

Editors

Sir David Edward
Jacquelyn MacLennan
Assimakis Komninos

Ian S. Forrester QC LL.D.

A Scot without Borders *Liber Amicorum* - Volume II

Peter Alexiadis, Jean-Yves Art, Carl Baudenbacher, Jean-François Bellis, Kent Bernard, Helmut Brokelmann, Eleanor M. Fox, Ayşe Gizem Yaşar, Rosa Greaves, Ayşe Güner, Gönenç Gürkaynak, Barry E. Hawk, Nicholas Khan, James Killick, Assimakis P. Komninos, Santiago Martínez Lage, Valérie Meunier, Jorge Padilla, Mark Powell, Francesco Setti, Luís Silva Morais, Jacques Steenbergen, Pablo Trevisán, Mathieu Vancaillie, James S. Venit, Denis Waelbroeck, Karen Williams.

► [GO TO TABLE OF CONTENTS](#)

Foreword

Sir David Edward
Jacquelyn MacLennan
Assimakis Komninos

It is a great honour and a special delight to be able to present this *Liber Amicorum* to Ian Stewart Forrester QC LL.D. on the occasion of his 70th birthday.

Ian comes from a formidable family of Scottish Presbyterian ministers and professors of divinity in whose footsteps he has followed as an elder and regular preacher at St Andrew's Church of Scotland in Brussels. While firmly rooted in the faith of his ancestors, the intellectual rigour of David Hume and Adam Smith, and the civil law traditions of Scots law, he has, like so many Scots down the ages, sought broader horizons – mainly in Brussels, but now in Luxembourg, with more than a passing dalliance with the common law in New York and London, as well as the cultural life of Japan and the byways of Serbian politics. His endless good spirits and quirky sense of humour have made him friends as well as professional connections all over the world.

Ian was born in Glasgow in 1945, the son of a well-loved and respected schoolmaster and outstanding cricketer – one talent that Ian did not, as far as we know, inherit. The youngest child of the family, who lost his mother tragically early, he was educated at Kelvinside Academy and Glasgow University where he took the traditional Scottish general arts degree (MA 1965) followed by a degree in law (LL.B. 1967). This was a glittering period in the annals of the University, marked by debating successes with the late Alan Rodger (Lord Rodger of Earlsferry) and later, in a North American debating tour, with James Douglas-Hamilton (Lord Selkirk of Douglas). He continued his studies at Tulane University (MCL 1969), Louisiana being carefully selected as a civil law island within a common law sea. Ian returned there to teach on many occasions. It was in New Orleans that he met Sandra Keegan, who became his wife.

Before returning to Scotland after Tulane, Ian spent some time as an intern with Davis Polk in New York, and then returned to prepare for the Scots Bar as the 'devil' (pupil) of David Edward. But his time with Davis Polk had brought him into a case involving a Palestinian hijacked plane, which continued to take him to places like Beirut in the

1970s. This was somewhat disconcerting for his devil-master, while opening new casements onto the foam of international practice. Despite these distractions, Ian was admitted to the Scots Bar in 1972, and ‘took silk’ (becoming a QC) in 1988. In the meantime, he took the New York Bar in 1977, and he was later admitted to the English Bar in 1996.

Ian had moved in 1973 to Cleary Gottlieb in Brussels as one of the first generation of UK lawyers who arrived there when the UK joined the European Communities. For the next forty-two years Brussels was to be his home. It is where he raised a family, together with Sandra, becoming the proud father of two sons, Alexander and James, both of whom have resisted the law to date, despite bedtime stories which, Ian confessed, were a soporific means for him to find the clearest expression of his arguments in the case before him at the time.

Meanwhile, he moved from Big Law to Boutique Law, creating Forrester & Norall with Chris Norall, later joined by Alastair Sutton, and then back to Big Law when Forrester Norall & Sutton merged with White & Case. His appointment to the Luxembourg bench will round off Ian’s illustrious career as a practitioner.

Ian belongs to the generation that ‘made’ the English-speaking competition law bar in Brussels, until then the monopoly of a few continental law professors and some Belgian French-speaking lawyers. He was fortunate to participate in many of the leading cases in the formation of key principles of EU law, particularly EU competition law. Examples are *Bosman* on freedom of movement in sport; *Bullock (Distillers)* on restricting exports through discriminatory pricing; *GSK* on parallel trade of pharmaceutical products; *Servier* and *Pfizer* on the precautionary principle; *Magill*, *IMS Health* and *Microsoft* on the interface of competition law and intellectual property law, and in particular, on compulsory licensing; *Rambus* on standard setting bodies and Article 102; *Intel* on unilateral conduct/discounts; *Chalkor* on the standard of judicial review of Commission decisions; and *Servier* on what promises to be a defining case in EU law on reverse settlements.

Ian has not just lived these cases professionally but also academically. He toured the amphitheatres and debated these and other cases with students, professors and researchers. There was never a conference he declined, to the despair of his faithful secretary and PA, Pauline Tart, who had to manage an unmanageable calendar.

Ian is also a prolific writer of seminal articles. His ‘Laicisation of Community Law - Self Help and the Rule of Reason: How Competition Law Is and Could be Applied’, co-authored with Chris Norall and published in 1984, remains a must-read for students of EU competition law. His articles on the modernization of EU competition law, when Regulation 1/2003 was being prepared, and on due process in EU competition law enforcement have also been influential, and he has written about the EU judicial system from a comparative law perspective.

Ian is generous with his time and talents and has been a mentor to many younger lawyers. A typical scene is Ian in an office full of papers and books surrounded by younger colleagues discussing a case. He has had a long association with the Jessup Moot Court and has also been the head of White & Case's global pro bono practice. He has also been a trustee and strong supporter of the European Baroque Orchestra, and recently embarked on a new career side line as narrator in 'The Snowman' concert and Master of Ceremonies at the Brussels Christmas Carol Concert.

His many qualities have been recognized in his appointment as Honorary Professor of European Law and the award of an LL.D. at his alma mater the University of Glasgow, and as an Honorary Bencher of the Middle Temple.

This Liber Amicorum is an occasion to mark the outstanding merits of a remarkable man and express the long lasting, deep, affectionate friendship by three generations of colleagues in this preface and in the contributions themselves. In this point of transition in an extraordinarily full professional life, we wish Ian all the best for an ever fruitful and rewarding time at the EU Bench.

David, Jacquelyn and Makis

Contributors

Peter Alexiadis
Gibson Dunn

Jean-Yves Art
Microsoft

Carl Baudenbacher
EFTA Court

Jean-François Bellis
Van Bael & Bellis

Kent Bernard
Fordham University School of Law

Helmut Brokelmann
*Martínez Lage, Allendesalazar
& Brokelmann*

Eleanor M. Fox
New York University School of Law

Ayşe Gizem Yaşar
ELIG

Rosa Greaves
University of Glasgow

Ayşe Güner
ELIG

Gönenç Gürkaynak
ELIG

Barry E. Hawk
Fordham University School of Law

Nicholas Khan
European Commission

James Killick
White & Case

Assimakis P. Komninos
White & Case

Santiago Martínez-Lage
*Martínez Lage, Allendesalazar
& Brokelmann*

Valerie Meunier
Compass Lexecon

Jorge Padilla
Compass Lexecon

Mark Powell
White & Case

Francesco Setti
Avvocati Associati Franzosi

Dal Negro Setti

Luís Silva Morais
*Luís Silva Morais Sérgio
Gonçalves do Cabo & Associados*

Jacques Steenbergen
Belgian Competition Authority

Pablo Trevisán
Estudio Trevisán Abogados

Mathieu Vancaillie
Ashurst

James S. Venit
Skadden Arps

Denis Waelbroeck
Ashurst

Karen Williams
European Commission

Table of Contents

Foreword.....	V
Contributors	IX
Table of Contents.....	XI
Ian S. Forrester QC LL.D. Biography	XV

Part IV - Competition Law

Merger control in regulated sectors: a bridge too far?.....	3
PETER ALEXIADIS	
Interim relief in EU competition law: a matter of relevance.....	57
JEAN-YVES ART	
‘[M]ust be interpreted in the light of economic considerations’: some reflections on the case law of the EFTA Court.....	77
CARL BAUDENBACHER	
Use and abuse of the ‘single and continuous infringement’ concept in EU cartel cases: the implications for follow-on private actions for damages....	99
JEAN-FRANÇOIS BELLIS	
Transatlantic competition law convergence: looking for a chimera?.....	113
KENT BERNARD	
Industrial policy, China and the world: are there norms?.....	131
ELEANOR M. FOX	
EU competition rules and maritime agreements post-2004	139
ROSA GREAVES	

► [GO TO TABLE OF CONTENTS](#)

Competition law and personal data crossing in digital markets153
GÖNEÇ GÜRKAYNAK, AYŞE GÜNER, AND AYŞE GİZEM YAŞAR

Competition law and consumer protection in pre-industrial societies173
BARRY E. HAWK

Patent settlements as by object restrictions: a European approach,
but is it the right one?185
JAMES KILLICK

Arbitration and damages claims based on competition law infringements201
ASSIMAKIS P. KOMNINOS

The relationship between public and private enforcement
of EU competition law: some thoughts on recent developments219
NICHOLAS KHAN

Parallel trade after the GlaxoSmithKline judgments233
SANTIAGO MARTÍNEZ LAGE AND HELMUT BROKELMANN

Joint ownership of undertakings without joint control:
minority shareholdings at a crossroads in competition law249
LUÍS SILVA MORAIS

Should reverse payment patent settlements be prohibited per se?271
VALERIE MEUNIER AND JORGE PADILLA

Has merger control spun out of control?
The effects of a quarter of a century of EU merger control291
MARK POWELL

Relations between regulatory and competition law in the light
of *Lucentis/Avastin (Novartis/Roche)* case law307
FRANCESCO SETTI

Some thoughts on legality and legitimacy329
JACQUES STEENBERGEN

Compensation for damages as a result of antitrust violations:
European Union and Argentina337
PABLO TREVISÁN

Ordoliberalism and the modernization of EU competition law353
JAMES S. VENIT

‘Oh illustrious Caesar! If it is sufficient to deny, what hereafter will become of the guilty?’ On the presumption of innocence, the burden of proof, and the standard of proof in EU competition law373
DENIS WÆLBROECK AND MATHIEU VANCAILLIE

The current role of the hearing officer: another step change405
KAREN WILLIAMS

Contributors’ Bios421

Editors

Sir David Edward
Jacquelyn MacLennan
Assimakis Komninos

Ian S. Forrester QC LL.D.

A Scot without Borders *Liber Amicorum* - Volume II

It is with great pleasure that we present this *Liber Amicorum* to Ian Stewart Forrester QC LL.D. on the year of his 70th birthday and at this point of transition in his extraordinary professional life. This two-volume *Liber Amicorum* is a collection of tributes to Ian Forrester's outstanding career and of a series of articles signed by prominent academics and practitioners around the world on the most current topics in EU law and policies, competition law, human rights and intellectual property.

Born in Glasgow from a Scottish family, Ian Forrester practiced law in multiple cities, Brussels, New York and London, to mention some. He arrived in Brussels in 1973 as one of the first generation of UK lawyers at the time when the UK joined the European Union. He participated in many of the leading cases in the formation of key principles of EU law, particularly EU competition law such as *Bosman*, *Bullock (Distillers)*, *GlaxoSmithKline*, *Servier*, *Pfizer*, *Magill*, *IMS Health* and *Microsoft*. Ian Forrester lived these and other cases professionally and academically, debating them with students, professors and researchers. He has been a mentor to many younger lawyers and is also a prolific writer of seminal articles. His good spirits and quirky sense of humour have made him friends and professional connections all over the world and this *Liber Amicorum* is an occasion to mark the outstanding merits of a remarkable man and express the long lasting and affectionate friendship.

ISBN 978-1-939007-28-5



9 781939 007285

Concurrences
Review, Bulletin, Books, Conferences

190 € VAT included