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Diverging but Increasingly Converging: The U.S. Supreme Court in *linkLine*—A European Perspective

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Diverging but Increasingly Converging: The U.S. Supreme Court in *linkLine*—A European Perspective

Peter Alexiadis & Anthony Shortall*

I. INTRODUCTION

In the much-awaited *linkLine* Judgment delivered recently,[1] the U.S. Supreme Court ruled that price squeeze (hereafter "margin squeeze") claims[2] could not be brought under Section 2 of the Sherman Act unless it could be demonstrated that the defendant:

1. had a clear duty to deal with its wholesale customer-competitors under the antitrust rules consistent with the authority of the Supreme Court in the *Trinko Case*[3]; or
2. had charged below-cost prices at the retail level, consistent with the legal standard established for predatory pricing by the Supreme Court in the *Brooke Group Case*.[4]

In the words of Chief Justice Roberts: "If both the wholesale price and the retail price are independently lawful, there is no basis for imposing antitrust liability simply because a vertically integrated firm's wholesale price happens to be greater than or equal to its retail price."

The case arose out of the claim by the plaintiffs, a group of four independent Internet Service Providers (or "ISPs"), that AT&T—which controls most of the lines that connect customers to the fixed telephone network in California—had engaged in a margin squeeze by setting the price of its wholesale DSL[5] services so high, while at the same time setting the prices of DSL retail services so low, that efficient ISPs who leased wholesale DSL services from AT&T were unable to trade profitably on the retail market.

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[1] Pacific Bell Telephone Co. DBA AT&T California v. LinkLine Communications Inc., 29 S. Ct. 1109 (Feb. 25, 2009).

[2] A margin squeeze is said to occur where a vertically-integrated entity with market power in the provision of upstream wholesale inputs forecloses its downstream retail competitors by preserving a margin between its wholesale input and its retail service which is so low that an efficient competitor at the retail level cannot sustain its market presence.

[3] Verizon Communications Inc. v. Law Offices of Curtis v. Trinko LLP, 540 U.S. 398 (2004).

[4] Brooke Group Ltd. v. Brown & Williamson Tobacco Corp., 509 U.S. 209 (1993).

[5] "DSL" signifies Digital Subscriber Lines, which represent a technology upgrade of the traditional fixed copper lines that are used for the provision of high-speed Internet access services.

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In reversing the Ninth Circuit Court of Appeals in the *linkLine* litigation, the Supreme Court has turned its back on the longstanding US Court of Appeals precedent in the *Alcoa Case*,[6] where Judge Learned Hand's famous opinion established the existence of a margin squeeze action as a separate stand-alone antitrust offence, thereby effectively subjecting firms with market power to the obligation to charge a "fair price" for their wholesale inputs relative to the retail price charged (allowing competitors to be able to generate a "living profit"). By contrast, the Supreme Court in *linkLine* reiterated its views expressed in Trinko that "if a firm has no antitrust duty to deal with its competitors at wholesale, it certainly has no duty under terms and conditions that the rivals find commercially advantageous."

The policy rationale for such a departure from *Alcoa*, according to the Supreme Court, is that recent "developments in economic theory and antitrust jurisprudence" rendered "*Trinko* and *Brooke Group* more pertinent [than *Alcoa*] to the questions before us."[7] Accordingly, the failure to establish antitrust liability at the wholesale level or at the retail level should not serve as the basis for liability under a margin squeeze formulation because "[t]wo wrong claims do not make one that is right."

II. THE ISSUE

In a nutshell, the question is whether it is correct to consider that a margin squeeze simply consists, as the U.S .Supreme Court holds in *linkLine*, in an evaluation of a predatory pricing action (at the retail level) and a duty to deal (at the wholesale level), or whether it should constitute a stand-alone antitrust offence short of a mandatory obligation to deal and/or predation finding, as appears to have been the position taken by the European Commission ("the Commission") and supported by the European Courts.

If one adopts a high level approach towards the treatment of a margin squeeze practice under U.S. and European antitrust principles, it would be true to say that the respective approaches across the Atlantic diverge radically. However, if one looks more closely at the historical policy origins underpinning both approaches in light of the prevailing regulatory regime in place governing the electronic communications sector, and the likely paths that they will take in the foreseeable future, the approaches display significant elements of policy convergence. Ultimately, the policy wheels of both *ex post* and *ex ante* disciplines of both systems are revolving in such broad sweeps that there is

[6] United States v. Aluminum Co. of America, 148 F.2d 416 (2d Cir. 1945). The Court of Appeals in *linkLine* (Ninth Circuit) had stressed that a margin squeeze had been recognized for over six decades as establishing a legitimate claim under Section 2 of the Sherman Act, and that the *Trinko* precedent had not undermined this traditional view because the pleadings had not alleged a margin squeeze. *See* linkLine Communications Inc. v. SBC Calif. Inc., 503 F. 3d 876 (9th Cir. 2007), at 880 and 883.

[7] In this regard, *see also* the views of the Supreme Court of the need to adopt a more modern economic theory in Leegin Creative Leather Prods. v. PSKS Inc., 127 S. Ct. 2705, (2007), at 2720. Another important policy rationale emphasized by the Court is the importance of having legal certainty in advising firms under Section 2 of the Sherman Act.

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great likelihood that they will achieve a balanced solution which achieves roughly similar results.

III. DEVELOPING A COMMON APPROACH

In analyzing the approach of the U.S. Supreme Court compared to European practice, it is worth considering the key policy drivers which have led us to the existing differences in enforcement across the Atlantic. Essentially, these policy drivers are:

- the characterization of the duty to deal under antitrust rules on both sides of the Atlantic, especially in the context of the telecommunications sector;
- whether an antitrust offence involving the alleged abuse of market power should require a more rigorous effects-based economic doctrine, rather than the traditional form-based approach adopted in the European Union; and
- the striking of the appropriate balance between the goals pursued by ex post antitrust and ex ante regulation.

Each of these elements is discussed below.

A. The Basis of a Duty to Deal

In the *linkLine* case, it was made clear by the Supreme Court that AT&T was not obliged to provide access on the basis of an "antitrust" finding. Rather, its obligation to deal only arose because of a "regulatory" finding, namely, an obligation stemming from a Consent Decree issued in relation to a merger before the Department of Justice involving AT&T.[8]

A European competition lawyer may find this distinction a rather elusive one to draw. If one starts from the premise that remedies in the context of a merger review are designed to address likely future market failures,[9] they are usually considered to be "antitrust" remedies, regardless of the fact that they are forward-looking in nature (i.e., *ex ante*). Having said that, what might appear to a European lawyer to be a semantic distinction might have its origins in the fact that general antitrust remedy will be capable of resulting in an action for damages, whereas a regulatory obligation, once breached, is enforceable usually only at the behest of the relevant regulatory authority. Accordingly, antitrust injury should, in principle, be based only on an economic analysis, whereas liability under a regulatory obligation can legitimately be driven by a variety of policy goals.

[8] *See* In re AT&T Inc. and BellSouth Corp., 22 FCC Red. 5662 (2007), at 5814, which subjects AT&T to mandatory interconnection requirements and wholesale "DSL transport" services to independent firms at a price no greater than the retail price of AT&T's DSL service.

[9] The relevant standard of review for mergers is the Substantial Lessening of Competition ("SLC") test across both sides of the Atlantic, although the standard of review in Europe is arguably more "antitrust" oriented insofar as a reference is also made to the creation of a "dominant position" being a particular embodiment of the SLC test.

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Moreover, a competition law action in Europe for a margin squeeze has thus far proceeded on the basis that the defendant in question was clearly "dominant," as is required as a pre-condition to the application of Article 82EC (the equivalent of "monopoly power" under Section 2 of the Sherman Act), and is also under a clear obligation to deal as a result of such a finding. In each case that has been investigated by the Commission under the competition rules, the obligation to deal had already been imposed by the relevant National Regulatory Authority ("NRA"). Under the EU Regulatory Framework, NRAs undertake a competition-style approach to market definition and to the assessment of market power on the part of the fixed incumbent on that relevant market. In doing so, it has in each case designated the fixed incumbent operator as dominant (or its *ex ante* analogue, "Significant Market Power") and has prescribed that the designated operator must deal with competitors on appropriate terms.

Although the U.S. Supreme Court might be tempted to conclude that such a finding of dominance and the attendant prescription of a duty to deal is not an "antitrust" obligation, the logic underpinning the EU Regulatory Framework on electronic networks and services is such that it is in every material respect an "antitrust" finding. Although the EU Regulatory Framework seems to promote mandatory dealing at the wholesale level, its motivation for doing so is because it is felt that the absence of wholesale access would result in a market failure at the retail level in the provision of a related electronic communications service. Accordingly, the consumer welfare goal of U.S. antitrust is consistent with such an analysis.

It must be remembered that, in both margin squeeze cases decided at EU level (see below), it is clear that the fixed incumbent in each case was not effectively challenged at the network level by alternative platforms (other than in certain geographic regions of Spain by cable TV operations). By contrast, when the FCC lifted the *ex ante* obligation to deal on AT&T, it did so expressly because it took the view that AT&T could not be considered to hold market power when faced by competition from a number of alternative platforms providing fast Internet access services. The logic of the FCC's Decision to lift *ex ante* regulation, if supported on the facts in any given EU Member State would, in theory, be repeated by an NRA exercising its powers under the EU Regulatory Framework.

If one therefore accepts that the starting point for regulatory intervention across the Atlantic was different because of different competitive conditions that prevailed in each case, the chasm between the respective U.S. and EU approaches becomes less pronounced. If anything, the approach expressed by the Supreme Court in *linkLine* tends to take a somewhat purist view of what constitutes antitrust and other neighboring regulatory doctrines,[10] but its particular legal and institutional context in

[10] *See* Peter Alexiadis *'Informative and Interesting': The CFI Rules in Deutsche Telekom v. Commission*, 5(1) GCP MAGAZINE (May 2008), where it is argued that the European competition law approach has tended to incorporate

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which it was delivered explains in large measure why its approach appears to differ so much from that of the Commission.

B. "Form-Based" v. "Effects-Based" Theories of Liability

There are also strong signs to support the proposition that the European approach to margin squeeze is becoming less of a *per se* offence, and thereby moving more towards the approach usually associated with predatory pricing, whereby both the rationale for the pricing behavior must be established as well as the impact of the pricing behavior on end-users.

1. *Deutsche Telekom*

In the *Deutsche Telekom* ("DT") case, the Commission applied competition law principles to margin squeeze practices for the first time in the telecommunications sector.[11] The Commission identified the relevant product markets as being those for wholesale access, retail narrowband, and retail broadband access to the fixed telecommunications network (local loops) in Germany. Since 1998, both EU and German law had required DT to provide competitors with local access to its network. Although wholesale access could, in principle, have been provided by other transmission platforms such as fibre-optic networks, wireless local loops, satellites, power lines, and cable TV networks, the Commission considered that these platforms were not yet sufficiently developed so as to be able to provide a substitute for DT's local loop network. Accordingly, it did not include them in its market definition. In 2003, DT still had a share of 100 percent for wholesale local network access and over 95 percent of the narrowband and broadband retail markets, and was therefore clearly dominant for the purposes of Article 82 EC.

DT was found guilty of engaging in a margin squeeze in circumstances where it had charged competitors more for unbundled broadband access at the wholesale level than it had charged its subscribers for access. At this time (which was relatively early in the history of the sector's liberalization), retail tariffs had not yet been rebalanced (i.e., were not cost-oriented) so that access charges were still relatively low while service charges were relatively high, thus increasing the propensity for margin squeeze to exist.[12] In fact, in the DT case, it was only from 2002 onwards that prices for wholesale access were lower than retail subscription prices, but the difference was still not deemed to be sufficient to cover DT's own downstream product-specific costs for the supply of services to end-users.

elements of regulatory thinking into its analysis (possibly not always correctly). This dilution of a purist antitrust agenda is arguably more legitimate when investigating newly liberalized network industries: that have been statutory monopolies for many decades; whose sunk costs have all been borne by the taxpayer over that period; and who can take advantage of their massive network effects as of the date of liberalization when they hold 100 percent market share at the retail level and, at which time, a wholesale market does not exist in the absence of *ex ante* regulation.

[11] Case C-280/08.

[12] In fact, many observers felt that the action taken by the Commission should have been directed against the German NRA, the BNetZa, since the outcome was ultimately a failure by the BNetZa to rebalance tariffs.

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The Commission stated that a margin squeeze would occur where the competing services were comparable and where "the spread between DT's retail and wholesale prices is either negative or at least insufficient to cover DT's own downstream costs." The implication behind such a presumption was that DT would have been unable to offer its own retail services without incurring a loss if it had had to pay the wholesale access price as an internal transfer price for its own retail operations. As a consequence, the profit margins of competitors would be squeezed, even if they were just as efficient as DT. As a result, a "margin squeeze imposes on competitors additional efficiency constraints which the incumbent does not have to support in providing its own retail services."

In retrospect, what was remarkable about the DT case was the absence of any kind of an effects–based analysis by the Commission, insofar as there was no attempt to examine the economic rationale for DT's actions. The Court of First Instance endorsed such an approach,[13] even though some other major Commission decisions on the abuse of dominance at the same time had undertaken a detailed analysis of the effects of the conduct at issue. In *Wanadoo*,[14] for example, the Commission launched an action against Wanadoo (France Telecom's ISP subsidiary) in the French market on the basis of its allegedly predatory pricing policy.

In *Wanadoo*, the Commission undertook a recoupment and effects-based analysis, even though Wanadoo's prices were found to be below average variable cost, which was considered to be presumptively unlawful under the *AKZO* Case precedent, following the economic analysis of Areeda-Turner.[15] Moreover, and most importantly, there was also a range of evidence of a calculated exclusionary plan. While the practice of pricing below average variable cost under Article 82 EC is generally considered to be close to a *per se* abuse, the detailed analysis of the likely effects of the impugned practice points to a more nuanced assessment being undertaken by the Commission consistent with the new approach expressed in its Article 82 Guidelines.[16]

2. *Telefónica*

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[13] The Court of First Instance, on appeal, did not consider it necessary to subject the appraisal of a margin squeeze to an effects doctrine style of analysis. *See* Case T-27/03, Deutsche Telekom AG v. Commission (NYR), Judgment of 10 April 2008). *See* discussion in Alexiadis, *supra* note 10.

[14] Case COMP/38.233.

[15] Areeda & Turner, *Predatory Pricing and Related Practices Under Section 2 of the Sherman Act*, 88 HARV. L. REV. 697 (1975).

[16] *See* the Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings (http://ec.europa.eu/competition/antitrust/art82/guidance_en.pdf.) The Commission's Decision in *Wanadoo* was upheld on appeal before the Court of First Instance on 30 January 2007 in Case T-340/03 France Télécom v. Commission [2007] ERC II-107, and again on appeal most recently by the European Court of Justice in France Télécom SA v. Commission, Judgment of 2 April 2009 (NYR) Case C-202/078. Unlike the Commission's attempt to pursue an effects-based approach, however, both European Courts on appeal took a more form-based approach, especially insofar as they held that: (i) pricing below average-variable costs must always be considered to be abusive; and (ii) there was no need to prove that recoupment would occur after the predation.

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Telefónica[17] was the Commission's second major "margin squeeze" investigation, where again the price structure reflected by the difference between Telefónica's wholesale and retail prices was deemed by the Commission to be insufficient. Faced with a margin squeeze, competing providers of retail broadband access, including those that were just as efficient as Telefónica, were faced with the choice of either exiting the market or, if they aligned their prices with those of Telefónica, incurring losses. Therefore, even though the margin squeeze in question may have stopped short of driving competitors out of the market, it nevertheless restricted their sustainable presence and growth, thereby limiting their ability to compete on the market.

In a typical margin squeeze case, the reluctance of a competition or regulatory authority to interfere is strengthened by the fact that, in the short term at least, end users are getting a good deal. Medium-term effects are less certain; authorities are making decisions which must weigh certain consumer benefits today against uncertain consumer harm which might occur in the future. However, in the *Telefónica* case, the Commission demonstrated that, by containing competitive pressure, Telefónica could cash in on both high wholesale prices and supra-competitive retail prices to the detriment of consumers. Despite its levying of very high retail prices, its market share had further increased over the relevant period (by 4 percent from June 2005 to June 2006).

By engaging in a margin squeeze, Telefónica was able to sustain supra-competitive retail prices which could not be matched by its competitors because the latter relied on Telefónica's wholesale products. Due to weakened retail competition on the broadband market at the time of the investigation, Spanish consumers paid about 20 percent more than the EU-15 average for broadband access. The negative impact on consumers was exacerbated by the fact that the Spanish broadband penetration was 20 percent below the EU-15 average, and its growth was nearly 30 percent below that of the EU-15.[18] In addition, the high level of the Spanish broadband prices was confirmed by all available studies. [19]

A similar set of regulatory issues surrounded the case, with the Spanish NRA, the CMT, having set the wholesale charges for access and having already determined that there was no margin squeeze taking place. However, the Commission was careful to point out Telefónica's freedom to avoid the margin squeeze since the CMT had only regulated a portion of the prices for wholesale broadband access (i.e., regional wholesale prices). This accounted for approximately 30 percent of the wholesale prices covered in the Decision in 2006. The CMT had never analyzed the margin squeeze between Telefónica's national wholesale prices and its retail prices (which represented

[17] Case COMP/38.784.

[18] The "EU-15" is the core group of EU Member States existing prior to the most recent round of accession on May 1, 2004.

[19] For example, the consultant Teligen (which regularly benchmarks prices for the OECD) has compared the cheapest retail ADSL offer of each country and concluded that Spain ranks last among the EU-15 countries.

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approximately 70 percent of the wholesale prices covered in this Decision in 2006). Most importantly, the CMT had used different data from that available to the Commission, since it was working in a forward-looking context, and had used estimates made on the basis of market and cost forecasts provided by Telefónica in 2001 (whereas the Commission had the benefit of being able to rely on *ex post* data). Therefore, although the CMT had used the same methodology as the Commission, it was working with different data, which explained why it had arrived at a different conclusion and why the Commission had felt it was obliged to intervene but that, in doing so, it was consistent with the CMT's previous interventions.

Telefónica was able to end the margin squeeze by lowering its wholesale prices, given that its national wholesale prices were not regulated and that its regional wholesale prices were only subject to maximum price caps—it was free to set prices below the maximum level, or to lower its retail prices. However, it never took this initiative until it was obliged to do so by the Commission in December 2006.

Telefónica differs markedly from the DT case, insofar as the EU approach seems to be adopting a much more effect-based analysis.[20] It is an analysis which went to great lengths to demonstrate the economic logic of Telefónica’s pricing behavior and to demonstrate how Telefónica would ultimately profit from that behavior. Even though the Commission draws a strong distinction between the establishment of predation and a margin squeeze (see ¶ 558 in particular), it is clear that the need to demonstrate a credible theory of harm in terms of likely economic impact and the strategic rationale of the impugned practice is not wholly unlike the analysis of predation that would be undertaken by a U.S. antitrust economist.

It is anticipated that, in furtherance of the principles listed in the Commission’s Article 82 Discussion Paper, the Commission’s application of an effects-based approach will become even more clearly reflected in its case precedents, as the role and importance of margin squeeze cases is unlikely to diminish in the short- to medium-term in Europe. In embarking upon such cases, it would not be surprising for the Commission to inch closer towards a U.S.-style of approach.

C. The Role of Regulation

The final general point of departure between the United States and European Union that needs to be considered is the rationale for interaction between *ex post* and *ex ant*e disciplines. These differences in approach lie at the root of the difference in approach towards margin squeeze practices across the Atlantic.

In the United States, antitrust and regulatory policymaking have developed along largely independent paths. There is no overall “coordination” between the policy goals sought to be achieved under either discipline. It therefore comes as less of a

[20] For example, Section E of the Decision is entitled "Impact on Competition", while Section F is entitled "Objective Justification and Efficiencies."

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surprise if a U.S. court of law analyzes an antitrust action on its own terms without recourse to the policy goals of another institution of the government, whose interventions will more likely than not be seen to be market-distorting. Such an approach lies at the heart of the *Trinko* doctrine that there is little or no role for antitrust where sectoral regulation effectively "covers the field" in its regulation of commercial interactions between competitors. *linkLine* takes that thinking one step further by clarifying that an obligation to deal, if imposed by an instrument other than an antitrust order, rules out the role of an antitrust action as regards that element of the offence. By the same token, the existence of regulation of some sort at the wholesale level does not mean that antitrust has no role to play as regards a predation claim at the retail level; indeed, the predatory pricing claim is still being pursued independently outside the case heard before the Supreme Court. What many U.S. commentators do feel, however, is that the net effect of the *linkLine* Case will be to drive margin squeeze actions into the hands of the Federal Communications Commission ("FCC,") the federal regulatory agency responsible for telecommunications matters.

The option of a margin squeeze action being dealt with exclusively by sector-specific regulators is currently not an option that is available to NRAs in Europe under the exercise of their *ex ante* powers under the EU Regulatory Framework. Their mandate is limited to the prescription of remedies designed to apply on a forward-looking basis to address an identified market failure at a particular functional level of competition (e.g., wholesale access).[21] A transparency remedy such as an accounts separation remedy or cost accounting obligations might, for example, be imposed in order to help clarify the precise costs incurred in the provision of a regulated wholesale service, but they could not stretch to the mandating of particular relationship between a wholesale price and a retail price in order to prevent a margin squeeze without being considered to be distorting market conditions.

In other words, the only effective means of addressing a price squeeze in the EU is through an *ex post* action brought under Article 82EC or its national equivalent. That ex post action will have been facilitated by the mandating of an obligation to deal under a market review process conducted under the EU Regulatory Framework (see above). Moreover, the very threshold decision of whether *ex ante* regulation is necessary in the relevant market will have been taken because it is felt that *ex post* remedies are, of themselves, inadequate to address the market failure problem identified (e.g., the refusal to deal at wholesale level).[22] The EU regime is thus one in which, since 2002 when the EU Regulatory Framework was introduced, the antitrust rules and sector-specific regulation operate as opposite sides of the same metaphorical coin, rather than as disciplines that

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[21] For example, refer to Article 8 of the Framework Directive, Directive No. 2002/21/EC, and to Articles 8-13 of the Access Directive, Directive No. 2002/19/EC.

[22] Refer to the Explanatory Memorandum of the original Relevant Markets Recommendation, Recommendation 2003/311/EC.

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might be pulling in completely different directions. This is arguably the major point of departure with the position in the United States.

IV. CONCLUSION

Given their respective regulatory starting points, the U.S. and the EU positions on margin squeeze will inevitably be different in the sphere of electronic communications, as indeed with all regulated network sectors. Unlike the situation in the United States, a margin squeeze action in Europe under competition rules will invariably proceed where the duty of the dominant firm to deal is unequivocal. Indeed, it will usually be the case that the duty to deal is mandated at a particular level of cost.

By the same token, the progressive adoption of the "effects doctrine" by the Commission in its application of Article 82EC suggests that the gap between the two antitrust approaches adopted across the Atlantic will narrow over time when it comes to the issue of the substantive appraisal of a margin squeeze claim, and will begin to reflect an analysis which is similar to that deployed in the assessment of a predatory pricing claim. Only two factors threaten to impede that process of convergence. First, in the transition from its traditional form-based approach to the application of an effect-based approach, the Commission has consistently sought to justify its recent Article 82EC infringement actions on the basis of both approaches. The Commission's attitude of pursuing such a double-barreled strategy will do little to clarify for industry whether the *per se* nature of the approach in the DT Case is no longer the prevailing legal standard for a margin squeeze. An even greater risk to convergence might exist because the European Courts have shown no inclination thus far to subject the Commission to the burden of proof usually associated with the application of an "effects-based" approach,[23] preferring to allow the Commission to be able to prove its case on the basis of the traditional form-based approach.

Second, the application of an effects-based approach might be more problematic in other more recently regulated sectors in which the process of competitive supply and demand, and hence the nature of the "effects" of anticompetitive practices, might be more speculative and therefore more difficult to apply in practice.

In its own way, *linkLine* may provide impetus for the Commission to further clarify its policy on margin squeezes. Rather than shifting its enforcement strategy to another sector, the Commission may have little choice other than to pursue further actions in the electronic communications sector—a sector that has matured under liberalization and which displays more characteristics of a properly functioning market

[23] Recent jurisprudence before both the CFI and the ECJ has demonstrated very little appetite on the part of the European Courts to accommodate its standard of review of Commission Decisions to reflect the adoption of an "effects-based" doctrine. For example, refer to Case C-95/04 British Airways plc v Commission of the European Communities, Virgin Atlantic Airways Ltd, Judgment of 15 March 2007; cf. Case T-201/04 Microsoft v. Commission, Judgment of 17 September 2007; cf. the Wanadoo appeals, op cit.

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than more recently liberalized network sectors... and hence one which is more likely to yield tangible results in terms of "effects."

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