



# **Article 102 Enforcement**

## **Between Effectiveness and Due Process**

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# Models of enforcement

- Judicial model (Ireland, Austria)
- Mixed model (Sweden, Finland, Estonia)
- Administrative enforcement systems (majority of MS + EU)
  - Monist authorities → no separation between investigation & decision (BG, CY, CZ, D, I, MT, NL, P, RO, SK, SLO, UK, EU)
  - Dualist authorities → separation between investigation & decision (B, F, L, E)
  - Mixed systems → incomplete separation (DK, GR, H, LV, LT)



# Models of judicial review

## ■ Organs

- Specialist bodies
- Specialist tribunals
- Administrative courts
- Civil courts

## ■ Scope of judicial review

- Full review (opportunité & légalité)
- Limited review (legality)



## Specificity of EU system

- Monist model
- Political organ – no independent authority
- No hearing in the judicial sense
- Limited judicial review for injunctive decisions – unlimited review for punitive decisions



# Historical reasons for the EU specificity

- Centralised administration – hesitation to decentralise
- Economic nationalisms – perennial battle between the Community (now EU) and the national method
- Competition policy links with other Community policies
- Institutional politics – power games



## Is Article 102 TFEU special?

- NO
  - Better distinction → fines - injunctions
- YES
  - Exclusionary – exploitative conduct → different types of harm → different types of victims-parties to the proceedings
  - Exclusion → participation of the victim(s)
  - Equality of arms → procedural equivalent of the substantive principle of competition on the merits





## Equality of Arms

- Investigation stage
- (Negotiations stage – commitments' possibility)
- Reply to SO and other written pleadings
- Hearing



## Some possible solutions

- Access to the file pre-SO
- More state of play meetings BUT caution with the principle of equality of arms
- Exchange of written pleadings desirable
- Cross-examination between the parties desirable
- Post-hearing exchange of written pleadings
- Better and more neutral organisation of the hearings