Coding non-competition interests under Article 101 TFEU

A quantitative and qualitative study

Brook, O.

Publication date
2019

Document Version
Other version

License
Other

Citation for published version (APA):

General rights
It is not permitted to download or to forward/distribute the text or part of it without the consent of the author(s) and/or copyright holder(s), other than for strictly personal, individual use, unless the work is under an open content license (like Creative Commons).

Disclaimer/Complaints regulations
If you believe that digital publication of certain material infringes any of your rights or (privacy) interests, please let the Library know, stating your reasons. In case of a legitimate complaint, the Library will make the material inaccessible and/or remove it from the website. Please Ask the Library: https://uba.uva.nl/en/contact, or a letter to: Library of the University of Amsterdam, Secretariat, Singel 425, 1012 WP Amsterdam, The Netherlands. You will be contacted as soon as possible.
ANNEX A: REFERENCES

Chapter 2: History of Article 101 TFEU Balancing

2.1. First enforcement period: prohibited horizontal agreements that impede market integration (footnote 269)

26623 Quinine; 128 Julien/Van Katwijk; 597 V.V.V.F.; 324 Vereniging van Cementhandelaren; 581 Cementregeling voor Nederland; 243 244 245 Cimbel; 26918 Sugar; 791 1373 1374 1498 1499 1500 SCPA; 795 Kali und Salz/Kali Chemie; 400 Agreements between manufacturers of glass containers; 426 Papiers peints de Belgique; 26602 FRUBO; 712 Stoves and Heaters; 256 Bomee-Stichting; 147 Centraal Bureau voor de Rijwielhandel; 28948 Cauliflowers; 29176 Vegetable parchment; 312 COBELPA/VNP; 28980 Pabst & Richarz/BNIA

Chapter 3: Article 101(3) TFEU Individual Exemptions

3.1. First enforcement period: industrial policy considerations justify exemptions (footnote 482)

Specialisation agreements: 26437 Jaz—Peter and the renewal of the exemption in 1977; 26625 Clima Chappée-Buderus; 26418 Sopelem-Langen; 26624 F.N. — C.F.; 26612 MAN/SAVIEM; 642 Papier mince; 26825 PRYM-BEKA; 27073 Bayer/Gist-Brocades

Joint research agreements: 26917 Henkel/Colgate; 26603 Rank/Sopelem

Joint ventures for the development, manufacture, and marketing of products: 27422 Vacuum Interrupters; 27093 De Laval/Stork; 29428 GEC-Weir Sodium Circulators; 29236 Sopelem/Vickers; 26940 KEWA; 26940 United Reprocessors GmbH

3.2. First enforcement period: focus on industrial policy benefits (footnote 483)

R&D: 26437 Jaz—Peter; 26625 Clima Chappée-Buderus; 26418 Sopelem-Langen

International competitiveness or EU industry: 26612 MAN/SAVIEM

Penetration into new geographic markets and overcoming difficulties in developing advanced technology products: 27422 Vacuum Interrupters; 27093 De Laval/Stork; 29428 GEC-Weir Sodium Circulators; 29236 Sopelem/Vickers

3.3. Fourth enforcement period: Commission rejects outright the possibility of Article 101(3) TFEU exemptions (footnote 534)

3.4. First enforcement period: refusal to exempt agreements that impede market integration (footnote 538)

Distribution agreements with elements of export restrictions, resale price maintenance, or other limitations on production or sales: 24510 GERO-fabriek; 28282 The Distillers Company Limited; 29146 BMW Belgium NV and Belgian BMW dealers; 29418 Spices; 26894 26876 26892 Pittsburgh Corning Europe — Formica Belgium — Hertel; 29151 Video cassette recorders; 29018 Miller InternationalSchallplatten GmbH

Uniform discounts and rebates protecting domestic manufacturers: 25963 Gas water-heaters and bath-heaters

Joint selling or purchasing agencies agreements resulting in similar negative impediments to market integration: 24510 GERO-fabriek; 28282 The Distillers Company Limited; 29146 BMW Belgium NV and Belgian BMW dealers; 29418 Spices; 26894 26876 26892 Pittsburgh Corning Europe — Formica Belgium — Hertel; 29151 Video cassette recorders; 29018 Miller InternationalSchallplatten GmbH

3.5. First enforcement period: exemptions emphasising the lack of harm to market integration (footnote 542)

Selective distribution agreements: 3036 D.R.U.-Blondel; 2702; 22491 Maison Jalatte; 847 Saba; 5715 Junghans; 10498 11546 12992 17394 17395 17971 18772 18888 3213 Omega; 14650 Bayerische Motoren Werke AG

Horizontal technical cooperation and joint R&D agreement: 26045 ACEC/Berliet, page 4;
IPRs agreements: 17545 6964 26858 26890 18673 17448 Davidson Rubber Co.; 21353 Kabelmetal/Luchaire; also see; 171 856 172 117 28173 Campari

3.6. Second and third enforcement periods: refusal to exempt agreements impeding market integration (footnote 555)

Horizontal agreements: 29453 SNPE-LEL; 29672 Floral; 29430 Kawasaki; 29595 Pioneer Hi-Fi Equipment; 29011 Rennet; 25007 IMA Rules; 197 Industrieverband Solnhofener Natursteinplatten eV; 30070 National Panasonic; 30077 Cafeteros de Colombia; 29629 Rolled zinc products and zinc alloys; 30174 Vimpoltu; 30064 Cast iron and steel rolls; 30988 Flat-glass sector in the Benelux; 30907 Peroxygen products; 28930 Milchförderungsfonds; 30809 John Deer; 31128 Fatty Acids; 29535 White lead; 29702 Johnson & Johnson; 29525 30000 SSI; 26870 Aluminium imports from eastern Europe; 29725 Wood pulp

Vertical agreements: 28852 29127 29149 Fedetab; 29440 Arthur Bell and Sons Ltd - conditions of sale; 28859 Wm. Teacher and Sons Ltd-conditions of sale; 1576 Zanussi;
3.7. Second enforcement period: loose application of Article 101(3) TFEU
conditions to agreements strengthening market integration and industrial
policy (footnote 557)

Horizontal cooperation agreements leading to innovation and the production of new
products: 28796 Beecham/Parke, Davis; 30517 Amersham Buchler; 29329 VW-MAN;
30971 BP/Kellogg; 30320 optical fibres; 31340 Mitchell Cotts/Sofiltra; 32306
Olivetti/Canon
Rationalisation, greater competitiveness of EU firms: 299555 Carbon Gas Technologie;
30320 Optical fibres
Improving the structure of the market: 30437 Rockwell/Iveco; 31846 Enichem/ICI
Ensuring security of supply: 299555 Carbon Gas Technologie
Joint buying agreement: 27955 National Sulphuric Acid Association
Restrictions in distribution agreements required for effective marketing strategies: 29420
Grundig’s EEC distribution system; 30846 lvoclar

3.8. Second and third enforcement periods: sectoral approach in “special”
markets (footnote 554)

Selective distribution systems in luxury cosmetics markets: 33242 Yves Saint Laurent
Parfums (1991); 33542 Parfums Givenchy system of selective distribution (1992)
Beer distribution agreements: 35079 Whitbread (1999), para 150-154
Similarly, instead of banning an exclusive distribution agreement, the Commission was
willing to accept voluntary commitments from undertakings in the beer sector: IP-19-94-
345 Interbrew exclusive right (1994); 35612 Tuborg/Pripps (1998)
Horticultural market: 35280 Sicasov (1998)

3.9. Third enforcement period: Article 101(3) TFEU in newly liberalised markets
(footnote 560)

Post services: 36748 REIMS II
Energy: 33151 33997 Jahrhundertvertrag; IP-95-550 Interconnector; 37732 Synergen
Telecom: 32737 Eirpage; 35617 Phoenix/GlobalOne; 34857 BT/MCI; 35337 Atlas; 35830
Unisource; 35738 Uniworld; 36237 TPS; 36592 Cégétel; 36539 British Interactive

417
3.10. Third enforcement period: Article 101(3) TFEU in regulated sectors (footnote 560)

Regulated professions: 33407 CNSD; 33686 Coapi; 36147 EPI

Sports: IP-98-355 Danish Tennis Federation; 37124 FIFA rules on players' agents; 37398 Joint selling of the commercial rights of the UEFA Champions League

Television and film: 32524 Screensport/EBU members; 32745 Astra; 35617 Phoenix/GlobalOne; IP/01/82 Broadcasting in Belgium of French horseraces

Pharmaceutical products: 34279 ADALAT; 32026 Bayo-n-ox; 36957 Glaxo Wellcome

3.11. Third enforcement period: sectoral approach focusing on market integration (footnote 561)

Financial services: 34607 Banque Nationale de Paris — Dresdner Bank; 29373 Visa International's multilateral interchange fee

Post: 36748 REIMS II

Telecom: 34279 ADALAT; 32026 Bayo-n-ox; 36957 Glaxo Wellcome

Sports: IP-98-355 Danish Tennis Federation; 37124 FIFA rules on players' agents; 37398 Joint selling of the commercial rights of the UEFA Champions League

Transport: 32490 Eurotunnel; 34518 ACI; 34600 Night Services; IP-94-850 Rapid delivery services; 34494 Decision on tariff structures in the combined transport of goods

3.12. Third enforcement period: exemptions in "special sectors" to agreements that do not directly fix prices or quotes (footnote 563)

Financial services: 31499 Dutch Banks; 31291 Uniform Eurocheques

Regulated professions: 36147 EPI

Sports: IP-98-355 Danish Tennis Federation; 37124 FIFA rules on players' agents; 37398 Joint selling of the commercial rights of the UEFA Champions League
Transport: 37396 Revised Trans-Atlantic Conference Agreement; IP-96-400 Baltic Liner Conference Agreement; 36253 P&O Stena Line; 32792 IATA agency programs; 32659 IATA Passenger Agency Programme; 35545 Lufthansa/SAS; 37730 Austrian Airlines/Lufthansa; 38477 British Airways/SN Brussels Airlines; 38479 British Airways and Iberia; 38284 Société Air France/Alitalia Linee Aeree Italiane; 37812 bmi British Midland/ Lufthansa/ SAS

3.13. Third enforcement period: Exemptions for joint ventures and cooperation agreements that do not fall within the BERs (footnote 588)

Rationalisation interests: 31902 Ivec/Ford; 34252 Philips-Osram; 32368 BBC Brown Boveri

R&D and innovation: 32368 BBC Brown Boveri; 34252 Philips-Osram; 33814 Ford/Volkswagen; 33640 Exxon/Shell; 33863 Asahi/Saint-Gobain; 34891 Fujitsu AMD Semiconductor; IP/97/742 Scandairy; IP/98/353 photo-graphic manufacturers; 36836 Yoplait/Valio; 37802 Precision Blasting; 37889 GM/Fiat; 32681 Cekacan; 32363 KSB/Goulds/Lowara/ITT; 36213 GEAE/P&W; and dissemination of technology: 34410 Olivetti-Digital

3.14. Third enforcement period: additional justification (footnote 597)

Environmental considerations: 14650 Bayerische Motoren Werke AG, para 24; 29428 GEC-Weir Sodium Circulators, 8; 29955 Carbon Gas Technologie, 3; 32368 BBC Brown Boveri, para 23

Employment considerations: Synthetic fibres, para 37; 33814 Ford/Volkswagen, para 36; 34456 Stichting Baksteen, para 27

Industrial policy: 30373 37143 P & I CLUBS, para 56; 30810; 35617 Phoenix-GlobalOne, para 60; 35337 Atlas, para 51; 38014 IFPI ‘Simulcasting’, para 91; 38370 UK Network Sharing Agreement, para 139; 26612 MAN/SAVIEM, para 29; 14650 Bayerische Motoren Werke AG, para 124; 29428 United Reprocessors GmbH, page 6; 29955 Carbon Gas Technologie, page 3; 30320 Optical fibres, para 59; 32034 Computerland, para 31; 32368 BBC Brown Boveri, para 23; 34857 PT-MCI, para 53-54; IP-94-850 Rapid delivery services; 36718 CECED, para 50; IP-94-850 Rapid delivery services

3.15. Exemptions to hard-core restrictions (footnote 631)

30810 Synthetic fibres; 31055 ENI/Montedison; 30863 BPCL/ICI; 36494 EACEM (1998); 36718 CECED (1999); 30804 Nuovo Cegam (1984); 30373 P&I Clubs (1985); 32408 TEKO (1989); 33100 Assurpol (1992); 32265 Concordato Incendio (1989); 29373 Visa International’s multilateral interchange fee (2002); 34494 Decision on tariff structures in the combined transport of goods (1993); 36748 REIMS II (1999)
3.16. Preliminary rulings (footnote 634)

Prior to modernisation - focus on distribution systems: C-126/80 SALONIA; C-243/83 Binon; C-41/96 VAG-Händlerbeirat eV

Following modernisation – regulated markets: C-238/05 Asnef-Equifax (financial sector); C-403/08 C-429/08 Football Association Premier League (broadcasting of sport programs); C-1/12 Ordem dos Técnicos Oficiais de Contas (the activity of chartered accountants). Distribution via the internet in C-439/09 Pierre Fabre (2011)

3.17. Article 101(3) TFEU appeals (footnote 635)

CJEU

First enforcement period: C-56/64 C-58/64 Grundig-Consten, page 347; C-8/66 C-9/66 C-10/66 C-11/66 Noordwijk's Cement Accoord, 92; C-17/74 Transocean Marine Paint Association, para 16; C-71/74 Frubo, para 42-43

Second enforcement period: Distribution systems: C-26/76 SABA; C-28/77 Theal/Watts; C-30/78 The Distillers Company Ltd; C-209/78 C-210/78 C-211/78 C-212/78 C-213/78 C-214/78 C-215/78 C-218/78 Fedetab; C-43/82 C-63/82 VBBB/VBVB; C-35/83 Tokes/Dorcel; C-25/84 C-26/84 Distribution system of Ford-Werke AG; C-240/82 C-241/82 C-242/82 C-261/82 C-262/82 C-266/82 C-269/82 SSI; C-260/82 SSI; C-75/84 SABA. Trade association: C-61/80 Rennet; C-258/78 Breeders' rights — maize seed; C-96/82 C-97/82 C-98/82 C-99/82 C-100/82 C-101/82 C-102/82 C-103/82 C-104/82 C-105/82 C-108/82 C-110/82 AVEWA-ANSEAU; Insurance: C-45/85 Fire insurance; specialised fairs: C-43/85 UIINDI


Fourth enforcement period: Professional associations: C-171/05P FIFA rules on players' agents (2006); Distribution agreements: C-501/06P C-513/06P C-515/06P C-519/09P GlaxoSmithKline (2009); MIF agreements: C-382/12P MasterCard (2014)

GC:

528/93 T-542/93 T-543/93 T-546/93 EBU/Eurovision System; T-185-00 T-216-00 T-299-00 T-300-00 Eurovision (2002); T-112/99 TPS; T-395/94 Trans-Atlantic Agreement


3.18. **Basis for GC scrutiny (footnote 638)**


3.19. **Fourth enforcement period: appeals on Commission’s old exemptions involving non-economic benefits (footnote 653)**

Confirming exemptions granted: On the basis of sport: T-193/02 FIFA rules on players’ agent; C-171/05P FIFA rules on players’ agent. Environmental considerations: T-289/01 DSD, para 38; T-419/03 Austrian system for the disposal of packaging waste, para 23. Financial services: T-259/02 T-260/02 T-261/02 T-262/02 T-263/02 T-264/02 T-271/02 Austrian banks – ‘Lombard Club


421
3.20. **France: consideration of broad non-competition interests (footnotes 699 and 702)**

Prior to 2009: Protection of jobs: 05-D-03 Bleach (2005), para 117-121
Living standards of agriculturist: 05-D-10 Fruit and vegetables in Brittany (2005), para 130-132
Stabilisation of prices: 05-D-10 Fruit and vegetables in Brittany (2005), para 130-132; 05-D-55 Essential Oils of Lavandin (2005), para 78-85
Increased bargaining power: 05-A-17 Collective bargaining on deadlines intercompany payment (2005), para 31-37; 05-D-55 Essential Oils of Lavandin (2005), para 78-85
Protection of SMEs: 07-D-49 Defibrillators (2007), para 321-325

Culture: 09-A-50 Cinema code (2009), para 94-95

Environmental considerations and development of rural areas: 13-A-08 Network sharing and roaming (2013), para 65

3.21. **Germany: consideration of cost and quality benefits (footnote 709)**

B1-25/04 Verta/Danzer, 19; B8-113/03-1 Long-term gas supply, 23-28; B1-116/04 Sand-lime Brick, para 134; B10-148/05 Lottery, para 422-425; B4-1006/06 Container glass; Joint selling of media rights (2008); B2-90/01-4 Timber; B1-232/07 Association of the German construction industry, 2; B3-64/05 Merck and VWR distribution agreement, para 105-110; B10-44/09 B10–45/09 B10–47/09 B10–48/09 B10–10/10 B10–11/10 B10–13/10 B10–14/10 B10–18/10 B10–19/10 B10–20/10 B10–21/10 B10–22/10 B10–23/10 B10–24/10 B10–25/10 Gas and electricity supplier resale bans; B3-134/09 Federal Guild of Hearing Aid Acousticians, para 44-46; B6-114-10 Joint selling of media rights for the German football leagues (2012); B9-96-09 Lufthansa, para 51; B7-11/13 Bosch Siemens, page 4; B3-93/15 lighters, para 43; B6-46/12 Amazon (2013), 2-3; B9-66/10 HRS-Hotel Reservation Service (2013), para 199-212; B7-46/13 Telekom and Telefónica (2014), para 90
3.22. Germany: industrial policy considerations (footnote 710)

B8-113/03-1 Long-term gas supply (2006), 24-26; B7-22/07 Basic Encryption of TV Programs – Commitments (2012), 41; B7-1/13-35 Sennheiser (2013), 1-2; B3-137/12 Adidas (2014), 6-7; B2-98/11 Asics (2015), para 613-622; B6-81/11 ARD/ZDF online platform "Germany's Gold" (2014); B7-46/13 Telekom and Telefónica (2014), para 88-89

3.23. UK: NCA outright reject Article 101(3) TFEU exceptions (footnote 722)

CE/2464-03 UOP/prices for desiccant; CE/2890-03 Future fees by certain independent fee-paying schools; CE/4327-04 Bid rigging in the construction industry in England; CE/7510-06 Construction Recruitment Forum; CE/8950/08 Loans to large professional services firms; CE/3094-03 Dairy retail price initiatives; CE/7691-06 Airline passenger fuel surcharges for long-haul flights; CE/9161-09 Distribution of Mercedes-Benz commercial vehicles (vans); CE/9248-10 Access control and alarm systems to retirement properties; CE/9627/12 Supply of prescription medicines to care homes in England; B8-175/11 Titisee-Neustadt (2015), para 151

3.24. Germany: NCA refusal to grant exceptions on basis of the first and third conditions (footnote 732)

B1-25/04 Verta/Danzer, 19-25; B8-113/03-1 Long-term gas supply, 23-28; B1-116/04 Sand-lime brick, para 134-138; B10-148/05 Lottery, para 422-425; B4-1006/06 Container glass, para 144, 153; B1-232/07 Association of the German construction industry, 2; B3-64/05 Merck and VWR distribution agreement, para 105-110; B10-44/09 B10-45/09 B10-47/09 B10-48/09 B10-10/10 B10-11/10 B10-13/10 B10-14/10 B10-18/10 B10-19/10 B10-20/10 B10-21/10 B10-22/10 B10-23/10 B10-24/10 B10-25/10 Gas and electricity suppliers resale bans; B3-134/09 Federal Guild of Hearing Aid Acousticians, para 44-46; B9-96-09 Lufthansa, para 51; B7-11/13 Bosch Siemens, 4; B1-62/13 Rental of retail space in factory outlet centres, para 323-354; B1-72/12 Round timber in Baden-Württemberg (2015), para 455-458, 482-485; B3-93/15 Lighters, para 43; B7-1/13-35 Sennheiser, 1-2; B3-137/12 Adidas, page 6-7; B2-98/11 Asics, para 613-622; B6-81/11 ARD/ZDF online platform "Germany's Gold"; Sanitary sector (2016); B6-32/15 Joint selling of media rights to matches of the German Bundesliga (2016); B4-71/10 Online banking conditions (2016), para 421-436

3.25. Hungary: broad interpretation of Article 101(3) TFEU until 2005 (footnote 725)


Granting exceptions for other types of agreements: Vj-169/2003/68 Fertilizers, para 6,32; Vj–132/2004/26 Card issuance, para 6, 13-15; Vj-200/2004/13 Funeral service in Szolnok, 5-6, 8; Vj-128/2004/23 Tomb construction activities in Türkeve, para 40; Vj-
3.26. **Hungary: NCA refusal to grant exceptions for agreements since 2006 (footnote 726)**


3.27. **Hungary: professional association cases (footnote 727)**

Cases terminated by accepting commitments: Vj-16/2005 Deontological rules of auditors; Vj-60/2006/37 Hungarian Chamber of Pharmacists; Vj-1/2008 Hungarian Real Estate Association; Vj-57/2008/23 Gyöngy Strategic Association; Vj-97/2013 Driver training ethics code, as upheld by the first instance in 38.Kpk.46.218/2014/5 Driver training ethics code; Vj-8/2012 Hungarian Banking Association

3.28. Netherlands: NCA rejects outright Article 101(3) TFEU exceptions (footnote 747)

4014 Horticultural Services, para 117-120; 5851-121 Thuiszorg 't Gooi, para 224; 108/258 Thuiszorg Kennemerland, para 184-185; 6274/569 Midden Ijssel, para 224-231; 6538 Houses merchants foreclosure auctions, para 219; 6425 Window cleaners, para 246-251; 6888/435 LHV pace of establishment, para 151-154; 7036_1/386 Bell peppers, para 280-281; 7401-106 Demolition firms bid-rigging - Bergambacht & Dilettant, para 128-129; 7244-597 Magazine packs, para 279-284; 13.0612.53 Mobile operators, para 83; 7571/40.O1018 Mandatory flood insurance, para 61-64; ACMDM2015201065_0V Proton therapy, 6

3.29. France: strict intensity of control (footnote 764)


Chapter 5: Article 101(1) TFEU

5.1. State action defence: anti-competitive behaviour goes beyond what is necessary (footnote 972)

5.2. State action defence: settling politically sensitive issues (footnote 973)


5.3. State action defence: lack of autonomy strand of cases (footnote 977)


5.4. State action defence: rejected if undertakings’ autonomy was considerably restricted, but not limited (footnote 979)


5.5. State action defence: non-legislative measures (footnote 989)


5.6. State action defence: an opinion or draft decision on the basis of public interest criteria is not a delegation of powers (footnote 997)

Conveying an opinion or draft decision: 35591 35634 Weyl-PW+SSR (1997). The decision was not published, yet is was summarized by the GC in T-197/97 T-198/97 Weyl-PW+SSR (2001), para 67, 79; C-221/99 Giuseppe Conte (2001), para 21; C-35/99 Manuele Arduino (2002), para 40-43; 38401 EMR-Producteurs européens de ciment (2005), para 91, as confirmed by the GC in T-432/05 EMC Development AB (2010), para 122; C-94/04 C-202/04 Federico Cipolla (2006), para 44-54; C-225/09 Jakubowska (2010), para 47-53; C-121/16 Salumificio (2016), para 22-23; C-532/15 C-538/15 Eurosaneamientos (2016), para 36-40


5.7. Article 106(2) TFEU: failing the proportionality test (footnote 1026)

EU Courts: T-289/01 DSD (2007), para 207-210; C-1/12 Ordem dos Técnicos Oficiais de Contas (2013), para 107


427
5.8. Notion of undertaking: commercial activities of associations irrespective of statutes under national law (footnote 1037)


5.9. Notion of undertaking: sport-related economic activities (footnote 1039)


GC: T-313/02 MecaMedina and Majcen/IOC (2004), para 35-69; T-193/02 FIFA rules on players’ agents (2005), para 68-72

5.10. Notion of undertaking: definition (footnote 1042)


5.11. Notion of undertaking: offering goods and services in a market (footnote 1049)


5.12. Notion of undertaking: solidarity (footnote 1052)

Schemes based on solidarity principles: C-159/91 C-160/91 Poucet (1993), para 8-19; C-218/00 Cisal (2002), para 31-45; C-264/01 C-306/01 C-354/01 C-355/01 AOK Bundesverband (2004), para 47-65; C-350/07 Kattner Stahlbau (2009), para 44-68 (the
Court noted that this finding is subject to verification of relevant factors by the referring court.


5.13. Notion of undertaking: the participation criterion (footnote 1053)

Social security schemes: C-159/91 C-160/91 Poucet (1993); C-264/01 C-306/01 C-354/01 C-355/01 AOK Bundesverband (2004)


Old-age insurance: C-244/94 Federation Française des Sociétés d’Assurance (1995)

Workers’ health and accident insurance: C-218/00 Cisal (2002); C-350/07 Kattner Stahlbau (2009); C-437/09 AG2R Prévoyance (2011)

Professional associations: C-1/12 Ordem dos Técnicos Oficiais de Contas (2013), para 37; C-327/12 SOA Nazionale Costruttori (2013), para 29; C-1/12 Ordem dos Técnicos Oficiais de Contas (2013), para 35; C-327/12 Ministero dello Sviluppo economico (2013), para 29; C-413/13 FNV Kunsten Informatie en Media (2014), para 33

5.14. Inherent restrictions: balancing is confined to Article 101(3) TFEU (footnote 1076)


5.15. Inherent restrictions: balancing is confined to Article 101(3) TFEU, types of non-competition interests (footnote 1077)


Consumer protection: 27000 Primary aluminium (1975), 8; 28980 Pabst & Richarz/BNIA (1976), 2, 4-5


Fight against illegal practices: 38281 Raw Tobacco Italy (2005), para 291

Anti-dumping: 26870 Aluminium imports from eastern Europe (1984), para 12.2; 36604 Citric acid (2001) para 162-166

Sporting aims: 40208 International Skating Union’s Eligibility rules (2017), para 171


5.16. **Inherent restriction: regulated associations and sporting rules (footnote 1088)**

Accepted with respect to sporting rules: 39471 Certain joueur de tennis professionnel/Agence mondiale antidopage (2009); 39732 Certain Formula One engine manufacturers (2011)

Rejected with respect to sporting rules: 40208 International Skating Union’s Eligibility rules (2017)


5.17. **Ancillary restraints: horizontal cooperation agreements (footnote 1127)**


5.18. Ancillary restraints: selective distribution systems based on qualitative objective criteria (footnote 1132)


5.19. Exhaustion doctrine: formalistic approach (footnote 1159)


5.20. Exhaustion doctrine: licensing agreements (footnote 1164)


5.21. De minimis: qualitative test (footnote 1176)


Sport: 37576 UEFA Broadcasting Regulations (2001), para 51-59


5.22. Hungary: following the EU state action doctrine (footnote 1207)


5.23. Hungary: notion of undertakings (footnote 1214)


5.24. Netherlands: non-economic benefits in the ancillary restraints exception (footnote 1198)


433
Chapter 6: Unique national exceptions

6.1. France: joint offering of bids in tenders (footnote 1265)


6.2. France: public body prerogative (footnote 1276)

Claims for lack of jurisdiction were accepted in: 05-D-04 Gaz de Strasbourg (2005), para 12-16; 05-D-02 Maritime Transport to Hyère (2005), para 12-14; 06-D-14 CPPAP, para 15-17; 11-D-16 Telecare for senior (2011), para 20-23; 13-D-10 Press Distribution (2013), para 97-100; 16-D-30 Banking (2016)


6.3. Hungary: NCA decisions in the agriculture sector prior to the amendment (footnote 1297)


Chapter 7: Commitments and fines

7.1. Modifications required following a market test (footnote 1319)

38173 The Football Association Premier League Limited, para 15-17; 38348 Repsol, para 40; 39596 BA/AA/IB, para 12-13; 39398 Visa MIF (2010), para 8; 39847 Ebooks, para 14; 39230 Rio Tinto Alcan, para 12; 39595 Continental/ United/Lufthansa/Air Canada, para 15; 39398 Visa MIF (2014), para 11; 39964 Air France /KLM/Alitalia/Delta, para 16; 39745 CDS Information Market, para 7; 40023 Cross-border access to pay-TV, para 16-17
## 7.2. Commitments by sector (May 2004 to 2017) (footnote 1342)

<table>
<thead>
<tr>
<th>Enforcer</th>
<th>Formal commitments</th>
<th>Informal commitments</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Regulated and liberalised markets</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Media, telecom and IPRs</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commission</td>
<td>37214 DFB; 38173 The Football Association Premier League Limited; 40023 Cross-border access to pay-TV; 38681 Cannes Agreement; 39151 39152 SABAM and BUMA</td>
<td>38427 Pay Television Film Output Agreements; 39673 Virtual Print Fee agreements; 39943 E5 - Cooperation among large telecom operators; 38767 FIPCOM/ Koninklijke Philips Electronics N.V.; 39636 Rights Agency Ltd/SCAPR a.o.</td>
</tr>
<tr>
<td>France</td>
<td>06-D-29 Access of local radios to national adverstisement; 06-D-40 Association conducting surveys on magazine press; 07-D-32 Remuneration of press distributors; 05-D-12 EUROPQN; 07-D-17 Films; 07-D-31 Citroën; 10-D-01 iPhone marketing</td>
<td>Arena and Premiere</td>
</tr>
<tr>
<td>Germany</td>
<td>B6-114/10 Joint selling of media rights; B7–22/07 Basic Encryption of TV Programs – Commitments; B7–17/06 T-Mobile, Vodafone and O2; B6-32/15 Joint selling of media rights to matches of the German Bundesliga</td>
<td></td>
</tr>
<tr>
<td>Hungary</td>
<td>Vj–51/2004 Remittance via mobile phone</td>
<td>KPN Customer call data</td>
</tr>
<tr>
<td>The Netherlands</td>
<td>13.0612.53 Mobile operators</td>
<td></td>
</tr>
<tr>
<td>UK</td>
<td>CE/2558-03 TV Eye; CE/2479/03 London-wide newspaper distribution</td>
<td></td>
</tr>
<tr>
<td><strong>Energy and transport</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commission</td>
<td>38348 Repsol; 39140 Daimler Chrysler; 39141 Fiat; 39142 Toyota Motor Europe; 39143 Opel; 39416 Ship Classification; 39596 BA/AA/IB; 39595 Continental/United/ Lufthansa/Air Canada; 39964 Air France/KLM/ Alitalia/Delta; 39850 Container Shipping</td>
<td>38307 PO/Territorial restrictions Germany (Gazprom); 37811 Algerian gas export contracts; 39699 Baltic Max Feeder; European Minibulk and Container Feeder cooperatives</td>
</tr>
<tr>
<td>France</td>
<td>08-D-26 UAT taxis Abbeilles; 09-D-01 pleasure boats; 13-D-15 Europe-Antilles Sea Freight</td>
<td>Verivox; Tank &amp; Rast</td>
</tr>
<tr>
<td>Hungary</td>
<td>Vj-7/2008/178 Motor oils and lubricants</td>
<td>VSS; APX and Endex</td>
</tr>
<tr>
<td>The Netherlands</td>
<td>Vj-7/2008/178 Motor oils and lubricants</td>
<td>VSS; APX and Endex</td>
</tr>
<tr>
<td>UK</td>
<td>11/2013 Provision of Deep Sea Container rail transport services between ports and key inland destinations in Great Britain</td>
<td>VSS; APX and Endex</td>
</tr>
<tr>
<td><strong>Professional associations</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>France</td>
<td>10-D-18 Veterinary analyses; 12-D-29 FF Golf; 15-D-12 Guides in refuge du Gouter; 06-D-40 Association conducting surveys on magazine press; 08-D-26 UAT taxis Abbeilles; 09-D-01 Pleasure boats; 05-D-12 EUROPQN; 07-D-17</td>
<td></td>
</tr>
<tr>
<td>Enforcer</td>
<td>Formal commitments</td>
<td>Informal commitments</td>
</tr>
<tr>
<td>----------------</td>
<td>------------------------------------------------------------------------------------</td>
<td>------------------------------------------------------------</td>
</tr>
<tr>
<td>Germany</td>
<td>B3-11/13 Ophthalmologists-AOK; B3-11/13 ophthalmologists-AÄGB; B3–123/11 Pharmacists association in Westphalia-Lippe</td>
<td>B1-232/07 association of the German construction industry</td>
</tr>
<tr>
<td>The Netherlands</td>
<td>6895 Amsterdam hospitals; 7191/138 National Association of General Practitioners; 7245/151 Federation Textile Management Netherlands</td>
<td>Orthobanda industry association; Royal Dutch Society for the Advancement of Pharmacology (KNMP); Architects; The Royal Dutch Notarial Society [Koninklijke Notariële Beroeporganisatie (KNB)]; Dutch Association for Real estate Agents (NVM); Royal Dutch Institute of Chartered Accountants (NIVRA) and the Dutch Association of Accounting Consultants (NOvAA); Royal Dutch Notarial Society [Koninklijke Notariële Beroeporganisatie (KNB)II; Foundation for Appraisals and Validations; APX and Endex; ROTA; Frisian horses; Breed association; Flower-bulb; Travel Agents and Tour Operators General Agency Conditions; VSS; 6502 Breed association</td>
</tr>
<tr>
<td>UK</td>
<td>CE/2558-03 TV Eye; CE/2479/03 London-wide newspaper distribution; 50243 Showmen's Guild of Great Britain</td>
<td>OFT946 Scottish legal 'mixed doubles' rule; Bar Council of Northern Ireland; School suppliers; Asbestos awareness training</td>
</tr>
</tbody>
</table>

**Public health and safety**

<table>
<thead>
<tr>
<th>Enforcer</th>
<th>Formal commitments</th>
<th>Informal commitments</th>
</tr>
</thead>
<tbody>
<tr>
<td>France</td>
<td>07-D-22 Distribution of Medicine (I); 07-D-45 Distribution of Medicine (II); 07-D-46 Distribution of Medicine (III); 11-D-18 CT and MRI</td>
<td></td>
</tr>
<tr>
<td>Germany</td>
<td>B3-11/13 Ophthalmologists-AOK; B3-11/13 Ophthalmologists-AÄGB; B3–123/11 Pharmacists association in Westphalia-Lippe; B7-30/07-1 Fire detection systems in Düsseldorf</td>
<td>B12-11/08 Ophthalmic lenses</td>
</tr>
<tr>
<td>Hungary</td>
<td>Vj-57/2008/23 Gyöngy Strategic Association</td>
<td></td>
</tr>
<tr>
<td>The Netherlands</td>
<td>6895 Amsterdam hospitals; 7138/47-BT930 Home care providers; 7191/138 National Association of General Practitioners</td>
<td>Orthobanda industry association; Royal Dutch Society for the Advancement of Pharmacology (KNMP)</td>
</tr>
<tr>
<td>UK</td>
<td></td>
<td>NHS trusts; asbestos awareness training</td>
</tr>
</tbody>
</table>

**Regulated and liberalised markets - other**

<table>
<thead>
<tr>
<th>Enforcer</th>
<th>Formal commitments</th>
<th>Informal commitments</th>
</tr>
</thead>
<tbody>
<tr>
<td>France</td>
<td>08-D-34 Funeral services in Marseille; 09-D-27 MGSR; 17-D-12 Sugar production</td>
<td></td>
</tr>
<tr>
<td>Germany</td>
<td>B4-32/08 Quantity transfer contracts; B2-90/01-1 to B2-90/01-4 Timber</td>
<td></td>
</tr>
<tr>
<td>Hungary</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Netherlands</td>
<td>5709 Day-care; 5998 Insurance pool</td>
<td>UvA and VU tuition fees</td>
</tr>
<tr>
<td>UK</td>
<td>CE/9388-10 Motor Insurers</td>
<td></td>
</tr>
</tbody>
</table>

**Technology markets**

<table>
<thead>
<tr>
<th>Enforcer</th>
<th>Formal commitments</th>
<th>Informal commitments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commission</td>
<td>39847 Ebooks; 39230 Rio Tinto Alcan; 39736 SIEMENS/AREVA</td>
<td>40360 Production and distribution of audiobooks</td>
</tr>
<tr>
<td>Enforcer</td>
<td>Formal commitments</td>
<td>Informal commitments</td>
</tr>
<tr>
<td>----------</td>
<td>------------------------------------------------------------------------------------</td>
<td>------------------------------------------------------------</td>
</tr>
<tr>
<td>France</td>
<td>06-D-24 Bijourama; 06-D-28 Home Cinema; 07-D-07 Sale of cosmetic products on the internet; 10-D-20 Electronic discount coupons; 15-D-06 Online hotel booking</td>
<td>Adidas</td>
</tr>
<tr>
<td>Germany</td>
<td>B4-9/11 B4-94/11 Electronic cash card payment system</td>
<td>B7-1/13-35 Sennheiser; B6-46/12 Amazon; B3-137/12 Adidas; B2-98/11 Online sales of ASICS running shoes; Audible; Digital cement trading platform; B5-100/10 Sanitary fittings</td>
</tr>
<tr>
<td>Hungary</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Netherlands</td>
<td></td>
<td></td>
</tr>
<tr>
<td>UK</td>
<td>S0408 Live online bidding auction platform</td>
<td>CE/9320-10 Hotel online booking; Yamaha musical instruments; CE/9692/12 Amazon’s price parity policy; CE/9857-14 Bathroom fittings &amp; fixtures; BMW car comparison sites</td>
</tr>
</tbody>
</table>

### Financial services

<table>
<thead>
<tr>
<th>Enforcer</th>
<th>Formal commitments</th>
<th>Informal commitments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commission</td>
<td>39398 Visa MIF (2010); 39398 Visa MIF (2014); 39745 CDS Information Market</td>
<td>39876 EPC online payments; 39177 Which?/DFB + Mastercard + FIFA</td>
</tr>
<tr>
<td>France</td>
<td>11-D-11 &quot;CB&quot; payment card; 12-D-17 Non-cash means of payment; 13-D-17 MasterCard; 13-D-18 Visa</td>
<td></td>
</tr>
<tr>
<td>Germany</td>
<td>B4-9/11 B4-94/11 Electronic cash card payment system</td>
<td>B4-13/10 B4-117/15 Fees for ATM withdrawal</td>
</tr>
<tr>
<td>Hungary</td>
<td>Vj-152/2006/86 Budapest Stock Exchange (BET); Vj-78/2013 MasterCard and OTP</td>
<td></td>
</tr>
<tr>
<td>The Netherlands</td>
<td></td>
<td></td>
</tr>
<tr>
<td>UK</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Other

<table>
<thead>
<tr>
<th>Enforcer</th>
<th>Formal commitments</th>
<th>Informal commitments</th>
</tr>
</thead>
<tbody>
<tr>
<td>France</td>
<td>09-D-08 Motorway breakdown services; 11-D-08 Multi-brand gift card</td>
<td></td>
</tr>
<tr>
<td>Germany</td>
<td>B3-93/15 Lighters</td>
<td>B05-144-13 GARDENA; B7-11/13 Bosch Siemens; B2-118/10 Procurement of raw milk; Lego II; B2-31/17 Edeka/Tengelmann</td>
</tr>
<tr>
<td>The Netherlands</td>
<td>7533-22 Art auctions; 15.0959.29 Ready-mix concrete</td>
<td>Concert organisation and ticket sales; Ballast Nedam</td>
</tr>
<tr>
<td>UK</td>
<td></td>
<td>OFT1415 Street furniture advertising</td>
</tr>
</tbody>
</table>

### 7.3. Rejecting fine reduction pleas on the basis of Article 29(5) of the 2006 Fining Guidelines (footnote 1409)

399/09 Calcium carbide and magnesium based reagents for the steel and gas industries (2013), para 143-149 the GC rejected such a claim, which had not been raised in the Commission’s decision

7.4. Rejecting crisis cartel situations as justification for a reduction of the fine (footnote 1425)

34018 Far East Trade Tariff and Surcharges Agreement (FETTSCA), para 197-198; 36490 Graphite electrodes, para 194-197; 37614 Interbrew and Alken-Maes, para 321; 37027 Zinc Phosphate, para 337-341; 36212 Carbonless paper, para 430-431; 36571 Austrian banks — ‘Lombard Club’, para 526-530; 37978 Methylglucamine, para 252-253; 38240 Industrial tubes, para 370-372; 38069 Copper plumbing tubes, para 741-746; 37533 Choline chloride, para 215-216; 38337 Thread, para 376-378; 38281 Raw Tobacco Italy, para 384; 38354 Industrial bags, para 810-811; 38620 Hydrogen peroxide, para 488-490; 38645 Methacrylates, para 389-390; 38121 Fittings, para 804-805; 39396 Calcium carbide and magnesium based reagents, para 331; 38589 Heat stabilisers, para 735; 39258 Airfreight, para 1258-1261; 5-12-2012 TV and computer monitor tubes, para 1106; 40018 Car battery recycling, para 362

7.5. Inability claims based only on the “economic situation” (footnote 1438)

38543 International Removal Services (2008), para 657; 38589 Heat stabilisers (2009), 774-795; 39092 Bathroom fittings & fixtures, case summary (2010), para 19-20; 38344 Prestressing steel (2010), para 1131-1189; 39168 PO/Hard Haberdashery: Fasteners (2011); 39600 Refrigeration compressors, para 97; 39452 Mountings for windows and window-doors, para 551; 39437 TV and computer monitor tubes, para 1104; 39780 Envelopes, para 106; 39563 Retail food packaging, para 59-60

7.6. Netherlands: confidential inability to pay decisions (footnote 1448)

5210 Metal grilles; 5211 Nurseries; 6431_1/172 Kazerne II; 6429_1/176 Kazerne I; 6430_1/131 Meiveld; 6274/569 Midden Ijssel; 6494 6836 Southern Dutch construction companies; 6306 Flour; 6929_1/205 Ship-generated waste collection cartel; 6306 Flour; 6538 Houses merchants foreclosure auctions; 7237 7268 Houses merchants foreclosure auctions; 6538 Houses merchants foreclosure auctions; 7237 7268 Houses merchants foreclosure auctions; 7244-597 Magazine packs

7.7. Inability to pay claims, NCAs (footnote 1449)

FR: Accepted: 10-D-35 Welding electrodes, para 271-289; 10-D-39 Road sign, 460, 468; 11-D-02 Restoration of historical monuments, para 720; 12-D-02 Géfil para 166-169; 206-208; 233-235; 241-243; 254-256; 12-D-08 Endive, para 653; 12-D-09 Flour mills, para 954-959; 13-D-03 Pork slaughtering, para 460-472; 13-D-09 Miradors Perpignan, para 202-203; 13-D-12 Distribution of commodity chemicals, para 1132-1336; 14-D-16 Relocation of military personnel in Martinique, para 161-165; 14-D-20 Wallpaper, para 340-348; 15-D-03 Fresh


DE: Accepted: B11-13/06 Flour mills; B1-164/13 B1-167/13 B1-87/14 B1-47/15 Furniture

Rejected: B11-20/05 Sale of liquefied petroleum gas (LPG)

NL: Accepted: 6108/258 Thuiszorg Kennemerland, para 238-244; 7130/216 Taxi transport IJssel cities, para 191-193; 6538 Houses merchants foreclosure auctions, 360-364; 6306 Flour, 8-10; 7244-597 Magazine packs (2013), para 251-254

Rejected: 4014 Horticultural Services, para 195-205; 6091/204 Distributors of sodium hypochlorite, para 250; 6108/348 Thuiszorg Kennemerland, 154-160; 6108/348 Thuiszorg Kennemerland, para 154-160; 6425 Window cleaners, para 340; 6442 WMO Friesland (2012), para 152; 7237 7268 Houses merchants foreclosure auctions, para 373; 6888/435 LHV pace of establishment (2014), para 401-405


UK: Accepted: CE/7510-06 Construction Recruitment Forum, para 5.261-5.270; 50223 Posters and frames, para 6.44-6.45; CE/9859-14 Modelling, para 5.99; 50235 Residential estate agency services

7.8. Commission: no fines imposed when Articles 101(1) and (3) TFEU balancing tools were discussed (footnote 1473)

26349 Besluiten van de Vereniging G.I.S.A.; 28374 Advocaat Zwarte Kip; 27095 Franco-Japanese ballbearings; 28996 Pabst & Richarz/BNIA; 28282 The Distillers Company Limited, Conditions of sale; 29418 Spices; 29535 White led; 29290 Vaessen/Moris; 29869 Italian cast glass; 29988 Italian flat glass; 28930 Aluminium imports from eastern Europe; 32732 Ijsselcentrale; 33494 Scottish Salmon Board; 33585 Distribution of railway tickets by travel agents; 31400 Ford Agricultural; 32448 32450 Cewal, Cowac and Ukwal; 33407 CNSD; 33686 Coapi; 40208 International Skating Union’s Eligibility rules

7.9. German NCA: no fines imposed when Articles 101(1) and (3) TFEU balancing tools were discussed (footnote 1474)

B1-116/04 Sand-lime brick; B10-148/05 Lottery; B4-1006/06 Container glass; B4-31/05 Pecuniary loss liability risks for auditors and chartered accountants; Joint selling of media rights (2008); B3-64/05 Merck and VWR distribution agreement; B3-134/09 Federal Guild of Hearing Aid Acousticians; B3-19/08 CVH; B9-66/10 HRS-Hotel Reservation Service; B1-62/13 Rental of retail space in factory outlet centres; B1-72/12 Round timber in Baden-Württemberg; B9-121/13 Booking; B4-71/10 Online banking conditions; B6-132/14-2 Ticketing

7.10. EU Courts: state involvement, crisis in sector and inability to pay as mitigating circumstances (footnote 1484)

State involvement: T-14/89 Polypropylene, para 384-385; T-145/89 Welded steel mesh, para 121-122; T-148/89 Welded steel mesh, para 118; T-141/94 Steel beams, para 501, 588, as upheld by the CJEU in C-194/99 P Steel Beams, para 113-116; C-240/82 C-241/82 C-242/82 C-261/82 C-262/82 C-268/82 C-269/82 SSI, para 94; C-100/80 C-101/80 C-102/80 C-103/80 Pioneer Hi-fi equipment, para 100

Crisis in sector: T-6/89 Polypropylene, para 285-291, 290; T-7/89 Polypropylene, para 327-336; 335; T-8/89 Polypropylene, para 305-306; T-11/89 Polypropylene, para 350-352; T-13/89 Polypropylene, para 372; T-14/89 Polypropylene, para 379; T-213/00 Far East Trade Tariff Charges and Surcharges Agreement (FETTCSA), para 351-354; T-85/10 Concrete reinforcing bars, re-adoption, para 111-114; T-70/10 Concrete reinforcing bars, re-adoption, para 399-400; T-69/10 Concrete reinforcing bars, re-adoption, para 241-242; T-489/09 T-490/09 T-56/10 Concrete reinforcing bars, re-adoption, para 193. Also see T-141/89 Welded steel mesh, para 146-147; T-142/89 Welded steel mesh, para 117; T-148/89 Welded steel mesh, para 125

Inability to pay: T-71/03 T-74/03 T-87/03 Speciality Graphite, para 332-333; T-23/99 Pre-Insulated Pipe Cartel, para 308; T-213/00 Far East Trade Tariff Charges and Surcharges Agreement (FETTCSA), para 351-356; T-452/05 PO/Thread, para 93-97; T-11/06 Raw tobacco – Italy, para 255-256; T-400/09 Calcium carbide and magnesium based reagents for the steel and gas industries, para 92-120; T-392/09 Calcium carbide and magnesium based reagents for
the steel and gas industries, para 111-149; T-54/14 Shrimp, para 131-142; C-308/04P Graphite electrodes, para 105; T-51/06 Industrial bags, para, para 161-166; C-40/12P Industrial bags, para 107-108; C-58/12P Industrial bags, para 98-101; T-393/10 Prestressing steel, para 288; T-406/09 Calcium carbide and magnesium based reagents for the steel and gas industries, para 285; T-352/09 Calcium carbide and magnesium based reagents for the steel and gas industries, para 185-210; T-426/10 T-427/10 428/10 T-429/10 T-438/12 439/10 440/10 T-441/12 Prestressing steel (2016) (French), para 489-499

7.11. **EU Courts: confirm change in the Commission approach to crisis situations (footnote 1486)**

T-236/01 T-239/01 T-244/01 T-245/01 T-246/01 T-251/01 T-252/01 Graphite electrodes (2004), para 345; C-328/05P Graphite electrodes (2007), para 100; T-38/02 Interbrew and Alken-Maes (2005), para 413-416; T-64/02 Zinc phosphate (2005), para 139-140; T-259/02 T-260/02 T-261/02 T-262/02 T-263/02 T-264/02 T-271/02 Austrian banks – ‘Lombard Club’, para 510; T-109/02 T-118/02 T-122/02 T-125/02 T-126/02 T-128/02 T-129/02 T-132/02 T-136/02 Carbonless paper, para 657-666; T-127/04 Industrial tubes, para 122; T-25/05 Copper plumbing tubes, para 129; T-29/05 Raw tobacco – Spain, para 147; T-12/06 Raw tobacco – Italy, para 289; T-39/06 Raw tobacco – Italy, para 352-354; T-30/05 PO/Needles, para 207-208; T-456/05 T-457/05 PO/Thread, para 195-196

7.12. **GC: confirm inability to pay claims (footnote 1490)**

T-23/99 Pre-Insulated Pipe Cartel, para 308; T-213/00 Far East Trade Tariff Charges and Surcharges Agreement (FETTCSA), para 351-356; T-44/00 Seamless steel tubes, para 286; T-50/00 Seamless steel tubes, para 318-334; C-308/04P Graphite electrodes, para 105; T-73/04 Electrical and mechanical carbon and graphite products, para 307-318; T-452/05 PO/Thread, para 93-97; T-217/06 Methacrylates, para 324-329; T-204/08 T 212/08 International Removal Services, para 168-178; T-199/08 International Removal Services, para 96; T-11/06 Raw tobacco – Italy, para 255-256; T-410/09 Calcium carbide and magnesium based reagents for the steel and gas industries, para 261-277; T-400/09 Calcium carbide and magnesium based reagents for the steel and gas industries, para 92-120; T-392/09 Calcium carbide and magnesium based reagents for the steel and gas industries, para 111-149; T-412/10 Bathroom Fittings and Fixtures, para 159-170; T-411/10 Bathroom Fittings and Fixtures, para 194-205; T-27/10 Heat Stabilisers, para 310-314; T-46/10 Heat Stabilisers, para 195-196; T-56/09 T-73/09 Carglass, para 387; T-72/09 Carglass, para 308; T-456/10 Animal feed phosphates, para 197-213; T-422/10 Prestressing steel, para 345-350; T-426/10 T-427/10 T-428/10 T-429/10 T-438/12 T-439/10 440/10 T-441/12 Prestressing steel, para 489-507; T-54/14 Shrimp, para 131-142; C-444/11P International Removal Services, para 188; C-439/11P International Removal Services, para 171; C-619/13P Bathroom Fittings and Fixtures, para 113

442
Chapter 8: Priority setting

8. Target discretion: in the fourth enforcement period, Article 101(3) TFEU is applied to price-fixing, market-sharing, and equivalent restrictions (footnote 1647)

37980 Souris-TOPPS, para 141-158; 37750 French beer market, para 75; 38456 Bitumen Nederland, para 162-168; 39181 Candle waxes, para 317; 39188 Bananas, para 339-343; 39125 Carglass, para 529-532; 39633 Shrimps, para 438-440; 39510 Ordre National des Pharmaciens en France (ONP), para 703-706; 38549 Barème d'honoraires de l'Ordre des Architectes belges, para 104-110; 38662 GDF-ENEL, para 143-145; 38662 GDF-ENI 120-122; 39736 SIEMENS/AREVA, para 82-83; 38698 CISAC, para 231-247; 39092 Bathroom fittings & fixtures, para 989-990; 39596 BA/AA/IB, para 77-80; 39258 Airfreight, para 1040-1045; 39462 Freight Forwarding, para 635-636; 39839 Telefónica and Portugal Telecom, para 439-446; 37214 DFB (Joint selling of the media rights to the German Bundesliga), para 24; 38173 The Football Association Premier League Limited, para 30; 39861 Yen Interest Rate Derivatives (YIRD), para 84-85; 39914 Euro Interest Rate Derivatives, para 66; 39610 Power cables, para 689; 39574 Smart card chips; 40055 Parking heaters; 40028 Alternators and Starters; 39824 Trucks; 39850 Container Shipping, para 57-58; 399904 Rechargeable battery; 39960 Thermal Systems; 40013 Lighting Systems

8.2. Target discretion: Commission rejects outright Article 101(3) TFEU exceptions in regulated markets (footnote 1649)

Energy: 38662 GDF/ENEL; 38662 GDF/ENI; 39736 SIEMENS/AREVA; 39610 Power cables, para 689
Telecom: 39839 Telefónica and Portugal Telecom; 40023 Cross-border access to pay-TV, para 51-52
Liberal professions: 38549 Barème d'honoraires de l'Ordre des Architectes belges
Broadcasting of sports: 37214 DFB (Joint selling of the media rights to the German Bundesliga); 38173 The Football Association Premier League Limited
Health services: 39510 Ordre National des Pharmaciens en France (ONP), para 704-705
Transport: 39416 Ship Classification, para 13; 39596 BA/AA/IB; 39258 Airfreight, para 1040; 39595 Continental/United/Lufthansa/Air Canada; 39462 Freight Forwarding, para 635-636; 39964 Air France/KLM/Alitalia/Delta, para 42, 110; 39850 Container Shipping, para 57-58
IPRs: 39230 Rio Tinto Alcan; 38698 CISAC, para 231-247
Financial services: 37860 Morgan Stanley Dean Witter/Visa para 312-317; 38606 Groupement des Cartes Bancaires "CB", para 428-433; 34579 36518 38580 MasterCard I, para 671-679; 39398 Visa MIF, para 21; 39861 Yen Interest Rate Derivatives (YIRD), para 84-85; 39914 Euro Interest Rate Derivatives, para 66
ANNEX B: CODING BOOK VARIABLES

Case Identification Variables
1. Jurisdiction: the jurisdiction (country/EU) rendering the decision.
2. Decision Date: the date the decision was rendered.
3. Authority: the administrative/judicial body rendering the decision.
4. Case ID: the (national) docket number of the decision.
5. Case Name: the name of the case (name of the first listed undertaking or the subject matter), according to the convention in each jurisdiction.
6. Procedure Type: the type of procedure (e.g. regular infringement decision, leniency application, decision in preliminary ruling, decision in appeal, decision not to investigate, informal procedure).

Undertaking’s Identification Variables
7. Undertaking 1: the name of the undertaking(s) subject of the case that allegedly infringed Article 101 TFEU. Undertaking 1 is the undertaking mentioned first in the decision. In appeals, Undertaking 1 includes all appellants.
8. Undertaking 2: the name of the undertaking(s) subject of the case that allegedly infringed Article 101 TFEU. Undertaking 2 is the undertaking mentioned second in the decision. In appeals, Undertaking 2 includes all defendants.
9. Other Undertakings: the name of the undertaking(s) subject of the case that allegedly infringed Article 101 TFEU, other than Undertakings 1 and 2. In appeals, Other Undertakings are all intervening parties (including Member States).
10. Relevant Market: the relevant product and geographical market(s) as identified by the decision.

Substantive Balancing Variables

Variables regarding the infringement of Article 101 TFEU
11. Source: the legal provision that was (allegedly) infringed (e.g. Article 101 TFEU and/or the national equivalent provision).
12. **Object/effect**: whether the (alleged) infringement is a by-object or by-effect restriction. In addition, this variable indicates whether the competition enforcer's classification is in line with the Commission's policy papers: According to the Commission Article 101(3) Guidelines (2004), para 23 restrictions that are black-listed in BERs or identified as hard-core restrictions in the Commission's guidelines and notices are generally considered as by-object restrictions.

**Variables regarding the relevant non-competition interest**

13. **Interest**: the non-competition interest balanced against the competition concerns.

14. **Origin**: the legal source of the non-competition interests (EU or national). With regard to EU interests, this variable indicates whether the case has referred to the policy-linking clauses of the Treaties.

**Variables regarding Article 101(1) TFEU balancing**

15. **Article 101(1) – Source**: the legal source facilitating Article 101(1) TFEU balancing tools (e.g. the notion of "undertakings"; effet utile; IPRs).

16. **Article 101(1) – Method**: the balancing method (e.g. commercial or regulatory ancillary restraints; other European-style or American-style rule of reason).

17. **Article 101(1) – Proportionality**: if, and to what extent, a proportionality test was applied to facilitate Article 101(1) TFEU balancing.

18. **Article 101(1) – Result**: the outcome of the balancing applied in the case.

19. **Article 101(1) – Weight**: the relative importance of Article 101(1) TFEU balancing in the case. This variable is based on the subjective assessment of the coder.

**Variables regarding Article 101(3) TFEU balancing**

20. **Article 101(3) – BERs**: if, and if so which, BER is examined in the case (European and/or national BERs).

21. **Article 101(3) – improvement (A)**: if, and what type of benefit is considered. The coding of this variable is based on the classification suggested by the OFT Roundtable on Narrow versus Broad Definition of Benefits (2010), distinguishing between direct economic benefits, indirect economic benefits, and non-economic benefits.

22. **Article 101(3) – improvement (B)**: if, and what type of improvement is considered. The coding of this variable is based on Monti (2007), 45 typology of efficiencies (e.g. static and dynamic productive efficiencies; allocative, distributive and social efficiencies).

23. **Article 101(3) – improvement – Met**: whether the "improvement" condition was fulfilled.
24. Article 101(3) – consumer: the definition of "consumer" followed by the case (e.g. direct and indirect consumers, consumers in affected markets, society as a whole).

25. Article 101(3) – fair share: if, and what type, of the fair share requirements are considered.

26. Article 101(3) – fair share – Met: whether the "fair share" condition was fulfilled.

27. Article 101(3) – indispensability: if, and in what manner, indispensability requirements are considered.

28. Article 101(3) – indispensability – Met: whether the "indispensability" condition was fulfilled.

29. Article 101(3) – elimination of competition: if, and to what extent, the no elimination of competition requirement is considered.

30. Article 101(3) – elimination of competition – Met: whether the "elimination of competition" condition was fulfilled.

31. Article 101(3) – Result: whether an Article 101(3) TFEU exemption/exception was granted.

32. Article 101(3) – Weight: the relative importance of the Article 101(3) TFEU balancing in the case. This variable is based on the subjective assessment of the coder.

Variables regarding other balancing methods

33. Article 101 as a whole: if the case included balancing with reference to Article 101 as a whole (as opposed to Articles 101(1) or (3) TFEU balancing tools). If so, whether the balancing led to exemption from the competition rules.

34. Balancing in remedy stage: if, and to what extent, non-competition interests were considered in the remedy stage (commitments and fines).

Variables regarding other circumstances

35. Article 102: whether the case concerns an alleged infringement of Article 102 TFEU (or of the national equivalent provision), and the relationship between Articles 101 and 102 TFEU balancing.

36. Free Movement: whether the case concerns an alleged infringement of the EU free movement rules, and the relationship between Article 101 TFEU and the free movement balancing.

37. Miscellaneous: other features of the case that were not reflected in other variables (e.g. parallel proceedings in other jurisdictions, economic crisis).
Outcome Variables

38. **Outcome**: the outcome of procedure (e.g., infringement of Article 101 TFEU, commitments, exemption/exception, administrative closure).

39. **Fine**: the amount of fine imposed, if applicable.

Descriptive fields

40. **Alleged Infringement**: summary of the alleged infringement of Article 101 TFEU.

41. **Comments**: any relevant comments of the coder.
### ANNEX C: BERS DEVELOPMENT

#### Vertical (Enabling Regulation 19/65)

<table>
<thead>
<tr>
<th>Year</th>
<th>Service</th>
<th>Regulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1968</td>
<td>Exclusive Distribution</td>
<td>67/67</td>
</tr>
<tr>
<td>1978</td>
<td>Exclusive Distribution</td>
<td>2790/99</td>
</tr>
<tr>
<td>1988</td>
<td>Exclusive Distribution</td>
<td>2672/88</td>
</tr>
<tr>
<td>1998</td>
<td>Exclusive Distribution</td>
<td>83/91 CRS</td>
</tr>
</tbody>
</table>

#### Horizontal (Enabling Regulation 2021/71)

<table>
<thead>
<tr>
<th>Year</th>
<th>Service</th>
<th>Regulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>Motor Vehicle</td>
<td>1217/2010 R&amp;D</td>
</tr>
<tr>
<td>2018</td>
<td>Motor Vehicle</td>
<td>1459</td>
</tr>
</tbody>
</table>

#### Insurance (Enabling Regulation 1334/91)

<table>
<thead>
<tr>
<th>Year</th>
<th>Service</th>
<th>Regulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>Insurance</td>
<td>3932/92 Insurance</td>
</tr>
<tr>
<td>2018</td>
<td>Insurance</td>
<td>2659/2000 R&amp;D</td>
</tr>
</tbody>
</table>


<table>
<thead>
<tr>
<th>Year</th>
<th>Service</th>
<th>Regulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1958</td>
<td>Exempting transport from the application of Regulation 17/62</td>
<td>141/62</td>
</tr>
<tr>
<td>1968</td>
<td>Exempting transport from the application of Regulation 17/62</td>
<td>1017/1968 Rail, road and inland waterway</td>
</tr>
<tr>
<td>1978</td>
<td>Exempting transport from the application of Regulation 17/62</td>
<td>1419/2006 Liner conferences</td>
</tr>
<tr>
<td>2008</td>
<td>Exempting transport from the application of Regulation 17/62</td>
<td>870/1995 Consortia</td>
</tr>
</tbody>
</table>

#### Consortia (Enabling regulation 479/92, 2411/92)

<table>
<thead>
<tr>
<th>Year</th>
<th>Service</th>
<th>Regulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>Consortia</td>
<td>906/2009 (amended by 87/2014) Consortia</td>
</tr>
</tbody>
</table>