Preface

Competition law has formed an important area of European law since the establishment of the Community. The EEC Treaty of 1957 introduced prohibitions of cartel agreements and abuse of a dominant position, which since 1962 onwards have been directly binding on firms. Since 1989 the Merger Control Regulation subjects all large concentrations to antitrust scrutiny, in order to prevent effective competition in the internal market being impeded. In recent years economics has assumed greater prominence in EC competition law analysis. On many occasions, the EC Commission has stated that an economics-based approach is to be preferred to strictly legalistic methods of decision making. Clear examples are the Notice on the definition of the relevant market and the Guidelines on vertical restraints. In addition, recent merger decisions show an increasing degree of economic sophistication, including econometric techniques to establish dominance.

In spite of this recent change of perspective, it is fair to say that up to now economic considerations have played a more important role in the United States than in Europe. From the 1970s onwards, the Chicago School had a profound impact on American antitrust law. Chicagoans argue that economic efficiency is to be considered as the sole goal of competition law. Obviously, confining antitrust to efficiency goals permits regulators and courts to employ the teachings of economic analysis to a much broader extent than would be possible if the opposite view, that non-economic goals are equally important, is accepted. In Europe, the political goal of market integration has impeded a full reception of the relevant economic insights. Clear examples are the ban on absolute territorial protection for dealers and the prohibition of third-degree price discrimination by dominant firms.

Confronting different views on controversial issues of competition law is always a challenging invitation for academics on both sides of the Atlantic Ocean. The University of Messina offered a great opportunity for such an intellectually stimulating meeting by organizing a conference in Taormina in October 2000. The timing of the conference was excellent. More than 20 years had passed since the initial successes of the Chicago School in the United States, hence, the time seemed ripe for a critical evaluation of the Chicago approach to antitrust. Recent judgments of the US Supreme Court (such as Kodak) and the debate surrounding the Microsoft case have led to the view that antitrust has entered the post-Chicago era, in which previous immoderations
are tempered and more refined and accurate analyses take precedence. This claim is made exactly at the time when European competition policy opens the door for an economics-based approach. The conference in Taormina created optimal scope for a discussion of the economic foundations of competition policy and the different ways in which both American and European competition law do – or do not – take account of these economic insights.

Most of the papers presented at Taormina have been collected in this book, which obviously gives no final answer to the host of questions arising from the complexities of antitrust, but does offer a definite contribution to a better understanding of the many ‘interfaces’ between economic thinking and sound legal policy.

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