



UNIVERSITY OF AMSTERDAM

Amsterdam Centre for Law & Economics

Greening Competition Law?, EUI Florence, 24 May 2022

Why Greening Antitrust is a No-Go

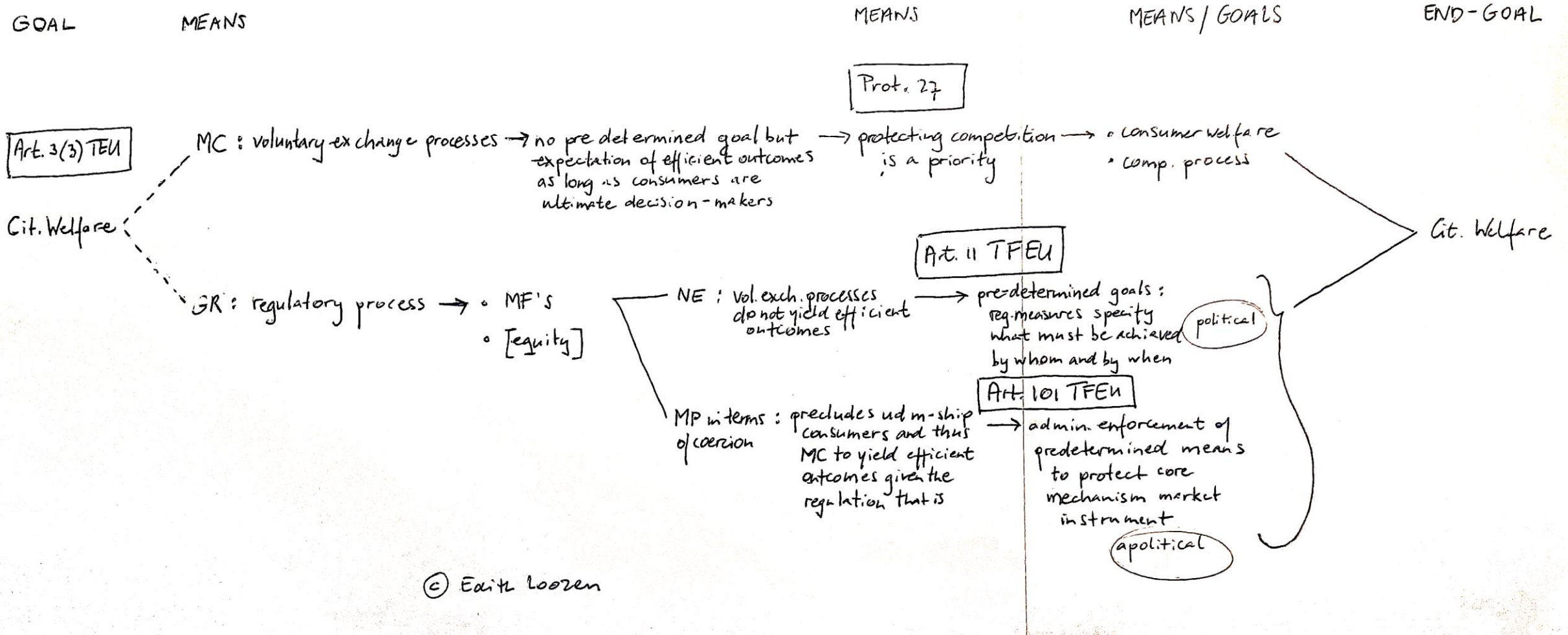
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Key Issues

- First mover disadvantage and vigorous antitrust
- Negative externalities: regulatory government
- Real life: (residual) negative externalities
- *Ceced*: Antitrust can help out
- Is that so?
 - 1) (Sub-)constitutional antitrust up close
 - 2) *Ceced* up close

Back to basics

- Article 3(3) TEU
 - “The Union shall establish an internal market
 - It shall work for a sustainable development of Europe based of [...] a high level of protection and improvement of the quality of the environment. [...]”
- Protocol 27 and Article 51 TEU
 - The internal market comes with a “system ensuring that competition is not distorted”
- Article 11 TFEU
 - “Environmental protection requirements must be integrated into the definition of the Union’s policies and activities, in particular with a view to promoting sustainable development”
- Article 101 TFEU
 - restriction of competition is prohibited unless all four exemption conditions are met



Ceced: greenwashing avant la lettre

- Multipurpose cartel
- Commission: No greenwashing because individual consumer benefits outweighed anticompetitive harm based on i) indispensability and ii) limited extent anticompetitive harm
- But agreement was not indispensable to attain collective environmental effects: Timely savings on electricity bills directly incentivized consumers to purchase energy-efficient washing machines and thus realize collective benefits
- Limited extent anticompetitive harm was not evidenced: i) mere presumption that the restriction regarding one product dimension would be compensated by an increase on other product characteristics; ii) discontinuation of lower-end washing machines hurts consumers as it eliminates competitive pressure on higher-end washing machine

Conclusion

- Green antitrust: Principally a no-go
- *Ceced*: false narrative

For more detailed reasoning:

- *Strict competition enforcement and welfare: A constitutional perspective based on Article 101 TFEU and sustainability*, CML Rev 56(2019)5:1265-1302
- *EU antitrust in support of the Green Deal. Why good is not good enough*
<https://ssrn.com/abstract=4094169>