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Editorial

The intention in instituting bi-annual CLaSF workshops was to consider and reflect, primarily from an academic perspective, on current topical competition law issues and developments. It is particularly appropriate therefore that the Review is launched so shortly after the monumental reforms to Community competition law enforcement introduced by Regulation 1/2003 and that the first issue, based on the April 2004 workshop theme: 'Decentralisation: From the Idea to the Reality', contains a range of perspectives from across Europe on the modernised enforcement landscape of Community competition law. It is a crucial time to consider the extent to which the various domestic systems are prepared for the new role and tasks allocated to them under the Community modernisation package.

In his article, Dr Hans Vedder considers the question of spontaneous harmonisation of national law in the wake of modernisation of EC Competition Law. He outlines the three alternative paths to effective enforcement of competition law: criminal law, administrative law and civil law and highlights that modernisation of EC law will inevitably lead to a greater reliance on the latter path to achieving workable competition, whilst also enhancing the 'criminal' character of investigations undertaken by the Commission. Furthermore he indicates that the spontaneous harmonisation of national law with EC law means that these trends will also be reflected in domestic competition law developments, as exemplified in the Netherlands. Dr Vedder considers the difficulties which are likely to follow from the increasing 'criminalisation' on the one hand and 'civilisation' on the other and ponders a number of, as yet unresolved, questions relating to the relationship between the two enforcement paths. Finally, this absorbing article considers the extent to which spontaneous harmonisation of civil law rules is achievable without some form of actual harmonisation of the procedural rules applying to national authorities and courts. This general article, albeit drawing to an extent upon the Dutch context, sets the platform for consideration of the extent to which some of the other Member States' legal systems are adequately prepared for the post-modernisation environment.

Pat Massey writes about the position in Ireland, where the national competition legislation, like that of many EU Member States, largely mirrors the basic prohibitions on anti-competitive behaviour contained in Articles 81 and 82 of the EC Treaty. Breaches of Irish competition law constitute criminal offences and, in the case of cartels, managers and directors of offending firms may be imprisoned if convicted of such behaviour. The concept of an administrative fine, which exists in many other EU Member States, is not recognised under Irish constitutional law. However, penal sanctions may only be imposed on parties found guilty of a criminal offence and in this context the article considers arguments for and against criminal penalties for breaches of competition law. This article reviews experience of the application of national

competition legislation in Ireland and assesses the implications of such experience for decentralised application of Community law in Ireland, focusing in particular on the importance of adequate resources being afforded to the domestic competition authorities to allow them to undertake their tasks effectively, on which recent Irish experience must be judged a relative failure.

This theme of under-resourced competition authorities is continued by Professor Yves Montangie in his vivid account of recent developments in Belgian competition law where he assesses critically the extent to which Belgium is prepared for the new regime. In addition to various political crises which have impacted on the reform and modernisation of Belgian domestic competition law, Professor Montangie outlines the lack of resources and staff afforded the domestic competition authorities in order to carry out their tasks effectively. Their lack of experience in applying Community law is shared generally by the Belgian judiciary and the paper concludes that training is required to enhance judicial competence in the application of competition law in private disputes.

Professor Paolo Giudici focuses, from an Italian perspective, on the increasing emphasis on the role of national courts in European competition law. This is a fascinating account of the problems encountered by a particular domestic legal system in providing an effective system of private party redress in relation to competition law infringements. Professor Giudici highlights that although there has been fairly considerable litigation in the Italian courts in relation to dominance-based abuses, private enforcement of hard-core cartel violations has been virtually absent. Attention is given to the *Motor Insurance* case, and the outcome that consumers have basically no competition law standing under Italian law. Professor Giudici indicates that a key problem lies in the absence of adequate discovery procedures, although broader reform is also advocated on the basis that the present Italian system simply does not cater for disputes concerning the protection of consumers' diffuse interests. Sceptics would certainly argue that if this conclusion were replicated in other civil law systems, European competition law is unlikely to experience a private enforcement revolution in which litigation such as the post-Vitamins cartel claims in the USA become commonplace.

It is very early in the post-modernisation era following Regulation 1/2003 to make any sweeping conclusions about the likely success of the new decentralised framework across the European Community. There are grounds for optimism based on the apparent general consensus between the Commission and national competition authorities on working towards an effective allocation of Community cases, outlined in the Commission Notice. In addition, there is evidence, at least in the UK, of increasing resort to the courts and the Competition Appeal Tribunal by party litigants, exemplified by the ongoing post-vitamins cartel claims by a range of parties before the CAT. However, there remains scepticism about the degree of preparedness of a number of the accession Member States to handle the enforcement of Community competition law, while a number of countries, as evidenced by the articles by Massey and Montangie, may struggle to deal with the additional workload. In addition, as Vedder and Giudici indicate, effective and consistent private enforcement throughout the Community may be jeopardised in the absence of harmonised civil procedural rules,

although this is an area the Commission may seek to develop following publication of the Ashurst's report on private enforcement of Community competition law across the twenty-five Member States. Inevitably, there will be a number of parallel and overlapping developments as enforcement practice across the Community develops post-modernisation and academics will require to overview *inter alia* trends in private enforcement practice, and case-allocation, procedural and human rights issues which arise in the European Competition Network before we can make a more considered judgement on the 'success' of the modernisation project.