Teaching EU English to national judges: Terminological collocations in EU Competition Law

Dr hab. Łucja Biel
Institute of Applied Linguistics
University of Warsaw
Objective

• to report on a study of terminological collocations in EU Competition Law conducted for the purposes of corpus-informed English language e-training for national judges
Project

- **Training action for legal practitioners: Linguistic skills and translation in EU Competition Law**

  - Program: the TRAINING OF National Judges Programme of the European Union
  - Funding: the EC’s DG COMPETITION
  - Team: lawyers, linguists & translation scholars
  - Coordinator: prof. Silvia Marino, Università degli Studi dell’Insubria, Como, Italy
  - Partners: University of Warsaw, Universidad de Burgos, Ionian University, University of Rijeka
  - Time frame: 2016-2018
  - Delivery: 1 preparatory class; 2 seminars, e-learning
Participants

- Participants/trainees: **130** legal professionals from **non-English speaking countries:** Poland, Italy, Croatia, Spain, Greece
- Legal professionals: mainly **national judges,** a few trainee judges, prosecutors
- Proficiency level: ranging from B2 to C1
- Need: to be able to consult EU competition legislation, CJEU judgments and other materials in English and to understand the complexities of multilingual translation; raise confidence level to improve collaboration
Legal collocations

• Much higher formulaicity in legal language ("frozen", "fossilized").
• Legal collocations as more restricted (fixed)/idiom-like; fewer variants and synonyms
• Legal collocations tend to be system-bound
• Frequency criterion/recurrence v sanctioning in legislation
• Terminological collocations (term-embedding collocations): collocations which embed legal terms in text; the collocational environment of legal terms (as opposed to non-terminological collocations, routine formulae, navigational bundles, etc., Biel 2014)
  • establish links between terms and elements of conceptual frames, e.g. verbal collocations which build scripts/scenarios with action (to distort competition, to eliminate competition)
EU English

- English as the **main procedural** language of EU institutions
- EU English as a distinct **hybrid variety** of English (cf. Modiano 2017: 2)
  → EU English, Euro-English, and Eurish.
- EU texts are written mainly by **non-native speakers** of English
- Extreme **filtering through other working languages**: documents are prepared and drafted in a multistage and multilingual manner (cf. Doczekalska 2009: 360); mediation through translators
- EU English reflects attempts to build a **neutral legal meta-language** (Šarčević 2010: 34–35), ‘a go-between’ which has been ‘reinvented’ to facilitate multilingual translation (Pozzo 2012b: 1198).

→ Questions as to the **naturalness** of collocations of neutralised and deculturalised legal terms.
Consequences: foreignness, unnaturalness

http://www.k-international.com/blog/funny-euro-english-words/
Misused English words and expressions in EU publications
EU Competition Law

- The objective of competition law is to protect competition and consumers by dealing with market failures and imperfections.
- Competition law as a mature branch of EU law, originating in 1960s.
- CL - significant contribution to the opening of national markets and EU Common Market.
- Strong impact of US antitrust laws; German and French competition law.
  - *undertaking* – from German *Unternehmen*.
  - *enterprise* - from French *entreprise*.
  - *state aid(s)* - from French *aide d’état*, meaning *(unfair)* government support.
A pilot study: a preparatory onsite class

• Prepare the Polish judges for the legal training session on recent developments in EU Competition Law (by legal experts from national competition authorities)


• Task: term extraction, n-grams, collocations, bilingual collocations
  
  • *direct effect, private/public enforcement, margin of appreciation, actions for damages, multinationals’ malpractice, settlement submission, the quantification of the damage, the limitations periods*

• Exercises: definition matching, listening comprehension, word formation, collocations
1. Any aid granted by a Member State which distorts competition by favouring certain undertakings is incompatible with the internal market.

2. The Commission may impose fines on undertakings if they infringe competition law.

3. National courts can order the defendant or a third party to disclose relevant evidence.

4. Any natural or legal person who has suffered harm caused by an infringement of competition law should be able to claim compensation for that harm.

This infringer has been granted immunity from fines under a leniency programme. The parties decided to engage in consensual dispute resolution after an action for damages for the same claim has been brought before a national court.

---

damages

~ punitive damages
~ multiple damages
~ to claim damages from X
~ to determine the quantum/amount of damages
~ to award damages
~ to obtain damages
~ to pay damages
~ action for damages
~ claim for damages

odszkodowanie

~ odszkodowanie karne
~ odszkodowanie wielokrotne
~ wystąpić z roszczeniem o odszkodowanie od
~ ustalić wysokość odszkodowania
~ przyznać odszkodowanie
~ otrzymać odszkodowanie
~ wypłacić odszkodowanie
~ powództwo o odszkodowanie
~ roszczenie odszkodowawcze
The main study: Method

• Corpus compilation with the assistance of legal scholars
• Term/node identification (term extraction, wordlist, keywords)
• Compilation of a monolingual glossary of collocations (sketchwords, collocations, concordances)
• Analysis of properties of collocations and focus areas
• Preparation of exercises for e-learning course
EU English Competition Corpus

- EU Competition Legislation and Case Law Corpus (‘EU Competition Corpus’), compiled in 2017
- List of documents prepared by competition lawyers
- Time span: 1973-2016
- Software: Sketchengine (POS tagging, sketch grammar, term definition for term extraction)

<table>
<thead>
<tr>
<th></th>
<th># of files</th>
<th>Tokens</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>EU Legislation</td>
<td>21</td>
<td>192,762</td>
<td>12.94</td>
</tr>
<tr>
<td>EU Case Law</td>
<td>60</td>
<td>1,049,747</td>
<td>70.48</td>
</tr>
<tr>
<td>EU Praxis (soft law)</td>
<td>18</td>
<td>246,824</td>
<td>16.57</td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td><strong>99</strong></td>
<td><strong>1,489,333</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>
Term/node identification

- A combination of automatic and manual methods:
  - Term extraction and keywords in Sketchengine against a range of RCs; Wordlist analysis
  - Exclusion of procedural terms (*judgment, plea, defence, limb*) or some content words (*kettle, lignite, decoder*)
  - Lemma isolation (nouns)
  - 103 term/node candidates
  - Analysis of collocations, word sketches, concordances to identify key collocational patterns
Nodes (103)

abuse, access, action, agreement, aid, allocation, annulment, antitrust, application, appreciability, arrangements, authorities, ban, barrier, behaviour, benefit, bidding, block, brand, cap, cartel, ceiling, circumstances, collusion, compensation, competition, competitor, concentration, concertation, conduct, continuity, contract, control, coordination, cost, damage, damages, discount, discrimination, dispute, distribution, effect, enforcement, exclusivity, exemption, fine, fixing, foreclosure, harm, immunity, influence, information, infringement, insolvency, investigation, judicature, leniency, limitation, loss, mark, market, measures, merger, monopoly, objections, obligation, oligopoly, operator, overcharge, payment, penalty, position, practice, pressure, price, principle, prohibition, protection, purchaser, rebate, recovery, redress, remedy, restraint, restriction, rules, sales, secret, sector, service, share, specialisation, squeeze, subsidiaries, system, tariff, test, threshold, trade, treatment, tying, undertaking, unit
### abuse

**Noun**

Alternative PoS: verb (freq: 38)

EU Competition Law freq = 383 (257.16 per million)

<table>
<thead>
<tr>
<th>modifiers of &quot;abuse&quot;</th>
<th>26.89</th>
</tr>
</thead>
<tbody>
<tr>
<td>exclusionary</td>
<td>5</td>
</tr>
<tr>
<td>exploitative</td>
<td>4</td>
</tr>
<tr>
<td>prohibiting</td>
<td>3</td>
</tr>
<tr>
<td>any</td>
<td>5</td>
</tr>
<tr>
<td>second</td>
<td>17</td>
</tr>
<tr>
<td>of the second abuse</td>
<td></td>
</tr>
<tr>
<td>appeals</td>
<td>2</td>
</tr>
<tr>
<td>first</td>
<td>14</td>
</tr>
<tr>
<td>the first abuse</td>
<td></td>
</tr>
<tr>
<td>potential</td>
<td>4</td>
</tr>
<tr>
<td>possible</td>
<td>3</td>
</tr>
<tr>
<td>alleged</td>
<td>4</td>
</tr>
<tr>
<td>such</td>
<td>2</td>
</tr>
<tr>
<td>actual</td>
<td>2</td>
</tr>
<tr>
<td>court</td>
<td>2</td>
</tr>
<tr>
<td>its</td>
<td>2</td>
</tr>
<tr>
<td>state</td>
<td>2</td>
</tr>
<tr>
<td>competition</td>
<td>2</td>
</tr>
<tr>
<td>the</td>
<td>3</td>
</tr>
<tr>
<td>s</td>
<td>2</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>verbs with &quot;abuse&quot; as object</th>
<th>28.98</th>
</tr>
</thead>
<tbody>
<tr>
<td>constitute</td>
<td>51</td>
</tr>
<tr>
<td>constitute an abuse</td>
<td></td>
</tr>
<tr>
<td>commit</td>
<td>9</td>
</tr>
<tr>
<td>prohibit</td>
<td>6</td>
</tr>
<tr>
<td>consist</td>
<td>2</td>
</tr>
<tr>
<td>characterise</td>
<td>2</td>
</tr>
<tr>
<td>encourage</td>
<td>2</td>
</tr>
<tr>
<td>avoid</td>
<td>2</td>
</tr>
<tr>
<td>identify</td>
<td>2</td>
</tr>
<tr>
<td>be</td>
<td>17</td>
</tr>
<tr>
<td>establish</td>
<td>2</td>
</tr>
<tr>
<td>regard</td>
<td>3</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>&quot;abuse&quot; and/or ...</th>
<th>9.40</th>
</tr>
</thead>
<tbody>
<tr>
<td>meaning</td>
<td>2</td>
</tr>
<tr>
<td>appellant</td>
<td>2</td>
</tr>
<tr>
<td>state</td>
<td>3</td>
</tr>
<tr>
<td>agreement</td>
<td>6</td>
</tr>
<tr>
<td>treaty</td>
<td>2</td>
</tr>
<tr>
<td>market</td>
<td>2</td>
</tr>
<tr>
<td>decision</td>
<td>2</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>prepositional phrases</th>
<th>4.44</th>
</tr>
</thead>
<tbody>
<tr>
<td>&quot;abuse&quot; of ...</td>
<td>114</td>
</tr>
<tr>
<td>... of &quot;abuse&quot;</td>
<td>61</td>
</tr>
<tr>
<td>... as &quot;abuse&quot;</td>
<td>17</td>
</tr>
<tr>
<td>&quot;abuse&quot; within ...</td>
<td>16</td>
</tr>
<tr>
<td>... to &quot;abuse&quot;</td>
<td>15</td>
</tr>
<tr>
<td>&quot;abuse&quot; in ...</td>
<td>8</td>
</tr>
<tr>
<td>&quot;abuse&quot; on ...</td>
<td>2</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>verbs with &quot;abuse&quot; as subject</th>
<th>10.18</th>
</tr>
</thead>
<tbody>
<tr>
<td>tend</td>
<td>2</td>
</tr>
<tr>
<td>begin</td>
<td>2</td>
</tr>
<tr>
<td>consist</td>
<td>2</td>
</tr>
<tr>
<td>cover</td>
<td>2</td>
</tr>
<tr>
<td>take</td>
<td>2</td>
</tr>
<tr>
<td>be</td>
<td>19</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>adjective predicates of &quot;abuse&quot;</th>
<th>2.87</th>
</tr>
</thead>
<tbody>
<tr>
<td>local</td>
<td>2</td>
</tr>
<tr>
<td>such</td>
<td>3</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>&quot;abuse&quot; is a ...</th>
<th>1.04</th>
</tr>
</thead>
<tbody>
<tr>
<td>concept</td>
<td>3</td>
</tr>
</tbody>
</table>
Glossary of collocations: Abuse

**ABUSE**

/əˈbjuːs/ (RF 382/NF 257)

**Derivatives:** to abuse /əˈbjuːz/, abusive /əˈbjuːsɪv/ (~ conduct, practices), abusively /əˈbjuːsɪvli/, abusiveness /əˈbjuːsɪvnəs/ (~ of a pricing practice)

**Adjective + Abuse:**

- **exclusionary** abuse (abuse that raises barriers to entry or eliminates competitors), **exploitative** abuse (abuse whereby the dominant undertaking exploits its economic power for instance by charging excessive or discriminatory prices)

**Noun Phrase:**

- an abuse of a **dominant position on the market**, abuse of **procedures**
- **existence**, **absence** of abuse

**Verb + Abuse:**

- to **commit** an abuse
- to **prohibit** an abuse
Analysis of term-nodes

• High frequency terms (>2000 pmw/NF)/cognitively salient/aboutness: market (4581), undertaking, aid, agreement, competition, price, infringement, product, effect and information

• Low frequency terms (with a higher degree of terminologicity): oligopoly (NF 12), overcharge (20)

• Negative semantic prosody (CL deals with market failures): negative infringement, neutral effect and price
  • anti-competitive effect, deterrent effect, adverse effect, negative effect, exclusionary effect;
  • price fixing, price collusion, price war, price competition, price cartel.

• Frequent use of semantically transparent everyday nouns and semi-technical terms;
Negative prosody: adjectives

- **breach of law**: anti-competitive (NF 425), unlawful (181), illegal (39), abusive (58), collusive (42), incompatible (NF 112)

- **restrictive, discriminatory or unilateral treatment/conditions**: exclusive (507), restrictive (140), selective (158), exclusionary (14), discriminatory (23), unfair (56), disproportionate (55), unilateral (35), non-reciprocal (24), dissimilar (19)

- **preferential treatment or conditions**: preferential (56), favourable (NF 49), privileged (16), favoured (7), beneficial (7), advantageous (13)

- **other negative conditions**: predatory (15), negative (132), harmful (27), serious (241), adverse (21), severe (279)
Collocational ranges

- **Large ranges** of high-frequency terms, esp. general ones: competition, aid, infringement, market, agreement
  - aid - over 15 adjectival premodifiers: e.g. state aid, de minimis aid, public aid, horizontal aid, transparent aid
- **Very restrictive** ranges: leniency, recipient, dispute, coordination
- **Blurred boundary** between a term and a collocate in legal language: position → dominant position → an abuse of a dominant position on the market
- **Polysemous** terms with a distinct set of collocates for each sense:
  - Action (=conduct, activity) collocates with concerted, unilateral and anti-competitive action and with the verb to undertake action
  - Action (=proceedings) → legal, representative, administrative, civil and collective action and verbs to bring, take, hear, dismiss an action.
Derivational productivity

• Derivability as one of the term formation principles (Unesco Guidelines)

• The lemma *compet*
  • V: to compete, non-compete
  • ADJ: competing, competitive, anti-competitive/anticompetitive, pro-competitive, uncompetitive, non-competing, competing, supra-competitive
  • N: competition, competitor, non-competitor, competitiveness, pro-competitiveness
  • ADV: competitively, anticompetitively.

• Derivatives are not always easy to predict for non-native speakers – irregular/arbitrary.
  • –ive: abusive – abuse; collusive – collusion; restrictive – restriction
  • –tion: compensation – compensatory, competition – competitive, continuation – continuous, concertation – concerted
Neo-classical compounds

- high productivity of international prefixes of Greek and Latin origin: non- (NF 557), anti- (403), intra- (109), re- (83), co- (67), sub- (57), inter- (56), pre- (53), cross- (51), pan-, pro-, quasi-, self-, post-, ex-, micro-
- non-* (RF 830/NF 557): non-compete, non-confidential, non-discriminatory, non-competitor, non-aseptic, non-payment, non-reciprocal, non-discrimination, non-compliance, non-hardcore, non-exclusive, non-economic, non-dominant, non-disclosure, non-imposition, non-essential, non-settling, non-authorised, non-existent, non-use, non-restrictive, non-conformity, non-challenge, non-appointed, non-participation, non-dominated, non-dairy, non-severable, non-performance, non-patented, non-member, non-exemption, non-entry, non-branded, non-binding, non-assertion, non-specific, non-profit, non-price, non-implementation, non-full, non-existence, non-delivery, non-competing, non-agricultural, non-notified, non-existent, non-transparent, non-tied, non-refundable, non-recovery, non-marketing, non-linear, non-exempted, non-coordinated, non-contestation, non-application, non-accessible, non-Member, non-European,

- non- 2.5 and anti- 10 times more frequent than BLR corpus
Deverbal and deadjectival nouns

- **Excessive nominalisation**
  - Deverbal nouns/‘buried’ verbs derived from verbs with suffixes – *ment, -tion, -ance*, etc.), a trend typical of administrative Ig
  - Nouns derived from adjectives with the *-ity* and *-ness* suffixes:
  - A conceptual reification of a process, facilitates its qualification and use in argumentation, thematisation of verbal action for emphasis, condenses the content, textual conciseness, reduced clarity


- **Deadjectival nouns**: *(un)lawfulness, soundness, effectiveness, compatibility, proportionality, confidentiality, indispensability, equality, substitutability, appreciabiility, abusiveness, gravity, validity.*
-ing participles

• **Stand-alone terms**: tying, quantity forcing, bid-rigging, market sharing, time-barring, profit-sharing, free-riding, hiving-off
  - The assessment of quantity forcing will depend on the degree of foreclosure of other buyers on the upstream market.

• **Premodification** of head terms in MWU
• -ing noun + node: the restructuring aid, tying product/market, switching costs, offending conduct, pricing policy, mitigating/attenuating/aggravating circumstances, countervailing benefits, blocking position, co-sourcing arrangement;

• Noun + -ing noun + node (with or without a hyphen): price-fixing agreement, market-sharing cartel, decision-making powers, fact-finding measures, price-cutting distributor, efficiency-enhancing effects, risk-sharing instruments

• Adjective + -ing noun + node: single-branding type arrangement, free-standing exchange of information, dual-pricing system.
Premodification with –ed participles

• Terms typical of CL (aboutness): a concerted practice, protected service, tied market, notified concentration, foreclosed manufacturer, dominated market, connected undertakings, sunk costs, coordinated course of action, prohibited agreement, block exempted agreement, unauthorised place of establishment

• Litigation terminology/protective linguistic hedges: a contested decision, alleged cartel, presumed perpetrator, suspected infringement, disputed sale, claimed violation of rights, impugned undertaking, reasoned opinion, accumulated losses

• –ing and -ed premodifiers less frequent in British Law Report Corpus; likely to have been transferred from other languages
Latinisms

Used relatively rarely to form or premodify terms:

- *de minimis* (e.g. *de minimis* aid, rule, threshold)
- *ad hoc aid*
- *de facto monopoly*
- *ex officio investigations, ex post decision, ex ante scrutiny of aid measures, ex nunc effect, ex parte proceedings*
- *the principle of audi alteram partem*
- *bona fide estimate*
Increased variation

• **Graphical variants** (hyphenation, spacing): *anti-competitive* versus *anticompetitive* v *anti competitive*, *coordination* v *co-ordination*, *quasi-monopoly* v *quasimonopoly*, *price fixing* v *price-fixing*.
  - Usu one form is dominant while the other is introduced idiosyncratically e.g. *trade mark* (350 times) v *trademark* (23). Variants appear in the same collocational patterns (synonyms), e.g. *anticompetitive foreclosure* v *anti-competitive foreclosure*.

• **Orthographic variants**: *specialise/specialisation* v *specialize/specialization*, *recognise* v *recognize*, with the –*ise* spelling being dominant; *pan-European* v *Pan-European*

• **Morphological variants**: *continuance of infringement* v *continuation of infringement* (another morphological variant, *continuity*, has different collocates - *financial continuity*); *exemptable* v *exemptible*, *investigatory* v *investigative* (e.g. *investigatory powers, investigative powers/measures*)

• **Inflectional** variants: *passing-on* v *pass-on*, *buying cartel* v *buyers’ cartel*

• **Permutation**: *action for damages* v *damages action*, *market share* v *share of the market*, *leniency application* v *application for leniency*. 
Denominative variation

• The same concept has different denominations; one variant — usually a neutral one — is dominant and the other is introduced occasionally under the influence of other languages or is more typically BrEN
  
  • *restrictions v impairment of competition*
  
  • *undertaking* (RF 4139/NF 2779); a more typical corresponding term of UK English - a *company* (RF 1382/NF 929), *enterprise* (372/250), broader concept (a conceptual variant) - *economic operator* (RF 307/NF 206), a collocational neologism introduced “in the interest of simplification” to cover contractors, suppliers and service providers, including public entities, in the context of awards of public contracts (Directive 2004/18/EC); a more generic *entity* (277/185)
  
  • a *merger* (RF 92/NF 62) replacing BrEN *amalgamation* (0); *fusion* (4), e.g. *the sale or fusion of an entire economic entity*
Match the sentence beginnings with the correct endings:

- Cartels-Translation of an English text
- Cartels-True/False Questions
- Mergers - Collocations
- State Aid - True/False Statements and Collocations
- State Aid - Collocations
- State Aid - Word Formation
- Antitrust - Definitions
- Antitrust - definitions, part. 2
Collocation exercises

Fill in the gaps with one of collocations.

1. A characteristic of ......................... mergers is that the activities and/or the products of the companies involved are complementary to each other. The integration of complementary activities or products within a single firm may produce significant efficiencies and be pro-competitive.
   (a) horizontal   (b) vertical   (c) legal   (d) notifiable

2. ......................... control exists if one undertaking alone can exercise decisive influence on an undertaking, e.g. when an undertaking enjoys the power to determine the strategic commercial decisions of the other undertaking.
   (a) joint   (b) exclusive   (c) merger   (d) sole

3. According to Article 3(1) of the Merger Regulation, a concentration only covers operations where a change of control in the undertakings concerned occurs on a ......................... basis.
   (a) lasting   (b) case-by-case   (c) stand-alone   (d) contractual

4. ....... turnover comprises the amounts derived by the undertakings concerned in the preceding financial year from the sale of products and the provision of services falling within the undertakings’ ordinary activities after deduction of sales rebates and of value added tax and other taxes directly related to turnover.
   (a) joint   (b) dominant   (c) daily   (d) aggregate

5. The Regulation permits effective control of all such concentrations by providing that any concentration which would significantly ......................... effective competition, in the common market or in a substantial part of it, should be declared incompatible with the common market.
   (a) impede   (b) impose   (c) disconcert   (d) interfere
© 2018

Language and Law

The Role of Language and Translation in EU Competition Law

Editors: Marino, S., Biel, Ł., Bajčić, M., Sosoni, V. (Eds.)

Includes contributions from both legal experts and linguistic experts