09:00 Philip Kessler
An Uncontested Idea? Explaining the shift towards comprehensive national competition policy regimes in Europe
SPEAKER: Philip Kessler

ABSTRACT. The spread of competition policy is an important part of the EU’s shift towards being a multi-level regulatory state. Despite a lack of formal provisions on national competition reform in the European treaties, most national competition policy regimes converged towards the EU model between the mid-1980s and the late 1990s. But what were the driving factors of national competition policy reform in Europe? Apart from Eastern European countries, which had to abide by strict economic conditions prior to EU entry, EU pressure to change national regimes was either absent (as in the case of the founding members of the EU) or very low (as in the case of Western and Northern accession countries). In addressing this puzzle of ‘voluntary harmonisation’, this paper argues that transnational networks are crucial to understand the success of the reform processes. Meanwhile, opponents of competition policy reform neither had access to transnational networks, nor offered any viable, alternative competition policy model. Specifically, this paper analyses the relationship between EU level competition policy and national competition policy regimes. In doing so, the paper uses both cross-case analysis and in-depth case studies to identify the causal mechanisms behind national competition policy reform. In addition to that, the convergence of competition laws is one, but certainly not the only factor determining the comprehensiveness of a competition regime. Thus, this paper seeks to trace the development of increasing regulatory capacities of national competition policy regimes.

09:30 Victoria Daskalova
Buyer Power and the Regulatory Toolbox: What Role for EU Competition Law?
SPEAKER: Victoria Daskalova

ABSTRACT. Ever since the 1970s, the grocery retail sector in the EU has experienced substantial concentration. Concentration has resulted in a change in the balance of power between retailers and producers. EU producers have complained about aggressive bargaining on the part of retail chains, including ever increasing demands for low prices and dubious commercial practices such as unfair use of proprietary information and unilateral changes to contract terms. Complaints have resulted in action both at the EU level and at the Member State level. At the EU level, Members of Parliament have pressed for enforcement of the competition rules and for reform of the Common Agricultural Policy (CAP). Additionally, a pan-European self-regulatory initiative has been started in an effort to solve the issues. At the national level, complaints from producers have resulted in the
introduction of new laws, sector-specific regulation and self- and co-regulatory schemes. Paradoxically, EU competition law – a legal discipline in the very heart of the European economic constitution – has played a limited role in the debate on and regulation of the exercise of buyer power. Even more interestingly, the Commission and national competition authorities have encouraged the developments in other fields of law. The curious position of competition authorities can be explained by misguided perceptions that the issues at stake in the buyer power debate concern “fairness” and are therefore better dealt with by “other laws”. The question is: how much is known about the nature and effectiveness of “other laws”? To what extent can they replace competition law or complement it without resulting in protectionism or fragmentation of the EU internal market? To answer these questions, the paper builds on available reports on national initiatives in the EU and their effectiveness and uses the EU Better Regulation criteria as a benchmark. Firstly, it gives an overview of the available regulatory approaches. Secondly, the paper proposes a categorization of these approaches into contract law approaches, self-regulatory approaches, and stricter competition law approaches. Based on this categorization, the paper identifies possible pros and cons of these approaches from the perspective of EU Better Regulation. The paper concludes that even if some approaches may be effective, the role of EU competition law should not be under-estimated.

10:00 Johan Wolswinkel
The winner takes it all? Exploring legal barriers and opportunities to joint authorisation in the European Union
SPEAKER: Johan Wolswinkel

ABSTRACT. In many sectors, states limit the number of market parties that can obtain an authorisation for the use of scarce resources within their territories. Because of ongoing expansions of markets, especially in the last decade, more and more market parties prefer one EU-wide authorisation to 28 national authorisations. States, by contrast, still fear decreasing revenues and conflicting national laws if they would award such ‘limited authorisations’ together, e.g. in an EU-wide auction of radio spectrum. What would happen, however, if the overall benefits of joint authorisation for both companies and states would exceed those of individual authorisation? This paper explores legal barriers and opportunities to joint authorisation, as possible conflicts of national administrative laws are considered to be one of the complexities in the context of joint awarding. To that end, the paper considers regulatory regimes in two areas of government intervention where issues of joint awarding arise: public procurement law and telecommunications law. The paper identifies (i) regulatory motives (not) to engage in joint authorisation, (ii) different modes of joint authorisation and (iii) general rules of joint authorisation that apply to any instance of joint authorisation, irrespective of the area of law concerned. It is expected that these general rules of joint authorisation might contribute to solving the alleged conflict of national administrative laws in the case of joint authorisation and might therefore open new paths for interstate cooperation.