

SUMMARIES

The Competition and Markets Authority: A more effective merger control authority?

Bola Ajayi

This article reviews the Competition and Markets Authority (CMA) structure and some of the CMA's new powers in respect of merger reviews, particularly the power to formally request information, impose interim measures and whether indeed these will make the CMA a more effective competition authority.

Practical application of the de minimis exception for small mergers in the UK

Steven Vaz and David Wirth

In December 2010, the Office of Fair Trading (OFT) published revised guidance on how it exercises its discretion not to refer certain mergers for phase 2 investigation where the market(s) involved are of insufficient importance to justify a reference (known as the de minimis exception). The Guidance remains applicable following its adoption by the Competition and Markets Authority (CMA), which came into force on 1 April 2014, taking over many of the functions of the OFT and the Competition Commission.

This article reviews the 24 merger decisions post-Guidance (from December 2010 to August 2014) in which the de minimis exception was considered by the OFT or CMA (including those cases where the de minimis exception was considered but rejected), and examines key trends which have developed in the practical application of the de minimis exception. This is of relevance to businesses (and their advisors) either engaged in or considering a small merger that is likely to raise competition concerns in the UK by highlighting the key factors relevant to the CMA's assessment of whether to apply the de minimis exception or not.

A new era for competition law scrutiny of financial services in the UK

Molly Herron

This article outlines the current competition remit of the Financial Conduct Authority (FCA), and how the FCA has approached this in practice, together with the changes which will come

into force in April 2015 when the FCA obtains concurrent competition law powers. It discusses the likely impact of these changes on the competition law scrutiny of firms active on financial services markets, and the relationship between the FCA and the Competition and Markets Authority in this area.

Opinion: Criminal cartel offence revision

David Corker

The purpose of this article is to consider the reform of the law concerning the criminal cartel offence and to survey what changes it is likely to precipitate in relation to the investigation and prosecution of the cartel offence.

Competition law, land agreements and the decision in *Martin Retail Group Ltd v Crawley Borough Council*: An opportunity missed?

Michael Armitage

This article considers the recent decision of the Central London County Court in *Martin Retail Group Ltd v Crawley Borough Council*. The judgment is notable as the first example (at least on record) of a court striking down a restriction in a land agreement since such agreements became subject to the Chapter I prohibition in 2011. However, since the defendant in *Martin* conceded the breach of s 2 of the Competition Act 1998, the judgment contains little or no reasoning on a number of substantive competition issues that have the potential to arise in land agreements cases. The article accordingly considers certain issues which were not addressed in *Martin*, but which may prove controversial in future cases in this area; specifically, the article addresses the interaction between competition law and property rights; the notion of an ‘undertaking’; and the requirements of an (appreciable?) effect on competition/trade within the UK.

Getting hold of the evidence: Access, disclosure and use of information in the Commission’s file

Daniele Calisti

In recent years, antitrust damages actions have been gaining momentum in EU competition policy. As more victims try to obtain compensation for the antitrust harm they suffered, there is an increasing tendency to try and obtain information from the Commission’s file in order to use it as evidence in civil actions. This article discusses the main features and limitations of

existing mechanisms to obtain information from the Commission's file, ie publication of decisions, access to documents, access to the file and information requests from national courts. The article also describes the relevant provisions of the forthcoming antitrust damages Directive, and their likely consequences on the availability of evidence for the purposes of private enforcement.

An effects-based approach to reverse payment settlements

Dr Avantika Chowdhury and Dr Alexander Gaigl

In July 2013, the European Commission, for the first time, fined pharmaceutical companies for settling a patent dispute via so-called 'reverse payment' settlement agreements. Under these deals, generics producers settle a patent dispute along with a payment from the patent holder and a restriction on the launch of the (potentially less expensive) generic drug. In its decision, the Commission has treated the agreements as illegal per se – but do deals of this type necessarily harm consumers?