

Neelie Kroes

European Commissioner for Competition Policy

**Antitrust in the EU and the US
– our common objectives**

Brussels, 26th September 2007

US and EU antitrust law agree on most things, not least the objective of benefiting consumers.

This is hardly surprising. When Jean Monnet, one of the founders of the European Union, was working on antitrust rules in the draft Treaties over fifty years ago he was heavily influenced by his many US friends, in particular Harvard Law professor Robert Bowie. Since then, discussion between academics, practitioners and enforcers on both sides of the Atlantic has never stopped. Both in Europe and America the objective is to find the best solution for consumers, the best way to solve competition problems so as to increase consumer welfare.

EU antitrust law achieves this objective to the tune of billions of dollars each year. By breaking up international cartels, it saves European consumers at least \$6 billion dollars every year. It has pushed down the price of international telephone calls in Europe by over 40%. It led to the European Commission fining France Telecom for pricing broadband in such a way that competitors that were every bit as efficient as France Telecom would be squeezed off the market. The result is that competitors are investing in the provision of broadband services and more consumers are using broadband in France than ever before. 18% of EU homes now have broadband, a figure that continues to rise rapidly. The Commission has recently acted against Spain's Telefonica for similar abuses. Antitrust law has led the debate in favour of proposals, adopted last week, for far reaching reforms to the EU energy market with an effective break-up of companies' supply and distribution businesses. That separation will eliminate conflicts of interest and lead to more investment and stronger competition, and a better deal for individuals and businesses. Sound rules, rigorously applied, benefit European consumers every day, for competition usually induces companies to offer the best products at the lowest prices.

Consumers benefit from competitive markets. So do the companies that compete on those markets. As a result of EU enforcement action, Deutsche Post separated its commercial activities from its letter monopoly business, allowing competitors like UPS better access to German customers. And the European Commission has acted against the drug company AstraZeneca for misuse of the patent system and the drug authorisation system which delayed market entry by generic drug manufacturers.

Antitrust law opens markets and keeps them open for companies to compete; it does not choose who wins. Inevitably, however, when a monopolist's abusive behaviour is stopped, chances are that its competitors will have a stronger position on the market afterwards. So when differences of opinion emerge across the Atlantic as to what to do in a particular case, we need to move beyond the simplistic rhetoric of whether one side protects consumers or competitors. I have more faith in both the EU and the US systems of antitrust than that. Both systems are looking to increase the welfare of consumers. In practice there are far more similarities than differences in our approach.

We have similar views on the iniquity of cartels, on the circumstances when mergers between competitors bring risks to consumers, on the – rarer – circumstances when mergers between suppliers and customers also bring risks to end consumers. Co-operation between agencies in furtherance of these views is common: we regularly co-ordinate action in the US and Europe to break up global cartels; faced with the same merger filings, we often co-ordinate information gathering to reduce the regulatory burden on notifying parties. Co-ordination is only possible because we are tackling these issues using essentially the same approach.

The work that the EU and US authorities do around the world, spreading the gospel of free markets is testament to our common approach. Both EU and US representatives delivered the same messages to China during the preparation of its now adopted Anti-Monopoly Law, not just about the importance of competition rules, but also about what those rules should contain.

Even in the field of unilateral behaviour by monopolists, we agree on a lot: antitrust law should rarely limit unilateral action by companies, even when those companies are monopolists. When looking at such conduct, the legal tests set out in their respective Microsoft cases by the US District Circuit on the one hand, and the EU Court of First Instance on the other, are largely the same. Both require a type of rule of reason analysis, looking not just at whether the potential consumer benefits outweigh the harm in the short run, but whether incentives to innovate will be maintained in the long run.

Maintaining the incentive for companies to innovate is vital to ensure that product markets remain dynamic, changing as improved products and production processes are introduced. In the Microsoft case decided last week in the EU, the Court noted that not even Microsoft had argued that its incentive to innovate had been undermined by its previous practice of disclosing Windows desktop interoperability information. It is worth remembering that in common with industry practice, Microsoft voluntarily used to provide information permitting interoperability between servers and its Windows desktop. Of course this was before Microsoft wanted to push its own server software; then the provision stopped. Even after Microsoft was later forced to resume providing certain interoperability information – as part of the settlement it reached with the US Department of Justice - Microsoft stated that its incentives to innovate had not been undermined.

So if the differences do not lie in the objectives of the antitrust laws, or in the tests that we apply, do differences exist? To answer that question, we have to look at the substance. Fortunately there are people on both sides of the Atlantic doing just that. FTC Commissioner Rosch has recently suggested that US and EU antitrust policies are based, respectively, on "Chicago school" and "post-Chicago school" economics. The Chicago school taught that markets are inherently efficient, and there is nothing a monopolist can do to keep a good competitor down. Work done since then – the post-Chicago school – suggests that life may not be that simple.

There is some truth to Commissioner Rosch's description of the EU's approach. Having worked in business for many years before becoming Competition Commissioner, I have difficulty seeing the real cut-throat world of business in the theoretical models of the Chicago school. They remind me of Dr Pangloss in Voltaire's *Candide*, believing that we live in the best of all possible worlds and that all is for the best. In reality businesses do engage in strategic behaviour to undermine their rivals. Where a well-established monopolist exploits its position to colonise neighbouring markets, this can scare investors from funding competitors, undermine the incentive and ability of those competitors to invest and innovate, and drive out competitors who are as efficient as the monopolist. And monopolists exploiting their strategic position to conquer new markets are less likely to innovate than companies forced to compete for customers on the basis of the merits of their products.

To most people, this is just common sense: a straightforward description of the real world of business. There cannot be many business people who doubt that a monopolist can use its market power to squash even the most efficient rival producers of goods or services that interact with the monopolised product. There cannot be many venture capitalists who would invest in a company whose market can at any moment fall under the sway of an entrenched neighbouring monopolist whose behaviour was subject to no limits.

What I will do is continue to look hard at the actions of monopolists. I will use my practical business experience to help me understand the dynamics of markets. I will look for answers that maintain the incentives of everyone on the market to innovate, and not just the friendly neighbourhood monopolist. Power has to be used responsibly, by the enforcement agencies, and also by the monopolists.

I will not look for fights, but where interventions will make consumers better off, I will not shy away from them.