

reasons,<sup>123</sup> but also for integrationist reasons. The presence of small business checks the kind of behaviour to which dominant companies in Europe may be prone: the re-imposition of divisions along Member State lines.<sup>124</sup>

- **Affecting trade between Member States**

The integration criterion present in both competition articles described above has been expanded through an ever-lowering of the jurisdictional hurdle defining what activity may be subject to EU-wide competition rules.

The reduction began soon after the formation of the Communities. In 1966, the *Consten* court explained that what is particularly important is whether the agreement is *capable* of constituting a threat, *either direct or indirect, actual or potential*, to freedom of trade between Member States in a manner which *might* harm the attainment of the objectives of a single market between States.<sup>125</sup>

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<sup>123</sup>De Jong, "Anti-trust and International Competitiveness: The European Experience", *Antitrust Law & Economics Review* (1988), 53:

Fairness is important in the thinking of the European Union; the Commission has consistently expressed for the past 20 years...that the viability of small business is important and should be taken care of.

Walsh and Paxton, *Competition Policy: European and International Trends and Practices*, London: Macmillan, 1975, p. 2:

"Bigness" has been preached as an economic gospel for most of the post-war years...but the social problems of large concentrations of industry are beginning to be recognized. There is an increasing awareness...within the EEU, that there is a place for the small neighbourhood firm and that sometimes the economies of scale tend to dehumanize men's working environment.

<sup>124</sup>Kalmansohn, "Application of EEU Articles 85 and 86 to Foreign Multinationals", 2 *Legal Issues of European Integration*, (1) (1984), 6:

the EEU has actively supported the existence and viability of small and medium size enterprises within the Community...the EEU envisions that they can serve as an effective counterweight to large common market-wide enterprises, which are prone to partition and "isolate" markets along national lines, contrary to the goal of integration.

<sup>125</sup>*Consten and Grundig v. Commission*, *European Union Review* (1966), 341. A few years later, the Court in *Miller International Schallplatten GmbH v. Commission*, *European Union Review* (1978), 131, confirmed that the Commission did not have to prove that an agreement actually affected trade, just that it was capable of doing so.