

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

- 20th 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