College of Europe
Collège d'Europe
Brugge
Natolin
Students of the College of Europe

Department of European Economic Studies
Department of European Legal Studies
Programme: European Law and Economic Analysis

INVITATION TO THE 9TH EUROPEAN LAW AND ECONOMIC ANALYSIS SYMPOSIUM

What is the ELEA Programme in the College?

A joint programme on EU competition policy and market regulation for students of the Legal Studies and the Economic Studies Departments of the College of Europe in Bruges

Interaction and interdependence between the disciplines of Economics and Law in the areas of competition policy and market regulation have become frequent and multi-faceted. Lawyers benefit from knowledge of the economic impact of legal rules and economists gain an understanding of the institutional legal framework in such areas as competition policy, regulation of network industries and risk regulation. Economic analysis of European law already contributes significantly to policy-making in the EU and has become a necessary component in several categories of case-law of the Union.

The ELEA option adds value to the current curricula of both lawyers and economists through a deeper knowledge and understanding of the other discipline. The purpose is not to transform lawyers into economists, or vice versa. The option enables the students to 'interconnect' more easily, and will thus be directly useful for their later work in such areas as competition policy, EU regulation and liberalisation initiatives or network markets.

What is the ELEA Symposium?

Organised every year by the ELEA students, this symposium gathers renowned academics and practitioners in EU competition law and market regulation. This is a unique opportunity to closely interact with people from academia, EU institutions and private sector and to apply a combined legal and economic approach towards highly topical issues.

The event is open to the ELEA students and alumni, students, the ELEA professors and other invited professors, the rector, the speakers, the assistants, and former students of the ELEA programme.

Practical details

Venue: College of Europe, Dijver 11, BE-8000 BRUGGE (Belgium)

Date: 19 June 2013 From 9.30 a.m to 5.00 p.m – Room A&B

Contact: Kletia NOTI (+32 50-47-72-26 / kletia.noti@coleurope.eu) or Jessie MOERMAN (+32 50-47-72-21 / jessie.moerman@coleurope.eu)

Directors of the programme: Inge Govaere (LAW) and Phedon NICOLAIDES (ECO)

Academic Assistant: Kletia Noti

Secretaries: Valérie Hauspie (LAW) and Jessie Moerman (ECO)

9th ELEA Symposium
Bruges, 19 June 2013
Room A+B

PROGRAMME

TENSIONS BETWEEN COMPETION RULES AND INTELLECTUAL PROPERTY RIGHTS IN THE ICT SECTOR.

09.30 - *Opening speech:* **Prof. Inge GOVAERE**, Director of European Legal Studies, College of Europe, Professor of European Law, University of Ghent.

1ST SESSION: HOW DOES EU COMPETITION POLICY CONSTRAIN OR HAMPER THE INDUSTRY'S INNOVATION POLICY?

"Does competition policy favor or hamper efforts of multinational companies in innovation? How do businesses adapt their strategy when constrained by competition policy?"

Chair: **Prof. Phedon NICOLAIDES**, Director of European Economic Studies and Jan Tinbergen Chair of European Economic, College of Europe

09.45	Confirmed Speaker: **Prof. Jean-Yves ART**, Visiting Professor, College of Europe, European Legal Studies Department, Director of Competition Law, Microsoft, Brussels.
10.45	Discussants: Gloria GENNARO (ECO) and Ada SILAKIEWICZ (LAW)
11.00	Discussion
11.45	Lunch (Foyer/Room B)

2ND SESSION: PATENT DISCLOSURE IN STANDARD SETTING

Chair: **Prof. Mike WALKER**, Visiting Professor at the College of Europe, Joint Seminar for Case Analysis, Vice President, Charles Rivers Associates

13.00 Confirmed speaker: **Dr. Emanuele TARANTINO,** Research Fellow, University of Bologna, Department of Economics.

13.30 Discussants: Iryna FOMINA (ECO) and Beatriz ALVARGONZALEZ (LAW)

13.45 Discussion

14.30 Coffee break (Room B)

3RD SESSION: ARTICLE 102 IN THE ICT SECTOR

"What should the role of competition law be in preventing the abuse of dominance in relation to setting of technical standards in the ICT sector?"

Chair: **Prof. Pierre LAROUCHE**, Visiting Professor at the College of Europe, Joint Seminar for Case Analysis, Professor of European Competition Law, University of Tilburg

15.00 Confirmed Speakers: **Dr. Tim POHLMANN**, Assistant Professor, Berlin University of Technology, **Mrs. Szilvia SZEKELY**, Official, DG Competition, European Commission

15.30 Discussants: Miguel Angel BOLSA FERRUZ (ECO) and Mélanie PEREZ (LAW)

15.45 Discussion

16.30 End

16.45 Reception (Foyer/Room B)
[open to all participants]

1ST SESSION: HOW DOES THE EU COMPETITION POLICY CONSTRAIN OR HAMPER THE INDUSTRY'S INNOVATION POLICY?

"Does competition policy favor or hamper efforts of multinational companies in innovation? How do businesses adapt their strategy when constrained by competition policy?"

DG Competition is increasingly called upon to express its opinion in cases in highly innovative sectors. The spectrum ranges from patent protection (e.g. Samsung) to traditional vertical restrictions cases (e.g. E-book). Doubts arise when traditional competition remedies are applied to innovative and extremely dynamic markets. On the one hand, business may find their innovation strategy constrained by the threat of an intervention by a competition authority; on the other, companies may refrain from investing in highly innovative sectors for fear of seeing their profits reduced by fines or commitments.

Besides the well-known Microsoft cases, other multinational companies' business practices have been scrutinized by the Commission. Recently Google came to a settlement with the European Commission in their listing case, reviewing their listing rules to meet DG Competition's concerns. Similarly, publishers in the e-book case with Apple agreed to dismiss the agency agreements, which limited Amazon's bargaining power, pushing publishers' revenues below their marginal costs.

In a framework in which companies adapt their innovation strategies according to the requirements of European competition policy, it is interesting to explore to what extent competition policy favors or hampers companies' efforts in innovation.

More precisely:

- Obstacles to innovation and investment decisions:
    - What kind of obstacles do firms encounter when planning business innovation strategies? What are your suggestions to overcome those obstacles? What do you think it is missing from competition policy in this area?
    - How does EU competition policy influence the investment decisions of firms within and outside the EU?

- In the framework of the crisis:
    - Does competition policy entice firms to be more competitive or does it worsen the business environment?

- International point of view and limits of competition policy regarding innovation:

- Do emerging countries like China, with less stringent competition policies, offer a more innovation-friendly environment?
- Does competition policy tackle market failures in innovation and/or create other market failures?

2ND SESSION: PATENT DISCLOSURE IN STANDARD SETTING (BASED ON THE PAPER "CONVERSATION WITH SECRETS", BY GANGLMAIR, B., TARANTINO, E.)

The paper analyzes the sustainability of a conversation between two agents. We model the conversation as a process in which agents exchange ideas for improvement. One agent might be endowed with a piece of private information that affects payoff distribution, for this reason such a secret can compromise the sustainability of the conversation. We show that, even without an explicit rule, the secret holder will disclose its secret if in this way it can prevent pre-emptive termination of the conversation. The non-secret holder lacks this possibility and stops the conversation. Competition and limited effectiveness of the conversation amplify this result of early disclosure and render the conversation process less likely sustainable.

We discuss policy and managerial implications in the contexts of industry standard development. A prominent approach in the literature on standard-setting is to model the process as one of ex-post coordination on one out of a number of competing, existing technologies. However, Farrell and Saloner (1988) observe that "*participants [in a standard-setting process] are often engineers who share information and view the committee as a design process, and pursue an 'ideal technology'*." We provide a model of ex-ante cooperation that addresses this function of standard-setting organizations (SSOs).

The model captures the salient features of industry standard development and provides novel insights into the functioning of standard setting and the decision to disclose standard-essential patents. The results suggest that *ex-post* disclosure of essential patents is more prevalent in committees that are more effective in their development process and characterized by soft competition among its members. Conversely, ineffective committees with competitive members experience early termination of the development process and lower quality standards. We conclude the application by discussing *ex-ante* license commitments (e.g., RAND commitments), implied waivers of patent rights, and no-patent certificates as remedies of the inefficiency caused by private information.

3RD SESSION: ARTICLE 102 IN THE ICT SECTOR

"What should the role of competition law be in preventing abuse of dominance in relation to setting of technical standards in the ICT sector"

The standard-setting process entails many advantages in terms of allowing interoperability, the diffusion of knowledge and promoting innovation. However, anti-competitive concerns might appear in cases where an undertaking which owns a patent that has become essential after the adoption of a specific standard may engage in opportunistic behavior, for instance by demanding licensing royalties for the use of the essential patent by a potential licensee which deviate from its FRAND commitments. While on the one hand, a potential licensee may be tempted to under-invest as a result of the possibility by the innovator to engage into rent seeking behavior, on the other hand, the innovator's efforts need to be properly rewarded.

More precisely:

- What should the role of competition law be in those cases?
- Are FRAND commitments an appropriate tool to deal with anti-competitive concerns related to standard-essential patents?
- Should those cases rather be internalized in intellectual property law itself or dealt with by self-regulation in the context of SSOs?