
Professional Certificate in Company Law in the European Union

European Union Competition Law

Abuse of Dominance – The unlawful exploitation of a dominant position in a market, prohibited under Article 102 TFEU.

Related terms: dominant position, market power, exclusionary conduct.

Explanation: A firm with sufficient market share may engage in practices such as predatory pricing, refusal to supply, or tying that hinder competition.

Example: A telecom operator refusing to interconnect with rivals, limiting their market access.

Practical application: Competition authorities assess market share, barriers to entry, and the effect on competitors.

Challenges: Distinguishing aggressive competition from abusive conduct, especially in rapidly evolving digital markets.

Article 101 TFEU – Prohibits agreements, decisions, or concerted practices that may affect trade between Member States and have as their object or effect the restriction of competition.

Related terms: cartel, vertical agreement, block exemption.

Explanation: The article targets both horizontal agreements (between competitors) and vertical agreements (between different levels of the supply chain).

Example: A price-fixing agreement among manufacturers of medical devices.

Practical application: Companies conduct compliance reviews to ensure contracts do not contain restrictive clauses.

Challenges: Determining whether an agreement has a “restrictive object” without a detailed market analysis.

Article 102 TFEU – Bars the abuse of a dominant position within the internal market.

Related terms: dominant firm, abuse, market dominance.

Explanation: The provision aims to prevent firms from exploiting their market power to the detriment of competition and consumers.

Example: A software provider conditioning the sale of a core product on the purchase of ancillary services.

Practical application: Authorities may impose fines, require divestitures, or order behavioral remedies.

Challenges: Measuring dominance in markets with network effects and multi-sided platforms.

Article 106(2) TFEU – Allows Member States to maintain public undertakings in sectors where the public interest requires it, provided that such undertakings do not affect competition contrary to the Treaty.

Related terms: public service, state aid, EU competition rules.

Explanation: This article balances the need for public services with the EU’s competition policy.

Example: A national railway operator receiving public funding while operating in competition with private firms.

Practical application: The European Commission evaluates whether the support constitutes state aid that distorts competition.

Challenges: Defining the “public interest” and ensuring transparency in funding.

Article 107(1) TFEU – Defines state aid as any advantage granted by a Member State or through state resources that may affect trade between Member States.

Related terms: state aid, distortion of competition, EU subsidies.

Explanation: Aid that gives a selective advantage is incompatible with the internal market unless exempted.

Example: A tax break exclusively for renewable energy firms in one Member State.

Practical application: Companies must notify aid schemes to the Commission for clearance.

Challenges: Differentiating between permissible aid (e.g., regional development) and illicit subsidies.

Article 108 TFEU – Requires Member States to notify the Commission of any measures they plan to adopt that could affect competition, allowing the Commission to assess compatibility with the internal market.

Related terms: notification, competition assessment, EU law.

Explanation: The article ensures that national measures are scrutinized for potential market distortions.

Example: A Member State proposing a merger of two national telecom operators.

Practical application: Early notification helps avoid later enforcement actions.

Challenges: Aligning national regulatory objectives with EU competition objectives.

Block Exemption Regulation (BER) – A set of EU rules that automatically exempts certain categories of agreements from the prohibition of Article 101 TFEU, provided they meet defined conditions.

Related terms: vertical agreements, horizontal agreements, de minimis.

Explanation: BERs simplify compliance by defining safe harbors for common business practices.

Example: The Vertical Block Exemption Regulation allowing resale price maintenance under specific thresholds.

Practical application: Companies use BERs to design contracts without needing prior clearance.

Challenges: Keeping up with periodic updates and ensuring that the specific conditions are fully met.

Cartel – A concerted practice between competitors to fix prices, limit production, allocate markets, or rig bids, constituting a serious infringement of Article 101 TFEU.

Related terms: price fixing, market allocation, bid rigging.

Explanation: Cartels undermine market competition and typically result in higher prices for consumers.

Example: A group of construction firms agreeing to submit identical bids for public projects.

Practical application: Competition authorities conduct covert investigations, often using leniency programmes.

Challenges: Detecting covert collusion, especially in markets with complex supply chains.

Commission Guidance – Non-binding documents issued by the European Commission to clarify the application of competition law provisions.

Related terms: interpretative guidance, policy papers, sector inquiries.

Explanation: Guidance assists businesses in understanding compliance obligations and helps authorities achieve consistent enforcement.

Example: The “Guidelines on the application of Article 101(3) TFEU to horizontal agreements.”

Practical application: Companies reference guidance when drafting contracts or assessing merger notifications.

Challenges: Interpreting guidance in novel market contexts, such as digital platforms.

Concentration – A merger or acquisition that results in a change of control over one or more undertakings, potentially affecting competition.

Related terms: merger, acquisition, market concentration.

Explanation: Concentrations are scrutinized under the EU Merger Regulation to prevent the creation of dominant positions.

Example: The acquisition of a leading cloud service provider by a major tech conglomerate.

Practical application: Parties must file a notification with the Commission if thresholds are met.

Challenges: Assessing the impact on competition in fast-changing technology markets.

De Minimis Regulation – Sets a turnover threshold below which agreements are presumed not to affect competition and are therefore exempt from the prohibition of Article 101 TFEU.

Related terms: threshold, small undertakings, exemption.

Explanation: The regulation aims to reduce the administrative burden on small businesses.

Example: An agreement between two SMEs with annual turnover below €10 million each.

Practical application: Companies can self-assess compliance without formal notification.

Challenges: Determining the appropriate threshold for cross-border activities.

Dominant Position – A situation where a firm has the ability to behave to an appreciable extent independently of competitors, customers, and consumers.

Related terms: market share, market power, abuse.

Explanation: Dominance is assessed on the basis of market definition, share, barriers to entry, and the firm's conduct.

Example: A search engine with a 90% share of the European market.

Practical application: Dominant firms must carefully review pricing and contractual practices.

Challenges: Measuring dominance in markets with multi-sided platforms and data-driven network effects.

EU Merger Regulation (EUMR) – Regulation (EC) No 139/2004 governing the control of concentrations that meet certain turnover thresholds, ensuring that mergers do not significantly impede effective competition.

Related terms: notification, clearance, market investigation.

Explanation: The Commission evaluates whether a merger would create or strengthen a dominant position.

Example: The proposed merger of two leading airline carriers.

Practical application: Parties must submit detailed information on market shares, efficiencies, and competitive effects.

Challenges: Assessing dynamic competition, especially in sectors with rapid innovation cycles.

Ex-ante Remedy – A preventive measure imposed by the Commission before a merger is completed, designed to preserve competition.

Related terms: behavioral remedy, structural remedy, commitments.

Explanation: Ex-ante remedies may include asset divestitures, licensing obligations, or restrictions on future conduct.

Example: A condition requiring a merged entity to provide non-discriminatory access to essential facilities.

Practical application: Companies negotiate commitments to secure clearance.

Challenges: Ensuring the remedy is proportionate and enforceable.

Ex-post Remedy – A corrective measure applied after a competition breach has occurred, often involving fines, restitution, or behavioral changes.

Related terms: penalty, injunction, compliance.

Explanation: Ex-post remedies aim to restore competition and deter future infringements.

Example: A fine imposed on a cartel for price-fixing in the automotive parts market.

Practical application: Firms may negotiate settlement agreements to mitigate penalties.

Challenges: Calculating appropriate damages and monitoring compliance over time.

Fines – Monetary penalties imposed by the Commission for infringements of competition law, calculated as a percentage of the offending firm's annual turnover.

Related terms: penalty, sanction, deterrence.

Explanation: Fines serve both punitive and deterrent functions.

Example: A €500 million fine for participation in a bid-rigging cartel.

Practical application: Companies incorporate compliance programs to avoid costly fines.

Challenges: Balancing fine severity with proportionality, especially for multinational groups.

Horizontal Agreement – An agreement between competitors operating at the same level of the supply chain, subject to strict scrutiny under Article 101 TFEU.

Related terms: collusion, price fixing, market sharing.

Explanation: Horizontal agreements are presumed to restrict competition unless justified by efficiency gains.

Example: Two manufacturers agreeing to set a minimum resale price.

Practical application: Legal teams assess the "object" test to determine prohibition.

Challenges: Distinguishing legitimate cooperation (e.g., joint research) from illegal collusion.

ICT Sector Inquiry – A Commission-led investigation into competition issues specific to the information and communication technology market.

Related terms: digital markets, platform competition, market study.

Explanation: Inquiries gather evidence on market dynamics, barriers, and potential anticompetitive practices.

Example: The "Digital Markets" investigation focusing on large online platforms.

Practical application: Findings may lead to policy proposals or enforcement actions.

Challenges: Keeping pace with rapid technological change and data-driven business models.

Infringement – A breach of EU competition law, which may be a violation of Article 101 or 102 TFEU, or an unlawful state aid.

Related terms: violation, breach, non-compliance.

Explanation: Infringements can be intentional or negligent, leading to sanctions.

Example: A firm engaging in exclusive dealing that forecloses market access.

Practical application: Companies conduct internal audits to detect and remediate infringements.

Challenges: Identifying subtle or indirect violations, especially in complex supply chains.

Joint Venture (JV) – An arrangement where two or more parties create a separate legal entity to pursue a common business purpose, potentially subject to competition scrutiny.

Related terms: co-ownership, collaborative agreement, market impact.

Explanation: JVs may be exempt under Article 101(3) if they meet the “EU test” of contributing to economic efficiency without restricting competition.

Example: Two pharmaceutical companies forming a JV to develop a new vaccine.

Practical application: Parties assess market share, barrier creation, and the ability to foreclose competitors.

Challenges: Demonstrating that the JV’s benefits outweigh its restrictive effects.

Leniency Programme – A system that offers reduced fines to cartel participants who voluntarily disclose the infringement and cooperate with authorities.

Related terms: whistle-blower, immunity, cooperation.

Explanation: The programme encourages self-reporting, aiding detection and dismantling of cartels.

Example: A firm reporting a price-fixing scheme in exchange for a reduced penalty.

Practical application: Companies establish internal reporting channels to trigger potential leniency.

Challenges: Balancing the benefit of leniency against reputational damage and potential civil liability.

Market Definition – The process of delineating the relevant product and geographic market for competition analysis.

Related terms: SSNIP test, substitutability, market boundaries.

Explanation: Accurate market definition is crucial for assessing market power and merger effects.

Example: Defining the “high-speed broadband” market in a specific Member State.

Practical application: Analysts use demand-side and supply-side tests to determine market scope.

Challenges: Accounting for rapid product innovation and cross-border consumer behavior.

Market Share – The proportion of total sales or volume that a firm holds within a defined market, a key indicator of dominance.

Related terms: concentration, HHI, dominance test.

Explanation: High market share may signal dominance but must be considered with barriers and competitive constraints.

Example: A firm with a 45% share in the European aircraft engine market.

Practical application: Companies monitor share trends to anticipate regulatory scrutiny.

Challenges: Determining share in markets with multi-sided platforms where traditional volume measures are insufficient.

Merger Control – The regulatory framework governing the notification, assessment, and clearance of concentrations under the EU Merger Regulation.

Related terms: notification, clearance, remedy.

Explanation: The process ensures that mergers do not substantially lessen competition.

Example: The review of a proposed acquisition of a leading e-commerce platform.

Practical application: Parties prepare a “Phase I” or “Phase II” packet containing market data and analysis.

Challenges: Managing confidentiality, coordinating with national competition authorities, and addressing concerns about future market dynamics.

Multi-Lateral Netting – A financial arrangement where multiple parties offset obligations, often scrutinized for potential competition concerns in the financial services sector.

Related terms: clearing house, systemic risk, competition impact.

Explanation: While designed for efficiency, such arrangements may create barriers to entry.

Example: A clearing system that only allows participation from incumbent banks.

Practical application: Regulators assess whether the netting arrangement restricts competition or harms consumers.

Challenges: Balancing systemic stability with open market access.

Non-Compete Clause – A contractual provision restricting a party’s ability to engage in competing activities for a specified period and territory.

Related terms: restriction of competition, covenant, restraint.

Explanation: Under Article 101 TFEU, non-compete clauses are permissible if they are limited in scope and proportionate to legitimate interests.

Example: An employment contract prohibiting a former employee from joining a rival for 12 months within the same region.

Practical application: Companies draft clauses that are narrowly tailored to avoid infringement.

Challenges: Determining the reasonableness of duration and geographic scope, especially in cross-border contexts.

OECD Guidelines – International recommendations on competition policy, including the “Guidelines on the Conduct of Business Enterprises” that influence EU competition practice.

Related terms: best practice, international cooperation, policy alignment.

Explanation: While not binding, the guidelines provide a reference for harmonizing competition enforcement globally.

Example: The EU’s adoption of the “Guidelines on Horizontal Cooperation Agreements.”

Practical application: Multinational firms align compliance programs with both EU and OECD standards.

Challenges: Reconciling differing national interpretations and enforcement priorities.

Obligation to Cooperate – The duty of parties under a merger clearance to comply with commitments or remedies imposed by the Commission.

Related terms: compliance, monitoring, enforcement.

Explanation: Failure to cooperate can lead to further sanctions, including fines.

Example: A merged entity not providing the required access to essential infrastructure.

Practical application: Companies establish internal monitoring mechanisms to ensure ongoing compliance.

Challenges: Interpreting vague commitments and adapting to evolving market conditions.

Official Competition Authority – The national or EU body responsible for enforcing competition law, such as the European Commission’s Directorate-General for Competition.

Related terms: enforcement, investigation, sanction.

Explanation: Authorities have powers to investigate, impose fines, and order remedies.

Example: The French Competition Authority (Autorité de la concurrence) conducting a cartel probe.

Practical application: Firms engage with authorities during investigations and notification processes.

Challenges: Coordinating investigations across jurisdictions and ensuring consistent enforcement.

Object Test – A legal standard under Article 101 TFEU that classifies certain agreements as automatically prohibited because they have an anticompetitive “object,” without needing a detailed effects analysis.

Related terms: per se violation, restrictive object, prohibition.

Explanation: Agreements such as price fixing, market sharing, or bid rigging fall within the object test.

Example: A horizontal agreement to allocate customers by territory.

Practical application: Legal counsel assesses whether an agreement falls within the object test early in drafting.

Challenges: Determining the precise scope of “object” in novel arrangements, such as data sharing agreements.

Omnibus Regulation – A comprehensive legislative instrument that consolidates multiple competition provisions, often used to update the framework in response to emerging market developments.

Related terms: legislative amendment, regulatory update, EU law.

Explanation: Omnibus regulations streamline the legal landscape, ensuring coherence across provisions.

Example: The “Omnibus Regulation” of 2021 that amended rules on state aid and merger thresholds.

Practical application: Companies must track changes to ensure ongoing compliance.

Challenges: Interpreting transitional provisions and aligning internal policies promptly.

Parental Restraint – Restrictions imposed by a parent company on its subsidiaries that may affect competition, particularly in vertically integrated groups.

Related terms: vertical integration, intra-group agreements, competition impact.

Explanation: Such restraints are examined under Article 101(3) to determine whether they are compatible with the internal market.

Example: A parent firm setting minimum resale prices for its subsidiaries across the EU.

Practical application: Companies conduct intra-group compliance reviews.

Challenges: Balancing group efficiency with the risk of anticompetitive effects.

Patent-Box Regime – A fiscal measure that applies a reduced corporate tax rate to profits derived from patented inventions, potentially raising state aid concerns under EU law.

Related terms: tax incentive, IP box, state aid.

Explanation: The regime may be considered selective aid unless it meets the “de minimis” or “market economy” criteria.

Example: A Member State offering a 5% tax rate on royalties from patented technologies.

Practical application: Companies assess whether the regime complies with EU state-aid rules.

Challenges: Demonstrating that the tax advantage does not distort competition.

Per-Se Violation – An infringement that is deemed illegal without the need for a detailed economic analysis, typically applied to agreements with a clear anticompetitive object.

Related terms: object test, automatic prohibition, strict liability.

Explanation: Cartels engaging in price fixing are classic per-se violations.

Example: A horizontal agreement to fix the price of a specific pharmaceutical product.

Practical application: Enforcement authorities impose sanctions swiftly upon detection.

Challenges: Ensuring that legitimate cooperation (e.g., joint research) is not mistakenly classified.

Public Procurement – The process by which public authorities acquire goods, services, or works, subject to EU rules designed to ensure competition, transparency, and non-discrimination.

Related terms: Tendering, award criteria, EU procurement directives.

Explanation: Competition law applies to procurement procedures to prevent collusion and market distortion.

Example: A tender for the construction of a highway that must be open to all qualified bidders.

Practical application: Companies monitor procurement notices and submit compliant bids.

Challenges: Navigating complex procedural requirements and avoiding inadvertent collusion.

Qualified Agreement – An agreement that meets the conditions of a block exemption, thereby escaping the prohibition of Article 101 TFEU.

Related terms: exemption, safe harbor, compliance.

Explanation: Qualified agreements must satisfy criteria on market share, duration, and effect on competition.

Example: A vertical supply agreement with a market share below the 30% threshold.

Practical application: Legal teams assess whether their contracts qualify for the exemption.

Challenges: Interpreting the nuanced conditions and ensuring that post-contractual conduct remains within the exemption.

Remedy – An action ordered by the Commission to restore competition after a breach, which may be structural (e.g., divestiture) or behavioral (e.g., licensing commitments).

Related terms: ex-ante remedy, ex-post remedy, enforcement.

Explanation: Remedies aim to neutralize the anticompetitive effects and prevent recurrence.

Example: The divestiture of a subsidiary to address a merger's dominance concerns.

Practical application: Companies negotiate remedial measures during the clearance process.

Challenges: Designing remedies that are effective, proportionate, and enforceable.

Reverse Auction – A procurement method where suppliers compete by lowering their bids, often scrutinized for potential collusion.

Related terms: e-procurement, bid rigging, competition risk.

Explanation: While promoting price competition, reverse auctions can facilitate tacit collusion if participants coordinate.

Example: A government agency using a reverse auction to purchase IT equipment.

Practical application: Authorities monitor bidding patterns for signs of collusion.

Challenges: Detecting subtle coordination and ensuring transparency.

Sector Inquiry – A comprehensive investigation by the Commission into competition issues within a specific sector, such as the energy or telecommunications market.

Related terms: market study, competition assessment, regulatory impact.

Explanation: Inquiries gather data, consult stakeholders, and may result in policy recommendations.

Example: The "Energy Market" inquiry examining cross-border electricity trade.

Practical application: Findings influence legislative proposals and enforcement priorities.

Challenges: Balancing industry input with competition objectives and addressing rapidly evolving

technologies.

State-Aid Compatibility – The assessment of whether a public measure qualifies for an exemption under the EU state-aid rules, allowing it to coexist with competition law.

Related terms: Article 107, de minimis, selective advantage.

Explanation: Compatibility requires meeting criteria such as objective justification and proportionality.

Example: A regional development grant that does not exceed 0.5% of EU GDP.

Practical application: Authorities evaluate applications for aid clearance before implementation.

Challenges: Demonstrating that aid does not distort competition, especially in niche sectors.

Supply-Side Restrictions – Limitations imposed by suppliers on the downstream distribution of products, which may be examined under Article 101 TFEU for anticompetitive effects.

Related terms: resale price maintenance, exclusive distribution, vertical restraints.

Explanation: Certain restrictions are permissible if they improve efficiency and do not foreclose competition.

Example: A manufacturer requiring retailers to sell its product only in dedicated storefronts.

Practical application: Companies assess whether restrictions meet the “vertical block exemption” criteria.

Challenges: Proving that restrictions are proportionate and necessary for legitimate objectives.

Symmetric Merger – A concentration where the merging parties are of comparable size and market power, often raising competition concerns.

Related terms: horizontal merger, market concentration, HHI.

Explanation: Symmetric mergers are scrutinized for potential creation of a dominant entity.

Example: Two leading European cloud service providers merging.

Practical application: The Commission evaluates market shares, concentration ratios, and potential efficiencies.

Challenges: Quantifying synergies versus competitive harm in fast-moving tech markets.

Tender Collusion – Coordinated behavior among bidders to manipulate the outcome of a public procurement process, violating Article 101 TFEU.

Related terms: bid rigging, cartel, procurement fraud.

Explanation: Collusion can involve rotating winning bidders, sharing confidential information, or agreeing on prices.

Example: Construction firms agreeing to submit a high bid while another submits a low “cover” bid.

Practical application: Authorities use statistical tools to detect irregular bidding patterns.

Challenges: Proving intent and establishing the existence of a concerted practice.

Vertical Agreement – A contract between parties at different levels of the supply chain, such as a manufacturer and a distributor, subject to the vertical block exemption regime.

Related terms: distribution agreement, exclusive dealing, resale price maintenance.

Explanation: While generally less restrictive than horizontal agreements, vertical agreements can still impede competition if they contain hardcore restrictions.

Example: An exclusive distribution contract that prevents the distributor from selling competing brands.

Practical application: Companies review clauses for compliance with the vertical block exemption thresholds.

Challenges: Assessing the impact of exclusive territories in markets with limited players.

Vertical Block Exemption Regulation (VBER) – The EU regulation that provides a safe harbor for vertical agreements meeting specific criteria, such as market share limits and the absence of hardcore restrictions.

Related terms: vertical agreement, exemption, compliance.

Explanation: VBER aims to reduce regulatory uncertainty for businesses while preserving competition.

Example: A wholesale agreement where the supplier's market share is 25 % and the retailer's share is 15 %.

Practical application: Legal counsel checks that the agreement does not contain prohibited clauses like resale price maintenance.

Challenges: Monitoring post-contractual behavior to ensure ongoing compliance.

Wholesale Price Maintenance – A vertical restriction where a supplier sets the minimum price at which a distributor may sell its product, prohibited under the VBER.

Related terms: price fixing, vertical restraint, resale price maintenance.

Explanation: The practice distorts downstream competition by preventing price competition among retailers.

Example: A fashion brand dictating a minimum retail price for its garments across all EU stores.

Practical application: Companies replace minimum price clauses with recommended retail prices (RRPs) to avoid infringement.

Challenges: Ensuring that RPPS are not interpreted as binding minimums.

Wrongful Conduct – Any behavior that breaches competition law, such as abuse of dominance, collusion, or illegal state aid.

Related terms: infringement, violation, non-compliance.

Explanation: Wrongful conduct can trigger investigations, fines, and remedial orders.

Example: A dominant firm refusing to license essential patents on fair, reasonable, and non-discriminatory (FRAND) terms.

Practical application: Firms implement compliance programs to detect and prevent wrongful conduct.

Challenges: Identifying indirect or subtle forms of conduct that may still be anticompetitive.

Zero-Rating – A practice where an internet service provider (ISP) does not count certain data usage against a consumer's data cap, potentially raising competition concerns under EU law.

Related terms: net neutrality, discriminatory pricing, digital markets.

Explanation: While promoting consumer welfare, zero-rating may favor certain services, hindering competition.

Example: An ISP offering free streaming of a specific music platform while charging for others.

Practical application: Regulators assess whether zero-rating constitutes a selective advantage.

Challenges: Balancing innovation incentives with the need for a level playing field.

EU Competition Law – The body of rules derived primarily from Articles 101 and 102 TFEU, the Merger Regulation, and state-aid provisions, aimed at preserving competition within the internal market.

Related terms: antitrust, market regulation, EU treaty.

Explanation: The law prohibits agreements that restrict competition, abuses of dominance, and selective

state support.

Example: The Commission's enforcement actions against cartels in the automotive parts sector.

Practical application: Companies adopt compliance frameworks aligned with EU competition principles.

Challenges: Interpreting the law in emerging sectors such as artificial intelligence, data markets, and platform economies.

EU State-Aid Rules – The framework governing public assistance that may distort competition, primarily found in Article 107 TFEU and its implementing regulations.

Related terms: subsidy, selective advantage, de minimis.

Explanation: Aid must be notified and approved unless it falls under a specific exemption.

Example: A regional grant to support renewable energy projects that exceeds the de-minimis threshold.

Practical application: Companies seek clearance from the Commission before receiving public funds.

Challenges: Demonstrating that aid is proportionate and does not confer an undue market advantage.

Economic Analysis – The application of economic theory and methods to assess the competitive effects of agreements, mergers, or state aid.

Related terms: market power, efficiency gains, antitrust economics.

Explanation: Economic analysis underpins most competition investigations, providing quantitative evidence of impact.

Example: Using the Herfindahl-Hirschman Index (HHI) to measure market concentration post-merger.

Practical application: Legal and economic experts collaborate to prepare robust defense or enforcement dossiers.

Challenges: Access to reliable data, modeling dynamic competition, and accounting for intangible assets.

Efficiencies Defence – An argument that a restrictive agreement yields sufficient economic benefits to outweigh its anticompetitive effects, potentially allowing it under Article 101(3) TFEU.

Related terms: pro-competitive benefits, balancing test, exemption.

Explanation: The defence requires that efficiencies are verifiable, indispensable, and passed on to consumers.

Example: A joint research programme that reduces R&D costs for participants.

Practical application: Parties quantify efficiency gains and demonstrate consumer benefits.

Challenges: Proving that efficiencies are not achievable through less restrictive means.

Ex-Ante Commitment – A promise made by merging parties before the Commission's final decision, outlining how they will address competition concerns.

Related terms: commitment, remedy, clearance.

Explanation: Commitments can be structural (e.g., divestiture) or behavioral (e.g., licensing).

Example: A commitment to grant third-party access to a patented technology on FRAND terms.

Practical application: Commitments are negotiated to secure a conditional or unconditional clearance.

Challenges: Ensuring that commitments are enforceable and effectively monitorable.

Ex-Post Review – The Commission's assessment of a market after a merger has been cleared, to verify that competition has not been impaired.

Related terms: monitoring, post-merger control, market analysis.

Explanation: Ex-post reviews may trigger remedial actions if adverse effects emerge.

Example: Monitoring price trends in the railway ticketing market after a merger.

Practical application: Companies may be required to submit periodic reports to the Commission.

Challenges: Detecting subtle anti-competitive effects that develop over time.

Fragmentation – The division of a market into smaller, less competitive segments, often a concern in competition analysis of vertical agreements.

Related terms: market segmentation, exclusive dealing, foreclosure.

Explanation: Fragmentation can reduce competition by limiting consumer choice and raising barriers to entry.

Example: Exclusive contracts that prevent retailers from offering competing brands.

Practical application: Authorities assess whether exclusive arrangements lead to market fragmentation.

Challenges: Balancing legitimate exclusivity with the risk of anticompetitive foreclosure.

Franchising – A form of distribution where a franchisor grants the right to use its brand and business model to a franchisee, subject to competition law scrutiny.

Related terms: distribution agreement, franchise contract, vertical restraint.

Explanation: Franchising arrangements are generally permissible if they comply with the VBER and do not contain hardcore restrictions.

Example: A fast-food chain requiring franchisees to purchase supplies exclusively from the franchisor.

Practical application: Franchisors ensure that territorial exclusivity is limited and proportionate.

Challenges: Preventing the creation of dominant positions in local markets.

Functional Test – An analysis used to determine whether parties are independent undertakings or part of a single economic entity, relevant for merger and abuse assessments.

Related terms: entity test, control, integration.

Explanation: The test examines factors such as decision-making autonomy, financial ties, and contractual arrangements.

Example: Assessing whether a parent company and its subsidiary act as a single entity for competition purposes.

Practical application: Authorities apply the functional test to decide on the applicability of Article 101 or 102.

Challenges: Complex corporate structures and cross-border operations can obscure independence.

Group Exemption – An exemption that applies to a whole corporate group, allowing certain intra-group arrangements that would otherwise be prohibited.

Related terms: intra-group agreement, block exemption, corporate structure.

Explanation: The EU recognizes that intra-group cooperation may yield efficiencies, provided it does not restrict competition externally.

Example: A group of automotive manufacturers sharing a joint procurement platform for raw materials.

Practical application: Companies document the economic rationale and ensure compliance with the exemption criteria.

Challenges: Demonstrating that the arrangement does not harm competition outside the group.

Harmonisation – The process of aligning competition rules across Member States to ensure consistent application of EU law.

Related terms: legal convergence, EU directives, internal market.

Explanation: Harmonisation reduces regulatory fragmentation and facilitates cross-border trade.

Example: The adoption of the EU competition rules by national competition authorities.

Practical application: Companies benefit from predictable regulatory environments across the EU.

Challenges: Reconciling national legal traditions with EU objectives.

Horizontal Restraint – Any restriction on competition arising from agreements between competitors, such as price fixing, market sharing, or bid rigging.

Related terms: cartel, collusion, restrictive agreement.

Explanation: Horizontal restraints are per se illegal unless justified by a valid exemption.

Example: Competitors agreeing to limit production to keep prices high.

Practical application: Companies implement strict policies to prevent any form of horizontal collusion.

Challenges: Detecting tacit coordination, especially in markets with few players.

Independence Test – An assessment to determine whether an undertaking is independent for the purpose of competition law, particularly in the context of Article 101.

Related terms: functional test, entity test, control.

Explanation: The test looks at governance, financial dependence, and strategic autonomy.

Example: Determining if a subsidiary is independent when its parent holds a majority of voting rights.

Practical application: Firms structure their corporate governance to preserve independence where needed.

Challenges: Complex ownership structures can blur the lines between independence and control.

Infringement Procedure – The formal steps taken by the Commission to investigate, decide, and enforce competition law violations.

Related terms: investigation, decision, sanction.

Explanation: The procedure includes a preliminary investigation, a formal investigation (Phase II), and the issuance of a decision.

Example: The Commission opening a cartel investigation after receiving a leniency application.

Practical application: Companies cooperate with the Commission, providing evidence and responding to requests.

Challenges: Managing reputational risk and potential fines during lengthy investigations.

Innovation Competition – Competition that arises from firms' efforts to develop new products, services, or processes, which can be protected under competition law.

Related terms: R&D, market entry, dynamic competition.

Explanation: Innovation is a key driver of consumer welfare and is considered in competition assessments.

Example: A start-up introducing a disruptive fintech platform that challenges incumbents.

Practical application: Authorities encourage innovation through lenient treatment of pro-competitive conduct.

Challenges: Balancing the protection of intellectual property with the need for open competition.

Joint Purchasing Agreement – An arrangement where firms combine their purchasing power to obtain better terms from suppliers, which may raise competition concerns under Article 101 TFEU.

Related terms: collective buying, procurement cartel, vertical cooperation.

Explanation: