



DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT
ECONOMIC AND SCIENTIFIC POLICY **A**



Economic and Monetary Affairs

Employment and Social Affairs

Environment, Public Health and Food Safety

Industry, Research and Energy

Internal Market and Consumer Protection

Competition Policy in International Agreements

Study for the ECON Committee



DIRECTORATE GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT A: ECONOMIC AND SCIENTIFIC POLICY

Proceedings of the Workshop on Competition Policy in International Agreements

Brussels, 28 May 2015

STUDY

Abstract

Enforcement of fair competition is based on different rules around the world. This workshop aims to give an overview of existing and planned international agreements on cooperation in the field of competition policy. The first session focuses on international cooperation in antitrust investigations and discusses how agreements are designed to ensure consistency in the prosecution of infringements and to overcome regulatory friction. The second session looks into what is currently known about the chapter on competition policy in the Transatlantic Trade Investment Partnership (TTIP) to provide a better understanding of the on-going negotiations.

This Workshop was prepared by the Policy Department A at the request of the Committee on Economic and Monetary Affairs (ECON).

This document was requested by the European Parliament's Committee on Economic and Monetary Affairs.

RESPONSIBLE ADMINISTRATORS

Stephanie HONNEFELDER
Doris KOLASSA

EDITORIAL ASSISTANTS

Irene VERNACOTOLA
Karine GAUFILLET

LINGUISTIC VERSION

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ABOUT THE EDITOR

Policy departments provide in-house and external expertise to support EP committees and other parliamentary bodies in shaping legislation and exercising democratic scrutiny over EU internal policies.

To contact the Policy Department or to subscribe to its monthly newsletter please write to:
Policy Department A: Economic and Scientific Policy
European Parliament
B-1047 Brussels
E-mail: Poldep-Economy-Science@ep.europa.eu

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PROGRAMME OF THE WORKSHOP



Европейски парламент Parlamento Europeo Evropský parlament Europa-Parlamentet Europäisches Parlament
Euroopa Parlament Ευρωπαϊκό Κοινοβούλιο European Parliament Parlement européen Parlaimint na hEorpa
Europski parlament Parlamento europeo Eiropas Parlaments Europos Parlamentas Európai Parlament
Parlament Ewropew Europees Parlement Parlament Europejski Parlamento Europeu Parlamentul European
Európsky parlament Evropski parlament Euroopan parlamentti Europaparlamentet

DIRECTORATE GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT A: ECONOMIC AND SCIENTIFIC POLICIES

WORKSHOP: Competition Policy in International Agreements

- Programme -

Thursday, 28 May 2015, 9.00 to 12.00 hrs., European Parliament, Brussels

Room ASP 5 E 2, no interpretation, EN only, the event is public and will be web-streamed

9.00 - 9.05 hrs.

**Welcome and Introduction: Markus FERBER,
ECON Vice-Chair and Chair of the ECON Working
Group on Competition Policy**

9.05 - 10.30 hrs.

**Session I: International Cooperation in the Area
of Antitrust Investigations**

Rachel BRANDENBURGER

Former Special Advisor, International to the US
Department of Justice's Antitrust Division; Non-
Governmental Advisor to the European Commission's
Competition Directorate; Senior Advisor and Foreign
Legal Consultant to Hogan Lovells US LLP, New York

Kenta SUZUKI

Mission of Japan to the EU, detached from the Japan
Fair Trade Commission

Patrik DUCREY

Deputy Director of the Secretariat of the Swiss
Competition Commission (COMCO), Bern, Switzerland

Blanca RODRIGUEZ GALINDO

Head of Unit International Relations, Directorate
General for Competition, European Commission

Possible points/issues to be discussed:

- Has the agreement with Switzerland been implemented smoothly? Are preparatory works on time?
- What are the expected benefits, chances, caveats?
- How many cases are likely to be covered?
- Are there any first experiences? For instance relating to the exchange of data?
- Are there any best practices on international level that could be used?
- For which countries would similar agreements make sense?
- Are there any similar agreements already planned (or revisions of existing agreements scheduled)?

10.30 – 11.55 hrs.

Session II: Competition Policy in TTIP

Hendrik BOURGEOIS

Chairman of TTIP Task Force at the American Chamber of Commerce to the EU and Vice President European Affairs at General Electric, Brussels

Ioannis LIANOS

Professor in Global Competition Law and Public Policy at the Faculty of Laws, University College London

Blanca RODRIGUEZ GALINDO

Head of Unit International Relations, Directorate General for Competition, European Commission

Christophe KIENER

Chief negotiator for competition in TTIP, Directorate General Trade, European Commission

Possible points/issues to be discussed:

- In how far will competition policy be covered in TTIP? What will be the impact of the competition chapter in TTIP?
- In how far would TTIP be different than existing international agreements covering competition policy?
- To what extent would TTIP affect other existing international agreements?
- What will be the implications for transatlantic merger control?
- Will there also be a cooperation agreement to enforce competition laws?
- Exchange of data?

11.55 - 12.00 hrs.

**Closing remarks by Markus FERBER,
ECON Vice-Chair and Chair of the ECON Working
Group on Competition Policy**

1. CURRICULA VITAE OF THE SPEAKERS

Rachel BRANDENBURGER

Rachel Brandenburger is recognized internationally as a leading international antitrust and competition law and policy advisor.

She is a Senior Advisor to Hogan Lovells US LLP based in New York. She is licensed as a foreign legal consultant in New York and is admitted as a qualified solicitor in England and Wales. She is a European Commission appointed non-governmental advisor to the International Competition Network, a member of the American Bar Association's Section of Antitrust Law's International Task Force, and sits on the editorial boards of two international antitrust publications. She has given guest lectures at Columbia University's Law School, New York University's Law School, and King's College, London.

From 2010 to 2013, she was Special Advisor, International to the Antitrust Division, U.S. Department of Justice, based in Washington, D.C. She advised on many Antitrust Division investigations that involved extensive cooperation efforts between the Antitrust Division and its international counterparts and on policy matters including revised best practices regarding cooperation in merger investigations with the European Commission and memoranda of understanding with the Chinese and Indian antitrust agencies.

Before that, she was a partner for 21 years in Freshfields Bruckhaus Deringer LLP, based in the firm's Brussels and London offices where she led cases before the European Commission and other international antitrust and regulatory agencies involving mergers, anti-competitive practices, monopolization or dominant positions, and cartels.

She also holds or has held non-executive board positions in various non-profit organizations in Europe and the USA.

She is a graduate of the University of Oxford, St Hilda's College (MA in Jurisprudence), and a former part-time lecturer in law at St Hilda's College.

Kenta SUZUKI

First Secretary (Competition Policy), Mission of Japan to the European Union

- 2003.3 Graduated from the University of Tokyo (Faculty of Law)
- 2003.4 Joined the Fair Trade Commission, Trade Practice Division, Trade Practice Department
- 2004 Investigation Division III, Investigation Bureau, JFTC
- 2005 Premiums and Representations Inspection Office, Trade Practice Department, JFTC
- 2006 Georgetown University Law Center (LL.M. in General Study)
- 2007 Georgetown University Law Center (LL.M. in Comparative Legal Study)
- 2008 General Affairs Division, Secretariat, JFTC
- 2009 Coordination Division, Economic Affairs Bureau, JFTC
- 2011 Planning Office, Investigation Bureau, JFTC
- 2013~ Mission of Japan to the European Union, Ministry of Foreign Affairs

Patrik DUCREY

Prof. Dr. iur., Attorney at law, Swiss Competition Authority, Bern

Patrik is Deputy Director and head of Division Product Markets at the Secretariat of the Swiss Competition Commission.

Patrik leads a team of 13 lawyers and economists that conducts competition law procedures in the fields of anti-competitive agreements, abuse of dominance as well as merger control. It also advises undertakings on antitrust issues.

Patrik graduated from the University of Fribourg with a major in Law in 1988. Subsequently, he wrote his PhD thesis while working as a research and teaching assistant at the Chair of Public and Public International Law, University of Fribourg. He received a doctor's degree in 1991. He was admitted to the bar in Zurich in 1994. He worked with Homburger in Zurich from 1994-1996 and joined the Secretariat of the Swiss Competition Commission as a Vice-Director in 1997. Until 2009 Patrik headed the Infrastructure Markets Division at the Secretariat and since then the Product Markets Division.

Patrik has published a wide range of articles on competition law and is co-author of a leading students handbook for competition law.

From 2002 until 2008, Patrik was lecturer and since 2008 he is Professor for Swiss and European Competition Law at the University of Bern.

Blanca RODRIGUEZ GALINDO

European Commission

DG Competition

Blanca Rodriguez is currently Head of Unit responsible for International Relations in the Directorate General (DG) of Competition of the European Commission.

She has represented the Commission in numerous Conferences and International seminars and has written and lectured on legal topics including antitrust and control of subsidies (State Aid).

Blanca started her professional career in the Directorate General of Competition as an antitrust enforcer and prior to her current job, worked in other departments of the European Commission. She was a member of its Legal Service for 7 years and represented the European Commission in litigation cases before the European Court of Justice. She was also advisor on Competition and Legal matters to President Jacques Santer (1995-1999) and to Commissioner Mario Monti on State Aid matters (2000-2001). More recently she was in charge of Control of State aid to banks and other credit institutions and in charge of the revision of the Commission guidelines for regional aid. From 2002 to 2007 and again since September 2013, Blanca is in charge of International Relations in DG Competition. Among other tasks she has advised the authorities of the People's Republic of China in the process of adoption of the Chinese Antimonopoly Law and negotiated bilateral cooperation agreements with countries such as Canada, Korea and Switzerland.

Blanca graduated in Law for the University of Barcelona (Spain) and has a Diploma of Advanced European Studies (Law) by the College of Europe, Bruges (Belgium). She was Emil Noel Fellow at Harvard Law School Harvard University (2001-2002).

Hendrik BOURGEOIS

Hendrik Bourgeois is General Counsel Europe and Vice President European Affairs at GE (General Electric Company). His most recent prior positions at GE include General Counsel

EMEA, Senior Counsel Competition, Regulation and Government Relations for Europe, and European Competition Counsel, serving all GE businesses on a wide variety of competition law matters involving mergers and acquisitions, distribution, R&D activities and compliance issues.

Prior to this, Hendrik headed the legal department of one of GE's business divisions, GE Industrial Systems, as European General Counsel.

Prior to joining GE, Hendrik Bourgeois was an attorney with Jones Day, based in Washington DC and Brussels, where he practiced mainly US antitrust and European competition law.

Hendrik obtained his law degree at the Rijksuniversiteit Gent, Belgium and has an LL.M degree from Harvard Law School. He is a former member of the Brussels Bar and current member of the New York Bar. Hendrik is a frequent speaker and writer on competition law issues.

He was Chairman of AmCham EU between October 2011 and October 2014. He is a regular writer and speaker on issues of European Affairs, trade and competition law.

Ioannis LIANOS

Ioannis Lianos is Professor in Global Competition law and Public Policy at the Faculty of Laws, University College London (UCL) and the founding director of the Centre for Law, Economics and Society (also at UCL). His publications include *Damages Claims for the Infringement of Competition Law* (Oxford University Press, 2015), *Competition and the State* (Stanford University Press, 2014), the two-volumes *Handbook in EU Competition Law* (Edward Elgar, 2013), *Competition Law and Development* (Stanford University Press, 2013), *The Global Limits of Competition Law* (Stanford University Press, 2012), *The EU After the Treaty of Lisbon* (Cambridge Univ. Press, 2012), *The Regulation of Trade in Services in the EU and the WTO* (Cambridge University Press, 2012) as well as a number of book chapters and law journal articles. His forthcoming publications include *Competition Law* (Hart Pub., 2015), *Brands, Competition Law and IP* (Cambridge University Press, 2015) and a monograph on *Economic Evidence in Competition Law* (Oxford University Press, 2016).

Lianos is a Laureat of the French Academie des Sciences Morales et Politiques (Emile Girardeau prize, 2005 for his monograph on the Transformation of Competition Law, Bruylant/Sakoulas, in French) and was awarded the Philip Leverhulme prize in 2012 for his work on the economic evidence and the interaction of law with economics. His recent research is exploring the emergence of forensic economics and their impact in the production of economic knowledge and legal norms. He is currently on sabbatical leave at WZB ad Humboldt University in Berlin under an Alexander von Humboldt Fellowship.

Christophe KIENER

Christophe Kiener currently works as Deputy Head of Unit for WTO and OECD matters in the Directorate-General for Trade of the European Commission. He has worked on trade for most of his career, both in the WTO and free trade agreements. In this context he has hands-on negotiating experience on issues such as industrial tariffs, services and investment, agriculture and export credit. Prior to his current post Christophe spent five years assisting the Deputy Director-General of DG Trade on free trade negotiations with Asia, Latin America and Africa. He was posted in Geneva as a delegate to the WTO from 1998 to 2001, where he notably chaired the Market Access Committee. Before joining the European Commission, he also worked for the Swiss Federal Office for Foreign Economic Affairs. He holds degrees from the Graduate Institute of International Studies in Geneva and from the College of Europe in Bruges.

2. CONTRIBUTIONS BY THE SPEAKERS

Session I: International Cooperation in the Area of Antitrust Investigations

2.1. Presentation by Rachel BRANDENBURGER

Competition Policy in International Agreements

Committee on Economic and Monetary Affairs

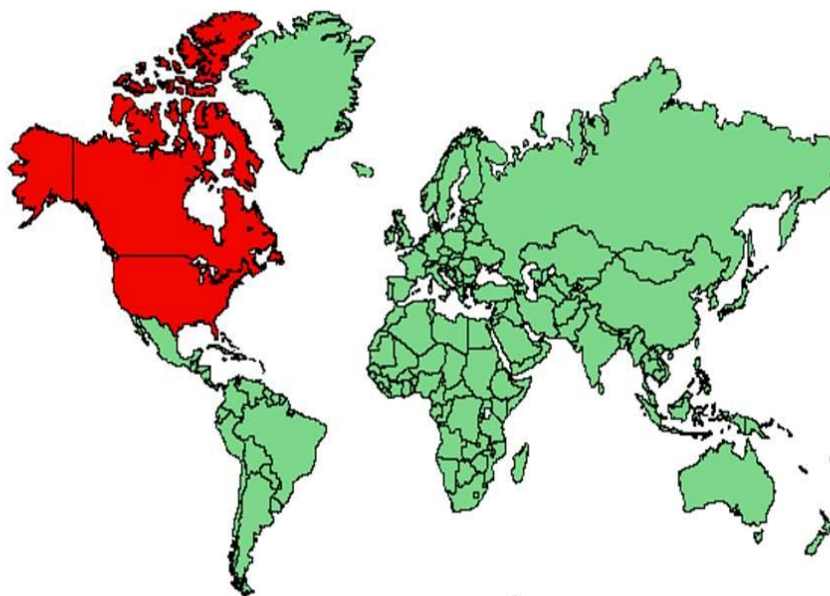
Rachel Brandenburger

Brussels, May 28, 2015

Overview

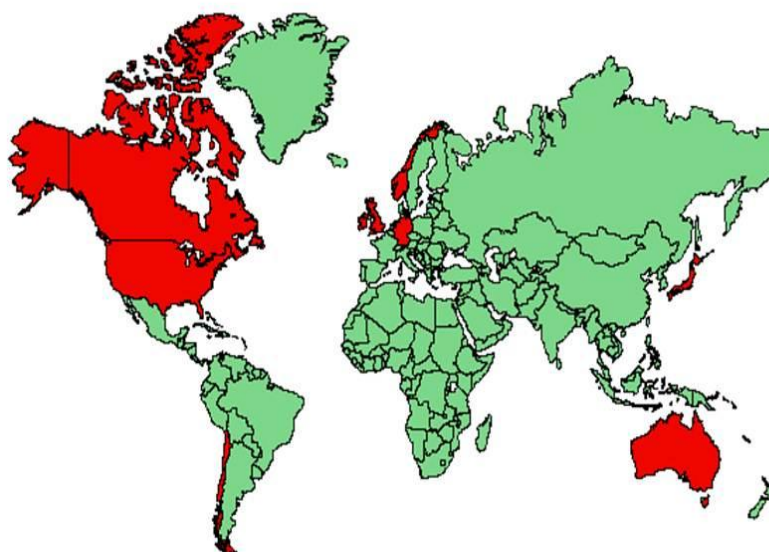
- Proliferation of competition agencies – 1900 to today
- Bilateral – US cooperation agreements/MoUs
- Bilateral – US best practices
- Multilateral - ICN and OECD
- In the future?

Proliferation of competition agencies - 1900



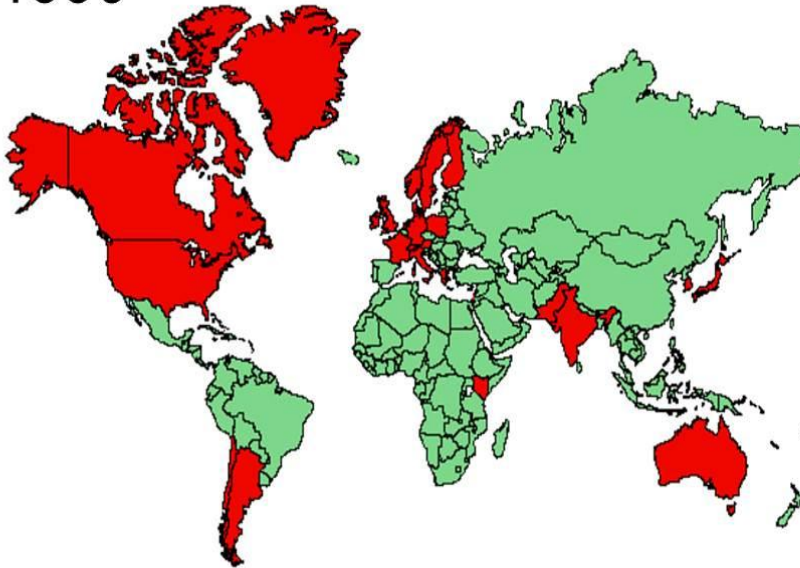
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Proliferation of competition agencies - 1960



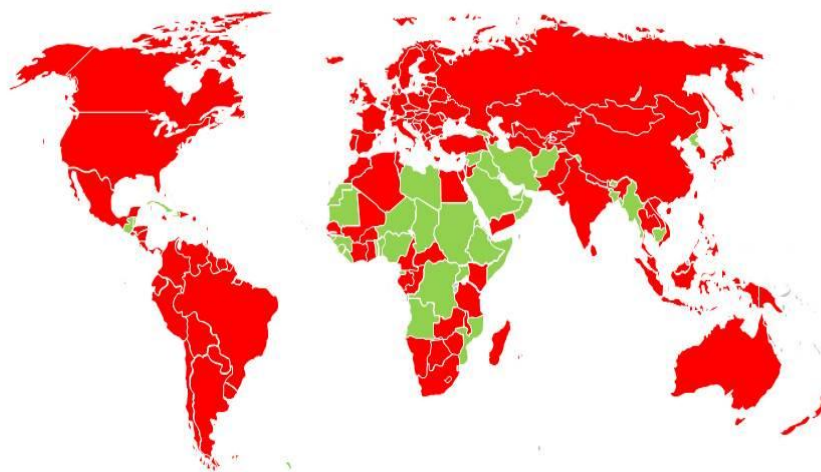
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Proliferation of competition agencies - 1990



5

Proliferation of competition agencies - today



6

Bilateral - US cooperation agreements/MoUs

- Germany – 1976
- Australia – 1982
- European Commission -1991
- Canada – 1995
- Israel – 1999
- Brazil – 1999
- Japan – 1999
- Mexico – 2000
- Russia – 2009
- Chile – 2011
- China – 2011
- India – 2012
- Colombia – 2014

7

Bilateral – US best practices

- US/EU best practices on cooperation in merger investigations – revised in 2011; prior best practices adopted in 2002
- US/Canada best practices on cooperation in merger investigations - 2014

8

Multilateral – ICN and OECD

- International Competition Network – Practical guide to international enforcement cooperation in mergers – 2015
- Organisation of Economic Cooperation and Development - Recommendation concerning international cooperation on competition investigations and proceedings – revised in 2014; prior recommendations adopted in 1995 and 2005

9

In the future?

- Across all enforcement areas – mergers, cartels, and abuse of dominance/unilateral conduct?
- Increasingly involving cooperation among multiple competition agencies?
- Within regions and other groupings – e.g. BRICS? ASEAN?
- Increased procedural as well as substantive convergence?

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2.2. Presentation by Kenta SUZUKI

European Parliament Workshop on 'Competition Policy in International Agreements'
(28/5/2015)

Competition Policy in Japan and Cooperation with the EU

Kenta SUZUKI
First Secretary (Competition Policy)
Mission of Japan to the European Union

1

Competition Policy in Japan

Anti-Monopoly Act (AMA)

- 1947 (68years old)
- The 3rd competition law in the world
(after US and Canada; EU Competition law was established in 1957)
- **PURPOSE:** ".....to promote the democratic and wholesome development of the national economy as well as to assure the interests of general consumers." (article 1)

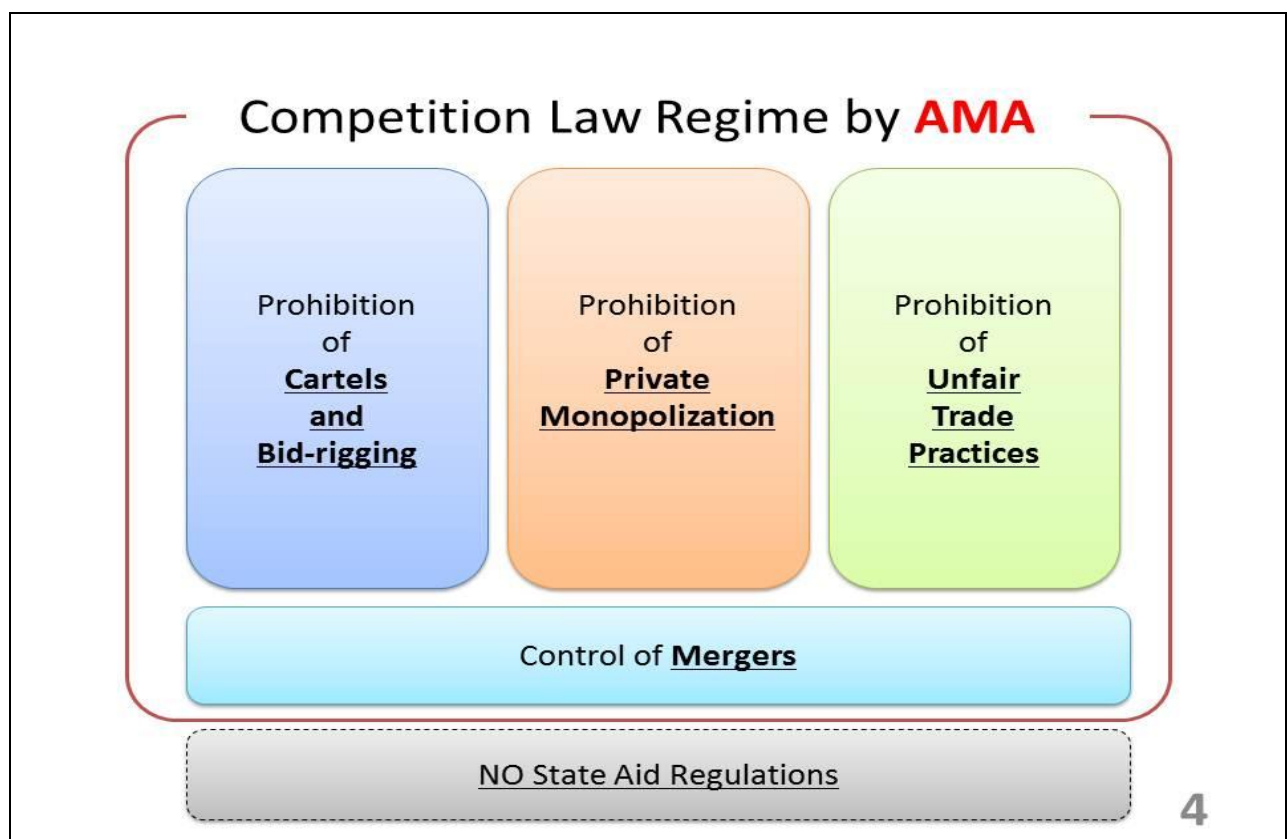
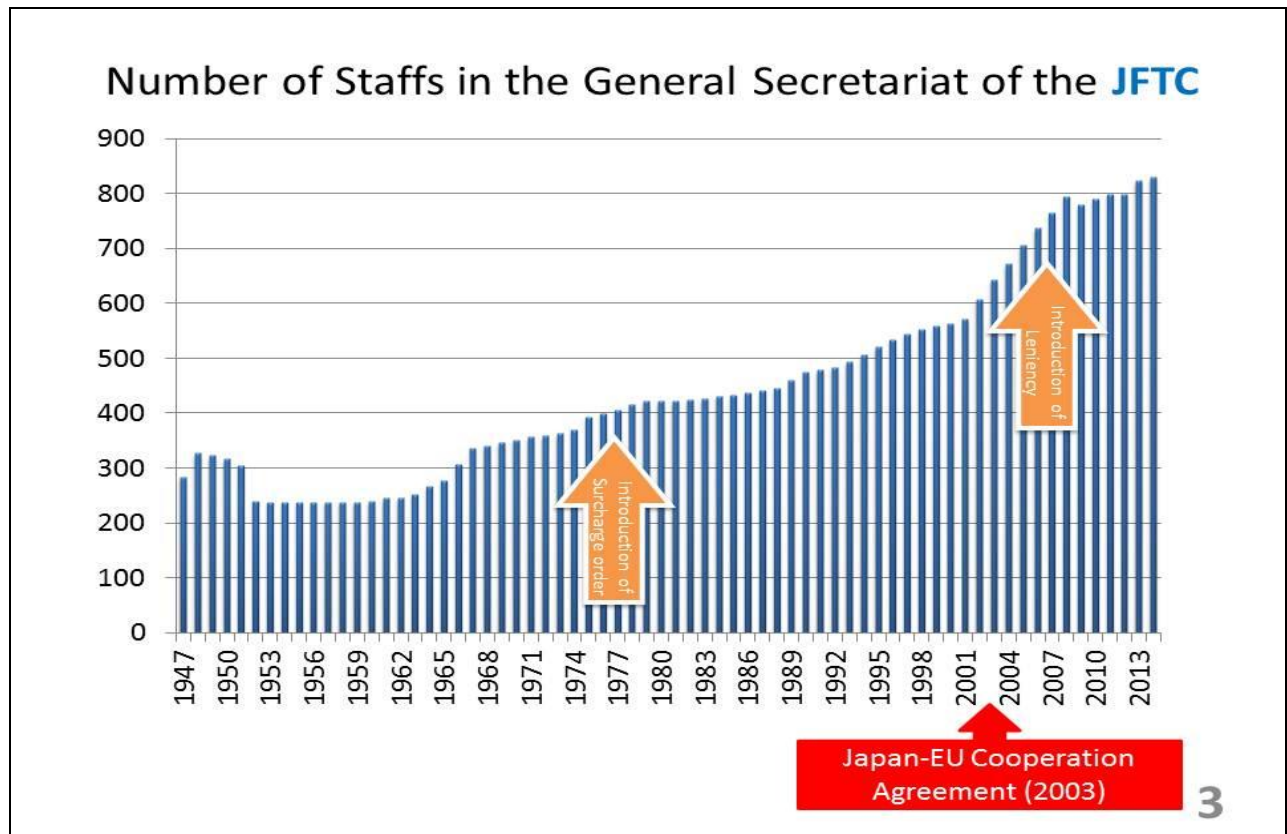


Japan Fair Trade Commission (JFTC)

- 1947 (67years old)
- 1 chairman + 4 commissioners
- about 800 staffs in the general secretariat



2



Comparison of substantive provisions: US-EU-Japan

Competition law structure			US	EU	Japan
After-the-fact regulation	Concerted practices	Horizontal restriction	Unreasonable restraint of trade (Sherman Act, Section 1)	Concerted practices (EU Treaty, Article 101)	Unreasonable restraint of trade (Article 3 (latter part), Article 8)
		Vertical restriction			Unfair trade practices (Article 19)
	Monopolization / Abuse of dominant position		Monopolization (Sherman Act, Section 2)	Abuse of dominant position (EU Treaty, Article 102)	Private monopolization (Section 3 (former part))
					Unfair trade practices (Article 19)
Ex-ante regulation	Merger regulation		Clayton Act, Section 7, Section 7A	Council Regulation (EC) No 139/2004	Chapter IV of the law (Articles 10-18)
Unique regulation			Robinson-Patman Act (Price discrimination)	State aids (EU Treaty, Article 107)	Subcontract Act

(Note) In addition to the above, the prohibition of "unfair methods competition" is stipulated in Article 5 of the Federal Trade Commission Act in the U.S.A.

5

Cooperation Between European Commission and JFTC (1)

"AGREEMENT between the European Community and the Government of Japan concerning cooperation on anti-competitive activities" (signed in July 2003)

- Notification of Enforcement Activities
- Assistance in Enforcement Activities
- Coordination of Enforcement Activities
- Request of Enforcement Activities
- Annual Bilateral Meeting
 - since 1979, "30th" in November 2013 in Tokyo

6

Cooperation Between European Commission and JFTC (2)

Other base of Cooperation;

- Trainee from the JFTC to the DG Comp
- sometimes in the past
- Competition attaché in Brussels
- since 1992, current attaché is in front of you

7

Recent news (1)

22nd EU-Japan Summit Brussels, 7 May 2014

Joint Press Statement

~ The EU and Japan Acting together for Global Peace and Prosperity ~
<excerpt>

7. We have reviewed, and are satisfied about the good progress made in, **sectoral dialogue and cooperation**. This includes the following areas:

(4) Considering the globalisation in the world economy, we welcome past cooperation in **competition** law enforcement and indicate our interest in developing initiatives to improve relations in this field further, based on the 2003 Agreement between the Government of Japan and the European Community Concerning Cooperation on Anticompetitive Activities.

8

Recent news (2)

2015 New Year Message from Chairman Sugimoto

<excerpt>

4. From an international point of view, in the midst of accelerated globalization of business activities, a significant challenge for competition authorities is to deal quickly and effectively with international cartels and international merger reviews. The JFTC will actively work for the promotion of international cooperation and convergence in competition law through bilateral talks and multilateral frameworks such as ICN, OECD and others. In addition to that, the number of cases in which competition authorities exchange information in investigation has been increasing. In line with this trend, the JFTC will be engaged in building and developing cooperation frameworks such as the bilateral antimonopoly cooperation agreements, the economic partnership agreements and the MOUs to promote case enforcement cooperation further.

9

Recent news (3)

Cooperation Arrangement between the JFTC and the ACCC (Australian Competition and Consumer Commission)

- On 29th of April, 2015, the JFTC concluded Cooperation Arrangement with the ACCC, competition authority of Australia.
- This is the first so-called “second generation” cooperation agreement for the JFTC that enables the JFTC to share confidential information without getting a waiver.

10

Thank you for your attention!

Kenta SUZUKI

First Secretary (Competition Policy)

Mission of Japan to the European Union

kenta.suzuki-3@mofa.go.jp

The Mission of Japan

Just Moved to *New Address*:

**Rue Van Maerlant / Van Maerlantstraat 1
1040 Brussels**



11/

2.3. Presentation by Patrik DUCREY



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Wettbewerbskommission WEKO
Commission de la concurrence COMCO
Commissione della concorrenza COMCO
Swiss Competition Commission COMCO

Bilateral Agreement CH-EU - Fundamental Considerations

Prof. Dr. Patrik Ducrey
Deputy Director, Secretariat COMCO
patrik.ducrey@weko.admin.ch



Overview

- History of the cooperation agreement with the EU
- Main content of the agreement
- Exchange of information and limitations of use of exchanged information
- Restrictions
- Implementation of the agreement
- Outlook



History of the Agreement CH-EU

- Preliminary exploratory talks between the then president and the EU 2006/2007
- Fact-finding report in December 2008
- Negotiating mandate of the Federal Council dating from August 2010
- Negotiation from March 2011 to April 2012
- Agreement signed on 17 May 2013
- Agreement entered into force on 1st December 2014

Bilateral Agreement CH-EU
Patrik Ducrey

3



Main content of the agreement

- Purpose/definitions (Art. I/II)
- Reciprocal notifications (Art. III)
- Coordination of enforcement activities (Art. IV)
- Negative/Positive comity (Art. V/VI)
- Exchange of information (Art. VII)
 - With consent of the parties involved
 - Without consent, upon request
- Use of information exchanged (Art. VIII-X)
- Consultation/communications (Art. XI/XII)

Bilateral Agreement CH-EU
Patrik Ducrey

4



Exchange of information (Art. VII)

- In general, authorities may discuss any information (exception in para. 6: leniency/settlement procedures)
- May transmit information with consent of undertaking which provided information
- In absence of consent, may transmit information
 - Upon request and investigating same/related conduct
 - Content of request according to VII (4) b
 - Requested authority shall determine which information
- Neither authority is required to transmit information
- No transmission of information
 - If obtained under leniency or settlement procedures (unless consent in writing)
 - If using would be prohibited under procedural rights/guarantees

Bilateral Agreement CH-EU
Patrik Ducrey

5



Use and protection (Art. VIII/IX)

- Use of informations obtained (Art. VIII)
 - Only for the purpose of enforcing competition law
 - Art. 7: only with regard to same /related conduct
 - Art. 7 IV: only for purpose defined in request
 - No use to impose sanctions on natural persons
 - Special restrictions of use required by transmitting authority
- Protection of information (Art. IX)
 - Information shall be kept confidential
 - No disclosure to third parties and authorities; exceptions are:
 - Court order for inspection
 - Disclosure to undertakings involved in proceedings (rights of defence)
 - Disclosure to courts in appeal procedures
 - Disclosure due to transparency provisions (proceedings closed)
- Information of national authorities and ESA (Art. X)

Bilateral Agreement CH-EU
Patrik Ducrey

6



Restrictions

- Does not regulate the cooperation with the competition agencies of the EU Member States
- No mutual legal assistance treaty i.e. no investigations carried out for the other competition authority
- No harmonisation of the substantive law i.e. no *acquis communautaire*
- No common institutions

Bilateral Agreement CH-EU
Patrik Ducrey

7



Implementation

- Preparation of the implementation
- Common templates for the exchange of information (Request for Information/ Transmission of Information)
- Two ways for electronic transmission of data (normal and secured)
- Possible cases for the exchange of information

Bilateral Agreement CH-EU
Patrik Ducrey

8



Outlook

- The agreement with its possibilities of cooperation and coordination strengthen the relation between the competition authorities of the EU and Switzerland
- Both authorities continue to apply their competition law autonomously (no harmonisation, no common institutions)
- For Switzerland, the agreement is an important step in formal international cooperation

Bilateral Agreement CH-EU
Patrik Ducrey

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2.4. Presentation by Blanca RODRIGUEZ GALINDO



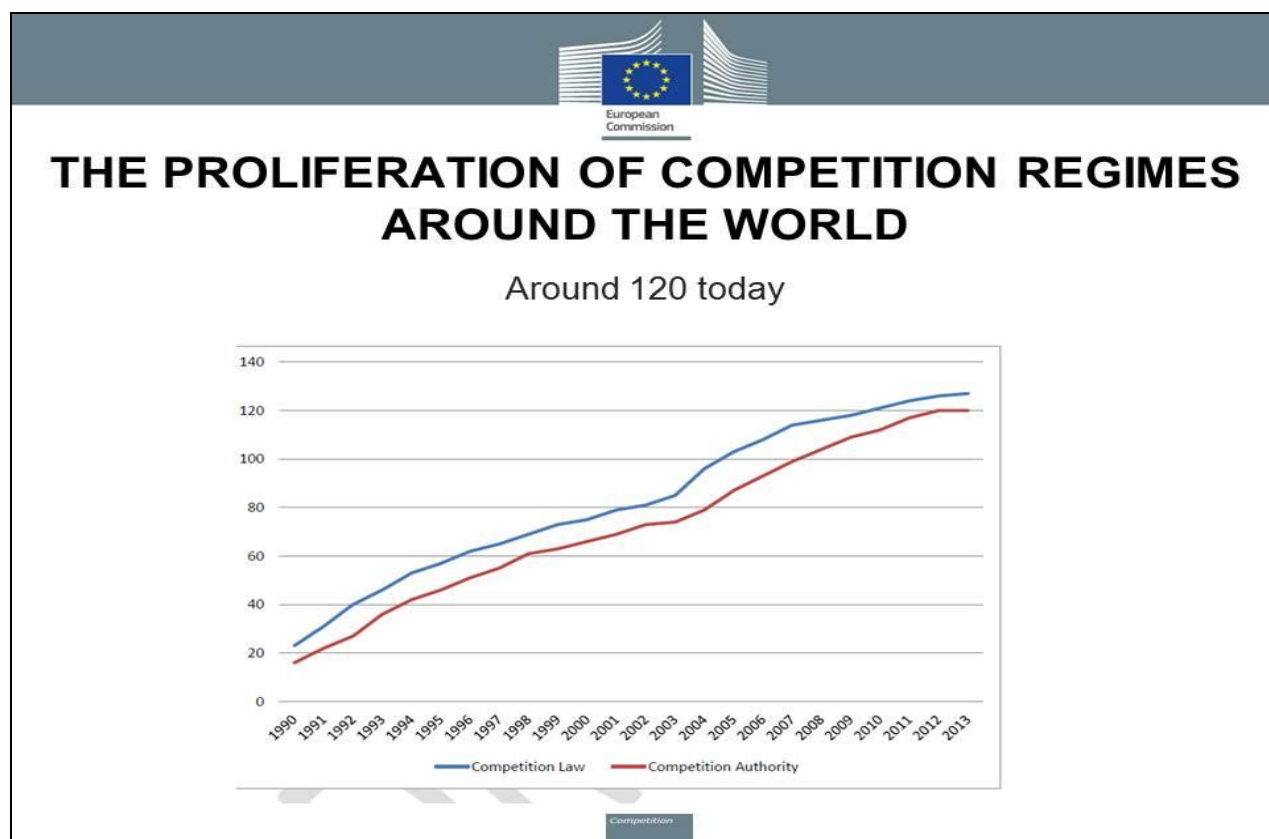
Competition Policy in International Agreements Workshop

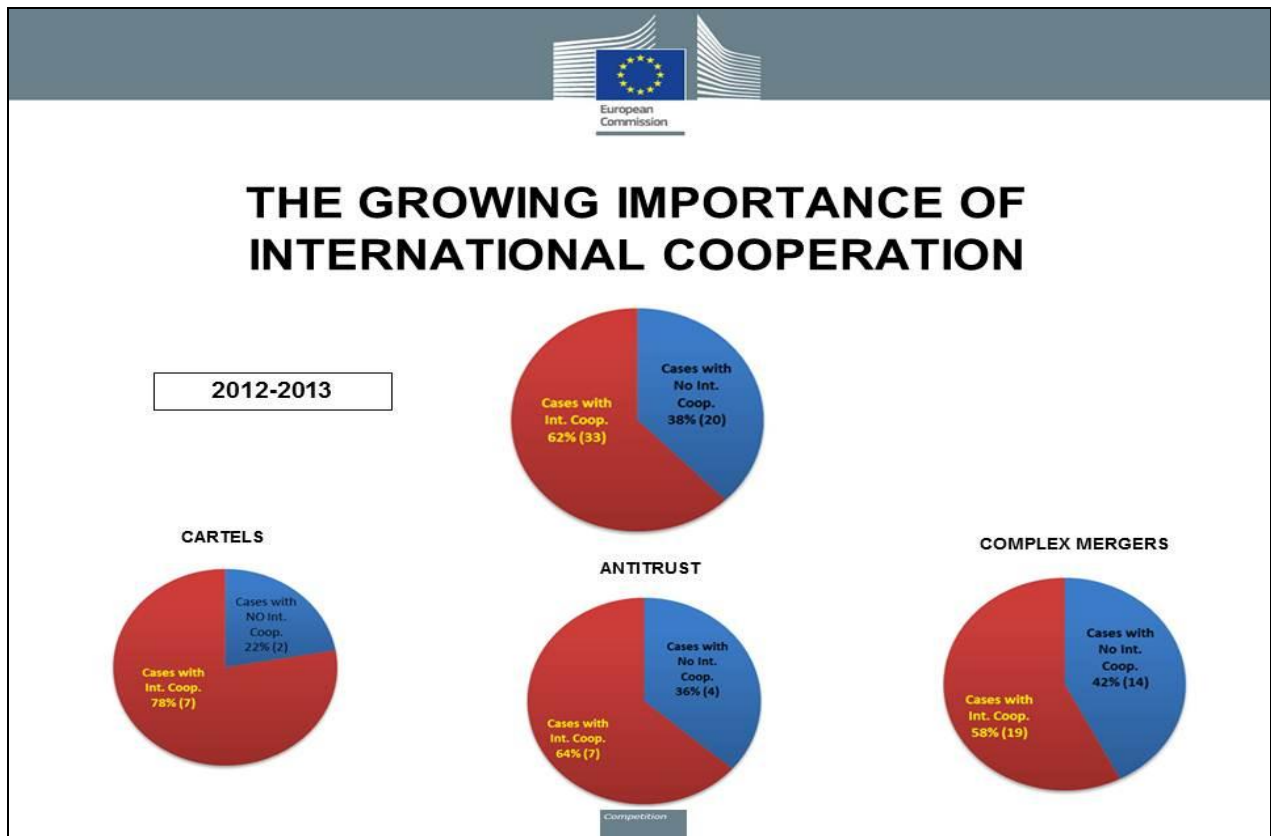
Session I – International Cooperation in the Area of Antitrust Investigations

28 May 2015
European Parliament, Brussels

Blanca Rodriguez Galindo, Head of Unit
International Relations
European Commission, Directorate General for
Competition

Competition






European Commission

THE OBJECTIVE OF INTERNATIONAL COMPETITION POLICY

- ☐ *"Promoting a competition culture in the EU and worldwide, promoting international cooperation."**
- ☐ Effective enforcement, convergent outcomes, level playing field for companies

** Mission letter from President Juncker to Commissioner Vestager*


Competition



POLICY RESPONSES

☐ **Develop bilateral relations on the basis of clear priorities**

- Intensify cooperation with trusted Competition Authorities of main trading partners
- Build up relations with emerging economies
- Competition Chapters in Free Trade Agreements
- Promote alignment in EU Neighbourhood

☐ **Engagement in multilateral fora (ICN, OECD, UNCTAD): advocacy and convergence on policy and rules**

Competition



BILATERAL – MAIN TRADING PARTNERS

☐ **Intensive cooperation on the basis of "1st Generation Cooperation Agreements":**

- US (1991), Canada (1999), Japan (2003), Korea (2010)
- Framework for policy dialogue + case cooperation

☐ **Deeper dialogue/cooperation:**

- 2nd Generation agreements (incl. exchange of confidential info)
 - EU-Switzerland (2014)
 - EU-Canada (in negotiation)

Competition



BILATERAL – BRICS

Memorandum of Understanding (MoU) between DG Comp and BRICS competition authorities

- ☐ MoUs are administrative arrangements
 - China (2004, 2012)
 - Brazil (2009)
 - Russia (2011)
 - India (2013)
 - South Africa: Case cooperation and exchange of experiences
- ☐ 1st step in cooperation – capacity building assistance to put in place legislation and organisation of competition authorities
- ☐ Progressive development of case cooperation

Competition



THE SPECIFIC EXAMPLE OF THE AGREEMENT WITH SWITZERLAND

- ☐ **The starting point:** Effective bilateral enforcement cooperation is impeded if authorities cannot exchange evidence
- ☐ **The innovative element:** Discussion and transmission of legally protected information
- ☐ **Basic Features and safeguards:**
 - Investigations concerning **same or related conduct or transaction**
 - Only evidence exchanged **which is already in the file**
 - Authorities have **discretion** in the decision to transmit information
 - **No exchange of leniency/settlement** information without the consent of the source
 - Protection of **rights of defence and sensitive information**
 - **Personal Data Protection**

Competition



ACTION AT MULTILATERAL LEVEL

- ❑ **OECD:** Recommendation concerning International Co-operation on Competition Investigations and Proceedings (2014)
- ❑ **ICN:** projects to facilitate convergence and multilateral cooperation in practice by agencies:
 - Anticartel Enforcement Manual and Model Leniency Waiver Template
 - Recommended Practices on Predatory Pricing
 - Practical Guide to International Enforcement cooperation in Mergers
 - Guidance on Investigative Process

Competition



TRENDS – MULTILATERALISM IN COOPERATION

- ❑ **Cartels**
 - Increased multilateralism: In 2010-11 average of 4 agencies involved in each cooperation case.
- ❑ **Mergers**
 - Multiple notifications required in most transnational mergers. Agencies tend to increasingly co-operate.
 - Example: Thermo Fischer / Life Technologies case (7 non-EU agencies); Holcim cement merger (8 non-EU agencies).

Competition



http://ec.europa.eu/competition/international/overview/index_en.html

Thank you for your attention!

Competition

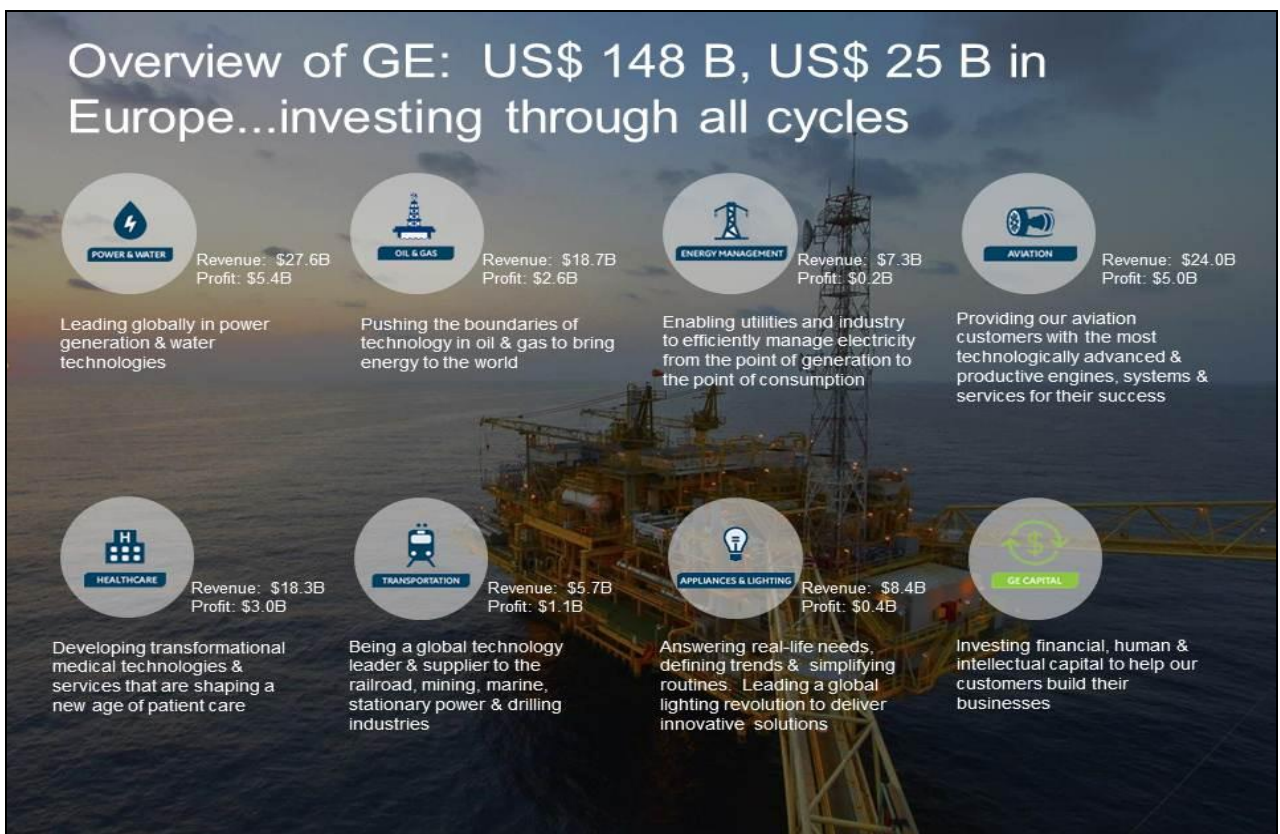
Session II: Competition Policy in TTIP

2.5. Presentation by Hendrik BOURGEOIS




Competition Policy in TTIP

Hendrik Bourgeois





AmChamEU champions Transatlantic trade & investments

- The EU is the US's biggest trade and investment partner (US's investment position in Europe is 16 times higher than in Brazil, Russia, India and China combined)
- Companies of American parentage employ about 4.1 million people in Europe
- But importance of the EU and the US in the global marketplace is being eroded – GDP growth, investment levels, employment
- Need an ambitious and comprehensive agreement
- Precedent setting agreement

Competition Policy in TTIP

- Facilitating transatlantic trade & investments
- Facilitating global trade & investments

Competition Policy in TTIP: facilitating transatlantic trade & investments

Both US and EU have among the most mature and sophisticated competition policy & enforcement regimes in the world

- No new high level rules necessary to make Transatlantic exports, imports and investments more easy and fair
- On paper, US & EU competition policy is 'colour-blind' regarding the nationality of the economic operators when applying competition law
- EU competition policy's aim is not to regulate trade with other economic partners (not – in theory – being used to promote protectionist policies)
- Similar goals, contrast Art 1 & 2 of the Law Against unfair Competition of the People's Republic of China

Differences in how similar principles are enforced

- US criminal enforcement and treble damages
- European State Aid and market integration focus
- EU formalistic approach in unilateral conduct cases
- US caution in ability to predict future competitive outcomes...procedural checks and balances
- Legal Privilege
- Compliance Programs

Competition Policy in TTIP: facilitating global trade & investments

- ✓ Goal of competition policy – promotion of consumer welfare, protecting competition and not competitors
- ✓ Identify transparency & due process obligations (predictability) – eg public decisions
- ✓ Decisions based on sound economics and factual evidence (synergies)
- ✓ Competition Advocacy and Allocation of Enforcement resources
- ✓ International Competition Network Recommended Practices (mergers, dominance, predatory pricing,...)
- ✓ Cooperation in Investigations (comity)
- ✓ State Owned Enterprises

7

Competition Policy in TTIP: Transatlantic Merger Control

- ✓ Avoiding conflicting outcomes
- ✓ Common understanding of the nature of relevant markets and a common approach on defining product and geographic markets
- ✓ Exchanging views on facts, theories of harm and complaints, possible remedies
- ✓ Shortens the learning curve, reduce the time to complete the review
- ✓ Waivers (US document intensive, EU less), Joint Meetings, Coordinate timing of review (EU frontloaded process, US back-loaded process)

8

Competition Policy in TTIP: Conclusions

- ✓ High degree of commonality and cooperation today
- ✓ Differences remain, but TTIP should not try to bridge them
- ✓ TTIP should codify joint EU/US approaches in promoting best practices vis-à-vis third countries

2.6. Presentation by Ioannis LIANOS



Competition Law and Policy in TTIP

Professor Ioannis Lianos
Faculty of laws
University College London



Competition law provisions in TTIP I

- No talk of convergence as such but one of the purposes of 1991 EU/US cooperation agreement was to “lessen the possibility or impact of differences between the Parties in the application of their competition laws”
- Possible addition of (i) consultation provisions and (ii) best practices
- General principles (X.1)
 - “(e)ffective competition enforcement contributes to making markets work better by ensuring that all companies compete on the merits”
 - Anti-competitive business practices **and** State intervention are targeted
- Not subject to the Dispute settlement (X.8)
- Legislative framework (X.2)
 - “maintain” antitrust and merger competition legislation addressing “in an effective manner”
 - Horizontal and vertical agreements between **enterprises**
 - Abuses by one or more **enterprises** of a dominant position
 - Concentrations between **enterprises** which significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position
 - Enterprises – Economic activity? (undertakings)

2

Competition law provisions in TTIP II

- Focus on implementation and due process (X.3)
 - An “operationally independent authority”
 - Enforcement in a “transparent and non-discriminatory manner”
 - “procedural fairness and the rights of defence” irrespective of nationality or ownership status
- Cooperation (X.5)
 - Strengthen cooperation with regard to competition policy development and the investigation of antitrust and merger cases
 - Exchange information subject to limitations “imposed by their respective legislations” concerning professional and business secrecy and ensuring the protection of business secrets and other confidential information
 - In accordance with existing EU-US Cooperation Agreements
 - **1991 EU/US Cooperation Agreement** (notification of cases, bilateral cooperation and coordination of the action of competition authorities, traditional comity procedure, a positive comity procedure)
 - **1998 EU/US Positive Comity Agreement** (one party may request the other to remedy anti-competitive behaviour originating in its jurisdiction but affecting the requesting party as well)
 - **Administrative Arrangements on Attendance (AAA)** applying the 1991 Agreement (reciprocal attendance at certain stages of the procedures in individual cases)
 - **2011 EU/US Best Practices on Cooperation in Merger Investigations** (coordination on timing issues, exchange of information/collection and evaluation of evidence, joint EU/US interviews of the companies concerned, key points for direct contacts between enforcers, cooperation in the remedial process)

3

Competition law provisions in TTIP III

- State enterprises [SOE] and Enterprises Granted Special or Exclusive Rights or Privileges [EGSERP] (X.4 in the Comp. Chapter and special provisions)
 - Purpose: “joint platform of rules which could be used in other agreements/forums (sic) to address concerns raised by the development of state capitalism”
 - Focus is not public ownership but “undue competitive advantage”
 - Personal Scope: every “**Person**” that has been delegated regulatory, administrative or other governmental authority by a Party at any level of government [Person>Undertaking? Reference to “commercial activity”]
 - *NB:* Monopoly does not include an entity that has been granted an exclusive IP right solely by reason of such grant
 - *NB:* The granting of a license to a limited number of enterprises in allocating a scarce resource through objective, proportional and non-discriminatory criteria is not in and of itself a special right
 - Incorporates Art. XVII(1)-(3) GATT 1994, Art. VIII GATS (1), (2), (5)
 - Disciplines:
 - Non Discriminatory Treatment means National Treatment or MFN, whichever is better
 - Commercial considerations
 - Transparency and corporate governance
 - A mixed positive/negative list approach
 - “(N)othing in this Chapter prevents the Parties from establishing or maintaining state enterprises or designating or maintaining monopolies or from granting enterprises special or exclusive rights or privileges”
 - Price discrimination is acceptable when price differences are based on “normal commercial considerations”, such as supply and demand conditions

4

Competition law provisions in TTIP IV

- Special provisions on subsidies
 - Definition: Reference to Article 1.1. of the WTO Agreement on Subsidies and Countervailing Measures (ASCM)
 - Only subject to this Chapter if it is “specific” in accordance with Art. 2(1) and (2) ASCM
 - Positive list
 - Disciplines:
 - Transparency: report every two years
 - Consultations on specific subsidies
 - Subject to Dispute Settlement (with the exception of X.4 on consultations)

5

Convergence between EU and US competition law? SCOPE

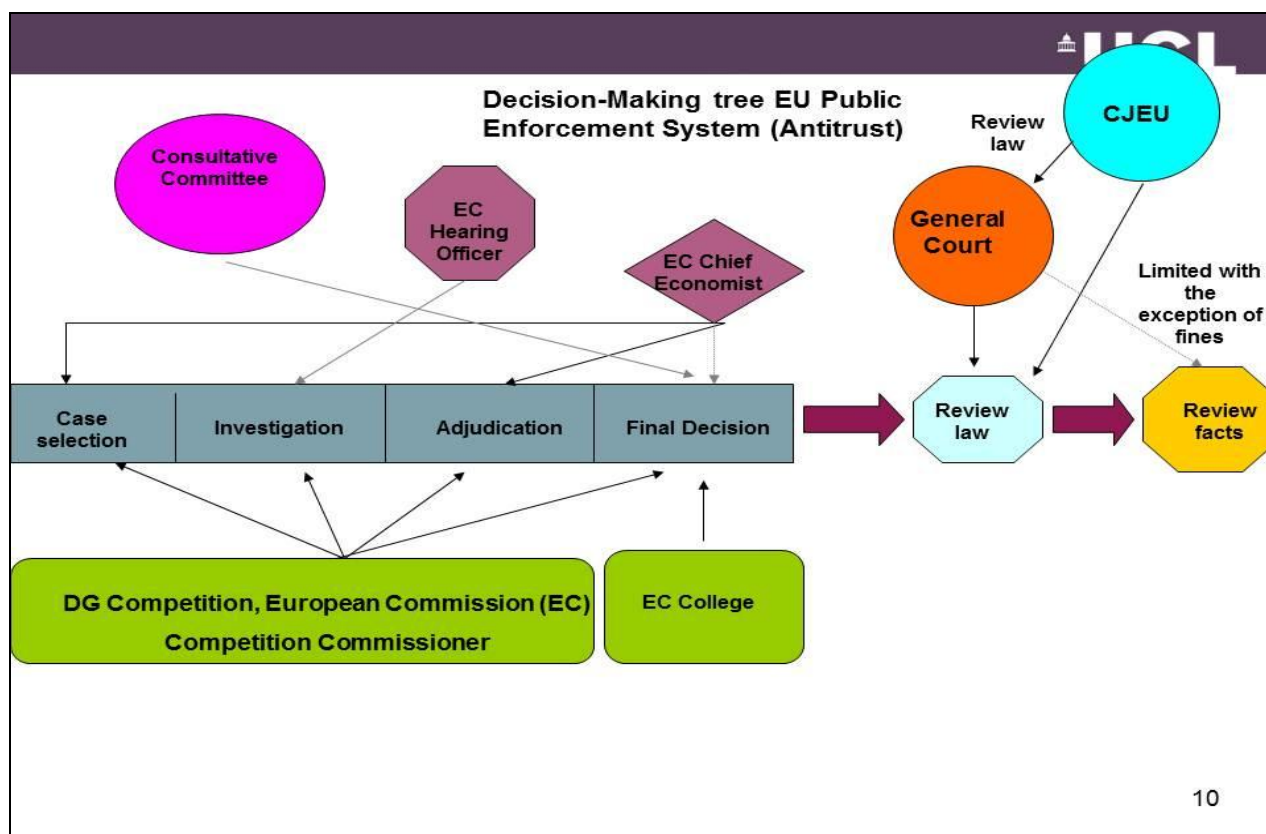
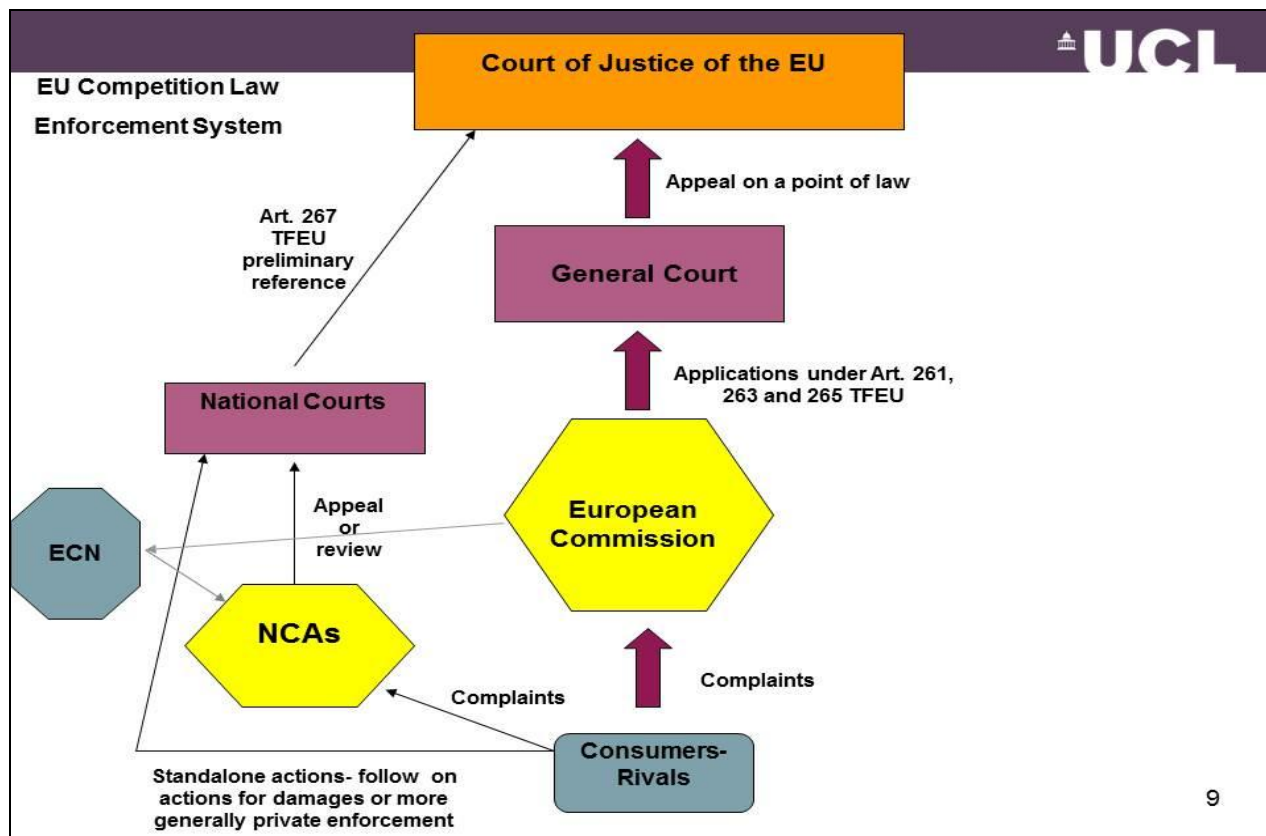
EU	US
<p>EU Treaty does not exclude any economic activity from the scope of competition law, although there are Treaty provisions establishing a specific competition law regime for the agricultural sector</p> <p>Economic activity: offering products on a market</p> <p>Does not constitute an economic activity</p> <ul style="list-style-type: none"> • Regulatory function • Solidarity function • The employment exception <p>Public services [Protocol no. 26, Art. 36 Charter, Article 14 TFEU, Art. 106(2) TFEU]</p> <p>The exercise of governmental authority is excluded from TTIP EU Mandate but SGEI and SGI provided commercially or in competition with private operators may be included</p> <p>Undertakings</p> <p>State restrictions</p> <ul style="list-style-type: none"> • No proper state action doctrine in the EU • Possibility of applying art. 4(3) TEU with Art. 101, 102 and 106 TFEU to State action (including regulation) • State subsidies are dealt by competition law 	<p>US law recognized exceptions to the principle of free competition</p> <ol style="list-style-type: none"> (1) statutory immunities or exemptions from some or all of the antitrust laws (e.g. statutory and non statutory labour exemption) (2) limitations on the full application of antitrust law as a consequence of continued economic regulation of certain industries; (3) an overly broad interpretation of the state action doctrine that permits private anticompetitive conduct not authorized or supervised by state regulatory programs" <p>Persons</p> <ul style="list-style-type: none"> • State action doctrine • Federal antitrust immunizes state and local regulation if the challenged activity is authorized by a clearly articulated state regulatory policy and any private conduct authorized by the state policy is actively supervised by an appropriate government agency • State Subsidies are not dealt by competition law

Convergence EU and US competition law? SUBSTANCE (some noticeable differences)

EU	US
<ul style="list-style-type: none"> • Market integration as a goal of competition law • Certain unconditional refusals to deal may be anticompetitive • Exploitative as well as exclusionary abuses are covered (e.g. excessive pricing/royalties) • Administrative fines/No criminal sanctions at the EU level/simple damages • Public interest provisions in merger control (some European jurisdictions) 	<ul style="list-style-type: none"> • No market integration objective • Per se/rule of reason • Prohibition of monopolization/attempted monopolization (but rare) [not just abuse] • Unconditional refusals to deal are not anticompetitive • Only exclusionary unilateral practices may be covered (not exploitative) • Criminal sanctions and (treble) damages
<p>IP and Competition Law interaction The Eli Lilly and Philip Morris cases Fair and equitable treatment clause in Investment protection Treaties Direct and indirect expropriation from (e.g.)</p> <ul style="list-style-type: none"> • court rulings that have the effect of revoking patents or other IP rights • royalty determinations in FRAND cases <p>State to State dispute settlement or ISDS?</p> <p>CETA Art. X.11(6): For greater certainty, the revocation, limitation or creation of intellectual property rights to the extent that these measures are consistent with TRIPS and Chapter X (Intellectual Property) of this Agreement, do not constitute expropriation. Moreover, a determination that these actions are inconsistent with the TRIPS Agreement or Chapter X (Intellectual Property) of this Agreement does not establish that there has been an expropriation</p>	

Convergence between EU and US competition law? PROCESS

EU	US
<p>EU enforcement structure: the integrated administrative agency model and private enforcement</p> <p>→ Compatibility with “fairness” principles;</p> <p>→ The role of the EC/EU general principles of law: “EU’s own” human rights’ protection standards...</p> <p>→ ...and the increasing importance of the European Convention on Human Rights</p> <p>→ The rule of law as a “cluster” of objective principles : the reach of fundamental rights type guarantees in the commercial context/ the notion of “rights of the defence”</p> <p>→ proportionality of public actions and sanctions</p> <p>→ Legal professional privilege</p>	<p>US enforcement structure:</p> <p>DOJ: bifurcated judicial model Executive branch: AAG civil and criminal competition advocacy lacuna on trade</p> <p>FTC: integrated agency model, but... 5 Commissioners unfair methods of competition/“unfair or deceptive acts or practices” competition advocacy</p> <p>State AGs: elected Coordination: networked enforcement Attorney-client privilege and attorney work-product doctrine</p>
	8



2.7. Presentation by Blanca RODRIGUEZ GALINDO



**Competition Policy in International Agreements
Workshop
Session II - Competition Policy in TTIP**

**28 May 2015
European Parliament, Brussels**

Blanca Rodriguez Galindo, Head of Unit
International Relations
European Commission, Directorate General for
Competition

Competition



Overview and overall objectives

- ☐ Trade and investment liberalisation should not be circumvented through anti-competitive behaviour by companies and governments
- ☐ Need for comprehensive competition provisions in TTIP and other FTAs covering:
 - ▶ Antitrust and Mergers
 - ▶ Subsidies
 - ▶ State-owned enterprises and public services

Competition



Antitrust and Mergers

- ❑ **Antitrust and Mergers** ⇒ including commitments to maintain an active enforcement of competition laws and operationally independent authority; adherence to principles on non-discrimination, transparency and procedural fairness.
- ❑ **Cooperation** ⇒ in accordance with existing EU-USA Cooperation Agreements: no exchange of confidential information.
- ❑ **Public Services** ⇒ Treatment of public services under relevant EU rules are safeguarded (inclusion of provision based on article 106 TFEU).

Competition



Subsidies

- ❑ Subsidies can nullify benefit of decrease in custom tariffs in TTIP
- ❑ TTIP to **extend WTO obligations**: (i) consultation and transparency mechanisms extended to services (ii) information on subsidies per recipient (iii) discussion on most distortive forms of subsidies.
- ❑ **Transparency** as the basis for effective discipline on subsidies.
- ❑ **Consultation** to solve trade irritants before they turn into disputes.
- ❑ **Discussion on prohibition** of aid to ailing firms without restructuring plan
- ❑ Commitments not going beyond requirements under EU State aid rules.
- ❑ Treatment of public services under relevant EU rules are safeguarded

Competition



TTIP Competition factsheet and texts:

<http://trade.ec.europa.eu/doclib/press/index.cfm?id=1230#rules>

Thank you for your attention!

Competition

3. SUMMARY OF THE WORKSHOP DISCUSSION

Markus FERBER (MEP, EPP) opened the workshop with a brief overview on the existing six legally binding cooperation agreements¹ the European Union has concluded over the past years as well as listing the four Memoranda of Understanding (MoU) between competition authorities² which are currently in place. He emphasized the importance of international cooperation given the different rules and principles in competition policy in different countries.

The **first session** of the workshop on '*International Cooperation in Antitrust Enforcement*' began with an introductory overview on the development of competition law and competition policy around the world by Rachel BRANDENBURGER in her personal capacity. Besides bilateral cooperation agreements, the presentation drew the attention also to multilateral cooperation in the International Competition Network (ICN), where at the end of April 2015 a practical guide on international enforcement cooperation in mergers had been adopted³. Furthermore, the Organisation of Economic Cooperation and Development (OECD) is also contributing to international cooperation in competition policy and enforcement as evidenced by for instance the '*Recommendation concerning international cooperation on competition investigations and proceedings*'⁴, that was revised in 2014⁵.

The cooperation between the EU and Japan was explained by Kenta SUZUKI who gave an overview on the agreement that has been in force for more than ten years. The advantages for antitrust enforcement in practice included notifications, assistance and coordination of enforcement activities as well as the possibility to request such activities. In April 2015, Japan concluded a cooperation agreement with Australia⁶ that enables the Japan Fair Trade Commission (JFTC) to share confidential information with the Australian Competition and Consumer Commission (ACCC).

An agreement of a similar character exists since 2014 between the EU and Switzerland. This *second generation agreement* entered into force on 1 December 2014 and was presented by Patrik DUCREY. The cornerstone of the text is that competition authorities may, with certain exceptions, discuss any information and may also transmit information, under certain conditions, also without consent of the respective companies. However, sharing any information obtained under a leniency or settlement procedure, or the use of information prohibited under procedural rights or guarantees is not allowed. Patrik DUCREY also explained the details of use and protection of the data as well as the restrictions to cooperate.

Blanca RODRIGUEZ GALINDO concluded this presentation session by putting bilateral cooperation into the context of trade with the EU's main partners as well as with competition authorities of Brazil, Russia India and China (BRICs). She also emphasized the importance of the ICN and OECD work at multilateral level and how enforcement

¹ EU - United States (1995, 1999), [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:21995A0427\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:21995A0427(01)&from=EN); EU - Canada (1999), http://ec.europa.eu/competition/international/bilateral/canada_en.pdf; EU - Japan (2003), [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22003A0722\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22003A0722(01)&from=EN); EU - Republic of Korea (2009) [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22009A0804\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22009A0804(01)&from=EN); and EU - Switzerland (2014), [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A1203\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A1203(01)&from=EN).

² Russia (1997), http://ec.europa.eu/competition/international/bilateral/mou_russia_en.pdf; Brazil (2009), http://ec.europa.eu/competition/international/bilateral/brazil_mou_en.pdf; China (2012) and http://ec.europa.eu/competition/international/bilateral/mou_china_en.pdf; India (2013) http://ec.europa.eu/competition/international/bilateral/india_agreement.pdf.

³ <http://www.internationalcompetitionnetwork.org/uploads/library/doc1031.pdf>.

⁴ <http://www.oecd.org/competition/international-coop-competition-2014-recommendation.htm>.

⁵ See the full text <http://www.oecd.org/daf/competition/2014-rec-internat-coop-competition.pdf>.

⁶ http://www.jftc.go.jp/en/pressreleases/yearly-2015/April/150430.files/150430_2.pdf.

cooperation was increasingly multijurisdictional. For example, in the field of cartels on average four competition agencies were involved in every case.

Markus FERBER initiated the discussion by pointing at the many commonalities that had been put forward by the different experts and consequently asked about the chances of developing some kind of worldwide applicable principles in competition law. Experts answered that the attempts of the ICN and OECD could be seen as first movements in this direction. On the contrary, Andreas SCHWAB (MEP, EPP) took a look at the still existing number of cases in which competition authorities of different jurisdictions came to different results. He pointed out that this could possibly lead to a risk that cases could be politically exploited and lead to confrontations between the western world and other countries. The experts argued that the level of cooperation between competition authorities was not a political one and that in practical work authorities had more common views than differences.

The **second session** focused on '*Competition Policy in TTIP*' and was started by Hendrik BOURGEOIS who began by drawing the attention to the importance of the EU-US trade relationship. This was followed by an assessment arguing that EU and US competition regimes are among the most mature and sophisticated in the world and a brief overview on the differences in how similar principles are currently enforced. He also looked at merger control and concluded that the competition chapter in TTIP should not try to bridge remaining differences but codify joint EU/US approaches especially, with a view to third countries.

Ioannis LIANOS first explained in detail the competition law provisions in TTIP and secondly analysed the existing convergence between EU and US competition law. He provided graphic overviews of the respective enforcement structures as well as the decision making process in antitrust.

Blanca RODRIGUEZ GALINDO and Christophe KIENER gave an overview of EU objectives by stating that trade and investment liberalisation should not be circumvented by anti-competitive behaviour and that TTIP as well as other free trade agreements (FTAs) therefore needed comprehensive competition provisions. However, bilateral cooperation will take place on the basis of the existing EU-US cooperation agreement. TTIP will not add any new features; e.g. there will be no possibility for an exchange of confidential information in the area of antitrust or mergers. As regards subsidies, the aim is to achieve transparency as a basis for effective discipline. In addition, disciplines about the most distortive types of aid, such as the prohibition of aid to ailing firms without a restructuring plan should be discussed.

So far eight TTIP rounds of negotiations have taken place, during which both sides exchanged textual proposals⁷. Currently both sides try to bridge the differences.

Markus FERBER led this session's discussion, pointing at the still existing different principles when enforcing antitrust law, for example the possibility of criminal sanctions against company staff in case of a cartel. Blanca RODRIGUEZ GALINDO confirmed that specific rules on both sides will prevail, however she emphasized that differences of this kind were not really relevant for trade. Christophe KIENER added that it was not the idea of TTIP to harmonise or merge the two legal systems. Hendrik BOURGEOIS focused on the purpose to foster investments and procedural fairness in order to make sure that the decision taken is considering the existing differences.

⁷ On Competition (i.e. antitrust and mergers), http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153029.pdf; on State owned enterprises http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153030.pdf and on Subsidies http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153031.pdf.

A question from the audience on the a specific clause in the Fourth Railway Package regarding market access for US companies via public tendering led to the statement that a clear distinction has to be drawn between competition policy and public procurement rules which can also can affect local market structure. On a further question on a competition chapter in the on-going FTA negotiations with Japan, Christophe KIENER replied that even though the agreement with Japan was not on trade and investment, the importance given to the competition chapter by the EU was equally high as in TTIP. Markus FERBER closed the discussion by pointing at the TTIP negotiations taking place in the midst of various ongoing trade negotiations between the US, the EU and countries in the Asian/Pacific region.

4. BACKGROUND

The rules and principles in competition policy differ between countries all over the world. To ensure effective competition on the market, the EU has negotiated several cooperation agreements and memoranda of understanding (MoU) with its most important trade partners (see lists below). The currently negotiated Transatlantic Trade and Investment Partnership (TTIP) also contains a chapter on competition policy.

Session I: International Cooperation in the Area of Antitrust Investigations

The two most frequently used instruments for the EU to cooperate with other countries are binding (bilateral) agreements or MoUs. By signing such an agreement both sides express their intention to follow the commonly agreed line in the process of their further relationship.

The lists below provide an overview on the existing tools of cooperation, namely the agreements and MoUs signed by the EU in chronological order. The most recent agreement on competition law has been concluded with Switzerland and entered into force on 1 December 2014. This agreement allows for the first time an exchange of data between competition authorities without a waiver and is therefore qualified as '**second generation agreement**'. Outside the EU, a similar second generation agreement was concluded in April 2015 between Australia and Japan.

Table 1: Cooperation agreements concluded by the EU

Country	Agreement	Year
United States	Agreement between the Government of the United States of America and the Commission of the European Communities regarding the application of their competition laws ⁸	1995
	Agreement between the European Communities and the Government of the United States of America on the application of positive comity principles in the enforcement of their competition laws ⁹	1998
Canada	Agreement between the European Communities and the Government of Canada regarding the application of their competition laws ¹⁰	1999
Japan	Agreement between the European Community and the Government of Japan concerning cooperation on anti-competitive activities ¹¹	2003
Republic of Korea	Agreement between the EU and the Republic of Korea concerning cooperation on anti-competitive activities ¹²	2009
Switzerland	Agreement between the European Union and the Swiss Confederation concerning cooperation on the application of their competition laws ¹³	2014

⁸ [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:21995A0427\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:21995A0427(01)&from=EN).

⁹ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31998D0386&from=EN>.

¹⁰ http://ec.europa.eu/competition/international/bilateral/canada_en.pdf.

¹¹ [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22003A0722\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22003A0722(01)&from=EN).

¹² [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22009A0804\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22009A0804(01)&from=EN).

¹³ [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A1203\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A1203(01)&from=EN).

Table 2: Most recent international cooperation agreement in the field of competition policy

Countries	Agreement	Year
Australia/Japan	Cooperation Agreement between the fair trade commission of Japan and the Australian Competition and Consumer Protection ¹⁴	2015

Table 3: Memoranda of Understanding entered into by DG COMP

Country	MoU	Year
Russian Federation	Memorandum of Understanding on Cooperation ¹⁵	2011
Brazil	Memorandum of Understanding on Cooperation ¹⁶	2009
China	Terms of Reference of the EU-China Competition Policy Dialogue ¹⁷	2004
	Memorandum of Understanding on Cooperation ¹⁸	2012
India	Memorandum of Understanding on Cooperation ¹⁹	2013

Session II: Competition Policy in TTIP

The currently negotiated chapter on competition policy in TTIP is seen by the EU as a model for global policies to promote free and fair competition. In January 2015 the European Commission has published on its homepage initial **textual proposals** on the competition chapter in TTIP covering the following three areas:

- **Competition, i.e. Antitrust and Mergers:** The EU underlines the importance of the general principle of free and undistorted competition in their trade and investment relations²⁰.
- **State-owned Enterprises (SOEs):** The intention of this proposal is to find solutions to protect private companies from discrimination by the monopoly power of SOEs²¹.
- **Subsidies:** The EU emphasises the importance of transparency between the parties in the field of subsidies²².

The EU's position is summarised in a Commission **fact sheet**²³.

¹⁴ http://www.jftc.go.jp/en/pressreleases/yearly-2015/April/150430.files/150430_2.pdf.

¹⁵ http://ec.europa.eu/competition/international/bilateral/mou_russia_en.pdf.

¹⁶ http://ec.europa.eu/competition/international/bilateral/brazil_mou_en.pdf.

¹⁷ http://ec.europa.eu/competition/international/bilateral/china_tor_en.pdf.

¹⁸ http://ec.europa.eu/competition/international/bilateral/mou_china_en.pdf.

¹⁹ http://ec.europa.eu/competition/international/bilateral/india_agreement.pdf.

²⁰ http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153029.pdf.

²¹ http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153030.pdf.

²² http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153031.pdf.



ЕВРОПЕЙСКИ ПАРЛАМЕНТ PARLAMENTO EUROPEO EVROPSKÝ PARLAMENT EUROPA-PARLAMENTET
EUROPÄISCHES PARLAMENT EUROOPA PARLAMENT ΕΥΡΩΠΑΪΚΟ ΚΟΙΝΟΒΟΥΛΙΟ EUROPEAN PARLIAMENT
PARLEMENT EUROPÉEN PARLAMENT NA HEORPA EUROPSKI PARLAMENT PARLAMENTO EUROPEO
EIROPAS PARLaments EUROPOS PARLAMENTAS EURÓPAI PARLAMENT IL-PARLAMENT EWROPEW
EUROPEES PARLEMENT PARLAMENT EUROPEJSKI PARLAMENTO EUROPEU PARLAMENTUL EUROPEAN
EURÓPSKY PARLAMENT EVROPSKI PARLAMENT EUROOPAN PARLAMENTTI EUROPA-PARLAMENTET

WORKSHOP

POLICY DEPARTMENT
ECONOMIC AND SCIENTIFIC POLICY **A**

Competition Policy in International Agreements

DATE
28 MAY 2015



TIME
9.00 – 12.00 hrs

ROOM
**ALTIERO SPINELLI
A5E-2**

Committee on Economic and Monetary Affairs (ECON)

Participants needing a badge must register providing their name, full address, date of birth, nationality and passport or ID number by 26 May 2015 to:
irene.vernacotola@ep.europa.eu

IPOL / 30665 EN

²³ http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153019.6%20Competition%20SoE%20Subsidies%20merged.pdf.

NOTES

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

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