



INTRODUCTION TO EU COMPETITION POLICY and STATE AID

for students from the
Toulouse University School of Law

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27 February 2019

Purpose of competition policy

- Making markets work better:
 - Lower prices
 - Better quality
 - More choice
 - Innovation
- Consumer welfare – protecting competition not competitors



Contribution to EU policies

- EU's jobs, growth and investment agenda:
 - Digital single market
 - Energy union
 - Financial services
 - Industrial policy
 - Fight against tax evasion
- EU competition enforcement concerns all undertakings (whether located in the EU or not) if their behaviour affects the EU market

Who are we

Commissioner...Margrethe Vestager



DG Johannes Laitenberger

DG COMP

Staff ±900 persons

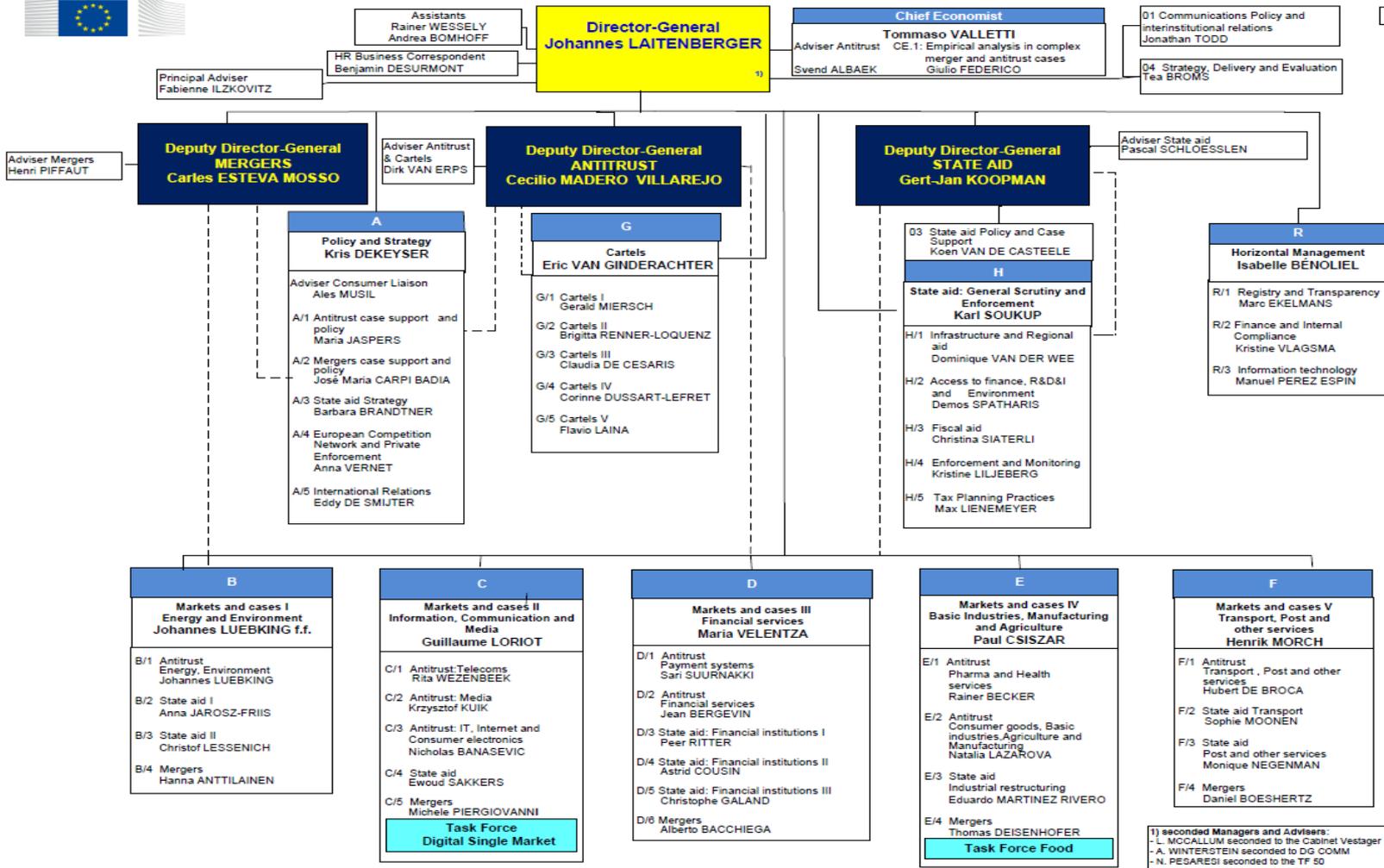




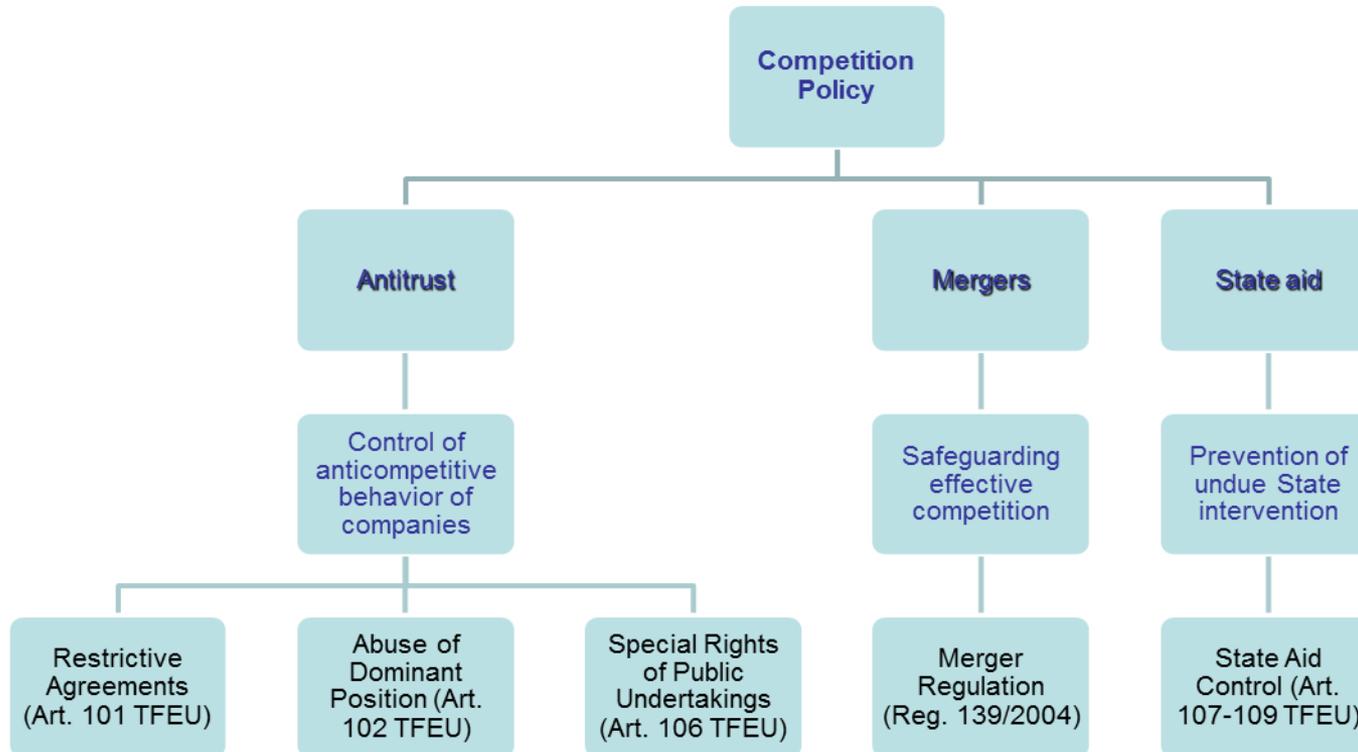
European Commission

EUROPEAN COMMISSION – DIRECTORATE-GENERAL FOR COMPETITION

01/07/2018



EU Competition policy





The Commission's powers

Commission: "*Guardian of the Treaty*" (enforces EU Law)

- It holds a number of **investigative powers**:
 - Requests for information
 - Inspections
 - Interviews
 - Sector inquiries
- **Adopts decisions**:
 - To terminate, fine and remedy infringements of antitrust rules
 - To clear or prohibit mergers
 - To declare state aid compatible/not compatible
- Adopts **legislation** and **soft law** (guidelines)

Co-operation: European Competition Network (ECN), national courts

Antitrust and Cartels

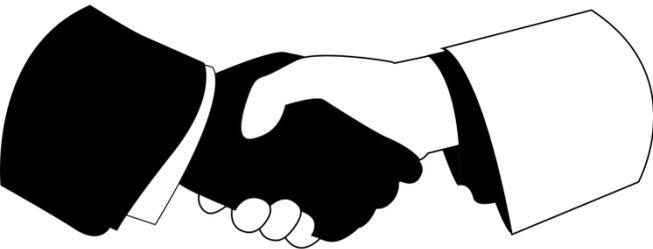
Article 101 TFEU: **Agreements** between undertakings, **decisions by associations** of undertakings, or **concerted practices** having as **object or effect** the **prevention, restriction or distortion of competition** and which **may affect trade between Member States**

–**horizontal** (between competitors)

E.g. non-competition arrangements, pay-for-delay of generic medicines, e-books, credit card interchange fees

–**vertical** (e.g., between a supplier and distributor)

E.g. restrictions of online distribution





Article 101 TFEU: Agreement/ concerted practice

- **Agreement** = existence of a **concurrence of wills** between at least two parties, the form in which it is manifested being unimportant as long as it constitutes the faithful expression of the parties' intention
- **Concerted practice** = a form of **coordination between undertakings** which, without having reached the stage where an agreement properly so-called has been concluded, knowingly substitutes practical cooperation between them for the risks of competition

Article 101 TFEU: Restriction

- A restriction is "**by object**" if it has the potential to restrict competition by its very nature (e.g., all cartels such as market-sharing or price-fixing arrangements)
- Presumed harmful and therefore illegal without analysis of its effects
- A restriction "**by effect**" if it could reveal likely/ actual anti-competitive effects based on further analysis
 - *De minimis* exception possible
 - Efficiency claims more likely to succeed
- At least **potential competition** should be restricted

Efficiency defence – Article 101(3)

- Potentially anti-competitive agreements and concerted practices may be allowed if:
 - they contribute to **improve production/distribution** of goods or **technical/economic progress**
 - consumers get a **fair share** of the resulting benefit
 - restrictions are **indispensable** to the attainment of these objectives
 - they do **not** remove competition for a **substantial part** of the products in question
- **Burden of proof on the undertaking claiming the efficiencies**

"Hard-core" infringements: Cartels

- Cartels – secret / hardcore / most harmful
 - **Price fixing**
 - **Market sharing**
 - **Limitation of production**
 - **Allocation of customers**
 - **Bid rigging**



Generally lead to higher prices, and less pressure on cartelists to:

- improve their products or
- find more efficient ways to produce them

Examples of cartels

- Financial services – Libor /Euribor
- Transport – Airfreight, Trucks
- Car parts – Maritime Car Carriers, Lightning systems
- Industrial inputs – Power Cables, Steel abrasives
- Consumer products – Canned Mushrooms

Article 102: Abuse of dominance

- **Dominance:** the ability to behave independently from customers and competitors

• *OK to be dominant except if...*

Abuse

- Charging unreasonably high prices
- Charging unrealistically low prices
- Discriminating between trading partners
- Certain forms of bundling & tying



Article 102 TFEU

- "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 as:
 - *(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*

Article 102 TFEU: Types of abuse

- **Exclusionary** abuses: behavior that harms competitors, thereby hindering competition, to the detriment of consumers (notably: foreclosure)
e.g. predatory pricing, exclusivity rebates, margin squeeze
- **Exploitative** abuses (more rare), behavior that directly harms customers/consumers
e.g. excessive pricing

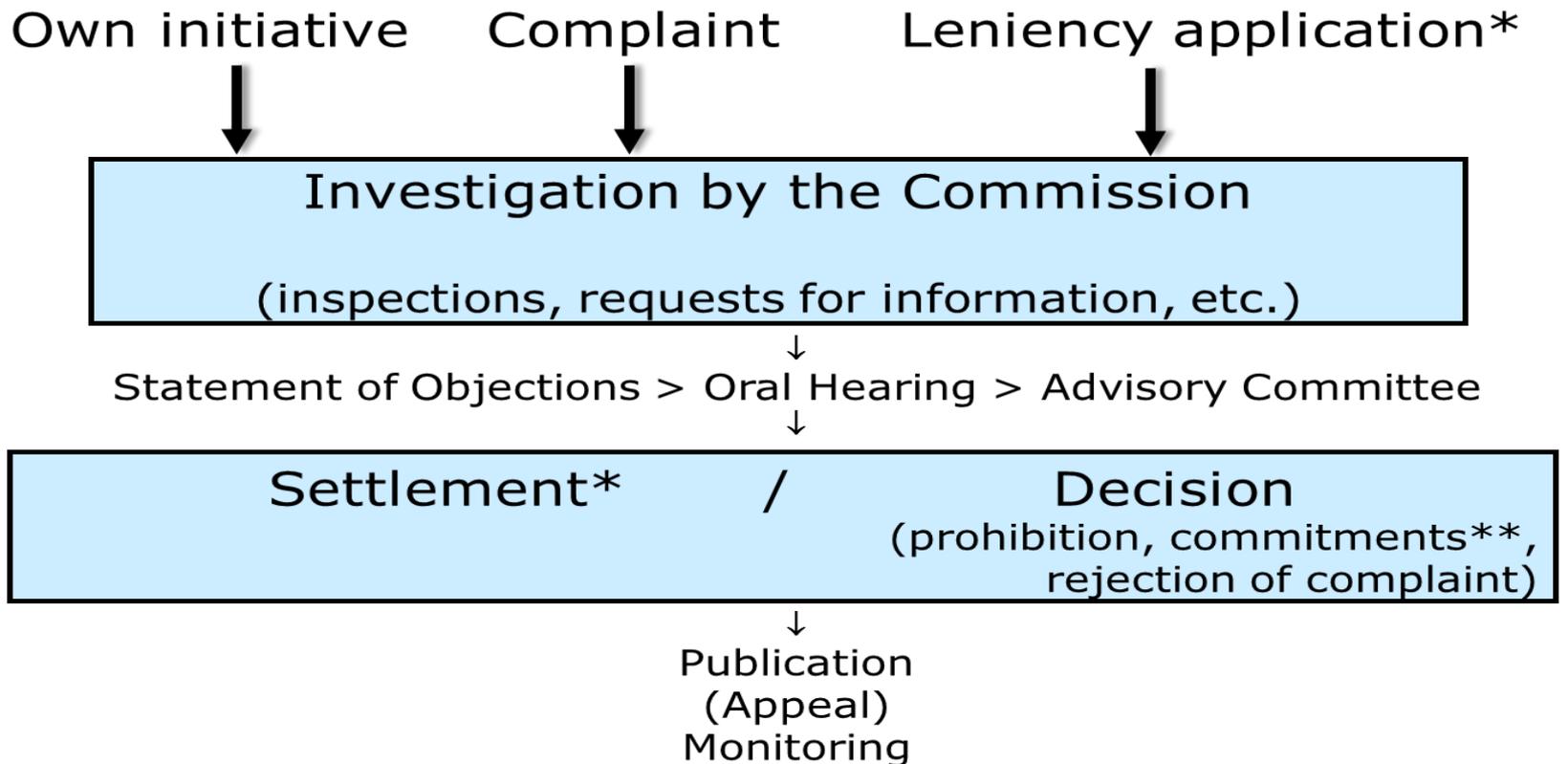


Abuse of dominance: recent cases

- **Google Android (2018)**: was the highest fine ever imposed, EUR 4.34 billion
- **Gazprom (2018)**: Commitments decision
- **Qualcomm (2018)**: Prohibition decision, EUR 997 million
- **Google Shopping (2017)**: Prohibition decision, EUR 2.4 billion fine
- **E-books Amazon case (2017)**: Commitments decision



The antitrust investigation procedure (How do cartels and abuses get caught?)





Leniency programme

- Commission 2006 Leniency Notice
- **Immunity** (= 0 EUR fine) for the first undertaking who discloses its participation in the cartel (not coercer)
- **Reduction** of fines for the subsequent undertakings that provide significant added value:
 - 30-50 % reduction for the first undertaking
 - 20-30 % reduction for the second undertaking;
 - up to 20 % reduction for the subsequent undertaking(s)
- **Cooperation** throughout the process



Inspections (I)

- 'Dawn raids' / unannounced / surprise inspections
- Not 'fishing expeditions'
- Powers:
 - enter any premises, land and means of transport of undertakings; (in certain circumstances even homes);
 - examine the books and other records related to the business;
 - take copies of such books or records;
 - seal any business premises and books or records;
 - ask for explanations.
- Possible assistance from the competition authorities of the Member States and from the police

Inspections (II)

- Penalties up to 1 % of the total annual turnover:
 - breach of seal (*E.ON* case; € 38 million)



- obstruction during inspection: failure to block an email account and diversion of incoming emails (Czech energy companies; €2.5 million)

Companies' compliance programmes

- Compliance strategy – in writing and well-known within company
- Needs full support of senior management
- Read the Commission's [compliance brochure](#)



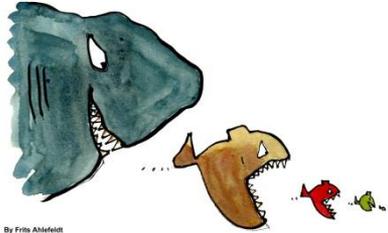
Remedies & Enforcement

- The Commission may:
 - require a company to end an infringement
 - impose fines of up to 10% of overall turnover
 - impose remedies
 - structural
 - behavioural

Ten highest cartel fines per case (since 1969)

Year	Case name	Amount in €*
2016/2017	Trucks	3 807 022 000
2012	TV and computer monitor tubes	1 409 588 000
2013/2016	Euro interest rates derivatives (EIRD)**	1 310 039 000
2008	Carglass	1 185 500 000
2014	Automotive bearings	953 306 000
2007	Elevators and escalators	832 422 250
2001	Vitamins	790 515 000
2010/2017	Airfreight (incl. re-adoption)	785 345 000
++2013/2015++	Yen interest rate derivatives (YIRD)	669 719 000
2007/2012	Gas insulated switchgear (incl. re-adoption)	675 445 000

* Amounts adjusted for changes following judgments of the Courts (General Court and European Court of Justice) and / or amendment decisions.



Merger Control

- Prevention of harmful effects on competition
- **SIEC** test: significant impediment to effective competition test:
 - If no: Unconditional approval (95 %)
 - If yes:
 - Commitments (proposed by the parties) to remove competition concerns
 - or
 - Prohibition (rare)





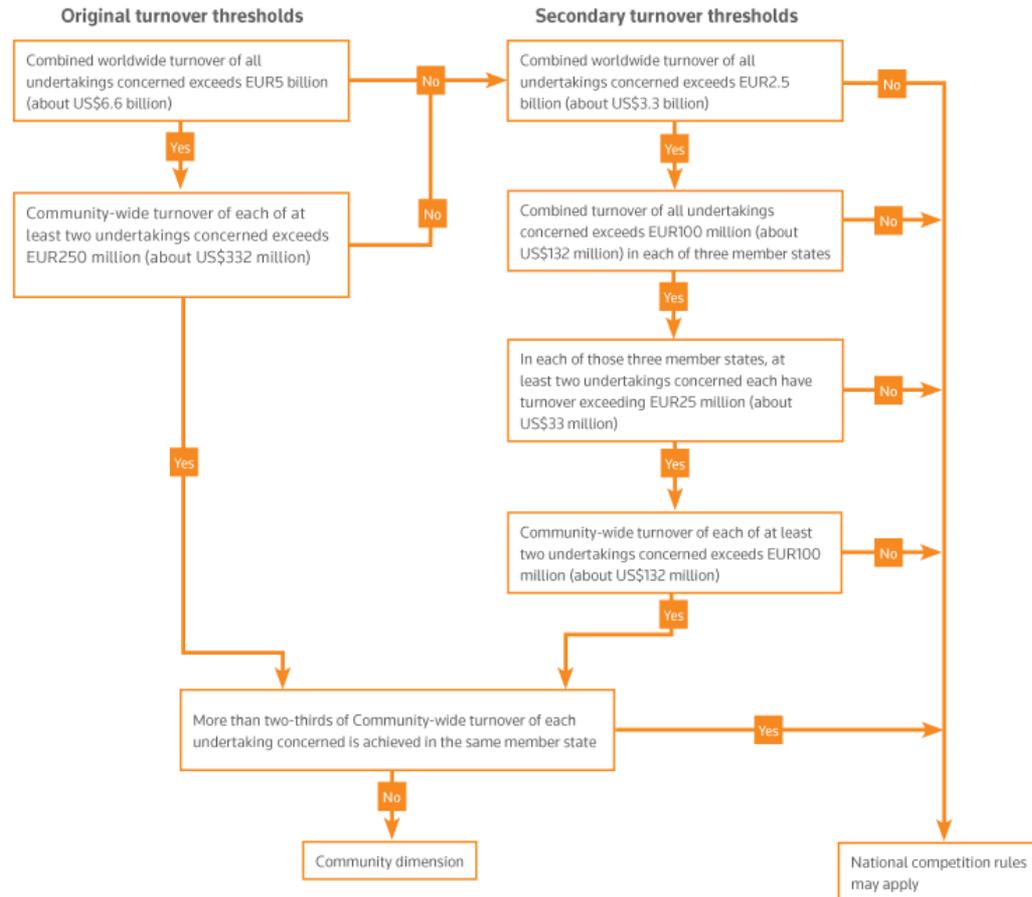
EU Merger Control (Regulation 139/2004)

- Concentration
 - change of control
 - business assets
- EU dimension
- One-stop-shop principle
- Mandatory notification system (~ 300 per year)
- Strict procedure with tight deadlines

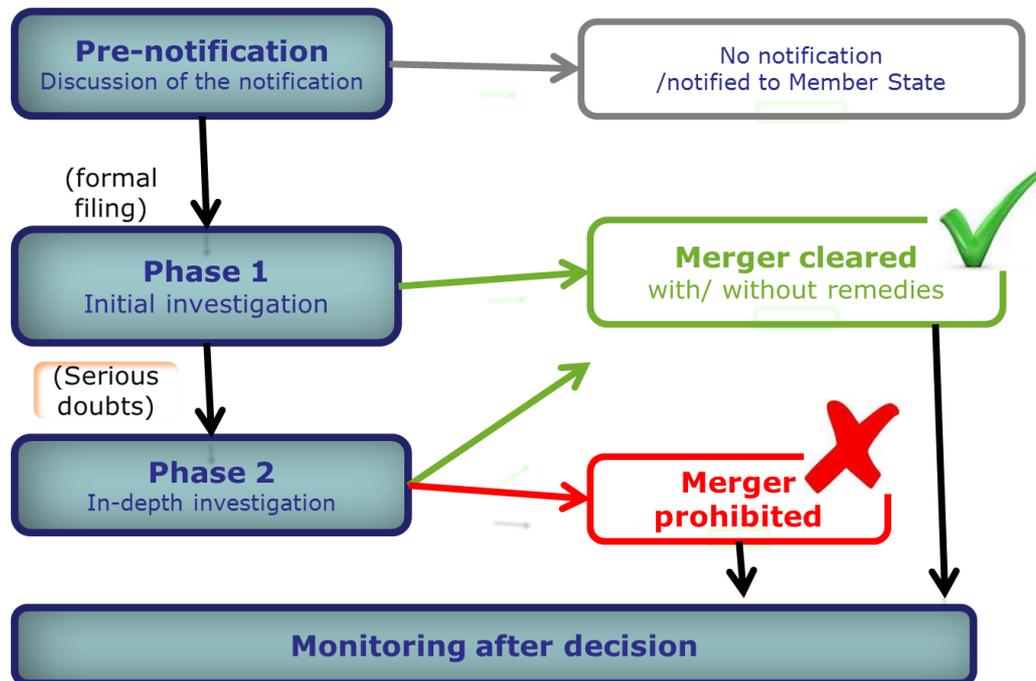


European
Commission

Mergers: EU Dimension



Merger Control - Procedure



Key statistics

- **95%** of all cases cleared unconditionally
- **Interventions:** only in **5-6%** of cases
 - Most of interventions via **remedies** removing the competition problem while preserving the deal rationale
 - **Prohibitions** rare - in the last 5 years: UPS/TNT; Olympic/Aegean; Deutsche Börse/NYSE; Ryanair/Aer Lingus; Hutchinson/O2; Deutsche Börse/LSE now Alstom/Siemens...
 - ❖ around 25 prohibitions in 25 years
- **98%** of cases solved in **Phase I**
- On average 5-10 cases per year in **Phase II**



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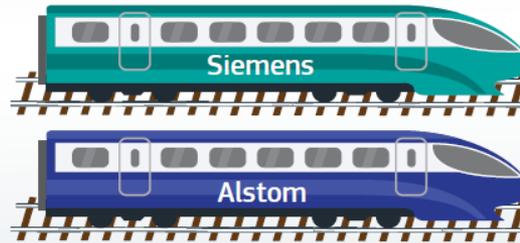
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Commission prohibits Siemens-Alstom takeover to protect rail operators and passengers

Rail signalling systems are essential to prevent collisions and keep train and metro passengers safe



Very high-speed trains travel at 300 kilometres per hour or more and are important for the transition to environmentally sustainable transport

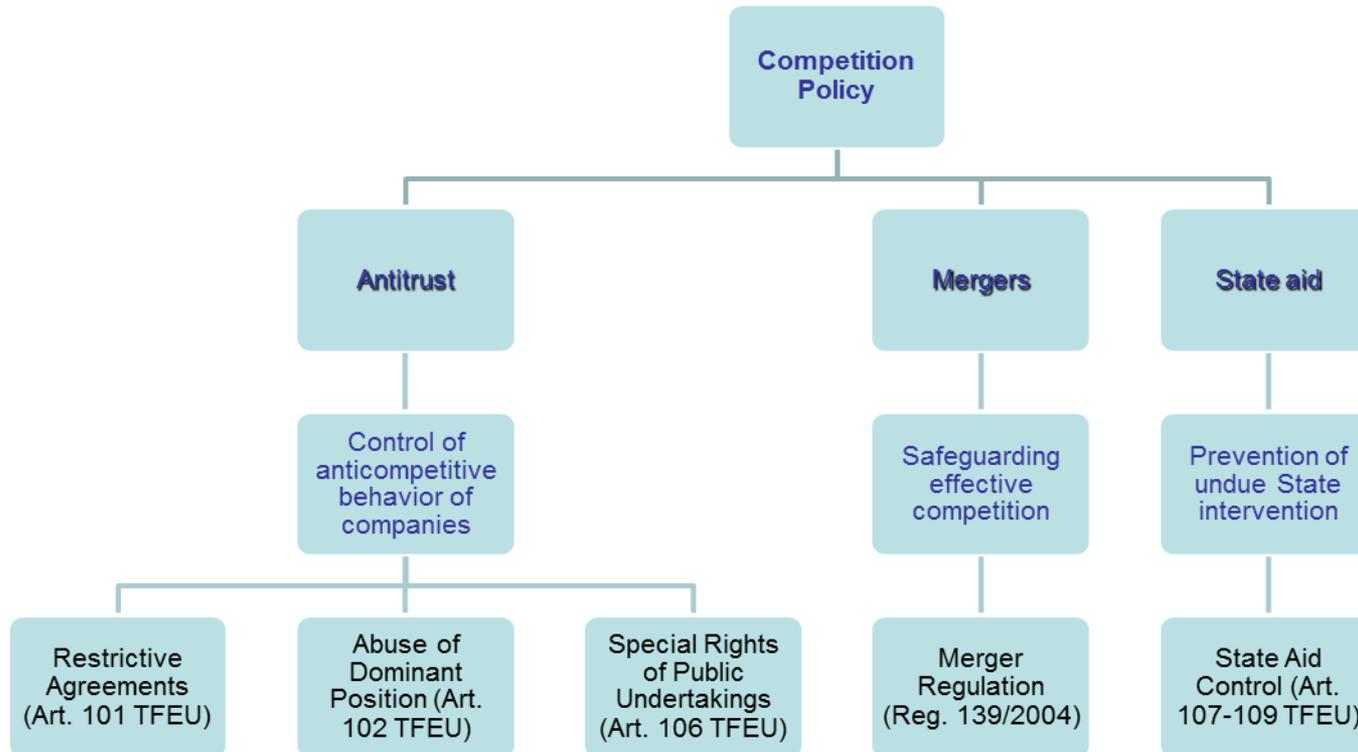


If combined, Siemens and Alstom would no longer compete resulting in higher prices, less choice and less innovation for rail operators

Competition

Competition

EU Competition policy



State Aid Control

- State Aid control is unique to the EU
 - ✓ state resources
 - ✓ **selective** advantage
 - ✓ potential to distort competition
 - ✓ may affect trade between Member States
- Commission has **sole competence** to authorise State aid
 - Avoid discrimination between competitors
 - Limit inefficient use of taxpayers' money
 - **Equal treatment** of public and private companies





Basic Rules for State aid

- Internal Market, level playing field
- avoid subsidy races
- competitive European industry
- element of cohesion

- Basic rule - **no State Aid**
 - Exemptions – notification procedure, block exemption cases, *de minimis* aid
- If State Aid is not considered compatible with State Aid rules, the Commission may order recovery



State Aid: Article 107 TFEU

"Save as otherwise provided in the Treaties, **any aid** granted by a Member State or through State resources **in any form whatsoever** which **distorts or threatens to distort competition** by **favouring** certain undertakings or the production of certain goods shall, in so far as it **affects trade** between Member States, be **incompatible with the internal market.**"

When is State aid acceptable?

- Art. 107(2) TFEU: "**shall be** compatible"
 - a) Aid having a social character, granted to individual consumers
 - b) Aid to make good the damage caused by natural disasters [...]
 - c) Aid granted to the economy of certain areas of Germany to compensate for the disadvantages caused by the country division
- Art. 107(3) TFEU: "**may be** considered compatible"
 - a) Economic development of most disadvantaged regions
 - b) Promote an important project of common European interest OR Remedy a serious disturbance in the economy of a Member State
 - c) Development of certain economic activities or certain economic areas
 - d) Culture and heritage conservation
 - e) Other categories as may be specified by a decision of the Council



Modernisation of State Aid rules

- Foster growth in a strengthened, dynamic and competitive internal market
- Focus enforcement on cases with the biggest impact on internal market
- Streamlined rules and faster decisions
- Transparency – for individual aid awards over €500,000



State Aid: General Block Exemption Regulation

Standard measures considered not very harmful → deemed to be compatible

→ Do not need to be notified to the Commission

Regional aid; SMEs; access to finance for SMEs; research and development and innovation; training; aid disadvantaged workers and workers with disabilities; environmental protection; natural disasters; transport for residents in remote regions; broadband infrastructure; culture and heritage conservation; sport and multifunctional recreational infrastructures; local infrastructures; ports; airports

How others see you ...



What you actually do...





How are the rules enforced?

- **Administrative enforcement system:**
 - The Commission takes decisions that are binding on the companies (antitrust & mergers) or Member States (in State aid)
 - The Commission may require a company to put an end to an infringement / impose fines or structural remedies / order a Member State to recover incompatible aid
 - All Commission decisions can be reviewed by the General Court and appealed to the European Court of Justice
 - No criminal sanctions for cartels (in USA or other jurisdictions: jail sentences for antitrust violations possible)
 - Private enforcement via national courts Directive 2014/104

European Competition Network

European Competition Network (ECN):
Commission + National Competition Authorities

➤ Directive (EU) 2019/1 on ECN: To ensure effective enforcement and coherent application of EU competition rules

- Definition of powers of inspection, termination/leniency
- informing each other (new cases, envisaged decisions)
- coordinating investigations
- helping each other (e.g. exchanging evidence)
- discussing issues of common interest.
- National competition authorities and courts have power to apply articles 101 and 102 TFEU in full.
- :





Competition policy in a globalised economy

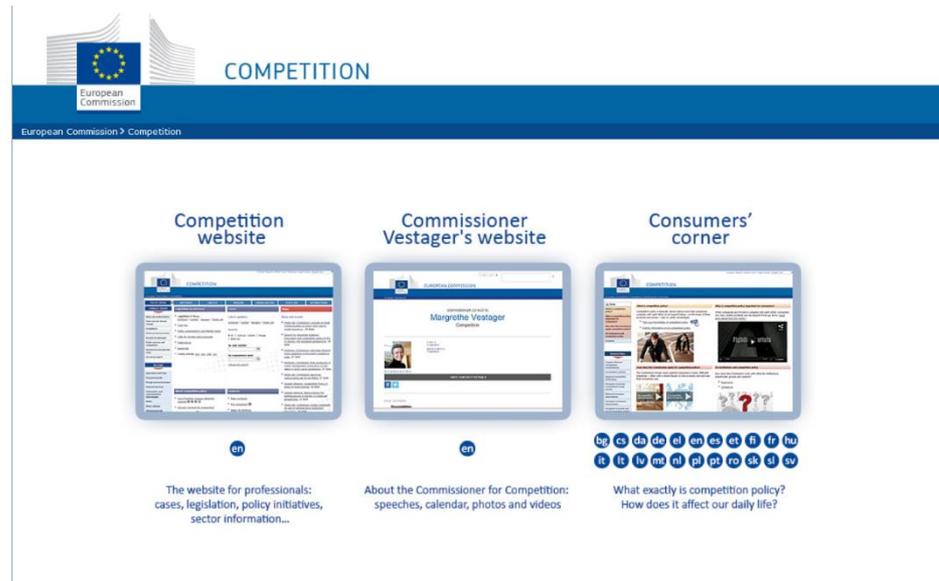
- Companies operating across national borders ...
→ Cooperation between competition authorities outside the EU:



- To promote **convergence of competition policy** instruments and practices
- To facilitate **cooperation in enforcement** with competition authorities in other jurisdictions

Our web portal

- <http://ec.europa.eu/competition/>
- https://ec.europa.eu/commission/commissioners/2014-2019/vestager_en
- <http://ec.europa.eu/competition/consumers/>



The screenshot shows the top part of the European Commission's Competition website. At the top left is the European Commission logo. To its right is the word "COMPETITION" in a blue bar. Below this bar, the text "European Commission > Competition" is visible. The main content area features three columns of information:

- Competition website:** A thumbnail of the main competition website interface.
- Commissioner Vestager's website:** A thumbnail of the website for Commissioner Margrethe Vestager, showing her name and title.
- Consumers' corner:** A thumbnail of the "Consumers' corner" section, which includes a question mark icon and a list of language options (bg, cs, da, de, el, en, es, et, fr, hu, it, lt, lv, ml, nl, pl, pt, ro, sk, sl, sv).

Below each thumbnail is a small "en" language indicator. Under the "Consumers' corner" thumbnail, there is a list of language options: **bg cs da de el en es et fr hu it lt lv ml nl pl pt ro sk sl sv**.

The website for professionals: cases, legislation, policy initiatives, sector information...

About the Commissioner for Competition: speeches, calendar, photos and videos

What exactly is competition policy? How does it affect our daily life?

- **Thank you for your attention**

- **Any questions?**

For further information on competition policy:

- **http://ec.europa.eu/competition/index_en.html**