

Editor's note

Dear readers,

As usual, our first edition of the year features contributions on topical antitrust issues from all four corners of the world.

In the first article, titled *Not the dawn of a new age: the EU Commission's competition policy review*, Dr Ulrich Soltész examines the European Commission's policy paper on antitrust law, which was announced as 'a review of competition policy tools with unprecedented scope and ambition'. He asks whether it will assist the competition law community, and the general public, to keep up with all the ongoing European antitrust reform workstreams, which include merger control and state aid law, the Digital Markets Act and the fight against third-country subsidies.

The second article, by Sébastien Evrard, Hayley Smith and Katherine Tomsett and titled *Hong Kong's competition ordinance: successes and challenges six years on*, considers the main achievements in the first six years of Hong Kong's Competition Ordinance as well as some key policy developments. Looking ahead, they consider what we can expect to see from the Hong Kong Competition Commission.

Then, as usual in our first edition of the year, we feature an interview conducted at the IBA Antitrust Section's 25th Annual Conference, held in beautiful Florence in September 2021. Michael Reynolds, IBA Honorary Life Member of Council and Association, a former President of the International Bar Association and past Chair of the IBA Antitrust Section, talked to Professor Jacques Steenberg, the then President of the Belgian Competition Authority, about the challenges he faced at the agency, how it has dealt with the pandemic, as well as its new powers to deal with the abuse of economic dependency.

Next, former Judge President of the South African Competition Appeal Court, Dennis Davis, examines a recent decision of South Africa's apex court, the Constitutional Court, on a proposed merger involving a prominent private South African hospital group. He acknowledges the Court's commendable application of the right to access to healthcare enshrined in section 27 of the Constitution, and notes that this decision

is likely to influence the interpretation of the Competition Act in future litigation. However, he notes two fundamental problems with the majority judgment, and cautions that this decision may encourage the South African Competition Commission to take the view in future that if there is some constitutional basis for justifying a complaint against a firm, there will be almost no need to rely on a cause of action predicated on the wording of the Competition Act.

The next article by Andrew Ward, Cristina Vila and Alexandre Picón Franco titled *The Spanish Courts and the golden thread: the return of the presumption of innocence?* is also focused on judicial review and the application of constitutional rights in the competition law. It examines a series of judgments issued in 2021, in which decisions of the Spanish Commission for Markets and Competition (Comisión Nacional de los Mercados y la Competencia or CNMC) have been annulled following a thorough review of the evidence, in order to give effect to the right to the presumption of innocence in Article 24 of Spain's Constitution. They note that the detailed, rigorous review of the CNMC's evidence and reasoning by the court in its recent rulings is a welcome development for parties under investigation and will likely be relied on increasingly in future appeals.

Our penultimate contribution, titled *Remedy commitments in Brazil: negotiation, procedure and recent trends* by Guilherme Favaro Ribas and Rodrigo Alves dos Santos, examines two decisions of the Brazilian competition agency, the Administrative Council for Economic Defense ('CADE'), in which it held that parties to a merger had violated agreements on remedy commitments negotiated with CADE. They conclude that although these agreements remain relatively rare in Brazil, these cases signal that CADE takes these agreements very seriously and is willing to reject a transaction if the parties fail to implement the agreed remedies.

Finally, in a contribution titled *UK collective proceedings in 2022 and beyond*, Jake Minards-Tonge, Samantha Haigh and Paul Chaplin note that the seminal judgment of the Supreme Court in *Walter Merricks CBE v MasterCard Inc and others* which has put the collective proceedings regime in England and Wales firmly back on track, with a further set of collective proceedings certified in *Mark McLaren Class Representative Limited v MOL (Europe Africa) Ltd and others* following on from the European Commission's decision in February 2018. They conclude that the Competition Appeal Tribunal will have to grapple with a number of novel and challenging procedural and substantive issues.

We hope you enjoy these thought provoking articles from around the globe, and extend our sincere thanks to all who contributed to this first edition of 2022.

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