

## Articles

CHRISTIAN KERSTING

### **Cartel Damages Claims: Limitation Periods After Heureka: A Case Note on ECJ 18 April 2024 Heureka Group a.s. v Google LLC (C-605/21)**

**ECLI:EU:C:2024:324 86**

In a series of judgments, the ECJ has developed the case law on limitation periods for competition law damages actions. The Heureka judgment further develops this judicature by not only explaining the determination of the applicable law *ratione temporis*, but in particular by spelling out the requirements of EU primary law. These largely coincide with the requirements of the Cartel Damages Directive. Finally, the statements regarding the acquisition of knowledge from the publication of the summary of the Commission's decisions in the Official Journal, which also allow conclusions to be drawn for stand-alone cases, are of great importance. It also becomes apparent that in particular the requirement of knowledge of the fact that the infringer's conduct constitutes an infringement must lead to strict requirements for the acquisition of knowledge.

CLARA CALINI

### **A Closer Look at Italy In The Last 12 Months: Between New Tools and Enforcement Priorities 95**

This article provides an overview of the major developments in competition law in Italy from June 2023 to September 2024. It highlights the Autorità Garante della Concorrenza e del Mercato's (AGCM) use of new tools, such as market investigations and below-threshold merger reviews. The AGCM's enforcement priorities show how protecting the competitive process can align with broader public policy objectives, including sustainability and protecting vulnerable groups.

KANISHK RAI AND SHREY  
AGGARWAL

### **Of Delays and Private Claims: Is Arbitration an Option under India's Competition Law? 99**

The Indian legal system has not yet been tasked with the duty of ascertaining the arbitrability of Competition law disputes in the country. While there is a general agreement over the non-arbitrable nature of 'rights in rem', the 'rights in personam' arising out of 'rights in rem' have been recognized to be arbitrable in India. Under this backdrop and in light of the private enforcement clause, i.e. s.53N of the Competition Act, 2002 that allows aggrieved party/parties to seek compensation for the damages suffered due to the anti-competitive activities carried out by an Enterprise, it becomes imperative to examine arbitrability of private action compensation claims under Competition framework of India. The need for arbitrating such private action claims arises in light of the infirmities faced by the grievance redressal system of India that lacks an effective and efficient mechanism to address such compensation claims. The National Company Law Appellate Tribunal, which acts as the appellate body to the Competition Commission of India, has been entrusted with not only adjudicating upon the appeals under the Competition Act, 2002 but also under the Companies Act, 2013 and Insolvency and Bankruptcy Code, 2016. Resultantly, when an understaffed appellate body which lacks in Competition expertise and is burdened with pending applications, is also tasked with addressing the private action claims under the Competition Act, delays will be inevitable. The purpose of this paper is to examine the viability of arbitrating private action compensation claims under s.53N of the Competition Act by taking into account the principles that have been enumerated by the Supreme Court of India with respect to Arbitration. The paper also ventures into the models adopted in western jurisdictions to strike a balance between public and private enforcement of Competition Law and discusses how the Indian framework can allow private compensation claims to be arbitrated upon based on such models.



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Functionalism Analysis Of The Failing Firm Defense In The Control Of Concentrations between Undertakings 112

The concepts and objects of bankruptcy law and antitrust law are not entirely aligned. While both bankruptcy law and antitrust law aim to promote the survival of the fittest by protecting enterprise exit mechanisms, they differ in their focus. Bankruptcy law, based on the creditor-debtor relationship, protects property order and emphasises the loss of business qualifications or economic personality rights post-bankruptcy. In contrast, antitrust law, grounded in competitive relations, aims to protect the order of competition and emphasises the loss of competitiveness. This article provides an in-depth analysis of the various types of reorganisation—corporate survival, business transfer, and liquidation—that could potentially meet the criteria for anti-monopoly declaration and exemptions in China. The piece scrutinises the decision-making logic underpinning both the efficiency and failing firm defenses, underscoring their unique value and characteristics within the broader framework of economic law. Utilising functionalism and comparative law as methodological lenses, the research offers robust theoretical support for the enhancement of the concentration review system under antitrust law.

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