

# 50 Years of Treaty

## Assessment and Perspectives of Competition Policy in Europe

IESE Business School's SP-SP Research Center marked the 50<sup>th</sup> Anniversary of the Treaty of Rome with an academic conference held on November 19 and 20, 2007.

Here we provide a synopsis of proceedings at two round table sessions involving some of the leading figures in EU competition policy debate.

### **1<sup>st</sup> round table**

20<sup>th</sup> November 2007

#### **"EU Antitrust Law and Economics"**

**Moderator:**

· **Chris Giles**, economics editor,  
Financial Times.

**Participants:**

- **John Swift QC**, lawyer.
- **John Fingleton**, chief executive,  
UK Office of Fair Trading (OFT).
- **Martin Hellwig**, economics  
professor, University of Bonn.
- **Carles Esteve-Mosso**, head of  
Merger Policy and Scrutiny Unit,  
DG Competition, European  
Commission.

## 1<sup>st</sup> Round Table

20<sup>th</sup> November 2007

### "EU Antitrust Law and Economics"



John Swift QC (center), Esteva-Mosso (left) & Chris Giles (right)

John Swift QC began by emphasizing the importance of how the common rules are applied in different cases, and how it can increase the European Union's economic efficiency. In his presentation, John Fingleton focused on an independent evaluation of the deterrence effect of competition enforcement by the UK's Office of Fair Trading (OFT), explaining that such evaluation helped show consumers the concrete benefits of the EU competition regulations and honor the UK Government's commitment to taxpayer value for money.

#### Europe without frontiers

Swift said that a fundamental characteristic of the European competition rules was that they applied equally to all those engaged in economic activity, regardless of their profession or vocational training. In his opinion, this was a decisive move on behalf of the European authorities in developing uniform regulation. But how far should this uniform approach go? Swift noted European Competition Network concern about taking

uniform regulation too far, particularly as the union grows and the differences between the member states becomes greater. The lesser the coherence in the application of uniform regulation in the EU, the lesser the effectiveness of common competition policy, Swift said.

The doctrines of direct effect and the supremacy had been among the most important contribution of the European authorities to competition policy in the last 50 years came. They had resulted in a mature legal framework within which citizens were aware of their rights, he said.

#### The benefits of the competition regulation

In his presentation, John Fingleton, who heads the OFT, the UK's consumer and competition authority, discussed an independent evaluation by business advisory firm Deloitte of the deterrent effect of the OFT's competition enforcement and merger control. Deloitte held a phone poll of 234 senior competition lawyers and 202 UK companies, and also did 30 in-depth interviews. Among its findings were that at least five

proposed mergers were abandoned or modified on competition grounds before the OFT became aware of them, for every one merger blocked or modified following intervention by the UK competition authorities. The research found that the UK competition enforcement was having substantial impact as a deterrent, particularly in economic sectors where mergers had recently been investigated, such as in the banking and retail sectors.

#### The call for an economics-based approach

Martin Hellwig, professor of Economics at the University of Bonn and director of the Max Planck Institute for Research on Collective Goods, spoke about the need for debate on the legal foundations for the application of article 82 of the EC Treaty. This section relates to abusive conduct by dominant companies, an area of law in which Hellwig said was difficult to create ideal regulation as authorities had to also factor in concepts of welfare and market structures. He said there should be an examination of current methods



which are currently used. Hellwig, as well as the last contribution, spread the idea of uncertainty; according to it, it can be very significant for the competition's and merger's cases, and therefore the strict regulation's interpretation could be harmful for the decisions made in the competition field.



Martin Hellwig (left) & John Fingleton (right)

### Non-horizontal mergers

According to Carles Esteva-Mosso, non-horizontal mergers are generally less likely to cause competition problems than horizontal mergers because they tend not to involve direct loss of competition for those involved in the merger. So how should the law handle these cases? Esteva-Mosso said that, regulation's application should depend on the compensation between the elements which could determinate the supposed merger's legality and the costs or possible mistakes of a deep analysis of each case without suppositions. That's why the European authorities consider that mergers must be analyzed one by one, using legal tools like *Market power screens* and *Safe harbors*. The exclusion's possibility, the trend to it and the possible impact on the effective competition are the three elements to examine during the mergers' analysis.

**2<sup>nd</sup> Round Table**

20<sup>th</sup> November 2007

**"Competition Policy Challenges in the EU"**



Xavier Vives

**2<sup>a</sup> round table**

20th November 2007

**"Competition Policy  
Challenges in the EU"**

**Moderator:**

· **Chris Giles**, economics editor,  
Financial Times.

**Participants:**

- **Xavier Vives**, IESE Business School Professor of Economics and SP-SP Research Center Academic Director.
- **Karel van Miert**, Chairman of the Institute of Competition, at the Nyenrode Business Universiteit, European competition commissioner.
- **Mario Monti**, President of the Università Bocconi, European competition commissioner.



Karel van Miert (left) & Mario Monti (right)

### The need for progress

What challenges lie ahead in the competition field? What should be the real aim of antitrust policy? Has the European Union found the right balance between economic analysis and regulation? These were some of the questions raised by Xavier Vives, who said that the United States was a useful point of reference for the European Union because it had a different system for monitoring competition. Vives said that European competition policy had shown its limitations in recent years, particularly in the lack of clarity on the balance between regulation and competition policy. In the fields of energy and telecommunications, for example, more coordination was needed between the different national regulators. In the energy sector it was necessary to establish an integrated market but complicated because in

some countries the companies were vertically integrated in a monopolized segment and not in others, he said.

### A positive point of view

Karel van Miert considers that, from a global perspective, the first fifty years of EU competition policy have been a success. He said that when the Treaty was created, it was impossible to foresee the path that competition policy would take. European authorities could not introduce a similar policy today because most governments would not be willing to hand over such control. Hence, it was understandable that the European Commission was occasionally questioned on matters of competition.

Van Miert said that EU competition policy had evolved over the last decades in line with

attempts to make the market economy work appropriately. He stressed the continuing need for strong competition policy, because monopolies still existed, and that it was crucial that the competition authority remain independent.

Mario Monti spoke of key challenges for the future, including external perception of European competition policy. He said that there was always a risk that rigorous and strong application of anti-monopoly regulation would be seen by some as regulative imperialism. Another important issue was whether European competition policy might be seen as retarding or eroding economic growth, Monti said. •