



Linguistics
Linguistique



HANDBOOK MANUEL

The Language of Competition Law
Le vocabulaire du droit de la concurrence



With financial support from the Justice Programme of the European Union
Avec le soutien financier du Programme Justice de l'Union Européenne

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Foreword of the EJTN's Secretary General

Mastering a foreign language and its legal terminology should form an inevitable part of the training of judges and prosecutors. Knowledge of a foreign legal language is key to participation in cross-border activities and to smooth cross-border judicial proceedings and cooperation. *

The European Judicial Training Network (EJTN) has devoted particular attention to designing and implementing linguistic training activities for members of the judiciary of EU Member States. EU judges and prosecutors benefit from the EJTN's high-quality training programmes, supported by the European Commission.

EJTN courses aim to develop participants' legal and linguistics skills by combining legal knowledge and language exercises in a practical and dynamic way. This includes highly acclaimed linguistic training on the vocabulary of judicial cooperation in criminal/civil matters, human rights, family law, competition law and cybercrime.

This Handbook is a compilation of the most relevant training materials used in EJTN linguistic courses in competition law, both in legal English and legal French. It is addressed not only to participants, but also to all practitioners interested in developing their linguistic skills. Definitions, exercises and examinations of real cases make the Handbook an invaluable, hands-on resource for any judge, prosecutor or trainer involved in linguistic endeavours.

On behalf of the EJTN, I would like to express my sincere gratitude to the authors of the texts and exercises in the Handbook for their dedicated work. I wish also to express appreciation to EJTN Project Coordinator, Ms. Carmen Domuta, for her dedication in executing the EJTN linguistic activities, as well as members of the EJTN Linguistic Sub-working Group chaired, by Ms. Renata Vystrčilová from the Czech Judicial Academy, which supervises all EJTN linguistic activities.

Enjoy using this Handbook.

Judge Wojciech Postulski
EJTN Secretary General

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UNIT 1

INTRODUCTION TO THE LANGUAGE OF COMPETITION LAW AND COMPETITION LAW: DEFINITIONS AND DISCUSSION

INTRODUCTION

Mapping of national jurisdictions for the application of EU competition and State aid law by professor Erika Szyszczak¹

Historical background

The application of EU competition law can be divided into three distinct periods.

The first period from 1957 to 2003 saw very little litigation concerning competition law (including State aid cases) at the national level. Although the European Court of Justice (CJEU) held that Articles 101-102 TFEU were capable of producing direct effect at the national level, the centralisation of the enforcement of competition law in the hands of the European Commission focused competition law litigation at the EU rather than national level.

The same principle applied to State aid litigation: the European Commission played a central role in negotiating legitimate State aid and held a monopoly in determining whether a State aid was compatible with the Common Market. Where such cases evolved, the matter was seen as a public-law issue, focusing often on the constitutionality of the measure being implemented by the State. This provided the few opportunities for State aid cases to come before national courts. There was, however, no harmonisation of EU legislation on how EU competition law should be applied so it was for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction to apply competition law.

¹ <http://ec.europa.eu/competition/publications/reports/kd0416407enn.pdf>

Regulation 1/2003 was a significant turning point in the enforcement of EU competition law and launched the second period in the application of EU competition law at the national level. This Regulation obliged the Member States to introduce national laws implementing Articles 101 and 102 TFEU and increased the need for national judges to be familiar with European Commission practice, guidance and developments in the case law of the European Courts. The Member States were obliged to create national competition law authorities, alongside sectorial regulators as part of the parallel liberalisation of public sectors such as telecoms, postal services, utilities and transport. The Member States could designate one single NCA, or allocate competence between several authorities. Litigation at the national level thus focused on judicial review and other forms of public-law remedies against decisions taken by the national competition authorities and regulators.

In addition to the public-law control of national competition authority decisions, some Member States also developed and refined criminal-law liability for a breach of the national competition law provisions.

Various safeguards were included in Regulation 1/2003 to avoid competition law developing in different ways in the Member States, for example the creation of the European Competition Network. Article 15 of the Regulation envisaged a frequent process of cooperation between the Commission and the national courts, though as the survey of national judges conducted for this study reveals, many judges remain unaware of how to apply these provisions.

The Commission can transmit information in its possession or transmit procedural information to the national courts (Article 15(1)); give its opinion on questions regarding the application of the EU competition rules (Article 15(1)); and (alongside national competition authorities) can submit observations to national courts as *amicus curiae* (Article 15(3)). Under Article 15(2), national courts are obliged to submit to the Commission a copy of any written judgment in which Articles 101 or 102 TFEU has been applied (Article 15(2)). It was within this context that the “Training of Judges” funding programme was introduced.

State aid was not covered by Regulation 1/2003 but from 2000 onwards the European Commission embarked on a modernisation of State aid, allowing the Member States a greater role in self-assessment of State aid within the General Block Exemption and its various Guidelines, as well as soft- and hard-law regulation of Services of General Economic Interest and De Minimis principles. In 2009 the Commission updated its earlier 1995 Cooperation Notice.

A third period in the enforcement of EU competition law emerged as a result of the acknowledgement that an individual can rely on a breach of Article 101 or 102 TFEU in the national courts, even where the individual was a party to the illegal agreement.

This line of case law was developed later, raising the question of how compensation (damages) could be obtained in a coherent and effective manner in the 28 Member States given the traditional view of the CJEU that – in the absence of harmonising rules – each Member State is free to determine its own procedural rules and remedies subject to the principles of effectiveness and equivalence.

The Damages Directive was adopted on 26 November 2014 and should be transposed into national law by 27 December 2016. The aim of the new Directive is to strengthen the private enforcement of EU competition law and to counterbalance the uneven distribution of litigation in different jurisdictions.

There may therefore be a need for a different or perhaps complementary approach to judicial training needs, for example a greater emphasis on case management, how to handle expert evidence, how to handle the burden of proof and for exchanges of information on how EU competition law is applied in the Member States through the different national procedures.

Competition law : fundamental concepts²

Definitions: read the following concepts of competition law and reflect on to what extent they correlate with any definitions provided by your national law.

Entity:

“Any entity engaged in economic activity, regardless of the legal status of the entity and the way in which it is financed” (C-41/90)

/Corporations, state-owned companies, public employment agencies, football players, central banks, etc./

Economic activity

“Any activity consisting in offering goods and services on a market is economic activity” But “political” exclusions (e.g., social security services, etc.) the activity needs to be in exchange of economic consideration.

Reading and comprehension: article pp. 6 - 7:

Exercise 1.

QUESTIONS : Having read the text attempt to write meaningful questions using the following phrases in questions :

An example is given:

application of EU competition law

How many periods can the application of EU competition law be divided into?

Look at the collocations and expressions to be used in the questions (and try to locate them in the text):

- producing direct effect
- enforcement of competition law
- negotiating legitimate State aid
- no harmonisation of EU legislation
- to designate the courts and tribunals
- a significant turning point in the enforcement
- increased the need for national judges to be familiar with
- to create national competition law authorities
- public-law control of national competition authority
- developed and refined criminal-law liability
- to avoid competition law developing in different ways in the Member States
- transmit information in its possession or transmit procedural information to the national courts
- embarked on a modernisation of State aid

² Activities by D. Petriláková

- De Minimis principles
- acknowledgement that an individual can rely on a breach of Article 101 or 102 TFEU
- line of case law
- compensation (damages) could be obtained
- aim of the new Directive
- a need for a different or perhaps complementary approach
- burden of proof
- expert evidence

LANGUAGE EXERCISES³

Types of Offences

Read the definitions for various competition law offences, breaches and concepts:

Read the different definitions of the competition law offences and breaches and do the following:

- 1. Match the offence from (A-H).*
- 2. Give one reason for each of the other definitions that has made you decide they are not the best.*
- 3. Three of these definitions come from official bodies, agencies or institutions. Can you spot them? What tricks can you use to spot “normative” definitions? In order to help you, here are a few of the typical features of formal language:*

Exercise 2.

1. Cartels	A. Legal definition: a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by affording it the power to behave to an appreciable extent independently of its competitors, customers and ultimately of its consumers (United Brands).
2. Vertical agreements	B. Agreements amongst rivals to fix prices, limit output, share markets (customers), limit investments.
3. Mergers	C. An advantage in any form whatsoever conferred on a selective basis to undertakings by national public authorities: examples include general taxation measures or employment legislation.
4. Bid Rigging	D. Agreements that are generally pro-competitive but may too yield anticompetitive effects.

³ Activities by D. Petriláková.

- abuse of a (8) _____ position – where a major player tries to squeeze competitors out of the market

8. a. preeminent b. privileged c. dominant

- (9) _____ (and other formal agreements whereby companies join forces permanently or temporarily) – legitimate provided they (10) _____ markets and benefit consumers'

9. a. mergers b. unifications c. amalgamations

10. a. enlarge b. expand c. amplify

efforts to open markets up to competition (liberalisation) – in areas such as transport, energy, postal services and telecommunications. Many of these sectors (11) _____ controlled by state-run monopolies and it is essential to ensure that liberalisation is done in a way that does not give a(n) (12) _____ to these old monopolies.

11. a. were used to be b. were used to have been c. used to be

12. a. unfair advantage b. biased predominance c. inequitable favour

financial support, also called state (13) _____ for companies from EU governments – allowed provided it does not (12) _____ fair and effective competition between companies in EU countries or harm the economy;

13. a. help b. assistance c. aid

14. a. distort b. disfigure c. transform

cooperation with national competition authorities in EU countries (who are also responsible (15) _____ aspects of EU competition law) – to ensure that EU competition law is applied in the same way across the EU.

15. a. of enforcing b. for enforcing c. to enforce

III. Case study with language input:

a) European Union: ECJ Upholds GC Ruling That Reduction In Subsidiary's Fine Also Applies To Parent Company Where Appeals Have Common Object ⁵

Exercise 4.

Read the text and answer the comprehension questions:

On 22 January 2013, the Court of Justice of the EU ("ECJ") ruled that, when the EU courts reduce a fine imposed by the Commission on a subsidiary for an infringement of the EU competition rules, they may also apply the same reduction to the fine imposed jointly and severally on the subsidiary's parent, provided that the subsidiary's and parent's appeals before the EU courts have the same object (and even if this reduction goes beyond the scope of the parent company's pleas).

⁵ Adapted and based on the ECJ Ruling. Activity by D. Petriláková.

The ECJ's judgment concerns appeals arising from the Commission's decision in the copper fittings cartel case. In its decision of 20 September 2006, the Commission fined several companies for their participation in a cartel between 31 December 1988 and 1 April 2004 relating to the supply of copper fittings. Among the addressees of the decision were Pegler, which was found to have directly participated in the cartel, and Tomkins, which was Pegler's parent company during the time of the infringement. Pegler and Tomkins were jointly and severally fined € 5.25 million for the infringement.

The two companies separately brought actions for annulment before the General Court ("GC").

Both companies contested the Commission's assessment of the duration of Pegler's involvement in the cartel, although the scope and grounds of their arguments were different. Pegler also contested the Commission's application of a 1.25 deterrence multiplier in the calculation of the fine.

In a first judgment of 24 March 2011, ruling on Pegler's appeal, the GC annulled the decision in so far as the Commission found that Pegler had participated in the cartel from 31 December 1988 to 29 October 1993 and applied a deterrence multiplier in the calculation of the fine.

Consequently, the GC set the amount of the fine for which Pegler was liable at € 3.4 million (see VBB on Competition Law, Volume 2011, No. 3, available at www.vbb.com).

In a second judgment issued on the same day, ruling on Tomkins' appeal, the GC considered that account should be taken of the outcome of the action brought by Pegler given that Tomkins had also contested the duration of Pegler's involvement in the cartel (even though the scope and grounds of its pleas on this point were different to Pegler's).

As a result, the GC reduced the amount of the fine imposed on Tomkins to € 4.25 million, in respect of which it was jointly and severally liable with Pegler as to € 3.4 million. (Tomkins' fine was not further reduced to € 3.4 million because, unlike Pegler, Tomkins had not contested the Commission's application of a 1.25 deterrence multiplier in the calculation of the fine.)

To reach this conclusion, the GC pointed out that Tomkins was not held liable for the cartel on account of its direct participation in the cartel's activities but only as Pegler's parent company.

The GC recalled that, according to EU competition law, the applicant and its subsidiary constitute a single entity and the imputation of liability to Tomkins meant that it had the benefit of the partial annulment of the contested decision.

Concerned by the fact that this ruling could be regarded as *ultra petita* (because Tomkins benefited from specific arguments put forward by Pegler concerning the duration of the infringement which it had not raised in its own action), the GC reasoned that, in actions for annulment brought separately by a parent company and by its subsidiary, the court is not ruling *ultra petita* if account is taken in the parent's action of the outcome of the subsidiary's action provided that the form of order sought in both actions has the same object. According to the GC, this was the case with Tomkins' and Pegler's appeals.

The Commission sought to set aside this judgment before the ECJ and raised a number of grounds in support of its appeal. In particular, the Commission argued that Tomkins was not entitled, in the proceedings initiated by its application, to benefit from the reduction of fine decided in the proceedings initiated by the separate action brought before the GC by Pegler, given that the *ultra petita* rule does not recognise exceptions on the basis that two applicants belong to the same undertaking and have been declared jointly and severally liable.

In its judgment, the ECJ rejected the Commission's arguments, holding that the GC had been correct to rely on the principle that Tomkins' liability as parent company was purely derivative and thus depended on that of its subsidiary. As regards the scope of the *ultra petita* rule as discussed by the GC, the ECJ clarified that the notion of the "same object" does not require that the scope of the applications of the

parent and subsidiary and the arguments on which they rely to contest the duration of the infringement be identical. The ECJ therefore upheld the GC's findings and dismissed the appeal.

Comprehension practice: choose the correct letter to complete the statements.

1. The ruling at hand was issued by
 - A. National Competition Authority
 - B. ECHR
 - C. Court of Justice of the European Union
2. The relevant legal question was concerned
 - A. with the fine being imposed unlawfully on both the mother and daughter company
 - B. with the relevance of the penalty imposed on the mother company with regards to the subsidiary
 - C. with the mother company being penalised for the breach conducted by a subsidiary
3. Based on the information available in the text
 - A. both the mother and daughter company submitted identical plea contesting the extent of the penalty
 - B. only the mother company submitted a plea contesting the extent of the penalty
 - C. the plea submitted by the mother company was different from that submitted by the daughter company
4. The breach at the centre of the core decision was concerned with
 - A. price fixing
 - B. cartels
 - C. state aid
5. In the case at hand the penalty for breach was imposed
 - A. upon two unrelated companies Pegler and Tomkins
 - B. upon both the daughter company Tomkins and the parent company Pegler
 - C. upon both the daughter company Pegler and the parent company Tomkins
6. The penalty imposed
 - A. was € 5.25 million for the infringement upon each company
 - B. was € 5.25 million for the infringement upon the daughter company
 - C. was € 5.25 million for the infringement upon both companies
7. The companies appealed separately
 - A. seeking to have the decision set aside
 - B. seeking to have the penalty imposed upon the other company
 - C. seeking to have the penalty reduced

8. The appeals submitted by the companies were
 - A. identical in their arguments
 - B. different in their arguments
 - C. insufficiently supported by arguments
9. The main issues of the appeal by Pegler was concerned with
 - A. lack of authority of the Commission
 - B. incorrect assessment of the breach
 - C. both incorrect assessment of the breach and extensive penalty
10. The appeal of Pegler before General Court
 - A. was admitted and partially granted
 - B. was admitted and fully granted
 - C. was admitted but dismissed
11. The General Court
 - A. reduced the penalty of the parent company and the daughter company
 - B. reduced the penalty of the parent company
 - C. decided against reduction of the penalty
12. The GC relied on a EU concept
 - A. that for the purposes of competition law the parent and the subsidiary are treated as separate entities
 - B. that the parent and the daughter are always both directly liable for the breach
 - C. that the parent and the daughter company are to be perceived as single entity
13. The Commission appealed the judgement of the GC before CJEU on the grounds of
 - A. a) the daughter company is not entitled to benefit from the reduction
 - B. b) the daughter company is not entitled to such an extensive reduction
 - C. c) the daughter company is not entitled to appeal
14. The *ultra petita* rule
 - A. a) was not mentioned by the GC
 - B. b) was referred to by both the GC and the Commission
 - C. c) was relied on by the Commission
15. The ECJ
 - A. focused on procedural aspects of the case
 - B. focused on the derivative liability of the parent company
 - C. focused on the derivative liability of the subsidiary

5. The application of 1.25 deterrence multiplier in the calculation of the fine was erroneous.
6. The decision of the Commission is to be annulled in the part regarding the assessment of the duration of the involvement in the cartel.
7. The fine is to be reassessed.
8. The action brought by the subsidiary concerning the penalty implied jointly and severally is to be taken into account when considering the outcome of the action brought by the parent company in the same matter even if the arguments are not identical.
9. Even if the parent company was not seeking reduction of the penalty, it should be reduced if the penalty imposed on the subsidiary has been reduced.
10. The applicant and its subsidiary constitute a single entity and the imputation of liability to Tomkins means that it has the benefit of the partial annulment of the contested decision.
11. In actions for annulment brought separately by a parent company and by its subsidiary, the court is not ruling *ultra petita* if account is taken in the parent's action of the outcome of the subsidiary's action provided that the form of order sought in both actions has the same object.
12. Tomkins' liability as parent company was purely derivative and thus depended on that of its subsidiary.
13. Tomkins was not entitled, in the proceedings initiated by its application, to benefit from the reduction of fine decided in the proceedings initiated by the separate action brought before the GC by Pegler.
14. Tomkins' and Pegler's appeals had the same object.
15. The notion of the "same object" does not require that the scope of the applications of the parent and subsidiary and the arguments on which they rely to contest the duration of the infringement be identical.
16. *Ultra petita* rule does not recognise exceptions on the basis that two applicants belong to the same undertaking and have been declared jointly and severally liable.

Vocabulary: State Aid control⁶

Exercise 5.

Read the following text about State Aid control and complete the gaps with the noun phrases in the box below. Before you begin make sure you know the meanings of the noun phrases.

A. State resources	B. government intervention	C. policy objectives	D. tax reliefs
E. new legislation	F. Member States	G. notification procedure	H. investigation procedure
I. taxation measures	J. regulatory framework	K. selective basis	L. industry sectors

Why control State aid?

A company which receives government support gains an advantage over its competitors. Therefore, the Treaty generally prohibits State aid unless it is justified by reasons of general economic development. To ensure that this prohibition is respected and exemptions are applied equally across the European Union, the European Commission is in charge of ensuring that State aid complies with EU rules.

What is State aid?

State aid is defined as an **advantage** in any form whatsoever conferred on a (1) _____ **to undertakings** by national public authorities. Therefore, subsidies granted to individuals or general measures open to all enterprises are not covered by this prohibition and do not constitute State aid (examples include general (2) _____ or employment legislation).

To be State aid, a measure needs to have these features:

- there has been an **intervention by the State or through** (3) _____ which can take a variety of forms (e.g. grants, interest and (4) _____, guarantees, government holdings of all or part of a company, or providing goods and services on preferential terms, etc.);
- the intervention gives **the recipient an advantage on a selective basis**, for example to specific companies or (5) _____, or to companies located in specific regions
- **competition has been or may be distorted;**
- the intervention is likely to **affect trade** (6) _____.

⁶ http://ec.europa.eu/competition/state_aid/overview/index_en.html, exercise by M.S. Boyd.

Despite the general prohibition of State aid, in some circumstances (7) _____ is necessary for a well-functioning and equitable economy. Therefore, the Treaty leaves room for a number of (8) _____ **for which State aid can be considered compatible.** The legislation stipulates these **exemptions.** The laws are regularly reviewed to improve their efficiency and to respond to the European Council's **calls for less but better targeted State aid** to boost the European economy. The Commission adopts (9) _____ in close cooperation with the Member States.

How is State aid verified?

The European Commission has strong investigative and decision-making powers. At the heart of these powers lies the (10) _____ which – except in certain instances – the Member States have to follow.

The 2013 revision of the State aid Procedural Regulation introduced the possibility of **conducting State aid sector inquiries**, which was previously only possible as part of Antitrust and Merger control. State aid sector inquiries can be launched in situations where State aid measures may distort competition in several Member States, or where existing aid measures are no longer compatible with the (11) _____.

Aid measures can only be implemented after approval by the Commission. Moreover, the Commission has the power to recover incompatible State aid.

Three Commission Directorates-General carry out State aid control: Fisheries (for the production, processing and marketing of fisheries and aquaculture products), Agriculture (for the production, processing and marketing of agricultural products), and Competition for all other sectors.

Companies and consumers in the European Union are also important players who may trigger investigations by lodging complaints with the Commission. Furthermore, the Commission invites interested parties to submit comments through the Official Journal of the European Union when it has doubts about the compatibility of a proposed aid measure and opens a formal (12) _____.

Now read the article again and focus on the meanings of the words in bold. Do you know all of their meanings?

Vocabulary/Word Formation: Antitrust Overview⁷

Exercise 6.

(Adjectives and adverbs)

Complete the gaps with the related adjective or adverb of the word provided in parentheses

Competition encourages companies to offer consumers goods and services at the most (1) _____ (**favour**) terms. It encourages efficiency and innovation and reduces prices. To be (2) _____ (**effect**), competition requires companies to act (3) _____ (**independence**) of each other, but subject to the (4) _____ (**competition**) pressure exerted by the others.

⁷ http://ec.europa.eu/competition/antitrust/overview_en.html, Activity by M.S. Boyd.

European antitrust policy is developed from two (5) _____ (**centre**) rules set out in the Treaty on the Functioning of the European Union:

- First, Article 101 of the Treaty prohibits agreements between two or more independent market operators which restrict competition. This provision covers both (6) _____ (**horizontal**) agreements (between actual or potential competitors operating at the same level of the supply chain) and vertical agreements (between firms operating at (7) _____ (**difference**) levels, i.e. agreement between a manufacturer and its distributor). Only (8) _____ (**limit**) exceptions are provided for in the general prohibition. The most flagrant example of illegal conduct infringing Article 101 is the creation of a cartel between competitors, which may involve price-fixing and/or market sharing.
- Second, Article 102 of the Treaty prohibits firms that hold a (9) _____ (**dominance**) position on a given market to abuse that position, for example by charging unfair prices, by limiting production, or by refusing to innovate to the prejudice of consumers.

The Commission is empowered by the Treaty to apply these rules and has a number of (10) _____ (**investigate**) powers to that end (e.g. inspection at business and non-business premises, written requests for information, etc.). The Commission may also impose fines on undertakings which violate the EU antitrust rules. The main rules on procedures are set out in Council Regulation (EC) 1/2003. Read more about:

- The procedures for anticompetitive practices cases
- The procedures for abuse of dominance cases
- The key actors and checks and balances in proceedings for the application of Articles 101 and 102 TFEU.

National Competition Authorities (NCAs) are empowered to apply Articles 101 and 102 of the Treaty fully, to ensure that competition is not (11) _____ (**distort**) or restricted. National courts may also apply these provisions to protect the individual rights conferred on citizens by the Treaty. Building on these achievements, the Communication on Ten Years of Antitrust Enforcement identified further areas to create a common competition enforcement area in the EU.

As part of the overall enforcement of EU competition law, the Commission has also developed and implemented a policy on the application of EU competition law to actions for damages before national courts. It also cooperates with national courts to ensure that EU competition rules are applied (12) _____ (**coherence**) throughout the EU.

European Court of Justice Rules in Favour of Black Cabs⁸

Exercise 7.

In this video you will hear a report about the ECJ's ruling in favour of Black Cabs. Please note that the speakers (both mother tongue and foreigners) speak with mainly West African accents, so you may have difficulty understanding every single word.

Listen the first time and answer the following questions

1. Which types of cabs can and which types cannot use the bus lanes?
2. What was the European Court of Justice's decision based on?
3. What did Transport of London have to say about the possibility of allowing minicabs to use the bus lanes?
4. What does the first minicab driver say about how they were being treated?
5. What does the second man interviewed on the street have to say about Black Cabs?
6. What did the Court say about the possible effects of the decision on minicabs' business?

Now listen again and complete the missing nouns.

Reporter: Here on the busy streets of London it's business as usual as Black Cabs continue to use bus lanes while minicabs still have no (1) _____. The European Court said its (2) _____ was based on the fact that Black Cabs are distinct from minicabs. Transport for London argues that allowing thousands of minicabs to drive in bus lanes would also affect the (3) _____ of bus (4) _____.

Minicab driver: Yes, because it's the governments regulated, yeah, stuff, which to be honest, yeah, with you, yeah, we are very very treated unfairly, because we are part of London transports, so that's the way I look at it. Well, eventually, yeah, I think we have to do something about it because it's very unfair to us. The governments should take that into consideration and look at it.

Man on the street 1: Well, in one hand, it's not fair.

Man on the street 2: On the other hand, black cabs are more easy to identify, whereas someone could possibly be impersonating a regular minicab. It's a very difficult (5) _____.

Reporter: The EU Court recognises that the (6) _____ could make minicabs less attractive and reduces their (7) _____ to penetrate the (8) _____. Those who have said that the policy is unfair also hold the (9) _____ that there should be no cab (10) _____ since both types of cab provide the same (11) _____. It seems things will have to remain this way however until the (12) _____ returns from the (13) _____ of Appeal.

⁸ <https://www.youtube.com/watch?v=F04c19eVKJw> activity by M.S. Boyd.

London MEP praises bus lane ruling⁹

Exercise 8.

In this video the London Member of the European Parliament (MEP) for the Green Party talks about why she is happy about the ruling to limit the use of the bus lanes to Black Cabs. You will have to complete the missing verbs (and, occasionally, adverbs) in this activity so pay attention to which forms are used (and try to explain why). The number of words (when more than one) is provided in parentheses.

Reporter: Jean Lambert, Green MEP for London. The European Court (1) _____ (2 **words**) that EU law (2) _____ (4 **words**). Black Cabs, but not other kind of taxis, are allowed in bus lanes. What's your reaction?

JL: I'm really pleased with this ruling from the European Court of Justice on the Black Cabs (3) _____ access to bus lanes in London and this (4) _____ (3 **words**) as state aid or sort of public support in that sort of way. I (5) _____ it's a really good ruling.

Reporter: What's the impact of this ruling? What (6) _____ (3 **words**) for London?

JL: Well, I think what it (7) _____ for London is that it's still within the power of London authorities to decide who (8) _____ access to the bus lanes. And of course, given that the whole point of a bus lane is (9) _____ (4 **words**) public transport moving efficiently and as smoothly as possible. Anything that actually says you (10) _____ (3 **words**) open it up to a whole range of other users actually (11) _____ the purpose of the bus lanes. So I think this is good for London's traffic and you know London's buses (12) _____ all the help they (13) _____ (2 **words**) in moving smoothly.

Reporter: Because the Court (14) _____ (3 **words**) in the opposite direction and ruled that all kinds of taxis (15) _____ (3 **words**) to use the bus lanes. What (16) _____ (3 **words**) the implication of that and why (17) _____ (3) so strongly that that shouldn't happen?

JL: Well, if the Court (18) _____ (2 **words**) differently, then obviously we (19) _____ (4) at bus lanes no longer being able to give priority to certain vehicles, but that you know effectively any minicab in London (20) _____ (3 **words**) them and therefore you'd begin to look at a bus lane almost as if it's any other ordinary traffic lane. So that (21) _____ the whole object of actually (22) _____ to keep certain forms of traffic moving more quickly to give a more efficient service for users. So we (23) _____ (3 **words**) an even greater clogging up really of London's traffic again, which is certainly not what London's public transport users (24) _____. And given that they think they're paying a lot already to use London traffic, London buses, they want them (25) _____ (5 **words**) as smoothly as possible.

Reporter: Does this underline to you that there is a difference between general taxis, public cars that

⁹ Reproduced with kind permission from Europe & You, available <https://www.youtube.com/watch?v=iXWlezPozXY>. Activity by M.S. Boyd.

(26) _____ (3 words) and pre-booked, and the Black Cabs that can be picked up on the kerb, on the side of the road?

JL: I think this ruling (27) _____ (2 words) that there is a difference between the London Black Cabs and the minicabs. That it's recognised that Black Cabs (28) _____ (3 words), that they have requirements about disability access, they have requirements about training of their drivers in terms of knowledge of London, a whole set of things which (29) _____ to one particular group of drivers, in this case the Black Cab drivers. And I think that this also will have implications for other sort of taxis elsewhere in the European Union that also have those sort of similar regulations.

Cartels¹⁰

Exercise 9.

Before listening to the short video about cartels, read the transcript and try to guess what the missing noun phrases might be. Then listen and complete the gaps with the missing words.

Richard Whish is one of the country's leading authorities on competition law.

"Well, the most serious _____ is what we call a cartel. And that's the situation where a number of _____ get together and basically decide 'let's not compete with one another'. The most obvious example of a cartel is a _____, _____, and that's where a number of competitors get together and they agree to fix their prices. For example, they might all agree that next Monday they will put their prices up to an _____.

What we can say quite simply is consumers get a raw deal from cartels. We come across very _____ where firms simply agree to _____. But you can imagine more complicated examples. One would be what we call _____, and this is where a firm goes out to _____, asking a number of companies to bid competitively to win a contract. And what they do is they get together and they decide 'it is my turn' to win the _____. So it is agreed that I will bid a price of a million pounds, somebody else will bid £1.2 million, somebody else £1.4 million. Well, obviously, I will win the bid and we have created the _____.

And clearly the likelihood is that the price even of a million is higher than the _____ should be. The very interesting thing about _____ is that it can take place at a number of different levels within a company, and you could imagine a situation where somebody from the _____ of company A has discussions with a director of a company B.

Or this might all take place at a much lower level, where perhaps _____ from two different organisations have discussions with one another. And there are also examples where _____

¹⁰Originally from <http://www.ofc.gov.uk/> but the site was closed in 2014. The video can now be found at <https://www.youtube.com/watch?v=JO2R4Yort-g>. Activity by M. S. Boyd.

the _____ sometimes takes place through a _____, for example, a trade association. It's a very important thing for business people to understand that cartels don't only mean cloak and dagger operations.

If competitors are all together at a social event, for example they go to a _____ dinner, then after the dinner they go to the bar and they start talking to each other about their _____ and that they're thinking of raising prices, this can also be illegal."

Office of Fair Trading Dawn Raid¹¹

Exercise 10.

Part I

Watch the first part of the video about a fictionalised account of a raid at an electronics company suspected of being involved in unfair trading activities and answer the following questions.

1. What does the company that is being raided deal in?
2. How many other companies are involved?
3. What did these companies allegedly agree to do?
4. At whose home do they also have a team in place? Why?
5. Does the receptionist know anything about the raid? What does she say?
6. Who is Mr Huston on the phone with? Where is her husband?
7. What does the woman investigator show Mr Huston?
8. What kind of investigation is being conducted? What specifically does it regard?
9. What does the warrant allow the representative from the OFT to do?
10. Why do they want to speak to the IT expert?

Part II [from 2:55]

Now listen to the second part of the video and complete the gaps with the missing (2 or three) words

Reporter: That was a fictionalised account of what could happen if a business is suspected of (1) _____. There are serious consequences for individuals and firms of all sizes that (2) _____. These can include (3) _____ and fines. We're going to speak to some (4) _____ that will explain to you why competition law is important, what it says and how you can (5) _____. And what to do if you suspect that another business or someone within your own business has (6) _____.

¹¹ Originally from <http://www.ofg.gov.uk/> but the site was closed in 2014. Video can now be found at <https://www.youtube.com/watch?v=unJFbjnKV0>. Activity by M.S. Boyd.

So why should we care? Well, competition law is designed to (7) _____ from distorting the (8) _____. It encourages rivalry and ensures that markets are open. It spurs (9) _____. It means that consumers and businesses can access the widest possible (10) _____ and services at the (11) _____. All businesses need to comply with competition law.

John Fingleton: Well the OFT's job is to make markets work well for consumers. That means (12) _____ well for business too. One of the ways we do that is through (13) _____. You can see the big benefits for (14) _____ that come from, for example, in the aviation market where ... and telecoms market where prices have come down by up to 90% over the last 20 years from (15) _____.

Given the importance for competition for the economy and for consumers there are (16) _____ of breaking competition law. They include in the UK (17) _____ of up to five years, direct disqualification and fines of up to 10% of turnover for companies. So we try to help business comply with the law and one of the ways in which we do that is with a setting out a (18) _____ for complying with competition law that you'd hear about in this video.

UNIT 2

COMPETITION LAW REGULATIONS, DIRECTIVES & ORGANIZATIONS

INTRODUCTION

In this Chapter we propose a number of language activities that are based on some of the legislative initiatives introduced by the EU (and other organizations).

The Commission relies on the effective administrative enforcement of EU rules through national administrative procedures and institutions. Immune from EU law regulation until 2004, national procedural settings have now become crucial for the uniform and consistent application of EU competition law.

The most relevant legal sources include:

Articles 101 to 109 of the Treaty on the Functioning of the European Union (TFEU), as well as a series of Regulations and Directives.

Four main policy areas include:

Cartels, or control of collusion and other anti-competitive practices, under Article 101 TFEU.

Market dominance, or preventing the abuse of firms' dominant market positions under Article 102 TFEU.

Mergers, control of proposed mergers, acquisitions and joint ventures involving companies that have a certain, defined amount of turnover in the EU, according to the European Union merger law.

State aid, control of direct and indirect aid given by Member States of the European Union to companies under TFEU Article 107.

Primary authority for applying competition law within the European Union rests with The European Commission and its Directorate General for Competition, although state aids in some sectors, such as agriculture, are handled by other Directorates General.

LANGUAGE EXERCISES

I. DIRECTIVE 2014/104/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union.¹²

Exercise 1.

Fill in the gaps with the correct word form, using the clue given in square brackets.

For the purposes of this Directive, the following definitions apply:

- (1) 'infringement of competition law' means an infringement of Article 101 or 102 TFEU, or of **(1)** _____ [nation] competition law;
- (2) 'infringer' means an undertaking or **(2)** _____ [associate] of undertakings which has committed an infringement of competition law;
- (3) 'national competition law' means **(3)** _____ [provide, plural forms] of national law that predominantly pursue the same **(4)** _____ [object] as Articles 101 and 102 TFEU and that are applied to the same case and in parallel to Union competition law **(5)** _____ [pursue] to Article 3(1) of Regulation (EC) No 1/2003, excluding provisions of national law which impose **(6)** _____ [crime] penalties on natural persons, except to the extent that such criminal penalties are the means whereby competition rules applying to undertakings are enforced;
- (4) '**(7)** _____ [act] for damages' means an action under national law by which a **(8)** _____ [claim] for damages is brought before a national court by an **(9)** _____ [allege] injured party, or by someone acting on behalf of one or more alleged injured parties where Union or national law provides for that **(10)** _____ [possible], or by a natural or **(11)** legal _____ [law] person that succeeded in the right of the alleged injured party, including the person that acquired the claim;
- (5) 'claim for damages' means a claim for **(12)** _____ [compensate] for **(13)** _____ [harm] caused by an infringement of competition law;
- (6) '**(14)** _____ [injury] party' means a person that has suffered harm caused by an infringement of competition law;
- (7) 'national competition **(15)** _____ [authorise]' means an authority designated by a Member State pursuant to Article 35 of Regulation (EC) No 1/2003, as being responsible for the application of Articles 101 and 102 TFEU;
- (8) 'competition authority' means the **(16)** _____ [commit] or a national competition authority or both, as the context may require;

¹² Activity by E. Samaniego Fernández.

(9) '(17) _____ [nation] court' means a court or tribunal of a Member State within the meaning of Article 267 TFEU;

(10) '(18) _____ [review] court' means a national court that is empowered by ordinary means of appeal to review (19) _____ [decide, plural form] of a national competition authority or to review (20) _____ [judge, plural form] pronouncing on those decisions, (21) _____ [respect, negative form] of whether that court itself has the power to find an infringement of competition law;

(11) 'infringement decision' means a decision of a (22) _____ [compete] authority or review court that finds an infringement of competition law;

(12) '(23) _____ [finalise] infringement decision' means an infringement decision that cannot be, or that can no longer be, appealed by ordinary means;

(13) '(24) _____ [evidential]' means all types of means of proof (25) _____ [admit] before the national court seized, in particular documents and all other objects containing information, irrespective of the (26) _____ [media, singular form] on which the information is stored;

(14) 'cartel' means an (27) _____ [agree] or concerted (28) _____ [practise] between two or more (29) _____ [compete, plural form] aimed at coordinating their competitive (30) _____ [behave] on the market or influencing the relevant parameters of competition through practices such as, but not limited to, the fixing or (31) _____ [coordinate] of purchase or selling prices or other trading conditions, including in relation to (32) _____ [intellect] property rights, the (33) _____ [allocate] of production or sales quotas, the sharing of markets and customers, including bid-rigging, restrictions of imports or exports or anti-competitive actions against other competitors;

(15) 'leniency programme' means a programme concerning the (34) _____ [apply] of Article 101 TFEU or a corresponding provision under national law on the basis of which a (35) _____ [participate] in a secret cartel, (36) _____ [independence] of the other undertakings involved in the cartel, cooperates with an investigation of the competition authority, by (37) _____ [volunteer] providing presentations regarding that participant's (38) _____ [know] of, and role in, the cartel in return for which that participant receives, by decision or by a (39) _____ [discontinue] of (40) _____ [proceed, plural form], (41) _____ [immune] from, or a (42) _____ [reduce] in, fines for its (43) _____ [involve] in the cartel;

(16) '(44) _____ [lenient] statement' means an oral or written presentation voluntarily provided by, or on behalf of, an undertaking or a (45) _____ [nature] person to a competition authority or a record thereof, describing the knowledge of that undertaking or natural person of a cartel and describing its role therein, which presentation was drawn up specifically for (46) _____ [submit] to the competition authority with a view to obtaining immunity or a (47) _____ [reduce] of fines under a leniency programme, not including pre-existing information;

(17) 'pre-existing information' means (48) _____ [evident] that exists irrespective of the proceedings of a competition authority, whether or not such information is in the file of a competition authority;

(18) '(49) _____ [settle] submission' means a voluntary presentation by, or on behalf of, an undertaking to a competition authority describing the undertaking's (50) _____ [acknowledge] of, or its (51) _____ [renounce] to dispute, its participation in an infringement of competition law and its (52) _____ [responsible] for that infringement of competition law, which was drawn up

(53) _____ [*specify*] to enable the competition authority to apply a simplified or (54) _____ [*expedite*] procedure;

(19) 'immunity (55) _____ [*receive*]' means an undertaking which, or a natural person who, has been granted immunity from fines by a competition authority under a leniency programme;

(20) 'overcharge' means the (56) _____ [*differ*] between the price actually paid and the price that would otherwise have prevailed in the _____ [*absent*] of an infringement of competition law;

(21) 'consensual dispute (57) _____ [*resolve*]' means any mechanism enabling parties to reach the out-of-court resolution of a dispute concerning a claim for damages;

(22) 'consensual settlement' means an agreement reached through consensual dispute resolution.

(23) 'direct (58) _____ [*purchase*]' means a natural or legal person who acquired, directly from an infringer, products or services that were the object of an infringement of competition law;

(24) 'indirect purchaser' means a natural or legal person who acquired, not directly from an infringer, but from a direct purchaser or a (59) _____ [*subsequently*] purchaser, products or services that were the object of an infringement of competition law, or products or services containing them or derived therefrom.

EU institutions and competition policy

Exercise 2.

Read the text and complete the gaps with the correct option, A, B or C.

European Parliament¹³

The European Parliament is the only institution directly elected (1) _____ the European citizens. The 751 members (2) _____ the Parliament (MEP) are elected every five years and sit according (3) _____ their political allegiance, not the Member State of origin. Parliament's legislative procedure is shared with the EU Council for almost three quarters of EU policy (4) _____ the "co-decision procedure". Competition policy is not subject (5) _____ the co-decision procedure.

- | | | | |
|----|---------------|------------|-----------|
| 1. | a. by | b. through | c. from |
| 2. | a. at | b. of | c. from |
| 3. | a. of | b. with | c. to |
| 4. | a. by mean of | b. through | c. though |
| 5. | a. under | b. from | c. to |

Parliament committees relevant (6) _____ competition

- | | | | |
|----|-------|------------|-------|
| 6. | a. to | b. towards | c. on |
|----|-------|------------|-------|

¹³ Source: http://ec.europa.eu/competition/consumers/what_en.html. Activity by E. Samaniego Fernandez

National courts can (and sometimes must) refer cases (32) _____ the Court of Justice (33) _____ clarification on how EU competition law is to be interpreted (34) _____ a specific issue.

- | | | |
|----------------|--------|--------|
| 32. a. towards | b. for | c. to |
| 33. a. to | b. for | c. on |
| 34. a. on | b. at | c. for |

European Central Bank

The European Central Bank is the central bank for Europe's single currency, the euro. Its main task is to maintain the euro's purchasing power and thus price stability (35) _____ the euro area. The euro area comprises (36) _____ the 16 European Union countries that have introduced the euro since 1999. The European Central Bank is consulted regularly on all competition issues related (37) _____ the financial sector.

- | | | |
|-----------|---------|------------|
| 35. a. in | b. at | c. through |
| 36. a. of | b. Ø | c. from |
| 37. a. at | b. with | c. to |

Court of Auditors

The Court of Auditors monitors the proper collection and legal spending of the EU budget (European taxpayers' money) on EU policies. It has the authority to audit fines imposed (38) _____ companies found liable (39) _____ anti-competitive behaviour in cases brought by the Commission. The money paid (40) _____ fines goes back into the EU budget.

- | | | |
|-----------|--------|-------|
| 38. a. on | b. for | c. to |
| 39. a. of | b. for | c. to |
| 40. a. in | b. of | c. on |

European Social and Economic Committee

A body through which trade unions, employers' associations and other groups representing civil society express their opinion on EU issues, contributing (41) _____ the decision-making process. It has a section dealing specifically with competition policy and consumer welfare issues (Single Market Production and Consumption (INT) section).

- | | | |
|---------|-------|-------|
| 41 a. Ø | b. on | c. to |
|---------|-------|-------|

Public enforcement and private enforcement¹⁴

Exercise 3.

Read the following text and answer the questions. Also read the info on <http://ec.europa.eu/competition/eojade/antitrust/nationalcourts/>.

The historical development of EU competition law at national level has led to at least three distinct target groups among judges:

- (a) Judges dealing with the public enforcement of competition law: this group may be further sub-divided into
 - (i) those – usually in a single specific court – dealing with the judicial review of national competition authority decisions or, in a few cases, taking such decisions and
 - (ii) those – in a small number of Member States – dealing with criminal sanctions for the breach of competition law;
- (b) Judges dealing with the private enforcement of competition law, whether in the form of stand-alone actions or follow-on actions subsequent to an NCA decision: this group may also be sub-divided into
 - (i) more specialised judges in jurisdictions in which only selected courts are competent to hear such claims, and (ii) non-specialised judges in other jurisdictions;
- (c) Judges dealing with actions related to the illegal award of State aid: whereas it is relatively clear which courts would be competent to hear cases related to the infringement of Articles 101 or 102 TFEU, it is often difficult to predict in which court an action concerning State aid may appear.

There are few special provisions for such actions in Member States' national laws. In jurisdictions where the distinction between administrative and civil justice is clearly defined, (i) administrative courts will in principle be competent for actions against State bodies but cases between competitors may be brought before (ii) the civil courts.

It is important to note that very few judges deal with all aspects of EU competition law at a given time. In very few Member States are the same courts competent at first instance for both public enforcement and private actions.

Answer the following questions on the text.

1. How many groups are judges classified into according to the historical development of EU competition law at national level?
2. Are judges dealing with the public enforcement of competition law in single specific courts taking decisions on competition?
3. Are there many Member States where judges deal with criminal sanctions for the breach of competition law?
4. Judges dealing with the private enforcement of competition law can do so in two types of actions. Which are they?
5. Into what sub-categories can judges dealing with the private enforcement of competition law be divided into?

¹⁴ Source: <http://ec.europa.eu/competition/publications/reports/kd0416407enn.pdf>. Activity by E. Samaniego Fernández.

6. Is it clear which courts would be competent to hear cases related to the infringement of Articles 101 or 102 TFEU?
7. Is it clear before which court an action concerning State will be brought?
8. In which type of jurisdiction will administrative courts be competent for actions against State bodies and cases between competitors can be brought before civil courts?
9. Which is the case of your Member State?
10. If you are a judge, which group would you classify into?
11. Are there many Member States where the same courts are competent at first instance for both public enforcement and private actions?

VI. Grammar in context:¹⁵

Exercise 4.¹⁶

Rewrite the following sentences using the passive voice. The first one has been done for you.

1. The Commission carries out the public enforcement of Articles 101 and 102 TFEU using the powers provided by Council Regulation (EC) No 1/2003.
The public enforcement of Articles 101 and 102 TFEU is carried out by the Commission using the powers provided by Council Regulation (EC) No 1/2003.
2. Alternative avenues of redress in systems of private enforcement of infringements of competition law complement actions for damages.
3. This Directive should not affect actions for damages in respect of infringements of national competition law which do not affect trade between Member States within the meaning of Article 101 or 102 TFEU.
4. The national rules and procedures of the Member States govern actions for damages.
5. Anyone who has suffered harm caused by such an infringement can claim compensation for actual loss.
6. The opposing party or third parties usually hold exclusively the evidence necessary to prove a claim for damages.
7. Where a national court wishes to order disclosure of evidence by the Commission, the principle in Article 4(3) TEU of sincere cooperation between the Union and the Member States and Article 15(1) of Regulation (EC) No 1/2003 as regards requests for information apply.
8. The effectiveness and consistency of the application of Articles 101 and 102 TFEU require a common approach across the Union on the disclosure of evidence.
9. National authorities should pay particular attention to preventing 'fishing expeditions', i.e. non-specific or overly broad searches for information that are unlikely to be of relevance for the parties to the proceedings.

¹⁵ Activity by E. Samaniego Fernández.

¹⁶ Activity by E. Samaniego Fernández.

VI. Listening in Context: European Commission Fighting against cartels

Exercise 5.¹⁷

Background: Companies can distort competition by cooperating with competitors, fixing prices or dividing the market up so that each one has a monopoly in part of the market. Companies in cartels are not under pressure to launch new products, improve quality or keep prices down. Consumers end up paying more for lower quality. Cartels are illegal under EU competition law, and the Commission imposes heavy fines on the companies involved. However, as they are generally highly secretive, evidence is hard to find.

Part I [up until 2.00]

Watch the first part of the video and listen for the following noun phrases in context. Can you remember what was said about each of these and some of the other words they were used with? Try to write down any words that are used in relation to these terms.

history of anti-cartel enforcement
 sector(s) of the economy
 free market economy
 fundamental principle(s)
 variety of choice(s)
 competitive market
 lower prices
 higher quality products
 competing companies
 secret agreement(s) between competitors
 prices and supply
 detriments from cartels
 goods and services
 choice of better quality
 innovation in the market

Part II [from 2:00]

Now listen to a fictitious account of an “ice-cream cartel” in a village. The transcript is provided below but there are 14 mistakes in what is written (wrong words, extra words, etc.). Correct the mistakes.

So let’s look at how cartels work. In this town here most people are really passionate about ice-cream. So selling ice-cream here is obviously a pretty good business. That’s why there are four shops in the village. Usually, shop owners try to get a lot of customers coming to their own shop. So they invent new tastes, they make ads, they are as nice as possible to the customers and do everything that you do when you want to keep their customers. But, one day they all meet up and say: “Hey, this is all very hard work, isn’t it? Why don’t we all decide to have people pay a higher price? A similar price? Let’s say €1. And the beauty of it is, we don’t even have to work any longer because our customers don’t have much choice.”

¹⁷ <http://ec.europa.eu/avservices/video/player.cfm?ref=1072385> Activity by M. S. Boyd.

Part III [up to 5:30]

Now listen to some more of the video and write information about what they say about the following:

<i>People understanding the existence of cartels</i>	
<i>Cartel decisions by the European Commission per year</i>	
<i>LCD screen cartel</i>	
<i>Bathroom fittings cartel</i>	
<i>Banana cartel</i>	
<i>A case involving car glass</i>	
<i>Uncovering proof of a cartel</i>	
<i>Investigation into the "ice-cream cartel"</i>	
<i>Whistle-blowing policy, leniency</i>	

UNIT 3

THE LANGUAGE OF COMPETITION LAW: CASES

INTRODUCTION

In this chapter we will look at a few actual cases in the area competition law, which in recent years have seen some very interesting and relevant examples.

LANGUAGE EXERCISES

I. On the interpretation of Articles 37, 85, 86 and 90 of the EEC Treaty,¹⁸

a) PART I: Reading comprehension

Read about the case and answer the questions below:

THE COURT (Sixth Chamber) - **Judgment**

Grounds

By a judgment of 20 January 1987, which was received at the Court on 2 February 1987, the French *Cour de Cassation* (Court of Cassation) referred to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty a number of questions on the interpretation of Articles 37, 85, 86 and 90 of the EEC Treaty, in order to assess the compatibility with those provisions of national rules on **exclusive concessions of communal monopolies for certain funeral services**.

Those questions arose in a dispute between Pompes Funèbres des Régions Libérées S.A. (hereinafter referred to as "PFRL"), a subsidiary of Pompes Funèbres Générales, which has since 1972 been given an exclusive concession by the town of Charleville-Mézières **to provide the "external services" for funerals**, on the one hand, and Mrs Corinne Bodson, who had engaged in certain activities forming part of the "external services" for funerals within the territory of that commune, on the other.

A French Law of 1904, whose main provisions at present form part of Article L 362-1 et seq. of the Code des Communes ((Code relating to the Communes)), entrusted the **"external services" for funerals** to the communes. Those services cover exclusively the carriage of the body after it has been placed in the

¹⁸ Activity based on a case excerpt as drafted by F. Motu, linguistic input by D. Petrilkova.

coffin, the provision of hearses, coffins and external hangings of the house of the deceased, conveyances for mourners, the equipment and staff needed for burial and exhumation and cremation.

In particular, the “external services” **do not include either the “internal services”, which relate to the religious services, or the “unregulated services”** which cover non-essential funeral services such as the supply of flowers and marblework.

It is apparent from the documents before the Court that 5 000 French communes, out of a total of some 36 000, with 25 million inhabitants, approximately 45% of the population of France, have granted to a private undertaking a concession to provide the “external services”. Pompes Funèbres Générales and its subsidiaries hold the concession in 2 800 communes. They carry out a large proportion of burials in France. According to the information provided by the Commission, the parent company, Pompes Funèbres Générales, is itself a subsidiary of an undertaking which forms part of the Lyonnaise des Eaux group.

Mrs Bodson operates an **undertaking business** under a franchise from Mr Michel Leclerc, who has set up a network of such firms in France which provide their services at prices substantially lower than those normally charged in that sector, in particular by Pompes Funèbres Générales and its subsidiaries. When Mrs Bodson organised funerals within the territory of the town of Charleville-Mézières, the holder of the exclusive concession instituted **proceedings for an injunction against her**.

Mrs Bodson **appealed** to the Cour de Cassation against the interim judgment of the Cour d’ Appel, Reims, which prohibited Mrs Bodson from engaging in any activity relating to the “external services” for funerals and prescribed a penalty in the event of any infringement. In the proceedings before the Cour de Cassation, Mrs Bodson contended that the group comprising Pompes Funèbres Générales and its subsidiaries had **abused its dominant position on the market**. She referred to a notice issued by the French Commission on Competition stating that that group enjoyed a monopoly or a dominant position.

She alleged that this monopoly or dominant position had arisen as a result of the fact that the Pompes Funèbres Générales group had been exclusively granted a large proportion, and in some regions of France almost all, of the communal concessions for the “external services” for funerals and the abuse consisted, in particular, of the charging of excessive prices. She claimed that the **applicability of Article 37 of the EEC Treaty** could not be ruled out where there were a number of **communal monopolies** covering the national territory.

Please read the questions and be prepared to summarise them without (if possible) referring to the text:

The Cour de Cassation considered that it was necessary to ascertain whether the Treaty had to be interpreted as applying to situations of the kind described; it therefore stayed the proceedings and referred the following questions to the Court of Justice for a preliminary ruling :

- 1.** Is Article 37 of the EEC Treaty capable of applying to a number of communal monopolies granted to a single undertaking or to a single group of undertakings covering part of the national territory whose object is the provision of the ‘external services’ for funerals as defined by Article L 362-1 et seq. of the Code des Communes set out above, which include the provision of services and the supply of goods?
- 2.** Is Article 90 of the EEC Treaty capable of being applied to an undertaking or to a group of undertakings to which a number of such monopolies have been granted in that field?
- 3.** If Article 90 of the EEC Treaty is not applicable, can Article 85 or Article 86 apply to that undertaking or group of undertakings? More specifically, is Article 85 applicable to contracts for such concessions concluded with the communes?

4. Does it make any difference to the answers to the above questions if all the monopolies or the dominant position resulting therefrom in fact also relate to the provision of services or the supply of goods in connexion with funerals which are outside the scope of the 'external services' as defined by Article L 362-1 of the Code des Communes?

The first question relates to the interpretation of the Treaty in the context of State monopolies, whilst the other three questions, which should be considered together, are concerned with the interpretation of the competition rules applicable to undertakings.

First question

With regard to the interpretation of Article 37 of the EEC Treaty, it must be borne in mind that, as the Court has consistently held (see in particular the judgment of 28 June 1983 in Case 271/81, *Société Coopérative du Béarn v Mialocq*, ((1983)) ECR 2057), it follows both from the place occupied by Article 37 in the chapter of the EEC Treaty on the elimination of quantitative restrictions and from the wording used in that provision that **it refers to trade in goods and cannot relate to a monopoly over the provision of services**. However, the **possibility cannot be ruled out that a monopoly over the provision of services may have an indirect influence on trade in goods between Member States**, in particular where the monopoly over the provision of services established by an undertaking or by a group of undertakings leads to discrimination against imported goods as opposed to products of domestic origin.

It must also be pointed out that **Article 37 applies to State monopolies of a commercial character, an expression which covers, according to the second subparagraph of Article 37 (1), any body through which a Member State either directly or indirectly supervises, determines or appreciably influences trade between Member States, and which also applies to monopolies delegated by the State to others**.

However, the situation described by the national court is not covered by either of those alternatives. The national rules entrust the provision of the "external services" for funerals to the communes, which are at liberty to grant private undertakings the concession to provide the service, to leave it entirely unregulated or to operate it themselves.

It is apparent from those considerations **that the situation envisaged by the national court must be dealt with in the light of the Treaty provisions applicable to undertakings, and in particular Articles 85, 86 and 90, rather than in the light of the rules relating to State monopolies in Article 37**.

Second, third and fourth questions

It must be pointed out, in the first place, that **the aim of Article 90 is to specify in particular the conditions for the application of the competition rules laid down by Articles 85 and 86 to public undertakings, to undertakings granted special or exclusive rights by the Member States and to undertakings entrusted with the operation of services in the general economic interest**. Accordingly, it is necessary to start by examining the problems relating to the applicability of Articles 85 and 86.

With regard to Article 85, the national court asks, more specifically, in the second limb of its third

The third condition laid down by Article 86 is the abuse of a dominant position. By way of illustration, indent (a) of the second paragraph of Article 86 refers to the imposition, whether directly or indirectly, of unfair prices. In this case, the complaints addressed to the Commission were concerned precisely with the imposition of unfair prices by the concession holders. In these proceedings, Mrs Bodson contended that Pompes Funèbres Générales and its subsidiaries charge excessive prices.

The French Government and PFRL have denied that the prices charged by the subsidiaries of Pompes Funèbres Générales are unfair. The documents before the Court do not contain any information enabling that problem to be resolved. Since over 30 000 communes in France have not granted to an undertaking the concession to provide “external services” for funerals, but have left that service unregulated or operate it themselves, it must be possible to make a comparison between the prices charged by the group of undertakings which hold concessions and prices charged elsewhere. Such a comparison could provide a basis for assessing whether or not the prices charged by the concession holders are fair.

- concession holders are not in a position to “impose” any price, since the prices to be charged are fixed by the contract specifications which form part of the conditions for the concession. **That argument cannot be accepted. It is clear from the documents before the Court that the grant of the concession for the “external services” for funerals is regarded in France as a contract concluded between the commune and the concession holder,** which, moreover, corresponds to the view taken by the national court. It follows from that finding that the level of prices is indeed attributable to the undertaking, since the latter assumes full responsibility for the contracts which it has concluded.
- so far as the communes imposed a given level of prices on the concession holders, in the sense that they refrained from granting concessions for the “external services” to undertakings if the latter did not agree to charge particularly high prices, the communes are covered by the situation referred to in Article 90 (1) of the Treaty. That provision governs the obligations of the Member States - which includes, in this context, the public authorities at the regional, provincial or communal level - towards undertakings “to which ((they)) grant special or exclusive rights “. That situation covers precisely the grant of an exclusive concession for the “external services” for funerals.
- finding that public authorities may not, in circumstances such as those of this case, either enact or maintain in force any “measure” contrary to the rules of the Treaty, in particular the rules laid down by Articles 85 and 86. They may not therefore assist undertakings holding concessions to charge unfair prices by imposing such prices as a condition for concluding a contract for a concession.

It follows from all the foregoing considerations that:

(a) Article 85 of the Treaty does not apply to contracts for concessions concluded between communes acting in their capacity as public authorities and undertakings entrusted with the operation of a public service;

(b) Article 86 of the Treaty applies in a case in which a number of communal monopolies are granted to a single group of undertakings whose market strategy is determined by the parent company, in a situation in which those monopolies cover a certain part of the national territory and relate to the “external services” for funerals,

- where the activities of the group, and the monopoly enjoyed by the undertakings in question over a part of the territory of a Member State, affect the importation of goods from other Member States or the possibility for competing undertakings established in other Member States to provide services in the first-mentioned Member State,
- where the group of undertakings occupies a dominant position characterised by a position of economic strength which enables it to hinder effective competition on the market in funerals,

- and where that group of undertakings charges unfair prices, even though the level of those prices is fixed by the contract specifications which form part of the conditions of the contract for the concession;

(c) Article 90 (1) of the Treaty must be interpreted as precluding public authorities from imposing on undertakings to which they have granted exclusive rights, such as a monopoly in the provision of the “external services” for funerals, any conditions as to price that are contrary to Articles 85 and 86.

SELF STUDY EXERCISES: Vocabulary: ¹⁹

Please go through the vocabulary below and label it accordingly dividing it into the three subsequent categories as listed below.

1: the ones directly related to and used in the judgment

2: the ones with no legal context at all

3: the ones that are used within a different than the one established by the judgment

Exercise 1.

Please reflect on the meaning of the following expressions and if unsure use an online dictionary to look them up:

- *Party to the proceedings (define or explain by referring to the text)*
- *The original lawsuit*
- *Domicile*
- *Provide services*
- *Provision of services*
- *Legal provisions*
- *The law provides that*
- *Entity*
- *Legal entity*
- *Physical entity*
- *Communal monopoly*
- *Communal bathroom*
- *An undertaking*
- *An undertaker*
- *An undertaking business*
- *To undertake something*
- *Exclusive*
- *Inclusive*
- *To grant a concession*
- *to grant a concession*
- *Concession - to confess - concession*

¹⁹ Activity by D. Petrilakova.

Reflect upon the following questions:

Who are the parties to the case and where were they domiciled?

Who referred the case to the ECJ?

When (under what circumstances) may a case be referred to ECJ for preliminary ruling?

What was the main issue in the instant case (interpretation of which Article was it concerned with)?

What does the term “communal monopolies” refer to?

What commercial activities were the parties to the dispute engaged in?

What was the core of the dispute concerned with?

What is the concept of “external services” for funerals and what do those services cover under the French law?

What does Mrs. Bodson operate?

What do the external services not include?

What do the “internal services” and the “unregulated services” include?

What does an undertaking business do?

Why did the holder of the exclusive concession institute proceedings for an injunction and who was the injunction to be directed against?

What did Mrs. Bodson appeal against, what did she contend and which unfair competition practice did she allege?

How many questions were referred for a preliminary ruling and what was, briefly said, the core of each of the questions referred?

What, in short, was the answer to the first question: find the relevant extract in the text and underline it as well as some reasoning behind it.

What, in short, was the answer to the second question: find the relevant extract in the text and underline it as well as some reasoning behind it.

What, in short, was the answer to the third question: find the relevant extract in the text and underline it as well as some reasoning behind it.

II. Reading: Black Cabs in London ruling 'Exclusive' Rights to Drive in Bus Lanes²⁰

Exercise 2.

PART I: Reading comprehension (Adjectives)

Read the first part of the article and fill in the gaps with an appropriate adjective from the list. Make sure you review the meaning of the words in the list before you start. Read once for meaning, thinking which word might go into the gap, and then complete the exercise. Some have legal meanings while others do not.

A. regulatory	B. consumer	C. enduring	D. traffic	E. exclusive
F. fierce	G. traditional	H. form-based	I. major	J. thorough

Black Cabs in London Retain 'Exclusive' Rights to Drive in Bus Lanes

Erika Szyszczak

A detailed note on Case C-518/13 *The Queen, on the application of Eventech Ltd v The Parking Adjudicator* (judgment of 14th January 2015)

An (1) _____ feature of EU law is that it may be used in an opportunist manner in some of the lowest tribunals in the EU to create challenges to national rules and policies. This was how the *Eventech case* arose. But the case has not made an impact upon the established case law on State aid, or focused attention upon the *effects* of (2) _____ rules, instead retreating into a comfortable (3) _____ approach towards State aid.

The Issue

In London, bus lanes may be used by the (4) _____ "Black Cabs" to transport fares but also to pick up fares through the process of "hailing a cab". Evidence produced before the High Court in London revealed that in a 2009 survey only 8 % of Black Cab journeys were pre-booked' (*AG Wahl Opinion, para 19*). The regulatory rules imposed by Transport For London did not allow other taxi companies ("minicabs"), to use the bus lanes or ply for trade. This was because Black Cabs were under an obligation to be recognisable, be capable of carrying persons in wheelchairs, to set the fares by meters and to have a (5) _____ knowledge of the City of London. This is a policy used in other (6) _____ cities for registered taxi companies and is regulated by local authorities and is often endorsed by (7) _____ groups to protect the safety of passengers. In London Black Cabs do not pay for this (8) _____ right, but obviously incur costs in meeting the criteria to be classified as a "Black Cab".

AG Wahl noted that 'taxis and PHVs are engaged in (9) _____ competition with each other across Europe, and London is not the only city where conflicts have arisen'. This system of (10) _____ control is increasingly being challenged by calls for de-regulation as new taxi services are emerging, employing new technology to make taxi bookings using apps, smart phones

²⁰ Reproduced with kind permission from E. Szyszczak, 'Black Cabs in London Retain 'Exclusive' Rights to Drive in Bus Lanes' (StateAidHub Blog by Lexion Publisher, 27th January 2015), <http://stateaidhub.eu/blogs/stateaid/post/1237>. Activities by M. S. Boyd.

and the internet. For arguments against de-regulation see L. Eskenazi, 'The French Taxi Case: Where Competition Meets—and Overrides—Regulation' in the *Journal of European Competition Law & Practice*.

Reading Part II: Verb practice

Read the second part of the article and complete the gaps with the correct form of the verb provided in brackets. The verbs are both passive and active. A gap has been provided for each missing word in the verb phrase.

The Process

The case (1) _____ [**begin**] with a fine imposed upon Eventech (a private hire taxi company, a subsidiary company of Addison Lee) when Eventech (2) _____ _____ [**use, deliberately**] the bus lanes on Southampton Row in London. Addison Lee had wanted to challenge the exclusive rights of Black Cabs in time to offer a competitive taxi service for the London Olympics. An appeal against the penalty fine (3) _____ _____ [**make**] to the Parking Adjudicator in August 2011 and this was refused, as was an application for judicial review of this decision by Burton J in July 2012. On appeal to the Court of Appeal a mixture of EU free movement and State aid issues (4) _____ _____ [**raise**]: was the Transport for London policy a breach of the freedom to provide services under Article 56 TFEU?; (5) _____ _____ [**breach, the policy**] the EU principle of equal treatment? Was the policy a breach of the EU State aid rules? On the State aid point the Court of Appeal (6) _____ _____ [**raise**] the question of whether the exclusive right of the Black Cabs to use the bus lanes was the use of State resources. Thus questions (7) _____ _____ [**refer**] to the CJEU on issues relating to State resources, selectivity, whether the rules were proportionate and whether the policy was liable to affect trade between the Member States.

State Resources

AG Wahl concluded that an analogy could (8) _____ _____ _____ [**draw, not**] with the ruling in *NOx*, [Case C-279/80P *Commission v Netherlands* [2011] ECR I-551]. That "releasing" Black Cabs from an obligation to pay a fine for using the London bus lanes (9) _____ _____ _____ [**give, not**] rise to a transfer of State resources. The AG argued that regulating public infrastructure (10) _____ _____ _____ [**engage, normally, not**] the State aid rules but the State should ensure that infrastructure is available on an equal and non-discriminatory basis. The AG (11) _____ _____ [**find**] that Black Cabs and minicabs are not in a comparable situation in all respects, since although both could find clients through pre-bookings, only Black Cabs could use the bus lanes to ply for trade. This would be the pivotal question: whether State resources are at issue. The CJEU agreed with the submissions made by the Commission and the EFTA Surveillance Authority that where the State (12) _____ _____ _____ [**pursue**] an objective, laid down in legislation, grants a privileged access to public infrastructure which is not operated commercially by the public authorities to users of that infrastructure the State does not necessarily confer an economic advantage for the purposes of Article 107(1) TFEU. [CJEU judgment, para 48]. This reasoning is confusing since the Black Cabs (13) _____ _____ _____ [**give**] exclusive, privileged rights to commercially exploit their trade by free access to the infrastructure, created through State resources, at the expense of competitors. Yet the CJEU creates an artificial boundary which ignores the *effects* of the Transport for London policy:

"[I]t is common ground that the right of privileged access is the right to use bus lanes; that that right has an economic value; that the right is granted by the competent traffic authority; that it is stated in the relevant road traffic legislation that the objective pursued by the legislation

at issue is that of ensuring a safe and efficient transport system; that neither the road network concerned nor the bus lanes are operated commercially; that the criterion for granting that right is that of providing taxi services in London; that that criterion was established in advance and in a transparent manner and, last, that all the providers of such services are treated equally” [para 50].

III. Reading: Case C-518/13 *The Queen v The Parking Adjudicator* Excerpt²¹

Please read and complete the tasks:

OPINION OF ADVOCATE GENERAL WAHL
delivered on 24 September 2014 (1)

Case C-518/13

The Queen, on the application of Eventech Ltd

v

The Parking Adjudicator

(Request for a preliminary ruling from the Court of Appeal (England and Wales) (United Kingdom))

(State aid — Concept of ‘aid’ under Article 107(1) TFEU — Rules governing access to and use of public infrastructure — Authorisation granted to taxis but not to private hire vehicles to use the bus lanes in the Greater London Area — Transfer of State resources — Selectivity — Effect on trade between Member States)

Exercise 3.

Reading/Grammar Part I: Prepositions

Read the first part of the Opinion and complete the gaps with the correct preposition

- The Court of Appeal (England and Wales) has asked the Court to clarify whether a contested London bus lane policy (‘the bus lane policy’) adopted (a) _____ Transport for London (‘TfL’) comes (b) _____ the concept of ‘aid’ under Article 107(1) TFEU. (c) _____ that policy, only black cabs (that is to say, London taxis) are allowed, (d) _____ certain periods of the day, to use the lane reserved for public buses (e) _____ public roads, (f) _____ the exclusion of private hire vehicles (‘PHVs’).
- This dispute comes (g) _____ the wake of the technological advances made (h) _____ the past few decades. In particular, the advent of satellite navigation systems and smartphones (i) _____ specific applications designed (j) _____ facilitating requests for transport have changed the way in which customers behave, blurring the lines (k) _____ taxis and PHVs. The result is that taxis and PHVs are engaged in fierce competition with each other (l) _____ Europe, and London is not the only city where conflicts have arisen. (2)
- In point of fact, I do not find that the State aid rules are generally concerned with State measures such as the bus lane policy, provided that equal treatment is ensured in respect of comparable undertakings.

²¹ Adapted from <http://curia.europa.eu/juris/document/document.jsf?docid=161376&doclang=EN>. Activity by M.S. Boyd.

Exercise 4.

Reading/Grammar Part II: Articles, determiners, and pronouns

Read the second part of the Opinion and complete the gaps with the correct word or blank (-).

I – The national legal framework:

A – Black cabs and PHVs

4. In London taxi services are provided by black cabs and PHVs. Both types of services are licensed by (a) _____ body which is under (b) _____ supervision of TfL. (c) _____ are, however, licensed under different statutory provisions and are subject to (d) _____ different conditions.
5. Black cabs are licensed under the provisions set out in the London Cab Order 1934. (e) _____ Order was made pursuant to (f) _____ power in section 6 of the Metropolitan Public Carriage Act 1869 ('the 1869 Act'), (g) _____ provides in section 8(2) that '(h) _____ hackney carriage shall ply for hire' (emphasis added) in London unless under (i) _____ charge of (j) _____ driver licensed by TfL under section 8 of the 1869 Act. (k) _____ effect of this is that only (l) _____ black cabs are permitted to collect (m) _____ passengers from (n) _____ street despite the absence of a prior booking.
6. PHVs are licensed separately under the Private Hire Vehicles (London) Act 1998. They are not permitted to 'ply for hire' in London, but may take (o) _____ passengers that have pre-booked (p) _____ services.

V. Case C-516/15 : Akzo Nobel versus European Commission²²

a) Part I: grammar (word formation and verbs)

Read the first part of the article and complete the gaps with the correct form of the verb in brackets.

Exercise 6.

Find the phrases based on the following verbs:

1. to judge
2. to reduce
3. to decide
4. to hold
5. to pose
6. to compete
7. to terminate
8. to regulate
9. to associate
10. to take
11. to initiate
12. to act

²² Adapted from <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=ecli:ECLI:EU:C:2010:512>. Activities by D. Petrilakova.

- 13. a title
- 14. a fringe
- 15. an intent
- 16. negligence

Judgment

1 By their appeal, Akzo Nobel NV, Akzo Nobel Chemicals GmbH and Akzo Nobel Chemicals BV ask the Court to set aside the judgment of the General Court of the European Union of 15 July 2015, *Akzo Nobel and Others v Commission* (T-47/10, 'the judgment under appeal', EU:T:2015:506), by which the General Court upheld only in part their action for, principally, annulment of Commission Decision C(2009) 8682 final of 11 November 2009 relating to a proceeding under Article 81 EC and Article 53 of the EEA Agreement (Case COMP/38589 — Heat Stabilisers) ('the decision at issue'), and, in the alternative, a reduction of the amount of the fines imposed on them.

Legal context

2 Article 7 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 [EC] (OJ 2003 L 1, p. 1), entitled 'Finding and termination of infringement', provides in paragraph 1:

'Where the Commission, acting on a complaint or on its own initiative, finds that there is an infringement of Article 81 or of Article 82 [EC], it may by decision require the undertakings and associations of undertakings concerned to bring such infringement to an end. ... If the Commission has a legitimate interest in doing so, it may also find that an infringement has been committed in the past.'

3 Article 23 of that regulation, entitled 'Fines', provides in paragraph 2:

'The Commission may by decision impose fines on undertakings and associations of undertakings where, either intentionally or negligently:

(a) they infringe Article 81 or Article 82 [EC] ...

...'

4 Article 25 of that regulation, entitled 'Limitation periods for the imposition of penalties', provides in paragraphs 1 to 3:

1. The powers conferred on the Commission by [Article 23] shall be subject to the following limitation periods:

(a) three years in the case of infringements of provisions concerning requests for information or the conduct of inspections;

(b) five years in the case of all other infringements.

2. Time shall begin to run on the day on which the infringement is committed. However, in the case of continuing or repeated infringements, time shall begin to run on the day on which the infringement ceases.

3. Any action taken by the Commission or by the competition authority of a Member State for the purpose of the investigation or proceedings in respect of an infringement shall interrupt the limitation period for the imposition of fines or periodic penalty payments. ...'

Exercise 7.

Read the text and find examples of:

1. infinitive
2. past participle
3. gerund
4. past perfect
5. past simple
6. passive voice
7. active voice

Background to the dispute

5 The background to the dispute is set out in paragraphs 1 to 50 of the judgment under appeal. In order to ensure that the present case is understood, it is important to note the following.

6 By the decision at issue, the Commission **found** that a number of undertakings **had infringed** Article 81 EC and Article 53 of the Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3) by participating in two sets of anticompetitive agreements and concerted practices covering the territory of the European Economic Area and **relating**, first, to the tin stabilisers sector and, secondly, to the epoxidised soybean oil and esters sector ('the ESBO/esters sector').

7 According to Article 1 of the decision at issue, both of the infringements found by the Commission, which **related** to those two categories of heat stabilisers, **consisted** of price fixing, allocation of markets through sales quotas, allocation of customers and exchange of commercially sensitive information, in particular on customers, production and sales.

8 The decision at issue states that the undertakings **concerned participated** in those infringements during various periods between 24 February 1987 and 21 March 2000, in relation to the tin stabilisers sector, and between 11 September 1991 and 22 March 2000, in relation to the ESBO/esters sector.

9 The decision at issue **was addressed**, with respect to each infringement, to 20 companies, which **had either participated** directly in the infringements **involved** or **were** liable as parent companies.

10 As regards attribution of the infringements, Article 1 of the decision at issue holds Akzo Nobel, Akzo Nobel Chemicals GmbH and Akcros Chemicals Ltd liable for their participation in the infringement relating to tin stabilisers from 24 February 1987 until 21 March 2000 in the case of Akzo Nobel, from 24 February 1987 until 28 June 1993 in the case of Akzo Nobel Chemicals GmbH, and from 28 June 1993 until 21 March 2000 in the case of Akcros Chemicals.

11 Similarly, Article 1 of the decision at issue holds Akzo Nobel, Akzo Nobel Chemicals BV and Akcros Chemicals liable for their participation in the infringement relating to the ESBO/esters sector from 11 September 1991 until 22 March 2000 in the case of Akzo Nobel, from 11 September 1991 until 28 June 1993 in the case of Akzo Nobel Chemicals BV, and from 28 June 1993 until 22 March 2000 in the case of Akcros Chemicals.

12 In addition, the Commission divided the participation of Akzo Nobel, Akzo Nobel Chemicals GmbH, Akzo Nobel Chemicals BV and Akcros Chemicals in the infringements into three separate infringement periods.

13 With regard to the infringement period before 28 June 1993 ('the first infringement period'), the Commission found that some companies, which were indirectly wholly owned by Akzo NV, which became Akzo Nobel, had participated directly in the infringements, namely Akzo Nobel Chemicals GmbH, for the infringement relating to tin stabilisers, and Akzo Nobel Chemicals BV, for the infringement relating to the ESBO/esters sector.

14 With regard to the second infringement period, from 28 June 1993 to 2 October 1998, the Commission found that the direct participant in the infringements had been the Akcros Chemicals partnership, which had centralised the heat stabilisers production and sales activities of the Akzo Group, which did not have a legal personality in its own right.

15 With regard to the third infringement period, from 2 October 1998 to 21 March 2000, in the case of tin stabilisers, and from 2 October 1998 to 22 March 2000, in the case of the ESBO/esters sector, the Commission found that Akcros Chemicals, which had absorbed the business of the Akcros Chemicals partnership, had participated directly in the infringements.

16 Accordingly, in the decision at issue, Akzo Nobel, as the ultimate parent company of a group of companies, some of which had participated directly in the cartels, was held liable for the entire infringement period, that is to say, from 24 February 1987 until 22 March 2000.

17 As regards the attribution of the fines, Article 2 of the decision at issue states the following:

'For the [infringement] in the tin stabiliser sector ..., the following fines are imposed:

...

(4) [Akzo Nobel], Akzo Nobel Chemicals GmbH and [Akcros Chemicals] are jointly and severally liable for: EUR 1 580 000;

...

(6) [Akzo Nobel] and Akzo Nobel Chemicals GmbH are jointly and severally liable for: EUR 9 820 000;

(7) [Akzo Nobel] is liable for: EUR 1 432 700;

...

For the [infringement] in the ESBO/esters sector ..., the following fines are imposed:

...

(21) [Akzo Nobel], Akzo Nobel Chemicals BV and [Akcros Chemicals] are jointly and severally liable for: EUR 2 033 000;

...

(23) [Akzo Nobel] and Akzo Nobel Chemicals BV are jointly and severally [liable] for: EUR 3 467 000;

(24) [Akzo Nobel] is liable for: EUR 2 215 303;

...'

18 By decision of the Commission of 30 June 2011, the decision at issue was amended to the extent that it was addressed to Akzo Nobel and to Akcros Chemicals ('the amending decision').

19 In recital 1 of the amending decision, the Commission recalled that it had imposed fines in the decision at issue on Akzo Nobel and Akcros Chemicals 'jointly and severally' with Elementis plc, Elementis Holdings Limited and Elementis Services Limited.

20 In recital 2 of the amending decision, the Commission stated that, in the light of the judgment of 29 March 2011, *ArcelorMittal Luxembourg v Commission and Commission v ArcelorMittal Luxembourg and Others* (C-201/09 P and C-216/09 P, EU:C:2011:190), it had decided to repeal the decision at issue to the extent that it was addressed, inter alia, to Elementis and Elementis Holdings Limited.

21 Accordingly, the Commission amended the decision at issue to the extent that it was addressed to Akzo Nobel and Akcros Chemicals in so far as they had been held jointly and severally liable with Elementis for the fines imposed.

22 By application lodged at the General Court Registry on 12 September 2011, Akzo Nobel and Akcros Chemicals brought an action against the amending decision. That decision was annulled by the General Court by judgment of 15 July 2015, *Akzo Nobel and Akcros Chemicals v Commission* (T-485/11, EU:T:2015:517).

The procedure before the General Court and the judgment under appeal

23 By application lodged at the General Court Registry on 27 January 2010, Akzo Nobel, Akzo Nobel Chemicals GmbH, Akzo Nobel Chemicals BV and Akcros Chemicals sought annulment of the decision at issue and, in the alternative, a reduction of the fines that had been imposed on them.

24 In support of their action, those companies put forward five pleas in law, the first of which alleged infringements of the rules on limitation. In the first part of the first plea, alleging infringement of Article 25(1)(b) of Regulation No 1/2003, they submitted that the Commission could no longer take action against Akzo Nobel Chemicals GmbH and Akzo Nobel Chemicals BV from 28 June 1998, since their participation in the infringements had ended on 28 June 1993. In consequence, neither they, nor Akzo Nobel, as their parent company, could be held liable for the first infringement period.

25 By the judgment under appeal, the General Court annulled Article 2(4), (6), (21) and (23) of the decision at issue in respect of the fines imposed on Akzo Nobel Chemicals GmbH and Akzo Nobel Chemicals BV for the first infringement period because the limitation period had expired, and dismissed the action as to the remainder.

Forms of order sought

26 The appellants claim that the Court should:

- principally, set aside the judgment under appeal in so far as it holds that liability for the fines originally imposed on Akzo Nobel Chemicals GmbH and Akzo Nobel Chemicals BV for their participation in the infringements can still be attributed to Akzo Nobel after the annulment of those fines by the General Court;
- annul the decision at issue in so far as it establishes the participation of Akzo Nobel Chemicals GmbH and Akzo Nobel Chemicals BV in the infringements, and in particular Article 1(1)(b) and Article 1(2)(b) thereof;
- annul the decision at issue in so far as it attributes liability to, and/or imposes a fine on, Akzo Nobel on account of the unlawful conduct of Akzo Nobel Chemicals GmbH and Akzo Nobel Chemicals BV, and in particular Article 1(1)(a) for the period from 24 February 1987 to 28 June 1993 and Article 1(2)(a) for the period from 11 September 1991 to 28 June 1993 and/or Article 2(6) and (23);
- in the alternative, set aside the judgment under appeal and refer the case back to the General Court;
- order the Commission to pay the costs.

27 The Commission contends that the appeal should be dismissed and the appellants ordered to pay the costs.

The appeal

28 By their single ground of appeal, the appellants claim, in essence, that the General Court infringed the rules concerning the liability of parent companies for the unlawful conduct of their subsidiaries.

Arguments of the parties

29 The appellants note that the Court of Justice recently confirmed, in its judgment of 17 September 2015, *Total v Commission* (C-597/13 P, EU:C:2015:613), that, where the liability of a parent company is derived entirely from that of its subsidiary, the liability of the former cannot exceed that of the latter. In such situations, where the parent company has lodged an appeal with the same object as the subsidiary's, the parent company must benefit from the partial or full annulment of the fine imposed on the subsidiary.

30 Thus, the annulment of the fines imposed on Akzo Nobel Chemicals GmbH and Akzo Nobel Chemicals BV should have led to the annulment of the fine imposed on Akzo Nobel, as parent company, for the first infringement period, since that fine was imposed on it only on account of its subsidiaries' direct participation in the infringements. Akzo Nobel's liability was therefore purely derivative of that of its subsidiaries, within the meaning of the judgment of 22 January 2013, *Commission v Tomkins* (C-286/11 P, EU:C:2013:29).

31 They submit, in that regard, that the principle that a parent company's liability cannot exceed that of its subsidiaries seems to have been overlooked in the judgments of 26 November 2013, *Kendrion v Commission* (C-50/12 P, EU:C:2013:771), and of 30 April 2014, *FLSmidth v Commission* (C-238/12 P, EU:C:2014:284). However, as a general rule, the Court's reasoning is based on the premiss that, in a situation where the liability of the parent company is wholly derived from the actions of its subsidiary, to apply, in respect of the parent company, a fine which exceeds that for which its subsidiary is ultimately liable is tantamount to imposing a portion of a fine for which there is no legal basis.

32 The appellants submit that the application of the principle according to which the liability of a parent company cannot exceed that of its subsidiary is of particular importance in the present case since the cancellation of the fines imposed on Akzo Nobel Chemicals GmbH and Akzo Nobel Chemicals BV should have led to the annulment of the whole of the decision at issue vis-à-vis those two companies.

33 On that point, the appellants note that, following delivery of the judgment of 29 March 2011, *ArcelorMittal Luxembourg v Commission* and *Commission v ArcelorMittal Luxembourg and Others* (C-201/09 P and C-216/09 P, EU:C:2011:190), the Commission was confronted with the fact that its power to impose a fine on Elementis and on Ciba/BASF was time-barred. As was evident from the amending decision, the Commission therefore not only cancelled the fines but withdrew the finding as to any participation of those undertakings in the infringements.

34 In accordance with the principle of equal treatment, and so as to give full effect to the judgment under appeal, for the purposes of the first paragraph of Article 266 TFEU, the Commission should have adopted the same approach in relation to Akzo Nobel Chemicals GmbH and Akzo Nobel Chemicals BV. However, the decision at issue still contained a declaratory finding of an infringement addressed to those two undertakings. In addition, although Article 7 of Regulation No 1/2003 requires the Commission to have a legitimate interest for that type of finding, the Commission has no such interest in the present case, in the appellants' submission.

35 The Commission contends that the single ground of appeal put forward by the appellants should be rejected.

Findings of the Court

Admissibility

36 As regards the appellants' complaints concerning, first, the Commission's alleged breach of the principle of equal treatment and, secondly, the lack of a legitimate interest, within the meaning of the last sentence of Article 7(1) of Regulation No 1/2003, such as to justify the finding that Akzo Nobel Chemicals GmbH and Akzo Nobel Chemicals BV participated in the infringements at issue, it is apparent on examination of the file submitted to the Court that those complaints were not put forward at first instance.

37 The appellants merely claimed before the General Court that, in view of the expiry of the limitation period with respect to Akzo Nobel Chemicals GmbH and Akzo Nobel Chemicals BV, those companies could not be held liable.

38 According to settled case-law, to allow a party to put forward for the first time before the Court of Justice pleas and arguments which it did not raise before the General Court would be to authorise it to bring before the Court of Justice, whose jurisdiction in appeals is limited, a case of wider ambit than that which came before the General Court. In an appeal, the Court's jurisdiction is thus confined to examining the assessment by the General Court of the pleas and arguments aired before it (see, in particular, judgment of 22 October 2015, *AC-Treuhand v Commission*, C-194/14 P, EU:C:2015:717, paragraph 54).

39 These complaints put forward by the appellants must, therefore, be rejected as inadmissible.

Substance

40 By the judgment under appeal, the General Court accepted the appellants' arguments in so far as they maintained that Article 25(1)(b) of Regulation No 1/2003 prevented the Commission from imposing fines on Akzo Nobel Chemicals GmbH and Akzo Nobel Chemicals BV. The General Court therefore annulled Article 2(4), (6), (21) and (23) of the decision at issue in respect of the fines imposed on those companies for the first infringement period because the limitation period had expired.

41 The General Court stated, in essence, in paragraphs 121, 123 and 124 of the judgment under appeal, that the Commission's first actions for the purpose of the investigation or proceedings in respect of the infringements, within the meaning of Article 25(3) of Regulation No 1/2003, had been taken at the beginning of 2003, and thus after the expiry, for Akzo Nobel Chemicals GmbH and Akzo Nobel Chemicals BV, of the five-year period provided for in Article 25(1)(b) of that regulation, those companies having ceased to participate in the cartels on 28 June 1993.

42 By contrast, the General Court held, in essence, in paragraphs 125 and 126 of the judgment under appeal, that although the expiry of the limitation period could be invoked by Akzo Nobel Chemicals GmbH and Akzo Nobel Chemicals BV and had the effect of ensuring that they avoided penalties, it had no bearing on the liability of their parent company with regard to the first infringement period.

43 In particular, the General Court held, in paragraph 126 of the judgment under appeal, that 'the mere fact that a subsidiary of a group of companies, in the sense of an economic unit, benefits from the expiry of the limitation period does not result in the parent company's liability being called into question and prevent proceedings being brought against that parent company'.

44 The appellants essentially dispute the validity of those findings of the General Court.

45 Consequently, it is necessary to consider whether the fact that the Commission's power to impose penalties on Akzo Nobel Chemicals GmbH and Akzo Nobel Chemicals BV was time-barred precluded Akzo Nobel from being held liable in respect of the first infringement period, contrary to the conclusion which the General Court reached in paragraph 126 of the judgment under appeal.

46 In this regard, it must be noted, in the first place, that the authors of the Treaties chose to use the concept of an undertaking to designate the perpetrator of an infringement of competition law, who is liable to be punished pursuant to Article 81 or 82 EC, now Article 101 or 102 TFEU (judgment of 18 July 2013, *Schindler Holding and Others v Commission*, C-501/11 P, EU:C:2013:522, paragraph 102).

47 It is apparent from the case-law of the Court of Justice that EU competition law refers to the activities of undertakings and that the concept of an undertaking covers any entity engaged in an economic activity, irrespective of its legal status and the way in which it is financed (judgment of 11 December 2007, *ETI and Others*, C-280/06, EU:C:2007:775, paragraph 38).

48 The Court has also stated that, in the same context, the term ‘undertaking’ must be understood as designating an economic unit even if in law that economic unit consists of several persons, natural or legal (judgment of 20 January 2011, *General Química and Others v Commission*, C-90/09 P, EU:C:2011:21, paragraph 35).

49 When such an economic entity infringes the competition rules, it is for that entity, according to the principle of personal responsibility, to answer for that infringement (judgment of 29 March 2011, *ArcelorMittal Luxembourg v Commission and Commission v ArcelorMittal Luxembourg and Others*, C-201/09 P and C-216/09 P, EU:C:2011:190, paragraph 95).

50 In the second place, the infringement of EU competition law must be imputed unequivocally to a legal person on whom fines may be imposed and to whom the statement of objections must be addressed (see, to that effect, judgment of 10 September 2009, *Akzo Nobel and Others v Commission*, C-97/08 P, EU:C:2009:536, paragraph 57).

51 Neither Article 23(2)(a) of Regulation No 1/2003 nor the case-law lays down which legal or natural person the Commission is obliged to hold responsible for the infringement or to punish by the imposition of a fine (see, to that effect, judgment of 11 July 2013, *Team Relocations and Others v Commission*, C-444/11 P, not published, EU:C:2013:464, paragraph 159).

52 By contrast, according to the settled case-law of the Court, the unlawful conduct of a subsidiary may be attributed to the parent company in particular where, although having a separate legal personality, that subsidiary does not determine independently its own conduct on the market, but essentially carries out the instructions given to it by the parent company, having regard especially to the economic, organisational and legal links between those two legal entities (see, to that effect, judgments of 14 July 1972, *Imperial Chemical Industries v Commission*, 48/69, EU:C:1972:70, paragraphs 131 to 133; of 25 October 1983, *AEG-Telefunken v Commission*, 107/82, EU:C:1983:293, paragraphs 49 to 53; of 11 July 2013, *Team Relocations and Others v Commission*, C-444/11 P, not published, EU:C:2013:464, paragraph 157; and of 17 September 2015, *Total v Commission*, C-597/13 P, EU:C:2015:613, paragraph 35).

53 That is the case because, in such a situation, the parent company and its subsidiary form a single economic unit and therefore form a single undertaking for the purposes of EU competition law (judgment of 11 July 2013, *Team Relocations and Others v Commission*, C-444/11 P, not published, EU:C:2013:464, paragraph 157).

54 On that aspect, in the particular case in which a parent company holds all or almost all of the capital in a subsidiary which has committed an infringement of the EU competition rules, there is a rebuttable presumption that that parent company actually exercises a decisive influence over its subsidiary (see, to that effect, judgment of 26 November 2013, *Groupe Gascogne v Commission*, EU:C:2013:770, paragraph 38).

55 Such a presumption implies, unless it is rebutted, that the actual exercise of decisive influence by the parent company over its subsidiary is established and gives grounds for the Commission to hold the former responsible for the conduct of the latter, without having to produce any further evidence (see, to that effect, judgment of 16 June 2016, *Evonik Degussa and AlzChem v Commission*, C-155/14 P, EU:C:2016:446, paragraph 30).

56 It must be pointed out, in the third place, that, according to the well-established case-law of the Court, the parent company to which the unlawful conduct of its subsidiary is attributed is held individually liable for an infringement of the EU competition rules which it is itself deemed to have infringed, because of the decisive influence which it exercised over the subsidiary and by which it was able to determine the subsidiary's conduct on the market (see, to that effect, judgments of 14 July 1972, *Imperial Chemical Industries v Commission*, 48/69, EU:C:1972:70, paragraphs 140 and 141; of 16 November 2000, *Metsä-Serla and Others v Commission*, C-294/98 P, EU:C:2000:632, paragraphs 28 and 34; of 26 November 2013, *Kendrion v Commission*, C-50/12 P, EU:C:2013:771, paragraph 55; of 10 April 2014, *Commission and Others v Siemens Österreich and Others*, C-231/11 P to C-233/11 P, EU:C:2014:256, paragraph 49; and of 8 May 2014, *Bolloré v Commission*, C-414/12 P, not published, EU:C:2014:301, paragraph 44).

57 As has been observed in paragraph 49 of the present judgment, EU competition law is based on the principle of the personal responsibility of the economic unit which has committed the infringement. Thus, if the parent company is part of that economic unit, it is regarded as personally jointly and severally liable with the other legal persons making up that unit for the infringement committed (see, to that effect, judgment of 10 September 2009, *Akzo Nobel and Others v Commission*, C-97/08 P, EU:C:2009:536, paragraph 77).

58 That is why the joint and several liability as between two companies constituting an economic unit cannot be reduced, as regards the payment of the fine, to a type of security provided by the parent company in order to guarantee payment of the fine imposed on the subsidiary (see, to that effect, judgments of 26 November 2013, *Kendrion v Commission*, C-50/12 P, EU:C:2013:771, paragraphs 55 and 56, and of 19 June 2014, *FLS Plast v Commission*, C-243/12 P, EU:C:2014:2006, paragraph 107).

59 In the fourth place, according to the case-law of the Court, in a situation in which the parent company's liability results exclusively from the direct participation of its subsidiary in the infringement and the two companies have brought parallel actions having the same object, the General Court may, without ruling *ultra petita*, take account of the annulment of the finding that the subsidiary committed an infringement for a certain period and make a corresponding reduction in the amount of the fine imposed on the parent company jointly and severally with its subsidiary (see, to that effect, judgment of 22 January 2013, *Commission v Tomkins*, C-286/11 P, EU:C:2013:29, paragraphs 34, 38, 39 and 49).

60 The Court has stated in that respect, first, that, in order to hold any entity within an economic unit liable, it is necessary to prove that one entity at least has committed an infringement of the EU competition rules and that that fact be noted in a decision which has become definitive, and, secondly, that the reason for which it was found that the subsidiary had not acted unlawfully is irrelevant (see, to that effect, judgment of 22 January 2013, *Commission v Tomkins*, C-286/11 P, EU:C:2013:29, paragraphs 37 and 38).

61 It is in that context that the Court referred to the wholly derivative nature of the liability incurred by the parent company solely because of a subsidiary's direct participation in the infringement (see, to that effect, judgment of 22 January 2013, *Commission v Tomkins*, C-286/11 P, EU:C:2013:29, paragraphs 34, 38, 43 and 49). In that situation, the parent company's liability arises from its subsidiary's unlawful conduct, which is attributed to the parent company in view of the economic unit formed by those

companies. Consequently, the parent company's liability necessarily depends on the facts constituting the infringement committed by its subsidiary and to which its liability is inextricably linked.

62 For the same reasons, the Court has made clear that, in a situation in which no factor individually reflects the conduct for which the parent company is held liable, the reduction of the amount of the fine imposed on the subsidiary jointly and severally with its parent company must, in principle, where the necessary procedural requirements are satisfied, be extended to the parent company (see, to that effect, judgment of 17 September 2015, *Total v Commission*, C-597/13 P, EU:C:2015:613, paragraphs 10, 37, 38, 41 and 44).

63 In the fifth place, it is apparent from the case-law of the Court that the Commission's power to impose penalties can be time-barred vis-à-vis the subsidiary but not the parent company, even though the parent company's liability may be entirely based on the unlawful conduct of that subsidiary (see, to that effect, judgment of 29 March 2011, *ArcelorMittal Luxembourg v Commission and Commission v ArcelorMittal Luxembourg and Others*, C-201/09 P and C-216/09 P, EU:C:2011:190, paragraphs 102, 103, 148 and 149).

64 In the present case, it is common ground, as is evident from Article 1 of the decision at issue, that Akzo Nobel Chemicals GmbH and Akzo Nobel Chemicals BV participated directly in the cartels in question, from 24 February 1987 until 28 June 1993, in the case of the former, and from 11 September 1991 until 28 June 1993, in the case of the latter company.

65 It is also common ground that, during the first infringement period, Akzo Nobel indirectly owned the entire share capital of Akzo Nobel Chemicals GmbH and of Akzo Nobel Chemicals BV and exercised decisive influence over them, with the result that, during that infringement period, the three companies formed one and the same undertaking for the purposes of EU competition law.

66 Consequently, in accordance with the case-law referred to in paragraphs 52 to 58 of the present judgment, the unlawful actions taken by Akzo Nobel Chemicals GmbH and Akzo Nobel Chemicals BV during the first infringement period were attributed to Akzo Nobel. Akzo Nobel was thus held individually liable for actions contrary to EU competition rules which it was itself deemed to have taken during that period.

67 Furthermore, it is also undisputed in the present case that Akzo Nobel was held liable because of its participation in the infringements at issue throughout the three infringement periods, that is to say, from 24 February 1987 until 21 March 2000, in the case of the infringement relating to tin stabilisers, and from 11 September 1991 until 22 March 2000, as regards the infringement relating to the ESBO/esters sector, as the ultimate parent company of the Akzo undertaking the various legal entities of which, including Akzo Nobel Chemicals GmbH and Akzo Nobel Chemicals BV, had participated directly in the cartels.

68 It is important to note in this regard that the applicants at first instance had relied, before the General Court, on the expiry of the limitation period provided for in Article 25(1)(b) of Regulation No 1/2003 only with respect to Akzo Nobel Chemicals GmbH and Akzo Nobel Chemicals BV, on the ground that their unlawful conduct had ceased on 28 June 1993.

69 As has been noted in paragraphs 40 and 41 of the present judgment, the General Court accepted the arguments of the applicants at first instance, ruling that the Commission's power to impose fines on Akzo Nobel Chemicals GmbH and Akzo Nobel Chemicals BV was time-barred.

70 Admittedly, as the General Court in essence underlined in paragraphs 125 and 126 of the judgment under appeal, the fact that the Commission's power to impose penalties is time-barred pursuant to Article 25(1)(b) of Regulation No 1/2003 means that a penalty can no longer be imposed on the companies in respect of which the limitation period has expired.

71 By contrast, the fact that penalties can no longer be imposed on certain companies because the limitation period has expired does not preclude another company, which is considered personally responsible and jointly and severally liable with those companies for the same anticompetitive behaviour, and in respect of which the limitation period has not expired, from having proceedings instituted against it.

72 Contrary to the appellants' contention, the fact that Akzo Nobel's liability in respect of the first infringement period arises exclusively from the direct participation of its subsidiaries in the cartels does not alter that conclusion.

73 First, the anticompetitive activities in relation to the first infringement period are nevertheless regarded as having been carried out by Akzo Nobel itself, since it formed an economic unit, within the meaning of the case-law of the European Union, with Akzo Nobel Chemicals GmbH and Akzo Nobel Chemicals BV.

74 Secondly, as the Advocate General stated, in essence, in points 58 and 59 of his Opinion, it is apparent from the case-law of the Court mentioned in paragraph 62 of the present judgment that factors specific to the parent company may justify assessing the parent company's liability and that of its subsidiary differently, even if the liability of the former is based exclusively on the unlawful conduct of the latter.

75 That is the case here, since, unlike Akzo Nobel Chemicals GmbH and Akzo Nobel Chemicals BV, whose participation in the cartels ended on 28 June 1993, Akzo Nobel, as has been noted in paragraph 67 of the present judgment, was involved in the infringements in question beyond that date, until 21 and 22 March 2000, as regards the infringement concerning the tin stabilisers sector and the infringement concerning the ESBO/esters sector, respectively.

76 Having regard to all of those considerations, it must be concluded that the General Court was fully entitled to find, in paragraph 126 of the judgment under appeal, that the fact that the Commission's power to impose penalties on Akzo Nobel Chemicals GmbH and Akzo Nobel Chemicals BV was time-barred did not preclude Akzo Nobel from being held liable in respect of the first infringement period.

77 The single ground of appeal must, therefore, be rejected as being in part inadmissible and in part unfounded.

78 It follows from all of the foregoing that the appeal must be dismissed in its entirety.

ANSWER KEY

Unit 1

Exercise 1

The questions containing the expressions should be based on the input text and can be either polar (answer is yes or no) or open (starting with a W- word).

Exercise 2

1H, 2D, 3E, 4F, 5B, 6G, 7A, 8C

Exercise 3

1. B; 2.C; 3. A; 4. A; 5. B; 6. C; 7. B; 8. C; 9. A; 10. B; 11. C; 12. A; 13. C; 14. A; 15. B.

Exercise 4

1C, 2B, 3C, 4B, 5C, 6C, 7A, 8B, 9C, 10A, 11B, 12C, 13A, 14B, 15B, 16A

Exercise 5

(1) selective basis; (2) taxation measures; (3) State resources; (4) tax reliefs; (5) industry sectors; (6) Member States; (7) government intervention; (8) policy objectives; (9) new legislation; (10) notification procedure; (11) regulatory framework; (12) investigation procedure.

Exercise 6

(1) favourable; (2) effective; (3) independently; (4) competitive; (5) central; (6) horizontal; (7) different; (8) limited; (9) dominant; (10) investigative; (11) distorted; (12) coherently

Exercise 7

European Court of Justice Rules in Favour of Black Cabs Transcript with answers

Reporter: Here on the busy streets of London it's business as usual as Black Cabs continue to use bus lanes while minicabs still have no (1) access. The European Court said its (2) decision was based on the fact that Black Cabs are distinct from minicabs. Transport for London argues that allowing thousands of minicabs to drive in bus lanes would also affect the (3) reliability of bus (4) services.

Minicab driver: Yes, because it's the governments regulated, yeah, stuff, which to be honest, yeah, with you, yeah, we are very very treated unfairly, because we are part of London transports, so that's the way I look at it. Well, eventually, yeah, I think we have to do something about it because it's very unfair to us. The governments should take that into consideration and look at it.

Man on the street 1: Well, in one hand, it's not fair.

Man on the street 2: On the other hand, black cabs are more easy to identify, whereas someone could possibly be impersonating a regular minicab. It's a very difficult (5) situation.

Reporter: The EU Court recognises that the (6) policy could make minicabs less attractive and reduces their (7) ability to penetrate the (8) market. Those who have said that the policy is unfair also hold the (9) opinion that there should be no cab (10) segregation since both types of cab provide the same (11)

service. It seems things will have to remain this way however until the (12) case returns from the (13) Court of Appeal.

Exercise 8

London MEP praises bus lane ruling Transcript with answers

Reporter: Jean Lambert, Green MEP for London. The European Court (1) has ruled that EU law (2) has not been broken. Black Cabs, but not other kind of taxis, are allowed in bus lanes. What's your reaction?

JL: I'm really pleased with this ruling from the European Court of Justice on the Black Cabs (3) having access to bus lanes in London and this (4) not being seen as state aid or sort of public support in that sort of way. I (5) think it's a really good ruling.

Reporter: What's the impact of this ruling? What (6) does it mean for London?

JL: Well, I think what it (7) means for London is that it's still within the power of London authorities to decide who (8) has access to the bus lanes. And of course, given that the whole point of a bus lane is (9) to try and keep public transport moving efficiently and as smoothly as possible. Anything that actually says you (10) don't have to open it up to a whole range of other users actually (11) maintains the purpose of the bus lanes. So I think this is good for London's traffic and you know London's buses (12) need all the help they (13) can get in moving smoothly.

Reporter: Because the Court (14) could have gone in the opposite direction and ruled that all kinds of taxis (15) would be allowed to use the bus lanes. What (16) would have been the implication of that and why (17) did you feel so strongly that that shouldn't happen?

JL: Well, if the Court (18) had ruled differently, then obviously we (19) would have been looking at bus lanes no longer being able to give priority to certain vehicles, but that you know effectively any minicab in London (20) could have used them and therefore you'd begin to look at a bus lane almost as if it's any other ordinary traffic lane. So that (21) defeats the whole object of actually (22) trying to keep certain forms of traffic moving more quickly to give a more efficient service for users. So we (23) would have seen an even greater clogging up really of London's traffic again, which is certainly not what London's public transport users (24) want. And given that they think they're paying a lot already to use London traffic, London buses, they want them (25) to be able to run as smoothly as possible.

Reporter: Does this underline to you that there is a difference between general taxis, public cars that (26) can be hired and pre-booked, and the Black Cabs that can be picked up on the kerb, on the side of the road?

JL: I think this ruling (27) does underline that there is a difference between the London Black Cabs and the minicabs. That it's recognised that Black Cabs (28) are more regulated, that they have requirements about disability access, they have requirements about training of their drivers in terms of knowledge of London, a whole set of things which (29) apply to one particular group of drivers, in this case the Black Cab drivers. And I think that this also will have implications for other sort of taxis elsewhere in the European Union that also have those sort of similar regulations.

Exercise 9

Cartels Transcript with answers

Richard Whish is one of the country's leading authorities on competition law. "Well, the most serious anti-competitive agreement is what we call a cartel. And that's the situation where a number of competing businesses get together and basically decide 'let's not compete with one another'. The most obvious example of a cartel is a price-fixing agreement, and that's where a number of competitors get

together and they agree to fix their prices. For example, they might all agree that next Monday they will put their prices up to an agreed level. What we can say quite simply is consumers get a raw deal from cartels. We come across very obvious cartels where firms simply agree to fix prices. But you can imagine more complicated examples. One would be what we call bid-rigging, and this is where a firm goes out to competitive tender, asking a number of companies to bid competitively to win a contract. And what they do is they get together and they decide 'it is my turn' to win the next contract. So it is agreed that I will bid a price of a million pounds, somebody else will bid £1.2 million, somebody else £1.4 million. Well, obviously, I will win the bid and we have created the illusion of competition. And clearly the likelihood is that the price even of a million is higher than the competitive price should be. The very interesting thing about cartel activity is that it can take place at a number of different levels within a company, and you could imagine a situation where somebody from the board of directors of company A has discussions with a director of a company B. Or this might all take place at a much lower level, where perhaps sales people from two different organizations have discussions with one another. And there are also examples where the exchange of information sometimes takes place through a third party, for example, a trade association. It's a very important thing for business people to understand that cartels don't only mean cloak and dagger operations. If competitors are all together at a social event, for example they go to a trade association dinner, then after the dinner they go to the bar and they start talking to each other about their future plans and that they're thinking of raising prices, this can also be illegal."

Exercise 10

Office of Fair Trading Dawn Raid

Part I

1. an importer and distributor of electronic devices; 2. three other companies; 3. to keep their prices artificially high; 3. at the home of one of the sales managers whom we're told initiated the cartel because he sometimes works from home; 4. No, she doesn't. She says: "I'll need to call Mr Huston, he's the MD and you'll need to talk to him."; 5. sales manager's wife on the phone, says that the OFT are at her house. Her husband went to see a customer this morning and she can't get hold of him; 6. a copy of the warrant and a notice explaining our powers as well as the company's rights; 7. a criminal investigation into suspected price fixing involving your company and a number of ex-competitors in the market for electronic devices; 8. to enter and search the premises and to seize any relevant documents; 9. to speak about the company's computer setup

Part II

(1) breaking competition law; (2) breach competition law; (3) prison sentences ; (4) leading experts ; (5) avoid breaking it; (6) broken the law; (7) prevent businesses ; (8) competitive process; (9) innovation and creativity; (10) range of goods ; (11) most competitive price; (12) making it work ; (13) enforcing competition law; (14) consumers and business ; (15) increased competition; (16) strong sanctions ; (17) prison sentences ; (18) four-step process

Transcript

Two of the Office of Fair Trading's investigators, Trevor Holden and Sharn Davis, are about to launch a dawn raid on the head office of an importer and distributor of electronic devices. The OFT suspects that they, along with three other companies, have agreed the prices at which they will sell their products.

SD: We received intelligence to suggest that the major UK importers and distributors of electronic devices have agreed to keep their prices artificially high. If this turns out to be true, that means competition's being restricted and that customers are paying inflated prices.

TH: So we're therefore part of a bigger team carrying out raids at all four companies. We also have a team in place at the homes of one of the sales managers whom we're told initiated the cartel and sometimes works from home.

Good morning, my name is Trevor Holden and this is my colleague Sharn Davis. We're from the Office of Fair Trading and we're here with a warrant to search the premises. I need to speak to the person in charge.

Receptionist: I don't know anything about this. I'll need to call Mr Huston, he's the MD and you'll need to talk to him.

Mr Huston: Let me guess. The OFT. They're here to look. I'll get someone to call you back as soon as I know what's going on. That was my sales manager's wife on the phone, says that the OFT are at her house. Her husband went to see a customer this morning and she can't get hold of him. I really have no idea why you're here. Never mind his house. That's beyond me. You'd better come into my office.

I don't understand what this can be about. We've always been scrupulously fair in all of our business dealings.

SD: Let me explain. This is a copy of the warrant and a notice explaining our powers as well as the company's rights. You'll need to read that carefully. You may also want to consult a lawyer. We're conducting a criminal investigation into suspected price fixing involving your company and a number of ex-competitors in the market for electronic devices. The warrant allows us to enter and search the premises and to seize any relevant documents. Failing to comply is a criminal offence.

TH: We're looking for any relevant documents, either paper or on the computer. We'll take the paperwork and leave you with a list of what we've seized but in respect of the electronic material we'll want to take a forensic image.

Do you have an IT expert we could speak to about the company's computer setup?

You'll also need to leave us your laptop, phone and any other portable devices.

Mr Huston: If it's ok with you I'm going to I'm going to call my solicitor.

SD: And we will need to speak to your sales manager as soon as he's back from his meeting.

TH: Well, now, that went pretty smoothly. At least they were cooperative and we seem to have gotten some really useful stuff to help us progress with the investigation.

SD: I guess they don't have much choice over whether to comply, but it is easier for everyone when they're cooperative. I'll be interested to hear what the sales manager has to say in his interview. He looked a bit taken aback when he heard the police were here to arrest him

Reporter: That was a fictionalised account of what could happen if a business is suspected of (1) breaking competition law. There are serious consequences for individuals and firms of all sizes that (2) breach competition law. These can include (3) prison sentences and fines. We're going to speak to some (4) leading experts that will explain to you why competition law is important, what it says and how you can (5) avoid breaking it. And what to do if you suspect that another business or someone within your own business has (6) broken the law. So why should we care? Well, competition law is designed to (7) prevent businesses from distorting the (8) competitive process. It encourages rivalry and ensures that markets are open. It spurs (9) innovation and creativity. It means that consumers and businesses can access the widest possible (10) range of goods and services at the (11) most competitive price. All businesses need to comply with competition law.

John Fingleton: Well the OFT's job is to make markets work well for consumers. That means (12) making it work well for business too. One of the ways we do that is through (13) enforcing competition law. You can see the big benefits for (14) consumers and business that come from, for example, in the aviation market where ... and telecoms market where prices have come down by up to 90% over the last 20 years from (15) increased competition. Given the importance for competition for the economy and for consumers there are (16) strong sanctions for breaking competition law. They include in the UK (17) prison sentences of up to five years, direct disqualification and fines of up to 10% of turnover for companies. So we try to help business comply with the law and one of the ways in which we do that is with a setting out a (18) four-step process for complying with competition law that you'd hear about in this video.

Unit 2

Exercise 1

1. national; 2. association; 3. provisions; 4. objective; 5. pursuant; 6. criminal; 7. action; 8. claim; 9. alleged; 10. possibility; 11. legal; 12. compensation; 13. harm; 14. injured; 15. authority; (16) Commission; (17) national; (18) review; (19) decisions; (20) judgments; (21) irrespective; (22) competition; (23) final; (24) evidence; (25) admissible; (26) medium; (27) agreement; (28) practice; (29) competitors; (30) behaviour; (31) coordination; (32) intellectual; (33) allocation; (34) application; (35) participant; (36) independently; (37) voluntarily; (38) knowledge; (39) discontinuation; (40) proceedings; (41) immunity; (42) reduction; (43) involvement; (44) leniency; (45) natural; (46) submission; (47) reduction; (48) evidence; (49) settlement; (50) acknowledgement; (51) renunciation; (52) responsibility; (53) specifically; (54) expedited; (55) recipient; (56) difference; (57) resolution; (58) purchaser; (59) subsequent.

Exercise 2

a 1. a; 2. b; 3. c; 4. b; 5. c; 6. a; 7. b; 8. a; 9. c; 10. b; 11. c; 12. b; 13. a; 14. c; 15. b; 16. a; 17. a; 18. b; 19. c; 20. c; 21. b; 22. c; 23. a; 24. b; 25. a; 26. b; 27. c; 28. c; 29. a; 30. b; 31. a; 32. c; 33. b; 34. a; 35. a; 36. b; 37. c; 38. a; 39. b; 40. a; 41. c.

Exercise 3

How many groups are judges classified into according to the historical development of EU competition law at national level? THREE: JUDGES DEALING WITH THE PUBLIC ENFORCEMENT OF COMPETITION LAW, JUDGES DEALING WITH THE PRIVATE ENFORCEMENT OF COMPETITION LAW, AND JUDGES DEALING WITH ACTIONS RELATED TO THE ILLEGAL AWARD OF STATE AID.

Are judges dealing with the public enforcement of competition law in single specific courts taking decisions on competition? IN A FEW CASES ONLY.

Are there many Member States where judges deal with criminal sanctions for the breach of competition law? NO, THERE ARE ONLY A FEW.

Judges dealing with the private enforcement of competition law can do so in two types of actions. Which are they? STAND-ALONE ACTIONS OR FOLLOW-ON ACTIONS SUBSEQUENT TO AN NCA DECISION. Into what sub-categories can judges dealing with the private enforcement of competition law be divided into? THEY CAN BE DIVIDED INTO TWO GROUPS: MORE SPECIALISED JUDGES IN JURISDICTIONS IN WHICH ONLY SELECTED COURTS ARE COMPETENT TO HEAR SUCH CLAIMS, AND NON-SPECIALISED JUDGES IN OTHER JURISDICTIONS.

Is it clear which courts would be competent to hear cases related to the infringement of Articles 101 or 102 TFEU? IT IS RELATIVELY CLEAR.

Is it clear before which court an action concerning State will be brought? IT IS OFTEN DIFFICULT TO PREDICT.

In which type of jurisdiction will administrative courts be competent for actions against State bodies and cases between competitors can be brought before civil courts? IN MEMBER STATES WHERE THE DISTINCTION BETWEEN ADMINISTRATIVE AND CIVIL JUSTICE IS CLEARLY DEFINED.

Which is the case of your Member State? OPEN-ENDED ANSWER.

If you are a judge, which group would you classify into? OPEN-ENDED ANSWER.

Are there many Member States where the same courts are competent at first instance for both public enforcement and private actions? NO, THIS ONLY HAPPENS IN VERY FEW MEMBER STATES.

Exercise 4

1. The public enforcement of Articles 101 and 102 TFEU is carried out by the Commission using the powers provided by Council Regulation (EC) No 1/2003.
2. Actions for damages are complemented by alternative avenues of redress in systems of private enforcement of infringements of competition law.
3. Actions for damages in respect of infringements of national competition law which do not affect trade between Member States within the meaning of Article 101 or 102 TFEU should not be affected by this Directive.
4. Actions for damages are governed by the national rules and procedures of the Member States.
5. Compensation for actual loss can be claimed by anyone who has suffered harm caused by such an infringement.
6. The evidence necessary to prove a claim for damages is usually held exclusively by the opposing party or third parties.
7. Where a national court wishes to order evidence to be disclosed by the Commission, the principle in Article 4(3) TEU of sincere cooperation between the Union and the Member States and Article 15(1) of Regulation (EC) No 1/2003 as regards requests for information are applied.
8. A common approach across the Union on the disclosure of evidence is required by the effectiveness and consistency of the application of Articles 101 and 102 TFEU.
9. Particular attention should be paid by national authorities to prevent 'fishing expeditions', i.e. non-specific or overly broad searches for information that are unlikely to be of relevance for the parties to the proceedings.

Exercise 5

Part I

if you look at the history of anti-cartel enforcement in the EU over 40 going on 50 years there's hardly a sector(s) of the economy where cartels have not been discovered

the free market economy is one of Europe's most fundamental principles.

It (the free market economy) provides consumers with a variety of choice(s)

In a competitive market the consumer is always king.

To gain customers firms must do their best to charge lower prices or offer higher quality products

What happens when competing companies get together and discuss how they can take these freedoms away from consumers for their own benefit?

One of the most common ways to do this is by forming by what is known as a cartel, that is secret agreement(s) between competitors to coordinate their behavior in the market.

Cartels typically aim to fix prices and or restrict supply in some way.

Consumers suffer detriments from cartels in lots of different ways.

The obvious one (detriment) is that they might end up paying higher prices for goods and services

It might be that they're deprived of choice of better quality or lower quality products.

Cartels normally mean that there is innovation in the market and so better products are not being developed.

Part II

So let's look at how cartels work. In this (1) town here (2) most people are really passionate about ice-cream. So selling ice-cream here is obviously (3) a pretty good business. That's why there are (4) four shops in the village. Usually, shop owners try to get (5) a lot of customers coming to their own shop. So they invent new (6) tastes, they make ads, they (7) are as nice (8) as possible to the customers and do everything that you do when you want to (9) keep their customers. But, one day they all (10) meet up and say: "Hey, this is all very hard work, isn't it? Why don't we all decide to (11) have people pay a higher

price? A (12) similar price? Let's say €1. And the beauty of it is, we don't even have to work (13) any longer because our customers don't have (14) much choice."

Transcript: So let's look at how cartels work. In this village here everyone is really passionate about ice-cream. So selling ice-cream here is obviously not a bad business. That's why there are three shops in the village. Usually, shop owners try to get as many customers coming to their own shop. So they invent new flavours, they make ads, they try to be nice to the customers and do everything that you do when you want to get customers. But, one day they all get together and say: "Hey, this is all very hard work, isn't it? Why don't we all decide to charge a higher price? The same price? Let's say €1. And the beauty of it is, we don't even have to work so hard anymore because our customers don't have any choice."

Part III

People understanding the existence of cartels: because of this you have to have laws against them

Cartel decisions by the European Commission per year: The EC adopts between 5 to 10 cartel decisions per year.

LCD screen cartel: in 2010, it was fined nearly €650 million imposed on Asian producers of LCD screens

Bathroom fittings cartel: (they were fined) €622 million

Banana cartel: (they were fined) €60 million

A case involving car glass: (they were fined) over €1 billion

Uncovering proof of a cartel: It is often difficult to uncover proof of a cartel, the methods used include tactics known from criminal police units.

Investigation into the "ice-cream cartel": Ice-cream prices have gone up and quality has gone down. Competition authorities have started an investigation. They have uncovered a shop owners' scam, restoring competition in the market leading to greater price competition, and the taste is now better than ever. Any personal firm affected by the cartel may also bring the matter before the court of the Member State and seek damages.

Whistle-blowing policy, leniency: Part of the Commission's success in detecting cartels lies in the success of the whistle-blowing policy, also known as leniency. Since cartels are illegal they are generally highly secretive and evidence of their existence is not easy to find. The leniency policy encourages companies to hand over inside evidence of cartels to the European Commission in exchange for immunity or reduction of fines. The first company in any cartel to do so will not have to pay a fine. The policy is important because it makes it more difficult to run cartels.

Unit 3

Exercise 1

Party to the proceedings are the defendant and the plaintiff

The original lawsuit is the action filed before national court

Domicile is the permanent seat of the party

Provide services means to undertake a services for a client

Provision of services is the noun based on providing the services

Legal provisions are the stipulations of the law

The law provides that - refers to the wording of the legal provision

Entity may include a legal person - Legal entity or a physical one - Physical entity

Communal monopoly refers to a monopoly in a commune

Communal bathroom refers to a bathroom used by more people

An undertaking refers to a business in the competition law concept

An undertaker is a person taking care of the deceased persons

An undertaking business is a business providing funeral services
 To undertake something means to do something
 Exclusive means excluding most of the other relevant entities
 Inclusive means including most of the other relevant entities, open to all
 To grant a confession refers to what a priest does in the church to the confessing churchgoer
 to grant a concession refers to granting a business license
 Confession and To confess differs from concession

Exercise 2

Black Cab case Part I

(1) enduring, (2) regulatory, (3) form-based; (4) traditional; (5) thorough; (6) major; , (7) consumer; (8) exclusive; (9) fierce; (10) traffic control

Black Cab Reading Part II

(1) began; (2) had deliberately used; (3) was made; (4) were raised; (5) did the policy breach; (6) raised; (7) were referred ; (8) not be drawn; (9) does not give; (10) does not normally engage; (11) found; (12) is pursuing; (13) are given

Exercise 3

(a) by; (b) within; (c) Under; (d) during; (e) on; (f) to; (g) in; (h) over; (i) with; (j) for; (k) between; (l) across

Exercise 4

(a) a; (b) the; (c) They; (d) – ; (e) That ; (f) the ; (g) which ; (h) no ; (i) the ; (j) a; (k) The ; (l) – ; (m) – ; (n) the ; (o) – ; (p) their

Exercise 5

Judgment

1 By their appeal, Akzo Nobel NV, Akzo Nobel Chemicals GmbH and Akzo Nobel Chemicals BV ask the Court to set aside the judgment of the General Court of the European Union of 15 July 2015, Akzo Nobel and Others v Commission (T-47/10, ‘**the judgment** under appeal’, EU:T:2015:506), by which the General Court **upheld** only in part their **action** for, principally, annulment of Commission Decision C(2009) 8682 final of 11 November 2009 relating **to a proceeding** under Article 81 EC and Article 53 of the EEA Agreement (Case COMP/38589 — Heat Stabilisers) (**‘the decision at issue’**), and, in the alternative, a **reduction** of the amount of the fines **imposed** on them.

2 Article 7 of Council **Regulation** (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on **competition** laid down in Articles 81 and 82 [EC] (OJ 2003 L 1, p. 1), entitled ‘Finding and **termination** of infringement’, provides in paragraph 1:

‘Where the Commission, acting on a complaint or **on its own initiative**, finds that there is an infringement of Article 81 or of Article 82 [EC], it may by decision require the undertakings and **associations** of undertakings concerned to bring such infringement to an end. ... If the Commission has a legitimate interest in doing so, it may also find that **an infringement** has been committed in the past.’

3 Article 23 of that regulation, **entitled** ‘Fines’, provides in paragraph 2:

‘The Commission may by decision impose fines on undertakings and associations of **undertakings** where, either **intentionally or negligently**:

Exercise 6

1. infinitive; 2. past participle; 3. gerund; 4. past perfect; 5. past simple; 6. passive voice; 7. active voice

Exercise 7

5 The background to the dispute is set out in paragraphs 1 to 50 of the judgment under appeal. In order to ensure that the present case is understood, it is important to note the following.

6 By the decision at issue, the Commission **5&7/found** that a number of undertakings **4&7/had infringed** Article 81 EC and Article 53 of the Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3) by participating in two sets of anticompetitive agreements and concerted practices covering the territory of the European Economic Area and **3/relating**, first, to the tin stabilisers sector and, secondly, to the epoxidised soybean oil and esters sector ('the ESBO/esters sector').

7 According to Article 1 of the decision at issue, both of the infringements found by the Commission, which **7&5/related** to those two categories of heat stabilisers, **7&5/consisted** of price fixing, allocation of markets through sales quotas, allocation of customers and exchange of commercially sensitive information, in particular on customers, production and sales.

8 The decision at issue states that the undertakings **2/concerned 7&5/participated** in those infringements during various periods between 24 February 1987 and 21 March 2000, in relation to the tin stabilisers sector, and between 11 September 1991 and 22 March 2000, in relation to the ESBO/esters sector.

9 The decision at issue **5&6/as addressed**, with respect to each infringement, to 20 companies, which **4&7/had either participated** directly in the infringements **5&7/involved** or **5/were** liable as parent companies.

VIII. Extra online resources²³

Fundamental terms of competition: online flashcards source with audio output

What is quizlet:

Anyone can use Quizlet to study and learn content created by other users, or to create your own custom study sets.

The sets linked below were created especially for the participants of the competition law linguistic seminar of EJTN and by clicking on the link you can practice fundamental concepts of competition law as well as the key vocabulary and concepts.

The best way to get started on Quizlet as a student or a teacher is to search for sets made by other Quizlet users:

https://quizlet.com/_2dzb7e

https://quizlet.com/_3xjfnm

https://quizlet.com/_3xjfz2

²³ Activities and cards by D. Petriláková.

GLOSSARY²⁴

Here is a list of some of the most important terms in the field of competition law. Some of the terms already dealt with in the exercises for each unit have been excluded from this list so as not to duplicate entries.

For each term definition and an example of usage is provided, as well as, where applicable, the sources of such definitions and examples.²⁵

Antitrust control

The Treaty on the Functioning of the EU (TFEU) prohibits antitrust (anti-competitive) behaviour in the form of:

agreements and business practices which restrict competition (Article 101), abuse of dominant positions (Article 102). Article 101 forbids agreements (i.e. cartels) where 2 or more firms try to restrict competition. Agreements may be horizontal (between competitors at the same level of the supply chain fixing prices or limiting production) or vertical (such as between a manufacturer and a distributor). Under Article 101(3), restrictive agreements may be permitted, however, if they generate more positive than negative effects (if they improve production or product distribution, for example).

Article 102 prohibits a firm abusing its dominant position (i.e. a substantial market share) by charging unduly low prices to prevent others entering the market or discriminating between commercial partners.

The Commission may impose large fines on firms for such illegal business practices. Since 2004, national competition authorities can enforce EU antitrust rules on agreements and dominance abuse in the same way as the Commission.

(<http://eur-lex.europa.eu/summary/glossary/antitrust.html>)

Abuse of a dominant position

A company can restrict competition if it is in a position of strength on a given market. A dominant position is not in itself anti-competitive, but if the company exploits this position to eliminate competition, it is considered to have abused it.

Examples include:

charging unreasonably high prices depriving smaller competitors of customers by selling at artificially low prices they can't compete with obstructing competitors in the market (or in another related market) by forcing consumers to buy a product which is artificially related to a more popular, in-demand product refusing to deal with certain customers or offering special discounts to customers who buy all or most of their supplies from the dominant company making the sale of one product conditional on the sale of another product.

(http://ec.europa.eu/competition/consumers/abuse_en.html)

Example: According to the plea agreement, MAXWELL and two unnamed co-conspirators created the botnet to fraudulently obtain commission income from installing adware on computers without the owners' permission. (<https://www.justice.gov/archive/criminal/cybercrime/press-releases/2006/maxwellPlea.htm>)

Anticompetitive practices

Anticompetitive practices refer to a wide range of business practices in which a firm or group of firms may engage in order to restrict inter-firm competition to maintain or increase their relative market position and profits without necessarily providing goods and services at a lower cost or of higher quality.

Example: Certain types of business practices are likely to be construed as being anticompetitive (<https://stats.oecd.org/glossary/detail.asp?ID=3145>)

²⁴ Glossary by D. Petriláková

²⁵ Source: <https://quizlet.com/> unless credited otherwise.

Article 101/TFEU

Prohibits undertakings using restrictive trading practices.

Article 101 (1)

Prohibits types of agreement, decision and concerted practices that restrict or distort competition.

Article 101 (2)

If these occur they are considered "automatically void." - i.e. there are no legal effects whatsoever.

Article 101 (3)

Unless they qualify for exemption..

Article 102/TFEU

Prohibits an undertaking abusing a dominant position.

Example:

Autonomy in determining conduct

May be an issue where there are parent and subsidiary undertakings. They are considered as a single undertaking if they form a "single economic unit."

100% shareholding by parent = presumption of no freedom.

<100% = degree of autonomy is based on the facts.

Bid Rigging

Particular form of co-ordination between firms which can adversely affect the outcome of any sale or purchasing process in which bids are submitted. For example, firms may agree their bids in advance, deciding which firm will be the lowest bidder. Alternatively, they may agree not to bid or to rotate their bids in number or value of contracts.

Example: *Bid rigging is an illegal practice in all OECD member countries.* (<https://www.oecd.org/competition/cartels/42851044.pdf>)

Breach of A101

1. Sufficient undertakings were involved.
2. There's an agreement, decision or concerted practice.
3. The object or effect preventing, restricting or distorting competition.
4. Sufficient effect on inter-state trade.

Block exemptions

Entire categories of agreements are exempted from article 101(1) provided for by secondary legislation.

Cartels.

Horizontal agreements, decisions or concerted practices

Concerted practice

Concerted practice attempts to cover the "agreements" made in secret. A form of coordination between undertakings.

Two elements of a concerted practice include: agreement and the effect on trade.

Definition of an "undertaking"

Any natural or legal person engaged in any economic activity and enjoying some autonomy in determining its conduct.

Economic Activity

Providing goods or services on the market and carried out to make a profit.

Horizontal agreement

Undertakings at the same levels of trade and industry

Mergers

A 'concentration' is the legal combination of two or more firms by merger or acquisition. Although such operations may have a positive impact on the market, they may also appreciably restrict competition, if they create or strengthen a dominant market player.

In order to preclude restrictions of competition, the European Commission exercises control over planned concentrations with an EU dimension (i.e. when the operation extends beyond the borders of an EU country and exceeds certain worldwide and EU-wide turnover thresholds). It may then authorise them subject to conditions or forbid them.

In determining whether a concentration is compatible with the common market, the Commission takes account on a case-by-case basis of several factors, such as the concepts of 'EU dimension', 'dominant position', 'effective competition' and 'relevant market'. The basic criterion used to analyse concentrations is that of a 'dominant position'. One or more firms are said to hold a dominant position if they have the economic power to influence the parameters of competition, especially prices, production, product quality, distribution and innovation, and to limit competition to an appreciable extent.

Predatory pricing

Predatory pricing is a form of exclusionary abuse, an act of setting prices low in an attempt to eliminate the competition.

Price fixing

An act of setting prices low in an attempt to eliminate the competitors.

Rule of reason

Consider the anti-competitive behaviour against the potential pro-competition elements.

Example: case of Societe Technique Miniere

Example: *Clickers can be used for advertising purposes or to lead a victim computer to an infected resource where the machine will be attacked further by other malicious code.* (<http://news.findlaw.com/hdocs/docs/cyberlaw/usanchetaind.pdf>)

SNNIP test

Looks at how consumers would respond to a permanent increase of 5-10% in the price of a product. It asks whether enough consumers would switch to other products in order to make the price increase unprofitable. If so these products will be considered part of the same product market.

Stands for: small but significant non-transitory increase in the price

Supply substitutability

Suppliers are able to switch production on the relevant products and market them in the short term without incurring significant additional costs or risks in response to small and permanent changes in relative prices.

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LE VOCABULAIRE DU DROIT DE LA CONCURRENCE:

I. INTRODUCTION GENERALE AU DROIT DE LA CONCURRENCE : CONCEPTS ET DEFINITION

EXERCICE 1. Que signifient les sigles suivants?

AELE, EFTA, ASA, ANC, CNC, DPI, EEE, OFCOM, PME, RIC.

EXERCICE 2. Faites coïncider les termes préfixés avec leur définition

1. oligopole, 2. non-concurrence (obligation de) 3. Monomarquisme 4. monopole, 5. oligopoleur, 6. monopsonne 7. Position oligopolistique 8. antitrust 9. Oligopoleur, 10. Anticoncurrentiel. 11. Non-opposition (procédure de)

1. Règles régissant les accords et pratiques anticoncurrentielles (ententes et autres formes de collusion) qui sont fondées sur l'article 81 du traité CE ainsi que les règles interdisant les abus de position dominante (existante) fondées sur l'article 82 du traité CE.

2. Opposé ou contraire au libre jeu de la concurrence (agissements, accords anticoncurrentiels)

3. Ce terme englobe tant des obligations de non-concurrence que des quotas d'achat. Il peut prendre la forme d'une obligation directe de ne pas acheter de produits de marques concurrentes (souvent appelée «achats liés»), mais également d'engagements d'achat minimal, de remises de quantité ou de remises de fidélité. Du point de vue de la concurrence, cette pratique pourrait déboucher sur un verrouillage du marché pour les fournisseurs concurrents, faciliter la collusion entre fournisseurs en cas d'utilisation cumulée et, dans le cas où l'acheteur est un distributeur, réduire la concurrence intermarques sur le point de vente.

4. Situation d'un marché sur lequel il n'existe qu'un seul vendeur qui, étant donné l'absence de concurrence, possède un pouvoir de marché extrêmement fort, équivalent à l'existence d'une position dominante.

5. Vendeur unique

6. Marché ne comportant qu'un seul acheteur

7. Mécanisme obligatoire ou incitatif contenu dans un contrat d'approvisionnement ou de distribution, qui amène l'acheteur à ne pas produire, acheter, vendre ou revendre des produits en concurrence avec les produits contractuels, ou à couvrir au moins 80 % de ses besoins concernant ce type de produit auprès de ce fournisseur

8. Procédure spéciale définie par certains règlements d'exemption par catégorie et autres règlements d'application destinée à simplifier les procédures d'exemption en ne faisant pas objection à un accord notifié dans un délai fixé par lesdits règlements.

9. Structure du marché caractérisée par un nombre très limité de vendeurs qui ont conscience de leur interdépendance lorsqu'ils adoptent des décisions stratégiques concernant par exemple le prix, la production et la qualité des produits en cause.

10. les gros vendeurs

11. Position dominante collective

EXERCICE 3. Faites correspondre le protagoniste et ses fonctions

1. mandataire, 2. revendeur, 3. soumissionnaire, 4. Sous-traitant, 5. détaillant, 6. prestataire, 7. grossiste, 8. fournisseur, 9. acheteur

1. Personne qui revend des marchandises, qui achète en gros pour revendre au détail

2 Intermédiaire de la chaîne de distribution qui achète le produit en grande quantité au producteur et le revend en plus petites quantités aux distributeurs ou aux détaillants.

3. Personne ou entreprise qui achète

4. Personne ou entreprise qui achète des produits auprès d'un fournisseur, d'un producteur ou d'un importateur, soit directement ou par l'intermédiaire d'un grossiste. Il revend de la marchandise à l'unité ou par petite quantité à un client dans un magasin, une boutique ou par correspondance à l'aide d'un catalogue ou d'un site internet.

5. Personne ou entreprise qui fournit un service (ce service s'appelle une prestation)

6. La sous-traitance est l'opération par laquelle une société délègue à une autre (le plus souvent une PME) une partie de sa production, la production de certains de ses composants ou encore une partie d'un contrat obtenu par le donneur d'ordre. Le sous-traitant s'engage à exécuter un produit ou une tâche sur la base des instructions de l'entreprise donneuse d'ordre qui conserve la haute main sur le produit et ses caractéristiques. En cela le sous-traitant est distinct du fournisseur dans la mesure où ce dernier est totalement responsable du produit ou service qu'il propose à son client.

7. Opérateur économique (toute personne physique ou morale, publique ou privée, ou tout groupement de personnes doté ou non de la personnalité morale) qui offre sur le marché la réalisation de travaux ou d'ouvrages, la fourniture de produits ou la prestation de services.

8. Personne morale ou physique nommée dans les affaires de concentration pour contrôler la mise en oeuvre des engagements et contribuer, si nécessaire, à cette mise en oeuvre, désigné par les parties avec l'approbation de la Commission. Il peut proposer et, le cas échéant, imposer des mesures aux parties pour garantir le respect des engagements; il dispose également d'un mandat irrévocable pour procéder à la cession d'activité ou des activités à vendre, sans prix minimal, si les parties n'y parviennent pas dans un délai donné.

9. Détaillant, producteur ou fabricant d'un produit, ou quiconque procède à sa transformation, son importation, son emballage ou sa vente.

EXERCICE 4. Trouvez le contraire des verbes et adjectifs suivants

1. Commencer une enquête:
2. Saisir une juridiction d'une demande de dommages et intérêts :
3. Décourager l'exercice du droit d'établissement:
4. Dissuader une entreprise de collaborer avec les autorités de concurrence:
5. Dissoudre un fusionnement:
6. Dessaisir l'autorité nationale de concurrence de sa compétence en ouvrant une procédure:
7. Empêcher la concurrence :

Adjectifs

1. Légal 2. Licite 3. Loyal 4. Honnête 5. Raisonnable 6. Compatible 7. Recevable

EXERCICE 5. Vous êtes un/e représentant/e d'une institution européenne: expliquez, en parlant à la première personne, le rôle que joue votre institution dans la politique de la concurrence en employant les expressions listées ci-dessous et en vous aidant du tableau récapitulatif tiré du site web de la DGC

Expressions: En ma qualité de membre de l'institution/ en tant que représentant de /étant donné que je travaille à/ j'occupe le poste de.../ je suis en poste dans cette institution depuis...

Je souhaiterais, je peux, je suis en mesure de, je suis à même de vous expliquer le rôle de cette institution en ce qui concerne/ pour ce qui est de/ à propos de/dans le domaine de la compétence

Il s'agit d'un rôle très important/elle joue un rôle de premier ordre/elle a un faible rôle

Je souhaiterais apporter quelques précisions/je tiens à préciser que /je vous rappelle que

Tableau récapitulatif : Rôle des institutions dans le domaine de la concurrence

Parlement européen: le parlement européen est la seule institution élue directement par les citoyens européens. il est renouvelé tous les cinq ans. les 751 députés européens siègent selon leur appartenance politique, et non pas en fonction de leur état membre d'origine. près des trois quarts de la législation européenne est adoptée conjointement par le parlement et par le conseil, dans le cadre de la procédure de «codécision». la politique de concurrence ne relève pas de cette procédure.

commissions parlementaires traitant de la concurrence; Il existe **deux commissions parlementaires traitant spécifiquement** de questions relatives à la politique de concurrence et au bien-être des consommateurs:

- la commission econ (*affaires économiques et monétaires*) elle est chargée des questions de politique économique et monétaire de l'union, notamment les règles de concurrence et les aides d'état aux entreprises;
- la commission imco (*marché intérieur et protection des consommateurs*) sa mission consiste à cerner et à éliminer les entraves au bon fonctionnement du marché unique européen, ainsi qu'à promouvoir et à protéger les intérêts économiques des consommateurs.

Conseil européen: le conseil européen, qui consiste en un sommet trimestriel réunissant les chefs d'état et de gouvernement des états membres, donne l'impulsion nécessaire au développement de l'union en définissant les priorités et la direction politique générale. En accord avec le parlement européen, le conseil européen joue un rôle important dans **l'approbation du commissaire à la concurrence**, nommé par les états membres et le président de la commission.

Conseil de l'union européenne: en collaboration avec le parlement, le conseil de l'union européenne approuve les propositions législatives relatives à la concurrence et à la protection des consommateurs. Pour les questions de concurrence, les ministres responsables dans chaque état membre de l'ue se réunissent régulièrement, au sein du conseil «compétitivité».

Commission européenne: la commission européenne veille à la bonne application de la réglementation européenne en matière de concurrence; son rôle consiste donc à surveiller et, si nécessaire, à empêcher:

- les accords anticoncurrentiels (en particulier les cas d'ententes caractérisés);
- l'exploitation abusive par des entreprises d'une position dominante sur le marché;
- les fusions et les acquisitions;
- les aides d'état.

Pour cela, la Commission dispose de pouvoirs de contrôle et de sanction, qui lui permettent de mener des enquêtes, d'organiser des auditions et d'accorder des exemptions. Les autorités nationales ont l'obligation de prévenir la Commission lorsqu'elles ont l'intention de fournir des aides publiques à une entreprise (aides d'État).

Depuis 2004, certaines compétences en matière de contrôle ont été confiées aux États membres, dans le cadre du processus dit de «modernisation» (règlement 1/2003). Ainsi, les autorités de concurrence des États membres et les juridictions nationales peuvent maintenant contrôler l'application des articles 101 et 102 du traité sur le fonctionnement de l'Union européenne (ex-articles 81 et 82 du traité CE).

Les intérêts des consommateurs sont une préoccupation constante de la Commission dans la mise en œuvre de la politique de concurrence, dans tous ses aspects.

Pour en savoir plus sur des affaires de concurrence spécifiques, la législation en vigueur ou d'autres questions, consultez le [site web de la Commission consacré à la concurrence](#).

Cour de justice de l'Union européenne: la Cour de justice est la principale instance judiciaire de l'UE. Elle garantit **une interprétation et une application uniformes du droit de la concurrence dans toute l'Union européenne**; la Cour a rendu au fil des années de nombreux jugements de portée historique — quoique souvent méconnus — en matière de concurrence, qui ont eu des **répercussions importantes sur la vie quotidienne des Européens** et ont contribué à maintenir des conditions de concurrence efficaces sur les marchés de l'UE, permettant d'offrir un choix plus large de produits et de services de meilleure qualité, à moindre prix.

Les affaires de concurrence sont traitées par le Tribunal de l'UE (anciennement appelé «tribunal de grande instance»). La Cour de justice se charge des procédures en appel.

Les **tribunaux nationaux** peuvent (et même doivent, dans certaines circonstances) solliciter l'avis de la Cour sur la façon d'interpréter le droit européen sur une question précise.

Banque centrale européenne: la Banque centrale européenne (BCE) est la banque centrale chargée de l'euro, la monnaie unique européenne. Sa tâche principale consiste à maintenir le pouvoir d'achat de l'euro et, ce faisant, la stabilité des prix dans la zone euro. La zone euro est composée des 16 pays de l'UE qui ont adopté la monnaie unique depuis 1999.

La Banque centrale européenne est régulièrement consultée sur toutes les questions de concurrence touchant au secteur financier.

Cour des comptes: la Cour des comptes contrôle les recettes versées au budget de l'UE et les dépenses consenties pour mener à bien les politiques européennes; elle est compétente pour vérifier les amendes imposées aux entreprises jugées coupables de comportements anticoncurrentiels dans des affaires traitées par la Commission. Ces amendes sont versées au budget de l'UE.

Comité économique et social européen: c'est l'instance par laquelle les syndicats, les associations patronales et d'autres organismes représentant la société civile contribuent au processus décisionnel, en rendant des avis sur les politiques européennes. Il comprend une section traitant spécifiquement les questions de concurrence et de bien-être des consommateurs (section «Marché unique, production et consommation»)

EXERCICE 6. Employez la préposition convenable si nécessaire:

à , de, en, pour, par, sur, en, dans, contre, sur, depuis, dès

1. L'état va aider entreprises lutter la fraude
2. La Commission va fournirentreprises la possibilitéobtenir des aides publiques
3.fil des années, ces jugements ont eu des répercussions importantesla vie des européens
4. Ces affaires sont traitées le Tribunal de l'UE
5. La zone euro est composée 16 pays qui ont adopté la monnaie unique1999; cette époque-là tout a changé.
6.mener bien et mettre œuvre les politiques européennes il faut...
7. Les amendes sont verséesbudget de l'UE

8. La mission de cette commission consistecerner et éliminer les entraves bon fonctionnement du marché unique européen
9. accord avec le parlement européen, le conseil joue un rôle important
10. Ils ne sont pas toujoursaccord certains points
11. les questions de concurrence les ministres se réunissent régulièrement
12. le domaine de la concurrence, il est important de savoir quoi consiste le marché
13. le cadre de la procédure de codécision, le Parlement et le Conseil travaillent conjointement
14. Le rôle de la Commission consiste empêcher les accords anticoncurrentiels.

II. LES REGLES DE CONCURRENCE APPLICABLES AUX ENTREPRISES¹⁸

EXERCICE 1. Dites si la Commission autorise ou interdit les aides d'État suivantes (article 107 du TFUE): 26

- aides à une entreprise ayant des chances de devenir rentable à terme
- allègements fiscaux
- aides servant les intérêts de l'union en préservant ou en créant des emplois
- aide à une entreprise qui n'a aucune chance de devenir économiquement viable
- garanties publiques qui améliorent la cote de crédit d'une entreprise par rapport à celle de ses concurrents
- mesures fiscales générales
- biens et services fournis à des tarifs préférentiels
- législation sur l'emploi

EXERCICE 2: Conjuguer au présent, au futur et au passé composé le verbe à l'infinitif

1. Ces entreprises (détenir) une large part du marché
2. Ces entreprises (enfreindre) la loi
3. Elles (contrevenir) à la loi
4. Elles (avouer) faire partie d'une entente et
5. Elles en (fournir) les preuves
6. Elles (bénéficier) d'une réduction des amendes imposées par la Commission
7. Les preuves (contenir) des informations confidentielles

²⁶ Comprendre les politiques de l'Union européenne-Concurrence , ISBN 978-92-79-41490-9 (Reproduction autorisée)

8. Les règles (régir) les actions en dommages et intérêts...
9. Les pressions concurrentielles (contraindre) les entreprises à améliorer la qualité de leurs produits

EXERCICE 3: Trouvez le substantif correspondant au verbe en gras:

Ex: entrer en vigueur: l'entrée en vigueur

1. Cet entrepreneur a **truqué** les offres
2. Les inspecteurs ont **agi** avec prudence
3. La fraude et le profit sont étroitement **liés**
4. Ils **mettent** tout en oeuvre pour frauder
5. Cette entreprise **enfreint** la loi
6. Ils ont **racheté** une demande
7. La juridiction nationale **enjoint** la production de preuves
8. Cette entreprise a **violé** les restrictions prévues pour l'utilisation des preuves
9. Le délai a **prescrit**
10. Ils se sont **entendus** sur un prix
11. Ils ont **maintenu** les autres arrangements de coopération
12. Elle a **cédé** ses parts à une entreprise

EXERCICE 4. Remplacez les mots en gras par le pronom personnel adéquat: le, la, les, lui, leur, en

1. Les entreprises se partagent **les marchés**
2. le fusionnement permet de contrôler certains **marchés**
3. l'entrepreneur a évincé **son concurrent**
4. elles essaient d'éliminer beaucoup **de concurrents**
5. les grandes entreprises doivent obtenir **l'autorisation de la commission européenne** avant de fusionner
6. elles demandent donc **cette autorisation à la Commission**
7. elles n'ont pas besoin d'autres **autorisations**
8. en unissant leurs activités, les entreprises peuvent réduire **les coûts des produits existants** et développer plus efficacement d'autres **produits**
9. ces gains d'efficacité rendent **le marché** plus concurrentiel, certaines opérations de concentration risquent de porter préjudice **aux consommateurs**

EXERCICE 5 : Remplissez les blancs du texte à l'aide des mots de la liste ci-dessous :²⁷
Plafonds, Besoin, accorde, à ce que, sous licence, en deça de, gains, respectent, quel que soit, bénéficient de, fusionner, requête, restreindre, intervenir, porter préjudice, dominant, hausse des prix, freinant, dans le cas contraire, aboutissant à, siège, chiffre d'affaires, s'engager, actifs mis en commun.

- Pourquoi les concentrations doivent-elles être autorisées au niveau européen?

De cette façon, les entreprises opérant dans plusieurs pays de l'UE n'ont que d'une seule autorisation. En unissant leurs activités, les entreprises peuvent développer plus efficacement de nouveaux produits, ou réduire leurs de production ou de distribution. Ces d'efficacité rendent le marché plus concurrentiel, et les consommateurs produits d'une qualité supérieure, à des prix plus équitables. Toutefois, certaines opérations de concentration sont susceptibles de la concurrence, en général parce qu'elles créent ou renforcent un acteur Elles risquent alors de aux consommateurs, en provoquant une des prix, en réduisant le choix de produits ou de services ou en l'innovation.

- Quels types de concentrations sont examinés par la Commission européenne?

Toute concentration la création d'une entreprise affichant un annuel, au niveau européen et mondial, supérieur aux fixés

..... ces plafonds, les opérations de concentration peuvent être examinées par des autorités nationales. Ces règles sont applicables à toutes les concentrations, l'endroit du monde où les entreprises participant à l'opération ont leur social, leurs bureaux, leurs activités ou leurs unités de production. En effet, si deux entreprises établies l'UE mais présentes sur le marché européen décident de, l'opération peut avoir des incidences sur les marchés européens. La Commission peut aussi examiner des opérations de concentration qui lui sont notifiées par des autorités nationales de concurrence. La peut émaner des autorités nationales ou des entreprises qui fusionnent. Il arrive également que la Commission soumette un cas à une autorité nationale

- Autorisation conditionnelle

La Commission européenne peut accorder une autorisation conditionnelle à une concentration lorsque les entreprises concernées s'engagent à prendre des mesures afin d'empêcher que l'opération ne fausse la concurrence. Elles peuvent, par exemple, à vendre une partie des ou à céder une technologie à un autre acteur du marché. Si la Commission estime que ces engagements sont de nature à maintenir ou à rétablir la concurrence sur le marché, elle une autorisation conditionnelle à l'opération et veille les entreprises concernées leurs engagements, elle se réserve le droit d'.....

²⁷ Comprendre les politiques de l'Union européenne-Concurrence, ISBN 978-92-79-41490-9 (Reproduction autorisée)

III FIXATION ET REVISION JUDICIAIRE DES SANCTIONS DANS LE CADRE DE L'UE

EXERCICE 1 : Faites coïncider le verbe avec le complément adéquat

1. Rendre 2. Adresser 3. Être tenu pour 4. Imputer 5. Rejeter 6. Rejeter 6. Condamner 7. Engager

1. aux dépens 2. un recours 3. solidairement responsable 4. un moyen comme non fondé. 5. une communication des griefs 6. Le comportement d'une filiale à la société mère 6. un arrêt 7. une procédure en vue de l'application du droit de la concurrence

EXERCICE 2. Conjuguez le verbe à l'infinitif en commençant la phrase par aujourd'hui, puis recommencez l'exercice en commençant les phrases par "demain" et enfin par "hier":

Ex: Aujourd'hui si l'entreprise fausse la concurrence elle sera punie. Demain si elle faussait la concurrence elle serait punie. Hier, si elle avait faussé la concurrence, elle aurait été punie

1. Si elle (savoir) cela, elle (prendre) les dispositions nécessaires
2. Si la Commission (vouloir), elle (agir) rapidement
3. Si elle (apprendre) qu'il y a fraude, elle (faire) le nécessaire immédiatement
4. Si l'entreprise (violer) les règles de la concurrence, la Commission lui (envoyer) une "communication de griefs" (acte d'accusation)
5. Si les entreprises (reconnaitre) leur faute elles (pouvoir) bénéficier d'une réduction des amendes
6. Si la Commission (détecter) des ententes, elle y (mettre) fin
7. Si une entreprise (faire) partie d'une entente, elle (être) dans l'illégalité
8. Si un entreprise (avouer) avoir conclu une entente, la commission (devoir) y mettre fin
9. Si cette procédure (réduire) la durée de l'affaire, la commission (économiser) de l'argent

EXERCICE 3. Reconstituez les collocations en faisant coïncider le verbe et son complément

1. Étayer 2. Enjoindre 3. Sanctionner 4. Imposer 5. Infliger 6. Octroyer 7. Indemniser 8. Empêcher 9. Prévenir 10. Faire bénéficier

1. une amende 2. une demande avec des éléments de preuves 3. au défendeur de produire des preuves 4. un abus commis 5. les dommages et intérêts 6. une astreinte 7. l'accroissement des disparités entre les règles de Etats membres 8. les comportements anticoncurrentiels 9. les consommateurs 10. le préjudice dans son intégralité

IV . LES POUVOIRS D'ENQUETE ET LA FIXATION DES AMENDES PAR LES AUTORITES DE LA CONCURRENCE

EXERCICE 1. Remplissez les blancs à l'aide des mots listés ci-dessous²⁸

Habilités, durée, mener, apposer, enregistrer, comportements, livres, extrait.

Quels sont les pouvoirs d'enquête de la Commission?

La Commission peut enquêter sur les potentiellement anticoncurrentiels. Cela signifie notamment que, si elle décide de une enquête, ses fonctionnaires sontà:

- à accéder à tous les locaux, terrains ou moyens de transport des entreprises;
- à contrôler lesde l'entreprise ainsi que tout autre document professionnel;
- à prendre ou obtenir sous quelque forme que ce soit une copie ou unde ces livres ou documents;
- àdes scellés sur tous les locaux commerciaux et livres ou documents pendant lade l'inspection et dans la mesure nécessaire à l'enquête;
- à demander aux représentants ou membres du personnel de l'entreprise des explications sur des faits ou documents en rapport avec l'objet et le but de l'inspection et àleurs réponses

EXERCICE 2. Employez un verbe de mouvement de la liste ci-dessous: dresser, suspendre, renverser, soulever, courir, verser, entamer

1. Le délai de prescription ne devrait pas commencer à avant que l'infraction ne prenne fin
2.une réparation, des dommages et intérêts
3.une procédure de règlement consensuel du litige
4.une procédure pendante devant une juridiction
5. Il est présumé que les infractions commises dans le cadre d'une entente causent un préjudice: l'auteur de l'infraction a le droit decette présomption
6. Il faut éliminer les problèmes de concurrence par l'opération de concentration
7. L'huissier aun acte

²⁸ Comprendre les politiques de l'Union européenne-Concurrence , ISBN 978-92-79-41490-9 (Reproduction autorisée)

EXERCICE 3. Dites s'il s'agit d'un accord anticoncurrentiel ou d'un accord légal

Ex: si les participants s'entendent pour fixer les Prix, il s'agit d'un accord anticoncurrentiel

1. s'il a plus d'effets positifs que négatifs:
2. s'il n'est pas conclu entre des concurrents:
3. si les participants s'entendent pour limiter la production:
4. s'il concerne des entreprises dont la part de marché cumulée est faible:
5. si les participants s'entendent pour limiter fixer les prix de revente (entre un producteur et ses distributeurs):
6. s'il est nécessaire pour améliorer les produits ou services concernés, élaborer de nouveaux produits ou trouver de nouveaux moyens, plus efficaces, de mettre des produits à la disposition des consommateurs:
7. si les participants s'entendent pour limiter se partager des parts de marché ou des clients:

V. LA CRIMINALISATION DU DROIT DE LA CONCURRENCE ET LES ACTIONS EN DOMMAGES ET INTERETS

EXERCICE 1. Trouver un synonyme des verbes et adjectifs suivants

Verbes

1. Évincer un concurrent
2. Nuire à
3. Enjoindre de produire des preuves
4. Contrevenir à la loi
5. Entraver l'introduction des actions en dommages et intérêts
6. Lésér une partie

Adjectifs

1. Partie contrevenante
2. Un règlement consensuel
3. Procédures connexes
4. Application temporelle
5. Durée temporaire
6. irréfragable

EXERCICE 2. Faites coïncider le verbe et son complément choisi dans la liste ci-dessous

1. Fausser 2. Omettre 3. Augmenter 4. Empiéter 5. Exploiter 6. Truquer 7. Exercer 8. Fournir 9. Recevoir 10. Fixer 11. Se livrer 12. Détenir

1. déraisonnablement le prix 2. sur une enquête en cours 3. la concurrence, 4. les offres, 5. une pratique commerciale déloyale 6. une documentation trompeuse 7. des ristournes trimestrielles, 8. de divulguer loyalement, 9. des quotas entre les concurrents , 10. à la limitation du marché 11. sa position pour éliminer la concurrence 12. Une trop grosse part du marché

EXERCICE 3. Remplissez les blancs à l'aide d'un verbe de la liste ci-dessous
réduire de, se monter à, s'élever à, ramener à, augmenter de , calculer à , fixer à , accorder

La part de marché combinée des entreprises participant à l'infraction100% et le montant de l'amende était 100millions. Or la Commission, qui l'avait initialement100millions, a ensuiteune réduction de 10%; ce montant,10% a alors été90 millions; mais dernièrement il a été..... 10% et finalement la somme100 millions

IP/16/1492

EXERCICE 4. JEU DE RÔLE: formez 2 équipes: partisans et détracteurs opposent leurs arguments dans une affaire portée devant la Commission²⁹

- membres de l'Autorité de la Concurrence Nationale des pays concernés
- responsables de l'entreprise visée: par ex.Google, ou Uber, ou Telefónica

L'équipe gagnante est celle qui a employé le plus grand nombre d'expressions citées ci-dessous dans son argumentaire :

Pour exprimer l'accord ou le désaccord: être pour, en faveur de, partisan de, //être contre, je ne partage pas votre opinion, je ne suis pas de cet avis, je ne suis pas du tout d'accord avec vous

Pour marquer la progression: premièrement, d'abord, en premier lieu// deuxièmement, ensuite, en second lieu, //finalement, enfin, en définitive, pour finir

Pour faire un ajout: j'ajouterai que, de plus, également, par ailleurs, d'une part, d'autre part

Pour citer un exemple: par exemple, notamment, en particulier, ainsi

Pour résumer: pour résumer, en guise de conclusion, tout compte fait

²⁹ https://ec.europa.eu/info/departments/competition_en/

EXERCICE 5. COMMENT PRÉSENTER SON EXPOSÉ

Le meilleur exposé est celui au cours duquel a été employé le plus grand nombre d'expressions citées ci-dessous

Je vais vous présenter une affaire que j'ai eu à traiter /dont j'ai été saisi/ récemment/il y a quelque temps/ il y a quelques années

Et sur laquelle j'ai beaucoup travaillé/qui m'a causé bien des soucis/qui m'a donné du fil à retordre/

Je ne suis pas spécialiste en la matière et j'ai trouvé dans la presse, sur internet, une affaire qui me semble intéressante/ qui semble bien illustrer ce que nous avons appris ces jours-ci

C'est une affaire qui a fait grand bruit, qui a fait couler beaucoup d'encre, qui a fait la Une des journaux tout récemment

Une affaire qui concerne tous les consommateurs européens

Voilà pourquoi je l'ai choisie/ C'est la raison pour laquelle je l'ai choisie

Je ferai tout d'abord un bref résumé des faits/je résumerai brièvement les faits/Voilà ce dont il s'agit

C'est une affaire qui s'est passée tout récemment/ il y a un certain temps/ en Roumanie, en Hongrie...

Si mes souvenirs sont bons, elle portait sur un conflit entre X et Y/il s'agissait d'un conflit entre...Le conflit résidait dans le fait que... l'affaire portait sur...

Les partisans de... affirmaient que ...

Par contre, les opposants à ...disaient que, avançaient comme argument que, réfutaient la thèse selon laquelle....

Si l'on ajoute à ceci que les intérêts en jeu étaient nombreux, que les lobbystes étaient très actifs au sein de l'UE, que les bataillons d'avocats spécialisés des parties travaillaient d'arrache-pied pour remporter la victoireon comprendra que l'affaire ait tardé/tarde encore / à être résolue

J'espère qu'elle sera résolue dans un proche avenir //malheureusement, je crois qu'elle ne sera résolue qu'au bout de longs mois de procédure.

En guise de conclusion, (pour conclure) : si j'avais suivi ce stage avant, je n'aurais pas eu tant de mal/les choses auraient été bien plus faciles pour moi

CORRIGÉS

I. INTRODUCTION GÉNÉRALE AU DROIT DE LA CONCURRENCE : CONCEPTS ET DÉFINITION

CORRIGÉ EXERCICE 1. Que signifient les sigles suivants?

AELE, EFTA, ASA, ANC, CNC, DPI, EEE, OFCOM, PME, RIC

AELE L'Association européenne de libre-échange (en anglais *European Free Trade Association, EFTA*) est une association d'États visant à établir une zone de libre-échange en Europe.

ASA Autorité de surveillance AELE

ANC Autorité Nationale de la Concurrence

CMC Autorité britannique des marchés et de la Concurrence

DPI Droit de propriété intellectuelle

EEE Espace économique européen

OFCOM régulateur des télécoms

PME Petites et Moyennes Entreprises

RIC Réseau International de la Concurrence

CORRIGÉ EXERCICE 2. PRÉFIXES Faites coïncider les termes préfixés avec leur définition.

1-9/2-7/3-3/4-4/5-10/6-6/7-11/8-1/9-10/11-8

1.ANTITRUST règles régissant les accords et pratiques anticoncurrentielles (ententes et autres formes de collusion) qui sont fondées sur l'article 81 du traité CE ainsi que les règles interdisant les abus de position dominante (existante) fondées sur l'article 82 du traité CE.

2.ANTICONCURRENTIEL

Opposé ou contraire au libre jeu de la concurrence (agissements, accords anticoncurrentiels)

3.MONOMARQUISME

Ce terme englobe tant des obligations de non-concurrence que des quotas d'achat. Il peut prendre la forme d'une obligation directe de ne pas acheter de produits de marques concurrentes (souvent appelée «achats liés»), mais également d'engagements d'achat minimal, de remises de quantité ou de remises de fidélité. Du point de vue de la concurrence, cette pratique pourrait déboucher sur un verrouillage du marché pour les fournisseurs concurrents, faciliter la collusion entre fournisseurs en cas d'utilisation cumulée et, dans le cas où l'acheteur est un distributeur, réduire la concurrence intermarques sur le point de vente.

4.MONOPOLE

Situation d'un marché sur lequel il n'existe qu'un seul vendeur qui, étant donné l'absence de concurrence, possède un pouvoir de marché extrêmement fort, équivalent à l'existence d'une position dominante.

5. MONOPOLEUR vendeur unique

6. MONOPSONE marché ne comportant qu'un seul acheteur

7. NON-CONCURRENCE (OBLIGATION DE) mécanisme obligatoire ou incitatif contenu dans un contrat d'approvisionnement ou de distribution, qui amène l'acheteur à ne pas produire, acheter, vendre ou revendre des produits en concurrence avec les produits contractuels, ou à couvrir au moins 80 % de ses besoins concernant ce type de produit auprès de ce fournisseur

8. NON-OPPOSITION (PROCÉDURE DE)

Procédure spéciale définie par certains règlements d'exemption par catégorie et autres règlements d'application destinée à simplifier les procédures d'exemption en ne faisant pas objection à un accord notifié dans un délai fixé par lesdits règlements.

9. OLIGOPOLE

structure du marché caractérisée par un nombre très limité de vendeurs qui ont conscience de leur interdépendance lorsqu'ils adoptent des décisions stratégiques concernant par exemple le prix, la production et la qualité des produits en cause.

10. OLIGOPOLEUR les gros vendeurs

11. POSITION OLIGOPOLISTIQUE position dominante collective

CORRIGÉ EXERCICE 3. Faites correspondre le protagoniste et ses fonctions :

1-9/2-2/3-8/4-7/5-5/6-6/7-4/8-3/9-1

Acheteur: personne qui achète

Revendeur: personne qui revend des marchandises, qui achète en gros pour revendre au détail

Fournisseur: détaillant, producteur ou fabricant d'un produit, ou quiconque procède à sa transformation, son importation, son emballage ou sa vente.

Grossiste: Intermédiaire de la chaîne de distribution qui achète le produit en grande quantité au producteur et le revend en plus petites quantités aux distributeurs ou aux détaillants.

Détaillant: personne qui achète des produits auprès d'un fournisseur, d'un producteur ou d'un importateur, soit directement ou par l'intermédiaire d'un grossiste. Il revend de la marchandise à l'unité ou par petite quantité à un client dans un magasin, une boutique ou par correspondance à l'aide d'un catalogue ou d'un site internet.

Prestataire: personne ou entreprise qui fournit un service (ce service s'appelle une prestation)

Sous-traitant La sous-traitance est l'opération par laquelle une société délègue à une autre (le plus souvent une PME) une partie de sa production, la production de certains de ses composants ou encore une partie d'un contrat obtenu par le donneur d'ordre. Le sous-traitant s'engage à exécuter un produit ou une tâche sur la base des instructions de l'entreprise donneuse d'ordre qui conserve la haute main sur le produit et ses caractéristiques. En cela le sous-traitant est distinct du fournisseur dans la mesure où ce dernier est totalement responsable du produit ou service qu'il propose à son client.

Soumissionnaire Est un opérateur économique toute personne physique ou morale, publique ou privée, ou tout groupement de personnes doté ou non de la personnalité morale, qui offre sur le marché la réalisation de travaux ou d'ouvrages, la fourniture de produits ou la prestation de services.

Mandataire

Personne morale ou physique nommée dans les affaires de concentration pour contrôler la mise en oeuvre des engagements et contribuer, si nécessaire, à cette mise en oeuvre, désigné par les parties avec l'approbation de la Commission. Il peut proposer et, le cas échéant, imposer des mesures aux parties pour garantir le respect des engagements; il dispose également d'un mandat irrévocable pour procéder à la cession d'activité ou des activités à vendre, sans prix minimal, si les parties n'y parviennent pas dans un délai donné.

CORRIGÉ EXERCICE 4. Trouvez le contraire des verbes et adjectifs suivants

1. Commencer une enquête: terminer, achever, mener à terme une enquête
2. Saisir une juridiction d'une demande de dommages et intérêts : dessaisir
3. Décourager l'exercice du droit d'établissement: encourager
4. Dissuader une entreprise de collaborer avec les autorités de concurrence: convaincre, persuader
5. Dissoudre un fusionnement: créer
6. Dessaisir l'autorité nationale de concurrence de sa compétence en ouvrant une procédure: saisir
7. Empêcher la concurrence : accroître, préserver la concurrence
8. Garder à l'esprit : oublier

Adjectifs

1. Légal/ illegal, 2. Licite/ illicite, 3. Loyal/ déloyal, 4. Honnête/ trompeur, malhonnête, 5. Raisonnable/ déraisonnable, 6. Compatible/incompatible, 7. Recevable/ irrecevable

CORRIGÉ EXERCICE 5 EXERCICE 5. Vous êtes un/e représentant/e d'une institution européenne: expliquez, en parlant à la première personne, le rôle que joue votre institution dans la politique de la concurrence en employant les expressions listées ci-dessous et en vous aidant du tableau récapitulatif tiré du site web de la DGC

Expressions: En ma qualité de membre de l'institution/ en tant que représentant de /étant donné que je travaille à/ j'occupe le poste de.../ je suis en poste dans cette institution depuis...

Je souhaiterais, je peux, je suis en mesure de, je suis à même de vous expliquer le rôle de cette institution en ce qui concerne/ pour ce qui est de/ à propos de/dans le domaine de la compétence

Il s'agit d'un rôle très important/elle joue un rôle de premier ordre/elle a un faible rôle

Je souhaiterais apporter quelques précisions/je tiens à préciser que /je vous rappelle que

Tableau récapitulatif : Rôle des institutions dans le domaine de la concurrence

Parlement européen: le parlement européen est la seule institution élue directement par les citoyens européens. il est renouvelé tous les cinq ans. les 751 députés européens siègent selon leur appartenance politique, et non pas en fonction de leur état membre d'origine. près des trois quarts de la législation européenne est adoptée conjointement par le parlement et par le conseil, dans le cadre de la procédure de «codécision». la politique de concurrence ne relève pas de cette procédure.

commissions parlementaires traitant de la concurrence; Il existe **deux commissions parlementaires traitant spécifiquement** de questions relatives à la politique de concurrence et au bien-être des consommateurs:

- la commission econ (*affaires économiques et monétaires*)
elle est chargée des questions de politique économique et monétaire de l'union, notamment les règles de concurrence et les aides d'état aux entreprises;
- la commission imco (*marché intérieur et protection des consommateurs*)
sa mission consiste à cerner et à éliminer les entraves au bon fonctionnement du marché unique européen, ainsi qu'à **promouvoir et à protéger** les intérêts économiques des consommateurs.

Conseil européen: le conseil européen, qui consiste en un sommet trimestriel réunissant les chefs d'état et de gouvernement des états membres, donne l'impulsion nécessaire au développement de l'union en définissant les priorités et la direction politique générale. En accord avec le parlement européen, le conseil européen joue un rôle important dans **l'approbation du commissaire à la concurrence**, nommé par les états membres et le président de la commission.

Conseil de l'union européenne: en collaboration avec le parlement, le conseil de l'union européenne approuve les propositions législatives relatives à la concurrence et à la protection des consommateurs. Pour les questions de concurrence, les ministres responsables dans chaque état membre de l'ue se réunissent régulièrement, au sein du conseil «compétitivité».

Commission européenne: la commission européenne veille à la bonne application de la réglementation européenne en matière de concurrence; son rôle consiste donc à surveiller et, si nécessaire, à empêcher:

- les accords anticoncurrentiels (en particulier les cas d'ententes caractérisés);
- l'exploitation abusive par des entreprises d'une position dominante sur le marché;
- les fusions et les acquisitions;
- les aides d'état.

Pour cela, la Commission dispose de pouvoirs de contrôle et de sanction, qui lui permettent de mener des enquêtes, d'organiser des auditions et d'accorder des exemptions. Les autorités nationales ont l'obligation de prévenir la Commission lorsqu'elles ont l'intention de fournir des aides publiques à une entreprise (aides d'État).

Depuis 2004, certaines compétences en matière de contrôle ont été confiées aux États membres, dans le cadre du processus dit de «modernisation» (règlement 1/2003). Ainsi, les autorités de concurrence des États membres et les juridictions nationales peuvent maintenant contrôler l'application des articles 101 et 102 du traité sur le fonctionnement de l'Union européenne (ex-articles 81 et 82 du traité CE).

Les **intérêts des consommateurs** sont une préoccupation constante de la Commission dans la mise en œuvre de la politique de concurrence, dans tous ses aspects.

Pour en savoir plus sur des affaires de concurrence spécifiques, la législation en vigueur ou d'autres questions, consultez le [site web de la Commission consacré à la concurrence](#).

Cour de justice de l'Union européenne: la Cour de justice est la principale instance judiciaire de l'UE. Elle garantit une interprétation et **une application uniformes du droit de la concurrence dans toute l'Union européenne**; la Cour a rendu au fil des années de nombreux jugements de portée historique — quoique souvent méconnus — en matière de concurrence, qui ont eu des **répercussions importantes sur la vie quotidienne des Européens** et ont contribué à maintenir des conditions de concurrence efficaces sur les marchés de l'UE, permettant d'offrir un choix plus large de produits et de services de meilleure qualité, à moindre prix.

Les affaires de concurrence sont traitées par le Tribunal de l'UE (anciennement appelé «tribunal de grande instance»). La Cour de justice se charge des procédures en appel.

Les **tribunaux nationaux** peuvent (et même doivent, dans certaines circonstances) solliciter l'avis de la Cour sur la façon d'interpréter le droit européen sur une question précise.

Banque centrale européenne: la Banque centrale européenne (BCE) est la banque centrale chargée de l'euro, la monnaie unique européenne. Sa tâche principale consiste à maintenir le pouvoir d'achat de l'euro et, ce faisant, la stabilité des prix dans la zone euro. La zone euro est composée des 16 pays de l'UE qui ont adopté la monnaie unique depuis 1999.

La Banque centrale européenne est régulièrement consultée sur toutes les questions de concurrence touchant au secteur financier.

Cour des comptes: la Cour des comptes contrôle les recettes versées au budget de l'UE et les dépenses consenties pour mener à bien les politiques européennes; elle est compétente pour vérifier les amendes imposées aux entreprises jugées coupables de comportements anticoncurrentiels dans des affaires traitées par la Commission. Ces amendes sont versées au budget de l'UE.

Comité économique et social européen: c'est l'instance par laquelle les syndicats, les associations patronales et d'autres organismes représentant la société civile contribuent au processus décisionnel, en rendant des avis sur les politiques européennes. Il comprend une section traitant spécifiquement les questions de concurrence et de bien-être des consommateurs (section «Marché unique, production et consommation»)

CORRIGÉ : EXERCICE 6. Employez la préposition convenable si nécessaire:

à , de, en, pour, par, sur, en, dans, contre, depuis, dès

1. L'état va aider les entreprises à lutter contre la fraude
2. La Commission va fournir aux entreprises la possibilité d'obtenir des aides publiques
3. Au fil des années, ces jugements ont eu des répercussions importantes sur la vie des européens
4. Ces affaires sont traitées par le Tribunal de l'UE
5. La zone euro est composée des 16 pays qui ont adopté la monnaie unique depuis 1999 ; dès cette époque-là tout a changé.
6. Pour mener à bien et mettre en œuvre les politiques européennes il faut...
7. Les amendes sont versées au budget de l'UE
8. La mission de cette commission consiste à cerner et à éliminer les entraves au bon fonctionnement du marché unique européen

9. En accord avec le parlement européen, le conseil joue un rôle important
10. Ils ne sont pas toujours d'accord sur certains points
11. Pour les questions de concurrence les ministres se réunissent régulièrement
12. Dans le domaine de la concurrence, il est important de savoir en quoi consiste le marché
13. Dans le cadre de la procédure de codécision, le Parlement et le Conseil travaillent conjointement
14. Le rôle de la Commission consiste à empêcher les accords anticoncurrentiels.

II. LES REGLES DE CONCURRENCE APPLICABLES AUX ENTREPRISES

CORRIGÉ EXERCICE 1 . Dites si la Commission autorise ou interdit les aides d'État suivantes (article 107 du TFUE):

- aides à une entreprise ayant des chances de devenir rentable à terme : autorise
- allègements fiscaux: interdit
- aides servant les intérêts de l'union en préservant ou en créant des emplois: autorise
- aide à une entreprise qui n'a aucune chance de devenir économiquement viable: interdit
- garanties publiques qui améliorent la cote de crédit d'une entreprise par rapport à celle de ses concurrents: interdit
- mesures fiscales générales: autorise
- biens et services fournis à des tarifs préférentiels: interdit
- législation sur l'emploi : autorise

Note: Les accords favorisant **la recherche et le développement** et **le transfert de technologies** sont souvent compatibles avec les règles de concurrence: certains nouveaux produits requièrent des efforts de recherche importants, qui seraient trop coûteux pour une seule entreprise. Les accords visant à fabriquer, acheter ou vendre des produits en commun, ou à harmoniser des produits, peuvent aussi être légaux.

Les **accords de distribution** sont illégaux si, par exemple, les producteurs obligent les détaillants à décorer leur magasin ou à former leur personnel d'une manière particulière. En revanche, ils peuvent être autorisés s'ils ont pour objet de fournir un environnement propice au stockage et à la vente d'un produit, d'offrir des conseils personnalisés aux clients ou d'empêcher un distributeur de profiter des efforts promotionnels déployés par un concurrent. Chaque cas doit être évalué séparément, en tenant compte de la position occupée par les entreprises concernées sur le marché et des montants engagés.

CORRIGÉ EXERCICE 2. Conjuguer au présent, au futur et au passé composé le verbe à l'infinitif

1. Ces entreprises (détenient/détiendront/ont détenu) une large part du marché
2. Ces entreprises (enfreignent/enfreindront/ont enfreint) la loi
3. Elles (contreviennent/contreviendront/ ont contrevenu) à la loi
4. Elles (avouent/avoueront/ont avoué) faire partie d'une entente et
5. Elles en (fournissent/fourniront/ont fourni) les preuves
6. Elles (bénéficient/bénéficieront/ont bénéficié) d'une réduction des amendes imposées par la Commission

7. Les preuves (contiennent /contiendront/ont contenu) des informations confidentielles
8. Les règles (régissent/ régiront/ont régi) les actions en dommages et intérêts...
9. Les pressions concurrentielles (contraignent/contraindront/ont contraint) les entreprises à améliorer la qualité de leurs produits

CORRIGÉ EXERCICE 3 Trouver le substantif correspondant au verbe en gras

1. Truquage 2. Action. 3. Lien 4. Mise en oeuvre. 5. Infraction. 6. Rachat. 7. Injonction. 8. Violation. 9. Prescription 10. Entente 11. Maintien. 12. Cession

CORRIGÉ EXERCICE 4. Remplacez les mots en gras par le pronom personnel adéquat: le la les lui leur en

1. Les entreprises se LES partagent
2. le fusionnement permet d'EN contrôler certains
3. l'entrepreneur L'a évincé
4. elles essaient d'EN éliminer beaucoup
5. les grandes entreprises doivent L'obtenir avant de fusionner
6. elles LA LUI demandent donc
7. elles n'EN ont pas besoin d'autres
8. en unissant leurs activités, les entreprises peuvent LES réduire et EN développer plus efficacement d'autres
9. ces gains d'efficacité LE rendent plus concurrentiel
10. certaines opérations de concentration risquent de LEUR porter préjudice

CORRIGÉ EXERCICE 5. Remplissez les blancs du à l'aide des mots de la liste ci-dessous

Plafonds, Besoin, accorde, à ce que, sous licence, en deça de , gains, respectent , quel que soit, bénéficient de , fusionner, requête, restreindre, intervenir, porter préjudice, dominant, hausse des prix, freinant, dans le cas contraire, aboutissant à, siège, chiffre d'affaires, s'engager, actifs mis en commun,

- Pourquoi les concentrations doivent-elles être autorisées au niveau européen?

De cette façon, les entreprises opérant dans plusieurs pays de l'UE n'ont besoin que d'une seule autorisation.

En unissant leurs activités, les entreprises peuvent développer plus efficacement de nouveaux produits, ou réduire leurs coûts de production ou de distribution. Ces **gains** d'efficacité rendent le marché plus concurrentiel, et les consommateurs **bénéficient de** produits d'une qualité supérieure, à des prix plus équitables.

Toutefois, certaines opérations de concentration sont susceptibles de **restreindre** la concurrence, en général parce qu'elles créent ou renforcent un acteur **dominant**. Elles risquent alors de **porter préjudice** aux consommateurs, en provoquant une **hausse** des prix, en réduisant le choix de produits ou de services ou en freinant l'innovation.

- Quels types de concentrations sont examinées par la Commission européenne?

Toute concentration **aboutissant** à la création d'une entreprise affichant un **chiffre d'affaires** annuel, au niveau européen et mondial, supérieur aux **plafonds** fixés.

En-deçà de ces plafonds, les opérations de concentration peuvent être examinées par des autorités nationales.

Ces règles sont applicables à toutes les concentrations, **quel que soit** l'endroit du monde où les entreprises participant à l'opération ont leur **siège** social, leurs bureaux, leurs activités ou leurs unités de production. En effet, si deux entreprises établies **hors de** l'UE mais présentes **sur** le marché européen décident de **fusionner**, l'opération peut avoir des incidences sur les marchés européens.

La Commission peut aussi examiner des opérations de concentration qui lui sont notifiées par des autorités nationales de concurrence. La **requête** peut émaner des autorités nationales ou des entreprises qui fusionnent. Il arrive également que la Commission soumette un cas à une autorité nationale....

- Autorisation conditionnelle

La Commission européenne peut accorder une autorisation conditionnelle à une concentration lorsque les entreprises concernées s'engagent à prendre des mesures afin d'empêcher que l'opération ne fausse la concurrence.

Elles peuvent **s'engager**, par exemple, à vendre une partie des **actifs mis en commun** ou à céder une technologie **sous licence** à un autre acteur du marché. Si la Commission estime que ces engagements sont de nature à maintenir ou à rétablir la concurrence sur le marché, elle **accorde** une autorisation conditionnelle à l'opération et veille **à ce que** les entreprises concernées **respectent** leurs engagements. **Dans le cas contraire**, elle se réserve le droit d'**intervenir**.

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III. FIXATION ET REVISION JUDICIAIRE DES SANCTIONS DANS LE CADRE DE L'UE

CORRIGÉ EXERCICE 1. Faites coïncider le verbe avec le complément adéquat

1. Rendre un arrêt 2. Adresser une communication des griefs 3. Être tenu pour solidairement responsable
4. Imputer le comportement d'une filiale à la société mère 5. Rejeter un recours 6. Rejeter un moyen comme non fondé
7. Condamner aux dépens 8. Engager une procédure en vue de l'application du droit de la concurrence

CORRIGÉ EXERCICE 2. Conjuguez le verbe à l'infinitif en commençant la phrase par aujourd'hui, recommencez l'exercice en commençant les phrases par "demain" puis par "hier":

Ex: Aujourd'hui si l'entreprise fausse la concurrence elle sera punie. Demain: si elle faussait la concurrence elle serait punie. Hier, si elle avait faussé la concurrence, elle aurait été punie

1. Si elle (sait/savait/avait su) cela, elle (prendra/prendrait/aurait pris) les dispositions nécessaires
2. Si la Commission (veut/voulait/avait voulu), elle (agira/agirait/aurait agi) rapidement
3. Si elle (apprend/ apprenait/avait appris) qu'il y a fraude, elle (fera/farait/aurait fait) le nécessaire immédiatement
4. Si l'entreprise (viole/violait/ avait violé) les règles de la concurrence, la Commission lui (enverra/anverrait/ aurait envoyé) une "communication de griefs" (acte d'accusation)

5. Si les entreprises (reconnaissent/reconnaissaient/avait reconnu) leur faute elles (pourront/pourraient/auraient pu) bénéficier d'une réduction des amendes
6. Si la Commission (décèle/décelait/avait décelé) des ententes, elle y (mettra/mettrait/aurait mis) fin
7. Si une entreprise (fait/faisait/avait fait) partie d'une entente, elle (sera/ serait/aurait été) dans l'illégalité
8. Si une entreprise (avoue/avouait/avait avoué) avoir conclu une entente, la Commission (devra/devrait/aurait dû) y mettre fin
9. Si cette procédure (réduit/réduisait/avait réduit) la durée de l'affaire, la Commission (économisera/économiserait/aurait économisé) de l'argent

CORRIGÉ EXERCICE 3. Faites coïncider le verbe avec le complément adéquat

1. Étayer une demande avec des éléments de preuves 2. Enjoindre au défendeur de produire des preuves 3. Sanctionner un abus commis, 6. Imposer une amende 4. Infliger une astreinte 5. Octroyer les dommages et intérêts, 6. Indemniser le préjudice dans son intégralité 7. Empêcher l'accroissement des disparités entre les règles de Etats membres 8. Prévenir les comportements anticoncurrentiels 9. Faire bénéficier les consommateurs

IV LES POUVOIRS D'ENQUÊTE ET LA FIXATION DES AMENDES PAR LES AUTORITÉS DE LA CONCURRENCE

CORRIGÉ EXERCICE 1. Quels sont les pouvoirs d'enquête de la Commission?

La Commission peut enquêter sur les comportements potentiellement anticoncurrentiels. Cela signifie notamment que, si elle décide de mener une enquête, ses fonctionnaires sont habilités à:

- à accéder à tous les locaux, terrains ou moyens de transport des entreprises;
- à contrôler les livres de l'entreprise ainsi que tout autre document professionnel;
- à prendre ou obtenir sous quelque forme que ce soit une copie ou un extrait de ces livres ou documents;
- à apposer des scellés sur tous les locaux commerciaux et livres ou documents pendant la durée de l'inspection et dans la mesure nécessaire à l'enquête;
- à demander aux représentants ou membres du personnel de l'entreprise des explications sur des faits ou documents en rapport avec l'objet et le but de l'inspection et à enregistrer leurs réponses.

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CORRIGÉ EXERCICE 2. Employez un verbe de mouvement de la liste ci-dessous: suspendre, renverser, soulever, courir, verser, entamer

1. Le délai de prescription ne devrait pas commencer à courir avant que l'infraction ne prenne fin
2. Verser une réparation, des dommages et intérêts
3. Entamer une procédure de règlement concensuel du litige
4. Suspendre une procédure pendante devant une juridiction
5. Il est présumé que les infractions commises dans le cadre d'une entente causent un préjudice. L'auteur de l'infraction a le droit de renverser cette présomption
6. Il faut éliminer les problèmes de concurrence soulevés par l'opération de concentration
7. L'huissier a dressé un acte

EXERCICE 3 Dites s'il s'agit d'un accord anticoncurrentiel ou d'un accord légal

1. s'il a plus d'effets positifs que négatifs: légal
2. s'il n'est pas conclu entre des concurrents: anticoncurrentiel
3. si les participants s'entendent pour limiter la production: anticoncurrentiel
4. s'il concerne des entreprises dont la part de marché cumulée est faible: légal
5. si les participants s'entendent pour limiter fixer les prix de revente (entre un producteur et ses distributeurs): anticoncurrentiel
6. s'il est nécessaire pour améliorer les produits ou services concernés, élaborer de nouveaux produits ou trouver de nouveaux moyens, plus efficaces, de mettre des produits à la disposition des consommateurs: légal
7. si les participants s'entendent pour limiter se partager des parts de marché ou des clients: anticoncurrentiel

V. LA CRIMINILISATION DU DROIT DE LA CONCURRENCE ET LES ACTIONS EN DOMMAGE ET INTÉRÊTS

CORRIGÉ EXERCICE 1 Trouvez un synonyme des verbes et adjectifs suivants

verbes

1. Évincer un concurrent : éliminer des concurrents
2. Nuire à: porter préjudice, atteinte à
3. Enjoindre à la Commission de produire des preuves:ordonner
4. Contrevenir à la loi: enfreindre
5. Entraver l'introduction des actions en dommages et intérêts:faire obstacle
6. Léser une partie: faire subir un préjudice

adjectifs

1. Partie contrevenante: qui a enfreint la loi
2. Un règlement consensuel: amiable
3. Procédure connexes: reliées entre elles
4. Application temporelle: du temps
5. Durée temporaire: provisoire
6. Irréfragable: que l'on ne peut contester ou contredire

CORRIGE EXERCICE 2. Faites coïncider le verbe et son complément choisi dans la liste ci dessous

1. Fausser la concurrence 2. Omettre de divulguer loyalement 3. Augmenter déraisonnablement le prix 4. Empiéter sur une enquête en cours 5. Exploiter sa position pour éliminer la concurrence 6. Truquer les offres, 7. Exercer une pratique commerciale déloyale 8. Fournir une documentation trompeuse 9. Recevoir des ristournes trimestrielles, 10. Fixer des quotas entre les concurrents, 11. Se livrer à la limitation du marché 12. Détenir une trop grosse part du marché

CORRIGÉ EXERCICE 3. Remplissez les blancs à l'aide d'un verbe de la liste ci-dessous

réduire de, se monter à, s'élever à, ramener à, augmenter de, calculer à, fixer à, accorder

La part de marché combinée des entreprises participant à l'infraction s'élevait à 100% et le montant de l'amende était calculé à 100 millions. Or la Commission, qui l'avait initialement fixé à 100 millions, a ensuite accordé une réduction de 10%; ce montant, réduit de 10% a alors été ramené à 90 millions; mais dernièrement il a été augmenté de nouveau de 10% et finalement la somme s'est montée à 100 millions

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CORRIGÉ EXERCICE 4. JEU DE RÔLE Vous êtes un/e représentant/e d'une institution européenne suivante (parlement européen (commission econ et commission imco), conseil européen, conseil de l'ue, commission européenne, cour de justice de l'ue, banque centrale européenne, cour des comptes, comité économique et social européen).

Expliquez le rôle que joue votre institution dans la politique de concurrence (consultez site web de la dgc de la Commission européenne)

Parlement européen: le parlement européen est la seule institution élue directement par les citoyens européens. il est renouvelé tous les cinq ans. les 751 députés européens siègent selon leur appartenance politique, et non pas en fonction de leur état membre d'origine. près des trois quarts de la législation européenne est adoptée conjointement par le parlement et par le conseil, dans le cadre de la procédure de «codécision». la politique de concurrence ne relève pas de cette procédure.

commissions parlementaires traitant de la concurrence; Il existe deux commissions parlementaires traitant spécifiquement de questions relatives à la politique de concurrence et au bien-être des consommateurs:

- la commission econ (*affaires économiques et monétaires*)
elle est chargée des questions de politique économique et monétaire de l'union, notamment les règles de concurrence et les aides d'état aux entreprises;
- la commission imco (*marché intérieur et protection des consommateurs*)
sa mission consiste à cerner et à éliminer les entraves au bon fonctionnement du marché unique européen, ainsi qu'à **promouvoir et à protéger** les intérêts économiques des consommateurs.

Conseil européen: le conseil européen, qui consiste en un sommet trimestriel réunissant les chefs d'état et de gouvernement des états membres, donne l'impulsion nécessaire au développement de l'union en définissant les priorités et la direction politique générale. En accord avec le parlement européen, le conseil européen joue un rôle important dans **l'approbation du commissaire à la concurrence**, nommé par les états membres et le président de la commission.

Conseil de l'union européenne: en collaboration avec le parlement, le conseil de l'union européenne approuve les propositions législatives relatives à la concurrence et à la protection des consommateurs. Pour les questions de concurrence, les ministres responsables dans chaque état membre de l'ue se réunissent régulièrement, au sein du conseil «compétitivité».

Commission européenne: la commission européenne veille à la bonne application de la réglementation européenne en matière de concurrence; son rôle consiste donc à surveiller et, si nécessaire, à empêcher:

- les accords anticoncurrentiels (en particulier les cas d'ententes caractérisés);
- l'exploitation abusive par des entreprises d'une position dominante sur le marché;
- les fusions et les acquisitions;
- les aides d'état.

Pour cela, la Commission dispose de pouvoirs de contrôle et de sanction, qui lui permettent de mener des enquêtes, d'organiser des auditions et d'accorder des exemptions. Les autorités nationales ont l'obligation de prévenir la Commission lorsqu'elles ont l'intention de fournir des aides publiques à une entreprise (aides d'État).

Depuis 2004, certaines compétences en matière de contrôle ont été confiées aux États membres, dans le cadre du processus dit de «modernisation» ([règlement 1/2003](#)). Ainsi, les autorités de concurrence des États membres et les juridictions nationales peuvent maintenant contrôler l'application des articles 101 et 102 du traité sur le fonctionnement de l'Union européenne (ex-articles 81 et 82 du traité CE).

Les **intérêts des consommateurs** sont une préoccupation constante de la Commission dans la mise en œuvre de la politique de concurrence, dans tous ses aspects.

Pour en savoir plus sur des affaires de concurrence spécifiques, la législation en vigueur ou d'autres questions, consultez le [site web de la Commission consacré à la concurrence](#).

Cour de justice de l'Union européenne: la Cour de justice est la principale instance judiciaire de l'UE. Elle garantit **une interprétation et une application uniformes du droit de la concurrence dans toute l'Union européenne**; la Cour a rendu au fil des années de nombreux jugements de portée historique — quoique souvent méconnus — en matière de concurrence, qui ont eu des **répercussions importantes sur la vie quotidienne des Européens** et ont contribué à maintenir des conditions de concurrence efficaces sur les marchés de l'UE, permettant d'offrir un choix plus large de produits et de services de meilleure qualité, à moindre prix.

Les affaires de concurrence sont traitées par le Tribunal de l'UE (anciennement appelé «tribunal de grande instance»). La Cour de justice se charge des procédures en appel.

Les **tribunaux nationaux** peuvent (et même doivent, dans certaines circonstances) solliciter l'avis de la Cour sur la façon d'interpréter le droit européen sur une question précise.

Banque centrale européenne: la Banque centrale européenne (BCE) est la banque centrale chargée de l'euro, la monnaie unique européenne. Sa tâche principale consiste à maintenir le pouvoir d'achat de l'euro et, ce faisant, la stabilité des prix dans la zone euro. La zone euro est composée des 16 pays de l'UE qui ont adopté la monnaie unique depuis 1999.

La Banque centrale européenne est régulièrement consultée sur toutes les questions de concurrence touchant au secteur financier.

Cour des comptes: la Cour des comptes contrôle les recettes versées au budget de l'UE et les dépenses consenties pour mener à bien les politiques européennes; elle est compétente pour vérifier les amendes imposées aux entreprises jugées coupables de comportements anticoncurrentiels dans des affaires traitées par la Commission. Ces amendes sont versées au budget de l'UE.

Comité économique et social européen: c'est l'instance par laquelle les syndicats, les associations patronales et d'autres organismes représentant la société civile contribuent au processus décisionnel, en rendant des avis sur les politiques européennes. Il comprend une section traitant spécifiquement les questions de concurrence et de bien-être des consommateurs (section «Marché unique, production et consommation»)

EXERCICE 5. JEU DE RÔLE: formez 2 équipes: partisans et détracteurs opposent leurs arguments dans une affaire portée devant la commission

- membres de l'Autorité de la Concurrence Nationale des pays concernés
- responsables de l'entreprise visée: par ex. Google, ou Uber, ou Telefónica

Préparez un argumentaire en vous aidant des expressions suivantes: l'équipe gagnante est celle qui a employé le plus grand nombre d'expressions de la liste.

Pour exprimer l'accord ou le désaccord: être pour, en faveur de, partisan de, //être contre, je ne partage pas votre opinion, je ne suis pas de cet avis, je ne suis pas du tout d'accord avec vous

Pour marquer la progression: premièrement, d'abord, en premier lieu// deuxièmement, ensuite, en second lieu, //finalement, enfin, en définitive, pour finir

Pour faire un ajout: j'ajouterais que, de plus, également, par ailleurs, d'une part, d'autre part

Pour citer un exemple: par exemple, notamment, ainsi

Pour résumer: pour résumer, en guise de conclusion, tout compte fait

EXERCICE 6. COMMENT PRÉSENTER SON EXPOSÉ

Je vais vous présenter une affaire que j'ai eu à traiter /dont j'ai été saisi/ récemment/il y a quelque temps/ il y a quelques années

Et sur laquelle j'ai beaucoup travaillé/qui m'a causé bien des soucis/qui m'a donné du fil à retordre/

Je ne suis pas spécialiste en la matière et j'ai trouvé dans la presse, sur internet, une affaire qui me semble intéressante/ qui semble bien illustrer ce que nous avons appris ces jours-ci

C'est une affaire qui a fait grand bruit, qui a fait couler beaucoup d'encre, qui a fait la Une des journaux tout récemment

Une affaire qui concerne tous les consommateurs européens

Voilà pourquoi je l'ai choisie/ C'est la raison pour laquelle je l'ai choisie

Je ferai tout d'abord un bref résumé des faits/je résumerai brièvement les faits/Voilà ce dont il s'agit

C'est une affaire qui s'est passée tout récemment/ il y a un certain temps/ en Roumanie, en Hongrie...

Si mes souvenirs sont bons, elle portait sur un conflit entre X et Y/il s'agissait d'un conflit entre...Le conflit résidait dans le fait que... l'affaire portait sur...

Les partisans de... affirmaient que ...

Par contre, les opposants à ...disaient que, avançaient comme argument que, réfutaient la thèse selon laquelle....

Si l'on ajoute à ceci que les intérêts en jeu étaient nombreux, que les lobbystes étaient très actifs au sein de l'UE, que les bataillons d'avocats spécialisés des parties travaillaient d'arrache-pied pour remporter la victoireon comprendra que l'affaire ait tardé/tarde encore / à être résolue

J'espère qu'elle sera résolue dans un proche avenir //malheureusement, je crois qu'elle ne sera résolue qu'au bout de longs mois de procédure.

En guise de conclusion, (pour conclure) : si j'avais suivi ce stage avant, je n'aurais pas eu tant de mal/les choses auraient été bien plus faciles pour moi

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