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From the Editor

David Evans



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Over 90 percent of antitrust litigation in the United States is filed by private plaintiffs, sometimes as class actions, and always seeking treble damages. As Judge Douglas Ginsburg and Leah Brannon have observed in these pages, such cases have been the source of most of the fodder that the courts have used to develop the precedents that constitute antitrust U.S. law. The situation has been far different in the European Community where the rights of private action have been limited, class actions largely unknown, and multiple damages uncommon. In the last few years several of the EC countries have embraced or considered adopting some aspects of private rights of action for violations of the competition laws, especially for the recovery of damages. Most recently the European Commission issued its White Paper on antitrust damage actions. The move in the EC towards private litigation for violation of the antitrust laws, and the issues and challenges this presents, begins the Autumn 2008 issue of *CPI*. The symposium consists of articles by authors from several different parts of the competition policy community: Christopher Cook, Vincent Smith, Assimakis Komninos, and Renato Nazzini & Ali Nikpay.

Thus far, private actions in Europe have mainly followed from the findings of a competition authority that a company participated in a cartel. It is thus fitting that we turn to two articles concerning collusion. The first, by Malcolm Coate, reports the result of an empirical study of the role of collusion in the FTC's merger reviews. The second, by Stephen Davies & Matthew Olczak, considers the conditions for overt and tacit collusion and uses both empirical and experimental evidence to address whether one theory fits all.

The issue concludes with a collection of papers that, roughly speaking, debate how the relative roles of static and dynamic competition in the economy affect antitrust rules for firms with significant market power. The colloquy begins with a paper by Keith Hylton and me which examines the implication of the fact that the antitrust laws generally do not condemn firms for having or acquiring significant market power, or enjoying the fruits of that power, as such. We conclude that the antitrust laws, like the intellectual property laws, are based on a tradeoff between static and dynamic monopoly power. Richard Schmalensee, the Chairman of our Editorial Board, has solicited comments from Jonathan Baker, Christian Ewald, Richard Gilbert, and Herbert Hovenkamp—all of whom disagree with the certain aspects of the article—

sometimes quite strongly. We are planning to continue this debate in the pages of *GCP—The Online Magazine* early next year. This grouping is followed by an article by Dennis Carlton and Ken Heyer which examines antitrust policy towards monopolies from a different perspective. They distinguish between the extension of monopoly power, which should be the subject of antitrust prohibitions, and the extraction of rents from a monopoly, which they argue should not be, in part because of its role in stimulating innovation.

The previous papers mention “Schumpeter” over 40 times. It is therefore fitting that the economist who coined the second most popular two words in economics should be the subject of our classic writings on antitrust this month. Thomas McCraw, the author of *Prophet of Innovation: Joseph Schumpeter and Creative Destruction*, has written an essay reviewing the Viennese Harvard professor’s musings regarding antitrust. It contains excerpts from the small portions of Schumpeter’s writings that actually dealt with antitrust as well as from a classic review of Schumpeter’s views from a piece written a half-century ago by Professor Edward Mason.

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

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