Dear Readers,

Our second issue in 2019 contains mostly articles by economists. Economists from the Commission, OECD, academia and from economic consultancies as well as two lawyers look at one of the big questions of antitrust enforcement today, namely whether current interpretations of antitrust law (or even the laws regulating competition and monopolistic practices as they stand to day) are still suited to the architecture of the modern economy in general, and of BigTech companies in particular. After all, economists have observed significant increases in concentration, profits and markups and decreases in the labor share as well as in new entry in many industries in the US and in Europe for decades. Staying away from simple (and often partisan) arguments it appears far from clear what has caused these developments and what, if anything, is to be done about them.

As you will see, our authors also have different views on these questions. Several of the articles critically examine alternative explanations for what is happening in different industries today. Reading about those it becomes clear that “two lawyers, three legal opinions” could have been written about economists also.

While views differ when it comes to the ways in which merger control in the EU could be perfected, several authors seem to suggest that it may be appropriate to apply stricter standards in merger review when it affects competition “for a market” than when the merger concerns competition “in a market.” Also at least some authors consider that restoring contestability in data-driven markets may require enhancing the tools mandating access.

That said, the majority of contributors seems to consider that it may not be necessary – or even helpful – to change existing competition rules. Indeed some fear that certain of the changes proposed to address the perceived issues risk disrupting competition enforcement which they consider a well-working system. Also, several authors refer to laws and regulations outside the area of competition law as more appropriate tools for addressing issues such as inequality, loss of innovation or job displacement.

I am sure you will find the symposium interesting and thought provoking.

The synopsis in this issued deals with State aid. The authors look at important developments in policy and case law at the Commission and at the ECJ’s jurisprudence over the last year. Clearly the new State aid architecture set up under the Commission’s State aid Modernization initiative has sped up the implementation of projects by Member States. When it comes to the Courts, 2018 brought further clarifications on the various constituent elements for State aid.

Finally, we also have a short “hot topic” article about a recent judgment, Belgium v. Commission, that clarifies the position of lenders in situations where State aid was granted unlawfully. As you will see the judgment is quite lender-friendly.

Enjoy reading this issue of CLPD and let me know if you would like to respond to one of the articles.

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