

## AUTHORS' PREFACE TO THE THIRD EDITION

The third edition of this work has seen very substantial change from previous editions, with the addition of almost 250 pages of new text, notwithstanding our deleting substantial text from previous editions as well. Virtually all chapters have had significant amendment—in some cases fundamental reworking—and there is a new 61-page chapter on Abuses in Digital Platform Markets (Chapter Seventeen).

Whether one views this as endeavour or prolixity on our part, these significant changes have been prompted by a series of developments. The first is that, whilst the overall quantity of Commission Decisions under Article 102 TFEU has probably diminished, the Commission has rendered a series of decisions in cases such as *Google Android*,<sup>1</sup> *Google Shopping*,<sup>2</sup> *AdSense*,<sup>3</sup> *Qualcomm (predation)*,<sup>4</sup> and *Qualcomm (exclusivity)*<sup>5</sup> that raise new and fundamental issues of principle. These decisions are referred to in most chapters, often in some detail.

Second, there have been potentially profound changes at the EU Court level as well. Well-known cases such as *Intel*<sup>6</sup> have the potential to reorient or even redefine the concept of abuse under Article 102 TFEU. But even somewhat less well-known judgments such as *MEO*<sup>7</sup> could have significant practical impact on issues such as discrimination under Article 102 TFEU, an area that we have argued for almost fifteen years now was in need of reconsideration.

Third, the competition concerns raised by multi-sided digital platforms under Article 102 TFEU have finally moved from the pages of law and economics journal articles into the realms of the decisional practice and case law. This area raises some of the most interesting, difficult, and controversial issues under Article 102 TFEU, affecting issues as diverse as market definition, dominance, predatory pricing, tying, leveraging, and exploitative terms.

Fourth, areas where the law and economics was either embryonic or had fallen into desuetude have now exploded. For example, global litigation on FRAND disputes in the area of patents has emerged on a significant scale in China, Germany, the United Kingdom, and United States, not to mention arbitral tribunals seated worldwide. These cases have led, for example, to Chapter Thirteen (Abusive Conduct And Standards) virtually doubling in size. Similarly, excessive pricing—which was effectively a dead letter at the EU level and in most Member States for almost two decades—has been revitalised, as Chapter Fourteen (Excessive Prices) attests to.

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<sup>1</sup> Case COMP 40099, *Google Android*, Commission Decision of 18 July 2018.

<sup>2</sup> Case AT.39740, *Google Search (Shopping)*, Commission Decision of 27 June 2017.

<sup>3</sup> Case AT.40411, *Google Search (AdSense)*, Commission Decision of 20 March 2019.

<sup>4</sup> Case AT.39711, *Qualcomm (Predation)*, Commission Decision of 17 July 2019.

<sup>5</sup> Case AT.40220, *Qualcomm (Exclusivity Payments)*, Commission Decision of 24 January 2018.

<sup>6</sup> Case C-413/14 P *Intel v Commission*, EU:C:2017:632.

<sup>7</sup> Case C-525/16 *MEO-Serviços De Comunicações E Multimédia* EU:C:2018:270.

*Authors' Preface to the Second Edition*

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Finally, whilst the subject of monopolisation conduct was something very obscure when we first started this work in the early 2000s, it is now a subject that has, amazingly, entered into the political mainstream. Concerns as respects the roles of digital platforms, digital products/services, and more generally about market concentration levels, firm profits, social inequality, *etc.* have led to calls, of varying degrees of precision of focus, for greater enforcement of monopolisation laws. These calls have in large part arisen in the United States—where these issues are likely to be a major electoral focus in November 2020—but Europe has not been immune from them either.

We are grateful to a number of people for their assistance. In alphabetical order, they are: Alexandru Circiumaru, Cani Fernandez, Ingrid Liedorp, Cynthia Ngwe, Daniel Piccinin, and Rebecca Wallace.

Finally, we wish to record our immense gratitude, and honour, that Judge Wahl has agreed to write a Foreword to this edition. He is, without question, Europe's leading competition law judge and has had a significant and positive effect on the evolution of EU competition law, and particularly Article 102 TFEU, as an Advocate General and, now, Judge of the Court of Justice of the European Union. Indeed, the copious references to his output in this edition show that it would not be a misnomer to call it the "Wahl edition."

As usual, any opinions expressed in this book are personal only and do not represent those of our respective firms/chambers or clients.

The law is stated as of 15 May 2020.

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