

Editor's Note

We begin our post-summer issue with a contribution from Alexandr Svetlicinii. In an insightful article Alexandr Svetlicinii makes very timely comments on the Commission's Draft Guidelines on Non-Horizontal mergers issued in February 2007 with a special focus on the treatment of the efficiency defence and its practical application in merger control. The author views the Draft Guidelines as failing to provide changes to allow for efficiency claims to be assessed against the alleged competitive harms caused by non-horizontal mergers. The lack of determination of the concrete role played by the efficiency defence in the merger control effectuated by the Commission would render this process more complicated and unpredictable.

Next we move to the realm of European merger control with an analysis carried out by Ioannis Kokkoris ("Buyer Power Assessment in Competition Law: A Boon or a Menace?", *W. Comp* 1 (2006), "Merger simulation: A Crystal Ball for Assessing Mergers", *W. Comp* 3 (2005)) on the concept of collective dominance. Most interestingly, the author explores the developments of the still disputed concept of collective dominance in the most relevant case-law and how the Commission's appraisal approach has changed over the years. *World Competition* is keen on throwing some light on this controversial issue by contributing to the academic debate on the issue.

The third submission by Doris Hildebrand ("Using Conjoint Analysis for Market Definition: Application of Modern Market Research Tools to Implement the Hypothetical Monopolist Test", *W. Comp* 2 (2006), "The European School in EC Competition Law", *W. Comp* 2 (2002)) and Andrea Schweinsberg explore the potential of applying an economic analysis to State Aid. Economic tools have proved successful in the modernisation of merger control and antitrust while remain rudimentary in State Aid. A revealing analysis of recent case law leads to the suggestion that a change is about to happen with the EU Courts calling for a "more economic based approach" when analysing the conditions set out in Article 87(1) EC.

With our fourth submission we continue the discussion on the behaviour of dominant companies from a different standpoint. Ralf Boscheck ("Contract Logic and Efficiency Concerns Considerations for an Efficiency Approach to Antitrust Analysis in Keeping with the Logic of Institutional Choice", *W. Comp* 4 (2002), "The Nature of Regulatory Contracts The Case of the Water Industry in England & Wales", *W. Comp* 3 (2002)) explores in his comparative article the need (and difficulty) of a clarification on the standards of dominance, abuse and efficiency defence in mature regimes like those of the US and the EU. A detailed analysis of both regimes is undertaken including recent case law which illustrate the current debate on the different regulatory

approaches in the US and EU. The new review undertaken by the Commission regarding exclusionary abuse is welcome although there are limits to the economic reasoning applied in practice.

To follow, Fabio Polverino conducts an interesting analysis of the class action model for antitrust litigation in the US and the example it may provide to enhance the still underdeveloped private enforcement of antitrust law in the EU. A class action was not considered on the Green Paper of the European Commission on private enforcement. However, this can be a useful and efficient tool to combine public enforcement by the competition authorities with successful private enforcement.

Rapidly changing Asia provides us with interesting new developments in the competition arena. In our last submission Thomas K. Cheng introduces us to the competition regulation of the telecommunication sector in Hong Kong and Singapore. The initial reluctance of the Hong Kong and Singapore regimes to enact competition laws may shift in the short term and this important sector can provide an example of a future comprehensive competition law. The author critically discusses the existing constraints on dominant firms in the competition regulation of the telecommunication sector and how this sectoral approach to regulation does not conveniently respond to the characteristics of these two economies.

I wish you all pleasant reading.

José Rivas
Editor-in-Chief
September 2007