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Jose Rivas (Bird and Bird, Belgium) · Sunday, January 17th, 2021

We are happy to inform you that the latest issue of the journal is now available and includes the following contributions:

Pablo Ibáñez Colomo, Self-Preferencing: Yet Another Epithet in Need of Limiting Principles

Self-preferencing is central to contemporary competition law discussions, in particular in digital markets. This article considers the meaning and scope of the label. It shows, first, that favouring an affiliate is, in itself, an expression of competition on the merits. Such conduct is typically linked to the very pro-competitive benefits that are expected from horizontal and vertical integration. Second, self-preferencing is not a sound category, whether from a legal or an economic perspective. It potentially applies to conduct that differs widely in its nature, purpose and effects. The scope of the category would range from traditional instances of tying, on the one hand; to cases that would demand a competition authority to interfere with the design of a product and/or a firm's business model, on the other.

Against this background, the use of self-preferencing as a category would require addressing some issues of principle. In the first place, it seems particularly necessary to ponder the substantive and institutional implications of abandoning indispensability as a filter limiting the exposure of the system to proactive intervention. In the second place, the need to preserve a robust assessment of effects comes across as particularly important.

Giorgio Monti, EU Merger Control After CK Telecoms UK Investments v. Commission

The General Court's judgment in CK Telecoms is of major importance. On matters of substance, the Court explains for the first time how to apply the substantial impediment of effective competition (SIEC) test to mergers which do not create or strengthen a dominant position. The judgment calls into question certain aspects of the Horizontal Merger Guidelines. On matters of procedure, the Court sets out the standard of proof in merger control and reveals itself willing to examine the Commission decision in depth. However, it is argued that the Court's disagreement with the decision is not always expressed convincingly. This episode reveals the need for the Commission to explain its theory of harm more clearly and the need for the General Court to

explain its conclusions more fully. The legislator may see this episode as an occasion to consider the suitability of assessing mergers based on the application of ever more complex economic analysis.

Hieu Trong Truong, Who Is the Dominant Actor Under the US Merger Regulation?

The US appears to lean towards the model of unconcentrated and distributed competition regulation agencies, instead of a single concentrated one. Aside from the states and private litigants, in practice, this model mainly runs through the Department of Justice (DOJ), via its Antitrust Division, and the Federal Trade Commission (FTC)'s enforcement. Traditionally, under developments of the regulatory approach, the 'quasi-judicial' FTC could be understood to be a cornerstone of US antitrust law, particularly in its practical enforcement. However, it appears that the DOJ contributes far more policies on the specific regulation of mergers as well as consumption of merger remedies. By analysing the US model of 'inter-agency competition' under perspectives of merger control, this writing leads to proof that the DOJ is a dominant actor to some extent. More significantly, the DOJ's performances partially bring the FTC and others to the uniformity of stipulated mergers as well as approved remedy fashions.

Yuting Wang, The Regulation of Injunctive Relief on Standard Essential Patents Within China's Anti-monopoly Law

Competition concerns arising from the seeking of injunctions by FRAND-encumbered (fair, reasonable and non-discriminatory) standard essential patent (SEP) owners have become a contentious issue. This issue has attracted the attention of many competition enforcement authorities and no consensus is reached as to the compatibility of such injunctive relief with competition law. This is also a hard and challenging problem faced by China. A coherent and balanced response is urgently needed under current China's legal framework. Therefore, this article proposes that a basic regulating approach should be established first to treat the seeking of injunctions by FRAND-encumbered SEP owners as an independent anti-competitive practice prohibited by the Anti-monopoly Law. Then, an analysis framework should be established to consider the circumstances in which and the extent to which such seeking of injunctions should be limited from the perspective of competition enforcement. The behaviour of both SEP owners and SEP users should be properly examined.

Yo Sop Choi & Andreas Heinemann, Competition and Trade: The Rise of Competition Law in Trade Agreements and Its Implications for the World Trading System

Since the failure of the Havana Charter in 1950, it has not been possible to agree upon a binding competition law at the global level. However, following the fiasco of the World Trade Organization (WTO) Ministerial Conference in Cancún in 2003, the number of bilateral and regional trade agreements containing competition law chapters, or at least competition-related rules, has increased noteworthy. This reflects that trade and competition are closely intertwined. In an ever more integrated, globalized, and digitized economy, the competition law framework needs to be internationalized. If a binding competition law is not possible at the global level, it is only

logical that bilateral and regional trade agreements fill the gap. This article questions the extent to which these agreements contribute to the convergence of competition law. In this context, the development in Northeast Asia seems promising and may provide a guidepost for establishing international standards of competition law cooperation and enforcement. Presented here is the idea of localized harmonization, which takes advantage of closer affinity between bilateral and regional partners. With a sufficient degree of convergence, it is not excluded that efforts towards a multilateral competition agreement could be relaunched one day.

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