

Editorial

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The editorial board is pleased to publish the new issue of the *Market and Competition Law Review* (M&CLR), devoted to the analysis of relevant emerging internal market and competition legal topics.

The opening article, written by Viktoria H.S.E. Robertson, discusses the long-awaited Intel judgment, concerning a rebate scheme and direct payments, which were qualified by the European Commission as abuses of dominance. The decision of the Commission was appealed to the General Court and then to the Court of Justice. This article reviews the leading European case law on rebate schemes as well as the Commission's approach to conditional rebates in its 2009 Guidance Paper. In addition, it makes interesting critical reflections on how the Court of Justice attempted to achieve the right balance between its formalistic case law on rebate schemes and the economic tests carried out by the Commission, pointing out that several legal questions remain, however, unanswered. In fact, the Author concludes that legal uncertainty for other rebate cases continues to exist, as the Court did not clarify which legal standard should be applied by the European Commission to prove the anti-competitive nature of a rebate scheme.

Subsequently, Vladimir Bastidas Venegas analyses the concept of consumer inertia in the light of the economic literature and examines several cases – Microsoft, Google Shopping, Google Android and Microsoft/LinkedIn – where such inertia is arguably present, concluding that consumer inertia must be seen as a concept which has already been accepted by both the Commission and the General Court. It remains to be seen, however, whether the Court of Justice will confirm this theory in future cases.

In the following article, Fabio Ferraro explores the most relevant aspects of the case law of the Court of Justice on legal services and particularly on

lawyers' fees. The article highlights the need to reflect upon the compatibility of the new Italian measures, introduced by the State and professional organisations, to ensure a fair remuneration to lawyers in a weaker position, with the EU solutions. The new Article 13a of the Italian Law No. 247/2012 raises special concerns, as it could re-introduce *de facto* minimum fees. In addition, the Author raises the question whether the legal profession should be distinguished from other professions, given that the rules on fair remuneration have been extended to all professions.

Afterwards, Alexandr Svetlicinii addresses the evolving experience of Chinese State-owned enterprises' (SOEs) acquisitions in the European Union, which are subject to *ex ante* assessment under EU and national merger control regimes, and argues that the application of the traditional assessment tools may no longer be adequate to the logic of corporate governance in China's State-owned enterprises. Furthermore, the Author suggests that the difficulties in the assessment of the Chinese SOEs' acquisitions under merger control rules could potentially lead to a shift of attention toward other forms of foreign investment screening, namely national security reviews or sector-specific merger control provisions.

In the last article, Dulce Lopes reflects upon the relevance of the *fraus legis* institute in EU Law, particularly within recognition procedures in the field of freedom of circulation. The article analyses the evolution of the recognition mechanism as well as the *fraus legis* requirement, highlighting the difficulties of defining clear procedures for the detection and proof of fraudulent situations and explaining its particular importance as a mechanism that encourages mutual trust between Member States, promoting the effectiveness of European Union law.

The second section of this issue contains two contributions: Claudia Massa explores the disclosure of leniency statements and other evidence under Directive 2014/104/EU, discussing whether there is an undue prominence of public enforcement, and Nevin Alija comments the Judgment of the Court (Fifth Chamber) of 13 September 2017, *ENEA S.A. v. Prezes Urzędu Regulacji Energetyki*, concerning support schemes in renewable energy.

In the third section, António Agostinho Guedes reviews the book of Magnus Strand "The Passing-on Problem in Damages and Restitution under EU Law", concluding that it must be considered a fundamental tool in the passing-on problem under EU law.