

Main rules EU

- Agreements
- Dominant positions
- Mergers
- Article 81
- Article 82
- Merger Regulation

Applicable to the entire European Economic
Area

Effect within the Common Market is decisive

Article 81

Prohibits:

- Agreements (in whatever form) or concerted practices between undertakings, or
- Decisions of branch associations

that may distort:

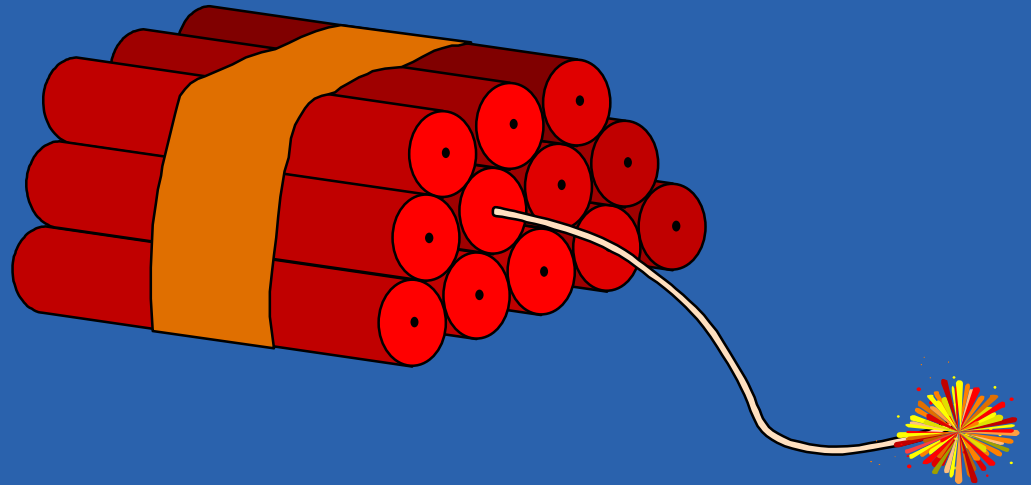
- Free trade between Member States
- Free competition within the European Union

Such agreements etc. are invalid and unenforceable!

Examples of illegal behaviour under Art. 81

Classic cartels

- Collusion between competitors on pricing, market or customer allocation, production quota, sensitive information, tenders
- Per se illegal!
- Hot



Examples of illegal behaviour under Art. 81

Other horizontal restraints:

Agreements and concerted practices between competitors or other parties at same level of supply.

Critical contract categories:

- Joint R&D/purchasing/selling
- Licensing
- Specialization
- Swaps/tolling
- Price announcements

Examples of illegal behaviour under Art. 81

Vertical restraints:

Agreements and concerted practices
between suppliers and customers,
distributors, retailers, etc.

Critical contract categories:

- Exclusive distribution
- Non-compete
- Total requirement

Examples of illegal behaviour under Art. 81

Critical clauses:

Such horizontal or vertical restraints may be illegal if they (may) restrain significantly interstate trade and competition.

Some examples:

- Export restrictions
- Obstruction of parallel trade
- Restrictions on use or on retail prices
- Tying under license agreements

Block Exemptions

For agreements concerning:

- Insurances
- Motor vehicle distribution
- Technology transfer
(Patent and/or know-how licensing)
- Specialization
- Joint R&D
- Guidelines horizontal agreements
- Vertical agreements

Vertical Agreements

Black list: not allowed:

- resale price maintenance

allowed: - price recommendation

- maximum price

- non-compete > 5 years

- > 80% requirements > 5 years

- restrictions on resale

allowed: no active sales to reserved
territory or customers

Article 82

Prohibits:

Abuse of a (collective) dominant position

Dominant position:

Power to behave in the relevant market
independently of competitors,
customers, suppliers

Critical elements for dominance

- Economic strength
- Industrial property rights/technological lead
- Large share of the relevant market (>40%)
- New competition
- Price increases

- No problem unless abuse:
 - Tying
 - Predatory pricing
 - Loyalty rebates
 - Refusal to supply
 - Price discrimination
 - Total requirement

Merger Control

EC Merger Regulation:

- Community dimension
- Notified to Commission's Merger Task Force
- No national notification required
- Test: dominant position
- Preliminary evaluation: one month
if full investigation: four more months
- Fine when not notified
- Undertakings
- Early in M&A process

Branch Organisations

- **Allowed:**
 - lobbying, new legislation, HSE, technical standards
- **Not allowed:**
 - commercially sensitive subjects
 - exchange of identifiable confidential information
- **Rules on meetings**

On-site Investigations by EC officials

- Powers
- Rules of Conduct
- Instructions for Receptionists

