



## **BOLLETTINO NOVITÀ**

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## MONOGRAFIE ACQUISTATE DAL CDE

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## European Competition Law Review

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**Cartel damages: the Court of Appeal rejects a gain-based remedy 105**

The Court of Appeal rejected a claim for a gain-based remedy that sought to deprive the defendant of its profits from a cartel. The claim arose in circumstances in which the claimant's overpayments had been substantially passed on to their own customers, thus largely eliminating their loss.

ROBERT GAUDET, JR.

**Turning a blind eye: the Commission's rejection of opt-out class actions overlooks Swedish, Norwegian, Danish and Dutch experience 107**

Swedish, Norwegian, Danish, and Dutch experiences contradict several reasons given in the Commission's White Paper for favouring opt-in class actions over opt-out class actions. Lacking persuasive reasons to reject Europe's most powerful mechanism, the Commission should take a harder look at opt-out class actions.

EPAMEINONDAS  
STYLOPOULOS**Powers and duties of arbitrators in the application of competition law: an EC approach in the light of recent developments 118**

This article illustrates the distinction between the "competence" and "duty" of arbitrators in the application of competition law and presents the powers and duties of arbitrators in this context, while adopting a European Community approach. It concludes that arbitrators are just one step behind the "courts or tribunals" within the meaning of art.234 of the EC Treaty.

GAVIN MURPHY

**Is it time to rebrand legal professional privilege in EC competition law? 125**

In September 2007, the CFI confirmed in the *Akzo* decision that the scope of legal privilege in EC competition law would remain unchanged and the privilege would not be extended to written legal advice communications between clients and in-house lawyers. This article examines the decision in detail and suggests that, given its current application, the privilege in EC competition law should no longer be referred to as legal professional privilege, which is an English common law expression covering legal advice communications to and from in-house lawyers and private practitioners and their clients (as well as litigation privilege). The EC term should be renamed to more accurately reflect its judicially-delineated limits, thereby enhancing legal predictability and fostering a better awareness of its precise reach. The article also considers the current state of the law on privilege in Canada, England and Wales, and Scotland; as well as featuring a brief overview of the privilege provisions in all EU Member States.

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MEZZANOTTE**Tacit collusion as economic links in article 82 EC revisited 137**

Following the *Piau* case, the Commission has claimed that tacit collusion can constitute "economic links" in art.82's collective dominance. This article argues that while this interpretation of *Piau* is unfortunate, a legal basis for tacit collusion in art.82 is nonetheless plausible after the recent European Court of Justice judgment in *Sony/BMG*.

DR PETER D.  
CAMESASCA AND  
ANNA K. SCHMIDT**EC Commission's Post-Conference Maritime Transport Guidelines—true guidance to navigate through antitrust compliance 143**

The Maritime Transport Guidelines replace the Conference Block Exemption, abolished effective October 18, 2008. They provide up-to-date guidance on how the Commission views information exchange, allowing post-conference liner shipping to avoid the exposure that has plagued this industry for years. In times of ever-mounting antitrust fines, other industries will be equally well-served to consider the general implications.

### Book Reviews

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## European Competition Law Review

### Articles

CATRIONA HATTON  
AND JEAN-MICHEL  
COUMES

#### European Commission Adopts Guidance on State Aids to the Financial Sector 51

Last October, the Commission adopted a more flexible approach in the application of the EU's state aid rules to guarantee schemes, recapitalisation measures and other liquidity support granted to financial institutions by national governments. This article analyses the requirements and procedure that companies will have to follow under this new set of rules.

RICHARD  
MURGATROYD,  
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AND SIMON BISHOP

#### Grand Theft Antitrust: Lessons from the GAME/Gamestation Transaction 53

This article examines the decision of the UK Competition Commission in the acquisition of Gamestation Ltd by GAME Group Plc, in the context of practical assessment of horizontal mergers.

PETER TURNER-KERR

#### Finally a bit of clarity for pharmaceutical companies; but uncertainties remain: Judgment of the ECJ in *Sot. Lélos Kai Sia EE v GlaxoSmithKline AVEE* 57

This article considers the ECJ judgment in *Sot. Lélos Kai Sia EE v GlaxoSmithKline AVEE*, noting in particular potential implications for pharmaceutical companies in terms of parallel trade.

MIGUEL MOURA  
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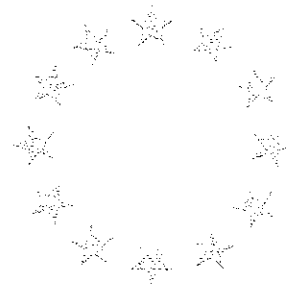
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# EUROPE



ACTUALITÉ DU DROIT COMMUNAUTAIRE

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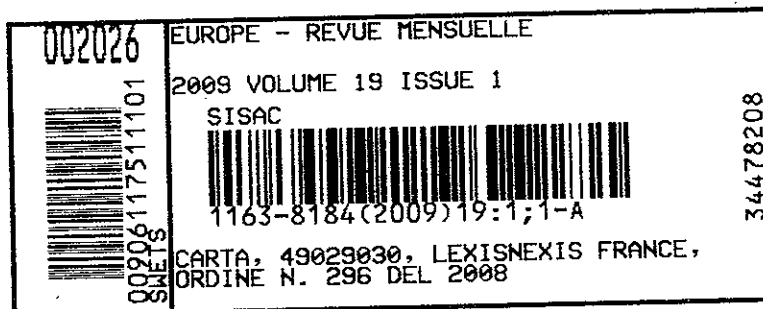
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Birgit Wouters

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