

Articles

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Germany's New Tool to Strengthen Competition: A Comparison with the UK's Markets Regime 132

The amended German Act Against Restraints of Competition took effect on 7 November 2023 and gives the Federal Cartel Office new powers to remedy “malfunctioning” of competition including, under certain circumstances, to impose behavioural or structural remedies. The UK Markets Regime served as a role model for the German tool and has been amply used. The article compares both regimes and provides an outlook on how the new German competition tool is likely to be applied.

An EU Competition Law Analysis of Potential Collusion Risks Surrounding Generative Artificial Intelligence Tools 147

Generative Artificial Intelligence tools (or ‘Generative AI tools’) offer the prospect of significant economic efficiencies for companies, possibly even to the extent of leaving certain jobs redundant. Since generative AI tools have become more widely available (at least to the average user or organisation), lawyers have evolved their thinking on the legal risks which generative AI may carry. In the competition law space, for example, there has been discussion on challenges such as market power benefiting first movers, high levels of concentration of computing power, access to data narrowly held by a handful of companies (or even fewer than that), barriers to entry, interoperability issues, and the potential abuse of subscription models. This article goes one step further, by considering the potential risk of specific types of collusion from the perspective of EU competition law. It is based on pre-existing literature focused on such collusion risks from the European Commission, the UK’s Competition & Markets Authority (CMA), the Organisation for Economic Co-operation and Development (OECD), European Court of Justice (ECJ) case law, and leading academic commentators. Whilst not attempting a comprehensive survey of the literature or the risks, it seeks to sketch out where such collusion risks may arise in the future and how companies might mitigate and respond to them.

Default Power in Global Antitrust Enforcement 155

US v Google LLC has generated similar legal and empirical questions around defaults as the seminal digital antitrust cases in Europe, *Google Android* and *Google Shopping*. The extent to which the US DOJ has sufficiently dealt with these challenges may be queried when compared with the European Commission’s statistically-driven approach towards defaults and their potential anti-competitive effects.

Selected Issues on General Strategies For Optimizing Competition Laws—Discussion on the Economic and Legal Perspectives, Parameters and Assessment Criteria 163

In a situation in which there are phenomena in the market that lead to economic inefficiency related to the distortion of competition, i.e., a loss in terms of social welfare that cannot be offset by market forces, legal interference in the operation of the market may reduce these losses. However, crafting an optimal legal mechanism—either in general terms or in specific case, requires a thorough discussion on both economic and legal perspective. Such a discussion also requires a specific parameters and criteria for assessment. Such legal interventions made by state authorities should consider associated and generated costs, effectiveness, and potential benefits. Such a discussion should involve not only an economic, cost-benefit analysis, but should also be anchored in legal values and principles, especially the proportionality principle (suitability, necessity, and proportionality *sensu stricto*). A model of such optimisation mechanism, incorporating all these elements may be proposed. Such a mechanism could also provide a framework for a textured discussion on practical issues in specific situations, including specific cases before the relevant courts or bodies. What is more, an economic optimization may be compared with the way in which traditionally legal proportionality principle operates, which on the other hand, may provide economic, practical argument with legal backbone, allowing for more persuasive arguments which will be valid within legal domain.