UNIVERZITA KARLOVA

Právnická fakulta

Kristýna Krejčová

Propojená vedení společností jako hrozba pro hospodářskou soutěž a jejich regulace v EU

Diplomová práce

Vedoucí diplomové práce: doc. JUDr. Václav Šmejkal, Ph.D.

Katedra: Katedra evropského práva

Datum vypracování práce (uzavření rukopisu): 17. 06. 2025

CHARLES UNIVERSITY

Faculty of Law

Kristýna Krejčová

Interlocking Directorates as a Threat to Good Competition and Their Regulation in the EU

Master's Thesis

Master's thesis supervisor: doc. JUDr. Václav Šmejkal, Ph.D.

Department: Department of European Union Law

Date of completion (manuscript closure): 17. 06. 2025

Poděkování

Ráda bych na tomto místě vyjádřila svůj vděk vedoucímu mé diplomové práce, doc. JUDr. Václavu Šmejkalovi, Ph.D., jednak za jeho ochotu ujmout se vedení práce, jednak za aktivní a podnětnou zpětnou vazbu obdrženou během jejího vypracovávání. Vedle toho patří můj dík take mé rodině, která mě nesmírně podporovala po celou dobu studií.

Acknowledgements

I would hereby like to express my gratitude to my master's thesis supervisor, doc. JUDr. Václav Šmejkal, Ph.D., for his willingness to supervise the thesis and for his active and inspiring feedback received during its preparation. In addition, I would like to thank my family, who supported me immensely throughout my studies.

Prohlášení

Prohlašuji, že jsem předkládanou diplomovou práci vypracovala samostatně, že všechny použité zdroje byly řádně uvedeny a že práce nebyla využita k získání jiného nebo stejného titulu.

Dále prohlašuji, že vlastní text této práce včetně poznámek pod čarou má 145.576 znaků včetně mezer.

Declaration

I hereby declare that I am the sole author of this submitted master's thesis. I also declare that all the sources used were cited properly and that this thesis was not used to obtain another or the same degree.

Furthermore, I declare that the actual text of this thesis, including footnotes, is composed of 145.576 characters, including spaces.

Kristýna Krejčová
diplomantka/graduate student

V Praze dne 17. června 2025 / In Prague on 17 June 2025

Contents

1. Introduction

The aim of this thesis is to provide insight into the issue of interlocking directorates and their impact on the competition on the market. The author aims to explore whether and how overlapping directors affect competition. Moreover, if negative consequences and, therefore, a need for EU competition law intervention are to be found, the author intends to provide suggestions, based on existing legislative examples and the literature, as to the most efficient response to the presence of interlocks on the market.

The term "interlocking directorate" indicates a situation when one person sits on the executive or non-executive[1] board of one or more companies.[2] A broader definition of interlocks even includes close relatives sitting on the board or being in executive positions in multiple competitors on the market.[3]

Interlocks can be either horizontal, in the case of direct competitors, or vertical, when occurring through the buyer-seller relationship. Additionally, one distinguishes between direct interlocking directorates, which are linked straight through one and the same director, and indirect interlocks. Indirect connections occur when directors sitting on boards of two or more companies are linked through their relationship (e.g., employment) to another entity or serve together as directors of a third, seemingly unrelated company.[4]

In such a situation, those individuals find themselves sitting "in two chairs at once", with the obligation to act in the best interests of at least two different companies at a time. But what happens when the aims of those entities differ? Moreover, what if those two same companies are doing business in the same field and, therefore, are competitors?

---

[1] GABRIELSEN, Tommy Staahl, HJELMENG, Erling and SORGARD, Lars, 2011. Rethinking minority share ownership and interlocking directorships - the scope for competition law intervention. European Law Review. Online. 2011. Vol. 36, no. 6, pp. 837-860. Available from: https://www.researchgate.net/publication/289781846_Rethinking_Minority_Share_Ownership_and_Interlocking_Directorships_The_Scope_for_Competition_Law_Intervention [Accessed 18 February 2025], p. 838.

[2] THÉPOT, Florence, 2023. Interlocking Directorates in Europe: An Enforcement Gap? In: NOWAG, Julian and CORRADI, Marco (eds.), *Intersections Between Corporate and Antitrust Law*. 2023. Cambridge: Cambridge University Press. pp. 190–207. Global Competition Law and Economics Policy. ISBN 978-1-108-84187-0, p. 190.

[3] OECD, 2009. Minority Shareholdings and Interlocking Directorates. *OECD Roundtables on Competition Policy Papers*. Paris: OECD Publishing. Online. 23 June 2009. No. 88, pp. 1-275. Available from: https://doi.org/10.1787/d81d1ccd-en [Accessed 25 February 2025], p. 23.

[4] Ibid., pp. 23-24.

The risks of this practice are far-reaching and of great importance to competition law. Such a situation can, for instance, lead to the exchange of insider information, which is otherwise confidential and difficult to obtain through the interlocking directors. It may also eventually result in illegal cooperation between competitors.[5]

Already in 2013, the Commission highlighted the risks connected to "*structural links*" acquired through non-controlling minority shareholdings between competitors, a phenomenon closely related to interlocking directorates, and maintained that it lacked the competencies necessary to prevent them.[6] As a result, the Commission sought a legislative solution to resolve the matter through amendments to the merger-control system.[7] However, no further action was taken in the field as the Commission's efforts remained unsuccessful.

Consequently, in her thesis, the author aims to highlight the key elements of structural links that potentially harm competition, which the Commission considered a reason for legislative change. Subsequently, given the failure to implement the corresponding regulatory mechanisms more than ten years ago, the author would like to find an answer to the question of whether the Commission has managed to find an effective way of dealing with the market impacts of interlocks through its existing competencies.

Shared directorships are not by any means a minor issue. The overall number of interlocks is, in fact, rising in recent years, although their density varies from one industry to another.[8] Even though the effects of such situations fall theoretically under the application of Articles 101 and 102 TFEU and the EU Merger Control Regulation, the practical reach of those provisions is limited,[9] as discussed further below.

For all the reasons listed above, the author considers it important to study the issue of interlocked directorships on a broader scale and, above all, from the perspective of competition law. That is

---

[5] Memorandum of Law in Support of Motion for Preliminary Injunction of the United States District Court of Georgia, Atlanta Division of 23 October 2006, *GOLD KIST INC. v. PILGRIM'S PRIDE CORPORATION and others*, case No. 1:06-CV-2441-JEC, p. 9.

[6] EU. *Commission Staff Working Document Towards more effective EU merger control, SWD(2013) 239 final Part 1/3*. Online. In: Dalloz Actualité. 25 June 2013. 2013-2025. Available from: https://www.dalloz-actualite.fr/sites/dalloz-actualite.fr/files/resources/2013/07/merger_control_en.pdf, p. 3.

[7] EU. *WHITE PAPER Towards more effective EU merger control*, *COM/2014/0449*. Online. 9 July 2014. In EUR-lex. 1998-2025. Available from: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52014DC0449 [Accessed 30 April 2025], p. 8.

[8] NILI, Yaron, 2023. Horizontal Directors Revisited. In: NOWAG, Julian and CORRADI, Marco (eds.), *Intersections Between Corporate and Antitrust Law*. Cambridge: Cambridge University Press. pp. 167–189. Global Competition Law and Economics Policy. ISBN 978-1-108-84187-0, p. 169.

[9] THÉPOT, F., rep. cited ref. 2, pp. 190-191.

also because the topic of overlapping directors largely remains unnoticed by legal scholars focusing on EU antitrust law and is instead studied by economic and other social scientists. The author believes that this thesis could contribute to the debate, as it intends to examine interlocks from different perspectives and, if necessary, to propose the most effective antitrust intervention.

In order to achieve that, in the second chapter, a general overlook on interlocks will be taken. The author will provide the reader with an explanation of how shared directorships are formed through ownership networks. Both the common and the cross-ownership structures will be discussed, as those phenomena are inseparably linked with overlapping directors. Once the reader is acquainted with the shareholders' influence on the origins of interlocks, the author will demonstrate how they mirror in the market reality through the division of interlocks into horizontal and vertical ones.

In the third chapter, the effects of interlocks on competition will be described, including both positive and negative ones. By this, the author intends to demonstrate how shared directorates influence competition and to establish whether their consequences are severe enough to call for a legislative action.

Following that, in the subsequent chapters of her thesis, the author will apply her previous theoretical findings to the existing EU legal framework to assess the presence of an effective approach to prevent the negative impact of overlapping directors while maintaining their benefits.

Correspondingly, in the fourth chapter, an overview of the regulation of interlocks in the US will be provided, as that was the first major jurisdiction to regulate shared directorships and, to this day, maintains a very strong position on the harmful effects that interlocks have on competition. Given this clear position, the author considers the US a suitable starting point for her practical analysis of interlocked directorships. Not only can one study the reasons behind the US decision to restrain interlocks, but the more than a hundred years that have passed since the regulation came into effect also provide the distance much needed to evaluate the regulation's effectiveness. The author is aware of the differences between the US and EU markets and their respective legal frameworks, yet she believes that general incentives from the US experience can be taken and used for the benefit of the European setting.

In the fifth chapter, the remarks from the preceding chapters will be taken into account, and the author will focus on adapting them to the reality of the EU Internal Market. First, she will provide an overview of the presence of interlocks in the EU. Second, the current reach of the EU's legislative provisions will be discussed with emphasis on Articles 101 and 102 TFEU. Subsequently, the author will point out examples of the Commission's decisions dealing with cases involving interlocks. Through this approach, the author aims to evaluate the effectiveness of the existing legislation and find out whether legal intervention is still potentially needed, as the Commission maintained 11 years ago.

In the sixth chapter, the author will focus on the role of Member States, as they have the opportunity to step in with their own legislation if they believe that EU law falls short in some area. In other words, the EU regulation on interlocking directorates cannot be taken in isolation. On the contrary, to get a full picture on the legislative framework governing overlapping directors, one cannot leave out the legal provisions of Member States. To best illustrate their different approaches, the author will proceed with describing the situation in Italy and the Czech Republic in more detail, as, in her opinion, those countries stand at opposite ends of the scale of (de)regulation of interlocks.

Consequently, the author will summarise her findings, which will lead her to the answer to the question of whether there is, in fact, an effective regulatory framework concerning interlocks in the EU. That is, whether the Commission and other responsible bodies have managed to find a persuasive solution to the issue of structural links through the application of their existing competencies after the failure to implement corresponding legislative changes more than ten years ago.

To support her findings, the author will provide a thorough analysis of the existing literature and studies concerning interlocks. That also partially includes the works of economists and other social scientists, as they offer interesting points of view on the issue, and, in the author's eyes, cannot be overlooked when discussing the reasons for the need to regulate interlocks. Furthermore, examples of case law of various bodies, including the Commission, the CJEU and various Member States' institutions, will be elaborated on. Last but not least, a comparative approach will be taken with regard to the regulatory settings in Italy and the Czech Republic as well as partially to the one in the US and the EU. Based on the aforementioned sources, the author will analyse the collected data and draw conclusions from it.

2. The Origins of Interlocks

When studying interlocking directorates and before discussing their impact on competition, it is essential to focus on their origins. The author suggests that only by taking this approach is one able to fully understand the broad issue of interlocks and consequently draw conclusions as to the potential need for their (de)regulation in terms of EU competition law.

In this chapter, the author will describe how common and cross-ownership networks mark the origins of interlocking directorates. Subsequently, she will draw the reader's attention to vertical and horizontal interconnected directorships, as they are, to a large extent, viewed differently from the point of antitrust law. Accordingly, the author will explain why she chose to focus primarily on horizontal interlocks in her thesis.

2.1. Interlocks as a Product of Connected Ownership Networks

Interlocking directorates may be formed by both inside and outside directors. It is less often the case when an inside director, most probably one of the company's leading officers, sits on the board of its competitors. The majority of interlocks are, therefore, created by outside directors, those who are primarily linked with other companies and become a director in another.[10]

Mizruchi maintains that once a director takes another position on the board of a competing company, an interlock is formed automatically. By that, he suggests that overlapping directors are the result of deliberate actions and decisions made by the companies' management to facilitate collusion and gain other interlocks benefits.[11]

Hence, the formation of interlocks is highly dependent on the exercise of power by those who have influence over companies' inner decision-making bodies, their composition, and actions. In search of such individuals, one must look at the companies' ownership structures. As described further below, the network of overlapping directors is often mirrored by the ownership structures of the companies in which they are involved.

[10] MIZRUCHI, Mark S., 1996. What Do Interlocks Do? An Analysis, Critique, and Assessment of Research on Interlocking Directorates. *Annual Review of Sociology*. Online. 1996. Vol. 22, pp. 271–298. Available from: https://www.jstor.org/stable/2083432 [Accessed 30 April 2025], pp. 272-273.
[11] Ibid., p. 273.

2.1.1. Common and Cross-Ownership as the Driving Force of Interlocks

The possibility of creating a directorial link between two or more different companies stems primarily from their ownership structure. Common ownership structures,[12] sometimes also referred to as "parallel holdings", unavoidably influence the appointments of directors. By exercising their voting rights (and appointment rights, if applicable), shareholders express their intention regarding the company's future direction. In a way, the director acts as an agent of the ruling majority of shareholders and is dependent on their will. Accordingly, today, in the age of parallel holdings, the independence of directors is lesser, and their position is weaker than it used to be when the ownership structures were less interconnected.[13]

In his book "Kaput: The End of the German Miracle", Wolfgang Münchau sets a perfect example of how a common ownership network can negatively influence competition in the steel industry. At the beginning of the 1990s, a company called Krupp, led by local politician Friedel Neuber, intended to take over its competitor, Hoesch. At first, Krupp slowly began to acquire a smaller share in Hoesch. Eventually, the majority of shares in Hoesch were bought by WestLB, one of the most important and influential banks of that time, and subsequently handed over to Krupp. That was because Friedel Neuber, the dominant figure of Krupp, also happened to be the director of WestLB.[14]

The situation described above was not unusual in Germany at the time. Consequently, such links between financial institutions, companies from other industries and politicians led to a disruption of the German investment market. That was because the investment bankers were risk averse, investing in interlocked companies without taking into account other risk factors. Subsequently, the market was distorted and no longer reflected reality.[15]

---

[12] Common ownership refers to a situation when a group of institutional investors, such as banks, pension or mutual funds, each hold a share in large listed companies, which compete with each other on the market. See in BURNSIDE, Alec J and KIDANE, Adam, 2020. Common ownership: an EU perspective. *Journal of Antitrust Enforcement*. Online. 1 November 2020. Vol. 8, no. 3, pp. 456–510. Available from: https://doi.org/10.1093/jaenfo/jnz037 [Accessed 9 April 2025], p. 457.

[13] CORRADI, Marco, 2023. Common Ownership by Investment Management Corporations and EU Policies: Please, Play Puzzles and not Mikado! In: NOWAG, Julian and CORRADI, Marco (eds.), *Intersections Between Corporate and Antitrust Law*. Cambridge: Cambridge University Press. Global Competition Law and Economics Policy. ISBN 978-1-108-84187-0, p. 268.

[14] MÜNCHAU, Wolfgang, 2025. *Kaput: Konec německého zázraku [Kaput: The End of the German Miracle]*. Praha: Nakladatelství Bourdon, 2025. ISBN 978-80-7611-286-5, pp. 13-14.

[15] Ibid., pp. 18-19.

In recent years, a steeper rise of the common ownership was documented in the EU than in the US, although its scale generally remains smaller.[16] A study researching the common ownership structures in the largest actors in the automotive industry in the US and the EU for example showed that the involvement of financial institutions is increasing in the past few years. The most elevated rise was recognised with shares acquired by passive investment funds in companies such as General Motors, Ford or Renault.[17]

Another phenomenon influencing the overlapping directors is the formation of a cross-ownership network. Such a setting arises once a company gains a non-controlling minority share in its competitor.[18] Consequently, competition may become less fierce, as the acquirer does not choose to attack its rival because it has an interest in its prosperity. Moreover, the minority shareholder can, on the other hand, misuse its influence to diminish the market power of its competitor by the performance of its rights.[19]

However, a cross-ownership network can also have positive connotations for the companies in question as it offers a better setting for innovation development and lowers the production and operational costs.[20] Accordingly, cross-ownership networks allow the entities involved to raise their product prices despite them having a potential stock constraint.[21] Similarly, it was found that once an entity holds a 10 to 40% share in its competitor, the prices of their products increase significantly, while their quantity decreases by up to 14%.[22] The author points out

---

[16] BOOT, Nuria, SELDESLACHTS, Jo and BANAL-ESTAÑOL, Albert, 2022. *Common Ownership: Europe vs. the US*. DIW Berlin Discussion Paper No. 2015. Online. 1 August 2022. Rochester, NY: Social Science Research Network, pp. 1-33. Available from: http://dx.doi.org/10.2139/ssrn.4203714 [Accessed 14 May 2025], pp. 23-25.

[17] SACOMANO NETO, Mario, CARMO, Marcelo José do, RIBEIRO, Evandro Marcos Saidel and CRUZ, Wilton Vicente Gonçalves da, 2020. Corporate ownership network in the automobile industry: Owners, shareholders and passive investment funds. *Research in Globalization*. Online. 1 December 2020. Vol. 2, pp. 1-12. Available from: https://doi.org/10.1016/j.resglo.2020.100016 [Accessed 14 May 2025], p. 5.

[18] HUSE, Cristian, RIBEIRO, Ricardo, VERBOVEN, Frank, 2024. Common-Ownership Versus Cross-Ownership: Evidence from the Automobile Industry. *The Journal of Industrial Economics*. Online. 26 March 2024. Vol. 72, i. 4, pp. 1339-1359. Available from: https://doi.org/10.1111/joie.12390 [Accessed 20 May 2025], p. 1340.

[19] GILO, David, MOSTHE, Yossi, Spiegel, Yossi, 2006. Partial cross ownership and tacit collusion. *The RAND Journal of Economics*. Online. 20 January 2010. Vol. 37, i. 1, pp. 81-99. Available from: https://doi.org/10.2139/ssrn.422840 [Accessed 20 May 2025]., p. 93.

[20] HE, Jie (Jack), HUANG, Jiekun, 2017. Product Market Competition in a World of Cross-Ownership: Evidence from Institutional Blockholdings. *The Review of Financial Studies*. Online. August 2017. Vol. 30, No. 8, pp. 2674-2718. Available from: https://www.jstor.org/stable/44506812 [Accessed 20 May 2025], pp. 2709-2710 and 2713.

[21] BENCHEKROUN, Hassan, DAI, Miao, LONG, Ngo Van, 2020. *On the Profitability of Cross-Ownership in Cournot Oligopolies: Stock Sizes Matter*. CESifo Working Paper No. 8503. Online. 25 August 2020. Pp. 1-40. Available from: https://dx.doi.org/10.2139/ssrn.3680360 [Accessed 20 May 2025], p. 36.

[22] HARISKOS, Wasilios, KÖNIGSTEIN, Manfred, PAPADOPOULOS, Konstantinos, G., 2022. Anti-competitive effects of partial cross-ownership: Experimental evidence. *Journal of Economic Behavior & Organization*. Online. January 2022. Vol. 193, pp. 399-409. Available from: https://doi.org/10.1016/j.jebo.2021.11.027 [Accessed 20 May 2025], p. 406.

that although this study was conducted as a lab experiment, its conclusions are aligned with other research works on the topic.[23]

With reference to the aforementioned, the author concludes that while common ownership, as well as cross-ownership structures, may have beneficial consequences for the market, most notably in innovation development, they are also associated with significant anticompetitive risks. That includes the facilitation of collusion, other actions directed towards the distortion of the market and last but not least, a negative impact on customers' welfare.

2.2. Vertical and Horizontal Interlocking Directorates

As already indicated above, the term 'interlocking directorate' encompasses a wide range of situations with varying impacts on market competition. In this subchapter, the author will focus on drawing a distinction between vertical and horizontal interlocks, as she considers this differentiation a key to understanding competition law's perspective on overlapping directors.

First, when focusing on vertical connections between competitors, one must distinguish the position of an interlock formed within a vertically integrated entity and of vertical restraints. Vertically integrated companies generally form a single entity under EU competition law.[24] Hence, an appointment of an overlapping director within them does not raise any additional antitrust issues, as the actions between vertically integrated companies are not *per se* subject of antitrust law's interest.

Vertical restraints[25], on the other hand, raise antitrust concerns, as they can, under some circumstances, restrict competition.[26] The Commission considers their highest risks to be

[23] For instance, see GILO, D. and MOSTHE, Y., rep. cited, ref. 19, p. 93.
[24] The single entity doctrine was first established in *Viho*. See Judgement of the Court of 24 October 1996, *Viho Europe v Commission of the European Communities*, case No. C-73/95, ECLI:EU:C:1996:405, summary and paras. 61-63.
[25] The term "vertical restraint" indicates a situation, where undertakings operating at different levels of the supply distribution chain enter into a vertical agreement. That includes not only supply, distribution and production actors, but also those involved in research and development. See: MARCO COLINO, Sandra, 2021. *Vertical Restraints (or Restrictions)*. The Chinese University of Hong Kong Faculty of Law Research Paper No. 2021-46. Online. June 2021. Pp. 1-7. Available from: https://www.researchgate.net/publication/353719216_Vertical_Restraints_or_Restrictions [Accessed 27 May 2025], p. 2.
[26] Under Article 1 sec. 1 (b) of the Commission Regulation (EU) 2022/720 vertical restraints are to be seen as vertical agreements restricting competition and are to be subject to Art. 101 sec. 1 TFEU. See EU. *Commission Regulation (EU) 2022/720 of 10 May 2022 on the application of Article 101 (3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices (C/2022/3015)*. Online. In EUR-lex. 1998-2015. Available from: http://data.europa.eu/eli/reg/2022/720/2024-02-11 [Accessed 27 May 2025].

the facilitation of foreclosure, the softening of competition, and collusion. However, not every vertical restraint is capable of having such consequences, as their market share must be more significant to affect competition and to fall within the scope of antitrust provisions.[27] Accordingly, Petersen sees vertical restraints as generally not harmful to competition, unless the entity holds a significant market power or the risk of foreclosure is present.[28] Gabrielsen supports these findings. [29]

Consequently, to prevent the negative impact described above, Petersen suggests establishing a vertical interlock notification system. That would include either a clearance preventive scheme or an *ex-post* system enabling the Commission to intervene once it finds an anticompetitive interlock. Both measures would be accompanied by a *de minimis* threshold excluding small companies from the scrutiny.[30]

Second, a closer look at horizontal interlocks[31] between direct competitors will now be taken, as they find themselves at the centre of legislators' and scholars' attention. Given the nature of an interlock, the author suggests that the presence of an overlapping director has the potential to largely substitute an explicit horizontal agreement, as will be described further below. She draws this conclusion also from the fact that both interlock and a cartel agreements facilitate collusion between competitors and can lead to an anticompetitive foreclosure.[32]

Accordingly, the author has decided to draw the centre of her attention in this thesis to horizontal interlocks. It follows from the above that vertically interconnected directorships, to a large extent, fall outside the scope of EU competition law. Horizontal interlocks, on the other hand, raise a number of antitrust issues, which offer a great field of research interest to be met further below.

---

[27] Typically, each of the parties involved in the vertical restraint must have at least a 30% share on the market to escape the "safe harbour" exemption. See EU. *Communication from the Commission – Commission Notice – Guidelines on vertical restraints (C/2022/4238)*. Online. In EUR-lex. 1998-2025. Available from: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52022XC0630(01) [Accessed 27 May 2025], paras. 7 and 11.

[28] PETERSEN, Vidir, 2016. Interlocking Directorates in the European Union: An Argument for Their Restriction. *European Business Law Review*. Online. 1 November 2016. Vol. 27, i. 6, pp. 821–864. Available from: https://doi.org/10.54648/EULR2016036 [Accessed 25 February 2025], pp. 855-858.

[29] GABRIELSEN, T., HJELMENG, E. and SORGARD, L., rep. cited ref. 1, p. 842.

[30] PETERSEN, V., rep. cited ref. 28, pp. 860-861.

[31] The term "horizontal interlock" refers to a situation where two or more otherwise independent companies share the members of the boards of directors, either directly, or indirectly via a third entity.

[32] These risks are of a great interest to the Commission. For reference see EU. *Communication from the Commission – Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements (C/2023/4752)*. Online. In EUR-lex. 1998-2025. Available from: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=oj:JOC_2023_259_R_0001 [Accessed 8 April 2025], para. 21.

3. The Impact of Interlocks on Competition

As already suggested above, interlocks may have both positive and negative effects on competition. The aim of this chapter is to provide examples of anti- as well as pro-competitive effects of interlocks. By that, the reader will be provided with an explanation of why companies choose to appoint overlapping directors and, more importantly, whether the negative impacts of interlocks and minority shareholdings are of such a magnitude that they should be regulated.

First, two major economic theories on the presence of shared directors will be discussed, followed by an overview of the negative and positive effects of interlocks on competition.

3.1. The "Agency Theory" and the "Resource Dependence Theory"

Generally speaking, two different perspectives on interlocks' consequences may be taken. First, as it concerns studies on the negative impacts of overlapping directors, scholars find their basis in the "Agency Theory" dating back to 1976. In short, the theory implies that once an individual assumes a decision-making position within a company, they act as its agent.

However, in such a setting, there is a significant risk that such a person might misuse their power, and instead of acting in the best interest of the company as the principal, they prioritise their own interests. Accordingly, such an entity might show lower profits, its management might be less effective, and the internal monitoring powers may be more vulnerable.[33]

Second, an interlocking directorate might, in fact, also have a positive role in the company's development. The foundation of this idea lies in the "Resource-Dependence Theory", popularised by Pfeffer and Salancik in 1978.[34] This hypothesis states that the links between companies and their subsequent collaboration are an important asset to their profits. By sharing resources, companies can lower their input costs, thereby sustaining growth and being more stable during market crises. Those resources, among others, include access to information and the director's expertise.[35]

---

[33] JENSEN, Michael C. and MECKLING, William H., 1976. Theory of the firm: Managerial behavior, agency costs and ownership structure. *Journal of Financial Economics*. Online. 1 October 1976. Vol. 3, no. 4, pp. 305–360. Available from: https://doi.org/10.1016/0304-405X(76)90026-X [Accessed 26 February 2025], pp. 308-310.
[34] PFEFFER, Jeffrey and SALANCIK, Gerald R., 2003. *The External Control of Organizations: A Resource Dependence Perspective*. Redwood City: Stanford University Press, 2003. ISBN 978-0-8047-4789-9, pp. 47-54.
[35] Ibid., p. 162.

It follows from the above that the doctrine offers multiple explanations on why overlapping directors can have both positive and negative roles in a company's performance. The author now intends to put those social theories to the test and examine the interlocks not from the point of view of companies and their motivation to form them,[36] but from the perspective of the market and competition as such, that is from the perspective of competition law.

3.2. Negative Effects of Interlocks on Competition

With respect to the aforementioned, the author will now focus on establishing the negative impacts that interlocks might have on competition. The author specifies that the list of examples provided below is by no means exhaustive; her intention is merely to point out the key negative elements the literature connects with overlapping directors.

3.2.1. Unlawful Exchange of Information

When considering interlocking directorships, Gabrielsen sees the potential exchange of information as the greatest risk to competition. Such information may include sales, product design, strategic management and other sensitive data.[37] Information exchange can provide a company with a great range of benefits, especially in industries with fiercer competition.[38]

Moreover, the confidential data forms a valuable asset for the directors themselves. It is undeniable that the company's directors are in possession of inner confidential information as to the company's current and future operations. It follows that managers hold a major opportunity in their hands, which could potentially turn into a valuable outcome.[39]

That is because an interlocking director has intimate knowledge of the companies' operations and their competitive advantages. Accordingly, this makes them a very desirable candidate

[36] A demonstrative list of negative consequences of interlocks from the point of interlocking companies was for instance given by Fischer. See in FISCHER, Eric N., 2015. Serving More than One Master: A Social Network Analysis of Section 8 of the Clayton Act. *Journal of Corporation Law*. Online. Fall 2015. Vol. 41, no. 1, pp. 313-341. Available from: https://jcl.law.uiowa.edu/sites/jcl.law.uiowa.edu/files/2021-08/Fischer_Final_Web.pdf [Accessed 11 February 2025], p. 323.
[37] GABRIELSEN, T., HJELMENG, E. and SORGARD, L., rep. cited ref. 1., p. 841-842.
[38] BISCHOFF, Oliver and BUCHWALD, Achim, 2018. Horizontal and Vertical Firm Networks, Corporate Performance and Product Market Competition. *Journal of Industry, Competition and Trade*. Online. 1 March 2018. Vol. 18, no. 1, pp. 25–45. Available from: https://doi.org/10.1007/s10842-017-0250-7 [Accessed 25 February 2025], p. 27.
[39] CARNEY, Michael, GEDAJLOVIC, Eric and SUR, Sujit, 2011. Corporate governance and stakeholder conflict. *Journal of Management & Governance*. Online. 1 August 2011. Vol. 15, no. 3, pp. 483–507. Available from: https://doi.org/10.1007/s10997-010-9135-4 [Accessed 26 February 2025], p. 493.

for a hiring competing company, as they possess valuable information about their competitor that is impossible to obtain any other way but from within the network. [40]

A better flow of information can, for instance, decrease a company's anxiety from unexpected market developments. In other words, a corporation can adapt its market strategies to the behaviour of its competitors. With sensitive information from the other competitor in hand, a company can react more quickly and at a lower cost. As a result, the competition could become less fierce, even without the need for direct collusion.[41]

However, as Widmer notes, an interlock occurring between competitors indicates the existence of non-market coordination within the economy. He proved his theory when researching on the Swiss banking industry, as he found that between 1995 and 2000, the collaboration between financial institutions through their shared directors was particularly strong and beneficial to the companies involved. Yet, after 2000, the links between companies disappeared completely. That was due to the parallel development of profit-oriented shareholders networks.[42]

The author suggests that this conclusion is consistent with the Agency Theory. In other words, once the directors lack the incentives from the company's monitoring bodies, their tendency to take on a new appointment in another company is strong, as is the motivation of interconnected companies to collaborate.

Another key attribute of interlocked directors and their access to information is the improvement of the company's reputation. With the help of valuable competitor's data and their personal credit, newly appointed directors are capable of increasing the company's market status, which is particularly important in markets with fewer actors and stronger competition. Consequently, Schmidt suggests that this benefit even has the potential to outweigh the fact that an interlocking director may lack focus in the monitoring activities.[43]

---

[40] SCHMIDT, Leonard, VELEMA, Thijs A and SHIH, Shih-I, 2024. The individual makes the difference: How mobile personnel affects organizational status of hiring firms. *Strategic Organization*. Online. 2024. pp. 1-22. Available from: https://doi.org/10.1177/14761270241229080 [Accessed 17 February 2025], pp. 4-5.
[41] GABRIELSEN, T., HJELMENG, E. and SORGARD, L., rep. cited ref. 1, p. 841-842.
[42] WIDMER, Frédéric, 2011. Institutional investors, corporate elites and the building of a market for corporate control. *Socio-Economic Review*. Online. 1 October 2011. Vol. 9, no. 4, pp. 671–697. Available from: https://doi.org/10.1093/ser/mwr014 [Accessed 25 February 2025], pp. 681-682, 693-694.
[43] SCHMIDT, L., VELEMA, T. and SHIH, S., rep. cited ref. 40, pp. 7 and 16.

Seen from a different perspective, information on product development and valuable customers can also destabilise coordination. Using such customer and product data, a company can better target its efforts to take over its competitors' customers. Accordingly, the sharing of information through interlocks can also make the competition tougher. It follows from the above that the effects of information sharing in an interlock are ambiguous and can have both positive and negative consequences. Gabrielsen, therefore, concludes that such a behaviour should be analysed in the same way as a full-scale merger, i.e., on an individual basis.[44]

Generally speaking, as long as there are substitute products, the information about their prices is of high value to competitors. Consequently, customer's standing and competition are weakened. Yet, Kühn proved that information exchange cannot be generally seen as always reducing welfare, as on the price-fixing markets, such collusion in fact decreases the deadweight loss.[45]

Similarly, Bennett and Collins provide several reasons why information sharing can, in fact, be procompetitive. First, only a well-informed supplier is able to make the decision on the allocation of the product that best fits the market's needs. Second, via an information exchange, innovation and best practice policies can be achieved, including the most efficient allocation of resources, as with more precise data, companies can better predict the demand and, therefore, match their supply to the market's needs.[46]

Similarly, it also follows from the Commission's guidelines that data flow between competitors can contribute to reducing information asymmetries, making better informed decisions and increasing market efficiency by following the best practices of others, ultimately increasing customers' welfare.[47]

There is no doubt that the exchange of information enhances the quality of decision-making of competitors. Moreover, the transaction costs tend to be lower when the data flow occurs through an interlock rather than via a more complicated and expensive scheme. However, such

[44] GABRIELSEN, T., HJELMENG, E. and SORGARD, L., rep. cited ref. 1, pp. 842-843.
[45] KÜHN, Kai-Uwe and VIVES, Xavier, 1994. Information Exchanges Among Firms and their Impact on Competition. *Publications Office of the European Union*. Online. June 1994. Pp. 1-119. Available from: https://op.europa.eu/en/publication-detail/-/publication/90fa6d91-de13-4c87-be75-ccb175427a61/language-en [Accessed 28 April 2025], pp. 19, 22 and 24-25.
[46] BENNETT, Matthew and COLLINS, Philip, 2010. The Law and Economics of Information Sharing: The Good, the Bad and the Ugly. *European Competition Journal*. Online. August 2010. Vol. 6, no. 2, pp. 311–337. Available from: https://doi.org/10.5235/174410510792283754 [Accessed 26 February 2025], pp. 318.
[47] EU. *Communication from the Commission – Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements (C/2023/4752)*, rep. cited ref. 32, para. 373.

a setting can also act as a controlling tool inside the collusive network. The fewer people are involved, and the denser the interlock structure, the lower the risk of whistleblowing is.[48] Accordingly, the same information channel mechanism can have both procompetitive and anticompetitive effects, depending on how the interlocking directors and those who influence them choose to use it.

Nevertheless, with well-developed information flow channels, there is also a risk of potentially spreading information that is harmful to the industry and the market as a whole. As already mentioned above, interlocks offer the possibility of the sharing of information important to the decision-making process. To take advantage of this opportunity, however, might appear as a double-edged sword for the companies. That is because once the defective data spreads through the interlocked companies, the impact on the market could be significant. [49]

Additionally, the exchange of information between competitors also facilitates monitoring activities of entities involved in the interlock. That is because, generally, it only appears natural for a competitor to break the collusive behaviour and subsequently benefit from it on the market. Collusive parties might, therefore, choose to appoint overlapping directors to ensure that their tacit agreements are fulfilled and that, in the case of a deviation, the other participants take joint actions in punishing the deviating entity.[50] Moreover, with access to the company's inner information, it is easier for the other entities to get a very precise overview of the potential punishments severe enough to deter the company from breaching the collusive network.[51]

To conclude, it stems from the aforementioned that information flow channels through shared directors, while having a mostly negative impact on competition, also have the potential to influence the market positively. In fact, according to Bennett and Collins, if interlocked companies exchanged only pro-competitive information, such behaviour should be exempted from the scope of Article 101 TFEU and other antitrust law provisions. As the researchers note, the argument for restricting interlocking directorates in fact lies in the nature of directorial positions. People sitting on boards have access to sensitive and confidential information. Such valuable data, once shared, can have a serious impact on the market. It's the mere high

[48] PETERSEN, V., rep. cited ref. 28, p. 837.
[49] LARCKER, David F., SO, Eric, WANG, Charles, 2010. *Boardroom Centrality and Stock Returns*. Stanford GSB Research Paper No. 2061. Online. July 2010. Pp. 1-43. Available from: https://www.gsb.stanford.edu/faculty-research/working-papers/boardroom-centrality-stock-returns [Accessed 12 February 2025], p. 3.
[50] PETERSEN, V., rep. cited ref. 28, pp. 838-839.
[51] BENNETT, M. and COLLINS, P., rep. cited ref. 46, pp. 322-323.

possibility of anticompetitive behaviour which calls for the action and the need for antitrust regulation. [52]

Similarly, Kühn is of the opinion that the main incentive for the regulation of the exchange of information within interlocks is its capability to facilitate collusive anticompetitive behaviour, potentially breaching EU competition law.[53]

It follows from the above that the risk of anticompetitive behaviour concerning the exchange of information between competitors is of such a magnitude that it should not be overlooked by the legislature. That especially holds truth when it comes to data shared between competitors on product prices and even more when it concerns future pricing strategies.[54]

3.2.2. Non-Coordinated Anti-Competitive Effects (Incentives for Companies Not to Compete and Other Unilateral Anti-Competitive Strategies)

As already described in previous chapters, interlocking directorates originate in companies' ownership networks. Accordingly, the negative impacts of shared directorships are largely connected to them. The common ownership structures enable non-explicit and non-coordinated forms of market practices harmful to competition. That is for example the strategy of companies not to compete with each other. Moreover, through their diversified portfolio and the performance of their voting rights, the common shareholders can unilaterally influence the targeted entity's behaviour on the market.[55]

The Commission addressed the issue in its *Hutchison/RCPM/ECT* decision.[56] When assessing the merger, the deciding body found strong common interests between Hutchison and RCPM. Those included the unique distribution of voting rights in a third company, ECT, which allowed them to control it jointly. Additionally, both companies, taken together, held four out of five seats on the Supervisory Board of ECT. Moreover, the Commission also considered the Hutchinson and RCPM's shareholders' agreement a risk for competition. In the agreement, the competitors committed each to hold a minimum 24% share in ECT for a period of five years. According to the Commission, such a clause had two main purposes. First, the assurance

[52] Ibid., pp. 314-315, 317-320 and 331-332.
[53] KÜHN, K. and VIVES, X., rep. cited ref. 45, p. 110.
[54] BENNETT, M. and COLLINS, P., rep. cited ref. 46, pp. 321-322.
[55] European Commission, 2020. *Common Shareholdings in Europe, JRC Technical Report*. Online. Available from: https://op.europa.eu/en/publication-detail/-/publication/eafd4226-02c9-11eb-8919-01aa75ed71a1/language-en# [Accessed 6 June 2025], p. 17.
[56] Decision of the Commission of the European Communities of 3 July 2001, relating to the proceeding of the case No. COMP/JV.55 – *Hutchison/RCPM/ECT*, No. SG (2001) 289490.

of the commitment in ECT's business and second, the increase of ECT's credibility to its investors. Consequently, the Commission concluded that due to their mutual interests in ECT, Hutchison and RCPM had strong incentives not to vote against each other.[57]

Additionally, the minority shareholder's ability to negatively unilaterally influence its competitor's behaviour for the shareholder's benefit was assessed multiple times with regard to Ryanair's efforts to acquire Aer Lingus. In the beginning, in 2006, Ryanair already held a significant 25.17% minority share at Aer Lingus. The Commission rejected the acquisition.[58]

Subsequently, Ryanair made another attempt to acquire Aer Lingus in 2013, but it was unsuccessful again. The Commission explicitly stated that the acquisition would impair competition and create Ryanair's dominant position in the total of 46 flight routes within Ireland and the UK.[59]

Consequently, the minority shareholding Ryanair held at Aer Lingus was examined by the UK Competition Commission. It concluded that the minority share allowed Ryanair to influence its competitor's business strategies for its flight routes within Ireland and the UK. Above all, it prevented Aer Lingus from being acquired by another airline company and from issuing shares and raising capital. In the end, Ryanair was ordered to reduce its then 29.8% share at Aer Lingus to 5%.[60]

The cases described above are examples of "active shareholding". That refers to a situation in which the share allows its holder to actively participate in the company's decision-making process, either through their voting rights or the right to assign board members. Opposite to that stand the "passive investments". [61]

---

[57] Ibid., para. 15.
[58] Decision of the Commission of 27 June 2007, relating to the proceeding of the case No. COMP/M.4439 – *Ryanair/Aer Lingus*, case No. C(2007) 3104, paras. 11 and 1240.
[59] Decision of the Commission of 27 February 2013, relating to the proceeding of the case No. COMP/M.6663 – *Ryanair/Aer Lingus III*, case No. C(2013) 1106 final, para. 2135.
[60] Competition Commission, 28 August 2013. *Ryanair Holdings plc and Aer Lingus Group plc, A report on the completed acquisition by Ryanair Holdings plc of a minority shareholding in Aer Lingus Group plc*. Online. Available from: https://assets.publishing.service.gov.uk/media/5329ddc8ed915d0e60000189/130828_ryanair_final_report.pdf [Accessed 6 June 2025], paras. 7.12-7.23 and 8.126.
[61] FRADE, Eduardo, BINOTTO, Anna, 2021. Minority shareholdings and antitrust: Recent developments. *Centro Competencia, Universidad Adolfo Ibáñez*. Online. 10 February 2021. Pp. 1-10. Available from: https://centrocompetencia.com/minority-shareholdings-and-antitrust-recent-developments/ [Accessed 6 June 2025], p. 5.

Such participation in a company theoretically does not allow the shareholder to influence its market behaviour directly. The passive investor – a competing company – "merely" seeks profits. Therefore, the company might adjust its strategies and raise its own product prices and lower its own output to benefit from the connection.[62] Moreover, once an undertaking holds an interest in its competitor, it can be discouraged from attacking it on the market.

In the *Dow/Dupont* merger decision, the Commission maintained that passive investors cannot be regarded simply as passive actors because they, in fact, actively participate in the company's internal business strategy discussions in order to positively influence their long-term investment. That is because large shareholders have unique access to the company's directors. Last but not least, the Commission, with reference to economic studies, came to the conclusion that its findings regarding common ownership also apply to cross-ownership networks.[63]

It follows from the above that common and cross-ownership structures can impact an entity's behaviour on the market. In fact, it stems from the Commission's past decisions concerning "active shareholders" that a smaller share than one might think is sufficient enough to influence a company's market behaviour and raise antitrust concerns.

In *Societe General de Belgique/Generale de Banque*, the Commission, for instance, concluded that the increase in the share Societe General de Belgique held in Generale de Banque from 20.94% to 25.96% gave it, in practice, the majority of voting rights. That was because Generale de Banque's owner structure was otherwise fragmented, and the other shareholders were reluctant to participate actively and attend the boards. Hence, only a one-quarter share in the company provided the shareholder with more than 50% of the actual voting rights and, therefore, a direct influence over General de Banque's business strategies.[64]

Similarly, in *RTL/M6,* the Commission held that RTL had sole control over M6, even though it could only hold a maximum of 34% of the voting rights. That was because, as in the previous case described above, the ownership structure of M6 was very diversified. Therefore, in practice,

[62] EU. *Commission Staff Working Document Accompanying the Document White Paper towards more effective EU merger control, SWD(2014) 221 final*. Online. 7 July 2014. In EUR-lex. 1998-2025. Available from: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=swd:SWD_2014_0221 [Accessed 6 June 2025], para. 50.
[63] Decision of the Commission of 27 March 2017, relating to the proceeding of the case No. M.7932 – *Dow/Dupont*, No. C(2017) 1946 final, Annex 5, paras. 19, 21 and 45.
[64] Decision of the Commission of the European Communities of 3 August 1993, relating to the proceeding of the case No. IV/M.343 – *Societe General de Belgique/Generale de Banque*, No. 31993M0343, paras. 5-14.

RTL would have the majority of voting rights in the shareholder's meetings. In conclusion, RTL was found to be able to influence M6's strategic and commercial behaviour on the market.[65]

However, the doctrine remains divided on the extent to which common ownership actually negatively affects competition. Rock and Rubinfeld, for example, suggest that before giving a clear conclusion, additional research on the role of common ownership in the company's behaviour is necessary. Until then, they are hesitant to unconditionally accept the Commission's *Dow/Dupont* findings as to the active role of passive investors.[66]

Accordingly, ownership structures and their non-coordinated effects have a large potential to influence the behaviour of companies involved in the network. Through the performance of their rights, the shareholders might for instance aim to reduce the competition by giving the companies incentives not to compete and therefore to split the market. Similarly, the unilateral non-coordinated actions of one competitor against another pose a risk to the market, as they enable the company to take over its competitor's decision-making processes. In consequences, such a behaviour might lead to the diminishing of the competitor's market power and, over time, even to its dissolution.

3.2.3. *Coordinated Anticompetitive Effects (Incentives for Companies to Collaborate)*

As illustrated above, the structural links between competitors developed through interlocks can potentially lead to a change in their market behaviour. In other words, once companies are mutually linked through their ownership structures and, consequently, also through their directors, they might, for instance, choose to decrease competition through mutual cooperation. The author views such coordinated practices as one of the biggest antitrust threats.

The aforementioned reduction of competition represents explicit cooperation, which may also occur through interlocking directorates. With the help of their shared directors, the companies involved can collaborate to extract consumers' means through cartels to achieve the entity's economic prosperity. Therefore, they can cooperate in an environment which mirrors the oligopolistic or even monopolistic market.[67]

---

[65] Decision of the Commission of the European Communities of 13 March 2004, relating to the proceeding of the case No. COMP/M.3330 – *RTL/M6*, No. 304M3330, paras. 5-14.
[66] ROCK, Edward, B and RUBINFELD, Daniel L., 2020. Common Ownership and Coordinated Effects. *Antitrust Law Journal*. Online. 2020. Vol. 83, No. 1, pp. 201-252. Available from: https://www.jstor.org/stable/27006859 [Accessed 6 June 2025], p. 250.
[67] European Commission, 2020. *Common Shareholdings in Europe, JRC Technical Report*, rep. cited ref. 55, p. 17.

In other words, horizontal minority shareholdings may facilitate competitors' ability to tacitly or explicitly coordinate their business actions. Moreover, minority shareholding can also act as a control mechanism within the collusive network. Once one competitor deviates from the common anticompetitive strategy, another one which holds a share in it can use its rights to obstruct the competitor's future operations.[68]

The matter was discussed in the *VEBA/VIAG* decision. The Commission elaborated on the common ownership structure of the oligopolistic German electricity market and concluded that the interlinked companies are likely to cooperate and not compete with each other. The anticompetitive nature of the proposed merger was also highlighted by the fact that the electricity market was vitally dependent on the infrastructure, which was, however, also under the common ownership network's control. Such a setting, according to the Commission, would enable the network participants to gain a considerable information advantage compared to their competitors and also allow them to collude. In consequence, both VEBA and VIAG were forced to limit their participation in the common ownership structure.[69]

Following the above, a common ownership network allows shareholders to influence the companies' behaviour through the performance of their voting and appointment rights. Eventually, such a practice can lead to the promotion of parallel competitive strategies. That means to a collaborative mechanism aiming to gain as many benefits to the companies involved as possible while decreasing competition on the market.

That is especially true once the relevant market is concentrated and the companies involved already represent a substantial market share, as in the case of *VEBA/VIAG* described above. In such a setting, it is, for example, possible for the colluding passive investors to raise their product prices. Moreover, explicit collusive behaviour could occur in both passive and active investments scenarios, although the former is less likely. That is because it would require a specific small market with just a few key players.[70]

---

[68] EU. *Commission Staff Working Document Accompanying the Document White Paper towards more effective EU merger control, SWD(2014) 221 final*, rep. cited ref. 62, para. 58.
[69] Decision of the Commission of the European Communities of 13 June 2000, relating to the proceeding of the case No. COMP/M.1673 – *VEBA/VIAG*, No. 2001/519/EC, paras. 55-56, 59, 106-107 and 214-225.
[70] EZRACHI, Ariel and GILO, David, 2006. EC Competition Law and the Regulation of Passive Investments Among Competitors. *Oxford Journal of Legal Studies*. Online 2006. Vol. 26, No. 2, pp. 327-349. Available from: https://www.jstor.org/stable/3877019 [Accessed 6 June 2025], pp. 328-329 and 331-332.

Accordingly, a common ownership structure allows the involved shareholders to influence the companies' market strategies directly and coordinate their behaviour to the shareholders' liking. That includes both tacit and explicit collusion. By doing so, the network operates in a cartel-like manner, and consequently, it is capable of diminishing competition to an oligopoly or even a monopoly. It follows from the aforementioned that such a possibility is not merely a theoretical observation, and it is of great importance to antitrust law.

3.3. Reasons for Interlocks to Exist from the Perspective of Market Efficiency

In contrast to the aforementioned, it is also important to present a counterpoint to the negative effects of interconnected directorships and minority shareholdings on the market. Examples of potentially positive consequences of interlocks will be described and evaluated from the points of competition law.

To begin with, it is important to distinguish between small and large corporations. In companies with a broad shareholder structure, the management of a company is, to a great extent, dependent on its executive board. The purpose of interlocks in these companies might be the product of strategic risk management. In smaller entities, on the other hand, interlocking directors are often closely tied to the shareholders, usually acting in their will rather than with creditors in mind.[71]

Accordingly, what might be beneficial in one institutional structure might have exactly the opposite effects in another. The following examples will focus on providing an explanation of why interlocks could, in fact, be beneficial to competition and the market as a whole.

3.3.1. Favourable Contract Negotiations as the Ground for Development

The social ties developed via interlocks could lead to a better bargaining position of the interlocking undertakings. Companies linked with each other through their directorships also share greater mutual trust and are more likely to enter into contracts under better terms. Additionally, such a situation also reduces the amount of asymmetric information which would otherwise form an obstacle to negotiations and which, if overcome, is likely to increase the contract's costs.[72]

[71] RAMASWAMY, Vinita, 2019. Director interlocks and cross-cultural impact on strategies affecting shareholder–creditor conflicts: A conceptual analysis. *Management Decision*. Online. 11 November 2019. Vol. 57, no. 10, pp. 2693–2713. Available from: https://doi.org/10.1108/MD-10-2017-0956 [Accessed 14 February 2025], p. 2700.
[72] LARCKER, D., SO, E., WANG, C., rep. cited ref. 49, p. 2.

In the Swiss and US banking industry, the important role of interlocks between banking and other industries was discovered, that is, in a common ownership situation; although this correlation tended to decrease over time due to market globalisation and stricter regulation.[73] In other words, an interlock with a bank might help companies secure a larger deposit or a reliable customer for bank loans.[74] Similarly, the presence of overlapping directors improve the bank's ability to manage problematic loans, as it strongly benefits the bank's recovery rate of non-performing loans.[75]

The author proposes that the reduction of transaction costs via interlocks can also be positively reflected in the funding of innovation and product development. Consequently, such a setting might result in the opening of new markets.

The aforementioned is in line with the "Disruptive Innovation Theory".[76] This theory implies that a smaller company with fewer initial resources can eventually become successful and can push its bigger competitors out of the market by targeting an overlooked group of product segments or by turning non-customers into customers, that is by opening new markets.[77]

Similarly, the author suggests that an interlock can help new companies enter the market, thereby widening the number of competitors and maintaining a healthier market condition. That is because interlocking directors possess insider information and, therefore, are very knowledgeable about the market's needs. Because of them, the newly established company has the best prerequisites to succeed.

On a sample of hundreds of newly established US companies, Field and her colleagues came to the conclusion that overlapping directors are especially very valuable and important in the initial phase of a company's existence on the market. The biggest benefit identified was the advisory capability of experienced directors regarding optimal market behaviour.

---

[73] WIDMER, F., rep. cited ref. 42, pp. 684-685.
[74] ELOUAER-MRIZAK, Sana and CHASTAND, Marc, 2013. Detecting Communities within French Intercorporate Network. *Procedia - Social and Behavioral Sciences*. Online. 6 June 2013. Vol. 79, pp. 82–100. Available from: https://doi.org/10.1016/j.sbspro.2013.05.058 [Accessed 16 April 2025], p. 95.
[75] CARRETTA, Alessandro and MATTAROCCI, Gianluca, 2012. *Financial Systems in Troubled Waters: Information, Strategies, and Governance to Enhance Performances in Risky Times.* 2012. Oxford: Taylor & Francis Group. ISBN 978-1-136-23224-4, p. 32.
[76] The theory was first introduced in CHRISTENSEN, Clayton, M., 1997. *The Innovator's Dilemma: When New Technologies Cause Great Firms to Fail.* 1997. Boston: Harvard Business School Press. ISBN-10: B0076ZFPKW.
[77] CHRISTENSEN, Clayton M., RAYNOR, Michael and MCDONALD, Rory, 2015. What is Disruptive Innovation?. *Harvard Business Review*. Online. December 2015. Vol. 93, No. 12, pp. 44-53. Available from: https://www.hbs.edu/faculty/Pages/item.aspx?num=50233 [Accessed 29 May 2025], pp. 47-49.

Furthermore, for young companies, this advisory function was concluded to be more important than the director's monitoring abilities.[78]

Consequently, later, in a better-established company, the demand for monitoring activities increases, and the number of interlocking directors declines. All in all, as Fields and her co-researchers suggest, a prohibition or limitation of interlocks could pose a problem for newly established companies, as it could have a negative impact on their governance structures.[79]

All of the aforementioned is in line with the Resource-Dependence Theory. A company's prosperity is, to a large extent, reliant upon gaining its resources through an interlock. The undertaking is, therefore, in a sense dependent on other companies and restricted in its autonomy.[80] As previously indicated, those resources might include the knowledge of the overlapping directors. [81]

It follows from the above that interlocking directors might have a crucial role in a company's growth and development, especially in the first years of its existence. Shared directors can provide valuable knowledge and experience. With such a background, they are capable of facilitating better contract opportunities and conditions, foremost concerning the project's funding, which gives the company a considerable competitive advantage in comparison with its non-interlocked rivals. Similarly, the author suggests that interlocks can, in fact, make competition fiercer, as more capable companies are able to participate in market competition. Additionally, the reduction of transaction costs can lead to disruptive innovations and the opening of new markets.

3.4. Interim Summary

According to the aforementioned, competition can be to a large extent shaped by the presence of interlocks and minority shareholdings, both positively and negatively. On the one hand, overlapping directors usually bring the company profound knowledge and experience, which is very valuable on the market, especially in the initial phase of the company's existence. That is

[78] FIELD, Laura, LOWRY, Michelle and MKRTCHYAN, Anahit, 2013. Are busy boards detrimental? *Journal of Financial Economics*. Online. 1 July 2013. Vol. 109, no. 1, pp. 63–82. Available from: https://doi.org/10.1016/j.jfineco.2013.02.004 [Accessed 17 February 2025], pp. 65 and 69.
[79] Ibid., p. 81.
[80] KACZMAREK, Szymon, KIMINO, Satomi and PYE, Annie, 2014. Interlocking directorships and firm performance in highly regulated sectors: the moderating impact of board diversity. *Journal of Management & Governance*. Online. 1 May 2014. Vol. 18, no. 2, pp. 347–372. Available from: https://doi.org/10.1007/s10997-012-9228-3 [Accessed 27 February 2025], p. 350.
[81] RAMASWAMY, V., rep. cited ref. 71, pp. 2698-2699.

according to the "Resource-Dependence Theory". Similarly, once an entity takes advantage of such expertise, it can reduce its transaction costs to a minimum. Moreover, an industry where the competitors are linked through their directors provides conditions for innovation and product development. Consequently, both the market and customers might benefit from such a setting.

One should, however, not overlook the negative effects of interlocks and minority shareholdings, those including the otherwise prohibited exchange of information and the coordinated, as well as non-coordinated, effects of minority shareholdings. It follows from multiple Commission decisions that even a minority participation in a company can give the shareholder a decisive role in its business operations. However, as Wilson purposes, given the limited number of decisions issued and their specific and highly contextual nature, it is important to bear in mind that the Commission has not yet given "*a stand-alone unilateral or coordinated effects theory of harm*" regarding the common ownership issues.[82]

Notwithstanding the aforementioned, the author maintains that it follows from a case-by-case analysis that ownership structures have a potential to negatively influence competition. The competing parties may take advantage of such a setting and choose to collude, not attack each other competitively and/or to in other way influence their competitor's behaviour. According to the author, the analysed data suggest that the negative impacts of interlocks on competition outweigh their benefits.

Therefore, in the next part of her thesis, the author will focus on the EU legal provisions currently applicable to interlocking directorates, aiming to establish whether they sufficiently prevent competition from being affected by the negative influence of interlocks and minority shareholdings.

However, first, the author will provide the reader with an insight into the US approach to interlocks. That is because the US was the first country to regulate interlocking directorates on a bigger scale and acts as the main source of inspiration for many other jurisdictions, including the EU, until today.

[82] WILSON, Thomas, 2019. Common ownership – where do we stand? *Kluwer Competition Law Blog*. Online. 15 April 2019. Pp. 1-6. Available from: https://competitionlawblog.kluwercompetitionlaw.com/2019/04/15/common-ownership-where-do-we-stand/ [Accessed 6 June 2025], pp. 2-3.

4. The Regulation Overseas

The issue of interlocking directorships is, of course, not unique to the Internal Market of the European Union. In the US, legislation regarding people serving on multiple boards of directors has been in effect for more than a hundred years.

4.1. Section 8 of the Clayton Act

Section 8 of the Clayton Act, first adopted in 1914, prohibits both the directors and the officers[83] of one company to serve as a director or an officer of its competitor. Its first paragraph states as follows:

> *(1) No person shall, at the same time, serve as a director or officer in any two corporations (other than banks, banking associations, and trust companies) that are—*
>
> > *(A)engaged in whole or in part in commerce; and*
> >
> > *(B)by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the antitrust laws;*
>
> *if each of the corporations has capital, surplus, and undivided profits aggregating more than $10,000,000 as adjusted pursuant to paragraph (5) of this subsection.* [84]

As Fischer notes, the urge to establish such a rule was driven by the fact that interlocks were fairly common. He gives an example of the J.P.Morgan company. At the time, its board members held simultaneously more than 300 director positions in 112 companies.[85]

The president's antitrust policy advisor, Louis Brandeis, even called these interconnected directorships "*the root of many evils*" and claimed that they offended both human and divine laws and therefore should be prohibited.[86]

---

[83] Section 8 of the Clayton Act was amended to apply to company's officers in 1990.
[84] USA. *15 U.S. Code*. Online. In: LII Legal Information Institute, Cornell Law School. Available from: https://www.law.cornell.edu/uscode/text/15/19 [Accessed 18 February 2025], § 19.
[85] FISCHER, E., rep. cited ref. 36, p. 315.
[86] BRANDEIS, Louis Dembitz, 1914. *Other People's Money, and How the Bankers Use It*. Frederick A. Stokes Company. Online. 31 August 2018, Project Gutenberg, pp. 1-223. Available from: https://www.gutenberg.org/ebooks/57819 [Accessed 11 February 2025], pp. 51-52.

Accordingly, the Clayton Act aimed to exclude any potential anticompetitive consequences of shared directorships, such as the coordination of activities through explicit collusion, as well as via the prohibited exchange of sensitive information.[87]

The provision does not, however, apply to all competitors regardless of their share on the market. A company can, therefore, enjoy the protection of a "safe harbour" if its capital, surplus and undivided profit do not exceed a certain value. These jurisdictional thresholds are revised on a yearly basis and adjusted for the change in gross national product.[88]

Hence, for the rule to apply, the companies in question must be of a certain size and sell more than a specified number of the products over which the corporations are allegedly in competition. Once the competitors cross these red lines laid down by law, there is no alternative for the board members and company officials but to step down.[89]

Additionally, in the case of a person finding themselves violating the aforementioned rule as a result of a merger or a spin-off, the application of Section 8(b) is in order. It gives such an individual one year to resolve the matter and fulfil the preceding legal requirements.

It is also important to note that under Section 8 of the Clayton Act, no actual harm to competition is necessary for it to be applicable; the provision is by its nature preventative. It is a strict liability offence where the intent of the violating company plays no role.[90] When strengthening the Sherman Act by adopting the Clayton Act in 1914, the Congress in fact aimed to remove the opportunity and temptation for companies to violate the interlocking directorates prohibition.[91]

---

[87] FINCH, Andrew C., RUBIN, Jacqueline P. and RANADE, Samir K., 2010. Interlocking Directorates: Re-Examining Section 8 of the Clayton Act. *Insights: The Corporate & Securities Law Advisor*. January 2010. Vol. 24, no. 1, pp. 8–13. ISSN: 0894-3524, p. 8.

[88] As it also follows from the 5th paragraph of Section 8 of the Clayton Act, for the latest jurisdictional threshold see: Federal Trade Commission, 10 January 2025. *FTC announces 2025 Jurisdictional Threshold Updates for Interlocking Directorates*. Online. Available from: https://www.ftc.gov/news-events/news/press-releases/2025/01/ftc-announces-2025-jurisdictional-threshold-updates-interlocking-directorates [Accessed 11 February 2025].

[89] FINCH, A., RUBIN, J. and RANADE, S., rep. cited ref. 87, pp. 9-10.

[90] MURINO, Andrea Agathoklis, 2016. Board Interlocks on Enforcement Hot Seat. *Insights: The Corporate & Securities Law Advisor*. December 2016. Vol. 30, no. 12, pp. 9–11. ISSN: 0894-3524, p. 9.

[91] Decision of the U.S. District Court for the Southern District of New York of 28 April 1953, *United States v Sears, Roebuck & Co.*, case No. 111 F. Supp. 614.

4.1.1. Once Section 8 of the Clayton Act Is Not Applicable

Section 8 of the Clayton Act is not the only antitrust provision governing possible unlawful effects of interlocks. When the *de minimis* threshold is not exceeded, the violation of Section 1 of the Sherman Act[92] can be found. Such a case emerged in 2013 when a Californian court dealt with a "handshake" agreement between the directors of eBay and Intuit, preventing the companies from hiring each other's employees. In one of its orders, the court ruled that: "*[…] Section 8* [of the Clayton Act] *does not go so* [as] *far as to provide complete immunity from antitrust scrutiny. In fact, other courts have found that the presence of even multiple interlocks does not necessarily preclude the finding of an actionable agreement under Section 1 of the Sherman Act.*"[93]

As an addition to the aforementioned, the prohibition of interlocking directorates may also be reached under Section 5 of the Federal Trade Commission Act,[94] which is generally applicable to interlocks as an unfair practice or method of competition.[95] Similarly, some exchange market regulations also demand the participant's directors to be independent.[96]

4.2. The Practical Reach of Section 8 of the Clayton Act

The far reach of Section 8 of the Clayton Act can be illustrated in the case of two of the biggest tech companies in the world. In 2009, the Federal Trade Commission came to notice that two individuals were, in fact, appointed to and served on the boards of both Apple and Google. A few months later, the matter was resolved before any official proceedings were initiated, as each of those individuals resigned from their positions in one of the companies.[97]

Although the regulating body did not issue any decision on the matter, one may predict that if it did, the application of Section 8 of the Clayton Act would be fine. The companies in question would most probably fall into the category of "competitors" under the Clayton Act, as they offer

[92] Section 1 of the Sherman Act prohibits any form of collusion, both through a contract (that is, via a cartel) and a conspiracy (that means via other, non-cartel, forms of collusion).
[93] Order of the U.S. District Court for the Northern District of California, San Jose Division of 27 September 2013, *United States of America v Ebay, Inc.*, case No. 5:12-CV-05869-EJD, p. 7.
[94] Section 5 of the Federal Trade Commission Act prohibits "*unfair methods of competition in or affecting commerce, and unfair or deceptive acts of practices in or affecting commerce*" For reference, see USA. *15 U.S. Code*. Online. In: LII Legal Information Institute, Cornell Law School. Available from: https://www.law.cornell.edu/uscode/text/15/45 [Accessed 18 February 2025], § 45.
[95] NILI, Y., rep. cited ref. 8, p. 181.
[96] Ibid., pp. 182-183.
[97] FINCH, A., RUBIN, J. and RANADE, S., rep. cited ref. 87, p. 9.

the same type of products for sale and operate in the same business.[98] Contrary to that, if the companies functioned on the market in a vertical relationship, such as a supplier and a customer, they would not be affected by Section 8 of the Clayton Act.[99] This rule applies not only to subsidiaries and parent companies but also to those not officially subordinate to one another, yet, in fact, acting as a single economic entity.[100]

On the contrary, generally speaking, entities offering something that is not interchangeable in the eyes of customers are not to be considered competitors. In the developing industries, however, where the newly opened market is still limited and the needs of customers have yet to be settled, other aspects will come forward. These include whether the industry itself considers certain products competitive to each other or the similarity of production processes.[101]

The wording of Section 8 of the Clayton Act implies that it shall apply only to directors and officers. In a situation where a company aimed to appoint a group of its representatives to the board of directors of a company it sought to overtake, the US District Court for the Southern District of New York rejected this hypothesis. It stated that the provision also applies to people with employment or business ties to the competitor and is not to be narrowed down by such a strict interpretation. The court concluded that any other outcome would violate the preventative aim of the section in question.[102]

Furthermore, as Murino notes, the provision applies not only to natural persons but also to legal entities. Hence, it might be found unlawful if one company appointed its agents to the boards of other competing companies.[103]

Although Section 8 of the Clayton Act is designed as a provision with a broad reach, banks, banking associations, as well as trust companies and entities which do not operate across states, are explicitly excluded from its application.[104]

---

[98] Decision of the U.S. Court of Appeals for the Seventh Circuit of 5 September 1973, *Protectoseal Company v. Charles Barancik*, No. 484 F.2d 585.
[99] Decision of the US District Court for the District of Maryland of 6 May 1981, *American Bakeries Co. v. Gourmet Bakers, Inc.*, civ. No. JH-81-946.
[100] Decision of the U.S. Court of Appeals for the Ninth Circuit of 15 November 1979, *Las Vegas Sun, Inc. and Others v Summa Corporation and Others*, No. 610 F.2d 614.
[101] FINCH, A., RUBIN, J. and RANADE, S., rep. cited ref. 87, p. 11.
[102] Decision of the U.S. District Court for the Southern District of New York of 28 March 1991, *Square D Co. v SCHNEIDER SA and Others*, No. 91 Civ. 1438.
[103] MURINO, A., rep. cited ref. 90, p. 9.
[104] The reason is simple. Banks and other financial institutions are regulated by the Federal Reserve's Regulation L,

As Section 8 of the Clayton Act forms a strict liability offence, it also enables private plaintiffs to seek damages based on the anticompetitive effects of the interlock. According to Morino, it is nonetheless more common for the Federal Trade Commission, the Department of Justice, and the private plaintiffs, to only claim for its removal.[105]

4.2.1. Implications for Legislative Change

It follows from the above that interlocks have long been in the spotlight of US regulators, and multiple acts and provisions were adopted to prevent the market from their negative impacts. As discussed further below, this approach is not common in other countries around the world.

Subsequently, opinions have risen to abolish the prohibition on interconnected directorships. They argue with the competitive disadvantage US companies are forced to face, as their foreign competitors, with which they fight for customers on the global market, do not have to fulfil such an obligation. Moreover, Section 8 of the Clayton Act forms an obstacle to the better distribution of network information. Accordingly, the limited access to inner data in consequence lowers the industry's economic performance. Furthermore, as Fischer notes, the market for which the provision was designed in 1914 changed significantly. Consequently, he explains that the amendments to Section 8 of the Clayton Act have fallen behind the changes in business conduct and should be revised.[106]

4.3. Interim Summary

The United States played a crucial role in efforts to legislatively cover the issue of interlocking directorates. Over the course of more than a hundred years since Section 8 of the Clayton Act came into existence, which explicitly prohibits interlocks within certain companies, regulatory bodies have regularly dealt with cases involving overlapping directors.

Accordingly, the provision was changed and amended multiple times and remains a vital part of US antitrust law, although concerns have been raised about its negative impact on the US companies' competitiveness on the global market. Yet, the author suggests and will demonstrate further below that Section 8 of the Clayton Act could still be a source of inspiration for other jurisdictions seeking an effective tool to prevent markets from harm caused by interlocks.

---

which in the case of interlocking directorship prohibition mirrors Section 8 of the Clayton Act with the exception of a possibility to ask for a waiver when the competition would not be substantially effected by the interlock. For reference see: NILI, Y. rep. cited ref. 8, p. 187

[105] Ibid., p. 9.

[106] FISCHER, E., rep. cited ref. 36, pp. 337-338 and 340.

In the next chapter, the author will focus on the regulation of interlocks in the EU. At first, however, a closer look will be taken at the reality of the EU Internal Market, specifically to the actual presence of interlocking directorates and their effects on competition. Following that, the author will elaborate on the applicability of the existing antitrust provisions on shared directorships.

5. Potential Anticompetitive Effects of Interlocking Directorates in the EU Setting

The issue of interlocking directorships and common ownership is by no means a theoretical one on the EU Internal Market. Heemskerk found that in the European Union, perhaps more and faster than anywhere else in the world, the transnational networks of interlocks emerged to an extent where most of the largest European companies are connected through their directors.[107]

One of the most probable causes of this phenomenon was described by José Azar. He studied the relationship between common ownership and interlocking directorates. He concluded that the more deeply rooted the common ownership, the higher the number of interlocking directors. This finding is in line with the common ownership theory described at the beginning of this thesis. Accordingly, larger companies are more likely to share directors with other companies, as their boards are larger and they have more funds to spare on travel costs. Azar also suggests that it is more probable for companies developing similar products to have the same directors and shareholders.[108]

Similarly, a recent French study reached the same conclusions, finding a correlation between overlapping directors in different companies owned by the same person. Moreover, it explicitly found that common ownership has the strongest influence on the existence of interlocks, compared with other potential factors, such as competencies and experience of directors. It suggests that owners exercise their influence through the selection of directors acting on their behalf to improve their monitoring and controlling abilities. Consequently, it maintains that interlocks can be better explained by ownership links between two entities rather than by the number of their common shareholders. [109]

---

[107] HEEMSKERK, Eelke M. and TAKES, Frank W., 2016. The Corporate Elite Community Structure of Global Capitalism. *New Political Economy*. Online. 2 January 2016. Vol. 21, no. 1, pp. 90–118. Available from: https://doi.org/10.1080/13563467.2015.1041483 [Accessed 12 February 2025], p. 94.

[108] AZAR, José, 2022. Common Shareholders and Interlocking Directors: The Relation Between Two Corporate Networks. *Journal of Competition Law & Economics*. Online. 10 March 2022. Vol. 18, no. 1, pp. 75–98. Available from: https://doi.org/10.1093/joclec/nhab026 [Accessed 14 February 2025], pp. 75-76.

[109] AUVRAY, Tristan and BROSSARD, Olivier, 2016. French connection: interlocking directorates and ownership network in an insider governance system. *Revue d'économie industrielle*. Online. 15 June 2016. No. 154, pp. 177–206. Available from: https://doi.org/10.4000/rei.6377 [Accessed 16 April 2025], pp. 180, 183 and 201.

As already discussed above, interlocks are, in fact, a channel for information flow between competitors, easing their cooperation, especially when the data is tacit or difficult to obtain on the market. Through this process, the undertakings gain competitive advantages. [110]

With that in mind, Simoni and Caiazza drew some very interesting conclusions when studying interlocks within Italian companies. They found that interlocked companies use the information channel to consolidate knowledge within the industry rather than attempting to enter new, extra-industrial knowledge fields.[111] Accordingly, the exchange of information primarily exists among direct competitors.

The reason why interlocks are the preferable option for companies might lie in the fact that, unlike mergers or acquisitions, interlocking directorates are not connected with large transaction costs.[112] Accordingly, interlocks represent a very efficient infiltration mechanism, as they make it possible for companies to gain secret information about their competitor for a small amount of resources. Moreover, they, in plain sight, enable otherwise prohibited close cooperation between competitors.[113]

The European Commission has, in fact, recognised the potential harmful effects of interlocks. These include both their ability to facilitate collusion and spread market-sensitive information between competitors.[114]

However, it is important to note that it is not always easy for the regulatory bodies, including the Commission, to detect an interlock. Buch-Hansen notes that the mere fact that the two competitors the investigation is focusing on do not directly share their directors does not mean that their management is not to be linked through a third uninterested company. An interlock could, therefore, not only be a platform for direct collusion but also merely a tool

[110] SIMONI, Michele, CAIAZZA, Rosa, 2013. Interlocking Directorates' Effects on Economic System's Competitiveness. *Business Strategy Series*. Online. 4 January 2013. Vol. 14, no. 1, pp. 30-35. Available from: https://doi.org/10.1108/17515631311295695 [Accessed 26 February 2025], pp. 30-31.
[111] Ibid., pp. 34-35.
[112] PETERSEN, V., rep. cited ref. 28, p. 828.
[113] CAIAZZA, Rosa, CANNELLA JR, Albert A., PHAN, Phillip H. and SIMONI, Michele, 2019. An Institutional Contingency Perspective of Interlocking Directorates. *International Journal of Management Reviews*. Online. 2019. Vol. 21, no. 3, pp. 277–293. Available from: https://doi.org/10.1111/ijmr.12182 [Accessed 26 February 2025], p. 279.
[114] OECD, 2009, rep. cited ref. 3, p. 183.

for the information flow between other companies. Such a setting is described as an "indirect interlock", as already discussed in the preceding chapters.[115]

From the American perspective, represented foremost by Section 8 of the Clayton Act, the fight against the concentration of economic power and its abuse is a political as well as an economic topic. Accordingly, the strict US antitrust law should also be seen from the political not only from the market perspective.[116] In Europe, on the other hand, the legislators are generally more willing to tolerate anticompetitive behaviour for the benefit of economic growth.[117]

Bischoff and Buchwald studied the role of overlapping directors on the EU Internal Market. According to them, horizontal interlocks create a platform for collaboration between competitors there, potentially influencing their strategies and market behaviour. Moreover, given their nature, they facilitate inter-company exchange of inner information. [118]

These findings were supported by Elouaer-Mrizak's and Chastand's research on the biggest French listed companies, as they added that interlocks actually promote transactions between horizontally linked companies.[119] However, it is worth noting that, at least in the case of a large sample of European companies considered by Bischoff, the market possessed disciplinary tools to, to some point, compensate interlock inefficiencies. [120]

All in all, although EU competition law is theoretically able to define and determine the anticompetitive behaviour of interlocks, its practical application is very limited, [121] as is elaborated on further below.

5.1. The Current Reach of EU Regulation

As already indicated in the first chapter of this thesis, the issue of minority shareholdings was raised by the Commission as early as in 2014 when it unsuccessfully promoted the need for their regulation. The main incentive for the Commission's efforts was its lack of investigative

[115] BUCH-HANSEN, Hubert, 2014. Interlocking directorates and collusion: An empirical analysis. *International Sociology*. Online. 1 May 2014. Vol. 29, no. 3, pp. 249–267. Available from: https://doi.org/10.1177/0268580914527021 [Accessed 25 February 2025], pp. 252-253.
[116] HARDING, Christopher and JOSHUA, Julian, 2010. Models of Legal Control: North America and Europe. In: HARDING, Christopher and JOSHUA, Julian (eds.), *Regulating Cartels in Europe*. Oxford University Press. Pp. 39-64. ISBN 978-0-19-955148-4, pp. 46-47.
[117] Ibid., p. 52.
[118] BISCHOFF, O. and BUCHWALD, A., rep. cited ref. 38, pp. 36-37.
[119] ELOUAER-MRIZAK, S. and CHASTAND, M., rep. cited ref. 74, pp. 96-97.
[120] BISCHOFF, O. and BUCHWALD, A., rep. cited ref. 38, pp. 36-37.
[121] RAMASWAMY, V., rep. cited ref. 71, p. 2699.

powers regarding minority shareholdings. For instance, the Commission did not have the authority to intervene against the acquisition of a minority share unless it was at the same time related to the acquisition of control from the acquiring party.[122]

Moreover, the Commission clearly stated that the acquisition of a minority share might not always be considered an "agreement" having the object or effect of restricting competition, which falls within the scope of Article 101 TFEU. Additionally, the obtaining of a minority share in a competitor might also find itself out of the reach of Article 102 TFEU, as the acquiring party would already have to be in a dominant position on the market.[123]

It is worth noting that while the Commission highlighted the importance of minority shareholdings and generally the effects of ownership structures on competition, it did not specifically mention the topic of interlocking directorates.[124] The author suggests that one should not pay much attention to this inconsistency. As already described above, minority shareholdings and interlocks are closely related to each other and share very similar consequences. As Petersen points out, they both result in the creation of structural links, possibly followed by anticompetitive effects.[125]

Consequently, the question still stands: why do the overlapping directors stay out of the spotlight of the EU's interest? Petersen suggests that it might be the result of the internal nature of interlocks, as the Commission mainly focuses on external competition between entities. In such a situation, the legislature and the monitoring bodies might think that the internal structure of a company should be subject to corporate governance and corporate law rather than be regulated by competition law provisions.[126]

In order to assess the EU regulatory framework's effectiveness when it comes to interlocking directorates, the author will now focus more closely on the practical reach of various EU legal provisions, which might apply to the relevant situations, starting with Article 101 TFEU.

---

[122] EU. *Commission Staff Working Document Accompanying the Document White Paper towards more effective EU merger control, SWD(2014) 221 final*, rep. cited ref. 62, para. 50.
[123] Ibid., para. 62.
[124] EU. *WHITE PAPER Towards more effective EU merger control*, *COM/2014/0449*, rep. cited ref. 7.
[125] PETERSEN, V., rep. cited ref. 28, p. 823.
[126] Ibid., p. 824.

5.2. Cartels

To begin with, the possibility of the application of EU provisions regulating cartels on interlocks will be presented. As Buch-Hansen points out, the regulatory environment, its abilities and reach influence, to a large extent, the willingness of companies to enter into a cartel. [127]

Generally speaking, in the case of cartels, a parent company may be held legally responsible for its subsidiary's anticompetitive actions, no matter the legal status of such a company. The key factor to consider is whether the parent company has a "decisive influence" over the subsidiary. This rule is based on the principle of personal autonomy with regard to criminal law responsibility.[128]

Another approach to cartels is from the viewpoint of corporate membership. When individuals meet to discuss cartel behaviour, neither such an assembly nor the cartel itself has a legal personality, hence it cannot be found legally liable. Cartels are the mere units of investigation; accordingly, the proceedings and potential sanctions are targeted against its participants.[129]

Accordingly, the problem arises when there is a need to identify the cartel's participants. Cartels are viewed as a group of competitors in a specific market that collectively make an agreement not to compete.[130] However, it is believed that, especially in larger corporate structures, a division should be made between the individual manager's actions and the company's awareness of these actions. The author notes that this difference could also affect interlock investigations.

There are instances where a company distanced itself from the manager's activities, as the corporation was unaware that the manager entered into a cartel. An example may be taken from the case law of the British Office of Fair Trading, which dealt with a cartel between two bus transportation companies. Consequently, both entities involved benefited from their thorough compliance programmes. As a result, their penalties were considerably lowered,

[127] BUCH-HANSEN, H., rep. cited ref. 115, pp. 250-251.
[128] HARDING, Christopher and JOSHUA, Julian, 2010. The Pathology of Cartels: Addressing Issues of Agency and Responsibility. In: HARDING, Christopher and JOSHUA, Julian (eds.), *Regulating Cartels in Europe*. Oxford: Oxford University Press. pp. 256-285. ISBN 978-0-19-955148-4, p. 261.
[129] Ibid. p. 263.
[130] Ibid., p. 264.

in the case of FairGroup, by 100%.[131] Hence, the personal motivation of the manager in question should be taken into account.[132]

If one would assume that an interlock fulfils the definition of an anticompetitive agreement under Article 101 TFEU[133] *per se*, a question of its objective as to the restriction of the competition remains to be assessed. Petersen does not see the option to prohibit interlocks based solely on Article 101 TFEU. To support his opinion, he offers examples from EU case law in *Phoenix/Global One*[134] and *Phillip Morris.*[135]

First, in *Phenix/Global One*, the Commission did not find a correlation between overlapping representatives and their access to confidential information on the one hand and prohibited anticompetitive behaviour and coordination between these entities on the other. That was because the appointed representatives did not have the possibility to exercise controlling influence. Moreover, the Commission also made a reference to US antitrust laws prohibiting the companies involved to share their internal data.[136]

Second, the CJEU concluded in *Phillip Morris* that the creation of a minority shareholding in one company by its competitor does not by itself constitute a breach of Article 101 TFEU. Yet, at the same time, the Commission added that such a situation might lead to an unlawful influence and, therefore, to the restriction of competition.[137] This finding is relevant to interlocking directorates, as their consequences are, to a large extent, similar to those of minority shareholdings, as described above.

Following the aforementioned, the mere existence of an interlocking directorate is not to be considered a breach of Article 101. Therefore, the bodies responsible must consider the anticompetitive effects of overlapping directors.

---

[131] Decision of the Office for Fair Trading of 30 January 2002, *Market sharing by Arriva plc and FirstGroup plc.*, case No. CP/1163-00, paras. 27 and 100.
[132] HARDING, C. and JOSHUA, J., rep. cited ref. 128, p. 267.
[133] Article 101 TFEU prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices potentially having the effect of a prevention, restriction or distortion of competition on the EU internal market.
[134] Decision of the Commission of the European Communities of 17 July 1996, relating to the proceeding of the case No. IV/35.617 – *Phoenix/Global One*, No. 96/547/EC.
[135] Decision of the Court of 17 November 1987, *British-American Tobacco Company Ltd and R. J. Reynolds Industries Inc. v Commission of the European Communities*, joined cases 142/84 and 156/84.
[136] Decision of the Commission of the European Communities of 17 July 1996, relating to the proceeding of the case No. IV/35.617 – *Phoenix/Global One*, No. 96/547/EC, para. 51.
[137] Decision of the Court of 17 November 1987, *British-American Tobacco Company Ltd and R. J. Reynolds Industries Inc. v Commission of the European Communities*, joined cases 142/84 and 156/84, para. 37.

One of the cartel regulation's objectives is to prevent the abuse of power, both economically and politically. The accumulation of power might result in intimidating actions towards customers, other competitors, as well as towards those hesitating to fully engage in the cartel.[138] Such growth of governing powers stands in opposition to the current all-embracing emphasis on legitimacy. This phenomenon in the end fuels and empowers the political bodies to regulate such tendencies.[139]

The downside of cartel investigations is their costs, which, even in the case of a smaller-scale cartel, are usually very high. As the regulation's reach gets further every year, the detection of potential cartel behaviour increases. Yet the resources for investigations are limited. The regulator is, therefore, forced to deal only with a selected number of cases, often referring to the "iceberg-like substance" of the anticompetitive conduct.[140]

If a new regulation implementing a new interlock-related cartel detection system were to be considered by the EU, the author proposes that it should first assess the effectiveness of such a solution and the actual need for it. That is because it follows from the Commission's previous cartel cases that the responsible undertakings, in fact, use channels of cooperation other than overlapping directors.

Buch-Hansen assessed 144 cartel cases in which a total of 890 companies were involved in order to find directorial links between them and to further elaborate on their effects. The number of interlocks found was surprisingly low and decreased over time. Additionally, the decrease in interlocks that had existed in the past 30 years was put into the context of heavier enforcement of anti-collusion provisions by the competent authorities.

The researcher, therefore, questions the existence of interlocks' benefits in facilitating collusive behaviour, particularly with regard to cartels. Especially in the case of cartels comprising huge companies, the benefit of interlocks is, in the first place, the development of mutual trust. Accordingly, their use for direct anticompetitive behaviour appears to be insufficient, as the interlocks are rather 'too transparent' to facilitate cartels.[141] However, the author points out that Buch-Hansen only researched cartels that were, in fact, detected by the authorities.

[138] HARDING, C. and JOSHUA, J., rep. cited ref. 128, p. 275-276.
[139] Ibid., p. 284.
[140] Ibid., p. 279.
[141] BUCH-HANSEN, H., rep. cited ref. 115, pp. 253 and 261-264.

The issue of transparency was also raised by Petersen, who argues that another difficulty the monitoring bodies must deal with is the lack of clarity of corporate networks. Although direct interlocks are quite easy to follow, even on the international level, the indirect links between competitors are the real "stumbling rock" for the regulators. This lack of clarity only further increases the costs of investigations. Petersen, therefore, suggests prohibiting interlocks as such rather than evaluating their effects one by one.[142]

5.3. Concerted Practices

Interlocks can serve as a device facilitating the exercise of influence and power among companies. As Sonquist and Koenig suggest, overlapping directors make it easier for the involved companies to collaborate and monitor each other's activities.[143] Accordingly, a question must be raised as to whether anticompetitive behaviour practised through the shared directorship could, after all, be addressed through Article 101 TFEU and the limitation of concerted practices.

The concept of concerted practices was explained by the CJEU in *ICI*[144] by its objective. CJEU ruled that Article 101 TFEU aims to protect the competition not only from explicit agreements between undertakings (that is, from cartels) but also from other less formal forms of intentional coordination harming the competition.[145]

In *Suiker Unie*, the CJEU concluded that Article 101 TFEU: "*strictly preclude*[s] *any direct or indirect contact between such operators, the object or effect whereof is either to influence the conduct on the market of an actual or potential competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market.*"[146]

---

[142] PETERSEN, V., rep. cited ref. 28, pp. 831-832.
[143] SONQUIST, John A. and KOENIG, Thomas, 1984. INTERLOCKING DIRECTORATES IN THE TOP U.S. CORPORATIONS: A Graph Theory Approach. *BMS: Bulletin of Sociological Methodology/Bulletin de Méthodologie Sociologique*. Online. 1984. No. 2, pp. 41–74. Available from: https://www.jstor.org/stable/43761867 [Accessed 9 May 2025], pp. 41-42.
[144] Judgement of the Court of 14 July 1972, *Imperial Chemical Industries Ltd. v Commission of the European Communities*, case No. 48-69, ECLI:EU:C:1972:70.
[145] Ibid., para. 64.
[146] Judgement of the Court of 16 December 1975, *Coöperatieve Vereniging "Suiker Unie" UA and Others v Commission of the European Communities*, joined cases 40/73 to 48/73, 50/73, 54/73 to 56/73, 111/73, 113/73 to 114/73, ECLI:EU:C:1975:174, para. 174.

With regard to the aforementioned, as Gabrielsen[147] notes, the CJEU's findings in *Hüls* should not be omitted. The Court established that there is a rebuttable presumption: "*that the undertakings taking part in the concerted action and remaining active on the market take account of the information exchanged with their competitors for the purposes of determining their conduct on that market. That is all the more true where the undertakings concert together on a regular basis over a long period*."[148]

Accordingly, the mere fact that there is a possibility of exchanging information is sufficient to have an impact on competition. Consequently, there is no need to establish nor prove the consequences of such behaviour. As referred to in *Hüls* and further confirmed in *T-Mobile Netherlands BV*,[149] even a single exchange of information may constitute a breach of Article 101 TFEU.

Furthermore, Odudu suggests that a reciprocal activity is not required. Even a one-way flow of data from one competitor to another can establish a concerted practice. For the company to be held liable for such actions, the willingness to participate in such a union is, however, still required. [150]

Gabrielsen questions the application of the aforementioned CJEU judgements on the exchange of information via interlocks, as these situations might lack the "*mental consensus*" feature of concerted practices. He further elaborates on the matter by adding that the law-violating contact would be constituted solely by the interlocking director's appointment. Such an order of things would, however, lack the joint understanding between the two competitors in question. Moreover, a director is part of the company's internal body. Therefore, the external influence element would also be missing. [151]

Furthermore, as to the "undertaking" definition under Article 101 TFEU, interlocking directorates do not fulfil the economic measures capable of considering the interlocking

[147] GABRIELSEN, T., HJELMENG, E. and SORGARD, L., rep. cited ref. 1, p. 851.
[148] Judgement of the Court of 8 July 1999, *Hüls AG v Commission of the European Communities*, case No. C-199/92, ECLI:EU:C:1999:358, para. 162.
[149] Judgement of the Court of 4 June 2009, *T-Mobile Netherlands BV and Others v Raad can bestur van de Nederlandse Mededingingsautoriteit*, case No. C-8/08, ECLI:EU:C:2009:343, para. 61.
[150] ODUDU, Okeoghene, 2006. Collusion: Agreement and concerted practice. In: ODUDU, Okeoghene (ed.), *The Boundaries of EC Competition Law: The Scope of Article 81*. Oxford University Press. Online. 2006. Pp. 57-96. Available from: https://doi.org/10.1093/acprof:oso/9780199278169.003.0004 [Accessed 19 February 2025], pp. 85-86.
[151] GABRIELSEN, T., HJELMENG, E. and SORGARD, L., rep. cited ref. 1, p. 850.

companies as a single economic unit and, therefore, an "undertaking" within the meaning of Article 101 TFEU.[152]

Yet, Gabrielsen still concludes that the competition-violating actions that occurred through interlocks are within the reach of Article 101 TFEU.[153] Such a result is, however, not uniformly accepted.[154]

5.4. Abuse of a Dominant Position

Another view on shared directorships can be taken from the position of Article 102 TFEU and the prohibition on the abuse of a dominant position. However, as illustrated below, the application of this provision on interlocks comes with its limitations.

The interlocking director's appointment cannot be *per se* regarded as an act of abusing dominance. A choice of such a person may nonetheless be regarded as a signal of potential abuse *via* the performance of shareholder's rights. Accordingly, the mere appointment of an overlapping director cannot by itself constitute a breach of Article 102 TFEU.[155]

This also follows from the Commission's decision in *Irish Sugar*, where structural ties between competitors were found to be one of the indicators of collective dominance. There was, in fact, evidence of the exchange of information on board meetings between representatives of competitors.[156]

The assessment of the presence of collective dominance, which can also occur through overlapping directors, was first introduced in *Airtours*[157]and subsequently clarified in *Impala.*[158] Following the above, a four-step test must be taken in order to assess a potential case of collective dominance.

---

[152] Ibid., p. 851.
[153] Ibid., p. 851.
[154] For example, see: PETERSEN, V., rep. cited ref. 28, p. 826.
[155] GABRIELSEN, T., HJELMENG, E. and SORGARD, L., rep. cited ref. 1, p. 851.
[156] Decision of the Commission of the European Communities of 14 May 1997 relating to the proceeding of the case No. IV/34.621 – *Irish Sugar plc*, No. 97/624/EC, paras. 111-112.
[157] Judgement of the Court of First Instance of 6 June 2002, *Airtours plc. v Commission of the European Communities*, case No. T-342/99, ECLI:EU:T:2002:146.
[158] Judgement of the Court of 10 July 2008, *Bertelsmann AG and Sony Corporation of America v Independent Music Publishers and Labels Association (Impala)*, case No. C-413/06, ECLI:EU:C:2008:392.

First, the parties involved must be aware of the terms of cooperation, with a particular accent on its basic focal points. Second, the sustainability of such actions must be taken into account. To prevent deviations from tacit cooperation seeking short-term profit, actors should be able to effectively monitor whether the agreed terms are met. Therefore, a certain level of market transparency is necessary. Third, the possibility of deviations requires persuasive deterrent tools to prevent it. Last but not least, no outside power, such as the one of other competitors or customers, should be able to threaten the results of the cooperation in question.[159]

It remains to be assessed whether those criteria could also successfully apply to interlocking directorates. Burnside and Kidane, to a large extent, ruled out the possibility of the application of Article 102 TFEU in the case of companies linked not through overlapping directors but via a common ownership network. Above all, they considered it contradictory to the principle of personal responsibility of institutional investors.[160] The author suggests that a similar approach might be taken on shared directorships.

Petersen also disagrees with the application of Article 102 TFEU to overlapping directors, as it would only be enforceable if the initiating undertaking were to be in a dominant position on the market. Additionally, the researcher views interlocks as a very ineffective and, therefore, unlikely tool for abusing a dominant position. The same, however, cannot be said about the abuse of collective dominance and parallel collusion.[161]

Following from the above, the reach of Article 102 TFEU on interlocks is likely to be limited and yet to be clarified by the enforcement bodies.

5.5. Examples of the Commission's Practices in Antitrust Cases

The Commission has in the past encountered several cases where interconnected directorates came to its notice. While most often not being at the centre of its attention, the Commission has indirectly acknowledged the role of overlapping directors in actions (potentially) harmful to competition in many instances.

[159] Ibid., para. 123.
[160] BURNSIDE, A. and KIDANE, A., rep. cited, ref. 12, pp. 499-500.
[161] PETERSEN, V., rep. cited ref. 28, p. 833.

One of the decisions dates back to 1987 when the Commission assessed the agreement between Enichem and ICI[162] forming a joint venture. The Commission ultimately exempted the joint venture and, at the same time, set a number of conditions to be met. For them to be exempted, neither party could hold any shares in the other, thereby preventing any risk of unlawful influence. Moreover, the Commission ordered a structural remedy so that no overlapping directors would be present.[163]

Additionally, in 1994, the Commission agreed with the acquisition of 20% shares in MCI by BT, [164] which also involved the presence of overlapping directors. It was because BT agreed not only to refrain from acquiring additional shares in MCI but also not to interfere in any matter with MCI's business.[165] A similar approach was taken in the *Nordbanken*/*Postgirot* merger.[166]

Furthermore, the matter of interlocking directors was considered in the acquisition of *Olivetti/Digital*,[167] where the Digital's representative sitting on the board of Olivetti delegated all their powers to another person. Subsequently, the Commission saw the risk of potential future anticompetitive actions from the entities involved as being low and cleared the transaction.[168]

The Commission continued this practice in the *Thyssen/Krupp* decision as well. The existing links between the companies were insignificant. However, during the Commission's investigation, a problem emerged once it was discovered that Krupp, in fact, held shares and rights to appoint directors in Kone, an escalator manufacturer. Given that the market with escalators was very concentrated at the time, concerns were raised because Thyssen also produced escalators. The Commission feared that the merger might result in anticompetitive collaboration between Kone and Thyssen.[169]

---

[162] Decision of the Commission of the European Communities of 22 December 1987, relating to the proceeding of the case No. IV/31.846 – *Enichem/ICI*, No. 88/87/EEC.
[163] WINTERSTEIN, Alexander and MOAVERI-MILANESI, Enzo, 2002. Minority Shareholdings, Interlocking Directorships and the EC Competition Rules-Recent Commission Practice. *Competition policy newsletter*. Online. February 2002. Vol. 2002, no. 1, pp. 15-18. Available from: https://op.europa.eu/en/publication-detail/-/publication/047389d4-af8a-42de-bb5f-b5e1d079925c# [Accessed 9 April 2025], p. 16.
[164] Decision of the Commission of the European Communities of 27 July 1994, relating to the proceeding of the case No. IV/34.857 – *BT/MCI*, No. 94/579/EC.
[165] WINTERSTEIN, A. and MOAVERI-MILANESI, E., rep. cited ref. 163, p. 16.
[166] Decision of the Commission of the European Communities of 8 November 2001, *Nordbanken/Postgirot*, case No. COMP/M.2567, paras. 58-64.
[167] Decision of the Commission of the European Communities of 11 November 1994, relating to the proceeding of the case No. IV/34.410 – *Olivetti-Digital*, No. 94/771/EC.
[168] WINTERSTEIN, A. and MOAVERI-MILANESI, E., rep. cited ref. 163, p. 16.
[169] European Commission, 3 June 1998. *Commission clears THYSSEN/KRUPP merger*. Online. IP/98/503. Available from: https://ec.europa.eu/commission/presscorner/detail/en/ip_98_503 [Accessed 9 May 2025].

Following the aforementioned, the matter of shared directorships is considered by the Commission in its decisions. However, it rarely plays a key role and is rather used as a supportive criterion.

5.6. Interim Summary

It follows from the above that the reach of Articles 101 and 102 TFEU is, to a large extent, limited with regard to interlocks. That is mostly because those provisions are not specific enough to apply to all cases of overlapping directors, as they were primarily designed for other antitrust behaviours.

Accordingly, in their practice, both the CJEU and the Commission have found difficulties when handling cases involving structural links between competitors. The author observed that due to the lack of explicit interlock-related provisions, many actions potentially harming competition might remain out of the Commission's reach.

For instance, it seems that the interlock between competitors might be within the scope of Article 102 TFEU only in a situation where one of the companies involved was already in a dominant position on the market prior to the appointment of the shared director. Additionally, it remains unclear whether the application of Article 101 TFEU could be possible solely because an interlock was created, as such an action might not be consistent with the "concerted practices" within the meaning of that article.

For the reasons described and elaborated on above, the author came to the conclusion that there is a gap in EU competition law regarding interlocks. In other words, the Commission has not yet found an effective way to target and regulate anticompetitive consequences associated with shared directorships.

Following her findings, the author will now focus on Member States' legal frameworks that could potentially substitute the EU provisions concerning interlocking directorates. That is because the enforcement gap present on the EU level might have already been filled with Member States' national rules and, therefore, no further legislative action might be needed from the EU.

6. The Reality of Interlocks within Europe

As already indicated, interlocks are a common part of market reality in many European countries. In France, for example, "*significant relations*" were found between banks. In fact, almost one-third of the most interlocked companies in France happen to be banks.[170]

Such results might come as a surprise because already in 2002, the French legislature chose to address the matter and introduced a new provision of the Commercial Law limiting the maximum number of top executive and board positions in joint-stock companies to five.[171]

Additionally, in 2015, the so-called "Macron Law" tightened the application of the above-mentioned provision on large, publicly listed companies and reduced the number to three appointments.[172]

Accordingly, interlocks remain a part of companies' day-to-day business, even in countries where shared directorships are regulated. To further develop this theory, the author will now focus on the legal regulation in two different EU jurisdictions. On the one hand, the overlapping directors of Italian companies will be discussed, as these connections are already well-mapped, alongside both their positive and negative consequences. On the other hand, the current situation in the Czech Republic will be highlighted, as interlocks there have long been out of the spotlight of legal scholars and the legislature.

6.1. Interlocks Regulation in Italy

Among the countries that chose to regulate interlocking directorates, Italy maintains a position that could be seen as vigilant. Italy decided to control and limit those interlocking directorates, which occur in companies active on the financial market.[173]

As Baccini and Marroni point out, Italian law aims to fill the gaps in EU competition law, which in some cases lacks the measures appropriate to regulate such actions harmful to competition.

---

[170] ELOUAER-MRIZAK, S. and CHASTAND, M., rep. cited ref. 74, p. 95.

[171] France. *Code de commerce*. Online. In: Légifrance. 2002-2025. Available from: https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000006223614 [Accessed 1 May 2025], Article L225-21.

[172] France. *LOI n° 2015-990 du 6 août 2015 pour la croissance, l'activité et l'égalité des chances économiques*. Online. In Légifrance. 2025. Available from: https://www.legifrance.gouv.fr/loda/id/JORFTEXT000030978561 [Accessed 30 April 2025].

[173] This also includes credit, insurance and financial companies.

This is particularly true when antitrust law cannot act in a case of collusive behaviour due to a lack of evidence on the existence of a cartel.[174]

6.1.1. Provisions of Italian Law Relevant to Interlocking Directorates

The Italian Consolidated Law on Finance,[175] first introduced in 1998, regulates the number of directory and controlling positions one can hold in different companies listed on public markets. The implementing Consob Regulation No 11971[176] further specifies the limit on appointments to five companies per person. Furthermore, the Italian Corporate Governance Code from 2020[177] proposes that publicly listed companies should establish in their internal governance systems a maximum number of positions one person can hold in different entities to prevent the consequences of the "busyness problem"[178].[179]

Special reference must be made to the specific Italian regulation regarding financial market actors. The Italian provision in question is Section 36 of Law Decree no. 201/2011 [from now on referred to as "Section 36"], also known as the "Rescue-Italy Law Decree",[180] which aims to correct the competition on the financial market. Section 36(1) states as follows: "*No member of management boards, supervisory boards and statutory board of auditors, as well no executive officer, of companies or corporate groups that are active on the markets for banking, insurances*

[174] BACCINI, Alberto and MARRONI, Leonardo, 2016. Regulation of interlocking directorates in the financial sector: a comparative case study. *European Journal of Law and Economics*. Online. 1 April 2016. Vol. 41, no. 2, pp. 431–457. Available from: https://doi.org/10.1007/s10657-014-9467-7 [Accessed 8 April 2025], pp. 432-435.
[175] Italy. *Article 148-bis of the Consolidated Law on Finance*. Online: In Inwit. 2025. Available from: https://www.inwit.it/wp-content/uploads/2024/03/18.-Art.-148-e-148-bis-ENG.pdf [Accessed 8 April 2025].
[176] Italy. *Consob Regulation no. 11971 of 14 May 1999 – Implementing the provisions on issuers of Legislative Decree 58 of 24 February 1998*. Online. In: Consob. 2025. Available from: https://www.consob.it/documents/718268/6018868/reg11971e.pdf/cc009e77-8442-0490-64cc-c4534a518d80?t=1728527801510 [Accessed 8 April 2025], Art. 144-terdecies.
[177] Italy. *Corporate Governance Code*. Online. In: Italian Corporate Governance Committee. January 2020. Available from: https://www.borsaitaliana.it/comitato-corporate-governance/codice/codice.en.htm [Accessed 8 April 2025], p. 11.
[178] The "busyness problem" is closely related to the "Agency Theory". In short, it states that a director sitting on board of many companies does not have the time and means to effectively lead and monitor all of them, because they are simply too busy.
[179] GHEZZI, Federico and PICCIAU, Chiara, 2023. The Curious Case of Italian Interlocking Directorates. In: NOWAG, Julian and CORRADI, Marco (eds.), *Intersections Between Corporate and Antitrust Law*. Cambridge: Cambridge University Press. p. 208–229. Global Competition Law and Economics Policy. ISBN 978-1-108-84187-0, n. 78.
[180] Italy. *Article 36 of the Decree Law No. 201/2011*. Online. In: Normattiva. 2025. Available from: https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2011-12-06;201 [Accessed 8 April 2025].

and finance shall, at the same time, serve in 'corresponding' positions in competing companies or corporate groups."[181]

Falce suggests that the reason the legislature chose specifically this way to regulate the financial market is the large number of personal ties, particularly family connections that were developed in the past and continued since then. Consequently, such a social network contributed to the poor performance of the Italian financial sector. With the introduction of the interlock limitation, the legislature wanted to correct this setting.[182]

Under the second paragraph of Section 36, the aforementioned rule applies to corporations that operate on the same product and geographical markets and do not fall within the scope of Section 7 of the Italian Antitrust Law. A sanction for not complying with these requirements is the dismissal of the interlocking director from all their positions on such a market.[183]

However, this sanctioning procedure is not optional. In a "comply or die" scenario, once a company falls within the scope of the provision, it must fulfil it. Section 36, therefore, embodies a breach of the principle of private autonomy.[184]

More generally speaking, Section 36 carries two main tasks, that is, to promote competition on the financial market while, at the same time, relying on governance ethical principles, such as diligence and fairness.[185]

6.1.2. The Reality of the Italian Limitation of Interlocks

In practice, it is the determination of the geographical and product market which causes difficulties the most, as well as the definition of "executive officers"[186] under Section 36.[187] Falce concluded that the wording of "executive officers" refers solely to general directors

[181] As translated in FALCE, Valeria, 2013. Interlocking Directorates: an Italian Antitrust Dilemma. *Journal of Competition Law & Economics*. Online. 1 June 2013. Vol. 9, no. 2, pp. 457–472. Available from: https://doi.org/10.1093/joclec/nht002 [Accessed 8 April 2025], n. 22.
[182] Ibid., pp. 459-460.
[183] BACCINI, A. and MARRONI, L., rep. cited ref. 174, p. 436.
[184] FALCE, V., rep. cited ref. 181, pp. 462-463.
[185] Ibid., p. 472.
[186] Under Baccini and Marroni's translation "top managers", see: BACCINI, A. and MARRONI, L., rep. cited ref. 174.
[187] Ibid., p. 437.

as opposed to managers merely carrying a single task, even though they may also directly or indirectly influence the company's performance.[188]

Another point the regulation was criticised for was the lack of a *de minimis* threshold, which would recognise the different positions of interlocking directors in companies with small market power as opposed to those with a greater impact on competition. This issue was later resolved by a guideline provided by the regulator.[189]

In a study covering the application of the interlocks' prohibition in the top 100 Italian companies, Baccini and Marroni found that interlocks were very common. That is illustrated by the fact that if Section 36 were to be interpreted strictly and broadly as applying to all companies, even to those which only operate on the financial market on a smaller scale, compared to their main field of interest, 26 out of 28 of them would be affected.[190]

On the other hand, if the provision were to be interpreted narrowly, its effects would be substantially limited, and the purpose of the legislation would, with a high probability, not be fulfilled. Consequently, Baccini and Marroni propose the need for a regulation not solely focused on financial market actors. That is because Section 36 could be easily circumvented via interlocking officials not linked directly through the financial institutions but through other non-financial actors.[191]

Accordingly, Falce, with the support of regulatory agencies' conclusions, maintains that Section 36 should apply to those who fall under the supervision of regulatory bodies. She considers such a practice best in line with the principle of the effectiveness of the provision in question.[192]

With regard to the aforementioned, it may come as a surprise that in the first years of the application of Section 36, its effects proved to be limited. Although the number of interlocks within Italian companies operating on the financial market decreased slightly in 2012, such changes involved merely companies on the periphery of the directorial networks. The core of the links remained more or less stable, not influenced by the prohibition

[188] FALCE, V., rep. cited ref. 181, n. 33.
[189] GHEZZI, F. and PICCIAU, C., rep. cited ref. 179, pp. 217-218.
[190] BACCINI, A. and MARRONI, L., rep. cited ref. 174, pp. 446 and 449.
[191] Ibid., pp. 446-449.
[192] FALCE, V., rep. cited ref. 181, pp. 464-465.

of interlocks, as the companies adapted to the reform through their transfer to non-financial groups while keeping the links alive.[193]

Fattobene, Caiffa and Di Carlo came to the same conclusions when they carried out research with a wider sample of Italian companies and their directors between 1998 and 2012. They also found that the number of overlapping directors decreased after the implementation of the interlocking ban. However, they also attribute at least part of it to the consequences of the 2008 financial crisis. All in all, they consider interlocking directorates an element very characteristic of Italian corporate networks. The scholars also came to a relatively high number of positions, which an average director held. Nevertheless, this mainly concerned a small group of people controlling the industry by sitting on the boards of many companies. Such directors typically stay loyal to their positions for a very long period.[194]

A more recent Italian study nevertheless concluded that by 2018, the interlocks previously existing within the 25 largest Italian banks had dissolved completely. Moreover, Ghezzi and Picciau put the implementation of Section 36 into the context with the decrease of bank lending rates, as they see it as a consequence of healthier competition.[195]

6.2. Interlocks (De)Regulation in the Czech Republic

The Czech legal system does not specifically regulate the issue of interlocking directorates as such. However, the Czech Office for the Protection of Competition[196] has dealt with the matter in a marginal way while carrying out its main tasks multiple times.[197]

6.2.1. Examples of the Office for the Protection of Competition's Decisions Related to Interlocks

In November 2007, the Office for the Protection of Competition considered the approval of a merger of Telefónica O2 Czech Republic, a.s., a telecommunications network provider,

[193] DRAGO, Carlo and RICCIUTI, Roberto, 2017. Communities detection as a tool to assess a reform of the Italian interlocking directorship network. *Physica A: Statistical Mechanics and its Applications*. Online. 15 January 2017. Vol. 466, pp. 91–104. Available from: https://doi.org/10.1016/j.physa.2016.08.029 [Accessed 8 April 2025], pp. 91 and 99.
[194] FATTOBENE, Lucrezia, CAIFFA, Marco and DI CARLO, Emiliano, 2018. Interlocking directorship across Italian listed companies: evidence from a natural experiment. *Journal of Management and Governance*. Online. 1 June 2018. Vol. 22, no. 2, pp. 393–425. Available from: https://doi.org/10.1007/s10997-017-9392-6 [Accessed 10 April 2025], p. 417.
[195] GHEZZI, F. and PICCIAU, C., rep. cited ref. 179, pp. 208-208 and 222-223.
[196] Office for the Protection of Competition stands for *Úřad pro ochranu hospodářské soutěže* in Czech.
[197] OECD, 2009, rep. cited ref. 3, pp. 107-110.

and DELTAX Systems a.s., a provider of services in the information technology sector.[198] As the conditions to its clearance, the Office for the Protection of Competition set that DELTAX Systems a.s. must terminate its participation in the public contract concerning the information system for the administration of interactive forms for the Czech Communication Office (ČTÚ).

The Office for the Protection of Competition had concerns that while performing this contract, the merged company could gain an undue competitive advantage through its newly established links. Consequently, DELTAX Systems a.s. had to transfer its contract to an uninterested third party, with no personal or proprietary links to the entities in question, so that no danger to competition could arise. The Office for the Protection of Competition, therefore, indirectly acknowledged the importance of strictly independent competitors on the market.[199]

The issue of interlocked companies arose again when the Office for the Protection of Competition dealt with a public contract concerning the railway infrastructure.[200] One of the competitors not successful in the tender, in this case, a construction company, objected to the potential conflict of interest of the other entities participating in the contract, as they shared one of the directors. The Office for the Protection of Competition, however, did not address the matter due to procedural deficiencies.[201]

More recently, the Office for the Protection of Competition issued a decision in the case of a public contract for Charles University.[202] One of the members of the committee appointed by the University to evaluate the offers also sat on the board of a company developing a technical device requested by the University. Consequently, another company, as the only participant, succeeded in the tender, offering the very same device.

The Office for the Protection of Competition highlighted the preventive aspects of rules governing the conflict of interest. As Charles University had already been encountered with the company in question before, during its research activities, the Office for the Protection of Competition concluded that the University knew or ought to have known about the directors'

[198] Decision of the Office for the Protection of Competition of 30 November 2007, *Spojení soutěžitelů Telefónica O2 Czech Republic, a.s. a DELTAX Systems a.s.*, case No. S 239/2007/KS-22312/2007/840.
[199] Ibid., paras. 44-47.
[200] Decision of the Office for the Protection of Competition of 7 July 2021, *Oprava havarijního stavu náspu v úseku Hájek – Dalovice km 178,850 – 179,000*, case No. S0382/2020/VZ.
[201] Ibid., para. 275.
[202] Decision of the Office for the Protection of Competition of 31 October 2023, *Pořízení NAP cely a analyzátoru parametrů palivových článků s protonově vodivou membránou - část 2 „Analyzátor parametrů palivových článku s protonově vodivou membránou"*, case No. S0692/2023/VZ.

identity. The public institution, therefore, did not fulfil its legal obligation to avoid conflicts of interest, when the development company, through its director, had access to insider information. Moreover, due to this opportunity, the director could influence the conditions of the contract for the benefit of its device, which might lead to unlawful economic advantages for the company involved.[203]

It follows from the above that due to the lack of a specific regulation on interlocked directorates, out of all their negative consequences, a (potential) conflict of interest and the unlawful exchange of information stands at the centre of the regulatory body's attention in the Czech Republic. To govern it, the Office for the Protection of Competition and other state authorities apply general legal rules, primarily those of civil, commercial and public procurement law.

6.2.2. The Czech Reality of Interlocking Directorates

In a broader context, Czech interlocked corporate networks were found to be densest in the energy, healthcare and utilities sector.[204] On the financial market, on the other hand, it is very difficult to encounter overlapping directors. This is most definitely due to strict regulations from the financial market supervisor, the Czech National Bank.

It is, for instance, entirely prohibited for a financial intermediary, a natural person, to be on the board of another financial intermediary, a legal person. The Czech National Bank stated that the reason for this approach is the prevention of conflicts of interest and the risk of information misuse by one financial intermediary for the benefit of another. Moreover, the body explicitly stated that customers could be misled as to the identity of a financial intermediary the person actually represents due to the overall lack of transparency in the inner structures of companies on the market. In general, the regulator sought to protect competition and the quality of services offered to customers.[205]

---

[203] Ibid., paras. 59-65.

[204] NOWAK, Ondřej, 2012. Corporate Governance Networks and Interlocking Directorates in the Czech Republic. *International Journal of Mechanical and Industrial Engineering*. Online. 2012.. Vol. 6, No. 11, pp. 3081-3085. ISSN: 0976-6340, pp. 3081 and 3084.

[205] Czech National Bank, 4 March 2019. *Může fyzická osoba, která vykonává činnost investičního zprostředkovatele, být současně členem vedoucího orgánu jiného investičního zprostředkovatele? Může být v jiném investičním zprostředkovateli v postavení jiného pracovníka nebo společníka? Liší se nějak pravidla pro vázané zástupce?* Online. RS2019-06. Available from: https://www.cnb.cz/cs/dohled-financni-trh/legislativni-zakladna/stanoviska-k-regulaci-financniho-trhu/RS2019-06 [Accessed 10 April 2025].

To the author's knowledge, only one study on the topic of directorial links between undertakings was introduced in the Czech Republic. In September 2012, Nowak considered a total of 2,906 joint stock companies operating on the Czech market in various fields. He found that fewer than one-fifth of executive or non-executive directors held positions in more than one company. However, and perhaps most interestingly, Nowak found no correlation between the company's economic performance and the number of interlocks it was involved in.[206]

Perhaps unexpectedly, considering the aforementioned, the Czech Codex of Corporate Governance explicitly addresses the matter of overlapping directors. Although it is not generally binding, it has a relevance, because it was developed by actors from both private and public sectors and it takes into account the Czech market's specifics. Moreover, it was supported by the state authorities, namely the Ministry of Finance. It proposes that one person should not hold more than a total of five board functions, concerns excluded.[207]

6.3. Interim Summary

Although interlocking directorates are present in both Italy and the Czech Republic, the legislature's approach to them differs to a large extent. While in Italy, there are legal provisions specifically targeting interlocks, in the Czech Republic, with a few exceptions, the matter is left to the application of general rules governing, in particular, the conflict of interest.

The author suggests that the cause of the different practices described above may lie in the past development of the markets. The financial sector in Italy, for example, has a long and uninterrupted history, with institutions often founded as family businesses hundreds of years ago. This setting is perfect for developing personal ties between competitors, as trust is highly valued and even demanded in such an environment.

In the Czech Republic (and previously in Czechoslovakia), on the other hand, the financial market faced multiple upheavals and had to be built from the ground up after 1989. This means that financial market development in the Czech Republic was not as organic as in Italy, leaving the Czech National Bank as the regulator with greater control over actors providing financial services.

---

[206] NOWAK, O., rep. cited ref. 204, pp. 3083-3085.
[207] Czech Republic. *Kodex správy a řízení společností ČR*. Online. In: Ministerstvo financí. 2018. Available from: https://www.mfcr.cz/cs/ministerstvo/kariera-a-vzdelavani/vzdelavani/odborne-studie-a-vyzkumy/2019/kodex-spravy-a-rizeni-spolecnosti-cr-201-34812 [Accessed 11 February 2025], para. 3.2.2.

Generally speaking, in the Czech Republic, interlocks seem to not influence the market behaviour as much as in Italy, especially in the financial market sector. That may be the reason why they are not considered an urgent matter to the legislature. However, due to the lack of studies on the matter, this conclusion cannot be decisive. Consequently, the need for further research continues to persist in order to assess the potential importance of a stricter regulatory framework in the Czech Republic.

7. Conclusions

Based on the analysed data, the author is confident in stating that there is, indeed, a gap in EU competition law regarding interlocking directorates that needs to be filled. While the Member States have the opportunity to do so, and some of them, such as Italy and France, have been active in addressing this issue for decades, their approaches vary and are often insufficient in preventing the negative effects of interlocks. In countries like the Czech Republic, on the other hand, the issue of interlocking directorates remains, to a large extent, untouched by the legislative bodies.

In other words, the author is, based on her research, confident in stating that the Commission and other bodies responsible (particularly from the Member States) did not manage to find an efficient way of regulating the negative effects of minority shareholdings and interlocks on competition, following the Commission's unsuccessful legislative efforts in 2014.

As it follows from above, the negative impacts of overlapping directors outweigh their benefits. The author considers the risk of information exchange between competitors, as well as the incentives for collusion and/or non-competition on the market, to be the biggest threats to competition. The urge for an explicit legislative solution also stands because such conduct is very difficult and costly to disclose for the regulatory bodies, given the untransparent nature of internal decision-making processes within companies.

Moreover, it's not only the customers and the market competition in general that are affected by these collusive practices on the market; it's also the shareholders. If there were a regulation ordering to disclose overlapping directors, shareholders and creditors would be more protected and could make better informed decisions and be more involved in corporate governance mechanisms.[208]

Another difficulty market regulators face is the unclear nature of certain industries, particularly those utilising modern technologies. That is because, as Nili pointed out, interlocking directorates are essentially based on cooperation within industries. With this approach, the interlocked companies can profit the best and can seize their competitive advantages. As the lines between different business fields become increasingly blurred in modern times, it

[208] NILI, Y., rep. cited ref. 8, p. 187.

will inevitably be more difficult to spot and monitor anticompetitive behaviour committed through interlocks.[209]

Following her findings, the author argues that both direct and indirect interlocks between competitors should be prohibited, especially in smaller, still developing markets and those with fewer competitors, such as the ones dealing with technology innovations.

Given the extensive range of possibilities for how an interlock may be formed, the reach of such a prohibition should be broad, applying not only to directors but also to other officers and employees who have influence over the company's decision-making process.

While it follows from the thesis that interlocking directorates can play a principal role in the development of innovations and the opening of new markets, the author argues that such a benefit should not be supported at the cost of disrupting competition.

Similarly, the author is aware of and does not question the positive role of shared directorates in the initial phase of an entity's development. That is why she suggests a *de minimis* threshold to be implemented. Accordingly, the author proposes an EU-wide prohibition of interlocks applicable competitors on all markets, except for those whose market power is insignificant compared to others. This solution is in line with the US approach and the regulation under Section 8 of the Clayton Act.

Moreover, such a solution is, in the author's eyes, consistent with the Commission's efforts to find a mechanism which catches all the potential disputable cases and does not put any additional administrative burden on the entities in question as well as on the controlling bodies, such as *pre ante* and post notification and clearance systems. Furthermore, a regulatory solution on the EU level would unify the current fragmented national approaches.[210]

Nonetheless, the author maintains that a special focus should be placed on the financial market situation, as, generally speaking, overlapping directors are especially common there. Furthermore, the author considers financial institutions to be crucial for the functioning of companies in different industries. As illustrated in German and Italian cases above, banks and other financial entities are vital for companies competing in other industries, for example,

[209] Ibid., p. 172.
[210] EU. *Commission Staff Working Document Accompanying the Document White Paper towards more effective EU merger control, SWD(2014) 221 final*, rep. cited ref. 62, paras. 68-71.

with regard to the issuance of loans. Inter-industrial connections with banks have far-reaching consequences on competition, as already proved more than 30 years ago in Germany in the WestLB Bank case.

All in all, the author notes that the preventive prohibition approach would not only have positive effects on competition but would also be more cost-effective for regulatory bodies. As described in the cases of cartel investigations, due to the lack of transparency, it is very difficult and expensive for the Commission to find strong enough links between competitors.

Moreover, as studies conducted on the topic of interlocks reveal, one of the biggest obstacles to the development of corporate governance and the regulation of interlocking directorates is the persistent lack of transparency in ownership structures. Ownership networks, namely the common and cross-ownership networks, are the driving force of interlocks. Without access to relevant and systematic data, it remains largely difficult to conduct research in the field and come up with incentives for (de)regulation. [211]

Accordingly, by prohibiting overlapping directors *per se*, anticompetitive behaviour could also be established based on the mere presence of interlocks. As noted above, the investigation often fails due to a lack of sufficient evidence of the prohibited conduct. This approach could help remove this obstacle.

The author suggests that it would appear more effective to regulate interlocks on the EU level rather than individually in each of the Member States. Given the global reach of the EU market and the international nature of today's companies, Member States might fall behind the pace of cross-border interlocks development.

Moreover, if the regulation were to be left on the national level, its mode of implementation might differ from state to state. The Netherlands might choose to forbid only horizontal interlocks of a certain size, whereas Hungary, on the other hand, would choose to ban all interlocks *per se*. Additionally, what might be considered an interlock in Germany, would be a completely acceptable corporate structure in Sweden. Under such circumstances, the different legislative solutions might present obstacles to the exercise of the EU Internal

[211] As noted for example in AUVRAY, Tristan and BROSSARD, Olivier, 2013. *French connection: interlocking directorates and the ownership-control nexus in an insider governance system*. Online. May 2013. Pp. 1-63. Available from: https://hal.science/hal-00842582 [Accessed 16 April 2025], p. 38.

Market freedoms. Hence, the author notes that it would appear more effective to find a unified EU-wide solution.

Additionally, the most functional approach to preventing the unlawful exchange of information could be inspired by New Zealand case law. That is the implementation of the obligation of traceability of any proposition relating to the company to the company's rules. In other words, such a practice could be referred to as "the rules of attribution".[212] This practice would further highlight the importance of upholding the director's fiduciary duties.

The author also considered the introduction of an *ex-post* controlling mechanism; however, she came to the conclusion that such a system would be cost-ineffective, difficult to maintain, and, foremost, hard to develop in a way that would catch all breaches of the prohibition. [213]

To conclude, the issue of interlocking directorates is complex and is by no means scholarly exhausted, especially from the perspective of competition law. Interlocks and minority shareholdings in general remain out of the spotlight of market regulators and legislators, although they negatively influence competition every day. Therefore, the question remains as to whether the Commission will leave its current tolerant position towards overlapping directors and, therefore, whether and in which form it chooses to regulate them.

As the author already indicated, on the one hand, it could opt for the US approach, prohibiting interlocks between direct competitors in any form, except for those with smaller market shares. On the other hand, there is the possibility of regulating only those shared directorships that are most harmful to competition.

That could, for instance, mean limiting the maximum number of directorial positions per person or the applicability of the prohibition only to certain industries, such as the financial sector. Another possibility could be the prohibition of interlocks in certain industries *per se*, while applying a rebuttable presumption of the existence of anticompetitive behaviour in the presence of shared directorates in other fields. Such a legislative solution would, however, require a thorough and precise research of competitors' behaviour on various markets and their comparison. The third option would be maintaining the current deregulation of interlocks. That is, instead of concentrating on the causes of anticompetitive behaviour (that

[212] Judgement of the Court of Appeals of New Zealand of 26 June 1995, *Meridian Global Funds Management Asia Limited v The Securities Commission*, case No. [1995] 2 BCLC 116, para. 7.
[213] As also concluded by GHEZZI, F. and PICCIAU, C., rep. cited ref. 179, p. 212.

is, on interlocks and minority shareholdings), the responsible bodies would step in only if they found a breach of antitrust provisions, foremost Article 101 TFEU. However, as demonstrated above, such an approach has its limits in practice.

This thesis demonstrates that interlocking directorates pose a threat to good competition within the European Union's Internal Market. Moreover, it was concluded that there is, in fact, a gap in EU competition law regarding interlocks, which has not been filled since the last attempts to introduce their regulation in 2014. Only time will tell whether it will be addressed by the EU or, in the case of its inaction, by the Member States. What is certain, however, is that in the era of the globalisation of markets and technological advancements, new challenges for competition law emerge rapidly. One of these challenges is the interconnected directorships, which are often invisible but loud shapers of market competition.

List of Sources

1. A List of Literature

CARRETTA, Alessandro and MATTAROCCI, Gianluca, 2012. *Financial Systems in Troubled Waters: Information, Strategies, and Governance to Enhance Performances in Risky Times.* 2012. Oxford: Taylor & Francis Group. ISBN 978-1-136-23224-4.

CHRISTENSEN, Clayton, M., 1997. *The Innovator's Dilemma: When New Technologies Cause Great Firms to Fail.* 1997. Boston: Harvard Business School Press. ISBN-10: B0076ZFPKW.

CORRADI, Marco, 2023. Common Ownership by Investment Management Corporations and EU Policies: Please, Play Puzzles and not Mikado! In: NOWAG, Julian and CORRADI, Marco (eds.), *Intersections Between Corporate and Antitrust Law*. Cambridge: Cambridge University Press. Global Competition Law and Economics Policy. ISBN 978-1-108-84187-0.

FINCH, Andrew C., RUBIN, Jacqueline P. and RANADE, Samir K., 2010. Interlocking Directorates: Re-Examining Section 8 of the Clayton Act. *Insights: The Corporate & Securities Law Advisor*. January 2010. Vol. 24, no. 1, p. 8–13. ISSN: 0894-3524.

GHEZZI, Federico and PICCIAU, Chiara, 2023. The Curious Case of Italian Interlocking Directorates. In: NOWAG, Julian and CORRADI, Marco (eds.), *Intersections Between Corporate and Antitrust Law*. Cambridge: Cambridge University Press. p. 208–229. Global Competition Law and Economics Policy. ISBN 978-1-108-84187-0.

HARDING, Christopher and JOSHUA, Julian, 2010. Models of Legal Control: North America and Europe. In: HARDING, Christopher and JOSHUA, Julian (eds.), *Regulating Cartels in Europe*. Oxford University Press. p. 39-64. ISBN 978-0-19-955148-4.

HARDING, Christopher and JOSHUA, Julian, 2010. The Pathology of Cartels: Addressing Issues of Agency and Responsibility. In: HARDING, Christopher and JOSHUA, Julian (eds.), *Regulating Cartels in Europe*. Oxford: Oxford University Press. p. 256-285. ISBN 978-0-19-955148-4.

MÜNCHAU, Wolfgang, 2025. *Kaput: Konec německého zázraku [Kaput: The End of the German Miracle]*. Praha: Nakladatelství Bourdon, 2025. ISBN 978-80-7611-286-5.

MURINO, Andrea Agathoklis, 2016. Board Interlocks on Enforcement Hot Seat. *Insights: The Corporate & Securities Law Advisor*. December 2016. Vol. 30, no. 12, p. 9–11. ISSN: 0894-3524.

NILI, Yaron, 2023. Horizontal Directors Revisited. In: NOWAG, Julian and CORRADI, Marco (eds.), *Intersections Between Corporate and Antitrust Law*. Cambridge: Cambridge University Press. p. 167–189. Global Competition Law and Economics Policy. ISBN 978-1-108-84187-0.

NOWAK, Ondřej, 2012. Corporate Governance Networks and Interlocking Directorates in the Czech Republic. *International Journal of Mechanical and Industrial Engineering*. Online. 2012.. Vol. 6, No. 11, p. 3081-3085. ISSN: 0976-6340.

PFEFFER, Jeffrey and SALANCIK, Gerald R., 2003. *The External Control of Organizations: A Resource Dependence Perspective*. Redwood City: Stanford University Press, 2003. ISBN 978-0-8047-4789-9.

THÉPOT, Florence, 2023. Interlocking Directorates in Europe: An Enforcement Gap? In: NOWAG, Julian and CORRADI, Marco (eds.), *Intersections Between Corporate and Antitrust Law*. 2023. Cambridge: Cambridge University Press. p. 190–207. Global Competition Law and Economics Policy. ISBN 978-1-108-84187-0.

2. A List of Online Literature

AUVRAY, Tristan and BROSSARD, Olivier, 2013. *French connection: interlocking directorates and the ownership-control nexus in an insider governance system*. Online. May 2013. Pp. 1-63. Available from: https://hal.science/hal-00842582 [Accessed 16 April 2025].

AUVRAY, Tristan and BROSSARD, Olivier, 2016. French connection: interlocking directorates and ownership network in an insider governance system. *Revue d'économie industrielle*. Online. 15 June 2016. No. 154, pp. 177–206. Available from: https://doi.org/10.4000/rei.6377 [Accessed 16 April 2025].

AZAR, José, 2022. Common Shareholders and Interlocking Directors: The Relation Between Two Corporate Networks. *Journal of Competition Law & Economics*. Online. 10 March 2022. Vol. 18, no. 1, pp. 75–98. Available from: https://doi.org/10.1093/joclec/nhab026 [Accessed 14 February 2025].

BACCINI, Alberto and MARRONI, Leonardo, 2016. Regulation of interlocking directorates in the financial sector: a comparative case study. *European Journal of Law and Economics*. Online. 1 April 2016. Vol. 41, no. 2, pp. 431–457. Available from: https://doi.org/10.1007/s10657-014-9467-7 [Accessed 8 April 2025].

BENCHEKROUN, Hassan, DAI, Miao, LONG, Ngo Van, 2020. *On the Profitability of Cross-Ownership in Cournot Oligopolies: Stock Sizes Matter*. CESifo Working Paper No. 8503. Online. 25 August 2020. Pp. 1-40. Available from: https://dx.doi.org/10.2139/ssrn.3680360 [Accessed 20 May 2025].

BENNETT, Matthew and COLLINS, Philip, 2010. The Law and Economics of Information Sharing: The Good, the Bad and the Ugly. *European Competition Journal*. Online. August 2010. Vol. 6, no. 2, pp. 311–337. Available from: https://doi.org/10.5235/174410510792283754 [Accessed 26 February 2025].

BISCHOFF, Oliver and BUCHWALD, Achim, 2018. Horizontal and Vertical Firm Networks, Corporate Performance and Product Market Competition. *Journal of Industry, Competition and Trade*. Online. 1 March 2018. Vol. 18, no. 1, pp. 25–45. Available from: https://doi.org/10.1007/s10842-017-0250-7 [Accessed 25 February 2025].

BOOT, Nuria, SELDESLACHTS, Jo and BANAL-ESTAÑOL, Albert, 2022. *Common Ownership: Europe vs. the US*. DIW Berlin Discussion Paper No. 2015. Online. 1 August 2022. Rochester, NY: Social Science Research Network, pp. 1-33. Available from: http://dx.doi.org/10.2139/ssrn.4203714 [Accessed 14 May 2025].

BRANDEIS, Louis Dembitz, 1914. *Other People's Money, and How the Bankers Use It*. Frederick A. Stokes Company. Online. 31 August 2018, Project Gutenberg, pp. 1-223. Available from: https://www.gutenberg.org/ebooks/57819 [Accessed 11 February 2025].

BUCH-HANSEN, Hubert, 2014. Interlocking directorates and collusion: An empirical analysis. *International Sociology*. Online. 1 May 2014. Vol. 29, no. 3, pp. 249–267. Available from: https://doi.org/10.1177/0268580914527021 [Accessed 25 February 2025].

BURNSIDE, Alec J and KIDANE, Adam, 2020. Common ownership: an EU perspective. *Journal of Antitrust Enforcement*. Online. 1 November 2020. Vol. 8, no. 3, pp. 456–510. Available from: https://doi.org/10.1093/jaenfo/jnz037 [Accessed 9 April 2025].

CAIAZZA, Rosa, CANNELLA JR, Albert A., PHAN, Phillip H. and SIMONI, Michele, 2019. An Institutional Contingency Perspective of Interlocking Directorates. *International Journal of Management Reviews*. Online. 2019. Vol. 21, no. 3, pp. 277–293. Available from: https://doi.org/10.1111/ijmr.12182 [Accessed 26 February 2025].

CARNEY, Michael, GEDAJLOVIC, Eric and SUR, Sujit, 2011. Corporate governance and stakeholder conflict. *Journal of Management & Governance*. Online. 1 August 2011. Vol. 15, no. 3, pp. 483–507. Available from: https://doi.org/10.1007/s10997-010-9135-4 [Accessed 26 February 2025].

CHRISTENSEN, Clayton M., RAYNOR, Michael and MCDONALD, Rory, 2015. What is Disruptive Innovation?. *Harvard Business Review*. Online. December 2015. Vol. 93, No. 12, pp. 44-53. Available from: https://www.hbs.edu/faculty/Pages/item.aspx?num=50233 [Accessed 29 May 2025].

DRAGO, Carlo and RICCIUTI, Roberto, 2017. Communities detection as a tool to assess a reform of the Italian interlocking directorship network. *Physica A: Statistical Mechanics and its Applications*. Online. 15 January 2017. Vol. 466, pp. 91–104. Available from: https://doi.org/10.1016/j.physa.2016.08.029 [Accessed 8 April 2025].

ELOUAER-MRIZAK, Sana and CHASTAND, Marc, 2013. Detecting Communities within French Intercorporate Network. *Procedia - Social and Behavioral Sciences*. Online. 6 June 2013. Vol. 79, pp. 82–100. Available from: https://doi.org/10.1016/j.sbspro.2013.05.058 [Accessed 16 April 2025].

EZRACHI, Ariel and GILO, David, 2006. EC Competition Law and the Regulation of Passive Investments Among Competitors. *Oxford Journal of Legal Studies*. Online 2006. Vol. 26, No. 2, pp. 327-349. Available from: https://www.jstor.org/stable/3877019 [Accessed 6 June 2025].

FALCE, Valeria, 2013. Interlocking Directorates: an Italian Antitrust Dilemma. *Journal of Competition Law & Economics*. Online. 1 June 2013. Vol. 9, no. 2, pp. 457–472. Available from: https://doi.org/10.1093/joclec/nht002 [Accessed 8 April 2025].

FATTOBENE, Lucrezia, CAIFFA, Marco and DI CARLO, Emiliano, 2018. Interlocking directorship across Italian listed companies: evidence from a natural experiment. *Journal of Management and Governance*. Online. 1 June 2018. Vol. 22, no. 2, pp. 393–425. Available from: https://doi.org/10.1007/s10997-017-9392-6 [Accessed 10 April 2025].

FIELD, Laura, LOWRY, Michelle and MKRTCHYAN, Anahit, 2013. Are busy boards detrimental? *Journal of Financial Economics*. Online. 1 July 2013. Vol. 109, no. 1, pp. 63-82. Available from: https://doi.org/10.1016/j.jfineco.2013.02.004 [Accessed 17 February 2025].

FISCHER, Eric N., 2015. Serving More than One Master: A Social Network Analysis of Section 8 of the Clayton Act. *Journal of Corporation Law*. Online. Fall 2015. Vol. 41, no. 1, pp. 313–341. Available from: https://jcl.law.uiowa.edu/sites/jcl.law.uiowa.edu/files/2021-08/Fischer_Final_Web.pdf [Accessed 11 February 2025].

FRADE, Eduardo, BINOTTO, Anna, 2021. Minority shareholdings and antitrust: Recent developments. *Centro Competencia, Universidad Adolfo Ibáñez*. Online. 10 February 2021. Pp. 1-10. Available from: https://centrocompetencia.com/minority-shareholdings-and-antitrust-recent-developments/ [Accessed 6 June 2025]

GABRIELSEN, Tommy Staahl, HJELMENG, Erling and SORGARD, Lars, 2011. Rethinking minority share ownership and interlocking directorships - the scope for competition law intervention. *European Law Review*. Online. 2011. Vol. 36, no. 6, pp. 837-860. Available from: https://www.researchgate.net/publication/289781846_Rethinking_Minority_Share_Ownership_and_Interlocking_Directorships_The_Scope_for_Competition_Law_Intervention [Accessed 18 February 2025].

GILO, David, MOSTHE, Yossi, Spiegel, Yossi, 2006. Partial cross ownership and tacit collusion. *The RAND Journal of Economics*. Online. 20 January 2010. Vol. 37, i. 1, pp. 81-99. Available from: https://doi.org/10.2139/ssrn.422840 [[Accessed 20 May 2025].

HARISKOS, Wasilios, KÖNIGSTEIN, Manfred, PAPADOPOULOS, Konstantinos, G., 2022. Anti-competitive effects of partial cross-ownership: Experimental evidence. *Journal of Economic Behavior & Organization*. Online. January 2022. Vol. 193, pp. 399-409. Available from: https://doi.org/10.1016/j.jebo.2021.11.027 [Accessed 20 May 2025].

HE, Jie (Jack), HUANG, Jiekun, 2017. Product Market Competition in a World of Cross-Ownership: Evidence from Institutional Blockholdings. *The Review of Financial Studies*. Online. August 2017. Vol. 30, No. 8, pp. 2674-2718. Available from: https://www.jstor.org/stable/44506812 [Accessed 20 May 2025].

HEEMSKERK, Eelke M. and TAKES, Frank W., 2016. The Corporate Elite Community Structure of Global Capitalism. *New Political Economy*. Online. 2 January 2016. Vol. 21, no. 1, pp. 90–118. Available from: https://doi.org/10.1080/13563467.2015.1041483 [Accessed 12 February 2025].

HUSE, Cristian, RIBEIRO, Ricardo, VERBOVEN, Frank, 2024. Common-Ownership Versus Cross-Ownership: Evidence from the Automobile Industry. *The Journal of Industrial Economics*. Online. 26 March 2024. Vol. 72, i. 4, pp. 1339-1359. Available from: https://doi.org/10.1111/joie.12390 [Accessed 20 May 2025].

JENSEN, Michael C. and MECKLING, William H., 1976. Theory of the firm: Managerial behavior, agency costs and ownership structure. *Journal of Financial Economics*. Online. 1 October 1976. Vol. 3, no. 4, pp. 305–360. Available from: https://doi.org/10.1016/0304-405X(76)90026-X [Accessed 26 February 2025].

KACZMAREK, Szymon, KIMINO, Satomi and PYE, Annie, 2014. Interlocking directorships and firm performance in highly regulated sectors: the moderating impact of board diversity. *Journal of Management & Governance*. Online. 1 May 2014. Vol. 18, no. 2, pp. 347–372. Available from: https://doi.org/10.1007/s10997-012-9228-3 [Accessed 27 February 2025].

KÜHN, Kai-Uwe and VIVES, Xavier, 1994. Information Exchanges Among Firms and their Impact on Competition. *Publications Office of the European Union*. Online. June 1994. Pp. 1-119. Available from: https://op.europa.eu/en/publication-detail/-/publication/90fa6d91-de13-4c87-be75-ccb175427a61/language-en [Accessed 28 April 2025].

LARCKER, David F., SO, Eric, WANG, Charles, 2010. *Boardroom Centrality and Stock Returns*. Stanford GSB Research Paper No. 2061. Online. July 2010. Pp. 1-43. Available from: https://www.gsb.stanford.edu/faculty-research/working-papers/boardroom-centrality-stock-returns [Accessed 12 February 2025].

MARCO COLINO, Sandra, 2021. *Vertical Restraints (or Restrictions)*. The Chinese University of Hong Kong Faculty of Law Research Paper No. 2021-46. Online. June 2021. Pp. 1-7. Available from: https://www.researchgate.net/publication/353719216_Vertical_Restraints_or_Restrictions [Accessed 27 May 2025].

MIZRUCHI, Mark S., 1996. What Do Interlocks Do? An Analysis, Critique, and Assessment of Research on Interlocking Directorates. *Annual Review of Sociology*. Online. 1996. Vol. 22, pp. 271–298. Available from: : https://www.jstor.org/stable/2083432 [Accessed 30 April 2025].

ODUDU, Okeoghene, 2006. Collusion: Agreement and concerted practice. In: ODUDU, Okeoghene (ed.), *The Boundaries of EC Competition Law: The Scope of Article 81*. Oxford University Press. Online. 2006. Pp. 57-96. Available from: https://doi.org/10.1093/acprof:oso/9780199278169.003.0004 [Accessed 19 February 2025].

OECD, 2009. Minority Shareholdings and Interlocking Directorates. *OECD Roundtables on Competition Policy Papers*. Paris: OECD Publishing. Online. 23 June 2009. No. 88, pp. 1-275. Available from: https://doi.org/10.1787/d81d1ccd-en [Accessed 25 February 2025].

PETERSEN, Vidir, 2016. Interlocking Directorates in the European Union: An Argument for Their Restriction. *European Business Law Review*. Online. 1 November 2016. Vol. 27, i. 6, pp. 821–864. Available from: https://doi.org/10.54648/EULR2016036 [Accessed 25 February 2025].

RAMASWAMY, Vinita, 2019. Director interlocks and cross-cultural impact on strategies affecting shareholder–creditor conflicts: A conceptual analysis. *Management Decision*. Online. 11 November 2019. Vol. 57, no. 10, pp. 2693–2713. Available from: https://doi.org/10.1108/MD-10-2017-0956 [Accessed 14 February 2025].

ROCK, Edward, B and RUBINFELD, Daniel L., 2020. Common Ownership and Coordinated Effects. *Antitrust Law Journal*. Online. 2020. Vol. 83, No. 1, pp. 201-252. Available from: https://www.jstor.org/stable/27006859 [Accessed 6 June 2025].

SACOMANO NETO, Mario, CARMO, Marcelo José do, RIBEIRO, Evandro Marcos Saidel and CRUZ, Wilton Vicente Gonçalves da, 2020. Corporate ownership network in the

automobile industry: Owners, shareholders and passive investment funds. *Research in Globalization*. Online. 1 December 2020. Vol. 2, pp. 1-12. Available from: https://doi.org/10.1016/j.resglo.2020.100016 [Accessed 14 May 2025].

SCHMIDT, Leonard, VELEMA, Thijs A and SHIH, Shih-I, 2024. The individual makes the difference: How mobile personnel affects organizational status of hiring firms. *Strategic Organization*. Online. 2024. Pp. 1-22. Available from: https://doi.org/10.1177/14761270241229080 [Accessed 17 February 2025].

SIMONI, Michele, CAIAZZA, Rosa, 2013. Interlocking Directorates' Effects on Economic System's Competitiveness. *Business Strategy Series*. Online. 4 January 2013. Vol. 14, no. 1, pp. 30-35. Available from: https://doi.org/10.1108/17515631311295695 [Accessed 26 February 2025].

SONQUIST, John A. and KOENIG, Thomas, 1984. INTERLOCKING DIRECTORATES IN THE TOP U.S. CORPORATIONS: A Graph Theory Approach. *BMS: Bulletin of Sociological Methodology/Bulletin de Méthodologie Sociologique*. Online. 1984. No. 2, pp. 41–74. Available from: https://www.jstor.org/stable/43761867 [Accessed 9 May 2025].

WIDMER, Frédéric, 2011. Institutional investors, corporate elites and the building of a market for corporate control. *Socio-Economic Review*. Online. 1 October 2011. Vol. 9, no. 4, pp. 671–697. Available from: https://doi.org/10.1093/ser/mwr014 [Accessed 25 February 2025].

WILSON, Thomas, 2019. Common ownership – where do we stand? *Kluwer Competition Law Blog*. Online. 15 April 2019. Pp. 1-6. Available from: https://competitionlawblog.kluwercompetitionlaw.com/2019/04/15/common-ownership-where-do-we-stand/ [Accessed 6 June 2025].

WINTERSTEIN, Alexander and MOAVERI-MILANESI, Enzo, 2002. Minority Shareholdings, Interlocking Directorships and the EC Competition Rules-Recent Commission Practice. *Competition policy newsletter*. Online. February 2002. Vol. 2002, no. 1, pp. 15-18. Available from: https://op.europa.eu/en/publication-detail/-/publication/047389d4-af8a-42de-bb5f-b5e1d079925c# [Accessed 9 April 2025].

3. A List of Legislation

Czech Republic. *Kodex správy a řízení společností ČR*. Online. In: Ministerstvo financí. 2018. Available from: https://www.mfcr.cz/cs/ministerstvo/kariera-a-vzdelavani/vzdelavani/odborne-studie-a-vyzkumy/2019/kodex-spravy-a-rizeni-spolecnosti-cr-201-34812 [Accessed 11 February 2025].

EU. *Commission Regulation (EU) 2022/720 of 10 May 2022 on the application of Article 101 (3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices (C/2022/3015)*. Online. In EUR-lex. 1998-2015. Available from: http://data.europa.eu/eli/reg/2022/720/2024-02-11 [Accessed 27 May 2025].

EU. *Commission Staff Working Document Accompanying the Document White Paper towards more effective EU merger control, SWD(2014) 221 final*. Online. 7 July 2014. In EUR-lex. 1998-2025. Available from: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=swd:SWD_2014_0221 [Accessed 6 June 2025].

EU. *Commission Staff Working Document Towards more effective EU merger control, SWD(2013) 239 final Part 1/3*. Online. In: Dalloz Actualité. 25 June 2013. 2013-2025. Available from: https://www.dalloz-actualite.fr/sites/dalloz-actualite.fr/files/resources/2013/07/merger_control_en.pdf

EU. *Communication from the Commission – Commission Notice – Guidelines on vertical restraints (C/2022/4238)*. Online. In EUR-lex. 1998-2025. Available from: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52022XC0630(01) [Accessed 27 May 2025].

EU. *Communication from the Commission – Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements (C/2023/4752)*. Online. In EUR-lex. 1998-2025. Available from: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=oj:JOC_2023_259_R_0001 [Accessed 8 April 2025].

EU. *WHITE PAPER Towards more effective EU merger control*, *COM/2014/0449*. Online. 9 July 2014. In EUR-lex. 1998-2025. Available from: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52014DC0449 [Accessed 30 April 2025].

France. *Code de commerce*. Online. In: Légifrance. 2002-2025. Available from: https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000006223614 [Accessed 1 May 2025].

France. *LOI n° 2015-990 du 6 août 2015 pour la croissance, l'activité et l'égalité des chances économiques*. Online. In Légifrance. 2025. Available from: https://www.legifrance.gouv.fr/loda/id/JORFTEXT000030978561 [Accessed 30 April 2025].

Italy. *Article 148-bis of the Consolidated Law on Finance*. Online: In Inwit. 2025. Available from: https://www.inwit.it/wp-content/uploads/2024/03/18.-Art.-148-e-148-bis-ENG.pdf [Accessed 8 April 2025].

Italy. *Article 36 of the Decree Law No. 201/2011*. Online. In: Normattiva. 2025. Available from: https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2011-12-06;201 [Accessed 8 April 2025].

Italy. *Consob Regulation no. 11971 of 14 May 1999 – Implementing the provisions on issuers of Legislative Decree 58 of 24 February 1998*. Online. In: Consob. 2025. Available from: https://www.consob.it/documents/718268/6018868/reg11971e.pdf/cc009e77-8442-0490-64cc-c4534a518d80?t=1728527801510 [Accessed 8 April 2025].

Italy. *Corporate Governance Code*. Online. In: Italian Corporate Governance Committee. January 2020. Available from: https://www.borsaitaliana.it/comitato-corporate-governance/codice/codice.en.htm [Accessed 8 April 2025].

USA. *15 U.S. Code*. Online. In: LII Legal Information Institute, Cornell Law School. Available from: https://www.law.cornell.edu/uscode/text/15/45 [Accessed 18 February 2025], § 45.

USA. *15 U.S. Code*. Online. In: LII Legal Information Institute, Cornell Law School. Available from: https://www.law.cornell.edu/uscode/text/15/19 [Accessed 18 February 2025], § 19.

4. A List of Case Law

Decision of the Commission of 27 February 2013, relating to the proceeding of the case No. COMP/M.6663 – *Ryanair/Aer Lingus III*, case No. C(2013) 1106 final

Decision of the Commission of 27 June 2007, relating to the proceeding of the case No. COMP/M.4439 – *Ryanair/Aer Lingus*, case No. C(2007) 3104.

Decision of the Commission of 27 March 2017, relating to the proceeding of the case No. M.7932 – *Dow/Dupont*, No. C(2017) 1946 final.

Decision of the Commission of the European Communities of 11 November 1994, relating to the proceeding of the case No. IV/34.410 – *Olivetti-Digital*, No. 94/771/EC.

Decision of the Commission of the European Communities of 13 June 2000, relating to the proceeding of the case No. COMP/M.1673 – *VEBA/VIAG*, No. 2001/519/EC.

Decision of the Commission of the European Communities of 13 March 2004, relating to the proceeding of the case No. COMP/M.3330 – *RTL/M6*, No. 304M3330.

Decision of the Commission of the European Communities of 14 May 1997 relating to the proceeding of the case No. IV/34.621 – *Irish Sugar plc*, No. 97/624/EC.

Decision of the Commission of the European Communities of 17 July 1996, relating to the proceeding of the case No. IV/35.617 – *Phoenix/Global One*, No. 96/547/EC.

Decision of the Commission of the European Communities of 22 December 1987, relating to the proceeding of the case No. IV/31.846 – *Enichem/ICI*, No. 88/87/EEC.

Decision of the Commission of the European Communities of 27 July 1994, relating to the proceeding of the case No. IV/34.857 – *BT/MCI*, No. 94/579/EC.

Decision of the Commission of the European Communities of 3 August 1993, relating to the proceeding of the case No. IV/M.343 – *Societe General de Belgique/Generale de Banque*, No. 31993M0343.

Decision of the Commission of the European Communities of 3 July 2001, relating to the proceeding of the case No. COMP/JV.55 – *Hutchison/RCPM/ECT*, No. SG (2001) 289490.

Decision of the Commission of the European Communities of 8 November 2001, *Nordbanken/Postgirot*, case No. COMP/M.2567.

Decision of the Court of 17 November 1987, *British-American Tobacco Company Ltd and R. J. Reynolds Industries Inc. v Commission of the European Communities*, joined cases 142/84 and 156/84.

Decision of the Office for Fair Trading of 30 January 2002, *Market sharing by Arriva plc and FirstGroup plc.*, case No. CP/1163-00.

Decision of the Office for the Protection of Competition of 30 November 2007, *Spojení soutěžitelů Telefónica O2 Czech Republic, a.s. a DELTAX Systems a.s.*, case No. S 239/2007/KS-22312/2007/840.

Decision of the Office for the Protection of Competition of 31 October 2023, *Pořízení NAP cely a analyzátoru parametrů palivových článků s protonově vodivou membránou - část 2 „Analyzátor parametrů palivových článku s protonově vodivou membránou“*, case No. S0692/2023/VZ.

Decision of the Office for the Protection of Competition of 7 July 2021, *Oprava havarijního stavu náspu v úseku Hájek – Dalovice km 178,850 – 179,000*, case No. S0382/2020/VZ.

Decision of the U.S. Court of Appeals for the Ninth Circuit of 15 November 1979, *Las Vegas Sun, Inc. and Others v Summa Corporation and Others*, No. 610 F.2d 614.

Decision of the U.S. Court of Appeals for the Seventh Circuit of 5 September 1973, *Protectoseal Company v. Charles Barancik*, No. 484 F.2d 585.

Decision of the U.S. District Court for the Southern Disctrict of New York of 28 March 1991, *Square D Co. v SCHNEIDER SA and Others*, No. 91 Civ. 1438.

Decision of the U.S. District Court for the Southern District of New York of 28 April 1953, *United States v Sears, Roebuck & Co.*, case No. 111 F. Supp. 614.

Decision of the US District Court for the District of Maryland of 6 May 1981, *American Bakeries Co. v. Gourmet Bakers, Inc.*, civ. No. JH-81-946.

Judgement of the Court of 10 July 2008, *Bertelsmann AG and Sony Corporation of America v Independent Music Publishers and Labels Association (Impala)*, case No. C-413/06, ECLI:EU:C:2008:392.

Judgement of the Court of 14 July 1972, *Imperial Chemical Industries Ltd. v Commission of the European Communities*, case No. 48-69, ECLI:EU:C:1972:70.

Judgement of the Court of 16 December 1975, *Coöperatieve Vereniging “Suiker Unie” UA and Others v Commission of the European Communities*, joined cases 40/73 to 48/73, 50/73, 54/73 to 56/73, 111/73, 113/73 to 114/73, ECLI:EU:C:1975:174.

Judgement of the Court of 24 October 1996, *Viho Europe v Commission of the European Communities*, case No. C-73/95, ECLI:EU:C:1996:405.

Judgement of the Court of 4 June 2009, *T-Mobile Netherlands BV and Others v Raad can bestur van de Nederlandse Mededingingsautoriteit*, case No. C-8/08, ECLI:EU:C:2009:343.

Judgement of the Court of 8 July 1999, *Hüls AG v Commission of the European Communities*, case No. C-199/92, ECLI:EU:C:1999:358.

Judgement of the Court of Appeals of New Zealand of 26 June 1995, *Meridian Global Funds Management Asia Limited v The Securities Commission*, case No. [1995] 2 BCLC 116.

Judgement of the Court of First Instance of 6 June 2002, *Airtours plc. v Commission of the European Communities*, case No. T-342/99, ECLI:EU:T:2002:146.

Memorandum of Law in Support of Motion for Preliminary Injunction of the United States District Court of Georgia, Atlanta Division of 23 October 2006, *GOLD KIST INC. v. PILGRIM'S PRIDE CORPORATION and others*, case No. 1:06-CV-2441-JEC.

Order of the U.S. District Court for the Northern District of California, San Jose Division of 27 September 2013, *United States of America v Ebay, Inc.*, case No. 5:12-CV-05869-EJD.

5. A List of Other Sources

Competition Commission, 28 August 2013. *Ryanair Holdings plc and Aer Lingus Group plc, A report on the completed acquisition by Ryanair Holdings plc of a minority shareholding in Aer Lingus Group plc*. Online. Available from: https://assets.publishing.service.gov.uk/media/5329ddc8ed915d0e60000189/130828_ryanair_final_report.pdf [Accessed 6 June 2025].

Czech National Bank, 4 March 2019. *Může fyzická osoba, která vykonává činnost investičního zprostředkovatele, být současně členem vedoucího orgánu jiného investičního zprostředkovatele? Může být v jiném investičním zprostředkovateli v postavení jiného pracovníka nebo společníka? Liší se nějak pravidla pro vázané zástupce?* Online. RS2019-06. Available from: https://www.cnb.cz/cs/dohled-financni-trh/legislativni-zakladna/stanoviska-k-regulaci-financniho-trhu/RS2019-06 [Accessed 10 April 2025].

European Commission, 2020. *Common Shareholdings in Europe, JRC Technical Report*. Online. Available from: https://op.europa.eu/en/publication-detail/-/publication/eafd4226-02c9-11eb-8919-01aa75ed71a1/language-en# [Accessed 6 June 2025].

European Commission, 3 June 1998. *Commission clears THYSSEN/KRUPP merger*. Online. IP/98/503. Available from: https://ec.europa.eu/commission/presscorner/detail/en/ip_98_503 [Accessed 9 May 2025].

Federal Trade Commission, 10 January 2025. *FTC announces 2025 Jurisdictional Threshold Updates for Interlocking Directorates*. Online. Available from: https://www.ftc.gov/news-events/news/press-releases/2025/01/ftc-announces-2025-jurisdictional-threshold-updates-interlocking-directorates [Accessed 11 February 2025].

List of Abbreviations

Article	Art.
Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings	EU Merger Control Regulation
Court of Justice of the European Union	CJEU
European Commission	Commission
European Union	EU
FTC	Federal Trade Commission
Member States of the European Union	Member States
Paragraph/paragraphs	para./paras.
Treaty on the Functioning of the European Union	TFEU
US	United States of America

Propojená vedení společností jako hrozba pro hospodářskou soutěž a jejich regulace v EU

Abstract in Czech

Diplomová práce si klade za cíl blíže čtenáře seznámit s problematikou propojených vedení společností a jejich dopadů na hospodářskou soutěž. Autorka se zabývá otázkou, zda se relevantním aktérům podařilo najít efektivní nástroje regulace propojených vedení společností poté, co o ně před vice jak 10 lety Komise neúspěšně usilovala.

Práce je rozdělena na dvě větší části. Nejprve autorka čtenáři poskytuje všeobecný teoretický základ potřebný k bližšímu pochopení příčin a tržních dopadů propojených vedení společností. Zde se dává velký prostor vlastnickým strukturám společností a fenoménu menšinových podílů, který je s propojeným vedením společností neodmyslitelně spjat. Čtenář má dále možnost nahlédnout do základních negativních i pozitivních dopadů, které společnosti propojené menšinovými akcionáři a/nebo svým vedením mají na hospodářskou soutěž.

Na jedné straně takové struktury mohou vytvářet lepší prostředí pro inovace a rozvoj trhu, na druhé straně mohou trh naopak citelně narušovat. Může se tak dít ku příkladu nedovolenou výměnou citlivých tržních informací, spoluprací prostřednictvím propojených statutárních orgánů nebo tichými či explicitními dohodami o nekonkurování si.

Ve druhé části autorka přistupuje k aplikaci teoretických zjištění na tržní a právní realitu. Na začátku tohoto segmentu se čtenáři nabízí vhled do soutěžního práva Spojených států amerických, které v dané oblasti představuje jednu z nejrozvinutějších úprav na světě, jež je v účinnosti již více než sto let a působí tak jako cenný zdroj inspirace.

Následně se autorka obrací k rozboru samotného aplikačního dosahu evropských soutěžních norem na propojená vedení společností. Zabývá se zejména použitelností článků 101 a 102 Smlouvy o fungování EU a uvádí řadu praktických případů k dokreslení celkové právní situace. Poté se autorka blíže zaměřuje na úpravu této problematiky v některých členských státech, které za určitých okolností mají možnost zaplnit mezery v právu EU, jmenovitě v Itálii a České republice. Uvádí je do kontrastu a porovnává je, jelikož do jisté míry stojí na opačných stranách přístupu k regulaci negativních dopadů propojených statutárních orgánů na soutěž.

Na závěr autorka zhodnotí svá zjištění a odpoví na otázku, zda se Komisi a dalším odpovědným orgánům podařilo najít efektivní řešení problému, pro nějž před více než deseti lety prvně jmenovaná bez úspěchu chystala regulaci. S ohledem na nalezenou mezeru v soutěžním právu EU nabídne autorka možná řešení jejího zaplnění, která by měla co nejvíce očistit trh od negativních dopadů propojených vedení společností na hospodářskou soutěž pokud možno za co největšího zachování jejich benefitů.

Klíčová slova: soutěžní právo EU, propojená vedení společností, mezera v právu

Interlocking Directorates as a Threat to Good Competition and Their Regulation in the EU

Abstract in English

The aim of this thesis is to introduce the reader to the problematics of interconnected directorships and their effects on competition. The author addresses the question of whether the relevant bodies succeeded in finding effective regulatory tools regarding overlapping directors, after the Commission failed to do so more than 10 years ago.

The thesis is divided into two major parts. First, the author provides the reader with a general theoretical overview needed for a better understanding of the causes and the market impacts of interlocks. Here, a great deal of space is given to the companies' ownership structures and to the phenomenon of minority shareholdings, which is inherently linked to shared directorships. Furthermore, the reader has the possibility to get an insight into the underlying positive and negative effects of minority shareholdings and/or interlocks on competition.

On one hand such networks can create a better environment for innovations and market development, on the other, they can have large disruptive impact. That can occur for instance through the unlawful exchange of confidential market data, the collusion through overlapping directors and via tacit or explicit agreements not to compete with each other.

In the second part, the author applies the theoretical findings on the market and legal reality. At first, the reader is offered an overview of US competition law, which in the field in question represents one of the most developed regulations in the world, which is in effect for more than a hundred years. Therefore, it may act as a valuable source of inspiration.

Following that, the author proceeds with the analysis of actual application reach of EU competition law provisions on interlocks. In particular, she discusses the application of Articles 101 and 102 TFEU and sets a number of practical examples in order to give a full picture of the overall legal situation. Later, the author focuses more closely on the legal regulation in certain Member States, namely in Italy and the Czech Republic, that, under some circumstances, have the possibility to fill in the gaps in EU law. She puts them into contrast and compares them. That is because they to a certain extent stand opposite each other in their approaches to regulate the negative effects of interlocks on competition.

At the end, the author evaluates her findings and answers the question of whether the Commission and other responsible bodies succeeded in finding and effective solution of an issue, for which the former sought a regulation more than a ten years ago. Taking into account the identified gap in EU competition law, the author will provide potential solutions

to fill it. Those aim to cleanse the market as much as possible from interlocks' negative impacts while, when possible, maintaining their benefits.

Key words: EU competition law, interlocking directorates, gap in enforcement