

Forensic Economics in Competition Law Enforcement

Friday March 17, 2006

University of Amsterdam

Faculty of Law (FdR)

Oudemanhuispoort 4

Amsterdam, The Netherlands



UNIVERSITEIT VAN AMSTERDAM
Amsterdam Center for Law & Economics

Forensic Economics in Competition Law Enforcement

Competition law enforcement increasingly applies sophisticated economic methods. Competition authorities try to detect cartels and possible abuses of dominance, monitoring markets for suspicious patterns and tell-tale signs derived from economic theory. Economics further guides in identifying evidence to substantiate a finding of an infringement. Subsequent antitrust decisions rely on corroborated economic theories and academic expertise, and so does their presentation in eventual (appellate) court proceedings. Merger decisions are similarly based on ever more advanced economic theory, econometrics, and their combination in simulation analyses. In private antitrust litigation, damages are estimated on the basis of involved econometric techniques. Simultaneously, firms with intentions to merge, as well as defendants in public and private antitrust cases place the latest insights and expert opinions in position to support their case. As a result, courts need to develop rules of engagement, as well as their own access to relevant economic expertise.

The Nash equilibrium is one in which competition law and economics are intimately related and progress together over time. In the US, with its considerably longer antitrust tradition, this situation has long established. In recent years, the EU and its Member States are rapidly converging to a similar dynamic equilibrium. The adjustment process is exciting and challenging. It produces (transatlantic) controversy over landmark cases and poses fundamental questions to economics as an academic discipline.

The Competition & Regulation group of the Amsterdam Center for Law and Economics (ACLE) hosts this event to discuss the role of forensic economics in competition policy. A program with key-note speeches by scholars versed in the use of economics in competition law proceedings, alternated with contributed paper presentations offers a platform to discuss merits and limitations of forensic economics in competition law enforcement. The workshop collects academics working in the field of competition law and economics, as well as practitioners in the various competition authorities, legal counsel and economic consultancy firms.

Workshop Ethics and Timing

You are free to attend the parallel session of your choice. There are quite a few parallel sessions and they all have interesting papers. Therefore, 'session-hopping' is fine, provided it is done non-disruptively, i.e., quietly and respectfully. It is important – in general and to facilitate hopping – that each presenter keeps to his or her allotted time. Presentations of 20 minutes per paper should work, leaving 3-5 minutes for questions and discussion after each presentation. Chairs (see program) are asked to keep to this 'roughly 20 minutes'-per paper schedule.

Conference Proceedings – Submission of Papers

The *Journal of Competition Law & Economics* (Oxford University Press) has reserved the topic of the workshop for a special journal issue. The issue will include the best efforts of the workshop. The journal will apply its normal high academic standards and refereeing process. The deadline for submissions for the issue is 1 May 2006.

Workshop Program – Structure

- 08.30 – 08.45 Registration with coffee (Central Hall, Faculty of Law)
- 08.45 – 09.00 Maarten Pieter Schinkel (University of Amsterdam ACLE) - Opening (Lecture theatre D109)
- 09.00 – 09.45 John M. Connor (Purdue University): “Forensic Economics: An Introduction with Special Emphasis on Price Fixing” (Lecture theatre D109)
- 09.45 – 11.00 Parallel Sessions I

Cartel Detection Room C017	Investigation Room C117	Profit Measures Room C217	Antitrust Damages Room C317
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11.00 – 11.30 *Coffee/tea and pastries (Central Hall, Faculty of Law)*

- 11.30 – 12.30 Andrew I. Gavil (Howard University School of Law): “The Challenges of Economic Proof in a Decentralized and Privatized European Competition Policy System” (Lecture theatre D109)

12.30 – 14.00 *Lunch - Het Atrium*

- 14.00 – 15.30 Parallel Sessions II

Empirical Evidence of Collusion Room C017	Advanced Forensics Room C117	Merger Analysis Room C217	Economic Evidence Across Antitrust Regimes Room C317
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15.30 – 16.00 *Tea/coffee and pastries (Central Hall, Faculty of Law)*

- 16.00 – 17.00 Franklin M. Fisher (MIT): “Economic Analysis and ‘Bright-Line’ Tests” (Lecture theatre D109)
- 17.00 – 18.00 Julian M. Joshua (Howrey LLP): “Supermodels, Geeks and Gumshoes: Forensic Economics in EC Cartel Investigations” (Lecture theatre D109)

18.00 *Drinks and dinner buffet at ‘In de Waag’, Nieuwmarkt 4*

Workshop Program - Parallel Sessions I¹

Cartel Detection (9.45 – 11.00, room C017)

Chair: Christian Lorenz

Iwan Bos (University of Amsterdam) and Maarten Pieter Schinkel (University of Amsterdam), Tracing the base: A topographic test to detect collusive basing-point pricing

Peter van Bergeijk (Netherlands Competition Authority), P. Meulmeester (Netherlands Competition Authority) and R. van der Laan (Netherlands Competition Authority), On the alleged invisibility of the Dutch construction cartels

Christian Lorenz (Münster University), Screening markets for cartel detection – collusive marker in the CFD cartel-audit

Investigation (9.45 – 11.00, room C117)

Chair: Vivek Ghosal

Hans Friederiszick (EC DG Competition) and **Frank Maier-Rigaud** (EC DG Competition and Max Planck Institute), An economic methodology for initiating *ex-officio* cartel investigations

Michiel Bijlsma (Netherlands Competition Authority), Committing to raise expectations: The interplay between competition authorities and cartels

Vivek Ghosal (Georgia Institute of Technology), Dynamic interrelationships in the process of criminal antitrust investigations

Profit Measures (9.45 – 11.00, room C217)

Chair: Paul Grout

Wim Driehuis (University of Amsterdam), The proper measurement of profitability in competition cases: the Dutch experience

Jan Boone (Tilburg University), Jan van Ours (Tilburg University) and Henry van der Wiel (Central Planning Bureau and Tilburg University), Measuring competition in the Dutch economy

Paul Grout (University of Bristol) and Anna Zalewska (University of Bath), Profitability measures and competition law

Antitrust Damages (9.45 – 11.00, room C317)

Chair: Georges Siotis

Mark Glueck (CapAnalysis) and **Eileen Reed** (CapAnalysis), Use and abuse of regression in determining damages in antitrust

Theon van Dijk (Antwerp University) and Frank Verboven (Universiteit van Leuven), Quantification of cartel damages

Maite Martinez-Granado (Universidad de Alicante) and **Georges Siotis** (Universidad Carlos III Madrid), Computing abuse related damages in the case of new entry: An illustration for the directory enquiry services market

¹ Presenting authors' names in bold.

Workshop Program - Parallel Sessions II

Empirical Evidence of Collusion (13.45 – 15.15, room C017)

Chair: Hans Theo Normann

Marc Baudry (University of Rennes) and **Beatrice Dumont** (University of Rennes), Tacit versus overt collusion: Is there a “Yalta” on the French mobile phone market?

Maria Jakobsson (Stockholm University), Bid rigging in Swedish procurement auctions
Peter Davis (London School of Economics) and **Eliana Garces** (EC DG Competition), Promoting empirical analysis in competition policy investigations

Hans Theo Normann (University of London), The effects of cartel policy: Evidence from the German cable industry

Advanced Forensics (13.45 – 15.15, room C117)

Chair: Xander Beenhakkers

Fabio Massimo Esposito (Italian Competition Authority) and Massimo Ferrero (Italian Competition Authority), Variance screens for detecting collusion: an application for two cartel cases in Italy

Andre Andeweg (Netherlands Competition Authority), The interest and legal base for digital investigation

Vincent Berk (Dartmouth College), Process query systems for cartel detection

Xander Beenhakkers (Netherlands Competition Authority), Digital evidence gathering

Merger Analysis (13.45 – 15.15, room C217)

Chair: Mike Walker

Massimo Ferrero (Italian Competition Authority) and **Pierluigi Sabbatini** (Italian Competition Authority), How to simulate the coordinated effect of a merger

Patrick Beschorner (Center for European Economic Research), Assessing the efficiency claim in European merger policy

Simona Fabrizi (Universidad del Pais Vasco) and Steffen Lippert (IUI Stockholm), How much efficiency gains and price reductions to put as ingredients into an efficiency defense? ‘Quanto Basta’

Walter Beckert (UK Competition Commission) and **Nicola Mazzarotto** (UK Competition Commission), Price-concentration analysis in merger cases involving differentiated products

Mike Walker (CRAI), The potential for significant inaccuracies in merger simulation models

Economic Evidence across Antitrust Regimes (13.45 – 15.15, room C317)

Chair: Peter Lewisch

Joan-Ramon Borrell (Universitat de Barcelona), Choosing among American, European, or no antitrust at all

Albert Sanchez Graells (EconLaw), Discovery, confidentiality and disclosure of evidence under the private enforcement of EU antitrust rules

Richard Wainwright (Allen & Overy), Competition Proceedings before the ECJ: The role of Economic Concepts and Economic Analysis

Peter Lewisch (University of Vienna), Economic analysis of antitrust law: Question of fact or question of law?

Key-note Speakers

John M. Connor is Professor of industrial economics at Purdue University in Indiana, where he teaches a short-course on forensic economics. John M. Connor holds a bachelor's degree in mathematics from Boston College and a Ph.D. from the University of Wisconsin. From 1979 to 1983 he was head of Food Manufacturing Research in the Economic Research Service of USDA. Dr. Connor specializes in empirical research in industrial economics and antitrust policy; since 1996 the focus of his research has been international cartels. He is the author of 13 books and monographs and more than 200 articles in journals of economics and law. His latest book, *Global Price Fixing*, received two national writing awards in 2002 and 2003.

Franklin M. Fisher is Jane Berkowitz Carlton and Dennis William Carlton Professor of Microeconomics, Emeritus, at the Massachusetts Institute of Technology. Professor Fisher has published extensively in professional journals in the area of economics, including directly on its application in court, and is the author of 17 books. He has been President of the Econometric Society, editor of *Econometrica*, and he is recipient of the John Bates Clark Award. Fisher is one of the world's foremost authorities on antitrust, competition, and industry structure. For over 20 years he has consulted to counsel, providing testimony, affidavits, and other support for a wide range of cases. He was IBM's chief economic witness in its antitrust cases of the 1970s and served in a similar role on behalf of the U.S. Department of Justice in the Microsoft antitrust case. Professor Fisher is Vice Chairman of CRAI.

Andrew I. Gavil is a member of the faculty of the Howard University School of Law, where he has taught civil procedure, complex litigation, federal courts, civil rights litigation, federal regulation and antitrust law since 1989. He is widely published in these areas. At the Law School he received the 2004 Warren Rosmarin Award for Excellence in Teaching and Service. Professor Gavil has been an active participant in the work of the Antitrust Section of the American Bar Association and the Antitrust and Economic Regulation Section of the Association of American Law Schools. He currently serves as Articles Editor of *Antitrust* and is a member of the ABA Antitrust Section's Liaison Task Force to the Antitrust Modernization Commission and the Section's Task Force on Economic Evidence. He was also a member of the Task Force on Remedies and Task Force on Criminal Penalties. He served as the 1999-2000 Chair of the Antitrust and Economic Regulation Section of the Association of American Law Schools. Professor Gavil has published several recent contributions to the debate on the role of economics in competition law proceedings, and is the co-author with William E. Kovacic and Jonathan B. Baker of *Antitrust Law in Perspective: Cases, Concepts and Problems in Competition Policy* (Thomsen/West 2002).

Julian M. Joshua is a partner in Howrey LLP's Brussels office. He specializes in international criminal and contentious antitrust investigations, follow-on civil litigation and European competition issues, with a special focus on the strategic and multi-jurisdictional implications of global anti-cartel enforcement. As a senior official at the European Commission for 27 years, Mr. Joshua led many of the Commission's successful investigations into Europe-wide price-fixing conspiracies in major industries during the 1980's and 90's. Mr. Joshua will comment on possible improvements to present EU methods, as well as limitations to the application of US practices in Europe. He published extensively on this topic, including the book *Regulating Cartels in Europe: A Study of Legal Control of Corporate Delinquency* (with Christopher Harding).

Workshop Venue

This academic workshop is held at the Faculty of Law of the University of Amsterdam, Oudemanhuispoort 4 in Amsterdam. The main place of assembly – for refreshments in particular – is the top plateau in the central hall. This is next to lecture theatre D109, where all plenary meetings will be. The parallel sessions rooms are in building C, in four rooms above each other. The short walk is sign-posted. The Faculty Room has been reserved for private meetings.

Registration

The registration desk in the central hall of the Faculty of Law 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.

Internet Access

A number of terminals with internet access are open for public use in the central hall and at the registration desk. There are no printing facilities.

Lunch

Lunch is served at 12.30 hours in Het Atrium, Oudezijds Achterburgwal 237 in Amsterdam. This restaurant is a short (2 minutes) walk from the conference venue and will be sign-posted.

Drinks and Dinner Buffet

After closing the program at approximately 18.00 hours, you are invited for drinks and a buffet dinner at restaurant 'In de Waag' at Nieuwmarkt 4. This restaurant is a 5 minutes walk from the conference venue. Leaving the Faculty of Law, turn left and out of the Oudemanhuispoort, turn left again and continue along 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 service. 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.

Conference Organization

The organizing committee consists of: Iwan Bos, Norman Bremer, Kati Cseres, Maarten Pieter Schinkel (chair), Floris Vogelaar and Irene Wamelink.

The Amsterdam Center for Law and Economics

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 academic research in fields at the interface of law and economics. The ACLE 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.

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