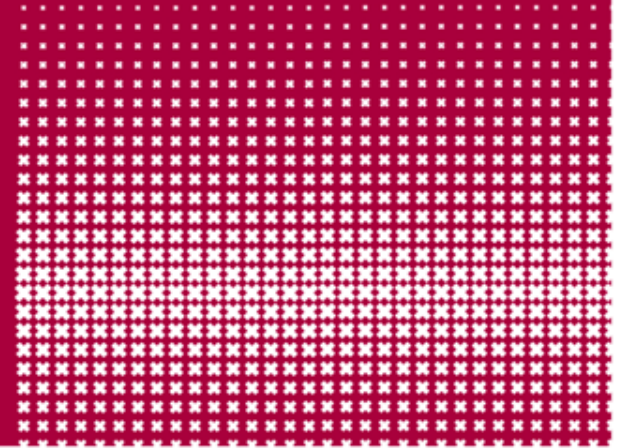




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# Accession to the EU's competition law regime

a law and governance approach

# Pre-accession rule transposition

- Extra-ordinary rule-transfer
- Strong conditionality (legal, economic and political)
- Different governance mechanisms in 2004, 2007 and 2013
- New governance mode in the enlargement policy
  - Structured framework for negotiations
  - Stricter monitoring

# Post-accession compliance

- Crucial test for the effectiveness of the governance mechanisms used in the process of Europeanization
- Conditionality (external incentive of membership) terminates
- Post-accession tendencies (Pridham, 2008)
  - “Backsliding” - reversal
  - Routinization
  - Social learning (changes in norms and beliefs)
  - External pressures

# Lessons from 2004

- Aim: “join the club” and obtain “school certificate”
- Exceptional rule transfer
  - External governance left questions of legitimacy and effectiveness
- Pre-accession dominated by rule adoption not implementation
- “World of dead letters” (Falkner and Treib, 2008)
  - Top down legislative process, legislation without participation and political deliberation
  - Favoured statutory enactment *vis-à-vis* institution building
- Modernization of EU competition law and accession of New Member States

# Double role of Regulation 1/2003 in the NMS

- (1) New procedural framework:
  - decentralized enforcement, parallel application of EU and national law
- Aim of reform: more effective enforcement
  - ECN, private enforcement
- (2) Inherent part of the accession *acquis*
  - Most significant influence on competition laws in the NMS
  - Clear example of Europeanization process

# Modes of implementation

- **Legislative implementation**
  - Articles 101 and 102 TFEU, Article 3 Reg. 1/2003
- **Administrative enforcement**
  - Article 5 of Regulation 1/2003, very basic
- **Judicial implementation**
- **Institution building: NCAs, NCs!**
  - Interacting with market, constitutional and institutional reforms
  - Revival of private law and private law courts

# Enforcement

Administrative	Criminal enforcement	Judicial enforcement
<p>NCAs: relatively independent, sufficient resources and expertise, take up broader regulatory tasks, increased investigative powers, cartel units, increasing corporate fines</p> <p><b>dominant mode of enforcement</b></p>	<p>Czech Republic Estonia, Hungary (bid-rigging), Romania, Slovenia, Slovakia</p> <p>Active invocation: Estonia</p>	<p>No special courts Judicial review Private enforcement Ambitious without actual enforcement except Lithuania</p>

# National governance and local enforcement strategies

- HU: leniency program for unfair and restrictive market practices (2009)
- HU: compliance program for SMEs (2012)
- CZ: Competition advocacy as an alternative tool to resolve less serious infringement of competition law without initiating administrative proceedings



# Institution building I.

- Article 5 and 35 Regulation 1/2003
- Administrative capacity has become a cornerstone of credible enforcement of EU law
  - EU enlargement policy made boundaries between institutions more distinct
  - Critical to effective law enforcement
- No legislative obligations or guidelines
- Technical assistance from EU and IOs
- Independence, accountability, procedures

## Institution building II.

- Institutional performance norms:
  - Expertise
  - Administrative efficiency (priority setting)
- Agency organization
  - allocation of enforcement powers
  - Internal organization
- Resources and staff
- Advocacy, competition culture
- Relationship with the courts and other regulatory authorities

# Institutional design of NCAs

<b>Competence of NCA includes unfair competition or consumer protection</b>	<b>Competence of NCA includes other regulatory area than competition law</b>	<b>Competence of NCA includes only competition law</b>
Bulgaria, Poland, Hungary, Lithuania, Latvia	Bulgaria, Poland, Hungary, Lithuania, Latvia, Estonia, Czech Republic	Romania, Slovakia, Slovenia

# European Competition Network

- Case allocation + information exchange
- Guardian of uniform application Arts. 101, 102 TFEU
- Designed as policy enforcement network functions as policy making network
  - E.g. Model Leniency, Working group on cooperation issues and due process
  - Melting pot of “national laboratories” but dominance of EC
- Peer accountability v. external accountability