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# Competition laws in Europe

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## Free movement of goods and services through the European Economic Area





The Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) provide for a single internal market with free movement of goods and services throughout the EU

The TFEU contains rules to ensure that competition within the EU is not restricted or distorted by anti-competitive behavior, including (i) cartels, (ii) abuses of dominant positions, (iii) major mergers and acquisitions that are incompatible with the internal market, and (iv) state aids



## Territory – The European Economic Area (EEA)

EU competition rules have the force of law throughout the European Economic Area (EEA)

-  EU and EEA member state
-  EFTA and EEA member state
-  EU member state provisionally applying the EEA agreement (Croatia)
-  EFTA member state and signatory of the EEA agreement that has not ratified (Switzerland)





## European Union competition laws vs. national laws

The EEA countries have their own domestic competition rules

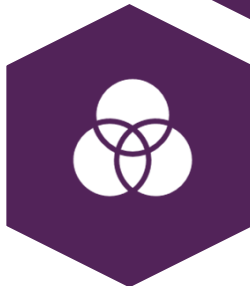
The National Competition Authorities (NCAs) have powers to apply the European Union competition laws (with the exception of those regarding merger control)

In Italy, domestic competition laws are mainly established by Law No. 287 of 1990 which contains provisions very similar to the relevant provisions of the TFEU

Domestic competition rules must in any event be interpreted in accordance with the EU competition laws principles



## Mergers and Acquisitions competition control: Europe



Scope: two or more undertakings merge, or one or more undertakings acquire direct or indirect control, in whole or in part, of one or more other undertakings.

### Thresholds:

Combined total worldwide turnover of all: at least EUR5 billion; and  
At least two undertakings: total EU-wide turnover of at least EUR250 million.

OR

Combined total worldwide turnover of all: at least EUR 2.5 billion; and  
At least two: total EU-wide turnover of EUR 100 million; and  
combined total turnover of all in three individual member states: at least EUR 100 million; and  
In each of the three member states, at least two have total turnover of at least EUR 25 million.  
UNLESS, in either case, each of the parties achieve two-thirds of their EU-wide turnover in one and the same member state

The «one-stop-shop»  
principle



## Mergers and Acquisitions competition control: Europe

1.

### • Pre-notifications activities:

- ❖ Advance ruling
- ❖ Test

2.

### • Procedural issues:

- ❖ Timing for notification
- ❖ Phase I and Phase II

3.

### • Sanctions



## Mergers and Acquisitions competition control: Italy



Scope



Thresholds



Timing



Party responsible for filing

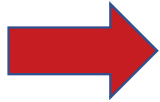


Sanctions





## Anti Competitive Behaviour:



**Article 101 of the TFEU:** prohibits any **agreement, decision or concerted practice** – **formal or informal, written or unwritten** – that is made between two or more **independent** “undertakings” that may **affect trade** between Member States and that has the object or **appreciable** effect of **preventing, restricting or distorting** competition, such as:

- ✓ Horizontal agreements (price fixing, market-sharing, information sharing)
- ✓ Vertical agreements



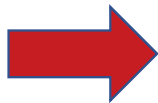
**Article 101(3) of the TFEU:** individual exemptions



**Block exemptions**



## Anti Competitive Behaviour:



**Article 102 of the TFEU:** prohibits the abuse by one or more undertakings of a dominant market position within the EU (or a substantial part of it) in a way that may affect trade between EU Member States



Definition of dominant position



Collective dominance



Cases of abuse:

- ✓ Pricing abuses
- ✓ Refusal to supply
- ✓ Tying



## Anti Competitive Behaviour:

### Enforcement

- ✓ The Commission
- ✓ The EFTA Surveillance Authority
- ✓ The NCAs

Consequences of infringement

Third party claims



## Criminal Offences



European Union  
competition  
laws



Italian  
competition  
laws