Editor's Note

Dear Reader,

As Editor of World Competition I am pleased to start the June 2011 issue by announcing the winner of the Young Writers Award 2010: Suleyman Parlak. His article, entitled *Passing-on Defence and Indirect Purchaser Standing: Should the Passing-on Defence Be Rejected Now the Indirect Purchaser Has Standing after Manfredi and the White Paper of the European Commission?* was published in our March 2010 Issue. It was felt that this article has made an important contribution to the debate surrounding private enforcement in Europe. This article analysed the two interrelated questions of passing-on defence and indirect purchaser standing. It explores the differences between the approach taken by the US courts and the approach proposed by the European Commission within the limits of the case law of the EU Courts. On behalf of World Competition I congratulate the Author.

Our first article comes from one of our greatest contributors, Hearing Officer Wouter Wils.[1] The article draws a thorough picture of investigative and decision making powers of the European Commission and National Competition Authorities in the enforcement of Articles 101 and 102 TFEU. The article focuses on the Procedural Guarantees and Rights that constrain those enforcement powers. It analyses those Rights and Guarantees and how their sources interplay. Unquestionably, Wouter has produced once again another article of reference for both practitioners and academics.

The following article is from Arianna Andreangeli.[2] The lecturer from Liverpool Law School looks into the recent developments in the case-law of the Court of Justice of the European Union regarding Article 101 TFEU. Using the preliminary ruling in the *Barry Brothers* case as a starting point, the author asserts that the ECJ has changed its interpretation on the scope of the prohibition contained in Article 101 (1) TFEU. The author concludes that the Court's position enshrines an idea of 'continuum between more or less serious

[1] Wouter P.J. Wils, 'The Principle of Ne Bis in Idem in EC Antitrust Enforcement: A Legal and Economic Analysis', *World Competition* 26 (2003): 131–148; Wouter P.J. Wils, 'Should Private Antitrust Enforcement Be Encouraged in Europe?', *World Competition* 26 (2003): 473–488; Wouter Wils, 'Self-incrimination in EC Antitrust Enforcement: A Legal and Economic Analysis', *World Competition* 26 (2003): 567–588; Wouter P.J. Wils, 'The Combination of the Investigative and Prosecutorial Function and the Adjudicative Function in EC Antitrust Enforcement: A Legal and Economic Analysis', *World Competition* 27 (2004): 201–224; Wouter P. J. Wils, 'Is Criminalization of EU Competition Law the Answer?', *World Competition* 28 (2005): 117–159; Wouter P.J. Wils, 'Powers of Investigation and Procedural Rights and Guarantees in EU Antitrust Enforcement: The Interplay between European and National Legislation and Case-law', *World Competition* 29 (2006): 3–24; Wouter P.J. Wils, 'Optimal Antitrust Fines: Theory and Practice', *World Competition* 29 (2006): 183–208; Wouter P.J. Wils, 'Settlements of EU Antitrust Investigations: Commitment Decisions under Article 9 of Regulation No. 1/2003', *World Competition* 29 (2006): 345–366; Wouter P.J. Wils, 'Leniency in Antitrust Enforcement: Theory and Practice', *World Competition* 30 (2007): 25–63; Wouter P.J. Wils, 'The European Commission's 2006 Guidelines on Antitrust Fines: A Legal and Economic Analysis', *World Competition* 30 (2007): 197–229; Wouter P.J. Wils, 'The Use of Settlements in Public Antitrust Enforcement: Objectives and Principles', *World Competition* 31 (2008): 335–352; Wouter P.J. Wils, 'The Relationship between Public Antitrust Enforcement and Private Actions for Damages', *World Competition* 32 (2009): 3–26; Wouter P.J. Wils, 'The Increased Level of EU Antitrust Fines, Judicial Review and the ECHR', *World Competition* 33 (2010): 5–29.

[2] Arianna Andreangeli, 'Toward an EU Competition Court: "Article-6-Proofing" Antitrust Proceedings before the Commission?', *World Competition* 30 (2007): 595–622.

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infringements.' Therefore, less formalistic than the traditional distinction between infringements 'by object' and 'by effect' and closer to the approach used by the U.S. Supreme Court.

Maria Teresa Maggiolino and Mara Lillà Montagnani[3] are the authors of this issue's third article. The object of this submission is the fraudulent enforcement of a Supplementary Protection Certificate by AstraZeneca which was deemed to be an abuse of dominant position, first by the European Commission and then by the General Court. The authors scrutinize these rulings but also provide an analysis of this and similar conducts in light of other EU provisions – such as those on the single market or on Intellectual Property Rights. As a conclusion the authors suggest a new understanding of the interface between antitrust and intellectual property rights in cases similar to AstraZeneca.

In the next article, Jeffrey Yow offers an alternative solution to the 2008 Commission's Decision for competition amongst collecting societies in digital music. The author argues that the Commission Decision, which abolishes membership and territorial restrictions, does not promote 'creative competition' nor does it take into account some fundamental aspects of the existence of national collecting societies. The author then concludes that a centralized licensing body to grant pan-European licenses for music in digital format, resulting from the (private) collaboration of national collecting societies, is the optimal solution.

Our fifth contribution comes from Kelvin Kwok and proposes a new antitrust framework regarding the refusal to license of Intellectual Property Rights to competitors. The author submits that such refusals should be assessed on a case by case basis while framed by a number of factors aimed at striking the best balance between allocative efficiency losses and dynamic efficiency gains. Several cases and literature are given to illustrate and support this innovative approach.

The article from Pablo Asbo tackles the definition of the wholesale broadband Access product market and whether it should include cable. It provides an overview of the decisional practice of the European Commission between 2008 and 2010 and some critical insight.

The last article is from Marco Botta,[4] also a regular contributor of World Competition. It deals with the enforcement of merger control and remedies imposed by Competition Authorities in emerging countries. Argentina and Brazil are used as case studies so as to conclude that those two countries do not 'over-enforce' merger control but, quite on the contrary, there has been 'under-enforcement' in their scrutiny. Marco Botta looks into the causes and implications of such 'under-enforcement' and puts forward some conclusions which he argues can be used as 'lessons' for other emerging economies.

I wish you a pleasant reading.

José Rivas
Editor
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[3] Maria Lillà Montagnani, 'Remedies to Exclusionary Innovation in the High-Tech Sector: Is there a Lesson from the Microsoft Saga?', *World Competition* 30 (2007): 623–643.

[4] Marco Botta, 'Fostering Competition Culture in the Emerging Economies: The Brazilian Experience', *World Competition* 32 (2009): 609–627; Marco Botta, 'The Definition of the Relevant Market and the Degree of Market Concentration in the Emerging Economies: Case Study on Brazil and Argentina', *World Competition* 33 (2010): 663–682.