

it is unsurprising that contributors focus primarily on ‘core’ aspects of the discipline as developed or applied in domestic legal systems. An interesting exception to this rule is found in the volume’s closing chapters, which touch on private international law’s role in international arbitration: George Bermann examines the role of private international law’s three processes in arbitration-related proceedings before national courts and arbitral tribunals, noting the added complexities they take on in these realms (ch 17); while Horacio Grigera Naón discusses the treatment of choice-of-law issues in International Chamber of Commerce arbitrations, outlining the freedom arbitral tribunals have in dealing with them alongside the legal and practical constraints thereon (ch 18). Other fields of law and practice which sit at the boundaries of private international law, but which are unaddressed here, include international commercial or civil mediation, in particular under the *Singapore Convention on Mediation* (see Eunice Chua, “The Singapore Convention on Mediation—A Brighter Future for Asian Dispute Resolution”, 2019); and the constitutional or foreign affairs dimension of domestic litigation with international elements, now recognised as the distinct field of foreign relations law (see Campbell McLachlan, *Foreign Relations Law*, 2014; *High Commissioner for Pakistan in the United Kingdom v Prince Muffakham Jah* [2020] 2 WLR 699 at para 85). That this single volume cannot touch on all of private international law’s sister- or sub-fields is no discredit to the editors’ efforts; indeed, the collection may be taken as a template for similar critical endeavours in those areas. For private international law itself, however, Ferrari and Arroyo’s overview of the foundations and frontiers of the field is impressive in terms of both breadth and depth, and provides perspectives useful to both academics and practitioners alike.

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Competition Law and Big Data: Imposing Access to Information in Digital Markets
BY BEATA MÄIHÄNIEMI [Cheltenham: Edward Elgar Publishing, 2020. x + 325 pp.
Hardcover: GBP95.00, eBook: GBP22.00/USD31.00]

Major information intermediaries (such as Amazon, Facebook and Google) have considerable control over the flow of information online. This has been an issue of concern for some competition regulators. The concern, generally speaking, is that an information intermediary can use its control over information in anti-competitive ways. This gives rise to the question of how competition law should intervene in this context.

This book focuses on one possible mode of intervention, namely: imposing obligations on information intermediaries to provide access to information (at p 24). As the author states, “the main research question of this book is whether access to business information can be granted under competition law in digital markets, and if yes, under which theory of harm would that be possible?” (at p 1).

In respect of her main research question, the author's general thesis may be understood as comprising the following main points.

(1) "Information-based abuse" is defined by the author as "any kind of mishandling, biasing or refusing access to information or the way it is gathered" (at p 299). In this book, the author chooses to focus on two specific types of information-based abuses: (a) "restrictions on the portability of online advertising campaign data to competing online advertising platforms" (or "portability restrictions") and (b) "search bias" (at p 126).

(2) In relation to portability restrictions, the author states that such restrictions "could be qualified as deliberately refusing access to interoperability information" (at pp 185, 186). Accordingly, she applies the established "exceptional circumstances" test to determine if portability restrictions are abusive (at pp 191, 207). She concludes that all the elements of the exceptional circumstances test "seem to be at least partly fulfilled" (at p 203) although it "seems that at least some of the objective justifications offered by Google are sufficient defences" to justify its portability restrictions (at p 205).

(3) In relation to search bias, the author criticises the European Commission's "exclusionary discrimination" theory of harm; however, she also argues that the European Commission was correct not to assess Google's search bias using the "essential facilities" doctrine, because there was no identifiable essential facility (at p 243).

(4) At a more general level, the author argues that the European Commission "should avoid the *per se* prohibition of abuses of dominance" in favour of an effects analysis (at p 300). The author also offers arguments supporting the application of the essential facilities doctrine to "new-technology markets" (at pp 287, 295, 310).

(5) The author proposes that the "distinction between seeing information as a 'commodity' and as 'commons'... could help in dealing with information-based abuses" (at p 275). According to the author, there is a distinction to be drawn between "information being used instrumentally ('commodity') or intrinsically ('commons')" (at p 126). Where the situation involves an information-related abuse and the information concerned is classified as "commons", fairness could be a goal of competition law (at pp 97, 279). The author argues that "[c]lassifying things as 'commons' or 'commodity' could then serve as a specific tool for identifying the cases where fairness considerations could be applied as an accommodating goal of competition law" (at p 282). In her view, issues connected to portability restrictions "can be treated as dealing with information as a commodity", while issues relating to search bias "can be considered to be dealing with information as commons" (at pp 126, 127).

This book is divided into three parts, and contains a total of 15 chapters, including the introduction.

Part I of the book provides some theoretical background on abuse of dominance in digital markets. The author's general argument in this Part is that "where good/input takes a form of information, competition law has to be adjusted but not necessarily radically changed" (at p 27). In Chapter 3, the author talks about information in digital markets; among other matters, she stipulates that information in a network economy is "anything that can be digitalised" (at p 34). In Chapter 4, she lists a few characteristics of digital markets, *viz*, they tend to be two-sided, driven by innovation, and exhibit network effects and other similar effects. In Chapter 5, the author

proceeds to discuss the concept of market dominance, as it applies to online platforms; here she talks about some of the difficulties with assessing the market power of online platforms, concluding that “analysis of the dominance of an online platform is difficult and prone to mistakes” (at p 87). In Chapter 6, the author examines how the EU law on abuse of dominance applies to digital markets, and she argues that the general criteria for abuse of dominance should also apply to information intermediaries (at p 108).

Part II of the book contains a case study centered on the European Commission’s 2017 decision in *Google Search (Shopping)* (Case AT.39740) [2018] OJ C 9/11. Chapter 8 provides some background on the US and EU investigations into Google’s practices. Chapter 9 discusses the question of whether Google has a dominant position—the author affirms that the European Commission was correct to find that Google was dominant, but questions some aspects of its findings (at p 174). Chapters 10 and 11 deal, respectively, with portability restrictions and search bias, which were two of the information-based abuses that Google was alleged to have committed. Chapter 12 evaluates the European Commission’s choice of legal procedures and remedies in the *Google Shopping* case.

Part III of the book is focused on policy recommendations for dealing with abuses of dominance by information intermediaries. In Chapter 14, the author examines the intersection between digital markets and competition law. Here she covers issues including the goals of competition law, theories of harm, and other modes of regulation of online platforms. Chapter 15 sets out the author’s conclusions.

In conclusion, this book is an interesting resource about the imposition of access to information. It is also a timely contribution to the broader debate about how competition law should be applied in the context of digital markets.

The eBook version is priced from GBP22.00/USD31.00 from Google Play, ebooks.com and other eBook vendors, while in print the book can be ordered from the Edward Elgar Publishing website.

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