid. We break down the statistics in terms of legal bases and types of interventions. We investigate whether there is a correlation between the amount of aid and the harm suffered as a result of Covid-19. We find a very weak relationship. We conclude that there is a risk of extensive distortion of competition in the internal market. For this reason, we propose that the intensity of allowable aid is modulated according to the damage that is suffered by the national economy and individual sectors. In this way the proportionality of aid will be more consistently applied across Member States.

MARK JEPHCOTT, DEVINA SHAH &
LISA KINGSBURY

Climate change, sustainability and competition law: where are we now? 366

As ESG initiatives climb to the top of the corporate agenda, laws and regulations around sustainability have been evolving at pace. One area of regulation that has been fluctuating is antitrust, as competition authorities in the UK and across the Continent seek to flex the muscles of competition law to take into account sustainability priorities. In this article, we consider the approaches adopted by competition regulators in different jurisdictions—namely the UK as compared with the European Commission and EU Member States—towards the interaction between competition law and ESG. We provide examples of where relevant guidance has been updated and highlight those areas where ambiguity remains and further guidance would be welcome.

PAUL K. GORECKI & FRANCIS
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Resale price maintenance guidance in Ireland: a per se approach? 372

In 2021 the Competition and Consumer Protection Commission (CCPC), Ireland's competition agency, advanced the proposition that, in effect, minimum, fixed and, it appears, maximum resale price maintenance (RPM) are per se breaches of competition law. Such a position is inconsistent with the European Commission's current and draft Vertical Block Exemption Regulation and Guidance, the efficiency provisions of both Irish and European Union competition law and CCPC prior decisional practice for the past 30 years or so. Civil fines for RPM are expected to be introduced with the implementation of ECN+ Directive in 2022. Prior to commencement, the CCPC should state whether and why it views minimum and fixed RPM as per se breaches; or, as seems more likely, the CCPC envisages it would be difficult but not impossible for the efficiency defence to be successfully employed in these by object breaches. The agency also needs to clearly articulate its position on maximum RPM, which it also appears to treat—inappropriately but perhaps inadvertently—in the same way as minimum and fixed RPM.

JAE WOON LEE & SABIN CHUNG

The Korea Fair Trade Commission's conditional approval of the Korean Air-Asiana merger 377

On 22 February 2022, the Korea Fair Trade Commission (KFTC) announced that it decided to conditionally approve a merger deal by Korean Air Lines to buy Asiana Airlines. After discussing the regulatory barriers and the impact of Covid-19 on the airline industry, we introduce the summary of the KFTC's decision, including its requested remedies, with a brief analysis.

DR DAVID MESTRES RIDGE

Comparing the approach to mergers in the competition regulations of mainland Tanzania and Zanzibar 384

This article reviews and contrasts the merger regimes in Zanzibar and Tanzania Mainland, both of which are strongly influenced by EU competition law and where the Mainland's regime especially is becoming more significant as Tanzania continues with an economic development that is likely to bring with it corporate growth through mergers and acquisitions.

Comment

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The Norwegian Telenor case—a “mobile” test for abuse? 394

We address the recent Norwegian Regional Court's judgment in an abuse case—towards the telecom incumbent Telenor. The case is approached both from a legal and economic perspective. From a legal perspective, the case primarily raises questions about the proper legal test for abuse—in particular in cases of “novel” forms of potential abuse. Arguably, the court has established a new test, based on anti-competitive intent, although this is not expressly addressed in the judgment. As well, the case implied that general competition law was used as a supplement to the sector specific regulation. From an economic perspective, the competition authorities, and the court, fail to take into account the role of Telia, who also provide access (national roaming). We argue that the structure of the access price, which is what constitutes the theory of harm, may be the outcome of less, not more, market power in the access market (national roaming).

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