

# History of Competition Law

Lecture 1.

# Competition (anti-trust, anti-monopoly) law

- Law
- Promotes or seeks to maintain market competition
- By regulating anti-competitive conduct by companies

# Competition law: elements

- prohibiting agreements or practices that restrict free trading and competition between business (including in particular the repression of free trade caused by [cartels](#));
- banning abusive behavior by a firm dominating a market, or anti-competitive practices that tend to lead to such a dominant position (practices controlled in this way may include [predatory pricing](#), [tying](#), [price gouging](#), [refusal to deal](#), and many others);
- supervising the [mergers and acquisitions](#) of large corporations, including some [joint ventures](#).

# Key notions of Competition law (1)

- **Cartel** = agreement between competing firms to control prices or exclude entry of a new competitor in a market, *alliances of enterprises*;
- **Predatory pricing (undercutting)** = pricing strategy where a product or service is set at a very low price, intending to drive competitors out of the market, or create barriers to entry for potential new competitors;
- **Tying** = practice of selling one product or service as a mandatory addition to the purchase of a different product or service.

# Key Notions of Competition law (2)

- **Price gouging** = pejorative term referring to a situation in which a seller prices goods or commodities at a level much higher than is considered reasonable or fair. This rapid increase in prices occurs after a demand or supply shock: examples include price increases after hurricanes or other natural disasters;
- **Refusal to deal**;
- **Mergers & Acquisitions** = aspects of strategic management, corporate finance and management

# Objectives of Competition policy

- Protecting the interests of consumers (consumer welfare) and
- Ensuring that entrepreneurs have an opportunity to compete in the market economy

Or

- Economic efficiency and
- European market integration

Etc.

- Defense of smaller firms;
- Promoting market integration;
- Economic freedom;
- Fighting inflation;
- Fairness and equity;

# Other public policy factors affecting competition

- Social reasons;
- Political reasons;
- Environmental reasons;
- Strategic reasons: industrial and trade policies.

# Timeline: Roman Empire legislation

- Lex Julia de Annona around 50 BCE;
- Diocletian's Edict in 301 CE;
- The constitution of Zeno of 483 CE;
- Justinian I legislation.



# Timeline: Middle ages

## Continental Europe

- Lex Mercatoria: the *constitutiones juris metallici* by Wenceslaus II of Bohemia between 1283 and 1305;
- Florentine Municipal laws of 1322 and 1325;
- The Law of Emperor Charles V in the Holy Roman Empire.

# Timeline: Middle ages

## English legislation:

- The Domesday Book completed in 1086 by order of King William the Conqueror;
- The Act of Henry III in 1266;
- The Statute of Labourers of 1349 under King Edward III;
- The Law of 1553 by King Henry VIII;
- The Municipal Corporations Act 1835.

# Penalties for breach of competition regulations in medieval England

The **pillory** was a device made of a wooden or metal framework erected on a post, with holes for securing the head and hands, formerly used for punishment by public humiliation and often further physical abuse.



**Tumbrel (ducking-stools, cucking-stools)** are chairs formerly used for punishment of disorderly women, scolds and dishonest tradesmen in England, Scotland and elsewhere.



# Early competition law in Europe: Great Britain (1)

- The English common law of restraint of trade;
- 1561 a system of Industrial Monopoly Licenses, similar to modern patents, had been introduced into England;
- 1623 the Parliament passed the Statute of Monopolies;

# First Case Law

- 1414 Dyer's
- 1602 Darcy v. Allein
- 1684 East India Company v. Sandys

# Early competition law in Europe(2)

- Diffusion of Adam Smith's work;
- Industrialization;
- French Revolution and the law of 14–17 June 1791;
- Austrian Penal Code of 1852 and the Law of 1870;
- the Panic of 1873

# Modern Competition Law

- 20<sup>th</sup> century – globalization of competition law;
- 1889 Canadian Act for the Prevention and Suppression of Combinations formed in restraint of Trade;
- United States Anti-Trust Laws;
- Europe: Germany and UK;
- European Communities Competition policy;
- EU Competition law

# Antitrust laws in the USA

Historical background - end of XIX century in the US:

- Revolution in transportation and communication, which lead to a single US market;
- Technological innovations, stock market, new managerial methods (separation between ownership-control)
- Liberalization of incorporation laws leading to a waves of mergers

→ economies of scale and scope to be reaped: firms' size increases (also through mergers)



# Antitrust laws in the USA

- Fall in transportation and communication resulted in a rise competition
  - low and unstable prices;
- Large investments □ attempt to operate at full capacity to cover fixed costs resulted also in price decrease
- Market instability, due to macroeconomic crises and price wars (and also by phenomena above)
- Firms answered to price war with PRICE AGREEMENTS to keep margins

# Antitrust laws in the USA

- incentives to form cartels and trusts
- negative effects on consumers, farmers and small firms
- Antitrust legislation on state level;
- Little effects at a federal level □ in 1890 enough consensus for the SHERMAN ACT

# Sherman Act

- Section 1 prohibits contracts which restrain trade □ prison and fines for violators
- Section 2 prohibits monopolisation (prison up to 3 years)
- In the first decade enforcement was not strict
- 1897: Supreme Court decision on a cartel of 18 railways fixing the transport fares □ illegal
- Prohibition of price agreements: strong principle, still valid, few exceptions
- Prohibitions in vertical relationships: resale-price maintenance
- Standard oil □ trust by Rockefeller □ monopolisation practices (predatory prices and acquisition of minor firms) + Terminal railroad (essential facility case)

# Sherman Act II

- Sherman act cover price fixing, market sharing agreements and monopolization, not mergers
- Firms wishing to coordinate price had the option of merging into a single firm □ sharp increase in the number of mergers
- The Clayton Act of 1914 extended antitrust to cover mergers reducing competition
- The Clayton act also forbids other practices like price discrimination
- Creation of the Federal trade Commission – independent agency - that shares with the Department of Justice enforcement of antitrust laws

# History...Politics...

- During the great depression (1930-1939) less enforcement of antitrust laws: more price control, more regulation
- Ex. Coal Mine industry □ reduction of demand, to avoid losses 137 producers formed a company to control prices and allocate output □ reasonable protection of the market against destruction
- Competition laws and enforcement should be understood in the political-economic-historic context

# More activism

- Until the mid-70s: more activism
- International salt (1947) established a rule prohibiting TIE-In SALES (a producer sells a product only if the consumer buy another one)
- Courts ruled against “exclusive territorial clauses” (only one distributor can operate in each area)
- Alcoa case (aluminium): the mere fact that Alcoa had 90% market shares and was building new capacity was enough to prove “monopolisation”

# Chicago & Reagan

- Chicago school criticized antitrust activism and stressed the efficiency rationale behind vertical restraints and mergers
- Joint effect of the Chicago views and the loss of competitiveness of US firm abroad changed the enforcement attitude of antitrust
- This trend became a major change during the Reagan Administration □ market forces should be let free to select more efficient firms
- In 1977 there was a peak of 1611 antitrust cases, in 1989 only 638

# Enforcement

- 1933: Appalachian Coals v. US, an exception
- 1950-60s: (too) active enforcement
- 1970s: efficiency criteria begin to play a role
- 1980s: (Reagan): laissez-faire



# Modern Competition Law : Germany

- Germany: initially cartels were seen as an instrument to control instability created by cut-throat competition and price wars. Cartels were even enforced in courts.
- 1923 – anti-cartel law as reaction to hyperinflation
- 1930: Great Depression – compulsory cartel participation in sensitive sectors
- Nazi regime: cartels to prepare the war apparatus
- Imposition of anti-trust laws in Germany and Japan by the Allied (to break economic concentration)
- 1957 – competition law in Germany (ratio: protection of freedom of contract); Bundeskartellamt

# Modern Competition Law: UK

- 1919 Profiteering Act;
- 1948 – the Monopolies and Restrictive Practices (Inquiry and Control) Act ;
- Until the 1998 the UK lacked the system of penalties and tools of enforcement (UK authorities were not entitled to search firms' headquarters and seize documents)
- Competition Law of 1998 brought the UK in line with the EU

# Competition Law in the European Communities

- Supra-national competition law in the EU originates from the “Treaty of Paris” □ European Coal & Steel Community
- Prohibition of trade barriers, discriminatory practices and other restrictions able to distort competition
- Aims: 1. equal access to basic resources 2. free competition increasingly seen as the best way to assure efficient markets (due to the success of the US economy relying on antitrust law)
- Competition rules under the Treaty of Paris wanted to avoid discrimination on national grounds

# Resume

Competition laws are often influenced by social and historical reasons and might respond to quite different objectives