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I. INTRODUCTION

European antitrust in 2025 will be a strangely familiar place even as a revolution of private enforcement changes the way regulators, industry, and the judiciary interact.

In order to envisage what the competition world will look like, it is necessary to make a number of assumptions:

1. Cartel detection by regulators will decline significantly as the deep well of industrial cartel behavior dating back to the 1970s dries up and the inherent contradictions exposed in the leniency program become more apparent.
2. Private enforcement and damages actions will succeed in establishing themselves as viable alternatives to regulator enforcement and punishment. This will not be a result of regulation but rather a market-led revolution.
3. Reform of the court system in Europe will have an enormous impact on the enforcement of antitrust rules in Europe and reduce the requirement for fundamental change to the way antitrust decisions are taken by the European Commission.

II. CARTEL DETECTION IN 2025: BUILDING CONSENSUS ACROSS MEMBER STATES

Inherent contradictions in cartel enforcement in Europe—where regulators relied on leniency applications to detect cartels and then levied massive fines—eventually led to fewer and fewer leniency applications. This was exacerbated by a series of investigations against particular companies collapsing after they refused to cooperate, leading to more companies feeling comfortable "taking their chances."

Instead, regulators began focusing on sectoral or industry specific investigations. While these started around 2005 with investigations into the pharmaceutical and energy sectors the probes became more and more focused, particularly in areas where the commission and European member states had industrial objectives.

While the increased use of forensic economic analysis by regulators to detect potential cartel activity led to some limited successes, regulators turned to more traditional methods to uncover conspiracies including rewarding individual whistle-blowers with plain, hard cash.

It was determined that the attempt to gain EU powers to levy criminal sanctions against individuals acting in cartels was never going to work for reasons of national sovereignty and differing legal systems. Nevertheless, the commission did finally use the powers available to it under the Lisbon Treaty to compel Member States to impose national sanctions for breaches of

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EU regulations. The commission, initially building consensus through its network of national authorities, also achieved some success in aligning penalties across Member States. It did, however, take more than two commission terms to get the appropriate regulation past the Member States.

III. PRIVATE ENFORCEMENT IN 2025: FOR INDIVIDUAL STATES ONLY

While the U.S. Supreme Court wound back the ability of plaintiffs to bring cases, judicial encouragement in Europe, particularly in the United Kingdom, Germany, and the Netherlands, compensated for a lack of European regulation in encouraging private enforcement.

Attempts to forge legislation that would encourage and facilitate private enforcement and class actions in Europe failed in the face of German industrial opposition channeled through the Christian Democratic Union in the European Parliament, Council, and Commission. Despite the lack of formal regulation, the incentive for private litigation came from classical capitalist incentives. With U.S. litigation firms seeking to replace receding business, and hedge funds willing to provide the risk financing, the way was open for companies and eventually groups of individuals suspecting antitrust infringements to seek judicial review.

IV. THE COURTS IN 2025: REFORM TO DATE

The EU courts, specifically the General Court, spawned several separate tribunals dealing with specific topics, while it has become the Court of Appeal on points of law. This has allowed the Court of Justice itself to deal with matters relating to interpretation of the treaties which bind the European Union and actions against Member States. This has been the first step towards easing the ever-growing burden on the court's limited resources.

Following the successful launch of a separate court for trademarks and patents, new courts for competition and state aid, trade and single market disputes, and other general European law were established in Strasbourg as part of the quid pro quo for ending the European Parliament's once-monthly travelling circus to the Franco-German border city. The financing for the initiative was partly obtained from cash saved by ending the parliament's Strasbourg sessions while costs were also alleviated by ensuring that the working languages of the court could be in either French or English, thus reducing at a stroke the enormous translation and interpretation costs while widening the pool of available legal talent.

The structure of the courts remains similar with the competition court consisting of five separate chambers. This enables a rapid acceleration in the time taken to hear cases, with some taking as little as three to four months.

The success of the review panel for nominations for judges, established in February 2010, has proven to be an incremental success as each round of replacement judges were made. The seven-person panel to vet such appointments—known as the "255 committee" after an EU treaty article—can give recommendations only to national governments who then sign off formally on the candidates. However, showing its teeth from the offset with the rejection of two candidates at its first-ever meeting set the standard for future nominations from Member States. Result: an increase in the quality of judges.

The General Court hears appeals not just on commission decisions and on judgments taken by the specialist competition court, but on referrals from national competition courts set up in each of the 30 member states. This finally achieves the much-sought-after harmonious application of competition law across all of the EU states.

V. STRUCTURE OF THE EUROPEAN REGULATOR IN 2025: PROGRESS

The increasing speed with which the court could take cases and the increased expertise and competence of judges also meant significant concern over the functioning of the European regulator as both investigator and decision maker in antitrust and merger cases was effectively removed.

With the court both able and willing to carry out fuller reviews, commission decision-making has gained an effective level of scrutiny that had previously, at best, been intermittent. This finally put pay to calls for a root-and-branch reform of the commission's enforcement structure.

Both practice and perception were also improved by the changes made to the role of the Hearing Officer, a position eventually built into a sub-directorate of the commission and split completely from both DG Competition and the Office of the Competition Commissioner, cementing its independence.

With a strengthened team of lawyers and economists themselves, the Hearing Officers have been involved in reviewing both procedures and gathering evidence on the type or quantity of information being sought by investigators without casting comment on the actual decision being taken. The Hearing Officer also coordinates representations from other directorates to ensure all relevant voices are being heard. The post is also involved in cases from a much earlier stage.

VI. INTERNATIONAL COOPERATION IN 2025: PARTIAL SUCCESS

While the success of the International Competition Network ensured some level of consistency in the development and application of antitrust rules, it wasn't able to rule on international disputes.

The development of antitrust enforcement as an economic weapon wielded at first by China and India, and then in retaliation by jurisdictions around the globe, spurred the eventual establishment of an arbitration body alongside the World Trade Organization in Geneva.

Similarly to trade however, the establishment of the organization hasn't stopped the tit-for-tat sanctions including fines, compulsory licensing, and asset disposals that have accompanied the findings of abusive behavior that are little more than attempts to subvert market access by foreign firms.

VII. CONCLUSION: BEYOND 2025

There will continue to be active enforcement of competition law—a law little changed from that which existed in 2010—but the nature of those enforcing it will change.

The greatest challenge will continue to be to prevent competition law—like state aid enforcement before it—from being subverted for political and industrial objectives.