

## Rebates under the spotlight

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TUESDAY, 21 JULY 2009

Delegates at a conference in Oxford disagreed with the European Commission's approach to dominant companies' rebate practices, following the commission's recent article 82 guidance.

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Frank Maier-Rigaud, a senior economist at DG Comp, presented a paper at Friday's European Competition Law Journal conference, arguing that too many practitioners and enforcers make incorrect assumptions about rebate practices.

"Rebates do not necessarily imply lower prices," he said, adding that he would prefer the commission to intervene too often against companies that offer rebates to selected customers, rather than too little. Maier-Rigaud produced economic analysis to show that, while rebate programmes may result in lower prices for some customers, they may actually raise the average sale price of a given product.

But Ali Nikpay, senior director in charge of policy at the UK's Office of Fair Trading, said in his personal capacity that "prudence, in a market economy, is not intervening", and that he was concerned by the idea that it is better for enforcers to intervene too often than not enough.

Christian Ahlborn, partner at Linklaters LLP in London, said that large companies faced with article 82 investigations "need fairly easy rules of thumb for what the law says." He also said that enforcement of article 82 at commission level is a "bottleneck" and that often it seems "purely random" which companies are chosen for investigation.

The conference also heard Bo Vesterdorf, former president of the European Court of First Instance, call for the court to exercise its powers more fully when assessing a case, rather than confining itself to procedural issues and fining levels.

Damien Neven, chief economist at DG Comp, spoke about the role of economics in merger analysis, while Gregory Werden, senior economic counsel at the US Department of Justice's antitrust division, discussed the complexities of market definition and the reasoning that European courts should apply to complex cases.

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