

The role of national courts: *Lessons from EC competition law*

Maartje de Visser

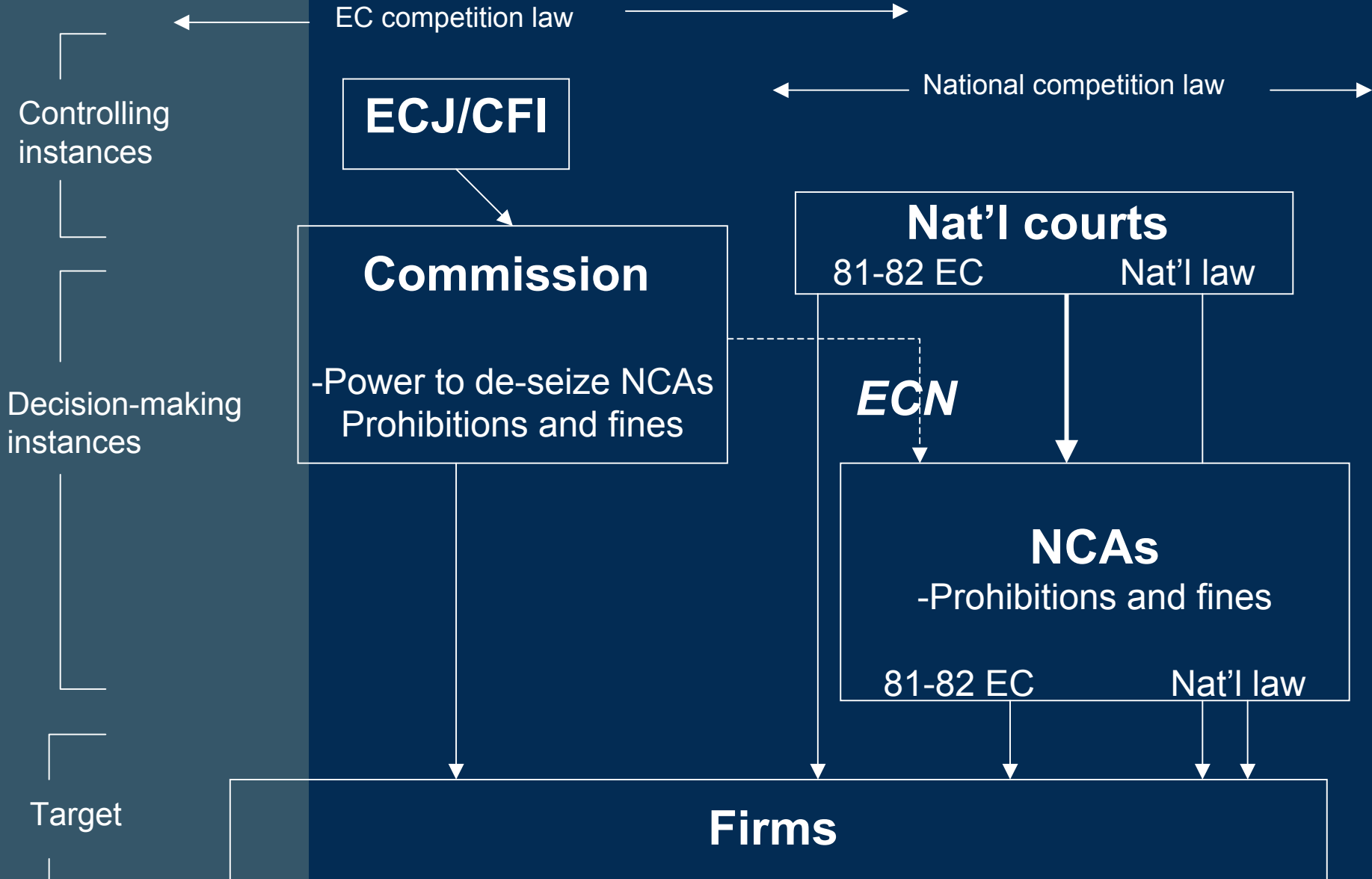
Department of International and European
Law/TILEC

Tilburg University

Outline

- The institutional framework in EC competition law post-Regulation 1/2003
- Conception of the role of national courts
- Lessons from EC competition law
- Lessons from EC communications law

The institutional framework in EC competition law



Judicial protection against NCA decisions at Member State level

- **Germany**
 - > NCA
 - *Oberlandesgericht Düsseldorf*
 - *Bundesgerichtshof*
 - > NRA
 - *Verwaltungsgericht*
- **France**
 - > NCA
 - *Paris Cour d'Appel*
 - *Cour de Cassation*
 - > NRA
 - *Conseil d'État + Paris Cour d'Appel (disputes)*

Judicial protection against NCA decisions at Member State level

- **The Netherlands**

- > NCA + NRA

- *Rechtbank Rotterdam*
 - *College van Beroep voor Bedrijfsleven*

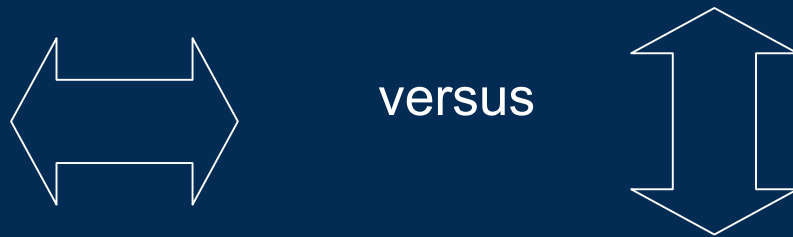
United Kingdom

- > NCA + NRA

- *Competition Appeal Tribunal*
 - *Court of Appeal*
 - *House of Lords*

The role of national courts

- EC competition law -> nat'l courts as *first instance alternative to public enforcers*
- EC communications law -> nat'l courts as *controlling instance of public enforcers*



- Difference in conception has led to a difference in the nature of provisions regarding nat'l courts
 - > Consistency concerns
 - > Procedural/effectiveness concerns

Lessons from EC competition law

Specific consistency mechanisms

- Legal basis: Articles 15 and 16 of Regulation 1/2003 (and Notice on cooperation)
 - > Right to ask Commission for information or opinion
 - > Obligation to notify final judgments to the Commission
 - > Right for Commission and NCAs to intervene as *amicus curiae*
 - > Single-case consistency

Lessons from EC competition law

Effectiveness consistency mechanisms

- Not many requests for information
- Database of national judgments → inspiration and guidance for other judges (informal 'network')
- No amicus curiae interventions by the Commission yet, but there have been interventions by NCAs
- Single-case consistency?

Lessons from EC competition law

Consistency in EC communications law

- Right to ask Commission for assistance (Article 10 EC)
- Infringement proceedings by Commission (Article 226 EC)
- Preliminary references to the ECJ (Article 234 EC)
- Need for specific consistency tools
 - > ‘Educational value’
 - > Role of nat’l courts as first instance alternative to NRAs
 - Dispute settlement
 - Competition law / damages actions

Lessons from EC competition law

Possible transplants

- Formal measures
 - > Express competence to ask the Commission for information
 - > Notification of judgments + database
 - > Amicus curiae
- Informal measures
 - > Training courses, conferences...
 - > Association of European Electronic Communications Law Judges

Lessons from EC communications law

- Nat'l courts also act as review instances of NCA decisions
- Similar concerns as in EC communications law
 - > Importance of merits-based review, suspensive effect
- Jurisdictional overlap between EC competition and EC communications
- Need for EC to pay attention to nat'l courts as review instance
 - > Take a leaf from the communications law book

Conclusion

- Recognition of need for consistency and ‘education’ of national courts
- Broader conception of national courts embracing first instance alternative *and* review role
- Cross-fertilization between EC competition and EC communications law