

Parallel enforcement of international cartels

- What about the principle of ne bis in idem?

Helene Andersson

Article 50 of the Charter



No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

Under Regulation 17/62...



- Centralised enforcement system
- The sanctions imposed were considered to be administrative and not criminal.
- No Charter...

ICN Webinar on parental liability 15 November 2017

- The principle of *ne bis in idem* raises important questions. How should an EU Member State consider an infringement for which a fine has already been imposed in a third (non-EU) country?



US

UK

EU

Japan

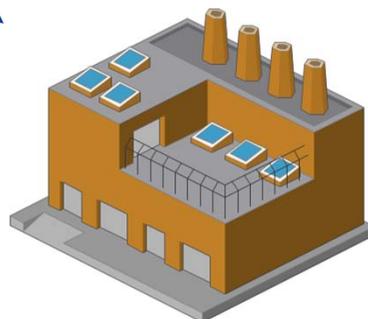
The agencies coordinated their investigations
and to some extent also the sanctions imposed.

National law and/or TFEU
Article 3.1 Reg 1/2003

Sweden

Germany

Czech Republic



Poland

Spain

17/11/2017

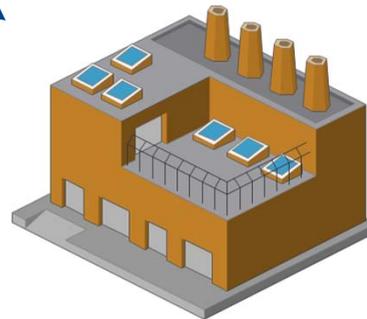
In theory...



Sweden

Germany

Czech Republic



Poland

Spain

17/11/2017

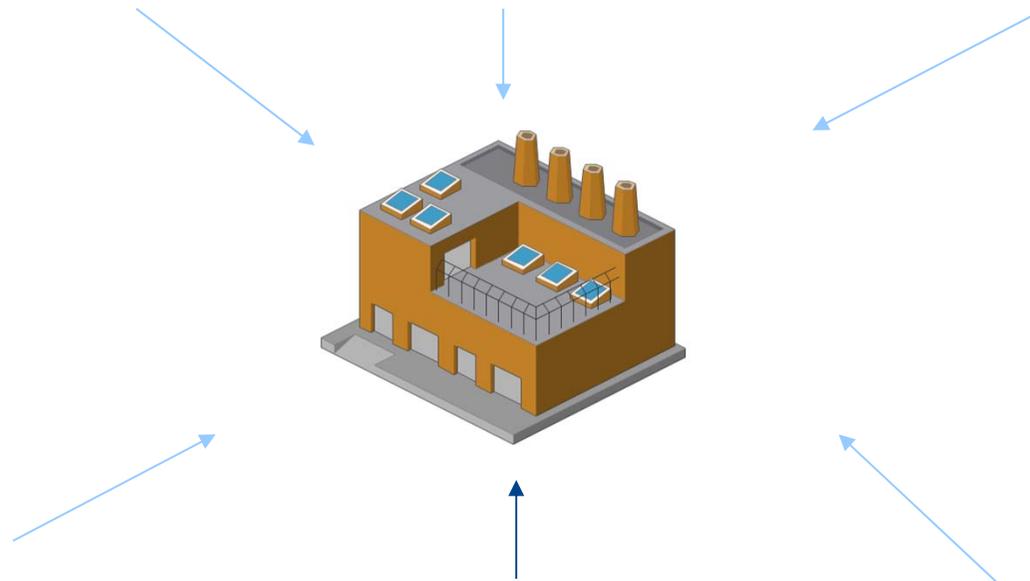
In practice...

National law and/or TFEU
The ECN Notice + Art. 11.6 Reg 1/2003

Sweden

Germany

Czech Republic



Poland

Commission

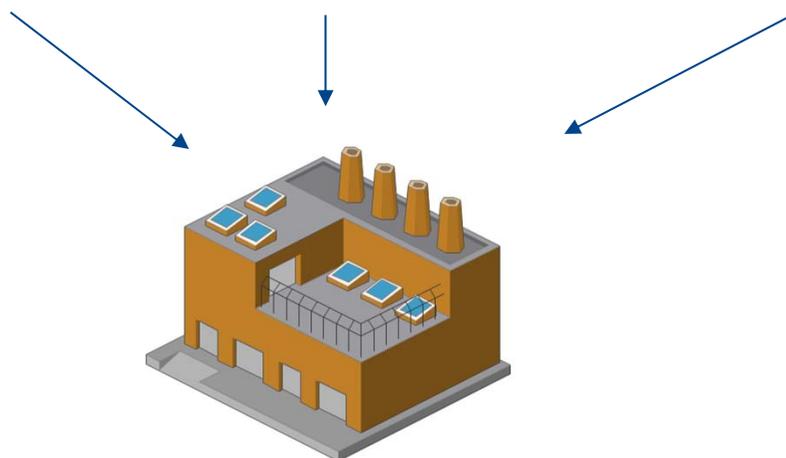
Spain

National law and/or TFEU
Article 3.1 Reg 1/2003

Sweden

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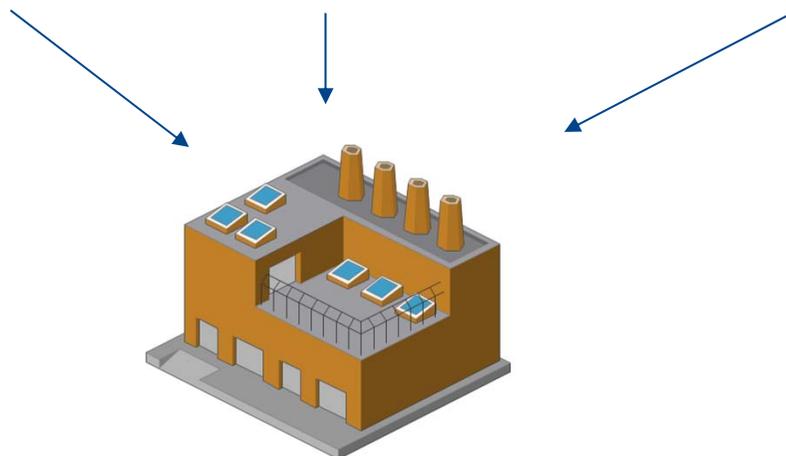
When several MS apply Article 101 or 102 TFEU in parallel, there are no territorial limitations set by Regulation 1/2003.

National law and/or TFEU
Article 3.1 Reg 1/2003

Sweden
10%

Germany
10%

Czech Republic
10%



When the maximum fine was set to 10% of the turnover, this was with the aim to ensure deterrence without forcing the cartelists into bankruptcy.



Dutch authorities impose a fine on Company X B.V. for breach of Article 101 TFEU/Dutch competition legislation through participation in the same cartel, but with regard to activities/effects on the Dutch market



French authorities impose a fine on Company X S.A. for breach of Article 101 TFEU/French competition legislation through participation in a cartel on the French market.

2013

The Commission imposes a fine on the Company X group for breach of Article 101 TFEU.

17/11/2017





The Charter and the ECHR protect individuals from being prosecuted, tried or convicted for the same offence twice.

Criminal offences according to the Engel criteria.

Competition law proceedings are considered to be of a criminal nature.

17/11/2017

Three criteria apply



- Identity of the facts;
- Unity of offender;
- Unity of the legal interest protected

The ECJ does not consider there to be a unity of the legal interest protected by EU competition law and competition law of third countries.

Likewise, the ECJ declared already in *Walt Wilhelm* that EU and MS law consider cartels from different points of view.



'[t]he principle of ne bis in idem ... precludes, in competition matters, an undertaking from being found guilty or proceedings from being brought against it a second time on the grounds of anti-competitive conduct in respect of which it has been penalised or declared not liable by a previous unappealable decision'

Case T-144/07 *Thyssen Krupp*



Is it time for a one-stop-shop
also within the field of antitrust?