Coding non-competition interests under Article 101 TFEU
A quantitative and qualitative study
Brook, O.

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**Treaties and international agreements**

| Agreement on Social Policy (1992) | Agreement on social policy concluded between the Member States of the European Community with the exception of the United Kingdom of Great Britain and Northern Ireland (OJ 1992 C 191, p. 91), annexed to Protocol (No 14) on social policy, annexed to the Treaty establishing the European Community |
| Charter of Fundamental Rights | Charter of Fundamental Rights of the European Union ((2000/C)364/01) |
| TFEU and TEU | Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (2012/C 326/01) |

**Regulations**

Regulation 1017/68 on Inland Transport

Regulation 1184/2006/EC on the application of Competition Rules on Agricultural Products

Regulation 1215/99 amending Enabling Council Regulation 19/65 on Vertical Agreements

Regulation 1217/2010 on Research and Development

Regulation 1218/2010 on Specialisation Agreements

Regulation 123/85 on Motor Vehicles

Regulation 1234/2007/EC Single CMO

Regulation 1400/2002 on Motor Vehicles

Regulation 141/62 on Transport
Council Regulation No. Regulation 141/62 exempting transport from the application of Council Regulation No 17 (OJ L 124, 28.11.1962)
Regulation 1419/2006 on Maritime Transport

Regulation 1475/95 on Motor Vehicles

Regulation 169/2009 on Inland Transport

Regulation 17/1962

Regulation 1983/83 on Exclusive Distribution

Regulation 1984/83 on Exclusive Purchasing

Regulation 2349/84 on Patent Licensing

Regulation 246/2009 on Liner Shipping
Council Regulation 246/2009/EC of 26 February 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia) (OJ L 79/1, 25.3.2009)

Regulation 267/2010 on Insurance
Commission Regulation 267/2010/EU of 24 March 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of agreements, decisions and concerted practices in the insurance sector (OJ L 83/1, 30.3.2010)

Regulation 2790/99 on Vertical Restrains
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- **ECN+ Directive (2019)**: Directive 2019/1/EU of the European Parliament and the Council to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market (OJ L 11, 14.1.2019, p. 3–33)

**Decisions**

- **Decision to Amend the EU/US Air Transport Agreement**: Decision of the Council and the Representatives of the Governments of the Member States of the European Union Meeting within the Council of 24 June 2010 on the signing and provisional application of the Protocol to Amend the Air Transport Agreement between the United States of America, of the one part, and the European Community and its Member States, of the other part (OJ L 223/3, 25.08.2010)

Policy papers and other documents


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<td>ECN+ Directive Proposal (2017)</td>
<td>Proposal for a Directive to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market (SWD(2017) 114 22.3.2017)</td>
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Guidance on restrictions of competition "by object" (2014) Commission Staff Working Document, Guidance on restrictions of competition "by object" for the purpose of defining which agreements may benefit from the De Minimis Notice Accompanying the document Communication from the Commission Notice on agreements of minor importance which do not appreciably restrict competition under Article 101(1) of the Treaty on the Functioning of the European Union (SWD (2014) 4136 final)


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Guidelines on vertical restraints in agreements for the sale and repair of motor vehicles and for the distribution of spare parts for motor vehicles (OJ C 138/5, 28.5.2010)

Guidelines on the application of Article 81 of the EC Treaty to technology transfer agreements (OJ C 101/2, 27.4.2004)


Commission Guidelines on Vertical Restraints (OJ C 130/1, 19.5.2010)

Guidelines on the application of Article 81 of the EC Treaty to technology transfer agreements (OJ C 101/2, 27.4.2004)


Commission Guidelines on Vertical Restraints (OJ C 130/1, 19.5.2010)


FRANCE

Codes

Civil Procedure Code
Code de procédure civile français Version consolidée au 1 janvier 2018

Commercial Code

Penal Code of 1810
Code Penal 1810. English translation in (Holmberg n.d.)

Laws

Chapelier Law of 1791
Loi Le Chapelier of 14 June 1791. English translation in (Stewart 1951), 165-166

Competition Law of 1977
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<td>Ordinance 86-1243 on Competition and Freedom of Prices</td>
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<td>Price Decree 53–704</td>
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**French NCA documents**

**Fining Guidelines (2011)**

**Notice on Competition Commitments (2009)**

**Report – 25 Years of enforcement (2012)**
Autorité de la concurrence, 25 years of enforcement (2012)

**GERMANY**

**Laws and regulations**

**Act on Compulsory Cartels of 1933**
Gesetz über die Errichtung von Zwangskartellen, 15 Juli 1933

**Competition Act**

**Federal Frosts Act**
Gesetz zur Erhaltung des Waldes und zur Förderung der Forstwirtschaft (Bundeswaldgesetz)

**Regulation Against Abuse of Economic Power Position of 1923**
Verordnung gegen Missbrauch wirtschaftlicher Machtstellungen, 2 November 1923. English translation in (Liefmann 1932), 351
German NCA documents


Hungary

Constitution and codes


Laws and regulations

Act No. CL XXXV of 2012 Waste Disposal Act 2012. évi CLXXXV. törvény a hulladékról

Act No. CLXXVI of 2012 on inter-branch organisations and certain issues of the regulation of agricultural markets 2012. évi CLXXVI. Törvény a szakmákőzi szervezetekről és az agrárszabályozás egyes kérdéseinek szervezetekről szóló 2012. évi CXXVIII. törvény módosításáról
| Act No. IV on the Prohibition of Unfair Economic Activities of 1984 | 1984. évi IV. törvény a tisztességégtelen gazdasági tevékenység tilalmáról |
| Act No. LXXXVI of 1990 on the Prohibition of Unfair Market Practice | 990. évi LXXXVI. Törvény a tisztességégtelen piaci magatartás tilalmáról, English translation in (WIPO 1990) |
| Act No. V on Unfair Competition 1923 | 1923. évi V. törvéncikk a tisztességégtelen versenyáról |
| Act No. XCVI of 2014 on the financial grounding of the central budget | 2014. évi XCVI. Törvény Magyarország 2015. évi központi költségvetésének megalapozásáról |
| Act No. XX on Agreements Regulating Economic Competition of 1931 | 1931. évi XX. Törvéncikk a gazdasági versenyt szabályozó megállapodásokról |

### Ordinance and decrees

Decree 54/2002 on R&D


Decree 55/2002 on vertical agreements


Decree No. 202/2011 on specialisation agreements

202/2011. (X. 7.) Korm. Rendelet a szakosítási megállapodások egyes csoportjainak a versenykorlátozás tilalma alól mentesítéséről

Decree No. 203/2011 on insurance sector

18/2004. (II. 13.) Korm. rendelet a biztosítási megállapodások egyes csoportjainak a versenykorlátozás tilalma alól való mentesítéséről

Decree No. 204/2011 on motor vehicles

204/2011. (X. 7.) Korm. Rendelet a gépjármű utópiacra vonatkozó megállapodások egyes csoportjainak a versenykorlátozás tilalma alól mentesítéséről

Decree No. 206/2011 (X.7) on research and development

206/2011. (X. 7.) Korm. Rendelet a kutatási és fejlesztési megállapodások egyes csoportjainak a versenykorlátozás tilalma alól mentesítéséről

Decree No. 86/1999 on technology transfer agreements


### Hungarian NCA documents

**GVH Fundamental Principles of Competition Policy (2007)**
Fundamental Principles of Competition Policy as Applied by the GVH (GVH’s English version)

**Hungarian Fining Guidelines (2003)**
Notice No. 2/3003 of the president of the Hungarian Competition Authority and the Chair of the Competition Council of the Hungarian Competition Authority – the method of setting fines in antitrust cases (GVH’s English version)

**Hungarian Fining Guidelines (2005)**
Notice No 2/2005, on the amendment of Notice No 2/2003 on the method of setting fines in antitrust cases, of the President of the Hungarian Competition Authority and the Chair of the Competition Council of the GVH (GVH’s English version)
Hungarian Fining Guidelines (2012) Notice No 1/2012 of the President of the Hungarian Competition Authority and the Chair of the Competition Council of the Hungarian Competition Authority on the method of setting fines in case of market practices infringing Articles 11 and 21 of Act LVII of 1996 on the Prohibition of Unfair Restrictive Practices (Competition Act), and Articles 101 and 102 of the Treaty on the Functioning of the European Union (GVH’s English version).


THE NETHERLANDS

Constitution

Constitution of the Kingdom of the Netherlands

Grondwet voor het Koninkrijk der Nederlanden van 24 augustus 1815

Laws and regulations

Act Establishing the Authority for Consumers and Markets of 2013


Business Regulation Act of 1951

Wet Schorsing Bedrijfsregelingen van 11 April 1951

Competition Act


Dutch Law on the Bar of 1952

Advocatenwet van 23 juni 1952
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<td>Beleidsregels van de Minister van Economische Zaken van 31 maart 2013, nr. WJZ / 12354959, met betrekking tot de toepassing door de Autoriteit Consument en Markt van artikel 6 van de Mededingingswet ten aanzien van combinatieovereenkomsten (Beleidsregels Combinatieovereenkomsten 2013)</td>
</tr>
</tbody>
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Dutch NCA documents

ACM Prioritisation of enforcement investigations (2016)

Prioritisation of enforcement investigations by the Netherlands Authority for Consumers and Markets, Dutch Government Gazette No 14564 on March 18, 2016, ACM/DJZ/2016/200888 (ACM’s English version)

ACM strategy and enforcement priorities with regard to vertical agreements (2015)

ACM’s strategy and enforcement priorities with regard to vertical agreements (ACM’s English version)

Fining Guidelines (2009)

Policy Rules No. 14079 of the Minister of Economic Affairs of 11 September 2009, no. WJZ/9150320, containing guidelines on the imposition of administrative fines under legislation the enforcement of which has been entrusted to the Board of the Netherlands Competition Authority (ACM’s English version)

Fining Guidelines (2014)

Policy rule of the Minister of Economic Affairs of 4 July 2014, no. WJZ/14112617, on the imposition of administrative fines by the Netherlands Authority for Consumers and Markets (ACM’s English version)


Leidraad Tariefafspraken voor zzp’ers in cao’s 24 februari 2017

Vision Document on Competition and Sustainability (2014)

Vision Document, Competition & Sustainability of May 2014 (ACM’s English version)

UNITED KINGDOM

Laws and regulation

Competition Act 1998


Order 2002

Competition Act of 1980

Competition Act of 1980 c. 21

Competition Act of 1998

Competition Act 1998 c. 41

Enterprise Act of 2002

Enterprise Act 2002 c. 40
Enterprise and Regulatory Reform Act of 2013

Enterprise and Regulatory Reform Act of 2013 c. 24

Fair Trading Act of 1973

Fair Trading Act of 1973 c. 41

Health and Social Care Act of 2012

Health and Social Care Act of 2012 c. 7

Other Enactments

The Competition Act 1998 and Other Enactments (Amendment) Regulations of 2004

Regulations 2004 No. 1261

Resale Price Act of 1964

Resale Prices Act 1964 c. 53

Restrictive Trade Practices Act of 1956

Restrictive Trade Practices Act of 1956 c. 68

Restrictive Trade Practices Act of 1968

Restrictive Trade Practices Act of 1968 c. 66

The Monopolies and Mergers Act of 1965

Monopolies and Mergers Act of 1965 c. 50

The Monopolies and Restrictive Practices (Inquiry and Control) Act of 1948

The Monopolies and Restrictive Practices (Inquiry and Control) Act of 1948 c. 66

Orders

Public Transport Ticketing Schemes Block Exemption

Public Transport Ticketing Schemes Block Exemption (Order 2001) (SI 2001 No 319)

UK NCA documents

CMA Prioritisation principles (2014)

CMA Prioritisation principles of April 2014

CMA Roundtable on the Use of Commitments (2015)

CMA, roundtable on the use of commitments in competition enforcement, Summary note of September 2015


Incorporating the Office of Fair Trading’s guidance as to the circumstances in which it may be appropriate to accept commitments, Understanding competition law of December 2004
Essential Information For Businesses: Warning and Advisory Letters (2016)

Fining Guidelines (2004) OFT, Guidance as to the appropriate amount of a penalty of December 2004

Fining Guidelines (2012) OFT, Guidance as to the appropriate amount of a penalty of September 2012

Fining Guidelines (2018) CMA, Guidance as to the appropriate amount of a penalty of April 2018


OFT Roundtable on Narrow versus Broad Definition of Benefits (2010) OFT, Article 101(3) - A Discussion of Narrow versus Broad Definition of Benefits. Discussion note for OFT breakfast roundtable of 2010


INTERNATIONAL ORGNIZATIONS

ECN


ECN Questionnaire on Regulation 1/2003 (2013)  
ECN Working Group on Cooperation Issues, Results of the questionnaire on the reform of Member States (MS) n of ational competition laws after EC Regulation No. 1/2003 of 22 May 2013

ECN Recommendation on Commitment Procedures (2013)  
Recommendation on Commitment Procedures of December 2013

ECN Recommendation on the Power to Set Priorities (2013)  
Recommendation on the power to set priorities of December 2013

ICN

Cartel Working Group, Anti-Cartel Enforcement Manual, Chapter 4, Cartel Case Initiation of March 2010

ICN Competition Enforcement and Consumer Welfare (2011)  
ICN 10th Annual Confrence, Competition Enforcement and Consumer Welfare, Setting the Agenda, 17-20 of May, 2011

ICN Seminar on Competition Agency Effectiveness (2009)  

OECD

OECD Commitments Report (2016)  
Commitment decisions in antitrust cases, Background paper by the Secretariat, DAF/COMP of 22 of January 2016

OECD Ex officio Cartel Investigations Report (2013)  
Ex officio cartel investigations and the use of screens to detect cartels, DAF/COMP(2013)27, published at 07 of July 2014

Report, Fighting Hard-Core Cartels: Harm, Effective Sanctions and Leniency Programs
OECD Food Chain Industry Report, Note by France (2013)


OECD Horizontal Agreements in the Environmental Context, Note by Germany (2010)


OECD Reforms to Improve the Investment Climate in South East Europe (2006)

Progress in Policy Reforms to Improve the Investment Climate in South East Europe

OECD Regulated Conduct Defence Report (2011)


OECD Regulatory Reform in France (2003)

Reviews of Regulatory Reform, Regulatory reform in France

OECD Regulatory Reform in Germany (2004)

Reviews of Regulatory Reform, Regulatory reform in Germany

OECD Regulatory Reform in Hungary (2000)

Reviews of Regulatory Reform, Regulatory reform in Hungary

OECD Regulatory Reform in the Netherlands (1998)

Reviews of Regulatory Reform, Regulatory reform in the Netherlands

OECD Role of Efficiency Claims in Antitrust Proceedings (2012)


UNCTAD

The importance of coherence between competition policies and government policies, Note by the UNCTAD secretariat of 10 of May 2011

UNCTAD Priority Setting and Discretionary Powers of Competition Authorities (2013)

Priority setting and discretionary powers of competition authorities, Note by the UNCTAD secretariat of 26 of April 2013

UNCTAD Competition Authorities and Judiciaries (2016)

Enhancing legal certainty in the relationship between competition authorities and judiciaries, Note by the UNCTAD secretariat of 17 August 2016
CASE LAW

Cases mentioned in the dissertation. The full list of cases comprising the database is available upon request from the author.

Commission

Commission decision no. IV/4 and IV/3344 Grundig/Consten, of 20 October 1964
Commission decision no. IV/223 Transocean Marine Paint Association, of 27 June 1967
Commission decision no. IV/26625 Clima Chappée-Buderus, of 7 August 1969
Commission decision no. IV/181 CEMATEX, of 24 September 1971
Commission decision no. IV/642 Papier mince, of 26 June 1972
Commission decision no. IV/26825 PRYM-BEKA, of 8 October 1973
Commission decision no. IV/26918 European sugar industry, of 2 January 1973
Commission decision no. IV/26603 Rank/Sopelem, of 20 December 1974
Commission decision no. IV/28374 Advocaat Zwarte Kip, of 24 July 1974
Commission decision no. IV/4847 Saba (1975), para 38-50
Commission decision no. IV/28775 UNIDI, of 17 July 1975
Commission decision no. IV/27073 Bayer/Gist-Brocades, of 15 December 1975
Commission decision no. IV/26940 KEWA, of 23 December 1975
Commission decision no. IV/28967 Bronbemaling V., Heidemaatschappij, of 25 July 1975
Commission decision no. IV/26949 AOIP/Beyrard, of 2 December 1975
Commission decision no. IV/28812 Theal/Watts, of 21 December 1976
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Commission decision no. IV/28980 Pabst & Richarz/BNIA, of 26 July 1976
Commission decision no. IV/27093 De Laval/Stork, of 25 July 1977
Commission decision no. IV/417 BPICA, of 7 November 1977
Commission decision no. IV/29428 GEC-Weir Sodium Circulators, of 23 November 1977
Commission decision no. IV/28824 Maize seed, of 21 September 1978
Commission decision no. IV/26186 Central Stikstof Verkoopkantoor, of 20 July 1978
Commission decision no. IV/29133 WANO Schwarzpulver, of 20 October 1978
Commission decision no. IV/29021 BP Kemi/DDS, of 5 September 1979
Commission decision no. IV/29290 Vaessen/Moris, of 10 January 1979
Commission decision no. IV/14650 Bayerische Motoren Werke, of 12 December 1974
Commission decision no. IV/93 European Machine Tool Exhibitions, of 13 March 1969
Commission decision no. IV/29869 Italiaan cast glass, of 17 December 1980
Commission decision no. IV/428 VBVB/VBBB, of 25 November 1981
Commission decision no. IV/29972 Langenscheidt/Hachette, of 17 November 1981
Commission decision no. IV/29995 ANSEAU-NAVEWA, of 17 December 1981
Commission decision no. IV/29883 AROW/BNIC, of 15 December 1982
Commission decision no. IV/29525 and IV/3000 SSI, of 15 July 1982
Commission decision no. IV/29955 Carbon Gas Technologie, of 8 December 1983
Commission decision no. IV/30064 Cast iron and steel rolls, of 17 October 1983
Commission decision no. IV/30525 International Energy Agency, of 12 December 1983
Commission decision no. IV/30389 and IV/30408 Nutricia-de Rooij Nutricia-Zuid-Hollandse Conservenfabriek, of 12 December 1983
Commission decision no. IV/27492 SMM&T Exhibition Agreement, of 5 December 1983
Commission decision no. IV/30804 Nuovo Cegam, of 10 April 1984
Commission decision no. IV/30810 Synthetic fibres, of 4 July 1984
Commission decision no. IV/30863 BPCL/ICI, of 19 July 1984
Commission decision no. IV/30988 Flat-glass in the Benelux countries, of 23 July 1984
Commission decision no. IV/30350 Zinc producer group, of 16 August 1984
Commission decision no. IV/30307 Fire insurance, of 5 December 1984
Commission decision no. IV/30299 Grohe's distribution system, of 10 December 1984
Commission decision no. IV/30261 Ideal-Standard's distribution system, of 10 December 1984
Commission decision no. IV/30717 Uniform Eurocheques, of 10 December 1984
Commission decision no. IV/30809 John Deere, of 14 December 1984
Commission decision no. IV/29725 Wood pulp, of 19 December 1984
Commission decision no. IV/26870 Aluminium imports from Eastern Europe, of 18 December 1984
Commission decision no. IV/29420 Grundig's EEC distribution system, of 10 July 1985
Commission decision no. IV/30846 Ivoclar, of 21 November 1985
Commission decision no. IV/30373 P&I Clubs, of 16 December 1985
Commission decision no. IV/31149 Polypropylene, of 23 April 1986
Commission decision no. IV/28959 VIFKA, of 30 September 1986
Commission decision no. IV/31055 ENI/Montedison, of 4 December 1986
Commission decision no. IV/261 Belgische Vereniging der Banken/Association Beige des Banques, of 11 December 1986
Commission decision no. IV/31356 ABI, of 12 December 1986
Commission decision no. IV/31458 X/Open Group, of 15 December 1986
Commission decision no. IV/31428 IV/31429 IV/31430 IV/31431 and IV/31432 Yves Rocher, of 17 December 1986
Commission decision no. IV/30937 Pronuptia, of 17 December 1986
Commission decision no. IV/31741 Sandoz, of 13 July 1987
Commission decision no. IV/32034 Computerland, of 13 July 1987
Commission decision no. IV/31739 Internationale Dentalschau, of 18 September 1987
Commission decision no. IV/31902 Ivec/Ford, of 20 July 1988
Commission decision no. IV/30143 Tetra Pak I, of 26 July 1988
Commission decision no. IV/32368 BBC Brown Boveri, of 11 October 1988
Commission decision no. IV/32173 Continental/Michelin, of 11 October 1988
Commission decision no. IV/31498 Delta ChemieDDD, of 13 October 1988
Commission decision no. IV/32358 ServiceMaster, of 14 November 1988
Commission decision no. IV/31697 Charles Jourdan, of 2 December 1988
Commission decision no. IV/27393 and IV/27394 Publishers Association - Net Book Agreements, of 12 December 1988
Commission decision no. IV/31865 PVC, of 21 December 1988
Commission decision no. IV/30979 and IV/31394 Decca Navigator System, of 21 December 1988
Commission decision no. IV/31866 LDPE, of 21 December 1988
Commission decision no. IV/31553 Welded steel mesh, of 2 August 1989
Commission decision no. IV/32265 Concordato Incendio, of 20 December 1989
Commission decision no. IV/33016 Ansac, of 19 December 1990
Commission decision no. IV/32006 Alcatel Espace/ANT Nachrichtentechnik, of 12 January 1990
Commission decision no. IV/32732 Ijsselcentrale, of 16 January 1991
Commission decision no. IV/31559 Sippa, of 15 February 1991
Commission decision no. IV/33473 Scottish Nuclear Energy Agreement, of 30 April 1991
Commission decision no. IV/33157 Eco System/Peugeot, of 4 December 1991
Commission decision no. IV/33100 Assurpol, of 14 January 1992
Commission decision no. IV/31572 and IV/32571 Building and construction industry in the Netherlands, of 5 February 1992
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Commission decision no. IV/33384 and IV/33378 Distribution of package tours during the 1990 World Cup, of 27 October 1992
Commission decision no. IV/33585 Distribution of railway tickets by travel agents, of 25 November 1992
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Commission decision no. IV/33814 Ford/VW, of 23 December 1992
Commission decision no. IV/32150 EBU/Eurovision System, of 11 June 1993
Commission decision no. IV/33374 Ladbroke, of 29 July 1993
Commission decision no. IV/33941 HOV SVZ/MCN, of 29 March 1994
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Commission decision no. IV/34252 Philips-Osram, of 21 December 1994
Commission decision no. IV/33686 Coapi, of 30 January 1995
Commission decision no. IV/34607 Banque Nationale de Paris - Dresdner Bank, of 24 June 1996
Commission press release IP-96-1183 regarding Roundwood trade, of 17 December 1996
Commission decision no. IV/35855 Scandairy of 28 July 1997
Commission decision no. IV/35814 Alloy surcharge, of 21 January 1998
Commission decision no. IV/36494 EACEM, of 15 April 1998
Commission decision no. IV/37231 ACEA, of 11 September 1998
Commission decision no. IV/34466 Greek ferries, of 9 December 1998
Commission decision no. IV/36718 CECED, of 24 January 1999
Commission decision no. IV/36147 EPI code of conduct, of 7 April 1999
Commission decision no. IV/36748 REIMS II, of 15 September 1999
Commission decision no. IV/37634 JAMA, of 1 December 1999
Commission decision no. IV/36851 Mouscron, of 3 December 1999
Commission decision no. IV/35860B 39041 Seamless steel tube, of 8 December 1999
Commission press release IP/96/1183 regarding CECED, of 11 February 2000
Commission press release IP/00/297 regarding Gas Natural/Endesa, of 27 March 2000

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Commission decision no. IV/32150 Eurovision, of 10 May 2000
Commission decision no. COMP/36516 Nathan-Bricolux, of 5 July 2000
Commission decision no. IV/37889 GM/Fiat, of 16 August 2000
Commission decision no. IV/36957 IV/36997 IV/37121 IV/37138 IV/37380 Glaxo Wellcome, of 8 May 2001
Commission decision no. COMP/38359 Electrical and mechanical carbon and graphite products, of 3 December 2003
Commission decision no. COMP/38284 Société Air France/Alitalia Linee, of 7 April 2004
Commission decision no. COMP/38549 Barème d'honoraires de l'Ordre des Architectes belges, of 24 June 2004
Commission decision no. COMP/38069 Copper plumbing tubes, of 3 September 2004
Commission decision no. COMP/38238 Raw Tobacco Spain, of 20 October 2004
Commission decision no. COMP/38662 GDF-ENI, of 26 October 2004
Commission decision no. COMP/38662 GDF-ENEL, of 26 October 2004
Commission decision no. COMP/37214 DFB, of 19 January 2005
Commission decision no. COMP/38281 Raw Tobacco Italy, of 10 October 2005
Commission decision no. COMP/38173 The Football Association Premier League Limited, of 22 March 2006
Commission decision no. COMP/38348 Repsol, of 12 April 2006
Commission decision no. COMP/39151 39152 SABAM and BUMA, of 4 October 2006
Commission decision no. COMP/38681 Cannes Agreement, of 4 October 2006
Commission decision no. COMP/39140 DaimlerChrysler, of 14 September 2007
Commission decision no. COMP/37860 Morgan Stanley Dean Witter/Visa, of 2 October 2007
Commission decision no. COMP/38606 Cartes bancaires, of 17 October 2007
Commission decision no. COMP/34579 COMP/36518 and COMP/38580 MasterCard I, of 19 December 2007
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Commission decision no. COMP/39188 Bananas, of 15 October 2008
Commission decision no. COMP/39401 E.ON/GDF, of 22 July 2009
Commission decision no. COMP/39396 Calcium carbide and magnesium based reagents, of 22 July 2009
Commission decision no. COMP/39471 Certain joueur de tennis professionnel/Agence mondiale antidopage, of 13 October 2009
Commission decision no. COMP/39416 Ship Classification, of 14 October 2009
Commission decision no. COMP/38589 Heat stabilisers, of 11 November 2009
Commission decision no. COMP/38866 Animal Feed Phosphates, of 20 July 2010
Commission decision no. COMP/39258 Airfreight, of 9 November 2010
Commission decision no. COMP/39510 Ordre National des Pharmaciens, of 8 December 2010
Commission decision no. COMP/39673 Virtual Print Fee agreements, of 4 March 2011
Commission decision no. COMP/39482 Exotic fruit (Bananas), of 12 October 2011
Commission decision no. COMP/39847 Ebooks, of 12 December 2012
Commission decision no. COMP/39230 Rio Tinto Alcan, of 21 December 2012
Commission decision no. COMP/39839 Telefonica and Portugal Telecom, of 23 January 2013
Commission decision no. COMP/39595 Continental/United/Lufthansa/Air Canada, of 23 May 2013
Commission decision no. COMP/39226 Lundbeck, of 19 June 2013
Commission decision no. COMP/39633 Shrimps, of 27 November 2013
Commission decision no. COMP/39685 Fentanyl, of 10 December 2013
Commission decision no. COMP/39612 Perindopril (Servier), of 9 July 2014
Commission decision no. COMP/39921 Refusal to provide payment services, of July 2014
Commission decision no. COMP/39097 Watch Repair, of 29 July 2014
Commission decision no. COMP/40023 Cross-border access to pay-TV, of 26 July 2016
Commission decision no. COMP/50343 Light fittings, of 21 June 2017
Commission decision no. COMP/40208 International Skating Union’s Eligibility rules, of 8 December 2017

**Court of Justice**

C-1/12 Ordem dos Técnicos Oficiais de Contas, ECLI:EU:C:2013:127
C-107/84 Commission v Germany, ECLI:EU:C:1985:332
C-108/09 Online distribution of contact lenses, ECLI:EU:C:2010:725
C-119/97P Ufex and Others v Commission, ECLI:EU:C:1999:116
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C-123/83 BNIC, ECLI:EU:C:1985:33
C-127/73 SABAM, ECLI:EU:C:1974:6
C-13/61 Bosch, ECLI:EU:C:1962:11
C-13/77 INNO, ECLI:EU:C:1977:185
C-136/12 Consiglio nazionale dei geologi, ECLI:EU:C:2013:489
C-136/86 BINC, ECLI:EU:C:1987:524
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C-14/68 Walt Wilhelm, ECLI:EU:C:1969:4
C-140/94 C-141/94 C-142/94 DIP SpA, ECLI:EU:C:1995:330
C-15/74 Centeafarm, ECLI:EU:C:1974:114
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C-17/74 Transocean Marine Paint, ECLI:EU:C:1974:106
C-171/05P Laurent Piau v. Commission, EU:C:2006:149
C-172/80 Züchner, ECLI:EU:C:1981:178
C-189/02 Dansk Rørindustri, ECLI:EU:C:2005:408
C-19/77 Miller International Schallplatten GmbH, ECLI:EU:C:1978:19

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C-19/92 Yves Saint Laurent Perfumes, ECLI:EU:C:1993:125
C-193/83 Windsurfing surfing Internationa, ECLI:EU:C:1986:75
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C-2/91 Meng, ECLI:EU:C:1993:885
C-210/81 REVOX, ECLI:EU:C:1983:277
C-218/00 Cisl di Battistello Venanzio & C. Sas, ECLI:EU:C:2002:36
C-219/00P Cementir, CLI:EU:C:2002:337
C-222/98 Hendrik van der Woude, ECLI:EU:C:2000:475
C-226/11 Expedia, EU:C:2012:795
C-229/83 Leclerc, ECLI:EU:C:1985:1
C-23/99 Pre-Insulated Pipe Cartel, ECLI:EU:C:2000:500
C-230/16 Coty, ECLI:EU:C:2017:941
C-230/96 Cabour, ECLI:EU:C:1998:181
C-231/83 Cullet, CLI:EU:C:1985:29
C-234/89 Delimitis ECLI:EU:C:1991:91
C-235/92P Polypropylene, ECLI:EU:C:1999:362
C-238/05 Asnef-Equifax, Servicios de Información sobre Solvencia y Crédito, SL v. Asociación de Usuarios de Servicios Bancarios, EU:C:2006:734
C-243/83 Binon, ECLI:EU:C:1985:284
C-245/91 Ohra Schadeverzekeringen, ECLI:EU:C:1993:887
C-248/98P Cartonboard, ECLI:EU:C:2000:625
C-250/03 Giorgio Emanuele Mauri, ECLI:EU:C:2005:96
C-250/92 Gøttrup-Klim Grovvareforening, ECLI:EU:C:1994:413
C-258/78 Maize seed, ECLI:EU:C:1982:211
C-26/76 Metro, ECLI:EU:C:1977:167
C-264/95P Distribution of railway tickets by travel agents, ECLI:EU:C:1997:143
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C-279/95P Langnese-Iglo, ECLI:EU:C:1998:447
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C-343/95 Cali, ECLI:EU:C:1997:160
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C-35/99 Manuele Arduin, ECLI:EU:C:2002:97
C-350/07 Kattner Stahlbau, ECLI:EU:C:2009:127
C-375/09 Tele2 Polska, ECLI:EU:C:2011:270
C-38/97 Autotrasporti Librandi Snc di Librandi F. & C., ECLI:EU:C:1998:454
C-382/12P MasterCard Inc., EU:C:2014:2201
C-386/07 Hospital Consulting, ECLI:EU:C:2008:256
C-399/93 H. G. Oude Luttkhuis, ECLI:EU:C:1995:434
C-401/96P Asia Motor France III, ECLI:EU:C:1998:208
C-41/90 Höfner, ECLI:EU:C:1991:161
C-413/13 FNV Kunsten Informatie en Media, ECLI:EU:C:2014:2411
C-42/84 Nutricia-de Rooij and Nutricia-Zuid-Hollandse Conservenfabriek, ECLI:EU:C:1985:327
C-437/09 AG2R Prévoyance, ECLI:EU:C:2011:112
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C-450/98P IECC, ECLI:EU:C:2001:276
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C-47/76 De Norre, ECLI:EU:C:1977:11
C-475/99 Ambulanz Glöckner, ECLI:EU:C:2001:577
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Joined Cases C-209/84 C-210/84 C-211/84 C-212/84 C-213/84 Asjes, ECLI:EU:C:1986:188
Joined Cases C-253/78 C-3/79 Procureur de la République, ECLI:EU:C:1980:188

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Joined Cases C-264/01 C-306/01 C-354/01 C-355/01 AOK Bundesverband, ECLI:EU:C:2004:150
Joined Cases C-359/95P C-379/95P Ladbrooke, ECLI:EU:C:1997:531
Joined Cases C-40/73 C-41/73 to 48/73 C-50/73 C-54/73 to 56/73 C-111/73 C-113/73 C-114/73 European sugar industry, ECLI:EU:C:1975:174
Joined Cases C-403/08 C-429/08 Football Association Premier League Ltd, ECLI:EU:C:2011:631
Joined Cases C-427/16 C-428/16 CHEZ, ECLI:EU:C:2017:890
Joined Cases C-43/82 and C-63/82 VBVB/VBBB, ECLI:EU:C:1984:9
Joined Cases C-501/06P C-513/06P C-515/06P C-519/06P GlaxoSlimKline, ECLI:EU:C:2009:610
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Joined cases C-8/66 C-9/66 C-10/66 C-11/66 Noordwijks Cement Accord, ECLI:EU:C:1967:7
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Joined Cases C-94/04 C-202/04 Federico Cipolla, ECLI:EU:C:2006:758

GC

Joined Cases T-101/05 T-111/05 BASF UCB, ECLI:EU:T:2007:380
Joined Cases T-185/00 T-216/00 T-299/00 T-300/00 Eurovision, ECLI:EU:T:2002:242
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Joined Cases T-49/02 T-50/02 T-51/02 Brasserie, ECLI:EU:T:2005:298
Joined Cases T-71/03 T-74/03 T-87/03 T-91/03 Speciality Graphite, ECLI:EU:T:2005:220
Joined Cases T-79/95 80/95 Eurotunnel, ECLI:EU:T:1996:155
T-106/95 FFSA, ECLI:EU:T:1997:23
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T-148/89 Welded steel mesh, ECLI:EU:T:1995:68
T-168/01 GlaxoSlimKline, ECLI:EU:T:2006:2969
T-17/02 Fred Olsen, ECLI:EU:T:2005:218
T-17/93 Ford/Volkswagen, ECLI:EU:T:1994:89
T-185/00 Eurovision, ECLI:EU:T:2002:242
T-19/91 Vichy, ECLI:EU:T:1992:28
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T-208/13 Telefónica/Portugal Telecom, ECLI:EU:T:2016:368
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Conseil de la concurrence decision no. 06-D-03 Heating, ceramic sanitary and plumbing equipment, of 6 March 2006
Conseil de la concurrence decision no. 06-D-11 Turbo Europe, of 16 May 2006
Conseil de la concurrence decision no. 06-D-37 Cycle and cycle products, of 7 December 2006
Conseil de la concurrence decision no. 07-D-04 Jeff de Bruges chocolates, of 24 January 2007
Conseil de la concurrence decision no. 07-D-05 UFOP, of 21 February 2007

FR

Autorité de la concurrence decision no. 09-D-18 Marseille transportation, 2 June 2009
Autorité de la concurrence decision no. 09-D-25 Work on railway tracks, 29 July 2009
Autorité de la concurrence decision no. 09-D-31 Football rights, 1 October 2009
Autorité de la concurrence decision no. 10-D-13 Le Havre Port, 15 April 2010
Autorité de la concurrence decision no. 10-D-28 Exchanges Check-Image Fee, 20 September 2010
Autorité de la concurrence decision no. 10-D-35 Welding electrodes, 15 December 2010
Autorité de la concurrence decision no. 11-D-01 Cargo handling in La Réunion, 18 January 2011
Autorité de la concurrence decision no. 11-D-02 Restoration of historical monuments, of 26 January 2011
Autorité de la concurrence decision no. 11-D-17 Laundry detergents, of 8 December 2011
Autorité de la concurrence decision no. 12-D-08 Endives, of 6 March 2012
Autorité de la concurrence decision no. 12-D-19 Tooth whitening, of 26 September 2012
Autorité de la concurrence decision no. 12-D-26 Fire extinguishers, of 20 December 2012
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Autorité de la concurrence decision no. 14-D-20 Wallpaper, of 22 December 2014
Autorité de la concurrence decision no. 15-D-19 Standard and express delivery, 15 December 2015
Autorité de la concurrence informal opinion no. 09-A-48 Dairy, of 2 October 2009
Autorité de la concurrence informal opinion no. 09-A-50 Cinema code, of 8 October 2009
Autorité de la concurrence informal opinion no. 09-A-56 Digital books, of 18 December 2009
Autorité de la concurrence informal opinion no. 10-A-10 Chartered accountants, of 27 May 2010
Autorité de la concurrence informal opinion no. 13-A-08 Network sharing and roaming, of 11 March 2013
Autorité de la concurrence informal opinion no. 15-A-02 Regulated professions, of 9 January 2015
Autorité de la concurrence press release regarding Adidas of 18 November 2015
Conseil de la concurrence decision no. 05-D-32 Dry dog food, of 22 June 2005
Conseil de la concurrence decision no. 05-D-48 Taximeters, of 28 July 2005
Conseil de la concurrence decision no. 05-D-60 Transport to Saint Honorat, of 9 November 2005
Conseil de la concurrence decision no. 06-D-03 Heating, ceramic sanitary and plumbing equipment, of 6 March 2006
Conseil de la concurrence decision no. 06-D-11 Turbo Europe, of 16 May 2006
Conseil de la concurrence decision no. 06-D-37 Cycle and cycle products, of 7 December 2006
Conseil de la concurrence decision no. 07-D-04 Jeff de Bruges chocolates, of 24 January 2007
Conseil de la concurrence decision no. 07-D-05 UFOP, of 21 February 2007
Conseil de la concurrence decision no. 07-D-16 Cereals, of 9 May 2007
Conseil de la concurrence decision no. 08-D-06 Specialist Physicians Overcharging Fees, of 2 April 2008
Conseil de la concurrence decision no. 08-D-09 Funeral parlour in Lyon, of 6 May 2008
Conseil de la concurrence decision no. 08-D-32 Steel trading, of 16 December 2008
Conseil de la concurrence decision no. 08-D-34 Funeral services in Marseille, of 22 December 2008
Conseil de la concurrence decision no. 09-D-05 Temporary employment sector, of 2 February 2009
Conseil de la concurrence informal opinion no. 04-A-13 Assistance with employment, of 12 July 2004
Conseil de la concurrence informal opinion no. 05-A-23 Electricity purchases by intensive industrial users, of 5 December 2005
Conseil de la concurrence informal opinion no. 06-A-07 Fair trade, of 27 March 2006
Conseil de la concurrence informal opinion no. 08-A-07 Organisation of fruit and vegetable processing industry, of 7 May 2008

Paris Court of Appeal
2005/15784 Dental surgeons in Puy-de-Dôme, of 20 February 2007
2006/07820 Heating, ceramic sanitary and plumbing equipment, of 29 January 2008
2006/18379 Access of local radios to national advertisement, of 6 November 2007
2007/00370 Cycle and cycle products, of 4 March 2008
2007/13915 Distribution of Medicine (I), of 26 November 2008
2008/01095 Distribution of Medicine (III) (2009), of 26 November 2008
2008/08385 Specialist Physicians Overcharging Fees (2009), of 18 March 2009
2008/12495 Plywood manufactures, of 29 September 2009
2009/00334 Steel trading, of 19 January 2010
2009/03532 Temporary employment sector, of 26 January 2010
2010/20555 Exchanges Check-Image Fee, of 23 February 2012
2012/06498 Endive, of 15 May 2014
2012/06826 Flour mill, of 20 November 2014
2014/22811 Electrification and electrical installation, of 21 January 2016

Cour de cassation
08/70449 Distribution of Medicine (I), of 2 February 2010
08/70450 Distribution of Medicine (II), of 2 February 2010
08/70451 Distribution of Medicine (III), of 2 February 2010
09/13494 09/66021 Specialist Physicians Overcharging Fees, of 7 April 2010
10/12913 10/13686 Temporary employment sector, of March 2011
12/15971 Exchanges Check-Image Fee, of 14 April 2015
14/19589 Endive, of 8 December 2015

Other
03174 Aéroport de Paris, of 18 October 1999 (Tribunal des conflits)

GR

Bundeskartellamt
Bundeskartellamt decision no. B4-1006/06 Container glass, of 31 May 2007
Bundeskartellamt decision no. B8-113/03 Long-term gas supply, of 13 January 2006
Bundeskartellamt press release regarding Joint selling of media rights, of 17 July 2008
Bundeskartellamt decision no. B3-144/08 Colistin antibiotics, of 25 May 2009
Bundeskartellamt decision no. B2-90/01-2 Timber of 29 January 2009
Bundeskartellamt decision no. B4-152/07 Coordination of tenders for sales packaging waste collection services by compliance schemes, of 31 March 2011
Bundeskartellamt decision no. B3-130/11 Associations of Ophthalmologists, of 2 May 2012
Bundeskartellamt decision no. B6-46/12 Amazon, of 26 November 2013
Bundeskartellamt decision no. B8-175/11 Titisee-Neustadt, of 28 January 2015
Bundeskartellamt decision no. B1-62/13 Rental of retail space in factory outlet centres, of 26 February 2015
Bundeskartellamt decision no. B9-121/13 Booking.com, of 23 December 2015
Bundeskartellamt press release regarding Sanitary sector, of 22 March 2016
Bundeskartellamt decision no. B9-66/10 HRS-Hotel Reservation Service, of 20 December 2013
Bundeskartellamt decision no. B4-71/10 Online banking conditions, of 29 June 2016
Bundeskartellamt decision no. B4-9/11 B4-94/11 Electronic cash card payment system, of 30 April 2014
Bundeskartellamt decision no. B1-25/04 Verta/Danzer, of 17 June 2004
Bundeskartellamt decision no. B2-90/01-3 Timber, of 3 March 2009
Bundeskartellamt decision no. B3-137/12 Adidas, of 27 June 2014
Bundeskartellamt decision no. B2-98/11 ASICS, of 26 August 2015
Bundeskartellamt decision no. B7-30/07-1 Fire detection systems in Düsseldorf, of 27 May 2013
Bundeskartellamt decision no. B3-06/05 OTC medicines - Land pharmacist, 21 December 2007
Bundeskartellamt decision no. B4-31/05 Pecuniary loss liability risks for auditors and chartered accountants, of 13 August 2007
Bundeskartellamt decision no. B2-90/01-1 Timber, of 17 September 2009
Bundeskartellamt decision no. B12-14/10 Household porcelain in Germany, of 17 October 2013
Bundeskartellamt decision no. B3-11/13 Ophthalmologists – AOK, of 24 June 2013
Bundeskartellamt decision no. B3-11/13 Ophthalmologists – AÄGB, of 1 July 2013
Bundeskartellamt decision no. B10-148/05 Lottery, of 23 August 2006
Bundeskartellamt press release regarding Yomo, of 14 September 2016
Bundeskartellamt decision no. B2-90/01-4 Timber, of 9 December 2008

**OLG Düsseldorf**

VI-2 Kart 1/06 (V) Long-term gas supply, of 4 October 2007
VI-2 Kart 12/04 (V) Verta/Danzer, of 10 June 2005
VI-Kart 1/14 (V) HRS, of 9 January 2015
VI-Kart 1/16 (V) Booking, of 4 May 2016
VI-Kart 10/15 (V) Round timber in Baden-Württemberg, of 15 March 2017
VI-Kart 11/07 (V) Pecuniary loss liability risks for auditors and chartered accountants, of 17 September 2008
VI-Kart 13/15(V) ASICS, of 5 April 2017
VI-Kart 5/09 (V) Merck and VWR distribution agreement, of 12 November 2013

BGH Kartellsenat

KVR 34/08 Pecuniary loss liability risks for auditors and chartered accountants, of 23 June 2009
KVR 67/08 Long-term gas supply, of 10 February 2009
KVZ 41/17 ASICS, of 12 December 2017

Other

11 U 84/14 Kart Deuter Sport, of 22 December 2015 (Higher Regional Court of Frankfurt)

HU

GVH

GVH decision no. Vj-1/2008 Hungarian Real Estate Association, of 12 September 2008
GVH decision no. Vj-141/2004 Plant protection products, of 1 June 2005
GVH decision no. Vj-154/2004/16 Distribution of tobacco products, of 1 February 2005
GVH decision no. Vj-161/2004/59 Animal Feed Phosphates II, of 21 March 2006
GVH decision no. Vj-18/2008 Uniform interchange fee levels, of 24 September 2009
GVH decision no. Vj-191/2006/10 Euronics, of 12 July 2007
GVH decision no. Vj-23/2005 Râba Group and Integris, of 9 June 2005
GVH decision no. Vj-3/2008 Rail freight transport services, of 27 April 2012
GVH decision no. Vj-43/2005/33 waste management, of 24 August 2006
GVH decision no. Vj-60/2004 Budapest Sports Stadium, of 8 September 2005
GVH decision no. Vj-62/2012 Watermelon, of 10 April 2013
GVH decision no. Vj-66/2012 Geophysical measuring operations, of 18 May 2014
GVH decision no. Vj-69/2008 Wheat mill products I, of 28 October 2010
GVH decision no. Vj-7/2008/178 Motor oils and lubricants, of 19 March 2009
GVH decision no. Vj-74/2003/117 White flour, of 19 October 2004
GVH decision no. Vj-74/2011 Mortgage loans, of 19 November 2013
GVH decision no. Vj-78/2013, MasterCard and OTP, of 14 May 2015
GVH decision no. Vj-96/2009-177, Book market, of 23 May 2013
Budapest Metropolitan/Metropolitan Administrative and Labour Court

2K.30863/2009/8 Hungarian Bar Association of attorneys, of 29 October 2009

Budapest Appeal/Metropolitan Court of Budapest

2.Kf.27.280/2008/7 Hungarian Association of Book Publishers and Retailers, of 14 January 2009
2.Kf.27.027200814 Waste management, of 18 October 2008
2.Kf.27.672/2008/7 Newspaper distribution I, of 22 April 2009
2.Kf.649.964/2013/20 Wheat mill products I, of 5 March 2014
1.Kf.650.154/2016/10 Mosquito control, of 13 December 2017

NL

Nma/ACM

ACM decision no. 7244-597, Magazine packs, of 7 November 2013
ACM informal opinion no. 12.0256.53, Veterinarian contracts, of 8 November 2013
ACM informal opinion no. 14.1134.15, ATMs in rural areas, of 18 December 2014
ACM informal opinion no. ACM/DM/2013/205913, De Stroomversnelling, of 2 November 2012
ACM informal opinion no. ACM/DM/2014/206028, Chicken for tomorrow, 26 January 2015
ACM informal opinion, Coal power plants, of 26 September 2013
Na decision no. 6824, Health insurers, of 12 April 2010
NNa decision no. 2501, Assen pharmacies, of 21 June 2004
NNa decision no. 2688, Tilburg pharmacies, 21 June 2004
NNa decision no. 3031, Temporary employment bureau, of 10 December 2004
NNa decision no. 3371, Branch Associations for Maritime Container Transportation, of 25 March 2005
NNa decision no. 4014, Horticultural Services, of 15 December 2005
NNa decision no. 4108-195, Nozema/Broadcast NT, of 21 November 2005
NNa decision no. 4814-31, Installation, of 22 November 2005
NNa decision no. 5170 VGT (reassessment), of 24 October 2006
NNa decision no. 5170, VGT, of 8 November 2005
NNa decision no. 5851-121, Thuiszorg 't Gooi, of 19 September 2008
NNa decision no. 6091_1/204, Distributors of sodium hypochlorite, of 12 November 2009
NNa decision no. 6109/258, Thuiszorg Kennemerland, of 19 September 2008
NNa decision no. 6109/814, Caraat, of 21 April 2011
NNa decision no. 6274/569, Midden IJssel, of 21 October 2010
NNa decision no. 6425, Window cleaners, of 20 December 2011
NNa decision no. 6429_1/176, Kazerne I, of 5 June 2009
NNa decision no. 6430_1/131, Meiveld, of 21 August 2009
NNa decision no. 6431_1/172, Kazerne II, of 5 June 2009
NNa decision no. 6442, WMO Friesland (reassessment), of 23 July 2012
NNa decision no. 6492_1/146, De Tongelreep, of 21 August 2009
NNa decision no. 6601_1/141, Meerhoven, of 29 December 2009
NNa decision no. 6888/435, LHV pace of establishment (reassessment), of 3 February 2014
NNa decision no. 6888/435, LHV pace of establishment, of 30 December 2011
NNa decision no. 7036_1/386, Bell peppers, of 15 May 2012
NNa decision no. 7213, NPO, of 27 April 2012
NNa decision no. 7377, SGR c.s., of 10 January 2013
NNa informal opinion no. 5194, Over-the-Counter Payment Services Covenant, of 14 November 2005
NNa informal opinion no. 6455, Boars castration, of 27 October 2008
NNa informal opinion no. 7011/23.827, MSC Shrimp Fishery, of 18 April 2011
NNa informal opinion, Royal Dutch Society for Physical Therapy (KNGF), of 21 October 2010

District Court
MEDED 06/4638 STRN VGT, of 5 November 2007
ROT 13/1174 Houses merchants foreclosure auctions, of 18 December 2014
ROT 15/1219 Veterinarian contracts, of 7 April 2016
ROT 15/6209 Magazine packs, of 27 July 2017

CBB
AWB 15/431 WMO Friesland, of 11 January 2017

Other
C/13/615474/HA ZA 16-959 Nike, of 4 October 2017 (District Court of Amsterdam)

UK

OFT/CMA and sector regulators
Decision of the Civil Aviation Authority no. CA98-001, East Midlands International Airport, of January 2017
Decision of the Competition and Markets Authority no. 50223 Posters and frames, of 12 August 2016
Decision of the Competition and Markets Authority no. 50230 Golf equipment, of 24 August 2017
Decision of the Competition and Markets Authority no. 50283 Cleanroom laundry services, of 14 December 2017
Decision of the Competition and Markets Authority no. CE-9531/11, Paroxetine - IVAX/GSK agreement, of 12 February 2016
Decision of the Competition and Markets Authority no. CE-9859-14, Modelling, of 16 December 2016
Decision of the Competition and Markets Authority no. CE/9691/12, Galvanised steel tanks – Main, of 19 December 2016
Decision of the Competition and Markets Authority no. CE/9784-13, Ophthalmology sector, of 20 August 2015
Decision of the Competition and Markets Authority no. CE/9856/14, Refrigeration, of 24 May 2016
Decision of the Competition and Markets Authority no. CE/9857-14, Bathroom fittings, of 10 May 2016
Decision of the Gas and Electricity Markets Authority, Energy Trade Association, of 28 June 2013
Decision of the Gas and Electricity Markets Authority, Price comparison websites, of 15 March 2016
Decision of the Office of communications no. CW/00842/06/05, BBC broadcast’s provision, of 30 May 2007
Decision of the Office of Fair Trading no. CA98/05/05, MasterCard, of 6 September 2005
Decision of the Office of Fair Trading no. CE/2471-03, Oakley (Case closure summary), of 1 August 2008
Decision of the Office of Fair Trading no. CE/2596-03, Tobacco, of 15 April 2010
Decision of the Office of Fair Trading no. CE/3094-03, Dairy retail price initiatives, of 26 July 2011

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Decision of the Office of Fair Trading no. CE/7691-06, Airline passenger fuel surcharges for long-haul flights, of 19 April 2012
Decision of the Office of Fair Trading no. CE/9320-10, Hotel online booking, of 31 January 2014
Decision of the Office of Fair Trading no. CE/9578-12, Mobility scooters, of 27 March 2014
Decision of the Office of Fair Trading, no CA98/03/2005, TV Eye, of 24 May 2005
Decision of the Office of Rail and Road, Provision of Deep Sea Container rail transport services between ports and key inland destinations in Great Britain, of 18 December 2015
Decision of the Office of Rail Regulation no. #213479.02, Electric trackside lubricators, of 12 August 2005
Decision of the Office of Fair Trading, no. CE/9320-10, Hotel online booking, of 31 January 2014
Decision of the Office of Fair Trading no. CE/9578-12, Mobility scooters, of 27 March 2014
Decision of the Office of Fair Trading no. CE/7691-06, Airline passenger fuel surcharges for long-haul flights, of 19 April 2012

CAT
1035/1/1/04 and 1041/2/1/04, Racecourse Association, [2005] CAT 29
1054/1/1/05 1055/1/1/05 1056/1/1/05 MasterCard, [2006] CAT 14
1067/1/1/06 Price fixing and market sharing in stock check pads, [2006] CAT 24
1071-2-1-06 Cityhook, [2007] CAT 18
1117/1/1/09 1123/1/1/09 1134/1/1/09 1135/1/1/09 1138/1/1/09 1139/1/1/09 Bid rigging in the construction industry in England, [2011] CAT 7
1120/1/1/09 Bid rigging in the construction industry in England, [2011] CAT 11
1125/1/1/09 1128/1/1/09 1130/1/1/09 1131/1/1/09 1136/1/1/09 1137/1/1/09 Bid rigging in the construction industry in England, [2011] CAT 9
1160/1/1/10 1161/1/1/10 1162/1/1/10 1163/1/1/10 1164/1/1/10 1165/1/1/10 Tobacco, [2011] CAT 41
1226/2/12/14 Hotel online booking, [2014] CAT 16

Court of Appeal
BIBLIOGRAPHY


Brook, O. & Cseres, K., 2019 (forthcoming) Member state interest in the enforcement of EU competition law: a case study of Article 101 TFEU. In M. Varju, ed. *Between compliance and particularism: Member State interests and European Union Law*. Springer Berlin Heidelberg.


Franck, J.-U., 2017. Defining the Leeway for Business Cooperation- Remaining Peculiarities under German Competition Law after Its Europeanisation,


Geradin, D., 2006. Efficiency Claims in EC Competition Law and Sector-Specific Regulation The evolution of European competition law: whose regulation, which competition? In H. Ullrich, ed. The evolution of European competition law: whose regulation, which competition?. Edward Elgar.


Horváth, B. & Tóth, T., 2016. Antitrust cases in the financial services sector - an overview of seminal Hungarian and EU cases. Nr. 2016/6.,


Korah, V., 1982. Competition law of Britain and the Common Market, BRILL.


Liefmann, R., 1932. Cartels, concerns and trusts, Methuen.

Lista, A., 2013. EU competition law and the financial services sector, Taylor & Francis.


Mehta, P., 2006. Competition regimes in the world: A civil society report. Available at: https://scholar.google.nl/scholar?hl=en&q=competition+regimes+in+the+world+-a+civil+society+report&btnG=&as_sdt=1%2C5&as_sdtp=#0.


Mendes, J., 2014. Law, Public Interest and Interpretation: Prolegomena of a Normative Framework on Administrative Discretion in the EU,


Parret, L., 2009. *Do we (still) know what we are protecting? The discussion on the objectives of competition law from different perspectives*. TILEC Discussion paper 2009-10.


Ritchie, J. et al., 2013. Qualitative research practice: A guide for social science students and researchers, SAGE.


Sauter, W., 2016. Coherence in EU Competition Law, Oxford University Press.


Turner, J.D.C., 2010. Intellectual property and EU competition law, Oxford University Press.


The role of non-competition interests in the enforcement of Article 101 TFEU is subject to a decades-long debate. The vague wording of this provision suggests that there is room for consideration of non-competition interests, but it details neither the precise extent of such balancing nor the test guiding it.

Over the years, the Council, Commission, EU Courts, and European Parliament have repeatedly endorsed consideration of non-competition interests within the enforcement of Article 101 TFEU. They have emphasised that EU competition law is not an end unto itself, but rather an instrument for achieving the EU Treaty’s economic and social goals. Despite this, the rationale, method, and limits for considering non-competition interests remain persistently subject to legal and political discussion. Favouring consensus over clarity, the EU institutions and the Member States have never codified the Article’s goals or defined a comprehensive balancing framework in EU primary or secondary law.

The debate over the role of non-competition interests was revived around the turn of the millennium, upon the modernisation of EU competition law enforcement. Each of the three pillars of modernisation raised fundamental challenges as to the future role of non-competition interests:

Under the first substantive pillar of modernisation, the Commission adopted a set of guidelines and notices introducing more stringent economic thinking to EU competition law and policy. Those policy papers considerably reduced the role of non-competition interests under the Article. Subsequently, many non-competition interests that had previously been taken into account under Article 101 TFEU were no longer applicable in the Commission’s view.

In parallel, Regulation 1/2003, which entered into force in May 2004, swept away the old centralised notification regime in favour of radical institutional and procedural reform. The institutional pillar of modernisation, has decentralised the enforcement of Article 101 TFEU; national competition authorities and courts were entrusted with discretionary powers allowing them to fully apply Article 101 TFEU and to balance competition and non-competition interests. Since the Commission’s policy papers are binding on the Commission alone, NCAs may adopt diverging interpretations. They enjoy a wide margin of discretion to shape their national approaches to balancing on the basis of their respective legal, economic, and social traditions,
bearing the serious risk that Article 101 TFEU is not enforced in a uniform manner across the EU.

Finally, the procedural pillar of modernisation has switched from a notification to a self-assessment regime. Accordingly, the Commission does not longer evaluate the compatibility of an agreement with Article 101 TFEU prior to its implementation. Rather, undertakings must evaluate whether non-competition interests can justify their otherwise anti-competitive agreement.

The combined effects of the three pillars of modernisation bear the serious risk that non-competition interests are not being taken into account in an effective, uniform and legal certain manner across the EU. Indeed, an impressive array of legal scholarship has already explored the changing role of non-competition interests under Article 101 TFEU from historical, constitutional and economic perspectives. Yet, thus far only limited attention has been given to the manner in which the EU and national competition enforcers have actually administered this balancing.

Against this backdrop, the dissertation takes a novel combination of empirical, doctrinal, and normative approaches. It is based on a large quantitative and qualitative analysis of all Article 101 TFEU proceedings investigated by the Commission, EU Courts and the NCAs and courts of five representative Member States from the creation of the EEC in 1958 through 2017. Covering more than 3100 proceedings, the empirical insights offer a systematic overview of balancing as applied in practice. This empirical approach not only assists in identifying explicit forms of balancing in which the competition enforcers have overtly considered non-competition interests; it also sheds light on the so-called “dark matter” of balancing, namely the invisible forms of balancing triggered by the institutional setup and specific procedures of the competition enforcers.

More specifically, the empirical findings uncover six balancing tools that were used to account for non-competition interests. First, it examines substantive balancing tools, namely (i) Article 101(3) TFEU individual exemptions/exceptions; (ii) Block Exemption Regulations; and (iii) Article 101(1) TFEU exceptions. Second, the dissertation studies (iv) national balancing tools, originating from Member States’ rules. And third, procedural balancing tools, embedded in the (v) remedies imposed for an Article 101 TFEU infringement (accepting commitment or moderating fines) and (vi) priority setting choices of the various competition enforcers.
The dissertation is structured around those six balancing tools. Each chapter provides an empirical and legal overview of one balancing tool, mapping the quantitative and qualitative aspects of balancing as applied in practice. It highlights the frequency of invoking and accepting the balancing tool, and analyses the type of benefits that were taken into account, the balancing process, and the intensity of control. Moreover, each chapter examines the role of EU and national courts in scrutinising the application of the balancing tools. It illustrates that the courts have adopted diverse approaches to balancing, which have in turn left the Commission and NCAs with different levels of discretion to balance. Finally, each chapter evaluates the compatibility of a balancing tool with the objectives of Article 101 TFEU enforcement (i.e. effectiveness, uniformity and legal certainty).

The dissertation proves wrong the commonly-held view that the modernisation of EU competition law in May 2004 removed non-competition interests from the enforcement of Article 101 TFEU. It shows that non-competition interests have played and continue to play an important role in the enforcement of Article 101 TFEU. Nevertheless, the dissertation points to a remarkable three-fold shift in the manner in which non-competition interests are being taken into account in the post-modernisation era:

First, the dissertation reveals a shift in the types of balancing tools employed in practice, transitioning from substantive to procedural balancing tools. It demonstrates that prior to the modernisation, substantive balancing tools embedded in Articles 101(1) and (3) TFEU have facilitated much of the balancing debate. Yet, following modernisation, they have rarely been invoked or accepted. Instead, the balancing has shifted to national and procedural balancing tools, that is, remedies and priority setting decisions.

Second, it identifies a shift in locus of the balancing tools, from EU-based to Member States-based balancing. The dissertation uncovers a mutually determinative connection between EU and national balancing principles. It shows that Member States were not only affected by EU balancing rules when they enforced Article 101 TFEU; they also affected the scope of the prohibition of Article 101 TFEU by interpreting the EU balancing tools and adopting unique national rules. Consequently, decentralisation has afforded the Member States a new opportunity to interpret and supplement the EU balancing framework.

Third, the dissertation reports a change in the institutional dynamics governing balancing. It shows that the EU Courts, and especially the CJEU, had an active role in shaping the balancing
principles in the past. Nevertheless, when the Commission embarked on the substantive modernisation in the early 2000s, it also took the reins on the development of the balancing principles. Although the EU Courts have not fully embraced the Commission’s new approach (i.e. with respect to the types of benefits that can be examined under the Article, the reference to the short-term narrow consumer welfare standard, the sole reliance on economic evidence, and the Commission’s new approach to by-object restrictions), they have not staked out a clear position on those matters. Instead, the EU Courts have only played a passive-reactive role with respect to balancing following modernisation.

The three shifts in balancing, the dissertation concludes, have hindered the attainment of the very objectives of Regulation 1/2003, namely an effective, uniform, and legal certain enforcement. Consequently, while the modernisation of EU competition law might have been successful in general, its effect on the role of non-competition interests under Article 101 TFEU has been counterproductive.
SAMENVATTING

De rol van niet-mededingingsbelangen bij de handhaving van Artikel 101 VWEU is al decennialang voer voor discussie. De vage verwoording van deze bepaling doet vermoeden dat er ruimte is voor de overweging van niet-mededingingsbelangen, maar beschrijft noch de precieze omvang van dergelijke afweging noch welke test deze afweging kan leiden.

De Raad, de Commissie, de EU-Gerechten en het Europees Parlement hebben in de loop der jaren meermaals bevestigd dat niet-mededingingsbelangen kunnen worden overwogen bij de handhaving van Artikel 101 VWEU. Zij hebben benadrukt dat het Europese mededingingsrecht geen doel is op zich, maar een instrument voor de verwezenlijking van de economische en sociale objectieven van de Verdragen van de Europese Unie. Desondanks blijven de ratio, methodes en grenzen van deze afweging onderworpen aan hardnekkige politieke en juridische discussie. De instellingen en lidstaten van de Europese Unie hebben, met het oog op consensus eerder dan op duidelijkheid, zich er steeds van weerhouden de doelstellingen van het Artikel te codificeren of een omvattend afwegingskader te definiëren in primair of secundair EU-recht.

Rond de millenniumwisseling onderging het debat over de rol van niet-mededingingsbelangen een heropleving, als gevolg van de modernisering van de uitvoering van het EU-mededingingsrecht. Elk van de drie pijlers van de modernisering vormde een fundamentele uitdaging voor de toekomst van niet-mededingingsbelangen:

Als deel van de eerste materiële pijler van de modernisering, bracht de Commissie een reeks richtsnoeren en mededelingen uit. Deze beleidsdocumenten strekten ertoe strikter economisch denken in te voeren in het EU-mededingingsrecht en –beleid en beperkten de rol van niet-mededingingsbelangen in Artikel 101 VWEU aanzienlijk. De Commissie oordeelde vervolgens dat vele niet-mededingingsbelangen niet meer van toepassing waren, hoewel ze voor de modernisering wel werden overwogen onder Artikel 101 VWEU.


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Aangezien enkel de Commissie gehouden is tot navolging van haar beleidsdocumenten, kunnen nationale autoriteiten uiteenlopende interpretaties aannemen. Ze beschikken over een ruime beoordelingsbevoegdheid om hun aanpak tot belangenoverweging vorm te geven met oog op hun respectievelijke juridische, economische en sociale tradities. Dit draagt natuurlijk het risico dat Artikel 101 VWEU niet op een uniforme manier zou worden uitgevoerd doorheen de EU.

De laatste pijler introduceerde procedurele hervorming, door het notificatieregime te vervangen door een zelfbeoordelingsregime. Bijgevolg beoordeelt de Commissie de verenigbaarheid van een overeenkomst met Artikel 101 VWEU niet meer vóór diens uitvoering. Ondernemingen dienen zelf te evalueren of niet-mededingingsbelangen hun mogelijks concurrentiebeperkende overeenkomst kunnen rechtvaardigen.

Het gecombineerde effect van de drie moderniseringspijlers creëert het serieuze risico dat niet-mededingingsbelangen niet op een doeltreffende, uniforme en rechtszekere manier in aanmerking zouden worden genomen doorheen de EU. De veranderende rol van niet-mededingingsbelangen is al uiteengezet in een indrukwekkende reeks rechtsgeleerdheid, vanuit historisch, constitutioneel en economisch perspectief. Doch tot op heden is er slechts in beperkte mate aandacht besteed aan de *daadwerkelijke* manier waarop de EU en nationale autoriteiten deze afweging maken.

Bijgevolg past dit proefschrift een nieuwe en originele combinatie toe van empirische, doctrinaire en normatieve benaderingen. Dit onderzoekt baseert zich op een wijde kwantitiatieve en kwalitatieve analyse van alle Artikel 101 VWEU-procedures die werden gevoerd door de Commissie, de EU-gerechten, de nationale mededingingsautoriteiten, en de rechtbanken van vijf representatieve Lidstaten, vanaf de creatie van de EEG in 1958 tot 2017. De empirische inzichten in dit proefschrift zijn gebaseerd op meer dan 3100 procedures, en bieden een overzicht van de manier waarop deze afweging gebeurt in de praktijk. Deze empirische benadering helpt niet alleen bij de identificatie van expliciete afwegingsvormen die door handhavers gebruikt worden wanneer ze openlijk niet-mededingingsbelangen overwegen; het werpt ook licht op de zogenaamde ‘donkere materie’ van belangenafweging, namelijk de onzichtbare afweging van belangen die wordt veroorzaakt door de institutionele opzet of specifieke procedures van de mededingingshandhavers.

De empirische bevindingen onthullen in het bijzonder zes afwegingsinstrumenten die werden gebruikt om rekening te houden met niet-mededingingsbelangen. Eerst onderzoekt het
proefschrift materiële afwegingsmiddelen, met name (i) de vrijstellingen/uitzonderingen onder Artikel 101(3) VWEU; (ii) groepsvrijstellingsverordeningen; en (iii) Artikel 101(1) uitzonderingen. Ten tweede bestudeert het proefschrift (iv) nationale afwegingsmiddelen, afkomstig uit de regels van de Lidstaten. En ten slotte bestudeert het procedurele afwegingsinstrumenten, ingebed in (v) de maatregelen opgelegd voor inbreuken van Artikel 101 VWEU (toezeggingen aanvaarden of boetes matigen) en in (vi) de prioriteitskeuzes van de verschillende handhavingsinstanties.

Dit proefschrift is georganiseerd rond deze zes afwegingsinstrumenten. Elk hoofdstuk biedt een empirisch en juridisch overzicht van één bepaald instrument en brengt de kwantitatieve en kwalitatieve kenmerken in kaart van het gebruik van dit afwegingsinstrument in de praktijk. Het benadrukt hoe vaak beroep wordt gedaan op dit instrument en hoe vaak het wordt aanvaard, en analyseert het type voordelen dat in aanmerking werd genomen, het afwegingsproces en de intensiteit van de controle. Bovendien onderzoekt elk hoofdstuk de rol die EU of nationale gerechten spelen in het controleren van de toepassing van het afwegingsinstrument. Het illustreert dat de verschillende gerechten belangenafweging op uiteenlopende manieren benaderen, en dat de discretiemarge die ze toevertrouwen aan de Commissie en nationale mededingingsautoriteiten bijgevolg ook uiteenloopt. Tot slot evalueert elk hoofdstuk ook de verenigbaarheid van het afwegingsinstrument met de doelstellingen van Artikel 101 VWEU-handhaving (i.e. doeltreffendheid, uniformiteit en rechtszekerheid).

Het proefschrift ontkracht de algemeen aanvaarde opvatting dat de modernisering van het EU-mededingingsrecht leidde tot de verwijdering van niet-mededingingsbelangen uit de handhaving van Artikel 101 VWEU. Het toont aan dat niet-mededingingsbelangen een belangrijke rol spelen in de handhaving van Artikel 101 VWEU, en dat ze dat zijn blijven doen. Desondanks valt er een opmerkelijke drievoudige verschuiving op te merken in de manier waarop niet-mededingingsbelangen worden benaderd in het post-moderniseringstijdperk:

Allereerst toont het proefschrift aan dat het type afwegingsinstrument dat in de praktijk wordt gebruikt is veranderd, met een geleidelijk overstap van materiële naar procedurele instrumenten. Vóór de modernisering werd het afwegingsdebat voornamelijk gevoerd in de context van de materiële instrumenten ingebed in Artikel 101(1) en 101(3) VWEU, zo toont het aan. Echter, na de modernisering werden deze nog amper ingeroepen of aanvaard. Het debat
vindt nu plaats in de context van nationale en procedurele afwegingsinstrumenten, namelijk bij het beschikken over maatregelen of het maken van prioriteitskeuzes.

Ten tweede identificeert het proefschrift dat er een verschuiving in locus plaatsvond: van afwegingen gemaakt op het niveau van de EU naar afwegingen op het niveau van de Lidstaten. Het onthult een wederzijds bepalend verband tussen de afwegingsprincipes op EU-niveau en op nationaal niveau. Het is niet alleen zo dat de Lidstaten beïnvloed worden door EU-afwegingsregels wanneer ze Artikel 101 VWEU uitvoeren; zij oefenen ook een invloed uit op de draagwijdte van het verbod in Artikel 101 VWEU wanneer ze de EU-afwegingsinstrumenten interpreteren en unieke nationale regels vaststellen. Modernisering heeft, bijgevolg, een nieuwe opportunititeit gecreëerd voor de Lidstaten om het EU-kader voor de afweging van belangen te interpreteren en aan te vullen.

Ten derde meldt het proefschrift een verandering in de institutionele dynamiek waarbinnen deze afwegingen plaatsvinden. Het toont aan dat de EU-gerechten, en dan voornamelijk het Hof van Justitie van de Europese Unie, in het verleden een actieve rol speelden in de vormgeving van de afwegingsprincipes. Wanneer de Commissie echter de substantiëve modernisering op gang trok begin jaren 2000, nam het ook de leiding in de verdere ontwikkeling van deze principes. Hoewel de EU-gerechten zich niet volledig hebben verzoend met de nieuwe aanpak van de Commissie (bv. met betrekking tot het soort voordelen dat kan worden onderzocht onder het Artikel, de verwijzing naar de nauwe korte-termijn consumentenwelvaart standaard, het beroep enkel op economisch bewijs, de nieuwe aanpak van de Commissie met betrekking tot restricties die strekken tot beperking van de mededinging), hebben ze geen duidelijk standpunt ingenomen over deze kwestie. In plaats daarvan hebben de EU-gerechten slechts een passief-reactieve rol gespeeld in de kwestie van belangenafwegingen na de modernisering.

Het proefschrift concludeert dat deze drie verschuivingen, in de specifieke context van belangenafwegingen, de verwezenlijking hebben belemmerd van de uiteindelijke doelstellingen van Verordening 1/2003, namelijk een doeltreffende, uniforme en rechtszekerheid handhaving van de regels. Met moet bijgevolg concluderen dat, hoewel de modernisering van het EU-mededingingsrecht mogelijks een succes was in het algemeen, het een contraproductief effect heeft gehad op de afweging van niet-mededingingsbelangen onder Artikel 101.
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