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# WORLD LAW OF COMPETITION

**Unit B**

**Volume B1**


**EUROPEAN ECONOMIC COMMUNITY**

**Ivo Van Bael**

**and**

**Jean-François Bellis**



MATTHEW BENDER

235 E.45TH STREET, NEW YORK, N.Y. 10017
450 SANSOME STREET, SAN FRANCISCO, CALIF. 94111

Julian O. von Kalinowski
*General Editor*

# WORLD LAW OF COMPETITION

**Unit B**
**WESTERN EUROPE**
**Volume B1**

## EUROPEAN ECONOMIC COMMUNITY

**by**
**Ivo Van Bael**
**and**
**Jean-François Bellis**

**1983**

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# Preface

During the past decade, we have seen many changes in the international arena. The most dramatic, of course, have been scientific progress and technological advances which have brought the countries of the world closer together. The speed of travel and the speed of communication have increased beyond even the most optimistic expectations. These changes have spawned, in turn, changes in economic systems, outmoding the old rules of doing business in the market places of the world and the methods of competing in those markets.

We have seen the rise of the multinational corporations and the expansion of the international trade in the world market. This growth has witnessed the introduction of innovative marketing techniques to keep pace with the increased tempo of competition. But we have also seen increases in industrial concentration and use of anticompetitive market practices to achieve and retain market dominance.

Countries which, in the past, have encouraged the cartel system and ignored the use of restrictive practices within their boundaries have awakened to the dangers that competitive abuses pose for their economic well-being. The result has been a dramatic change in philosophy.

Sparked by the enactment of the competition rules contained in the Treaty of Rome, and in particular Articles 85 and 86, many countries have adopted similar competition rules outlawing restrictive practices and abuse of dominant position. Some are more sophisticated than others. Most, if not all, in substantial respects, are patterned after the United States antitrust laws.

In Europe, in addition to the EEC competition rules, the member countries of the European community have likewise enacted national legislation forbidding anticompetitive practices. Among the most comprehensive are West Germany and the United Kingdom. But these are just a few. Numerous countries throughout the free world have enacted laws forbidding anticompetitive practices in one form or another.

There exist discernible trends in the development of the various national laws governing competition which are of importance to an understanding of the transition which is taking place. Therefore, a brief examination of these trends may be in order.

In a number of European countries, there is a tendency to move from a policy of prohibition of certain specific restrictive practices to that of a more general prohibition applying to all market activities. This is not unlike the prohibition contained in Section 1 of the Sherman Act against concerted activities in unreasonable restraint of trade. Where this trend exists, there is a tendency for administrative and quasi-judicial tribunals to be less significant and the law courts to be more prominent. Additionally, there is a trend toward expanding the area of application of the laws, again not unlike the development which has taken place in American jurisprudence with respect to the United States antitrust laws. Among the European Economic Community countries, both of these trends are influenced in some measure by the EEC and its emphasis on a convergence of policy among community members.

Equally important is the tendency by public authorities to seek flexibility in competition rules so as to have available a system which is sensitive to the public need. This desire is accentuated and the need becomes imperative where heavy reliance is placed on concepts of fairness rather than the principle of non-intervention in a free market.

All in all, there exists a climate of emerging and developing competition which seeks to regulate the acts and conduct of business in the international markets.

The enactment of these laws, and their interpretation by the courts and regulatory agencies, has created a need for knowledge. Businesses competing in the world markets must be made aware of the legal rules under which they compete, and their application; otherwise, they are courting serious and unwarranted risks.

The World Law of Competition treatise is designed by the general editor and the publisher to satisfy this need. Its purpose is to add a new dimension to international legal lore. Never before in the history of legal publishing has there been an exhaustive, authoritative treatise on the competition laws of every major country in the free world. We are proud to present a treatise which is authored by experts on the competition laws of their respective countries and on competition laws of the European Economic Community. The task has been a gigantic one, and a challenge to all concerned. We have been able to meet that challenge only through extraordinary effort and devotion to the project. Our efforts will continue as the set is updated and expanded.

Our endeavors have not been without problems. Several warrant mentioning.

Diversity in legal systems among the various countries created an obvious problem. It was necessary to design a common format which would provide at least some similarity in the organization of the various contributors and yet retain the necessary flexibility. The general editor, in conjunction with the publisher, chose a format which had been found to be successful in the publication of the general editor's own treatise on United States antitrust laws and trade regulation.

Each contribution was to be divided into four major sections:

Section 1, an introduction which would contain a brief overview of the historical background of the competition laws of the nations;

Section 2, which would analyze in detail the jurisdictional and substantive elements of each of the competition laws;

Section 3, a description of the various laws or rules which apply to specific types of business conduct and, where pertinent, application of the laws to six specific categories of business conduct were to be discussed: (1) Pricing Practices; (2) Distribution Practices; (3) Mergers, Acquisitions, and Joint Ventures; (4) Monopolies and Monopolization; (5) Licensing Agreements; and (6) Unfair Practices;

and Section 4, which would be concerned with the enforcement of the competition laws and the procedures relating to them.

An outline was prepared embodying that format. Each contributor was asked to use the outline as a guide in the preparation of his own contribution.

Obviously, legal systems differ and the choice of format is influenced, in some degree, by the legal system being described. Our format was designed with the legal system of the United States antitrust laws in mind. Admittedly, it was not a format which normally would have been followed in a number of the countries and, as a result, some contributors experienced difficulties. However, these difficulties were solved by the creative efforts of the contributors themselves who seemed to welcome the challenge, and by our editorial efforts.

A second major problem was consistency in the use of terms. There exists a wide diversity of legal definitions reflective of the diversity of legal systems. Serious consideration was given to the adoption of a common glossary of terms, even if it were to be merely a guide to certain of the concepts. The difficulty in obtaining an agreement among the contributors as to the definition of the terms led to the decision that each national contribution should define its terms in the context of its own system.

As indicated, it is anticipated that the treatise will cover competition laws of every major country in the free world. In order to publish the various contributions in orderly fashion, and for ready reference, the treatise will be divided into units, as follows:

Unit A—North America;

Unit B—Western Europe, including the European Economic Community, the various member countries of that Community and some non-member countries.

Succeeding units will cover the competition laws of all the free countries of the world where such laws apply. It is planned that there will be a periodic upkeep for all units, as needed.

Being a part of this project has been a most satisfying experience. Through it, I have had the rare privilege to meet colleagues throughout the world, our contributors. The opportunity to exchange ideas with these fine scholars and to know them personally is, indeed, something to be cherished.

Deep appreciation is expressed for the assistance rendered to the general editor by his associate, James P. Clark. The assistance and advice of the publisher, in particular Louis R. Frumer, is also gratefully acknowledged, as is the editorial assistance of Maria Carlson, formerly of the publisher's staff.

Finally, a special commendation must be given to Penelope J. Dyer, the editorial coordinator for the project. Without her unceasing efforts, organizational skills, and devotion to her work, it is questionable whether the project ever would have reached publication stage.

This treatise is dedicated to those who made the project a reality.

ABOUT THE AUTHORS OF

## WORLD LAW OF COMPETITION: EUROPEAN ECONOMIC COMMUNITY

Ivo Van Bael and Jean-François Bellis are both members of the Brussels Bar.

Mr. Van Bael obtained his Ph.D., and J.D. from the University of Louvain. He also attended the University of Bologna Law School, the John Hopkins University, Bologna Center, and the University of Michigan Law School, where he obtained his M.C.L.

Mr. Bellis obtained his law degree from the University of Brussels. He studied at the University of Michigan Law School for his LL.M.

Before commencing their law practice in Brussels, both Mr. Van Bael and Mr. Bellis were exposed to practical experience in the United States as trainees with New York law firms.



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# European Economic Community

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