



*Letter from
the Editor*

The first competition law was passed in 1889 in Canada, followed shortly by the United States in 1890. Subsequent expansion of competition regimes was slow—it wasn't until 1957 that the European Union established an antitrust policy with the Treaty of Rome. There followed a steady growth—39 countries had established competition regimes as of 1989—but then antitrust exploded: By the end of 2004, 102 countries—over 85 percent of the world's population—had competition laws on their books, and about 120 do today.

But despite this proliferation, there's no consensus on the optimal structure for an authority. While most competition laws can trace their inspiration back to the United States (common law system) or the European Union (civil law system), laws still widely vary, as do the structure of the authorities created to enforce them, reflecting diverse cultural, legal, and political regimes. And while most authorities have an institutional interest in preserving and promoting competition, their ability and inclination to do so have also been challenged by political events—recently, in particular, the financial crisis that began in October 2008.

While differences across countries probably dictate that there is no one “best” design for a national competition authority, we can still hope for some general principles for those countries figuring out how to come up with the best design for their circumstances. And with more than 100 hundred countries, from undeveloped to highly developed, having competition laws there must be something every country can learn from others.

With this as background, this issue presents a lively discussion regarding effective institutional designs for competition regimes.

We're starting in Great Britain, which recently undertook a complete redesign of their competition structure, requiring substantial retrospection and analysis. David Currie, Alex Chisholm, & Tim Jarvis—the three senior executives of the new Competition and Markets Authority—lead off with a look at how the new agency's design and governance structures were created. Andrea Coscelli & Antonia Horrocks, who manage mergers and acquisitions for the CMA, describe specifically how the new markets investigations regime will be working.

Presenting an external viewpoint, Robert O'Donoghue & Tim Johnston highlight the importance of the rule of law in this process, explaining how the concepts of natural justice and fairness need to be reflected in an authority's design and operations. Jackie Holland & Aurora Luoma then focus on the topic of institutional design and decision-making within sectoral regulators in relation to competition cases.

Next, we look at a diverse range of specific institutional designs and dig deep to find out not only why they're designed the way they are, but whether they present an effective structure. Roderick Meiklejohn presents an overview through a comprehensive comparison of competition authorities, with the goal of

determining the factors that make them most effective.

Starting from west to east (as viewed on a Mercator map), we then look at specific countries. Juan Delgado & Elisa Mariscal analyze and compare the recent restructuring of the Mexican and Spanish authorities, focusing on the merits of a multi-purpose vs. single-purpose structure. Michael McFalls presents how political thought and expression in the United States have produced a complicated institutional design and asks if it needs to be simplified. Ana Paula Martinez & Mariana Tavares de Araujo consider lessons learned from Brazil's recent restructuring; in particular, Brazil's efforts to enhance its convergence to international best practices.

We move on to India, where Cyril Shroff & Nisha Kaur Uberoi investigate how, in the wake of the liberalization and privatization of India's market economy, it became increasingly important for India to shift its focus from curbing monopolies to developing a comprehensive competition policy, and report on India's progress in doing so. And, looking at another mega-economy, Adrian Emch analyzes the challenges presented by China's option for a three-headed structure in its competition regime.

To bring this section to a close, we look at two of the newest authorities. The 1997 Asian Financial Crisis was the impetus for the introduction of competition law in both Indonesia and Thailand, required by external agencies as a condition of financial aid. Further, Indonesian and Thai economies were shaped by numerous common and historical and political features. Yet, as Ian McEwin explains, Thailand has created an ineffectual regime, while Indonesia seems to be on the road to success. The reasons are eye opening.

We conclude our issue with three special features. David S. Evans, Vanessa Yanhua Zhang, & Xinzhu Zhang explore how to create an economic framework for applying an unfair pricing law in China. Consistent with the theme of this issue they examine how the experience of other jurisdictions, combined with the particularities of the Chinese Anti Monopoly Law and the history of market liberalization in China, can help guide the development of approaches to unfair pricing under the AML.

Our highlighted case this issue also concerns the question of innovation. Peter J. Levitas & Kelly Schoolmeester look at the recent *Bazaarvoice* case, where a triumphant U.S. Department of Justice effectively rebutted jurisprudential attacks regarding the enforcement of antitrust in a high-tech market and, further, overcame the lack of both demonstrable price effects and very few complaining customers to obtain a robust remedy for a consummated transaction.

And, finally, returning to our main theme our classic for this issue is Philip Lowe's 2008 article: *The Design of Competition Policy Institutions for the 21st Century—The Experience of the European Commission and DG Competition*. His message that competition authorities institutions must "constantly assess and re-assess their mission, objectives, structures, processes and performance" is as true today as it was then—and the driving force behind the changes we've highlighted in this issue.

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