

Editor's Note

As Editor of World Competition it is with great pleasure that I present this last issue of 2007, a year full of excitement in the competition arena. Firstly, Maarten Pieter Schinkel, in his article “Effective Cartel Enforcement in Europe”, embarks in a back-of-the-envelope calculation of the fines and sanctions to be expected by cartel participants in Europe. In a most exhaustive analysis, the author goes over the Commission’s methodology to set out fines and the leniency programme. He also explores the possibility of private antitrust damages claims before national courts. These are the tools to determine the expected liability of cartel participants and their incentives to collude. It follows from his insights that the Commission should establish a high perceived probability of cartel detection with the objective of deterring these anticompetitive behaviours in the future. This practical exercise can help readers understand the rationale behind cartel behaviours and the need for an effective cartel detection.

The possibility of exercising private damages actions against price fixing cartels in particular is dealt with by Christian Andrelang. In his submission, he analyses the changes introduced in 2005 in the German legislation in order to facilitate private damages claims. After carefully exploring the case law both at European and at German level he welcomes the abolition of the restrictions to the admissibility of private actions under the previous provision of German law, in particular, the “protective law” requirement and the “direct target” condition. The restrictive approach adopted by German courts is not to be continued in the light of European law but it remains to be seen what method for the assessment of damages will be established in Germany. The underdeveloped field of private antitrust damages in Europe has already generated a certain amount of academic writing and it is surely an issue to follow closely.

To follow, Arianna Andreangeli explores the interesting proposal introduced by the Confederation of British Industry (CBI) to establish a specialised EU Competition Court. This new tribunal would be entrusted with the review of merger decisions and all competition matters introduced by private parties in an allegedly faster and more effective way. The author analyses the CBI’s initiative in depth and the possible powers and jurisdiction of a EU Competition Court. She concludes that despite the benefits in the light of fairness of the enforcement of the competition rules, the various institutional implications of this construction cast doubts on its ability to provide an adequate response to the shortcomings of the current system. Furthermore, a such proposal would need a sufficient political support which is lacking so far.

With our fourth contribution we move to a sector, the high-tech, which provides us with many interesting competition issues. Maria Lilla Montagnani analyses the relationship between innovation, intellectual property and competition. In the high-tech sector, the potential anti-competitive effects of exclusive innovation can be

amplified by the particular features of the market and the presence of intellectual property rights. The author focuses on the controversial cases where innovation can generate both beneficial and detrimental effects on competition employing for this purpose the very illustrating Microsoft cases. The question is how antitrust law may intervene and what are the adequate remedies to permit innovation and preserve a competitive market.

Lastly, Adrian Emch discusses the wide-spread phenomenon of Frequent Flyers Programmes (FFP) used by many airlines to create a bond with customers and their capacity to lead to excessive loyalty to a dominant firm, thus allowing an abuse of its strong position in the market. The author analyses the main features of these marketing tools with the view of assessing the existing case law on rebates and how the principles extracted from it can apply to several characteristics of FFP's. As a result of this study, two main propositions are presented on how to improve the criteria regarding rebates. On one hand, for single-market rebates, the attention should be drawn to the price actually charged and not the reduction granted and if this price is justified. On the other hand, the second proposition refers to multi-product rebates. In this regard, the most important questions are whether the price reduction corresponds to the efficiencies made and, as a later step, if there are barriers to entry in the tying product market.

I wish you all a very pleasant reading.

José Rivas
Editor-in-Chief
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