Summaries

The double duality of two-sided markets

Alfonso Lamadrid de Pablo

A great deal of attention has been paid in recent times to competition law enforcement regarding multi-sided platforms. The starting point of this article is the observation that the application of the law may not have always accounted for the ambiguity of business practices carried out in these settings. The article identifies the causes at the root of this situation and proposes some solutions. In sum, it argues that multi-sided platforms raise old questions but with renewed intensity, and that this forces us to go back to basics and to recall – also with renewed intensity – some general principles which we should never lose sight of.

Intel v Commission – the AEC test is dead, long live the AEC test, and three other observations

Stijn Huijts

Intel v Commission (Case T-286/09) re-affirms a strict, 'form-based' approach to rebates awarded by dominant undertakings. However, scratch beneath the judgment's apparent certainty and some questions emerge. This article seeks to draw out the impact of the uncertainties that the judgment creates. It finds that a cautious approach to these uncertainties may lead national competition authorities to attempt to 'appeal-proof' their decisions, which could lead to delays and may erode the strength and reliability of 'form-based' rules. Dominant undertakings on the other hand, may decide against potentially legitimate conduct, which may have a chilling effect.

The *Intel* case in a broader context: can we learn some lessons from the US perspective?

Elisabet Ruiz Cairó

The rejection of a price-cost test in recent judgements both in Europe and in the United States has raised a number of concerns as courts seem to converge towards a more per se approach. However, as some commentators have stated and as this article shows, the consequences of these decisions are very different. Indeed, European courts have adopted very strict per se rules whereas American courts apply the rule of reason as an alternative to the price-cost test, therefore safeguarding an effects-based approach.

State of the unions: the applicability of Art 101(1) TFEU to collective bargaining agreements after *FNV Kunsten Media*

Henrik Nordling

In its brief history the *Albany* exemption granted to collective bargaining agreements from EU competition law has only been successfully applied to the benefit of workers. However, in *FNV Kunsten Media* the CJEU allows for a possible extension of this principle to self-employed persons if they amount to 'false self-employed'. The article assesses the scope and impact of this new development against the backdrop of the relatively sparse case-law at EU level as well as national regulation and inspiration from the US legal system, where labour and antitrust conflicts have been going on for well over a century.

Behavioural economics and market studies: a call for restraint

Alexander M Waksman

This article considers the use of behavioural economics in market studies carried out by the FCA and CMA. It notes that while theories of irrational decision-making are potentially helpful in understanding customer choices, there is a need for caution. In particular, behavioural economic theories require empirical proof in each context and are less likely to apply to firms than to individual consumers. Furthermore, customers may be capable of self-correction, and in some circumstances a degree of irrationality may in fact strengthen their negotiating position.

Ground rules on airport access: the *Arriva v Luton* case

Michele Granatstein and Gunnar Niels

In 2014 the High Court in London handed down a judgment in an abuse of dominance case between Luton Airport and bus operator, Arriva. Luton Airport was found to have abused its dominant position by excluding Arriva from accessing the bus station at the airport. The judgment provides useful insight into the economic and legal principles applying to access agreements in this type of case.