

DECENTRALISED ENFORCEMENT OF COMPETITION LAW IN THE EU – IS THIS A FAIRLY TALE?

UNITED STATES

CANADA

CHINA

POLAND

MEXICO



DECENTRALISED ENFORCEMENT AS A MAJOR THEME IN 2010/2011

- VEBIC
- PFEIDERER
- TELE2POLSKA
- DAMAGES CASES
- DAMAGES GUIDANCE – DRAFT COMMISSION PAPER
- NATIONAL CASES
- ACTIONS BY NATIONAL COMPETITION AUTHORITIES

A FAIRY TALE?



- EU COMMISSION
- NATIONAL COURTS
- NATIONAL COMPETITION AUTHORITIES
- COURT OF THE EUROPEAN UNION

VEBIC

- Ruling of the Court of the European Union;
- Can National Competition Authorities participate in appeals against their decisions as defendants or respondents?
- Yes, they can !
- Member States may not preclude such participation – this would be in breach of Reg. 1/2003

PFEIDERER

- JUDGEMENT OF THE COURT OF THE EUROPEAN UNION
- QUESTION OF ACCESS TO LENIENCY SUBMISSIONS IN FOLLOW-ON DAMAGES ACTIONS;
- WHAT THE COURT HAS SAID OR RATHER WHAT THE COURT HAS NOT SAID;
- NECESSARY TO WEIGH THE INTERESTS;
- ROLE FOR THE NATIONAL COURT
- POTENTIAL ADVERSE EFFECTS FOR LENIENCY APPLICANTS
- CONSEQUENCES OF THE RULING

TELE 2 POLSKA

- RULING OF THE COURT
- CAN A NCA ADOPT A DECISION STATING THAT THERE IS NO BREACH OF EU COMPETITION LAW?
- NO, IT CAN'T !
- THE NCA MUST LIMIT ITS ENTHOUSIASM TO THE ADOPTION OF A DECISION STATING THAT THERE ARE NO GROUNDS FOR ACTION
- OTHERWISE THE SYSTEM OF CO-OPERATION UNDER REG. 1/2003 WOULD BE UNDERMINED

DAMAGES GUIDANCE – DRAFT PAPER

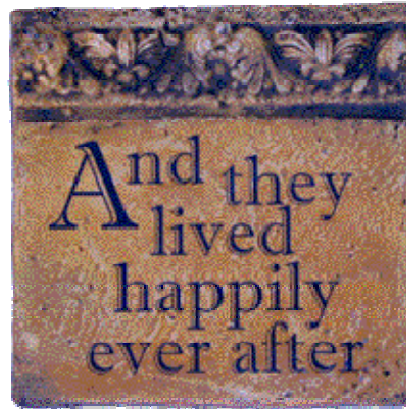
- JUNE 2011 – PUBLIC CONSULTATION ON DRAFT GUIDANCE PAPER FOR QUANTIFYING HARM FOR DAMAGES BASED ON BREACHES OF EU COMPETITION RULES
- MATTER OF NATIONAL LAW OF EU MEMBER STATES
- „BUT FOR” THE INFRINGEMENT METHOD
- GUIDANCE FOR NATIONAL COURTS
- COMPARATOR-BASED METHODS

INTERESTING NATIONAL CASES

- DAMAGES CASES AND 'SATELLITE LITIGATION'
- ABUNDANCE OF NATIONAL CASES ON IP/COMPETITION LAW MATTERS
- ACTIONS BY NATIONAL COMPETITION AUTHORITIES – COLLECTING SOCIETIES, MEDIA, PHARMA

CONCLUSIONS

- DESPITE A NUMBER OF ISSUES....



Thank you for your attention !

For any questions – tomczak@pl.millercanfield.com

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