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Jose Rivas (Bird and Bird, Belgium) · Tuesday, February 18th, 2025

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

Alba Ribera Martínez, The Credibility of the DMA's Compliance Reports

The institutional setting of the Digital Markets Act (DMA) (Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828, OJ L 265, 12 October 2022.) reverses the rationale of the application of Articles 101 and 102 TFEU (Treaty on the Functioning of the European Union, OJ C 326, 26 October 2012.) to make profound changes in digital business models. The deterrence-based framework gives way to an instrument based on cooperative engagement between private and public actors. Private undertakings, termed as gatekeepers, bear the burden of submitting compliance reports to the European Commission detailing their technical implementation of the regulation.

Following the compliance reports submitted by the seven gatekeepers in 2024, the paper seeks to clarify their role as stemming from their practical significance. To do that, the paper sets out the legal framework and requirements surrounding the submissions of those compliance reports. The paper then maps out the gatekeeper's compliance strategies and meters them against the benchmark of their credibility. By doing so, the paper considers a nuanced perspective of the procedural yardstick the enforcer should apply in its future enforcement actions.

Bernadette Zelger, Taming BIG TECH – A shift in Paradigm and Its Implications for the Principle of ne bis in idem

With the adoption and entry into force of the Digital Markets Act (DMA) at the EU level as well as national laws targeting similar issues (e.g., the German §19a GWB), questions concerning the consequences of parallel proceedings (PP) pursuant to the competition provisions and – in its broadest sense – 'digital regulatory law' become more and more pressing. Potential conflicts with the principle of ne bis in idem are thus about to occur in various different constellations. Against the bigger picture of diverging approaches to competition law and/or regulation in the digital

sphere, this article depicts the current legal framework regarding the prohibition of double jeopardy in EU (competition) law. It then identifies scenarios of possible PPs of the different (EU and national) provisions mentioned and exemplifies potential frictions by means of hypothetical case studies. The latter shall be further scrutinized according to the law as it stands and illustrate the different strands of arguments on how to deal with such conflicts. The aim of this article is thus to show that while the current legal framework is workable, the decisive element in many potential scenarios of PPs surrounds the notion of the idem, that is, more precisely, the element of the identity of the facts. A corollary of this finding is that there are pivotal questions to be clarified with respect to the objectives of the two regimes, namely the traditional competition provisions on the one hand and the DMA or DMA-like provisions at the national level on the other hand.

Melvin Tjon Akon, What the FRANDT?! Understanding the Regulation of Pricing Power in the Single Market for ESG Ratings

The European co-legislators have adopted the Regulation on the transparency and integrity of Environmental, Social and Governance (ESG) rating activities (ESGR). The ESGR requires fees charged by rating providers to be fair, reasonable, transparent and non-discriminatory, to reduce the ability of providers to exploit their pricing power.

This pricing rule, which belongs to a class of rules known as FRAND(T) rules, does not provide any context or guidance that clarifies how to apply the pricing policy to a provider's pricing policy. As a consequence, providers are facing considerable legal uncertainty.

This article applies established interpretation methods, including a comparative analysis using other FRAND(T) rules in the body of European Union financial and digital regulation, to guide the interpretation of the pricing rule in practice.

Na Wang, Caroline Buts & Marc Jegers, A Systematic Literature Review on Mergers, Acquisitions, and Other Foreign Direct Investment by Chinese Firms in the EU

Over the past twenty years, Chinese investments in the EU have significantly increased. Although such investments support the revival of the economy, also several concerns have surfaced. These often relate to matters of unfair competition and national security. This paper employs a PRISMA methodology to systematically analyse the literature on mergers and acquisitions (M&A) and other foreign direct investments (FDI) made by Chinese companies in the EU and to present a neutral overview of the current state of the art. Our research delves into: (1) the theoretical frameworks that have been applied, (2) the motivations of Chinese companies to engage in M&A and FDI in the EU, (3) the effects that have been studied, (4) which types of Chinese firms engage in M&A and FDI in the EU, the role of government support, the affected industries and timeframes, and (5) the empirical methods and data. Our main conclusions point to the continued use of Dunning's Ownership, Localization, Internalization (OLI) and motivation theories as the primary theoretical frameworks. Chinese companies seem mainly driven by market access, growth, and supply chain opportunities, while also political motives are extensively discussed. The literature reports substantial financial support from the Chinese government as an enabling factor. Following recent geopolitical changes, the EU is increasingly monitoring Chinese investments in light of security, strategic autonomy and fair competition.

Francisco E. Beneke Avila, Competition Law in Latin America and Global Greenhouse Gas Emissions: The Way Forward

The Latin American region is rich in minerals – such as lithium and copper – that are critical for the global transition to clean energy, is home to the largest rain forest in the world, and enjoys geographical advantages for the deployment of renewable energy technologies. The latter could provide the region with an opportunity to develop green hydrogen, an energy source with the potential to play a significant role in energy transitions of hard-to-abate industries such as steel production. The region has therefore a strategic importance in the global effort to achieve reduction targets of greenhouse gas (GHG) emissions required for the goal to keep global warming below 1.5 degrees Celsius as established in the Paris Agreement. This paper provides an overview of the possible market power problems associated with the development of this potential, such as high concentration of mining and refining activities, as well as market power in food value chains that may be driving deforestation in the Amazon. The paper sketches antitrust enforcement interventions that do not require changing the prevailing goals and analytical framework of competition law enforcement as well as interventions that would require such a change, identifying areas where future research should be conducted in order to inform policy change.

Reyadh Faras & Abbas Al-Mejren, How Comprehensive are Competition Laws? The Case of the GCC Countries

This research aims to investigate the comprehensiveness of the competition laws in the Gulf Cooperation Council (GCC) countries. The study covers six countries: Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates. A comparative and gap analysis was used to identify the gaps and shortcomings in these countries' laws compared to best-practice competition laws. The focus of analysis is on four key areas: (1) Authority Provisions, (2) Merger Control, (3) Abuse of Dominance, and (4) Anticompetitive Agreements. The results indicate that, overall, competition laws in the GCC countries have a high coverage ratio of provisions that establish legal and institutional frameworks to ensure fair competition in the market. However, there is significant variation in coverage across the region, highlighting the need for harmonization and improvement of these laws, particularly given the common market arrangement shared by the GCC countries.

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