Editor's Note

As Editor I would like to welcome you to the first World Competition issue of 2009. I believe this year will once again bring us a number of outstanding contributions.

Allow me to note that following the success of our *Young Writer's Award* over the last three years, the fourth edition will be held in 2009. I therefore invite young competition law talents to send us articles as candidates for the award. The winner of the *3rd Young Writer's Award* will be announced in our June issue.

Our first contribution comes from Wouter Wils, unquestionably our most regular contributor ('The Use of Settlements in Public Antitrust Enforcement: Objectives and Principles', *W. Comp*. 31 (2008): 3, 'The European Commission's 2006 Guidelines on Antitrust Fines: A Legal and Economic Analysis', *W. Comp*. 30 (2007): 2). I have said it elsewhere but I am happy to repeat it here again: Wouter has a unique outstanding ability to explain in plain English the most forward legal thinking. In this contribution, Wouter analyses the relationship between public antitrust enforcement and private actions for damages in Europe, focusing in particular on the enforcement of Articles 81 and 82 EC. Wouter argues that public enforcement should aim at clarifying and developing the antitrust prohibitions and deterring and punishing violations, whereas private actions for damages should aim at compensation of the actual damage suffered. Extremely interesting are Wouter's most convincing views as to why punitive damages are precluded in Europe in stand alone or in follow on actions due to the principle *ne bis in idem* and Article 16 of Regulation 1/2003. Despite of their different objectives, public and private antitrust enforcement have effects on each other, a number of which are examined further in the article.

Next economist Juan Briones, who has contributed previously to World Competition ('The Complex Landscape of Oligopolies under EU Competition Policy; Is Collective Dominance Ripe for Guidelines?', *W. Comp*. 24 (2001): 3), examines the role of economic analysis in EU competition law. This insightful article covers the move to an SLC test in merger control, the adoption of non-horizontal merger guidelines, efficiencies and the reform of Article 82 EC. The author comes to the conclusion that economic analysis does not have major material implications with regard to policy definition or case handling.

In a brilliant article Professor Damien Geradin (also a regular contributor to our journal) proposes a three-step test for separating pro-competitive rebates from anti-competitive ones. This contribution and the next by Ms Akman are very timely now

Rivas, J. 'Editor's Note'. *World Competition* 32, no. 1 (2009): 1-2.

that the European Commission has published its Guidance on enforcement priorities in applying Article 82 EC to abusive exclusionary conduct. The author stresses that per se rules of illegality are poorly suited to conditional rebates as such rebates can generally be explained by pro-competitive rationales. Mr Geradin overviews the practise of the EU and the US in the area and introduces his effects-based criteria for separating the two sorts of rebates.

In yet another article on abuse of a dominant position, Pinar Akman questions whether the objective of Article 82 EC is indeed to enhance 'consumer welfare' as declared by the EC Commission. The author goes through the case law of the Commission and Community Courts to show the dissonance between the practice and the policy declarations. Ms Akman concludes that the modernisation of Article 82 EC cannot succeed without a properly defined 'consumer welfare' standard applied in decisions of the EC Commission and upheld by the EC Courts. The author has been shortlisted for the *4th Young Writer's Award*.

The contribution of Adrien de Hauteclocque deals with the uncertainty in the appraisal of long-term exclusive supply contracts in the EU electricity market in the context of energy markets deregulation. It explores how the European Commission and national competition authorities deal with such contracts and how the modernization of EC competition law impacts antitrust enforcement in energy sectors. The author comes to the interesting conclusion that legal uncertainty in the field of electricity is largely overstated. Mr de Hauteclocque has been shortlisted for the *4th Young Writer's Award*.

Our last contribution takes us outside of Europe. Neil Finkelstein, Brian A. Facey and Jonathan Finkelstein analyze the Canadian merger review rules. Mr Facey and Mr N. Finkelstein have already published in World Competition ('Predatory Pricing in Canada, the United States and Europe: Crouching Tiger or Hidden Dragon', *W. Comp*. 26 (2003): 4; and 'Do Merger Efficiencies Receive "Superior" Treatment in Canada? Some Legal, Policy and Practical Observations Arising from the Canadian Superior Propane Case', *W. Comp*. 27 (2004): 2 respectively). The authors use a game theory approach in an original way to examine why Canada's merger review has evolved into an administrative, rather than adjudicative process contrary to the legislator's intent. Jonathan Finkelstein has been shortlisted for the *4th Young Writer's Award*.

I wish you a pleasant read.

José Rivas
Editor
March 2009