Editor's Note

Dear Reader,

As Editor of World Competition, I am delighted to present to you the first issue of 2019. For this edition we have made every effort to include a variety of unique and interesting articles.

Our first article is co-authored by Ariel Ezrachi and Viktoria Robertson. The article deals with a fascinating and very novel topic: ***Competition, Market Power and Third-Party Tracking.*** The authors study the rise and growth of third-party tracking, the power it has bestowed on a handful of operators and the possible implications for competition dynamics and consumer welfare. According to the authors, it is important to consider the scope of third-party tracking in relation to market power, market dynamics, barriers to entry and expansion, and the assessment of proposed concentrations between trackers and between platforms and trackers. The reason for this is that the merged entity may have the ability and incentive to engage in exploitation or exclusion thanks to its tracking capacity. The article concludes by arguing that competition law could add an important layer of protection, in addition to the regulatory and consent limitations against exploitative third-party tracking.

The second article of this issue is written by Wouter Wils, Hearing Officer of the European Commission, and is entitled: ***Legal Professional Privilege in EU Antitrust Enforcement: Law, Policy & Procedure.*** In his article the author has conducted a very thorough analysis of the legal professional privilege (LPP) in the context of EU antitrust enforcement focusing on the prohibition of cartels and other restrictive agreements as well as the prohibition of abuse of a dominant position (Articles 101 and 102 TFEU). Merger control is not within the scope of the article. This submission is a very comprehensive study that covers a wide array of issues, such as: the legal basis and nature of LPP and its rationale; the cumulative conditions of LPP including the exclusion of in-house and non-European Economic Area lawyers; the type of documents protected by LPP; the procedure and practice in case of inspections by the European Commission, requests for information, and the role of the European Commission's Hearing Officer; the enforcement of EU antitrust law by the competition authorities of the EU Member States; and private enforcement.

The third contribution is by Paolo Iannuccelli, Legal Secretary at the Court of Justice of the European Union. The title of his article is: ***Interim Judicial Protection***

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against Publication of Confidential Information in Commission Antitrust Decisions. This article examines the fundamental question of how an undertaking which has been found responsible for an antitrust infringement and has challenged before the EU Courts the decision to publish a non-confidential version of the infringement decision established by the Commission, may obtain interim relief against the envisaged publication of purportedly confidential information. The author provides an in-depth explanation of the rationale and practice of publishing antitrust decisions, how the publication of confidential information can be opposed, and the relevant case law on interim proceedings. In the end, the author provides some very interesting and useful practical lessons from the case law of the EU Courts on interim judicial protection.

For the fourth article of this issue we have a contribution by Marc Veenbrink entitled: ***Bringing back unity: Modernizing the application of the non bis in idem principle.*** The author has written about the approach taken by the EU Courts regarding the *non bis in idem* principle in case of dual proceedings by the European Commission and National Competition Authorities (NCAs) or by different NCAs. The EU Courts have not clearly established the right not to be tried or to be found liable twice for the same anti-competitive behaviour by different competition authorities, this means that the competition law *non bis in idem* principle is separated from the application in other areas of EU law. In order to remedy this divergence the author proposes three changes to the current competition law regime: (1) dual proceedings by NCAs and the Commission should be prescribed by law; (2) obligatory coordination mechanisms should be introduced in Regulation 1/2003, to prevent duplicated evidence-gathering activities; and (3) the EU Courts should abolish the condition of the unity of the legal interest to determine whether the *non bis in idem* principle is infringed.

The fifth article of this issue is entitled: ***The Interaction of Public and Private Cartel Enforcement*** and is co-authored by Nicole Rosenboom and Daan in 't Veld. The article is concerned with the interaction effects between public and private enforcement that may affect the effectiveness of the combined enforcement policies. In particular, the article analyses the effects of civil damages claims on applications for leniency by conducting an empirical analysis. A survey amongst firms and competition lawyers in the Netherlands was conducted by the authors, the results of which show that firms apply for leniency depending on the magnitude of the personal fine for directors and do not take into account civil claims when deciding to apply for leniency. Thus, there is no negative interaction effect between civil claims and the leniency programme. Conversely, private actions are considered by lawyers when advising clients to apply for leniency, especially if leniency documents cannot be disclosed in follow-on actions, if the burden of

proof lies with the claimant and if the client would receive a more lenient treatment.

Finally, the sixth article is written by Cento Veljanovski and is entitled: ***Collective Certification in UK Competition Law: commonality, costs and funding.*** The author analyses the new collective actions regime for competition law infringements that was established in the United Kingdom in 2015, particularly the certification requirement. For his study, the author has looked at the first two collective actions before the Competition Appeal Tribunal – *Gibson v. Pride Mobility Products* and *Merricks v. Mastercard*. The Competition Appeal Tribunal Guide to Proceedings 2015 endorses an expedited certification procedure; however, it appears from the approach taken by the Tribunal that the certification process is a more rigorous and expensive exercise. In this regard, the author presents a critical assessment of the Tribunal's approach to the certification procedure focusing on the determination of common issues, pass-on, distribution of damages, costs and funding.

The latest edition provides immense food for thought on an array of subjects, making for a very strong publication. I would like to thank all our contributors and of course our readers for the continued success of World Competition. I sincerely hope find this new issue as enjoyable and fascinating as I have.

José Rivas
Editor
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