Editorial

Dear Reader,

It is my pleasure to welcome you to the fourth 2020 issue of World Competition Law and Economics Review. The last issue of this year is full of high-quality articles, which will guide you through the analysis of topical competition law issues over three different continents.

The first article, *Self-Preferencing: Yet Anothet Epithet in Need of Limiting Principles*, authored by Pablo Ibáñez Colomo, reflects on the meaning and the scope of the self-preferencing label. In the author's view, self-preferencing can be regarded as being in itself an expression of competition on the merits. Moreover, this label does not reflect a sound category both from a legal and economic point of view, as it can be applied to very different behaviours. The author argues that the use of self-preferencing as a category does require an analysis of some issues of principle in the first place. In particular, what could be the consequences of abandoning the indispensability filter to limit proactive interventions and the exigence to maintain a robust assessment of effects.

In the second article, entitled *EU Merger Control after CK Telecoms UK Investments v. Commission*, Giorgio Monti analyses the implications that the recent General Court's CK Telecoms judgment will have on the future of the EU merger control. According to the author, the relevance of this judgment is two-fold as it sheds light on both substantial and procedural matters. On the substantial side, the Court explains for the first time how to apply the substantial impediment of effective competition (SIEC) test to mergers which do not create or strengthen a dominant position. In particular, the author argues that the points of discussion raised by the judgment may eventually require a rewriting of the Horizontal Merger Guidelines. On the procedural side, the Court sets out the standard of proof in merger control. The judgment can therefore be seen, in the author's view, as an occasion for the EU legislator to consider the suitability of assessing mergers based on even more complex economic analysis.

With the third article, we keep our eyes on mergers – but we move to the United States. The author, Truong Trong Hieu, attempts to respond to the question enshrined in the title of the article *Who is the Dominant Actor under the US Merger Regulation*? In particular, the author argues that, while the Federal Trade Commission (FTC) could have traditionally been regarded as being the cornerstone of US antitrust law practical enforcement, the Antitrust Division of the

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Department of Justice (DoJ) appears to contribute far more policies on the specific regulation of mergers. Therefore, based on analysis of 'inter –agency competition', the author aims to proof that the DOJ represents to some extent the dominant actor under the US merger control framework.

The fourth article, *The Regulation of Injunctive Relief on Standard Essential Patents within China's Anti-Monopoly Law*, brings us to the Asian continent. The author, Yuting Wang, analyses the interface between Standard Essential Patents (SEPs) and competition law and, more specifically, whether injunctions should be granted to the FRAND-encumbered SEP owners or the circumstances in which the seeking of injunctions by SEP owners will be regarded as violating competition law. In this regard, after having compared the situation in the EU and in the US, the author stresses that this topic deserves a response under the current China's legal framework and proposes that a basic regulating approach should be adopted with the first objective to treat the seeking of injunctions by FRAND-encumbered SEP owners as an independent anti-competitive practice prohibited by the Anti-monopoly Law. Subsequently, an analysis framework should be established to consider the circumstances in which and the extent to which such seeking of injunctions should be limited from a competition enforcement point of view.

In the fifth and last article, *Competition and Trade: The Rise of Competition Law in Trade Agreements and its Implications in the World Trading Systems*, Yo Sop Choi and Andreas Heinemann reflect on the interactions between competition and trade law. In particular, the authors stress that, with the world getting more and more integrated, globalized and digitized, the competition law framework needs in turn to be internationalized. Since an agreement on such a legislative framework is currently not possible at the global level, the authors investigate bilateral and regional trade agreements to understand to which extent these agreements may support an international convergence of competition law. In conclusion, the authors present the idea of localized harmonization, to be built up on the closer affinity of bilateral and regional partners.

I wish you a pleasant reading.

José Rivas
Editor
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