European
Commission

University of International Business and Economy
Beijing, China
19 March 2013

The Competition Rules of the European Union and their Enforcement by the European Commission

Bernd Langeheine
Deputy Director General - Mergers
Directorate General for Competition

Competition

European Commission

The Three Pilars of EU Competition Law

Antitrust policy Control of behaviour of companies	Merger Control Safeguarding market structure	State Aid Control Prevention of undue subsidisation by the State
Restrictive agreements (Cartels) Art 101 TFEU Abuse of market power Art 102 TFEU (unilateral conduct)	Reg. 139/2004 Offical Journal L 24 of 29 January 2004, p. 1	Art 107-109 TFEU

Restrictive agreements (Art. 101)

By object

- illegal in themselves and invariably harmful to competition
- "per se" illegal object, no need to examine effects,

e.g. cartels on price fixing or market sharing

By effect

- case-by-case assessment
- positive effects can outweigh restrictive effects
- depends on the nature of the agreement and market conditions
- exemption requires proof of efficiencies or other consumer benefits

Hard Core Cartels

Most serious attack on fair and undistorted competition:

- Price fixing
- Limiting or controlling production, markets, technical developments or investment
- Dividing up markets or sources of supply.

Example: Cartel among producers of LCD panels.

European Commission

Abuse of dominance (Art 102)

Dominance: the ability to behave independently from customers and competitors

Abuse examples:

- Charging excessive prices
- Charging unfair low prices
- Discriminating between trading partners
- Certain forms of bundling & tying
- Unfair loyalty rebates

Examples:

➢ Microsoft case (2004) - Intel case (2009)

European Commission

Example: Intel case

Abuse of dominant position 2002-2007 (>70% market share):

- Granting of rebates to computer manufacturers on condition that they bought (almost) all x86 CPUs from Intel.
- Direct payments to computer manufacturers to halt or delay the launch of competing products.
- Direct payments to retailer on condition it only stocked Intel products

Fine: €1.06 billion (highest fine for an abuse of a dominant position to date)

Reform (2004)

From a centralised enforcement system to a decentralised application of EU competition rules

Creation of a forum for cooperation between the 27 EU Member States and the Commission: European Competition Network (ECN)

- Efficient division of work
- Effective enforcement of EU competition rules
- Further cooperation

Merger Control (Regulation 139/2004)

- Ensure that mergers that would harm competition are blocked or modified (by commitments)
  - ➢ mergers may "*significantly impede effective competition*", often by creating or strengthening a dominant player but also by further tightening a narrow oligolpoly.
- Mergers can be good for competition
  - ➢ e.g. cost savings; efficiency gains in innovation; R&D
  - ➢ Market players can become more competitive and consumers can benefit from higher-quality goods at fairer prices

Merger Evaluation

EU Merger control increasingly applies an **effects-based approach** (meaning greater emphasis on "economics" and less reliance on structural factors such as concentration levels or market shares)

Typical elements to be examined :

- Are the products of the merging parties close substitutes?
- Could other companies enter quickly and on a sufficient scale to compensate for the loss of competition by the merger (creation of a new "competitive constraint")

Prohibitions are the exception

Only 24 prohibitions in some 4600 merger reviews since 1990. But over 300 mergers only cleared subject to conditions (remedies)

Recent examples:

- Financial services:Deutsche Börse/NYSE Euronext
- Airlines: Ryanair/Aer Lingus
- Logistical services: UPS/TNT

Remedies: a proportionate solution for competition problems (normally through a structural measure, such as a divestment of assets)

Examples:

- Panasonic/Sanyo
- Cisco/Tandberg
- Western Digital/Hitachi

Competition Authorities - Enforcement

- Effective enforcement procedures
- Efficient structures
- Adequate resources
- Independent decision-making
- Focus on competition policy considerations
- Transparency and procedural rights

International enforcement and cooperation

An increasing number of competition cases concern markets which are wider than national or global

- Air transport cartel (2010) included i.a. Air Canada, British Airways, Cathay Pacific, Singapore Airlines, Japan Airlines
- International cooperation – benefits in terms of coherence, credibility and convergence
- Cooperation between EU Commission and Chinese competition authorities – MoUs with Mofcom, NDRC and SAIC