

History, Development and Enforcement of EC Competition Law

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The aim of the course is to develop a good understanding of the central issues of EC competition law by studying its history and development through the relevant case-law of the Commission and the Community Courts. Furthermore, it will be analysed the degree to which decentralisation of EC competition law enforcement to Member States can take place. A deep knowledge of primary and secondary EC legislation is of crucial importance in order to have an overview and to grasp how competition is ensured on the market.

In detail the course will focus on the following topics:

1. Competition legislation

- History of competition legislation.
- The aim of competition legislation.
- The EC legislation on competition (articles 81 and 82 of EC Treaty, EC Reg. 139/2004).
- The development of EC legislation on competition (from Reg. 17/1962 to Reg. 1/2003, leniency, fines and settlement procedure).
- The cooperation between EC Commission and national competition Authorities and courts.

2. Relevant Market

- The relevant product market and the geographic market definition.
- The relevant market definition in case of agreements, abuse of dominant position and concentrations.

3. Agreements

- Elements:
 - i) concept of undertaking.
 - ii) collusion between undertakings (Article 81 EC). The general prohibition of agreements restrictive of competition. Decisions by associations of undertakings. Concerted practices.
 - iii) Object and effects of agreements.
- Horizontal and vertical agreements.
- Horizontal agreements: price fixing; limitation of production; market partitioning, exchange of sensitive information, uniform commercial policy.
- Vertical agreements: foreclosure, intra-brand competition, resale price fixing, exclusive ad selective distribution.

4. Abuse of dominant position

- Elements
 - i) The concept of undertaking.
 - ii) The dominant position.
 - iii) The abusive conducts.
- Exploitative abuses
 - i) Pricing policy or unfair contractual clauses.
 - ii) Discriminatory practice.
- Exclusionary abuses
 - i) Refusal to deal.
 - ii) Predatory pricing, price (or margin) squeeze.
 - iii) Discounts and rebates.
 - iv) Tying practice.
- DG Competition discussion paper on the application of Article 82 of the Treaty to exclusionary abuses. (Dec. 2005).

5. Concentrations between undertakings

- The concept of concentration (merger, acquisition or joint venture).
- The concept of control.
- The horizontal concentrations and their effects.
- Vertical concentrations.
- The conglomerate concentrations.
- Restrictions directly related and necessary to concentrations.
- Acceptable remedies.

6. Jurisdiction

- The claims against EC Commission Decisions lodged before the CFI and ECJ.
- EC Commission's *White Paper on private enforcement*.

LITERATURE

Among the considerable amount of books on the subject:

Amato, *Antitrust and the Bounds of Power: The Dilemma of Liberal Democracy in the History of the Market*, Hart Publishing.

Amato, Ehlermann (eds), *EC Competition Law, a critical assessment*, Hart Publishing.

Bellamy, Child, *European Community Law of Competition*, Sweet & Maxwell.

Craig, G. De Burca, *EU Law text, cases and materials* (3rd ed.), Oxford University Press.

Jones, Sufrin, *EC Competition Law* (3rd ed.), Oxford, Oxford University Press.

Elhague, Geradin, *Global Competition Law and Economics*, Hart Publishing.

Kerse, Khan, *EC Antitrust Procedure*, Sweet & Maxwell.

Korah, *An Introductory Guide to EC Competition Law and its Practice* (8th ed.), Hart Publishing.

Motta *Competition Policy: Theory and Practice*, Cambridge, Cambridge University Press.

Ritter – Brawn, *European Competition Law: a practitioner's guide*, (3rd ed.), Kluwer Law International.

Vogelaar, *The European Competition Rules- Landmark cases of the European Courts and the Commission* Europa Law Publishing (2nd ed.).

Whish, *Competition Law*, (5th ed.), Lexis Nexis.

LEGISLATION¹

A. EC TREATY

Principles – articles 1-3.

Prohibitions of quantitative restrictions between member states – articles 28-31.

Rules on competition – articles 81-89.

The Commission- articles 211-219.

The Court of Justice and The Court of first Instance- articles 220-245.

B. EC REGULATIONS AND COMMISSION NOTICES

Commission Notice on the definition of relevant market for the purposes of Community competition law (97/C 372/03).

Art. 81

Commission Notice on agreements of minor importance which do not appreciably restrict competition under Article 81(1) of the Treaty establishing the European Community (*de minimis*) (2001/C 368/07).

Commission Notice, Guidelines on Vertical Restraints (2000/C 291/01).

Commission Notice, Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty (2004/C 101/07).

Communication from the Commission, Notice, Guidelines on the application of Article 81(3) of the Treaty (2004/C 101/08).

-Block Exemptions-

Regulation 772/2004 of 27 April 2004 on the application of Article 81(3) of the Treaty to categories of technology transfer agreements.

Regulation 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices.

Regulation 1400/2002 of 31 July 2002 on the application of article 81(3) on the Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector.

Regulation 2958/2000 on the application of Article 81(3) of the EC Treaty to categories of specialization agreements.

Regulation 2659/2000 on the application of Article 81(3) of the EC Treaty to categories of research and development agreements.

¹ Old legislation is written in italics.

All the legislation and documents cited herein is freely available on the internet on the web site of the EC Commission: http://ec.europa.eu/comm/competition/index_en.html; and/or on EURLEX: <http://eur-lex.europa.eu>.

Merger Control

Council Regulation (EC) No 139/2004 on 20 January 2004 on the control of concentrations between undertakings (EC Merger Regulation).

Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings.

Commission Regulation (EC) No 802/2004 of 7 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings.

Commission Notice on the definition of the relevant market [1997] OJ C 372/3.

Commission Notice on restrictions directly related and necessary to concentrations (2005/C 56/03).

Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98 (2001/C 68/03).

Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2004/C 31/03).

Commission consolidated jurisdictional notice under Council Regulation (EC) 139/2004 on the control of concentrations between undertakings, published on 10 July 2007 on DG Comp website.

Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, published on 27th of November 2007 on DG Comp website.

Procedural Matters

Regulation No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.

Regulation No 17/1962 First Regulation implementing Articles 85 and 86 of the Treaty.

Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (2006/C 210/02).

Guidelines on the method of setting fines imposed pursuant to Article 15 (2) of Regulation No 17 and Article 65 (5) of the ECSC Treaty (98/C 9/03).

Commission Notice on Immunity from fines and reduction of fines in cartel cases (2006/C 298/11).

Commission notice on immunity from fines and reduction of fines in cartel cases (2002/C 45/03).

Commission Notice on the non-imposition or reduction of fines in cartel cases (96/C 207/04).

Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 in cartel cases (2008/C 167/01)

Cooperation between EC Institutions and Member States' authorities and courts

Commission Notice on the co-operation between the Commission and the courts of the EU Member States in the application of Articles 81 and 82 EC (2004/C 101/04).

Commission Notice on co-operation within the Network of Competition Authorities (2004/C 101/03).

C. OTHER RELEVANT MATERIAL

DG Competition discussion paper on the application of Article 82 of the Treaty to exclusionary abuses. (Dec. 2005).

Commission White Paper on Damages actions for breach of the EC antitrust rules (April 2008).

DG Competition Best Practices on the conduct of EC merger control proceedings.