Editor's Note

Dear Reader,

It is with pleasure that I present to you another issue of World Competition Law and Economics Review. The last issue of this year is full of high-quality and original articles.

The first article by Michael Albers is entitled: ***Achieving competitive neutrality step-by-step.*** In his article, the author explores the concept of competitive neutrality and the problem of distortions of competition caused by state activities on the markets. Usually, states act in markets as purchasers and suppliers of goods and services; in such cases, the concept of competitive neutrality is a useful instrument to ensure a level playing field between public and private market participants. According to the author, the process of achieving competitive neutrality cannot be done from one day to the next and should be done step-by-step. For this purpose, the author lists thirteen steps to be taken, grouped in three categories: (1) create awareness of competition-distorting state measures; (2) prevent new distortions by the state; and (3) remove existing state distortions. By implementing the concept of competitive neutrality, states can identify unjustified competitive advantages, remove them from the markets and enjoy the ensuing economic benefits.

The second contribution is entitled: ***What can we learn about the application of the As Efficient Competitor Test in fidelity rebates cases from the recent US case law?*** The author, Miroslava Marinova, deals with the very up-to-date and interesting topic of fidelity rebates in European Union competition law. The author has conducted a very thorough comparison between the treatment of fidelity rebates in the recent US federal court judgments in *Meritor* and *Eisai* and the judgments of the EU Courts in *Intel* and *Post Danmark II.* The objective of the article is to determine under which circumstances a price-cost test should be deployed as a tool to determine the anticompetitive effects of fidelity rebates, and how this can be translated into concrete lessons for European case-law. The article explores the available tools to distinguish anticompetitive rebates from effective competition and the role of price-cost tests in the context of these tools. In the end, the author concludes that the economic theory of Raising Rival's Costs provides an alternative interpretation of why fidelity rebates can be anticompetitive even if the price is above costs (i.e. dominant companies can set prices above costs and still marginalize competitors by making access to input or customers more difficult),

'Editor's Note'. *World Competition* 41, no. 4 (2018): 491–494.

and a framework to understand the rejection of the price-cost test in the *Intel* and *Post Danmark II* judgements.

The third article is entitled: ***Do pay-for-delay agreements promote innovation? The effects across innovation cycles.*** Traditionally, pay-for-delay agreements have been considered a restriction of competition by object under Article 101 TFUE. It has been argued that in these agreements the harm caused to consumers can be balanced out by efficiencies in terms of increased incentives to innovate. The author, Laureen de Barsy, considers this efficiencies argument by studying the effect of pay-for-delay agreements on innovation. The article arrives to the conclusion that the desirability of pay-for-delay agreements varies with the innovation cycle considered. Accordingly, while the expected effect of pay-for-delay agreements on first-generation innovation is either positive or neutral, second-generation innovation appears either non-affected nor hindered.

The fourth article by Chiara Muraca is entitled: ***Cultural and political forces in the criminalization of cartels: A case study on the Chilean experience.*** According to the author, in most cases, the adoption of competition rules by developing countries or countries that have recently decided to adopt them has been influenced by external interests. In practice, this has caused a deficient enforcement of these criminal provisions because this process has overlooked the specific characteristic of the adopting countries. It has been argued, that the lack of enforcement of these criminal provisions is due to the fact that the criminalization process is often the product of a top-down process led by transnational enforcement interests rather that domestic bottom-up forces. In Chile, there have been two processes to criminalize cartels. The 1973 Competition Act, which contained similar criminal provisions to those of the US, these were abolished in 2003. And the reestablishment of criminal penalties for cartels, in 2016. According to the author, this second attempt to criminalize cartels in Chile has been driven by a regulatory populism and, even though is too early to say, this might have ignored important considerations such as the proportionality of the sanctions and the enforceability of this provisions.

Finally, the fifth article of this issue is co-authored by Svetlana Avdashevam, Dina Korneeva and Tatiana Radchenko. The article is entitled: ***Antitrust price remedies may facilitate collusion in global commodity markets.*** In their article they treat a very novel topic, price remedies by national competition authorities that target local companies in domestic markets. This kind of remedies is often used in Russian competition law against large exporters that dominate local markets. According to the authors, national competition policies do not consider antitrust restrictions that only affect buyers outside the national territory, in this sense, the imposition of price remedies by national competition authorities on one exporter in a determined country may limit competition in global commodity markets. The

authors consider that pricing remedies that link domestic prices for exported goods with the export prices of domestic suppliers may affect the competitive process in primary commodities markets that are prone to collusion, and that currently there are not any rules or policies that can address this issue.

José Rivas
Editor
December 2018