

Editor's Note

Dear reader,

Let me welcome you to another issue of *World Competition*. As in the past, our authors have chosen very original and interesting topics for our June issue.

For our first article entitled: ***Level Discrimination and FRAND Commitments Under EU Competition Law***, Renato Nazzini studies the subject of level discrimination and how the provisions of Article 102 TFEU should be interpreted and applied in this regard. Level discrimination occurs when the holder of a standard essential patent, having made a FRAND commitment, decides to license only undertakings at a given level of the supply chain, typically, the end-product manufacturers, rather than the component manufactures. The article provides a comprehensive study of the economic and policy arguments in favour and against level discrimination and examines if this practice may amount to an abuse of dominance according to the provisions of Article 102 TFEU.

Moving on, in her article: ***The Opinion of AG Wahl in the Intel Rebates Case: A Triumph of Substance over Form?***, Julie Clarke undertakes a thorough examination of the Opinion by Advocate General Wahl in the *Intel* appeal case regarding the legal assessment of pro-competitive and anti-competitive rebates by dominant undertakings under Article 102 TFEU. In the article, the author establishes how the Opinion by AG Wahl tries to reconcile the previous case-law and the provisions of the European Commission Guidance on Exclusionary Conduct, while moving from earlier form-based presumptions, to a more effects-based approach to dominant firm rebates under the provisions of Article 102 TFEU.

For our third contribution, Hila Nevo and Roger Van den Bergh, in their article: ***Private Labels: Challenges for Competition Law and Economics***, explore the possible anticompetitive effects that the continuing growth of private labels may cause. The growing concentration in the retailing sector has strengthened the bargaining power of large retailing firms. On the upstream markets, large retailers may abuse their buyer power to obtain more favourable contract terms from manufacturers. Moreover, on the downstream markets vertically integrated super-markets may prioritize their private labels to the detriment of branded goods. According to the author, the analysis of competition authorities, economists and lawyers have to be adapted in order to effectively address the potential anticompetitive effects that the growth of private labels and the increase of bargaining power of large retailing firms can produce.

In the next article, *Foreign State's Entanglement in Anticompetitive Conduct*, Marek Martyniszyn provides an insightful view of the State's entanglement in transnational competitive harm. The author examines the different types of State's activity, both inbound and outbound, which may cause harm in foreign markets and how these could be pursued by the national authorities of the affected jurisdiction. Ultimately, the author concludes the article by arguing that States should not enjoy immunity for the competitive harm resulting from their commercial dealings.

Finally, Thomas K. Cheng in his article: *The Meaning of Restriction of Competition Under the Monopolistic Agreements Provisions of the PRC Anti-Monopoly Law*, provides a detailed and practical assessment of the application of the restrictive agreements provisions of the Anti-Monopoly Law by the Chinese courts and enforcement authorities, i.e. the National Development and Reform Commission and the State Administration of Industry and Commerce, and how these have interpreted the concept of restriction of competition in monopolistic agreement cases. The author claims that the courts and enforcement authorities have reached an agreement on the level of scrutiny in certain areas (cartels), while in others there is still some divergence (resale price maintenance), in addition, it is argued that, so far, the notion of restriction of competition is in line with the international consensus.

I hope that you enjoy reading these articles.

José Rivas
Editor
June 2017