

Fairness, efficiency, choice

What standard
for competition policy worldwide?

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Changes

- Economics
- Variation of competition policies
 - In space and time
 - Fairness, efficiency
- Internationalisation

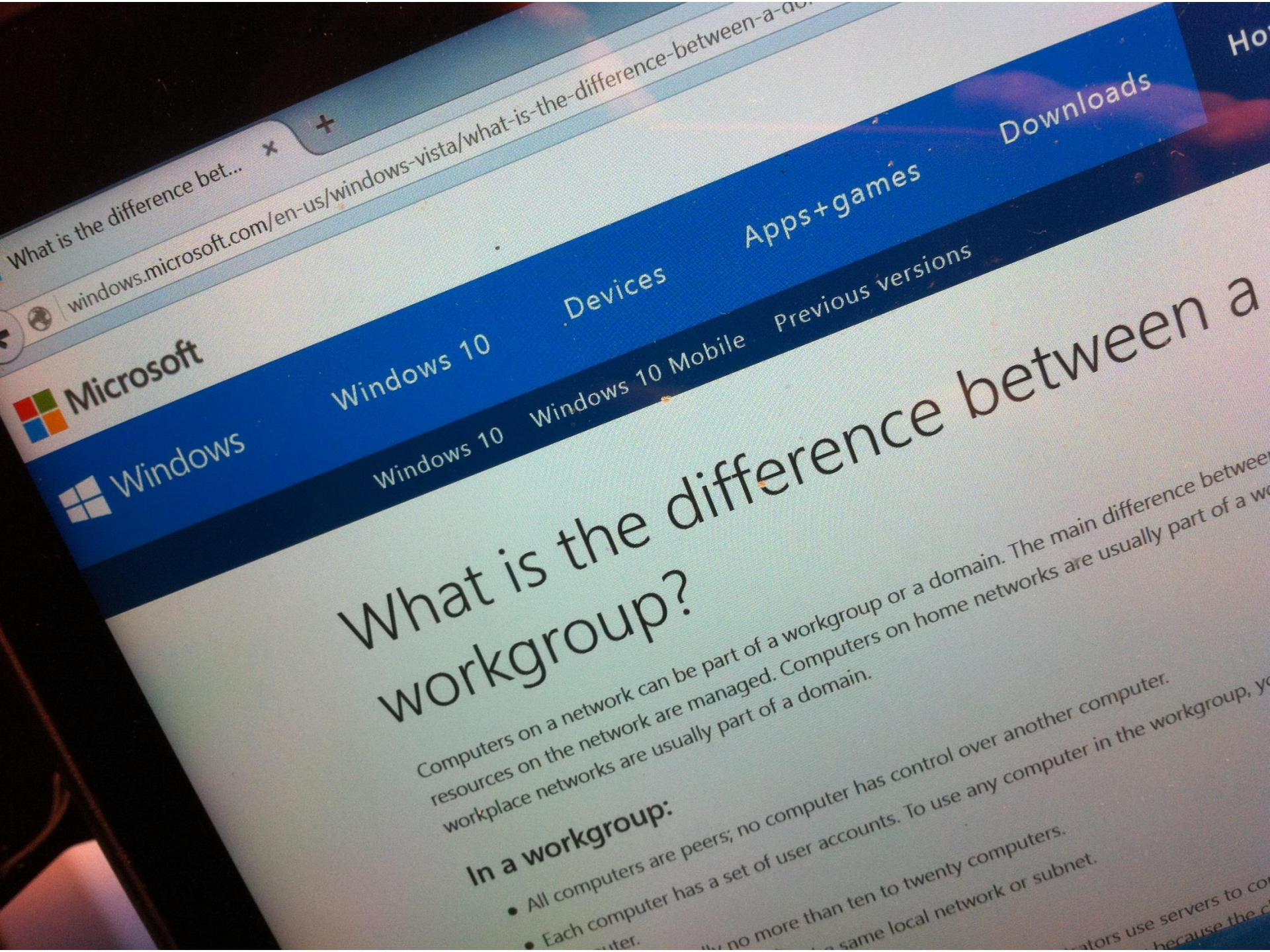
Events

- Ascola conference
 - 2010, Washington
- Federal Trade Commission
 - 2011, Washington
- Brussels
 - 2012
- Warsaw
 - 2015

Consumer Choice Initiative

- Global
- Multi disciplinary
- Open





What is the difference between a workgroup?

Computers on a network can be part of a workgroup or a domain. The main difference between resources on the network are managed. Computers on home networks are usually part of a workgroup, while computers on workplace networks are usually part of a domain.

In a workgroup:

- All computers are peers; no computer has control over another computer.
- Each computer has a set of user accounts. To use any computer in the workgroup, you must log on with a user account on that computer.
- There are no more than ten to twenty computers.
- All computers are on the same local network or subnet.



ecteur Windows Media

Organiser ▾ Bibliothèque ▸ Musique ▸ Album ▸

Diffuser en continu ▾ Créer une sélection

Album

Satie: Early Piano Works [Disc 1]

Satie: Early Pia

Reinbert De

Classical

1998

Paul Nihoul

▲ Sélections

▶ rtbf - 21 mars 200

▶ Musique

Artiste

Album

Genre

Vidéos

Images

ment(s)

MSDN.- “Microsoft’s refusal to supply has the consequence of stifling **innovation** in the impacted market and of diminishing **consumers’ choices** by locking them into a homogeneous Microsoft solution. As such, it is ... inconsistent with the provisions of Article [102] (b) of the Treaty”.

Decision of the Commission, para 694 and 782.

- **Scene 1 - Pro competitive justification**
 - Customers save on transaction costs
 - The firm saves on distribution costs, and the saving may be passed on to customers
- **Scene 2 - Problem**
 - But the behavior adopted by MS impaired seriously two Fundamental Market Mechanisms

Fundamental Market Mechanism 1 : With its behavior, MS relieved itself from the pressure normally associated with the exercise of economic activities in competition

- The behavior* adopted by MS made close to impossible the emergence of credible alternative client PC multimedia software
- In the absence of credible alternative, customers could not make choices on the relevant market
- This was probably a problem for them but, more importantly, it allowed the firm to escape the pressure coming from customer choices on competitive markets
- As that mechanism was not available any longer, there was no guarantee that customers and society would enjoy, on the relevant market, the advantages of a competition based economy**

** low prices, better quality, innovation

* Pre installation WMP in Windows + exclusivity

Fundamental Market Mechanism 2 : with its behavior, MS created a situation where business decisions were not made any longer, on the relevant market, as a result of market interactions

- Surveys* indicated that informed customers preferred alternative software (OEMs ...)
- However, that preference did not translate into purchases of alternative software, as a result of the behavior** adopted by MS
- That behavior implied that customers were not any longer in a position to choose what they considered as best for their needs
- This was probably bad for them but, more importantly, it implied that, on the relevant market, business decisions were not made on the basis of preferences by business actors – but were imposed by the dominant firm
- In that context, there was no guarantee that customers and society could enjoy the benefits normally associated with the organization of markets on a competitive basis.

Low prices, better quality, innovation

* Some of them provided by Microsoft

** Pre installment WMP in Windows + exclusivity

WMP.- “[I]t constitutes an abuse when an undertaking in a dominant position directly or indirectly ties its customer by a supply obligation since this deprives the customer of the ability to choose freely his sources of supply and denies other producers access to the market ».

Decision of the Commission, para835.



“AMD-based products for which there was a customer demand did not reach the market, or did not reach it at the time or in the way they would have in the absence of Intel's conduct. As a result, customers were deprived of a choice which they would have otherwise had”

“Intel was able to use the tool of conditional rebates that were capable of inducing loyalty and thereby **limiting consumer choice** and foreclosing the access of competitors to the market”.

Decision of the Commission, para 1598.

“Intel's exclusionary practices had a direct and immediate negative impact on those customers **who would have had a wider price and quality choice** if they had also been offered the product of their favourite OEM and/or retailer with x86 CPUs from Intel's competitors”.

Decision of the Commission, 1602.

- **Scene 1 - Pro competitive justification**
 - Ultimately, OEMs were charged low prices and had to pass these prices on to their customers (final market was competitive)
 - Conditional discounts and payments ensure quantity production, economies of scale, and lower prices for all
- **Scene 2 – Problem**
 - But the behavior adopted by Intel impaired seriously two Fundamental Market Mechanisms (FMM)

– FFM 1 - No pressure on firm any longer

- The behavior* adopted by Intel made close to impossible the emergence of alternative chip manufacturer
- Customers could not make choices any longer
- Yet choice is what places a pressure on firms to do better
- In the absence of choice, there was no guarantee that customers and society would enjoy, on the relevant market, the advantages associated to a competition based economy

Low prices, better quality, innovation

– FFM 2 - Choices not made by markets any longer

- There was a demand for AMD products on the part of direct and indirect purchasers
- But Intel made sure that that demand could not be served *
- Behavior MS > customers could not choose what corresponded, in their judgments, to their needs
- Market decisions were not made by customer or business partners as normal in a competition based economy – but were imposed by the dominant firm

* Payments to OEMs conditional on them not purchasing AMD's chips, discount equally conditional



france telecom

- **France Telecom : “Pro competitive justification”**
 - Low prices are good for customers !
 - Prices will remain low as entry barriers are low
- **Procedure : “Avoid Type II Errors”**
 - Commission, General Court:
Wrong to consider that entry barriers were low
 - 2 + European Court of justice :
Loss recoupment is not a condition for prices to be deemed predatory and hence abusive

“[T]he lack of any possibility of recoupment of losses is not sufficient to prevent the undertaking concerned reinforcing its dominant position, ... so that the degree of competition existing on the market, already weakened precisely because of the presence of the undertaking concerned, is further reduced and customers suffer loss as a result of **the limitation of the choices available to them**”[\[1\]](#).

[\[1\]](#) Judgment of the European Court of justice, para 112.

Is there a trend?

- Founding cases
 - Hoffmann La Roche, United Brands, Michelin
- Choice as a mechanism
- Very strong in Art. 102 TFUE cases

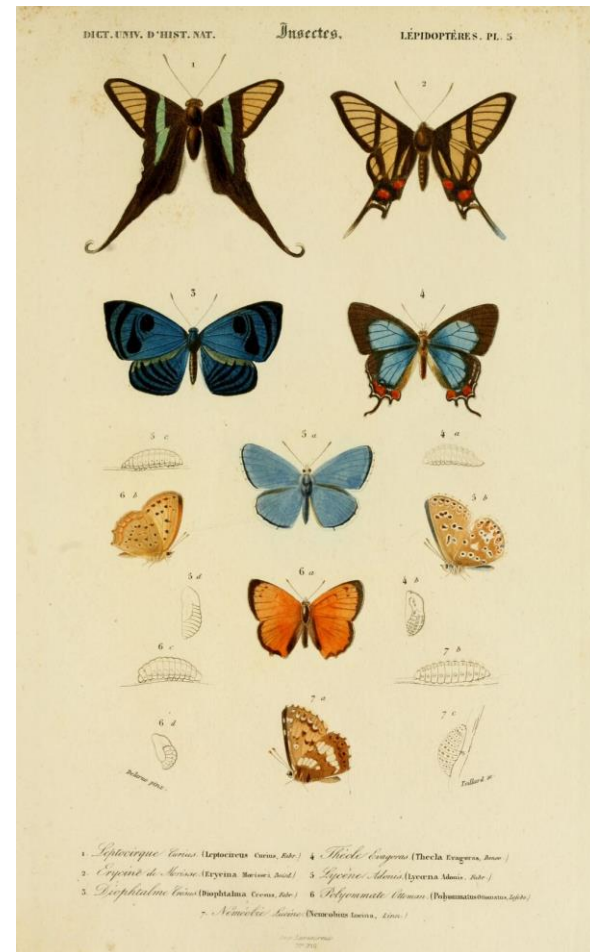
Pervasive

- **Merger** cases
 - Pre 2004
 - Post 2004
- Agreements with **horizontal** effects
- And with **vertical** effects

Basic dilemma

- Meaningful choice
 - = Lack of market power (game theory)
 - > Pressure on firms
 - > Advantages for customers and society
 - lower prices, better quality, innovation
 - < Existence of credible alternatives
- No such choice
 - = market power
 - > No pressure
 - > No such advantages
 - < Absence of credible alternatives

International context



Think twice
before
accepting the
invitation of an
excellent
colleague ...

