

Articles

JAKUB KOCIUBIŃSKI

The Ring of Gyges in EU State Aid Law: Strategic Sequencing of State-Run Interdependent Infrastructural and Commercial Projects to Avoid State Aid Classification 87

This article examines a specific “blind spot” within the European Union (EU) state aid control system, where Member States can strategically sequence projects to exclude them from scrutiny. The first component is presented as non-economic infrastructure, while the second is portrayed as a purely commercial endeavour, even though the latter is entirely dependent on the former. While authorities take various steps to facilitate investments, the problem in the discussed scenario arises when only a state-run entity has the capacity to make that subsequent investment. The author argues that this distorts the essence of the Market Economy Investor Test, replacing the hypothetical with the fictitious, and blurs the consistently emphasised distinction between the state acting as an authority and as a market player. Given the noticeable rise in state participation in markets, a common phenomenon during uncertain times, the scenario under discussion poses a significant risk. It provides authorities with a practical means to establish a competitive edge for state-run undertakings. The paper concludes with suggestions for improvement.

MICHAEL MAYR

The Significance of Advance Information Copies of European Union Merger Clearance Decisions 101

The European Commission typically sends an advance information copy of merger clearance decisions to the parties’ external counsel in advance of formally notifying the final decision to them. This practice raises the question whether parties can assume that the standstill obligation under the Merger Regulation has fallen away once they have received the advance copy of the decision or whether the standstill obligation continues to apply until they receive the formally notified decision. This article explores the legal significance of advance information copies of merger clearance decisions in the context of the specific legal framework of the Merger Regulation.

PEDRO CALLOL

Spain: The New Foreign Direct Investment Regulation: A Welcome Improvement—Though Gaps Remain 107

FDI screening has blossomed internationally as a key regulatory tool available to national governments to intervene in ‘sensitive’ foreign investments. This article provides some detailed analysis of the regulatory regime in force since September 2023 in Spain, while exploring broader trends around (excess) government discretionary power and potential for judicial review beyond mere issues of procedure.

CHENYING ZHANG AND JIAYING XU

Application of the Safe Harbor Rule to the Chinese Legal System 117

The article discusses the introduction and implementation of the “Safe Harbor Rule” in China’s anti-monopoly legislation. The rule, initially developed in maritime transport, provides operators with a safe expectation of legal liability protection within limited parameters. The article highlights the rule in China’s anti-monopoly regulation of monopoly agreements, considering the country’s beneficial reference to major jurisdictional rules, such as those in Europe and the United States (US). The rule’s introduction in China’s anti-monopoly law reflects significant legal practice and accumulation of expertise in the field of monopoly agreements, but there are still some problems in actual applications, such as the vagueness of laws and regulations and the need for further clarification of the specific standards. Thus, the article hopes to solve such problems and assist in optimising the legal application of the “Safe Harbor Rule” in the field of the China’s anti-monopoly law.

Opinion

CHRISTIAN BERGQVIST

EU’s Google AdTech Investigation—Some Preliminary Thoughts 124

Book Review

CHRISTIAN BERGQVIST

Abuse of Platform Power by Friso Bostoen 128