
Summaries

Doomed enterprise: the Court of Appeal torpedoed the CMA's second attempt to take jurisdiction over Eurotunnel's purchase of SeaFrance assets

George Peretz QC

The Court of Appeal's recent judgment in *Société Coopérative de Production SeaFrance SA v CMA and DFDS A/S* is the latest step in the long-running Eurotunnel/SCOP/SeaFrance saga to consider the concept of an 'enterprise' in the UK merger control regime. This article considers the background to this concept, reviews the litigation and analyses the impact of this latest judgment.

From scotch to sausage rolls: digesting recent FMCG merger control cases in the UK

Susan Black, André Pretorius and Chris Sherwin

Significant levels of transactional activity in the consumer goods sector over recent years have given UK competition authorities opportunities to revisit several recurring themes with regard to substantive merger control assessment in this sector. Recent cases have considered again the role of retail buyer power in constraining the merged entity post-merger, the extent of competition between branded and private label goods and other factors affecting market definition, and the circumstances in which the prospect of timely new entry or expansion will be credible. This article considers the authorities' recent treatment of these issues.

Competition at the Financial Conduct Authority

Deborah Jones, Mark Bethell and Ingrid Cameron

The Financial Conduct Authority (FCA) has a strong competition mandate, embodied in the Financial Services and Markets Act 2000 (FSMA), which allows it to use its FSMA powers to promote effective competition in the interests of consumers in financial services markets and recognised investment exchanges. It is fulfilling this mandate by conducting market studies, actively supporting innovation, and by taking competition into account as it fulfils its FSMA functions. In addition, since 1 April 2015, the FCA can enforce against breaches of competition law within the financial services sector. It can also undertake market studies under the Enterprise Act 2002, and make market investigation references to the CMA. This article considers the FCA's powers and duties in relation to competition in more detail.

Marketing of football broadcasting rights: is competition off-side?

Christian Huveneers

Media rights are of key importance in televised sports, and TV broadcasters consider major sports events to be a valuable tool in differentiating their product. The last 20 years have seen an explosion of broadcasting rights fees, especially for football TV rights. In particular, the English Premier League has recently been in the spotlight due to the enormous amounts paid by its clubs in attracting top players from all over the world.

This article discusses the economics of sport broadcast rights, how competition concerns can arise – especially in the context of vertical concentration between channel providers and network operators – and how they can be dealt with.

State aid scrutiny of corporate tax arrangements

James Kavanagh, Nicole Robins and Tridevi Chakma

The corporate tax affairs of EU-based multinationals are under significant state aid scrutiny. In 2014 the European Commission (the Commission) began in-depth state aid investigations into the corporate tax affairs of Amazon, Apple, Fiat Finance and Trade, and Starbucks. In late 2014, the Commission announced that it was also investigating tax rulings agreed by all EU Member States between 2010 and 2013, and has recently requested individual tax rulings agreed by at least 15 Member States. As the state aid remit is potentially far-reaching, the question of whether the tax arrangements constitute illegal state aid is an important one.

If the tax arrangements are found to constitute aid that is incompatible with EU rules, the aid must be paid back (with interest), by the beneficiary to the relevant Member State. This article explores why the tax affairs of EU-based multinationals are under state aid investigation, and examines the Commission's approach to assess whether the tax arrangements constitute illegal state aid. As highlighted in this article, there are many challenges associated with this assessment. Therefore, ensuring compliance with state aid rules is likely to become increasingly important in corporate tax planning.