

# Indice

*pag.*

## **Valeria Falce**

### **Market challenges and Pro-competitive Solutions** 1

1. Introduction 1
2. Technological storm and creative destruction 2
3. Competitive assessment 6
4. The European Strategy 15
5. The Regulatory Framework 19
6. National *momentum* 27
7. Conclusions 37

## **Valeria Falce**

### **Structural challenges and Pro-innovation Solutions** 39

1. Introduction 39
2. Past and present 43
3. The European response 49
4. The national revival 56
5. The knots of effectiveness in the European forum 64
6. The risks of uncertainty of national choices 71
7. Conclusions 76

## **Valeria Falce**

### **Contractual asymmetries and Market solutions** 79

1. Introduction 79
2. The origins of economic dependence between bargaining and market imbalances 81
3. The public-law turn 83
  - 3.1. Recent novelties 87
4. Private-law enforcement 90

	<i>pag.</i>
4.1. The nature of the relationship	90
4.2. The molecular state of economic dependence	93
4.3. A non-exhaustive list of abusive conduct	95
5. The public-law enforcement	97
6. Conclusions	103
<b>Andrea Postiglione</b>	
<b>Relevant market definition in the digital markets</b>	105
1. Historical introduction	105
2. Market Definition assessment criteria	107
3. The role of the consumer	108
4. Market Definition and block exempt regulations	109
5. The market definition notice (MDN)	110
6. MDN and market shares	110
7. MDN in digital markets	111
8. MD and digital ecosystems	112
<b>Antonio Manganelli</b>	
<b>Navigating Essentiality: A Compass for Digital Platforms Regulation</b>	115
1. Introduction	115
2. The evolution of the Essential Facility Doctrine	119
3. Essential services, public utilities and service of general economic interest	123
4. Squaring the circle: old ‘essentiality’ concepts in a brand-new world	126
4.1. The Essential Facility Doctrine in the digital domain	127
4.2. Data as an essential facility?	130
4.3. Blurred concepts of large digital platforms as ‘public utilities’	135
4.4. Do digital platforms provide essential public services to end-users?	136
5. Concluding remarks: Gatekeepers’ Regulation on the Rise	139
<b>Alexandra Mikroulea</b>	
<b>Algorithms. Collusion and Beyond</b>	143
1. Definition and Typology	143
2. Algorithmic Collusion	146
3. Legal Parallel behaviour <i>vs.</i> Illegal Tacit Collusion	184
4. Regulatory and competition policy considerations and measures	198
5. Computational Antitrust	208
6. Liability under the theory and case law of competition law	209

pag.

**Valeria Falce****Private enforcement and the DMA: looking for a happy ending story** 213

1. Introduction 213
2. The basics of private enforcement in competition law 214
3. Public and Private enforcement in light of the Digital Markets Act 220
4. Specifications of the role of national courts 225
5. Risk of decentralization leading to fragmentation and under-utilization 226
6. The effect on legal certainty 229
7. Conclusions and general remarks 230

**Nicola M.F. Faraone****The *ne bis in idem* principle in digital markets: a tentative test for reconciling the European and Italian legislation** 231

1. Introduction: Past and future challenges of the principle of *ne bis in idem* 231
2. An overview of the case law of the ECHR and the CJEU, including the recent judgments in BPost and Nordzucker 234
3. The process of growth and contradiction of the DMA and its concurrent application with (European and national) competition law 243
4. An additional layer of complication for the duplication of proceedings/sanctions: the case of the 2021 Annual Law for Market and Competition and the new Italian legislation on abuse of economic dependence in digital markets 253
5. Concluding remarks 258

**The Authors** 259

