SUMMARIES

Aspirations and challenges for the Competition and Markets Authority

Alex Chisholm

This article is based on the text of the Competition Law Association's annual Burrell Lecture, delivered on 24 April 2013. It sets out the ambitions of the CMA leadership for the new competition regime, including vigorous enforcement, a proactive markets programme, efficient merger control and a high performance organisation.

The four horsemen? The impact of four CAT judgments on the UK's Competition Act settlement framework

Dan Burton

This article considers the impact of four CAT cases (*Construction Cover Pricing*, *Tobacco I* and *II* and *Dairy*) on the UK's settlement framework (commonly referred to as 'early resolution') and what reforms may be necessary to address issues identified by the CAT and arising from in-built challenges in partial settlement cases. The author suggests some ideas for reform and argues that, as OFT/CMA resources will continue to be limited, an effective settlement system should continue to be a feature of UK competition enforcement. This offers the opportunity to close down cases more quickly following an SO and with an infringement decision (the UK Government having tasked the OFT/CMA to secure more enforcement decisions and reach decisions more quickly over the next 5 years as part of the recent UK competition enforcement reforms).

Whose fault is it anyway? Undertakings and the imputation of liability

Simon Burden and John Townsend

This article discusses liability for infringements of competition law within the concept of the undertaking. The issue of parent-subsidiary liability, and in particular the rebuttable presumption imputing liability to parents of 100%-owned subsidiaries, often arises in appeals of enforcement decisions. However, the rules governing the imputation of liability also extend to other scenarios, where there remains some uncertainty. When can liability for infringements by an undertaking be imputed to companies who became responsible for that undertaking after

the infringement was committed ('successor liability')? On what basis is it possible to impute joint and several liability to a number of sibling companies within a group, as well as, or instead of, to the parent company ('sibling liability')? In this article, we explore whether it is possible to extract a consistent and principled approach to these issues, from the perspective of competition enforcement.

Competition law and human rights: The privilege against self-incrimination and related rights in competition investigations

Tim Ward QC and Brendan McGurk

This article considers the extent of the privilege against self-incrimination of those who are subject to investigations into allegedly anti-competitive behaviour. The privilege is one of a number of immunities that falls within the scope of the right to silence. It entails that no person can be forced to answer a question which would expose him to a criminal charge, penalty or forfeiture. In competition investigations, the right will often be relied upon as a result of a competition authority (1) seeking answers in the context of compulsory questioning, or (2) where documents are obtained as a result of, for example, a dawn raid. Despite the evident practical importance of this privilege, there remains a fundamental lack of clarity as to its scope.

EU and US declaration of war on patent ambush in standardisation processes: Peace treaties on both shores of the Atlantic

Teresa Lorca Morales

Despite the fact that the foundation of competition law is substantially the same throughout the different jurisdictions (protection of consumers) and there is an increasing convergence of competition laws globally, there is considerably less uniformity in the regulation of dominant positions than is the case for the regulation of anticompetitive agreements. As a matter of fact, EU competition law imposes more constraints on the conduct of dominant firms than US antitrust law. This divergence in the assessment of monopolisation/abuse of dominance will be studied in this article in the framework of Standard Setting Organizations and the patent-ambush behaviour. The *Rambus* case will be the perfect example of how both antitrust jurisdictions have approached in very different ways the same facts.

The reform of the UK merger regime in the Enterprise and Regulatory Reform Act 2013 – not much to shout about?

Tamara Todorovic

This article outlines the key strands of the reform of the UK merger regime as contained in the Enterprise and Regulatory Reform Act 2013 (ERRA13) and the Government's rationale for the reform. It also draws out a number of potential practical implications that can be expected to flow from the merger provisions in the ERRA13, highlighting some remaining questions about how the regime will operate in practice. The article concludes that, despite the lack of noise being made about the merger provisions in the ERRA13 to date, there is no doubt that the ERRA13 is introducing a number of changes that will affect the way in which the UK merger regime operates in practice. The precise impact of the changes will only be fully measureable post April 2014, when the changes come into force.

OECD roundtable on the role of efficiency claims in antitrust proceedings (UK contribution)

Carole Begent, Kate Collyer, Adam Land, Dan Moore and Alex Baker

This article is submitted jointly by the Office of Fair Trading and the Competition Commission (together the Authorities). The article summarises the circumstances in which the Authorities may take account of efficiencies in merger and market investigations under the Enterprise Act 2002 and when applying the antitrust prohibitions under the Competition Act 1998 and the Treaty on the Functioning of the European Union. It also illustrates their experiences in relation to a selection of recent cases in which efficiencies were taken into account.

Behavioural economics and its impact on competition policy: A practical assessment

Gunnar Niels, Reinder Van Dijk and Leon Fields

The rise of behavioural economics has caused much debate in academia and among policy makers. A new study for the Netherlands Authority for Consumers and Markets explores the implications for competition policy. Although there is no need for major rewrites of competition law and economics textbooks, behavioural economics will form an important part of the competition policy toolkit, and will be relevant in a small but significant number of competition cases.