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Discrimination of consumers is an issue of increasing importance, especially as commerce moves online and is ever more able to differentiate between them. At the same time, the concept of fairness as a form of consumer protection is gaining traction in EU competition law. Because there are few precedents, new thinking is needed to define when and how to discipline dominant undertakings with respect to consumer discrimination. This involves developing the legal basis of art.101(a) TFEU on unfair treatment, and building on the Geo-blocking, 1998 World Cup and Deutsche Post precedents. A sounder grounding in economics as to when price differentiation by dominant operators is unfair is also required. In addition, active enforcement may be accompanied by a compliance-based duty of care for online or digitally dominant undertakings.

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There is a need for clarification of the case law on how state aid may be passed on to escape from recovery. Different judgments appear to give priority to different aspects of transactions between aid recipients and third parties to which previously subsidised assets are sold. The European Commission uses a checklist that contains both relevant and irrelevant elements. The list is not structured in terms of necessary or sufficient elements. The concept of economic continuity appears to have distinct meanings. This article develops a structured four-step test to determine whether incompatible state aid is passed on from the aid recipient to another entity which is economically linked with it. The article also applies this test to the Commission's assessment of the selling price of NCHZ to Via Chem Slovakia and then to Fortischem. It concludes that that assessment appears to be logically incorrect.

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"Gun jumping" in mergers has highly significant competition consequences and attracts substantial penalties globally. In Australia, in the *Cryosite* case in 2019 the ACCC was successful in its first gun-jumping case. In the Digital Age, with the employment of fast-paced information and communication technologies (including artificial intelligence), even greater pressure is being placed on merger regulation to ensure effective compliance with lawful merger practices.

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The power of soft law: spontaneous approximation of fining policies for anti-competitive conduct—Part 1 538

The new ECN+ Directive takes a step towards the harmonisation of procedural aspects hitherto considered to fall under the purview of national procedural autonomy. To ensure the effectiveness of European competition law enforcement in a system of parallel competences, the ECN+ Directive sets forth some rudimentary provisions to be applied by NCAs when fining undertakings for anti-competitive conduct. The Directive comes at a time where, in a process of spontaneous approximation, numerous NCAs had already voluntarily aligned their fining policies to that of the Commission, going beyond the requirements of the Directive. The present article explores the effect of the Commission's guideline on fines, as a soft law measure on national fining policy regulation, trying to unpack the reasons for the NCAs' turn towards spontaneous approximation and the failure to make use of their regulatory leeway in this specific regulatory area.

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