

## Editorial

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## Articles

FRANCESCO RIZZUTO

### **The Primacy of EU Fundamental Rights over the Regulatory Autonomy of Sports Governing Bodies: The RFC Seraing Ruling** 3

The CFEU has confirmed and further clarified the constitutional primacy of the right to effective judicial protection over the regulatory autonomy of private law sport's governing organisations. The implications are far-reaching for the dispute resolution systems of these bodies. Access to the courts of the Member States must be assured where the dispute involves EU law rights that fall within the scope of a broader definition of EU public policy. The awards of the Court for Arbitration in Sport and the rulings of the Swiss Federal Tribunal will no longer be the final word in the resolution of sports disputes between participants and governing bodies.

HARALD WEIB

### **The FSR's Merger Tool "Two Years On"** 15

The present article offers a practitioner's perspective on the application of the Foreign Subsidies Regulation to concentrations, reflecting on early trends, practical experiences and challenges faced by companies and their legal advisors. It focuses on the practical aspects encountered in the various stages of a typical FSR case: From assessing the FSR filing thresholds to preparing the FSR filing, assisting undertakings in FSR data collection, and navigating them through the (pre-)notification and FSR review process before DG COMP. The article notes that, two years on, there is a huge discrepancy between the case load anticipated by the Commission and the actual numbers. It also reflects on the possible causes and implications of this phenomenon. The conclusion sets out some reform proposals with suggestions for improvements.

ROB VAN DER LAAN

### **Predatory Pricing in The Pharmaceutical Sector: An Example from Saudi Arabia** 27

Saudi Arabian competition law prohibits predatory pricing by a dominant undertaking. In this contribution, I will summarise the legislation and guidance on predatory pricing, and the application of the prohibition to an infringement in the pharmaceutical sector. The investigation resulted in a fine in the year 2014. This case is but one indication that the GAC is willing and able enforce all parts of the KSA competition rules.

MM SHARMA

### **When the State Competes—Competitive Neutrality in India? Analysing Abuse of Dominance by Public Sector Enterprises in India** 34

The concept of "competitive neutrality," that is, creating a level playing field between the Public Sector and Private Sector enterprises, lies at the core of developed economies following sound competition principles essential for the growth and development of free market economy. This well-developed concept, followed in letter and spirit, in the major developed economies both in the EU and USA since ages, though borrowed by India in principle after the commencement of liberalisation and opening of its economy to competition since 1991 and enshrined in the statutory frame work of India's modern competition law, the Competition Act, 2002, has largely remained on paper and has not been implemented in its true spirit, mainly due to the lopsided and ad-hoc approach to its enforcement by the institutions responsible for ensuring fair market competition in India, including the Competition Commission of India. In this article, the author has traced its evolution and growth (or decline?) with the help of the up-to-date available jurisprudence on the subject in India. Alongside a brief comparative analysis, the article also highlights how even the highest judiciary in India, the Supreme Court, except in one isolated case, has failed to rise to the occasion to establish this golden concept in India.

## Comment

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