

## Editorial

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## Articles

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### **The need for a clear delineation of resale price maintenance—an analysis of the Dutch Competition Authority’s Samsung Decision** 154

The *Samsung* Decision demonstrates the need for a clear frame of reference for future RPM cases, as it erroneously broadens the scope of what is considered to be a “by object” restriction of competition, while failing to examine the existence of inter-brand competition and confusing hub-and-spoke and vertical price-fixing analyses.

### **Stand-alone claims in Spain: Sue me, please!** 162

In this article we will review the implications of pre-judiciality between the civil and administrative orders in Spain. While the Spanish Comisión Nacional de los Mercados y la Competencia in the 2015/2019 Spanish dairy products producers cartel decision declared that a company was a cartel member (decision currently under appeal), a recent stand-alone damages claim judgment from a Spanish civil court has declared that the very same company was not a member of the alleged cartel. We will analyse how this was technically possible and its potential spillover effects, and whether a short-term victory could turn out to be a long-term defeat.

### **The exemption of sustainability agreements under European competition law—balancing societal benefits with consumer harm: a new way forward** 170

In order to ensure that competition law does not stand in the way of green innovation, this article proposes a new way forward in the re-interpretation of the two first exemption criteria of art.101(3) TFEU so that genuine sustainability agreements see the light of day.

### **Sumal SL v Mercedes Benz Trucks España: another landmark Court of Justice judgment for cartel damages litigation** 186

The Court of Justice in *Sumal* has laid down a clear statement of general principles for the circumstances under which parental infringement can be relied upon to establish subsidiary liability, to go alongside its earlier jurisprudence in *Skanska* as to the principles upon which a parent may be held liable for subsidiary infringement.

### **Google Shopping and self-favouring as a separate abuse** 191

The General Court has rendered its ruling in *Google Shopping* upholding DG COMP’s Decision, including the €2.42 billion fine. This provides us with a preliminary answer on accepting whether self-favouring is an abuse in itself or not. The short answer to this is no, while the ruling might be a tactical defeat for Google, it is a strategic victory for tech companies at large. However, as always, the devil does lie in the details, and other elements of the ruling indicate trouble, e.g., Google search engines are described as a form of an essential facility subject to an obligation of providing search neutrality.

### **Endorsement for the Commission’s approach to tax rulings from the Court of Justice: the decision in Commission v Belgium and Magnetrol (C-337/19 P) EU:C:2021:741** 196

The decision of the Court of Justice in *Commission v Belgium and Magnetrol* delivers the most authoritative judicial statement on the legitimacy of the Commission’s approach to reviewing transfer pricing decisions using the State aid rules. While the Commission’s appeal was successful on procedural grounds, the judgment clearly indicates its general approval of the enforcement of the State aid rules against transfer pricing measures and tax rulings.



Opinion

DR CIHAN DOĞAN & ATT. DENİZ TANLI

A critical analysis of the Turkish Competition Authority’s interim measures imposed on Trendyol 201

The Turkish Competition Authority imposed interim measures on Trendyol, one of the largest multi-category online marketplaces in Turkey. The TCA’s interim measures imposed on Trendyol are significant as the TCA seems to adopt a stricter approach to e-marketplace platforms following the findings in its E-Marketplace Platforms Sector Review Preliminary Report, and this is one of the few cases where the TCA used its power to impose interim measures.

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