Editorial

The Stars Look Very Different Today!

... observed David Bowie from his odd spaceship, in one of his most famous songs, and the same is true when we glance at the world of competition right now. In my previous editorial, only three months ago, I was still wondering about the size and shape of the upcoming competition law reforms, now being supported by an increasing number of governments and authorities around the world. But who would have thought that such dramatic changes would occur so fast with a massive impact on our economies and hitting so many companies?

In this unprecedented crisis, our governments were and still are being faced with difficult tasks. Suspending the activities of almost all businesses was the inevitable consequence of the lock down, in the interest of saving human lives. For the European Union, this came along with the closure of national borders, mainly decided at national level, which brought the Internal Market to an unwelcome halt. At the same time, the survival of the market players, whether big or small, had to be taken care of, and in this respect, the EU institutions played an important role, and still do.

Because it is commonly predicted that the current pandemic will have a lasting impact on our economies and companies, the upcoming competition law reforms are becoming even more important and more complex at the same time. Some of them can be implemented in the short term while others may take longer.

Competition authorities, both at national and EU level, started to send out strong signals to the business world immediately after the outbreak of the crisis. Some were meant to encourage and accommodate exceptional measures taken to address specific needs. Others were to remind companies that the competition rules continue to apply and the current restrictions shall not provide any justifications for anti-competitive conduct.

The authorities will in any case continue to closely and actively monitor relevant market developments to detect undertakings trying to take advantage of the current situation by breaching the competition rules, either by engaging in anti-competitive agreements or by abusing their dominant position. It can be expected that companies falling under such investigations may present justifications based on the exceptional circumstances of the crisis. So the odds are still out on what will work and what won't in this regard, and the first cases will produce interesting insights for all.

Novel legal questions have been triggered and, despite certain clarifications, leave companies in a sphere of uncertainty. To address some of these concerns, the Euro-

pean Commission published, in early April, a 'Temporary Framework Communication' on the scope for cooperation among companies under Article 101 TFEU.

It is acknowledged by the Commission that the coronavirus outbreak has led to shortages in critical goods, and that this can arise not just within, but also outside, the health sector. Such supply shocks may require the swift coordination of companies to overcome or mitigate the effects of the crisis to the benefit of citizens. Companies may therefore need to coordinate on production stock management and potentially distribution, so that not all undertakings focus on the same products.

Such coordination would be contrary to antitrust rules in normal circumstances. But in the context of a pandemic, such coordination can, with appropriate safeguards, bring important benefits, according to the Commission. The Communication explains the main criteria the Commission will follow in assessing any such cooperation projects. As regards the procedure, moving a step away from the self-assessment principle, oral guidance shall be provided by the Commission. Under exceptional circumstances the Commission would even provide companies with written comfort concerning specific cooperation projects that need to be swiftly implemented to effectively tackle the outbreak, especially where there is still uncertainty about whether such initiatives are compatible with EU competition law.

What's more, for the first time in almost twenty years, the Commission has already issued a first written 'comfort letter', concerning a specific cooperation project aimed at avoiding situations of shortages of critical hospital medicines, and following the procedure set out in the Communication. This letter, addressed to 'Medecines for Europe', addresses a specific voluntary cooperation project among independent pharmaceutical producers to reduce the risk of shortage of critical hospital medicines for the treatment of coronavirus patients. It can be expected that many other market players would also want to benefit from such comfort from now on.

In the field of merger control, companies have been advised by competition authorities that the review process of their transactions may be delayed during the crisis, and that notifications shall be postponed to the extent possible. These announcements have created some uncertainty as well when they were made, but the impact in practice has been limited, as can be seen from regular updates on ongoing merger control proceedings.

The biggest changes were certainly made in the field of State aid, where the Commission has played a strong role with a swift amendment of the relevant rules and an unprecedented series of speedy approvals granted for wide ranging national support schemes. While State aid is mainly dealt with in our sister journal EStAL, you will find a summary assessment of these first measures also in this issue of CoRe.

Indeed, all of these topics are highly relevant for many companies across Europe. That's why we are very pleased to present a comprehensive overview, including also other

areas of EU law, in the article on ‘Corona and EU Economic Law’ by Friso Bostoen, Nina Colpaert, Wouter Devroe, Joris Gruyters, Lennard Michaux and Liesbet Van Ackeer, of the University of Leuven.

This will certainly trigger further publications in the next issues of CoRe, which we would of course welcome. Two of the country reports in this issue already follow this path, with Mariya Papazova describing the enforcement activity of the Bulgarian Competition Protection Commission, and Tomasz Feliszewski summarising Poland’s safeguards for competition, both after the COVID-19 outbreak.

In our second main article, Pieter Huizing focuses on the ‘Parallel Enforcement of Global Cartels’, with an in depth look into the development of such cases and the limited attempts so far to streamline investigations at the global scale.

The Reports section, in addition to those already mentioned, once again offers a wide array of topics: the application of Article 101 TFEU on a parent-JV in Austria, by Heinrich Kühnert; a Belgian request for preliminary ruling on the ‘Non Bis in Idem Principle’ in competition law, by Jeroen Dewispelaere and Joren Vuylsteke; a Czech Court decision about anticompetitive conduct of public authorities, by Michal Petr; the (de)regulation of so called vectoring technology in Germany, by Philipp Offenbächer; a Dutch Tribunal ruling on collective dominance, by Tim Raats, unfair trading practices in the grocery market in Norway, by Pernille Edh Hasselgård; and the transposition of the Damages Directive in Portugal, by Miguel Sousa Ferro and Rita Luís Leitão.

A case note prepared by Francesco Rizzuto and Monika Ewa Lynch on ‘The Implications of the Generics UK Pay-for-Delay’ (Case C-307/18) and two book reviews, by Helene Andersson on *Antitrust Procedural Fairness* (Daniel Sokol and Andrew Guzman, eds) and by Kathryn McMahon on *Competition Law of the EU and UK* (Sandra Marco Colino) are also included in this summer edition of CoRe in the year 2020 when suddenly nothing looked the same anymore.

In our new Miscellaneous section, we decided to publish from time to time contributions a little bit outside the mainstream of CoRe, and to kick this off with a very interesting overview prepared by Shuping Lyu, Caroline Buts and Marc Jegers entitled ‘Case Studies in Competition Policy Research: A Systematic Literature Review’.

We hope that you will stay tuned to CoRe throughout and after the crisis, both as readers and - why not? - also as contributors, whether in our quarterly journal or in our Blog. Your suggestions are always welcome!

Robert Klotz
Managing Editor