



EU Antitrust Enforcement & Procedures

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**The views expressed are those of the speaker and do not necessarily reflect those of DG Competition or the European Commission*



What is EU antitrust/cartels enforcement about? (1)

- **Agreements/coordination** between companies (Article 101)
- **Unilateral abuses** of dominant position by companies (Article 102)
- **Distortive State measures** privileging public undertakings (Article 106)
- Procedure: on average 10-12 cases reach the College each year. Decisions often impose heavy fines (EUR 9 054 million 2010-2014)
- Since 2004 decentralized enforcement with MS – DG COMP focusing on "big and bad" cases with cross border dimension

What is EU antitrust/cartels enforcement about? (2)

Objectives:

- Boosting the European economy's competitiveness
- Contributing to jobs, growth and innovation
- Fostering the internal market
- Delivering more benefits to consumers
- Preventing and deterring anti-competitive behaviour
- Promoting a competition culture

EU Antitrust and cartel cases/fines over the last 10 years

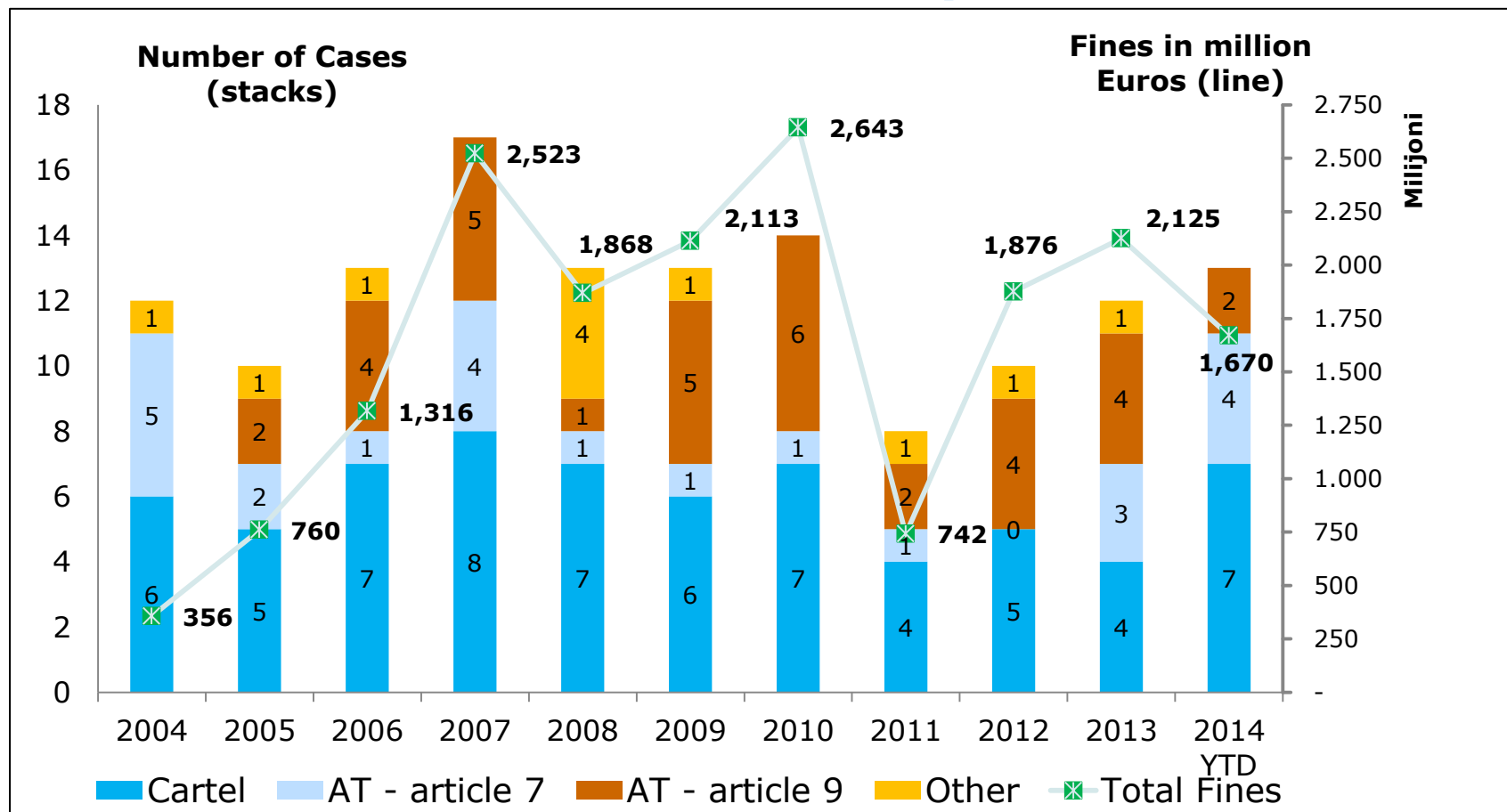
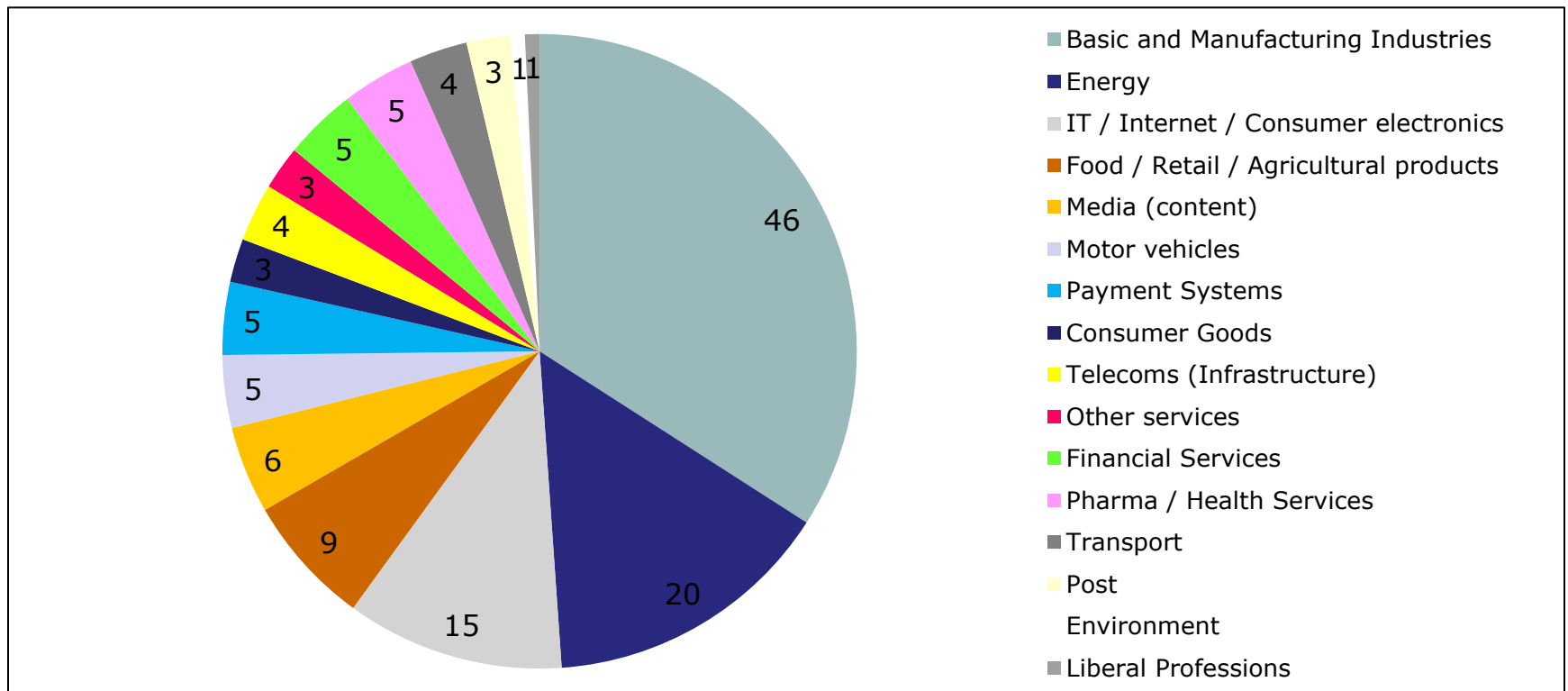


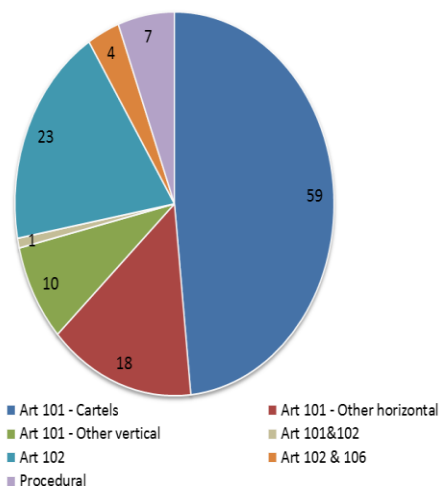
Chart – breakdown of cases by sector over the last ten years



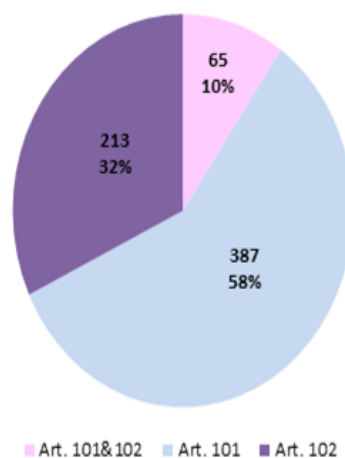
Enforcement activity May 2004 – December 2013

Decisions by type of infringement

COM: 122

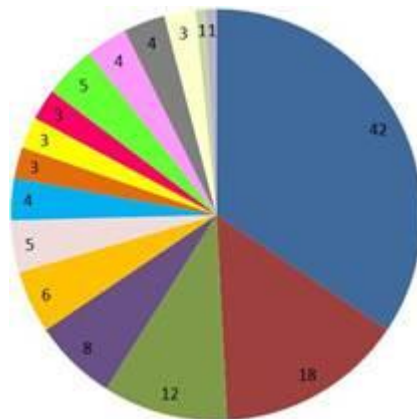


NCA: 665

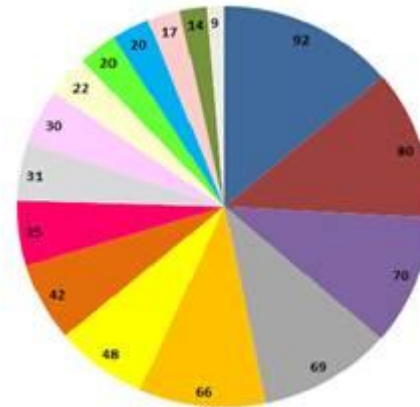


Enforcement activity by sector

COM



NCA's



- Basic and Manufacturing Industries
- Energy
- IT / Internet / Consumer electronics
- Food / Retail / Agricultural products
- Media (content)
- Motor vehicles
- Payment Systems
- Consumer Goods
- Telecoms (Infrastructure)
- Other services
- Financial Services
- Pharma / Health Services
- Transport
- Post
- Environment
- Liberal Professions

Procedure (1)

- **Step 1: Several ways to detect cases**
 - Ex officio (possibly after sector inquiry or information from market participants)
 - Complaints
 - Leniency (cartels only)
- **Step 2: Fact-finding**
 - Inspections
 - Requests for Information
 - Other

Procedure (2)

- Step 3: Fairness, impartiality and rights of defence
 - Possibility to challenge certain investigative decisions
 - Statement of objections
 - Access to file
 - Written defence and oral hearing
 - The role of the Hearing officer

Procedure (3)

- Step 4: Concluding the case: several types of decisions
 - **Regular Article 7 decisions:** infringement, fines (usually), no settlement
 - **Article 9 decisions:** commitments, no fines, only for non-cartel cases
 - easier for COM and the parties, in many cases faster
 - less legal certainty for the outside world?
 - concerns about under-enforcement/over-enforcement?
 - **Settlement decisions** (also Article 7): infringement, fines, settlement, currently only for cartels
 - efficient procedural option (less access to file, usually no court case)
 - recent development: hybrid cases

Procedure (4)

- Step 5: After the decision
 - Fines (to be paid into the EU budget; ITP; forced recovery)
 - Appeals to European Courts
 - Court case (we win roughly 70-80% in terms of outcome, 80-90% in terms of fines)
 - Over 100 judgments a year in antitrust → constantly evolving case-law



European

Two sites (other companies outside EU)

7683 documents

26 addressees, 193 pages

Longest reply: 537 pages, 99 binders of annexes

Immunity Application: ABB

Inspections: Feb 2009

Evidence Analysis

Statement of Objections: June 2011

Replies to the SO: Late 2011

Power Cables Cartel

Confidentiality ring

Access to File: 2011/12

Court Appeals (ongoing)

Final Decision by College April 2014

Letters of Fact: Sep 2013

6 day Hearing: June 2012

15 separate appeals

26 addressees, 287 pages

5 person COMP case team

18 law firms, 135 representatives

Focusing antitrust enforcement on high impact cases

- There is scope to choose cases (compared to merger control and State aid, where cases are notified)
- There is scope to set priorities, e.g. to align with broader Commission objectives and meet today's challenges
 - Digital society
 - Liberalising formerly regulated sectors (e.g. rail, telecoms, energy)
 - Energy security (esp. gas)
- There is scope to make a high impact on businesses and consumers – antitrust cases change markets, e.g.
 - *Microsoft, (ongoing cases Google, Gasprom, PayTV etc.)*
 - Pay-for-delay
 - Financial cartels



Perception

- High impact in media and on business community, scrutiny by courts
- Some criticisms from stakeholders
 - "Enforcement bias" and fundamental rights ("investigator, prosecutor, judge and jury")
 - Fines are too high (companies, law firms) and too low (The Economist, Bruegel)
 - Too many cases about U.S. companies (often hi tech) and too many EU companies (often former state monopolists)
- European and worldwide recognition
 - A strong and high-quality enforcer
 - Independent, legally and economically rigorous
 - Leading competition enforcer in the world, together with the U.S



Thank you for your attention!

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