

Editorial's Note

Dear reader,

This fourth and last issue of 2019 covers, as usual, competition law topics of great interest extensively analysed by our contributors. I will also take this opportunity to congratulate our Book Review Editor, Ioannis Lianos, for his appointment as head of the Hellenic Competition Commission. This is a great responsibility that Ioannis will perform with equally great competence.

The first article, written by Dr Hedvig Schmidt, is entitled: ***Competition Law and IP Rights: Not So Complementary – Time for Realignment of the Goals?*** The author examines both EU and US goals of IP and competition law and warns that unless adjustments are made to these goals, there is a risk of innovation being stifled as well as harm to consumer welfare, as a result of internal conflicts between these two spheres of law.

Dysfunctional EU competition policy objectives have left a trail of inconsistency between European Courts and the Commission over the policies being pursued while IP laws have continued to expand and strengthen. As IP rights have widened, follow-on or cumulative innovation is being hindered with negative effects for overall economic welfare goals. Competition law is then effectively being relied on as a second-tier regulator in preventing foreclosure in IP heavy markets. However, internal struggles within competition law itself, as to what its own goals should be, prevent it assuming this role. This article also sheds some light on the challenges posed by applying competition law in the digital economy while retaining customer welfare as an optimal standard to ensure effective competition.

Our second author, Jan Blockx, offers a critical perspective in his article: ***The Limits of the 'More Economic' approach to antitrust.*** He argues that the two principles advocated by this economics centred approach to antitrust have major flaws and are often impracticable. Firstly, antitrust enforcement cannot be guided only by the economic analysis of a business practice, as it is often inconclusive; other factors have to be taken into account for the assessment of likely effects of agreements and other commercial practices. Second, antitrust policy cannot have economic efficiency as its only driving principle; other values (such as consumer welfare, environmental protection, media plurality, etc.) cannot be overlooked and may be more important in certain markets than pure economic efficiency. The

author elegantly tackles the tricky definition of the border between competition law as a policy tool and economics – a very topical issue.

In this third article, *'Brexit and Competition Law: the Future Place of the UK Competition Law Regime internationally'*, Eyad Maher M. Dabbah delivers an in-depth analysis of the future of the UK Competition law regime following *Brexit*. Once it becomes fully independent, the UK Competition and Markets Authority will still benefit from a great trans-national standing and intellectual influence, but this will not be enough to guarantee its future status at international level. For this, the Authority will need to engage in far more extraterritorial enforcement procedures (once the 'EU shield' – enforcement action by the European Commission that protects UK markets against harmful behaviour has fallen) and build an equivalent 'UK shield' to protect UK consumers and businesses against harmful conduct by non-UK entities. It will then have to build a strong cooperation link with the European Commission and build its own network of bilateral connections with other competition authorities. This contribution concludes with insightful recommendations to the authority, to build the post-*Brexit* international face of UK competition law enforcement.

The fourth article is entitled: *Quantitative Methods and Merger Effects in Competition Policy: the Brazilian Case*. In this contribution, Camila Cabral Pires Alves, Marcos Puccioni de Oliveira Lyra, and Marina Maria Gutierrez Bonfatti dive into an intellectually engaging discussion on the use of mathematical models as means of evidence in quantifying the potential anticompetitive effects on prices in the Brazilian merger control regime. They observe that many different models are used to get estimates of effects on price, but they are generally applied to the more complex merger cases. Amongst the very interesting conclusions of the article, the authors stress that the models used by the Brazilian Authority remain a complementary tool to the qualitative evidence produced during the investigation. This is a very interesting contribution to the analysis of the impact of econometrics and predictive models on competition law investigations.

Our fifth article is entitled: *Common Ownership and Mergers between Portfolio Companies*. In this interesting contribution, Roman Inderst and Stefan Thomas examine the competitive risks of common ownership in the assessment of horizontal mergers between portfolio companies. Through the application of the economic analysis, the co-authors reach the conclusion that even if it were to be assumed that common ownership has an inherent propensity to impede competition, it cannot be concluded that common ownership in itself increases anticompetitive effects without evaluation of the actual effects on price, innovation competition or other competitive parameters.

Our last contribution is co-authored by Ploykaew Porananond and Po Ma Ma Aung, entitled: *Emerging Trend in Competition Law in Southeast Asia:*

Perspectives from Myanmar and Thailand. From the experience of the adoption of competition laws in the two countries, the authors challenge the accepted general belief that an effective competition law regime thrives best in a democratic political regime with a stable rule of law. According to the contributors, there is substantial evidence that competition law may grow even in States with questionable democracy as long as the will to liberalize the national economy exists. The article concludes with an assessment the role of the ASEAN in the development of comprehensive competition law regimes in the ASEAN Member States. This article gives a fresh perspective, as it shows that competition law can be efficiently enforced regardless of the local political climate.

I wish you a pleasant read.

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Editor*

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