Competition Policy's Social Paradox: Are We Losing Sight of the Wood for the Trees?

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ABSTRACT

The present contribution seeks to provide a normative justification for the better consideration of employment and its negative social consequences in the area of mergers. First, it challenges the widespread rhetoric of competition policy when advancing economic efficiency as a goal of competition policy. Second, it argues that the promotion of efficiency-driven, fierce competition comes at the expense of other sensible social values, such as job creation. As evidenced by statistics, this contribution unravels how job cuts follow from mergers and acquisitions. It argues (i) in favour of an overhaul of the efficiency defence with the aim of focusing more actively on job creation, or at least on balancing the number of job cuts with the number of newly created jobs and (ii) against anti-competitive practices such as social dumping and camouflage.

KEYWORDS Competition policy, employment, efficiency, social market economy, mergers

I. Introduction

The present contribution seeks to provide a normative justification for the better consideration of employment and its social consequences in the area of mergers. First, it challenges the widespread rhetoric of competition policy when advancing economic efficiency as a goal of competition policy. Second, it argues that the promotion of efficiency-driven, fierce competition comes at the expense of other sensible social values, such as job creation. Modern competition policy is based on a flawed assumption about how markets work in practice. It believes that by promoting efficiency, inefficient businesses will always leave the market. This policy, however, reveals its own fallacy. The exit of larger, or the merger of smaller businesses, is often associated with their downsizing or restructuring and, as a result, with job losses. A dogmatic application of competition policy serving economic calculus, rather than the social order, has silently ignored the negative impact of fierce competition on wages and employment.

Over the past many years of successful enforcement of competition laws, no attempts have been made to reverse the negative social impact that has been inflicted by aggressive forms of competition. One way of curbing this negative impact could be through job creation; for example, in lieu of corporate fines for breaches of competition rules, a reduction could be offered based on the number of jobs that are newly created or the 'public interest' clause could be activated more often.

By revisiting the classical concepts of 'price efficiency' and 'wage efficiency' and their theoretic assumptions, this contribution goes on to challenge the use of the 'efficiency' benchmark at both micro- and macroeconomic levels. The study of mergers and acquisitions, known as 'M&A', across several sectors of the economy seeks to demonstrate how internal growth and merger-specific efficiencies – some of which include the elimination of labour costs – have a negative impact on both wages and employment prospects. While 6.5% out of 3.7 million jobs losses as a result of M&A activity during a four-year period did not create a major macroeconomic imbalance, a closer look at recent M&A trends during 2013-2016 demonstrates that, indeed, job losses far outweigh the balance of job creation. In this respect, this contribution fills a gap in the scant literature on the impact of M&A activity on social welfare.

Ultimately, if economic efficiency always translates into the destruction of jobs, why should it, then, be afforded such a prominent role in modern competition policy rhetoric? Therefore, this contribution challenges the well-established assumption that 'new jobs replace old jobs' following a successful merger. This assumption is basically at odds with the fact that the majority of European Union (EU) mergers are approved, even if subject to conditions, leaving an insignificant percentage of mergers blocked since 1990 (27 or 0.38%).

As evidenced by statistics, this contribution unravels how job cuts follow from mergers. It argues (i) in favour of an overhaul of the efficiency defence with the aim of focusing more actively on job creation, or at least on balancing the number of job cuts with the number of newly created jobs, and (ii) against anti-competitive practices, such as social dumping and camouflage. There is yet another significant gap in the interdisciplinary literature on the intersection of competition policy and employment theories.[1]

A particularly under-researched area in competition law is the link between efficiency-driven, i.e., fierce competition, and its social impact on employment in the form of job losses or austerity. Job losses have been pursued in the name of efficiency with the aim of curbing public governmental debt, and austerity has ultimately brought about job cuts, which subsequently discourages public spending and consumption. Efficiency-driven, fierce competition has been tempered by attempting to integrate labour economics into competition policy. Although recent competition policy rhetoric refers to a 'highly competitive social market economy', its social feature remains an elusive

[1] The current disciplinary divide between micro-and macroeconomics has been best portrayed by Greenwald and Stiglitz as follows: 'The schizophrenia to which Keynesian economics gave rise was reflected in the way economics was taught: micro-economic courses, in which students were introduced to Adam Smith's invisible hand and the fundamental theorems of welfare economics, were followed by macro-economic courses, focusing on the failures of the market economy and the role of the government in correcting them. Two disciplines developed, with micro-economists looking upon the (lack of) rigor of the macro-economists, and denigrating the lack of theoretical foundations, while macro-economists castigated micro-economists for the obvious inappropriateness of their theories', in Bruce Greenwald and Joseph E. Stiglitz, 'Keynesian, New Keynesian and New Classical Economics' (1987) National Bureau of Economic Research Working Paper no. 2160, 3. As this contribution will demonstrate further, the 'grand' theories of both disciplines rest upon fundamentally flawed premises and often contradict each other or fail entirely in practice.

normative concept. The Treaty of Lisbon ambitiously seeks to meet a self-imposed, social target of 'full-employment'. The practicalities of the latter have been daunting.

II. A Hidden Paradox: Achieving 'Full Employment' through Competition Policy?

A hidden paradox has been the involvement of EU competition policy in the area of employment law, especially its active, or rather more passive, involvement in the delivery of Article 3's (3) 'highly competitive social market economy, aiming at full employment'. Understanding the social feature of competition policy is crucial for the concrete design of implementation tools with the help of which competition law could meet the social target of 'full employment'. It is, therefore, necessary to explore how the 'social' market economy could reconcile its social feature with the prevalent focus on the efficiency-driven feature of fierce or aggressive competition. How could it be possible to embrace solidarity, which is a derived social value? The latter is the pathway towards the achievement of 'full' employment. It seeks to secure prosperity and well-being for the whole of society. In contrast, a 'highly competitive' market economy is the antithesis of the social feature. In other words, fierce competition inevitably triggers negative effects for social welfare. Therefore, the desire for fierce, efficiency-driven competition cannot be absolute, i.e., *the most*, but *a highly* competitive market economy. In this section, it is therefore argued that such a moderate balancing of efficiency-driven competition is precisely what serves the social feature of competition policy. In so doing, this balancing unleashes the hidden paradox mentioned above.

The next research question, then, turns to whether the EU Treaty's legal framework is indeed able to meet its projected target of full employment. Regarding this question, the present contribution argues that, although this projection appeared utopian for many years, it can still be achieved, following the aftermath of years of European austerity and the harm inflicted through job cuts.

Unlike its predecessor, namely, the Treaty of Amsterdam's 'high level of employment', the Treaty of Lisbon appeared too often to have more than missed its target of 'full employment'. Towards this end, another factor has actively contributed, especially the missed unemployment targets from the 'convergence' criteria that are required to join the Eurozone.[2]

Finally, the present contribution seeks to demonstrate how competition law can, and should, integrate a more pro-active focus on employment-friendly considerations by carefully revisiting the intentions of corporations willing to merge, which could unnecessarily reduce the number of existing jobs. Through a careful consideration and balancing of the commercial interests of the merging parties, in particular their employment targets vis-à-vis newly created jobs and avoidance of unnecessary job cuts, competition law can successfully implement a social policy that effectively curbs the negative impact of fierce and aggressive competition and long-term austerity.

[2] See, e.g., Anca D Chirita, 'The Impact of the EU Crisis on Law, Policy and Society' (2014) 16 Cambridge Yearbook of European Legal Studies, 270.

A. Why Utopian 'Full Employment' is better than Dystopian Efficiency-Driven Fierce Competition

This sub-section argues that even utopian 'full employment' is better than dystopian efficiency-driven, fierce competition. First, fierce competition disguised as competitiveness, coupled with an increased pressure to cut down on public spending through austerity, has had negative effects on social welfare. Aggressive forms of job competition, i.e., employment-based competition, have led to a perpetual state of insecurity. Second, a reconciliation of 'full employment' with efficiency-driven competition is the key to achieving the highly desirable social market economy. Third, a swinging pendulum of perpetual job insecurity through an invisible anti-competitive practice of social camouflage, i.e., newly created jobs that do not add up to the number of existing ones, or replacing older (costly) with younger (cheaper) employees ahead of the retirement age in the name of efficiency, is purely dystopian. It is, therefore, argued that the above anti-competitive practice pursued by corporations in the name of industrial organization efficiency should be banned. The European scholarship offers further support regarding labour law as a form of market regulation of 'transnational competition', which is subordinate to competition law.[3]

B. Putting 'Full Employment' into Context

From the outset, the Treaty of Rome presented an awkward imbalance between social and economic goals, which has been attributed to the German neo-liberal model of economic governance.[4] For the latter, social values can be built only on the solid economic foundations of an internal market. It is thought that social goals could be achieved solely through economic growth, which emerges following a successful integration of national markets. An obvious flaw of this approach to 'economic governance' has been to prioritise economic over social goals.[5] This has led to inherent tensions between competition and labour law, the latter being subject to judicial review in the name of efficiency and market freedoms.[6]

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[3] See Simon Deakin, 'Labour Law as Market Regulation: The Economic Foundations of European Social Policies' in Paul Davies, Antoine Lyon-Caen, Spiros Simitis and Silvana Sciarra (eds.), *European Community Labour Law: Principles and Perspectives* (Oxford: Clarendon Press, 1996), 63-94; Stefan Giubboni, 'The Rise and Fall of EU Labour Law' 24 (2018) European Law Journal, 9, who refers to the autonomy of labour law from competition law to prevent social law from being de-regulated; national labour laws are subject to the judicial review before European courts in terms of necessity, adequacy, and proportionality, 12; for the concept of transnational solidarity, see Floris de Witte, *Justice in the EU: The Emergence of Transnational Solidarity* (Oxford: Oxford University Press, 2015), 38; on the subordination of social policy to the wider goal of improved economic performance, see Simon Deakin and Frank Wilkinson, 'Social policy and economic efficiency: The deregulation of the labour market in Britain' (1991) Critical Social Policy, 40.

[4] Stefan Bernhard, 'From Conflict to Consensus: European Neoliberalism and the Debate on the Future of EU Social Policy' (2010) 4 Work Organisation, Labour & Globalisation 1, 177.

[5] Ibid. 182.

[6] Against the subordination of labour law to market freedoms, see cf Giubboni, (n 3), 13; Hans-Wolfgang Micklitz, 'Judicial Activism of the European Court of Justice and the Development of the European Social Model in Anti-Discrimination and Consumer Law' in Ulla Neergaard, Ruth Nielsen and Lynn Roseberry (eds.), *The Role of the Courts in Developing a European Social Model* (Copenhagen: DJØF Publishing, 2010), 22; and for an anti-discrimination approach to labour law, see Catherine Barnard, 'Fifty Years of Avoiding Social Dumping? The EU's Economic and Not So Economic Constitution' in Michael Dougan and Samantha Currie (eds.) *50 Years of the European Treaties: Looking Back and Thinking Forward* (Oxford: Hart Publishing, 2009), 322.

Neglecting social goals has made the integration of markets primarily based on anti-competitive practices, such as social dumping, camouflaging labour costs, and maintaining employment.[7] For example, competing firms were forced to operate with lower wages to meet rival firms' prices. Otherwise, firms offering higher wages would have been squeezed out of the market due to fierce competition based on dumping wages, or have been forced to re-locate elsewhere so as to be able to achieve an equivalent dumping wage.[8] However, the phenomenon of losing well-paid jobs to cheaper workers from elsewhere had been recorded before, including protectionist slogans, such as 'British jobs for British workers'.[9]

All in all, such a social policy met the foremost economic ends of corporations and businesses alike, including industrial growth and competitiveness, by 'adaptation' to the labour market.[10] The EU Commission recognised 'labour market integration' as 'the key objective',[11] which requires Member States to adapt their social policies 'in order to make their economies more efficient'.[12] Unfortunately, competition based on cheaper labour has actively contributed to the acquisition, often from elsewhere, of highly skilled workers, known as 'economic' migrants. This form of social dumping has contributed towards a higher overall productivity and delivered economic efficiency.[13]

With the Treaty of Amsterdam, social policy gained momentum to re-calibrate social over economic goals.[14] Upon its entry into force, the Treaty endorsed a 'high level' of employment. However, it was not until the Treaty of Lisbon that a shift of perspective came to fruition with the explicit insertion of 'full employment'. Nevertheless, this insertion remains an ideal, subject to unusual deviations, such as the financial crisis, public debt issues, or austerity cuts. In sharp contrast, the US affirms a 'statutory commitment' to full employment.[15] In the EU, the Lisbon Strategy was the first to promote the positive interaction between economic and social policy and to focus on

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[7] These practices are often achieved through unlawful discrimination and harassment of existing employees, see Sandra Fredman, *Discrimination Law* (Oxford: Oxford University Press, 2nd ed., 2011), 109. On the German consensus against social dumping, see John Grahl and Paul Teague, 'Reconstructing the Eurozone: The Role of EU Social Policy' (2013) 37 Cambridge Journal of Economics, 681.

[8] See, e.g., Stephan Leibfried and Paul Pierson, 'European Social Policy' (1999) 15 ZeS-Arbeitspapier, Zentrum für Sozialpolitik, 30.

[9] See, e.g., Peter Clarke, *Keynes: The Twentieth Century's Most Influential Economist* (London: Bloomsbury Publishing, 2009), 115; for the unemployment context, see, e.g., Nicholas Wapshott, *Keynes Hayek: The Clash That Defined Modern Economics* (New York: W.W. Norton, 2012), 56 and 145, for the social situation in the UK in 1929, where 1.34 million were unemployed, i.e., one in ten, reaching a peak of 23% in January 1933. Keynes was critical of the Marshallian theory of equilibrium according to which a state of equilibrium will be reached where, in the long run, everyone will be employed, and 'full employment' will be met. As the theory did not cure the unemployment problem, Keynes advocated in favour of public spending remedies and of artificially lowering the interest rate, which triggered the criticism that such remedies would lead to inflation. Keynes responded to this criticism by famously saying that 'in the long run we are all dead', see 26, 31 and 43; on the problem of persistent long-term unemployment and the need for corrective action, see Roger E. Backhouse, 'The Keynesian revolution' in Roger E. Backhouse and Bradley W Bateman (eds.) *The Cambridge Companion to Keynes* (Cambridge: Cambridge University Press, 2006), 21, 24.

[10] Bernhard (n 4), 188.

[11] EU Commission, 'Concerning a consultation on action at EU level to promote an active inclusion of people furthest from the labour market', COM (2006) 44 final.

[12] Ibid.

[13] Cf Giubboni (n 3), 13; against the current lax approach to social dumping where intervention against social dumping is seen as an 'obstacle to the freedom to provide a service'.

[14] See, e.g., Erika Szyszczak, 'Social Policy' (2001) 50 International & Comparative Law Quarterly, 182.

[15] See Alex Callinicos, 'Commentary: Contradictions of Austerity' (2012) 36 Cambridge Journal of Economics, 70.

employment.[16] The Strategy projected a social model of sustainable development, which aimed at raising the living standards of all citizens in the EU. Through a combination of economic growth with social cohesion, it was hoped to achieve the highly competitive social market economy.

The EU social model[17] embraces several core values, such as social welfare, solidarity, equality of opportunity, and collective bargaining. Due to the usual constraints of space, the present contribution focuses primarily on labour costs and employment theories. It remains silent on issues pertaining to the protection of individual workers or, more generally, on labour standards.

Ultimately, this contribution argues that a dynamic interpretation of social rights as fundamental rights requires that social rights be prioritised over the pursuit of economic efficiency.

C. Leaving Egocentric Efficiency Behind?

Article 3 TEU has certainly projected a much better social governance model that stands for solidarity, social justice, and equality. The 'social' market economy imposes certain economic limitations and restraints upon the desire for greater competitiveness, i.e., a 'highly competitive' market economy. However, can the social feature of the market economy be reconciled with fierce competitiveness, and could egocentric efficiency be left behind? So far, many citizens have felt rather left behind by the negative effects inflicted through social dumping, camouflaged labour costs, and long-term austerity.

Comparatively, if one looks to the German model of a social market economy, the latter allows state intervention to ensure economic efficiency and full employment.[18] At the heart of its social model of governance is the maintenance of competition in the presence of economic conditions favourable to full employment. This status quo has facilitated a wider economic participation, including in the distribution of income.[19] Safeguarding a minimum income and the principle that individual losses cannot be socialised are other stronger features of the German model of economic governance.[20] In contrast, in the EU, social goals remain subordinate to economic goals. For example, Article 3 (3) TEU's mandate 'for the sustainable development' of Europe based on 'balanced economic growth' and 'price stability' offers a clear nexus between economic growth and social development.[21] However, Article 127 TFEU's economic goal of achieving price stability by fighting against inflation or deflation has been featured more prominently ahead of the social goal of achieving full employment. The present configuration relies on the premise that the maintenance of price stability through monetary intervention is a sine qua non for economic growth. Later, this will

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[16] EU Commission, 'Joint Report on Social Protection and Social Inclusion 2005', COMP (2005) 14 final.

[17] See the EU Commission, White Paper on Social Policy, COM (94) 333, para 3.

[18] Hans F. Zacher, 'Social Market Economy, Social Policy, and the Law' (1982) 138 Zeitschrift für die gesamte Staatswissenschaft/Journal of Institutional and Theoretical Economics 3, 373.

[19] Zacher (n 18), 376.

[20] Christine Wolfgramm and Ines Läufer, 'Social Security Systems in the Social Market Economy' in Christian L Glossner and David Gregosz (eds.) *60 Years of Social Market Economy: Formation, Development and Perspectives of a Peacemaking Formula* (Sankt Augustin, Berlin: Konrad-Adenauer-Stiftung e.V.), 132.

[21] See Catherine Barnard, 'EU Employment Law and the European Social Model: The Past, the Present and the Future' (2014) 67 Current Legal Problems, 203.

also create the economic conditions favouring full employment. However, Article 9 TFEU refers specifically to the promotion of a 'high level' of employment. The 'high' and 'full' levels of employment raise expectations that, to a certain extent, can only contradict each other. It is unreasonable to aim towards 'full' employment, i.e., under 5% unemployment rate, but, at the same time, aim towards a high level of employment, i.e., 60% or more. For example, a EU2020 target referred to a 75% employment rate among 20- to 64-year-olds. With an employment rate of 68.3%, 2013 stood slightly below such an optimistic target.

It has also been difficult to correct macroeconomic imbalances in the Eurozone. The fluctuation of inflation rates has had a similar impact on real interest rates. While a lower interest rate encouraged a period of economic boom, it later triggered the rise of inflation. The latter resulted in a lack of competitiveness compared to higher rates of interest coupled with a lower level of inflation.[22] For example, Spain lost its competitiveness due to a higher than expected public debt coupled with a depressive unemployment rate.

Comparatively, if one looks to the Anglo-Saxon model of low unemployment with welfare benefits, the former is in sharp contrast to the continental model of high unemployment.[23] During the 1970s and 1980s, following an extensive process of privatisation, monetarism replaced Keynesianism and efficiency-driven fierce competition the welfare state.[24] In contrast to its predecessor, the newly introduced model sacrificed labour while creating low-paid entry jobs or unpaid internships. Following dramatic reforms to its social benefits programme (Hartz IV), the German welfare model undercut unemployment benefits.[25] In contrast, the Anglo-Saxon model of the welfare state did the same in recent years following the financial crisis and austerity measures. The latter measures inevitably affected the most vulnerable and unskilled workers.

The novelty of the Anglo-Saxon model surfaced with the financialisation of services and increasing casualisation of labour. Again, the Anglo-Saxon model contrasted the flexible continental model.[26] At least historically, especially during the 1950s and 1960s, the continental model offered better employment protection and unemployment compensation. In mainland Europe, tenured jobs contributed to the maintenance of lower unemployment rates.[27] In contrast, the contemporary model of temporary, agency or 'flexi' work,[28] or the casualisation of the hourly paid workers, has been short-sighted. Short-term employment has been based on aggressive forms of competition for jobs. The shortcoming of fierce competition based on lower wages driven by economic efficiency was a

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[22] See Christopher Adam, Paola Subacchi and David Vines, 'International Macroeconomic Policy Coordination: An Overview' (2012) 28 Oxford Review of Economic Policy 3, 404-5.

[23] See Simon Deakin and Hannah Reed, 'The Contested Meaning of Labour Market Flexibility: Economic Theory and the Discourse of European Integration' in Jo Shaw (ed.), *Social Law and Policy in an Evolving European Union* (Oxford: Hart Publishing, 2000).

[24] Lawrence King, Michael Kitson, Sue Konzelmann and Frank Wilkinson, 'Making the Same Mistake Again –Or Is This Time Different?' (2012) 36 Cambridge Journal of Economics, 8.

[25] Ibid., 684.

[26] Riccardo Bellofiore, 'Two or Three Things I Know About Her': Europe in the Global Crisis and Heterodox Economics' (2013) 37 Cambridge Journal of Economics, 501.

[27] See Lars Ljungqvist and Thomas J Sargent, 'Two Questions about European Unemployment' (2008) 76 Econometrica 1, 1-29.

[28] See Grahl and Teague (n 7), 683.

higher unemployment rate in the long run. The continuous decline of the social welfare state has gradually eroded social rights and employment protection and amplified job insecurity. However, fixed-term contracts are commonly employed by smaller and medium-sized firms. The latter have to overcome certain information asymmetries pertaining to their own employees. Following probation, even such firms should be more interested in open-ended, permanent contracts of employment. This is because hiring and subsequent training are more costly to employers.

D. Major Obstacles on the Road to Full Employment

Unemployment has been expounded as 'the worse manifestation of pervasive market failures which arise in the presence of imperfect information and incomplete markets'.[29] The major obstacles to full employment are first given by the brief study of the general causes of unemployment. To this end, several factors have been identified as leading to unemployment, including inter alia an excessive monetary expansion leading to inflation, labour market imperfections, state intervention, stronger trade unions, generous welfare benefits, lower employees' performance, and motivation.[30]

Keynes regarded unemployment as 'the major social ill' and proposed several remedies.[31] Other commentators have argued that any governmental attempt to increase employment above the 'natural rate' of employment, known as NAIRU, i.e., 'non-accelerating inflation rate of unemployment',[32] will cause inflation or job cuts elsewhere in the economy.[33] In turn, microeconomic theory assumes that businesses sell and buy all that they wish to supply and demand respectively at the prevailing wages and market prices.[34] In contrast to Walrasian economics, wages are dictated by the bargaining power of the labour unions and larger firms, and are not the result of a market-clearing process. Were unemployment to fall below NAIRU, this could ultimately improve the bargaining position of workers.[35] While inflation triggers adverse effects, including unemployment, it can also increase demand. Due to widespread involuntary unemployment, it has been argued that the NAIRU analysis is inappropriate, as it is not labour, but a lack of aggregate demand that is responsible for unemployment.[36]

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[29] Greenwald and Stiglitz (n 1), 36.

[30] In addition, Hobson mentions moral and economic defects, such as 'drink, laziness, inefficiency, or some other personal fault', see, e.g., John E. Hobson, *The Problem of the Unemployed: An Inquiry and an Economic Policy* (London: Methuen, 1896), 47; thus, Hobson later argued that 'individual character has little to do with the causes of labour problems', see Michael S Lawlor, *The Economics of Keynes in Historical Context: An Intellectual History of the General Theory* (New York, Palgrave Macmillan, 2006), 52.

[31] Lawlor (n 30), 81; Lawlor refers to Keynes' General Theory of Employment 'a loose social theory of wages', 86.

[32] See James Meade, *Wage Fixing* (London: George Allen and Unwin, 1982), vol. 1, 21 ff.; for Meade's argument that employment policy required inter alia increased mobility of labour and willingness of industry to relocate, see George C. Peden, 'Keynes and British economic policy' in Backhouse and Bateman (n 9), 113.

[33] See, e.g., Milton Friedman, 'Inflation and Unemployment: The New Dimension of Politics', 1976 Alfred Nobel Memorial Lecture (1977) 51 Occasional Paper of the Institute of Economic Affairs.

[34] Assar Lindbeck and Dennis J. Snower, 'Explanations of Unemployment' (1985) 1 Oxford Review of Economic Policy 2.

[35] Engelbert Stockhammer, Eckhard Hein and Lucas Grafl, 'Globalization and the Effects of Changes in Functional Income Distribution on Aggregate Demand in Germany' (2011) 25 International Review of Applied Economics 1, 298.

[36] See, e.g., John Cornwall, 'Keynes? What Remains of' in Thomas Cave (ed.) *An Encyclopaedia of Keynesian Economics* (Cheltenham: Edward Elgar, 2nd ed., 2013), 330.

A preliminary finding is that a higher rate of employment gives labour unions better bargaining power and eventually higher nominal wages. At this level of employment, but under inflationary conditions, the expected real wage is convergent with that one based on market prices dictated by oligopolistic firms. In order to achieve full employment, there is therefore not much of a choice left: either 'higher' or 'lower' real wages. The last option creates more jobs, whilst the first option is egocentric.

E. The Quest for an Optimal Equilibrium between 'High' and 'Full' Employment

The ultimate quest is for governments to establish an optimal equilibrium between high and full employment so that the harm caused by inflation does not outweigh the benefits stemming from an increase in employment. It has been suggested that, until unemployment becomes serious, it is possible to maintain a level of wages that could cover the living costs.[37] Therefore, an 'excess of wages' beyond the basic living costs becomes close to a monopolistic mark-up, i.e., an excess of the market price over the marginal cost. In his famous book 'The Wealth of Nations', Adam Smith traced this perennial conflict apparent in the distribution of income: 'The workmen desire to get as much, the masters to give as little as possible. The former are disposed to combine in order to raise, the later in order to lower the wages of labour'.[38] There is no better evidence of the close relationship between the macroeconomics of lower wages and the microeconomics of business efficiency.

Other suggestions include monetary and fiscal policy, which could maintain adequate demand in order to make wages and prices behave as if they were determined by market forces. For instance, the Phillips curve identified the existence of an inverse relationship between employment and inflation.[39] In other words, inflation became the necessary price to be paid for maintaining a high level of employment and competitive wages in the economy. This ambivalent relationship has been fully exploited by Marxian theory, according to which, by maintaining unemployment, capitalism is an inferior society to communism.[40] The latter theory advanced a centrally planned economy where there is no unemployment, but wages are very low. Too much unemployment and inflation at the same time is known as stagflation. According to neo-Keynesians, stagflation is the response to the effect of raising direct taxes and import prices on the real wage of workers.[41] Most revealing, however, is the correlation between market prices and wages, specifically, to maintain price stability,

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[37] See, e.g., Abba P Lerner, 'Employment theory and employment policy' (1964) 57 American Economic Review 2, 9.

[38] See, e.g., Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (London: W. Strahan, 1776), previously cited by Heinz D. Kurz, 'Adam Smith on Markets, Competition and Violations of Natural Liberty' (2015) Cambridge Journal of Economics, 21.

[39] Alban W. Phillips, 'The Relation between Unemployment and the Rate of Exchange of Money Wages in the United Kingdom 1861 to 1957' (1958) 25 Economica 100, 283-99; Ekkehard Ernst and Uma Rani, 'Understanding Unemployment Flows' (2011) 27 Oxford Review of Economic Policy 2, 271.

[40] Lerner (n 37), 17.

[41] See Frank Wilkinson and HA Turner, 'The Wage Tax Spiral and Labour Militancy' in Dudley Jackson, HA Turner and Frank Wilkinson (eds.) *Do Trade Unions Cause Inflation?: Two Studies: with a Theoretical Introduction and Policy Conclusion* (Cambridge: Cambridge University Press, 1972).

wages have to rise in line with marginal productivity.[42] In other words, wages cannot be artificially raised above the normal competitive level.

Hayek, too, examined another revealing correlation between wages and interest rates. Where producers make informed choices regarding the intensity of production, they need to consider the inverse relationship between interest rates and real wages.[43] Otherwise, an artificial lowering of interest rates, in turn, could trigger a rise in real wages. Followed by the use of capital-intensive methods of production, producers will spend more on capital rather than consumption goods.

F. What Role for Competition Policy: To Intervene or Not to Intervene?

Neoclassical economics placed trust in the self-correcting mechanism of free competitive markets. Governmental intervention for lowering unemployment was, therefore, doomed to failure in the long run.[44] Neoliberal prescriptions of this kind tended to intensify competition through deregulation and privatisation and to maintain price stability and budgetary balance.[45] In contrast, Keynesian economics held that free markets cannot guarantee the full utilisation of all available resources. In the name of economic efficiency and social justice, governments ought to intervene in the economy to eliminate 'involuntary' unemployment.[46]

However, could governments intervene directly to correct all possible macroeconomic imbalances regarding unemployment? Indeed, competition policy could indirectly intervene. So far, competition policy has been active at the micro-economic level, ensuring inter alia that businesses behave rationally in setting the most efficient market price per unit of production. Could competition policy look further beyond microeconomics? So doing could include a macro-economic dimension by examining the cost of real wages. Could it, then, also question any unintended social consequences, namely, the manner in which wages could artificially distort price competition? For example, the 'supply-demand' relationship between labour and employers is nothing but an unfortunate proxy that is incapable of addressing the market-price distortions created by artificial wages.[47] Competition policy could also investigate more thoroughly a wider range of monopoly or oligopoly problems, namely, whether wages are raised above labour costs, or whether they do not fall below such costs. The latter situation aims to prevent an increase in the mark-up price.

The way in which competition policy could correct macroeconomic imbalances of artificial wages through pro-active intervention at the microeconomic level of the firm remains another revelation that could shed light on the corrective mission of competition policy.

As firms operate in imperfect markets, so prices are set with a mark-up over wage costs. For example, were trade unions to request an 'artificial' wage above the competitive wage under an

[42] Lerner (n 37), 12.

[43] See, e.g., Marina Colonna, 'Hayek on Money and Equilibrium' (1990) 9 Contributions to Political Economy, 59.

[44] Dennis J. Snower, 'Evaluating Unemployment Policies: What Do the Underlying Theories Tell Us?' (1995) 11 Oxford Review of Economic Policy 4, 111.

[45] See Jean-Paul Fitoussi and Francesco Saraceno, 'European Economic Governance: the Berlin-Washington Consensus' (2013) 37 Cambridge Journal of Economics, 480.

[46] Konzelmann (n 24), 730.

[47] See, e.g., Lerner (n 37), 13. This relationship is expressed as the percentage of unemployed or the number of unfilled vacancies.

optimal equilibrium, employers could then attempt to address this concern by maintaining their corporate profits at the expense of higher prices to consumers.[48] The latter could lead to inflated prices and, ultimately, unemployment; in particular, a central bank does not tolerate inflation. The way to break out of this vicious circle appears to be wage moderation. This is the safest option, especially where dismissal is feared and lower employment protection is in place. Equally, excessive wages could result in losing jobs to foreign competitors.[49]

In light of all of the above arguments, it is questionable whether capitalism could still be able to adjust itself to full employment in the EU. Could capitalism achieve full employment subject to reforms?[50] As will later be seen, despite notable success in achieving full employment in the UK and Germany, this is not the case in other Member States.

Wage flexibility is yet another remedy being offered to resolve the unemployment problem.[51] Supporters of wage flexibility argue that, by reducing the costs of hiring and firing and those associated with unemployment insurance, the conditions of unemployment should be less generous.[52] Thus, such a wage/price adjustment could restore lost competitiveness, if only temporarily.[53] However, it is not the ultimate cure. Similarly, using unemployment as a weapon to combat inflation may simply work the wrong way.[54] In contrast, successful maintenance of full employment in the long run would yield a considerable social benefit to the society as a whole.

Finally, a notable enemy of full employment is technological progress[55] and the rise of robots and artificial intelligence (AI).[56] The effects of the latter are currently under-estimated by economics. Although they could advance social progress, robots and AI could also elevate unemployment to levels never seen before. Workers could be left behind, i.e., marginalised, rather than co-opted to social progress, which would involve them receiving a decent wage for fewer hours of work. To Keynes, technological unemployment due to the 'discovery of means of economising the use of labour'[57] was just 'a temporary phase of maladjustment'.[58]

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[48] See, e.g., Ronald Schettkatt, 'Are Institutional Rigidities at the Root of European Unemployment' (2003) 27 Cambridge Journal of Economics 6, 772.

[49] Ibid. 772.

[50] For the view that capitalism could succeed by incorporating a fundamental reform, see e.g, M Kalecki, 'Political Aspects of Full Employment' (1943) 14 Political Quarterly 4, 330.

[51] See Stockhammer (n 35), 308; Lerner (n 37). In his General Theory of Employment, Keynes noted that 'There is, therefore, no ground for the belief that a flexible wage policy is capable of maintaining a state of continuous full employment', 267; Lawlor (n 30), 91, referring to Keynes' opinion that a policy of 'economy-wide wage reductions would never cure mass unemployment', 87.

[52] See Paul Lewis, '(How) Do Flexible Labour Markets Really Work? The Role of Profitability in Influencing Unemployment' (2009) 33 Cambridge Journal of Economics 1, 55.

[53] See, e.g., The Foundation Forum, 'Social and Employment Policies for a Fair and Competitive Europe', Background Paper (2013), 8.

[54] Lerner (n 37), 14.

[55] Ibid. 16.

[56] For such a negative scenario, see Miguel D. Ramirez, 'Marx, Wages, and Cyclical Crisis: A Critical Interpretation' (2007) 26 Contributions to Political Economy, 37.

[57] John M. Keynes, 'Economic Possibilities for our Grandchildren (1930)' in Lorenzo Pecchi and Gustavo Piga (eds.) *Revisiting Keynes: Economic Possibilities for our Grandchildren* (Cambridge, Massachusetts: MIT Press, 2010), 21.

[58] Ibid.

Equally, creating a larger pool of low-paid, insecure workers could magnify unemployment through restructuring. Such an outcome challenges the expectation that higher corporate profits will, in return, yield greater capital investments in human resources.[59] Worse than corporate restructuring is the aforementioned anti-competitive practice of social camouflage, i.e., hiring new employees in the hope that older ones will subsequently leave. In the name of economic efficiency, this perverse phenomenon becomes just another attack on jobs, i.e., employment.

G. Employment Theories: A Convoluted Approach to the Unemployment Problem?

In his famous 'General Theory of Employment, Interest, and Money', Keynes put forward the argument that trade unions might resist falling wages more vigorously than rising prices.[60] Relying on classical assumptions of perfect competition, Keynes examined the supply of labour as a function of money similar to real wages. The latter implied bargaining for 'money wages'.[61] Where aggregate demand met aggregate supply, i.e., effective demand, the expectations of corporate profits were best maximised.[62] In an attempt to simplify his theory of employment, Keynes advanced that 'the psychology of the public, the level of output and employment as a whole depends on the amount of investment'.[63]

By adding a subjective factor, i.e., the psychology of the public, to the unemployment puzzle, Keynes complicated the equation.[64] Furthermore, Keynes regarded investment not as the sole objective factor on which aggregate output depends, but certainly as a key one, i.e., *causa causans.* In other words, Keynes found inadequate capital accumulation and/or closely related high interest rates to be the real causes of high unemployment. Therefore, Keynes advanced three major variables of employment: the 'propensity to consume', which can be influenced by the distribution of income or the rate of interest; the efficiency of capital; and the liquidity preference.[65] Together with the quantity of money, these variables influence the level of output and employment. Although Keynes' intention was to advance 'a theory of why output and employment' were 'liable to fluctuation', his theory became 'a ready-made remedy' about avoiding fluctuations and maintaining an optimal level of output.

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[59] See, e.g., Lewis (n 52), 71.

[60] Jan A. Kregel, 'The Microfoundations of the 'Generalisation of *The General Theory*' and 'bastard Keynesianism': Keynes's theory of employment in the long and the short period' (1983) 7 Cambridge Journal of Economics, 351. On the effect of a change in real wages, employment, real capital formation and on the real rate of interest, see John R. Hicks, 'Wage and Interest: the Dynamic Problem' in *Money, Interest and Wages: Collected Essays in Economic Theory* (Oxford: Blackwell, 1982), vol. 2, 10.

[61] See Edgar O. Edwards, 'Classical and Keynesian Employment Theories: A Reconciliation' (1959) 73 Quarterly Journal of Economics 3, 409.

[62] Edwards (n 61), 413.

[63] John M. Keynes, *The General Theory of Employment, Interest and Money. The Collected Writings of John Maynard Keynes* (1936), vol. 7 (London: Palgrave Macmillan, 1973), 221.

[64] See John Considine and David Duffy, 'Keynes and the Confidence Faeries' (2014) 40 Cambridge Journal of Economics 1, 8.

[65] See John M Keynes, 'The General Theory of Employment' (1937) 51 Quarterly Journal of Economics 2, 219. On income distribution, see Sidney Weintraub, 'Solow and Stiglitz on Employment and Distribution: A New Romance with an Old Model' (1970) 84 Quarterly Journal of Economics 1, 150; on the four variables and the limitations of Keynes' general theory, see Richard F. Kahn *The Making of Keynes' General Theory* (Cambridge: Cambridge University Press, 1st ed. 1984, reprinted 2011), 126-68; Tyler B. Goodspeed, *Rethinking the Keynesian Revolution: Keynes, Hayek and the Wicksell Connection* (Oxford: Oxford University Press, 2012), 86-99.

Keynes' theory of employment 'explains *why*, in any given circumstances, employment is what it is'.[66] A major weakness of his theory remains the perceived tolerance towards budgetary indiscipline, through encouragement of more public spending, i.e., Keynes's 'digging holes' suggestion.[67] In 'Can Lloyd George Do it?',[68] Keynes argued for undertaking major public works, financed by borrowing, as a temporary solution to unemployment. As a preliminary finding, while one cannot alleviate a public debt crisis following the Keynesian commitment to continued debt-financed public spending, one can also no longer rely on credit-financed private consumption either.

Ultimately, Keynes argued that, in the long run, the demand for investment depends on the rate of interest. In contrast, the demand for consumer goods was a short-term expectation.[69] Other commentators argued that a fall in interest rates increases long-term unemployment.[70] Hicks, for instance, identified separate markets for goods, loans, and money. Using bread as an example, Hicks explained the relationship among wages, employment, capital, and the interest rate. If labourers' wages were to be raised, there would be an excess demand for bread. As the supply of bread is inelastic, the interest rate would need to be raised, too, so as to reach an optimal equilibrium in the market for bread. Otherwise, producers would be forced to counteract the wage increase by lowering their profits. Therefore, consumption would also decline. In conclusion, the rise of real wages is nothing but an increase in the marginal cost of output. Despite excessive demand, future output can be adjusted downwards. Bread producers can substitute 'past' for 'current' labour. Due to the rise in real wages, the interest rate will also follow. This will ultimately cause unemployment.[71]

From the above example, one can only conclude that higher wages contribute to unemployment following a concomitant rise in the interest rate. This confirms another preliminary finding, namely, that wage reductions could lead to an expansion of output and employment through the liquidity preference and propensity to consume.[72]

Throughout the 1970s, several economists attempted to develop 'microeconomic' foundations for Keynes' macroeconomic theory of employment.[73] They attempted to re-assess the causes of Keynes' 'involuntary' unemployment. Wage 'rigidities' were identified as incompatible with the ideal of full

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[66] Ibid. 221.

[67] See Considine and Duffy (n 64); see, e.g., Maria C. Marcuzzo, 'Re-embracing Keynes: Scholars, Admirers, and Sceptics in the Aftermath of the Crisis' in Toshiaki Hirai, Maria C. Marcuzzo and Perry Mehrling (eds.) *Keynesian Reflections: Effective Demand, Money, Finance, and Policies in the Crisis* (Oxford: Oxford University Press, 2013), 11; Keynes' suggestion of 'digging holes in the ground' is to be interpreted in the sense that 'it did not matter how public money is spent, as long as it is spent'.

[68] See, e.g., John M. Keynes, 'Can Lloyd George Do It?' in John Keynes, *Essays in Persuasion* (London: Palgrave Macmillan, 2010), 86-125.

[69] Edwards (n 61), 421.

[70] Joan Robinson, *Essays in the Theory of Employment* (London: Macmillan, 1937), 121.

[71] See, e.g., Kregel (n 60), 354.

[72] Ibid. 355.

[73] Lindbeck and Snower (n 34), 36; see Geoff C. Harcourt, 'Kahn and Keynes and the Making of *The General Theory*' (1994) 18 Cambridge Journal of Economics, 15; in the presence of an excess supply of labour, classical economics did not trust that falling wages would restore full employment but overlooked 'wage rigidities'. In contrast, Keynes observed contractual rigidities that prevented nominal wages from falling; see, e.g., David Laidler, 'Keynes an the birth of modern macroeconomics' in Backhouse and Bateman (n 9), 40.

employment.[74] Such wages offer firms few, if any, incentives to hire unemployed workers as long as firms remain unable to sell the goods that they produce.

Keynes's theory of employment, however, did not rely upon price-wage rigidities. Instead, for Keynes, the way out of the vicious circle of unemployment was the price-wage deflation.[75] Historically, the Great Depression had been attributed to the public deficit problem, the blocking of the free market for labour due to wages and price rigidities, and oligopolistic competition.[76] However, for Keynes, the hidden cause of unemployment was the high rate of interest maintained for a long period of time.[77]

Falling wages and prices and the imposition of a minimum wage are other intricate issues. As the value of assets held by the private sector rises to stimulate consumption, this could reduce unemployment. Where the minimum wage is higher than the wage required to clear the market, then, the supply could exceed the demand for labour. Furthermore, due to the monopsony power of employers, the imposition of a 'minimum' wage may raise the level of employment.[78] This happens where workers have imperfect information about wages, unemployment is high, and the rate of vacancies is low. Were firms to enjoy monopsony power in the labour market, they could offer a lower than average wage.[79]

For the 'insider-outsider' theory of employment, the relative bargaining power of a firm vis-à-vis its labourers makes it possible for 'insider' wages to exceed those of outsiders. The entry wage would only exceed the reservation wage.[80] However, firms having higher rates of labour turnover fail to offer job security and provide no opportunity for promotion, which results in low levels of productivity.

The monopsony power of strong unions has also been considered responsible for rising wages and, as a result, for unemployment.[81] Stiglitz's theory relies on the existence of perfectly competitive labour markets with perfect information. Such a market is based on a bilateral monopoly, or even monopolistic competition.[82] On both sides of the labour market, there are significant costs associated with job searches, hiring, and training. Thus, non-unionised workers receive lower wages.[83] In contrast, by promoting higher wages in unionised sectors of the economy, employers have to offer

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[74] Cf Greenwald and Stiglitz (n 9), 10, for the opinion that wage rigidities fail to explain unemployment in some sectors of the economy.

[75] Lindbeck and Snower (n 34), 36.

[76] See Robert Boyer, 'The Four Fallacies of Contemporary Austerity Policies: the Lost Keynesian Legacy' (2012) 36 Cambridge Journal of Economics 1, 292.

[77] Geoff Tily, *Keynes's General Theory, the Rate of Interest and 'Keynesian' Economics: Keynes Betrayed* (New York: Palgrave Macmillan, 2007), 298.

[78] George Stigler, 'The Economics of Minimum Wages Legislation' (1946) 36 American Economic Review, 358; Charles S. Maurice, 'Monopsony and the Effects of an Externally Imposed Minimum Wage' (1974) 41 Southern Economics Journal 2, 283.

[79] See, e.g., Edmund Phelps, 'Money-Wage Dynamics and Labour-Market Equilibrium' (1968) 76 Journal of Political Economy, 678.

[80] Lindbeck and Snower (n 34), 47.

[81] Joseph E. Stiglitz, 'Towards a General Theory of Consumerism: Reflections on Keynes' Economic Possibilities of our Grandchildren' in Pecchi and Piga (n 57), 74; for a similar explanation that unions use their monopoly power to demand higher wages than would otherwise prevail, at the expense of employment, see Thomas Piketty, *The Economics of Inequality* (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 2015), 89, followed by the recognition that unions do not seek only higher wages.

[82] Ibid. Stiglitz.

[83] Ibid., 76.

higher wages.[84] Such 'efficiency wages' could make employers more selective in hiring. Better wages are believed to lead to greater productivity as well as to profitability due to lower labour turnover.

In any event, claims that unions exert a monopolistic power in the setting of wages, including by increasing wages, are best treated with caution.[85] Attempts to diminish the collective bargaining power of trade unions will ultimately weaken the position of individual labourers, which causes unemployment, too. Sometimes, employers also enjoy monopsony power and make employees accept wages below the market level, which puts off some workers and, as a result, lowers the level of employment.[86]

Finally, the Shapiro-Stiglitz model of wage-efficiency argued that the European social policy inadvertently causes higher levels of unemployment due to offering higher unemployment 'benefits'. While offering some sort of social protection, the latter are actually welfare enhancing.[87]

Although none of the above theories of employment is fully satisfactory, these theories offer a solid analytical framework for the next discussion of the uneasy relationship between the 'price' and 'wage' efficiency divide in micro-and macroeconomics scholarship.

III. Back to Basics: The Uneasy Relationship between 'Price' and 'Wage' Efficiency

This section discusses the historic 'price efficiency' benchmark undertaken by microeconomics, i.e., having the aim of always delivering the lowest possible market price, which is at odds with the antagonistic objective of 'wage efficiency' undertaken by macroeconomics. It does so by reflecting on the complex but uneasy relationship between market prices and wages. In this respect, Adam Smith notably offers the example of monopolists who 'by keeping the market constantly under-stocked' do not meet actual demand so that they can sell well above the natural price of free competition, and later raise wages or profits 'greatly above their natural rate'.[88] One could argue that in the absence of competition, monopolies deliver better wages; in contrast, efficiency-driven fierce competition drives wages down. However, the aforementioned 'efficiency' benchmark is just a pathway towards the Marshallian doctrine of 'maximum satisfaction'.[89] For the pursuit of the latter, both producers and consumers will, egocentrically, look after their own individual interests, namely, those of their capital and labour, and their expenditure respectively. The immediate interest of an individual monopolist is to obtain the maximum net revenue by adjusting production and sales; however, this will be on a collision course with the collective interests of the society at large.[90] Better suited, therefore, is Stigler's ethical concept of 'social efficiency', which reflects the 'socially optimum', since

[84] Ibid.

[85] See Lindbeck and Snower (n 34), 125.

[86] See, e.g., Piketty (n 81), 94.

[87] Ibid, 77.

[88] Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, Edwin Cannan (ed.) (London: Methuen, 1904), para I.7.26.

[89] Alfred Marshall, *Principles of Economics* (London: Palgrave Macmillan, 1920: 8th ed., reprinted 2013), Chapter XV, 'Summary of the General Theory of Equilibrium of Demand and Supply), 416.

[90] Ibid. 416; see also Chapter XIV, 'The Theory of Monopolies', 395.

'the most efficient' firm size may be caused by monopoly power, undesirable labour practices, discriminatory legislation and so on.[91]

Furthermore, this section attempts to contrast theory with practice with the help of real world examples. These days, it is unsurprising to see a shortage of popular brands in supermarkets only to have their prices pushed up. However, while economic theory assumes that higher prices will be channelled towards higher corporate profits, they do not necessarily lead to higher wages for workers, so they fail to deliver the latter in practice. In the context of mergers, it cannot be completely ruled out that the emerging monopoly might have a positive impact on wages. This latter theoretic assumption remains to be challenged at a later stage.

Moving on from the classical example, a contemporary example of a contrasting real-life scenario is offered by the Commissioner for Competition when talking about the over-capacity of the steel industry. Relying on Wells' example of steam-driven machinery, Letwin also captures the problem of 'industrial overproduction', i.e., 'excessive competition', where manufacturers struggle to sell unwanted goods and therefore 'combinations', i.e., mergers, appear as the only possible solution.[92] The steel industry went through a painful process of restructuring to make its business more competitive.[93] In the context of state aid, granting national subsidies to maintain over-capacity in the Italian steel sector was seen as effectively putting 'other' steelworkers' jobs at risk across Europe. The above example offers conclusive evidence of the close, but inverse, relationship that exists between the lowest possible price as an indicator of economic efficiency and the macroeconomic prospect of job security.

In contrast to harmful monopolies, which maintain artificially high prices above those that could arise from competition under free markets, fierce competition delivers the lowest possible market price. Naturally arising lower prices are an efficient market outcome. As has already been mentioned, higher corporate profits might negatively affect wages if corporations become too greedy to invest in human resources and choose not to contribute towards better wages. Alternatively, lower prices could lead to overproduction and possibly lower corporate profits, which could make the social impact on wages much worse.

The ideal of price efficiency can be reached only through vigorous competition. The same game of competition drives labour markets and, implicitly, the ideal of wage efficiency.[94] In this context, Smith recalls the exclusive privileges of corporations, as well as of employment laws, which could

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[91] See, e.g., George J. Stigler, *The Organization of Industry* (Chicago: The University of Chicago Press, 1968), 73.

[92] See, e.g., William Letwin, *Law and Economic Policy in America: The Evolution of the Sherman Antitrust Act* (Chicago: The University of Chicago Press, 1965), 73, citing one of the most prominent economists of the older generation, Davis A. Wells, *Recent Economic Challenges* (New York: D. Appleton, 1889), 74.

[93] EU Commission, Commissioner for Competition, Margrethe Vestager, Speech: 'European Economic and Social Committee's Plenary Session', 4 (Brussels, 14 July 2016) ‹https://ec.europa.eu/commission/commissioners/2014-2019/vestager/announcements/eesc-plenary-thursday-14-july_en›.

[94] On the phenomenon of efficiency wages used by employers as a retention incentive, see, e.g., Paul Krugman and Robin Wells, *Microeconomics* (New York: Worth Publishers, 3rd ed., 2013), 224; 548.

restrain labour market competition to a smaller number of workers. Depicted as 'enlarged monopolies', by making employment opportunities available to only a select category of individuals, the relevant market price was kept above the natural price of free market competition, as were the wages of the employed labour and monopolistic corporate profits.

The overarching concept of efficiency works differently for market prices and wages. If one were to employ the same natural level for workers' wages as for the natural market price, the lowest market price would be on a par with the lowest possible living wage for individuals. For example, Ricardo's concept of the 'original state of efficiency' considers primarily the costs associated with paying the wages for the labour necessary for the production of goods, which makes the trade surplus, i.e., profit, dependent on efficiency wages minus additional expenses.[95] Were such labour costs lower than they should be, then the monopolists could add another monopoly margin to those extracted from the overpriced sale of goods.

The Marshallian explanation of wage efficiency recognises 'equal earnings (or rather equal net advantages), which are achieved in the long run in different occupations by 'persons of about equal efficiency'.[96] It also recognises the difficulty associated with the definition of wage efficiency[97] and embraces therefore a broader interpretation, i.e., that of 'general industrial efficiency'. Marshall usefully mentions the tendency of competition towards offering equal earnings to people engaged in the same trade or in trades of equal difficulty. The principles of economic freedom, equality, and fairness permeate classical economics. For Marshall, 'economic freedom and enterprise', which were commonly referred to as 'competition', displayed 'a tendency towards equality of efficiency-earnings'.[98] For Pigou, 'fair' wages are 'proportionated to efficiency'.[99] In contrast, 'unfairly' low wages are where 'the cost of movement' prevents 'workpeople' from moving elsewhere where the rate wage is higher.[100] Later, however, Pigou clarifies that 'fair wages would be equal wages'.[101] Meanwhile, for Pikkety, 'efficiency wages' make workers more cooperative, as they are paid a 'fair'

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[95] David Ricardo, *Principles of Political Economy and Taxation* (London: John Murray, 1817) in Daniel A Crane and Herbert Hovenkamp (eds.) *The Making of Competition Policy: Legal and Economic Sources* (Oxford: Oxford University Press, 2013), 26.

[96] Marshall (n 89), Chapter III, 'Earning of Labour', 455.

[97] Ibid. 456, where Marshall noted the ambiguity of the phrase, 'the efficiency of the workers'. For Keynes' concise explanation of efficiency wages, see, e.g., Austin Robinson and Donald Moggridge (eds.) *The Collected Writings of John Maynard Keynes: Activities 1929-1931: Rethinking Employment and Unemployment Policies* (Cambridge: Cambridge University Press, 2013), vol. xx, 45: 'By efficiency wages I mean wages per unit of output (…) in a very wide sense, to cover what economists call 'remuneration of the factors of production'. Whether it is business men's efforts, or capital, or whatever it is'.

[98] Ibid. 456. But where more expensive capital is used, Marshall considered it to be better for employers to raise the time-earnings of the more efficient workers 'more than in proportion to their efficiency', 457-8.

[99] Arthur Cecil Pigou, *The Economics of Welfare* (London: Palgrave Macmillan, 4th ed. 1932, reprinted 2013), Chapter XVI, 'Fairness as a Variable Relation', 586. Thus, Pigou recognised that 'the comparative efficiencies of different persons possessing given qualities and capacities are not the same in all circumstances'.

[100] Ibid. 553, Chapter XIV, 'Interference to Raise Wages in Places and Occupations Where They Are Unfair'.

[101] Ibid. 590.

wage.[102] Finally, for Greenwald and Stiglitz, the 'efficiency wage' model explains why the wages of firms are interdependent, which leads to 'multiple equilibria'.[103]

The ideals of efficiency inherent in each of the two scenarios explained above stand diametrically opposed to each other. It does not follow that monopolies are necessarily bad for prices but good for wages. On the contrary, while monopolies might preserve monopoly rents for a select group of shareholders, the wider public trusts that these monopolistic entities create and secure jobs for the economy at large. Out of sentimentality, there is public sympathy towards monopolists should a fine imposed on them be perceived to lead, immediately, to job losses; giants such as Google or Apple are obvious examples these days. In contrast, there is no outcry when a smaller or medium-sized firm exits the market, because their business is not regarded publicly as a success story; it is not seen as something that could adversely affect employment at large.

As will be examined in the following sections, the merger of powerful corporations might lead to a monopolistic constellation. Therefore, the practical question to be asked is whether, at the microeconomic level, the market price will be moving towards the efficiency ideal and, if so, how this, in turn, will affect wages at the macroeconomic level, or whether the underlying rationale for merging is simply reducing labour costs. In principle, it is assumed that mergers bring about external growth and new jobs. Ultimately, efficiency arguments could twist the outcome of a merger towards jobs losses.

IV. Economic Efficiency as a Goal of Competition Policy

This section briefly discusses the goals of competition policy, including considerations of distribution versus economic efficiency as a goal that should be pursued by merger control. There are conflicting views on the many goals that competition policy has embraced over time. Indeed, there is more than one goal that deserves attention. However, policy-makers often state which goal takes precedence at a given time. Over the last decade, EU commissioners responsible for competition policy have projected various goals of competition law. Amongst them, market integration, economic efficiency, consumer welfare and the social market economy have gradually grown in substance over the years.[104] The 'social side' of competition law was featured in President Juncker's speech on the 'State of the Union' as follows:

[102] See, e.g., Piketty (n 81), 98; thus, fair wages decrease overall employment.

[103] The firm's optimal wage depends on the wages paid by all other firms, see, e.g., Greenwald and Stiglitz (n 1), 15.

[104] See, e.g., EU Commission, Commissioner for Competition Policy, Mario Monti, Speech: 'Competition in a Social Market Economy', Conference of the Parliament and the Commission on 'Reform of European Competition Law' (Freiburg, 9/10 November 2010), ‹http://ec.europa.eu/competition/speeches/text/sp2000_022_en.pdf›; for competition policy as a means of strengthening social market economy; see, e.g. Commissioner for Competition, Joachim Almunia's mandate statement, (Brussels, February 2010), ‹http://ec.europa.eu/archives/commission_2010-2014/almunia/about/mandate/index_en.htm›; for the social side of competition, see, e.g., EU Commission, President of the European Commission, Jean-Claude Juncker's Speech, 'The State of the Union 2016: Towards a Better Europe – A Europe that Protects, Empowers and Defends' (Strasbourg, 14 September 2016), ‹http://europa.eu/rapid/press-release_IP-16-3042_en.htm›.

'In Europe, consumers are protected against cartels and abuses by powerful companies. This goes against giants like Apple too. In Europe we do not accept powerful companies getting illegal backroom deals on their taxes. The Commission watches over this fairness. This is the social side of competition law'.[105]

The fact that goals conflict with each other is nothing new. Kaysen and Turner argued in favour of a hierarchy of goals considering both the limitation of market power and the achievement of desirable economic performance. They suggested that 'in so far as reduction of market power is incompatible with efficiency and progressiveness', the first goal is subordinate to the second.[106] Therefore, efficiency is best seen as an instrument to achieve economic progress. For Kaysen and Turner, there should be no competition intervention that could make a few efficient firms exercise their own market power where the cost of intervention could see a substantial loss in efficiency. Nonetheless, 'where market power exists and can be reduced without sacrifices in performance, then such action is desirable without reference to the question of how good over-all performance may have been'.[107] In practice, it is difficult to predict how competition intervention against monopolistic giants could worsen the quality or the performance of the products concerned. Retrospectively, one could assess, for example, whether the intervention against Microsoft's Internet Explorer has, indeed, made the browser more efficient. The positive side of that intervention is that, indeed, it did open up the market for browsers.

A. Could Fair Redistribution Reduce Inequality?

It has been advanced that, when drafting the Sherman Act, the US Congress intended primarily to encourage redistribution, not efficiency.[108] The former interpretation endorses the consideration of equity[109] as a legitimate concern of antitrust laws that are called upon to improve the distribution of income, thereby addressing the increasing inequality due to the 'large scale accumulation of wealth'.[110] However, while the Congress did not enact the Sherman Act to ensure the 'fair'

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[105] Ibid. 5. For progressive thinking of what is 'socially fair' in the single market, beyond the remit of competition policy, see, e.g., EU Commission, President Jean-Claude Juncker, Speech: 'State of the Union Address 2017' (Brussels, 13 September 2017), ‹http://europa.eu/rapid/press-release_SPEECH-17-3165_en.htm›, 'And if we want to avoid social fragmentation and social dumping in Europe, then Member States should agree on the European Pillar of Social Rights as soon as possible and at the latest at the Gothenburg summit in November. National social systems will still remain diverse and separate for a long time. But at the very least, we should agree on a European Social Standards Union in which we have a common understanding of what is socially fair in our single market'.

[106] Carl Kaysen and Donald F. Turner, *Antitrust Policy: An Economic and Legal Analysis* (Harvard: Harvard University Press, 1959) in Crane and Hovenkamp (n 95), 338.

[107] Ibid.

[108] Robert Lande, 'Wealth Transfers as the Original and Primary Concern of Antitrust: The Efficiency Interpretation Challenged' (1982) 34 Hastings Law Journal, 67; on the wider goals of the US Sherman Act, see Ben Van Rompuy, *Economic Efficiency: The Sole Concern of Modern Antitrust Policy?* (Dordrecht: Kluwer Law International, 2012) 72.

[109] See, e.g., Tay-Cheng Ma, 'Antitrust and Democracy: Perspectives from Efficiency and Equity' (2012) 12 Journal of Competition Law and Economics (2), 233.

[110] On the latter and ensuring a level playing field for small businesses, see Oliver E. Williamson, 'Economies as an Antitrust Defense: The Welfare Trade-off' (1968) 58 American Economic Review 1, 18; Kenneth G. Elzinga, 'The Goals of Antitrust: Other Than Competition and Efficiency, What Else Counts?' (1977) 125 University of Pennsylvania Law Review, 1191. For the concern about inequality in the 'hipster' anti-trust debate, see Philip Marsden, 'Who Should Trust-Bust? Hippocrates, not Hipsters' (2018) Competition Policy International Antitrust Chronicle 1.

distribution of wealth from the rich to help the poor,[111] it did aim to prevent unfair transfers of wealth from individual consumers to large corporate trusts. This was understood in the sense that the objective of antitrust law is 'essentially a political rather than an economic enterprise'.[112] In this respect, Stiglitz regarded the social concern of the Progressive era as an 'attack' against monopolies and trusts, which was motivated more by concerns about political and social consequences than by market 'distortions'.[113] In a similar vein, Pikkety argues that, in contrast to 'efficient' redistribution, 'pure' redistribution is justified by considerations of 'social justice', not by market 'failure'.[114] Redistribution, then, is best achieved through taxation and transfers rather than through price control.[115] As the latter may involve shortages and rationing, Pikkety favours redistribution as a more efficient way 'to help the poor cope with high prices by means of fiscal transfers'.[116]

Nonetheless, while some commentators expressed concern over the cost of redistribution,[117] others suggested taxation as a better avenue for dealing with distribution.[118] Indeed, redistribution could be socially costly, and it remains, therefore, solely a second-best choice. In particular, Kaplow expressed concerns over labour inefficiency created by the tax and transfer system, which by taxing 'more heavily those who earn more income' engages in cross-subsidisation of individuals who earn less income.[119]

Whilst fair redistribution is the most desirable outcome of the process of competition, dealing with income inequality is beyond the purpose of competition law.[120] Of course, one could argue that competition intervention against anti-competitive behaviour, including abnormal corporate profits, could indirectly address the problem of raising inequality. Recent studies have evidenced a negative relation between inequality and growth, on the one hand, and a 'weak' relationship between redistribution and growth, on the other.[121] Stiglitz advanced that, beyond increased monopoly

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[111] See Robert H. Lande, 'Wealth Transfers as the Original and Primary Concern of Antitrust: The Efficiency Interpretation Challenged' in Edward T. Sullivan (ed.) *The Political Economy of the Sherman Act: The First One Hundred Years* (Oxford: Oxford University Press, 1991), 72.

[112] Richard Hofstadter, 'What Happened to the Antitrust Movement?' in Sullivan (n 111), 23.

[113] See, e.g., Joseph E. Stiglitz, 'New Theoretical Perspectives on the Distribution of Income and Wealth Among Individuals' in Kaushik Basu & Joseph E Stiglitz (eds.) *Inequality and Growth: Patterns and Policy: Concepts and Analysis* (London: Palgrave, Macmillan, 2016), vol. I, 52.

[114] See Piketty (n 81), 32.

[115] Ibid., 31, highlighting the allocative and not just distributive function of prices. Redistribution depends on taxation, i.e., income tax, VAT, social charges; transfers, i.e., family allowances, unemployment insurance, guaranteed minimum income, pensions; or expenses paid directly by the government for health, education and so on, see 100.

[116] Ibid., 32.

[117] See Louis Kaplow, 'On the choice of welfare standards in competition law' in Daniel Zimmer (ed.) *The Goals of Competition Law* (Cheltenham: Edward Elgar, 2012), 12; on redistribution's potential to inhibit 'the natural incentives of individuals to act in a capital-enhancing manner', see Radu Mușetescu, 'Competition Policy: Between Economic Objectives and Social Redistribution' (2012) 5 Economics & Sociology, 119.

[118] Roger J. Van den Bergh and Peter D Camesasca, *European Competition Law and Economics: A Comparative Perspective* (London: Sweet & Maxwell, 2011), 11.

[119] See Kaplow (n 117), 12.

[120] For the cautionary view that any state intervention to redistribute income from capital to labour would not work for the poor, see, e.g., Pikkety (n 81), 35.

[121] See, e.g., Jonathan D. Ostry, 'Inequality and the Fragility of Growth' in Basu and Stiglitz (n 113), 143.

power, exploitative (real estate) rents are responsible for increased inequality, and policies have to be devised to reduce rents and tax profits at 'very high rates'.[122] In contrast, Pikkety suggests that the source of inequality that needs to be addressed stems from labour income, i.e., wage inequality, rather than from inequality between capital and labour.[123]

However, further research into micro-and macroeconomic policy analysis needs to be undertaken so as to explore the relationship between inequality, redistribution, and growth.[124] From the above considerations, it follows that competition law is not only law, but also 'a socio-political statement about our society' in general.[125] Hovenkamp described this phenomenon as 'legal formalism', which instructed lawyers searching for the meaning of competition law not to look outside their case reporters.[126] Nonetheless, Hofstadter identified social goals of antitrust alongside economic, political and moral goals. Oberschall and Leifer raised yet another interesting issue on the use by sociologists of the term 'function', instead of 'goal', as something that is sought to be accomplished.[127]

B. Why the Social Side of Mergers Should No Longer Be Ignored?

It is rather unfortunate that subsequent government administrations often chose to ignore social goals in the interpretation of the Sherman Act.[128] Following a similar critical line on the legacy of the Reagan administration, Broder noted that the enforcement of mergers was then no longer hostile towards 'potentially troublesome mergers and acquisitions'. As a consequence, antitrust enforcers helped the transactions in question to go ahead.[129] Neither did the Bush administration make any attempt to block mergers.[130] As Foer explained, the justification for this deliberate exclusion of social goals tied to political ones was based on the perception of subjectivity, which could later be negatively affixed to antitrust decision-making.[131]

However, it is no longer possible to validly claim that enforcing antitrust laws solely with objective economic criteria in mind means that this kind of enforcement would always be effective in

[122] See Stiglitz (n 113), 51.

[123] See, e.g., Pikkety (n 81), 36; for the theory of human capital used to explain the rising wage inequality caused by globalization, see 73; for the view that labour market discrimination contributes to the inequality of human capital, see 85. Later, Pikkety suggested that offering fiscal compensation for labour discrimination and monopsony power is not an efficient way of dealing with inequality, 114. Thus, inequality in retirement is caused by unequal life expectancy, 118.

[124] See, e.g., François Bourguignon, 'Comments on 'Inequality and the Fragility of Growth' in Basu & Stiglitz (n 113), 161; Pikkety (n 81), 36, recognising that his argument is based on logic rather than empirical studies.

[125] Ibid. 3.

[126] Herbert Hovenkamp, 'The Sherman Act and the Classical Theory of Competition' in Sullivan (n 111), 139; cf Richard A Posner, *Antitrust Law* (Chicago: The University of Chicago Press, 2001), 24-26, who argued that the legislative intention of the drafters is irrelevant.

[127] Anthony Oberschall and Eric M. Leifer, 'Efficiency and Social Institutions: Uses and Misuses of Economic Reasoning in Sociology' (1998) 12 Annual Review of Sociology, 248.

[128] Marc Allen Eisner, *Antitrust and the Triumph of Economics: Institutions, Expertise, and Policy Change* (Chapel Hill: The University of North Carolina Press, 1991), 3.

[129] See, e.g. Douglas Broder, *US Antitrust Law and Enforcement: A Practice Introduction* (Oxford: Oxford University Press, 2016), 9, para 1.31.

[130] Ibid., 11, para 1.42.

[131] Albert Foer, 'On the Inefficiencies of Efficiency as the Single-minder Goal of Antitrust' (2015) 60 Antitrust Bulletin 2, 116.

eliminating various biases or even a misuse of economic theories. The salience of economics should not make sociological factors less valuable for the modern analysis of antitrust laws. As Duesenberry once noted, 'Economics is all about why people make choices, while sociology is all about why they don't have any choices to make'.[132] By paying attention to the socio-economic factors that could adversely affect social welfare, antitrust enforcement could better service the public, rather than corporate interests.

It has been argued elsewhere[133] that the congressional debates on both the Sherman and the Clayton Acts do not reveal any interest in efficiency as an objective of antitrust policy. Indeed, making efficiency the goal of antitrust 'may signify a false consensus'.[134] In contrast, Bork famously stirred up controversy by arguing that the task of antitrust law has to be seen as an 'effort to improve allocative efficiency without impairing productive efficiency so greatly so as to produce either no gain or a net loss in consumer welfare'.[135] Otherwise, antitrust laws could negatively affect consumer welfare. Despite his nebulous use of 'consumer welfare', Bork succeeded in imposing[136] it as a legitimate, even if unwritten, goal of the US antitrust law. Attempting to place economic efficiency in a wider context of market outcomes, modern industrial organization refers to a situation where 'it is impossible to find some small change in the allocation of capital, labour, goods or services that would improve the well-being of one individual in the market without hurting any other'.[137]

From the perspective of firms producing goods or offering services, measuring their own price efficiency at a microeconomic level is something that looks primarily at the difference between the maximum amount a consumer could spend and the actual price that the consumer ultimately pays. Similarly, if one seeks to measure macroeconomic labour efficiency for the other side of the market, then firms will have to look at the maximum and minimum salary that could be paid to maximize profits. Therefore, an evaluation of 'microeconomic' efficiency as desired by firms clashes with the pursuit of 'macroeconomic' efficiency as a market outcome servicing the public at large. In other words, there are two kinds of efficiencies, depending on which economic level one chooses to examine.

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[132] James Duesenberry, 'Comments on Becker's 'An economic analysis of fertility' in *Demography and Economic Change in Developed Countries* (National Bureau of Economic Research: Princeton University Press, 1960), 231-40.

[133] Elzinga (n 110).

[134] Foer (n 131), 108.

[135] See Robert Bork, *The Antitrust Paradox: A Policy at War with Itself* (New York: Free Press, 1978), 91.

[136] On Bork's influence, see George L. Priest, 'The Abiding Influence of the Antitrust Paradox' (2008) 31 Harvard Journal of Law & Public Policy 12, 455.

[137] Lynne Pepall, Dan Richards and George Norman, *Industrial Organization: Contemporary Theory and Empirical Applications* (Oxford: Oxford University Press, 4th ed., 2008), 35.

In the probability of a merger scenario, competition authorities undertake a well-established analysis to determine the kind of efficiencies brought about by the merger itself.[138] It is, however, assumed that if the merger will lead to a reduction in variable costs, this will create an incentive for the merged entity to subsequently reduce prices to the benefit of consumers. Commentators have suggested that any reductions in fixed costs, including cuts in the number of office staff, will not adversely affect pricing.[139] The so-called 'efficiencies' brought about by a merger have to be 'specific', i.e., any reductions in costs must be the result of the merger, must be verifiable, and must benefit consumers.[140] These efficiencies reduce production costs per unit. It is assumed that this will later increase the margins and offer the company involved an incentive to reduce the unit price.[141] While the whole process will benefit final consumers through further price reductions, it becomes nonetheless clear that 'many mergers are allegedly beneficial because of their elimination of all sort of redundancies, which very often include labour. Unemployment compensation and related costs are externalities of such mergers that are unrecognised in the antitrust analysis'.[142] In other words, mergers have a direct, and thus negative, impact on labour. At the same time, the 'microeconomic' efficiency brought about by a merger through cost reductions will ultimately result in lower prices.

Other efficiencies stem, for example, from the specialisation of labour, i.e., workers are able to perform certain tasks more efficiently; from the operation of higher capacity equipment, which requires less labour;[143] or from the sharing of managerial or sales expertise.[144] Leaving aside the resultant price efficiency, this positive side of mergers comes at the expense of considerable staff redundancies and, as a result, job losses. To date, economists have advanced limited empirical research on the negative effect of mergers on jobs in the long run.[145]

It has been argued that, after the implementation of a merger, the merged entity has to strike a difficult balance between the need to reduce labour costs and the need to minimise workplace

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[138] Although there is no formal recognition of an efficiency defence under the EU Merger Regulation 139/2004, see, e.g., , Edurne Navarro, Andrés Font, Jaime Folguera and Juan Briones, *Merger Control in the EU: Law, Economics and Practice* (Oxford: Oxford University Press, 2nd ed., 2009), 329, para 11.01.

[139] See Daniel Gore, Stephen Lewis, Andrea Lofaro and Frances Dethmers, *The Economic Assessment of Mergers under European Competition Law* (Cambridge: Cambridge University Press, 2013), 305.

[140] See Manuel Kellerbauer, 'Beurteilung von Zusammenschüssen' in Werner Berg and Gerald Mäsch (eds.) *Kommentar zum Deutsches and Europäisches Kartellrecht* (Köln: Hermann Luchterhand Verlag, 2015), 1493; Gore and others (n 139), 305; on specific efficiency gains, see Alistair Lindsay and Alison Berridge, *The EU Merger Regulation: Substantive Issues* (London: Sweet & Maxwell, 2012), 598; Ulrich Schwalbe and Daniel Zimmer, *Law and Economics in European Merger Control* (Oxford: Oxford University Press, 2009), 337.

[141] On efficiencies created by economies of scale, see, e.g., Paul Belleflamme and Martin Peitz, *Industrial Organization: Markets and Strategies* (Cambridge: Cambridge University Press, 1st ed., 2011), 377; Don E Waldman and Elizabeth J Jensen, *Industrial Organization: Theory and Practice* (Harlow: Pearson, 2013), 39.

[142] See Foer (n 131).

[143] See, e.g., Philip Nelson and David Smith, 'Efficiencies in Antitrust Analysis: A View from the Middle of the Road' (2015) 60 Antitrust Bulletin 2, 134.

[144] See David Teece, 'Economies of Scope and the Scope of the Enterprise' (1980) 1 Journal of Economic Behaviour & Organization 3, 223.

[145] See Oliver Budzinski and Isabel Ruhmer, 'Merger Simulation in Competition Policy: A Survey' (2010) 6 Journal of Competition Law and Economics 2, 277-319; Oliver Budzinski and Jürgen P Kretschmer, 'Horizontal Mergers, Involuntary Unemployment, and Welfare' (2016) 21 Journal of Economic Research (3), 297-317.

disruptions.[146] The assumption is that implementing job cuts could see the merged entity having its own performance adversely affected due to a potentially very high staff turnover. The latter is widespread in the U.S. banking industry where aggressive staff replacements took place with the aim of reducing labour costs.[147] There is, of course, further scope for achieving efficiency following the elimination of duplicate job descriptions. However, any cuts of previously available jobs means an increasing burden on existing employees. Other exceptional cases have emerged in the process of privatisation where outdated technologies had to be eliminated and, consequently, many jobs were lost. In the long run, other jobs have been created, making the previous losses a painful, but short-term, economic shock.

V. The Impact of Mergers & Acquisitions on Employment

This section seeks to examine the impact of mergers and acquisitions on employment and in so doing to fill in a gap in the literature. Drawing on the efforts of a previous study[148] on the negative consequences of mergers and acquisitions, which highlighted large-scale job losses, the EU Restructuring Monitor identified 3.7 million job losses as a result of the restructuring activity undertaken during 2002-2007. Approximately 6.5% of these job losses were caused by mergers and acquisitions, that is, 240,000 jobs during a five-year period.

2002	2003	2004	2005	2006	2007	2002-2007
6.6	2.9	3.8	5.3	11	9.9	6.5

Some of the high profile cases of job losses involved various sectors of the economy from pharmaceuticals, oil, steel, telecommunications, and banking, to the automobile industry. Prominent examples are, for example, the acquisition of Schering by Bayer with nearly 5,350 jobs cut, of which 3,150 were in Europe; Statoil-Norsk Hydro, with 3,500 redundancies; Arcelor and Mittal Steel, with 2,700 direct and 2,280 indirect jobs lost; 1,000 jobs at Neuf Telecom and Cegetel; 2,600 jobs at ABN AMRO and Royal Bank of Scotland/Fortis/Banco Santander; 7,500 jobs at Fortis bank; 11,300 jobs at Renault and Automobile Dacia; and 2,250 jobs at Boots and Alliance UniChem.

A. Some Reflections on the Negative Impact of M&A

Drawing on the data provided by the Restructuring Monitor, the table below identifies the type of restructuring activities involving mergers and acquisitions. The table highlights the creation of any planned jobs against imminent job losses. For the period under review of just four years, the results

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[146] See, e.g., Ingo Walter, *Mergers and Acquisitions in Banking and Finance* (Oxford: Oxford University Press, 2004), 112.
[147] Ibid.
[148] See the European Foundation for the Improvement of Working and Living Conditions, 'EMR case studies: The consequences of mergers and acquisitions', 2008.

show that only 1,420 new jobs had been created for 56,703 jobs cut that is, one newly created job for every 40 jobs cut. This result challenges the previously held assumption that mergers and acquisitions are positive in the sense that they bring about economic growth and therefore better job prospects. It exposes a net economic benefit of around 2.5% (1/40 ratio) in terms of job prospects.

The above findings are limited to the period between 2013 and 2016, but do not include major economic shocks, for example, post-Brexit[149] job prospects. The majority of mergers have had a devastating impact on jobs, despite assumptions that labour costs are not to be seen as an incentive to merge. It could also be argued that, in the long run, more jobs could eventually be created, but the facts have revealed the opposite.

The vast majority of mergers notified to the EU Commission are approved, even where these approvals may be subject to conditions; thus, from 21 September 1990 to 31 July 2018, this accounted for an insignificant percentage (0.37%),[150] that is, 27 blocked mergers out of a total of 7,037 notified mergers. A tiny fraction of mergers have been the subject of a prohibition decision under Article 8.3 of the EU Merger Control Regulation 139/2004. One good reason for a tempered criticism of the blocking of this fraction is given by an American commentator, who recently noted that 'indeed, the competition authorities of the European Commission (EC) have been even more aggressive in pursuing their enforcement agenda than have their U.S. counterparts'.[151] Other commentators asserted that blocking a merger could eventually lead to the market exit of a poorly performing firm.[152]

B. The Remaining Gap in the EU Merger Control – Historical and Intentional

Historically, the introduction of EU merger control rules led to controversy over whether this gap in the Treaty of Rome was left intentionally, with the purpose of a late introduction of a national industrial policy.[153] The subsequent exploration of the historical roots of the Treaty provisions revealed that a later introduction of merger control had already been envisaged by the Spaak report.[154] Koch concluded that in the 1950s, there was simply no political appetite for merger control.[155] The founding Member States feared losing their 'economic sovereignty' over national

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[149] For an insightful contribution on Brexit more generally and its political context, see Paul Craig, 'Brexit: A Drama in Six Acts' (2016) 41 European Law Review 4, 447-468; Oxford Legal Studies Research Paper no. 45.

[150] For recent statistics see ‹http://ec.europa.eu/competition/mergers/statistics.pdf› (July 2018). For an analysis of this aspect and the procedure under the Merger Control Regulation, as amended by the Implementing Merger Regulation 1269/2013, see, e.g., Anca D. Chirita, 'Procedural Rights in EU Administrative Competition Proceedings: *Ex Ante* Mergers' in Caroline Cauffman and Qian Hao (eds.) *Procedural Rights in Competition Law in the EU and China* (Berlin: Springer Verlag, 2016), 62.

[151] Broder (n 129), para 1.47.

[152] See Mark A. Jamison and Janice A. Hauge, 'Adding Dimension to Merger Analysis' (2016) 12 Journal of Competition Law & Economics 1, 6, drawing on this point raised earlier by Alexei Oytchinnikov, 'Merger Waves Following Industry Deregulation' (2013) 51 Journal of Corporate Finance.

[153] Oliver Koch, 'Fundamentals of European Merger Control' in Günther Hirsch, Frank Montag, Franz J Säcker, Philip Marsden and Rob Murray (eds.) *Competition Law: European Community Practice and Procedure* (London: Sweet & Maxwell, 2008), 1903, para 51007.

[154] On the history of the European competition rules, see Anca D. Chirita, 'A Legal-Historical Review of the EU Competition Rules' (2014) 63 International & Comparative Quarterly (2), 282.

[155] Koch (n 153), 1904, para 51008.

industrial concerns.[156] After many years of growing concentrations of power, calls followed to introduce merger control. As has already been explained, the economic regulation of mergers did not particularly harm the agglomeration of market power, as the overwhelming majority went ahead to obtain approval by the EU Commission. It is, therefore, doubtful that the enforcement has, indeed, achieved what was initially hoped for, namely, the keeping of monopolistic concentrations under control. This constructive criticism goes hand in hand with pertinent evidence provided by economic experts. Upon closer examination of thirteen mergers, Gore, Lewis, Lofaro, and Dethmers raised concerns over these mergers being ultimately cleared unconditionally, despite a clear picture that was indicative of dominance.[157]

Date	Country	Company	Sector	New jobs	Job losses
5/4/2016	Ireland	Paddy Power	Arts/entertainment	0	250
5/4/2016	UK	Paddy Power Betfair	Arts/entertainment	0	350
15/3/2016	Sweden	Orbit One	Manufacturing	0	40
16/2/2016	Germany	DZ Bank	Financial services	0	700
1/2/2016	Netherlands	Vivat	Financial services	0	900
25/1/2016	Ireland	Intuity	Information/communication	100	0
14/12/2015	World	Shell	Mining/quarrying	0	2.800
3/12/2015	Belgium	GlaxoSmithKline	Manufacturing	0	170
1/12/2015	France	Société nationale Corse Méditerranée	Transportation/storage	0	583
13/11/2015	France	Futurol	Construction	0	228
30/10/2015	UK	Caparo	Manufacturing	0	43
28/10/2015	Spain	Lafarge/Holcim	Manufacturing	0	99
26/10/2015	France	Gérard Darel	Manufacturing	0	130
21/10/2015	France	Brit Air	Transportation	0	66
21/10/2015	Netherlands	Q8 Europoort	Manufacturing	0	100
24/9/2015	France	3SI Holding	Retail	0	140
11/9/2015	Sweden	SSAB	Manufacturing	0	270
1/9/2015	Spain	Vodafone Spain	Information/communication	0	1,059
31/8/2015	Austria	Baumax	Retail	0	400
6/8/2015	World	Merck	Manufacturing	0	2,585
21/7/2015	France	Alcatel Lucent EU	Manufacturing	0	83
16/7/2015	France	Hop!	Transportation/storage	0	250
9/7/2015	France	L'Express Roularta	Information/communication	0	240
25/6/2015	France	La Dépêche Journaux du Midi	Information/communication	0	350
25/6/2015	France	La Dépêche Journaux du Midi	Information/communication	0	300

[156] See, e.g., Wolf Sauter, *Competition Law and Industrial Policy in the EU* (Oxford: Clarendon Press, 1997), 133.
[157] See the helpful table of cases drawn by Gore and others (n 139), 165-76.

12/6/2015	Norway	Coop Norge	Retail	0	500
29/5/2015	France	Alma Consulting Group	Professional services	66	156
19/5/2015	France	Lafarge	Manufacturing	37	166
15/5/2015	Italy	Olivetti	Manufacturing	0	75
5/5/2015	World	Lafarge	Manufacturing	37	380
4/5/2015	Italy	Ansaldo Breda	Manufacturing	0	282
29/4/2015	Spain	BBVA	Financial services	0	1,557
28/4/2015	France	Verreries de Manières	Financial services	0	119
24/3/2015	Poland	Alior Bank	Financial services	0	1,000
9/3/2015	Italy	Firema Transporti	Manufacturing	0	119
5/3/2015	Poland	BankBGZ	Financial services	0	1,800
26/2/2015	Germany	Noelke	Manufacturing	0	144
19/2/2015	Croatia	OTP Bank	Financial services	0	124
19/2/1015	France	Abattoirs Industriels de la Manche	Manufacturing	0	314
15/1/2015	Spain	Barclays Bank	Financial services	0	975
8/1/2015	Malta	Autobuses de León (Malta Public Transport)	Transportation/storage	300	0
24/12/2014	France	Arc International	Manufacturing	150	550
17/12/2014	UK	Dixons Carphone	Retail	0	400
11/12/2014	Netherlands	Wegener	Information/communication	0	275
11/12/2014	Finland	M-Brain	Information/communication	0	32
5/12/2014	France	Tilly Sabco Bretagne	Manufacturing	0	118
5/12/2014	Spain	Vodafone	Information/communication	0	1,000
1/12/2014	France	Altia	Manufacturing	0	41
1/12/2014	Germany	Sachtleben	Manufacturing	0	527
19/11/2014	Germany	HansaGroup	Manufacturing	0	100
11/11/2014	Germany	Riha Wesergold	Manufacturing	0	180
29/10/2014	France	Mobilier européen	Retail	0	1,003
27/10/2014	France	Caddie	Manufacturing	0	252
24/10/2014	UK	Monarch Airlines	Transportation/storage	0	700
18/10/2014	Germany	Telefónica	Information/communication	0	1,600
16/10/2014	Netherlands	Ziggo	Information/communication	0	450
7/10/2014	France	Peugeot Motocycles	Manufacturing	0	90
29/9/2014	France	Gad	Manufacturing	0	289
17/9/2014	France	Isoa	Manufacturing	0	114
16/9/2014	Spain	Orange	Information/communication	0	550
5/9/2014	Germany	iSoft	Information/communication	0	70
1/8/2014	Finland	Starkki and Puukeskus	Retail	0	100

25/7/2014	France	CEIT	Manufacturing	0	131
17/7/2014	World	Microsoft	Information/communication	0	18,000
18/6/2014	France	Pixmania	Retail	0	187
17/6/2014	Sweden	Sydsvenkan	Information/communication	0	160
14/6/2014	Poland	Boryszew	Manufacturing	130	0
6/6/2014	France	Jardiland	Retail	0	230
30/4/2014	Italy	General Montaggi	Construction	0	100
26/4/2014	Germany	Gardner Denver Deutschland	Manufacturing	0	87
10/4/2014	France	Manufacture vosgienne de meubles (MVM)	Manufacturing	0	43
31/3/2014	UK	Creative Foods	Manufacturing	0	149
26/3/2014	France	NextiraOneFrance	Manufacturing	0	277
12/3/2014	Germany	Bosch Solar Energy	Manufacturing	0	350
5/3/2014	Germany	PBC Banking Services	Financial services	0	300
26/2/2014	France	Call Expert	Administrative services	0	507
14/2/2014	Sweden	Sparbanken Skane	Financial services	0	200
6/2/2014	France	Mory Ducros	Transportation/storage	0	2,850
31/1/2014	France	Jean Caby	Manufacturing	0	120
11/1/2014	Netherlands	Be Informed	Information/communication	0	140
29/11/2013	UK	Menzies Hotel	Hotel/restaurants	0	155
28/11/2013	Germany	Conergy SolarModule	Manufacturing	0	80
7/11/2013	Spain	Caja Badajoz	Financial services	0	193
6/11/2013	Belgium	Mediahuis	Information/communication	0	138
4/11/2013	Czech Republic	Telefonica Czech Republic	Information/communication	0	2,000
30/10/2013	France	La Redoute	Retail	0	1,178
30/10/2013	France	Europeene Food	Retail	0	218
22/10/2013	France	Calaire Chimie	Manufacturing	0	111
30/9/2013	France	Sodetal	Manufacturing	0	173
8/8/2013	Bulgaria	Ledenika	Manufacturing	300	0
22/7/2013	Romania	Autoritatea de Supraveghere Financiara	Public administration and defence	300	0
19/7/2013	France	Sony	Manufacturing	0	168
25/6/2013	Austria	Hutchinson 3G Austria	Information/communication	0	170

The EU merger control rules were introduced in 1989, sixteen years after the presentation of a first draft proposal in 1973.[158] The legal basis for the enactment of the merger regulation is Article 3 TEU in conjunction with Protocol 27 on the Internal Market and Competition, which seeks to safeguard undistorted competition within the internal market.[159] However, a closer examination of the 28 years the notification system has been in existence shows the overall enforcement of this area remains relatively modest.

As a preliminary finding, this contribution suggests that the assessment of mergers has been based on legal and economic considerations, rather than the social impact that a particular merger might have, for example, on job prospects. Otherwise, the analysis of the so-called 'efficiencies' brought about by the proposed merger could have been endangered by political and social considerations, including job insecurity.

C. Public Interest Mergers: Protecting Jobs or Corporate Profits?

There is no explicit recognition of the creation, loss, or maintenance of jobs in Regulation 139/2004. Indeed, Article 21 (4) of this Regulation allows Member States to 'take appropriate measures to protect legitimate interests other than those taken into consideration by this Regulation and compatible with the general principles and other provisions of Community law'. Comparatively, under the US antitrust law, the Bank Merger Act of 1966 offers a similar objective justification for disapproval of a merger where 'the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served'.[160]

Under the EU Merger Control Regulation, the protection of jobs could be seen to fall under the ambit of a 'legitimate interest'. Another legal obstacle against this projection is the fact that Article 21 (4), second sentence, includes under the concept of public interest 'public security, plurality of the media and prudential rules'. This shortcoming could be overcome by reliance on the last paragraph of Article 21 (4), which mandates that 'any other public interest' be communicated to the Commission for an evaluation.[161] However, blocking a merger on the grounds of a social, public interest would normally attract criticism for being based on pure politics, rather than on economic considerations. In any case, it has already been recognised that merger decisions are not merely legal, but also economic or political decisions.[162] In the UK, the public interest exception under Section 58 of the Enterprise Act has successfully been raised several times in the media sector, e.g.,

[158] See Manuel Kellerbauer, 'Erwägungsgründe zur FKVO' in Berg and Mäsch (n 140), 1433.

[159] Ibid. 1433.

[160] Broder (n 129), 26, para 2.34.

[161] To date, reliance on public policy interests has been very rare; see, e.g., Bellamy & Child, Vivien Rose and David Bailey (eds.) *European Union Law of Competition* (Oxford: Oxford University Press, 7th ed., 2013), 568 and 569, para 8.104. For the distinction between 'recognised' and 'non-recognised' public interests, see, e.g., Claes Bengtsson, Josep M Carpi Badia and Massimiliano Kadar, 'Mergers' in Jonathan Faull and Ali Nikpay (eds.) *The EU Law of Competition* (Oxford: Oxford University Press, 3rd ed., 2014), 607, paras 5.283 and 5.284.

[162] Fritz Rittner and Michael Kulka, *Wettbewerbs- und Kartellrecht* (Heidelberg: C.F. Müller, 2008), 381.

for the accurate presentation of news, safeguarding the freedom of opinion and plurality of views; on grounds of national security, e.g., the maintenance of UK strategic capabilities and the protection of classified information; and for maintaining the stability of the financial system, but has recently missed the opportunity to protect jobs in the hostile takeover of Cadbury by Kraft.[163]

D. The Legal Avenue to Public Interest – Time for an Inclusive Interpretation

Since the legitimacy of politics in merger control is at best as dubious as the perception of the immorality of politicians in the eyes of the general public, the search for the objective of competition policy could offer some useful insights into whether sociological aspects should necessarily concern economics. The primary objective of a 'highly social market economy, aimed at full employment' embedded in Article 3 (3) TEU[164] could be usefully interpreted in conjunction with Article 21 (4) of the EU Merger Regulation. Secondary legislation could be applied in a constructive manner for the delivery of 'full employment' by clarifying that, ex post, following a merger implementation, new jobs must be created and existing ones cannot be eliminated to take advantage of cheaper labour, thereby resulting in social dumping.

E. Social Dumping: An Under-Estimated Phenomenon in Mergers?

Most mergers rely on relocation to areas where a corporation can effectively cut down on labour costs. This phenomenon of 'social dumping' has been actively pursued rather than discouraged. The Court of Justice of the EU has also referred to social dumping. In his Opinion, Advocate General Wahl examined 'provisions designed to prevent social dumping, which are negotiated and included in a collective agreement on behalf of and in the interests of workers' and concluded that these provisions are 'in principle to be regarded as improving directly their employment and working conditions'.[165] The Advocate-General considered that it is for the competent court to 'determine whether there exists a real and serious risk of social dumping'.[166]

One could recall here that the general objective of the EU is working for 'the sustainable development of Europe'. This is based on 'balanced economic growth and price stability' and 'a highly competitive social market economy', both of which represent the necessary layout for

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[163] See Jonathan Parker and Adrian Majumdar, *UK Merger Control* (Oxford: Hart Publishing, 2nd ed., 2016), 152-64; Andrew Scott, Morten Hviid and Bruce Lyons, *Merger Control in the United Kingdom* (Oxford: Oxford University Press,2008), 388-95, referring inter alia to *Bristol Evening Post/David Sullivan*, *George Outram/Observer*, *Johnston Press/Trinity Mirror*, *Trinity International Holdings/Thomson Regional Newspapers*, *Trinity/Mirror Group*, *Portsmouth & Sunderland Newspapers and Johnston Press/Newsquest (Investments)/News Communications and Media*, *Century Newspapers/TRN* and *Sky/ITV* in the media and to Lloyds TSB and HBOS in the banking sector respectively. For a missed opportunity to consider the public interest, see Richard Wachman, 'Kraft takeover by Cadbury would jeopardise 30,000 jobs, warns Unite' The Guardian (13 January 2010) ‹https://www.theguardian.com/business/2010/jan/13/cadbury-kraft-unite-jobs-warning›; Federico Mor, 'Contested mergers and takeovers', House of Commons Briefing Paper no. 5374 (24 July 2018); previously, the governmental response cautioned against protectionism, see Government Response to the Business, Innovation and Skills Committee's Report on 'Mergers, Acquisitions and Takeovers: The Takeover of Cadbury by Kraft', CM 7915 (July 2010).

[164] It is worth recalling that the area in question is one of 'shared' competence of the EU with its Member States. More generally, see Mia Rönnmar, 'Labour and equality law' in Catherine Barnard and Steve Peers (eds.) *European Union Law* (Oxford: Oxford University Press, 2014), 593.

[165] Opinion of AG Wahl, Case C-413/13, *FNV Kunsten Informatie en Media v Staat der Nederlanden* [2014], ECLI:EU:C:2014:2215, para 83.

[166] Ibid. para 89.

achieving sustainable development. Efficiency is not explicitly mentioned in the context of the above wider objectives, but has been seen as a means to this end or as 'part of this goal'.[167] To exacerbate the drafting complexity of the Treaty of Lisbon, one could also add Article 119 TFEU's principle of 'open markets with free competition' based on an 'efficient allocation of resources'.[168] The latter provision has placed competition as an economic policy in the context of macroeconomics based on price stability, sound public finances and monetary conditions, and a sustainable balance of payments. This kind of configuration makes competition an economic policy that integrates two sides of the same coin: micro-and macroeconomics.

F. Fixing Micro-Economics 'Price' Efficiency by Breaking Macro-Economics 'Wage' Efficiency: One Way of Losing Sight of the Bigger Picture

It can also be argued that the ideal of price and wage efficiency at the microeconomic firm level is intertwined with macroeconomic principles of price stability and employment, including job creation. Furthermore, it is advanced that the ideal of price efficiency can never be maintained in the long run, for example, in the presence of inflation or of a huge public debt. Similarly, the requirement of Protocol 27 on 'Internal Market and Competition' that competition within the internal market should not be distorted cannot allow an uneven playing field of tax competition,[169] whereby certain Member States will misuse tax incentives to attract foreign corporations through an extremely low tax base for corporate profits. Inevitably, this kind of competition based on tax levels, which could be seen in the *Apple* case,[170] is never based on efficiency or merit alone. Rather, it dangerously distorts the macroeconomic principles based on free competition with open markets. It is also the first time that a Commissioner for Competition has chosen to tackle the massive inequality arising from extremely low taxed corporate profits. By setting a welcome precedent of this kind – to the despair of several commentators distraught at losing sight of economic efficiency for re-distributive taxation - the enforcement of competition ventures, indeed, into unchartered territory, but it does so bravely, as many more corporations could soon follow the same kind of much-needed treatment. Tackling this well-known distortion of competition through 'tax competition' has both the legitimacy and the support of Protocol 27 in conjunction with Title VII on 'Common rules on Competition, taxation and approximation of laws'. Furthermore, the avoidance of

[167] See Heike Schweitzer, 'Efficiency, political freedom and the freedom to compete – comment on Maier-Rigaud' in Zimmer (n 117), 171.

[168] See Anca D Chirita, 'Legal interpretation and practice versus legal theory: a reconciliation of competition goals' in Zimmer (n 117), 123.

[169] For the recent controversy surrounding Apple's unpaid tax, see also EU Commission, Commissioner for Competition, Margrethe Vestager, Speech: 'Why fair taxation matters' (Copenhagen, 9 September 2016).

[170] EU Commission, press release IP 162923, 'State aid: Ireland gave illegal tax benefits to Apple worth up to €13 billion' (Brussels, 30 August 2016); COMP SA 38373, *Apple*, decision of 30 August 2016, C (2016) 5605 final; Joseph Stiglitz, 'The Apple Tax Tussle Shows the Need for a New Way of Taxing Profits', Süddeutsche Zeitung (19 September 2016), ‹http://www8.gsb.columbia.edu/faculty/jstiglitz/sites/jstiglitz/files/Apple%20Tax%20Tussle_0.pdf›.

tax controls has also been recognised as one of the main reasons for engaging in vertical integration between downstream and upstream firms to achieve cost savings based on low corporate tax.[171]

G. About Dividing Lines in Micro-and Macroeconomics and in Competition and Employment Laws – No More of Social Isolationism

As in economics, where both industrial organization and macroeconomics draw dividing lines between price and wage efficiency, the EU framework deals with competition rules separately from social and employment law. This means that the exclusive focus on economic efficiency, in theory, could deliver optimal outcomes when it comes to growth and productivity, but could be less helpful where it sacrifices employment and job prospects. In an attempt to address this shortcoming, one could look for integration provisions that could re-unite the two areas of concern to achieve a better balance between productivity and job creation. This classical solution seeks to identify a flanking or integration provision elsewhere in the Treaty.[172] For example, Article 9 TEU requires that 'in defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment'. While the provision has been used in the context of employment law, it can be argued that as an economic policy of the European Union, competition policy has to seek and actively promote at least a 'high level of employment' to reach the desired 'highly competitive social market economy'. The social feature cannot be tied exclusively to social protection without firms or corporations being asked to behave responsibly when it comes to jobs.

H. Putting Jobs Ahead of Corporate Profits – How Dreams Can Come True

Based on the relevant data, a clear case can be made that competition policy has successfully been used to achieve economic growth while sacrificing the fair cost of labour. This finding is in line with Perrow's critical assessment of mergers and takeovers as being motivated by power struggles among firms within and across markets and the conferral of advantages that may have little to do with efficiency.[173]

Another available avenue is making better sense of Article 151 TFEU, which mentions the promotion of employment aimed at 'the development of human resources with a view to lasting high employment'. There are also weaknesses associated with an approach that could ensure competition policy be applied responsibly when it comes to asking businesses to create jobs. For example, job creation is encouraged in the context of small and medium-sized enterprises, but has never been de facto imposed or otherwise made conditional on monopolists. Similarly, the legal balancing of efficiencies as a result of a merger does not need to consider its resultant social impact.

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[171] See, e.g., John Lipczynski, John Wilson and John Goddard, *Industrial Organization: Competition, Strategy and Policy* (Harlow: Pearson, 4th ed., 2013), 588.

[172] For an attempted integration of consumer protection provisions under the umbrella of competition law to seek the legitimacy of consumer welfare as a policy objective, see Anca D Chirita, 'Undistorted, (Un)fair Competition, Consumer Welfare and the Interpretation of Article 102 TFEU' (2010) 33 World Competition Law and Economics Review 3, 418.

[173] Charles Perrow, *Complex Organizations: A Critical Essay* (New York: McGraw-Hill Publishers, 3rd ed., 1985).

Although businesses cannot be expected to offer safeguards for jobs, which could eventually compromise productive efficiency and later harm consumers, there is a greater potential to block international mergers that could destroy local economies, lead to job losses, and amplify social inequality. Critics have argued that, similarly, a competition policy would enforce industrial policy and bring unwanted protectionism. This position is critical in the sense that it does nothing to address the negative impact of the sole focus on efficiency, and it does not contribute to the social balance of the market economy. Other critics have seen a real conflict between economic efficiency and the reduction of inequality.[174] Indeed, they go further and claim that the EU's low levels of economic growth and high unemployment are to be attributed to its excessive concern with equality, given the European social welfare state and its highly regulated labour markets.[175] Higher protection for employees has generally been blamed for the so-called labour market rigidities.[176] I can only respectfully disagree with this earlier point when it comes to competition policy intervention; the latter has rarely tackled issues surrounding inequality for the poor. However, it did so for the rich when the previous Commission injected billions of euros of state aid into banks, which were deemed to be too big to fail rather than exit the market due to poor performance and management alike.[177]

Ultimately, the historical analysis of the inception of the merger control rules reveals that the late introduction of these rules was due to the lack of consensus over the pursuit of non-economic criteria in the assessment of mergers, in particular, the legal balancing of employment or other industrial policy considerations.[178] There was then a concern that the politicisation of merger control would[179] happen in the following years.[180] It can still be argued that the silence with regard to jobs or unemployment in the Merger Regulation should be properly acknowledged and that the legal balancing should not be based exclusively on industrial organization 'efficiency' criteria without any further consideration of the social impact of the proposed merger.

Nonetheless, the present state of the law is very clear in the sense that competition law does not apply to labour relations. The considerations are based strictly on the special regulation of employment contracts. For example, a collective labour agreement that set minimum fees for the

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[174] See Vicente Navarro and John Schmitt, 'Economic Efficiency versus Social Equality? The U.S. Liberal Model versus the European Social Model' (2005) 35 International Journal of Health Services, 614.

[175] Ibid. 614.

[176] In defence of labour protection, see Jo Shaw, Jo Hunt & Chloe Wallace, *Economic and social law of the European Union* (London: Palgrave Macmillan, 2007), 393; for an economic explanation of rigidities, see Stephen D Williamson, *Macroeconomics* (London: Palgrave Macmillan, 2014), 205.

[177] See Chirita (n 2), 272, on the 'efficiency' justification argument raised against bail-outs of inefficient banks or Member States.

[178] See Koch (n 153), 1906, para 51.022.

[179] Ibid. 1907, 51023.

[180] On this point, in particular 'Independence and Impartiality from Outside: The Case against Politicisation of the Directorate-General for Competition' see Chirita (n 150), 81; in defence of politicisation more generally, see Commissioner for Competition, Margrethe Vestager, Speech 'Independence is non-negotiable', Chatham House (London, 18 June 2015).

supply of independent services could not be challenged as anti-competitive under Article 101 TFEU.[181]

From the interpretation of the available data on new jobs and cuts following a merger, it can be concluded that the assumption that 'new jobs replace old jobs' is a fallacy, with the exception of losses that could be justifiable due to technological change.[182] It is, however, beyond the scope of this contribution to offer recommendations to economists[183] as to the optimal trade-off between price and wage efficiency that should be pursued. It is obvious that it would not be desirable to replace 'higher' with 'lower' wages to the extent to which this strategy results in unwanted social dumping of 'older' and experienced workers to be replaced with 'cheaper' ones. Obviously, 'full employment' is incompatible with egocentric individuals who are solely after very high wages.

VI. The Macroeconomics of Wage Efficiency

It is advanced that the disciplinary division between micro- and macroeconomics has contributed to the lack of a coordinated implementation of a competition policy that could actively seek to achieve both productivity and jobs. Having set lower prices as a target, competition policy has sought to achieve both 'price' and 'wage' efficiency by cutting down labour costs and hurting wages. In contrast, full employment translates into making more jobs available, and, at the same time, by maintaining the wages at a lower level than under fierce or aggressive competition for jobs, it creates stable market conditions for lower labour costs. And lower labour costs contribute directly to lower prices for goods and services.

As has been argued elsewhere,[184] in a highly competitive EU labour market, a lower wage will not attract many workers, so employers will have to offer other employees a higher wage. As businesses have no interest in raising their own labour costs, inducing unemployment will be seen as positive, as it pushes wages further down. The perils of high unemployment are the existence of fierce competition for jobs with a high demand for jobs and a lower level of offers.

However, there is an illusion of *real* wages that are higher than these wages would have been during times of lower unemployment with normal competition for jobs, i.e., lower demand and higher numbers of offers. The argument that fierce competition for jobs rewards employees with

[181] Case C-413/13, *FNV Kunsten Informatie en Media v Staat der Nederlanden* [2014], ECLI:EU:C:2014:2411. In the same vein, namely, 'agreements entered into within the framework of collective bargaining between employers and employees and intended to improve employment and working conditions must, by virtue of their nature and purpose, be regarded as not falling within the scope of Article 101 (1) TFEU', see, e.g., *Albany* [1999] EU:C:1999:430; Case C115/97 to C-117/97, *Brentjens* [1999] EU:C:1999:434; Case C-219/97, *Drijvende Bokken* [1999] EU:C:1999:437; Case C-180/98 to C-184/98, *Pavlov and Others* [2000] EU:C:2000:428; Case C-222/98, *van der Wounde* [2000] EU:C:2000:475; Case C-437/09, *Prevoyance* [2011] EU:C:2001:112.

[182] See Michael Burda and Charles Wyplosz, *Macroeconomics: A European Text* (Oxford: Oxford University Press, 6th ed., 2013).

[183] The latter should be in a better position to revisit their own flawed theories and to identify the optimal equilibrium between 'price' efficiency at a micro-economic level and 'wage' efficiency at a macro-economic level so as to reconcile the two targets and meet somewhere in the middle.

[184] See, e.g., Wendy Carlin and David Soskice, *Macroeconomics: Imperfections, Institutions and Policies* (Oxford: Oxford University Press, 2006).

higher wages is yet another fallacy. Employers could easily divest themselves of higher paid employees and reduce labour costs by hiring younger talent. This phenomenon was also captured by Advocate-General Wahl, who exposed the perils of social dumping by saying that this 'might occur through the immediate dismissal of workers or through gradual economisation by not replacing workers whose contract has come to an end'.[185] In a nutshell, unemployment is the root of the problem, but not the solution.

Advocate General Wahl also referred to how 'the elimination of wage competition between workers – which is in itself the very raison d'être for collective bargaining – implies that an employer can under no circumstances hire other workers for a salary below that set out in the collective agreement'.[186] He went on to ask the following self-revealing question: 'How could workers credibly ask for a salary increase if they knew that they could be easily and promptly replaced with self-employed persons who would probably do the same job for a lower remuneration?'[187] Similar to the scenario mentioned above, 'wage efficiency' cannot be taken to represent the real, but rather an artificial wage since a larger percentage of the active workforce is never fully employed.

As a preliminary finding, this contribution has identified that the current rhetoric found in mainstream micro-and macroeconomic textbooks is in sharp contrast to real-life scenarios: first, jobs are restructured at a higher rate than they are being created, and, second, higher unemployment creates only an impression of higher real wages than those possibly available under full employment, i.e., perfect labour competition.

VII. The Macroeconomic Outlook of 'Full' Employment: Are We Anywhere Near?

Over the years, the statistics offered by Eurostat have raised several concerns over unemployment figures, which, from a total of 513 million EU citizens in January 2018,[188] amounted to an overall 15.7 million and 8.2% of the total workforce by the end of 2016. In 2018, the unemployment situation has slightly improved with an overall 17.105 million in the EU28 and 13.570 million in the Eurozone area.[189]

Year	Unemployed in EU-28	Unemployment rate as a percentage of the total

[185] Ibid., para 89.

[186] Opinion of A.G. Wahl, Case C-413/13, *FNV Kunsten Informatie en Meia v Staat der Nederlanden* [2014], para 76.

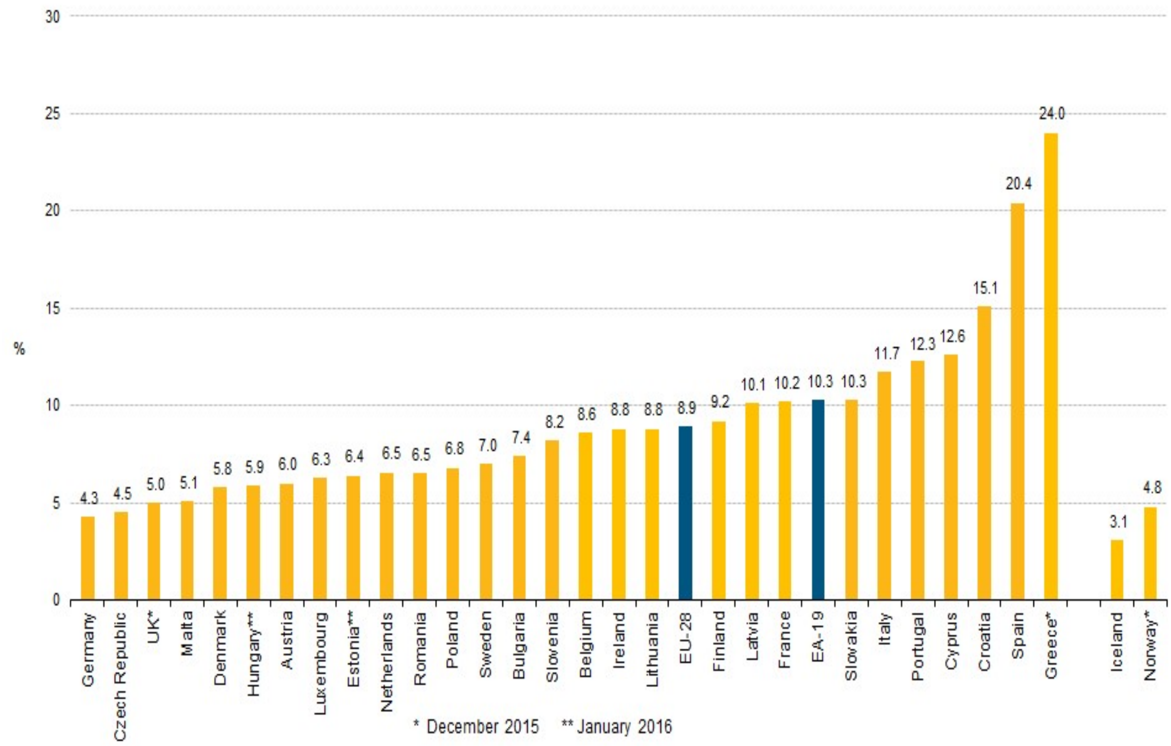
[187] Ibid., para 77.

[188] See, e.g., ‹http://ec.europa.eu/eurostat/documents/2995521/9063738/3-10072018-BP-EN.pdf/ccdfc838-d909-4fd8-b3f9-db0d65ea457f›. This change was due to a net migration of 1.1 million, as the natural change of the EU population is negative with more deaths (5.3 million) than births (5.1 million). On the impact of unemployment and challenging the legitimacy of Commissioner Almunia's intervention to rescue banks too-big-to-fail in the EU through state aid competition policy, see, e.g., Chirita (n 2), 267, 271.

[189] For the latest unemployment statistics, see, e.g., ‹http://ec.europa.eu/eurostat/documents/2995521/9105174/3-31072018-AP-EN/a942605d-7a19-4c0a-8616-c5805a826798› (31 July 2018, Eurostat); for the previous year's statistics, see ‹http://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics›. Compared to 2017, unemployment in the EU fell by 1.657 million in EU28 and by 1.146 million in the euro area.

		workforce
2000s	20.5 million	9.2%
End of 2004	21.2 million	9.2%
2005s	16.2 million	6.8%
2008-mid-2010	21.9 million	9.7%
2001-2013	26.5 million	11%
End of 2016	15.7 million	8.2%
End of July 2018	17.1 million	6.9%

A few Member States, namely, Germany (4.3%), the Czech Republic (4.5%), and the UK (5.0%), were in full employment as of January 2016, while the remaining Member States displayed higher unemployment, with the worst conditions clearly evidenced in Spain (20.4%) and Greece (24%).[190] In 2018, the lowest unemployment rates were recorded in the Czech Republic (2.4%) and Germany (3.4%) whilst the highest unemployment rates remain in Greece (20.2%) and Spain (15.2%).



Looking at the wider picture from 2004 to 2015, Germany had a higher level of unemployment in the period from 2004 to 2010, fluctuating from 11.2% in 2005 to 7.0% in 2010, but it addressed the issue, moving towards full employment from 2011 with 5.8%, and effectively reaching full employment at 4.6% in 2015. In contrast, the UK was in a better position, as it had full employment in the period from 2004 to 2008 with fluctuations from the lowest level of 4.7% in 2004 to 5.8% in 2008 and had relatively higher levels of unemployment in the following period from 8.1% in 2010 to

[190] The data vary slightly when looking at the latest statistics, which include seasonally adjusted workers, see, e.g., ‹http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Unemployment_rates,_seasonally_adjusted,_July_2016.png›.

6.1% in 2014, reaching 5.3% in 2015. The UK's situation is comparable with that of the US in the sense that higher levels of unemployment dominated the years of the financial crisis from 2009 to 2013 with relatively higher levels of unemployment, which reached a peak of 9.6% in 2010, but it has been moving slowly towards full employment in the last three years (5.3% in 2015).

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
EU-28	9.3	9.0	8.2	7.2	7.0	9.0	9.6	9.7	10.5	10.9	10.2	9.4
Euro area	9.3	9.1	8.4	7.5	7.6	9.6	10.2	10.2	11.4	12.0	11.6	10.9
Belgium	8.4	8.5	8.3	7.5	7.0	7.9	8.3	7.2	7.6	8.4	8.5	8.5
Bulgaria	12.1	10.1	9.0	6.9	5.6	6.8	10.3	11.3	12.3	13.0	11.4	9.2
Czech Republic	8.3	7.9	7.1	5.3	4.4	6.7	7.3	6.7	7.0	7.0	6.1	5.1
Denmark	5.5	4.8	3.9	3.8	3.4	6.0	7.5	7.6	7.5	7.0	6.6	6.2
Germany	10.4	11.2	10.1	8.5	7.4	7.6	7.0	5.8	5.4	5.2	5.0	4.6
Estonia	10.1	8.0	5.9	4.6	5.5	13.5	16.7	12.3	10.0	8.6	7.4	6.2
Ireland	4.5	4.4	4.5	4.7	6.4	12.0	13.9	14.7	14.7	13.1	11.3	9.4
Greece	10.6	10.0	9.0	8.4	7.8	9.6	12.7	17.9	24.5	27.5	26.5	24.9
Spain	11.0	9.2	8.5	8.2	11.3	17.9	19.9	21.4	24.8	26.1	24.5	22.1
France	8.9	8.9	8.8	8.0	7.4	9.1	9.3	9.2	9.8	10.3	10.3	10.4
Croatia	13.9	13.0	11.6	9.9	8.6	9.2	11.7	13.7	16.0	17.3	17.3	16.3
Italy	8.0	7.7	6.8	6.1	6.7	7.7	8.4	8.4	10.7	12.1	12.7	11.9
Cyprus	4.6	5.3	4.6	3.9	3.7	5.4	6.3	7.9	11.9	15.9	16.1	15.0
Latvia	11.7	10.0	7.0	6.1	7.7	17.5	19.5	16.2	15.0	11.9	10.8	9.9
Lithuania	10.9	8.3	5.8	4.3	5.8	13.8	17.8	15.4	13.4	11.8	10.7	9.1
Luxembourg	5.0	4.6	4.6	4.2	4.9	5.1	4.6	4.8	5.1	5.9	6.0	6.4
Hungary	6.1	7.2	7.5	7.4	7.8	10.0	11.2	11.0	11.0	10.2	7.7	6.8
Malta	7.2	6.9	6.8	6.5	6.0	6.9	6.9	6.4	6.3	6.4	5.8	5.4
Netherlands	5.7	5.9	5.0	4.2	3.7	4.4	5.0	5.0	5.8	7.3	7.4	6.9
Austria	5.5	5.6	5.3	4.9	4.1	5.3	4.8	4.6	4.9	5.4	5.6	5.7
Poland	19.1	17.9	13.9	9.6	7.1	8.1	9.7	9.7	10.1	10.3	9.0	7.5
Portugal	7.8	8.8	8.9	9.1	8.8	10.7	12.0	12.9	15.8	16.4	14.1	12.6
Romania	8.0	7.1	7.2	6.4	5.6	6.5	7.0	7.2	6.8	7.1	6.8	6.8
Slovenia	6.3	6.5	6.0	4.9	4.4	5.9	7.3	8.2	8.9	10.1	9.7	9.0
Slovakia	18.4	16.4	13.5	11.2	9.6	12.1	14.5	13.7	14.0	14.2	13.2	11.5
Finland	8.8	8.4	7.7	6.9	6.4	8.2	8.4	7.8	7.7	8.2	8.7	9.4
Sweden	7.4	7.7	7.1	6.1	6.2	8.3	8.6	7.8	8.0	8.0	7.9	7.4
United Kingdom	4.7	4.8	5.4	5.3	5.6	7.6	7.8	8.1	7.9	7.6	6.1	5.3
Iceland	3.1	2.6	2.9	2.3	3.0	7.2	7.6	7.1	6.0	5.4	5.0	4.0
Norway	4.3	4.5	3.4	2.5	2.5	3.2	3.6	3.3	3.2	3.5	3.5	4.4
Turkey	:	9.5	9.0	9.1	10.0	13.0	11.1	9.1	8.4	9.0	9.9	10.3
United States	5.5	5.1	4.6	4.6	5.8	9.3	9.6	8.9	8.1	7.4	6.2	5.3
Japan	4.7	4.4	4.1	3.8	4.0	5.1	5.0	4.6	4.3	4.0	3.6	3.4

: Data not available

Source: Eurostat (une_rt_a)

Taking into account the existing disparities in the economic development throughout the EU, the target of full employment has *still* not been met since 2004, but the situation looks more promising than ever before in 2018 with 6.9%. By 2020, the Union should most likely reach its outstanding social goal of full employment. As can be seen from the above table, it had historically been the case that the EU unemployment figures stagnated around 9%. In fact, the average unemployment rate for the period from 2004 to 2015 was 9.16% and was only slightly higher in the Eurozone area at 9.81%. In contrast, in the US, the target has been met with the exception of the financial crisis period, when from 2009 to 2013, the average unemployment rate stood at 8.66%.

Unemployment rate 2007-2017 (%)

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
EU-28	7.2	7.0	9.0	9.6	9.7	10.5	10.9	10.2	9.4	8.6	7.6
Euro area	7.5	7.6	9.6	10.2	10.2	11.4	12.0	11.6	10.9	10.0	9.1
Belgium	7.5	7.0	7.9	8.3	7.2	7.6	8.4	8.5	8.5	7.8	7.1
Bulgaria	6.9	5.6	6.8	10.3	11.3	12.3	13.0	11.4	9.2	7.6	6.2
Czech Republic	5.3	4.4	6.7	7.3	6.7	7.0	7.0	6.1	5.1	4.0	2.9
Denmark	3.8	3.4	6.0	7.5	7.6	7.5	7.0	6.6	6.2	6.2	5.7
Germany	8.5	7.4	7.6	7.0	5.8	5.4	5.2	5.0	4.6	4.1	3.8
Estonia	4.6	5.5	13.5	16.7	12.3	10.0	8.6	7.4	6.2	6.8	5.8
Ireland	5.0	6.8	12.7	14.6	15.4	15.5	13.8	11.9	10.0	8.4	6.7
Greece	8.4	7.8	9.6	12.7	17.9	24.5	27.5	26.5	24.9	23.6	21.5
Spain	8.2	11.3	17.9	19.9	21.4	24.8	26.1	24.5	22.1	19.6	17.2
France	8.0	7.4	9.1	9.3	9.2	9.8	10.3	10.3	10.4	10.1	9.4
Croatia	9.9	8.6	9.3	11.8	13.7	15.8	17.4	17.2	16.1	13.4	11.1
Italy	6.1	6.7	7.7	8.4	8.4	10.7	12.1	12.7	11.9	11.7	11.2
Cyprus	3.9	3.7	5.4	6.3	7.9	11.9	15.9	16.1	15.0	13.0	11.1
Latvia	6.1	7.7	17.5	19.5	16.2	15.0	11.9	10.8	9.9	9.6	8.7
Lithuania	4.3	5.8	13.8	17.8	15.4	13.4	11.8	10.7	9.1	7.9	7.1
Luxembourg	4.2	4.9	5.1	4.6	4.8	5.1	5.9	6.0	6.5	6.3	5.6
Hungary	7.4	7.8	10.0	11.2	11.0	11.0	10.2	7.7	6.8	5.1	4.2
Malta	6.5	6.0	6.9	6.9	6.4	6.3	6.4	5.8	5.4	4.7	4.0
Netherlands	4.2	3.7	4.4	5.0	5.0	5.8	7.3	7.4	6.9	6.0	4.9
Austria	4.9	4.1	5.3	4.8	4.6	4.9	5.4	5.6	5.7	6.0	5.5
Poland	9.6	7.1	8.1	9.7	9.7	10.1	10.3	9.0	7.5	6.2	4.9
Portugal	9.1	8.8	10.7	12.0	12.9	15.8	16.4	14.1	12.6	11.2	9.0
Romania	6.4	5.6	6.5	7.0	7.2	6.8	7.1	6.8	6.8	5.9	4.9
Slovenia	4.9	4.4	5.9	7.3	8.2	8.9	10.1	9.7	9.0	8.0	6.6
Slovakia	11.2	9.6	12.1	14.5	13.7	14.0	14.2	13.2	11.5	9.7	8.1
Finland	6.9	6.4	8.2	8.4	7.8	7.7	8.2	8.7	9.4	8.8	8.6
Sweden	6.1	6.2	8.3	8.6	7.8	8.0	8.0	7.9	7.4	6.9	6.7
United Kingdom	5.3	5.6	7.6	7.8	8.1	7.9	7.5	6.1	5.3	4.8	4.4
Iceland	2.3	3.0	7.2	7.6	7.1	6.0	5.4	5.0	4.0	3.0	2.8
Norway	2.5	2.7	3.3	3.7	3.4	3.3	3.8	3.6	4.5	4.8	4.2
Turkey	9.1	10.0	13.0	11.1	9.1	8.4	9.0	9.9	10.3	10.9	10.9
United States	4.6	5.8	9.3	9.6	8.9	8.1	7.4	6.2	5.3	4.9	4.4
Japan	3.8	4.0	5.1	5.0	4.6	4.3	4.0	3.6	3.4	3.1	2.8

: Data not available

Source: Eurostat (online data code: une_rt_a)

A. An Optimistic Scenario

Are there any signs of recovery? The above figures would suggest that, based on the top performing economies of the UK and Germany, the full employment target was met in 2015 in Germany (4.6%), and more than met (3.4%) in 2018, while it was nearly met in the UK and the US (5.3%), but more than met in the US (4%) and in the UK (4.2) in 2018.[191] Critics can contradict an exaggerated optimism, as the target has seen some improvement from 9.4% for the EU28 and 10.9% in the Eurozone in 2016 to 6.9% in the EU28 and 8.3% in the Eurozone in 2018.

However, exaggerated pessimism is equally inappropiate, given that these figures represent an average of 28 Member States, which included two severely depressed economies, i.e., Greece (24.5%) and Spain (22.1%), as well as the worst performing economies, including France (16.3%), Croatia (16.3%), Cyprus (15%), and Portugal (12.6). From the former Eastern European block, with 6.8%, Romania outperformed two Nordic states, Sweden (7.4%) and Finland (9.4%), at job creation.

B. A Downgraded 'Optimistic Scenario' Due to Brexit

[191]See, e.g., the Office for National Statistics ‹https://www.ons.gov.uk/employmentandlabourmarket/peoplenotinwork/unemployment› (May 2018).

Given the UK's decision to exit the EU, and its imminent departure by March 2019,[192] there might be further signs of optimism for mainland Europe should major international corporations re-locate there and, as a result of the emergence of social dumping in the UK, bring an influx of jobs and address the present imbalance in certain EU Member States. Therefore, a 'hard' exit could bring a grey prospect and make it impossible for the UK to maintain its already met target of full employment (4.2%).

Indeed, 'Brexit' could soften the EU's overall unemployment rate through some newly 'gained' jobs from elsewhere. However, a 'hard' exit could also have a negative effect on the EU27 by destroying some of its existing jobs and by losing its present status quo of nearly full employment (6.9%). After years of hard work, and being so close to reaching the social goal of full employment (1.9%), this could be lost because of a macroeconomic event such as a 'hard' Brexit.

C. A Parable about Brexit?

These days, one could compare the ubiquity of the 'Brexit talk', i.e., a community of people that consume 'Brexit' daily, after being misled about 'Brexit' before it became an end-product, with Keynes' famous parable to the Macmillan committee: 'Let us suppose a community which owns nothing but banana plantations which they labour to cultivate. They produce bananas, they consume bananas, and nothing else' (…).[193] What they do not spend on bananas, they save and the investment in the production of bananas exactly equals this saving. 'Into this Eden, there enters a thrift campaign urging the members of the public to abate their improvident practice of spending nearly all their current incomes on buying bananas for food. "You have no provision for your old age; save more money" '.[194] In Keynes' parable, because the community turns to saving, this reduces the amount that people will pay for bananas. However, what remains to be seen is how *efficient* 'Brexit' actually is as an end-product, i.e., its final cost to the community; the level of employment generated by the demand for 'Brexit' and, what is currently unknown, how successful 'Brexit' will be if the whole community decided to save time, as the most precious human resource of their lifetime, and switch off from 'Brexit' entirely. Except for producers who will, then, buy 'Brexit'?

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[192] See the House of Lords, EU Committee, 12th Report of Session 2017-19, 'Brexit: competition and State aid' (2 February 2018), ‹https://publications.parliament.uk/pa/ld201719/ldselect/ldeucom/67/67.pdf›; cf Anca D Chirita, Written Evidence to the House of Lords (14 September 2017) ‹http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/eu-internal-market-subcommittee/brexit-competition/written/70117.html›, on the need to maintain the principle of consistent interpretation of EU competition law; for the governmental response to the House of Lords' Inquiry, see, e.g., Department for Business, Energy & Industrial Strategy, 'Government Response to the House of Lords EU Internal Market Sub-Committee Report on the Impact of Brexit on UK Competition and State Aid' (29 March 2018), ‹https://www.parliament.uk/documents/lords-committees/eu-internal-market-subcommittee/brexit-competition/290318-Government-Response-to-HoL-EU-Internal-Market-Sub-Committee-competition.pdf›.

[193] For direct references to Keynes' parable, see, e.g., Peter Temin and David Vines, *The Leaderless Economy: Why the World Economic System Fell Apart and How to Fix It* (Princeton: Princeton University Press, 2013), 72; Peter Clarke, *Keynes: The Twentieth Century's Most Influential Economist* (London: Bloomsbury Publishing, 2009), 141. Beyond this expository parable, Keynes is famous inter alia for his burlesque language, for example, where 'animal spirits' denote entrepreneurs.

[194] Ibid.

D. A Possible Solution, not Illusions: Saying 'No' to Social Dumping, and, hopefully, to Brexit, Too

The present picture demonstrates that the EU has not yet successfully delivered on its social market economy promise, as it created and maintained clusters of job opportunities in the most influential Member States, which have traditionally been seen as open to economic migration and social dumping. Therefore, the EU must learn its lesson the hard way. Taking the UK as an example, the level of economic development has been uneven, with record numbers of jobs being created in the city of London and fewer opportunities in the rest of the country. Making access to jobs evenly spread throughout the Union could also have reduced the burden of economic migration on public services and prevented the existence of top and bottom performers.

One could also argue that the UK has been the victim of its own economic success and the influential status it has achieved inside the EU during its forty-five years of membership, as while it has been incapable of re-distributing these economic benefits within the UK, it has been unwilling to pass on some of these opportunities to other Member States. There is no active economic migration in the absence of full employment: create unemployment, and all talented workers will leave the economy while productivity stagnates.

In conclusion, competition policy should actively focus on the delivery of new jobs instead of being blindly focused on economic efficiency. This does not mean tolerating inefficient firms; rather, it means asking those firms to redistribute a higher percentage of their corporate profits towards creating new jobs and maintaining existing ones where firms decide to merge.

VIII. Conclusion

This contribution has sought to close the gap between the perfect competition theoretical ideal of price and wage efficiency by de-constructing the meaning of economic efficiency from both a micro- and a macroeconomics perspective. As a real-life scenario, the case of mergers and acquisitions has been used to illustrate how the reality of newly created jobs is not on a par with job losses. In the context of mergers, this contribution has identified the need for a major overhaul of the efficiency defence with the aim of focusing more actively on job creation, or at least on balancing the number of job cuts with the number of newly created jobs.

Ultimately, this contribution arrives at the conclusion that the theoretical ideal of wage efficiency is not one that aspires to very high wages associated with higher levels of unemployment, but one that seeks to actively address the issue of full employment. The latter will enhance the working conditions of the employed workers, although it also offers the opportunity for wages to be pushed further down. In this respect, a viable alternative has to be a pragmatic balance between fierce and aggressive competition (higher wages) and little or no competition (lower wages). A highly competitive social market economy cannot be successful in delivering the desired market outcome of full employment if the foundations of microeconomics are not set up to actively encourage the creation of new jobs.

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