

# Kluwer Competition Law Blog

## World Competition Law and Economics Review, Volume 46, Issue 1, 2023

Jose Rivas (Bird and Bird, Belgium) · Saturday, March 11th, 2023

We are happy to inform you that the latest issue of the journal is now available and includes the following contributions:

### **Wouter P. J. Wils, Regulation 1/2003: An Assessment After Twenty Years**

Regulation 1/2003 brought about a radical change in the way in which the EU antitrust prohibitions contained in Articles 101 and 102 TFEU are enforced. The previous enforcement regime, under Regulation 17, which dated from 1962, was characterized by a centralized notification and authorization system for Article 101(3) TFEU. Regulation 1/2003 abolished this system and replaced it by a system of ex post enforcement. The objectives of this reform were to allow the European Commission to become more active in the pursuit of serious infringements of Articles 101 and 102 TFEU, as well as to decentralize enforcement to the Member States' competition authorities and to the national courts, while maintaining EU-wide consistency.

This article provides an overview of the genesis of Regulation 1/2003, its objectives, and its main results, as apparent twenty years later. It finds that the decentralization to the national competition authorities, cooperating with the European Commission and each other in the European Competition Network, has been a major success, beyond expectations. On the other hand, the prediction that the reform would lead to a significant increase in the number of prohibition decisions adopted by the European Commission has turned out to be too optimistic. Ten possible explanations for this lack of increase in the number of prohibition decisions are tentatively examined. Taking together the figures for the European Commission and the national competition authorities, however, there can be no doubt that Regulation 1/2003 has led to a spectacular increase in the enforcement of Articles 101 and 102 TFEU, and that Regulation 1/2003 has thus been a great success.

### **Valeria Falce & Nicola M.F. Faraone, Digital Ecosystems in the Wake of a Legislative/Regulatory Turmoil: A First (Tentative) Antitrust Assessment of the Italian (And European) Experience in the AGCM Case Law**

Ecosystems is central to contemporary competition law debate, in particular in digital markets. Over the past few months, the EU Commission has launched several initiatives, such as the AI Regulation and the Digital Markets Act (DMA), in the attempt to induce faster changes in business conducts compared to competition law proceedings by avoiding the numerous lengthy stages and

the lack of flexibility of such enforcement. The current initiatives at EU level and the proactive legislative approach adopted by various Member States have the merit to (at least try to) codify general ex ante rules inspired, largely, by specific competition law proceedings and, then, clarify the emerging notion of digital ecosystems. This article considers the meaning and the scope of this recurring concept by reviewing all the relevant legislative and policy-related initiatives adopted by the EU Commission and the Member States. It then shows the outcome of the recent proceedings concluded by the Italian Competition Authority ('AGCM') concerning the role of ecosystems in the current digital landscape. Against this background, this article argues that it will be difficult to reconcile this ever-growing national trend, in terms of parallel competition proceedings (with record-fines) and legislative proposals/amendments regarding the digital gatekeepers, with the EU Commission's 'legislative train' aimed at regulating the EU digital markets.

### **Peter J. Van De Waerdt, LL.M., 'Everything the Data Touches Is Our Kingdom': Market Power of 'Data Ecosystems'**

Companies such as Google and Facebook are not merely conglomerates of Internet-based services which just so happen to process personal data. They should instead be conceptualized as 'data ecosystems' and treated as such. Data ecosystems are companies which collect and monetize personal data through a network of widely diverging internet-based services, for the overarching purpose of targeted advertising. Contrasted with traditional conglomerates, a data ecosystem is unique since all of its different branches are interconnected through a single shared resource: personal data. Consequently, this ecosystem structure grants strong sources of market power. Network effects of personal data, throughout the entire ecosystem, lead to services being constantly updated and personalized with increasing accuracy, while simultaneously enhancing the monetization strategy of targeted advertising. Meanwhile, data ecosystems' reach across the Internet means that consumers cannot realistically choose not to participate, nor find suitable competitors for each service. Finally, data ecosystems have strong incentives to expand into additional markets: conglomerate mergers are an essential strategy to reinforce their sources of market power. Data ecosystems enjoy a unique form of market power which has been seriously underestimated in the past. A new approach that fully appreciates their unique structure and market power is therefore required.

### **Yuichiro Hayakawa & Koki Arai, Three E-commerce Case Studies in the Context of Japanese Competition Enforcement: Comparative Considerations With the US Experience**

This study compares three case studies in the context of Japanese competition law enforcement with the US experience. Although each case involves important issues, this study focuses on extracting common aspects of competition law by critically examining the following cases of Antimonopoly-Law-suspected violations pursued by the Japan Fair Trade Commission (JFTC): the e-commerce case against Amazon Japan, the shipping charges case against the Rakuten group, and billing-related suspected violations by Apple. After extracting the common aspects from each case, this study recursively re-examines the cases to clarify the aspects that should be emphasized in competition law enforcement.

To make sure you do not miss out on regular updates from the *Kluwer Competition Law Blog*, please subscribe [here](#).

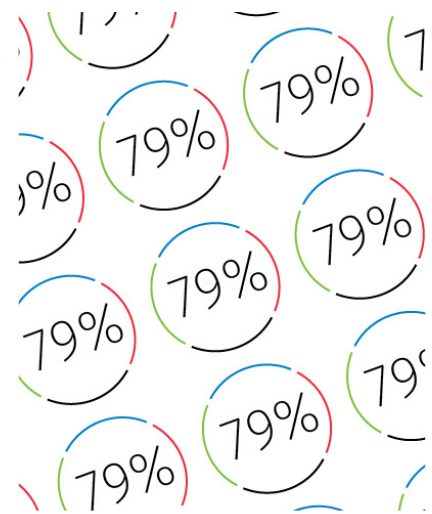
## Kluwer Competition Law

The **2022 Future Ready Lawyer survey** showed that 79% of lawyers are coping with increased volume & complexity of information. Kluwer Competition Law enables you to make more informed decisions, more quickly from every preferred location. Are you, as a competition lawyer, ready for the future?

Learn how **Kluwer Competition Law** can support you.

79% of the lawyers experience significant impact on their work as they are coping with increased volume & complexity of information.

**Discover how Kluwer Competition Law can help you.**  
Speed, Accuracy & Superior advice all in one.



2022 SURVEY REPORT  
The Wolters Kluwer Future Ready Lawyer  
Leading change

This entry was posted on Saturday, March 11th, 2023 at 10:10 am and is filed under [World Competition Law and Economics Review](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.