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A quantitative and qualitative study

Brook, O.

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2019

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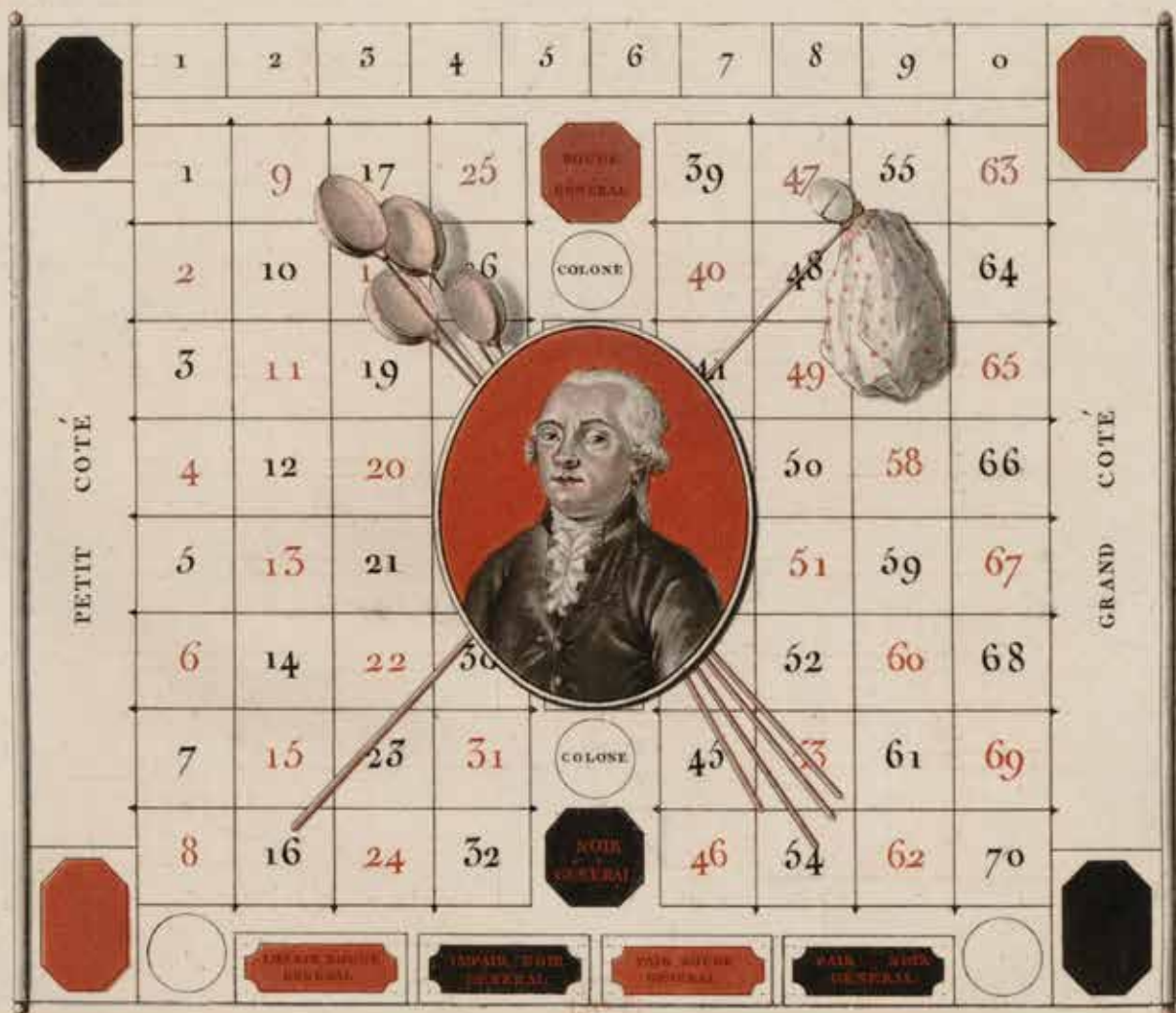
Brook, O. (2019). *Coding non-competition interests under Article 101 TFEU: A quantitative and qualitative study*. [Thesis, fully internal, Universiteit van Amsterdam].

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Coding non-competition interests under Article 101 TFEU

A quantitative and qualitative study

Or Brook

Coding non-competition interests under Article 101 TFEU:
A quantitative and qualitative study

Or Brook



University of Amsterdam

Coding non-competition interests under Article 101 TFEU: A quantitative and qualitative study

ACADEMISCH PROEFSCHRIFT

ter verkrijging van de graad van doctor
aan de Universiteit van Amsterdam
op gezag van de Rector Magnificus
prof. dr. ir. K.I.J. Maex
ten overstaan van een door het College voor Promoties ingestelde commissie,
in het openbaar te verdedigen in de Aula der Universiteit
op vrijdag 24 mei 2019, te 11.00 uur

door
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Faculteit der Rechtsgeleerdheid

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LIST OF ABBREVIATIONS

ACM	Autoriteit Consument & Markt (NL)
AG	Advocate General
BER	Block exemption regulation
CAT	Competition Appeals Tribunal (UK)
CFI	Court of First Instance
CJEU	Court of Justice of the European Union
CMA	Competition and Markets Authority (UK)
DG COMP	Directorate-General for Competition
ECN	European Competition Network
ECSC	European Coal and Steel Committee
EU	The European Union and the European Economic Community
GVH	Gazdasági Versenyhivatal (HU)
ICN	International Competition Network
IPRs	Intellectual property rights
MFN	Most favoured nation clause
MIF	Multilateral interchange fee
NCA	National Competition Authority
NMa	Nederlandse Mededingingsautoriteit (NL)
OECD	Organisation for Economic Cooperation and Development
OFT	Office of Fair Trading (UK)
SEC	The Dutch Social and Economic Council
SGEI	Services of General Economic Interest
TEU	Treaty on the European Union
TFEU	Treaty on The Functioning of the European Union
UK	United Kingdom
UNCTAD	United Nation Conference on Trade and Development

LIST OF DEFINITIONS

The definition is further elaborated in Chapter Section

Article 101 TFEU	Articles 101 TFEU (ex. 81 EC and 85 EEC) and 53 EEA	1	3.2.1
Article 101 TFEU proceedings	Public enforcement of Article 101 TFEU in EU, mixed, and purely national cases	1	3.2.1
Balancing	The process of reconciling between competition and non-competition interests	1	1.1
Competition enforcer(s)	The Commission, NCAs, and the applicable EU and national courts	1	3.2.2
Competition interests	The protection of the competitive process and structure	1	2
Database	The database of cases forming the basis of the empirical study of this dissertation	1	3.2
Direct economic benefits	Cost and qualitative efficiencies that occur to direct or indirect users of the product or service covered by an agreement	2	2.3.1
Enforcement periods	(i) Foundation period (1962-1977); (ii) Workable competition period (1978-1987); (iii) Economic social and political EU era (1988-April 2004); (iv) Post-modernisation era (May 2004-2017)	2	5
EU cases	Enforcement of Article 101 TFEU alone, without the national equivalent provision	1	3.2.1
EU Courts	The GC and CJEU	1	3.2.2
Five NCAs	The NCAs of France, Germany, Hungary, the Netherlands, and the UK	1	3.2.2
Indirect economic benefits	Cost and qualitative efficiencies that do not occur in the market in which the agreement takes place or has a direct impact	2	2.3.1
Mixed-cases	National enforcement of both Article 101 TFEU and the national equivalent provision	1	3.2.1
Modernisation	The substantive, procedural and institutional pillars of the modernisation of EU competition law	1	1.1
National balancing tools	Unique national rules of the Member States which take into account non-competition interests	1	1.2

National courts	Relevant national court exercising judicial review over Article 101 TFEU proceedings	1	3.2.2
Non-competition interests	All interests, except of competition interests (as defined above)	1	2
Non-economic benefits	Benefits that are not directly related to the characteristics of the product or service of the agreement in question	2	2.3.1
Normative benchmarks	The objectives of Article 101 TFEU enforcement, as defined by Regulation 1/2003, used to evaluate the empirical findings	1	4
Objectives of EU competition policy	Maintenance of economic freedom, market integration and economic efficiency	2	2.1
Policy-linking clauses	Clauses in the Treaties requiring the EU institutions to consider public policy interests	2	5.3.2
Procedural balancing tools	The balancing embedded in the remedies imposed for an Article 101 TFEU infringement (commitments and fines) and priority setting choices	1	1.2
Purely national cases	National enforcement of the national equivalent provision to Article 101 TFEU alone	1	3.2.1
Substantive balancing tools	Article 101(3) TFEU individual exemptions/exceptions, BER, and Article 101(1) TFEU exceptions	1	1.2
Treaty(ies)	The Treaty on European Union and the Treaty on The Functioning of the European Union, as amended by the Lisbon Treaty		

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