

Letter From the Editor

David S. Evans



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From the Editor

This Autumn 2009 issue marks several anniversaries; it is the tenth volume of CPI, the end of our fifth year, and the last issue we will publish in the first decade of the 21st century. Since our first issue, we've published 134 articles from many of the leading thinkers, doers, and judges of antitrust from around the world. As the global competition policy community has grown, so has this publication. Over the course of the year the CPI website attracts visitors from more than 150 countries. We extend our thanks to this vibrant community.

Our tenth issue follows a very difficult year for the economies in many countries. Looking back, the September 2007 run on the Northern Rock Bank in Britain was a warning shot of what was to come. After an initial injection of liquidity it was soon nationalized. A year later Lehman Brothers collapsed and a global financial meltdown appeared imminent. Governments came to the rescue of many financial institutions as well as other industries, such as automobiles, that were subject to collateral damage as lending and spending cratered. Forced mergers and bailouts occurred with seeming abandon. Financial regulators talked much about firms being too big to fail but less about whether firms were too big and why.

The first collection of articles in this issue deals with several antitrust aspects of the financial crisis. Philip Lowe kicks off the discussion with an article on DG Competition's views. Bruce Lyons argues that it makes sense to bail out banks under the circumstances but that one should be circumspect about helping other sectors. John Kwoka then argues in favor of the help that the U.S. government gave to its beleaguered domestic automobile industry. Lorenzo Coppi and Jenny Haydoc review the European Commission's policies on state aid and the financial crisis. The symposium concludes with an article by Ken Heyer and Sheldon Kimmel who argue that there is no reason for competition authorities to relax their examination of failing firm defenses given the crisis.

We then turn to the controversial issue of reverse payment settlements—cases in which branded pharmaceutical companies sue generic entrants for patent infringement and settle the litigation by paying the generic entrant some money in return for delaying entry. The U.S. Federal Trade Commission has challenged these types of settlements vigorously but the courts have not seen things the

same way. William Rooney and Elai Katz provide an overview, Michael Kades describes the problem with the *per se* legal treatment of some reverse payment settlements, and Anne Layne Farrar argues for a moderate approach. The European competition authorities and courts have not yet addressed the issue although it has been raised in the pharmaceutical sector inquiry. Marc van der Woude explains the approach he believes is required under EU law.

The past several years have seen considerable debate over single-firm conduct. An important issue is whether the single-monopoly profit theorem—which is closely identified with the Chicago School—convincingly demonstrates that firms usually lack the incentives to use tying, bundling, and other devices for purposes that reduce consumer welfare. In a widely circulating and influential working paper, soon to be published in the *Harvard Law Review*, Einer Elhauge provocatively asserts the theorem is dead and argues that many forms of tying and bundling should be considered highly suspect. CPI recruited four commentators who we thought would have diverse views on Elhauge’s paper, and indeed they did. The commentary begins with Harry First who provides a supportive summary of Elhauge’s argument, is followed by Daniel Crane and Joshua Wright who dispute Elhauge’s conclusions on bundled discounts, continues with Barry Nalebuff who clarifies issues surrounding the welfare-effects of price discrimination (which is key to Elhauge’s analysis) and agrees and disagrees with various aspects of Elhauge’s piece, and concludes with Paul Seabright who argues that the single-monopoly profit theorem may have some life left in it.

Continuing our anniversary theme, Thomas Kauper provides his perspective on the government antitrust case that led to the breakup of the American Telephone & Telegraph Company 25 years ago. Kauper was the Assistant Attorney General for Antitrust who brought the case against AT&T in 1974.

This issue concludes with a classic piece by Arnold Harberger on the social cost of monopoly. As Hill Wellford, who introduces the article explains, Harberger’s piece was revolutionary both because it documented that the social costs of monopoly were surprisingly small and because it pioneered the use of empirical methods in antitrust.

The classic has been a feature of CPI from the beginning. We believe that there is a tendency to forget some of the lessons from leading thinkers on antitrust over the years and that it is helpful to go back and read originals or at least be reminded of them. The first classic we reprinted was Oliver Williamson’s

Economies as an Antitrust Defense: The Welfare Tradeoffs. We extend our congratulations to Professor Williamson who was awarded the 2009 Nobel Prize in Economics for work that has had a profound influence on our theoretical and empirical understanding of firm governance, transactions costs, and contractual relationships.

On behalf of CPI’s readers and its editorial team, I am delighted to extend my thanks to all the contributors of this issue.

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