

Articles

EMILIANO MARCHISIO

The Fact-Finding Inquiry Undertaken by the Italian Competition Authority into the Pricing Algorithms Employed in Airline Revenue Management on Routes Linking Sicily and Sardinia (IC56) 425

The article distils the Italian Competition Authority's (AGCM) fact-finding inquiry IC56 into the use of pricing algorithms on domestic air routes to/from Sicily and Sardinia. Framed under Articles 101 and 102 TFEU and Italy's Decree-Law 104/2023, the inquiry combines transactional micro-data, an independent algorithmic audit, and a large-scale consumer survey to assess market structure, pricing dynamics, the role of public-service obligations (PSOs), and transparency of fare display. The inquiry shows potential risks of tacit collusion and signalling under art.101 TFEU, tests the boundaries of unilateral "personalised" pricing and data-driven market power under art.102 TFEU, and links these to transparency duties on price presentation and optional fees under EU air services law and CJEU case-law. It also examines how public service obligations may shape competitive dynamics and state intervention. Finally, it sketches governance tools—algorithmic accountability, auditability, human oversight, and coordination with data-protection and emerging EU AI rules—as proportionate remedies to preserve contestability and informed consumer choice.

ZHANG ZHUOYUAN AND ZHANG SHIMING

Theoretical Exploration of Conditional Approval in The Undertakings Concentrations Review 432

The approval concentration with additional conditions and obligations is also called the "merger commitment system" or the "concentration remedy system" in the European Union (EU) competition law theory. The Chinese merger commitment system is based on the "commitment decision" procedure in Article 9 of the 2002 EU Council Regulation (1/2003) regarding the implementation of competition rules in arts 81 and 82 of the Treaty. From the comparative law perspective, the remedy for undertakings concentration is different from the commonly referred legal remedy. It is a remedy for market competition that may be harmed, rather than a remedy for competitors of the concentration parties, and is not related to punishment. In the conditional approval of undertakings concentration control, important differences are evident in the legal nature and consequences of conditions and obligations. Among the types of remedy measures for undertakings concentration, structural remedies are considered easier to implement than non-structural remedies; however, the situation is not simple and needs to be treated dialectically. Although behavioral conditions exhibit characteristics similar to or convergent with regulatory measures, they should not be confused with traditional economic regulations. The unclear spectrum of the undertakings concentration control theory will become an important restriction for the in-depth research on this issue.

MARIATERESA MAGGIOLINO

Between Clarity and Ambiguity: Legal Certainty in the Draft Guidelines on Article 102 TFEU 448

The paper critically examines the European Commission's 2024 draft Guidelines on the Application of Article 102 TFEU, focusing on their stated objective of enhancing legal certainty in the enforcement of EU competition law. The analysis addresses four core dimensions: the Commission's drafting technique and reliance on case law quotations; the reformulation of the constituent elements of exclusionary abuse; the relationship between general legal principles and specific liability tests; and the newly introduced classification of exclusionary conduct. While the Guidelines provide clarity in some areas—particularly regarding the evidentiary role of established tests—they fall short of offering a coherent and principled analytical framework. In particular, the concept of "competition on the merits", though central to the new structure, remains ambiguous and risks undermining predictability. The paper argues that a more structured and transparent interpretive approach is needed to ensure the legitimacy and intelligibility of art.102 enforcement.

AI and Their Competitive Effects: A Legal Perspective on the Impact of AIs on Markets and Consumer Behaviour 455

Artificial intelligences (AIs) are a set of technological tools that have become part of consumers' everyday practices and are increasingly supporting businesses' strategic operations, despite the limited academic literature on their implementation and impact. In recent years, a clear trend has emerged of companies deploying a variety of AI algorithms across different market sectors, building on previously established systems from which AIs diverge significantly due to their greater complexity, autonomous data generation, and problem-solving capabilities. This development highlights the urgent need for regulatory intervention. However, even the legal framework introduced by the European AI Act refrains from establishing a definitive normative scheme for the operationalisation of its foundational principles. This leaves such articulation to doctrinal scholarship and necessitates recourse to ancillary regulatory regimes. AI mechanisms often facilitate large-scale consumer profiling, enabling data generation that informs corporate strategy while shaping consumer decision-making processes. Empirical evidence suggests that AI use can distort competitive dynamics and lead to anti-competitive behaviour, with algorithms potentially learning to engage in tacit collusion. At the heart of this phenomenon lies the implementation of addictive design paradigms that instruct AI systems to maximise user engagement as a means of optimising profit, raising significant regulatory and ethical concerns. These developments, therefore, necessitate a re-evaluation of the extent to which conventional competition law can effectively govern the novel strategic behaviours induced by AI technologies.

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