Foreword

Vigorous competition in the European internal market is the best guarantee of the efficiency of the economy in serving consumers' needs, innovation and the competitiveness of European firms in world markets. A large number of empirical studies confirm that companies that are exposed to effective competition in their home markets not only serve their domestic consumers better but also compete more successfully in foreign markets than firms that face little or no competition at home. An effective competition policy is therefore just as important today, in a context of rapid globalisation, as it ever was.

During my period of office as the member of the European Commission responsible for competition policy, I launched a programme of reforms designed to equip EU competition policy with the tools needed to face the challenges of enlargement and globalisation, while making greater use of the insights derived from theoretical and empirical economics. Prominent amongst these reforms was a thorough revision of the merger regulation, covering all aspects of merger control. One of the major changes introduced in the new regulation was the inclusion of a clear statement that substantiated and likely efficiencies should be taken into account if they counteract the effects on competition, in particular the potential harm to consumers, that the merger might otherwise cause. Soon after the adoption of the new regulation in January 2004, the Commission issued guidelines, explaining how it would apply the regulation to horizontal mergers, that is, mergers between companies active in the same market. A section of those guidelines is devoted to the evaluation of the merging parties' efficiency claims, addressing questions concerning the sort of evidence needed to substantiate such claims, the assessment of the likelihood that the efficiency gains will be achieved and the extent to which the gains will be passed on to consumers.

It cannot be said that mergers generally lead to significant improvements in efficiency. Nevertheless, in important exceptional cases a merger may be a necessary step towards making substantial cost savings or significantly enhancing the parties' ability to innovate. Where benefits from such efficiency gains are passed on to the consumer, they should be taken into account in the merger appraisal, since consumer welfare is the ultimate object of EU competition policy.

Taken together, the new regulation and the Commission guidelines lay down two principles that are worthy of particular note in this context. The first is that efficiency gains can not be considered sufficient to counteract anti-competitive effects in cases where a merger eliminates effective competition. The second is that the benefit of the efficiency gains must be passed on to consumers, at least to the extent necessary to avert the danger that they will suffer harm as a result of the merger. Consequently, the Commission's willingness to consider efficiency arguments does not constitute a relaxation of competition policy nor is it an open door for the creation of would-be 'European champions' no longer subject to effective competition on home markets. Without sufficient competitive pressure, there can be no assurance either that the merged company will make the efforts needed to improve efficiency or that it will pass on any benefits from efficiency gains to its customers. Furthermore, as I have argued above, a firm enjoying unchallenged dominance at home is unlikely to be a dynamic player in world markets.

The introduction of the provisions for an efficiency defence in European merger control followed extensive debate and study, in which the considerations that I have outlined above figured prominently. The present volume brings together some significant contributions to the debate from an economic point of view. They examine in depth the theoretical and empirical foundations for the consideration of efficiencies in merger control while also proposing ways of resolving some important practical questions raised by the efficiency defence, such as the burden of proof, the nature and quality of the evidence required and methods for estimating the extent to which efficiency gains will be passed on to consumers.

Mario Monti