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Editor's Note

Our last issue of the year 2005 is opened by an article by Fernando Castillo de la Torre, member of the Legal Service of the European Commission. Fernando Castillo analyzes the recent ruling by the European Court of Justice in the *CIF* case. This contribution not only points to the praiseworthy attempt that the Court has made to clarify the scope of the state action defence but also addresses the many questions that have remain unanswered. Fernando Castillo regrets the narrow interpretation that has been made of the principle of primacy of Community law as not being applicable to private individuals. We invite readers to discover for themselves this interesting study.

The second contribution is by Matteo F. Bay and Javier Ruiz Calzado. Their article examines the landmark ruling of the European Court of Justice in the *Tetra Laval II* case. The two authors analyze the scope of judicial review that the Court of First Instance must ensure in the merger control area and the standard of proof incumbent upon the European Commission to support its merger decisions. Firms are now more aware than ever of the potential for judicial review and they are starting to consider judicial review as a relevant part of an overall process in a transaction. When the Commission relies on novel theories of harm or applies classic ones to situations that *prima facie* do not fit with them, the European Courts will need more convincing evidence.

Now that the European Commission is considering a policy review of Article 82 EC, Paul-John Loewenthal in his timely article lays down a framework within which the defence of objective justification can be applied under Article 82 EC. The application of this defence, which has been often alleged but seldom honoured, has not been systematically approached yet. The author provides illuminating reasons for why this defence has only rarely been applied by the European institutions. The article concludes with the author advocating for some guidance on the application of Article 82 EC in order to ensure uniformity in the application of this provision in the post-modernisation era.

The next contribution is also of high relevance for the current modernisation of EC Competition law. Maja Brkan, in her contribution, elaborates on the procedural aspects of Private Enforcement of EC Antitrust Law. The article dwells on different issues: jurisdiction, standing, class actions, burden, standard of proof and costs. Maja Brkan analyzes the experience on private enforcement in some Member States and she compares it with the situation in the United States. Finally, the author advocates for the harmonisation of Member State's civil procedures and lays down a proposal in this regard.

We move on then to a different arena. Wolfgang Kerber and Simonetta Vezzoso lead us through an analysis of vertical restraints and innovation in EC Competition Policy. The EC competition policy in regard to vertical restraints is mainly based upon neoclassical efficiency-oriented reasoning, which results in a neglect of the innovation dimension. Kerber and Vezzoso analyse to what extent evolutionary theories of competition and innovation economics can be used to derive additional criteria for the assessment of vertical restraints and for competition policy in general.

Our two last contributions this month will take us to the international arena. Firstly, William Rowley and Neil Campbell will report on the 2004 survey on the Implementation of the ICN Recommended Practices related to review periods, requirements for initial notification, transparency and review of merger control provisions. The report has shown that implementation of the practices is still a challenge and the article points to numerous opportunities for ICN members to bridge the gap between the adoption of the Recommendations and their implementation.

Finally, we close the year with a contribution by Jonathan Galloway, who assesses the degree of convergence that has been reached by bilateral antitrust agreements. In light of the substantive convergence achieved, the author concludes that an important justification for pursuing bilateral antitrust agreements at the expense of an effective multilateral agreement has been removed.

The final article is followed by a copious book review section.

I wish you all a pleasant reading,

José Rivas
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