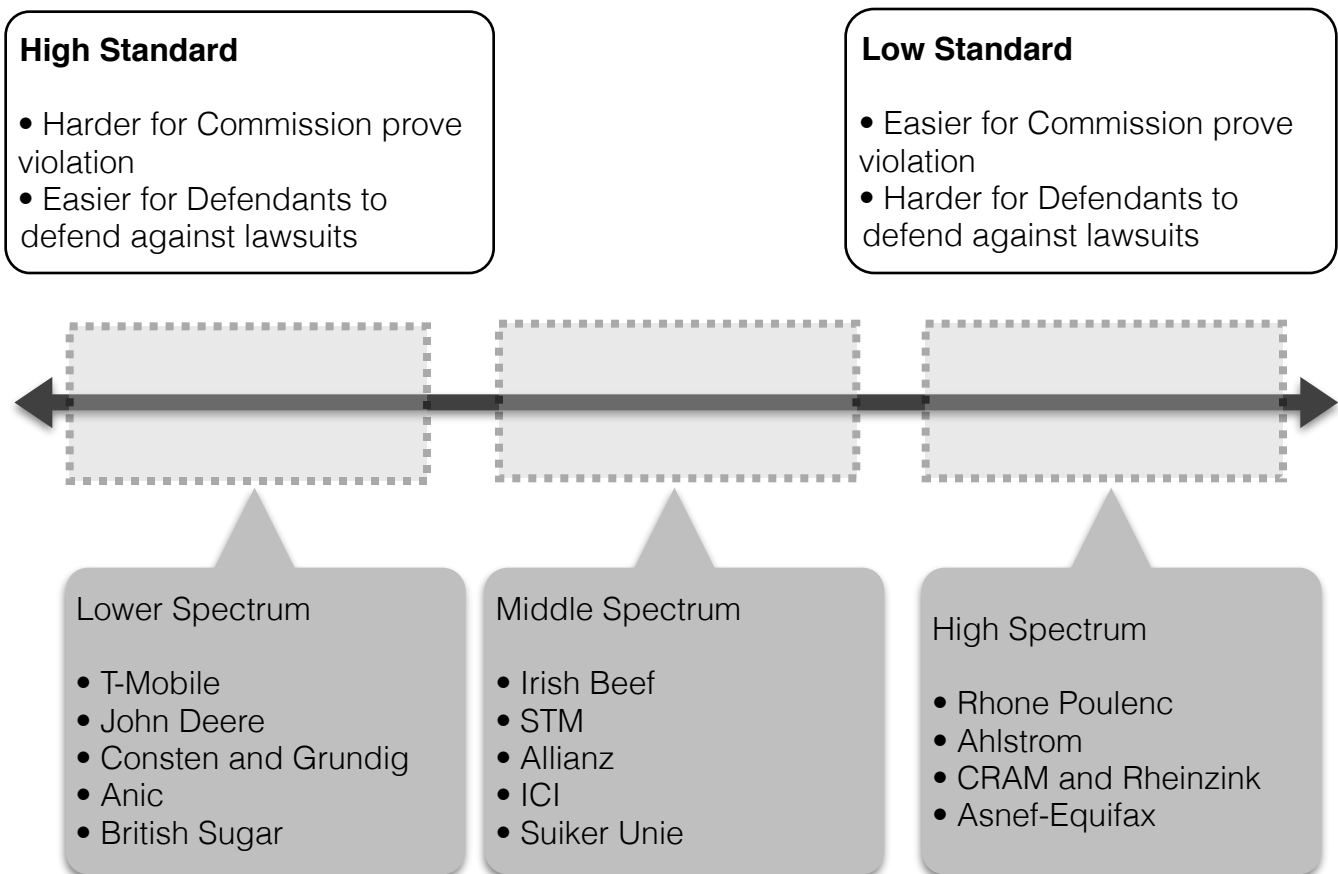


## Standards of Proof

The standard of proof is the quantity and quality of the evidence that is sufficient to prove a legal violation. Article 101 of the Treaty on the Functioning of the European Union clearly states that agreements and concerted practices that prevent, restrict or distort competition are prohibited. There are activities that would be considered in clear violation of this provision. For example, agreements with the object of affecting competition are prohibited, as demonstrated by a contract for exclusive dealership rights between Grundig, a German electronics manufacturer, and Consten, a French distributor. However, such clarity is rare and there is a range of activities whose lawfulness is difficult to define. Relevant case law is the best guide to navigate what is considered a violation but there is a wide range of definitions and standards.

This range is best presented as a scale to show, compare and contrast the standards that each case applies to determine whether an actor or action has compromised competition. Similar to the evidentiary standards of “preponderance of the evidence”, “beyond a reasonable doubt”, and “clear and convincing evidence” found in criminal law, certain cases will fall into categories indicative of the quantity and quality of evidence necessary to show a violation. A low standard, as portrayed to the left of the spectrum, allows a wide range of actions to fall within a broad definition of the concepts to be considered a violation, making it harder for the firms to defend against allegations of anti competitive conduct. A high standard will require clear and specific actions to match a precise definition of the concepts in the law in order to be considered a violation, making it easier for firms to defend against allegations of anti competitive conduct..



## **EVIDENTIARY STANDARDS**

### **Lower Spectrum**

The Commission is required to show less to prove a violation. The Defendants have few to no defenses available.

### **T-Mobile**

This case concerns the single communication by one cellular provider to the other cell providers in the market.

- **It doesn't matter that there was only one event.** Continuous events are generally the subject matter of the concerted action, market conditions, the number, frequency and form of meetings determine what is considered a violation. However, in this case, the court ruled that one event was enough to constitute a concerted practice, as a concerted practice must simply be capable in an individual case of resulting in the prevention, restriction or distortion of competition in order for Article 101 EC to be triggered.

- **No link to retail prices necessary.** Even an exchange of information can suffice; especially one which removes the uncertainties in the market pursues anti-competitive object.

- **The only viable response to an allegation of concerted practice by object is to leave the market.** The only defense against such a violation is to leave the market, to remain is to continue the concerted practice.

### **John Deere**

This concerns the information exchange system of market data.

- **Reduction or removal of uncertainty regarding the operation of the market restricts competition.** Traders may adapt and make intelligent decisions but Article 101 precludes any direct or indirect contact which has the object or effect to change normal conditions of competition in the relevant market. That contact may include the exchange of information regarding the nature of the products or services offered, the size and number of undertakings and the volume of that market.

- **If independence is affected by direct or indirect action, it is in violation of Article 101.** If the effect of the agreement was to increase the transparency of that market and reduce uncertainty regarding the strategies of competing undertakings, then it is in violation.

- **Increased barriers to the market constitute a violation.**

- **Analysis of the effects on the market is not necessary.**

### **Consten Grundig**

This case concerns an agreement between a French distributor and a German manufacturer to distribute German electronics exclusively in France. [mention territorial constraints]

- **If the agreement explicitly states an anti-competitive object, it is in violation of Art 101.** An agreement for exclusive distribution rights is in clear violation of Article 101 and there is no need to consider effect on the market. The decision is based on the words of the agreement. The Court does not look at the effects on the market which may actually be favorable competition

### **Anic**

This case is about the setting of target prices through price initiatives and annual volume control in the polypropylene industry

- **Business activity is considered unlawful when the autonomy of each undertaking is preserved.** The concerted practice by object is influencing the conduct of an undertaking in correspondence to a increased

certainty as to the future conduct of its competitors, though actual certainty is not required. It is particularly doubtful whether a an undertaking may acquire certainty as to the conduct of its competitors even if it has entered into an agreement with them on the matters concerned. The relevant criterion continues to be whether the object of the meetings is to influence the conduct on the market of a given undertaking by lessening uncertainty as for the conduct of the competitors.

• **It is theoretically impossible to participate in a meeting in which other participants agree on an unlawful course of conduct without participating in the unlawful conduct itself.**

### **British Sugar**

This case is about the pricing structure between two sugar manufacturers as evidenced by written correspondence.

• **Potential effect must be taken into account without showing actual effect.** The written correspondence shows a concurrence of wills and while the actual effect on the market was nonexistent. The correspondence was deemed a violation due to the possible negative effects on the market.

## EVIDENTIARY STANDARDS

### Middle Spectrum

No Particular party is favored.

#### **Irish Beef**

This case is about how the Irish Beef Industry set up limits to the meat industry's output.

- **If there's an object, there's no need for effect.** The notion of restriction by competition refers primarily to the object of the agreement; if a necessary consequence of the agreement is the restriction of competition then it's a violation. There are no limitation on what actions could be considered a restriction

- **Intent is not taken into account.**

- **Must consider the legal and economic context.** There are three categories where assumptions of restrictions can be rejected: limitations on freedom that have no effect, the agreement is ambivalent in terms of its effects, and ancillary agreements which are necessary to pursue the lawful primary arrangement. (If the primary agreement is not restricted then the ancillary agreement can't be considered violation).

#### **Société Technique Minière**

This a case about the vertical agreement between a French and German company to sell goods in Germany.

- **There is a restriction on competition when the position of parties in an agreement are altered to an appreciable extent as shown with quantitative evidence.** The alteration to trade must appear directly from the facts or must appear directly from the facts or must be reasonably foreseeable and that the influence on trade must be of some importance.

#### **Allianz**

This case is about the agreements, regarding insurance sales and repair prices, between insurance companies and auto repair shops.

- **Concerted practice by object is enough to prove violation.** An anti-competitive object is shown by assessing the context and provisions of the undertakings. May take intent into account but it not necessary. If competitors decide to replace risk with coordination through direct/indirect contact or if subsequent conduct shows a cause/effect relationship then it constitutes a violation.

- **Parallel Conduct is not enough to prove existence of concerted practice.**

#### **ICI Dyestuffs**

This case is about three general and uniform price increases of dyestuffs and constitute concerted practice among the undertakings

- **Parallel conduct that can't be explained by market conditions constitute a violation.**

- **Removal of the risks of competition constitutes a violation.** This can be shown through the price announcements.

- **Parallel conduct alone is not sufficient; there also needs to be a will to act in common.** It is important to look at the effects on the market in order to determine if there is a concerted practice in violation of Article 101.

#### **Suiker Unie**

This case is about the activity of the sugar market in the EU, specifically which companies they were and weren't selling to.

- **In order to show a violation the totality of the facts must be considered.**

- **It is important to examine the market regulations in the industry.** To show if a undertaking's actions were lawful or unlawful, documents used by the the companies are very good evidence.

## EVIDENTIARY STANDARDS

### Higher Spectrum

The Commission is required to show more evidence to prove a violation. The respondent has ample defenses to respond.

### **Rhône-Poulenc**

This case is about whether or not the polypropylene company was part of the secret meetings, price setting, output restriction and quota designations.

- **A concerted practice relates to a form of cooperation between undertakings which, without having reached the stage where an agreement properly so-called has been concluded, knowingly substitutes practical cooperation for the risks of competition.** The continuing cooperation and collusion of the producers in the implementation of the overall agreement may display the characteristics of a concerted practice. It is sufficient that the undertakings in question expressed their joint intention to conduct themselves on the market in a specific way.

### **Ahlström**

This case is about the quarterly price announcements of woodpulp producers.

- **Concerted practice must be the only plausible explanation.** In determining the probative value of different factors, it must be noted that parallel conduct cannot be regarded as furnishing proof of concertation unless concertation constitutes the only plausible explanation for such conduct. It is necessary to bear in mind that, although Article 101 prohibits any form of collusion which distorts competition, it does not deprive economic operators of the freedom to adapt themselves intelligently to the existing and anticipated conduct of their competitors.

- **Unlawful concertation must lessen uncertainty and give participants assurance as to the conduct expected of the competitors to the point where they can foresee their competitors' actions.**

- **Parallel conduct is lawful as long as knowledge of that conduct is obtained solely by lawful market conduct.** Take caution in accusing "price fixing"; mere price announcements are not concerted practice. However, if certain price changes are irrational in comparison to the market they're more likely to be a concerted practice.

- **Evidence must be "sufficient, coherent and precise to view that parallel behavior was concerted practices".**

### **CRAM and Rheinzink**

This case is about the seemingly parallel and cause/effect actions occurring in the zinc markets.

- **Parallel conduct without explanation or evidence of object does not constitute a violation.** If a restrictive effect on competition is not demonstrated there is no violation. Furthermore, an error of fact resulting in parallel conduct does not show a concerted practice.

- **It is sufficient to show facts in a different light and allow another explanation of the facts to be substituted.**

### **Asnef-Equifax**

This case is about the exchange of information regarding the solvency and credit-worthiness of potential borrowers between credit institutions.

• **The distinction between a lawful and an unlawful exchange of information depends on the following two factors: the nature and substance of the information exchanged, the structure of the market concerned and the frequency with which the information.** Aggregate market information is lawful, provided that it does not make it possible to identify an individual competitor or become aware of its business strategy. Each trader involved in an information exchange must act independently and autonomously. It is also essential for the system to be available to all traders operating in that field.

• **Requirements for infringement are that the exchange affects member states and that competition must be restricted.** If the object has been established, then no need to go into effect. If the object is not established, consider effect on the market

• **Exchanges of information are not prohibited automatically.** Whether an exchange is lawful or unlawful is based on the information the firms exchanged, the structure of the market concerned and the availability of information. For example, an agreement all parties in an industry to share public information is not a violation.

2. Get the French accents correct.
3. Get Facts of T-Mobile correct - Single meeting. One company made a disclosure of future plan for
4. Check terminology in the cases / related terms. keep it **consistent** - “Respondent” “Felonious” “legislative intent”
5. WC word choice
6. circled - wording not clear
7. refine syntax
- 8.