Essay

Economic Law and income inequality: competition, regulation and the firm

What role for the European Union?

7 April 2019

Yves Van Gerven*

Abstract

This article discusses how economic law, as founded in European Union law, can by meeting its core task of remedying market imperfections help in addressing the public concern about growing income inequality, without hurting economic efficiency. Three themes are explored. First, the link between market power and income inequality[1] supports the effective enforcement of competition law. And the idea of fairness may inspire priority-setting and adjustment of legal antitrust standards. Second, public regulation of the market will protect the "weak" consumer in addressing information asymmetries, and remove regulatory barriers to market entry and distribute market income among economic operators within the confines of public interest goals. Public regulation also has the potential of contributing to a 'fairer' market. Third, the firm is the institution through which income from market activities is shared amongst stakeholders.

I. Introduction

In his book *Global Inequality – A new approach for the age of globalization*, B. Milanovic analyses the increase of income inequality throughout the world as well as within OECD member countries.[2] While Belgium is one of the most egalitarian societies, poverty is a serious issue. In recent years, income inequality became the central focus of debate among economists, social scientists and politicians. The voice of the legal community has been less outspoken. In this contribution, I will look at the area of economic law from this specific angle: can economic law help in addressing the public concern about growing income inequality within Western societies?

---

* Director of Legal Affairs, Belgian Competition Authority. This contribution is an updated and extended version of my essay "Economisch Recht en Inkomensongelijkheid" (in "Le magistrat et le Professeur, Hommage à Walter van Gerven, Larcier, 2017, p. 63-84). It expresses my personal opinions and cannot in any way be attributed to the Belgian Competition Authority.

[1] By way of update of the text accompanying the footnotes 22 to 25 below, one can for example mention the very recent book "The Profit Paradox" (Princeton University Press, 2021, 327 p.), where Professor Jan Eeckhout explains in a very detailled manner how the rise of unbridled market power of a small number of superstar firms over the last 30 years has led to rising inequality and stagnating wages for most workers. See the text below accompanying the footnotes 22 to 25.

[2] B. Milsanovic, Global Inequality. A New Approach for the Age of Globalization, 2016, Belknap Harvard University Press, 299 p.

This is an important topic. Not only, and foremost, because too much income inequality affects social cohesion in society, but also for the political legitimation of the European Union. Numerous economic laws in the EU Member States find their origin in harmonization legislation that was approved by the EU legislator. A common reproach is that the construction of Europe is too much focused on economic matters that benefit companies; a "social" Europe is missing. However, I want to highlight that economic law as the "core business" of Europe has a role to play in response to growing income inequality and that specific adjustments in legal standards of economic law may be considered.

To support this point, I will look in turn at the three building blocks of the social market economy in the European Union: the firm, market-competition and government regulation. I will start with a brief discussion of the relation between income inequality and economic law.

II. Income inequality and economic law

In the European welfare state, governments achieve income distribution primarily through progressive income taxes and the social security system. This distributive function of the State aims at levelling out existing differences in people's gross income, i.e. market income, within society. In response to growing inequality, some economists argue however that the State should intervene directly in the unequal distribution of market income.[3] Economic textbooks teach that income inequality is the result of the free operation of the market. The market remunerates workers and entrepreneurs in proportion to their productivity and economic contribution to society. Efficient and competitive markets are deemed to determine the value of each person's contribution and the income that he or she derives therefrom.[4] In other words, markets and income inequality form an inseparable pair.

Therefore, economic law, i.e. the body of rules dealing with the functioning of markets, can play a useful role in addressing the concern of income inequality. Admittedly, this role is limited as economic law cannot eliminate the primary causes of the increase in income inequality. According to the economic literature, these causes are found in the fundamental redesign of our market economy over the last thirty years: globalization and technological changes.[5] World trade exerted a downward pressure on wages for low-skilled labor in Western countries who face competition from low-skilled workers in lower-wage countries. By contrast, demand for high-skilled employees with higher wages in Western economies has increased.[6] Moreover, new technologies led to automatization - robots and computers - of routine jobs in the middle skilled and wage class, while productivity and wage prospects of highly skilled workers have improved.[7] In addition, new information technology led to the emergence of big digital companies with enormous impact on our daily lives. These companies have tremendous stock exchange capitalizations, high market shares, few

[3] B. Milanovic, o.c., p. 217-222.

[4] Economists call this the marginal productivity theory: see J.E. Stiglitz, The Price of Inequality, W.W. Norton & Company, 2012, p. 17 and 41.

[5] The short description of the causes of the increasing income inequality is based on: Economic report of the President and Annual report of the Council of Economic Advisors to the U.S. Congress (February 2016), p. 36-38; B. Milanovic, *o.c.*, p. 103-112; and Report of McKinsey Global Institute, describing this period as a golden age for multinational companies from rich countries: their profits represented more than two third of global profits and 10% of public companies generated 80% of all profits. The biggest contributor to the MNC's high profitability was the strong increase of turnover due to the world trade growth in intermediary goods/services and households' consumption goods, while at the same time MNCs benefited from a shrinking cost base (McKinsey Global Institute, "Playing to win: The New Global Competition for Corporate Profits", September 2015, 108 p., available on the Internet).

[6] See P. De Grauwe, Waar gaat het naartoe met onze economie?, 2006, Lannoo, p. 86-87.

[7] See, e.g., J.E. Stiglitz, *o.c.*, p. 68-71.

physical assets and relatively few employees on their payroll in proportion to the value created by their activities.[8] In the information economy the "idea-intensive sectors" (pharma, media, finance, information technology) create value more by intellectual property rights (patents, trademarks and copyrights) and networks, less by machines, factories and massive employment. The weakening of the bargaining power of labor against capital is another, often cited cause for the increase in income inequality.[9]

Economic law, being the part of the law dealing with the operation of the market, is defined as the set of rules relating to the conduct of firms on the market vis-à-vis consumers and competitors.[10] It embraces rules to protect consumers (consumer law), competitors by preventing dishonest practices in trade and commerce (unfair competition law) and the competitive process (competition law). It also contains a vast body of EU originated rules on market integration, aiming at the creation of one single European market (internal market law). Admittedly, economic law does not address the primary causes of income inequality which, as we are told, result from the natural operation of the free market under changed geographical (globalized) and technological circumstances. Nevertheless, we submit that economic law has a distinct role to play in helping to reduce income inequality and this role paradoxically lies in one of the core tasks of economic law, which is assuring that markets are working optimally and that any market failures are remedied by appropriate regulatory intervention. The abovementioned rules of economic law address market imperfections such as information asymmetries, unequal bargaining power and market power, and market integration rules seek to abolish regulatory barriers to market entry.

Economic and theoretical research show that this core task of economic law is particularly relevant for the concern of income inequality. Economists, with the Noble Price winner Joseph E. Stiglitz as the early protagonist, have pointed to the increased importance of so-called "economic rents" in the economy as an additional explanation for rising income inequality during the last decades.[11] Persistent economic rents point to the existence of market failures. There is evidence both for the U.S. and the EU that substantial rents exist in the economy by way of rising corporate profits (product price-cost markups) from 1980 onwards, associated with the rise of market power in the economy.[12] Some of these increasing rents seem to result also from regulatory barriers erected by government to shield providers of goods and services from competition and market forces.[13]

In this context, the concept of "economic rent" has a specific meaning and refers to the extra income that firms, professionals, workers and corporate management receive above the level that they would require to put their products and services on the market or to take up their jobs.[14] According to these economists, the capture of rents in the economy entails a transfer

---

[8] Contrary, e.g., to the car manufacturing industry which until the 1990s created many hundred of thousands of jobs.

[9] B. Milanovic, op. cit., p. 109.

[10] See, e.g., W. Van Gerven, XIII Handels- en Economisch Recht, Deel I Ondernemingsrecht, vol. A, 3d ed., 1989, E. Story-Scientia, p. 11-12.

[11] J.E. Stiglitz, *o.c.*, p. 35-64 (Chapter 2 "Rent seeking and the making of an unequal society") and p. 65-103 (Chapter 3 "Markets and Inequality").

[12] For the US, see J. De Loecker and J. Eeckhout, The Rise of Market Power and the Macroeconomic Implications, August 24, 2017, 44 p.; for the EU, see J. De Loecker and J. Eeckhout, Global Market Power, 2018.

[13] See, as regards occupational licensing, Economic report of the President and the annual report of the Council of Economic Advisors to the U.S. Congress (February 2016), p. 42-46.

[14] J.E. Stiglitz, o.c., p. 39-41 and 48-64; J. Furman, Equality and Efficiency: A Global Perspective, World Bank Group Macroeconomic and Fiscal Management Global Practice Annual Forum, 2 May

of wealth from consumers to certain (powerful) firms or regulated professions, from SME's to big firms and, within the firm, from workers to shareholders (investors).[15] If this explanation is correct, the good news is, so economists say, that government can reduce inequality without hurting market efficiency, by changing how the rents are divided or even reduce inequality while increasing efficiency by acting to reduce these rents.[16] In other words, reducing income inequality and ensuring efficiency might go hand in hand: one would address market failures and regulatory barriers, and increase efficiency, but at the same time reduce economic rents and income inequality. From that angle, economic law is relevant as its core task is precisely to ensure the efficient operation of the free market by tackling market failures (market power and information asymmetries), and to pursue market integration by eliminating unjustified regulatory barriers to market entry.

III. Market and competition: correcting too much market power

1. Market power and income inequality

The classic example of economic rents are the profits that a firm in a monopoly position, or possessing significant market power, extracts from charging the consumer high supra-competitive prices.[17] Too much market power, and a fortiori monopoly power, enables undertakings to raise prices above the competitive level, to the detriment of the consumer. This normally leads to inefficient allocation of ressources. By the same token, big firms with significant market power may charge SMEs supra-competitive prices. Alternatively, large buyers may pay SMEs too low prices (monopsony).

Recent economic and legal literature stress the relation between market power and income inequality. First, a general link is identified: higher prices and profits are transferring wealth from consumers to firms with market power. In turn, these firms distribute profits disproportionately to people with more resources and often higher incomes as they own a bigger share of financial assets in firms.[18] There is empirical evidence confirming this link between market power and wealth/income inequality.[19] Second, one may intuitively discern a more specific link from the type of products and services for which prices are increased. Price increases for basic products and services, such as basic foodstuffs, healthcare

2016, p. 8-9; J. Furman and P. Orszag, A Firm-level Perspective on the Role of Rents in the Rise of Inequality, presentation at "A just Society" Centennial Event in Honor of Joseph Stiglitz, Columbia University, 24 p. The economic report of the President and the annual report of the Council of Economic Advisors explicitly mention the existence of "economic rents" as an explanation of growing incoming inequality.

[15] See, e.g., J.E. Stiglitz, o.c., p. 39-41 and 48-64

[16] J. Furman, o.c., p. 8-9.

[17] J. Furman, o.c., p. 11: "[t]he overall point is that to the extent industries look more like oligopolies than perfectly competitive markets, they will generate economic rents. In the absence of some countervailing public purpose, such rents reflect an erosion of the surplus that would otherwise accrue to consumers in a competitive market. These rents can become manifest in the form of higher prices for consumers, reduced quality and variety of products and services, and even a reduction in innovative activity;" J.E. Stiglitz, *o.c.*, p. 53-59.

[18] J. Baker en S. Salop, "Antitrust, Competition Policy, and inequality" (2015), The Georgetown Law Journal, Vol. 104, 2015, p. 1-28 (11); L. Kahn and S. Vaheesan, Market Power and Inequality: The Antitrust Counterrevolution and Its Discontents, Harvard Law & Policy Review, Vol. 11, 2017, p. 235-294 (238-240); and the Working paper OESO secretariat, "Market Power and Wealth Distribution", 27-28 October 2015, p.3.

[19] See Working paper OESO secretariat, cited in previous footnote. According to the study, the share of wealth of the top 10% of households (by wealth) rises by 10 to 24% in households in the presence of market power.

products, gas and electricity, insurance affect persons with lower incomes disproportionately harder because they spend a great part, if not all, of their income to these products or services. Third, the charging by dominant buyers of too low prices may also lead to wealth transfers from sellers, often SMEs.[20]

The general link between market power and firm owners' wealth accumulation was underlined more than half a century ago already in Bale junior's long foreword to the revised edition of the famous treatise of Bale & Means, *The Modern Corporation and Private Property* (1968): "[a] mature corporation typically does not call for investor-supplied capital. It charges a price for its products from which it can pay taxation, costs, depreciation allowances, and can realize a proft over and above all these expenses. (...) This is a phenomenon not of "investment", but of market power. (...) The result has been that more than 60 % of capital entering a particular industry is "internally generated" or, more accurately, "price-generated" because it is collected from the customers. (...) The corporation becomes the legal "owner" of the capital thus collected and has complete decision-making power over it. (...) On the other hand, its stockholders, by now gransons or great-granssons of the original "investors" or (far more often) transferees of their transferees at thousands of removes, have and expect to have through their stock the beneficial ownership of the assets and profits thus accumulated and realized, after taxes, by the corporate entreprise."[21] In that sense, the general link between market power and wealth distribution finds its germs way back in the institute of the modern corporation.

An important new insight from economic research is that the rise of market power since the 1980s apparently has macroeconomic implications. On the one hand, studies show for the US and the EU the association between the increase in markups (profits) and the increase in market concentration in many sectors of the economy over the last 30 years.[22] According to one hypothesis in the economic literature, the simultaneous rise in concentration and markups is caused by a decrease of competition in the economy – the rise of market power – through increased concentration in many sectors (e.g. due to merger and acquisitions activity). The other hypothesis submits that this trend is not caused by less competition, but by much more intensive competition. The globalization of the economy and technological changes would favour the most productive companies: they make innovative and superior products for the consumer thereby outcompeting their competitors. As a result, market concentration goes up and many sectors in the economy are increasingly dominated by a few "superstar firms" with high profits margins. It seems that among economists the hypothesis of the rise of "superstar firms" is gaining ground.[23] On the other hand, higher profits (markups) lead to a higher capital share of economic production and hence to a decreasing share labor share in the economy.[24] Economists have explained that an increasing capital share and a decreasing labor share is closely related to growing income

[20] L. Kahn and S. Vaheesan, o.c., p.239.
[21] A. A. Berle and G.C. Means, The Modern Corporation and Private Property, revised edition, 1968, Harcourt, Brace & World Inc., New York, p. xv. I am grateful to Professor Rik Swennen for bringing this passage to my attention.
[22] Supra, note 11, and C. Shapiro, Antitrust in a Time of Populism, International Journal of Industrial Organization, 2017.
[23] See for an overview of the debate: J. Von Reenen, Increasing Differences between firms: Market Power and the Macro-Economy, July 29, 2018 paper for Jackson Hole 2018, p. 14-22, and C. Shapiro, supra note 21.
[24] Autor, David, et al. The Fall of the Labor Share and the Rise of Superstar Firms, MIT and NBER paper 2017.

inequality. More people earn income from labour while less people earn income from investments (capital). A decrease in labor share therefore leads to more income inequality. [25]

2. Some implications for competition law

The lesson for lawyers, under any hypothesis, is that competition law has a valuable role to play for society. Indeed, the purpose of the competition rules is to prevent the concentration of market power and to challenge the unlawful exercise of market power.[26] If there is a link between market power and income inequality, the application of competition may contribute to reducing income inequality.

2.1 Goals

Article 101 TFUE prohibits agreements between competitors who restrict or eliminate price competition amongst themselves to charge higher prices to clients and consumers (price cartels), or otherwise restrict competition (quota, allocations of markets and customers). Article 102 TFUE prohibits undertakings with a dominant position on the market to abuse it, for example by charging inequitable or excessive prices (exploitative abuses) or excluding or weakening actual or potential competitors (exclusionary abuses), to the detriment of consumers. The EU and national merger control legislation will prohibit mergers between companies that significantly impede effective competition. Competition authorities assure that the combined entity does not acquire market power enabling it to increase prices.[27]

The Court of Justice of the European Union has refused to be pinpointed on a narrow definition of the goals of competition law. It has declared that the function of the competition rules is “to prevent competition from being distorted to the detriment of the public interest, individual undertakings and consumers, thereby ensuring the well-being of the European Union.”[28] On the other hand, the Court also made clear that competition law only pursues, in a direct way, pure economic goals, i.e. the protection of the competitive process (rivalry between firms) and consumer welfare.[29] The European Commission focuses on the pursuance of consumer welfare and economic efficiency.[30] While we agree that competition rules should not embrace income redistribution as an explicit goal (other public policies like tax policy and social security schemes are far more effective tools), the recent economic

---

[25] See e.g. Bormans, Y. and Abraham, F., De impact van supersterbedrijven op de inkomensverdeling, Vives Briefing, 2018/05.

[26] According to the case law, the mere possession of a dominant position does not constitute a violation of the competition rules.

[27] Guidelines European Commission on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ n° C 31/5), point 8.

[28] Judgment of the Court of 17 February 2011, TeliaSonera, case C-52/09, ECR 2011, I-527, point 22. See J.W. van de Gronden, Europees mededingingsrecht en niet-economische belangen, *S.E.W.*, 2016, p. 473.

[29] Judgment of the Court of 6 October 2009, GSK, case C-501/06 P, point 63.: the competition rules “aim to protect not only the interests of competitors or of consumers, but also the structure of the market and, in so doing, competition as such. For a finding that an agreement has an anti-competitive object, it is not necessary that final consumers be deprived of the advantages of effective competition in terms of supply or price.”

[30] See Guidelines of the Commission on the application of Article 101(3) TFUE**,** OJ C 101/97 of 27.4.2004, point 13: “[t]he objective of Article [101] is to protect competition on the market as a means of enhancing consumer welfare and of ensuring an efficient allocation of resources.” And the Commission’s Communication on its enforcement priorities in applying Article 102 TFUE: “[t]he aim (...) is to ensure that dominant undertakings do not impair effective competition by foreclosing their competitors in an anti-competitive way, thus having an adverse impact on consumer welfare, whether in the form of higher price levels than would have otherwise prevailed or in some other form such as limiting quality or reducing consumer choice” (PB. C 45/7, 24.2.2009, point 19).

findings on the macro-economic implications of market power suggest that, in pursuing even pure economic goals, competition law may have progressive distributive effects and address, together with the other public policy tools, the concern of income inequality.[31] In that regard, we refer to the related debate within the antitrust community, stirred by EU Commissioner Vestager, as to whether competition law should include values of fairness, as opposed to pure efficiency considerations. While DG COMP Director Laitenberger reportedly emphasized that fairness is not an operational concept, it has been observed that it can be a useful source of inspiration when a competition authority is exercising its discretion under established legal anitrust standards to decide individual cases.[32]

2.2 Effective enforcement, priority-setting and legal standards

In that context, turning to the specifics of competition law and policy, the European Commission and national competition authorities can indirectly contribute to reducing income inequality.[33] And some refinements can be made to the legal standards for applying the competition rules.

First, it is obvious that the economic findings favour the effective enforcement of competition rules. The application of competition law – through attacking price cartels, abuses of dominance and anti-competitive mergers -- will contribute to an efficient economy in which competition will ensure that undertakings sell products and services at lowest prices and highest quality to consumers. To use the words of one legal scholar in economic law: “one [leaves] the coordinating function to the market mechanism of demand and supply, whereby it is assumed that, *thanks to the effective competition* between the undertakings, the available production factors will be employed where they can meet most advantageously, i.e. *with the lowest costs and profits*, the demand of users and consumers.”[34] In other words, the competitive process, i.e. the process of rivalry between undertakings, will prevent the long term existence of non-productive rents reflected by higher prices in the economy.

Second, competition authorities will normally give priority to the treatment of cases in sectors which are characterized by high market concentration, important barriers to entry and a general weakening of the competitive structure of the market. Methods exist for identifying the sectors in the economy where substantial rents (high profits) are concentrated in the hands of a few or only one powerful company.[35] Competition authorities must be vigilant that restrictive competition practices in these sectors do not further impair competition. The European Commission sees digital markets as a priority for competition policy. For example, it conducted investigations against Google (concerning its online search services and the Android steering system), Amazon (distribution of e-books) and Qualcomm (mobile devices). However, the Commission is also ready to examine the financial sector, as is shown by the MasterCard-investigation into the alleged charging of too high costs for payment with

---

[31] Compare with L. Kahn and S. Vaheesan, o.c., 294.
[32] See D. Gerard, Fairness in EU Competition Policy: Significance and Implications, JECLAP, 2018, 211-212 (reporting on the 3th GCLC Annual Conference where the Commissioner and the Director General were speakers).
[33] See J. Baker and S. Salop, “Antitrust, Competition Policy, and Equality”, The Georgetown Law Journal 2015, Vol. 104:1 p. 13-26.
[34] W. van Gerven a.o, Handels- en Economisch Recht, Part I, Ondernemingsrecht, Vol. A, in Beginselen van Belgisch Privaatrecht, 3d edition, 1989, p. 47.
[35] See, e.g., the selection proposed by *The Economist* on basis of “economic moats”, a notion popularized by Warren Buffett referring to a firm’s ability to maintain competitive advantages over its competitors in order to protect its long-term profits competing firms (The Economist, 17 November 2018, Special report Trustbusting in the 21th centrury, p.9).

payment cards to consumers and retailers.[36] On the other hand, the OECD rapport (2013) on competition in the food industry also pointed to high market concentration in the production of foodstuffs.[37]

Third, competition authorities can prioritize cases that benefit lower incomes by focusing enforcement on essential products and services as they represent an important part of the budget of lower incomes.[38] We refer to basic foodstuffs, retail trade, healthcare products, pharmaceuticals, insurances, gas and electricity, legal and medical services, internet access, etc.[39] In this regard, by way of example, the BCA imposed in the context of two settlement procedures fines on companies for participating in a price cartel with respect to healthcare products[40], and on a company for imposing minimum resale prices and the exclusion of low price competitors regarding fresh baker's yeast.[41] A competition authority can also pay special attention to the exercise of buying power of dominant companies against small producers (SMEs), for example in the agricultural sector. Conversely, competition authorities may invest less resources in certain luxury products (the example of sailing yachts).[42]

Fourth, as regards Article 101 TFUE, the consensus is that competition authorities have, with the help of leniency programs, effectively pursued and punished price cartels to the benefit of the European consumer. However, as far as the assessment and approval of competitive practices of undertakings are concerned, competition authorities may in appropriate cases take the interests of lower incomes more into account. For example, in examining whether an anti-competitive agreement between companies may benefit from exemption under the criteria provided in Article 101, paragraph 3, TFUE, competition authorities may favourably consider economic advantages from the agreement that allow a fair share to low-income and vulnerable population groups. The case law of the Court of Justice does not seem to prevent a competition authority from making such distinction between consumers.[43] Competition authorities may also adopt a critical view in reviewing joint purchasing arrangements concluded between powerful firms in monopsonistic or oligopsonistic markets.

Furthermore, competition authorities may look more closely at collusive practices among firms affecting the labour market, like no-poach and wage fixing agreements.[44] In that regard,

---

[36] Commission Decision of 22 January 2019, Case COMP/AT.40049 MasterCard II (imposing a fine of 570 million euros).

[37] OECD Competition Committee, Competition Issues in the Food Chain Industry, 2013, p. 15 (figures only available for mid 1990s). The "Belgium" section of the report shows that the Belgian authorities (investigation 2012) are concerned about the high Belgian retail prices, in comparison with prices in neighboring countries.

[38] See J. Baker and S. Salop, o.c., p. 18.

[39] See on high prices in Belgian supermarkets compared to neighbouring countries: R.J. Van den Bergh, Dure boodschappen in België, welke boodschap voor het mededingingsrecht, S.E.W., 2014, p. 23 – 65.

[40] Decision of the auditorat, BMA-2015-I/O-19-AUD of 22 June 2015, case CONC-I/O-06/0038 – Hausses coordonnées des prix de vente de produits de parfumerie, d'hygiène et de droguerie.

[41] Decision of the auditorat, n° BMA-2017-I/O-07-AUD of 22 mars 2017, case MEDE-I/O-13/0001: Algist Bruggeman N.V.

[42] See J. Baker and S. Salop, o.c., p. 19.

[43] In the judgment of 23 November 2006 (C-238/05, Asnef-Equifax) the Court declared: "[i]n order for the condition that consumers be allowed a fair share of the benefit to be satisfied, it is not necessary, in principle, for each consumer individually to derive a benefit from an agreement, a decision or a concerted practice. However, the overall effect on consumers in the relevant markets must be favourable." It is submitted that a fair share going to consumers with a low income may have an overall favourable effect on consumers in the relevant market.

[44] See the recent statements of the President of the French Competition Authority at a conference (reported in mlex 5 March 2019).

a court in the US has opined that "[a]ntitrust law does not treat employment markets differently from other markets in this respect."[45]

Fifth, Article 102 TFUE is an obvious candidate to check abusive conduct of superstar firms and the extraction of unproductive economic rents. This provision does not prohibit companies to gain market power and become a dominant firm, as the Court acknowledged.[46] Companies may become superstar firms on their own merits. Being innovative is good for society and should be applauded, not punished. Nevertheless, Article 102 TFUE does prohibit a dominant firm from engaging in foreclosure conduct by excluding or weakening actual or potential competitors (exclusionary abuses). On this point, the Court seems to take a rather restrictive approach. While the starting point is anti-competitive foreclosure of competitors, i.e. the protection of the competitive process, the Court has endorsed in the Post Danmark and Intel cases the "as efficient competitor" standard. Only rivalry between *efficient* competitors is protected. One may wonder whether the strong focus under the article 102 TFEU on efficiency considerations may lead, in some cases, to under-enforcement vis-à-vis dominant firms, especially in digital markets which are very much characterized by network and scale effects.[47] Here, one may argue for relaxing the 'as efficient competitor' standard to some extent.

National competition authorities may also give more priority to investigating exploitative abuses. Excessive pricing cases are classic examples of rent extraction from consumers. While Article 102(a) TFUE expressly prohibits charging "unfair purchase or selling prices", competition authorities are reluctant in starting these cases, for a number of valid reasons.[48] More recently, the Commission and national authorities have nevertheless been willing to address practices of pharmaceutical companies imposing very high price increases with several 100%.[49] This increased attention to excessive pricing by dominant firms could be extended to other sectors, where high barriers to entry prevent the market from correcting itself and bringing high prices to normal competitive levels.

Sixth, there is a growing discussion as to whether merger control should be more strictly applied in certain respects and, hence, envisage more frequently blocking mergers in oligopolistic sectors. For example, some criticism has been voiced regarding the approval by the European Commission of the Facebook/Whatsapp merger.[50] On the other hand, the

---

[45] See Hoffer, D. And Prewitt, E., To hire or not to hire: U.S. cartel enforcement targeting employent practices, Concurrences, n°3-2018, 78-85, citing at p. 80: United States v. eBay, Inc., 968 F. Supp. 2d 1030, 1034 (N.D. Cal. 2012).

[46] Judgment of the Court of 6 September 2017, Intel Corporation, case C-413/14 P, points 133 and 134: "it is in no way the purpose of Article 102 TFEU to prevent an undertaking from acquiring, on its own merits, the dominant position on a market. (...) Competition on the merits may, by definition, lead to the departure from the market or the marginalization of competitors that are less efficient and so less attractive to consumers from the point of view of, among other things, price, choice, quality or innovation."

[47] For example, a competitor may be less efficient at the time of market entry and may become later as efficient when achieving the required economies of scale. Therefore, application of the "as efficient test" may lead to conduct of a dominant platform preventing the emergence of an as efficient rival. Furthermore, also less efficient competitors may exert a downward competitive pressure on dominant firm's prices.

[48] See the written contribution "Excessive Pricing" from the European Union dated 17 October 2011, submitted to Working Party n° 2 of the Competition Committee of the OECD.

[49] See the written contribution "Excessive Pricing in Pharmaceutical Market" from the European Union dated 23 November 2018, submitted for the 130th OECD Competition Committee meeting on 27-28 November 2018.

[50] Case N° COMP/M.7217 – Facebook/WhatsApp (17 May 2017).

Commission has recently blocked on the same day two mergers as anti-competitive, for one of which it faced serious criticism from certain Member States.[51]

Apart from the appropriate level of merger enforcement, an interesting question is what interests the competition authorities should take into consideration in the assessment of mergers. In that regard, it seems possible to take account of the interests of lower incomes in the design of commitments offered by the merging companies. In the literature, the example is mentioned of a competition authority approving a problematic merger between two pharmaceutical undertakings on the commitment that advantageous prices are offered to persons with low income in the absence of insurance coverage. Another, non-hypothetical example, is the approval by the Federal Communications Commission (FCC) of a merger between two telecom companies on the commitment that cheap internet access subscriptions are offered to the lowest incomes.[52] Of course, commitments must comply with the basic conditions prescribed in the relevant legislation. [53]

A separate question is whether the competition authorities should be allowed to consider the workers' interests of the merging firms. A concentration may lead to substantial synergies resulting in lower prices and better products, but also involve the closure of factories/offices and job losses. Will the focus only be on consumer welfare or also on workers' interests? The answer is that the EU and Belgian merger control regime will only look at the effects of the merger on the competitive structure of the relevant markets: will the combined entity concentrate too much market power and be able to charge higher prices to the consumers? Any social consequences of the concentration will be disregarded. Two observations can however be made. On the one hand, organizations representing workers might intervene as "interested parties" in the proceedings before the competition authorities and submit observations on the competitive effects of the merger. Their input can be useful for assessing any efficiencies invoked by the parties to justify the merger's effects on competition and in particular potential harm to consumers. Competition authorities are in principle tough on accepting an efficiency defense from merging parties, i.e. that efficiencies (sometimes resulting in lay-offs) will be passed on to the consumer.[54] Also, the workers' views can be useful for the appraisal of the merging parties' commitments to obtain clearance of the transaction. Typically, such commitments contain the divestiture of a business (with workers on the payroll) to a suitable purchaser. The parties must show that the divested business is a commercially viable business competing effectively on the market.[55] Trade unions' views can offer an important "reality check" for appraising the effectiveness of the commitments that are offered by the merging parties.

On the other hand, more fundamentally, some commentators have suggested that the competitive analysis of a merger might be supplemented with a "public interest" standard that weighs in social consequences. The antitrust legislation of some countries allows competition authorities to complement their merger analysis with public interest factors, such as any impact on employment. [56] One well-known example is the competition legislation of South-

---

[51] Case N° COMP/M.8677 – Siemens / Ahlstom (6 February 2019).
[52] Zie J. Baker and S. Salop, o.c., p. 20.
[53] Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (OJ n° C 267/1 of 22 October 2008, points 9 et sqq.
[54] See §§ 76 to 88 of the Guidelines of the Commission on the assessment of horizontal mergers, (specifiying the strict conditions which efficiency claims from the parties must meet), OJ C 31/5 of 5 February 2004..
[55] Ibid. points 22 et sqq.
[56] H. First and E. Fox, Philadelphia National Bank, Globalization, and the Public Interest, 80 Antitrust Law Journal 307, 2015.

Africa, where the competition authority considered local employment and production interests in the analysis of two notable mergers, Wal-Mart/Massmart[57] and AB Inbev/Miller.[58] In both cases the merging parties committed to setting up an investment fund for improving the local production and supply chain and increasing its competitveness. An element of industrial policy is introduced. Admittedly, the risk of introducing a public interest standard is that competitive authorities do no longer confine themselves to technical expertise in competitive analysis but make political choices for which they lack the required legitimacy.

IV. Public regulation: dealing with unequal negotiating power, regulatory barriers and unfair competition

The argument with respect to economic rents and income transfers from consumers to (some) firms, can be transposed to the area of public regulation. The economic literature explains that economic rents may result from market imperfections, i.e. information asymmetries and unequal negotiating power between market parties. Also, government may institute regulatory barriers that shield market operators from competition and market forces, affording them to extract rents.[59] Furthermore, differences in social protection between Member States and preferential tax regimes may lead to unfair competition between companies and have an adverse impact on income distribution.

At present, European economic law provides a series of tools to address these market imperfections and to fight unfair competition.

1. Adressing information asymmetries and unequal bargaining power

The first source of economic rents are market transactions between unequal parties that lead to inequitable prices and conditions to the benefit of the stronger party.

Textbooks on economic law devote an important part to the analysis of legislation that protects the "weak" consumer in a variety of transactions, such as purchases of consumer goods, granting of credits and loans, opening bank and saving accounts, investment in financial assets and the like. Numerous directives approved by the European legislator during the last 40 years in the area of consumer protection, subsequently implemented by the EU Member States in their national legislations, have greatly contributed to the high level of protection of the "weaker" party in all kinds of daily transactions.

In that way, the government has intervened against a type of market imperfection that economists call "asymmetric information", i.e. the difference in negotiating power between market parties. One contract party may exploit its position of power by imposing financial conditions favorable to it and benefit from an economic rent, and income transfer, to the detriment of the other party. The Court of justice has recognized that important parts of European consumer law seek to neutralize this type of market failure: "the system of

[57] South African Competition Tribunal, Order of 9 mars 2012, Wal-Mart / Massmart, regarding the acquisition by Walt-Mart, the world largest supermarket chain, of Massart, the South-African retailer and wholesaler of foodstuffs, that purchased its supplies from local producers (SMEs). The acquisition would have led to more foodstuffs being imported from abroad. The Competition Tribunal approved the acquisition on the condition that Walt-Mart established an investment fund providing for training of local foodstuff producers to become part of the supply chain of Walt-Mart.

[58] South African Competition Tribunal. Order of 30 June 2016, Anheuser-Busch InBev / SABMiller. The world's largest beer producer acquired the second largest beer producer. AB Inbev would post-merger be able to switch the supply of certain inputs produced locally for SABMiller, to foreign suppliers. The Competition Tribunal approved the transaction on the condition that the merging parties create an investment fund for developing the agricultural supply chain and helping local farmers.

[59] See e.g. J.E. Stiglitz, *o.c.*, p. 42-44 and 45 ("asymmetries of information"); Economic report to the President, p. 38, referring to "the unearned benefits of preferential government regulation."

protection introduced [...] is based on the idea that the consumer is in a weak position vis-à-vis the seller or supplier, as regards both his bargaining power and his level of knowledge. This leads to the consumer agreeing to terms drawn up in advance by the seller or supplier without being able to influence the content of the terms."[60] According to the Court, the situation of imbalance between the consumer and the seller or supplier may only be corrected by positive action unconnected with the actual parties to the contract. This means for example that the national court must have the power to apply of its own motion the system of protection.[61] A corner stone in combatting this type of economic rents is Directive 93/13 which prohibits unfair clauses in consumer agreements. In this respect the Court has recognized the special importance of this protection for the rental of private residences: "[t]he consequences of the inequality existing between the parties are aggravated by the fact that, from an economic perspective, such a contract relates to an essential need of the consumer, namely to obtain lodging, and involves sums which most frequently, for the tenant, represent one of the most significant items in his budget, while, from a legal perspective, this is a contract which, as a general rule, is covered by complex national rules about which individuals are often poorly informed."[62]

In that regard, we also refer to the concept of universal services in European law for utility sectors such as natural gas, electricity and telecommunications that guarantee to households and vulnerable customers (low income) a special level of protection (right to be supplied, prohibition to disconnect gas and electricity supply, reasonable and social tariffs, etc.). This concept aims to neutralize the weak negotiating position of the "weak" consumer by imposing public service obligations on natural gas and electricity producers. The Court of justice is ready to give a broad interpretation to the obligation on suppliers of electricity and gas to ensure security of supply and the accompanying high level of consumer protection in relation to the transparency of the contract terms and conditions.[63]

2. Eliminating unnecessary regulatory barriers

The second source of economic rents relates to regulatory barriers erected by government to shield providers of goods and services from effective competition and enable them to charge supra-competitive prices to consumers and extract income from them.

The rules on free movement of goods, services, persons and capital (the "four freedoms") laid down in the Treaty of Rome (1957) [64] aim to eliminate cross-border regulatory barriers and unify national markets into one single, EU-wide market.[65] The consistent application of these rules over so many years can be viewed as directed at reducing non-productive rents in the economy – rents that result from the many cross-border regulatory barriers existing at the time of signature of the Rome Treaty. Market operators are permitted to provide products

---

[60] Judgment of the Court of 27 June 2000, Océano Grupo Editorial SA, C-240 tot 244/98, point 25.

[61] See with regard to Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29): arrest Mostaza Claro, C-168/05, point 28; with regard to Council Directive 87/102/EEC of 22 December 1986 on consumer credit (OJ 1987 L 42, p. 48): arrest Rampion and Godard, C-429/05, point 65; and with regard to Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on the sale of consumer goods and associated guarantees (OJ 1999 L 171, p. 12): arrest Froukje Faber, C-497/13, point 42.

[62] Judgment of the Court of Justice of 30 May 2013, Dirk Frederik Asbeek Brusse, C-488/11, point 32.

[63] See e.g. Directives on common rules for the internal market in natural gas and electricity: judgment of 23 October 2014, Alexandra Schulz, C-359/11 and C-400/11, point 45 et sqq.: tariffs for the supply of electricity and gas may not be adjusted without giving households adequate notice, before that adjustment takes effect, of the reasons and preconditions for the adjustment, and its scope.

[64] See Articles 28, 45, 49, 56 and 63 TFUE.

[65] Judgment of the Court of Justice of 5 May 1982, Schul, case 15/81, ECR 1982, p.1409.

and services freely across internal borders within the EU, and such EU-wide competition reduces rents to the efficient economic minimum. The Service Directive 2006/123/EU that seeks to create a unified competitive services market deserves special attention.[66] Furthermore, the Treaty rules on State aid prohibit national governments to confer economic advantages favouring specific market operators without a justification grounded in the public interest.

However, both the internal market rules – that is the four freedoms guaranteed by the Rome Treaty and the many hundreds of harmonization directives needed to define minimum rules and create a unified market for the numerous products and services – and the State aid rules do not introduce unbridled free markets and competition, with lowest prices as the only worthy purpose. From the start, European Union law has reserved a central place for the many goals of public interest and considered them as the decisive criterion to define the optimal degree of cross-border trade and competition (consumer protection, environmental protection, public health, protection of intellectual property, general economic development, etc.).[67] In numerous cases, the Court of Justice ruled on the compatibility of national regulatory barriers with the four freedoms. Methodologically, the Court will examine first whether the regulatory barrier restricts cross-border trade and, in the affirmative, whether the regulatory barrier can be justified as proportionate to the public interest.

Here we see that law and policy take precedence over markets and economic theory which only focus on efficient allocation of resources, not on equitable outcomes. The basic structure of European economic law is founded on the idea that the public interest – not specific economic interests of market participants – will determine how much free market and competition is justified and how income created by economic activity is distributed. In that exercise, the proportionality principle plays a crucial role in striking the proper balance between competitive market forces and the public interest.

A recent example of this balancing approach can be found in the field of regulated professions. There is the study commissioned by DG Internal Market on regulated professions within the meaning of Directive 2005/36/EG regarding the mutual recognition of professional qualifications.[68] The study shows that the license requirement to access a regulated profession ("*occupational license*") can lead to economic rents for licensed professionals to the detriment of consumers and excluded professionals: higher prices for the consumer and an income and salary gap between professionals.[69] The study suggests widespread use of license requirements in the European economy, higher prices for services and an increase of income inequality between licensed and excluded professionals.[70] In the recent Directive 2018/958/EU, the European legislator adopted a common approach at Union

---

[66] Directive 2006/123/EC of the European Parliament and the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36).

[67] See justification grounds of Articles 36, 45, 51, 52 and 65 TFUE and rule of reason formulated in the *Cassis de Dijon*-jurisprudence of the Court of Justice.

[68] Study M. Koumenta en M. Pagliero, Measuring Prevalence and Labor Market Impacts of Occupational Regulation in the EU, 16 January 2017 (available on the DG Internal Market website). This topic also draws attention in the US: U.S. Department of the Treasury Office of Economic Policy, the Council of Economic Advisors and the Department of Labor, Occupational licensing: A framework for Policymakers, July 2015.

[69] Study, p. 14-15.

[70] Ibid., p. 57: about 22% of workers in the EU are subject to these licenses (in Belgium the percentage would however be lower); occupational licensing is associated with an aggregate wage premium of about 4 %, while for some groups such as crafts the premium can be much higher; licensing benefits those at the top of the income distribution and therefore contributes to wage inequality in the EU.

level, preventing the adoption of disproportionate legislative, regulatory or administrative requirements restricting access to, or the pursuit of, regulated professions. When EU Member States want to introduce new, or amend existing, requirements, they must show that these requirements are suitable for the attainment of the public interest objective pursued and will not go beyond what is necessary to attain that objective. The proportionality assessment must be carried out in an objective and independent manner, including where a profession is regulated indirectly by giving a professional body the power to regulate. In that regard, the Directive warns that, although these bodies are well placed to identify the best way of meeting the public interest objectives of the profession, their policy choices could also provide benefits to established operators at the expense of new market entrants.[71]

3. Combatting unfair competition – towards a 'fairer' market

Economic law cannot only eliminate non productive rents by ensuring a *free* market and effective competition, it can also address income inequality by creating a level playing field, notably in the field of social legislation and taxation, and ensure *fair* competition between companies. Illustrative is the recent reform of the Posting of Workers Directive 96/71.[72] According to that Directive, posted workers were subject to the same rules as host Member State employees in fields such as health, safety and hygiene. However, the employer was not obliged to pay a posted worker more than the minimum rate of pay set by the host country.[73] The Commission has pointed to the negative consequences of this salary gap: on the one hand, posted workers will often be remunerated less for the same work than local workers; on the other hand, there is unfair competition to the detriment of undertakings of the host country as they must comply with all provisions regarding salary and labor conditions of the latter country.[74] There is a link with income inequality. First, posted workers benefit from limited social protection as they were only entitled under the Directive to minimum wages. Second, reduced competitiveness of the host country's firms may cause less employment in that country for local, often less-skilled employees in the building sector and processing industry where posted work is frequent. Under the motto "towards a deeper and fairer European labor market" the European Commission had proposed to include in the Posted Workers Directive the principle of equal pay for equal work. On 21 June 2018, the Council has agreed with the proposal and adopted a new Directive revising the Posted Workers Directive. The principle of equal pay for equal work essentially means that the remuneration of posted workers should be at the same level of the salary of local workers and paying the minimum wage will not suffice.[75] Therefore, posted workers will benefit from a higher wage, while posting and host country undertakings will create employment under equal competitive conditions. In the field of taxation, the European Commission makes under the motto "a fairer EU single market" use of State aid rules to attack selective income tax advantages that

[71] Directive (EU) 2018/958 of the European Parliament and of the Council of 28 June 2018 on a proportionality test before adoption of new regulation of professions (OJ L 173/25 of 9 July 2018), recital 14, Article 4 (5) and Article 6.

[72] Press release of the European Commission of 8 March 2016, "Commission presents reform of the Posting of Workers Directive – towards a deeper and fairer European labor market."

[73] See Article 3, paragraph 1 of Directive 96/71/EC of the European Parliament and the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.

[74] See Press Release of the European Commission of 8 Mars 2016.

[75] Directive of the European Parliament and of the Council amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of service.

Member States conferred to companies.[76] In these cases, the Commission argued that transfer prices were used to unduly shift profits for reducing taxes paid by the company. The Commission considered that the company is given an unfair competitive advantage over other companies, typically SMEs that are taxed on their actual profits because they pay market prices for the goods and services they use.[77]

Interestingly, these initiatives introduce the notion of a "fairer" market and therefore do not merely concern an "efficiently" operating market, but also equitable outcomes. Concepts of economic law, such a competition under equal conditions, are used in two neighboring areas of law, i.e. labor pay and income taxes, to address certain causes of income inequality. We noted above that economic law has virtually no grip on the primary causes of income inequality as they are related to the natural operation of the free market under changed geographical (globalized) and technological circumstances. However, economic law can ensure that competition will occur on an "equal playing field" (equal conditions for pay, employment creation and taxes) and therefore fairly. The central question is what an "equal playing field" and "fair" competition are. These are questions that can be the subject of political debate (as is shown by the discussions concerning the revised Posted Workers Directive) or debate before the European Courts (the qualification of the tax treatment as State aid is disputed by the companies in question before the General Court of the European Union). Regardless of the outcome of the debate, politics and economic law do provide an answer to these questions.[78]

4. Sharing income among market participants on public interest grounds

Ultimately, the economic legislator makes all the time policy choices that directly affect income distribution between market participants. Market regulations have in varying degrees welfare redistributing effects for the different participants in the economic value chain (producers, distributors, end users, etc.). The European legislator has adopted and will adopt in future, using its harmonization powers, numerous legislative acts that regulate markets of products and services. This legislation pursues various goals, such as the establishment of the internal market, public health, intellectual property protection, consumer protection, the environment, energy security, etc. The legislator must make policy choices and strike the right balance between the interests of all participants to the economic value chain and the general interest. In that context, it is crucial that intensive lobbying activities undertaken by interest groups do not divert the legislator from pursuing the public interest.

V. The large firm: the distribution of the revenues from market activities

The firm is the third building block of the social market economy. The question is how economic law impacts on the distribution of the firm's revenues from the sale of products and services on the market – including the economic rents earned from the exercise of market

---

[76] Report on Competition Policy of the Commission 2015, 15 June 2016, COM (2016) 393, final. The European Commission started proceedings against alleged selective tax advantages to Fiat in Luxembourg, Starbucks in the Netherlands McDonalds in Luxembourg, Apple in Ireland, Amazon in Luxemburg, and the Belgian excess-profit scheme.

[77] Ibidem, p. 14.

[78] In the recent judgment of 14 February 2019, the General Court annulled the Commission decision according to which the Belgian excess-profit scheme constituted state aid (T-131/16, Belgium/Commission and T-263/16, Magnetrol International/Commission).

power, regulatory barriers to entry, intellectual property rights, etc. -- amongst the "stakeholders" of the firm: shareholders (investors), workers and management.

Here, we are pushing the limits of economic law. The distribution of value created by firms is is a matter of policy and social dialogue between workers and entrepreneurs. This matter falls largely outside the ambit of European Union law.

As far as economic law is relevant, one will look at company law that deals with relations between the corporation's governance and shareholders. In large corporations, executive decisionmaking bodies enjoy significant autonomy: the more the shareholder structure becomes impersonal and anonymous, the more these bodies will act independently from the company's owners. To the extent the relation with the company's shareholders is looser, the interests of other stakeholder groups will be more prominent in the company's decisionmaking: large and small shareholders, but also workers, managers and local and (supra)national community.[79] The independence of the executive decisionmaking function vis-à-vis shareholder interests is reflected in the duty of the board of directors to exercise its competences solely in the company's interest.[80] Even if the company's interest is restricted to the collective profit interest of present and future shareholders,[81] the board of directors "[must] take into consideration all other, above mentioned interests and, under circumstances, have these other interests prevail over the collective shareholder interests."[82]

First, the company's board of directors will make the proposal for the distribution of a dividend to the *shareholders*. Illustrative for the topic of income inequality is the interplay of opposing interests between the company's directors and the shareholders when investment decisions must be made. The company's financing mode of the investment, with own or extern resources, will directly impact on the magnitude of the dividend distribution. As has been observed, if the directors propose to limit profit distribution and increase auto-financing, they will have other interests, notably workers' interests on their side. Admittedly, any escalation of diverging interests will rarely occur because the company's directors have an interest in a reasonable distribution of profits to ensure any future appeal to new capital and guarantee the company's expansion.[83]

The conclusion is that the company's directors act as arbitrators in the accommodation of the many interests involved in the life of the firm and the distribution of the value created by the firm amongst the stakeholders.[84]

Second, the company's executive governance is involved in the formulation of proposals for decisions regarding the remuneration *of directors*, members of the *management committee* and other persons responsible for the daily management.[85] The remuneration must be proportionate to the responsibilities of persons holding executive positions in large

---

[79] W. van Gerven, Handels- en Economisch Recht, Part I, vol. A, in Beginselen van Belgische Privaatrecht, 3de Edition,1989, p. 30-31.This is notably the case for corporations whose shareholdings are spread amongst some shareholders with a limited shareholding percentage and a large number of small and anonymous shareholders.

[80] W. van Gerven, *o.c.*, p. 33.

[81] Cass. 28 november 2013, *R.W.* 2014-15, 974, *T.R.V.* 2014, 286, note, *T.B.H.* 2014, 854, note D. Willermain and *R.P.S.* 2014, 41, noot J.M. Gollier; J.-M. Nelissen Grade, "De la validité et de l'exécution de la convention de vote dans les sociétés commerciales" (noot onder Cass. 13 april 1989), *R.C.J.B.* 1991, 233; J. Heenen, "L'intérêt social", in *Liber Amicorum Paul de Vroede*, Kluwer, Brussel, 1994, II, 893-894.

[82] W. van Gerven, *o.c.* , p. 34.

[83] W. van Gerven, *o.c.*, p. 35.

[84] Compare with Kh. Liège 26 November 2013*, T.R.V.*, 2014, 319, note N. Cooreman.

[85] Zie S. De Geyter, Over remuneratie van bestuurders en topmanagers, *T.R.V.*, 2013, p. 6-23.

corporations. In corporations listed on the Stock Exchange, a remuneration committee must be established within the board of directors. As regards the contents of any remuneration policy, inspiration can be found in the *Financial Stability Board Principles for Sound Compensation Practices* for the financial sector which link remunerations to criteria that favor long term decisionmaking.[86]

Finally, the question may be raised whether it is appropriate to give workers, on top of their salary, a share in the profit distribution of the company. In his book *Global Inequality – A New Approach for the Age of Globalization* B. Milanovic pleads in favor of the gradual evolution towards a system of limited workers' capitalism, for example by the creation of fiscal stimuli for firms to issue shares to their workers. This will create in the long term more equality in the distribution of financial capital amongst the population, which will in the long run contribute to reducing income inequality.[87]

VI. Conclusion

We conclude that European economic law has a valuable role to play in contributing to less income inequality. As the economic activity in society is an important source of market income for many people, this role will only become more significant in future. The redistributive function of the State via taxes and social transfers has its limits. Economic law provides a series of tools that may contribute to alleviate income inequality by reducing rents in the economy while enhancing economic efficiency. First, the competition rules and the rules on EU market integration will ensure that companies offer products and services in the most efficient way, that is at lowest prices and profits. Hence, welfare transfers from consumers/SMEs to (large) companies can be limited to the efficient minimum and economic power (and market income) is spread amongst companies. In so far as there is a link between market power and income inequality, the effective application of competition law is to be welcomed for both efficiency *and* equitable (distributive) reasons. Values of fairness may inspire certain adjustments to established legal standards in antitrust cases. Second, the focused application of the competition rules in favor of people with low income and the enforcement of the extensive protective legislation to the benefit of weak and vulnerable consumers can help in addressing the concern of income inequality for these groups. Third, the primacy of politics, as implemented by economic law, will define the limits of free markets and competition by specifiying public interest requirements in combination with the proportionality principle. Fourth, economic law can by creating a level playing field (equal conditions of pay, employment and taxes) contribute to a fairer market and less income inequality. Finally, regarding the sharing of revenues earned by (large) companies from market activities amongst stakeholders, company law may play a role in providing that the duty of the company's executive will strike a proper balance between the diverging interests of stakeholders, and the promotion of workers' ownership in the firm.

***

[86] E. Janssens, Remuneratiecomité verplicht voor genoteerde vennootschappen, *T.R.V.*, 2011, p. 9-10. See FSB Principles for Sound Compensation Practices of 2 April 2009 and the progress reports of the FSB (available on the internet).

[87] B. Milanovic, o.c., p. 221.