



Round Table n°4

Competition agencies

Regulation of State interventions

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The U.S Federal System

- ❑ **Size and Character of the Federal and State Economies**
 - Federal government as the most important ? Europe
 - But states as important economies of their own
 - California, New York, Texas
- ❑ **At the Federal level**
 - Competition law as statutory
 - No check on Congress
- ❑ **At the State level**
 - Supremacy of US Competition law
 - But « reverse federalism »
 - No explicit State Aid prohibition


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U.S Federal Level




- ❑ **Competition law as statutory ? Treaty of Rome**


- ❑ **Thus, no legal constraint on political powers**
 - One time Aids
 - AIG
 - Automakers
 - Banks
 - Ongoing Aid – Buy America Act

- ❑ **Moral constraint?**
 - No speeches during Fall 2008 ? Kroes

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EU Competition law



- ❑ **Transfer of sovereignty**
- ❑ **Regulation of State subsidies**
 - Automatic EU supervision : notification
 - EU Commission : prevention of distortion
- ❑ **Industrial policies and competition requirements**
 - Notion of overall collective benefit (Microsoft)
 - When sufficient benefits outweigh the inherent restriction of competition
 - industrial v. competition policy
 - Transitional period
- ❑ **Concentrations : acquisitions of a failing company (Moulinex)**
- ❑ **Financial regulations : from transparency to competition**

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The European regulation authority : the European Commission

- ❑ **European common policy**
- ❑ **Subsidiarity principle**
 - Member States have first hand on monitoring and sanctioning
- ❑ **Motion by plaintiff**
- ❑ **Enquiry, judgment, and plea-bargaining**

European National competition authorities

- ❑ **Regulation 1/2003 : The European Competition Network (ECN) has been set up to facilitate close co-operation among national competition authorities**
- ❑ **Right of initiative : action raised of own motion**
- ❑ **Federal Cartel Office (FCO) in Bonn**
 - Economic democracy and political democracy combined
- ❑ **France : Autorité de la concurrence**
- ❑ **UK : Office of Fair Trading**
- ❑ **Governmental overruling**



European national regulation agencies

- ❑ **France** : Telecom regulation agency (Agence Nationale de Réglementation des Télécommunications, ANRT)
- ❑ **Germany** : Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen
- ❑ **UK** : **communications, gas, electricity, water and sewerage, railway and air traffic services**
 - Frequent out of court settlement

Judicial review by European national courts

- ❑ **FRANCE**: de facto specialization (Paris)
- ❑ **UK**: Competition Appeal Tribunal (CAT), specialized
- ❑ **GERMANY**:
 - the Düsseldorf Higher Regional Court (*Oberlandesgericht Düsseldorf*) 1st instance
 - the Federal Supreme Court (*Bundesgerichtshof*) 2nd instance.
- ❑ New EU members : training
- ❑ Experts and judges : respective roles



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U.S. State Level

- ❑ **Two sources of « Supreme » Federal law**
- ❑ **Constitution**
 - No competition provisions
 - Prohibition on « discrimination »
 - Positive vs. Negative action
 - Subsidy = positive
- ❑ **Statutory – Competition law**
 - No state aid provision
 - State action exemption – « active supervision »

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International Level, American perspective

- ❑ **Voluntary/Moral pressure**
 - ICN
- ❑ **Treaty obligations**
 - WTO

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European continental approach : open and inclusive multilateral cooperation frameworks

- **OECD Global Forum on Competition (GFC)**
 - Intergovernmental
 - presence of non-OECD member countries, particularly developing countries, including LDCs
 - For a smooth exit from the emergency measures