

UNIVERSITY OF MACAU

FACULTY OF BUSINESS ADMINISTRATION

**EC COMPETITION LAW AND POLICY AND
ITS IMPLICATIONS FOR CHINA**

TANG, Tat Weng

M-A3-6014-1

Thesis presented to the

Faculty of Business Administration

University of Macau

In partial fulfilment for granting the MBA Degree

(In Area of European Studies)

2008

Table of Contents

Abstract.....	i
Acknowledgments.....	iii
Abbreviations.....	ix
List of Tables	xi
List of Diagrams	xii
Chapter 1: Introduction.....	1
1. Motive of the study	3
2. Objective of the study	5
3. Ambits of Research.....	7
4. Literature Review.....	9
4.1. The ambit of the competition law and policies of the EC.....	9
4.1.1. The policy on antitrust	10
4.1.2. The policy on cartels.....	12
4.1.3. The policy on state aids	12
4.1.4. The policy on mergers	13
4.1.5. The policy on liberalisation	14
4.1.6. The policy on international cooperation	15
4.2. The development and establishment of fair competition law in China	16
5. Applied Methodology in this Research.....	17
6. Organization of this thesis	19
Chapter 2: Background and Development of the EC Competition Law and Policy	25
1. Brief History of Competition Law and Policy in EU	25
1.1. The Foundation of the Antitrust Law in US	25
1.1.1. Sherman Act	26
1.1.2. Clayton Act.....	26
1.1.3. Federal Trade Commission Act	27
1.2. Source and Initial Evolution of Competition Law in the EC.....	27
2. Concept of Competition.....	31
3. Definition of the EC Competition Policy.....	32
4. Objectives of the EC Competition Policy	33
4.1. General Objectives of Competition Policy for which the TEC Provides	33
4.2. Concrete Objectives of Competition Policy Developed Pursuant to Annual Implementations.....	37
5. Legal Framework of the EC Competition Law.....	39
5.1. Fundamental provisions of the TEC	40

5.2. Secondary legislation	42
5.2.1. Regulations	43
5.2.2. Directives	43
5.2.3. Decisions	44
5.2.4. Recommendations and opinions	45
5.2.5. Other acts	45
5.3. Hierarchical relation of secondary legislation to fundamental provisions of the TEC	46
6. Conclusion	47
Chapter 3: Institutions of European Competition Policy	49
1. The Commission	51
1.1. Cabinets	56
1.1.1. Secretariat-General	57
1.1.2. Legal Service	57
1.2. Organization and Functions of Directorate-General for Competition	59
1.3. Mission of Directorate-General for Competition of the Commission	65
2. The European Parliament and the Council	66
2.1. European Parliament	67
2.2. Council	70
3. The European Courts	72
3.1. European Court of Justice	72
3.2. Court of First Instance	76
4. Conclusion	78
Chapter 4: EC's Competition Policy I – Rules, Interpretation and Application on the Core Provision of Competition Law	81
1. Antitrust	82
1.1. Restrictive Practices	83
1.1.1. The prohibition	85
1.1.2. <i>De Minimis</i> rule	93
1.1.3. Horizontal Agreement and Vertical Agreement	95
1.1.4. Exemption from Prohibition	101
1.2. Abuse of Dominant Position	107
1.2.1. The Concept of Abuse	109
1.2.2. Relevant Market	115
1.3. New System for implementing Articles 81 and 82 of the TEC	120
1.3.1. European Competition Network	123
1.3.2. Cooperation within the ECN and between ECN and national courts	127
2. Cartels	129
2.1. Leniency Programme	133
2.1.1. The purpose of introduction to Leniency Programme	133
2.1.2. Revised Leniency Notice in 2006 and its improvements	135
Chapter 5: EC's Competition Policy II – Rules, Interpretation and Application on Mergers, Liberalization, State Aids and International Cooperation	137
1. Mergers	137

1.1. Origin of Rules on Mergers Control	138
1.2. Previous Regulations on Mergers Control	139
1.3. Status Quo of Mergers Regulation.....	140
2. Liberalization – Concession Granted by Member States.....	143
3. State Aids	146
3.1. General purposes of State Aids policy.....	146
3.2. The structure and applicability of Article 87 of the TEC	149
3.2.1. Aids incompatible with the Common Market.....	149
3.2.2. Exceptions <i>ipso jure</i>	153
3.2.3. Discretionary exceptions by the Commission	154
3.3. The application of Article 87 of the TEC	159
3.4. The machinery of Articles 88 and 89 of the TEC	160
4. International Cooperation	161
4.1. Cooperation with international organizations.....	163
4.1.1. The World Trade Organization.....	163
4.1.2. The Organization for Economic Cooperation and Development	164
4.2. Bilateral cooperation and the extraterritoriality principle.....	165
4.2.1. Brief bilateral relationships of EU with US, Canada and Japan.....	167
4.2.2. Bilateral cooperation with China	169
5. Conclusion	170
Chapter 6: Chinese Competition Law Reform with EU's Experience	173
1. Progress of EU-China competition policy dialogue	174
1.1. Establishment and intensification of EU-China relationship.....	174
1.2. Cooperation related to competition policy in the EU-China relationship.....	175
2. The present competition legal framework of China	179
2.1. The effective competition-related laws in China	180
2.2. Developmental reform in anti-monopoly system of China.....	185
2.3. Orientation of competition policy reform in China	191
2.3.1. Impact of the WTO on the development of competition law and policy of China.....	192
2.4. The newly approved Anti-monopoly Law of PRC	205
2.4.1. Objectives of Anti-monopoly Law of PRC	205
2.4.2. Ambit of subjects of monopolistic conducts.....	206
2.4.3. Conditions constituting monopolistic conducts.....	208
2.4.4. Definition and typology of monopolistic conducts.....	209
2.4.5. The legal liabilities of monopolistic conducts and abuse of administrative power	218
3. Comparison between Anti-unfair Competition Law and Anti-monopoly Law	222
3.1. Changes in anti-competitive conducts	222
3.2. Competition in application of both laws	227
4. Projection of EU's competition law model to China	228
5. Conclusion	233
Chapter 7: Conclusion.....	235
1. The Components of Competition Law and Policy of the EU	236

1.1. Historical Background	236
1.2. Legal Framework	237
1.2.1. Core provision	237
1.2.2. Peripheral provisions	239
1.3. Structure and Staff	240
2. International characteristics of the competition policy of the EC.....	241
2.1. International Bilateral Cooperation Relations of the Competition Policy of the EC.....	242
2.2. International Multilateral Cooperation Relations of EC's Competition Policy	244
3. Background of Competition Law and Policy of the new EU	245
4. EU Competition Law model implied for China.....	249
4.1. Definition of all-encompassing national competition law	249
4.2. Essential Elements in Competition Policy	251
4.2.1. The legislation is the subject of the competition policy	251
4.2.2. The competition-related legal system acts as the key role in the competition policy	254
4.2.3. The consciousness of fair competition is a power to motivate fair competition	255
4.2.4. The entirety is the scope of competition policy	255
4.2.5. Implementing the sustainable development strategy	256
Bibliography:	259
Annex 1: Rules on Competition of the TEC	269
Annex 2: Anti-monopoly Law of the PRC	273