

Editorial

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GenAI and Antitrust: Tread Lightly in Times of Uncertainty 45

Developments in AI have rapidly gained prominence. The most high-profile of these have been innovations in the field of generative AI (“GenAI”). This article provides an overview of the initiatives adopted by competition authorities regarding GenAI, explores potential antitrust issues associated with GenAI, and critically examines the concerns raised by competition authorities. It concludes that the uncertainty surrounding GenAI calls for a cautious approach to antitrust enforcement, allowing this technology room to develop.

European Court of Justice’s Sport Case Trilogy: General and Sport-Specific Considerations 58

The European Court of Justice's sport case trilogy provides valuable insights into both the specific considerations of sports law and the general principles of competition law in the EU. The trilogy emphasized that sport is not a general policy of the EU and is subject to competition law if it involves economic activities. The Court also highlighted the applicability of art.106 TFEU in sports cases, stressing the need for a transparent and non-discriminatory framework. Additionally, the Court clarified the Meca-Medina and Wouters case-law, stating that not every agreement or decision that restricts the freedom of action of undertakings falls under the prohibition of art.101 TFEU. Overall, the trilogy provides important guidance for the application of competition law in the sports sector and highlights the need for transparent and fair practices in the sports industry.

MOL and Undertakings as Creditors: The Question is Still Open 62

Undertakings themselves are the addressees of the prohibitions under competition law and are therefore themselves liable for competition law damages in the event of an infringement. This also applies if an undertaking is an economic unit, consisting of a parent company and (some of) its subsidiaries. But can the undertaking itself also be a creditor (and not only a debtor) of claims for damages? This question has been answered affirmatively elsewhere with detailed reasoning. Now the CJEU has ruled in MOL that a parent company cannot bring an action for damages at its place of registered office on the grounds that its subsidiary has suffered harm as a result of anticompetitive conduct. The CJEU expressly states that the parent company cannot invoke the concept of the economic unit to claim damages from its subsidiary at its own place of registered office. Is this a rejection of the possibility of an undertaking being a creditor in competition law? Why this is not the case, but on the contrary, why a door has been opened to consider undertakings as creditors will be explained in the following.

Is It Really Necessary for China’s Antimonopoly Regulation of Its Digital Market to Learn from the EU DMA Model? 65

It is a general trend that jurisdictions around the world have been strengthening the regulation of the online platforms due to obvious monopoly or oligopoly, under the influence of network effects, economies of scale and big data. The EU Digital Markets Act is the first of this kind regulatory tool to rein in big online platforms through explicitly listing prohibited conducts, among others. With the Digital Markets Act coming into effect, while the public observes Brussels effects, if any, some in China also wonder whether we should transplant this mechanism. One should always take the national status quo into account. Before determining whether China should follow EU’s step, we should not only evaluate the efficiency and prospects of anti-monopoly regulation of online platforms, but also assess whether prohibition of series of conducts would benefit the development and innovation of China’s digital economy.

The Italian New Power to Call in Below—Thresholds Concentrations 79

Italian Antitrust Law was recently amended to allow the Italian Competition Authority (“ICA”) to call in below-the-threshold concentrations. This article illustrates ICA’s new power and the conditions under which the ICA can call in a transaction. It also provides an overview of ICA’s application of the call-in power since it came into force.

Is the CMA's Power to Request Information Extraterritorial? Recent Guidance from the Court of Appeal's Judgment in Competition and Markets Authority v Volkswagen AG & Bayerische Motoren Werke AG 82

Can the Competition and Markets Authority address formal information requests to overseas companies? The Court of Appeal recently answered this question in the affirmative, quashing the previous joint judgment of the UK's High Court and Competition Appeal Tribunal. This article examines the question of whether the Competition and Markets Authority's cartel investigatory powers have extraterritorial effect, a question with continued relevance notwithstanding the entry into force of the Digital Markets, Competition and Consumers Act 2024. Even were the Supreme Court to adopt the Court of Appeal's almost unlimited approach to the extraterritorial effect of the CMA's investigatory powers, it is nevertheless the case that the CMA will continue to face practical territorial limits to its investigatory powers at least with respect to parties which have no assets, business or other connection with the UK.

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