

Articles

SIR JONATHAN FAULL

Updating the World’s Antitrust Statutes—What is to be Done, if Anything? 44

A lot can be done to modernise competition law without amending venerable treaty and legislative texts. Their language is usually flexible enough accommodate policy changes, new markets and theories of harm. Courts have shown themselves capable of dealing with these and other challenges. Only radical departures probably require democratic debate and legislation.

AIDAN ROBERTSON KC AND
RICHARD HOWELL

The First Subsidy Control Challenge in the Competition Appeal Tribunal 47

Comments on the dismissal of the first application to the Competition Appeal Tribunal under s.70 of the Subsidy Control Act 2022 relating to a council’s commercial waste collection charges. Reviews the background to the application, the nature of the evidence, including the duty of candour, claims for legal privilege, and costs following the council’s successful appeal against the Tribunal’s proposed costs capping order.

STEPHEN KON

Mediating Competition Claims: Thoughts on an Underutilised Option 52

It is widely recognised that competition law private litigation in the UK has become increasingly complex, time consuming and, for the parties, burdensome and expensive. This article examines the Competition Appeal Tribunal’s apparent reluctance to encourage alternative dispute resolution (ADR)/mediation as a means to address many of the perceived litigation bottlenecks and procedural challenges. It considers the benefits that mediation/ADR can offer, compared to pursuing litigation, and assesses what type of competition claims may be suited to consensual dispute resolution. It then proposes some initial initiatives and innovations to encourage “walking the mediation walk” going forward.

PROFESSOR FRANCESCO RIZZUTO

A Missed Opportunity to Fill the Enforcement Coordination Gap in Cross-Border Proceedings? The Volkswagen Ruling of the Court of Justice of the European Union Regarding Unfair Commercial Practices 60

The Court of Justice of the European Union (CJEU) has ruled for the first time that the principle of *ne bis in idem* may apply to fines imposed for unfair commercial practices because they may be classified as penalties of a criminal nature. The CJEU confirmed the threefold criteria under European Union (EU) law for assessing whether proceedings and penalties are criminal in nature, and that it precludes the imposition of fines where the same person has been the subject of a criminal penalty based on identical, not merely similar facts, in another Member State. The CJEU also confirmed the three requirements when a limitation of the principle may be justified. However, with regards to the crucial third requirement, the coordination of proceedings, unfortunately, the CJEU fails to clarify, how they must take place in the event EU law is silent on the matter.

LEONARDO PEIXOTO BARBOSA AND
BARBARA LUVIZOTTO

Rethinking Competition Law for Digital Markets: A Comparative Institutional Analysis 75

The emergence of economic activities driven by new technologies, marked by the widespread and strategic utilisation of data on an unprecedented scale, is commonly referred to as the “digital economy”. Within this digital economy, digital platforms play a distinct and pivotal role. They contribute to societal well-being by reducing transaction costs and facilitating the introduction of innovative services. However, they also present significant challenges to fostering competition within markets, as numerous expert reports have underscored. In addition to determining the appropriate responses that competition law should offer in addressing these challenges, it is equally essential to consider how such responses are implemented within an institutional framework. In this paper, we contend that comprehending the governance structure is of paramount importance for the efficiency and efficacy of the “revised” legal framework. Our analysis substantiates this proposition, highlighting three fundamental governance mechanisms, each with its own merits and drawbacks.