

Editorial

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General Editor

The Editorial Board is pleased to present the first issue of Volume IX of the *Market and Competition Law Review*, which brings together valuable contributions that explore the aligned analytical approaches across various legal fields, with the aim of enhancing the effectiveness of competition law enforcement.

The intersection between competition law and other areas of law is of critical importance in the digital era. Competition law must coexist not only with traditional frameworks, such as the classic rules on Free Movement, but also with newer developments like the Digital Markets Act. While the differences between these legal domains are widely recognized, parallel analytical trends are emerging and drawing increasing attention in the academic literature. Understanding these trends is essential for the proper application of competition rules.

The first article, written by Albertina Albors-Lloren, compares the application of Treaty prohibitions in the areas of free movement and competition law, highlighting key differences in their objectives, personal and material scope, and enforcement mechanisms. Despite these distinctions, both domains have experienced a shift from a formalistic approach towards one that focuses on the actual restrictive effects of a national measure on intra-Union trade or of an agreement or practice on competition. The Author suggests that this emerging convergence is important, as it signals a broader evolution towards analytical frameworks grounded in the demonstrable negative impact on intra-Union trade or competition.

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A growing consensus is becoming visible around an “effects-based” approach, one that is continually refined and is increasing analytical rigour in the application of Treaty provisions.

Afterwards, Florence Thépot analyses the intersection between Article 102 of the Treaty on the Functioning of the EU and the Digital Markets Act in the context of digital markets. On the one hand, for the purposes of enforcing abuse of dominance under Article 102 TFEU, market power assessment, including market definition, has been considerably challenged by specific features of digital markets. On the other hand, the Digital Markets Act aims to address entrenched power in digital markets, bypassing traditional market definition tools. Instead of assessing harm in a given market, the Digital Markets Act focuses on designating “gatekeepers”, moving away from Article 102 TFEU analytics. This article questions the extent to which market power and gatekeeper powers are substitutes, or complements, regarding the analytical *tools* used, and regarding the *purposes* to which they contribute. While the market power approach has moved away from quantitative methods for greater accuracy, the Digital Markets Act reintroduces a heavy reliance on quantitative tools. The article’s conclusion posits that market and gatekeeper power may act as substitutes in promoting market contestability, and as complements as well, considering that the concept of gatekeepers expands the reach of intervention against unfair conduct.

In the following article, Maria Teresa Maggiolino delves into the intersection of competition law and sustainability, with particular emphasis on the potential role of Article 102 TFEU. The article offers a new framework that categorizes the relationship between Article 102 and sustainability into four distinct scenarios, analysing the appropriate responses antitrust authorities should consider in each case. It evaluates the strengths and weaknesses of two potential approaches: a bottom-up method, which relies on consumer willingness to pay for sustainable practices, and a top-down approach, which incorporates sustainability directly into antitrust objectives. Maria Teresa Maggiolino argues that ordinary antitrust law already does a lot to support sustainability and competition law should not expand its mandate to include sustainability, privacy, or labour rights as direct goals; those objectives are better addressed by other legal instruments. In the author’s view, competition law must not “punish dominant firms that harm sustainability without harming competition”.

Next, Sílvia Bessa Venda explores the topic of class actions, which are an important instrument to enable consumers and small and medium enterprises to seek compensation for competition law breaches, especially when individual claims are too small to justify the high costs of litigation. However, class actions face unique challenges, in particular the difficulty of accessing evidence, deemed crucial for identifying class members, supporting certification, and calculating damages. Sílvia Bessa Venda points out that the current EU legal framework does not address this issue adequately, as Directive 2014/104/EU has improved access to evidence post-filing, but it has not provided for pre-filing discovery. Similarly, Directive 2020/1828 requires class representatives to present some initial evidence without offering tools to obtain it beforehand. This places an unrealistic burden on claimants and undermines effective redress, especially in complex competition cases where key evidence is held by defendants. Without effective and harmonized EU-level rules for early access to evidence, class actions for competition law violations remain difficult to pursue.

Finally, José Pedro Oliveira Pinto provides a review of Gönenç Gürkaynak's book *Innovation paradox in merger control* (Institute of Competition Law, Concurrences, 2023).