

Editor's Note

I wish to begin this edition by congratulating one of the members of our Advisory Board and recent contributor to World Competition, Koen Lenaerts, on his appointment as a Judge to the Court of Justice of the European Communities. World Competition is fortunate to have such high calibre contributors.

This winter issue opens with some valuable thoughts on the current reform that the Commission is considering of its policy towards technology transfer agreements. I am most pleased to introduce our opening article by Lucas Peeperkorn, who is a member of the team responsible for the review of the Technology Transfer Block Exemption Regulation. Lucas Peeperkorn advocates for the adoption of an approach similar to the approach recently applied to vertical and horizontal agreements, and specifically the introduction of market share thresholds. The article gives us a valuable insight into the background to the review and the proposed new rules.

Our second article continues with the same theme, however here Maurits Dolmans and Anu Piilola focus on the legal and economic foundations as well as the practical implications of the Commission's proposal for a new technology transfer block exemption regulation and associated guidelines. In particular the article provides an insight into the major changes proposed, agrees that the new block exemption brings desirable flexibility to the assessment of the competitive effects of technology licensing agreements, but highlights areas of difficulty, such as market share ceilings and the tightening of rules on territorial restrictions.

Next a further contribution from my friend and frequent contributor to World Competition, Wouter P.J. Wils (See W. P.J. Wils, "The Principle of 'Ne Bis in Idem' in EU Antitrust Enforcement: A Legal and Economic Analysis", (2003) W.Comp 26:2 and "Should Private Antitrust Enforcement be Encouraged in Europe?", (2003) W.Comp 26:3). In this issue W. P.J. Wils gives us an overview of the instruments available to the Commission and competition authorities of the Member States to collect intelligence and evidence of violations of Articles 81 or 82 EC. He further carries out an economic analysis of the use of direct force, compulsion and leniency as ways to collect intelligence and evidence including an economic interpretation of the privilege against self-incrimination.

We then move to an article by Romano Subiotto and Thomas Graf that discusses the Commission's review of exclusive broadcasting licences under EC competition law. The article concludes that there are a number of inconsistencies and contradictions in the Commissions approach to exclusive broadcasting licences and suggests that this leads to legal uncertainty for companies active in this area.

In our next article Frédéric Jenny, a member of our Advisory Board, looks at the current debate on the need to address the issue of competition on global markets. He compares the EU proposal that a competition agreement is adopted within the WTO with alternative solutions.

Brian A. Facey and Roger Ware provide us with a timely article on predatory pricing in Canada, the United States and Europe as Canada has proposed changes to its enforcement policies in this area. The authors conclude that in a time of increased convergence in the area of antitrust, predatory pricing remains an area of divergence and there may be further divergence if Canada does not change its enforcement policy as has been proposed.

Our next article looks at the merger efficiency defence of pass-on. Kamil Klijanski proposes, in this article, a formalised conceptual framework of incorporating efficiency analysis into a merger review and then draws pass-on and general merger efficiency defence implications.

Finally we conclude this issue with an article that looks at the application of Article 82 EC Treaty to intellectual property rights. In particular, Estelle Derclaye highlights the inconsistencies in the case law regarding the conditions in the Court of First Instance on whether a holder of an intellectual property right abuses its dominant position. She further uses the IMS case as an illustration of the confusion in this area of the law. The article aims to reconcile the case law and clarify the circumstances in which an intellectual property right holder abuses its dominant position.

José Rivas
Editor
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