

Editor's Note

World Competition has had the great pleasure of reviewing a large number of interesting and enlightening contributions by the candidates to the 3rd World Competition Young Writer's Award, and is proud to open the June issue with the announcement of the winner of the award. In light of the extraordinary quality of the contributions received, World Competition felt it appropriate to grant the award *ex aequo* to two young writers, Mr. Ashwin van Rooijen and Mr. David Bailey, for their widely differing but equally valuable contributions to the debate on the role of investments in refusals to deal, and the applicable threshold for distancing oneself from a cartel, respectively. The first is an ambitious and valuable insight into the role that the nature of rights and investments have played and indeed should play in findings of refusal to deal, via an analysis of European and US case-law. The second offers a thorough and highly practical analysis of the applicable threshold for distancing oneself from a cartel, both in the EU and the UK, and the policy justifications for this. The World Competition team congratulates the winners.

At the same time I would like to take this opportunity to remind you that the *4th World Competition Young Writer's Award* is running in 2009. Young authors who meet the criteria laid down by the Journal are invited to submit their contributions in order to compete for the award. I am particularly pleased that our present issue contains such a high number of articles written by nominees for this award.

In our first article Lars Kjølbye investigates whether Article 82 EC serves as a remedy to patent system imperfections. He asks whether strategic patenting engaged in by dominant firms is caught by Article 82 EC in light of the case law on refusals to license intellectual property rights. The article discusses in particular patent clustering, secondary patenting and defensive patenting. Mr Kjølbye concludes that Article 82 EC already provides broad powers to intervene against conduct which is considered to hamper innovation and argues against further extension of the application of this Article. According to the author, the effects of a firm's patenting strategy on other firms' incentives to innovate should primarily be addressed through patent law.

Further in a very timely article professor Spencer Weber Waller, member of our Editorial Board and a regular contributor ('Towards a Constructive Public-Private Partnership to Enforce Competition Law', *W. Comp.* 29 (2006):3), together with Jennifer Woods overview the current transition of antitrust enforcement in the United States. The authors take a look at the transition reports offered by the Antitrust Section of the American Bar Association and the American Antitrust Institute and the vision they offer for the new Administration of

President of the United States. The authors conclude that the most durable legacy of current United States antitrust policy is likely to be the continued focus on the criminal prosecution of hard-core cartels, with the remainder subject to debate and new initiatives. Ms Jennifer Woods has been nominated for the *4th World Competition Young Writer's Award*.

In our following contribution Alessandro Di Giò takes an interesting angle of analysis, namely the interplay between contract law and competition law. He examines the potential role of contractual and restitutionary remedies within the private enforcement of EC competition law as opposed to claims for tortious damages. The author insightfully suggests that such remedies could be relevant in (i) disputes between co-contractors to an agreement prohibited by Article 81 EC as regards the sanction of voidness and the related restitutionary claims; (ii) anticompetitive agreements and the validity of subsequent contracts; (iii) abuse of dominant position and its possible relationship with contractual remedies against 'unfair' contracts. Mr Di Giò has been nominated for the *4th World Competition Young Writer's Award*.

Next Massimiliano Vatiero examines the notion of joint dominance in order to shed more light on the analysis of Article 82 EC cases. The author characterizes joint dominance as positive conjectural variations that represent economic links among firms involved. He further introduces three forms of joint dominance (horizontal, vertical and authoritative) deriving from the concept of transaction as formulated by John Rogers Commons. Mr Vatiero has been nominated for the *4th World Competition Young Writer's Award*.

Further Savas Manoussakis questions whether liberalization of the EU electricity market, as proposed in the Third Energy Packet, is capable of powering real progress. In order to answer this, the author analyses the effects of ownership unbundling on consumers, renewable energy and energy security. Mr Manoussakis backs up his analysis with the examples of liberalization of electricity markets in California and the United Kingdom. The author concludes that the Third Energy Package will not constitute a sufficient step towards the functioning European electricity market mainly due to the absence of comprehensive ownership unbundling. Mr Manoussakis has been nominated for the *4th World Competition Young Writer's Award*.

The last article brings us to China. Giacomo Di Federico seeks to answer whether the new Chinese anti-monopoly law introduces suitable regime of control. He analyses the goals, scope, positive features and shortcomings of the law. Moreover Mr Di Federico interestingly undertakes a comparative approach by highlighting similarities and differences between the Chinese and the EC enforcement systems. The author indicates that the new Chinese regulation inconveniently introduces a complex normative and institutional framework. Nonetheless it offers the necessary instruments to enhance a 'competitive culture'. Mr Di Federico has been nominated for the *4th World Competition Young Writer's Award*.

I wish you a pleasant read.

José Rivas
Editor
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