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Competition in the New Economy

There is much talk these days of the "new economy" and of the part played by rules on competition in changing conditions. As Chairman of the Federal Trade Commission, Robert Pitofsky addressed these problems from an American point of view. Now, Mario Monti, the Commissioner for Competition Policy, has also tackled the question. In a recent speech in Barcelona, he identified three main issues: the boundary between applying competition law to the new economy and leaving it alone; the boundary between competition law and regulation in the telecommunications sector; and some key issues on mobile telecommunications and the progress of competition in the local loop. On the face of it, he says, three characteristics of the new economy already offer benefits to consumers and competitors alike, without interference from competition regulations. These three are an increase in transparency, a growth in the size of the markets and a reduction of transaction costs.

It is arguable that the pace of change renders the role of regulators, including competition authorities, both unnecessary, because the market will correct itself, and impossible to fulfil, because the change is too rapid for a competition authority to make timely decisions. Mr Monti recognizes that a firm may not have a position of entrenched market power because its product is likely to be displaced, or rendered obsolete by technological innovation. He also recognizes that, even where a firm has entrenched market power in a particular industry, condemning it could damage incentives to innovate and would constitute a denial of the realities of market preferences. "Nevertheless, the finding that entrenched market power can exist in the new economy by definition means that the way that market power may be used should be subject to the normal rules of competition analysis."

Regulation will therefore continue to be a tool in the promotion of competition. The link between regulation and competition is reflected in the Commission's current review of the regulations on electronic communications. One of the main shifts in the new framework will be the replacement of the current threshold for significant market power (based on a market share of 25%) with the dominance criterion, as it is defined by Commission practice and the case law of the Court of Justice. Technological change and new emerging activities (like those linked to the Internet) require constant review of the criteria for assessing cases. The correct definition of the relevant product and service markets and of their geographical scope is a key element is this respect; hence the Commission's current consultations on draft "Guidelines" which are intended to provide further guidance to all parties concerned about how these principles apply to electronic communication services. ■