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EDITORIAL

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Digital Platforms and Competition Law: A Review – *Myles Bayliss*

Digital platforms have rapidly become a major presence in worldwide marketplaces. The rapid ascension to dominance has attracted the attention of market regulators in numerous jurisdictions due to the unique business models of those platforms that often do not fit neatly within established understanding of business or marketplace competition. In this regard, the sufficiency and applicability of existing regulatory frameworks has become a key point of concern. To this end, many jurisdictions, including Australia, have undertaken reviews of their competition frameworks. This article canvasses and contrasts the developing positions of regulators in several jurisdictions in regard to the suitability of existing competition frameworks for regulating digital platforms. 176

A “Facelift” to the Abuse of Dominance – The German Competition Perspective on Facebook – *Dr Sabrina Frank and Malte Frank*

Competition authorities worldwide perceive a need to address the new challenges posed by the tech industry, as big tech companies are continuously gaining market power. Their business conduct is overall viewed with suspicion, but it is in particular their data policies that are subject to scrutiny. While some competition authorities have started to ask lawmakers to broaden their fields of competence or to provide for additional enforcement measures, the German Federal Cartel Office (Bundeskartellamt, FCO) has taken action against Facebook by making use of the existing legal framework. In November 2018, the FCO issued a prohibition order based on abuse of dominance and, simultaneously, data protection law while also relying on fundamental rights under the German constitution. This unprecedented approach has sparked an intense debate and led to divergent views in the injunctive relief proceedings. The court of first instance disagreed with the FCO. In June 2020, however, the German Federal Court of Justice (Bundesgerichtshof, FCJ) confirmed the FCO’s decision in the result, but not in the reasoning. The article provides an overview on the FCO’s decision and the following legal discussions, the relevant case law and an outlook on the likely future development of the case. 188

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