

Editorial

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The Editorial Board is proud to present the second issue of Volume IX of the *Market and Competition Law Review*. This issue features several relevant contributions on recent landmark rulings, such as the Android Auto and Illumina/Grail cases, as well as classic topics including restrictions by object or effect, the interaction between national security and EU Merger control, and the investigative powers of competition authorities.

Giuseppe Colangelo introduces the issue with an analysis of the European Court of Justice's Android Auto ruling, which could represent a pivotal shift in digital competition policy. By requiring dominant platforms to grant third parties interoperability access, the Court's decision could reshape platform architecture and business strategies, with implications far beyond the EU. The author highlights that, from a transatlantic standpoint, the ruling underscores a growing doctrinal divergence from U.S. jurisprudence on refusals to deal and may, in fact, exert a more profound and far-reaching impact on the global regulatory landscape than the Digital Markets Act itself, thereby casting uncertainty over whether major American platforms will redesign their services globally or instead tailor them to the European market. This paper seeks, therefore, to explore how the interoperability mandate articulated by the ECJ could, more effectively than the celebrated "Brussels effect," advance the DMA's core aim of **interoperability by design**.

Subsequently, Mária T. Patakyová analyzes the concept of *by object* restrictions of competition under Article 101(1) TFEU, focusing on the case

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law since **Allianz Hungária**. She explains that although such classification removes the need to prove actual effects, determining whether an agreement qualifies as a by object restriction has become increasingly complex, as the European Court of Justice has shifted its assessment criteria over time, blurring the boundaries between object and effect restrictions.

Turning to mergers and acquisitions, Samuel Scandola's article offers a comprehensive analysis of the intersection of national security and EU merger control. It explores how Member States may increasingly rely on Article 346 TFEU and Article 21(4) EU Merger Regulation and analyzes the legal framework and scope of these derogations, as well as their interaction with national FDI regimes. While these mechanisms do not prevent the consolidation of the European defense industry, the author suggests that the lack of consistent case law and fragmented national practices could undermine legal certainty and coherence.

Still within the context of the merger control regulation, Vicente Bagnoli and Nicola Faraone assess the Illumina/Grail case, in which the European Court of Justice rejected the European Commission's broad interpretation of its authority to accept a referral of a merger that did not meet the national merger control thresholds of the referring Member State. Although this outcome enhances legal certainty, it restricts the Commission's ability to target killer acquisitions. The paper explores, therefore, alternative tools, including national call-in powers, Article 102 TFEU (post-*Towercast*), and the DMA's gatekeeper notification duties, while also engaging with policy debates on deal-value thresholds and revised merger guidelines aimed at capturing dynamic competition and fostering innovation.

The last two articles address traditional institutional issues, notably the constraints on the investigative powers of competition authorities.

On the one hand, Belle Beems identifies persistent challenges in cooperation between data protection and competition authorities, notably the lack of a structured forum and legal basis for information sharing in cross-border cases. The EU legislator is called upon to address these deficiencies by establishing a harmonized framework governing the interaction between those authorities in a cross-border context.

On the other hand, Nuno Castro Marques examines the relationship between the investigative powers of competition authorities and the protection of fundamental rights within the EU legal order, arguing that effective competition enforcement and respect for fundamental rights are not inherently incompatible, provided that both European and national

institutions uphold the shared constitutional values embodied in the rule of law.

Finally, Rita Henrique offers a review of Elias Deutscher's *Competition Law and Democracy: Markets as Institutions of Antipower* (Cambridge University Press, 2024).