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Editor's Note

We begin our June 2005 journal with an insightful contribution from our regular contributor Wouter P.J. Wils on the issue of criminal sanctions and European competition law (see also 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, "Should Private Antitrust Enforcement be Encouraged in Europe", (2003) W.Comp. 26:3 and "Self Incrimination in EC Antitrust Enforcement: A Legal and Economic Analysis", (2003) W. Comp 26:4, "The Combination of the Investigative and Prosecutorial Function and the Adjudicative Function in EC Antitrust Enforcement: A Legal and Economic Analysis", W.Comp (2004) 27:2). The author addresses the subject through five clear questions and illustrates his argument with examples of European and US approaches. Wouter Wils asks whether criminal sanctions for breach of competition law are desirable and offers his own suggestions for penalising corporate bodies. The article concludes with an interesting remark about the possibility of criminalizing antitrust enforcement under the new Constitutional Treaty.

We then consider the future of the postal monopoly in the US. Professors Damien Geradin (see also D. Geradin and Michel Kerf, "Post-liberalization challenges in telecommunications: balancing antitrust and sector-specific regulation – tentative lessons from the experiences of the United States, New Zealand, Chile, and Australia", (2000) W. Comp 23:2) and J. Gregory Sidak consider the work of the Presidential Commission on the United States Postal Service and the effects of the 2004 US Supreme Court decision in *Flamingo Industries*, which held that the US Postal Service is immune from antitrust law. They provide an analysis of the proposed reforms for the Postal Service and argue that the Postal Service may already operate as a commercialised government agency. Drawing from the European and US perspectives, the authors propose two principles of postal reform; firstly suggesting a defined mission for the Postal Service and secondly limiting price distortion through the pricing and products offered by the organisation. The article is concluded with specific recommendations that the authors believe will advance their proposals.

Next Claus-Dieter Ehlermann (member of the Advisory Board of World Competition), Sven B. Volcker and G. Axel Gutermuth reflect on the old EC Merger Regulation. The authors argue that the old dominance test used prior to 1 May 2004 clearly applied to mergers creating or strengthening a leading market player, but failed to address situations of unilateral or non-co-ordinated effects. The result was an enforcement gap and the authors provide a warning of this limitation to Member States who are still using a variation of the dominance test.

We are very pleased to present an article on the recent experience of a new Member State competition authority, the Hungarian Competition Office. Árpád Hargita and Tihamér Tóth, present an excellent introduction to the competition and

public procurement regulations in Hungary, with attention given to the application of these rules to the construction sector. The authors examine a number of issues including types of bid-rigging, the leniency programme and the defences put forward by companies. The article concludes by looking to the future of competition law now that Hungary is a member of the EU.

Our next article, by Paolo Buccirossi, Laura Ferrari Bravo and Paolo Siciliani, provides an introduction to the highly technical world of the Internet Backbone Market. The authors discuss the European Commission decisions in *MCI/WorldCom* and *MCI WorldCom/Sprint*, where it was concluded that the proposed merger could negatively affect competition in the backbone market. In a quickly developing world, the authors argue that these Commission decisions may no longer be appropriate. Instead they introduce us to new behavioural strategies and future competition concerns.

Finally, Giuseppe Mazziotti, has provided a comment on the decision of the French Competition Authority's regarding Apple's refusal to licence its digital rights management technology to a competitor in the downstream market for music downloads. The article shows that property rights and trade secrets in respect of DRM technologies, have the potential to establish a bottleneck between content providers and media player manufacturers.

I wish you pleasant reading.

José Rivas
Editor
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