

Editorial

Dear Reader,

To finish 2017, we present in this December issue a great variety of articles of excellent quality that we trust will be of your liking and interest.

The first article of the present issue comes from Anna Gerbrandy. The author tries to demonstrate the sustainability deficit of competition law in Europe, focusing on the Netherlands, where this flaw plays out most visibly. The article exhibits the necessity for more sustainability-focused agreements with an overview of its possible solutions. For this purpose, the author includes an analysis of whether there is indeed a sustainability deficit and puts forward several proposals to reform and adjust the mechanisms of competition law to remedy such a deficit. The article discusses the underlying rationale relating to the dichotomy between market and government, the exception clause of Article 101 (3) TFEU and the doctrines relating to placing entities and activities outside the scope of Article 101 (1) TFEU. It is therefore a novel approach to the current shortcomings of competition law, showing legal-external and legal-internal arguments to support the adjustment of competition law in order to palliate its deficit.

The second submission is by Stefan Holzweber which sheds some light on how multi-sided platforms should be dealt with from a competition law perspective. The author exposes the complexity of delimiting the relevant product market in this kind of platforms compared to the traditional markets due to the fact that the stronger its indirect network effects are, the more the market definition deviates from traditional approaches. For this purpose, it is primordial to proceed with an intermarket-analysis due to their close interrelation. The article analyses the relevance of market products for multi-sided platforms under competition law with a legal and economic view.

In the third article, Jochem de Kok submits an interesting proposal about the treatment of Chinese state-owned enterprises (SOEs) under competition law of the European Union. For the author, the relevance in these enterprises is the degree of interdependence of decision-making power from the State and other SOEs. The article illustrates the Commission's recent approach by considering that various Chinese SOEs may form part of the same economic unit, bringing an increasing number of transactions of these Chinese enterprises under the scope of the European Merger Regulation, meeting the jurisdictional thresholds. Nevertheless, for the author the Commission's decisional practice and soft law

instruments illustrate that concentrations between SOEs which form part of the same economic unit fall outside the Commission's jurisdiction.

Moreover, the author of the fourth article Xingyu Yan comes back to China and discusses the concept of loyalty rebates in Chinese Anti-Monopoly Law as the main consequence of the Tetra Pak decision in China. For the author, this pioneer case was the first step in rebates regulation with an effects-based approach. Nevertheless, the decision fails in not showing enough contextualized effects-examination as a consequence of not having a well-developed theory of harm for its analysis. To end, the article suggests that the exclusive dealing analogy in China should be employed for loyalty rebates analysis.

Finally we jump on to another continent by the hand of Mahmoud A. Momtaz who considers the need for Imprisonment Sentence under the Egyptian antitrust regime. The article provides an analysis of the Egyptian Cement Cartel Case, and the need to create the necessary deterrence effect for future anticompetitive practices in general and from creating cartels in particular. The author states that there is a wide understanding among competition law practitioners that the Egyptian competition regime should not include imprisonment sentences for competition law violations. The article concludes by exposing that sometimes, fines are not the best sanctioning system compared to imprisonment in order to achieve better enforcement.

I wish you a pleasant read.

José Rivas
Editor
December 2017