

## **Book Review**

### **Antitrust and Regulation in the EU and US: Legal and Economic Perspectives**

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A well functioning industrial sector is crucial to economic growth. History proves that a free industrial market involves substantial imperfections, suggesting that economic policy improving the functioning of the industrial sector is warranted. Basically, three types of tools have been used by governments to this end: competition policy, regulation and taxation. The book “Antitrust and Regulation in the EU and US: Legal and Economic Perspectives” edited by François Lévêque and Howard Shelanski is concerned with the first two tools, competition policy and regulation, and how they have been applied in network industries. Competition policy is based on ex post evaluations of relatively simple rules of firm behavior, and regulation is based on ex ante detailed rules designed to prevent harmful behavior. But when is competition policy preferred to regulation as a means of dealing with market power and how has the use of these two instruments evolved over time?

The book consists of seven separate chapters (written by different authors). Each chapter deals with the overarching topic of how competition policy and regulation have interacted over the years, and how these two instruments for improving the efficiency of markets have been applied to different sectors of the economy. Overall, the book offers a good overview of how competition policy has evolved over time so as to, in many cases, replace regulation (due to technological development and bad experiences with regulation). Nonetheless, in many circumstances, competition policy is not enough and need to be substituted or complemented with regulation.

In chapter one, Chief Judge Douglas H. Ginsburg offers a good overview of regulatory history in the U.S. and argues that courts should view the practice of the competition law differently between normal markets and markets with “synthetic competition”, i.e. in markets where competition has been created as a result of regulation. He points out that the government objective in these markets is broader and argues that the courts should apply a less strict view of economic reasoning in cases in such markets.

The European perspective on how regulation and competition policy have interacted is given in chapter two. In this chapter, John Temple Lang offers a detailed summary of the differences between regulation and competition policy in the context of the different regulatory regimes under the European Community directives. He points out that EU competition law limits what national regulators can do and that going forward, it would be desirable if the EU provided more guidance as to how conflicts between EU law and national law should be handled and interpreted. He also discusses whether an EU sectoral regulator would make sense.

The book naturally progresses into chapter three where Professor Pierre Larouche focuses on how differences in the legal framework between the US and the EU affect how suitable they are to economic reasoning. Comparing the US Supreme Court decision in *Trinko* and the EU commission *Deutsche Telecom* price squeeze case, he argues that the US system creates the benefit of more legal certainty whereas the EU system creates the benefit of more easily rolling back inefficient regulation. Further, while competition policy is always applicable to regulated markets in the EU, antitrust

cases are to a greater extent seen as the domain of regulators in the US. Competition law is thus not always applicable.

Chapter four is more industry specific. Professor James B. Speta asks what an efficient policy for telecom markets should look like. Is antitrust policy preferable? He argues that this is not the case due to network effects in these markets, which will require broader interventions than those available under antitrust law. The risk is then overregulation but he argues that FTC has built up a credible reputation of not overregulating and thus, in the hands of FTC, this would not be a problem.

Continuing on the theme of telecommunications, Professor Philip J. Wiser argues in chapter five that merger review in regulated markets needs to be reformed. Merger review in the telecom industry has been uncoordinated and counterproductive, and the process could be improved if merger review is handed over to antitrust authorities which have built up an experience of merger remedies.

Chapter six discusses electricity generation markets and challenges in evaluating the existence of market power. Professors Richard Gilbert and David Newbery discuss how market power can best be detected in the electricity generation markets in the US and the EU. Their argument is that simple measures of market concentration are not likely to be good predictors of market power in electricity markets due to inelastic demand and many submarkets. They suggest a competitive residual demand market power test which better captures the characteristics of this particular market.

Finally, in chapter seven, Professor Tommaso Valletti discusses how to define markets and conduct economic evaluations in telecom cases. He argues that market definition is not a substitute for a full economic analysis of the likely competitive effects in certain cases (due to the “two-sidedness” of telecom markets) and proceeds to discuss several pitfalls and how to deal with them.

This volume is intended for economists, lawyers and practitioners of competition policy and regulation. It gives a useful overview of the current legal structure in the EU and the US as well as a historical view and case studies on how regulation and competition policy have interacted in network industries. A conclusion that is easy to draw is that more research is needed to find a good balance between competition policy and regulation in the future.

The book contributes to the active debate on what roles competition policy and regulation can fill as a way of ensuring healthy competitive markets. It also provides an intriguing insight into the history of competition policy and regulation in network industries on both sides of the pond, and of the general shift away from regulation towards relying more on competition policy. Somewhat of a limitation are the different directions taken by each chapter, which disrupts the flow of the book. Nonetheless, this very limitation also makes it useful as supplementary reading in classes on regulation and competition policy as the chapters are sufficiently self-contained. In particular, it is excellent as a complement to a text book on these issues, such as Motta (2004) or Viscusi, Vernon, and Harrington (2005).

## **References**

Motta, M. (2004), *Competition Policy: Theory and Practice*, Cambridge, Mass.: Cambridge University Press

Viscusi, W.K., J.E. Harrington, Jr., and J.M. Vernon. (2005), *Economics of Regulation and Antitrust*, 4th Edition. Cambridge, Mass.: The MIT Press.