Editors Note

Dear Reader,

As Editor of World Competition, I am pleased to begin the June 2012 issue by announcing the winner of the Young Writers Award 2011: Michael Frese.

His article entitled *Fines and Damages under EU Competition Law: Implications of the Accumulation of Liability* was published in our September 2011 issue. It was felt that the subject matter of this article is very topical and relates to the increased private enforcement of EU competition law in recent years. The article addresses the topic of accumulation of liability (fines and damages) in the EU, identifies the legal principles which are at risk if this accumulation is not properly addressed and, most notably, proposes a solution which EU competition authorities would be ill-advised not to consider to its full extent.

On behalf of World Competition I congratulate the Author.

Our first contribution, from Ramin Gohari, deals with margin squeeze in the telecommunications sector. The Article examines the different approaches adopted by the European Union, where the Court of Justice of the European Union has endorsed an economics-based approach, and the United States, which has traditionally seen margin squeeze as an exclusive domain of regulation. While the author favours the economics-based approach, he concludes that this will only produce convincing results if it includes a rigorous and transparent analysis of the effects on competition and consumers.

The article by Sheela Rai considers the regulation of cartels in India. The article examines whether the Monopolies and Restrictive Trade Practices Act can be interpreted as treating horizontal agreements between competitors as per se illegal or is instead intended to allow a rule of reason analysis more akin to the approach adopted in the United States and the European Union. The author concludes that, while flexibility is needed in developing countries to reflect changing economic conditions, greater clarity is required from the Monopolies and Restrictive Trade Practices Commission on its approach to this question.

Our third contribution, by Russel Pittman, Svetlana Avdasheva, and Nadezhda Goreyko, deals with collective dominance and its abuse under the competition law of the Russian Federation. In 2006, Russia amended its competition law and added the concept of 'collective dominance'. This article examines the

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enforcement experience to date, looking in particular at the sanctions imposed on firms in the oil industry. Based on the case law to date, the authors find that it is difficult for antimonopoly authorities to use the concept of collective dominance without interfering in some of the most sensitive and important decisions made by firms: what prices to set and to which consumers to sell. The article concludes that, while the concept faces certain hurdles that should be born in mind as the country goes forward in antimonopoly enforcement, it should not be abandoned as a tool in Russian antimonopoly enforcement.

Simon Robert's article examines the record of abuse of dominance cases in South Africa after more than a decade of the new competition regime. The South African Competition Act expressly prescribes certain exclusionary abuses of dominance. While these prima facie increase business certainty, the author argues that, in practice, the interpretation of the provisions has been highly contested such that the characterization of the conduct has become more important than the substantive analysis of its anti-competitive effects. The article concludes that the express delimitation of specific abuses in the Act has contributed to further delaying abuse of dominance cases, stymied the substantive evaluation of anti-competitive conduct, and, more generally, appear to undermine the administration of abuse enforcement. In light of the rife collusion uncovered in recent years, the author suggests that it may be appropriate to amend the Act to create a more administrable framework to promote effects-based assessment of conduct and to rectify the current imbalance between over- and under-enforcement.

Our fifth article, from May Fong Cheong, considers the Competition Commission of Singapore's ('CCs') record in enforcing of section 34 of Singapore's Competition Act 2004 since it entered into force on 1 January 2006. The author examines the principles applied in the Competition Commission of Singapore's first three decisions in setting the financial penalties for anti-competitive agreements and applying the leniency programme. The article argues that the CCS has embraced financial penalties as a means both to reflect the seriousness of the infringement, but also to create a strong deterrent effect. It concludes that, through this emphasis on deterrence, a well-balanced application of the Guidelines on Penalty and the Leniency Programme will help Singapore – as an already highly competitive country – to drive its competitiveness yet further.

Our next article is by Andreas Themelis, who considers the questions of the extraterritorial application of EU competition law and jurisdictional competence in relation to anticompetitive conduct on the Internet. The article examines the disjuncture between traditional jurisdictional principles and the global online environment. It concludes that while competition law is capable of addressing the substantive aspects of the situation, it cannot be applied at present due to

procedural reasons. The author introduces a concept of 'over-territoriality' intended to address the question of jurisdiction in scenarios involving anticompetitive conduct on the Internet.

Our final contribution is an article by Oles Andriychuk. The article explores the qualitative (deontological) approaches to economic competition, synthesizing the Ordoliberal and the Austrian perceptions of antitrust economics, policy, and law. It critically assesses the main normative motto of contemporary antitrust as well as the methodological reduction of competition policy to the empirical analysis. It concludes that although the two deontological doctrines differ significantly with respect to their broader views on the role of public instruments in the regulation of economics affairs, both antitrust schools hold the same methodological views concerning the conceptual independency of the competitive process and ultimately reinforce one another.

I wish you a pleasant reading.

José Rivas
Editor
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