

## Editor's Note

Dear Reader,

As Editor of *World Competition* I would like to welcome you to the December 2010 issue, covering a broad range of interesting topics through some high quality contributions. It is also my pleasure to announce the sixth edition of the Young Writers Award in 2011. Authors under 35 and meeting the criteria are strongly invited to participate. This year's awarded author will be announced, the latest, in the June Issue.

Turning to our contributions, Marek Szydło's starting point is that national competition laws in the EU differ with regard to the concept of 'Undertaking', by ultimately broadening or narrowing its personal scope. The author analyses the EU Treaties and Regulation 1/2003 and the relevant case law of the Court of Justice of the European Union to come to the conclusion that whilst national laws may wider the concept, they may not narrow it.

The next contribution tackles the role of intent in the investigation of Article 102 TFEU Cases, notably in predatory pricing. Firstly, Maria Joao Melicias guides us through a comparative analysis of EU and US practices, considering these two legal systems have different approaches and therefore pursue different aims. She then analyses enforcement policies and their effects on the markets to conclude that at EU level intent should be reduced to a corroborative role, favouring more objective evidence.

The third contributor discusses group liability for cartel infringements. Richard Burnley considers the current state of play unclear as regards the scope and nature of this principle and argues that in *AZKO* the General Court has not given all the necessary guidance. Given this framework the author makes some suggestions in order to achieve the overall regulatory objectives and the fairest outcomes. Firstly, a shift on the policy objective: a maximal *ex-ante* deterrence of cartel infringements, rather than a means to increase fines. Secondly, he proposes a set of broad parameters regarding discretionary powers and the standard of proof used by the Commission for assessing group liability.

The financial intermediary system is a sector with particular features. However, Carletti, Spagnolo, Calazza and Giannetti argue that in the last two decades studies have shown that stability is not jeopardized by competition. Instead, banks can become more prudent and also more efficient. The authors review decisions from several National Competition Authorities in light of this paradigm and look for any signs that competition authorities will maintain this line despite foreseeable criticism due to the current financial crisis.

The next contribution comes from Ralf Boscheck, one of our most regular contributors.<sup>1</sup> He focuses on the United States market, notably on the recent enquiry by the Obama Administration into the state of competition in the agricultural sector. The author illustrates the issues at play and examines the US debate on Intellectual Property (IP) as an essential facility through the case study of biotechnology specialist Monsanto.

The last article of this issue seeks to understand whether Significant and Non-Transitory Price Increase (SSNIP) and Herfindahl-Hirschman Index (HHI). should be applied in emerging countries, namely in Latin America, the same way as they are in developed countries. Marco Botta<sup>2</sup> looks at merger control in Brazil and Argentina, highlighting economical and institutional features. The conclusion is that NCA's might need greater flexibility in their assessment powers and they should be given the possibility of introducing other parameters in econometric tests.

I wish you a pleasant read.

José Rivas  
Editor  
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<sup>1</sup> 'The Governance of Global Market Relations: The Case of Substituting Antitrust for Antidumping', *World Competition* 24, no. 1 (2001): 41–64; 'The Nature of Regulatory Contracts the Case of the Water Industry in England & Wales', *World Competition* 25, no. 3 (2002): 303–348; 'Contract Logic and Efficiency Concerns Considerations for an Efficiency Approach to Antitrust Analysis in Keeping with the Logic of Institutional Choice', *World Competition* 25, no. 3 (2002): 435–462; 'Competitive Advantage and the Regulation of Dominant Firms', *World Competition* 30, no. 3 (2007): 463–477; 'Constraining Drug Supply: Product Positioning, Patent Protection and Regulatory Standards', *World Competition* 31, no. 4 (2008): 485–498; 'The EU's Third Internal Energy Market Legislative Package: Victory of Politics over Economic Rationality?', *World Competition* 32, no. 4 (2009): 593–608.

<sup>2</sup> 'Fostering Competition Culture in the Emerging Economies: The Brazilian Experience', *World Competition* 32, no. 4 (2009): 609–627.