

# Integrate or separate? Institutional designs for enforcing competition law and consumer protection

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**Merging Market Authorities: Mix & Match**

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## Legislative history Dutch Consumer Authority

- Regulation 2006/2004
  - intervening with traditional private public divide in Member States' enforcement models of consumer law
- Explanatory Note to Consumer Enforcement Act 2005:
  - “Most of the existing supervisory authorities control sector specific legislation such as the AFM and OPTA and for that reason they are unfit to provide general supervision as required by Regulation 2006/2004.”
  - “While the NMa is a general supervisory authority, it, however, pursues a different perspective. It is mainly targeted at maintaining well-functioning markets which makes workable competition possible and which guarantees an optimal price-quality relation of goods and services and an efficient allocation of resources.”

# Optimal agency design

- New challenges in liberalized and emerging markets
- Traditional divide consumer protection and competition law becomes hazy
- Market failures of complex nature
  - unfair trade practices, unfair contract terms, switching, entry barriers, abuse of dominance
- Allocation of regulatory powers for competition law and consumer protection within one or separate agencies
- Wide diversity of institutional arrangements
- Country specific factors: legal administrative traditions, stage of economic development, political realities

# Separate v. generic agencies

- Mandate of regulatory agencies
- Three models
  - Integrated agency: CY, DK, FR, IE, PL, UK, NL
  - Partially integrated agency: HU, IT, LT, LV, ES
    - Competition law + Unfair trade practices
  - Separate agencies: AT, BE, BG, CZ, EE, FI, DE, GR, LU, MT, PT, RO, SE, SI, SK,

<b>Member State</b>	<b>National Competition Authority</b>	<b>National Consumer Authority</b>
Austria	BWB	Federal Ministry for Labour, Social and Consumer Protection
Belgium	Autorité Belge de concurrence	Privacy Protection Commission DG Mediation and Monitoring
Bulgaria	Commission on protection of competition	Consumer Policy Unit
Cyprus	CPC	Competition and Consumer Protection Service
Czech Republic	UOHS	Ministry of Industry and Trade
Denmark	Konkurrencestyrelsen	Danish Competition and Consumer Authority
Estonia	Konkurentsiamet	Consumer Protection Board
Finland	FCA	Consumer Agency/Ombudsman
France	L' Autorité de la concurrence	Directorate-General for Competition, Consumer Affairs and Fraud Repression
Germany	Bundeskartellamt	Federal Office of Consumer Protection and Food Safety
Greece	The Hellenic Competition Commission	General Secretariat of Consumer Affairs
Hungary	Gazdasági Versenyhivatal (GVH)	Hungarian Authority for Consumer Protection
Ireland	TCA	National Consumer Agency
Italy	AGCM	Directorate-General for Market Harmonization and Consumer Protection (DGAMTC)
Latvia	KP	Consumer Rights Protection Centre
Lithuania	CC	State Consumer Rights Protection Authority
Luxembourg	CCM	Ministry of Economic and Business Affairs
Malta	MCA	Consumer and Competition Division
Netherlands	NMa	Dutch Consumer Authority
Poland	UOKiK	Office of Competition and Consumer Protection
Portugal	Competition Authority	Consumer Directorate-General
Romania	Competition Council	The National Authority for Consumer Protection
Spain	National Competition Commission	National Institute for Consumers
Sweden	Swedish Competition Authority	The Swedish Consumer Agency/Consumer Ombudsman
Slovenia	Competition Protection Office	Market Inspectorate of RS
Slovakia	Antimonopoly Office	The Ministry of Economy and Construction of the Slovak Republic
United Kingdom	Office of Fair Trading	Office of Fair Trading

# Pros of integration

- Single portfolio of policy instruments
  - Economies of scope in access to resources and in efficacy of monitoring and accountability processes
- Share expertise:
  - Integrated management and professional development
  - Better coordination of enforcement at three stages:
    - Identification of market failures case selection and allocation
    - Assessment of competitive/consumer harm
    - Remedies
- Avoid regulatory failures:
  - agency captured by consumer agenda without proper appreciation of costs of regulation OR captured by regulated firms
- Wider visibility to community
  - Public awareness, accountability, acceptance, consumer welfare

# Cons of integration

- Differences in substance and implementation
- Competition law:
  - general, horizontal and prohibitory in nature
  - adaptable to industries and situations
  - administrative proceedings and litigation, blunt instrument, small number of cases often large in absolute terms, formalized process
- Consumer law:
  - industry specific, steering and prohibiting
  - soft regulatory tools, many small cases
  - varied in form, substance and instruments
  - Australian Productivity Commission: consolidate consumer law
- Agency's agenda might be dominated by competition law
- Limits on integration in practice: cannot be complete
  - Strongly decentralized, scattered consumer protection

# Checklist for policymaking

- Study and understand the different constituencies, different objectives
  - Choice of enforcement tools
  - Types of intervention: *ex ante* and *ex post* control
  - Choice of remedies and sanctions
- Identify cross-junctions in the enforcement framework
- Align policy objectives and implement single tools
- Integration of policymaking and enforcement can take place through separate agencies and separation can exist within an integrated agency