Trade and Cooperation with the EU in the new Millennium

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COMPETITION & GLOBALISATION

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The increasing degree of economic interaction between countries is generally good for the promotion of competition and the furtherance of the interests of consumers. However, it also gives rise to new forms of anticompetitive behaviour. This paper will discuss the rise of international cartels, the significance of global mergers and their relationship to the state of competition and the current debate about the interaction between trade policy and competition policy. It will discuss international developments with particular reference to European attitudes and interests.

Globalisation

As we all know, the international factor in the economic activities of countries has been increasing greatly in recent decades.

Trade has grown even faster than economic growth in the last 50 years - so also have foreign investment and international capital flows.

In 98/99 the EU was Australia's largest economic partner, with transactions worth A$59.9 bn, representing 21% of all Australian overseas transactions. The EU is the second major investment location for Australian funds invested overseas. By June 1999 it attracted almost A$74 bn or 29% of the total. The EU is second to the US with a 36% share of Australian investment overseas. Conversely, at the end of June 1999, the level of the EU's accumulated investment in Australia was about A$200 bn.

During 1999 exports from Australia to the EU totalled A$10.8 bn with the major commodities including coal, wool, alcoholic beverages, non-monetary gold and iron ore. In the same period imports from the EU to Australia amounted to A$23.1 bn and included medicines, passenger cars, telecommunications equipment, paper and paperboard, and various organic and inorganic compounds.

Clearly such strong investment links achieved over many years bring with them the scope for a durable trading relationship, technology transfers and enhancement of employment in both the domestic and export sectors of the economy. A recent survey identified about 350,000 jobs created by EU companies in Australia.

The causes of increased global trade include:

- Economic growth itself which both creates ever increasing demand for imports and also increases the capacity of economies to produce exports; it also generates greater amounts of savings which may be invested domestically and internationally to meet the greater investment demands associated with economic growth.

- Technological innovation. This pervades most fields of economic activity but is especially great in the areas of information and communication technology. A sector particularly affected by technological growth in these areas is the financial services sector which, in turn, facilitates higher degrees of financial and economic interaction between economies in different countries.

- Falling transport costs.

- International, as well as domestic, liberalisation of trade, investment and economic activity generally.

Generally speaking, globalisation has positive effects on promoting competition and in widening consumer choice. However, it can be associated, in some cases, with anticompetitive behaviour on an international scale and this can pose problems for national governments which have difficulties in dealing with behaviour taking place in other countries that can affect their own economies.

It is important to note that the European Union has been particularly active in trying to promote a global approach to competition policy and in promoting the inclusion of competition issues in the next round of trade negotiations at the WTO.

Today, I will particularly focus on the areas of international cartels and global mergers, although I shall also mention some other areas where the global dimension to anticompetitive behaviour is relevant.

I would also like to discuss the related debate about the interaction of trade policy and competition policy and some of the policy choices being discussed.

Global Cartels

Global cartels, that is, cartels organised on an international scale, have been in existence since the beginnings of international trade. There is a long history of cartels, in particular, during the nineteenth and early parts of the twentieth century. Indeed, in 1907 an important US Antitrust case sought to end the tobacco cartel which had divided up world markets between British producers, who controlled the UK; US producers, who controlled the US; and the rest of the world, which was divided up and allocated to either British or American producers who agreed not to compete in one another's markets.

However, there appears to have been a sharp increase in the extent of global cartel activity, or at least in its detection, in the past few years. If there has been an increase in the amount of international cartel activity, rather than just an increase in the amount that has been detected, this is probably due to the impact of trade liberalisation. Liberalisation is generally good for competition, but it tends to put pressure on firms

that have traditionally dominated particular local markets without much international competition. Facing competition for the first time, some of them tend to get together with producers in other countries to divide up world markets and to agree on prices and output.

The Vitamins Case

The vitamins case is the most spectacular example. Vitamins is an important product supplied to the food processing industry and the animal feed industry. There is also a small amount supplied to consumers directly. Food companies blend raw vitamins into things like bread, rice and juice. The animal feed industry buys huge amounts of bulk vitamins to produce healthier and faster growing livestock. An example would be huge chicken farms.

There is evidence that the cartel increased prices by around 70% during the 1990's. Initially the conspiracy was European inspired. Most of the firms are European and were later joined by the Japanese.

The conspiracy appears to have begun in 1989 when executives at Roche AG, and BASF began holding talks about price fixing. They decided to carve up the vitamin market and to recruit other major vitamin makers to come in on the arrangement, like Rhone-Poulenc of France and Takeda Chemical Industries from Japan. Later, yet further vitamin producers joined the cartel. Nearly all world vitamin producers now face massive fines. Already Roche has paid fines of US $500 million and the total fines already collected exceed US $1 billion in the US alone.

In Australia a proposed settlement has been put before the Federal Court which would see penalties totalling A$26 million imposed upon the companies involved. Judgment has been reserved. In the EU there has been no decision yet and the investigation is continuing.

The cartel appears to have operated in a fairly stable manner for over ten years. There were frequent high level executive meetings. There were very detailed arrangements involved in the administration of the cartel, including careful budgeting, market allocation, price fixing and so on.

Archer Daniels Midlands Case

Another important cartel concerned Archer Daniels Midland which in 1996 paid $100 million to settle US charges about price fixing conspiracies that occurred with European and Japanese to fix the prices of feed additives. Some top executives are now in jail. The Archer case was revealed by Mr Mark E Whitacre, an Archer executive, who secretly tape recorded company executives discussing price fixing with rivals. In fact, he very conveniently was able to arrange for the videoing, as well as recording, of these meetings for a couple of years.

The Archer Daniels Midland's case involved international cooperation between American, Japanese and European firms to fix prices in the worldwide food and feed additives industries.

Other cartel cases

Another important case concerned UCAR International Inc which pleaded guilty in participating in an international cartel which agreed to fix prices and allocate market shares in the US $500 million graphite electrodes industry.

The above conspiracies involved secret meetings of high level executives in a number of countries around the world. Typically the meetings were held outside the United States where fear of imprisonment, high penalties and detection is greatest. A significant number of meetings were held in the Asian region.

The US is currently investigating a number of other international cartels. There are currently over 25 Grand Jury investigations. We are told that there are some major cartels still to be disclosed.

The Situation in Europe

Europe has stepped up sharply its competition law activity in recent years. There have been some major cartel cases prosecuted by the European Commission involving hundreds of millions of dollars in fines, some with international ramifications.

Seamless Steel Tubes

For example, in December 1999 the EC adopted a decision imposing fines totalling EUR 99 million (A $161.1 million) on eight producers of seamless steel tubes, operating in the UK, Italy, Germany, France and Japan. These eight firms, which are among the largest producers of seamless tubes in the work, had agreed until 1995 to keep to their respective domestic markets for certain seamless tubes used in oil and gas prospecting and transportation, and not compete across their various international borders for these products.

In the 1990s and especially in the most recent years, the Commission has been far more active in intervening to block or modify mergers that are anticompetitive on a national and even international scale. There has been a sharp increase in cooperation with other regulators, particularly the United States.

One of the biggest tasks however, has been the modernisation of European competition law. For years the administration of this law has been bedevilled by the far reaching system of notification of vertical trade restraints which has tied up Commission resources heavily whilst yielding very little benefit to anyone. The European Commission is now in the process of radically altering its administrative and legal arrangements. This will amongst other things have the effect of freeing up the scarce resources in the European Commission to concentrate on major matters of which international questions, especially international cartel and international merger questions, are of prime importance.

I believe that the existence of international cartels on a rather large scale is an important reason why steps need to be taken to enhance the extent of international cooperation in competition law and perhaps why every country needs to consider having a competition law and policy of its own.

Global mergers

In recent times there has been a spectacular increase in the extent of international merger activity, in one sector after another – finance, communications, oil, airlines, pharmaceuticals, automotive professional services and so on.

For the most part, these mergers are not anticompetitive and pose no major challenge to the global economy's major competitiveness. Indeed, in many cases, they enhance competitiveness and improve economic efficiency by creating more efficient arrangements for international business transactions.

However, it is very important that we be vigilant about these matters.

I am often asked whether in Australia, or indeed or in other smaller countries, global mergers pose an economic threat and are we powerless to deal with them.

My answer is, for the most part, the global mergers that we read about every day are not anticompetitive. Most of them are logical commercial developments occurring in response to the forces of globalisation, technological change and liberalisation. For example, many of the financial sector mergers in Europe are a response to the advent of the Euro which is leading to the emergence of a single European financial market. In the United States many of the financial mergers are a response to deregulation of financial markets which had previously prohibited operations on a truly national scale within the United States.

Likewise, telecommunications mergers have a great deal to do with the emergence of a liberalised approach to telecommunications and the breaking down of barriers to international transactions. This is similarly the case with airlines.

Another reason why these mergers do not deeply concern me is that these days in particular, major anticompetitive mergers are likely to be stopped by overseas authorities. In this respect, it is worth noting that the United States, after a rather quiet period in the 1980s, has become far more active in the public enforcement of antitrust law. The European Union is also becoming far more active than in the past. Japan and Korea are also stepping up some of their antitrust activities and I have no doubt that there are other examples. Indeed in some respects the real issue is that some global mergers have to be approved by so many regulators in so many countries that greater cooperation between regulators is required.

One of the most important elements of cooperation in recent times has been that between the EU and the United States. The most important single merger involving cooperation was that between McDonnell Douglas and Boeing. Here the merger authorities of the two continents simultaneously considered the merger and cooperated very fully. A very interesting outcome however was that the US authorities had no objections to the merger whereas the European ones did. Various explanations have been put forward as to the reasons for the difference. The laws and market structures in each continent are slightly different. There was claimed to be a greater protection element in the European approach because of concerns about the effect on Airbus, and lobbying by Airbus, but the Europeans denied this. In the end, the merger was allowed to proceed subject to some conditions. According to press

reports the European decision to allow the merger only followed a phone call from President of the United States to the President of the European Commission.

However, it still remains the case that some mergers that occur internationally can damage competition and will force consumers to pay more in certain countries with particular market structures. Are these countries powerless to act?

My own view is that they are not. I shall take Australia as an example. When Gillette tried to take over Wilkinson Sword in the wet shaving market, the ACCC opposed the merger successfully in the Federal Court of Australia, even though the transaction occurred offshore. As a result of the Federal Court action, divestiture was imposed upon the companies with the selling off of the Wilkinson Sword brands to an independent buyer for ten years.

This case established the jurisdiction of the Trade Practices Act with respect to off shore mergers and showed that strong remedies are possible.

Moreover, when a merger occurs that is anticompetitive, it is often possible to resolve it in a manner that does not damage competition.

BAT / Rothmans

A recent example was the attempt by the British American tobacco company (trading in Australia as WD & HO Wills) to take over Rothmans. In some countries this would not have damaged competition. However, in Australia it was clear that it would. There are only three companies – WD & HO Wills, Rothmans and Philip Morris – and imports are fewer than 1%. The Commission considered that a merger of two of three big players would reduce competition. It opposed the merger. Following this, British American Tobacco and Rothmans decided to release 17% of the total brands of cigarettes on the market and they were acquired by Imperial Tobacco, a major international tobacco organisation which has now entered aided by an initial 17% market share and the introduction of its own well established brands into Australia. Some coincidental changes in tax law will also boost imports. As a result, there remain three strong credible players in the Australian market and the original merger between British American tobacco and Rothmans has been able to go ahead in Australia as well as in other parts of the world.

The point is that very often practical solutions can be found to seemingly difficult problems.

Coca-Cola / Schweppes

Another case we have dealt with has been the Coca-Cola acquisition of Schweppes. This was an interesting merger because the original proposal excluded the USA and France, where there has been a history of competition concerns with soft drink acquisitions, nor in South Africa. Following concerns raised by the EC about the possible anticompetitive effects of the merger in Europe, the deal later excluded all EU Member States, with the exceptions of the UK, Ireland and Greece.

Australia opposed the merger. It noted strong opposition by many outlets that sell Coke. Following that, Coke put two proposals to try and meet our concerns but, in each case, the Commission decided that they could not overcome our concerns. The essential concern of the Commission was the merger of the two sets of brands, ie, Coca-Cola brands and the powerful international brands of Schweppes. The undertakings to which I have referred and which the Commission rejected all failed to address this fundamental concern. They involved concessions about other minor brands and some other arrangements.

BHP / New Zealand Steel

Another interesting solution has occurred in a couple of cases where the Commission had initial concerns. When BHP, Australia's major steel company, wanted to take over New Zealand Steel, the Commission believed that there could be some anticompetitive effects in certain parts of the steel market, even though international trade would take care of many problems. However, when the Commission objected a practical solution was found. The Government agreed to reduce tariffs on an accelerated basis in relation to those parts of the market where there could have been an anticompetitive effect.

Accordingly, it is my provisional view that many of the problems for competition created by global mergers can be met by appropriate action in domestic markets.

Market Power

It is not my intention to pursue today issues about market power occurring on a global basis, other than to make one point about the Microsoft case in the United States.

In November 1999 the United States District Court found that Microsoft possessed monopoly power in the markets for Intel-compatible PC operating systems and browsers, and that it used this power to thwart competition in contravention of US anti-trust law, which resulted in substantial consumer detriment. On 6 June 2000 the Court ruled that Microsoft should be split into two distinct entities.

The point I want to make about this case is that it is essentially about anti-competition arrangements in the United States that have a global effect. Moreover, the Microsoft case illustrates the importance of applying antitrust law to areas of the economy which are characterised by high rates of technological innovation.

Questions about Microsoft are still under consideration in Europe.

Policy

Let me now turn to some policy issues. First it seems obvious that in an economy characterised by ever increasing degrees of economic interaction between countries with ever greater activity on the part of multi-national firms with global cartels and global market power that some kind of international effort is needed to deal with some of the problems. National governments alone cannot deal with all global problems. I shall return to this in a moment.

Trade and Competition

However, I would like to deal with one sub set of the problems concerning the international dimension of competition policy. This concerns the interaction between trade policy and competition policy. I emphasise that this is only one aspect of the global competition scenario but this fact is not always recognised.

The essence of the debate about the interaction between trade and competition policy can be summarised as follows.

First, trade policy liberalisation can be frustrated by failures in the enforcement of competition policy. For example, supposing a country liberalises trade, allowing a potential flow of imports following the reduction or elimination of trade barriers.

The benefits to consumers of this liberalisation can be defeated by restrictive practices in the liberalising market. For example, retailers in the liberalising market may reach agreement with manufacturers in the home market not to accept imports. Entry into that distribution sector may be difficult. Trade policy liberalisation in such cases can clearly be frustrated by failures to enforce competition policy properly, eg, if the regulator does not exist or fails to take action to stop anticompetitive practices.

Second, it is important to note the reverse relationship. Trade policy can be highly anticompetitive. For example, nearly all forms of import protection, whether they be quotas, tariffs, anti dumping laws and so on can reduce competition and damage consumer interests. It is important that the debate about the damaging effect on trade of failures in competition law enforcement be balanced by recognition of the damaging effects on competition and consumers of trade restrictions.

Third, it is important to note that there is another extremely important variable which may be at work – regulation. Very often it is Government regulation, rather than failures in the enforcement of competition law, that are the true obstacle to imports, to trade liberalisation working and to competition working. What is needed is a three-way debate about the relationship between trade, competition policy and regulation, rather than a debate that is focussed too narrowly on trade protection and failures in competition law and enforcement.

Intellectual property laws are an interesting example of potentially anticompetitive regulation. An interesting aspect of the Microsoft case that I discussed earlier is that the outcome reinforces the defeasibility of Intellectual Property Rights in the event that they are used as a facade for blatant anti-competitive behaviour.

Intellectual property law has been captured by the interests of producers in countries which are net exporters of intellectual property. In particular, the statutory restrictions on parallel imports under copyright law have enabled massive unjustified price discrimination between countries, have hindered and distorted competition and imposed draconian restrictions on international trade. In this part of the world we are losers from these laws. I am heartened that some change is occurring in some parts of the world – New Zealand has abolished parallel import restrictions, Australia has removed restrictions in some areas and Japan's Supreme Court has relaxed them in respect of patents.

The position in Europe is especially interesting. Essentially, within Europe, restrictions on parallel imports under intellectual property law have been broken up. As well, the competition law authorities and courts have been vigilant in breaking up commercial restrictions on parallel imports for the most part. However, vis-à-vis the rest of the world, the European Union imposes draconian restrictions on parallel imports by intellectual property law, causing European prices to be higher than in North America.

Policy implications

Let me now turn to some policy issues relating to globalisation.

As I mentioned earlier, it seems obvious that in an economy characterised by ever increasing degrees of economic interaction between countries with ever increasing activity on the part of multi-national firms involved in global cartels and/or with global market power that some kind of international effort is needed to deal with some of the problems. National governments alone cannot deal with all global problems.

The issue is, with no international antitrust regime, nor any real likelihood of one being introduced in the near future, what should and can be done to address the issues raised?

There seem to be six options:

- Extraterritorial application of laws.
- Enhanced voluntary convergence in competition laws and enforcement practices.
- Enhanced bilateral voluntary cooperation between competition agencies.
- Regional agreements containing competition provisions.
- Plurilateral agreements.
- Multilateral competition policy agreements.

Of these I will discuss bilateral and multilateral approaches.

Bilateral Approaches

There are number of forms of Bilateral Cooperation Agreements. They are:

- Non-binding, voluntary exchange of non-confidential information and of technical expertise.
- Traditional Comity.
- Positive comity.
- Bilateral agreements or treaties permitting exchange of confidential information on case by case basis.
- Mutual Legal Assistance Treaties.

On 28 April 1999 the Australian and United States Government's signed a Treaty which allows the two countries' anti-trust organisations to assist each other, and perhaps most importantly, to be able to exchange confidential information on a reciprocal basis for use in anti-trust enforcement and assist each other in obtaining

evidence located in the other's country. Agreements like this will greatly assist in the break up of global cartels and the investigation of global mergers.

Further, on 20 July 2000 the ACCC signed agreements with the US Federal Trade Commission to facilitate law enforcement cooperation in the consumer protection area between the US and Australia. The agreements relate to notification of enforcement activities, cooperation and coordination and exchange of information and will enable the ACCC and FTC to better combat fraudulent, misleading and unfair commercial conduct in each other's jurisdiction.

These cooperation agreements are in addition to similar arrangements that the ACCC has in place with its counterpart agencies in Canada, New Zealand, Chinese Taipei and Papua New Guinea. The ACCC is also currently exploring opportunities to increase the number of cooperation arrangements that it has in place.

This includes the current negotiation of a cooperation arrangement between Australia and the EU on consumer protection matters. During 1999 the ACCC conducted its first staff exchange program with the then named DGXXIV of the European Commission. The exchange was for a period of four months.

While no formal arrangements have yet been put in place, strong bilateral links exist between the ACCC and the European Commission in respect of both competition and consumer protection matters and there is an increasing level of activity between ACCC and the EC on specific cases. These links are facilitated by the close personal relationships between agency heads. It is relevant to note that the past two EC Director Generals for competition visited Australia during the term of the appointment with the EC.

Multilateral Competition Rules

The European Union has been particularly active in promoting a multilateral competition approach. Much of the framework has been developed at the European Union and/or at the OECD.

The *OECD Recommendation concerning Cooperation between Member Countries on Anticompetitive Practices affecting International Trade* establishes a framework of guiding principles for notifications, the exchange of information, cooperation in investigations and proceedings, consultations and conciliation of anticompetitive practices affecting international trade; thereby strengthening cooperation and minimising conflicts in the enforcement of countries' domestic competition laws.

The EC has been a strong campaigner for a multilateral framework on competition policy for quite some time. The 1995 Van Miert Report established a group of experts to report on the desirability of creating such a framework. This Report recommended that a multilateral framework ensuring the respect of certain basic competition principles should be put in place. This is the broad approach which has, since then, been pursued by the European Commission, with the support of Member States.

Because of the complementary relationship between trade and competition policy, the EC has promoted the WTO as the optimal institution to house such a framework. The

EC argues that the WTO possesses the advantages of a very broad membership, and a tradition of enforcing binding rules. The incorporation of a competition dimension of this kind into the organisation would moreover serve to underpin the impressive progress which has been made in trade liberalisation over the past few decades, by facilitating the effective combating of anticompetitive behaviour which might otherwise have the effect of undermining that same progress.

The EC also points out that it is important to bear in mind that over eighty WTO member countries have, or are in the process of establishing, antitrust authorities. Cooperation between such authorities cannot reasonably be expected to be conducted on a bilateral basis alone: administering the network of cooperative arrangements would be prohibitively burdensome. In an integrating world economy, there is an increasingly obvious role for a multilateral approach, and the EC has, through the deliberations of the WTO Working Group on Trade and Competition, been at the forefront of efforts to persuade member countries of the merits of such an initiative.

While the WTO Working Group on the Interaction between Trade and Competition was mandated only "to study" the interaction between trade and competition policy, the EC is continuing its push to commence negotiations on the development of a multilateral framework of competition rules as part of the next Round of WTO trade talks.

It is important to note that not inconsiderable resistance to this concept has been voiced by the US. Australia is taking a more conservative approach somewhere in between the two.

Elements of Multilateral Framework

The key elements of a framework are:

- core principles;
- scope and coverage of competition law;
- common legal rules, concepts and methods of analysis;
- advisory forum on institutions and enforcement;
- principles of enforcement (including rights of remedy);
- bilateral cooperation forum;
- dispute settlement arrangements; and
- sectoral approaches.

Core Principles

The basis for a multilateral framework on competition could well be based on the OECD's *Core Principles*, which include:

- Competition laws should be based on the principle of non-discrimination on grounds of the nationality of firms.
- Transparency, as regards the legislative framework, including as regards any sectoral exclusions.
- Guarantees of due process (rights to remedy under competition laws).

- Scope and coverage of competition laws.
- International cooperation.

Any agreement on a set of core principles would contribute towards reinforcing the role of competition authorities and establishing mutual confidence for reinforced international cooperation. It is not intended that the development of a set of core principles would require harmonisation of laws, but rather would allow for differences in domestic legal systems and institutional capacities.

Common Standards and Common Approaches

As outlined in the OECD's *Common Standards and Common Approaches*, it is widely accepted that any multilateral framework on competition would at least need to cover the following types of anticompetitive behaviour:

- hard core cartels;
- vertical restraints;
- abuse of dominance; and
- mergers.

Dispute Settlement

Dispute settlement is one of the key issues that raises controversy in any discussion about developing some form of multilateral framework on competition. In this respect there are two key points that need to be kept in mind:

- Individual cases would not be dealt with internationally.
- Dispute settlement would relate to observance of core principles and possibly to common standards and even common approaches.

The Relationship Between Multilateral and Bilateral Options

An issue arises as to whether there is complementarity or conflict between multilateral and bilateral approaches.

Whether we go down a bilateral or multilateral, or a mixed bilateral or multilateral path is the issue which is being faced in international discussions at the present. It is difficult to forecast the outcome. The most likely is perhaps that the WTO will want to give further study to the options, leaving open the possibility of some negotiations on these topics in coming years.

In the meantime, the forces giving rise to convergence are likely to generate more widespread and serious adoption of competition policies at the domestic level everywhere. The lack of an international anti-trust regime can be overcome if countries throughout the world have comparable domestic laws with a high level of international cooperation. Most OECD countries have recently become very active in competition policy. Many Asian countries are beginning to recognise the benefits of competition policy and are starting to develop and implement their own competition

regimes, often with technical assistance from countries with greater experience, including Australia and the EU. However most still have a long way to go.

Conclusion

The efforts and persistence by the European Commission in exploring other, more wide ranging and more ambitious, mechanisms for achieving greater competition at the global level and promoting fair and efficient international trade, are to be commended. I think it is fair to say that the EC are leading the drive to find practical solutions to global problems.

Competition Policy within Europe – some trends

Regarding competition policy within the European Union, several general comments can be made:

1. Competition policy is of even greater importance than in the past in the European Union. This appears to be generally recognised and to be the subject of greater activity within the Commission and on the whole in member States.
2. One reason for this is that with a relatively good macroeconomic climate, the introduction of the euro, and the development of the internal European market, competition policy becomes a higher priority than in the past.
3. Competition policy is not just about the application of competition law to anticompetitive practices of business. Australia's Hilmer reforms recognise this with their emphasis on reviewing and reforming legislation that restricts competition and on dealing with a range of important matters that limit competition in such areas as the energy, communications (including telecommunications), transport and water areas where market power is typically very large, being based on the crucial role of network monopolies based on electricity grids, gas pipelines, telecommunications networks and the like. These matters are important in Europe and, as in Australia, involve difficult federal relationships between the European Union and member States. This is one area in which Australia's recent experience in applying a broader based competition law is of relevance to Europe which is generally at a less advanced stage in its dealing with these issues.
4. The "modernisation" of European competition law has an important role to play in making competition policy more effective. Elements of modernisation include:
5. a fresh approach to vertical trade restraints since the present approach involves a high and somewhat unproductive work burden on the competition Directorate, not to mention business and the legal community;

- greater delegation of case work to national competition agencies, taking into account, inter alia, the lack of adequate resources for the Competition Directorate;
- in light of (a) and (b), an attempt to give higher priority to core competition issues, especially including international cartels and global mergers.

There appears to have been a considerable increase in the volume and intensity of the application of European competition law by the Directorate of Competition with a high number of cases, some high fines, a higher rate of merger rejection, and an

expanded view of the scope of the dominance test. This has been reinforced by greater competition law activity at member State level.

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