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Ten Years of Pros and Cons Conferences

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It could have started better. Einar Hope, former Director-General of the Norwegian Competition Authority and Professor of Energy Economics at the Norwegian School of Economics and Business Administration phoned in on September 5, 2002 to say that he had sprained his ankle and was unable to attend the conference. He was supposed to be the moderator of the Swedish Competition Authority's first Pros and Cons conference, the Pros and Cons of Merger Control. When Director-General Ann-Christin Nykvist next day entered the stage in the meeting room Trafalgar in a hotel in the Old Town of Stockholm she did not know that it marked the beginning of a now ten-year old tradition of organizing Pros and Cons conferences.

The first conference was held as part of a meeting of the Director-Generals of European Competition Authorities. The idea was to stimulate a discussion between scholars and practitioners. The Director-Generals from OFT (John Vickers), Bundeskartellamt (Ulf Böge), the Irish Competition Authority (John Fingleton), and the Danish Competition Authority (Finn Lauritzen) acted as discussants on the contribution by the researchers. One paper was jointly written by Damien Neven (University of Geneva) and Lars-Hendrick Röller (Humboldt University, Berlin) and the other papers were written by Luke Froeb (Vanderbilt University) and Greg Werden (U.S. Department of Justice) jointly, Henrik Horn (University of Stockholm) and Johan Stennek (The Research Institute of Industrial Economics, Stockholm) jointly and the final paper was written by Kai-Uwe Kühn (University of Michigan). Little did we know then that we had managed to gather the first three Chief Competition Economists of the European Commission.

The Swedish Competition Authority ("SCA") is a state authority working in order to safeguard and increase competition in Sweden. Our vision is "Welfare through well-functioning markets." To promote research on competition issues has been one of the SCA's tasks since the beginning, the others being law enforcement and advocacy. The SCA has a special government appropriation to be used to contribute to research in both the areas of competition and public procurement. The appropriation for 2012 was just over SEK 14m (EUR 1.5m). The research should result in an increased level of knowledge among our staff as well as our stakeholders. In the first instance we finance research within the fields of law and economics. We also arrange seminars and provide information about the research and its findings. We announce an essay competition for students every year.

Assigned to the SCA is the Council for Research Issues consisting of representatives from universities, other research institutions, and authorities. The task of the Council is to stimulate research in the competition and public procurement area and to keep the SCA informed of important developments within the economic and legal sciences. The Council is responsible for

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the SCA's evaluation of research applications. The Council is chaired by the Director-General of the SCA.

Among the research seminars we arrange, the series of Pros and Cons conferences are our success story. We have covered numerous topics throughout the years. We always try to set a timely topic in order to stimulate discussions and let the input from the researchers influence the agenda. A timely topic is one of the keys to our success in organizing conferences. Finding the best mix of researchers and discussants to get a thought-provoking discussion is another.

The format of the Pros and Cons conferences has evolved over time. For the first conference, the only participants were Director-Generals of European Competition Authorities, employees of the SCA, and the members of the Council for Research Issues. The year after, we welcomed invited researchers and staff from competition authorities. In 2004, we opened the conference for all interested researchers and decided that we would limit the number of participants to 120 in order to conserve the intimate format and the active involvement of the audience. In 2005 we took the bold step to invite the first contribution from researchers in law to what had, until then, been a mainly economics-focused conference. It was a success and ever since one out of the five contributions has been written by a researcher in law. Since then, we began to notice a growing demand from lawyers to get access to the conference and, in 2007, we started welcoming lawyers and consultants. We typically get some 100 participants from around 15 countries; two-thirds from Sweden.

The papers are gathered in a hard cover conference volume that is usually released a month after the conference. The presentations by the speakers are made available at the SCA website shortly after the conference.

The pros and cons of merger control were high on the agenda in 2002 with the review of the Merger Regulation in the Green Paper by the European Commission just out. Neven & Röller evaluated how accurate the Commission had been in the last ten years on prohibiting anticompetitive concentrations and allowing those that promote competition. Kühn highlighted in his chapter a number of critical aspects on how the term “collective dominance” was used by the Commission in some current cases. Werden & Froeb discussed in detail the advantages and disadvantages of economic models such as merger simulation in analyzing acquisitions and markets. Horn & Stennek discussed in their chapter whether small countries were disadvantaged by the EC rules on concentrations.

In 2003, the theme was the pros and cons of low prices. In the first chapter William J. Baumol (New York University and Princeton University) reviewed the fundamental principles that have to be taken into account when determining whether a price is too low or not. Andrew Eckert & Douglas S. West (both from the University of Alberta) focused on the issue of how to assess undertakings that set low prices on a loss leader in order to get customers to buy other goods at the same time. Paul A. Grout (University of Bristol) analyzed price squeezing — a situation where a vertically integrated undertaking charges a high price for its upstream supply to competitors in downstream markets, at the same time as it charges a low retail price. And finally Adriaan ten Kate (Mexican Competition Authority) and Gunnar Niels (OXERA) focused on the issue of when a low introduction price may be legitimate.

In 2004 we tackled the pros and cons of antitrust in deregulated markets. Martin Cave (University of Warwick) and Peter Crowther (LeBoeuf, Lamb, Greene & MacRae) argued that there are advantages to be drawn from special regulation as a complement to the rules on competition when markets are being liberalized. Consumer aspects in regulatory reform were discussed by Michael Harker & Catherine Waddams Price (both from ESRC Centre for Competition Policy and the University of East Anglia). Alison Oldale & A. Jorge Padilla (both from LECG) had a clearly critical approach to the new Electronic Communications Act introduced in the European Union to regulate the telecom market. Frank A. Wolak (Stanford University) pointed to the fact that the competition rules in the electricity area must be supplemented by special legislation to tackle the actions of electricity undertakings.

The pros and cons of price discrimination was the topic for 2005. Damien Geradin (University of Liège and the College of Europe) and Nicolas Petit (University of Liège) analyzed the scope of Article 82 (c). They distinguished between three main types of price discrimination that can be found in the EC competition law practice. Simon Bishop (RBB Economics) focused on one specific form of price discrimination: loyalty rebates. Yongmin Chen (University of Colorado) focused on price discrimination in a symmetric duopoly situation. Thomas P. Gehrige (University of Freiburg) and Rune Stenbacka (Swedish School of Economics and Business Administration, Helsinki) took a step back and asked: What are the arguments in favor of—and against—price discrimination? Anne Perrot (Conseil de la Concurrence) argued that competition authorities' policies towards price discrimination should be governed by the effect of a particular type of price discrimination, not by its form. David Spector (Centre National de la Recherche Scientifique, Paris) analyzed different companies' strategic use of price discrimination.

Information Sharing was the topic for 2006. Richard Whish (King's College London) discussed EC legal practice on information sharing. Valerie Suslow (University of Michigan) and Margaret Levenstein (Michigan Census Research Data Center) focused on the role of information exchange in explicit cartels. Xavier Vives (IESE Business School) discussed the theoretical insights from the economics literature on information sharing. Peter Møllgaard (Copenhagen Business School) and Per Baltzer Overgaard (University of Aarhus) focused on the role of transparency for effective competition. Christina Caffarra (CRA) and Kai-Uwe Kühn (University of Michigan) suggested that while private communication about planned future pricing should not be accepted, a more reasoned approach should be used vis-à-vis what they considered to be "information exchange:" private communication about current market information or past actions in the market.

Four years after the pros and cons of low prices the theme was the pros and cons of high prices. Massimo Motta (European University Institute, Florence) and Alexandre de Stree (University of Namur) guided us through the last years' policy debates regarding the treatment of excessive pricing. Nils Wahl (Court of First Instance) gave his personal reflection on the European case law regarding excessive prices. Bruce Lyons (University of East Anglia) started with the apparent paradox of the exclusion of exploitative abuse as monopoly pricing is the textbook abuse in economics. Timothy Brennan (University of Maryland Baltimore County) focused on the contrast between static efficiency and dynamic efficiency. Should we allow firms to exploit market power in the short run in order to stimulate innovation? Mark Williams

(NERA Economic Consulting) asked the question: Excessive prices—do we care, and how would we know?

In 2008, when it was time to review the vertical block exemption, our theme was the pros and cons of vertical restraints. Margaret E. Slade (University of Warwick and University of British Columbia) assessed the empirical evidence of vertical restraints. Daniel P. O’Brian (U.S. Federal Trade Commission) took us back 170 years and argued that most robust results in the theoretical literature on the subject can be traced back to Cournot’s work. Paul W. Dobson (Loughborough University) examined vertical restraints that are put in place by buyers. Patrick Rey (IDEI, Université Toulouse I) started with the paradox that competition authorities and courts treat price restraints harder than non-price restraints whereas the economic literature does not see a reason to do so. Joanna Goyder (Freshfields Bruckhaus Deringer) started with the question of how an understanding of economics should be transformed into workable legal rules.

The pros and cons of competition in/by the public sector was the topic for 2009. Gianni De Fraja (University of Leicester and University of Rome "Tor Vergata") explored the economics of mixed oligopoly. D. Daniel Sokol (University of Florida Levin College of Law) made two key observations: The first being that good corporate governance for state-owned enterprises can minimize bad management and the second that competition policy can reduce distortions of state-owned enterprises. Hans W. Friederiszick & Jakub Kałużny (both from ESMT Competition Analysis) conducted a thought experiment considering public ownership as a form of state intervention and applying European state aid control principles. Michael Steinicke (University of Southern Denmark) went out on a search for the correct market price under state aid rules.

In 2010 it was time to discuss the pros and cons of standard setting. Tineke M. Egyedi (Delft University of Technology) guided us through a case of two competing standards issued by the same standard setting organization. Anne Layne-Farrar (LECG) took us through the change in invention. From being done by large, vertically integrated firms, invention is now done by a multitude of firms, with different business models. Klaus M. Schmidt (University of Munich) explained the complements problem that arises when input goods are perfect substitutes and offered by monopolies. He continues by showing how patent pools can solve the problem. Richard J. Gilbert (University of California at Berkeley) searched for the meaning of fair, reasonable, and non-discriminatory (FRAND) royalties. Damien Geradin (Tilburg University and Howrey LLP) examined the literature on patent hold-up.

The pros and cons of consumer protection was the theme for 2011. Oren Bar-Gill (New York University) discussed whether the benefits of competition that obtain in a world of rational consumers also extend to a world with imperfectly rational consumers. Paul Heidhues (ESMT) presented work on consumer misperception and deception in competitive credit markets. Maurice Stucke, (University of Tennessee) discussed the implications of bounded rationality and imperfect willpower on the part of consumers for our conception of competition as well as its effect on consumers and, ultimately, for the role of consumer protection and competition policy. Mark Armstrong (Oxford University) discussed information-based models of consumer protection without behavioral biases. Matthew Bennett (Office of Fair Trading) pointed out that markets could be self-correcting. Consumers may learn, markets self-regulate, and other parties can profit from correcting the problem.

This year, the theme for the seminar is once again merger control. Ten years after the first conference we believe that enough time have passed to revisit the area of merger control and discuss the developments over the last ten years in the area. The seminar will be held in Stockholm on the 9th of November 2012.