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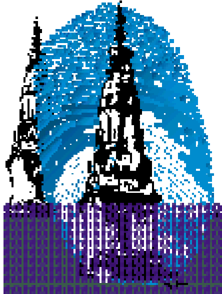

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COMPETITION COMPLIANCE: LIMITS TO COMPETITION POLICY HARMONISATION IN EU ENLARGEMENT

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Competition compliance: limits to competition policy harmonisation in EU enlargement[*]

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Abstract

The paper analyses the extent of and the reasons behind limits to competition policy harmonisation in EU enlargement. Our focus is on vertical restraints. First, we compare the relevant legal regimes towards vertical agreements in the EU and in Eastern Europe. We then describe competition policy practice in all ten EU candidate countries and point out differences both between East and West and among the candidates. Finally, we examine a large database of inter-firm agreements in Eastern Europe's car industry and use insights from case studies of subcontracting to highlight instances of non-conformity between (1) East European competition law and practice and (2) EU rules and East European competition law enforcement. The conclusion recommends how to improve competition policy practice, and thus compliance, post-enlargement.

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1 Introduction

The 1993 Copenhagen European Council specified that candidate countries for EU accession must adjust their administrative structures, "so that European Community legislation transposed into national legislation is implemented effectively through appropriate administrative and judicial structures." Hence accession depends on setting up the rules embodied in the *acquis communautaire* and on making them work. This paper addresses one area of the *acquis*, namely parts of competition policy, where rules and rule enforcement are considerably at odds. Our evidence suggests that firms in the candidate countries strike agreements that distort competition to a higher extent than acknowledged. This contradicts the guarded optimism concerning harmonization expressed by the Commission in its annual *Progress Reports*.

Throughout the accession process the Commission for good measure emphasized the importance of market dominance, merger control, and state aid in aligning competition policy in the candidate countries with the *acquis*. Given their history of pervasive state ownership especially of large enterprises, soft budget constraints, and no market for corporate control, this was clearly warranted. The endeavours of the candidate countries in these policy fields are highly visible and lend themselves to careful monitoring, including by outside observers such as the Commission. For example, corporate takeovers are impossible to keep out of the limelight. And what definitions of market dominance the respective competition authority uses, how it decides what the relevant markets are, and whether this process is transparent to – and open to appeal by – the interested parties is relatively easy to observe. All of this is key to judging competition compliance.

By contrast, restrictive agreements among firms, such as vertical restraints, are different. In principle, they are illegal. But under certain conditions they need not be, for example when they protect certain types of technology transfer. So it is not enough for entrepreneurs to be aware of the general prohibition in that they may be able exploit one of numerous exemptions. In addition, this area of competition law is in flux. Therefore, for the candidate countries rule alignment has been like shooting at a moving target. Rule enforcement is even more challenging. Our research suggests that not everyone in the business community and certainly not all regulators are familiar with the issue at hand. For firms to be in compliance, and for outsiders to monitor the enforcement capability and record of the competition authorities, is not a simple feat at all. Thus, lack of competition compliance is what this paper is about. It adds to the sparse literature covering implementation experience in transition countries (cf. Dutz & Vagliasindi, 2000; Fingleton *et al*., 1996, Chap.9; Hoekman & Djankov, 2000).

Section 2 describes the rules governing vertical agreements in EU competition law. It also covers the rules pertaining to the relationship between the EU and the candidate countries of Eastern Europe. Section 3 characterises similarities and differences between EU and East European competition rules. It discusses how the Commission interprets competition policy harmonisation and suggests what may be wrong with its approach. Section 4 produces evidence of anti-competitive behaviour between domestic and foreign firms in East Europe's emerging automotive sector.

Section 5 concludes with recommendations for competition policy practice post-enlargement.

2 The legal regime towards vertical agreements in the EU and in the Europe Agreements

In the Europe Agreements, the approximation of competition laws plays an important role for the candidate countries' economic integration into the European Community (Van den Bossche, 1997, p. 25). In 1999 the EU changed its legal regime on vertical agreements. Traditionally it was primarily legal-form based. The revised version makes more use of economic analysis in assessing VRs. Thus the part of the *acquis* that refers to VRs was effectively in flux while the accession negotiations were under way. This cannot have made harmonization any easier for the candidate countries.

The current EU regime towards vertical agreements with technology transfer

Anti-competitive vertical agreements are referred to as vertical restraints (VRs). They are prohibited (Art 81(1) EC) and automatically void (Art. 81(2) EC). However, they may qualify for an exemption from the prohibition if their benefits outweigh the anticompetitive costs (Art. 81(3) EC). The focus of this study is on inter-firm relationships where technology transfer may justify exclusivity in the parties' dealings with each other on efficiency grounds.

Three sets of rules may apply to vertical agreements containing intellectual property rights (IPR) clauses:

1. The Commission's *Notice on Subcontracting*[1]: Subcontracting agreements oblige the subcontractor to supply goods or services to the contractor (or on his behalf). If he for this purpose needs access to the contractor's technology or equipment, the latter may want to protect his assets and restrict how the subcontractor employs them. He may forbid that the subcontractor make them available to third parties, and require that the subcontractor supply the goods, services or work resulting from the use of the assets exclusively to himself. Such restrictions are allowed if the assets are necessary for the subcontractor to provide the buyer with goods or services that differ from those available on the market. It is also a necessary condition that the subcontractor not have easy alternative access to similar assets (European Commission, 1978; see also Van Bael & Bellis, 1987, pp. 207-8).

2. C*ommission regulation (EC) No. 240/96 on technology transfer*[2] aims to facilitate the dissemination of technology and the improvement of manufacturing processes by giving the licensor incentives to license her technology or know-how, and by

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[1] Commission (1978). The notice represents the Commission's views on subcontracting and is not legally binding. However, the European Court of Justice is likely to respect the Notice in the interest of legal certainty insofar as no significant opposing considerations take effect (Fejø, 1997, p. 218).

[2] Korah (1996) and Robertson (1996) provide in-depth treatments of this regulation.

giving the licensee incentives to invest in complementary assets necessary to market new products or to employ new processes. The licensor may restrict the use of the license and promise that the licensee will not face intra-brand competition in her own territory, including from the licensor herself. She may also restrict the licensee's active or passive sales into other licensees' territories. White clauses cover, *inter alia*, an obligation on the licensee to restrict her exploitation of the licensed technology technically or product-wise. Price fixing, resale price maintenance, refusals to deal with parallel traders and other restrictions on manufacturing, sales and innovations are blacklisted.

3. *Art. 2(3) of the Block Exemption Regulation*[3]: The BER exempts from Art. 81(1) vertical agreements provided their market share not exceed 30 per cent of the relevant market. Some IPRs fall within the scope of the BER. Article 2(3) exempts vertical agreements which transfer IPRs from a supplier to a buyer in order to facilitate use, sale or resale of the contract good or service.[4] The BER complements the Technology Transfer Regulation and the Notice on Subcontracting. It does not apply when the IPRs are provided by the buyer to the supplier, or in the case of subcontracting involving the transfer of know-how to a subcontractor.

The Europe Agreements

With a wording copied from Articles 81(1) and 82 of the EC Treaty, the Europe Agreements prohibit restrictive agreements and abuse of dominance insofar as they affect trade between the EC and the candidate country. Practices are to be assessed on the basis of criteria arising from the application of the rules of Article 81 and 82 of the EC Treaty. The Agreements mandated the bilateral Association Councils to implement the competition rules within three years.

Tóth (1998) gives a fascinating account of the effect of the Europe Agreements on the harmonisation of Hungarian competition law. He argues that for a number of reasons the provisions of the Europe Agreements regarding restrictive practices and abuse of dominant positions that affect trade between the candidate country and the EU must be seen as "soft law". Not even the implementing rules can be seen as giving direct effect of the competition article of the Europe Agreements, since they foresee that both competition authorities should proceed on the basis of their own substantive legislation. Tóth further argues that a candidate country has an obligation to harmonise competition rules while Member States are free to choose a different legislation. This implies that a candidate country might in theory choose to re-optimise its competition policy, once accession has occurred. Therefore, the

[3] Commission (1999). For a comprehensive review, see Whish (2000).

[4] This rule thus applies to technology transfer moving in the opposite direction of that relating to the Notice on Subcontracting. The purpose of the rule is to allow "vertical agreements where the use, sale or resale of goods or services can be performed more effectively because IPRs are assigned to or transferred for use by the buyer". To qualify for the exemption, the IPR provisions must not contain restrictions of competition having the same object or effect as vertical restraints that are not exempted under the BER (Commission, 2000k, par. 30-31).

insistence on formal harmonization may not lead to effective *ex-ante* or *ex-post* competition compliance but exhaust itself in an approximation of legal texts.

In sum, the candidate countries must copy Art. 81(1) and Art. 82 from the EC Treaty. However, they have also adopted some or all of the various block exemptions. This is the topic of the next section.

3 Competition policy in the candidate countries

The broad outlines of competition policy in the candidate countries are very – and increasingly – similar to EU law.[5] In this sense at least there is little difference between the candidate countries in the fast lane to EU membership and those that are in for the long haul. The Baltic countries and Slovenia completed negotiations of the Competition Chapter in the second half of 2001. All others were still negotiating a few weeks before the Commission was scheduled to issue its final *Progress Report*, in October 2002, prior to the expected enlargement.

All ten countries have a general prohibition on restrictive agreements, often verbatim following Art. 81(1), and apply the *de minimis* rule. They also all allow for exemptions from the prohibition of restrictive agreements, again mirroring the letter and the spirit of Art.81(3). Their laws provide for block exemptions much as in EU practice, although the lion's share of harmonization in this area took place only in 2001.

Table 1.— Share of Vertical Restraints in Total Case Load

Country	Year	Practice	RA/TCL	VR/TCL
Bulgaria	1999-2000	Decisions	11/132 = 8%[a]	8/156=5%[b]
Czech Republic	2000	Decisions	25/73 = 34%	20/73 = 27%
Estonia	1998-9	Investigations	17/190 = 9%	~ 0%
Hungary	2000	Decisions	18/144 = 12%	7/144 = 5%
Latvia	1999	Investigations	5/48 = 10%	~ 0%
Lithuania	2000	Decisions	6/63 = 9%	0/63 = 0%
Poland	2000	Decisions	16/297 = 5%	<5%
Romania	1999	Decisions	312/472=66%	38/472=8%[c]
Slovakia	2000	Decisions	10/201 = 5%	<5%
Slovenia	2000	Decisions	9/51 = 18%	~ 0

Note: RA = restrictive agreements; TCL = total case load; VR = vertical restraints. [a]=1999; [b]=2000; [c]=net of franchise agreements.
Source: Antimonopoly Office (Slovakia, 1997, 1998, 1999, 2000, 2001)), European Commission (2000a-j), Competition Council (Lithuania (1998, 1999, 2000, 2001)), Estonian Competition Board (1998, 1999, 2000, 2001), Office for Protection of

[5] For references to candidate country competition laws, see final section of reference list as well as Musil (1996) on the Czech Republic; Tóth (1998) on Hungary; Virtanen (2000) on Lithuania; and Banas (1995) on Slovakia. Fornalczyk (2002) provides a general overview.

Competition (Czech Republic (2001)), Office of Economic Competition (Hungary (1998, 1999, 2000, 2001, 2002)), plus interviews with competition officials.

Candidate competition law differs in terms of notification requirements. The rules are rather restrictive in Bulgaria, Czech Republic, Estonia, Hungary, Lithuania, and Romania. Here all agreements, including those covered by block exemptions, must be notified. Firms in Slovenia need to notify only agreements requiring individual exemptions. For firms in Latvia only agreements that go beyond what is exempted explicitly require notification. Poland and Slovakia have the most liberal regimes; in Slovakia, only mergers need to be notified, and in Poland firms are only expected to self-assess the agreements they are subject to in terms of the antimonopoly law.

Caseloads and case history are good indicators for the general level of activity of the competition authorities and for what the focus of their attention is. Unfortunately, information from candidate country sources, interviews, and the Commission often matches only approximately. Nonetheless a few interesting trends are evident. Until 2000, restrictive agreements accounted for anywhere between 8 and 66 per cent of the total caseload. But in most countries there had been hardly any investigations of vertical restraints (see Table 1). 17 of the 20 Czech cases had to do with exclusive sale or purchasing, and with franchises. In Romania, of the 312 cases 19 dealt with exclusive distribution, 17 with exclusive purchasing, 274 with franchising, and only two referred to technology and/or know-how transfer. In Slovakia, the relative prominence of restrictive agreements fell from 44 per cent to 16 per cent in 1999-2000, and that of VRs from 35 per cent to 13 per cent. Most of these were multiple decisions concerning the retail outlets of the same five cosmetics distributors. Hence exclusive agreements of the type analysed in this paper were not prominent on the competition authorities' agenda.

This appears slowly to change, but not in all countries. For example, after provisions on vertical restraints were inserted into the Lithuanian competition law in 2000, firms subsequently notified 30 VRs all of which qualified under the general exemption. Half of all restrictive agreements decided on by the Estonian and Latvian authorities in 2001 – which did not deal with any VRs in 2000 – concerned vertical restraints, but their absolute numbers were less than a handful and a mere fraction of the total load. Likewise in Slovenia, 4 out of 52 decisions concerned VRs in 2000. By contrast, in the Czech Republic decisions on horizontal and vertical (non-franchise) agreements in 2001 became more important relative to those relating to franchise agreements.

By and large, the competition authorities in candidate countries have paid most attention to unfair competition, abuse of market dominance, and merger control. In mature market economies competition authorities devote more time and energy to horizontal than to vertical agreements, too. But the evidence reviewed above suggests that regulations of VRs are a legal proviso more than a standard feature of competition policy practice in the candidate countries. In terms of competition compliance, this could become a problem once the candidate countries join the EU.

In successive generations of *Progress Reports* reviewing the candidate countries' readiness for EU accession, the Commission made little use of this

information (e.g. Commission 2000a-j, 2001a-j). It confirmed that in all candidate countries, legislation was largely (fully in the case of a few countries) in line with the *acquis* although further progress was necessary in view of developments in the *acquis* with respect to vertical restraints. The Commission identified the application and enforcement of rules as the principal challenge for competition policy in the candidate countries and admonished the competition authorities to concentrate on serious breaches of the law instead of on what it interpreted as often marginal infringements that were being investigated. But our research shows that a harmonised legal apparatus plus a competent and vigilant competition authority by themselves do not make for competitive markets.[6] Section 4 provides evidence for this claim.

4 Subcontractor agreements in the car industry in the candidate countries

In 1999-2000, we conducted a survey of 413 car component suppliers' exposure to or use of vertical agreements and technology transfer in Poland, the Czech Republic, Hungary, Romania, Slovakia and Slovenia. We asked what type of exclusivity they faced in their contracts, if any: if customers requested exclusivity of the respondent firm (ECR); whether they requested exclusivity of their customer (ERC); whether suppliers requested exclusivity of the respondent firm (ESR); and whether they requested exclusivity of their supplier (ERS). We also asked if they received technology from their customer (TTC) and whether they transferred technology to their own supplier (TTS). Table 2 summarizes the findings on technology transfer and use of exclusivity.

Table 2. – Summary of evidence on exclusive agreements and technology transfer

	Number of different types of exclusive agreements					
Technology transfer	*0*	*1*	*2*	*3*	*4*	TOTAL
0	56	38	9	10	3	116
1	75	45	17	7	3	147
2	80	32	18	13	5	148
TOTAL	211	115	44	30	11	411

Note: Number of observations reduced from 413 to 411 due to two missing values.

The table shows that 28 per cent (116 of 411) of the firms did not receive technology from their customer and did not transfer technology to their supplier. Yet out of these 116 firms, only slightly less than half (56) did not engage in exclusivity at all. One third (38) had experience with exactly one kind of exclusive agreements

[6] Tóth (1998, p. 364), for example, is intrigued by the fact that although the new Hungarian Competition Act called for notification, the Hungarian Competition Authority "did not have to work itself into the ground by responding to hundreds of notifications. Notwithstanding a few examples, statistics show that things stand now as if the law on vertical restraints had not changed at all. The general ban on vertical competition restrictions neither provoked hostile reactions from the business sphere, nor gave rise to a mass of notifications seeking negative clearance or exemption." Tóth speculates whether this is due to Hungarian firms being unaware of the new rules or because Hungarian firms do not engage in vertical restraints.

while 19 per cent (9+10+3) did with two or more. There is no evident relationship between the extent of technology transfer and the use of exclusivity. Independently of whether the respondent firm is not at all involved in technology transfer, party to one kind only (TTC or TTS), or to two kinds (TTC and TTS), roughly half the firms experience no exclusive agreements, 30 per cent exactly one kind of exclusivity, and 20 per cent two or more kinds.

There are country differences. Romanian firms are especially likely to receive and transfer technology with no strings attached (no exclusive agreements). More than half of our Romanian firms both receive technology from their customers and transfer it to their suppliers without facing any exclusive agreements. At the other extreme, Hungarian and Polish firms are more likely to face exclusive agreements without any technology transfer than are firms in the other four countries. Polish and Czech firms are most likely to meet exclusivity, but in the Czech cases it is more easily defended by the simultaneous occurrence of technology transfer. However, Planavova-Latanowicz and Harding (1999) find that general awareness of competition policy is higher in Poland than in the Czech Republic. What matters is perhaps the Polish law providing for self-assessments, whereas notification is required in the other countries.

A simple efficiency hypothesis justifying use of exclusivity could be as follows: A customer that transfers technology (TTC) requests exclusivity (ECR) from the receiver of technology in order to protect the transfer. This would be in accordance with the thinking behind the legal framework outlined in Section 2. Table 3 shows that 39 per cent of the firms that did not receive technology from their customers nonetheless faced requests of exclusivity from them. At the same time, 65 per cent of the firms that received technology from their customers had no such demands placed on them. This shows that the simple hypothesis is only true for at most 45 per cent of the sample. For the remaining cases, a more complicated explanation for technology transfer or use of exclusivity is called for. This is where our case material fits in (see Sections 4.1-3).

Table 3. – Use of ECR and TTC among the firms

	Exclusivity requested by customer?		
TT from customer?	*No*	*Yes*	TOTAL
No	99	62	161
Yes	162	88	250
TOTAL	261	150	411

Note: Number of observations reduced from 413 to 411 due to two missing values.

Again, results differ across countries. On average, 15 per cent of the firms face ECR restraints without receiving technology from their customer, but Polish and Hungarian firms are more likely to experience this (20 per cent) than Romanian (4 per cent) or Slovakian firms (7 per cent).

Upstream, a justification for exclusivity would read as follows. To protect TT, a respondent firm that transfers technology to a supplier (TTS) requests that this supplier not sell the products manufactured with this technology to the competitors of the respondent (ERS). This would again be in line with the thinking behind rules discussed in Section 2. Table 4 shows that a little less that half of the firms transfer

technology to their suppliers, and of these only nine per cent protect their technology transfer using exclusive agreements. Six per cent of the firms request exclusivity of their suppliers although no technology transfer has taken place. The simple hypothesis only appears to be true for at most 55 per cent of the cases, asking for a more complicated case analysis.

Table 4.—Use of ERS and TTS among the firms

	Exclusivity requested from supplier?		
TT to supplier?	*No*	*Yes*	TOTAL
No	207	13	220
Yes	175	18	193
TOTAL	382	31	413

This time, Polish and Hungarian firms are twice as likely to request exclusivity without transferring technology than the average firm. And this never happens in Romania or Slovakia and only rarely in the Czech Republic.

To throw light on the many situations where these two simple efficiency hypotheses about the relationship between vertical restraints and technology transfer do not hold, we contacted firms that had reported to use or to be exposed to exclusive agreements in the Czech Republic, Hungary, Poland and Slovenia. During the summer of 2000, we assembled more than 30 case studies. Semi-structured interviews in the four countries were held primarily in the local language. They focused on

- the way in which technology transfer and vertical restraints are related;
- how firms bargain about exclusive agreements and how their bargaining position is determined;
- the firm's knowledge of competition policy at the domestic and EU level.

The interviewed firms broadly fall into three categories. In the first group, firms impose VRs to protect TT, thus confirming the hypotheses. In the second group, firms transfer technology to their supplier. This requires the recipient firm to undertake relationship-specific investment to be able to use the transferred technology. To ensure itself against hold-up by the transferring firm, the supplier then imposes exclusivity on the transferring firm. Thus, we experience TTS and ESR at the same time, but this is again consistent with traditional economic efficiency explanations (Williamson, 1985, Klein *et al.*, 1978).

In the third group, firms do *not* transfer technology but demand exclusivity all the same. We focus on these potentially problematic cases in Sections 4.2-3 below. First we briefly discuss the cases that fit our hypotheses.

4.1 Vertical restraints with technology transfer

A Czech producer of a "very complex and technologically intensive product" that received technology from a final assembler supports our hypothesis that exclusivity may be used to protect intellectual property rights:

> "… we cannot use the transferred technology to produce products for any other firm except the one which gave us the technology – and the same holds

for our suppliers. The problem is that the current patent law is not sufficient to protect the transferred technology."

The firm extends the same exclusivity clause to its own suppliers. Thus it seems that firms transfer not only technology upstream, but also exclusive agreements. This firm did not bargain about the exclusivity terms but did renegotiate the penalty from breaking it. The firm claims to be aware of national and EU rules on vertical restrictions but does not think it violates them. For this reason it did not notify any authorities about the VR although in our reading of the Czech rules on notification it would have to do so (see Section 3). However, the firm added, "even if we would feel like [we were] violating some regulation rules, we would never do it [notify], because we would be immediately out of business."

Another Czech producer of a "complex and technologically intensive product" agreed with its customers that it would not sell to their competitors. In exchange the manufacturer receives technology and finds that this technology helps improve both product and processes. The technology could not have been acquired on the open market "because the technology is very special." In addition, the firm negotiated that its customers do not buy rivals' products (i.e. ERC). Thus the exclusivity seems to be reciprocal in this case. The firm invested in own research capacity. Thus, the ECR can be perceived as protecting technology transfer, and the ERC a relation-specific investment. This company is familiar with rules regarding vertical restraints but did not find it necessary to notify the authorities.

4.2 Vertical restraints without technology transfer: *de minimis*?

A small Hungarian producer of brake hoses, a very simple product that is easily copied from original equipment samples or acquired on the market, entered a contract with a Danish trading company. The latter requested the Hungarian firm not to sell outside Hungary except through the Danish company, and that they not be present at foreign trade fairs. The business with the Danish firm amounted to roughly 30 per cent of their total turnover and as such was something the Hungarian firm could not afford to lose. There was no technology transfer in the sense of the subcontractor notice. The Danish firm would simply send the Hungarian firm original equipment samples and request it to produce small runs of these products for the European aftermarket. The Hungarian company was not familiar with competition rules concerning vertical restraints and did not consider notifying competition authorities about the exclusivity, although it found the agreement strange. In fact, it probably did not have to notify as it would benefit from the *de minimis* rule. Its annual sales are about USD 500,000 which is likely less than one per cent of total turnover in the (after-)market for brake hoses.

4.3 Vertical restraints without technology transfer

A Hungarian producer of components for buses and lorries entered an agreement with a customer that has a very large market share. After the contract for delivery had been signed, the customer wrote to the producer: "We inform you of the fact that the supplied product is our own product and you are not allowed to sell it but through us." The producer opines that this product cannot be protected as it is generally available on the world market and it is not covered by a patent. The

customer, however, invokes intellectual property rights. This is an interesting case in which the customer could claim (rightly or wrongly) that the agreement can be interpreted positively in terms of the subcontractor notice while the producer would contend that it cannot. The companies (both Hungarian) did not notify the competition authority about the agreement.

A Slovenian producer of washers is subject to a vertical restraint by a Romanian customer. In general these restraints appear in cases "where the customer is important enough" for the firm. Interestingly the company has a fairly advanced (if erroneous) view on the nature of these restraints:

> "[The] vertical restraints are in principle not formalised in some formal agreements but are informal as a kind of gentlemens' agreements. This is eased by the fact that [the Company's] sales are relatively concentrated on a smaller number of customers with whom the company has long established business relations. Although the gentlemens' agreements make the practical imposition of restraints less sure, on the other hand it eliminates any potential problems of being accused of using restrictive business practices."

In sum, many firms use or face exclusivity in vertical contracts. In some cases this is associated with technology transfer. Yet in many cases TT cannot explain the use of exclusivity. This represents a challenge for competition policy in an enlarged Europe.

5 Harmonisation and compliance

The literature on the criminology of the corporation categorizes firms in three types of agents according to their motive for not complying with legislation (Frazer, 1995, p. 58). They may be 'amoral calculators' that rationally decide to break the law because fines are low or the probability of detection is small; 'incompetent organizations' that are poorly managed or informed about the legislation; or 'political citizens' that view the legal rules as being unfair, unjust or unreasonable. A mixture of the three is obviously possible. Our case studies identified a high fraction of 'incompetent organizations', relatively many 'amoral calculators' and a fair number of 'political citizens'.

Our analysis illustrates a number of insights. First, violations of EU and candidate country competition rules on vertical restraints do take place. Our survey suggests that a substantial number of exclusive agreements are not easily defended on efficiency grounds. Indeed, technology transfer explains at most half of VRs at different stages of the supply chain in our sample. We do not imply that all of these would be deemed illegal if they were investigated. They might fall below the threshold of *de minimis* rules or be innocent for reasons that the statistics do no reveal. Furthermore, it may well be that the car component industry is not representative for the business environment as a whole. However, the case studies clearly show that not all are innocent.

Second, they go undetected. Whether this is rare or frequent is anyone's guess. If no-one is aware of these infringements, it obviously becomes rational for the firms

involved not to care about the competition rules regarding vertical restraints. Fingleton *et al.* (1996, Chap. 6) reported that competition authorities in Central Europe were swamped by complaints about unfair bargains in contract relationships. We do not suggest that it would be sensible to re-instate such a regime. But to the extent that the competition authorities of the candidate countries wish to take anti-competitive effects of vertical restraints seriously, their notification provisions make a lot of sense. Unlike with abuse of dominance, merger control, and state aid, effective supervision of vertical restraints is not going to work if it relies exclusively on monitoring *ex officio* and investigations of complaints. In other words, a minimum of cooperation from market participants is required. It may be that the European Union can make do without notification of such agreements because firms in the EU have a long experience based on the Commission's and the Court's practice of determining notified cases. But many firms in the candidate countries clearly lack this experience.

Third, firms in Central Europe are either ignorant or suspicious of competition law, at least as far as vertical restraints are concerned. Ignorant, because they often simply do not know what the rules are. And suspicious, because our interviews indicate that firms regard notification – let alone complaints – much like a gang of street smarts views ratting to the police.

Our analyses showed that in order to ensure compliance the Commission and the prospective new members must now move on to more practical tasks:

1) They must make companies understand that competition authorities are not their enemies, but that they may also be an ally when faced with anti-competitive vertical restraints. This amounts to convincing 'political citizens' that competition policy is an essential part of free markets. It is especially important to allay the fear that 'if I talk to competition authorities, I'll be out of business', through high-profile trial cases and a proper system to ensure the paying of damages.
2) They must target 'incompetent organizations' by explaining the rules in clear language and reach out beyond big-city business associations and antitrust lawyers.
3) They must target 'amoral calculators' by ensuring proper methods of revelation and by sufficient penalties to make non-compliance a significant expected cost. Reinforcing and keeping the present notification system in place for a number of years would support this endeavour.

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Estonia: "Competition Act", www.konkurentsiamet.ee/gb/eng-law.rtf.

Hungary: "Act on Prohibition of Unfair and Restrictive Market Practices", www.gvh.hu/angol/ineto6aa.htm.

Latvia: not available on the web.

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Poland: not available on the web.

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