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Rebates under EU Competition Law after the 2017 *Intel* Judgment: The Good, the Bad and the Ugly*

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ABSTRACT: On 6 September 2017, the Court of Justice of the European Union delivered its long-awaited *Intel* judgment. The European Commission had accused Intel of inducing customer loyalty and thus foreclosing the relevant market for its competitors through (i) a rebate scheme and (ii) direct payments, both of which the Commission qualified as abuses of dominance under Article 102 TFEU. The General Court upheld the Commission decision in its entirety in June 2014. Before the Grand Chamber of the Court of Justice, however, the General Court's *Intel* judgment was set aside and the case was referred back to that Court. The Court of Justice held that where the Commission, as in its *Intel* decision of 2009, also relies on an as-efficient-competitor (AEC) test in order to assess the capability of a rebate scheme to restrict competition contrary to Article 102 TFEU, the General Court must review a party's counter-arguments pertaining to this economic analysis. The General Court was instructed to further examine the factual and economic evidence in this respect.

With a view to illuminating the legal questions that posed themselves in *Intel*, the present contribution reviews the leading European case law on rebate schemes – *Hoffmann-La Roche*, *Michelin I* and *II*, *British Airways*, *Tomra* and *Post Danmark II* – as well as the Commission's approach to conditional rebates in its 2009 Guidance Paper. After briefly recalling the different stages of the *Intel* case, the contribution then offers a commentary on and an analysis of the Court of Justice's *Intel* judgment and the way in which the Court attempted to reconcile its formalistic case law on rebate schemes with the effects-based economic tests carried out by the Commission.

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