

EU Internal Market Law

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**“EU Competition Law:
General Remarks”**

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EU competition law sources

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The EU and competition

- One of the objectives of the EU, as set out in Art 3 TEU, is to establish an internal market, which *"includes a system ensuring that competition is not distorted"* (Protocol No 27 on the internal market and competition)
- Art 3(1)(b) TFEU → the EU shall have exclusive competence in ... *"the establishing of the competition rules necessary for the functioning of the internal market"* → Rules on competition (Arts 101 et seq TFEU)

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TFEU rules on competition

- Section 1: Rules applicable to private undertakings (Arts 101-106) → negative obligations imposed on undertakings operating in the single market: they are prevented from distorting competition
- Section 2: Aids granted by States (Arts 107-109) → negative obligations imposed on Member States: they cannot favour (some) undertakings in such a way that competition could be distorted

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What is the aim?

Double perspective

- a) Market integration → complementarity with fundamental freedoms
- b) Market economy → economic efficiency → maximization of consumer welfare

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Joined Cases C-403/08 and C-429/08, *Premier League*

"... an agreement which might tend to restore the divisions between national markets is liable to frustrate the Treaty's objective of achieving the integration of those markets through the establishment of a single market. Thus, agreements which are aimed at partitioning national markets according to national borders or make the interpenetration of national markets more difficult must be regarded, in principle, as agreements whose object is to restrict competition within the meaning of Art 101(1) TFEU"

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EU secondary law on competition

- Art. 103 TFEU: powers conferred on the Council to lay down the "appropriate **regulations** or **directives** to give effect to the principles set out in Articles 101 and 102" TFEU → ex. Regulation (EC) No 1/2003 on the implementation of the rules on competition laid down in Arts 81 and 82 EC
- Also the Commission may adopt Regulations, acting under delegated powers → ex. '**block**' exemptions under Art 101(3), applicable to categories of agreements

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The primary role of the Commission

- Commission → the authority with primary responsibility for the administration and enforcement of EU competition rules
- Decisions in individual cases
- Annual Reports, which the Commission's policy and practice may also be discerned from
- 'soft law' mechanism, i.e. **Notices** and **Guidelines**: rules indicating the approach which the Commission is to take, how it will exercise its discretion → ex. Commission Notice on cooperation within the Network of Competition Authorities

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May 'soft law' measures have legal effects?

- They are NOT rules of law which the Commission is required in all cases to comply with
- BUT rules of conduct indicating the approach to be adopted from which the Commission cannot depart, in an individual case, without giving reasons which are compatible with the principle of equal treatment → by adopting such rules, the Commission imposes a limit on the exercise of its own discretion → it cannot depart from those rules, without being found, in some circumstances, in breach of general principles of law

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EU competition law applicable to undertakings

Material scope of application

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The concept of "undertaking"

- Case C-41/90, *Höfner* → "every entity engaged in an **economic activity**, regardless of its legal status and the way in which it is financed": ex. public employment agency engaged in the business of employment procurement
- Economic activity → offering goods and services in the market → what about liberal professions (ex. lawyers, notaries)?


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The dividing line between EU and national rules on competition

Behaviours which may affect trade between Member States


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Effect on trade between MSs

- EU rules only apply to behaviours which may affect intra EU trade: Arts 101 and 102 → expansive interpretation of this criterion: conducts that *"may have an influence, direct or indirect, actual or potential, on the pattern of trade between MSs in such a way as to cause concern that they might hinder the attainment of a single market between MSs"*
- No affection of trade between MSs → EU rules do not apply; national competition rules are exclusively applicable

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Art 3(2) reg. (EC) No 1/2003

- The application of national competition law may not lead to the prohibition of agreements, decisions by associations of undertakings or concerted practices which may affect trade between Member States but which do not restrict competition under Art 101(1) or which fulfil the conditions of Art 101(3) or which are covered by a Regulation for the application of Art 101(3).
- Member States shall not be precluded from adopting and applying on their territory stricter national laws which prohibit or sanction unilateral conduct engaged in by undertakings.

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