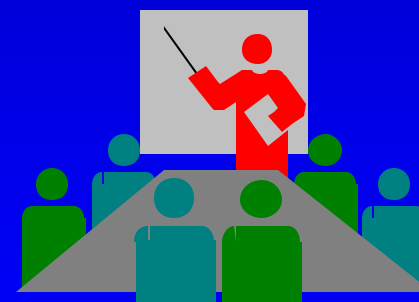


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# **Framework of Modern Competition Law and Policy**

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# Competition Policy and Legislation

- ⇒ **The need for competition policy and competition legislation**
- ⇒ **Tensions in Competition law and Policy**
- ⇒ **Different approaches to competition legislation**
- ⇒ **Basic procedures of investigating RBPs or mergers**
- ⇒ **The objectives of competition policy and the role of government**

# The Hong Kong competition policy approach

- ⇒ Hong Kong “Statement on Competition Policy” issued in May 1998
- ⇒ The role of free market forces
- ⇒ “The sectoral approach”
- ⇒ Review of the impact of government policy measures on competition

# Competition policy and deregulation

- ⇒ **Advocacy role of authorities with regard to regulation and deregulation**
- ⇒ **Protection of the general interest**
- ⇒ **Interaction between competition law and policy and regulation**
- ⇒ **Examples of sectors to be discussed:**
- ⇒ **Food and petroleum retailing, transport, etc..**

# Different approaches to competition legislation

- ⇒ Existing laws and laws in preparation
- ⇒ Structural versus behavioural control
- ⇒ Terminology and structure of basic competition law
- ⇒ Prohibited practices: horizontal and vertical practices

# Different approaches to competition legislation

- ⇒ **Merger control**
- ⇒ **Consumer protection**
- ⇒ **The Competition Authority**
- ⇒ **Sanctions**
- ⇒ **Damages**
- ⇒ **Class actions**
- ⇒ **Appeal procedures**

# Existing laws and laws in preparation

✂ **All OECD countries**

✂ **Central and Eastern Europe and CIS members**

- Bulgaria (1991)
- Czech Republic (1991)
- Croatia (1995)
- Hungary (1996)
- Lithuania (1992)
- Poland (1990)
- Romania (1996)
- Russia (1991)
- Slovakia (1994)
- Azerbaijan (1993)
- Belarus (1992)
- Georgia (1996)
- Kazakhstan (1991)
- Kyrgyzstan (1994)
- Moldova (1992)
- Tajikistan
- Ukraine (1992)
- Uzbekistan (1992)

# ✂ Developing countries

## • Latin America and Caribbean

- Argentina (1980)
- Brazil (1960, rev. 1994)
- Chile (1973, rev. 1980)
- Colombia (1992)
- Costa Rica (1992)
- Jamaica (1993)
- Mexico (1992)
- Panama (1996)
- Peru (1990)
- Venezuela (1991)
- Bolivia \*
- Dominican Republic\*
- El Salvador\*
- Guatemala\*
- Honduras\*
- Nicaragua\*
- Paraguay\*
- Trinidad and Tobago\*

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\* *Competition law in preparation*

- *Africa*

- Algeria (1995)
- Côte d'Ivoire (1978)
- Gabon (1989)
- Kenya (1988)
- Malawi (1998)
- Morocco (2000)
- Senegal (1994)
- South Africa (1995, rev. 1980)
- Tanzania (1994)
- Tunisia (1991)
- Zambia (1994)
- Zimbabwe (1997)
- Cameroon\*
- Egypt\*
- Ghana\*
- Mauritius \*

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\* *Competition law in preparation*

- *Asia and Pacific*

- China (1993)
- Fiji (1993)
- India (1969)
- Indonesia (1999)
- Pakistan (1970)
- Republic of Korea (1980)
- Sri Lanka (1987)
- Thailand (1979, rev. 1999)
- Taiwan Province of China (1992)
- Jordan \*
- Malaysia \*
- Philippines \*
- Viet Nam \*

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\* *Competition law in preparation*

# Structure of basic competition law

**Objectives**

**Definitions**

**Scope of application**

**Exemptions and exceptions**

**Prohibited practices:  
horizontal and vertical**

**Merger control**

**The Competition Authority**

**Sanctions**

**Appeal procedure**

## ***Trends in modern laws***

- ▶ **To promote competition**
- ▶ **To maximize economic efficiency**

# ***Definitions:***

- **Restrictive business practices (RBPs)**
- **Enterprises**
- **Monopolies**
- **Dominant firm (or enterprise enjoying a dominant position of market power)**
- **Relevant market**
- **Abuse of dominant position of market power (DPMP)**

## *Scope of application*

*Modern competition law usually covers:*

- All enterprises engaged in business, whether private, public or other;
- All transactions in goods and services;
- Private persons such as those engaged in the liberal professions (except collective bargaining and trade unions);
- The national territory without extending outside national boundaries (except a few laws, e.g. those of US).

## *Exemptions and exceptions:*

- **Sovereign acts of States**
- **Labour markets (trade unions)**
- **Regulated industries**
- **Defence industry (in some countries)**
- **Utilities and “natural monopolies”**

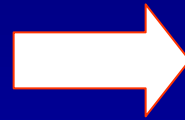
## ***Exemptions and exceptions:***

- **Small and medium-sized enterprises (SMEs)**
- **R & D joint ventures**
- **Specific distribution agreements in the EU (e.g. motor cars, perfumes)**
- **Export cartels and “joint ventures for export”**
- **Rationalization. Crisis cartels. Recession cartels**

# *Prohibited practices: horizontal and vertical practices*

- ◆ *Types of prohibition of horizontal restraints:*
  - ↳ Per se approach (i.e., the United States): prohibition of all horizontal agreements, such as, price-fixing, market allocation and especially collusive tendering or bid-rigging
  - ↳ Prohibition in principle approach (i.e., the EU, Article 85): prohibition of price-fixing and market allocation, except when the benefits of the restraint (including consumer benefits) outweigh the damage to competition

Vertical agreements



“rule-of-reason”

↳ *Resale price maintenance:  
prohibited in most countries*

# **BASIC PROCEDURES FOR INVESTIGATING RBPs OR MERGERS**

**A. Initiating an investigation**

**B. The search for evidence**

**C. Decisions and remedies**

# Initiating an investigation

1. **Sources of information**
2. **Preliminary assessment of the case**
3. **Analysis of the market**

# *Tests to determinate the existence of DPMP*

**Market share**

**Effects on  
competition**

**Characteristics of the market:**

- Dynamic of stable market
- Relative size in the market
- Government regulations

**Entry/exit  
conditions**

# The relevant market test

**First**

Possibility of substitution

**Second**

Scope of substitution, according to consumer tastes

**Third**

Degree of transparency, knowledge about prices, and response of consumers

**Fourth**

Relevant geographical area

**Fifth**

Definition of the product or service to be considered