

# Exclusion

## US and EU Approaches

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# Competition policy and football



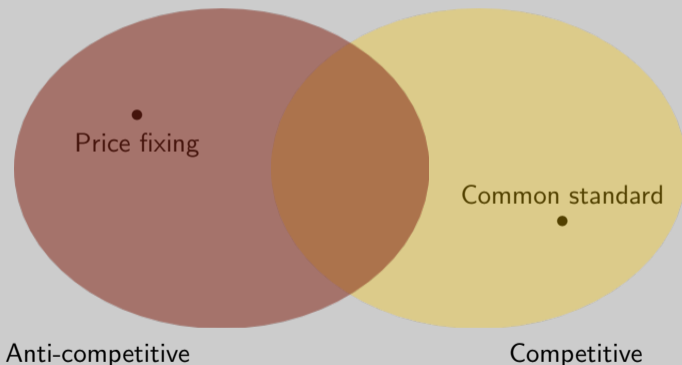
The competition authority must be like a good referee: easy enough to let the game flow but not too easy to the point of letting the game become a mess.

## Basic trade-off: Type I and Type II errors

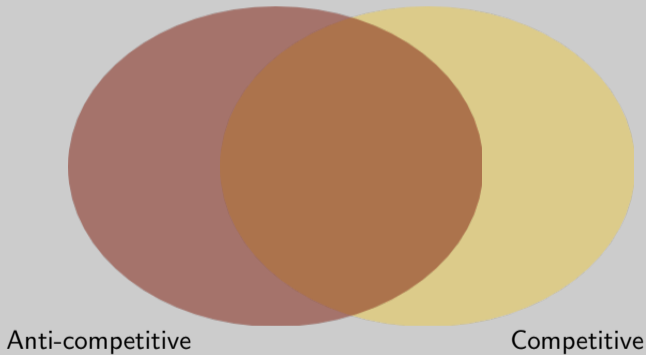
- Errors in decision making can be classified as
  - False positive: competitive practice labeled anti-competitive.
  - False negative: anti-competitive practice labeled competitive.
- Trade-off increasingly difficult as we move down the list:
  - Horizontal agreements.
  - Mergers.
  - Dominant position (e.g., exclusion).

# Observable conditions and economic effects

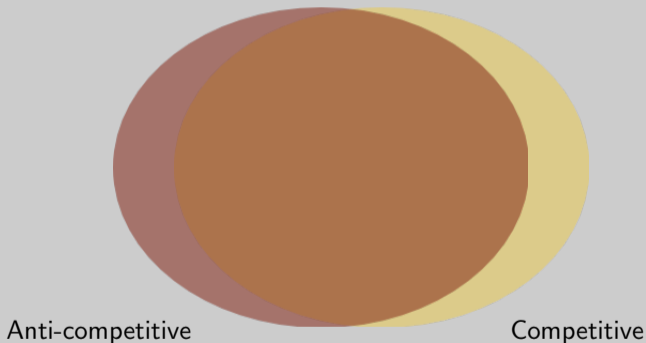
## 1. Horizontal agreements



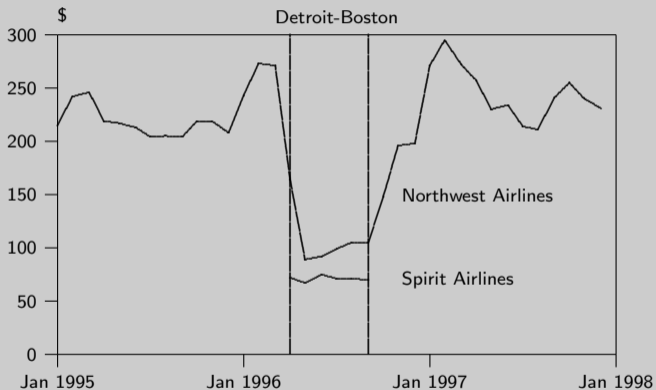
## 2. Mergers



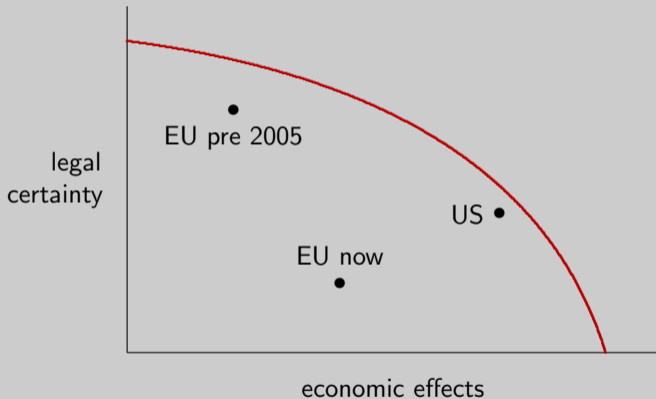
## 3. Dominant position



# Spirit Airlines



## Another trade-off



# Legal uncertainty

- EU:
  - DG Comp Chief Economist, Commission, Courts.
  - Economic tests require parameter values.
  - Transition costs.
- US:
  - Older system.
  - Higher bar for plaintiff.

## U.S./E.U. comparison: predatory pricing

	U.S.	E.U.
Market dominance	Necessary condition	Necessary condition
Price test	$p < AVC$ necessary condition	$p < AAC$ <i>per se</i> illegal $p > LRAIC$ OK (?)
Recoupment	Reasonable prospect	Not necessary
Intent	Talk is cheap	Helpful in proof
Key quote	Predatory pricing schemes are rarely tried, and even more rarely successful.	A dominant undertaking has no interest in applying such prices except that of eliminating competitors.

# Beware of false positives (dominant firm)

- Competitive justification frequently correct.
- Preemptive effect on firm's competitive strategies.
- The extreme statistics phenomenon.
  - Multiple jurisdictions with global impact.
  - Jurisdiction balance expected costs from false positives, negatives.
  - Binding decision is toughest.
  - In expected terms, it will likely be a false positive.

# Competition policy and football



Is the Commission showing too many yellow cards?