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Fünf Fragen an Pieter Van Cleynenbreugel

Pieter Van Cleynenbreugel ist Assistant Professor an der Universität Leiden, der ältesten Universität der Niederlande, und Inhaber eines Lehrstuhls am Liège Competition and Innovation Institute (LCII). Er studierte in Leuven und Harvard und ist spezialisiert auf Kartellrecht und institutionelles Europarecht. Van Cleynenbreugel und seine Kollegen sind in diesem Jahr Gastgeber der Jahreskonferenz von Ascola, der Academic Society for Competition Law.

Ascola chose as a topic „The Role(s) of Innovation in Competition Analysis" for the 2016 meeting. Why this topic, why at Leiden, why now?

In most legal orders, specific provisions of economic law guarantee free competition as well as the protection of innovative ideas. Recently, however, those two objectives and the legal provisions shaping them seem to have clashed more frequently and fundamentally than before. The 2016 Ascola conference aims to come to a deeper understanding of how innovation and competition analyses interact and how competition law can create and maintain a workable balance between both policy objectives.
The Ascola conference will be the first in a series of academic events organised in the context of a new faculty-wide research programme, entitled „The progression of EU law". Launched since 2015, this programme envisages to address complex legal balancing problems relating to (EU) economic law.

Is the innovation debate specific to the competition analysis of the digital economy or do you think that more traditional sectors need an innovation approach as well?

It is true that recent cases in which the balance between innovation and competition came explicitly to the forefront have almost all dealt with the digital economy: the 'smartphone wars', the Google abuse investigations and other high profile cases. However, economic policy at large, competition policy included, has long been concerned with innovation in other, more traditional sectors, as well. For that reason, we made the conscious choice not to restrict the conference programme to specific digital economy issues, looking for ways in which an innovation approach may be suitable to more traditional economy sectors as well.

Die Fragen stellte Prof. Dr. Rupprecht Podszun, Universität Bayreuth.

In your talk, you will analyse the „process/result gap" in EU competition law. How do you mean this? Do you have a proposal for a more innovation-oriented case analysis?

It struck me that literature and policy documents addressing the role of innovation and competition law are either very generally focused on ways potentially to enhance the competitive and innovation processes or extremely case-specific and result-oriented in a particular context. Attempting to bring both strands together, I propose the acknowledgment of a specific rebuttable 'pro-innovation' legal presumption, to be applied as a part of enforcement authorities' legal assessments of restrictive or abusive anticompetitive behaviour. The contours of such a presumption can already be recognized on the basis of preceding case law and policy developments. By explicitly recognizing it as such, however, undertakings will be offered more certainty as to how far innovation-based claims can help them escape from competition law scrutiny.

You did a lot of research on the institutional design of the competition law regime in the EU. We seem to underestimate the influence of institutional issues for shaping competition law. Could you give us an example of this interplay?

What strikes me most is how procedural fairness claims are used as tools to challenge vested interpretation of competition law concepts. A good example in this respect is the notion of concerted practice in Article 101 TFEU. This notion has long been interpreted and applied from the enforcement authority's point of view, leaving defending undertakings no option to contest the classification of their behaviour as being concerted. More recently, however, one can notice a tendency – yet nothing more than a tendency – to accord some importance to the opportunity given to undertakings to defend themselves against such claim. In that regard, enforcement presumptions that previously guided the European Commission are called into question and even adapted to cater for counterclaims to be developed in a procedurally fair way. The January 2016 *Eturas* judgment can be understood as harbouring such an attempt to balance authorities and defendant undertakings' claims.

Hosting an Ascola conference means a lot of work. Still, is there anything in particular that you are looking forward to?

Personally, I am very much looking forward to welcoming many competition law colleagues from within the Netherlands and from all over the world in the beautiful historical setting of Leiden University. On top of that, there has not been one Ascola conference where I did not gain at least one new insight beneficial to my own research. I have no doubts that I will again benefit from more than a few new insights in June!