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José **Rivas**, 'Editor's Note'

ARTICLES

Pieter J.F. **Huizing**, 'Fining Foreign Effects: A New Frontier of Extraterritorial Cartel Enforcement in Europe?'

Abstract: Regulation 1/2003 does not explicitly address the question whether national competition authorities (NCAs) have the power to prosecute and sanction infringements of Article 101 TFEU beyond their own national borders. This has allowed wide differences to exist between NCAs in respect of the territorial scope of their fines imposed under Article 101. A legal assessment reveals that there is much uncertainty as to the legality of NCAs taking into account foreign effects in sanctioning cross-border cartels. Many of the legal arguments used to either support or object to the right for NCAs to do so are unsatisfactory, at least in the context of the current legal framework. As such a right can significantly enhance the effectiveness of decentralized enforcement of Article 101, it may well be desirable to further explore this new frontier of extraterritorial cartel enforcement within the Union. However, it is submitted that this will require legislative action, so that legal certainty can be provided in accordance with the common views of Member States. Either as part of the new ECN Directive or through an amendment of the Regulation, the necessary procedural rules and safeguards can be put in place to give NCAs the right to fine foreign effects in a way that ensures effective enforcement and proportionate sanctioning while still allowing for sufficient prosecutorial discretion at the national level.

Pablo Solano **Díaz**, 'EU Competition Law Needs to Install a Plug-in'

Abstract: This article vindicates the definition of a new approach to Article 102 enforcement in digital economy based on the concept of multi-sided platform, which in turn revolves around the data flow among groups of users on the various sides of the platform in the form of indirect network effects. The cross-cutting nature of such novel approach, embedded into a broader paradigm of contestable markets and dynamic competition, calls for an analytical framework for market definition and market power appraisal to be devised accordingly. Once such framework is sketched, a section is devoted to exploring recent abuse cases involving e-platforms in light of the approach advocated by this article. In order to provide a full overview, other legal questions are explored as well, with a focus on the relaxation of the notion of ex ante objective justification and the place for an ex post efficiency defence within the proposed analytical framework.

Jay Matthew **Strader**, 'Multiple Product Discounts: A Comparative EU/US Competition Law Perspective'

Abstract: This article constitutes a direct challenge to applying cost tests as the sole liability test for multiproduct discounts. The article utilizes Neoclassical Price Theory to isolate the methods by which mixed bundling can harm consumers by viewing the practice as a form of predation, then alternatively as tying.1Under tying, the article considers market power and the conditions aside from the aggregate amount of price cuts that must exist for coercion to produce anticompetitive foreclosure. Such factors determine the contestability of demand in the linked market. The article lastly recommends an alternative test that aims to maximize welfare by focusing the analysis on overlapping demand, contestability, the EU cost test, and the benefit of the discount to package purchasers.

Ralf **Boscheck**, 'Pharmacy Benefit Managers: Fixing Healthcare Market Failures or Straining Regulatory Logics!?'

Abstract: US healthcare spending has made healthcare market reforms a critical and ongoing priority of regulatory policy. Healthcare markets are intrinsically fragile simply because providers deliver heterogeneous services to generally ill-informed patients who cover only a fraction of the costs. Intermediaries respond to the root causes of failing market coordination by injecting knowhow, aggregating demand and screening supplies. But they themselves are subject to regulatory concerns, as non-transparent practices could give rise to deceptive conduct and the scale of operations may eliminate actual, or foreclose potential, competition. Pharmacy benefit managers (PBMs) are a case in point. PBMs organize the sale and reimbursement of prescription drugs between producers, pharmacists and diverse sets of private and public health plans. They are also the focal point in the current 'drug-price blame game' with independent pharmacists and drug producers zeroing in on PBMs as the main culprits. At the same time, the Federal Trade Commission (FTC) itself is called upon to reconsider its allegedly 'laissez-faire' position on healthcare markets, if only to avoid that a growing number of US states are to enact new regulations and licensing rules to curtail presumably abusive PBM behaviour. Observing the situation, Moody's warned that if any of the legislative proposals aimed at reining in PBMs took hold, the value of the PBM model would be lost.

Given the contradictory atmosphere, how is one to know whether structural relief is needed or, on the contrary, if overregulation should be averted? This article addresses some of the key issues emerging from the current debate. By way of introduction, section 1 sketches 'PBMs: Market contexts and benefits'. Section 2 assesses 'Monopolization fears and fiduciary duties'. Section 3 discusses 'Federal enforcement actions and local regulatory capture'. Section 4 sums up.

Margherita **Colangelo**, 'Reverse Payment Patent Settlements in the Pharmaceutical Sector Under EU and US Competition Laws: A Comparative Analysis'

Abstract: Within the tool-box developed by originator companies in order to prepare and respond to generic entry, a prominent position must be recognized to a category of patent strategies particularly controversial under antitrust scrutiny, i.e. patent settlement agreements, in particular in the form of reverse payment patent settlements (also called pay-for-delay settlements), due to the fact that they provide for the patentee to pay the alleged infringer, rather than the opposite, with the aim of delaying its market entry. It is a fact that reverse payment settlement agreements arise mainly in the pharmaceutical industry. The article firstly analyses US and EU regulatory

frameworks in order to highlight similarities and differences between them. Then, it examines the relevant case law in both contexts with a view to conducting a comparative study. Finally, the article discusses the approaches to reverse payment patent settlements adopted by antitrust authorities and courts and their clashes with intellectual property law, and contains a final proposal for the assessment of these agreements.

Lei **Wang**, Ivo **Krizic**, 'Beyond Legal Transplant: China's 'Shopping Around' Approach and Formation of Anti-Monopoly Law'

Abstract: The aim of the article is to analyse the internal and external drivers in the formation of new competition regimes. Drawing on the concepts of external governance and international policy diffusion, the article takes the enactment of China's Anti-Monopoly Law (AML) as a case study to scrutinize the various channels through which emerging competition policy regimes have been shaped. It first illustrates the limits of recent research suggesting that the AML is essentially the product of EU competition rule export. Recognizing the specific features of China's competition regime, we then investigate the domestically driven process of inspiration from abroad and customization to domestic conditions. By highlighting the diversity of sources in domestically driven rule selection, the article makes a first step towards capturing the complex diffusion process in international competition policy.

BOOK REVIEWS

Ioannis **Lianos**, 'Book Review: *Evidence, Proof and Judicial Review in EUCompetition Law*, by FernandoCastillo de la Torre & Eric Gippini Fournier. (Cheltenham, UK: Edward Elgar. 2017)'

Thomas J. **Horton**, 'Book Review: *Patent Assertion Entities and Competition Policy*, edited by D. Daniel Sokol. (Cambridge University Press. 2017)'

Willem H. **Boshoff**, 'Book Review: *Competition Law Compliance Programmes: An Interdisciplinary Approach*, edited by J. Paha. (1st Edition. Cham: Springer. 2016)'

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