

Editor's Note

Dear Reader,

It is my pleasure to present the September 2010 issue of *World Competition*, once again containing a number of outstanding contributions which cover a wide range of jurisdictions.

The first article of this issue comes from Fernando Castillo De La Torre ('State Action Defence in EC Competition Law', *World Competition* 28, no. 4 (2005): 407–431; 'Evidence, Proof and Judicial Review in Cartel Cases', *World Competition* 32, no. 4 (2009): 505–578). The author analyses the application of the 2006 Guidelines on Fines of the European Commission. He examines different steps in the calculation of fines and the factors taken into account when defining the level of fines under the Guidelines. The analysis is supported by numerous examples from the Commission's practice and European Courts' jurisprudence. The author concludes that the current level of fines is not excessive and that the Guidelines provide the necessary tools for adjusting the level of fines to the circumstances of a particular case.

In our second contribution, Anca Daniela Chiriță examines the issue of interpretation of the Article 102 of the Treaty on the Functioning of the European Union (TFEU). The author suggests shifting the Courts' teleological interpretation of Article 102 towards a legal balancing test of the TFEU's objectives. Such interpretation could take into account consumer protection requirements when applying Article 102 TFEU. Ms. Chiriță stresses that in the context of the application of the Treaty's provisions prohibiting the abuse of dominance, consumer protection requirements should be defined narrowly. The article has been shortlisted for the *5th World Competition Young Writer's Award*.

The next article comes from Liyang Hou who presents a new approach to geographic market definition within the electronic communications sector. Whilst traditionally these markets were considered to be national in scope, the recent developments show that the European Commission and national regulatory authorities are developing a new approach to defining geographic markets: as sub-national. Based on the recent Commission decisional practice the author identifies the main steps and criteria for analysis of the geographic markets in electronic communication sector. Mr Hou is a candidate for the *5th World Competition Young Writer's Award*.

The article by Maher Dabbah ('The Development of Sound Competition Law and Policy in China: An (Im)possible Dream?', *World Competition* 30, no. 2 (2007): 341–363) draws our attention to the topic of competition law and policy in developing countries. The author argues that while competition law and policy are important for developing

economies, the unique circumstances of these countries present specific challenges to establishing effective competition law regimes. These challenges differ from those faced by competition law specialists in developed countries, therefore the assumptions based on the knowledge of the developed competition law regimes maybe ill-suited for designing the competition law of the developing world. The author highlights numerous important examples of such specific circumstances and local interests in order to shed some light on the challenges to establishing competition law regimes in developing countries.

In the next contribution Lifen Wu discusses the specifics of merger control in China. The article notes that there is a broader perspective to the assessment of foreign mergers in China. Lifen Wu underlines that the competition scrutiny of such transactions is only a part of overall regulatory assessment which in addition comprises national security review and 'foreign investment entry review'. The article analyses the three merger review systems and discusses the role of industrial policy considerations in this structure. The author concludes that in the current stage industrial policy is likely to have a prominent role in Chinese merger control. The article also underlines the importance of developing a clear and predictable merger review system.

In yet another article, Yo Sop Choi ('The Enforcement and Development of Korean Competition Law', *World Competition* 33, no. 2 (2010): 301–315) and Kazuhiko Fuchikawa provide a comparative analysis of competition laws on buying power in Japan and Korea. The authors discuss the relevant Korean and Japanese legislation and their application in practice. They note that in both jurisdictions the legal provisions on buyer power are affected by such considerations as fairness and protection of smaller enterprises. In addition, the competition authorities of both countries rely heavily on the laws on unfair business practices to curb the buyer power of large retailers. The paper explains why the application of broad provisions on unfair business practices to buyer power may have negative consequences and gives several suggestions as to how to make the implementation of legal provisions dealing with buyer power more coherent.

We conclude the issue with a contribution by Daniel Weick who takes us to the African continent and discusses competition law and policy in Senegal. Senegal participates in the West African Economic and Monetary Union (WAEMU), and is one of its leading members. Since 1994 has Senegal implemented a package of economic reforms, established competition legislation and was developing a promising implementation infrastructure. However, in 2000 the Court of Justice of the WAEMU ruled that members of WAEMU cannot have competition law regimes independent of the WAEMU's competition law. This meant a large step back for the competition law of Senegal, since WAEMU's competition law enforcement is still very underdeveloped. Mr Weick explores ways for Senegal to revive competition policy within the limits of the Court's judgment. He also suggests that Senegal could play a prominent role in developing WAEMU's competition law. The article has been nominated for the *5th World Competition Young Writer's Award*.

I wish you a pleasant read.

José Rivas
Editor
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