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Jose Rivas (Bird and Bird, Belgium) · Friday, September 6th, 2019

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

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Wouter Wils & Henry Abbott, ***Access to the File in Competition Proceedings Before the European Commission***

This article deals with access to the file in competition proceedings conducted by the European Commission for the enforcement of Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) (antitrust proceedings) and merger control proceedings under the EU Merger Regulation.

Barbora Jedli?ková, ***Digital Polyopoly***

The digital economy has significantly changed many aspects of our lives, including the way firms do business and compete with each other. In addition to the benefits the digital world has introduced, it has also brought challenges for competition law, including new ways to restrict competition, with computing algorithms representing one of the most prominent examples. Algorithms can lead to, facilitate and maintain anticompetitive collusion, and one of the most pressing tests for competition law and its enforcement in the digital world is algorithmic parallel conduct. The terminology introduced for this conduct in this article is ‘digital polyopoly’. Digital polyopolies encompass conditions similar to oligopolies, in particular, interdependency and transparency. However, unlike parallel conduct arising from oligopolies, digital polyopolies are not limited by their number of competitors. This new phenomenon requires fitted interpretation and rethinking of existing competition-law and economic concepts. What digital polyopolies are, how they differ from pre-digital era concepts and how competition law should tackle them (with a particular emphasis on the European Union competition law’s concept of ‘concerted practice’), are questions explored in this article.

Emmanuel Combe & Constance Monnier-Schlumberger, ***Public Opinion on Cartels and Competition Policy in France: Analysis and Implications***

In this article, we analyse the foundations, methodology, results and implications of a survey conducted by the French Competition Authority on the perception of cartels and competition policy by general public in France. The results show that French people consider these practices to be harmful and are in favour of dissuasive sanctions. In addition, while not in favour of imposing a prison sentence on individuals, public opinion favours the implementation of criminal sanctions, in particular in the form of disqualification. The results also suggest that cartels are considered to be as serious or more serious breach of the law than other types of fraud. Moreover, French people agree to denounce this practice, but on ethical grounds more than in exchange for a monetary reward. Finally, the French Competition Authority enjoys a certain notoriety, unlike the cartel cases it deals with and despite the amount of sanctions imposed. These empirical results can help to better guide competition policy and enhance its effectiveness.

Giuseppe Colangelo & Mariateresa Maggiolino, ***Antitrust Über Alles. Whither Competition Law after Facebook?***

After a three-year investigation the German Competition Authority (GCA) found Facebook's data policy to be abusive. In its assessment the authority stated that, by making the use of its social-networking service conditional upon users granting extensive permission to collect and process their personal data, Facebook unlawfully exploited its dominant position in the German market for social networks. Hence, the GCA has found a way – uniquely German-specific – to limit Facebook's ability to gather, combine, and analyse data. In order to achieve this, it has acted as a self-appointed enforcer of data protection rules, establishing a violation previously undetected by any data protection authority and placing a 'special privacy responsibility' on dominant firms.

Paolo Siciliani, ***Tackling Anticompetitive Parallel Conduct under Personalized Pricing***

This article investigates under what circumstances parallel conduct under personalized pricing is anticompetitive and whether it is within the scope of competition law, depending on which dimension of consumer preference heterogeneity is targeted by rival firms. Whilst enforcement against the use of personalized pricing based on consumers willingness to pay, and the lack thereof with respect to brand preferences, is problematic due to the inherent ambiguity at the inferential phase; the exploitative use of personalized pricing based on heterogeneous levels of search costs might be beyond the reach of competition because its sustainability is not underpinned by a collusive agreement. In contrast, evidence that firms are obstructing consumers use of third-party price aggregators may provide an unambiguous signal that they are colluding to obfuscate prices.

Peter Georg Picht & Gaspare Tazio Loderer, ***Framing Algorithms: Competition Law and (Other) Regulatory Tools***

As other fields of law, competition law is put to the test by new technologies in general and algorithmic market activity in particular. This article takes a holistic approach by looking at areas of law, namely financial regulation and data protection, which have already put in place rules and procedures to deal with issues arising from algorithms. Before making the bridge and assessing whether the application of regulatory tools from these areas might be fruitful for competition law as well, the article discusses some recent competition cases involving algorithmic market activity. It concludes with policy recommendations.

Tjarda van der Vijver*, Law & Ordo: Exploring What Lessons Ordoliberalism Holds for African Competition Law Regimes*

For many years, it was believed that trade liberalization would address the lack of competition that many African economies suffer from. Recent insights seem to have falsified that belief. Many of those economies still suffer from a lack of competition and a prevalence of monopoly behaviour, often (enabled) by the State. So if trade liberalization did not do the trick, what other recipes are available? This article focuses on the added value that more rigorous competition law enforcement could bring, and seeks to derive insights from Ordoliberalism. Although often overlooked in recent years, it is submitted that the comprehensive conceptual framework of Ordoliberalism could provide tangible suggestions to strengthen competition in African economies. It provides a theoretical basis for introducing vigorous competition law enforcement, putting the competition rules in the centre of economic policy-making. It affords great weight to the consistency of economic policies and strongly cautions against any undue government influence, both through the enactment an 'economic constitution'. It also provides scope provides analytical tools how to deal with the interaction between market power and vested interests. This article concludes that Ordoliberalism does in fact have various insights that could be helpful for spurring competition in Africa.

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