



TILEC

Annual Report

2015

The Tilburg Law and Economics Center (TILEC) was created in 2003 as a joint research center of the Tilburg School of Economics and Management (TISEM) and the Tilburg Law School (TLS) at Tilburg University.

TILEC’s vision is to be, and be recognized as, a global leader in the research the governance of economic activity at the frontier between law and economics, known for its interdisciplinary method, path-breaking research output and societal relevance.

- TILEC research is distinguished by the following characteristics:
- **Interdisciplinary:** TILEC research integrates law and economics together on an equal footing, or at least includes substantial input from the other discipline;
 - **Innovative:** TILEC brings law and/or economics further, and opens up new perspectives. Whilst this might imply that it leaves established paths in each discipline, it remains state-of-the-art at the technical and methodological level;
 - **Fundamental:** TILEC research addresses basic questions of each discipline, including the relationship between the two disciplines and how they can mutually strengthen each other;
 - **Relevant:** TILEC research is inspired by real-world problems and aims to contribute to the ultimate solution of these problems.

CONTENTS

Foreword 4

1. Research 7

 1.1 Research output and key results 7

 1.2. PhD Dissertations 36

 1.3. Events and dissemination of research 37

2. Education 44

3. Finances 46

Appendix A Members per 31 December 2015 48

Appendix B List of Publications 2015 54

Appendix C Activities 2015 69

FOREWORD

The Tilburg Law and Economics Center (TILEC), a Center of Excellence at Tilburg University, is a joint venture of the Tilburg Law School and the Tilburg School of Economics and Management, two institutions which have been at the forefront of academic innovation and internationalization in the Netherlands for the past 30 years. TILEC brings together economists and legal scholars who are eager to pool their expertise on the governance of economic activity, in order to push the knowledge frontier. Our ambition is simple: through its research and its activities, TILEC aims to be recognized as a leading inter-disciplinary research center worldwide, as evidenced by the high quality of its publications and its international reputation in academic and policy circles.

In 2015, our members again made decisive progress in analyzing the role that legal institutions and market designs play in the promotion of economic welfare. Let us take only a few examples. In the *European Law Journal*, Wolf Sauter revisited the perceived and perhaps exaggerated conflict between the general framework of EU law and public services, which happen to remain a vital building block of the European internal market. In the *Journal of Public Economics*, Jan Boone reached striking conclusions as regards the coverage that should be offered as part of basic mandatory health care insurance in systems which, like the Dutch, French or American ones, are organized around competition by private insurers. In the *European Law Review*, Agnieszka Janczuk-Gorywoda traced the evolution of EU retail payments law to conclude that this area of the law has witnessed a nuanced shift of objectives from integration towards “regulation for competition”. In the *Journal of Economic Theory*, Bert Willems showed how on electricity markets, characterized by spot market competition in supply functions and forward trade in derivatives, energy producers could take speculative positions so as to dampen price competition, an issue that had so far escaped observers’ attention.

Thus, on fundamental or policy issues, TILEC research makes a difference! When it comes to the role of institutions and incentives, competition policy, innovation, regulated industries, financial markets, or international trade, our expertise is sought after. We strive to make sure that the knowledge we produce is not accessible to our fellow researchers only, through academic publications. We also disseminate our research to students, market participants and policy-makers through our education programs, our contract research, our conferences, and our policy work.

We are eager to engage with partners within and outside academia. We hope that this report on our 2015 activities will give you an accurate picture of what we do, and what we stand for. Feel free to contact us in case you want to know more about us.

Cédric Argenton,
TILEC Director

Pierre Larouche
TILEC Director a.i.



Pierre Larouche (director a.i.), Cédric Argenton
and Panagiotis Delimatsis

1. RESEARCH

In accordance with its 2012-2017 research program, TILEC focuses on **the study of the governance of economic activity**. In 2015 TILEC researchers produced and disseminated their research in our six core research areas: (1) Institutions and incentives; (2) Competition policy; (3) Innovation; (4) Health care markets regulation; (5) Regulation of network industries; and (6) Finance, trade, and investment.

1.1. RESEARCH OUTPUT AND KEY RESULTS

Overview

In 2015 TILEC members, a full list of whom is available in Appendix A, remained very active in research. The table below provides a summary of the number of relevant publications by TILEC members falling within the scope of the TILEC research program. Appendix B provides the complete list.

	2015
Academic publications	
Journal articles	54
Book chapters.....	23
Monographs and edited books.....	6
Other academic publications.....	3
Professional publications	
Journal articles	19
Book chapters.....	1
Books and reports	5
Discussion papers	26

Table: Relevant publications by TILEC members

In 2015 TILEC members again produced high-quality research pieces and successfully ran a number of sponsored projects. This is reflected not only in the volume of TILEC research output but also in its quality, as evidenced by publications in top journals and their very good or excellent inter- or multidisciplinary quality. Given the broad scope of the TILEC research program and the many results achieved, what follows is only a summary of key substantive results across the different areas of the TILEC research program.

Institutions and incentives

Within this cluster, TILEC members conduct fundamental research into questions of how institutions should be designed to further societal objectives, especially when the incentives of individual decision-makers may not be aligned with those of society.

In 2015 TILEC members produced a substantial stream of research on international standardization. In an era of increased reliance on private regulatory bodies and globalized economic activity, standardization is the field where politics, technical expertise and strategic behavior meet and interact. TILEC member **Panagiotis Delimatsis** edited a book ([The law, economics and politics of international standardisation](#), Cambridge University Press) bringing together papers first presented in 2013 at TILEC's 10th anniversary conference on 'Marrying public and private, global and local, law and economics within international standardization'. This book takes an empirical approach, focusing on the mechanics of international standard-setting. It constitutes a multidisciplinary inquiry into the foundations of international standard-setting, an empirically under-researched yet important area of international informal law-making. Contributors expertly examine the peculiarities of international standardization in selected issue-areas and legal orders and shed light on the attributes of international standard-setters, allowing comparisons among standard-setting bodies with a view to identifying best practices and improve our understanding of standardization processes.

Apart from the Introduction and the Conclusions, **Panagiotis Delimatsis** contributed a chapter entitled "[‘Relevant international standards’ and ‘recognised standardisation bodies’ under the TBT Agreement](#)" in which he analyzes the WTO negotiating history and case-law to project what procedural and substantive guarantees an international standard and an international standard-setter will have to comply with in an era of increased legalization of international rule-making. Democratic governance is not an obvious feature of the international trade regime. Numerous international standard-setting bodies (ISSBs) operate through procedures that do not guarantee representativeness, inclusiveness and transparency, and where power politics prevail over good governance practices. Yet, the WTO has traditionally endorsed technical rationality expressed in international standards regardless of their adoption process. The WTO Agreement on Technical Barriers to Trade (TBT) even requires WTO Members to use relevant international standards and presumes compliance with the TBT when such standards are used. However, more recently, a gradual democratization of international standardization can be observed.

A chapter "[Interoperability standards, patents and competition policy](#)" by TILEC member **Pierre Larouche** and his co-author Geertrui Van Overwalle (KU Leuven) brings together different perspectives on technical standards – (1) the traditional European literature on standardization; (2) intellectual property law; and (3) the competition law literature and policymaking – and proposes a more holistic research agenda. The current lack of interconnection between the three strands of debate on standardization creates a risk that different types of problems are highlighted in different settings without due consideration of the complete picture. In particular, recent litigation has brought to the fore three issues, popularized under the buzzwords 'patent ambush', 'patent hold-up' and 'patent thicket'. There is a risk that the discussion of standardization becomes reduced to these issues. In contrast, a holistic approach should capture standardization in its totality, including the parameters such as the prior state of the market, path dependency, complementarity or substitutability of contributions, etc. which might affect the scientific and policy analysis. Once that empirical and analytical work has been carried out, broader issues can be tackled, concerning the relationship between standardization and innovation, and the balance between the private and public aspects of standardization.

Interoperability of technical standards in the world of the Internet of Things (IoT) is the focus of TILEC member **Nicolo Zingales** in his TILEC Discussion Paper No. 2015-026 "[Of coffee pods, videogames, and missed interoperability: Reflections for EU governance of the Internet of Things](#)". Zingales argues that the advent of IoT raises the need for an interoperability that goes beyond mere interconnection between digital objects, and requires IoT manufacturers to be able to access and "mine" each other's data. Observing that collaboration in existing IoT consortia falls short of this deeper level of integration, Zingales calls upon the European Commission to develop guidelines that facilitate broader cooperation, for example by adopting model licenses and best practices, and to address the interaction between competition and standardization involving intellectual property other than patents. The paper also illustrates with two examples that lock-in strategies pursued by leading platforms by preventing interoperability in secondary markets (specifically, coffee pods and console video games) resulted in dubious competitive advantage, generating consumer dissatisfaction, requiring significant legal expenses and attracting antitrust scrutiny.

In TILEC Discussion Paper No. 2015-013 "[Standard-setting in services – New frontiers in rule-making and the role of the EU](#)" TILEC member **Panagiotis Delimatsis**

Branislav Hock, Zlatina Georgieva and Agnieszka Janczuk-Gorywoda



Jan Boone and Cédric Argenton



Victoria Daskalova and Eric van Damme



notes that standard-setting has moved beyond purely technical standards. In the controversial EU Services Directive, and, more recently, in the Single Market Act, the European Commission is called upon to lead the development of voluntary European standards to facilitate compatibility among services, whereas the new EU Regulation on European standardization provides the legal basis for a new era in service standard-setting in the EU. Focusing in particular on financial and business (including professional) services, Delimatsis maps this new area of rule-making in services and analyzes whether the relevant standard-setting procedures and institutions can successfully promote trade in services.

The principles of subsidiarity and proportionality are key features of EU law regulating the use of the legislative competence by the EU. Yet, the monitoring of the principles is mostly left to the EU institutions and as a result internal quality control bodies play an important role in developing tests and standards which represent part of ‘subsidiarity and proportionality in action’. In this context, the Impact Assessment Board (Board), established within the European Commission in 2006 and recently renamed ‘Regulatory Scrutiny Board’ (to review impact assessments) holds a key position. In [“Regulatory scrutiny of subsidiarity and proportionality”](#) (*Maastricht Journal of European & Comparative Law*, 22 (4), 483-505) TILEC junior member **Suren Gomtsian** and his co-author Anne Meuwese (Tilburg University) present an analysis of opinions from the Board from 2010 and 2011 as an alternative jurisprudential source regarding subsidiarity and proportionality. The analysis is instructive about the everyday meaning of these principles, but also about the way the Board functions as an ‘in-house’ regulatory review board.

The a-territorial nature of the Internet makes it difficult to regulate it via the actions of territory-bound nation-states. On the other hand, the very same a-territoriality means that regulation of the Internet enacted by one State can be of great relevance for actors across the globe. This is especially so if such regulation has broad extraterritorial reach. In [“The Brazilian approach to internet intermediary liability: Blueprint for a global regime?”](#) (*Internet Policy Review*, 4 (4)) TILEC member **Nicolo Zingales** argues that this is the case with the newly proposed Brazilian “Internet Constitution”, famously known as “Marco Civil”. Under the current formulation of the Marco Civil, various activities conducted outside the Brazilian territory may trigger the obligation to comply with Brazilian law, including any administrative or regulatory burden that it imposes. In the paper – submitted in the context of the consultation for the new law – Zingales proposes criteria that could be used to prevent the overreaching of the Marco Civil obligations in potentially problematic cases.

Firms frequently form organizations to promote the common interests of industry participants. Modern-day standard-setting organizations are one example, but there are others; the practice can be traced back all the way to medieval merchant guilds. In their article [“Trade associations, lobbying, and endogenous institutions”](#) (*Journal of Legal Analysis*, 7(2), 467-516), TILEC members **Maria Larrain Aylwin** and **Jens Prüfer** use the common denominator of business associations for all of these organizations, and ask whether on balance they generate net benefits or costs for society. On the one hand, business associations might help their members enforce contracts and promote cooperation. These functions would also benefit society at large. On the other hand, business associations might allow members to coordinate pricing or rent-seeking decisions, which would benefit members but hurt society. Larrain and Prüfer show that the main function assumed by a business association arises endogenously, depending on the strength of property rights. If property rights are weak, business associations specialize in improving their strength, resulting in net social benefits. However, if property rights are strong, business associations specialize in rent-seeking, with associated net social costs.

In many markets, governments impose transparency (or information disclosure) regulation on firms, which is aimed at improving consumers’ ability to assess the quality of the products on offer. From a theoretical point of view, the desirability of transparency regulation is unclear: while it may lead to higher quality, it may also lead to more differentiation, thus softening price competition. In their article [“Transparency in markets for experience goods: Experimental evidence”](#) (*Economic Inquiry*, 53(1), 640-659), TILEC member **Florian Schütt** and his co-authors Bastian Henze (Tilburg University) and Jasper P. Sluijs (AEF) study the effects of transparency regulation in a controlled laboratory environment. They compare four different treatments in which they vary the degree to which consumers are informed about quality. Contrary to theoretical predictions, firms do not differentiate quality under full information and instead offer products of similar, high quality, entailing more intense price competition than predicted by theory. Under no information, a “lemons” outcome with low quality arises, but price competition is less intense than predicted. In two intermediate treatments, quality is significantly higher than the no-information level, and there is evidence that prices become better predictors of quality. Taken together these findings suggest that information disclosure is a more effective tool to raise welfare and consumer surplus than theory would lead one to expect.

It is often claimed that a plurality of media outlets is necessary for a healthy democracy. But what are the channels through which competition in the media

affects the electoral process? In “Media competition and electoral politics” (*Journal of Public Economics*, 130, 80-93), TILEC member **Florian Schütt** and his co-author Amedeo Piolatto (University of Barcelona) argue that one important channel is turnout. They build a framework linking competition in the media market to political participation, media slant, and selection of politicians. In the model, media outlets report on the ability of candidates running for office and compete for audience through their choice of slant. Citizens derive utility from following a rule that maximizes their group’s welfare. The rule specifies whether to vote and consume news. The authors show that entry of an additional media outlet has two effects. On the one hand, it may give previously undecided voters the information they need to make up their minds, thus increasing turnout. On the other hand, because of diminishing returns to voting, it may decrease turnout of voters who already knew their preferred candidate. Their results can reconcile seemingly contradictory empirical evidence showing that entry in the media market can either increase or decrease turnout. They also provide insights about the impact of competition on the most competent candidate’s chance of election.

Competition policy

It is well-known that exclusivity contracts between firms in a vertical relationship can have exclusionary effects and reduce welfare. In their article “Exclusion through speculation” (*International Journal of Industrial Organization*, 39, 1-9), TILEC members **Cédric Argenton** and **Bert Willems** investigate whether financial contracts can play the same role. Firms might rely on financial contracts to avoid scrutiny by competition authorities, who often intervene against the more conspicuous exclusivity contracts. Derivatives contracts are often cash-settled, hence avoid physical delivery, and might be traded through an intermediary so as to prevent direct contractual relationships between the contracting firms. The authors show that entry deterrence by means of financial contracts is harder but remains a distinct possibility. To deter entry, an incumbent firm can sell a volume of cash-settled derivatives contracts exceeding total demand. By doing so the incumbent commits to future prices that are sufficiently low to lead to aggressive spot-market pricing regardless of whether entry occurs. This reduces the likelihood of entry. The reason that this mechanism is profitable for the incumbent is that in exchange for the options for lower prices in the future, the buyer is willing to pay an upfront fee, which transfers the rent extracted from the entrant to the incumbent. The scheme, however, leads to price variability. This implies that it is less profitable for the incumbent to deter entry by means of financial contracts than by means of exclusivity contracts, as he has to compensate a risk-averse buyer for additional risk.

EMBRACED
BY THE
COMMUNITY
OF PEOPLE WHO
CARE ABOUT EACH
OTHER’S WORK



I started working at TILEC in October 2013 and was immediately embraced by the community of people who care about each other’s work. What I like most about TILEC is its lively academic climate, deep engagement in the debates and, very importantly, friendly constructive criticism offered by TILEC members to one another. This type of atmosphere nurtures critical thinking and questioning established assumptions but also invites solid research. This is exactly what is needed to push the borders of science!

AGNIESZKA JANCZUK-GORYWODA

TILEC member **Lapo Filistrucchi** has a long-standing line of research exploring competition policy in two-sided markets. These are markets in which a firm acts as a platform and sells two different products or services to two distinct groups of customers. An example is the newspaper market, in which publishers sell content to readers and advertising slots to advertisers. Because advertisers are interested in reaching as many readers as possible, charging a low price on the reader side and thereby attracting a larger readership may allow the newspaper to charge higher prices on the advertiser side. Economists have long argued that applying “one-sided logic” to two-sided markets can lead to mistakes. In [“Areeda-Turner in two-sided markets”](#) (*Review of Industrial Organization*, 46(3), 287-306) Filistrucchi and his co-author Stefan Behringer (University of Duisburg-Essen) argue that this may be true in particular in the case of predatory pricing. According to the famous Areeda-Turner Rule, prices below average variable cost (as a proxy for marginal cost) should be considered unlawful. The authors first show that in two-sided markets price cost margins on the two sides of the market are interrelated and that even a monopolist may find it optimal to charge a price below marginal cost on one side of the market. As a result, showing that the price is below average variable cost on one side of the market cannot be considered a sign of predation in such markets. This is in contrast to a recent decision of the Commercial Court of Paris that sanctioned Google for giving away for free its online mapping services. They also extend the Areeda-Turner rule to two-sided markets and argue that one should apply the rule by taking into account revenues and costs from both sides of the market. Their analysis of three alleged cases of predatory behavior in the market for daily newspapers highlights the fact that applying a one-sided Areeda-Turner rule may lead one to assess a perfectly legitimate pricing policy as predatory.

Private antitrust litigation is now a reality in the EU, and the implementation of the 2014 Directive on actions for damages from competition law infringements will further stimulate such litigation. In [“Collective redress for antitrust damages in the European Union: Is this a reality now?”](#) (*George Mason University Law Review*, 22 (5), 1079-1101) TILEC member **Damien Geradin** discusses the Recommendation on Collective Redress adopted by the European Commission in 2013. The Recommendation takes the form of a horizontal framework whose principles are set to apply to claims regarding rights granted under EU law in a variety of areas, including competition law. Geradin argues that the Recommendation takes a conservative approach to collective redress, largely due to the fear that Member States may adopt mechanisms triggering unmeritorious litigation. Many in the EU consider that the US class actions regime has led to excessive litigation by entrepreneurial lawyers that, in the end, produce limited benefits to victims while creating significant costs to society.

This view is, however, questionable since district courts, which are called to certify class actions, have in recent years exercised a more rigorous analysis of the claims presented to them. In addition, by opting for an “opt in” regime and the “loser pays” principle, while not authorizing contingency fees and punitive damages, the Recommendation may have made it harder for victims with small claims (i.e., individual consumers that have been overcharged for the goods they purchase) to obtain compensation for the harm suffered.

Leading judgments from the European Courts always stimulate a stream of research analyzing their coherence with the existing law, effects for the future evolution of law, and soundness from the policy perspective. In 2014 the General Court of the EU (GCEU) issued a judgment of great relevance for competition law in which it condemned Intel for breaching EU competition rules (Article 102 TFEU) by adopting exclusive rebates and “naked restrictions.” This judgment, in which the GCEU considered that in line with Hoffman-La Roche loyalty rebates should be quasi-per se illegal, has been subject to many criticisms as it is not in line with the teachings of economics. In [“Loyalty rebates after Intel: Time for the European Court of Justice to overrule Hoffman-La Roche”](#) (*Journal of Competition Law and Economics*, 11(3), 579-615) TILEC member **Damien Geradin** discusses the shortcomings of this judgment and argues that it is a great time for the CJEU to abandon the application of its quasi-per se rule of illegality approach to exclusive dealing and loyalty rebates and replace that application with a structured rule of reason. Such an approach would have many advantages and create greater coherence in the case law of the CJEU on unilateral pricing conduct.

Another important decision of the General Court of the EU concerned the application of competition law to private rule-making that is purportedly in the public interest. This issue has long been the subject of heated discussions. The judgment – concerning professional rules for pharmacists – prompted TILEC member **Wolf Sauter** to analyze the evolution of EU competition law in that respect. In [“Containing corporatism: EU competition law and private interest government”](#) (*European Competition Law Review*, 36(5), 187-193) Sauter tracks development of two competing lines of cases in EU competition law: (1) one based on ruling in *Wouters* (2002) which placed inherent restrictions in the public interest outside of the bounds of the cartel rules, that is, Article 101(1) TFEU; (2) a newer strand of cases which separates public service tasks from private (economic) activities and applies competition rules to the latter. Both lines of argument were raised in the pharmacists’ ordering case in a manner suggesting they are both good law. Yet, the case was decided on the basis that no public interest was at stake.

Jens Prüfer, Panagiotis Delimatsis and Lapo Filistrucchi



Nicolo Zingales, Agnieszka Janczuk-Gorywoda and Safari Kasiyanto



Safari Kasiyanto, Florian Schuett and Victoria Daskalova

More than a decade ago consumer welfare was proclaimed as the goal of EU competition law. As important as this may be, the actual content of the EU consumer welfare standard still remains ambiguous. In [“Consumer welfare in EU competition law: What is it \(not\) about?”](#) (*The Competition Law Review*, 11 (1) 133-162) former TILEC junior member – and now TILEC Extramural Fellow – **Victoria Daskalova** tries to verify whether the meaning of consumer welfare as used by the European Commission and Courts matches the economic notion of ‘consumer surplus’. Daskalova examines consumer welfare in light of Commission soft law and decisions as well as in light of the case law of the European Courts. She concludes that although it is not exactly clear what the legal meaning of ‘consumer welfare’ is, there is no support to equate it with the notion of ‘end-user surplus’. At the same time, Daskalova notes the change in language in the 2012 *Post Danmark* ruling and speculates whether and in what direction the Court’s approach might change.

The decentralized system of competition law enforcement in the EU with multiple decision-makers and a more effects-based but less formalistic approach requires a mechanism to ensure a certain level of consistency and predictability of decisions taken in various Member States. The European Commission has used soft law in the form of Guidelines or Notices to steer national competition enforcement agencies (NCAs) and national courts. But do national courts take Commission-issued competition soft law into account in their judgments, and if so how? This question is asked by TILEC junior member **Zlatina Georgieva** in [“Soft law in EU Competition Law and its judicial reception in member states: A theoretical perspective”](#) (*German Law Journal*, 16(2), 223-260). The paper also proposes a theoretical framework for national judicial engagement with competition soft law instruments.

“Data protection in the context of competition law investigations: An overview of the challenges” (published in 2014 in *World Competition*, 37(1), 69–102), co-authored by TILEC member **Damien Geradin** and his co-author Monika Kuschewsky (Covington & Burling LLP) won an Antitrust Writing Award 2015 in the category “Procedural” awarded by the Institute of Competition Law. The paper identifies the limits placed by data protection law on competition authorities, on the one hand, and undertakings, on the other, with respect to the collection and further processing of personal data in the context of competition law investigations. The authors explain in particular how key data protection principles, such as the lawfulness of data processing, data quality, information requirements and rights of individuals as well as international data transfers, apply in this context and set out the consequences of noncompliance and the possibilities for judicial

remedy. The authors conclude that there is a double standard, which arguably leads to an information asymmetry and inequality of arms between regulators and undertakings. The authors also give some practical suggestions for undertakings to prepare for and address potential data protection implications in advance. The authors also give some practical suggestions for undertakings to prepare for and address potential data protection implications in advance.

Innovation

Venture capital is a specialized form of financial intermediation that often provides funding for costly technological innovation. Venture capital firms have a tight time frame for exiting their investments, since they commit to return money back to their financial sponsors within a few years. This creates pressure to invest in companies that are likely to mature soon from a commercial viewpoint. In TILEC Discussion Paper 2015-009, entitled [“Venture capital and innovation strategies”](#), TILEC members **Marco Da Rin** and **Maria Fabiana Penas** examine the association of venture capital funding with a company’s choice of innovation strategies. They employ a unique dataset of over 10,000 innovative Dutch companies, some of which received venture financing. The data include detailed information on patent applications, innovation activities, financing sources, and other company characteristics. They find that companies backed by venture capital tend to use an innovation strategy that can be qualified as “make and buy”: they not only engage in in-house R&D but also acquire external knowledge. Da Rin and Penas interpret this finding as a consequence of the short time horizon of venture capital firms.

There is now consensus that innovation is a key driver of economic growth in advanced economies, and that the law should support it. But what does it mean and how to achieve it? In [“Regulation for innovativeness or regulation of innovation?”](#) (*Law, Innovation and Technology*, 7(1), 52-82) TILEC members **Anna Butenko** and **Pierre Larouche** draw conclusions from two strands of inter-disciplinary literature which normally function as two non-intersecting silos: (1) Law & Economics and (2) Law & Technology. The authors distinguish between regulation for innovation, that is, regulation stimulating innovativeness, and regulation of innovation. While Law & Technology sees innovation as an essentially technological phenomenon that is exogenous to the regulatory process, the Law & Economics literature pays closer attention to regulation for innovation (or innovativeness), addressing in particular market failures like market power and externalities. Yet the Law & Economics literature simply assumes that innovation is good for welfare. Here, Law & Technology is helpful with its concern for the regulation of innovation and the traditional aim of maximizing the benefits and minimizing the risks.

UNIQUE COMMITMENT

TO REGULAR INTERACTION BETWEEN LAWYERS AND ECONOMISTS



I am a lawyer and (since September 2013) a TILEC researcher working at the intersection of law, economics and technology. My research aims to contribute to understanding incentives and implications in the design of legal rules, typically in relation to technological change. At TILEC, I have been exploring the legal and policy challenges associated with standardization, participative regulation, and data science. TILEC offers an extremely conducive environment to this kind of research: its conferences and weekly meetings provide an opportunity to not only stay abreast of the latest developments, but also address fundamental policy questions with inputs by experts in a variety of closely related fields. Given the importance of wisely deploying the tools of law and economics in addressing those questions, TILEC's unique commitment to regular interaction between lawyers and economists is laudable, and paves the road for interdisciplinary cross-fertilization.

NICOLO ZINGALES

Disruptive innovation occurs when an innovative product is brought to a market that meets the basic requirements of the lower-end of an established value network and also offers added value outside of that value network. That product wins over consumers and progressively takes over the established market. Disruptive innovation is a frequent entry strategy, and it is usually beneficial for welfare. In TILEC Discussion Paper No. 2015-021 "[Disruptive Innovation and Competition Policy Enforcement](#)" – which was commissioned by the OECD to be presented at the 14th OECD Global Forum on Competition – TILEC member **Pierre Larouche** and his co-author Alexandre De Streel (University of Namur) analyze how a dominant firm can hinder disruptive innovation. An incumbent firm with market power may seek to prevent a potential disruptor from another market from executing its strategy, using either (i) anti-competitive practices designed to prevent the creation of an overlap between its innovative product and the established market or (ii) an acquisition with a view to mothball the disruptor and its invention. Larouche and De Streel argue that existing competition law tools are not well tuned to deal with disruptive innovation. First, it cannot be properly factored in within an analytical framework that relies on static tools such as market definition and market power. After all, with disruptive innovation competition takes place at the level of market definition: the disruptor aims to create a product on a new relevant market and create sufficient overlap with the existing market in order to attract customers away from the existing market. In addition, competition authorities experience difficulties in acting quickly enough to deal effectively with attempts to prevent disruptive innovation. Larouche and De Streel conclude with suggesting remedies that competition authorities should adopt to be more effective.

Health care markets regulation

In TILEC Discussion Paper No. 2015-017 "[A dose of competition: EU antitrust law in the pharmaceuticals sector](#)" TILEC members **Leigh Hancher** and **Wolf Sauter** examine the application of EU antitrust law to cartels and dominance abuse in the pharmaceutical sector over a period of approximately 10 years. They conclude that pharmaceutical companies cannot assume that their intellectual property rights will stand in the way of a finding of antitrust infringement and should therefore expect that their behavior will be closely scrutinized.

In a number of countries, including the Netherlands, France and – under the provisions of the Affordable Care Act ("Obamacare") – the US, government-mandated basic health insurance is combined with supplementary private insurance. The latter is bought to cover treatment for conditions that are not covered by public insurance (e.g., dental care, physiotherapy, or prescription

glasses). In his article “[Basic versus supplementary health insurance: Moral hazard and adverse selection](#)” (*Journal of Public Economics*, 128, 50-58), TILEC member **Jan Boone** analyzes which treatments should be covered by basic insurance if the insurance market has to cope with both adverse selection and moral hazard and the government faces a budget constraint that does not allow it to cover all treatments. To answer this question, he extends the famous Rothschild-Stiglitz model to include moral hazard and multiple treatments. His analysis draws on the fact that mandatory insurance can overcome adverse-selection problems but does not address moral-hazard problems. As a result, basic insurance should cover those treatments for which adverse-selection problems are most severe. Contrary to conventional wisdom, neither the cost effectiveness of a treatment nor the extent of moral hazard play any role for the decision to include a treatment in the basic insurance.

Selective contracting in health care markets is a practice whereby an insurer limits the choice of providers that can be visited by the insured when they need treatment. There is evidence that selective contracting helps to reduce costs. This is intuitive: since insured patients do not pay for their treatments, they may select inefficient providers. What is more controversial is the effect of selective contracting on the quality of the health care services that the market provides. In TILEC Discussion Paper No. 2015-003, entitled “[Health provider networks, quality and costs](#)” TILEC member **Jan Boone** and extramural fellow **Christoph Schottmüller** (University of Copenhagen) point out that whereas they might be indifferent to cost, patients do care about provider quality; yet they may not be able to observe it ex ante (i.e., before knowing which treatment they need). In a framework with two health care providers that differ in quality and costs, the authors show that an insurer’s choice of whether to use selective contracting may signal to consumers whether he is focused on costs or quality. Whether a cost or a quality focus is more efficient depends on parameters. Insurer competition can lead to the efficient outcome. By contrast, market power on either the insurer or provider side makes the efficient outcome less likely.

Many countries with private health insurance markets feature restrictions on premia in the form of community rating, whereby insurers have to accept any customer and charge the same price to each customer for a given contract. Policy makers’ motivation for community rating is to enforce solidarity, which would be threatened by insurers charging high prices to high-risk consumers. Economists have shown, however, that community rating induces insurers to find other, less efficient ways of price-discriminating, thus reducing welfare. In TILEC Discussion

Paper No. 2015-022, entitled “[Community rating in health insurance: trade-off between coverage and selection](#)”, TILEC members **Jan Boone** and **Michiel Bijlsma**, together with TILEC extramural fellow **Gijsbert Zwart** (University of Groningen), show that community rating can be part of a second-best policy when insurers have private information about their customers’ risk profiles. They study a model in which the government offers insurers a menu of risk adjustment schemes to elicit this information. The optimal scheme includes a voluntary reinsurance option, which is sometimes complemented by a community rating requirement. The resulting inefficient coverage of low-cost types lowers the government’s cost of separating different insurer types. This makes it possible to redistribute more rents from low-cost to high-cost consumers.

Regulation of network industries

In wholesale electricity spot markets, producers sell their output in a uniform-price auction. These markets are characterized by uncertainty in consumers’ demand and in the output of renewable power, but at the same time little information asymmetry concerning production costs. This makes them a good example of supply function competition, whereby firms commit to the entire schedule of output they produce depending on the possible realizations of the spot-market price. In their article “[Relaxing competition through speculation: committing to a negative supply slope](#)” (*Journal of Economic Theory*, 159(A), 236-266), TILEC member **Bert Willems** and his co-author Pär Holmberg (Research Institute of Industrial Economics, Stockholm) show that trade in derivatives can have anti-competitive effects in such markets. In their model, producers first choose a portfolio of call option contracts with a range of strike prices. Then, they compete in supply functions in a spot market with uncertain demand. Holmberg and Willems show that each producer uses derivatives to commit to a downward sloping supply function, i.e., to produce more when prices are low and less when they are high. This commitment makes the residual demand curve for each of its competitors steeper (less price-sensitive) and induces competitors to increase mark-ups and reduce their output.

Net neutrality – the idea that all data packets should be treated equally, regardless of source and type of content – continues to draw the attention of scholars and policymakers in the field of telecoms regulation. The US Federal Communications Commission recently decided to enforce tougher net neutrality rules on the Internet. A few months later, the European Parliament passed a package of rules that takes a more permissive stance towards certain net neutrality violations, such as paid prioritization. In TILEC Discussion Paper No. 2015-006, entitled “[Net](#)

neutrality and inflation of traffic”, TILEC member **Florian Schütt** and his co-author Martin Peitz (University of Mannheim) argue that strict net neutrality may create a “tragedy of the commons.” They develop a model in which content differs in its sensitivity to delay (think of real-time video versus email). Certain techniques used by content providers (CPs) to minimize delay – so called congestion control techniques – affect the volume of traffic on the network, and thus other CPs, but this is not taken into account by the originating CP. In such a framework, enforcing strict net neutrality rules may worsen network congestion. Net neutrality effectively turns the network into an unmanaged common property resource, which CPs overexploit by generating too much traffic. The authors show that departures from strict net neutrality can alleviate the overexploitation problem, as the Internet service provider (ISP) is enabled to manage this resource. However, they caution that piece-meal departures from net neutrality may be counterproductive. In their simple setting, allowing the ISP to create a fast and a slow lane and to charge a premium for faster delivery can implement the first-best allocation.

As water is becoming an increasingly scarce resource world-wide, its proper governance becomes of ever greater – potentially even existential – relevance. In 2015 TILEC members contributed to the expanding debate on water governance. The Netherlands has been praised for its robust water industry, especially given that 55% of the Netherlands territory is below sea level. In “[Principles of good supervision and the regulation of the Dutch drinking water sector](#)” (*Competition and Regulation in Network Industries*, 16 (3), 219-255) TILEC member **Saskia Lavrijssen** and her co-author Blanka Vitez analyze the Dutch framework of the economic regulation of drinking water and suggest improvements in light of the principles of good governance, in particular with respect to the principles of transparency and participation. The authors also recommend to create an independent regulatory agency and designate the Dutch Authority for Consumers and Markets (ACM) to perform this function.

In TILEC Discussion Paper No. 2015-020 “[The regulation of water services in the EU internal market](#)” TILEC member **Panagiotis Delimatsis** examines the EU regulatory framework regarding the water sector and links it with the discussion on services of general (economic) interest (SGI/SGEI). The paper further examines the application of the EU free movement, state aid and government procurement rules to the water sector. It shows that the main principles applicable to the supply of water services in all three sectors are transparency and non-discrimination.

Public Services are a cornerstone institution of EU internal market, state aid and

competition law, and TILEC Members have long belonged to the key participants in the European debate on public services. Some important contributions were published also in 2015. In “[Public services and the internal market: Building blocks or persistent irritant?](#)” (*European Law Journal*, 21 (6), 738-757) **Wolf Sauter** revisits the perceived conflict between the general framework of EU law and public services. It goes back to the well-known thesis by Fritz Scharpf concerning the imbalance between positive and negative integration: on the one hand discriminatory national rules that are considered to be obstacles to the internal market have been habitually struck down by the European Courts to promote negative integration; on the other hand, however, the complexity of the EU legislative process prevents the adoption of EU positive measures to replace eliminated national rules and tackle relevant concerns at EU level. From this perspective, national rules for public services become exposed to the regime of market liberalization and do not survive. Sauter reminds us, however, that EU law includes important exceptions which provide breathing space for national public services. Sauter looks closely at two sectors: electronic communications (utilities sector) and healthcare (welfare services) to show that once they have been rationalized by EU law, public services constitute a vital building block of the internal market.

Public services are an extremely complex area of EU law which, among others, segregates them into a number of categories. In particular, services of general interest (SGI), which cover economic and noneconomic activities alike, are to be differentiated from services of general economic interest (SGEI), which are economic activities which deliver outcomes in the overall public good and which would be supplied under conditions less favorable to consumers in terms of quality, safety, affordability, equal treatment or universal access if the State did not intervene. While the SGEI is a well-developed concept within the EU, the discussion on SGI has been more recent. It is also of great relevance as SGI are a key component of the EU economy, accounting for 26% of GDP and 30% of employment within the EU. Yet, current discussions focus on the internal dimension of SGI; less is said about the external aspects of such services. The energy sector is particularly important in that regard not only due to global concerns relating to sustainable development, but also due to the EU’s dependence on external energy sources. In “[Services of general interest and the external dimension of the EU energy policy](#)” (in: *Services of general interest beyond the single market: External and international law dimensions* edited by Markus Krajewski, T.M.C. Asser Press) TILEC member **Panagiotis Delimatsis** discusses the external dimension of the EU energy policy in the area of SGI. After a review of the role of SGI in the energy sector, Delimatsis focuses on the external aspects of the EU energy policy. In this regard, the concept of public services in the context of energy is examined through a discussion of the relevant rules in the WTO General Agreement on Trade in Services (GATS),

the role of energy services in the GATS and some relevant provisions in a number of free trade agreements (FTAs) that the EU concluded jointly with its Member States.

Ensuring an adequate, long-term energy supply is a paramount concern in Europe. EU member states now intervene by encouraging investment in generation capacity, offering an additional revenue stream for conventional power plants in addition to the existing, heavily subsidized investments in renewable energy sources. These capacity remuneration mechanisms (or simply capacity mechanisms) have become a hot topic in the wider European regulatory debate. European electricity markets are increasingly interconnected, so the introduction of a capacity mechanism in one country not only distorts its national market but may have unforeseeable consequences for neighboring electricity markets. If these mechanisms are adopted by several member states with no supra-national coordination and no consideration for their cross-border impact, they may cause serious market distortions and put the future of the European internal electricity market at risk. [“Capacity mechanisms in the EU energy markets. Law, policy and economics”](#) co-edited by a TILEC member **Leigh Hancher** together with Adrien de Hauteclocque, and Malgorzata Sadowska (Oxford University Press) provides an in-depth analysis of capacity mechanisms. It discusses capacity mechanisms from legal, economic, and policy perspectives and includes eleven country case studies permitting swift comparison between different models and legal approaches. Hancher also contributed a chapter [“Capacity mechanisms and state aid control: A European solution to the ‘missing money’ problem?”](#) In addition, TILEC member Bert Willems contributed a chapter on [“The Generation Mix, Price Caps and Capacity Markets”](#).

Finance, trade, and investment

The past two decades have witnessed unprecedented changes in the corporate governance landscape in Europe, the US and Asia. Across many countries, activist investors have pursued engagements with management of target companies. More recently, the role of the hostile activist shareholder has been taken up by a set of hedge funds. Hedge fund activism is characterized by mergers and corporate restructuring, replacement of management and board members, proxy voting, and lobbying of management. These investors target and research companies, take large positions in their stock, criticize their business plans and governance practices, and confront their managers, demanding action enhancing shareholder value. The book [Institutional Investor Activism: Hedge funds and private equity,](#)

[economics and regulation](#) (Oxford University Press) co-edited by TILEC member **Joseph McCahery** together with William Bratton (University of Pennsylvania) analyzes the impact of activists on the companies that they invest, the effects on shareholders and on activists’ funds themselves. Chapters examine such topics as investors’ strategic approaches, the financial returns they produce, and the regulatory frameworks within which they operate. The chapters also provide historical context, both of activist investment and institutional shareholder passivity. The volume facilitates a comparison between the US and the EU, juxtaposing not only regulatory patterns but investment styles. McCahery also contributed a chapter [“Recasting private equity funds after the crisis: The end of “two and twenty” and the emergence of co-investment and separate accounts”](#).

The recent global turbulence in the credit markets had a severe impact on all aspects of the private equity industry. In response, lawmakers introduced legislation that subjects fund managers to a registration requirement and includes provisions targeted at improving fund monitoring and accountability. Yet, little is known about the post-crisis scrutiny of private equity funds by investors. In [“New private equity models: How should the interests of investors and managers be aligned?”](#) (*Journal of Financial Perspectives*, 3(1), 1-27) TILEC members **Joseph McCahery** and **Erik Vermeulen** examine the post financial crisis trends in the private equity industry. The evidence indicates that investors’ demands for the inclusion of more investor-favorable compensation terms have begun to take hold in European funds. Fund manager responsiveness to the demand for better terms seems more general, extending to increased investor control over fund investment decisions. The new pattern also reveals the inclusion of more straightforward co-investment rights. Finally, their findings suggest that, besides the contractual “improvements,” investors want to see more skin in the game from the managers/general partners.

Using a dataset for the Netherlands, TILEC member **Joseph McCahery** and his co-author Alexander De Roode (Robeco) show in TILEC Discussion Paper No. 2015-019 [“Corporate Litigation in Specialized Business Courts”](#) that in settings without strong distortions, like plaintiffs’ lawyer fees and monetary awards present in the US, derivative style litigation may enhance firm value. Their findings also suggest that longer waiting times for court resolutions are costly.

In [“The governance of publicly traded limited liability companies”](#), (*Delaware Journal of Corporate Law*, 40, 207) TILEC Junior member **Suren Gomtsian** examines whether there is a need for contractual freedom in the governance of limited liability companies (LLCs). LLC statutes were enacted by most US

INTEGRATING LAW AND ECONOMICS ON AN EQUAL FOOTING



states in the 1990s and combine limited liability of their members with strong contractual freedom in relations between the members and in internal governance matters. As LLCs are becoming popular among publicly traded companies, they can jeopardize traditional corporate governance mechanisms used in listed corporations and create risks for investors in stock markets. The author analyzes the governance agreements and structures of all 20 publicly traded LLCs in Delaware to see whether that danger is real. The study shows that the founders of publicly traded LLCs relied extensively on the default statutory rules to strengthen and entrench their control rights, but they included provisions in the operating agreements which could balance the rights of controlling and minority members. The study also finds that other factors such as ownership structure, dividend policies, board composition and practices, market forces and the standardization of the governance structures of listed LLCs can be substitutes for legal rights. Publicly traded LLCs used different combinations of contractual rights and of the mentioned factors to make their IPOs attractive for investors.

Banks are a critical source of funding for small firms and start-ups. It is thus important to know which type of financial institution is best able to serve their financial needs. The conventional wisdom holds that small banks have a comparative advantage vis-à-vis large banks in serving small, opaque firms because they have access to qualitative information gathered through relationships that cannot easily be transferred through the communication channels of large banks. However, recent evidence suggests that large banks may be superior in serving at least a subset of small, opaque customers using quantitative information since they are able to exploit economies of scale in the processing and transmission of this information. In their article “[Market size structure and small business lending: Are crisis times different from normal times?](#)” (*Review of Finance*, 19(5), 1965-1995), TILEC member **Maria Fabiana Penas** and her co-authors Allen N. Berger (University of South Carolina) and Geraldo M. Cerqueiro (Catolica Lisbon School of Business and Economics) try to shed light on which of these arguments is correct and how this depends on whether the economy is in a boom or bust phase. They find that a greater market presence of small banks results in more bank lending to small, opaque firms and reduces the failure rate of these firms during normal times (2004-2006). However, this differential effect disappears or may even be reversed during the financial crisis (2007-2009). These results suggest that during the crisis, small banks were no longer able to sustain their competitive advantage over large banks.

In the aftermath of a banking crisis a severe recession usually ensues. One explanation is that banks reduce lending in response to shocks to their equity

capital, which increases firms' costs of external financing. A shock to the banking sector can therefore be expected to affect firms more strongly the more they rely on external finance. The structure of the financial sector should also matter because a shock should have stronger effects on more leveraged banks, whose equity capital is depleted faster.

In their article “[How does financial market structure affect the impact of a banking crisis?](#)” (*Economics Letters*, 135, 144–147), TILEC member **Michiel Bijlsma** and his co-authors Andrei Dubovik (RBB Economics) and Bas Straathof (CPB) investigate these hypotheses. Their results support the idea that there was a credit crunch due to the financial crisis and that high leverage was an important determinant of how strongly the bank lending channel was affected during the crisis. This suggests that lowering bank leverage may be a key ingredient in reducing the impact of a financial crisis on the economy.

In a networked and digital age, we need to rethink the structure of the modern corporation. In order to survive and grow, corporations must operate with a new set of assumptions and principles in order to remain relevant, competitive, and successful. Consider the growing number of technology start-up companies that are doing something that once seemed unthinkable: challenging and disrupting traditional corporate giants. Even the behemoths that operate in industries that traditionally were not viewed as technology-related industries have not been spared from the impact of new arrivals and the resulting transformation in the business environment. With the rise of digital technologies, every corporation must now become agile, innovative and, more importantly, act as though they are dynamic technology companies. Ignoring the challenge of the networked age and the digital revolution is no longer an option as it will merely accelerate the failure and decline of large corporations. So, how should large, well-established corporations operate in today's business environment? This is the question addressed by TILEC member **Erik Vermeulen** in “[Corporate governance in a networked age](#)” (*Wake Forest Law Review*, 50(3), 711-742).

Payments are a core element of financial markets constituting the “plumbing system” for the economy. Every “real” transaction is accompanied by a parallel payment. Globalization and technological revolution have been transforming also this field that for years earlier had remained rather stagnant. In “[Evolution of EU retail payments law](#)” (*European Law Review*, 40(6), 858-876) TILEC member **Agnieszka Janczuk-Gorywoda** traces the evolution of EU Retail Payments Law identifying four phases of its development. The principle of free movement of payments has always been at the core of European integration. In spite of this, the

first two phases of EU payments law were characterized by negative integration and soft law measures with limited effects on the performance of cross-border payments. The introduction of the euro started the third phase of EU payments law in which the EU became more aggressive in its approach to regulating payments. Nevertheless, EU legislation was mainly aimed at triggering and supporting “voluntary self-regulation” by the banking industry. As a result, EU payments law acquired a hybrid character. The ensuing Single Euro Payments Area (“SEPA”) is composed of publicly- and privately-made rules which became mingled together into a single system. Finally, the fourth phase of the development of EU payments law has witnessed, on an unprecedented scale, EU public regulation colonizing areas that used to be in the private domain. It also marks a nuanced shift of the objectives of EU payments law: integration is no longer the overarching objective but “regulation for competition” has surfaced as an equally important goal.

In TILEC Discussion Paper No. 2015-024 “[The new transnational payments law and global consumer trade: Online platforms as providers of private legal orders](#)” TILEC member **Agnieszka Janczuk-Gorywoda** uses the example of one of the best-known global payment systems provided by an online platform, PayPal, to analyze the role of private legal orders in creating new markets beyond jurisdictional borders. Janczuk-Gorywoda shows that a relatively uniform legal order reduces risks involved in cross-border transactions and in this way enables transnational markets. While transnational law is more easily created by private entities rather than states, it remains embedded in state laws. The continuous role of state law in shaping transnational private legal orders is guaranteed because the latter operate with the endorsement and support of states. In this way states facilitate globalization. At the same time, the impact of state laws is fragmentary and disintegrates the applicable global private legal framework. Finally, the scattered influence of state laws undermines the protection offered to consumers. This is particularly important because mutual rights and obligations between transnational private rule-makers, like the online platform PayPal, and their ‘users’ tend to be strongly biased in favor of the former.

The recent emergence of Bitcoin, a peer-to-peer network currency that is totally different from e-money or many other payment instruments has elevated the debate on whether to regulate new forms of money. In “[Regulating peer-to-peer network currency: Lessons from Napster and payment systems](#)” (*Technology and Public Policy*, 2, 40-73) TILEC junior member **Safari Kasiyanto** asks the question how the authorities should react to this innovation at its early stage of development. Kasiyanto outlines the legal issues surrounding the rise of peer-to-peer network currency and the measures available in dealing with the rise of

MEMBERS OF TILEC

ALL SPEAK A COMMON LANGUAGE



I have been with TILEC ever since it was established. I find it remarkable how much progress has been achieved. In the beginning, lawyers and economists at TILEC were interested in the same questions, but they spoke different languages. Lawyers focused on aspects of problems for which economists had difficulty to understand why these were interesting and vice versa. Economists dealt with the details of the problem, while lawyers were more interested in the more general aspects. Economists analyzed models on the basis of specific assumptions, while lawyers tried to synthesize the various results that were obtained. Bridging the gap was not always easy.

Nowadays, the TILEC lawyers and economists are still complementary; the differences in culture have not vanished. However, the members of TILEC all speak a common language, which makes cooperation easier and more fruitful. There are still different “dialects”; TILEC does not house researchers that are half lawyer and half economists. Each member is a specialist in his own discipline, but able to interact with the specialists from the other side. This model is not very common, but it works quite well. One of the nicest things one sees is the development of young people. They enter TILEC trained in one discipline and leave with a refined understanding of their own field and a multi-disciplinary attitude and, I think, confident that they are ready to contribute solutions to the world’s problems.

ERIC VAN DAMME

such crypto currency. Kasiyanto offers two lessons: one from the case of a peer-to-peer network file sharing system, Napster, and the other from existing payment systems instruments.

In TILEC Discussion Paper No. 2015-010 “[A theory of global trade law and the WTO](#)” TILEC member **Panagiotis Delimatsis** traces the emergence of global trade law and argues that it is constituted of all rules, whatever their source, that mitigate risks of economic actors engaging in transnational trade. Delimatsis further argues that research on global law should focus on three broad questions: (1) identifying principles akin to the global law advocacy; (2) empowerment of non-state actors affecting global commercial transactions; (3) creating a more inclusive global trading system offering development opportunities for all.

In TILEC Discussion Paper No. 2015-016 “[Trade in services and regulatory flexibility – 20 years of GATS, 20 years of critique](#)” TILEC member **Panagiotis Delimatsis** offers an account of the GATS birth defects, critically reviews its inability to take stock of the progress made the last fifteen years of multilateral trade negotiations, discusses its development-related potential and assesses its future prospects amidst regional service-related initiatives that threaten its existence, including the Transatlantic Trade and Investment Partnership (TTIP) and the Trade in Services Agreement (TiSA). Delimatsis concludes with a call for ‘GATS 2.0’ and argues that it should be focused on guaranteeing non-discrimination and ensuring good governance.

1.2. PHD DISSERTATIONS

2015 was an important year for TILEC junior member **Ting Jiang**, who defended her PhD dissertation on 6 May 2015. Her thesis entitled “[Social Preferences, Culture and Corruption](#)” was supervised by TILEC members **Eric van Damme**, **Jan Boone**, and **Jan Potters**. During her PhD, Ting pursued fundamental research on corrupt decision-making and gained behavioral insights on corruption before looking into the effectiveness of certain anti-corruption remedies. Neoclassical economics postulates that agents will break the law if the gains outweigh the costs of potential punishment. In her thesis, Ting argues that a better understanding of corruption can be obtained by incorporating insights from behavioral economics such as the postulates of social preferences. To understand why an individual decides to be corrupt, and in what context, it is helpful to recognize that economic agents care about not only their own narrow self-interest, but also others’ payoff consequences as well as their moral image. She argues that the characteristics of other-regarding preferences are relevant factors of decision-making in general, and corrupt decision-making is no exception. Her work suggests that more effective

policies can be designed if we gain more realistic behavioral insights.

1.3. EVENTS AND DISSEMINATION OF RESEARCH

TILEC maintained a busy program of regular activities in 2015. Following TILEC’s well-established tradition, members met every Wednesday morning to discuss recent developments and present their research. In addition, monthly seminars gave TILEC members the opportunity to interact with leading scholars working in the areas of the TILEC research program. As space is lacking to display the full range of TILEC events, Appendix C provides a list of all events organized and held by TILEC in 2015. Here we mention only a handful of major events.

Institutions and incentives

On 1-2 September 2015, TILEC members **Eric van Damme** and **Saskia Lavrijssen** organized the KNAW Conference: “[Endogenous preferences and the broader effects of competition](#)”, which took place in Amsterdam. The grand question forming the background of this conference was: how should society be governed? The economist’s answer is: by providing appropriate incentives. To find these good incentives, economists construct models, usually by assuming that people are selfish, amoral and fully rational, that is, they are homo economicus. But real people are not like this, at least, not all are. The question then becomes: how to govern when incorporating more realistic models of human behavior? The two keynote speakers (Sam Bowles (Santa Fe Institute) and Bruno Frey (CREMA)) addressed this question in general. Bowles argued that incentives based on the assumption of selfishness can be counterproductive. He argued that good laws (or good institutions, or good incentives) are no substitute for good citizens. A good governance mechanism needs to balance fines, rewards and moral persuasion. Frey focused on pay for performance, PpP, and on the paradox of why PpP is so often used in practice while we know from academic research that it can frequently backfire. The other papers that were presented can broadly be divided into two groups. One group addressed the question: how do markets (or institutions) function when we incorporate a more realistic model of human behavior? For example, one paper argued that traditional analysis underestimates the innovative potential of the market: as competitors are motivated not only by material rewards, but also want to do better than others, they innovate more. Another paper demonstrated that, under some conditions, markets will function as if people are selfish. However, the usual welfare properties (markets produce Pareto optimal outcomes) need not hold. The common element in the second group of papers was the recognition that institutions and experience shape preferences. Hence, preferences are not exogenous and stable, as conventional economics assumes. This raises deep normative questions (what preferences do we want?),

but the conference focused mainly on the positive ones: what do we know about the interaction between institutions, preferences and outcomes? Again, the focus was mainly on the market institution: how does the market influence preferences? For example, does market experience make people act in a more selfish way? Some papers found evidence of such negative side effects of markets. Another paper showed that the type of market experience matters: those with negative market experience become more ambitious than those that had a positive market experience; in fact, losers become too ambitious, with disappointment as the inevitable consequence. One conclusion that can be drawn from the conference is that our current picture of the effect of the market is seriously incomplete and that much more work is needed. A second conclusion is that much of the current research is experimental. It discovers new phenomena, but does not yet offer unambiguous explanations for why we see these. Consequently, more theory is needed.

On 3-4 September 2015, TILEC organized the 3rd economic governance workshop: “Economic governance and social preferences”. Following up on two workshops focusing on Economic Governance and Competition (in 2010) and Economic Governance and Organizations (in 2013), the third TILEC workshop in this series was set up to build bridges between the research communities studying institutions & organizations, on the one hand, and social preferences, on the other hand. Four keynote speakers and eight contributed papers, which originated from a call for papers attracting 85 submissions, complemented by a poster session, kept the audience busy during the two days. The event took place in a mansion in Tilburg’s city center, which facilitated academic interactions in a both secluded and distinguished atmosphere. Avner Greif (Stanford) started the workshop with a talk about social organizations on Thursday morning, and Simon Gächter (Nottingham) concluded on the same topic on Friday afternoon. Yet, their research methodologies - combining historical data with game theory, and using insights from a cross-cultural lab experiment conducted in 45 countries – were highly complementary. Mark Ramseyer (Harvard) explained by means of three examples from his experience studying Japanese institutions the dismal consequences that can occur when researchers do not know the origin of the data they work with. Roland Bénabou (Princeton) presented a model studying the behavior of investment managers, which showed how bonus payments can be excessive in equilibrium. He also derived an optimal interior level of competition – which implies that too much competition can distort investment managers’ incentives so much that total welfare declines. Many other interesting papers, studying the functions and interactions of social preferences and man-made rules that aim at

fostering cooperation by means of theory, lab and field experiments, and extensive data work, ensured a constantly high level of discussions both during and between the academic sessions.



“A terrific workshop, bringing together established researchers and the next, upcoming generation, for two days intellectual feast around an exciting topic -all of this in a wonderfully friendly atmosphere.”

– Roland Bénabou

Competition policy

On 21 May 2015, in cooperation with CPB and the Dutch Ministry for Economic Affairs, TILEC organized a competition workshop on “platforms and vertical restraints”. The background was the growing importance and increasing market power of internet platforms, which had led several competition authorities (in particular, the German Bundeskartellamt) to intervene. Attention focused on the Across Platform Parity Agreements (APPA’s), by which platforms such as Booking.com prevent hotels from advertising lower rates on other sites. Hence, such an APPA guarantees that Booking.com has the lowest rate in the market. This is convenient for shoppers, but it gives market power to the platform which can thereby attract higher commissions from hotels. The question is whether APPA’s should be considered illegal. For those who view a platform as a supermarket, the answer is clear: an APPA amounts to RPM and that is illegal in the EU. However, for those that see a platform as a (two-sided) market place, the answer is less clear. Bart Noé (ACM) presented the recent priority document of the ACM on vertical restraints. ACM takes a case-by-case approach, realizing that APPA’s have efficiency enhancing effects as well as possibly anti-competitive ones. In the discussion, Jens Prüfer (TILEC) argued that APPA’s may be less of a concern than the data that platforms gather, as it is the latter that leads to dominance. In its approach, the ACM is guided primarily by the possible harm to consumer surplus.

In his presentation, Daniel Ropers (CEO of Bol.com) questioned that approach. He argued that suppliers also need protection as, without them, there will not be any consumer surplus to distribute. He also argued that for a platform like Bol.com it is crucial to treat suppliers fairly so as to keep the platform attractive for them. His discussant, Jan Kees Winters (RBB Economics) agreed and argued that, therefore, calls for antitrust intervention were premature. The lively discussion following these presentations further clarified some of the issues and illustrated the trade-offs involved in this new and challenging domain.

In addition, TILEC hosted the now well-established annual workshop of the **Competition Law and Economics European Network (CLEEN)**. The 9th international workshop was held on 28-29 May 2015 and took place on the campus of Tilburg University. In line with the main purpose of CLEEN, an academic network aiming at fostering the exchange of ideas on competition policy and market regulation, several junior TILEC members participated in the workshop and discussed their work with peers from other CLEEN institutions. Two distinguished scholars from law and economics delivered keynote lectures at the event. Giancarlo Spagnolo (Tor Vergata, SITE, EIEF and CEPR) presented work on “Memory and privacy in a market for lemons”. His presentation focused on how the storage of information by law enforcement agencies and internet platforms should be regulated. Based on a dynamic model of adverse selection, he argued that negative records should be kept for a long time, while positive records should be forgotten rapidly to avoid market breakdown.

Innovation

As part of its longstanding commitment to research on the law and economics of innovation, TILEC organized two important events in 2015. On 16 January 2015 TILEC organized a small-scale, invitation-only workshop on “**Standard setting and FRAND licensing**”. Hosted on the campus of Tilburg University, the event was aimed at fostering a dialogue between researchers from law and economics on the one hand and policy makers from the relevant European institutions on the other hand. In line with this objective, the workshop featured academic presentations of frontier-level research by Justus Baron (Northwestern University), Knut Blind (TU Berlin), Aija Leiponen (Cornell University), Yann Ménière (Mines ParisTech), Marc Rysman (Boston University) and David Teece (UC Berkeley) as well as a policy roundtable with representatives from standard-setting organization ETSI, the European Patent Office, and the European Commission (DG Competition, DG Growth and DG Research and Innovation were all represented). Among many other topics, the participants discussed whether market mechanisms lead to an

GREAT OPPORTUNITY TO PRESENT MY RESEARCH



“Attending the CLEEN Workshop at Tilburg University was a great opportunity to present my research to PhD students and faculty alike. Since the workshop attracts people from different fields, I really had to consider carefully how to present my research in a way that allows everyone to benefit from it. I definitely enjoyed this challenge and in my opinion every academic should take it on every once in a while. Both keynote speakers delivered interesting insights into their current research and I am happy to have gotten the chance to listen to them. Last but not least I would like to thank the organizers for the great workshop and hope to be invited to the CLEEN Workshop again.”

SEBASTIAN DENGLER

efficient allocation of standard-essential patents, whether the licensing guidelines released by IEEE favor innovators or implementers, what role standards play in producing new knowledge, and how the structure of the network of participants in standard-setting organizations shapes the standard-setting process.

On 10-11 December 2015, TILEC organized a two-day conference based on submissions received following a call for papers. The conference, on the topic of “[Competition, standardization, and innovation](#)”, took place in Amsterdam and brought together economists and legal scholars to advance our understanding of the relationships between competition, standardization, and innovation, and their implications for public policy. The event featured keynote lectures by 2014 Nobel Memorial Prize in Economic Sciences laureate Jean Tirole (Toulouse School of Economics), Josef Drexl (Max-Planck Institute on Competition and Innovation, Munich), Alison Jones (King’s College London), and Mark Schankerman (London School of Economics), as well as many contributed presentations. On the first day, Alison Jones got the discussion started by analyzing the recent judgment by the Court of Justice of the European Union (CJEU) in *Huawei vs. ZTE* and its implications for whether seeking an injunction against an alleged patent infringer can constitute an abuse of a dominant position under Article 102 TFEU. To her mind, the judgment has clarified some of the issues put before the court but without contributing much to the more general discussion about the definition of abuses under EU competition law. Mark Schankerman later presented empirical evidence on the effect of patent invalidation on follow-on innovation by the patent holder, showing that invalidation decreases subsequent patenting on average but is very heterogeneous across firms. Sandwiched in between the two first-day keynotes where three parallel sessions discussing the bundling of (F)RAND-committed patents, patent disclosure in standard-setting organizations, provision of R&D incentives through research grants, standard wars, patent screening, and the assertion of standard-essential patents by non-practicing entities, among other things. On the second day, Jean Tirole provided insights on how independent licensing and unbundling requirements can be used to distinguish good from bad patent pools without placing strong informational demands on authorities, and how structured price commitments can alleviate several inefficiencies caused by the fact that standard-setting eliminates technological alternatives. In the three plenary sessions that followed, the discussions centered, among other things, on how the value of the standard should be shared between technology contributors and implementers, the effect of interlocking directorships on firms’ patenting activity, and the historical role of prizes and rewards in 18th- and 19th-century

Britain. To close out the conference, Josef Drexl returned to the *Huawei vs ZTE* case, arguing that the judgment did not adequately take into account the nature of competition in the smartphone industry, which revolves around upstream innovation more than prices. In addition, it did not clarify whether non-practicing entities should be treated differently than the practicing ones, and probably entertains too high expectations as regards the role which arbitration can play in solving pre-licensing disputes. On the whole, the conference, one of many events that TILEC has organized on innovation, standardization, and the patent system over the years, proved an exciting one. It made clear which advances have been made in our understanding of the relationship between competition, standardization, and innovation in recent years, while identifying the issues that remain worth researching.



“TILEC organizes events in which top legal scholars and economists from all over the world do interact. The conference was really stimulating”
— [Jean Tirole](#)

Health care markets regulation

As part of the series of health policy workshops TILEC organizes jointly with the Netherlands Bureau for Economic Policy Analysis (CPB) and the Dutch Healthcare Authority (NZa), on 5 June 2015 the 7th Health Policy Workshop took place at the Ministry of Health in The Hague on the topic “[Can health insurance competition work?](#)” In 2006, a new health care system with regulated competition was implemented in the Netherlands in which competing health insurers buy care on behalf of their consumers. The goal of this reform was to improve the efficiency in the health care sector. After almost ten years, it was time for an evaluation, and deciding whether the reform has been a success. Among the questions discussed during the workshop were the following ones. Did health insurers take up their role of stimulating providers to become more efficient? Do savings in the health care sector end up with consumers? What policies should be considered

to increase efficiency in the health care sector? What are good instruments for the government to control health care expenditure without decreasing incentives for efficiency? These and other questions were discussed during the workshop. Speakers included Liran Einav (Stanford University), **Jan Boone** (TILEC / Tilburg University) and Ernst van Koesveld (Director Health Insurance of the Dutch Ministry of Health, Welfare and Sport).

TILEC RETREAT

On 25 September 2015 the annual TILEC Retreat was held in Tilburg. The Retreat started with the overview of TILEC's development and plans for the future. In addition individual research clusters of TILEC were discussed: institutions and incentives, innovation, health care governance, competition policy, and regulation of network industries.

2. EDUCATION

Although TILEC is not formally responsible for running any of the university's educational programs, it plays a key role in a number of them, especially masters-level and doctorate-level education at TiSEM and TLS.

TILEC members are very active in the MSc in Economics program at TiSEM (in the Competition and Regulation track, in particular) as well as the Global Law Bachelor, the International Business Law Master and the Master in International and EU law at TLS. In addition, additional courses are offered at the PhD level. In 2015, on top of general courses, many courses directly linked up with the TILEC research program.

Examples on the side of TiSEM include the bachelor course "Competition policy and regulation" (**Jan Boone** and **Clemens Fiedler**), the master courses "Competition policy" (**Cédric Argenton** and **Eric van Damme**), "Methods: Game theory" (**Florian Schütt** and **Wieland Müller**), and "Competition and regulation in network industries" (**Bert Willems**). Examples on the side of TLS include the bachelor course "Mededingingsrecht/competition law" (**Saskia Lavrijssen**), the Global Law bachelor courses "Tort Law" (**Pierre Larouche**), "Methods and Techniques of Legal Research" (**Pierre Larouche** and **Panagiotis Delimatsis**), and master courses "European competition law" (**Pierre Larouche** and **Nicolo Zingales**), "Advanced competition law and economic regulation" (**Nicolo Zingales**, **Leigh Hancher**, and **Branislav Hock**), "Banking and securities regulation" (**Joseph Mc Cahery**), "Constitutionalization of the EU" (**Agnieszka Janczuk-Gorywoda**), and "Trade and WTO law", "Internal markets", and "External Relations" (**Panagiotis**

Delimatsis). In addition, TILEC members **Cédric Argenton** has contributed to the TiSEM Research Master program by offering a specific course in Law and Economics, while **Bert Willems** and **Jan Boone** taught Competition and Regulation and Industrial Organization.

In July 2015, for the second time, TILEC organized a summer course on *Global Business Law and Economics* as part of Tilburg University's Summer School. This for-credit course aimed at providing advanced undergraduate students with a non-technical introduction to the main legal and economic issues encountered in today's global business life. By blending law and economics, teachers **Cédric Argenton**, **Panagiotis Delimatsis**, **Agnieszka Janczuk-Gorywoda**, and **Nicolo Zingales** enabled an international group of students from various backgrounds to understand the legal and economic logic of the constraints that determine the environment of any economic enterprise: contract law, competition law, and trade law.

TILEC does not have its own PhD program but accommodates doctoral students through its affiliation with the graduate schools of its parent schools. Doctoral students who become junior TILEC members are provided with regular supervision by a team of academic experts from both TiSEM and TLS and become part of a congenial research environment. In 2015 6 new junior members and 1 external PhD started their PhDs at TILEC, and 21 junior members and external PhDs continued their doctoral studies at Tilburg

3.FINANCES

TILEC is funded through a mix of internal funds (39%) provided by the University or TILEC's parent schools, as well as external funds (61%). External funds comprise research funding obtained from the Netherlands Organization for Scientific Research (NWO) and assimilated institutions, larger-scale agreements with public authorities or private firms, and revenues from research contracts.

More specifically, research at TILEC was funded by the following organizations:

- **Centre on Regulation in Europe (CERRE)**, for research projects on privacy in network industries and the reform of the regulatory framework for electronic communications
- **Royal Netherlands Academy of Arts and Sciences**, for research on the role of markets in society
- **Qualcomm Inc**, for research on innovation, intellectual property, standard setting, and competition

APPENDIX

2015

APPENDIX A. MEMBERS PER 31 DECEMBER 2015

Senior members	TiSEM/TLS	II*	CP*	IN*	HC*	NI*	FT*	Fte applicable
Argenton, Cédric	TiSEM		•	•				0.3
Bijlsma, Michiel	TiSEM				•			0,1
Boone, Jan	TiSEM				•			0.2
Brouwer, Erik	TiSEM		•		•			0.4
Da Rin, Marco	TiSEM						•	0.1
Damme, Eric van	TiSEM	•	•					0.4
Delimatsis, Panagiotis	TLS	•					•	0.4
Devarakonda, Shivaram	TiSEM			•				0.1
Filistrucchi, Lapo	TiSEM		•		•	•		0.2
Geradin, Damien	TLS		•	•				0.2
Hancher, Leigh	TLS		•			•		0.2
Husovec, Martin	TLS			•				0.5
Janczuk, Agnieszka	TLS	•					•	0.4
Klein, Tobias	TiSEM		•					0.1
Larouche, Pierre	TLS		•	•		•		0.4
Lavrijssen, Saskia	TLS		•			•		0,4
McCahery, Joseph	TLS						•	0.1
Müller, Wieland	TiSEM		•					0.1
Penas, Maria Fabiana	TiSEM	•					•	0.2
Potters, Jan	TiSEM	•						0.1
Prüfer, Jens	TiSEM	•	•	•		•		0.2
Renneboog, Luc	TiSEM						•	0.2
Sauter, Wolf	TLS				•			0.2
Schütt, Florian	TiSEM			•		•		0.5
Suetens, Sigrid	TiSEM	•						0.1
Vermeulen, Erik	TLS						•	0.4
Willems, Bert	TiSEM					•		0.2
Zingales, Nicolo	TLS	•	•					0.4

Junior members	TiSEM/TLS	II*	CP*	IN*	HC*	NI*	FT*
Aslan, Cansu	TiSEM		•	•			
Broulik, Jan	TLS	•					
Dengler, Sebastian	TiSEM	•					
Fernandez Machado, Roxana	TiSEM	•				•	
Fiedler, Clemens	TiSEM		•	•			
Georgieva, Zlatina	TLS		•				
Gomtsian, Suren	TLS	•		•			•
Habetinova, Lenka	TiSEM	•					
Hock, Branislav	TLS	•				•	
Kanevskaia, Olia	TLS	•		•			•
Kasiyanto, Safari	TLS		•	•		•	•
Li, Jing	TLS			•			•
Srivastava, Vatsalya	TiSEM	•					
Wang, Xiaoyu	TiSEM	•	•				
Xie, Muping	TLS	•					
Xu, YiLong	TiSEM	•					•
Yang, Yadi	TiSEM			•			

★

II: Institutions and incentives
IN: Innovation
NI: Regulation of network industries

CP: Competition policy
HC: Health care markets regulation
FT: Finance, trade, and investment

EXTRAMURAL FELLOWS

Bijl, Paul de
Brunekreeft, Gert
Calcagno, Riccardo
Carletti, Elena
Cengiz, Firat
Chaudhuri, Amrita
Chirico, Filomena
Cserne, Peter
Cziraki, Peter
Degryse, Hans
Dijk, Theon van
Dimopoulos, Angelos
Foldes, Eva Maria
Gabor, Barbara
Haar, Ilse van der
Halbersma, Rein
Johan, Sofia
Kervel van, Vincent
Littler, Alan
Luttikhuis, Karin
Mikkers, Misja
Motchenkova, Evgenia
Mulder, Machiel
Negrinotti, Matteo
Overvest, Bastiaan
Schottmüller, Christoph
Seres, Gyula
Sidak, Gregory
Sluijs, Jasper
Sorana, Valter
Szilagyi, Peter
Tajana, Alessandro
Tarantino, Emanuele
Verouden, Vincent
Zhou, Jun
Zwart, Gijsbert

Radicand Economics
Jacobs University
EM Lyon
European University Institute
University of Liverpool
University of Winnipeg
European Commission
University of Hull
University of Toronto
KU Leuven
European Patent Office
Queen Mary, University of London
University of Vienna
European Commission
Tele2
Kansspelautoriteit
York University
VU University Amsterdam
Kalff Katz & Franssen Attorneys at Law
Maastricht University
NZA
VU University Amsterdam
ACM
Competition Authority Italy
CPB
University of Copenhagen
Humboldt University
Criterion Economics
Andersson Elffers Felix
Charles River Associates
University of Cambridge
Johnson & Johnson
University of Mannheim
European Commission
University of Bonn
University of Groningen

EXTERNAL PHD STUDENTS

Argyropoulou, Venetia
Battaglia, Lauren
Bezem, Jan
Bolhuis, Machiel
Comnenus, George
Corte, Emanuel de
Daskalova, Victoria
De Lemos Pinto Aydos, Elena
Hiemstra, Liebrich
Kathuria, Vikas
Katona, Katalin
Lugard, Paul
Ochieng Pernet, Awilo
Trias, Ana

Hogan Lovells
Min. Veiligheid en Justitie/Belastingdienst
Liberty Global

Ecorys
University of Twente
University of Newcastle
Energy Trading
Jindal Global Law School
Nederlandse Zorgautoriteit
Baker Botts LLP
Codex Alimentarius Commission



BREAKING
NEW GROUND
IN RESEARCH

LIST OF PUBLICATIONS

APPENDIX B. LIST OF PUBLICATIONS 2015

List of publications by TILEC members falling within the scope of the TILEC research program

Academic publications – Journal articles

English publications

Argenton, Cédric and Willems, Bert

Exclusion through speculation. *International Journal of Industrial Organization*, 39 (March 2015), 1-9.

Bijlsma, Michiel

How does financial market structure affect the impact of a banking crisis? *Economics Letters*, 135, 144–147 (with Andrei Dubovik and Bas Straathof).

Consumer perception of deposit insurance: little awareness, limited effectiveness? *Applied Economics*, 47 (32) 3439-3461 (with Karen van der Wiel).

Tail-dependence: a cross-industry comparison. *The Journal of Portfolio Management Spring* 41(3), 109-116 (with Sander Muns).

Boone, Jan

Basic versus supplementary health insurance: Moral hazard and adverse selection. *Journal of Public Economics*, 128, 50-58.

Devarakonda, Shivaram

Mechanisms of hybrid governance: Administrative committees in non-equity alliances (online first). *Academy of Management Journal* (with Jeffrey Reuer).

Filistrucchi, Lapo

Areeda-turner in two-sided markets. *Review of industrial organization*, 46(3), 287-306 (with Stefan Behringer).

Hotelling competition and political differentiation with more than two newspapers. *Information Economics and Policy*, 30, 36-49 (with Stefan Behringer).

Georgieva, Zlatina

Soft law in EU competition law and its judicial reception in member states: A theoretical perspective. *German Law Journal*, 16(2), 223-260.

Geradin, Damien

Loyalty rebates after Intel: Time for the European Court of Justice to overrule Hoffman-La Roche. *Journal of Competition Law and Economics*, 11(3), 579-615.

Collective redress for antitrust damages in the European Union: Is this a reality now? *George Mason University Law Review*, 22 (5), 1079-1101.

Gomtsian, Suren

The Governance of publicly traded limited liability companies, 40 *Delaware Journal of Corporate Law* 207.

Regulatory scrutiny of subsidiarity and proportionality, 22(4) *Maastricht Journal of European & Comparative Law* 485, 483-505 (with Anne Meuwese).

Contractual mechanisms of investor protection in non-listed limited liability companies, 60 *Villanova Law Review* 955.

Husovec, Martin

Slovak Constitutional Court annuls national data retention provisions. *European Data Protection Law Review*, 227-229.

Janczuk-Gorywoda, Agnieszka

Evolution of EU retail payments law. *European Law Review*, 40(6), 858-876.

Kasiyanto, Safari

Regulating peer-to-peer network currency: Lessons from Napster and payment systems. *Journal of Law, Technology and Public Policy*, 2, 40-73.

Larouche, Pierre

Regulation for innovativeness or regulation of innovation? *Law, Innovation and Technology*, 7(1), 52-82 (with Anna Butenko).

Lavrijssen, Saskia

Principles of good supervision and the regulation of the Dutch drinking water sector. *Competition and Regulation in Network Industries*, 16 (3) 219-255 (with Blanka Vitez).

McCahery, Joseph A. and Vermeulen, Erik P.M.

New private equity models: How should the interests of investors and managers be aligned? *Journal of Financial Perspectives*, 3(1), 1-27.

Penas, Maria Fabiana

Market size structure and small business lending: Are crisis times different from normal times? *Review of Finance*, 19(5), 1965-1995 (with Allen N. Berger and Geraldo M. Cerqueiro).

Prüfer, Jens

Trade associations, lobbying, and endogenous institutions. *Journal of Legal Analysis*, 7(2), 467-516 (with Maria Larrain Aylwin).

Renneboog, Luc

Taxes, earnings payout, and payout channel choice. *Journal of International Financial Market, Institutions and Moneys*, 37, 178-203 (with Philipp Geiler).

Investing in diamonds. *Business and Economic Research*, 5(1), 166-195.

The political determinants of executive compensation: Evidence from an emerging economy. *Emerging Market Review*, 25, 69-91 (with Hao Liang and Sunny Li Sun).

Do managers manipulate earnings prior to management buyouts? *Journal of Corporate Finance* 35, 43-61.

Are female top managers really paid less? *Journal of Corporate Finance* 35, 345-369 (with Philip Geiler).

Sauter, Wolf

Containing corporatism: EU competition law and private interest government. *European Competition Law Review*, 36(5), 187-193.

The duty of care for the environment: CO₂ reductions made mandatory. *Utilities Law Review*, 20(6), 261-279.

Public services and the internal market: building blocks or persistent irritant?. *European Law Journal* 21 (6), 738-757.

Schaumans, Catherine

Prescribing behavior of general practitioners: Competition matters! *Health Policy*, 119(4), 456-463.

Schütt, Florian

Transparency in markets for experience goods: Experimental evidence. *Economic Inquiry*, 53(1), 640-659 (with Bastian Henze and Jasper P. Sluijs).

Media competition and electoral politics. *Journal of Public Economics*, 130, 80-93 (with Amedeo Piolatto).

Suetens, Sigrid

An experimental investigation of evolutionary dynamics in the rock-paper-scissors game. *Scientific Reports*, 5, art no. 8817 (with Moshe Hoffman, Uri Gneezy and Martin A. Nowak).

Vermeulen, Erik P.M.

High tech companies and the decision to “go-public”: Are backdoor listings (still) an alternative to “Front-Door” IPOs? *Penn State Journal of Law & International Affairs*, 4(1), 420-444.

Corporate governance in a networked age. *Wake Forest Law Review* 50(3), 711-742.

Vollaard, Ben

The engine immobiliser: A non-starter for car thieves (Online First). *The Economic Journal* (with Jan van Ours).

The power of a bad example: A field experiment in household garbage disposal (Online First). *Environment and Behavior* (with Robert Dur).

Willems, Bert

Relaxing competition through speculation: committing to a negative supply slope. *Journal of Economic Theory*, 159(A), 236-266.

Zingales, Nicolo

Crowdsourcing ideas as an emerging form of multistakeholder participation. *Policy and Internet*, 7(3), 214-237 (with Roxana Radu and Enrico Calandro).

The Brazilian approach to internet intermediary liability: blueprint for a global regime? *Internet Policy Review*, 4 (4).

Protecting user privacy in the cloud: an analysis of terms of service. *European Journal of Law and Technology*, 6(3), 1-19 (with Konstantinos Stylianou and Jamila Venturini).

Academic publications – Book chapters

Damme, Eric van

Game theory: non-cooperative games. In: Neil J. Smelser and Paul B. Baltes (eds.), *International encyclopedia of the social & behavioral sciences* (pp. 582-591). Oxford: Elsevier, 9.

Delimatsis, Panagiotis

Services of general interest and the external dimension of the EU energy policy. In: Markus Krajewski (ed.), *Services of general interest beyond the single market: external and international law dimensions* (Legal issues of services of general interest) (pp. 325-350). The Hague: T.M.C. Asser Press.

Introduction: continuity and change in international standardisation. In: Panagiotis Delimatsis (ed.), *The Law, Economics and Politics of International Standardisation* (pp 1-16). Cambridge University Press.

‘Relevant international standards’ and ‘recognised standardisation bodies’ under the TBT Agreement. In: Panagiotis Delimatsis (ed.), *The Law, Economics and Politics of International Standardisation* (pp. 104-137). Cambridge University Press.

The law, economics and politics of international standardisation: a future research agenda. In: Panagiotis Delimatsis (ed.), *The Law, Economics and Politics of International Standardisation* (pp. 460-472). Cambridge University Press.

Hancher, Leigh

The trans Atlantic pipeline project: how exemptions lead to tailor-made regulatory regimes. In: Dick Buschle and Kim Talus (eds.) *The Energy Community: A New Energy Governance System* (pp. 229-251). Cambridge: Intersentia.

Capacity mechanisms and state aid control: A European solution to the ‘missing money’ problem? In: Leigh Hancher, Adrien de Hauteclocque and Malgorzata Sadowska (eds.) *Capacity mechanisms in the EU energy markets. Law, policy and economics*. Oxford: Oxford University Press.

Larouche, Pierre

Interoperability standards, patents and competition policy. In: Panagiotis Delimatsis (ed.), *The Law, Economics and Politics of International Standardisation* (pp 367 – 393). Cambridge University Press (with Geertrui van Overwalle).

McCahery, Joseph A.

Institutional investor activism: Introduction. In: William Bratton and Joseph A. McCahery (eds.), *Institutional Investor Activism: Hedge Funds and Private Equity, Economics and Regulation*. Oxford: Oxford University Press (with William Bratton).

McCahery, Joseph A. and Vermeulen, Erik

Recasting private equity funds after the crisis: The end of “two and twenty” and the emergence of co-investment and separate accounts. In: William Bratton and Joseph A. McCahery (eds.), *Institutional Investor Activism: Hedge Funds and Private Equity, Economics and Regulation*. Oxford: Oxford University Press.

Müller, Wieland

Experimental economics in antitrust. In: Roger Blair and Daniel Sokol. (eds.), *The Oxford Handbook of International Antitrust Economics (Vol 1)* (pp. 229-253). Oxford: Oxford University Press, (Oxford Handbooks in Economics).

Renneboog, Luc

CEO networks and the m&a market. In: Marc Fetscherin (ed.) *CEO Branding: Theory and Practice* (pp. 275-294). Routledge Publishing (with Yang Zhao).

Serial takeovers, large shareholders, and CEOs’ equity-based compensation. In: Jennifer G. Hill and Randall S. Thomas (eds.), *The Research Handbook on Shareholder Power*. Cheltenham: Edward Elgar Publishing Ltd (with Elena Pikulina).

Portugal’s experience with public-private partnerships. In: Akintola Akintoye, Matthias Beck and Mohan Kumaraswamy (eds.), *Public Private Partnership: A Global Review* (pp. 266-282). London: Routledge, Taylor and Francis (with Miranda Sarmento).

Shareholder activism through proposals: The European perspective. In William Bratton and Joseph A. McCahery (eds.), *Institutional Investor Activism Hedge Funds and Private Equity, Economics and Regulation* (pp.105-150). Oxford: Oxford University Press (with Peter Cziraki and Peter G. Szilagyi).

Mutual funds: management styles, social responsibility, performance and efficiency. In: H. Kent Baker, Greg Filbeck and Halil Kiymaz (eds.), *Mutual Funds and Exchange-Traded Funds: Building Blocks to Wealth* (pp. 268-289). Oxford: Oxford University Press (with Tamas Barkó).

Hard assets: the return of rare diamonds and gems. In: Roman Grynberg and Letsema Mbayi (eds.), *The Global Diamond Industry: Economics and Development* (Vol 1) (pp. 196-217). London: Palgrave Macmillan (with Christophe Spaenjers).

The (/A) multi-layered network of the (Colombian) sovereign securities market. In: Bilana Alexandrova-Kabadjova, Martin Diehl, Richard Heuver and SerafinMartinez-Jaramillo (eds.), *Analyzing the Economics of Financial Market Infrastructures: Advances in Finance, Accounting and Economics* (pp.124-149). Hershey: IGI Global (AFAE Book Series) (with Carlos León Ricón and Jhonatan Pérez).

Vermeulen, Erik P.M.

Specialised business courts: how to settle conflicts in international joint ventures. In: Zapata A. (ed.), *Contemporary Issues of National and International Negotiations*. International Chamber of Commerce.

The future of venture capital in Europe: Applicable lessons from the United States. In: Zetzsche, D. (ed.) *The Alternative Investment Fund Managers Directive: European Regulation of Investment Funds* (International Banking and Finance Law). Alphen aan den Rijn Kluwer: International Law (with Brian Park).

Willems, Bert

The generation mix, price caps, and capacity payments. In: Leigh Hancher, Adrien de Hauteclocque and Malgorzata Sadowska (eds.) *Capacity mechanisms in the EU energy markets. Law, policy and economics*. Oxford: Oxford University Press.

Zingales, Nicolo

The global multistakeholder meeting on the future of internet governance (NETmundial). *Multistakeholder as governance groups: observation from case studies*, Berkman Center Research. Urs Gasser, Ryan Budish, Sarah Myers West (ed), 214-237 (with Marília Maciel and Daniel Fink).

Academic publications – Monographs and edited books

Delimatsis, Panagiotis

Panagiotis Delimatsis (ed.), *The law, economics and politics of international standardisation*. Cambridge: Cambridge University Press.

Hancher, Leigh

Hancher, Leigh (ed.) *Capacity mechanisms in the EU energy markets. Law, policy and economics*. Oxford: Oxford University Press (with Adrien de Hauteclocque and Malgorzata Sadowska).

Ting, Jiang

Social Preferences, Culture and Corruption. Tilburg: CentER, Center for Economic Research. Prom.: prof.dr. Eric van Damme, Prof.dr. Jan Boone, Prof.dr. Jan Potters.

McCahery, Joseph A.

Joseph A. McCahery (ed.), *Institutional investor activism: hedge funds and private equity, economics and regulation*. Oxford: Oxford University Press (with William Bratton).

Academic publications – Others

Geradin, Damien

Global antitrust convergence: words or reality? Book review of *The Atlantic Divide in Antitrust – An Examination of U.S. and EU Competition Policy* edited by Daniel J. Gifford and Robert T. Kudrle (University of Chicago Pres.), *The antitrust source*, 1(4).

Hock, Branislav

Book review of *Corruption: Economic Analysis and International Law*, by Marco Arnone and Leonardo S. Borlini (Edward Elgar Publishing Limited). *The Modern Law Review*, 78(5), 909-911.

Lavrijssen, Saskia

Book review of *Market integration through ‘network governance’: the role of european agencies and networks of regulators*, by Marco Zinzani. (Cambridge: Intersentia, 2012). *Common Market Law Review*, 52(6), 1703-1705.

Professional publications – Journal articles

Hock, Branislav
Fighting corruption via performance audit, *IACA Alumnus*, VII, 18-21.

Corruption, public procurement and the European Court of Auditors, *Journal of the European Court of Auditors*, 04/2015.

Professional publications – Reports

Mc Cahery, Joseph A.
The European capital markets study: estimating the financing gaps of SMEs (with Florencio Lopez de Silanes, Dirk Schoenmaker and Dragana Stanisic).

Professional publications – Other

Vermeulen, Erik P.M.
The IPO market conundrum: can we find solution before the bubble bursts? (web publication).

We know the saviour... and it is them: the new face(s) of venture capital (web publication).

TILEC discussion papers

DP 2015-001
Title: Containing corporatism: EU competition law and private interest government
Author: Wolf Sauter

DP 2015-002
Title: The Principles of Good Regulation in the Water Sector
Authors: Saskia Lavrijssen & Blanka Vitez

DP 2015-003
Title: Health provider networks, quality and costs
Authors: Jan Boone & Christoph Schottmüller

DP 2015-004
Title: Immigration, Endogenous Technology Adoption and Wages
Authors: Manish Pandey & Amrita Ray Chaudhuri

DP 2015-005
Cancelled

DP 2015-006
Title: Net neutrality and inflation of traffic
Authors: Martin Peitz & Florian Schuett

DP 2015-007
Title: Regulation for Innovativeness or Regulation of Innovation?
Authors: Anna Butenko & Pierre Larouche

DP 2015-008
Title: Balancing protection of public health and safety with the free movement of goods in the EU medical device sector: the case of ‘borderline products’ classification
Authors: Tasoula Tseliou

DP 2015-009
Title: Venture Capital and Innovation Strategies
Authors: Marco Da Rin & María Fabiana Penas

DP 2015-010
Title: A theory of Global Trade Law and the WTO
Authors: Panagiotis Delimatsis

DP 2015-011
Title: Consumer Welfare in EU Competition Law: What Is It (Not) About?
Authors: Victoria Daskalova

DP 2015-012
Title: Debtor Protection, Credit Redistribution, and Income Inequality
Authors: Hamid Boustanifar, Geraldo Cerqueiro, and María Fabiana Penas

DP 2015-013

Title: Standard-Setting in Services – New Frontiers in Rule-Making and the Role of the EU
Author: Panagiotis Delimatsis

DP 2015-014

Title: Temporal displacement of environmental crime. Evidence from marine oil pollution
Author: Ben Vollaard

DP 2015-015

Title: The Rise and Fall of Cartels with Multi-Market Colluders
Author: Jun Zhou

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Title: Trade in Services and Regulatory Flexibility – 20 years of GATS, 20 years of critique
Author: Panagiotis Delimatsis

DP 2015-017

Title: A dose of competition: EU antitrust law in the pharmaceuticals sector
Authors: Leigh Hancher & Wolf Sauter

DP 2015-018

Title: How Jeremy Bentham would defend against coordinated attacks
Authors: Ole Jann & Christoph Schottmüller

DP 2015-019

Title: Corporate Litigation in Specialized Business Courts
Authors: Joseph A. McCahery & Alexander de Roode

DP 2015-020

Title: The Regulation of Water Services in the EU Internal Market
Author: Panagiotis Delimatsis

DP 2015-021

Title: Disruptive Innovation and Competition Policy Enforcement
Authors: Alexandre de Streel & Pierre Larouche

DP 2015-022

Title: Community rating in health insurance: trade-off between coverage and selection
Authors: Michiel Bijlsma, Jan Boone & Gijsbert Zwart

DP 2015-023

Title: Evolution of EU Retail Payments Law
Author: Agnieszka Janczuk-Gorywoda

DP 2015-024

Title: The New Transnational Payments Law and Global Consumer Trade: Online Platforms as providers of Private Legal Orders
Author: Agnieszka Janczuk-Gorywoda

DP 2015-025

Title: The Judicial Reception of Competition Soft Law in the Netherlands and the UK
Author: Zlatina Georgieva

DP 2015-026

Title: Of Coffee Pods, Videogames, and Missed Interoperability: Reflections for EU Governance of the Internet of Things
Author: Nicolo Zingales

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Een wereld zonder banken? Marktfinanciering en bankfinanciering in perspectief.
CPB Policy Brief.

Vijf aanknopingspunten voor doelmatigheid in de curatieve zorg. *CPB Policy Brief.*

Damme, Eric van

De universiteit kan zoveel beter. *Eindhovens Dagblad.*

APPENDIX C. ACTIVITIES 2015

1. TILEC SEMINARS

A Seminar is devoted to a specific topic within the TILEC research program and typically involves one or two academic presentations (law and economics). It is organized for the benefit of faculty members and other researchers at Tilburg University.

28 January 2015

Rebecca Haw Allensworth, Vanderbilt Law School

Incommensurability of “pro-competitive” and “anticompetitive” effects in antitrust law

04 February 2015

Markus Reisinger, WHU - Otto Beisheim School of Management

Interchange fee regulation and service investments

11 March 2015

Melissa Wasserman, University of Illinois

Is the time allocated to review patent applications inducing examiners to grant invalid patents? : Evidence from micro-level application data

08 April 2015

Roland Strausz, Humboldt Universität Berlin

Optimal sales contracts with withdrawal rights

10 June 2015

Patrick Legros, Université libre de Bruxelles

Divestitures and high prices

30 September 2015

Šarūnas Keserauskas, Vilnius University

*Setting priorities for a small country's competition authority:
On independence and the more economic approach*

28 October 2015

Tobias Kretschmer, Ludwig-Maximilians-Universität München

Video killed the radio star? Online music videos and recorded music sales

01 December 2015

Eva Barrett, Trinity College

A case of: Who will tell the emperor he has no clothes? Market liberalisation, regulatory capture and the need for further improved electricity market unbundling through a fourth energy package

02 December 2015

Koichiro Ito, University of Chicago

Sequential markets, market power and arbitrage

09 December 2015

Dariusz Adamski, University of Wrocław

Are true solutions to the euro-area crisis politically and legally viable?

2. WORKSHOPS AND CONFERENCES

TILEC organizes larger *conferences and workshops*, devoted to specific topics open to everyone interested in our research themes and activities. More often than not, those larger events are used to bring together academics, policy-makers and representatives from the business world.

16 January 2015

TILEC workshop: Standard setting and FRAND licensing

Speakers:

Knut Blind, TU Berlin and Erasmus University Rotterdam

Theon van Dijk, Chief Economist, EPO

Thomas Kramler, Directorate General, Competition, Standard and Patents

Aija Leiponen, Cornell University and Imperial College London

Christian Loyau, Legal Affairs Director, ETSI

Patrick McCutcheon, Directorate General, Research and Innovation

Yann Ménière, MINES ParisTech

Marc Rysman, Boston University

David Teece, UC Berkeley

Elia Garces Tolon, Directorate General, Industry and Enterprise

21 May 2015

Competition workshop on *Platforms and vertical restraints*, jointly organized by the Netherlands Bureau for Economic Policy Analysis (CPB) and TILEC

Keynote speakers:

Bart Noé, ACM

Daniel Ropers, Bol.com

28-29 May 2015

9th Competition Law and Economics European Network (CLEEN) workshop

Keynote speakers:

Giancarlo Spagnolo, Tor Vergata, SITE, EIEF and CEPR

Nicolas Petit, University of Liège

05 June 2015

The 7th Health Policy Workshop *Can health insurance competition work?*, Jointly organized by The Dutch Healthcare Authority (NZA), the Netherlands Bureau for Economic Policy Analysis (CPB) and TILEC

Speakers:

Jan Boone, Tilburg University, TILEC

Liran Einav, Stanford University, USA

Ernst van Koesveld, the Dutch Ministry of Health, Welfare and Sport

01-02 September 2015

KNAW Conference Dienstbare Markten: *Endogenous preferences and the broader effects of competition*

Speakers:

Björn Bartling, University of Zurich

Sam Bowles, Santa Fe Institute

Thomas Buser, University of Amsterdam

Patricio Dalton, Tilburg University

Tore Ellingsen, Stockholm School of Economics

Carsten de Dreu, University of Amsterdam

Armin Falk, University of Bonn

Bruno Frey, University of Zurich and University of Basel, CREMA Switzerland

Siegwart Lindenberg, University of Groningen

Jan Potters, Tilburg University, TILEC

Arno Riedl, Maastricht University

Klaus Schmidt, University of Munich

Joel Sobel, UCSD

Sigrid Suetens, Tilburg University, TILEC
Alexander Vostroknutov, University of Trento
Frans van Winden, CREED, University of Amsterdam

03-04 September 2015

3rd TILEC economic governance workshop: Economic governance and social preferences

Keynote speakers:

Roland Bénabou, Princeton University
Simon Gächter, University of Nottingham
Avner Greif, Stanford University
Mark Ramseyer, Harvard University

10-11 December 2015

TILEC Conference: Competition, standardization, and innovation

Keynote speakers:

Josef Drexler, Max-Planck Institute Munich
Alison Jones, King's College London
Mark Schankerman, London School of Economics
Jean Tirole, Toulouse School of Economics

3. CLUB MED / CLUB IO

Club Med (for Club Mededingingsrecht – or competition law, in Dutch) meetings have long been a cornerstone of TILEC's weekly activities. In 2013, the format of the meetings was changed: Club Med meetings are now coupled with a so-called Club IO (for Club Industrial Organization) meeting, taking place the following week. In the Club Med, recent legal and policy developments are discussed, including Commission decisions, judgments of the European or US courts, legislative initiatives, and policy guidelines. In the Club IO, these same developments are examined through the lens of economic analysis.

11 February 2015

Cansu Aslan, Tilburg University, TILEC
Empirical evidence on the effect of patent pools on competition and innovation

17 June 2015

Zlatina Georgieva, Tilburg University, TILEC
Developments under article 102 TFEU: opinion of AG Kokott in post Danmark II

16 September 2015

Branislav Hock, Tilburg University, TILEC
Wherever you are, we will get you: FIFA Corruption Scandal 2015

04 November 2015

Jan Broulik, **Zlatina Georgieva**, **Agnieszka Janczuk-Gorywoda**, **Pierre Larouche**, Tilburg University, TILEC
Restrictions by object or effect? The newest developments in EU case law

25 November 2015

Eric van Damme, Tilburg University, TILEC
Peer-to-peer markets, Liran Einav, Chiara Farronato, and Jonathan Levin

4. WORK-IN-PROGRESS (WIP) MEETINGS

WIP Meetings are internal events where TILEC members present their own work at an early stage, for comments and discussion.

14 January 2015

Vikas Kathuria, Jindal Global Law School, TILEC
A conceptual framework to identify dynamic efficiency

21 January 2015

Marco Corradi, University of Oxford
Legislative options for an efficient allocation of corporate opportunities: Disclosure, negotiation and residual allocative effects

04 March 2015

Wolf Sauter, ACM, TILEC
Coherence in EU competition law

18 March 2015

Zlatina Georgieva, Tilburg University, TILEC
The judicial reception of competition soft law in the Netherlands and the UK

25 March 2015
Suren Gomtsian, Tilburg University, TILEC
Interest (share) transfer restrictions: Theory and evidence from business organization contracts

1 April 2015
Bert Willems, Tilburg University, TILEC
Ten years of retail competition in Dutch electricity markets

15 April 2015
Helen Eenmaa-Dimitrieva, University of Tartu
Responsibility under corrective justice as a necessity for any legitimate distributive system

22 April 2015
Vatsalya Srivastava, Tilburg University, TILEC
The sorry clause

29 April 2015
Christoph Schottmüller, University of Copenhagen, TILEC
Models of the panopticon: Coordination, information asymmetries and modern society

6 May 2015
Gyula Seres, Humboldt University of Berlin, TILEC
The effect of collusion on efficiency in experimental auctions

13 May 2015
Nicolo Zingales, Tilburg University, TILEC
Competition law and data markets

20 May 2015
Amrita Ray Chaudhuri, University of Winnipeg, TILEC
Mergers in exhaustible resource industries

27 May 2015
Victoria Daskalova, Tilburg University, TILEC
Exploitative abuses by powerful buyers – What analysis under art. 102 TFEU?

3 June 2015
Vincent Verouden, E.CA Economics, TILEC
Information exchanges among competitors

26 June 2015
Anna Butenko, UVA, TILEC
IRIS: Institutional and regulatory Innovation for local smart energy supply

9 September 2015
Steffen Juranek, NHH
Patent trolls: A specialization story?

7 October 2015
Florian Schütt and Pierre Larouche, Tilburg University, TILEC
Repeated interaction in standard setting

14 October 2015
Pierre Larouche, Tilburg University, TILEC
Innovation and law: Developing a general theory of innovation for use in legal analysis

21 October 2015
YiLong Xu, Tilburg University, TILEC
Believing in making a difference

11 November 2015
Anna Marhold, EUI
Restrictive practices in energy trade and consistency with WTO Law: The case of the OPEC cartel

18 November 2015
Vikas Kathuria, Jindal Global law School, TILEC
Pharmaceutical Mergers and their effect on access and efficiency: A case of emerging markets

16 December 2015
Peter Czerne, University of Hull, TILEC
Model-building, idealisation and reductionism in (law and) economics

CREDITS

Editor:

TILEC MT

Design and production:

Beelenkamp Ontwerpers, Tilburg

Print:

Prisma Print, Tilburg