



# EC Competition law – sanctions & procedure

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# Enforcement pluralism

- Regulation of market conduct
  - EU Commission
    - General surveillance of compliance with the Treaty
    - “Trustbuster”: DG Comp
  - National Competition Authorities
    - National competition law, but also
    - EC comp rules (Reg 1 art 3 & 5)
  - Private action before ordinary courts
- Regulation of transactions:
  - One stop shop
  - If EU dimension – disapplication of national legislation

# Relationship with national law

- Art. 3 & supremacy

- **Obligation** on courts and NCA's to apply EC law where interstate trade is affected.
- Stricter national legislation on unilateral conduct allowed, but not on agreements / concerted practises.
- Agreements:

Impact on  
interstate  
trade



Art 81(3) applies, or not  
restrictive in the sense  
of 81(1)



Cannot be prohibited by  
national legislation

- Cooperation: ECN (Article 11, 12, 13)
- Uniform application: Article 16



# Function of competition law enforcement

<b>Function</b> \ <b>Type</b>	<b>Public remedies</b> (Before the Commission and NCAs)	<b>Private remedies</b> (Before national courts)
<b>Prevention</b> (To bring illegal conduct to an end)	<ul style="list-style-type: none"><li>• Interim injunction</li><li>• Cease-and desist order</li><li>• Structural relief</li></ul>	<ul style="list-style-type: none"><li>• Interim injunctions</li><li>• Final injunctions</li><li>• Nullity (non-performance of contracts)</li></ul>
<b>Deterrence</b> (to prevent infringements of the law from taking place)	<ul style="list-style-type: none"><li>• Fines</li></ul>	Not a task for private parties (but damages may serve this end)
<b>Compensation</b>	Not a task for public bodies	<ul style="list-style-type: none"><li>• Restitution</li><li>• Damages</li></ul>



# Powers of the Commission/Sanctions under Reg. 1/2003

- Interim measures (Art 8)
- Cease-and-desist orders (Art 7)
- Structural relief (Art 7(1))
- Commitments (Art 9)
- Fines (Art 23)
- “Finding of inapplicability” (Art 10)



# Fines – a powerful deterrent

- Fines up to 10 % of annual turnover
- All time high:
  - Microsoft Corp.: €497 Million (Abuse of dominant position)
  - Intel €1 060 000 000 (Abuse of dominant position)
  - Saint Gobain €896 Million (Cartel – Car glass)
- Gravity x duration
  - Type of infringement
  - Retaliatory measures
  - Impact on market
  - Value of goods
  - Cooperation?
- Details: Guidelines on the method of setting fines 2006



# Leniency

- No fine imposed on first undertaking to provide evidence
- Reduction of fines for second, third etc.
- Most "modern" cartel cases initiated by leniency applications
  
- Why & how?
  - Cartels unstable
  - Prisoners' dilemma
  
- Leniency notice 2006



# Investigation / fact-finding

- Requests for information (Art 18)
- Power to take statements (Art 19)
- Powers of inspection (Art 20)
  - Dawn-raids
  - Competence
  - Role of national courts (20.8)
- Inspection of private homes (Art 21)
- Investigations by NCA's (Art 22)





# Rights of the defence I

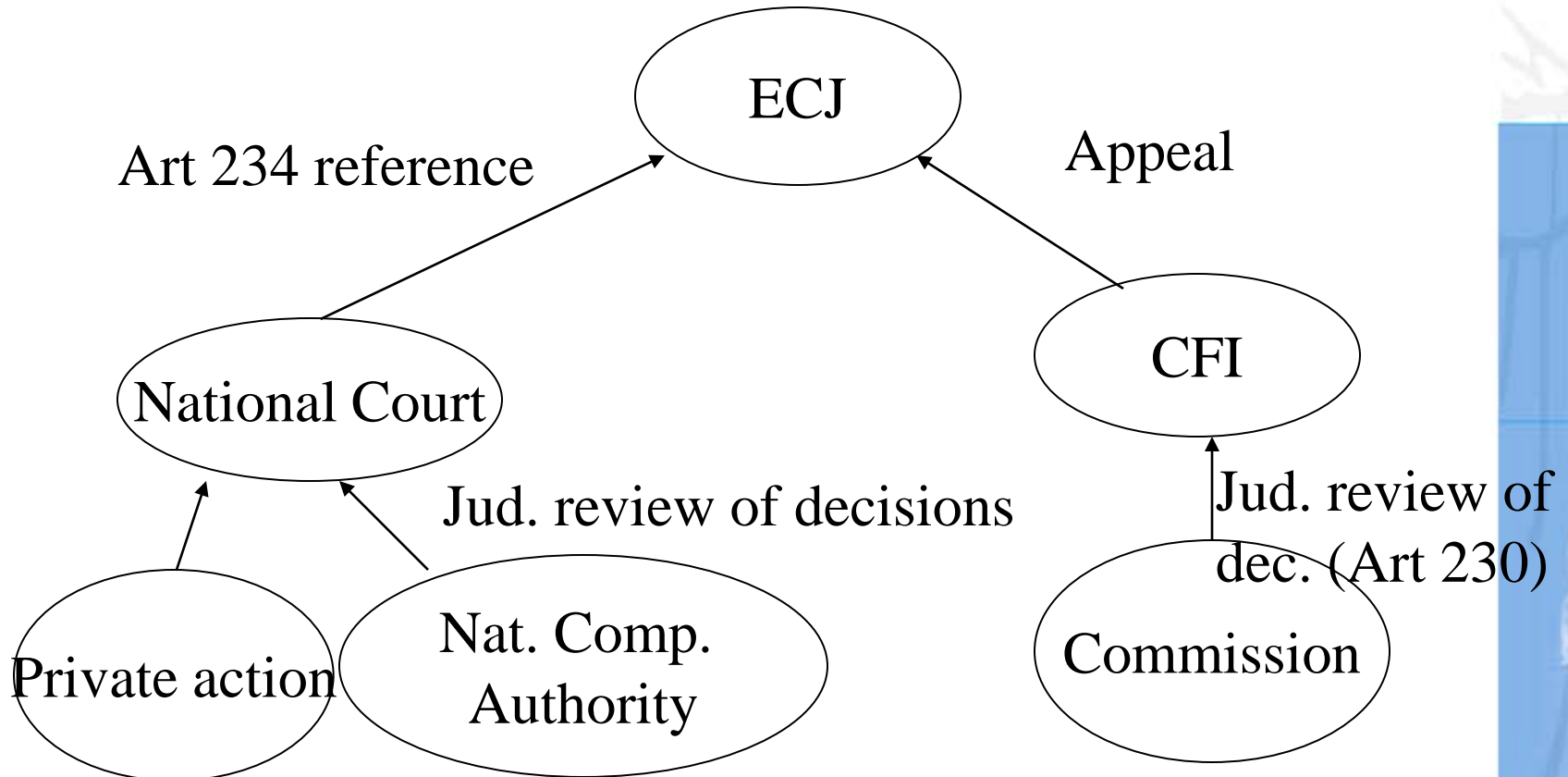
- Self-incrimination – A right to remain silent
- ECHR not directly applicable in EU law, but Nice Charter on fundamental rights
- The Orkem principle:  
”the Commission may not compel an undertaking to provide it with answers which might involve an admission on its part of the existence of an infringement which it is incumbent upon the Commission to prove”



# Rights of the defence II

- Client-lawyer privilege
  - Correspondence with external lawyer relevant for the case
- The right to be heard
  - Statement of objection
  - Hearings
- Access to file
- Secrecy/Use of information

# Judicial review and enforcement



Co-operation between Commission, NCA and NC



# Judicial review of Commission decisions – Article 230

- A challengeable act
- Locus standi
- Grounds of review
  - Lack of competence
  - Infringements of procedural requirements
  - Infringement of the Treaty
  - Misuse of powers (détournement de pouvoir)
- Fines: Unlimited jurisdiction (Reg 1 Art 31)



# A role for private enforcement?

- US: Treble damages
- Private action not subject to specific regulation, but
  - Power to apply 81&82 mentioned in the Regulation (Art 6)
  - Cooperation Commission/national courts (Art 15)
- General principles of EU law apply, together with relevant national law
  - Nullity: Article 81(2)
  - Damages: Case C-453/99 Courage, C-295/04 Manfredi:  
Damages required by EU law
    - Cf. Francovich (State liability)
  - Injunctions