

# Kluwer Competition Law Blog

## World Competition Law and Economics Review, volume 42, issue 2, 2019

Jose Rivas (Bird and Bird, Belgium) · Tuesday, June 4th, 2019

We are happy to inform you that the latest issue of the journal is now available and includes the following contributions:

### **Wouter P.J. Wils, *Independence of Competition Authorities: The Example of the EU and Its Member States***

At the end of 2018, the European Parliament and Council adopted Directive (EU) 2019/1, often referred to as the ‘ECN+ Directive’, which, among other things, contains provisions ensuring the independence of the competition authorities of the EU Member States (national competition authorities or NCAs), which are, together with the European Commission, responsible for the enforcement of the EU antitrust rules laid down in Articles 101 and 102 TFEU. In early 2019, the European Commission visibly showed its own independence by prohibiting Siemens’ takeover of Alstom’s rail transport business, a proposed merger publicly backed by the German and French governments. This article gives an overview of the independence guarantees in EU law and discusses more in general the notion of independence of competition authorities and its rationale.

### **Annalies Outhuijse, *Effective Public Enforcement of Cartels: Rates of Challenged and Annulled Cartel Fines in Ten European Member States***

A substantial number of cartels in the European Union are detected and enforced by the national competition authorities (NCAs). The effectiveness of the domestic enforcement has been subject to extensive review and debates, which have recently culminated and resulted in the proposal for the ECN+ Directive. The current discussions are mostly limited to the number of enforcement activities, the quantity of imposed fines and their height and deterrence. An empirical assessment of the court procedures in which those fines were challenged and the consequences thereof received minimal attention, despite its importance. The Dutch example, more in particular the difference between the fines as issued by the NCA and those remaining after court review, shows that the mere reference to the number of cases sanctioned paints a distorted picture and an analysis of the rates of litigation and successful litigation is indispensable for veraciously assessing the NCA’s effectiveness. In light thereof, this article analyses the frequency of (successful) litigation

and the reasons for annulments in cases of cartel fines in ten Member States (Belgium, Bulgaria, Croatia, Finland, France, Germany, Italy, the Netherlands, Sweden and the United Kingdom). Public policy makers, such as the European Commission, could benefit from this data gathered in order to analyse the effectiveness of the NCAs. Moreover, the analysis is valuable for future research, since the depiction of the trends and differences can form the basis for further research to explain the percentages, trends and developments – as the author is doing for the Netherlands.

### ***Alan McCarthy, Competition Damages Claims in Ireland: The Damages Directive Improves the Irish System Though Obstacles Remain***

The Damages Directive and the implementing Irish legislation apply to infringements of EU (and Irish) competition law that occurred on or after 27 December 2016. Irish litigation rules were already well developed but the Directive will augment and add to the Irish rules on disclosure, the effect of national decisions on competition law, limitation periods, joint and several liability, quantification of harm, passing-on of overcharges and consensual dispute resolution. However, obstacles remain to bringing competition damages claims in Ireland. In particular, the absence of any class action system and litigation funding coupled with the lack of any real history of such claims will limit the ability to bring such actions in Ireland.

### ***Slavica Jokovi?, Bid Rigging Analysis and Relevant Provisions in the Serbian Legislation***

The article reviews the main characteristics of bid rigging in public procurement regarding some forms, objectives and consequences, as well as various features of the industry, products and services that tend to facilitate collusion in public tenders. This article also describes the most common indicators of bid rigging in order to detect and prevent anticompetitive collusion.

For the purpose of this analysis, the common definition of bid rigging and some practical examples are included in order to elaborate effective measures for its detection and prevention.

Taking into consideration that certain public procurement rules may support bid rigging by lessening competition, this article gives an overview of the Law on Public Procurement in Serbia. It outlines relevant provisions that should boost competition and stimulate participation of potential bidders in the public procurement process. Some incentives concerning participation of small and medium enterprises in public procurement are examined, as well as certain new provisions aimed at increasing transparency, promoting integrity and preventing corruption in public procurement.

This article also emphasizes the role of the Commission for Protection of Competition in fighting against bid rigging in public procurement. It includes examination based on legislative framework and empirical data of the Commission for Protection of Competition, that performs the activities in accordance with the Law on Protection of Competition. Some examples of bid rigging cases in Serbia are examined, as well.

Finally, concluding remarks and recommendations are included.

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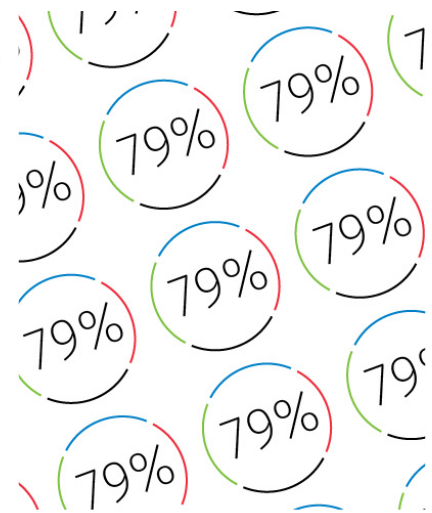
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