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Editorial

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The goals of sustainability and environmental protection are referred to in several articles of the Treaty on the Functioning of the EU, namely in Article 3(3) TEU, in Article 191 TFEU and in Article 37 of the Charter of Fundamental Rights of the European Union. In addition, Article 11 TFEU establishes a horizontal integration clause, requiring environmental protection to be integrated into the definition and implementation of the Union's policies and activities. Competition law cannot be considered an exception to this aim.

The benefits of sustainability had already been considered at European level within the broad standard of efficiency gains, under Article 101(3) TFEU. With the new Guidelines on Horizontal Cooperation Agreements, environmental concerns become more relevant, although, from our perspective, the Commission's approach regarding societal benefits is still limited compared to the solutions followed in other national jurisdictions.

Market and Competition Law Review, Vol. 8 (2) features several contributions on the role of sustainability in competition law, as well as on the interaction of competition law with other legal frameworks.

The issue starts with an article by Johan Van de Gronden examining whether the concept of Services of General Economic Interest is capable of accommodating nature management concerns in the application of the State aid rules. The Author distinguishes three types of activities in nature management: (1) the acquisition of natural sites; (2) nature conservation; and (3) exploitation of natural sites. After discussing critically the *praxis*

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developed, namely by the European Commission, towards the financing of the management of natural sites and SGEIs, a new approach is persuasively suggested: competition rules, including State aid law, will only apply to nature management services that are economic activities. Therefore, the financing of nature conservation should fall outside the scope of the EU State aid rules, "as there is no market for such tasks"; exploitation activities could constitute economic activities, in so far as they are not inseparable from nature conservation, and could be considered "a SGEI mission", and the acquisition of land for nature management is only of economic nature "if it is used subsequently for economic purposes".

In a similar vein, Marc Veenbrink assesses the synergies between EU Competition Law and the Corporate Sustainability Due Diligence Directive (CSDDD), aiming to foster sustainable and responsible corporate behaviour in companies' operations and across their global value chains. The Author delves into the complex question of how much room undertakings will have in light of the cartel prohibition to create agreements with the aim of achieving the CSDDD goals.

Shifting to the field of EU Merger Regulation, Catalin Rusu reflects on the main role of this legal mechanism to address concentrations with EU relevance as well as its relationship with other instruments, namely, Antitrust Rules, the Digital Markets Act and the Foreign Subsidies Regulation, discussing whether the interacting frameworks are coherent and agile.

Antonio Robles Martín-Laborda debates whether disputes concerning cartel damages prohibited by Article 101 TFEU can be validly removed from the jurisdiction of the competent national courts by means of a standard arbitration clause. In the CDC Hydrogen Peroxide case, the Court of Justice ruled that an exclusive jurisdiction clause could not be found to include cartel damages claims for breach of Article 101(1), unless those claims were explicitly referred to in the clause. The Court did not decide, however, whether damages claims were covered by arbitration agreements. The Author recognizes, on the one hand, that, in theory and in exceptional cases, under EU law, a national court has the duty to disapply an arbitration agreement if its enforcement makes the exercise of the right to damages impossible or excessively difficult, in breach of the principle of effectiveness. On the other hand, in the Author's view, in the absence of harmonisation by EU law of the rules on commercial arbitration, the question of validity or scope of the arbitration agreement is ruled by national laws. Therefore, a standard arbitration clause may also cover

disputes related to cartel damages (non-contractual liability) if that is the will of the parties.

Finally, Benedita Sequeira provides a review of Magnus Strand and Ignacio García-Perrote Martínez's book, *The Passing-on Problem in Damages and Restitution under EU Law* (2nd Edition).