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# THE INTRODUCTION OF EUROPEAN UNION COMPETITION LAW AND POLICY IN THE NEW MEMBER STATES

Andre Fiebig†

## Introduction

The competition policy negotiations with the Eastern European candidate countries have been at times arduous but remarkably expedient. The accession negotiations with Cyprus, the Czech Republic, Estonia, Hungary, Poland, and Slovenia were formally opened after the Luxembourg Council meeting in December of 1997. These countries are sometimes referred to as the “Luxembourg Group.” The other group of accession candidates, the “Helsinki Group,” is comprised of Bulgaria, Latvia, Lithuania, Malta, Romania, and Slovakia. In order to facilitate the rapid advancement of negotiations, the negotiations were divided into thirty-one policy areas or “chapters.” Negotiations with the Luxembourg Group over the competition “chapter” began in 1998 and with the Helsinki Group in 2000.<sup>1</sup> Negotiations were closed earlier this year with a target date of May 1, 2004 for accession. It is quite remarkable how much has been accomplished in such a short time, particularly when one considers that the European Union (“EU”) negotiated the concerns of each of the candidate countries individually.<sup>2</sup> The introduction of competition law and policy in the candidate countries is characterized by a panoply of political, sociological and legal challenges. My presentation will attempt to identify the challenges that the EU has faced in the process leading up to the accession of the candidate countries and the challenges that an expanded EU will likely face in the near and long-term future. I will conclude my presentation with a few predictions on the future of competition law in the European Union comprised of twenty-five member states.

## General Challenges

According to one of the Copenhagen criteria, membership in the EU requires

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<sup>1</sup> *Enlargement: Negotiations of the Chapter 6 Competition Policy*, at <http://europa.eu.int/comm/enlargement/negotiations/chapters/chap6/index.htm> (Dec. 2000) (Negotiations with Bulgaria on the competition chapter began in 2001).

<sup>2</sup> The Commission refers to this approach as the strategy of differentiation. Youri Devuyt, *EU Enlargement and Competition Policy: Where Are We Now?*, 2002 EC COMPETITION POLICY NEWSLETTER (Competition Directorate-Generale of the European Commission, Brussels, Belgium), Feb. 2002, at 3.

adoption by the candidate countries of the EU's *acquis communautaire*.<sup>3</sup> Moreover, as a prerequisite for closing the negotiations over the competition chapter, the EU required the candidate countries to maintain laws applicable to competition and state aid, adequate administration to enforce those laws and a credible enforcement record in the area of competition law.<sup>4</sup> For the accession countries, this may be characterized as representing a fundamental shift to greater reliance on the market for organization of the economy and the distribution of wealth. Adherence to the free movement principles means that member states must remove state-imposed obstacles to trade. The introduction of the competition rules means that private obstacles to trade are prohibited. In other words, membership in the EU means acceptance not only of the *acquis communautaire*, but also of the “economic constitution”<sup>5</sup> of the EU, which itself is based on notions of liberal democracy.

It is important to recognize that the candidate countries will be starting at a point that is different from that of the existing member states at the time of their accession. Most of the existing fifteen member states already were familiar with rules regulating competition prior to their entry into the European Community. Although the Europe Agreements with the accession countries already provided for mirror competition law, the experience in applying these rules has been limited.<sup>6</sup> Moreover, the “ramp-up” period for the new member states will be much shorter than that of the founding member states. Although the competition rules were part of the initial Treaty Establishing the European Community (“EC Treaty”) signed in 1957,<sup>7</sup> their enforcement was not really possible until the adoption of Regulation 17 in 1962.<sup>8</sup> Even then, the competition rules codified in the EC Treaty were not immediately enforced. Their application was as flexible as needed in order to achieve the desired integration at the desired speed.<sup>9</sup> Now,

<sup>3</sup> Copenhagen European Council, Presidency Conclusions, E.C. Bull., no. 6, at 7 (1993).

<sup>4</sup> See Youri Devuyst, *supra* note 2.

<sup>5</sup> See Barry J. Rodger, *Competition Policy, Liberalism and Globalization: A European Perspective*, COLUM J. EUR. L. 289 (2000); P. Behrens, *Die Wirtschaftsverfassung der Europäischen Gemeinschaft*, in: BRÜGGEMEIER, G. (ed.), 73-90 (Verfassungen für ein Ziviles Europa) (1994).

<sup>6</sup> See Milan Banas, *The New Anti-Monopoly Law in Slovakia*, 16 EUR. COMPETITION L. REV. 16(7), 441-445 (1995); Mark A. Dutz and Maria Vagliasindi, *Competition Policy Implementation in Transition Economies: An Empirical Assessment*, 44 EUR. ECON. REV. 762 (2000); Bernard Hoekman and Simeon Djankov, *Competition Law in Post-Central-Planning Bulgaria*, ANTITRUST BULLETIN 227 (2000); Ales Musil, *Protection of Economic Competition in the Czech Republic*, 17 EUR. COMPETITION L. REV. 1996, 17(8), 476-479; Tóth, Tihamér, *Competition Law in Hungary: Harmonisation Towards E.U. Membership*, 19 EUR. COMPETITION LAW REV. 1998, 19(6), 358-369; Virtanen, Dalia, *The New Competition Act in Lithuania*, 18 EUR. COMPETITION LAW REV. 2000, 21(1), 30-36.

<sup>7</sup> CONSOLIDATED VERSION OF THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY, (March 25, 1957), O.J. (C325) 13, at [www.europa.eu.int/eur-lex/en/treaties/dat/ec\\_cons\\_treaty\\_en.pdf](http://www.europa.eu.int/eur-lex/en/treaties/dat/ec_cons_treaty_en.pdf).

<sup>8</sup> Council Regulation No. 17: First Regulation implementing Articles 85 and 86 of the Treaty, (1962). 87 O.J. SPEC. ED., at <http://europa.eu.int>.

<sup>9</sup> DAVID J. GERBER, LAW AND COMPETITION IN TWENTIETH CENTURY EUROPE: PROTECTING

however, the new member states will be assimilated into a system that has been in existence for several decades. Its flexibility will be limited by case law in existence and stated European Commission policy.

The introduction of competition law into the new member states has an aura of antitrust imperialism for many people. Professionals, in particular lawyers, are often captured by their training and the context in which they practice their profession. The application of the law to achieve fair results is not always appropriate in different societies. For example, an interpretation of what constitutes anti-competitive behavior may legitimately vary between societies; an aspect often overlooked by antitrust regulators, practitioners and economists. Moreover, antitrust lawyers are particularly vulnerable to making this mistake because many believe that the application of competition rules is based on objective economic principles. And, after all, economics is sometimes considered a science that can be supported by empirical evidence. As the history of antitrust law shows, there are very few objective rules of antitrust law that do not change over time.<sup>10</sup> As Professor Waller correctly observes, "Antitrust, like all law, is not universal, but specific to a time, place, and culture."<sup>11</sup>

The popularity of the term "competition culture" is a manifestation of the antitrust imperialism to which I refer. Officials in both the EU and the United States have used the term "competition culture" without precise definition.<sup>12</sup> The basic message is that the new member states need to adopt the EU and US understanding of competition in order for these states to join the developed world. This position not only ignores the possibility that the objectives of competition policy may be achieved by other means, but also the fact that neither the US, nor the EU, can claim to be entirely right when it comes to competition law. No jurisdiction in the world gives absolute deference to the protection of competition. There are always situations in which democratic societies, through their legislatures, decide that competition should not be the governing principle.<sup>13</sup> The question then becomes not whether a state protects competition, but rather how much competition to allow. In Germany, for example, the German Minister of Economics recently granted approval to a merger that the Bundeskartellamt had prohibited because of its negative effect on competition in

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PROMETHEUS (1998); Claus-Dieter Ehlermann, *The Contribution of EC Competition Policy to the Single Market*, 29 COMM. MKT. L. REV. 257 (1992).

<sup>10</sup> See Thomas J. Di Lorenzo & Jack C. High, *Antitrust and Competition, Historically Considered*, 26 ECON. INQUIRY 423 (1988); RUDOLPH J.R. PERITZ, *COMPETITION POLICY IN AMERICA 1888-1992* (1996).

<sup>11</sup> Spencer Weber Waller, *Comparative Competition Law as a Form of Empiricism*, 25 BROOK. J. INT'L L. 455, 463 (1997-1998).

<sup>12</sup> Speech by Mario Monte, *Enforcement of Competition Policy—Case for Accession Negotiations and for Developing a Real Competition Culture* Speech/01/294 (2001), available at <http://europa.eu.int/rapid/start/cgi/guesten.ksh?reslist>.

<sup>13</sup> See Robert H. Lande, *Wealth Transfers as the Original and Primary Concern of Antitrust: the Efficiency Interpretation Challenged*, 34 HASTINGS L.J. 65, 150-51 (1982) (citing United States as an example of such a democratic society).

Germany.<sup>14</sup> The decision was based on the nebulous concept of “public interest” rather than on a concern for preserving competition.

In addition to recognizing the absence of an objective model of antitrust, one needs to recognize the inherent vagueness of the term “competition.” The dynamic character of the concept of competition means that identifying its restraint is relative.<sup>15</sup> The candidate countries will struggle with this. Reliance upon the methodology currently applied in the EU provides only minor relief because of the different stages of economic development of the candidate countries.<sup>16</sup> Moreover, the accession of the ten new member states means an increase of official languages from eleven to twenty-two.<sup>17</sup>

Finally, the introduction of competition law in the new member states will confront different social norms and expectations. The role of the state in economic activity, both as a participant and as a protector, differs between societies. Accession will require at least partial conformity to the western European understanding of the role of the state in protecting competition. This adjustment is a challenge to the integration process.<sup>18</sup>

### Specific Challenges

Now that I have identified several of the abstract challenges associated with the introduction of competition law in the candidate countries, I have fulfilled my academic obligations. As I am a legal practitioner, I would like to move away from the abstract and towards the concrete. In my view, the primary challenge of introducing competition law in the candidate countries will be to address the market dominance of privatized entities. The economies of the new member states are characterized by large state-owned enterprises. The

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<sup>14</sup> *E.ON/Ruhrgas*, Verfügung vom 5. Juli 2002, 52 WIRTSCHAFT UND WETTBEWERB 751 (2002); See W. Möschel, Neue Rechtsfragen bei der Ministererlaubnis in der Fusionskontrolle, 2002 Betriebs-Berater 2077.

<sup>15</sup> Erich Hoppmann, Zum Problem einer Wirtschaftspolitisch Praktikablen Definition des Wettbewerbs, in: GRUNDLAGEN DER WETTBEWERBSPOLITIK (1968). Moreover, sociolinguistics illustrate that even the same term often is society-dependent.

<sup>16</sup> James Langenfeld & Marsha Blitzer, 1, *Competition Policy the Last Thing Central and Eastern Europe Need?*, 6 AM. U.J. INT'L L. & POL'Y 347 (1991); A.E. Rodriguez & Mark Williams, *The Effectiveness of Proposed Antitrust Programs for Developing Counties*, 19 N.C. J. INT'L L. & COM. REG. 209 (1994).

<sup>17</sup> For a discussion of the myriad of issues raised by the use of a large number of different languages within one legal system see S. Moratinos Johnston, Multilingualism and EU Enlargement, 2000 Terminologie et Traduction 5; Gerd Toscani, *Translation and Law – The Multilingual Context of the European Union Institutions*, 30 INT'L J. LEGAL INFORMATION 288 (2002); R. Baerts, *Law and Language in the European Union*, 1997 EC TAX LAW 49; D. Martiny, *Babylon in Brüssel? Das Recht und die europäische Sprachenvielfalt*, 1998 ZEITSCHRIFT FÜR EUROPÄISCHES PRIVATRECHT 227.

<sup>18</sup> William Kovacic, *Getting Started: Creating New Competition Policy Institutions in Transition Economies*, 23 BROOK. J. INT'L L. 455 (1997). Anne Forualczyk, *Competition Policy During Transformation of a Centrally Planned Economy*, 1992 FORDHAM CORP. L. 131 (1993).

introduction of competition law will mean the liberalization of these sectors of the economy. The process of transforming an enterprise from state ownership to private ownership is only half the battle. At least initially, the newly privatized firms will likely enjoy a dominant position in the sector of the economy in which they operate. As the European Commission can verify, the competition “policing” of such firms is often difficult and fraught by political barriers. Many of the formerly state-owned enterprises in the EU have attempted to employ different mechanisms by which to maintain their dominance.<sup>19</sup> The competition authorities in new member states will have a similar challenge except that they lack the stature in their countries that many competition authorities in the old member states enjoy.

In addition to the dominance of newly privatized companies, the competition authorities in the new member states will encounter industries to which the old member states have granted exclusive rights. Here again, this challenge is not foreign to the EU. The EU Community has struggled for years to draw a line between those industries that should be exposed to competition and those industries operating for the public good that should be shielded from competition. Article 86 of the EC Treaty prevents the member states from maintaining measures which facilitate violations of the competition rules by public undertakings to which the member states have granted exclusive rights. As illustrated by *Cali e Figli*, if a private undertaking has been granted the responsibility to fulfill public functions, then the competition rules do not apply.<sup>20</sup>

### Predictions

I would like to conclude by offering some predictions for the near future. Allow me to begin by simply making the observation that, from an administrative perspective, the introduction of European competition law into the new member states could not have come at a worse time. The European Commission is currently in the process of “modernization” of its competition rules.<sup>21</sup> One legislative instrument that forms the basis of the modernization will coincidentally come into force on the same day as the accession of the new member states.<sup>22</sup> Because the modernization process involves fundamental

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<sup>19</sup> See e.g. Commission of Dec. 5, 2002, *Decision Relating to a Proceeding Under Article 82 of the EC Treaty*, 2002 O.J. (L 61) 32; Commission Decision of Mar. 20, 2001, *Relating to a Proceeding Under Article 82 of the EC Treaty* 2001 O.J. (L 125) 27.

<sup>20</sup> *Cali e Figli*, Case C-343/95, 1997 E.C.R. I-1547; see also *Fluggesellschaft v. Eurocontrol*, Case C-364/92, 1994 E.C.R. I-43.

<sup>21</sup> Damien Geradin, *Competition Between Rules and Rules of Competition: A Legal and Economic Analysis of the Proposed Modernization of the Enforcement of EC Competition Law*, 9 COLUM. J. EUR. L. 1, 1 (2002); Wouter P.J. Wils, *The Modernization of the Enforcement of Articles 81 and 82 EC: A Legal and Economic Analysis of the Commission's Proposal for a New Council Regulation Replacing Regulation No. 17*, 24 FORDHAM INT'L L.J. 1655 (2001).

<sup>22</sup> *Commission Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty*, 2003 O.J. (L 1) 1, at

changes to the substantive and procedural rules, legal uncertainty is an inevitable consequence of the modernization process. For example, it remains to be seen how the increased application of the European competition rules by the member states will play out. The European Commission will have enough difficulty ensuring consistent results between fifteen different competition authorities let alone twenty-five.

This legal uncertainty, which is the Achilles heel of businesses, will be exacerbated—and indeed has been exacerbated—by the lack of a consensus over an appropriate economic model. The application of competition law is guided primarily by economics.<sup>23</sup> In recognition of this fact, the European Commission recently announced the creation of a new position of Chief Economist within the Competition Directorate, with the staff necessary to provide both an independent economic viewpoint to decision-makers at all levels and to provide guidance throughout the investigation process.<sup>24</sup> However, there is no consensus within Europe, and certainly not the world, over the appropriate economic model and the role of non-economic concerns in the application of competition law.<sup>25</sup> Economic efficiency, the perceived purpose of US antitrust law,<sup>26</sup> is not the exclusive goal of EU competition law.

The current US antitrust jurisprudence tends to rely heavily on the concept of efficiency in determining which conduct should be prohibited. European competition law is situated in a much different legal, economic and social context. Although the EC Treaty importantly proclaims the protection of competition as one of its fundamental goals,<sup>27</sup> it is only one of many goals that share the same legal status. For example, the EC Treaty specifically provides

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[http://europa.eu.int/abc/treaties\\_en.htm](http://europa.eu.int/abc/treaties_en.htm).

<sup>23</sup> See e.g. Di Lorenzo & High, *supra* note 10.

<sup>24</sup> Commission Press Release, Commission Reorganizes its Competition Department in Advancement of Enlargement, IP/03/603 (30 April 2003), at <http://europa.eu.int/rapid/start/cgi/guesten.ksh?reslist>; see also Speech by Mario Monti, Competition Enforcement Reforms in the EU : Some Comments by the Reformer, Georgetown University Washington, Apr. 4, 2003 Speech/03/200 at <http://europa.eu.int/rapid/start/cgi/guesten.ksh?reslist>.

<sup>25</sup> Eleanor Fox, *What is Harm to Competition? Antitrust, Exclusionary Practices and the Elusive Notion of Anticompetitive Effect*, in THE FUTURE OF TRANSNATIONAL ANTITRUST – FROM COMPARATIVE TO COMMON COMPETITION LAW (Josef Drexel ed., 2003).

<sup>26</sup> Daniel R. Ernst, *The New Antitrust History*, 35 N.Y.L. SCH. L. REV. 879 (1990) (explaining that in the US there has been significant debate over the goals of antitrust, and that, although it is difficult to identify a specific goal intended by the drafters of the legislation, the current consensus is that the antitrust laws are designed for the “protection of competition, not competitors”). see, e.g. *Brunswick Corp. v. Pueblo Bowl-o-Mat, Inc.*, 429 U.S. 477 (1977); *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209 (1993); *Atlantic Richfield Co. v. U.S.A Petroleum Co.*, 495 U.S. 328 (1990); *Andrx Pharmaceuticals, Inc. v. Biovail Corp. Intern.*, 256 F.3d 799 (2001); *Continental Airlines, Inc. v. United Airlines, Inc.*, 277 F.3d 499 (4th Cir. 2002); see also Lawrence H. Summers, *Competition Policy in the New Economy*, 69 ANTITRUST L.J. 353, 358 (2001) (stating that in the U.S. legal, economic and social system, competition is worthy of protection because it is used as a tool to allocate resources efficiently: “The goal is efficiency, not competition”).

<sup>27</sup> EC TREATY art. 3(1)(g).

that “(e)nvironmental protection requirements must be integrated into the definition and implementation of the Community policies. . . .”<sup>28</sup> It is not surprising, therefore, to see non-economic considerations influencing the application of the competition rules.<sup>29</sup> Although this is not a critical assessment, one must concede that the potential for non-competition factors to influence the application of the competition rules will result in very different results in the ten new member states.<sup>30</sup>

The *German Book Publishers* case provides a cogent example of how competition law interacts with other social concerns in Europe. In contrast to the US, the protection or promotion of cultural and linguistic diversity is recognized by the European Commission as having an influence on the application of competition law. In Germany, book publishers have adopted a system (“Sammelrevers”) to allow the publishers to fix the resale price of books. As long as retail book buying was primarily a local activity, this system did not draw the attention of the European Commission, and it was expressly exempted under German competition law.<sup>31</sup> The basic rationale behind allowing such activity was to preserve cultural heritage.<sup>32</sup> Once the Internet made the purchase of books easier, the issue arose whether the system infringed Article 81(1) of the EC Treaty. After the book publishers’ association agreed not to fix the resale price of books for sale outside Germany, the European Commission took the position that there was no effect on trade between member states and hence no infringement of Article 81 of the EC Treaty.<sup>33</sup> As is generally recognized,<sup>34</sup> this case illustrated the readiness of the European Commission to take into account national claims of cultural and linguistic diversity. It is not necessarily consistent with the European Commission’s otherwise broad interpretation of the interstate trade requirement.

The situation is not helped by the inadequate guidance from European courts. In the field of competition law, European courts have traditionally deferred to the discretion of the European Commission.<sup>35</sup> The qualification of vertical agreements establishing absolute territorial protection is but one example. For

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<sup>28</sup> EC TREATY art. 6 EC.

<sup>29</sup> See e.g. DSD, *Grüner Punkt*, 1997 O.J. (C 100) 4; *Eco-Emballages*, 2001 O.J. (L 233) 45.

<sup>30</sup> The Commission is aware of this potential and has consequently established a network comprised of the competition authorities of the member states. The main objective of this network is to coordinate the application of the European competition rules by the individual member states.

<sup>31</sup> §15 GWB.

<sup>32</sup> BGH, GRUR 1979, 490ff.

<sup>33</sup> IP/02/461.

<sup>34</sup> Hanns Peter Nehl & Jan Nuijten, *Commission Ends Competition Proceedings regarding German Book Price Fixing*, 2002 (2) COMPETITION POLICY NEWSLETTER 35 (2002).

<sup>35</sup> See e.g. Case T-342/00, *Petrolescence SA v. Commission*, 2003 E.C.R. II-67. Only in the last several years have the Community courts started to devote greater scrutiny to the conclusions of the Commission.

many years, the European Commission and European courts have treated absolute territorial protection as a “hardcore” restraint that could not even qualify for an exemption under Article 81(3) of the EC Treaty.<sup>36</sup> However, in *Royal Philips Electronics NV v. Commission*, the Court of First Instance stated that “even an agreement imposing absolute territorial protection may escape the prohibition contained in Article 81(1) if it affects the market only significantly.”<sup>37</sup>

Another example of the lack of guidance from the European courts is *Wouters v. Nederlandse Orde van Advocaten*.<sup>38</sup> For many years, the European Commission has equated a restraint of competition in the context of Article 81(1) of the EC Treaty with a limitation of the commercial freedom of a market actor.<sup>39</sup> Even the European Court of Justice (“ECJ”) has confirmed this interpretation.<sup>40</sup> This approach was attractive, particularly in view of the open-ended rule of reason approach applied by US courts, because it facilitated easy application of the norm and avoided the necessity to engage in complicated economic analysis of the particular practice. Recently, however, the ECJ seemed to suggest that this is no longer the standard. The issue in *Wouters* was whether Dutch rules of professional responsibility for lawyers, which prevented lawyers from practicing in partnership with accountants, violated Article 81(1) of the EC Treaty. After recognizing that the prohibition is “liable to limit production and technical development within the meaning of Article 81(1)(b) of the Treaty,”<sup>41</sup> the Court stated that “not every agreement between undertakings or every decision of an association of undertakings which restricts the freedom of action of the parties or of one of them necessarily falls within the prohibition laid down in Article 81(1) of the EC Treaty.”<sup>42</sup> The Court of First Instance concluded that the restriction was somehow a justified restriction and did not infringe Article 81(1).

The expansion of the EU to the new member states will result in increased forum shopping, possibly involving the new member states. As discussed earlier, one consequence of the European Commission’s modernization program is the devolution of responsibility for applying the European competition rules from the European Commission to the member states. In instances where the competition rules provide for *ex ante* clearance of business practices, there will be an incentive for businesses to find the most lenient competition authority with

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<sup>36</sup> DeMinimis Notice, O.J. 2001 (C 368) 13.

<sup>37</sup> Case T-119/02, *Royal Philips Electronics NV v. Commission*, 2003 E.C.R. ¶218.

<sup>38</sup> Case C-309/99 *Wouters v. Nederlandse Orde van Advocaten*, 2002 E.C.R. I-1577.

<sup>39</sup> *BP/Kellogg*, O.J. 1985 (L 369) 6 ¶15; *UIP*, O.J. 1989 (L 226) ¶40; Commission, 23rd Report on Competition Policy (1994) ¶160.

<sup>40</sup> Case 107/82, *AEG v. Commission*, 1983 E.C.R. 3151, 3201 ¶60.

<sup>41</sup> *Wouters* at ¶90.

<sup>42</sup> *Wouters* at ¶97.

jurisdiction from which to secure that clearance.

The final consequence of the enlargement process that I would like to predict is greater politicization of the application of the competition laws. As discussed above, the legal and social context of competition rules and the limited nature of economics as a prediction of human behavior make the application of competition laws vulnerable to political influence. Once one recognizes that economic principles are not the only source of guidance in applying the competition rules,<sup>43</sup> it becomes difficult to determine whether a particular decision applying the legal norm is correct. Moreover, the public in the new member states will put pressure on its politicians to apply the competition laws in a particular way so as to achieve results that may not have otherwise resulted from the application of the competition rules. This, however, may be an inevitable characteristic of any competition law regime in a democratic context.<sup>44</sup> Greater reliance on the market for organization of the economy and the distribution of wealth results in economic discontent. As accession will expose industry in the accession countries to increased competition, it will result in economic difficulties for those less competitive sectors of the economy. The ensuing loss of employment will be a difficult pill to swallow.

## Conclusion

This presentation has focused on the competition law aspects of EU enlargement. There will no doubt be difficulties in the integration from a competition law perspective. Taken as a whole, however, accession will prove to be beneficial for the new and the old member states as it reduces the barriers to trade between these areas. Most of the predicted problems identified above will be short-term difficulties, which will no doubt be overcome. Many of the challenges are not new to the European Commission. There are a large number of European officials who experienced the assimilation of East Germany into the Community. Almost overnight, European competition law was applicable in the East.<sup>45</sup> This experience will no doubt prove useful in the assimilation of the candidate countries in the next several years.<sup>46</sup>

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<sup>43</sup> Schwartz, *Justice and other Non-Economic Goals of Antitrust*, 127 U. PA. L. REV. 1076 (1979).

<sup>44</sup> See generally Roger Faith, Donald Leavens & Robert Tollison, *Antitrust Pork Barrel*, 25 J.L. & ECON. 329 (1982).

<sup>45</sup> Andre Fiebig, *The German Federal Cartel Office and the Application of Competition Law in Reunified Germany*, 14 U. PENN. J. INT'L. BUS. L. 373 (1993).

<sup>46</sup> See Speech by Mario Monti on 27 Sept. 2001 to the Friedrich-Ebert-Stiftung.