

Rivista di contabilità pubblica riconosciuta di carattere culturale dal Comitato interministeriale di cui al d.P.C.M. 9 marzo 1957

Amministrazione e Contabilità dello Stato e degli enti pubblici

Fondata e diretta da Salvatore Sfrecola

Rivista scientifica riconosciuta dall'ANVUR nell'area 12 - ISSN 0393 - 5604

2020 - Anno XLI

MICROSOFT CASES AND THE NEW ECONOMIC APPROACH: A COMPARATIVE STUDY

di Luigi Maria Pepe, PhD in Comparative Law and Processes of Integration

Abstract: *European competition law today needs more attention to innovation and consumer protection than ever before. Starting from the comparative study of the Microsoft cases in Europe and the US, we reconstruct the need for the European Institutions to adopt a more economic approach. Following the example of the US, this change is taking place, albeit more slowly. The European institutions will have to support this process politically.*

Table of Content

1. *Introduction*
2. *Microsoft's liabilities and the European Commission analysis*
3. *The ineffectiveness of the European remedies and the lack of evidence*
4. *U.S Microsoft case*
 - 4.1 *The difference in remedies*
5. *Comparative considerations and the developments of European antitrust policy*

1. Introduction

U.S. and EU antitrust policies have always been different. The former focuses on boosting the economy trying to provide the cheapest and highly innovative products for consumers; the latter always aims to create a single internal market without barriers and with a sustainable development among competitors¹. Both the U.S. and EU antitrust institutions dealt with Microsoft's unilateral market behavior with the consequence of resulting in different approaches and different remedies. The main competition problems arisen were the refusal to deal with and the tying conduct which found Microsoft guilty. Despite the difficulties to prove guiltiness in such a controversial area of competition law, the different remedies show which were and are the antitrust targets and the tools used to foster the economy. The U.S. approach with the Microsoft case was the most reasonable one, trying to restore the violated market balance without damaging the dominant firm in the software sector and its ability to innovate. Instead, the European Institutions sacrificed the possibility to boost the software industry with new and further inventions imposing code removal remedies to Microsoft. The attempt to create a perfect and ideal market has not allowed the European Commission to focus on fostering innovation and encouraging competitors to fill the gap.

This is because innovation has become increasingly important in markets. Not only to stimulate competitors to improve their market products but also for increasing consumer welfare. For this reason,

¹ A Bagchi, 'The political economy of merger regulation' [2005] 53(1) The American Journal of Comparative Law 1-20.

the abuse of dominance needs to be examined carefully without stating *a priori* its unlawfulness.

This paper aims to analyze the EU decisions and rulings in the Microsoft case in a comparative approach with the U.S. The objective is not to declare which antitrust framework is more efficient but only to show how the European Commission decision chose to pursue competitors demands despite market innovation i.e. consumer welfare.

It is also a comparative analysis with a foreign country which guides policy makers to follow new guidelines and understand the developments of a particular approach. The evolution of the U.S. theory after their Microsoft judgement spread rapidly till it got in Europe. The Court of Justice of the European Union seems to appreciate the U.S. “more economic” approach focused on competition, consumers and innovation. The path to introduce this new antitrust policy in Europe will be slow and tough. But it is the duty of European Institutions to pave the way for future, where innovation and society welfare ranked first.

2. Microsoft’s liabilities and the European Commission analysis

Everything started with a complaint to the European Commission (EC) from a Microsoft rival in the software operational system’s market, Sun, which claimed that Microsoft stopped to share interoperability information, useful to develop products in the downstream market of work group server operating systems. The EC ex officio started to investigate and, apart from the refusal to supply

with, also found a tying liability. Microsoft tied to its software Windows Operational System (WOS) another application Windows Media Player (WMP) in order to enter in the media player market. This technical tying allowed Microsoft to take advantage of its distributional network and ubiquity in software to present a new product and to foreclose consumer's choices for a different media player product. Anyone who had bought the Microsoft software, would have automatically made the choice for that media player.

According to the Commission², Microsoft leading position in the software market was used to conquer the media player market; there was a tying liability because Windows and WMP were different and separated products; and there was a predatory conduct to create barriers for rivals and gain the consumers interest. The Commission claimed the breach of Article 102 TFUE³ imposing various commitments to Microsoft as remedies in accordance to the Regulation 1/2003⁴. Clearly, the Commission noticed a coercion in that market resulting in the will to defeat the exclusionary conduct rather than the attempt to remove it.

Concerning the refusal to supply, the EC claimed that, thanks to the previous sharing of interoperability information provided by Microsoft's, rivals would have made their products worthier enabling them to increase their sales; at the same time, they would avoid useless costs in order to beat Microsoft's disclosure barriers⁵. On the

² Microsoft (Case COMP/C-3/37.792) Commission Decision C (2004) 900).

³ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union 2012/C 326/01

⁴ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.

⁵ Kai-Uwe Kuhn and John Van Reenen, 'Interoperability and market foreclosure in the European Microsoft case' (Centre for Economic Performance special papers (CEPSP20) Centre for Economic Performance, London School of Economics and

other hand, the EC argued that WMP was a different product and that consumers approached it as such. Worthless was Microsoft defense trying to explain that since WMP was part of WOS they belonged to the same market thus had the same demands.

The test run by the EC to prove if there was a distinct demand for the tying product without the tied one, was not supported by any evidence on the consumer viewpoint.⁶ Moreover, regarding the refusal to disclose information to rivals, Microsoft's arguments were based on the right to choose freely to whom grant_a license in accordance with its intellectual property rights. On Microsoft's appeal in front of the General Court, the judgement⁷ didn't face the intellectual property issues and the Court just stated the presumption that the refusal of supply interoperability information was a predatory conduct in order to foreclose competitor's participation in that market⁸.

It is clearly showed that the competition problem arisen by the EC is structural⁹. It is not represented by the potential harmful effect of tying on the consumer welfare or the innovation but rather the presence of a dominant market power able to create barriers for

Political Science, London, UK, 6 May)
<http://eprints.lse.ac.uk/4664/1/Interoperability_and_Market_Foreclosure_In_the_European_Microsoft_Case.pdf> accessed 11 April 2020.

⁶ Jorge Padilla and Ciara Kalmus, 'Tying and Competition Law: an overview of EU and National Case Law (E-Competition Tying, 7 March)
<<https://www.concurrences.com/en/bulletin/special-issues/tying/Tying-and-competition-law-An>> accessed 11 April 2020.

⁷ Case T-201/4, Microsoft v Commission, EU:T:2007:289)

⁸ Thomas Kramler, Carl-Christian Buhr and Devi Wyns, The EU Court of First Instance partially upholds the Commission's decision concerning an abuse of a dominant position in the PC operating system (Microsoft) (E-Competitions, 17 September) <https://www.concurrences.com/en/bulletin/news-issues/september-2007/the-eu-court-of-first-instance-partially-upholds-the-commission-s-decision-en> accessed 11 April 2020.

⁹ Nicholas Economides and Ioannis Ilianos, 'A critical appraisal of remedies in the EU Microsoft cases' [2010] 2010(2) Columbia Business Law Review 346-420.

competitors. The European antitrust policy is highly concentrated in this decision, in the appeal judgement and in the final remedies.

3. The ineffectiveness of the European remedies and the lack of evidence

It is interesting to analyze the remedies taken by the EC upheld by the GC and to compare them with the remedies adopted by the U.S Department of Justice (DOJ) dealing with a similar Microsoft case. The aim is to prove that the European antitrust policy and the consequent measures of public enforcement adopted in the case, do not encourage innovation in high tech industries. This policy damaged the only dominant firm which may have stimulated the software market and induced rivals to bridge the gap. The EC should understand that *"restoring competition must not be interpreted as reaching perfect competition"*¹⁰. And the remedies should aim to restore the previous market dynamics without attempting at future developments. Moreover, art.7 of the Regulation 1/2003 states how remedies should be proportionate to the conducts found illegal in order to assure the welfare of competition and not of competitors. Even the presence of a dominant firm among small rivals shall not be fought since remedies should be aimed to preserve the competitive dynamics without altering the incentives that a dominant undertaking may enroll in the market process. The EC found that the market conditions could be restored imposing Microsoft to re-share interoperability information among competitors and creating a new

¹⁰ Ibid.

version of WOS without WMP. But clearly, these remedies did not show the intention to increase the average of consumer benefits. On one hand, they only imposed a duty on Microsoft to share their data with competitors. The EC did not justify this solution upon Microsoft, and it did not attach evidence that *“the lack of information from Microsoft stopped competitors to innovate and to provide new products to consumers”*¹¹. On the other, the EC required a new version of Windows with WMP unbundled in order to break the technical tie. Nevertheless, it was clear that the remedies would be proven ineffective.

The original version of WOS with WMP integrated was more attractive than the one without the application. When Microsoft created the new unbundled version, Windows XPN, it was priced the same, but the consequence was a clear lack of demand from the market. It was obvious the appeal for the bundled version for consumers¹².

During the investigations, Microsoft was continuing to sell WOS with WMP and despite this, it did not conquer the media player market as declared by the EC. Therefore, the tying behavior did not affect the competitors because the dominant position was still held by the firms iTunes and Adobe’s flash.¹³ These measures taken by the EC and upheld by the GC provided huge damages to Microsoft and to its selling’s. Were these remedies of public enforcement suitable in a high-tech industry with a steady need for innovation? Damaging the only dominant firm able to innovate this sector is it the right option

¹¹ Ibid.

¹² Aisha Sanad, 'The inadequacy of the European Commission’s Remedies for Microsoft’s tying practices in the Microsoft Cases: Casting doubt on the suitability of the Commission’s approach for an Information Technology Economy' [2014] Global Antitrust Review 113-135.

¹³ Padilla and Kalmus (n 4)

for a public Authority which role is to implement the market and consumers welfare?

The narrowed EC's interpretation of Art. 102 TFEU finding guilty all the dominant positions have harmed software market. The huge lack of evidence from the EC's decision and the GC's ruling showed the a priori consideration of the unlawfulness of predatory strategies. Does this approach benefit competition and consumers?

To address these questions, it will be carried out a comparative analysis of the EU's Microsoft case with the U.S one. Similar liabilities but different remedies.

4. U.S Microsoft case

As declared by R. Hewitt Pate, Assistant Attorney General for Antitrust, afterwards the EC's decision in the Microsoft 'case in 2004, antitrust policy should pay attention to the consumer welfare and the steady need to implement one of the most innovative industry of this century. He also argued that the EC's decision too easily imposed the largest antitrust sanction (497 million euro) and the "code removal" measures without considering the complexity to address the illegality of unilateral conducts. Moreover, without taking into consideration the consequences on the market and the competition game.

This speech has been delivered not without knowledge of the facts. The U.S. Courts and the Department of Justice (DOJ) have already dealt with Microsoft dominant position and its predatory conduct. In fact, in 2001 the Court of Appeals represented by Judge Posner has

been called to rule on the case *United States v. Microsoft Corp.*¹⁴ because abusive behaviors have been found during the investigations of the DOJ. Similarly, to the European scenario, Microsoft was guilty of a refusal to deal with and for having bundled to its WOS, Internet Explorer (IE).

The comparative exercise will show two different outcomes in Microsoft's controversy in the EU and the U.S. As we have already seen, EU antitrust practice aims to design an ideal competitive market trying to create unity, cooperation, and conformity among competitors. The U.S antitrust policy is focused on consumers satisfaction and it is clear how the Sherman Act defends competition and not competitors.

The U.S. Microsoft judgement paved the way for a new approach to unilateral conduct from a dominant firm where the awareness of an incoming new economy must not be blamed and overwhelmed by the devastating effect of litigation.¹⁵ Judge Posner claimed that the old fashioned and traditional antitrust law must adapt to the new environment, in which a complex technological industry is growing rapidly. Competition rules should take into consideration that technical upgrades are required in order to foster innovation and to achieve higher technological standards. They will provide benefit to the society and to the market.¹⁶ A rule of reason is essential in order to set aside the obsession of monopoly power and of dominant positions in the market. In this industry we cannot deny the

¹⁴ *United States v. Microsoft Corp.*, 253 F.3d 34 (D.C. Cir. 2001).

¹⁵ Chris Butts, 'The Microsoft Case 10 Years Later: Antitrust and New Leading "New Economy" Firms' [2010] 8(275-291) *Northwestern Journal of Technology and Intellectual*.

¹⁶ *Ibid.*

essentiality of dominant firms because it is thanks to the investments and the risk taken by them that economy growth and innovation can be achieved.

This statement does not mean that Microsoft conduct is lawful. It means that in designing the remedies, Courts and Public Authorities should consider the long-term effect on the economy, on the market and on the innovation essential need. In the U.S case, the DOJ, which run the investigations, claimed that there was a tying liability bundling WOS with the IE browser. In fact, it stated that Internet Explorer constitutes a separate product from WOS because it has a double existence as physical and commercial application¹⁷. Despite this interpretation, the Court of Appeals recognized IE as a new creative integration with a value-adding.¹⁸ It was a legitimate combination with the aim of upgrading the operational system and to provide a new product¹⁹. As integrated product, Microsoft could not enter in the browser market with a monopoly power. Surely Microsoft would have affected competitors selling but the software bundling would have provided further efficiencies. Therefore, Judge Posner deemed that *"the new antitrust approach to software tying should move from a "per se analysis" to a more flexible rule of reason"*²⁰. The same rule of reason should guide public authorities to limit redundant and avoidable competition constraints. The bundling, in a new economic scenario, should be tolerable for its procompetitive outcomes. Despite the new and revolutionary interpretation of competition rules by Judge Posner, Microsoft was found guilty of

¹⁷ James F Ponsoldt and Christopher D David, 'Comparison between U.S. and E.U. Antitrust Treatment of Tying Claims against Microsoft: When Should the Bundling of Computer Software Be Permitted' (2007) 27 Nw J Int'l L & Bus 421.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

many exclusionary conducts such as the refusal to disclose interoperating and communicating information to competitors.

4.1 The difference in remedies

The EU and U.S. Microsoft cases not only have different interpretations of the concept of dominant position in the high-tech industry, but different remedies adopted. As it was argued, in both cases Microsoft tactics were found illegal respectively under the provisions of Article 102 TFEU and Section 2 of the Sherman Act. The U.S. Court of Appeals and the General Court both ordered Microsoft to share the interface information to rivals needed with the aim to deal with WOS. First difference is that the U.S. judgement did not ask Microsoft to provide all Windows specific information allowing competitors to create a new compatible version. A wide disclosure of these sensitive information could have damaged Microsoft market position and its attitude to innovate²¹. Contrary, the General Court upholding EC's decision, ordered Microsoft to restore the previous level of interoperability information to competitors without any consideration of the intellectual property rights.

Second difference regards the tying liability. The remedy addressed in the U.S. judgement was not a binding obligation to separate WOS from IE browser but only to make it easier for consumers to uninstall IE and choose another browser²². In this way competitor's browser

²¹ Toshiaki Takigawa, 'A comparative analysis of US, EU, and Japanese Microsoft cases: How to regulate exclusionary conduct by a dominant firm in a network industry' [2005] 50(2) The Antitrust Bulletin 237-266.

²² Ibid.

could have been install on Windows. Instead, the European reaction against Microsoft was to compel to design a new version of Windows rid of WMP.

Third difference is that U.S authorities have used the rule of reason as parameter to assess Microsoft conducts. Thereby they have had a rational approach in order to not discourage Microsoft to invest in innovation and letting the market gain some benefits. The EC theory of harm, instead, is based on considering tying a priori an anticompetitive tactic without collecting enough evidence and try to take into consideration the advantages for the market. As already demonstrated the EC did not add evidence neither that Microsoft was likely to acquire a monopoly in the media player market and either that there was a huge demand of the WOS version with WMP unbundled²³.

The European competition policy revealed its limits in the Microsoft case without being able to pursue competition and market innovation. Moreover, some authors argued that EC obstinacy tending for an ideal market competition, has led to not consider the "commercial usage exception" of Article 102 TFEU²⁴. If the bundled tying and tie products have given rise to a commercial demand, the EC should have recognized its commercial use not qualifying it as anticompetitive. This exception could have created efficiencies in the European software industries inspiring many more firms to innovate and to reduce the gap with the dominant undertaking. But the EC is still believing that it cannot preserve the market dynamics without safeguarding competitors.

²³ Nicholas Economides and Ioannis Ilianos (n7)

²⁴ James F Ponsoldt and Christopher D David (15)

5. Comparative considerations and the developments of European antitrust policy

The comparative exercise with the U.S judgment did not aim to show an alternative and more effective antitrust policy. It aims to show how the different approach between the U.S. Court and the EC in addressing Microsoft behaviors has allowed to highlight the centrality of innovation in competition markets. Taking measures of public enforcement against a dominant firm to end the breach of legal provisions, it should not result in undermining the position of the firm and its contribution to the market. After the U.S Microsoft judgement, the DOJ and the Federal Trade Commission started to interpret the Sherman Act in the sense of a more economic approach, where abusive and exclusionary strategies are examined under the lens of procompetitive justifications. In U.S this is possible because the Sherman Act does not enunciate the objectives of competition policy such as the TFEU, since in U.S. the antitrust rules are modified in accordance with the new policies. This new approach is witnessed by several case that were ruled in this sense. In *Verizon V Trinko*²⁵, the Supreme Court for the first time refused the perfect and ideal competition target for embracing a "resource-advantage" economic theory in which the abuse of dominance should be interpret in a consumer welfares way²⁶.

In Europe, after the Microsoft case, it was hoped this new economic approach could be achieved and that the antitrust authorities could

²⁵ Verizon Communications, Petitioner v. Law Offices of Curtis V. Trinko, LLP 540 U.S. 398

²⁶ Christopher M Grengs, 'Verizon v. Trinko: From Post-Chicago Antitrust to Resource-Advantage Competition' (2006) 2 JL Econ & Pol'y 105.

start to read art.102 in a wider sense. In 2009, the EC published Guidance on its enforcement priorities in applying Article 102 TFEU to exclusionary abusive conduct²⁷ and it was claimed that with this further step, the new antitrust scenario would have paid more attention to procompetitive justifications from dominant firms in order to increase innovation and consumer benefits. Moreover, the Guidance introduced a "effects based" approach according to which the EC shall analyze the predatory conduct of the dominant undertaking and its actual or potential effect only on dynamic and productive competitors²⁸. The aim should be to avoid the dominant firm to create barriers and hindrances to efficient competitors for their and market development. Despite this further step and the will to adopt a more economic approach, the European Authorities continued to handle the following case law with a narrow interpretation of art.102, of dominant positions and of procompetitive acts. In *Intel Corp. v European Commission* case²⁹, the General Court stated that the "efficient competitor analysis" must not be applied and that the profitable effects for competition could not be accepted³⁰ in presence of exclusionary acts. It just denied the possibility to change the case law approach to art.102 declaring, instead, the a priori unlawfulness of predatory tactics despite the procompetitive effect. Hopefully, the Court of Justice of the European Union (CJEU)

²⁷ Communication from the Commission-Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings OJ C 45, 24.2.2009, p. 7-20.

²⁸ Ibid paragraph 23.

²⁹ Case T-286/09 RENV *Intel Corp. v European Commission* [2014]

³⁰ Wouter Wils, 'The judgment of the EU General Court in Intel and the so-called 'more economic approach' to abuse of dominance'(www.concurrences.com,January2015)
<<https://www.concurrences.com/en/review/issues/no-1-2015/articles/the-judgment-of-the-eu-general-court-in-intel-and-the-so-called-more-economic-en>>
accessed 16 April 2020

overturned the GC's judgement arguing that the EC must not interpret the TFUE provisions but only apply and enforce the Union Law. The interpretation of the Treaty, of the art.102 TFEU, is reserved to the Court. In *Intel* final ruling³¹, the CJEU clarified that when the dominant undertaking prove with authoritative evidence the benefits for competition, specific industry innovation and consumers welfare, a deeper analysis of the case is needed³². Presumption of illegal conducts will still survive for these strategies, but the EC carries the obligation to consider all the procompetitive evidence attached by the leading firm.

This seems the first step for the introduction of a more economic and innovation-oriented interpretation of Art.102 TFEU. And the fact that it comes from the CJEU and not from the EC shows how the real and authoritative interpret of the European Treaty is paving the way for a new antitrust trend.

6. CONCLUSIONS

The Microsoft inquiry in both European and U.S case has shown the difficulty to address and to crystalize such a controversial concept such as the abuse of dominant position. The methodology used in this paper is a comparative approach. A comparative exercise because Countries, international and supranational organizations do not have

³¹Case C-413/14 P Intel Corporation Inc v European Commission [2017] ("CJEU Judgment")

³² Maurits Dolmans, 'Modernising Abuse of Dominance – the CJEU's Intel Judgment' (www.clearygottlieb.com, 2017) <<https://www.clearygottlieb.com/~media/organize-archive/cgsh/files/2017/publications/alert-memos/modernising-abuse-of-dominance-the-cjeus-intel-judgment-10-17-17.pdf>> accessed 16 April 2020

legislative laboratories to test new policies or legislative reforms. So, comparison allows Governments, Parliaments, public Authorities, and academics to analyze the foreign framework trying to introduce and adapt that outcomes in the own legal environment.

This is what happened after the Microsoft case in Europe. In its attempts to create a perfect and ideal market, the EC undermine Microsoft potential attitude to innovate in such a complex industry such as the software one. The code removal measures were unsuitable to that specific case. Evident proves comes from the U.S Microsoft case and how the U.S. Court dealt with it. Penalizing Microsoft for its predatory tactics with remedies that did not fit to the case, attempted to its capacity to innovate and benefit the market. This procompetitive interpretation of the abuse of dominance has given birth to the theory of the more economic approach which it has been spreading rapidly in U.S. case law. Not without surprises we have seen how this theory has landed even in Europe, first with the Guidance on the Commission's priorities in the abuse of dominance ex art.102 TFEU, and after with the case law ruled by the CJEU. A slow but steady development from the European Authorities. As far as I'm concerned, it seems that the CJEU, as the unique interpret of the European Treaties, has understood how competition policy cannot focus exclusively on market outcomes and competitors safeguard. Innovation is the new target that should challenge public entities. And in order to fulfil it, firms must be encouraged to invest and to take the risk without the fear of an antitrust inquiry in case of success. Intellectual property rights are one of the key features of the high-tech industry and its development. It should be the task of competition policy to protect intellectual inventions of firms and their potential success. *Microsoft v Commission* has shown which should not be the approach and which must be the European antitrust new

task. A new interpretation of art.102 considering the need for innovation in the marketplace seems to pick up speed. It will be fundamental to encourage the spread of the more economic approach in antitrust case law. The future is in innovation and European competition policy must realize it.

Bibliography

CASES

- United States v. Microsoft Corp., 253 F.3d 34 (D.C. Cir. 2001).

EU LEGISLATION AND CASES

- Case T-201/4, Microsoft v Commission, EU:T:2007:289)
- Microsoft (Case COMP/C-3/37.792) Commission Decision C (2004) 900).
- Case T-286/09 RENV Intel Corp. v European Commission [2014]
- Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.

- Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union 2012/C 326/01
- Communication from the Commission — Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings OJ C 45, 24.2.2009, p. 7–20.

JOURNAL ARTICLES

- Gregory S. Mccurdy, 'The European Commission's Media Player Remedy in its Microsoft Decision: Compulsory Code Removal Despite The Absence Of Tying or Foreclosure' [2004] 25(11) European Competition Law Review 694-707.
- James F Ponsoldt and Christopher D David, 'Comparison between U.S. and E.U. Antitrust Treatment of Tying Claims against Microsoft: When Should the Bundling of Computer Software Be Permitted' (2007) 27 Nw J Int'l L & Bus 421.
- Aisha Sanad, 'The inadequacy of the European Commission's Remedies for Microsoft's tying practices in the Microsoft Cases: Casting doubt on the suitability of the Commission's approach

for an Information Technology Economy' [2014] Global Antitrust Review 113-135.

- Toshiaki Takigawa, 'A comparative analysis of US, EU, and Japanese Microsoft cases: How to regulate exclusionary conduct by a dominant firm in a network industry' [2005] 50(2) The Antitrust Bulletin 237-266.

- Daniel F Spulber, 'Competition Policy and the Incentive to Innovate: The Dynamic Effects of Microsoft v. Commission' (2008) 25 Yale J on Reg 247.

- A Bagchi, 'The political economy of merger regulation' [2005] 53(1) The American Journal of Comparative Law 1-20.

- Nicholas Economides and Ioannis Lianos, 'A CRITICAL APPRAISAL OF REMEDIES IN THE EU MICROSOFT CASES' [2010] 2010(2) Columbia Business Law Review 346-420.

- Chris Butts, 'The Microsoft Case 10 Years Later: Antitrust and New Leading "New Economy" Firms' [2010] 8(275-291) Northwestern Journal of Technology and Intellectual.

- Christopher M Grengs, 'Verizon v. Trinko: From Post-Chicago Antitrust to Resource-Advantage Competition' (2006) 2 JL Econ & Pol'y 105.

WEBSITES

- Inge Graef, 'Rethinking the essential facilities doctrine for the EU digital economy' (Researchgate.net, 2019)
<https://www.researchgate.net/publication/332401208_Rethinking_the_essential_facilities_doctrine_for_the_EU_digital_economy> accessed 11 April 2020.

- Jorge Padilla and Ciara Kalmus, 'Tying and Competition Law: an overview of EU and National Case Law (E-Competition Tying, 7 March) <<https://www.concurrences.com/en/bulletin/special-issues/tying/Tying-and-competition-law-An>> accessed 11 April 2020.

- Kai-Uwe Kuhn and John Van Reenen, 'Interoperability and market foreclosure in the European Microsoft case' (Centre for Economic Performance special papers (CEPSP20) Centre for Economic Performance, London School of Economics and Political Science, London, UK, 6 May)
<http://eprints.lse.ac.uk/4664/1/Interoperability_and_Market_Foreclosure_In_the_European_Microsoft_Case.pdf> accessed 11 April 2020.

- Henri Piffaut, Nicholas Banasevic, Jean Huby, Miguel Angel Pena Castellot, Oliver Sitar, 'The European Commission adopts a decision in a case concerning the abuse of a dominant position by a leading US provider in the PC operating systems (Microsoft) (E-Competitions, 24 March)

- <<https://www.concurrences.com/en/bulletin/news-issues/march-2004/The-European-Commission-adopts-a-38380>> accessed 11 April 2020.
- Wouter Wils, 'The judgment of the EU General Court in Intel and the so-called 'more economic approach' to abuse of dominance' (www.concurrences.com, January 2015)
<<https://www.concurrences.com/en/review/issues/no-1-2015/articles/the-judgment-of-the-eu-general-court-in-intel-and-the-so-called-more-economic-en>> accessed 16 April 2020
 - Thomas Kramler, Carl-Christian Buhr and Devi Wyns, The EU Court of First Instance partially upholds the Commission's decision concerning an abuse of a dominant position in the PC operating system (Microsoft) (E-Competitions, 17 September)
<https://www.concurrences.com/en/bulletin/news-issues/september-2007/the-eu-court-of-first-instance-partially-upholds-the-commission-s-decision-en>> accessed 11 April 2020.
 - Maurits Dolmans, Wanjie Lin, Fairness and competition law: A fairness paradox, (Concurrences, November 2017)
<https://www.concurrences.com/en/review/issues/no-4-2017/articles/fairness-and-competition-law-a-fairness-paradox>> accessed 11 April 2020.
 - Maurits Dolmans, 'Modernising Abuse of Dominance – the CJEU's Intel Judgment' (www.clearygottlieb.com, 2017)

<<https://www.clearygottlieb.com/~media/organize-archive/cgsh/files/2017/publications/alert-memos/modernising-abuse-of-dominance-the-cjeus-intel-judgment-10-17-17.pdf>>
accessed 16 April 2020.