1.
The first element is the meaning of “competition” from a juridical point of view.
Lawyers borrow the concept of competition from economics. As stated by economists, on the one hand, the first approach refers to perfect competition as being “static”. In a recent paper (B. Deffains), it has been suggested that the “static” approach, the most common in literature, emphasizes the “demand” side. The economic operators evaluate the comparative advantages that are provided more through some rules present in the different legal systems than by the general differences of the various systems.
In conclusion, this approach describes what some scholars define as “choice of law”. This mechanism is well described by fiscal competition, and it is represented by the so called “voting with one’s feet”. So both companies and, more in general, economic operators and private agents are attracted to the more favourable legal system.
On the other hand, a second approach to competition could be stressed, namely a “dynamic” approach. What is relevant is the basis and the conditions of competition among the so-called law “producers”. In contrast to the first one, the dynamic approach, in the meaning of “process”, takes into account the “strategic” behaviours of “law producers”, i.e. legislators, judges, lawyers and even private agents. Therefore it takes into consideration the ways in which “producers” react to their competitors’ decisions. However competition as a “process” includes the constitutive elements of the “static” approach, i.e. the evaluation of the different rules within the various legal systems. Nevertheless it is characterized by a further aspect. What is relevant is to verify the consequences of such dynamics, namely whether law producers, given a competition condition, are seeking to cooperate toward an increasing harmonization or to behave in a non-cooperative manner enhancing the competition.

2.
As some legal scholars suggest, the alternative between cooperation and competition stems eventually from the approach from which the jurists observe legal systems. This means stating whether the system/order is “unitary” and legal rules are organized in accordance with an hierarchical principal (state as exclusive legal order) or “non-unitary” that leads to competition. However, even the approach based on the unity of the legal order envisages many “sources of law” which could be in conflict with each
other and enter into competition (especially if the sources of law are organized according to the criterion of competence instead of the hierarchical one).

Moreover, legal rules may be regarded as the result of intersecting activities of many law “producers” (legislators, judges, lawyers, scholars, etc.). Consequently several rules could be available to regulate the same activity or behaviour. Regarding this point Ugo Mattei (1991) investigated whether relationships among those producers are cooperative or competitive.

In accordance with Hayek’s notion of competition, basically as a process of creating, circulating and selecting information, he argued that competition between legal rules puts different legal solutions into circulation. The emerging rule, namely the selected rule is that which seems to be the most powerful and useful among the rules suggested by both different law producers and different legal systems. The hypothesis is that competition between the producers/suppliers of legal rules will significantly influence the evolution of law.

Regarding this process in an international/supranational perspective, potential competition between different national legal systems is, if one might say so, partially hidden by “transplants” of legal concepts and rules from one system to another.

It is generally assumed that the effect of “transplants” is the potential convergence between legal systems. In contrast, there is no expectation that competition between national systems will lead to a convergence.
Broadly speaking, the more general framework, within which legal transplants are increasingly developing, is the phenomenon of the so-called “law globalisation”.

What is to be stressed is that legal globalisation doesn’t affect the production of rules but the circulation of the rules and their “intrusion” or hybridization into different legal systems.

As known, recently, legal tools and rules, that have arisen in the context of common law, have been transplanted into the legal system of civil law countries. On the one hand, regarding the legal systems from within the new institutions and rules conflict with pre-existing legal contexts. On the other hand, the national laws previously stated (the states as “law takers”) are adapting to the demand stemming from the global economy.

Summarising, we can suggest two different interpretations of this phenomenon.

The first is based on the prospect that legal systems converge (both from an European and a global point of view). Widely speaking competition could, theoretically, lead to a coherent legal order. The idea of “convergence” is based on setting up a kind of “jus commune” and this, in turn, would transplant rules into each system in order to minimize differences (see the economic institutions whose aim is the enforcement of global law rules such as WTO).

The second can be illustrated as “supremacy of one legal system”. The focus of this approach is that countries are led to align with the legal system of the dominant countries. The Anglo-Saxon system is the
dominant one since common law is believed to be more efficient in the regulation of economic relationships.

3.
Summarizing, the meanings of competition, illustrated above, are the following:
1. the static one which is also defined as choice of law / choice of regulation by the users of legal rules. Essential elements in the classical model of the competition between jurisdictions are, on one side, the freedom of establishment and circulation of goods and services and the movement of capital and, on the other side, the relative appeal of the different regulations for economic operators and investors;
2. the dynamic model introduces innovations based on feedback taking into account both to the users’ preferences and the changes in other legal systems through transplants of rules.

From this point of view are the dynamics within the European Union competitive or converging?
The European system, in contrast to the US where the model of regulatory competition was worked out, is not a federal one. It is a so-called “supra-national” system and this represents the particular feature of the institutional dynamics in the European context.
A further element in the debate on the fundamental characteristics of the EU is the dialectic between uniformity and differentiation. The process of European integration is not to be depicted as a process of building a single order characterized by a uniform law.
The analysis of the integration process must come out of the static opposition uniformity – differentiation and emphasizes the dynamic elements in the dialectic between the two different forms. Moreover, from the beginning, the principal aim of the Treaties and of the European law should be the harmonization namely the approximation (narrowing gap between) of national laws. And this evolution concerns not only the fields and the more recent regulations characterized by a lower degree of harmonization, but the building of the internal market at least from the introduction of the principal of “mutual recognition” by the ECJ in the decision “Cassis de Dijon” (De Burca, 2000). The dynamics of the integration process are based either on the elimination or on the decrease of the superfluous differences and on the enforcement of interaction mechanisms among many different systems.

In this perspective, the dynamic integration of the national legal systems is conveniently depicted in the notion of “integrated legal order”. It means that the different legal orders are not annulled in the European order as undifferentiated unity. Rather they are compared through the integration. This deals with a no hierarchical but “interactive” relation, and the interaction is a process shaped by the rules.

Consequently the European system appears to be a unitary order within which the differences resulting from the feature of plurality specific to its identity are becoming compatible. In the evolution of the European context, the “coexistence” has been based, in the course of time, even if not in logical sequence, on
different mechanisms. The “harmonization” of the sectorial regulations (accomplished by directives and regulations) entails the definition of minimal requirements and the exclusion of incompatible differences. In contrast, the “mutual recognition” brings about a legal decentralized process based on the coexistence of different national regulations without reciprocal nullification. It deals with a mechanism totally in alternative to the harmonization built on a hierarchical organisation of the sources of law, namely the supremacy of the European law. Moreover the mechanism of the mutual recognition attains a kind of “decentralized harmonization” as the result of the free circulation of legal rules so that the actors have the opportunity to choose the regulation which could be applied to their own activities or behaviours. The balancing between these two tools is clearly visible in the steps of European integration: on the one hand, the introduction of the single currency and of the ECB, and, on the other hand, the implied exhaustion (disapplicazione) of the rules of the country that imports the goods produced on the basis of different national regulations; on the one hand, the “global” harmonization stated by the ECJ in the decision concerning the Directive 85/374/EEC – Liability for defective products (Skov Aeg vs Bilka Lavprisvarehus A/S, 10 gennaio 2006), and, on the other hand, the principal of “mutual recognition” applied in the field of family law in order to develop the free circulation of persons (Reg. CE n. 2201/2003).

So in the perspective of the single market mutual recognition and freedom of circulation are closely linked. Consequently the principal of mutual recognition puts into effect the competition between legal
regulations. The result is the guarantee of the same opportunities of choice for all operators and the certainty of the compatibility of the rules. In addition, on the one side, mutual recognition prevents the overlapping of regulations and administrative interventions and hinders the attainment of supremacy of one regulation over the others. Therefore the national regulations neither conflict directly nor are directly compared to each other but are evaluated individually on the basis of the compatibility with the general principal of the freedom of circulation. On the other side, mutual recognition and freedom of circulation are general rules aimed at the free circulation of legal regulations concerning the production of goods and the supply of services. These peculiarities of the European order set up dynamics which are not completely homogenous with those typical of the competitive differentiation and produce a continuous narrowing of the gap between the regulations without the interference of the European legislator starting from the basic differentiation of the regimes that are “carried” by the movements of goods, persons, services and companies within the single market. As recently assumed, mutual recognition is the criterion which organizes the inter-relation between national orders as it guarantees the “mutual recognition of each legal force”. The rule, which permits the regulation of the interaction within a single order but which is characterized by a high degree of differentiation, is called “principal of equivalence”. It represents a tool that permits different rules regulating the same activity or behaviour to be maintained by acknowledging their equivalent legal effects with regard to the compatibility with the European law.
In conclusion we observe that the free circulation of goods, services, persons and capital through the “principal of equivalence” permits both the economic agents and in general the citizens to choose the most convenient legal regime.

But, at the same time, taking the options and preferences into consideration, the national orders are led or would be led to modify autonomously their own sectorial regulations or partial aspects of the same.

Such a horizontal movement, through which rules “transplant” from a national legal order to another one, is generally made with the objective to minimize differences in the regulation which is sometimes highly costly in economic terms.

The effect of this horizontal circulation is a convergence among the national systems, namely a degree of minimal, sectorial or fragmentary harmonization that is not led from the “center” and, hence, is open to new dynamics of differentiation.

This dialectic relation harmonization – differentiation in its horizontal dimension could be kept open or, over a certain period, could lead to an intervention even of minimal harmonization by the European institutions.

The final hypothesis is that the emerging model has been built on a “complementary” relationship between harmonization and differentiation/competition. However it should be tested in the European context through many sectorial analyses in different fields of regulation.