

Editor's Note

We begin this September 2006 issue with a new contribution by my friend Wouter Wils, to whom World Competition and competition literature in general is greatly indebted for his excellent and prolific writings. Wouter 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, “Is Criminalization of EU Competition Law the Answer?”, (2005) W. Comp. 28:2, “Powers of Investigation and Procedural Rights and Guarantees in EU Antitrust Enforcement: The Interplay between European and National Legislation and Case-Law”, (2006) W. Comp. 29:1, “Optimal Antitrust Fines: Theory and Practice”, (2006) W. Comp 29:2. The contribution by Wouter Wils carries out a comprehensive analysis of Article 9 of Regulation 1/2003 and of other settlement possibilities in EC and national competition laws in Europe. This excellent article complements the previous contribution on the topic by Christopher Cook (*Commitment Decisions: the Law and Practice under Article 9*, Christopher J. Cook, (2006) W. Comp 29:2).

Secondly, we will discuss in depth the issue of private enforcement with three articles that cover different angles of this question in the aftermath of the Green Paper on Damages published by the Commission. Our debate begins with a contribution by Prof. Spencer Weber Waller, who is a member of our Editorial Board. Spencer deals with the urge to find the right balance between public and private competition enforcement. Working on the presumption that some private rights of action are a necessary complement to the public enforcement of competition law, the author argues that the precise shape and extent of those rights is heavily dependent upon the history and legal culture of each jurisdiction.

The debate continues with a contribution by Franklin M. Fisher. This second paper deals, in a very clear and accessible way, with economics-related issues in the theory of damages. Franklin Fisher will go through the rationale for damages in private antitrust cases to deal, later on, with the main problems which are apparent from the US experience.

Thirdly, Jakob Rüggeberg and Maarten Pieter Schinkel will introduce a proposal for efficient private enforcement. Their article presents a centralised consolidation of fragmented individual antitrust damages claims. Their innovative institutional design of

far-reaching consequences should, in principle, safeguard an efficient, single, consistent and complete damages estimate in Europe.

We move on then to state aid. Luca Prete covers in his article the question of state aid in the form of guarantees. A critical examination of the Commission's approach to public guarantees in paper and in practice under its current Notice on State Aid in the form of Guarantees is undertaken. The author advocates a revision of this piece of legislation on the occasion of the State Aid Action Plan. This article has been shortlisted for the *1st World Competition Young Writer Award*.

Later on, Jorge Piernas López studies the aggravating circumstance of recidivism under EC Competition Policy. This promising young writer examines whether the fact that no explicit provision for recidivism can be found in the primary or secondary law may constitute an infringement of fundamental rights and principles of Community Law. This article has been shortlisted for the *1st World Competition Young Writer Award*.

Before we jump on to another continent, Ariel Ezrachi will introduce us to the scope and limitations of behavioural remedies under merger control. The author will question whether they are used adequately in light of their potential role in conditional clearances of merger transactions, in particular under the EC merger control regime. This contribution provides a useful overview of the benefits and drawbacks of different behavioural remedies that are currently used.

Finally, Carlos Mena Labarthe concludes with an article that will introduce us to the enforcement of competition law by the Mexican Federal Competition Commission. The analysis carried out by Mena Labarthe will draw on the responsive regulation model and will focus on an examination of the environmental and institutional settings that affect enforcement trends. We invite the readers to discover the state of competition law enforcement in the Mexican jurisdiction. This article has been shortlisted for the *1st World Competition Young Writer Award*.

I wish you a pleasant read,

José Rivas
Editor
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