

VIII. Conclusion

The Commission's Guidance is a much welcomed and needed contribution to the reform of Article 102 TFEU. The Commission fulfilled what it promised and it would be unreasonable to expect more. The Competition Commissioner explained that the Commission wants to go the path of evolution rather than revolution. It wants to explain its approach and show that it is based on a sound analysis. It is true that the Guidance is eclectic and does not leave form-based approach entirely. It rather tries to marry the effects-based and the form-based approach. It is necessary to stress-out that in the majority of cases, these two approaches will render the same outcome. The borderline cases which will come up in the future will show, whether the Commission will start the thorn path of the case-by-case analysis or remain in the well-experienced formalistic approach.

The stance of the Community Courts to the new approach will play a crucial role. If they will decide to endorse the economic analysis it will eventually become binding law. That would open the way to a deeper development of the effects-based doctrine. Nevertheless, at the moment this would not be feasible. The strictly economic attitude might be appealing, but the Commission realistically estimated that there is not the necessary consensus to bring this approach into life. Therefore, the critics are right: the Guidance rather summarises than modernises the law on article 102. But realistically this is as much as can be done now. And it is already a significant development.

At the moment, the Commission and generally the EU are busy dealing with the worst economic recession in the history of the EU. In the past, economic crises were known to lead to relaxing of antitrust rules. The Commission does not appear to fall in this trap as it proved by the decision in the *Intel* case.

It is impossible to precisely evaluate the impact of the Guidance at the moment. This paper tried to explain its text in the light of the previous case law. It tried to foreshadow some implications the paper might have on the enforcement practice. At the moment it is necessary to abide and see how the application practice of the paper will deal with the subject matter.