From the Editor

The second issue of *Competition Policy International* begins with articles by two distinguished jurists representing both sides of the Atlantic. President Bo Vesterdorf, of the European Court of First Instance in Luxembourg, looks at the role of the EC courts in reviewing competition policy decisions by the European Commission. One of the interesting questions he addresses is how much deference the courts should give to findings by the Commission that involve complex economic assessments. Douglas H. Ginsburg, Chief Judge of the U.S. Court of Appeals for the D.C. Circuit, and Leah Brannon explore how court decisions have affected the pace of private enforcement activity in the United States. In an interesting statistical analysis, he documents how waves of private litigation have come and gone, driven in part by U.S. Supreme Court decisions that that opened or closed the door to theories of anticompetitive harm.

The issue then turns to a provocative article by Professor Luke Froeb, until recently chief economist at the U.S. Federal Trade Commission, and several co-authors who are FTC economists. Froeb and his colleagues argue that the available evidence provides little support for various theories of anticompetitive vertical foreclosure. Two leading industrial organization scholars—Professors F. M. Scherer and Ralph Winter—beg to differ to varying degrees. This exchange has relevance for ongoing debates in the European Community, where the Commission is considering guidelines for vertical mergers as well as abuse of dominance cases involving vertical issues, and in the United States, where the Antitrust Modernization Committee is examining possible legislative reform of the antitrust laws.

Next comes a symposium on loyalty rebates—discounts that are tied to buying some fraction of one or more goods from a single manufacturer. Such rebates are the focus of an intense debate in the European Community and the United States. The *Michelin II* decision, for example, would appear to make it very difficult for a dominant firm to persuade the courts that its loyalty rebates are not an abuse. From a European perspective, the *LePage's* case decided by the U.S. Court of Appeals for the Third Circuit, which subjects the rebates of a firm with market power to a rule of reason inquiry, would seem to be much more permissive. But in the United States, *LePage's* has been viewed as opening a new and wider door for plaintiffs to bring cases against discounting

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arrangements. Dr. David Spector of Paris Sciences Economiques, Professor Bruce Kobayashi of George Mason University in the United States, and Alberto Heimler of the Italian Competition Authority bring different geographic and institutional perspectives to this issue.

This issue of the journal concludes with two classic articles on predatory pricing. Phillip Areeda and Donald Turner's "Predatory Pricing and Related Practices under Section 2 of the Sherman Act" triggered the rise of skepticism toward claims of predatory pricing, both in the courts and among many academics. Many economists now believe that this tide has risen too far and that U.S. courts have become too skeptical of predatory pricing claims. Basil Yamey's "Predatory Price Cutting: Notes and Comments" will resonate with those who hold this view. Professor Yamey argues that predatory pricing is not only theoretically plausible, but that several cases clearly demonstrate its existence as an empirical matter.

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

Richard Schmalensee
Editor-In-Chief