

Editorial

JAMES HARVEY

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Articles

AIDAN ROBERTSON

Judicial and Legislative Developments to the Extraterritorial Application of UK Anti-trust Law: If You Can't Beat Them, Join Them 287

Reviews the shift in the attitude of UK legislators and courts to the extra-territorial application of anti-trust law since the entry into force of the Competition Act 1998. This shift includes forthcoming amendments to the 1998 Act contained in the Digital Markets, Competition and Consumers Act 2024 and the Court of Appeal's 2024 judgment in the *BMW* and *VW* cases, now on appeal to the Supreme Court.

PETER GEORG PICHT AND
ANNA-KATHARINA LEITZ

Algorithms and Competition Law—Status and Challenges 290

Algorithmic software has become as a key tool for digital gatekeepers as well as for small and medium enterprises. This paper takes stock of the discourse regarding algorithmic market activity and competition law and economics. Furthermore, it discusses three topics, namely rules on mitigating algorithmic collusion risks that are viable for main street businesses, unilateral conduct employing generative “artificial intelligence”, and the control of algorithmic compliance through audits.

PHEDON NICOLAIDES

The Discretion of Competition Authorities and their Liability for Damage they Cause with Erroneous Decisions 308

This article examines the relationship between the discretion of the Commission and the concept of serious breach of competition law that can create non-contractual liability. In practice, a serious breach of a rule of law is more likely to be established with respect to procedural errors where there are simple and straightforward rules on how an investigation is to be conducted and where undertakings enjoy clear rights of defence. By contrast, so far no undertaking has succeeded to prove that the Commission has committed a serious breach when its assessment of the impact on competition was wrong. This is because in assessing competition effects, the Commission enjoys a wide margin of discretion and despite committing mistakes, no claimant has been able to demonstrate that the error was unreasonable or abnormal or outside the boundaries of usual behaviour. This article argues that the case law has not defined what reasonable or normal behaviour may mean. It proposes that where the Commission exercises its discretion to use new analytical methods, it should also be obliged to justify them according to independent expert opinion.

DR BEVERLEY WILLAIMSON

The ECN+ Directive, Successor Liability and Mergers: An Unintended Source of Leniency applications? 317

The ECN+ Directive has ensured that the notion of ‘undertaking’ will be applied in the Member States, in accordance with the jurisprudence of the Court of Justice, and along with it, the notion of ‘single economic unit.’ This paper considers the unintended consequence of this on M&A activity in Ireland, and its potential to increase competition enforcement as a result.

A Comparative Analysis of Blockchain and Competition Law in the European Union and the United States: Decentralization, Data Accumulation, and Collusion 323

This paper scrutinises blockchain and competition law in the European Union ('EU') and the United States ('US'), investigating the multi-jurisdictional challenges caused by this emerging technology. The paper argues that while blockchain technology can potentially increase competition in certain markets, it poses new antitrust concerns requiring careful consideration. The paper argues that while blockchain technology can potentially increase competition in certain markets, it poses new antitrust concerns requiring careful consideration. This paper explores the potential for blockchain technology to enable collusion, cartel formation, and monopolization through data aggregation. Additionally, it delves into the difficulties of applying competition law in a decentralised setting where conventional methods might be inadequate. To address these problems, the paper puts forth several recommendations. First, it proposes fostering collaboration between blockchain developers and competition regulators to address antitrust concerns during the initial stages of blockchain projects. Second, it advises competition authorities to consider adopting blockchain technology for enforcement purposes, particularly in data gathering and analysis. Finally, the paper encourages competition authorities to collaborate and establish a common understanding of the opportunities and challenges posed by blockchain technology, through continuous dialogue and cooperation on a transatlantic scale. In summary, this paper highlights the significance of a collaborative strategy in tackling blockchain-related challenges and competition law within an EU-US comparative framework. Offering practical guidance to policymakers and practitioners on managing competition law concerns arising from blockchain technology, this paper contributes to the ongoing international law dialogue. The expected outcome of this project is to equip policymakers and practitioners with pragmatic guidance to address competition law challenges associated with blockchain technology.

Case Notes

PIERRE GOFFINET AND MEDIONA SHEHU

The Gun jumping obligation, some pieces of the puzzle are still missing: Case Altice Group Lux v Commission (C-746/21) 330

In November 2023, the European Court of Justice largely uphold the fine imposed on Altice for a breach of the gun jumping obligation. While the Court confirmed a rather strict approach regarding the gun jumping requirement, there are still some grey areas left in the interpretation of some key concepts such as the 'partial implementation' and the 'direct functional link'.

DR. CHRISTIAN BERGQVIST

Murder on the Dance Floor—The Danish Disco Cartel 334

According to the Danish Competition Authority was it akin to market sharing and a by-object restriction, when 22 nightclubs incorporated a non-establishing clause in an otherwise legitimate joint procurement arrangement. Consequently, did the matter warrant fines in a series of Decisions rendered in 2021 and 2022. However, this approach comports badly with EU's Horizontal Guidelines, generally looking favourable upon joint procurement unless masking a buyer cartel. The case is now pending before the judicial, providing for a case to watch for.

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