

Editorial

EMILIANO MARCHISIO

Articles

W. SOLOMON MENABDISHVILI

DR. IUR. MAHMOUD A. MOMTAZ

VELIZAR K. KIRILOV

Editorial: Issue 1 1

Analysis of Georgian Merger Regulations and Decisions of National Competition Agency of Georgia 3

The article analyses Georgian merger rules and case laws. As the research shows that the current merger rules are approximated to the EU Merger Regulation, though there are still some drawbacks, and one of the main drawbacks in Georgian merger rules compared to EU ones is that it provides a small amount of the fine for breaching a prenotification obligation. During the research twenty-three merger decisions were studied. All notified mergers then were cleared by the Georgian National Competition Agency. Though there were some cases in which the Agency did not pay enough attention to the factual circumstances and details of the relevant market, such as HHI, maverick firm, coordinated and non-coordinated effects, etc.

The Egyptian Competition Enforcement Policy: The Dual Distribution Arrangements 10

This article examines the enforcement policy of the Egyptian Competition law in relation to multifaceted arrangements. The *Float Glass* and *Private Medical Insurance* cases adopted by the Egyptian Competition Authority (ECA) are then assessed and comparative experiences are contextually explored. This article then suggests that the ECA should have adopted an alternative enforcement policy focusing on the horizontal aspect of the said arrangements rather than considering them of purely vertical nature.

Sector-Specific Essential Facilities Doctrine: A Tool for Remedying Distortions of Innovation Competition for Future Markets 16

In high-value-added industries the anticompetitive effect of refusals to deal may not pertain to existing downstream markets but to the process of innovation competition for future markets. This reveals the limitation of the current exceptional circumstances test tailored by European Union (EU) judicature under what could be called a European essential facilities doctrine. Moreover, the strictness of the current legal test has resulted in its circumvention on certain occasions through the imposition of ad hoc facility sharing obligations on dominant undertakings. Against this background, this article proposes a sector-specific approach to the assessment of input foreclosures that are capable of restricting market-creating innovations. It is based on a two-stage legal test. First, the latter nuances antitrust liability according to the way in which the essential resource holder has attained that status. Second, the presence of key conditions shaping the innovation process in the respective industry is investigated. The aim is to mitigate excessive risks for innovation incentives associated with antitrust intervention in the context of competition for the market and to increase legal certainty. It is argued that an innovation-centric essential facilities doctrine can function only as sector-specific.

Navigating No-Poaching Clauses—A Critical Comparative Analysis of Indian Competition Law and Global Approaches 34

In a competitive labour market, supply and demand are the two factors which drive the wages of employees. However, such perfect competition can be distorted in the labour market if employers create a monopsonist situation therein. Significant employers operating in a highly concentrated relevant labour market can create a collusive monopsony power by agreeing to act in a coordinated manner. Such collusion restricts job mobility and leads to lower wages. No-poaching agreements represent a similar situation wherein a few significant recruiters in the market collude to create and take undue advantage of monopsony power. No-poaching agreements are a business understanding between competitors whereby they agree to not solicit or hire each-other's employees. 1 It is a sub-set of agreements avoiding human resource competition. In several mature jurisdictions i.e., the European Union (EU) and the United States (US) antitrust regime, agreements avoiding competition among employers in terms of wages, hiring of employees, etc. run afoul of competition regimes. 2 Addressing the legality of such agreements under competition law in India is at a very nascent stage. In 2022, India's two biggest conglomerates, Adani group and Reliance group entered into a no-poaching agreement. 3 In this context, the author analyses the position of no-poaching agreements under various international jurisdictions. This article undertakes the task to clear the anomalies regarding the Competition Commission of India's (CCI) jurisdiction vis-à-vis the labour market. Lastly, the author analyses the pro-competitive and anti-competitive effects emerging from such agreements and accordingly, clears the position of the Indian competition regime on the validity of such agreements under the Competition Act, 2002.

Case Note

PROF. DR. CHRISTIAN KERSTING

Case Note on European Court of Justice Judgment of 19 January 2023 Unilever (C-680/20) EU:C:2023:33 41

In *Unilever* (C-680/20) the European Court of Justice (ECJ) holds that “the actions of distributors forming part of the distribution network for goods and services of a producer in a dominant position may be imputed to that producer if it is established that those actions were not adopted independently by those distributors, but form part of a policy that is decided unilaterally by that producer and implemented through those distributors.” This case note analyses this holding and discusses whether the unity of conduct on the market ensuing under such circumstances could lead to an understanding of producer and distributor forming a single economic unit—as the Italian Competition Authority has done in this case. This would also lead to liability of the producer while at the same time both excluding the applicability of art.101 Treaty on the Functioning of the European Union (TFEU) and establishing liability of the distributors as well. The case note finds that the ECJ was, by not addressing this point, right in not adopting the ‘economic unit approach’ and tries to provide a doctrinal argument to support this result.

National Reports

Austria

ANTI-COMPETITIVE PRACTICES

Restrictive business practices N-1

Austria

COMPETITION GOVERNANCE

New Federal Competition Authority Director General N-2

Finland

FOREIGN SUBSIDIES REGULATION

Legislation N-2

Finland

MERGERS

Merger control N-3

Finland

PROCUREMENT

Judgment N-4

Finland

COMPETITION

Report N-5

France

ANTI-COMPETITIVE PRACTICES

Infringement N-6

France

ANTI-COMPETITIVE PRACTICES

Decision N-7

France

ANTI-COMPETITIVE PRACTICES

Enforcement N-8