

THE SOCIETAS EUROPAEA: AN ECONOMIC ANALYSIS

**Stephen Copp
Bournemouth University**

**Public lecture, Commercial Law Series, at the
Institute of Advanced Legal Studies,
London**

4th June 2003

ABSTRACT

The corporation in economic theory may be seen as a product the function of which is to act as a least inefficient device for dealing with real life transaction costs. Significant amongst such transaction costs are the costs arising from multiple party contracting. In an international context the market for the corporation tends to be characterised by local monopolistic behaviour by governments who both seek to restrict competition within their jurisdiction for incorporation and to extract rents from incorporations, usually indirectly through the imposition of non-efficiency related requirements, which reduce the value of the corporation "product" as a means of minimising transaction costs. In addition, such products reflect the problems of monopolistic production either in terms of high price or poor quality. In this context the adoption of an EC Regulation on October 8th 2001 to provide for the formation of the Societas Europaea on or after October 8th 2004 is a potentially valuable development. A true pan-European company subject to a single Europe-wide corpus of company and tax laws offered in competition to national products should both enable a reduction in transaction costs for multi-jurisdictional companies by requiring compliance with one set of rules only, as well as leading to desirable competition which should produce lower prices and increased quality in incorporations generally. This is supported by national monopolies being challenged in other ways, for example, through the recent decision in the Centros case. However, the EC Regulation, and its linked Directive on employee involvement, instead reflect the behaviour of a monopolist - but one which does not in fact possess a monopoly. As a consequence, the Societas Europaea would appear likely to fail without substantial modification. This paper provides an economic analysis of the Societas Europaea.