

## Consumer Inertia, the New Economy and EU Competition Law\*

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ABSTRACT: Services and goods in the new economy, such as social media platforms and applications, are often offered to end-consumers for “free”. This may cause problems for the application of traditional antitrust doctrines, such as tying or other forms of leveraging, which normally have been applied to products and services offered at a price. As illustrated by the Microsoft I decision (Windows Media Player), it is not self-evident that the bundling of an application with an operating system results in coercion, the pressure to consume the “tied” product, if consumers have a *de facto* possibility to download competing products for free. Moreover, the availability of competing products for free may also affect the long-term effects in the market, as both the existing customer base and new customers may easily shift their consumption, which decreases potential “lock-in” effects. This propensity and capability of customers to choose products or services other than the predefined “default” option, e.g. by being included in a bundle, was also relevant in the recent Google decision (Shopping), which concerned the company’s preferential placement of its own advertising messages in internet searches. In both Microsoft I and the Google decision, it was found that consumers were unable to choose products and services other than the default option, so-called *consumer inertia*. Consumer inertia has been explained both by the traditional law and economics literature and behavioural economics with switching costs, information costs and the status quo bias. Accordingly, this article explores the concept of consumer inertia in the light of the law and economics literature, in particular behavioural economics, to determine the factors which are relevant for establishing the presence of consumer inertia in individual antitrust cases concerning the new economy. Moreover, the article evaluates to what extent the use of consumer inertia in cases from the Union courts and the Commission is consistent with economic theory.

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