

maximization motivation is that much stronger in U.S. case law, due to the incentives of treble damages and contingency fees, both only available in the U.S..¹⁵⁵ Thus, anti-trust compliance costs for doing business in the U.S. tend to be higher and the multi-faceted enforcement system fills business with greater uncertainty. As a result, some beneficial and pro-competitive mergers or business arrangements may fail to take place under the U.S. enforcement system.

EU: The EU follows an administrative approach to the enforcement of competition law. The European Commission Directorate-General for competition policy, DG-IV, has extensive powers to investigate, to prosecute and to impose penalties on offending parties.

The Commission's attitude is strongly influenced by integrationist concerns. Horizontal cartels will be tolerated in cases where their market share is unimportant and there is no effect on inter-State trade. The Commission has ruled that trademarks, licensing agreements and copyright law may not be used to stop parallel imports.

With respect to the control of monopolization, the focus is behavioural, on abuse. The controls applied to monopoly problems are conduct remedies, which aim to control aspects of firms' behaviour. Some writers have argued that controlling the behaviour of dominant firms without some form of structural remedy, such as powers of dissolution, has not been particularly effective in the EU.¹⁵⁶

Merger enforcement is administered and reviewed by a special Task Force within the DG-IV. The final authority in all competition cases rests with the European Commission as a whole. At stage one, the DG-IV routinely consults with the Directorate-General for Industrial Affairs (DG-III). At the second stage, the case is referred to the Advisory Committee of Member State Representatives. In the final round, the case comes before a corporate decision-making body of all the EU Commissioners. Some commentators have argued

¹⁵⁵See Jorde and Teece, "Innovation, Cooperation and Antitrust" in *Antitrust, Innovation and Competitiveness*, Oxford University Press, 1992, pp. 56, 58.

¹⁵⁶Ken George and Alexis Jacquemin, *op. cit.*, 1990, p. 233.