

Editorial

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BKartA and the ALNG: Undermining Patents, Emboldening Cartels and Suppressing Innovation? 3

The recent decision by the Bundeskartellamt to issue a Comfort Letter ‘tolerating’ an Automotive Licensing Negotiation Group (ALNG) is extremely unwise. This ‘toleration’ is likely to create a precedent that will lead to the undermining of the patent system, embolden the operation of buyer cartels and suppress innovation.

Self-Preferencing that is Discriminatory as a New Type of Abuse of Dominance Following the Google Shopping Ruling of the Court of Justice of the European Union? 11

The CJEU has clarified the law regarding the market conduct of dominant online gatekeepers commonly referred to as self-preferencing when ranking the display of the results of their online search services. Conduct that the Digital Markets Act prohibits if found by public enforcers to be anticompetitive. The CJEU has thus confirmed a new type of discriminatory abuse of dominance under art. 102 TFEU specific to dominant gatekeepers of online markets.

Canada’s Competition Bureau Officially Launches Airline Industry Study 23

Canadians constantly knock the quality of domestic airline service. Lost luggage, delayed departures and arrivals, cancelled flights, missed connections, overbooked flights, congested airports, lack of competition and outrageous prices are the new standard. Travellers are at the end of their tether and something had to break. So on 29 July 2024 the Competition Bureau announced the official launch of a market study into the state of the domestic airline industry. Emma Ghanem and Gavin Murphy explain.

Could Compulsory Licencing Effectively Enhance the Accessibility of Advanced Therapy Medicinal Products (ATMPs) by Addressing Potential Anti-Competitive Practices by Their Manufacturers? 32

The tension between intellectual property rights and public health access to essential medicines, particularly Advanced Therapy Medicinal Products (ATMPs), remains a global challenge. Compulsory licensing presents a potential solution to address anti-competitive practices, such as excessive pricing and abuse of dominant positions by drug manufacturers, and to improve access to medicines. However, in its current form, compulsory licensing is not yet feasible for medicines in Europe. Until a joint procurement mechanism is implemented, anti-competitive practices can persist within individual EU member states, leading to disparities in access to essential medicines. Furthermore, the current regulatory framework poses challenges for the commercialization of generic medicines following a compulsory license granted by a single member state. Given the EMA’s centralized role in marketing authorization, a compulsory license granted by one country would not automatically extend to others, hindering broader availability and affordability. To address these issues and ensure equitable access to essential medicines across the EU, a reform of the current system is necessary.

Flight of fantasy? The European Commission’s Booking/Etraveli Prohibition 38

The European Commission’s recent Booking/Etraveli prohibition signals an important change in the assessment of conglomerate mergers in the EU. The decision set aside the well-established economic framework of the non-horizontal merger guidelines, focusing instead on an “ecosystem” theory of harm. We argue that this produced a less rigorous assessment, and a materially lower intervention threshold, than set out in the guidelines.

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