

## Editorial foreword

Almost 60 years ago, on 26 June 1963, President John F. Kennedy gave the following speech at St. Paul's Church in Frankfurt:

Goethe tells us in his greatest poem that Faust lost the liberty of his soul when he said to the passing moment: "Stay, thou art so fair." And our liberty, too, is endangered if we pause for the passing moment, if we rest on our achievements, if we resist the pace of progress. For time and the world do not stand still. Change is the law of life. And those who look only to the past or the present are certain to miss the future.

Likewise, for antitrust law to keep serving the purposes for which it was adopted – one being the protection of *liberty* against anticompetitive practices – it cannot ignore the challenges of the present and those of the foreseeable future. In this vein, this issue of the *Yearbook of Antitrust and Regulatory Studies*, 2022 15(26), features a number of contributions dealing with challenges confronting competition and regulation at present and future.

In doing so, the issue takes part in the debate on the interface between competition law and sectoral regulation in Europe – a debate that has become fashionable once again in view of the challenges posed by the application of competition law notions and remedies to digital markets. More specifically, the issue contributes to the advancement of the relevant doctrinal debate, particularly with regard to the specific complexities tackled by competition law in the digital realm and the coexistence of competition law enforcement with *ex ante* regulatory tools.

Jeanne Mouton, from the University of Nice Côte d'Azur, leads on with an article on digital economy and its threats to private competition law enforcement. In order to address those threats, the author explores the idea extending the presumption of harm also to abuse of dominance in digital markets, as well as making private parties aware of cease-and-desist injunctions or filing for private enforcement remedies.

Isabella Lorenzoni, from the University of Luxembourg, follows suit with a contribution on how Artificial Intelligence (AI) tools may assist antitrust authorities in curbing anticompetitive algorithmic practices, notably by reverse

engineering the companies' algorithms in order to better understand their impact on market performance. The Author also examines the potential challenges associated with the introduction of AI enforcement tools and argues that fundamental rights, notably the right of defense and the right to a reasoned decision, should not be undermined by the introduction of innovative enforcement tools.

In contrast, Anzhelika Gerasymenko and Nataliia Mazaraki, from the State Trade and Economic University of Kyiv, authored a paper describing how antitrust in Ukraine has been so far unable to address the challenges arising from on-line platforms. They argue that the existing enforcement tools are ineffective, and the current legal framework is incapable of dealing with on-line giants. Thus, the Authors call for a recalibration of Ukraine's approach to the regulation of digital markets and examine a number of options to that end.

Tabea Bauermeister, from the University of Hamburg, provides a critical assessment of the German's regulatory initiative on digital platforms, the so-called 'Lex GAFA', set out in Section 19a of the German Competition Act. The Author analyzes that provision, compares it to Article 102 TFEU, and contrasts it with the EU Digital Markets Act (DMA). On that basis, the Author concludes that the German initiative was neither a 'lighthouse project' nor a 'superfluous solo run', but 'a useful bridge for the time gap before the DMA comes into force'.

The DMA is the subject of another article featured in this issue, by Claudia Massa, from the University of Naples Federico II. Unlike other antitrust scholars, the Author does not seek to engage with the practical aspects of the DMA but wishes to investigate its theoretical implications against the background of EU Economic Constitutionalism. To this end, the Author examines the DMA's legal context, its underlying values, its objectives, and its conceptual underpinnings.

The following paper was written by three Hungarian Authors: Judit Firniksz and Borbála Tünde Dömötörfy, from Pázmány Péter Catholic University, and Péter Mezei, partner at Baker & McKenzie (Budapest). In the wake of the lessons arising from the *Google Shopping* case, the Authors focus on 'enabling and discovery tools', which they examine from the perspective of antitrust, consumer protection and sector regulation. They also discuss the role that national competition authorities and advocacy can play in the promotion of a competitive environment.

This issue also features a case comment by Kamil Dobosz, from the Cracow University of Economics, to the European Court of Justice's recent ruling in *Nordzucker*, dealing with the thorny issue of *ne bis in idem* in the context of competition law, notably when antitrust authorities from different EU Member States are involved.

Turning to book reviews, Baskaran Balasingham, from Utrecht University, reviewed the book by YARS' Editor-in-Chief Maciej Bernatt "Populism and Antitrust", published by Cambridge University Press in 2022. The commentator highlights that this monograph is the first one to investigate how populism affects the institutional characteristics and practices of competition authorities and courts, notably in Hungary and Poland, but also in other countries such as Greece, India, South Africa, and Venezuela.

The conference reports section in this issue features two contributions. One, by Eduardo Molan Gaban and Vinicius Klein, from the Brazilian Institute of Competition and Innovation, concerns the international conference organized by that Institute from 9 to 11 November 2021. That conference consisted of a series of webinars covering a range of topics related to competition law, innovation and data, rights, and law enforcement, with a Brazilian and global perspective.

Finally, Walter Bruno, from the University of Luxembourg, reported on the Memorial Conference devoted to the Neapolitan Jurist Giuseppe Tesauro, held at the University of Naples Federico II and at the Alfredo De Marsico Law Library on 1 and 2 July 2022. Tesauro held various positions during his life, from Professor of European Union Law to President of the Italian Constitutional Court, from Advocate General at the European Court of Justice to President of the Italian Competition Authority, and in the latter capacity he played a major role in the early days of International Competition Network, whose first annual conference was held in Naples in September 2002.

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