Summaries

Deterrence of abusive pricing in telecommunications markets under Article 102 TFEU

John Townsend and Rory Cochrane

This article is based on a presentation given at the 9th Junior Competition Conference, 'Competition in telecommunications markets: requiem for a fixed line margin squeeze'. Two recent abuse of dominance enforcement decisions of Ofcom (the UK's national regulatory authority (NRA) for telecommunications) highlight the difficulties for dominant undertakings to know whether a pricing model of a product offering is compliant or not with competition law.

High Court decision in *Arriva v Luton Airport*: does a dominant undertaking need to be present downstream and/or to gain some economic benefit for a finding of abuse?

Ben Smith and Dimitris Mourkas

In a judgment handed down in January 2014, the High Court found that Luton Airport had abused an (assumed) dominant position in respect of the supply of access to the airport bus station. Rose J held, inter alia, that the grant by Luton Airport of seven years of exclusivity to National Express, which placed Arriva at a competitive disadvantage, lead to a significant distortion of competition. This article explores two specific aspects of the judgment: (i) the finding that Luton Airport did not need to be present downstream for there to be an abuse of its dominant position; and (ii) the view that it is not necessary for there to be commercial benefit on the part of the dominant undertaking for a finding of abuse.

'*Willing or not willing, that is the question*': thoughts on the *Motorola* decision

Annalisa Tosdevin

This article examines the Commission's decision in *Motorola* and concludes that it provides welcome clarity on the availability of injunctions on SEPs as a matter of EU law, striking a balance between the interests of SEP owners on the one hand, and implementers on the other. Nevertheless, in reaching that outcome, the decision may have gone too far in certain fundamental respects; in others, perhaps not far enough.

Drawing a line in the sand? The Court of Justice's *Cartes bancaires* judgment

Martim Valente

The Court of Justice of the European Union's judgment in the *Cartes bancaires* case has been subject to a great deal of interest and comment. This is because this judgment has the potential to settle one of the key post-modernisation questions of EU competition law: what type of conduct constitutes an object infringement under Art 101 TFEU? This article seeks to contribute to this debate by assessing the potential impact of this important judgment on one of the Commission's current high-profile investigations in the financial services sector (the CDS investigation). The broader impact of the *Cartes bancaires* judgment is also considered.

Is competition law the right tool to protect vulnerable consumers?

Mike Hales

The addition of a competition objective and concurrent competition powers to the FCA's existing consumer protection and market integrity objectives mean that it now has almost unparalleled regulatory responsibilities and powers. This article considers the overlap between those remits, the extent to which competition law should be used to protect vulnerable consumers, and what the early output from the FCA's competition work may reveal about its approach to competition enforcement.

The economics of class actions in follow-on competition damages

Patrick Smith

The UK Consumer Rights Act may encourage more effective collective redress for competition infringements. This article examines the economics of class actions, sets out the analytical framework that informs the substantive assessment of collective proceedings, and discusses the role of economics as a toolkit to test the necessary requirements at the certification stage.

Competition authorities and compliance programs: cooperation and enforcement

Paul Henty and Rory Ashmore

When faced with a financial penalty for infringing competition law, to what extent can an undertaking expect to receive credit for putting in place a compliance programme? This article looks at the policy of the CMA, by reference to previous decisions and makes a comparison in its policies with those of authorities in the USA, France and Germany. It also examines the impact of developing global standards for compliance, including those

promoted by the OECD. Finally, the authors survey current thinking amongst practitioners and offer their own thoughts on the CMA's policies towards compliance when setting a financial penalty.

Behavioural economics in competition policy enforcement for financial product markets

Bruce Lyons and Nicola Mazzarotto

Behavioural Economics (BE) acknowledges that individuals often make choices that are not entirely rational. The UK Competition and Markets Authority and Financial Conduct Authority have recently highlighted the relevance of BE. This article explains the difference it makes to the economic analysis of competition and why it is seen as particularly relevant to financial product markets. BE is already being used to frame and test theories of harm. It also brings experimental techniques to the analytical toolkit. The current approach is illustrated with examples from recent and ongoing cases. Finally, the risks of over-intervention and unintended harm from inappropriate remedies are highlighted.

Most-favoured-nation clauses in the e-commerce sector: an economist's point of view

Spyros Droukopoulos, Avantika Chowdhury and Matthew Johnson

Competition authorities across the globe have recently been investigating most-favoured-nation (MFN) clauses in online distribution contracts in industries as diverse as hotel bookings, books and insurance. Such clauses usually guarantee to a distributor that no better deal can be offered through another sales channel. Although there is concern that they may restrict competition and harm consumers, MFNs can also have pro-competitive effects. How should competition authorities strike the balance between potential harm and benefits?