

Remedies and Sanctions in Competition Policy

*Economic and Legal Implications of the Tendency
to Criminalize Antitrust Enforcement
in the EU Member States*

Friday February 18, 2005

KNAW/Het Trippenhuis
Kloveniersburgwal 29
Amsterdam, The Netherlands



UNIVERSITEIT VAN AMSTERDAM
Amsterdam Center for Law & Economics

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There is increasing recognition of the fact that the existing remedies and sanctions for anticompetitive behavior in the EU are not necessarily sufficient to deter parties from what are often lucrative restraints of trade or abuses of dominance. A review of remedies and sanctions for those in breach of European competition law is therefore under way. Apart from further increasing corporate pecuniary penalties, it explores the introduction of criminal sanctions (such as fines, professional remedies, disqualification orders and jail sentences). Antitrust enforcement in the US – which included criminal sanctions in the original Sherman Act – is studied for guidance. Installing similar penalties in Europe, however, raises fundamental issues. It requires, for example, elements of criminal law in addition to present administrative law enforcement. As a result, the status and tasks of the various competition authorities would have to be reformulated. Also, there are serious political concerns, as the trend to criminalize has important economic and social implications.

This first and festive conference hosted by the Competition & Regulation research group of the Amsterdam Center for Law & Economics (ACLE) at the Universiteit van Amsterdam is intended to explore and map out these various topics. The conference collects scholars in competition law and economics, as well as practitioners in the various competition authorities, legal counsel and economic consultancy firms. The aim is to share experiences and visions, in order to facilitate future policy making on this important issue.

The Amsterdam Center for Law & Economics (ACLE), is a joint initiative of the economics and law faculties of the Universiteit van Amsterdam. The objective of the ACLE is to promote high-quality research in the fields at the interface of law and economics. It combines the research expertise of some twenty scholars in both disciplines, ranging from full professors to PhD students. The Center's main focus areas are: Competition & Regulation, Corporate Governance & Law, and Foundations of Law & Economics. In these three areas, the ACLE seeks to advance understanding, through both research and teaching.

The conference proceedings, including the best contributed papers, the invited speaker contributions, and transcripts of the panel and floor discussions, will be edited by Kati Cseres, Maarten Pieter Schinkel and Floris Vogelaar, and published as *Remedies and Sanctions in Competition Policy* (working title) by Edward Elgar, London.

Conference Program

- 8.30 – 9.00 Registration (with coffee)
- 9.00 – 9.10 Welcome and opening by Prof. Floris Vogelaar, Universiteit van Amsterdam and ACLE
- 9.10 – 9.40 Introduction to the topic by Prof. Dr. Claus-Dieter Ehlermann (chair);
- 9.40 – 10.20 “Analysis of Remedies and Sanctions in Competition Law Enforcement,” Prof. Dr. William Kovacic
- 10.20 – 10.40 *Coffee break*
- 10.40 – 11.20 “Is Criminalization of EU Competition Law the Answer?,” Prof. Dr. Wouter Wils
- 11.20 – 12.30 Panel discussion with: Dr. Andreas Reindl, Prof. Dr. William Kovacic, Dr. Giancarlo Spagnolo and Prof. Dr. Wouter Wils
- 12.30 – 14.00 *Lunch*
- 14.00 – 14.30 “Requests for Leniency in the EU; Experience and Legal Puzzles,” Prof. Dr. Dirk Schroeder
- 14.30 – 15.00 “Criminalization and Leniency - Will the Combination Favorably Affect Cartel Stability?,” Mr. Pat Massey
- 15.00 – 17.10 Country experiences with criminal law sanctions:
- 15.00 – 15.20 USA: Prof. Dr. Eleanor Fox
- 15.20 – 15.40 UK: Mrs. Diana Guy
- 15.40 – 16.00 Germany: Dr. Christof Vollmer
- 16.00 – 16.30 *Tea break*
- 16.30 – 16.50 The Netherlands: Pieter Kalbfleisch LL.M
- 16.50 – 17.10 Estonia: Mrs. Aini Proos
- 17.10 – 18.00 Panel discussion with all speakers after lunch
- 18.00 – 18.15 Closing by Prof. Dr. Claus-Dieter Ehlermann and Prof. Floris Vogelaar
- 18.30 – 21.30 ACLE celebration drinks and buffet at ‘In de Waag’, Nieuwmarkt 4

Claus-Dieter Ehlermann is Senior Counsel at Wilmer Cutler Pickering Hale and Dorr LLP, resident in the firm's Brussels office. He was Chairman of the Appellate Body of the World Trade Organization in Geneva in 2001 during the last year of his mandate as a member that started in December 1995. Prior to his service at the WTO he was Director-General of the Directorate-General for Competition (1990-1995), Spokesman and Special Adviser for Institutional Questions of President Jacques Delors (1987-1990), and Director-General of the Legal Service of the European Commission (1977-1987). Professor Ehlermann is one of the leading authorities on EU competition and administrative law as well as international trade law. Educated at the Universities of Marburg/Lahn and Heidelberg and the University of Michigan Law School, and holding honorary degrees from the Universities of Hamburg and Neuchatel, Mr. Ehlermann has published widely. He was Chair of EU Law at the European University Institute (Florence), is co-editor of one of the foremost commentaries on the Treaty of Rome, and an Honorary Bencher of Gray's Inn, London.

Eleanor Fox is the Walter J. Derenberg Professor of Trade Regulation at New York University School of Law. She served as a member of the International Competition Policy Advisory Committee to the Attorney General and the Assistant Attorney General for Antitrust of the United States Department of Justice (1997-2000). As Director of the American Foreign Law Association, she advises the European Commission as well as numerous new antitrust jurisdictions, including South Africa, Indonesia, Russia and the Central and Eastern European nations. Professor Fox has also served as Chair of the Section of Antitrust and Economic Regulation of the Association of American Law Schools and Chair of the New York State Bar Association's Section on Antitrust Law. She has published several books and numerous scholarly articles.

Diana Guy is a Deputy Chairman of the UK Competition Commission, a position she has held since September 2004. She was admitted as an English solicitor in 1968 and was a partner in the firm of Theodore Goddard (now part of Addleshaw Goddard), based in the City of London, for over 20 years. She resigned from the firm in November 2001 when she became a member of the Competition Commission. In practice, she specialized in EU law, particularly competition law. Mrs. Guy has a MA in jurisprudence from Oxford University.

Pieter Kalbfleisch is Director-General of the Netherlands Competition Authority (NMa) since September 2003. After obtaining his law degree from the Vrije Universiteit in Amsterdam in 1972, he was attorney-at-law in Arnhem before joining the bench of the Court of Haarlem. In 1986 Mr. Kalbfleisch was appointed Deputy Presiding Judge, and later Acting Presiding Judge of the Court of The Hague. Among the many positions in which he served prior to heading the NMa, he was Chairman of the Professional Football Appeals Board of KNVB (Royal Dutch Football Federation)

in Zeist. Mr Kalbfleisch has taught at the Business Studies course and Management Programs in Haarlem, as well as the Dutch Bar Association. He has published on matters relating to family, juvenile and criminal law.

William Kovacic is the E.K Gubin Professor of Government Contracts Law at The George Washington University Law School in Washington, D.C.. From June 2001 through December 2004, he served as the General Counsel of the U.S. Federal Trade Commission. Professor Kovacic received an A.B. degree from Princeton University in 1974 and a J.D. degree from Columbia University in 1978. From 1986 to 1999, Mr. Kovacic was a professor at the George Mason University School of Law. Professor Kovacic is a member of the American Bar Association, where he is a Contributing Editor to the *Antitrust Law Journal*. He also is co-author of *Antitrust Law in Perspective: Cases, Concepts and Problems in Competition Policy* (Thomson West 2002) and *Antitrust Law and Economics in a Nutshell* (Thomson West 2004). Since 1992 Professor Kovacic has served as an advisor on antitrust or consumer protection issues to the governments of Armenia, Benin, Egypt, El Salvador, Georgia, Guyana, Indonesia, Mongolia, Morocco, Nepal, Panama, Russia, Ukraine, Vietnam, and Zimbabwe.

Patrick Massey has an B.A. and M.Litt. in Economics, Trinity College Dublin. He is a director of Compecon Limited, a consulting firm specializing in the economic analysis of competition, mergers and regulatory issues. Mr. Massey previously held positions at the New Zealand Treasury and the Irish Competition Authority. He published in a number of international journals, including the *Antitrust Bulletin* and the *Competition Law Review*, and lectures at Trinity College, Dublin and the National University of Ireland, Maynooth, County Kildare.

Aini Proos has a MA in Economics, Tallinn Technical University. She has been Deputy Director General of the Estonian Competition Board (ECB) since 1993. Mrs. Proos previously worked in the Institute of Ministry of Services and the Estonian Price Authority – later ECB. She helped drafting the Competition Act and the Anti-dumping Act, and was responsible for the Consumer Protection Act. Mrs. Proos published internationally and is a regular lecturer on competition matters.

Andreas Reindl is with the OECD's Competition Division, where he works in particular on matters related to competition law enforcement and international cooperation among antitrust agencies. Prior to joining the OECD, Mr. Reindl practiced U.S. and European antitrust law with the Washington, DC Office of Skadden, Arps, Slate, Meagher & Flom. He also taught at the University of Michigan Law School and the American University Washington College of Law. Mr. Reindl has published in the areas of antitrust, European law, and intellectual property law.

Dirk Schroeder is a partner of Cleary Gottlieb Steen & Hamilton, based in Cologne. He is widely published, a professor at the University of Cologne and a guest lecturer at the Amsterdam Law School. Mr. Schroeder studied at the University of Cologne and the Ecole Nationale d'Administration in Paris. A member of the Bar of Cologne since 1981, he was resident in Brussels from 1989-1997. Mr. Schroeder is a member of the board of the German competition law association (Studienvereinigung Kartellrecht) and a member of the professional rules committee of the German Lawyers' Association (Deutscher Anwaltverein).

Giancarlo Spagnolo is Associate Professor of Economics at the Stockholm School of Economics and Head of Research at the Italian Public Procurement Agency (Consip Spa). He is also Research Affiliate of C.E.P.R. and member of E.A.R.I.E.'s Executive Committee. His research focuses on Industrial Organization, Law and Economics, Banking, Corporate Finance, Games and Contract theory, and his work has been published in top academic journals, including the *Rand Journal of Economics* and *Journal of Economic Theory*.

Christof Vollmer studied law at the universities of Münster, Geneva, London (LSE) and Bonn and obtained Referendariat in Saarbrücken and Brussels. Since July 1998, Dr. Vollmer has served in the Bundeskartellamt in various sections, including the energy unit, the public procurement tribunal and the unit German and European Merger Control. From October 2001 to May 2004, Mr. Vollmer was Head of the general policy unit German and European Cartel Law. Since June 2004 he is Head of Special Unit for Combating Cartels.

Wouter Wils holds degrees in economics and in law from the universities of Louvain-la-Neuve, Leuven, Harvard and Utrecht. After having worked as a *référéndaire* of Advocate-General Van Gerven at the EC Court of Justice, he has been since 1994 a member of the European Commission's Legal Service, where he has been working mainly in the field of competition. He has also lectured at several European and American universities, and is a Visiting Professor at King's College London. He is the author of numerous legal and economic publications, including *The Optimal Enforcement of EC Antitrust Law* (Kluwer Law International 2002) and *Principles of European Antitrust Enforcement* (Hart Publishing 2005).

Conference Venue

The conference is held in the main conference hall of the Royal Netherlands Academy of Arts and Sciences (Koninklijke Nederlandse Akademie van Wetenschappen, KNAW), Het Trippenhuis, Kloveniersburgwal 29 in Amsterdam.

Registration

The registration desk at the entrance of the KNAW/Het Trippenhuis will be staffed by Irene Wamelink during the entire day. She is happy to assist you with any inquiries concerning the conference, your stay in Amsterdam or onward travels.

Lunch

A light lunch is served at 12.45 hours in Het Atrium, Oudezijds Achterburgwal 237 in Amsterdam. This restaurant is a short (5 minutes) walk from the conference venue. For the exact location, see the enclosed map.

ACLE Celebration Drinks and Buffet

After closing the program at approximately 18.15 hours, the ACLE invites you to join us in celebration of this first major conference event of its Competition & Regulation group for drinks and a buffet dinner at restaurant *In de Waag*, Nieuwmarkt 4 in Amsterdam. This facility is a 2 minutes walk from the conference venue. Leaving the KNAW/Het Trippenhuis, turn right and follow the canal. *In de Waag* is the medieval building in the middle of the square (De Nieuwmarkt) you reach first.

Leaving Amsterdam

Schiphol airport is best reached by regular train. The 15 minutes train ride leaves every 10 to 15 minutes from Amsterdam Central Station, which is a 10 minutes taxi ride from the conference venue (approximately euro 10). A taxi from the conference venue to Schiphol airport would take about 25 minutes and be approximately euro 40.

Internet Access

At the conference venue there is a limited number of terminals with direct and free access to the internet. No wireless network is presently available at KNAW. There is no possibility for printing.

Accreditation

Those interested in receiving a certificate to testify of their participation in the conference are kindly asked to express this request at the registration desk, so that one can be mailed to you after the event. Dutch lawyers may receive permanent-education credits for participation in the Thursday afternoon workshops and the Friday conference. For more information, please see Besluit Aanmerken als Opleiding (Vademecum Advocatuur 2004, Wet -& Regelgeving blz. 410.)

Transcript Recordings

To facilitate the production of transcripts of the panel and floor discussions, during the day discussions in the conference room will be recorded on audiotape. We will assume that you implicitly agree with publication of your interventions in the proceedings. Should you object to being quoted, or want to inspect the galley proofs of the transcripts prior to publication of the volume, please enter your requests in a log that is kept for this purpose at the registration desk at KNAW/Het Trippenhuis. You can also contact the ACLE office, no later than 1 March 2005, with your inspection requests at acle@uva.nl. After that date, your agreement is implied.

Associated Scholars Workshop

Thursday afternoon February 17, the Universiteit van Amsterdam hosted an associated workshop with some thirty contributed papers and keynote speeches by Prof. Dr. Bruce Lyons (University of East Anglia) and Dr. Giancarlo Spagnolo (Stockholm School of Economics) on the broader topic of *Remedies and Sanctions in Competition Policy*. The best papers of this workshop will be included in the conference proceedings.

Conference Organization

The organizing committee consists of: Prof. Floris Vogelaar (chair), Prof. Dr. Wim Driehuis, Dr. Maarten Pieter Schinkel, Dr. Kati Cseres, Irene Wamelink and Drs. Ine Raangs.

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