Editorial

Dear Reader,

As Editor, may I welcome you to the first Edition of World Competition for 2017. The March issue which, as ever, is full of high quality contributions. We begin this issue of World Competition with a new contribution by Wouter Wils, to whom World Competition and competition literature is greatly indebted for his excellent and prolific writings. The contribution by Wouter Wills 'Private Enforcement of EU Antitrust Law and its Relationship with Public Enforcement: Past, Present and Future' provides a short history of private enforcement of EU antitrust law and its relationship with public enforcement, from the 1957 EEC Treaty over Regulation 17 and Regulation 1/2003 until Directive 2014/104 and the current outlook. Wouter discusses the three type of private enforcement in which Articles 101 and 102 TFEU can be invoked in litigation between parties meaning; defence, claims for injunctive relief and claims for damages.

Secondly, we introduce a piece by Ariel Ezrachi on a topic of tremendous relevance and actuality: E-commerce and Marketplace Bans. The author discusses how a tighter control of distribution agreements is leading producers to include restrictions on the use of online marketplaces in their selective distribution agreements, seeking to identify an adequate balance between the interest of manufacturers in limitations on the use of online marketplaces, and the need to sustain maintain competition in an online world. The discussion opens with a review of the ways in which online marketplaces contribute to dynamic competition, exploring the role of selective distribution and the economic and legal impact on online market places. The article considers the effect of such restrictions and in the author's opinion, that an absolute ban on the use of online marketplaces may have a detrimental effect on market transparency, price competition, entry and expansion.

In our third contribution, Damien Geradin and Emilio Villano debate the extent to which competition rules are capable of being arbitrable. The article builds on a sharp and vivid discussion of the arbitration scenario after the *CDC Hydrogen Peroxide case* and Advocate General Jääskinen's opinion on whether arbitration is a suitable method to settle claims for damages from breaches of competition law. The article analyses a topic of thundering actuality where actions for damages by competition law infringements are expected to swell as a result of the recent adopted EU Directive (2014/104/EU). Based on the latter, the article considers the onward recognition by national and EU courts of the arbitrability of

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EU competition law, followed by an analysis of AG Jääskinen's opinion on the topic and it finally considers new challenges towards the arbitrability of EU Competition law, not only in the sphere of Articles 101 and 102 TFEU, but also for Articles 106–108 TFEU and the EUMR.

Fourthly, Patrick Actis Perinetto and Natalia Latronico, delve into, from an EU Competition law perspective, an analysis of the courses of action that a pharmaceutical company may take with a view to preventing or limiting parallel trade of its products. The article provides a detailed and practical assessment of every option available to the pharmaceutical companies, always considering, the relevant case-law of EU courts, which however is scarce and leaves open many questions. First, the most relevant features of parallel trade in the pharmaceutical sector are described. Secondly, the main strategies used to counter drugs arbitrage are analysed under EU – and, where relevant, national –competition rules and case law. Finally, the article discusses how current case-law is far from satisfyingly covering and interpreting present conflicts, thus leading to a high degree of uncertainty.

Later on, we move on to an article authored by Jonathan Galloway on 'Securing the Legitimacy of Individual Sanctions in UK Competition Law'. The author advances a framework for assessing the legitimacy of high severity sanctions, and argues that providing and maintaining legitimacy from multiple stakeholder perspectives is essential to successful enforcement. The author suggests that legitimacy is built upon all aspects of enforcement and sanctions being perceived as fair and appropriate, but where deficiencies exist there remains the potential to nonetheless earn legitimacy through prudent enforcement action. The author directs criticism at the legislative drafting of key elements of both the Enterprise Act 2002 and the Enterprise and Regulatory Reform Act 2013, as well as the exercise of enforcement discretion by successive competition authorities. The author develops the argument further in order to suggest how enforcement discretion should be now exercised in order to rebuild the legitimacy of individual sanctions in UK Competition law.

Finally, Damiano Canapa, closes with an article that will introduce us to a proposed analytical framework and review of strategies for assessing free and open source software (FOSS) programs in merger control procedures in the European Union and how Competition Authorities should deal with these cases.

I trust you will enjoy reading these articles and accompanying book reviews, as World Competition remains committed to contributing to the debate in the global antitrust community.

José Rivas
Editor
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