



# Legal Protection of Competition

## ***2. EC and National Competition law*** (Who applies which law, and why?)

Michal Petr

Office for the Protection of Competition



# *I. Jurisdiction*

**To what conduct may a competition authority apply „its“ law?**

- **Effects doctrine**

*Hartford Fire Insurance, 509 U.S. 764 (1993): the Sherman Act applies to foreign conduct that was meant to produce and did in fact produce some substantial effect in the United States*

- **Implementation doctrine**

*Wood Pulp I. (89 et al./85): infringement of Article [81] [...] consists of conduct made up of two elements, the formation of the agreement [...] and the implementation thereof . If the applicability of prohibitions laid down under competition law were made to depend on the place where the agreement [...] was formed, the result would obviously be to give undertakings an easy means of evading those prohibitions . The decisive factor is therefore the place where it is implemented.*



## *Prosecuting global cartels*

### *Graphite Electrodes (C-289/04 P et al.)*

- *when the Commission imposes sanctions on the unlawful conduct of an undertaking, even conduct originating in an international cartel, it seeks to safeguard the free competition within the common market [...]. On account of the specific nature of the legal interests protected at Community level, the Commission's assessments pursuant to its relevant powers may diverge considerably from those by authorities of non-member States*
- *the principle of non bis in idem does not apply to situations in which the legal systems and competition authorities of non-member States intervene within their own jurisdiction*



## *And within EU?*

### **RC Brno in *RWE Transgas* and *GIS***

- *the territory of the European Communities must due to the systemic interconnection of the enforcement of EC and national law [...] be viewed as one jurisdiction, regardless of the territorial scope of the relevant market*
- *the conception under which each of the NCAs can in parallel declare the infringement of Article 82 EC and simultaneously the corresponding provisions of national law [. . .] when assessing materially identical conduct of identical persons and when the applied regulation express materially identical prohibition, is void*
- *Sanctioning of practices distorting competition within the Common Market has to be [. . .] effective, but not repetitive*



## *The GIS Cartel*

- Prosecuted in ... till
  - Czech Republic – 4 March 2004
  - Hungary – 4 March 2004 (approved by court)
  - Slovak Republic – 30 April 2004
  - EC – 11 May 2004
- RC in Brno: infringement of *ne bis in idem*
- SAC: two separate delicts



## *And within EU?*

- ECN Notice
- Experience
- Overlapping Jurisdictions Dilemma?
- EU Charter?
- ECHR?



## *II. Effect on Trade*

- Trade between Member States
  - Possibility to affect
  - Appreciability
- ... and what does it mean?



## *Czech case-law*

- Telecommunications, Energy, Transport
- Forests
- Vertical restraints
- Pharmaceutical distributors
- Poultry producers
- Funeral services





## *Rules of Convergence*

### Art. 3 (2) Regulation 1/2003

- *The application of national competition law may not lead to the prohibition of agreements [...] which may affect trade between Member States but which do not restrict competition within the meaning of Article 81 (1) of the Treaty, or which fulfil the conditions of Article 81 (3) of the Treaty or which are covered by [BER]*
- *Member States shall not [...] be precluded from adopting and applying on their territory stricter national laws which prohibit or sanction unilateral conduct engaged in by undertakings.*



## *Parallel application*

- *RC RWE Transgas*  
*parallel declaration of infringement of Article 82 of the Treaty and at the same time Article 11 (1) of the Act on the Protection of Competition with respect to a single conduct [ . . . ] is void*
- *SAC RWE Transgas*
  - two distinct objectives of legal regulation
  - ECHR 14939/03 *Zolotukhin?*  
*the Court takes the view that Article 4 of Protocol No. 7 must be understood as prohibiting the prosecution or trial of a second “offence” in so far as it arises from identical facts or facts which are substantially the same*



*Thank you for your attention*



[michal.petr@compet.cz](mailto:michal.petr@compet.cz)

[www.compet.cz](http://www.compet.cz)