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From the Editor

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Antitrust authorities have pursued cartels with steadily increasing vigor over the last three decades. Guided in significant part by economics and game theory, authorities have both ratcheted up fines to discourage forming cartels and implemented leniency programs to encourage cartel members to rat on their partners in crime. Yet, despite massive fines and hefty civil damages in some jurisdictions such as the United States, business people still conspire against the public to raise prices. Even tossing the occasional price-fixer in jail has not dissuaded executives from entering into agreements with their rivals over prices. Of course, even an efficient criminal justice system does not eliminate all wrongdoing. Nevertheless, there is a widespread perception that antitrust is not doing enough to discourage price-fixing.

That, at least, is the thrust of most of the papers in this Autumn 2010 issue, which has cartels as its primary focus. Douglas Ginsburg & Joshua Wright kick off the discussion with a provocative article that argues for increasing punishment to the business people who participate in these price-fixing schemes. They suggest, among other penalties, preventing these people from working in their profession—debarment. More controversially, they advocate less emphasis on corporate fines which, they say, are felt mainly by innocent consumers and shareholders. Competition authority heads Pieter Kalbfleisch and Mariana Tavares react to these suggestions as do economist Joseph Harrington and lawyer Donald Klawiter. There is remarkable agreement, although each disagrees with elements of what Ginsburg & Wright propose.

Continuing the cartel theme we move to four papers by economists on various aspects of cartel enforcement. John Connor shares his extensive historical research that documents the surprising frequency of repeat offenders among firms that have participated in cartels. Rosa Abrantes-Metz & Patrick Bajari examine how various statistical tests, “screens,” can be used to either help detect that prices have been fixed or provide some comfort they haven’t been. Margaret Levenstein & Valerie Suslow consider the “inability-to-pay” defense that is being increasingly invoked by companies caught for price-fixing in the wake of the recent financial crisis. The series ends with a survey by Elisa Mariscal & Carlos Mena-Labarthe of leniency programs in the quickly developing Latin American competition policy arena.

The next two pieces offer an interlude from the cartel theme and both turn to China, one of the most important—and confusing—areas that competition policy practitioners need to grapple with. Michael Jacobs & Xinzhu Zhang compare the U.S. and EU laws concerning compulsory licensing of intellectual property by dominant firms and examine what, if any, implications these very different approaches have for China and companies looking to do business there. For our case study this issue, Ian McEwin & Corinne Chew examine a Chinese Court decision on an abuse of dominance claim brought against Chinese search-engine giant Baidu. The case is significant because it involves a decision in the developing private action case law in China and entails a court’s attempt to analyze market definition and market power in a complex business. Our Spring 2011 issue will return to this case as part of our consideration of antitrust for the digital economy.

We end with a classic that ties nicely to the cartel theme: George Stigler’s enormously influential *A Theory of Oligopoly*. While this article pre-dated the game-theoretic treatment of this subject, it laid significant groundwork for how modern economics analyzes the interaction of a small number of firms. Much of the analytic framework followed by antitrust for cartels and tacit collusion is found in this 46-year old article. Dennis Carlton & Sam Peltzman explain the importance of Stigler’s contribution to modern economics and, in particular, its influential role in merger analysis.

On behalf of CPI’s readers and its editorial team, we extend our thanks to this excellent set of contributors for an insightful collection of articles.

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