Coding non-competition interests under Article 101 TFEU
A quantitative and qualitative study
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Publication date
2019
Document Version
Other version
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<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 ES - 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 advertisement; 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></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>Arena and Premiere</td>
</tr>
<tr>
<td>Hungary</td>
<td>Vj–51/2004 Remittance via mobile phone</td>
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<tr>
<td>The Netherlands</td>
<td>13.0612.53 Mobile operators</td>
<td>KPN Customer call data</td>
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<tr>
<td>UK</td>
<td>CE/2558-03 TV Eye; CE/2479/03 London-wide newspaper distribution</td>
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<td><strong>Energy and transport</strong></td>
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<tr>
<td>Commission</td>
<td>38348 Repsol; 39140 DaimlerChrysler; 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>
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<tr>
<td>France</td>
<td>08-D-26 UAT taxis Abbeilles; 09-D-01 pleasure boats; 13-D-15 Europe-Antilles Sea Freight</td>
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<tr>
<td>Hungary</td>
<td>Vj-7/2008/178 Motor oils and lubricants</td>
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<tr>
<td>The Netherlands</td>
<td>VSS; APX and Endex</td>
<td></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>
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<td><strong>Professional associations</strong></td>
<td></td>
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<td>Commission</td>
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<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>
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<tr>
<td>Enforcer</td>
<td>Formal commitments</td>
<td>Informal commitments</td>
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<tr>
<td>Germany</td>
<td>B3-11/13 Ophthalmologists-AOK; B3-11/13 ophthalmologists-AGB; B3–123/11 Pharmacists association in Westphalia-Lippe</td>
<td>B1-232/07 association of the German construction industry</td>
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<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 Beroepsorganisatie (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 Beroepsorganisatie (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>
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<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>
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<td><strong>Public health and safety</strong></td>
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<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>
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<tr>
<td>Germany</td>
<td>B3-11/13 Ophthalmologists-AOK; B3-11/13 Ophthalmologists-AGB; B3–123/11 Pharmacists association in Westphalia-Lippe; B7-30/07-1 Fire detection systems in Düsseldorf</td>
<td>B12-11/08 Ophthamic lenses</td>
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<td>Hungary</td>
<td>Vj–57/2008/23 Gyöngy Strategic Association</td>
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<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>
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<tr>
<td>UK</td>
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<td>NHS trusts; asbestos awareness training</td>
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<td><strong>Regulated and liberalised markets - other</strong></td>
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<td>Commission</td>
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<tr>
<td>France</td>
<td>08-D-34 Funeral services in Marseille; 09-D-27 MGSR; 17-D-12 Sugar production</td>
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<tr>
<td>Germany</td>
<td>B4-32/08 Quantity transfer contracts; B2-90/01-1 to B2-90/01-4 Timber</td>
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<td>Hungary</td>
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<tr>
<td>The Netherlands</td>
<td>5709 Day-care; 5998 Insurance pool</td>
<td>UvA and VU tuition fees</td>
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<td>UK</td>
<td>CE/9388-10 Motor Insurers</td>
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<td><strong>Technology markets</strong></td>
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<td>Commission</td>
<td>39847 Ebooks; 39230 Rio Tinto Alcan; 39736 SIEMENS/AREVA</td>
<td>40360 Production and distribution of audiobooks</td>
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<tr>
<td>Enforcer</td>
<td>Formal commitments</td>
<td>Informal commitments</td>
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<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>
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<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>
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<td>Hungary</td>
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<td>The Netherlands</td>
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<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>
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<td><strong>Financial services</strong></td>
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<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>
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<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>
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<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>
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<td>Hungary</td>
<td>Vj-152/2006/86 Budapest Stock Exchange (BET); Vj-78/2013 MasterCard and OTP</td>
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<td>The Netherlands</td>
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<td>UK</td>
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</table>

**Other**

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

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, par 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-194/99P 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 T-91/03 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
8. Chapter 8: Priority setting

8.1. 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 Barême 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 Barême 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 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

#### Effect-based

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*End of validity: June and October 2006 (according to the type of agreement)