REVIEWS AND ANNOTATIONS

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The new issue of Prague Law Faculty's open-source electronic periodical offers a set of working papers on various topics. The following provides a general outline of their content. Their full versions can be downloaded free of charge from http://www.prf.cuni.cz

Richard Macko contributed a paper titled **Bending Traditional Private International Law towards More Favourable Private Enforcement**. His paper criticises the recent case law of the Court of Justice of the European Union, in particular some of its findings in Volvo (C-30/20), as well as in other earlier judgments concerning the rules on determining the international and local jurisdiction of the courts under Article 7(2) of the Brussels Regulation Recast. According to the author the Court clearly goes beyond the limits of traditional private international law in helping claimants (injured parties) to establish international and local jurisdiction of courts in the place of their establishment, irrespective of whether the damage actually occurred there, or only manifested itself there in the form of indirect or consequential damage. Although such an approach of the Court may have a noble intention behind it, e.g., promoting the private enforcement of competition law in Europe, it must not be forgotten, as the author warns, that such interpretation of Article 7(2) will inevitably lead to unreasonable results.

Barbara Dufková asked the following question in the title of her paper: **What Can the EU Learn from the Chinese Anti-Monopoly Guidelines for the Platform Economy Industries?** She deals with the issue of the rising economic importance and market power of many digital platforms, which is raising concerns that they may engage in anti-competitive conduct and misuse their power to the detriment of competition and consumer welfare. Regulators worldwide resort to traditional ex-post antitrust methods or propose ex-ante regulatory frameworks. Given the global scale of operations of the platforms, regulators may find inspiration in approaches adopted in other jurisdictions. This paper draws attention to the Anti-Monopoly Guidelines for the Platform Economy Industries promulgated on 7 February 2021 by the Antimonopoly Commission of the State Council of China. The guidelines 'put on paper' what has been a matter of theoretical debate in the EU competition law and its approach to digital markets. For example, they expressly state that a platform can, in certain circumstances, constitute an essential facility, that requiring a counterparty to the transaction to choose between two competitive platforms ('either-or-choice') can constitute exclusive dealing or that implementing differentiated prices and other transaction conditions based on big data can constitute discrimination ('big data discrimination'). Chinese experiences may be insightful to the EU which is on its quest to find a proper balance between ex ante and ex post regulation of digital platforms.

Hynek Brom treated in his contribution the topic of **On-site Inspection and Legal Certainty**. The aim of his article is to clarify and describe the inspection and the location, in the terminology of dawn raid competition law, and the legal certainty of the competitors affected by the inspection. An on-the-spot inspection is one of the effective tools for detecting anti-competitive behaviour. It is a tool that places high demands on competition authorities, not only on their professional execution, but also on the justification for carrying out the inspection itself. The degree of broad authorisation of the competition authorities to intervene, on the one hand, is compensated by the possibility of a procedural defence against possible unlawful interference by the entity under investigation, on the other. The article aims to indicate the limits of legitimate expectations when conducting an on-site inspection with both competition authorities and competitors. Examples or descriptions of procedures are based on the author's long-term administrative practice. The issue of the on-the-spot

inspection is also illustrated in the article through the case law of the Court of Justice of the European Union, the administrative courts of the Czech Republic and the administrative practice of competition authorities. The paper also outlines the current topics of the on-site inspection, such as the provision and handling of data and information in electronic form, the issue of the right of defence or issues raised by measures taken in connection with the COVID 19 pandemic measures.

Li Chaoqun contributed a paper on **The Comparative Analysis of ISP's Limitation of Liability Regimes in the EU and China**. In recent years, the author writes, there has been a proliferation of online platforms providing access to large amounts of copyrighted works. These platforms have become a main source of access to content online. On the one hand, rights holders claim that the revenues generated from the online use of their protected works are distributed unfairly (value gap). On the other hand, strict regulations on ISPs will stifle competition amongst online platform providers. Therefore, it is important to strike a balance between the interests of online platforms and rights holders. One approach is to grant the online platforms exemption from liability under certain circumstances. In the EU, the enforcement of European Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market introduces significant changes to copyright infringement liability for ISPs. Although many countries conditionally provide safe harbours for online platforms, the feasibility and eligibility of safe harbours vary from one to another. This essay does not address questions in which scenarios ISPs directly constitute infringement of copyright law. Instead, this essay will primarily compare 1) ISP liability exemptions under the copyright law regime between China and the EU, namely under what circumstances can ISPs be granted immunity from liability;2) analyse the differences between liability limitations for ISPs in China and the EU; and 3) finally, propose improvements of the certainty and feasibility of the system of ISP's liability limitation.

Jan Exner's article bears the title **The Europeanization of Fair Sport: How the Council of Europe and the European Union Shape the Proportionality of Ineligibility for Doping**. In this paper he examines the Europeanization of the proportionality of sanctions for doping. The World Anti-Doping Code (Code) and implementing anti-doping rules must comply with the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the law of the European Union (EU), including their dimensions of proportionality. Therefore, this paper analyses how the Council of Europe (CoE) and the European Union (EU) influence the proportionality of ineligibility for anti-doping rule violations in the Code, focusing on its edition in force from 2021 (Code 2021). This paper employs an empirical study of the transnational law-making process resulting in Code 2021. The CoE and the EU belong to the World Anti-Doping Agency (WADA) stakeholders that submitted comments and proposals on drafts of Code 2021, including those on the proportionality of ineligibility. Therefore, this paper analyses these comments and their reflection in Code 2021. It demonstrates that the influence of the CoE and the EU on the proportionality of ineligibility in Code 2021 is limited but not negligible. The CoE influences the proportionality of ineligibility considerably more than the EU in terms of quantity and quality. The representatives of the CoE pleaded for both milder and harsher ineligibility. The final text of Code 2021 fully reflects on a third of their comments, partially the second third, but disregards the last third.

Václav Šmejkal*

* Associate Professor, JUDr. Václav Šmejkal, Ph.D., Faculty of Law, Charles University, Prague, Czech Republic. ORCID: 0000-0003-1403-9494.