

Editorial

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KIERON BEAL KC

“More flexible and less bureaucratic” or carte blanche? The enforcement of subsidy control post-Brexit 533

This article analyses the Subsidy Control Act 2022 and whether it complies with the UK’s anti-subsidy commitments under the Trade and Cooperation Agreement (TCA). It explores the interlinking aspects of post-Brexit subsidy control in the light of the Northern Ireland Protocol, the TCA and the new Act.

CLAUDIO CALCAGNO

Market definition, two-sided markets and most-favoured nation clauses: an assessment of the CAT’s economic analysis in BGL v CMA 543

In *BGL v CMA*, the UK Competition Appeal Tribunal overturned an infringement decision by the UK Competition and Markets Authority. It also set out its views on how to assess certain aspects of digital markets and how to perform an effects-based analysis in cases involving most-favoured nation clauses. This article focuses on some key economic aspects of this case.

PAUL STODDART & ANGELA ZHOU

Don’t go out on a limb—navigating the exiting firm scenario before the CMA 551

The exiting firm scenario (“failing firm defence”) is rarely invoked in merger cases before the CMA and even less frequently successful. However, increased wholesale energy prices and weaker economic conditions may push more businesses towards failure, leading to its increased use. This article summarises CMA decisional practice, including *Freshways/Medina* (2022), to guide on arguments most likely to succeed.

ADRIAN DEUSCHLE

Germany: the new Section 19a of the German Competition Act 557

Section 19a of the Act against Restraints of Competition (ARC) aims to tackle anti-competitive effects and threats for competition in the digital ecosystem, where some companies act as gatekeepers. The purpose of the new German tool is to challenge potential threats for competition in the digital sector faster and in a more effective manner. Section 19a ARC is not directly applicable. The German Competition Authority (FCO) first has to issue a decision based on s.19a(1) ARC declaring the paramount significance for competition across markets (PSC) of a company. The FCO is then entitled to prohibit certain conduct exhaustively listed in s.19a(2) ARC. The FCO initiated investigations to declare the PSC against Meta (formerly Facebook), Amazon, Google and Apple. After over a year of enforcement practice the FCO has only declared the PSC of three companies. Surprisingly, a prohibition decision has not yet been taken by the FCO until today. Meanwhile, on the European level the Digital Markets Act (DMA) is about to enter into force. Section 19a of the German Competition Act largely overlaps with the provisions in the DMA. It remains to be seen whether the new s.19a ARC is still applicable once the DMA enters into force.

HÉCTOR PÉREZ

Use of marketplaces by distributors as sales channels: regulatory analysis and critical remarks 564

On 10 May 2022, the European Commission published the revised Vertical Block Exemption Regulation and Vertical Guidelines with the purpose (among others) of adjusting the regulation of vertical agreements to the new digital business context. This article proves that the provisions contained in the new legal framework regarding restrictions on the use of marketplaces are more effective in regulatory terms than the legal framework adopted in 2010, whilst also tackling different aspects of the new regulation on marketplaces that have been subject to criticism from Spanish experts. Conclusions were reached through the use of both theoretical and practical research methodologies such as literature review, doctrine synthesis, case study, and regulatory comparison.

The digital domain of the 21st century is ripe with technology, the most prominent and accessible of which is the booming smartphone application industry. In an era where we have an app for almost every internet activity imaginable, super apps have come and placed themselves in an overriding position of importance, useful and convenient as they may be. They pose newfound challenges for lawmakers and governments as far as their market regulation is concerned. This article seeks to analyse the competition issues that super apps will raise if they are left untamed to grab hold of an unregulated digital data driven market space. The article will attempt to explicate the evolution, the functionality and the challenges that competition authorities around Southeast Asian countries are facing due to the rise in these so called “consumer friendly” platforms. Although super apps are considered convenient, the other side of the coin is not as pretty. The primary focus of this article is to assess the various ways in which competition authorities around the world have been perceiving this new-fangled challenge and derive lessons that may help India assimilate into this new framework.

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