International and Comparative Competition Law

Lecture 1

Class Overview

• Institutional and Procedural Framework (PB)	October 2
• Dominance/Monopolisation (Introduction and Tying) (DH)	October 9
• Dominance/Monopolisation (Refusals to Supply) (DH)	October 16
• Market Definition and Economic Principles (PB)	October 23
• Mergers – Part 1 (PB)	October 30
• Mergers – Part 2 (PB)	November 6
• Joint Ventures (and Other Horizontal Agreements) (DH)	November 13
• Restrictive Agreements (Art 101 and Section 1) (PB)	November 27
• Cartels and Information Exchanges (PB)	November 29
• Distribution Agreements (DH)	December 4
• Licensing Agreements (DH)	December 11
• Mock Case Exercise (PB + DH)	December 18

“Then we are all . . . agreed!”

Antitrust / Competition Law Objectives

Antitrust / Competition Law Goals

Promote / Protect vigorous competition ?	Protect competitors?	Protect the free-market economy?
Promote a single / transparent market?	Ensure the efficient allocation of resources / an efficient market place?	Redistribution?
Prevent / Curb Market Power?	Maximize consumer welfare?	Protect Consumers?

The (Modern Age) Origins

- U.S. Sherman Act (1890)
  - Prohibits “combinations in restraint of trade” and abuse of monopoly power
  - Standard Oil v. U.S. (1911) establishes “rule of reason”
- U.S. Clayton Act and FTC Act (1914)
  - Adds private cause of action
  - Prohibits mergers/acquisitions that result in substantial lessening of competition
  - Establishes Federal Trade Commission
- Robinson Patman Act (1936)
- HSR Act (1976)

The (Modern Age) Origins

- *"The purpose of the [Sherman] Act is not to protect businesses from the working of the market; it is to protect the public from the failure of the market. The law directs itself not against conduct which is competitive, even severely so, but against conduct which unfairly tends to destroy competition itself)"*

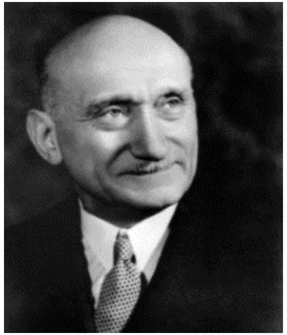
  US Supreme Court in *Spectrum Sports, Inc. v. McQuillan* 506 U.S. 447 (1993)

- *"... [a person] who merely by superior skill and intelligence...got the whole business because nobody could do it as well as he could was not a monopolist..(but was if) it involved something like the use of means which made it impossible for other persons to engage in fair competition"*

  Senator George Hoar (Massachusetts)

The (Modern Age) Origins

David Ricardo (1817):
Increasing trade between states leads to higher levels of output. Trade barriers slow down economic growth



Robert Schuman (1949):
"Our century, that has witnessed the catastrophes resulting in the unending clash of nationalities and nationalisms, must attempt and succeed in reconciling nations in a supranational association."

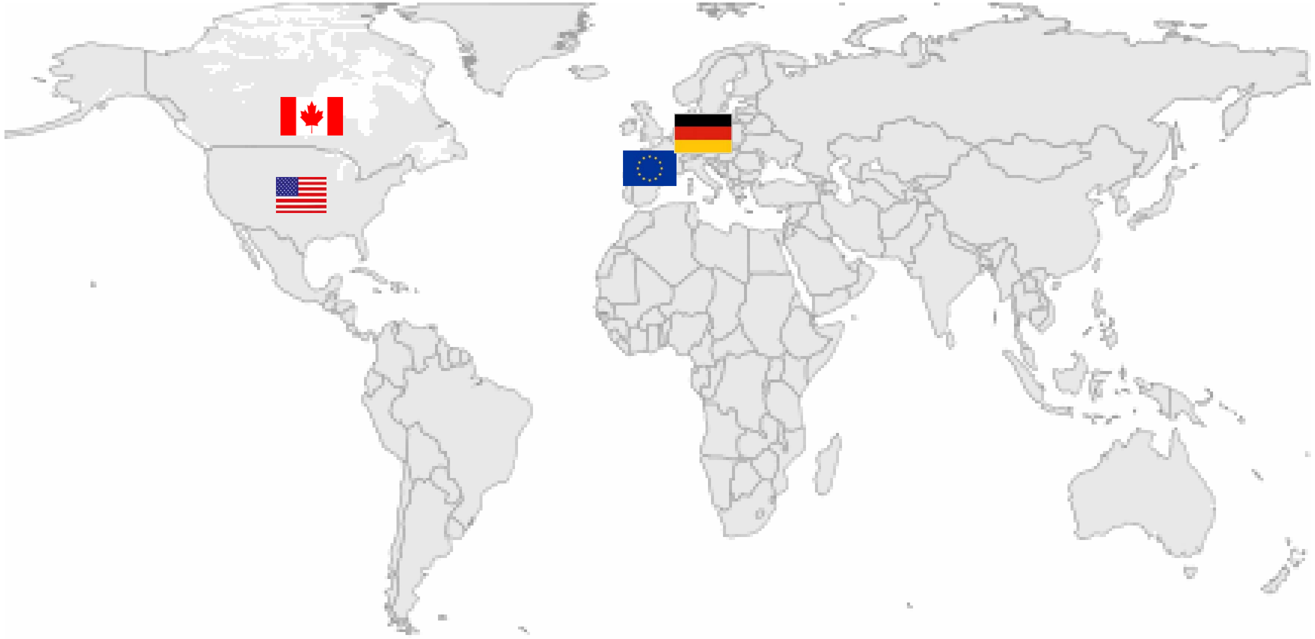
Konrad Adenauer & Ludwig Erhard (1956)
The state should ensure that the free market produces results close to economic potential

- Treaty of Paris (1951)
- Treaty of Rome (1957)
- *Grundig* (1966)
- Modernisation Regulation (1/2003) (2002)
- Treaty of Lisbon (2009)

EU Single Market

- Schuman's revolutionary idea: instead of reducing conflict by top-down political cooperation, create bottom-up economic integration (interdependence)
- EU single market was to bring down barriers and establish free market principles to allow consumers and businesses to buy, sell, and invest EU-wide
- Cornerstones of the single market are the "four freedoms" :
  - Free movement of People: right to live, work, study or retire in another EU country
  - Free movement of Goods: right to buy or sell goods in another EU country
  - Free movement of Services: right to supply/consume services in another EU country
  - Free movement of Capital: right to invest in another EU country
- Further cooperation later followed in, *e.g.*,
  - foreign and security policy,
  - justice and home affairs,
  - monetary affairs

1990: The Early Days



1990 - Limited competition law enforcement

Competition Law Enforcement Today

Today - Significant increase in competition law enforcement worldwide

A Heavy Stick – Recent Cartel Fines in EU Alone

Cartel	Fine in EUR M*	Year
Trucks	3,807.00	2016/17**
Forex	1,413.27	2019/2021
TV and Computer Monitor Tubes	1,409.60	2012
Euro Interest Derivatives	1,308.20	2016*
Car Glass	1,185.50	2008
Automotive Bearings	953.3	2014
Car Emissions	875.2	2021
Elevators and Escalators	832.4	2007
Vitamins	790.5	2001
Air Freight	739.6	2010/2017***

*Amounts as adjusted following appeals judgments

** 5 cartelists fined in 2016 through the settlement procedure and 1 fined in 2017 through the ordinary procedure

*** Decision re-adopted

A Heavy Stick – Recent Abuse Fines in EU Alone

Company	Fine in EUR M	Year
Google - Android	4,340.0	2018
Google - AdTech	2,950.0	2025
Google – Shopping	2,420.0	2017
Apple	1,840.9	2024
Microsoft	899.0	2008
Meta (Facebook Marketplace)	797.72	2024
Microsoft	561.0	2013
Teva	462.6	2024
Intel	376.36	2009/2023
Telefonica	151.9	2007

- In many jurisdictions competition law violations also a violation of criminal law with significant personal exposure
  - In the US, may lead to jail time of up to 10 years

Key Antitrust Statutes/Provisions Today - Europe

- Treaty on the Functioning of the European Union
  - See, in particular, Articles 101, 102, 103, and 107
- Regulations – e.g.:
  - Council Regulation 1/2003 (Implements rules laid down in Articles 101/102)
  - Council Regulation 773/2004 (Implements rules on conduct of Commission in Article 101/102 cases)
  - Commission Regulation 720/2022 (Vertical Restraints Block Exemption Regulation)
  - Council Regulation 139/2004 (Merger Regulation)
  - Commission Regulation 914/2023 (Implementing EUMR rules)
- Various Notices and Guidelines
- National Competition Laws

Key Statutes/Provisions – U.S.

- Sherman Act
- Clayton Act
- FTC Act
- HSR Act
- Various DOJ and FTC Guidelines
  - Horizontal Merger Guidelines
  - Non-Horizontal Merger Guidelines
- Various State and Local Antitrust Laws

Agreements in Restraint of Trade

European Framework – Article 101

Article 101(1) TFEU	Prohibits: • Agreements between firms, decisions of associations, and concerted practices • which may affect trade between Member States, and • which have as their object or effect the prevention, restriction, or distortion of competition
Article 101(2) TFEU	Agreements are void and unenforceable
Article 101(3) TFEU	Exemption if efficiency benefits outweigh competitive harm, restrictions are proportionate, and competition not eliminated

Equivalent rules under national competition laws

European Framework – Article 101

"1. The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:

(a) directly or indirectly fix purchase or selling prices or any other trading conditions;

(b) limit or control production, markets, technical development, or investment;

(c) share markets or sources of supply;

(d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

European Framework – Article 101

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

— any agreement or category of agreements between undertakings,

— any decision or category of decisions by associations of undertakings,

— any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

(a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;

(b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question."

Horizontal & Vertical Agreements

Horizontal agreements: between actual or potential competitors

— Main concern: direct restriction of competition

"*if the parties agree to fix prices or output or to share markets, or if the co-operation enables the parties to maintain, gain or increase market power and thereby is likely to give rise to negative market effects with respect to prices, output, product quality, product variety or innovation.*"

Vertical agreements: between at different levels of the supply chain

— Main concern: foreclosure of competitors

"*competition concerns can only arise if there is insufficient competition at one or more levels of trade, … if there is … market power at the level of the supplier or the buyer or at both levels. Vertical restraints are generally less harmful than horizontal restraints and may provide substantial scope for efficiencies*"

Agreements with end-customers

"*agreements with final consumers do not fall under Article 101(1)*"

“By Object” Infringements

- Most serious infringements are restrictions “by object”
- No need to prove anticompetitive effects
- Includes cartel agreements:
  - Fixing prices
  - Limiting production, supply or development
  - Sharing markets or customers
  - Bid rigging
  - Sharing strategic information with competitors.
- Some vertical restrictions are “by object”:
  - Resale price maintenance
  - Territorial restrictions (preventing customers from purchasing across borders).

“People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices.
It is impossible indeed to prevent such meetings, by any law which either could be executed, or would be consistent with liberty and justice”

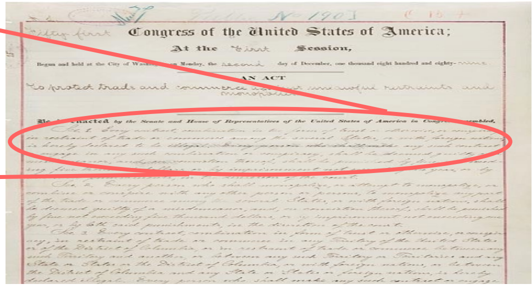
Self-Assessment under Article 101(3)

- Regulation 17 originally gave Commission monopoly on declaring Article 101(3) conditions
  - Power was exercised by "group exemptions" and individual exemption decisions – though often the Commission did not react at all.
- The Commission was overwhelmed by the number of individual notifications. Also:
  - There would be a number of new Member States (so more cases);
  - The most serious price fixing agreements were not notified;
  - Because of notifications, the Commission had no control over its priorities;
  - The law was becoming clear enough for companies to assess themselves
  - Market integration goal was being achieved; shift attention to consumer welfare goal
- Regulation 1/2003 abolished notifications; self-assessment is now the norm.
- Block exemptions and detailed Guidelines

US Framework – Sherman Act § 1

Sherman Act § 1

"Every contract, combination . . . , or conspiracy, in restraint of trade . . . is declared to be illegal."



- Must be concerted action by two or more independent entities which constitutes "restraint of trade"
- Formal agreement not required; conspiracy may be proven by circumstantial evidence
  - Covers any "meeting of the minds," even through a "wink and a smile"
- § 1 is enforced through both criminal and civil enforcement actions

Relevant Legal Standards: Per Se vs. Rule of Reason

- US Supreme Court has cautioned against application of per se rule where the competitive effects of challenged conduct are unclear
- Courts are concerned about chilling legitimately procompetitive business behavior that may ultimately benefit consumers

"Per se" illegality	Rule of reason
• Applies when conduct almost certainly harms competition • Horizontal agreements such as price fixing, output restrictions, or allocating customers/territories • Summarily condemned – conduct presumed to be anticompetitive; no analysis of harm vs. benefits	• Applies when conduct has mixed competitive effects • Most vertical agreements and a limited number of horizontal agreements such as joint ventures • Requires proving anticompetitive harm that outweighs procompetitive benefits

Unilateral Conduct/Abuses

European Framework - Article 102

"Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

(a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

(b) limiting production, markets or technical development to the prejudice of consumers;

(c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts."

National competition rules may be more restrictive than Article 102

Abuse of Dominance – Three Elements

Dominance in a Relevant Market → Abuse → No Objective Justification

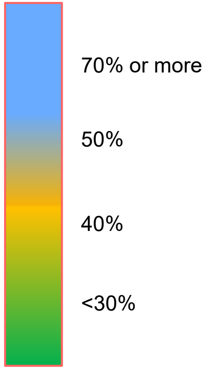
"Article [102], like the other competition rules of the Treaty, is not designed only or primarily to protect the immediate interests of individual competitors or consumers but to protect the structure of the market and thus competition as such (as an institution), which has already been weakened by the presence of the dominant undertaking on the market. In this way, consumers are also indirectly protected. Because where competition as such is damaged, disadvantages for consumers are also to be feared."

AG Kokott in *British Airways*

"Dominant companies are like the proverbial bull in a china shop; they must be ***restrained to prevent further damage to their already fragile surroundings****."*

Assessing Dominance

- Persistent, high market shares are an important indicator of dominance
- EU Court has determined that 70-80% share is a "*clear indication of the existence of a dominant position*"
- Agencies will also consider rivals' market position, ease of entry, and countervailing buyer power.



"*Save in exceptional circumstances, very large market shares are in themselves evidence of the existence of a dominant position. That is the case where there is a market share of 50%.*"

(Case C-62/86 *Akzo*)

Abuse

Dominance in a Relevant Market → Abuse → No Objective Justification

- A dominant company has a "special responsibility" not to distort competition
- Common commercial practices that would be legitimate for a non-dominant company may raise concerns

Exclusionary Abuses (non-price)
- Tying or bundling
- Refusing to deal

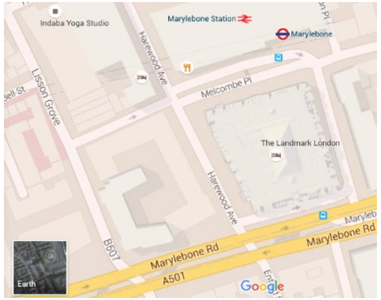
Exclusionary Abuses (price)
- Exclusive dealing
- Conditional rebates

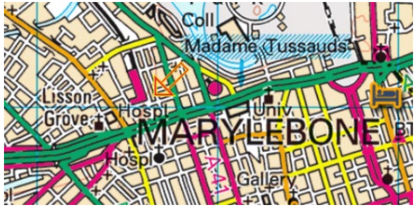
Exploitative Abuses
- Excessive pricing
- Imposing unfair terms on customers

Objective Justification

Dominance in a Relevant Market → Abuse → No Objective Justification

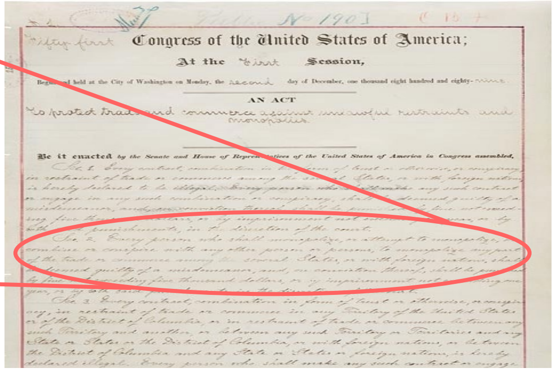
- Burden on dominant company to show that "abusive" conduct is objectively justified
- Four cumulative conditions:
  - Conduct likely to result in efficiencies
  - Conduct indispensable to achieving those efficiencies
  - Efficiencies outweigh negative effects
  - Conduct does not eliminate effective competition.





US Framework: Sherman Act § 2

"Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize . . . shall be deemed guilty of a felony."


Congress of the United States of America;
At the first Session,
AN ACT

- Monopolization
  - Possession of market power (power to control prices or exclude competition)
  - Gained, enhanced, or maintained through "exclusionary conduct" (*i.e.*, something other than competition on the merits)
    - Mere possession of monopoly power not enough
- Attempted monopolization
- Dangerous probability of gaining market power
- Generally analyzed under rule of reason

Merger Control

Prevention Better than Cure

- Competition law forbids the abuse of market power. Why do we need to prevent the creation of market power before the abuse takes place?
  - Merger control is not simply about preventing future abuses: it is also about maintaining competitive market structures which lead to better outcomes for consumers
  - Article 102 investigations (and domestic equivalents) are lengthy, complex and cumbersome, so that competition authorities lack the resources to police every alleged infringement. Exclusive reliance on Article 102 would be ineffective
- Most sizeable M&A transactions are therefore subject to merger control clearance, and transactions falling under the EC Merger Regulation or the HSR Act generally cannot be implemented until the relevant regulators provide clearance

EU Framework: EU Merger Regulation

- The Merger Regulation requires the Commission to determine whether a concentration with a Community dimension would:

" … *significantly impede effective competition in the common market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position*" (Article 2)

- Notification required if above EU Merger Control thresholds
  - € 5,000 million jointly worldwide + at least 2 firms each € 250 million EU-wide
  - € 2,500 million jointly worldwide + at least 2 firms each € 100 million EU-wide + in 3 states: € 100 million jointly and at least 2 firms each € 25 million
- If below EU thresholds, notification under national merger control
  - Mandatory in most Member States
  - Voluntary in the UK (if target >£70 million UK turnover or combined UK share of supply of at least 25%)

Theories of Competitive Harm

- ***Unilateral effects***. Transactions that permit merging firms to increase price and reduce output unilaterally
  - Horizontal mergers eliminate a rival and may result in the merged entity having greater market power
  - Vertical mergers may impair actual or potential rivals' access to inputs or customers
- ***Coordinated effects***. Transactions in markets where, due to transparency of prices, "*tacit collusion*" may be expected
  - A horizontal or vertical merger on a sufficiently transparent and highly concentrated market may cause rivals to adopt parallel forms of competitive behaviour and together assume a dominant position
- ***Conglomerate effects***. Transactions that combine a portfolio of complementary products and may in turn lead to exclusionary conduct and market foreclosure
  - A conglomerate merger may allow an undertaking dominant on one market to leverage its pre-existing market power on a second, related market (*e.g.*, by bundling together complementary products)

U.S. Framework - Clayton Act § 7

"No person … shall acquire … the whole or any part of the stock or other share capital and no person … shall acquire the whole or any part of the assets of another person … where … <u>the effect of such acquisition may be substantially to lessen competition</u>, or to tend to create a monopoly."

Forward looking: Will transaction lead to **higher prices**, **lower output**, or **less innovation**?

- Hart-Scott-Rodino ("HSR") Act creates notification regime
  - Acquisitions valued at > $50 million (adjusted annually) may be HSR reportable
  - Notification begins 30 day period during which transaction cannot close
- Agency can let waiting period expire or issue "second request"
  - Second request is a broad subpoena for documents and data
  - Compliance is quite burdensome and typically takes several months
  - Extends waiting period until 30 days after all parties certify "substantial compliance"
  - Agency options: No action, consent decree, or lawsuit to block transaction

State Aid (EU)

State Aid - General Principles

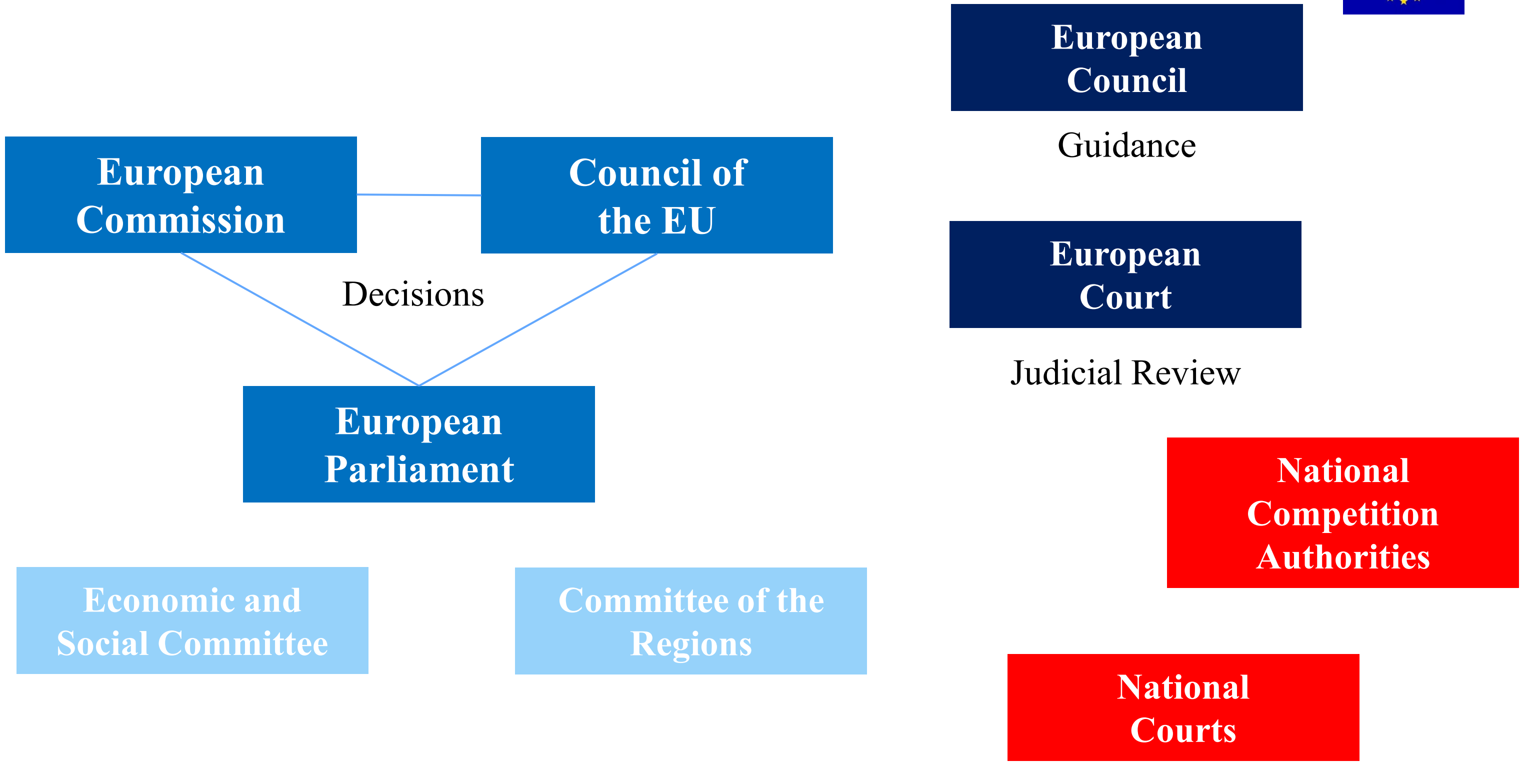
- A company which receives government support gains an advantage over its competitors. TFEU generally prohibits State aid unless it is justified by reasons of general economic development. (Article 107 EC)
- State aid is defined as any advantage conferred on a selective basis to undertakings by national public authorities. ***Subsidies granted to individuals or general measures open to all enterprises are not covered and do not constitute state aid (examples include general taxation measures or employment legislation)***
- A measure is state aid if it:
  - confers on recipients an advantage (market investor/operator test);
  - is granted by the State or through State resources;
  - is selective (given to specific companies); and
  - distorts competition and affects trade between Member States
- TFEU leaves room for a number of policy objectives for which State aid can be considered compatible (*e.g.* reducing regional disadvantages)

EU State Aid Procedures

- Member States must notify all new aid measures (subject to exceptions) to the Commission before putting them into effect
  - Preliminary investigation: Commission may request information if notification incomplete
  - Formal investigation: if Commission has serious doubts, decision sent to Member State that summarises basis for investigation and Commission's concerns
  - Potential decisions: positive decision (no aid or compatible with EU rules); conditional decision (implementation subject to conditions); negative condition (implementation prohibited)
  - Recovery case: if negative decision is taken on aid already paid out, Commission requires Member State to recover the aid with interest from the beneficiary

The Enforcers

The EU Institutional Framework



The Council of the European Union (Council of Ministers)

- Main decision-making body of the EU
- 10 different "Configurations" based on topic discussed (*e.g.*, Economic and Financial Affairs, Environment, *etc.*), attended by relevant government minister from each Member State
- Responsible for adopting legislation and the EU budget (alone or jointly with European Parliament), coordinating Member State policies (*e.g.*, economic policy), and conducting the EU's common foreign and security policy
- N.B. "European Council" is different: comprises Heads of State, President of the European Council, and President of the Commission. Establishes general political guidelines; no decision-making power
- Approves Competition Commissioner, nominated by national governments and Commission President

The Council and Competition

- Council, after consulting Parliament, approves EU competition and consumer protection laws (not “co-decision”)
- Competitiveness Council configuration (COMPET) works to enhance competitiveness and increase growth in the EU
- Four major policy areas: internal market; industry; research and innovation; and space
- Brings together ministers responsible for trade, economy, industry, research and innovation, and space

The European Parliament

- Elected directly by EU citizens every 5 years
- 705 Members organized by EU-wide political groups
- Seats allocated among Member States based on share of EU population – between 6 (Cyprus) and 96 (Germany)
- Shares legislative and budgetary power with the Council and has control and oversight of the European Commission

EUROPEAN PARLIAMENT

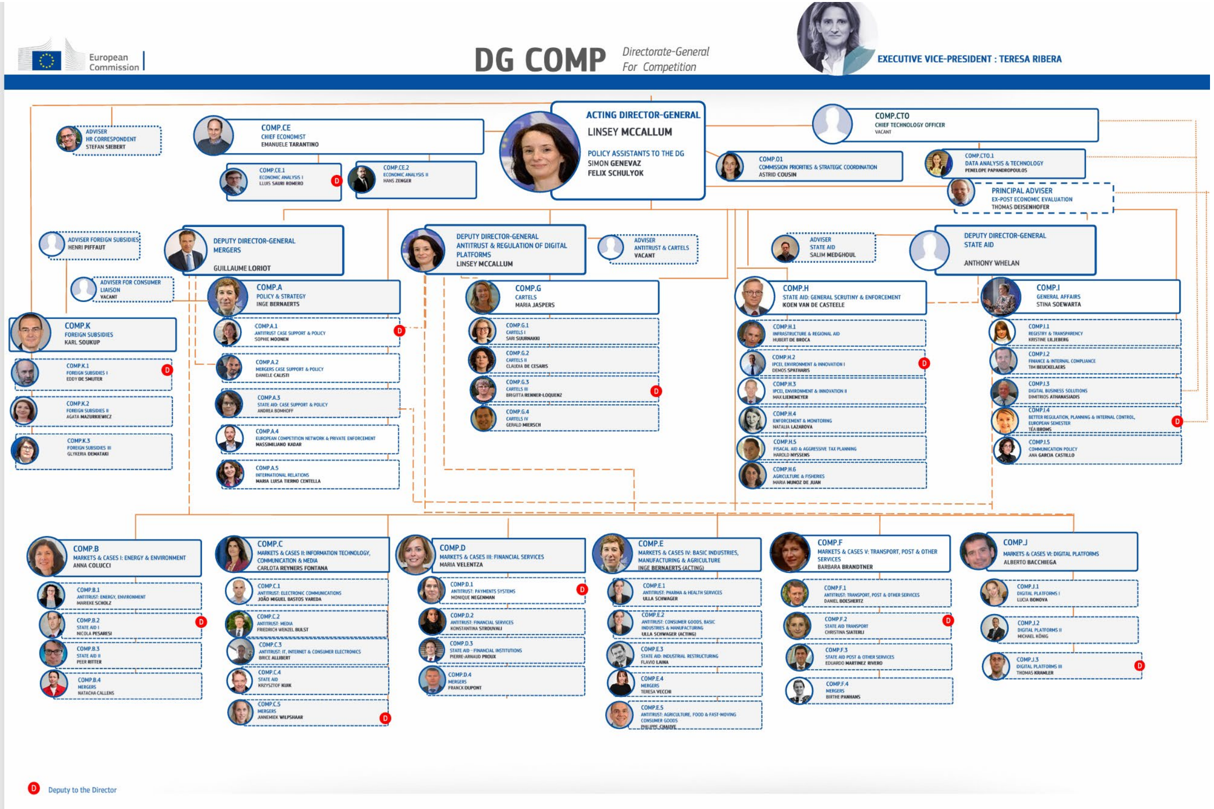
The Parliament and Competition

- Parliament must be consulted on legislative proposals by Council but does not have "co-decision" powers in competition law
- Parliament approves the nomination of the Competition Commissioner and oversees DG Competition
- Two Parliamentary Committees deal with matters concerning competition policy and consumer welfare
    - European Parliament ECON Committee (economic and monetary affairs)
    - European Parliament IMCO Committee (internal market and consumer protection)

The European Commission

- Executive body of the EU
- 27 Members ("Commissioners") – one from each Member State – each responsible for a specific policy area
- Executive Vice President and Commissioner: Teresa Ribera
- Term of office: 5 years
- Staff organised into directorates-general – each responsible for a particular policy area
- Responsible for:
  - proposing legislation
  - managing and supervising EU law implementation by Member States; and
  - ensuring EU law is correctly applied

DG Competition



The Commission and Competition

- Commission (DG Comp) enforces EU competition law - makes decisions collectively as a College and all Commissioners are collectively responsible
  - All final decisions on substance, including interim measures, and decisions of principle are reserved to the College (*E.g.*, decisions finding and ordering termination of an infringement, decisions making commitments binding, decisions imposing fines)
- Competition Commissioner is empowered to adopt certain measures, which she can sub-delegate to a Director-General
  - *E.g.*, initiating proceedings, decisions rejecting a complaint, issuing a Statement of Objections
- Mergers above certain thresholds must be notified for review – and may prohibit transactions
- Enforces competition law prohibiting:
  - anti-competitive agreements (Article 101 TFEU)
  - abuse of dominance (Article 102 TFEU)
  - Conducts sector inquiries (which may lead to Article 101/102 cases)
- Enforces state aid rules (Article 107 TFEU)
- Wide range of information-gathering powers (including dawn raids)
- Ability to impose high fines

EU Sector Inquiries

- Commission carries out inquiries into markets that it suspects are not working optimally
- Commission may seek information from businesses, business associations, and governmental authorities
- Results are published in a report and interested parties may make further submissions
- May be a precursor to opening specific antitrust investigations (under Articles 101 and 102 TFEU)
- Example: “e-Commerce” or most recently “Consumer Internet of Things”

The Court of Justice of the European Union

- Ensures uniform application of, and compliance with, EU law by EU institutions and Member States
- Three courts: General Court, Court of Justice, Civil Service Tribunal
- Judges and AGs appointed for 6-year terms
- Responsible for:
  - Interpretation of EU laws (preliminary rulings);
  - Enforcement of Treaty provisions against Member States (infringement proceedings);
  - Review of legality of acts and omissions of EU institutions (actions for annulment); and
  - sanctioning of EU institutions (actions for damages)

The EU Courts and Competition

- Ensures uniform interpretation and application of competition law across the EU
- Competition cases are heard initially by the General Court
- Addressees of a Commission decision may appeal to the General Court to amend or annul the decision; the Court may also increase or reduce a fine imposed by the Commission
- Judgments of the General Court may be appealed (including by the Commission) to the Court of Justice on questions of law
- National courts may make references to the Court of Justice for clarification on interpretation of EU competition law

Interplay between EU and National Laws / Enforcers

- Regulation 1/2003
  - Article 3 – national authorities/courts must (also) apply Article 101/102 when investigating/sanctioning conduct affecting trade between the Member States, but:
    - May adopt and apply stricter laws prohibiting unilateral conduct
    - May apply divergent merger control rules
  - Article 11 – close cooperation and consultation between Commission and national authorities but
    - If Commission adopts a decision in a proceeding, that relieves the Member States of the competence to review the same conduct under Article 101/102
  - Article 15 – close cooperation between Commission and national courts – ability for Commission (and national competition authorities) to make observations in national court cases
  - Article 16 – national courts and competition authorities cannot take decisions that would run counter to a decision already adopted by the Commission.

U.S. Antitrust Enforcement: Federal Agencies

Federal Enforcement Agencies

- Department of Justice, Antitrust Division
  - Both civil and criminal enforcement
  - Washington, D.C. headquarters + 3 field offices
  - Arm of the Executive branch
  - Civil sections organized around industry expertise
- Federal Trade Commission, Bureau of Competition
  - Civil enforcement only
  - Washington, D.C. headquarters + 8 regional offices
  - Independent agency with five (three?) Commissioners
  - Antitrust enforcement through Bureau of Competition
  - Competition and consumer protection jurisdiction

FTC and DoJ Broadly Responsible for Different Industries

FTC	DOJ
— Airframes	— Agriculture
— Autos and Trucks	— Avionics, Aeronautics, and Defense Electronics
— Building Materials	— Beer
— Chemicals	— Computer Software
— Computer Hardware	— Cosmetics and Hair Care
— Energy	— Financial Services
— Healthcare	— Flat Glass
— Industrial Gases	— Health Insurance
— Munitions	— Industrial Equipment
— Groceries	— Media and Entertainment
— Operation of Retail Stores	— Metals, Mining, and Minerals
— Pharmaceuticals and Biotechnology	— Missiles, Tanks, and Armored Vehicles
— Professional Services	— Naval Defense Products
— Satellite Manufacturing and Launch	— Photography and Film
— Textiles	— Pulp, Paper, Lumber, and Timber
	— Telecommunications
	— Travel and Transportation
	— Waste

U.S. Enforcement Agencies – DOJ Antitrust Division

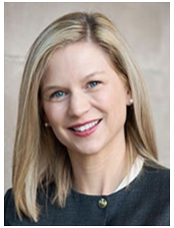
- Led by Assistant Attorney General (AAG) for Antitrust (Abigail Slater) (since March 2025)
  - Nominated by President, confirmed by Senate
- Responsible for civil and <u>criminal</u> enforcement
  - Shares responsibility with FTC for civil enforcement, including merger review
- Enforcement actions require filing in federal court
- Seven Civil Sections dealing with different industries
- Washington Criminal Section and three field offices (Chicago, NY, SF) responsible for criminal enforcement

U.S. Enforcement Agencies – Federal Trade Commission

Rebecca Slaughter (?)
Democrat

Alvaro Bedoya (?)
Democrat

Andrew Ferguson
Chairman



Melissa Holyoak
Republican

Mark Meador
Republican

- Five (three?) commissioners
  - In principle bipartisan – no more than three commissioners from the same political party
  - Serve staggered 7-year terms
- Majority vote of Commission required for any enforcement action
- Shares responsibility for civil enforcement and merger review with DOJ
  - Competition Bureau (4 Merger Sections, Health Care Section, Technology Enforcement Section, Anticompetitive Practices Section) (and Consumer Protection Bureau)
- Administrative actions possible in front of Commission ALJs, with judicial review by federal appellate courts

U.S. Antitrust Enforcement: State and Private

- State Attorneys General
  - Usually focus on state law and local issues, though increasingly active in matters of national (and even international) importance
  - Significant variation among states; often politically motivated
  - State criminal and civil enforcement; enforcement in state and federal courts
- Private enforcement (litigation)
  - Civil plaintiffs can sue for monetary harm caused by anticompetitive activities
    - For example: injured rivals and direct purchasers
    - Some state law counterparts also allow indirect purchaser suits
  - Among other requirements, plaintiffs must:
    - have “antitrust standing” (something more than constitutional injury)
    - bring suit within statute of limitations (four years under Clayton Act)
  - Treble damages and attorneys’ fees available; joint and several liability with no right of contribution
  - Class actions often certified in antitrust cases (particularly in price-fixing cases)