Editorial

Dear Reader,

It is my great pleasure to introduce this edition of *World Competition*. In the period since this journal was last published, the world has gone through immeasurable changes as a result of the continuing COVID-19 pandemic. Competition law is, of course, not insulated from the impact of the coronavirus; we have already seen antitrust authorities tweak procedural rules and take steps to continue their work and adapt in the changed environment. Going forward, we can expect altered market dynamics in many sectors which will have knock-on effects on competition, antitrust enforcement and the approach of regulators; the scale of these changes remains to be seen and I am sure that we will feature commentary on them in editions to come. As in the past, our authors have chosen an array of original and thought-provoking topics for this June issue. I hope they provide food for thought in these turbulent times.

The issue is opened by Eva van der Zee's *Quantifying Benefits of Sustainability Agreements under Article 101 TFEU*. Her paper gives a legal overview of Article 101 TFEU and its relevant guidelines before exploring the different methods of quantifying agreements under Article 101(3) TFEU. Eva highlights that the current interpretation of the European Commission's economic approach, as most notably laid out in the Commission's 2004 guidelines on the application of Article 101(3) TFEU, has created situations where agreements between undertakings to stop the sale of unsustainable products or production processes have been discouraged. This is symptomatic of the lack of clarity that exists if one is attempting to apply the economic approach to an anti-competitive sustainability agreement more generally. Eva considers how the 2004 guidelines could be reformed so that undertakings could assess their agreements in a way that is quantifiable, yet not limited to their financial well-being is prescribed by the economic approach currently.

Jens-Uwe Franck and Martin Peitz's entry, *Cartel Effects and Component Makers' Right to Damages*, is the second article in this issue. They point out that when it comes to the law on competition damages, the focus is on the recovery of the overcharges appropriated by a cartel, but parties other than the purchasers are often neglected due to a mix of judicial practices and legal limits. The authors argue that the concept of standing which applies in these antitrust cases – which excludes parties that act as suppliers to a cartel or firms that purchase from them

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with complementary product components – fail to meet the objectives of effective deterrence of competition infringements and the pursuit of corrective justice which are associated with the remedy of damages in antitrust law. The authors use an economic framework with two complementary products to demonstrate that whether a market is subject to market competition or a cartel, either way the allocation and distribution of surpluses does not depend on whether producers of complements purchase from a cartel or supply a cartel or its customers. The authors build on this analysis which suggests that all producers of complements should be treated similarly, eventually concluding that the application of a broader concept of standing would be preferable to bring about a more coherent policy on competition damages and likewise fit well with the objectives of competition damages which have been set out previously by the judiciary and legislature of the EU.

Eyad Maher M. Dabbah returns with the third instalment in a series of articles which have been previously published in this journal. Having previously considered the place of the UK's competition law regime internationally and the domestic enforcement of UK competition law in the post-Brexit world, Eyad's latest article *Brexit and competition law: The future relationship between the UK and EU competition law regimes* considers how the European Commission and the Competition and Markets Authority will interact in the future – a topic which has not received much attention up to now, particularly from a policy perspective. Naturally, future EU-UK cooperation will be conditioned by how the ongoing transition period ends and whatever political and economic ties are negotiated, however Eyad analyses and describes his vision for how the relationship should look in terms of the two parties' competition law regimes, their antitrust authorities' formal and informal relationship, and their cooperation in competition law enforcement into the future. He believes that the shared achievements of the CMA and the European Commission can and should be preserved in the next chapter, adding that a degree of cooperation commensurate with the special relationship between the parties should continue as time goes on.

The issue's fourth article is from Macquarie Law School, Sydney, lecturer Baskaran Balasingham. It is entitled *'Hybrid Restraints and Hybrid Tests under US Antitrust and EU Competition Law'*. Baskaran highlights that while case law, particularly in the United States, establishes that there is a contrast between vertical and horizontal restraints, the commercial reality is that line between them can be blurred. In recent cases, the legal assessment of vertical restraints that have horizontal effect has proven to be more challenging than assessing restraints which could be clearly classified as horizontal or vertical. That said, Baskaran posits that the process of assessing those 'hybrid restraints' is further clouded by the development of intermediary approaches in the courts in both the United States in the form of the rule of reason/per se rule in section 1 of the Sherman Act and also

arguably in the European Union, where the by object/by effect distinction is used in Article 101 TFEU disputes. Baskaran challenges the suitability of these intermediary approaches for the assessment of hybrid restraints before he puts forward a solution which could lead to a more accurate and administrable approach to these restraints in both jurisdictions.

Finally, this edition of *World Competition* is rounded out by third year law student Rhea Reddy Lokesh's *The Anti-Competitive Effect of Price-Controls: Study of the Indian Pharmaceutical Industry*. Price controls on essential medicines were introduced by the Modi government in India with the aim of protecting the consumer against prohibitively high prices, yet in the time since the introduction of these controls, the price of these medicines has substantially increased. Rhea queries how these increases occurred and whether the type of price ceilings introduced by the measures facilitate collusion in India's pharmaceutical market. In doing this, she concludes that such market-based price ceilings lend themselves to facilitating anti-competitive practices in the pharmaceuticals market because of the market's inherent characteristics – hence, as Rhea highlights, similar collusive behaviour has been observed in other markets such as the US and the UK. The author concludes by putting forward five policies which could be employed to mitigate the negative effects of market-based price ceilings and protect consumers.

I wish you pleasant reading and continued good health,

José Rivas
Editor
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