

Standard of Proof in Competition Law (the EU/EEA perspective)

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Overview

<u>What</u> has to be proved	Substantive legal test	e.g. SIEC, margin squeeze, refusal to supply, anti-competitive agreement
<u>Who</u> has to prove it	Burden of proof	Presumption of innocence Art 2 Reg 1/2003
<u>'How much'</u> evidence is enough to prove something	Standard of proof	CJEU various formulations National level > equivalence & effectiveness
<u>What evidence</u> can you bring (and when), how much <u>weight</u> can you attach to it	Rules on production of evidence and its appraisal	Rights of Defence CJEU RoP and case-law National level > E&E

Standard of proof

- **Nothing in Treaties; CJEU various formulations:**
 - *Sufficiently precise and coherent proof to justify the firm conviction (that the alleged infringement has taken place)* e.g. 29/83 [CRAM](#) ¶20
 - *Beyond all reasonable doubt* e.g. T-44/02 etc [Dresdner Bank](#) ¶137, 144
 - *Precise and consistent evidence demonstrating convincingly (the existence of facts constituting those infringements) / to support the firm conviction* e.g. T-67/00 [JFE Engineering](#) ¶179, 341 (T-53/03 [BPB](#) ¶64)
 - >> ‘Benefit of the doubt’? e.g. T-286/09 RENV [Intel](#) ¶ 234-256, 525
 - *Balance of probabilities/likely?* Merger cases: [Sony](#), [CK Telecoms](#)
 - **“To the requisite legal standard” ☺**

Standard of proof – some issues

- Different legal traditions
- Forward-looking assessments, ‘unlikely things’ vs balance of probabilities
 - C-376/20 P [CK Telecoms](#)
- Interaction with substantive legal tests e.g. C-233/23 [Alphabet](#)
- Use of presumptions
- ‘Mismatch’ between EU and national level – could the effectiveness principle fix it?