

Introduction

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The Second Lisbon Conference on Competition and Economics, held in Lisbon on 15 and 16 November 2007, was intended as a forum to debate current issues related to Competition Law and Economics, where leading experts from Europe and North America were invited to address the following current issues: (i) the role of public versus private enforcement of competition and its benefits and costs in the US and EU. How to make more effective the control of administrative decisions by competition authorities? (ii) The specific economic problems posed by merger control in regulated sectors, and in particular in energy and telecommunications. (iii) The results of the modernization package in the US. (iv) The outcome of the extensive discussions about Section 2 in the US and Article 82 in the EU. What are the intrinsic differences in the law on monopolization and attempts to monopolize and dominant position, and what does the case-law teach us? Contrasting US and EU views. (v) The doctrine of national champions and competition policy. What role has industrial policy played on both sides of the Atlantic? and (vi) the EU's new approach to state aid: a report card.

President Cavaco Silva, after recognizing the importance of competition policy in a modern economy and its increasing role in building the single market, stresses the need for independent and competent competition authorities. Pointing out the need for clear rules and strong institutions that apply the laws in a credible and speedy process, he stresses the requirement for firms to cooperate with authorities to pursue the public interest. In response to the dynamic strategies of enterprises in the modern business world, authorities need to take decisions, especially merger decisions, that do not unduly constrain those strategies. The State should also avoid unduly distorting markets. For that purpose competition authorities should have the possibility of controlling state aid and States should take into due consideration recommendations made by independent regulators.

Commissioner **Neelie Kroes** underlines the aim of competition policy on both sides of the Atlantic: consumer welfare. As the main theme of the

European Competition Day, state aid is undergoing a major reform. Less and better targeted aid should be used to tackle market failures, including environment and social objectives. It is particularly important to support research and innovation and to give access to risk capital. Economic analysis should be used to balance the benefits and costs of each project, and procedures are being implemented to simplify applications and to make decisions more predictable. On the question of competition and industrial policies in a globalized world the Commissioner points to the danger of subsidy races at a global level and the need to avoid shielding European companies from competition through artificial entry barriers. On regulated markets the Commission has recently issued a new energy package that proposes the unbundling of the generation and transmission network, and through its merger decisions ensure that open markets are not foreclosed in telecommunications.

Commissioner **Kuneva** stresses the importance of single market policy delivering tangible benefits to consumers. Ensuring a competitive environment on the supply side may not be enough to guarantee such benefits. She cites cases like switching costs in energy markets, international roaming charges and tying in financial markets. Two particular areas that the Commission has acted on Consumer Protection are transparency in sales of on-line air travel tickets and improving mechanism for consumer redress for European consumers.

After pointing to the fact that competition policy has remained at the core of the Treaty of Lisbon, **Abel Mateus** stressed the importance of law enforcement and the role of courts to upholding the reputation of competition authorities both in Europe and the United States. On state aid he calls attention to the externalities generated by bad decisions that are frequently emulated by other States, and the use of this instrument to pursue industrial policies that may be detrimental to the single market. He also points to the need that instruments used to further energy or environmental objectives should not distort competition and be market friendly. We are still a long way from building a single market in energy, and it is necessary to complement unbundling with more competition in power generation. National governments should avoid building national champions to confront state firms in non-member States, and the level playing field in international trade should be preserved by the Commission. Finally, the new retail payment system (SEPA) should not increase consumer costs to the benefit of large banks. He also addresses other important issues like maintaining an open system for company takeovers, a revaluation of the 'two-thirds' rule used by the Commission in merger assessments and the need to apply a more comprehensive competition impact assessment by member states.

Part II addresses *judicial control of administrative decisions and private enforcement*. Courts continue to play a major role in competition enforcement, in terms of control of administrative decisions by Competition Authorities in the EU and in private enforcement in the US. What are the prospects for private enforcement in the EU? How to combine public and private enforcement? Are there major differences between common law and roman law based systems? The chapters aim to compare the EU and US experiences.

The first two chapters were written by magistrates with more than three decades of experience in courts and contrast their experience in private versus public enforcement in the competition area. They defend opposing views that largely reflect the characteristics of the US and EU systems. However, as the first chapter defends, the US has a structure of incentives very much different from that of the EU, with treble damages and payment of attorneys' and litigation costs by the party that loses coupled with a success fee arrangement. The EU system does not have a structure that encourages private enforcement. **Judge Douglas Ginsburg** compares the benefits and costs of private and public enforcement as shown by the US experience. How can we achieve optimal enforcement (deterrence) by allocating responsibility between public and private complainants and then calibrating the incentives for private enforcement? Judge Ginsburg answers this question from the perspective of incentives for law enforcement, concluding that optimal antitrust enforcement can almost certainly be achieved only by relying primarily upon private plaintiffs. The most important exception is merger control, since the only relief available is an injunction, and consumers do not have enough incentive to block anti-competitive mergers. There are very important reasons for courts to be suspicious of competitors that bring cases against a merger, so merger control should be entrusted to a public agency. In the case of cartels, a private plaintiff can recover treble damages, plus costs and attorneys' fees. Coupled with a substantive law per se rule against horizontal price-fixing and market-sharing cartels is a very powerful incentive for private litigation. He defends the rule of treble damages in this case because of the deterrence effect and the evidence that only 10 to 30% of cartels are detected. Non-horizontal agreements are subject to a rule of reason which has made them difficult to prosecute, but probably most of them are not anti-competitive. On monopolization or attempt to monopolize he defends that the rule of treble damages should be cut to actual damages in order to prevent over-litigation. Finally, he discusses the question of financing the costs of litigation and concludes that class actions in the US are a very useful instrument for consumer redressing.

While private enforcement is prevalent in the USA, public enforcement

is the most dominant form of law enforcement in the EU, and history matters a lot, when comparing the previous and the next chapters. **Judge John Cooke** looks at the prospects for private enforcement in the EU, giving the recent initiatives of the Commission and in some leading countries, and how to combine both types of enforcement. He asks, if private litigation as a means of enforcing Articles 81 and 82 is a good thing, why has there been so little of it? And so much so because those Articles can be applied directly and most of the national laws also parallel those Articles. The most important problem is the difficulty of private parties in proving the infringement and having access to evidence, particularly in Article 81 cases. The affected party can reduce the costs of litigation and improve the means to get evidence by complaining to the Commission or a national competition authority (NCA) that will be in full charge of the procedures. The main difference is this: the Commission and an NCA enforce the rules in the public interest of maintaining the equilibrium of competition and the efficiency of the market, while in private cases the focus is on the rights of the parties themselves. Thus he sees little prospect for private enforcement in the EU. In the *Magill* case it took the victim 10 years to recover damages, and the ice-cream case is still running after 20 years.

But judicial systems in the EU are not uniform: Anglo-Saxon countries follow the common law approach and most of the Continental countries the civil law. **Frédéric Jenny** addresses the issue of major differences between common law and roman law based systems as they enforce competition law. The civil law tradition, repository of the Napoleonic codes, prevents intrusion of the judiciary into the legislative area, so it avoids interpreting the law and restricts itself to applying the law. This is in large contrast with the common law tradition established by the Sherman Act, a statute setting forth very general propositions that judges would implement and develop on a case-by-case basis. However, Frédéric Jenny points out that most of the EU countries have followed a third route. Administrative agencies develop the fundamental rule and judges intervene in an appellate stage. This is the role of the Court of First Instance (CFI) in the Community that is a court of judicial review, in order to prevent and correct lack of jurisdiction, procedural failure, error of law, manifest error of appreciation, among others. He stresses that the CFI usually leaves complex economic arguments to the discretion of the Commission, reflecting its choice of economic policy, as he illustrates with the *Microsoft* case. Next he addresses the issue of specificity of competition law and the role of economics. Competition law is unique because it grafts economic concepts into law: to judge a given behaviour as anticompetitive the court has to use an economic model. Relevant facts can be established only through an understanding of economic concepts, and to put them

together to establish if there is a violation requires economic reasoning. This is particularly acute in the application of the rule of reason or balancing costs and benefits in an exemption case. If the EU tradition moves towards an effects-based approach, it requires more economic inputs. In all cases, for both trial and review courts, there is a need to acquire more economic expertise. He then goes on discussing the provision of economic expertise in both cases, and the way that expertise should be admitted in court proceedings.

Sérvulo Correia discusses the interaction of private parties and the powers and responsibilities of the NCA and the domains of the Portuguese system of competition law with respect to public and private enforcement. Public enforcement, which is dominant, is entrusted to the NCA, subject to judicial control of the Trade Court of Lisbon, a specialized court. Merger decisions are subject to an administrative procedure and anti-competitive behaviour to a special procedure intermediate between penal and civil procedures (*contra-ordenações*). There have been only two cases of private enforcement in the last 10 years or so, without success to the complainant, and there is no incentive as in other European countries for this type of actions. However, the Portuguese legal system already contains a class action known as *acção popular* that has been used recently in a successful case. Finally, private parties can also use the courts for compensation as a follow on to a case successfully decided by the NCA.

Part III addresses *merger control in regulated markets and dynamic analysis of network markets*. Mergers in regulated markets, and particularly in energy and telecommunications, pose particular problems because of scale and network economies, and the intersection of competition and regulatory issues. **Dennis Carlton** uses a recent merger in the USA to discuss these issues. He draws several lessons: market shares that are traditionally used in merger analysis can be misleading in electricity markets; failure to expose consumers to variable prices exacerbates market power, in fact, fixed price retail regulation promotes the exercise of market power in wholesale markets; regulation affects profit-maximizing choices; transmission externalities may generate discontinuities in the supply function and increase complications of having geographically separate regulators; and long-term fixed price contracts at wholesale level may enhance competition, as in fact a long-term contract where prices are not linked to spot prices is like the firm having sold off part of its infra-marginal capacity. This is a market where demand is variable and inelastic and supply is non-storable and inelastic in peaks, so market power has to be defined for each specific time of the day and season and depends on other firms' response.

Luís Cabral uses a new framework for the dynamic analysis of industries

with network effects to study the issue of mark-ups on network access charges, which is an issue in regulation and competition policy in the wireless telecommunications industry. He shows that a positive mark-up, in addition to the short run deadweight loss, implies a higher degree of increasing dominance in market share dynamics, that is, a greater tendency for larger networks to become even larger. In fact, consumer surplus increases with the size of the network, and the result obtains even with the same cost independent of the size of the network. This is a stark reminder that allowing higher off-net prices than on-net tariffs can have dramatic effects on competition in the long term.

Part V addresses *abuses of dominant position and monopolization: conclusions of the major debates in the EU and USA*. In the last two years there were major debates about Article 82, abuses of dominant position, in the EU, and about Sherman Act, section 2, attempts at monopolization in the USA. The time has arrived to compare major conclusions and contrast communalities and differences between the EU and US debates.

Emil Paulis addresses some of the key points about the debate on Article 82 of the EC Treaty after the publication of the discussion paper by the Commission. The first conclusion is the need to switch from a form-based approach to an effects-based approach, since most of the unilateral conduct effects are both pro- and anti-competitive. Second, the standard for formulating policy rules is consumer welfare. Third, we need to establish causality between the conduct and the existing or increased market power. Fourth, the causality is not actual but likely. There are cases of blatantly unfair conduct that should be considered per se violations. But most of them have to be approached with a structured-effects analysis: defining the relevant market, proving dominance, and showing that the conduct is capable of producing dominance. In price predation cases he argues that we should retain the as-efficient competitor test. Then he looks at the (di)convergence across the Atlantic. On predation he finds a different approach in recoupment. On rebates there are still conflicting decisions in the US. On tying he points out the different treatments in contractual tying with a per se rule and technological tying in unilateral conduct (*Microsoft*) where the standard of proof is very high. On refusal to deal, the CFI has confirmed in the *Microsoft* decision the traditional approach in EU, which is still quite different from the current understanding in the USA. Finally, as the *Trinko* case shows, the US is more cautious in finding a violation when it cannot find a ready remedy. The US does not have exploitative abuses in the law either. But in the EU a Competition Authority can intervene only if dominance is established while in the US intervention is lawful in the stages before dominance is achieved.

How might the debate about unilateral conduct influence a future

course of action in the EU, from a legal perspective? **Inge Govaere** tries to answer this question, in particular in so far as the IP–antitrust interface is concerned. Govaere defends that the present enforcement of Article 82 EC is not an adequate remedy to counter harmful competitive practices that stifle competition, such as a patent ambush in collective standard setting and leveraging subsequently to a de facto standard setting, and in itself is not an adequate remedy for attempts to monopolize through potential abuses of the IP system. In fact, she cites the *Microsoft* case where the firm had built a commanding market share in the relevant markets several years before the decision of the Commission. She calls for more ex ante action that goes beyond imposing FRAND (Fair, Reasonable and Non-Discriminatory) conditions and closely monitoring the markets. This action should come by the acceptance by the Commission and the European Courts of a more preventive role under Article 82 EC and a more direct interference of competition policy in the formulation and acquisition of IP exclusivity.

As the head of the Economic Advisors' Group for Competition Policy (EAGCP) that had a major input in the revision of Article 82 EC, **Patrick Rey** gives an economist's perspective on the current debate and reinforces some points regarding the reform of competition policy in this area. In terms of the test for anti-competitive behaviour Rey defends the short- and long-term impact on consumer welfare. He points to flaws on the 'no economic sense test', the 'as efficient competitor test' and the vagueness of 'maintaining an effective competition structure' that has been used recently by the CFI. On the effects-based approach proposed by the EAGCP he stresses the need for a good 'story' (economic model), a consistent scenario grounded on facts, that assesses the incentives of the firms in pursuing a given conduct. If both the competitive harm and efficiencies are present, a balance test has to be applied between the two. Applying the economic approach to rebates, Rey points to some flaws in the DG COMP discussion paper if we give importance to incentives of firms to foreclose, under the Chicago and post-Chicago approaches. On application to predation he says that we should study all aspects: sacrifice, elimination of competitor(s) and recoupment as a joint analysis. For example, the financial weakness created to a competitor is both part both of the elimination and recoupment. Finally he argues in favour of more integration of efficiency benefits into the analysis, pointing to several recent court decisions where those benefits are discarded ex ante because they are associated with the anticompetitive behaviour.

In a specially invited chapter, **Thomas O. Barnett**, Assistant Attorney General, Department of Justice, USA, addresses the issue of modernization of antitrust rules and institutions. Commenting on the results of

the Antitrust Modernization Commission, he finds that the standards set for unilateral conduct are appropriate, namely: (i) monopoly power is not prohibited, only the acquisition or maintenance of such power by improper means, (ii) the law protects consumer welfare and not individual competitors, and (iii) the law considers the impact on incentives and static and dynamic efficiency in assessing potential violations. He points to the advantage of the common law approach in allowing the antitrust system to incorporate new and better thinking as it becomes available. As an example, the *Leegin* decision, holding that minimum resale price maintenance is no longer per se illegal, incorporates the contributions of 10 works by economists. This also shows the increasing importance of economics in antitrust laws. And in *Brown Shoe* the Court explained that below-cost pricing is not unlawful unless there is a likelihood that the predator will be able to recoup, so antitrust is for 'protection of competition and not competitors'. Finally, he cites the *Twombly* decision that set a minimum standard for plaintiffs in private litigation (requirement of plausibility) before obtaining discovery from the defendants, a problem that can cause enormous costs to the judicial system.

Barry Hawk addresses the questions of legal certainty versus rule of reason on the current debate about the Sherman Act, Section 2. He starts by recognizing that there is a shared position by businessmen that unlawful monopolization under Section 2 lacks predictable rules. He then presents the shortcomings and merits of four single tests that could increase legal certainty: (i) as-efficient competitor, (ii) profit sacrifice, (iii) no economic sense, and (iv) increase in the monopolist's efficiency or impairing efficiency of rivals. He concludes that none is satisfactory. He then comments on the consumer welfare test intended to provide a single standard, noting, in sharp contrast to Rey that it is difficult to apply and is too broad and may over-deter. The proportionality test (Hovenkamp) classifies as exclusionary conduct actions that impair rivals' opportunities and do not benefit (or are unnecessary for) consumers, which brings us back to impact on consumer welfare. The harms/justifications test pursued by the DC District Court in the *Microsoft* case raises the problem of balancing that again raises a quantification problem. Contrary to other participants he is also against the issuance of guidelines for unilateral conduct and prefers a case law development. He closes by defending that intent should not be an element of a monopolization abuse.

Herbert Hovenkamp addresses two issues: first, the offence of 'attempt' to monopolize by a firm that is not yet dominant; the second, the offence of a dominant firm 'leveraging', that is, using its dominant position in one market to cause harm in a different market where it also does business. The first issue the EU does not consider an offence in contrast with the US.

One of the reasons seems to be that the EU is more aggressive in pursuing foreclosure conduct, while in the US, once the monopolist has attained this position, it may charge any price (there is no excessive price). The reason that the Sherman Act includes the offence of 'attempt' is because of the tradition of criminal law prevailing at the moment of its inception. But according to Hovenkamp there is today no significant difference between the two approaches, given the jurisprudence, the requirement to define a relevant market and the market power of the firm under scrutiny. On the second issue the position of the EU and US is reversed. The US courts do not recognize the leveraging claim, as reiterated in *Trinko*. But the author argues that this claim can be subsumed as contractual tying under the Clayton Act, an issue relevant for the *Microsoft* case. Like other participants, he recognizes that US antitrust does not recognize technological tying as an offence, which Hovenkamp recognizes as an important element in the different judgments about that case in the EU and US. Furthermore, he says that the principal concern of the US decision was Microsoft's restraints on innovation in its primary market, which is computer operating systems, while in the EU it was Microsoft's attempts to leverage the power it held in its primary market into secondary markets. He then goes on to analyse the *Microsoft* decisions from both sides of the Atlantic.

The *Microsoft* case clearly dominates the debates about monopolization and abuses of dominant position, and **Timothy Bresnahan**, working as Chief Economist at the DoJ at the time of the *Microsoft* case, as a personal view on the issue. He characterizes Microsoft as a fading dominant firm defined as a dominant firm that starts to be eclipsed by technologies, strategies, or business models that are innovative ideas from outside. This is not a social problem if creative destruction competition offers consumers a choice between the old and the new. However, sometimes a fading dominant firm's strategy will be to block the new competition. The fading dominant firm can earn a rent above and beyond the rent in its traditional business if it expropriates the return to innovative outsiders' inventions. It can do it by regaining its competitive advantage and competing on the merits or by blocking outsiders' opportunities. He goes on to discuss the antitrust of the fading dominant firm and the economics of the *Microsoft* case. He spends the rest of the chapter discussing the DoJ and the EU cases and the effectiveness of the remedies imposed.

Part VI addresses *competition and industrial policies in a globalized world*. What is the proper role of competition policy and sectoral policies and, in particular, industrial policies, in the context of the single market? What is the experience in terms of coherence and trade-offs between those two policies in North America? Does globalization raise new issues for the

debate? What is inside the conundrum of national champions? These questions have once more surfaced in the debate leading to the Lisbon Treaty and have shaped some heated opposition between the Commission and national governments recently.

The 'generally accepted' ideas about national champions, particularly in business, according to **Anne Perrot**, is that big firms are more efficient and public intervention should encourage them, since markets are unable to promote their efficiency and incentives to export and innovate. While Perrot finds clear theoretical foundations for competition policy there are no such fundamentals for industrial policy. Modern Industrial Organization (I-O) theories find very strong reasons for competition to favour innovation, and size should be determined by technology and demand. There is also ample evidence that more intense competition implies higher productivity or productivity growth of firms, and there is no clear empirical support that less competition leads to more exports, and on the contrary domestic rivalry increases exports. But even if in a reduced number of cases there is room for government intervention there is a serious problem of asymmetry of information. Network industries have larger size and network and switching costs reduce the intensity of competition, are more prone to (ab)uses of dominant position and characterized by two-sided platforms. In general there are large benefits with unbundling and introducing competition in markets where it is theoretically possible. She concludes that there is no need of any special treatment of mergers or state aid in these industries and the SLC (Significant Lessening of Competition) is appropriate. She remarks finally that lessening competition on domestic markets to favour exports makes redistribution of revenues from domestic consumers to large firms, which is not always so perceived.

From a slightly different viewpoint, **Damien Neven** considers a national champion the firm that has a restriction on the national or foreign ownership of shareholding. He cites cases that raised a conflict between the Commission and Member States: *E.On-Endesa*, *Unicredito-HPV*, as well as the *Danone* and *Volkswagen* cases, among others. Using the theory of bounded rationality he presents some results of surveys to managers that show different attitudes towards the objectives of firms. However he argues that no single profit-maximizing type of behaviour leads to a single outcome. Thus, he presents results of a study based on detailed firm-level data at the level of statistical disaggregation, for France and UK, that shows that most of the difference associated with higher labour productivity is not associated with domestic or foreign ownership but with the fact that it is a multinational firm. The same conclusion holds for after-merger performance and for R&D: multinationals perform better. More empirical evidence comes from Polish banks that shows that manipulation

by the government of the nationality of shareholders does not promote efficiency.

John Fingleton starts by showing that competition is a good industrial policy since it increases productivity, as the literature and empirical evidence demonstrates, and that competition drives competitiveness. Protectionism may take the form of allowing domestic monopolies as national champions, prevent mergers that may threaten national ownership, and other general restrictions to trade. The primary harm of these policies is to the domestic economy and there is also a Community harm via demonstration effects, by undermining business support for good policy. He argues that protectionism through national ownership does not stand up to scrutiny: protects weak management and so increases inefficiency, raises the cost of capital and reduces the value of domestic stock, and it entails lack of transparency in government policies with consequent rent seeking. He then draws some policy lessons. The framework of the EU Treaty is sound and provides a good basis. There have been some important achievements with liberalization driven by the Commission and intervention in the areas of competition law enforcement. Finally, he advocates that EU policy should be based consistently and clearly on consumer welfare, that NCAs should be strong, politically independent institutions and that these policies should be advocated and evaluated more largely in Europe.

Lawrence White addresses the role for competition and industrial policies, using the US experience. Antitrust policy is intended to promote competition and allocative efficiency by preventing cartels, mergers that significantly lessen competition and unilateral actions that foreclose markets. Industrial policy is the promotion of specific industries through government intervention. Does the US have an industrial policy? There is no focused policy as such, but a patchwork of government policies to encourage specific industries (like the current encouragement of corn-based ethanol), specific exemptions of antitrust and others like international trade restrictions or agricultural policies that subsidize, protect and inhibit competition. Although there is room for regulations or other forms of intervention when there are externalities or spillovers, most policy interventions are not of this type. Today the domain of markets and antitrust is much larger after the deregulation movement of the 1970s and 1980s, but he points out that there is still a collection of other policies that remain inefficient and anticompetitive, mainly because the model of 'concentrated interests and capture' remains alive and powerful.

Thomas Ross reviews the Canadian experience on this debate which is especially important because it raises problems regarding smaller versus larger countries, like its neighbouring country. The populist revolt led

to demands for controls on collusion, resulting in the first modern anti-trust policies in 1889, predating that of the US. The Canadian experience since the 1980s shows that a strong competition policy can itself serve as an element of industrial policy rendering alternative policies such as public ownership or intensive regulation unnecessary. The MacDonal Commission of 1985 advocated free-trade, deregulation, privatization and a vigorous competition policy. The Porter report of 1991 also advised a more vigorous competition policy, deregulation of infrastructure and greater investments in education and training and technology development policies tied to industry clusters. The other important policy change was the NAFTA, created in 1988. All these policies have been pursued vigorously and show that there was never during this period a concern for building national champions. In fact, Canada is one of the countries with the highest level of foreign ownership. Although the Investment Canada Act subjects to approval any acquisition by a foreigner of a Canadian firm, the more common condition imposed is the retention of head offices in Canada. However, there are limits on fractions of firms that can be held by foreigners in airlines, telecommunications and broadcasting, as well as limits on the concentration of banks' capital ownership, despite recent calls for a more competitive environment in those industries. He concludes by discussing some areas where Canada still needs to make progress to improve productivity.

Part VII turns to the issue of state aid that is undergoing a major reform in the EU. *Towards a more efficient approach to state aid*: the Commission has undertaken a major revision of the guidelines on state aid. How to reach a more efficient approach? What are the trade-offs between efficiency and equity contemplated in the current approach? What problems do some regional and sectoral policies present for competition issues? What is the role intended for NCAs?

Lowri Evans and **Harold Nyssens** start to recall that there has been very little analytical work done in state aid when compared with antitrust. The State Aid Plan sets out the balancing test which asks whether it addresses a market failure or other objective of common interest, is well targeted and the distortion in competition is limited. Then it analyses the incentive effect test as the main economic criterion: whether state aid enables the beneficiary to carry out activities or projects which it would not have carried out as such in the absence of the aid. Secondly it studies the possible role of NCAs in cooperating with the Commission. While Denmark and Spain have explicitly given their independent NCAs a role to play, and new Member States (Czech Republic, Lithuania and Poland) carried out their responsibilities from the pre-accession phase, the remaining countries still leave state administration with all the responsibilities. NCAs could

assist government in application of the block exemption programmes, operate as consulting intermediaries and assist governments in preparing dossiers for state aid and in assembling aggregate information.

Massimo Merola and **Marie Debieuvre** study the question of contributions and limits from case law for formulating the new approach to state aid. What traces are there of a constructive dialogue between the Commission and the EC Courts in this field? Some elements are: the renewed concept of selectivity, the efficiency test (*Altmark*) and the market investor principle (*Landesbank*) that shows approval of the reform by the EC Courts. Merola and Debieuvre consider that the appraisal of the distortion of competition and the effect on trade under Article 87(1) of both the Commission and EC Courts has so far been rudimentary. The examples of a more refined economic approach are still very limited (*NeoVal*). Litigation under Article 87(3) will increase due to different interpretations of assessment of evidence of market failure when applying the necessity and balancing tests. Finally they call for a larger recognition of third parties' rights, mainly those of beneficiaries and competitors.

This is a book written by leading European judges and competition enforcers as well as some of the leading world economists and law professors on competition issues, with a focus on leading issues and reforms in the EU and in the US. Its primary audience consists of judges, academics and economic and law practitioners active in competition policy and enforcement, as well as officials of European national competition authorities. Equally interested will be students of law and economics concerned with competition issues, as well as non-governmental organizations dealing with consumer protection and private enforcement of competition law. We hope that these contributions will help focus the discussion on the main current topics in need of further reform and underline the importance of competition policy in modern market economies, by giving ample evidence of the impact of competition and efficient regulation on economic growth.

