

- **Corporate governance.** Some continental European and Japanese similarities in corporate governance run as follows. The Germans have bank-centred industrial groupings and sympathetic officials in the economics and technology ministries. French industry is used to administrative guidance provided through networks based on the Ecole Nationale d'Administration. Germany is the land of cartels and Italy the land of personalized managerial networks. In many European countries, antitrust implementation has been either modest or *industrie-freundlich*. Given this background, European officials tend to be more sympathetic to Japanese administrative arrangements.¹⁴⁴

Thus, whereas individualistic considerations propel corporate governance in the U.S., communitarian factors drive the policies of business and government in Japan and continental Europe.

7.2 Competition law and jurisprudence

- **Conspiracy and export cartels**

- **Conspiracy**

U.S.: The prohibition of agreements among competitors has long been viewed as an offence in the U.S.. The development of the concept of a *per se* offence is a manifestation of the strong philosophical aversion to collusion that leads directly to monopolistic pricing and practices with no offsetting gains. However, in permitting an efficiency defence the U.S. Supreme Court in a 1979 case may have eroded the strong *per se* treatment of the proscribed collusive conduct.¹⁴⁵

EU: Let us begin with some historical examples. In Germany, at the turn of the century, the legality of cartels and other restraints of competition were generally governed by the *Civil Code* of 1900. In general, the courts were reluctant to restrain the activities of cartels and monopolies. Even the *Cartel Ordinance* of 1923 did not make cartels illegal *per se*; cartels were legal in

¹⁴⁴Wilks, *op.cit.*, p. 40.

¹⁴⁵*Broadcast Music, Inc., v. Columbia Broadcasting System*, 44 US 1 (1979).