

SUMMARIES

Quis custodiet ipsos custodes? Do proposed reforms risk undermining confidence in UK competition and communications appeals?

James Aitken and Richard Romney

The consultation on ‘Streamlining Regulatory and Competition Appeals’, published by the Department for Business, Innovation and Skills on 19 June 2013, proposes significant changes to the UK regime for appeals against decisions under the Competition Act 1998 and Communications Act 2003. This article considers the consultation’s controversial proposal to change the standard of review for competition and communications appeals from a merits review to a judicial review standard or defined grounds of appeal. It examines the background to the proposals and considers whether a case has been made for reform. It also addresses the implications of the proposed changes and considers whether they are likely to meet the Government’s stated objectives for the appeals regime.

Collective proceedings and settlements before the CAT: A new dawn

Lianne Craig and Lesley Hannah

The draft Consumer Rights Bill published by the Department for Business, Innovation and Skills on 12 June 2013 has the potential to transform the legal landscape in respect of competition law damages actions. This article considers the detail of the reforms and in particular whether the proposed opt-out collective action mechanisms have realistic prospects of improving access to justice for victims of competition law infringements.

The right to property: New ammunition for competition litigation?

Andriani Kalintiri

Ownership holds a core position in a market economy; however, property-related claims are uncommon in competition litigation. This article provides a brief account of the relevant case-law and explains its scarcity by reference to the caveat that accompanies the right to property, namely that it is subject to lawful restrictions. Indeed, the competition rules constitute examples of such limitations. It is submitted that the proportionality test seems to be

the only way for undertakings to benefit from a property claim in antitrust litigation. It is also suggested that the right to property and the associated economic freedom may have an impact on merger proceedings, either by increasing the requisite standards of procedural fairness, or by underpinning a presumption of legality as the guiding principle for merger evaluation.

Evaluating the merger control process

Kai Hüschelrath

This article discusses two general approaches to evaluation of merger control. First, the merger control process is separated into three stages – selection of cases, assessment of competitive effects, and tailoring and implementation of remedies – and their functioning and performance is reviewed from both academic and practical perspectives. Secondly, options to quantify the overall costs and benefits of merger control are discussed. It is concluded that merger control is likely to contribute substantially to the overall net benefits of competition policy.

OECD roundtable on the role and measurement of quality in competition analysis (UK contribution)

Carole Begent and Kate Collyer

This article was prepared jointly by the Office of Fair Trading and the Competition Commission (together, the Authorities), with contributions from Monitor, which is the sector regulator of healthcare. It summarises the circumstances in which the Authorities may take account of quality competition in merger and market investigations under the Enterprise Act 2002. It also illustrates the experiences of the Authorities and Monitor in relation to a selection of recent and current cases in which quality competition has been taken into account.

Estimating damages from the global LCD cartel: The role of economics

Dr Avantika Chowdhury and Robin Noble

The liquid crystal display (LCD) cartel investigations constitute one of the largest global investigations in this sphere in recent times. From a legal perspective, it is no doubt an important case involving fines of millions of dollars across jurisdictions, criminal convictions of top executives of big global players, and multiple private damages actions as well as representative class actions. Additionally, from an economics perspective, the case involves equally diverse issues, and highlights the need for careful consideration of sophisticated economic approaches when assessing the magnitude of damages.