Editor's Note

Dear reader,

I am delighted to bring you this new issue of World Competition Law and Economics Review. As always, this issue provides an in-depth insight for academics and practitioners into the latest developments in the competition law field.

In our first article entitled: ***Fining Foreign Effects: A New Frontier of Extraterritorial Cartel Enforcement in Europe?***, Pieter J. F. Huizing studies the controversial topic of national competition authorities (NCAs) prosecuting and sanctioning infringements of Article 101 TFEU beyond their national borders. The legality of the sanctions imposed taking into account the foreign effects of cross-border cartels is questioned. This is a topic very close to World Competition's heart. In 2004 we published an article co-authored by the current President of the Court of Justice of the EU where it is stated:

> it is important to keep in mind that Regulation 1/2003 does *not* confer jurisdiction upon NCAs or national courts over conduct or effects occurring entirely outside their respective Member State. Moreover, none of them may impose fines or remedies for conduct or effects occurring outside their State, even if nationally imposed remedies may indirectly affect an agreement or practice which is also in operation in other Member State.[1]

According to Huizing, the possibility of NCAs to impose fines that take into account effects in other Member States could strengthen the effectiveness of decentralized enforcement of Article 101 TFEU, however, it is important to provide the necessary procedural rules and safeguards that ensure that the sanctions imposed by the NCAs are both adequate and proportionate. In the view of the author, this could be accomplished by creating a robust legal framework through the revision of Regulation 1/2003 or the introduction of such possibility in the new ECN+ Directive on the empowerment of NCAs to be more effective enforcers.

Moving on, in the second article: ***EU Competition Law Needs to Install a Plug-In***, Pablo Solano Díaz provides an insightful view on the fundamental change that multi-sided platforms is causing in the factual context of the abuse of dominance analytical framework in the EU Competition Law landscape. In his article, the author argues in favour of a more economic or, at least, a more facts-based approach and, as a consequence, the departure from the more traditional *per se*

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[1] Koen Lenaerts & Damien Gerard, *Decentralisation of EC Competition Law Enforcement: Judges in the Frontline*, 27(3) World Competition 313–349, 322 (2004).

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abuses doctrine which is questionable due to the rapidly evolving markets of the new digital era. Ultimately, the author calls for the development, by the European Commission, of a level playing field in order to avoid inconsistencies in the application of the competition law rules by the national competition authorities of the Member States.

For our third contribution: ***Multiple Product Discounts: A Comparative EU/US Competition Law Perspective***, the author, Jay Matthew Strader, challenges the current trend in multi-product discount cases to rely exclusively in cost tests to determine the liability of infringing dominant undertakings. For this purpose, the author uses Neoclassical Price Theory to isolate the methods by which mixed bundling can harm consumers by viewing the practice as a form of predation and then as a form of tying. Additionally, the article discusses the decision procedure points that have influenced both the EU and US competition law authorities to adopt the legal tests for this particular type of abuse. Finally, the author makes a series of recommendations for an alternative legal test which is ultimately intended to the maximization of welfare.

In the fourth article entitled: ***Pharmacy Benefit Managers: Fixing Healthcare Market Failures or Straining Regulatory Logics!?***, Ralf Boscheck provides a detailed and practical assessment on the presumably anticompetitive behaviour of Pharmacy Benefit Managers in the US and how the regulators/legislators should effectively address this issue. According to the author, Pharmacy Benefit Managers provide important benefits to consumers. However, though the application of the state action doctrine, States override federal laws to protect local pharmacies against large out-of-state Pharmacy Benefit Managers and, as a consequence, protecting providers over consumers. The author concludes by stressing the role of the regulators as protectors of consumers rather than defenders of providers.

In the fifth article entitled: ***Reverse Payment Patent Settlements in the Pharmaceutical Sector Under EU and US Competition Laws: A Comparative Analysis***, Margherita Colangelo undertakes a comprehensive study on the anticompetitive concerns raised by reverse payment patent settlements. In the pharmaceutical industry, through the reverse payment patent settlements, the patentee (originator company) pays the alleged infringer of a patent (generic company) with the purpose of delaying its market entry. The author analyses the US and EU regulatory frameworks and the relevant case law to highlight the similarities and differences between these two jurisdictions. According to the author, reverse payment settlement agreements should be evaluated on a case-by-case basis, rather than through the *per se* rule; the antitrust analysis of these agreements without the assessment of the validity of the patent is not the proper approach; and reverse payment settlements are detrimental to consumers only if the generic company would have prevailed in litigation.

Finally, Lei Wang and Ivo Krizic, in their article entitled: ***Beyond Legal Transplant: China's 'Shopping Around' Approach and Formation of Anti-Monopoly Law***, undertake a comprehensive analysis of the internal and external drivers that influence the formulation of new competition law regimes and how domestic reform efforts interact with the provisions of more mature competition law jurisdictions. For this purpose, the authors have studied the enactment of China's Anti-Monopoly Law to scrutinize the numerous channels through which emerging competition policy regimes have been shaped. In the end, the authors conclude that the implementation of the Chinese competition law regime has been more complex than the simple transplant of the provisions of more advanced competition law jurisdictions and that further research should be conducted on the regulations and enforcement practices of the Chinese competition authorities and on the impact of bilateral and multilateral mechanisms on the domestic competition regime.

I hope that you enjoy reading this new issue.

José Rivas
Editor
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