

Editorial

Dear Reader,

World Competition endeavours to publish a wide spectrum of competition articles. This December issue is no exception. Topics covered include: the ever pertinent question of big data and its implications on competition; the role of commitment decisions in private enforcement actions; and, the anti-competitive impact of conglomerate mergers.

My personal thanks to our authors and to our book reviewers for their contributions to this issue of *World Competition*.

In our first article, Inge Graef explores the relationship between big data and competition law. Companies, the likes of Google, Amazon and Facebook, all harvest data from online platforms to feed algorithms and make future searches more efficient. The more data these companies acquire, the more effectively they can tailor advertisements to online platform users. This article gives an in depth analysis of how companies use data and looks at the importance of data in market power. The question of whether there should be a market definition for data is also examined.

Our second article, written by Andreas Stephan and Morten Hviid, departs from the big data debate and focuses on the role of cover pricing in competition law. Through economic analysis, the authors show that cover pricing, the act of seeking a non-winning bid from a competitor during the tender process, can have a limited anti-competitive effect. Alternatively, the lawful behaviour of announcing the non-intention to bid can have a more severe anti-competitive impact. The overreach of ‘*object*’ liability under Article 101 TFEU is considered and the authors argue that greater analysis is needed in infringement situations involving cover pricing.

The increasing use of commitment decisions in Article 102 TFEU cases is the topic for discussion in our third article. Dorin Raț explains the role of commitment decisions in competition law, before looking at the importance of private enforcement in Article 102 TFEU cases. Within the realm of private enforcement, a commitment decision and an infringement decision have differing significance. A breach of a commitment decision does not necessarily amount to an infringement of Article 102 TFEU. Therefore, the burden of proof for a claimant may be harder to achieve. On the other hand, the breach of an

infringement decision may facilitate a private enforcement action for damages. The author evaluates the growing use of commitment decisions as a remedy for Article 102 TFEU cases and the impact this will have on private enforcement.

Our fourth contribution, written by Lukas Solek, is an interesting study into the broad discretion exercised by the Commission in imposing fines for anti-competitive behaviour. The author explores the importance of the Commission's discretion in competition policy and, the possible overstepping of this discretion in recent cases, in order to achieve a maximum deterrent effect.

Adrian Proctor, in his article, looks into the impact on competition by conglomerate mergers. The article first compares the economics of vertical and conglomerate mergers, before considering the likelihood of and the possible techniques used by a merged firm engaging in exploitative behaviour. The final section discusses whether the existing ability, incentive, and effect methodology can be adapted and proposes an improved structure for analysing conglomerate effects.

We round up our articles this issue with Zhaofeng Zhou taking a look at the entry into force of the Rules on Abuses of Intellectual Property Rights Eliminating or Restricting Competition ('Abusing IPR Rules') in China, in the light of the recent *Qualcomm* case. A huge market for IPRs, China is shifting its focus towards the development of its own domestic technologies. This has profound implications on international companies operating in China. Just how the Chinese authorities will enforce the existing Anti-monopoly Law and the new Abusing IPR Rules, with regard to IPRs, remains to be seen.

I hope you enjoy these varied and insightful articles.

José Rivas
Editor
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