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# **WORLD LAW OF COMPETITION**

**Unit B  
Volume B1**

**EUROPEAN ECONOMIC COMMUNITY**

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



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# **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.

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# European Economic Community

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## Table of Contents

---

### VOLUME B1

Preface .....	xv
Biographical Notes .....	xxi
Topical Index .....	TI-1
List of Appendix Material .....	EEC AM-1
Finding List .....	EEC FL-1

---

### Chapter 1

#### INTRODUCTION

§ 1.01	Introduction .....	EEC 1-1
§ 1.02	The Structure of the European Economic Community ..	EEC 1-3
[1]	Generally .....	EEC 1-3
[2]	The European Parliament .....	EEC 1-3
[3]	The Council .....	EEC 1-3
[4]	The Commission .....	EEC 1-4
[5]	The Court of Justice .....	EEC 1-4
§ 1.03	The Jurisdictional Scope of EEC Competition Law— Extraterritorial Application of EEC Competition Rules .....	EEC 1-5
§ 1.04	The Relationship Between Community and National Competition Law .....	EEC 1-8

---

### Chapter 2

#### SPECIAL SECTORS

§ 2.01	Special Sectors .....	EEC 2-1
[1]	Introduction .....	EEC 2-1

## TABLE OF CONTENTS

vi

[2]	Coal and Steel .....	EEC 2-2
[3]	Transport .....	EEC 2-11
[a]	Generally .....	EEC 2-11
[b]	By Rail, Road and Inland Waterway .....	EEC 2-12
[i]	Generally .....	EEC 2-12
[ii]	Respective Agreements .....	EEC 2-13
[A]	Generally .....	EEC 2-13
[B]	Exemption for Technical Agreements .....	EEC 2-15
[C]	Exemption for Groups of Small and Medium-Sized Undertakings .....	EEC 2-17

*(Text continued on page vii)*

## TABLE OF CONTENTS

[D] Exemption for Beneficial Agreements .....	EEC 2-18
[E] Exemption for Agreements Intended to Reduce Disturbances Resulting from the Structure of the Transport Market .....	EEC 2-22
[iii] Abuses of Dominant Position .....	EEC 2-24
[iv] Enforcement .....	EEC 2-25
[c] Sea and Air Transport .....	EEC 2-26
[4] Agriculture .....	EEC 2-28
[5] Nuclear Energy .....	EEC 2-34
Appendices .....	EEC 2A-1

---

**Chapter 3**
**ARTICLE 85—CONCERTED ACTION RESTRICTING  
COMPETITION**

§ 3.01 Introduction .....	EEC 3-2
§ 3.02 Jurisdictional Elements .....	EEC 3-6
[1] Introduction .....	EEC 3-6
[2] “Undertaking” Defined .....	EEC 3-6
[a] Generally .....	EEC 3-6
[b] Non-EEC Undertakings .....	EEC 3-7
[c] Public Undertakings—Undertakings to Which Member States Grant Special or Exclusive Rights .....	EEC 3-7
[3] Activities Included in the Word “Trade” .....	EEC 3-11
[4] Effect on Trade Between Member States .....	EEC 3-19
[5] Trade From Third Countries .....	EEC 3-28
[a] Generally .....	EEC 3-28
[b] Imports from Third Countries .....	EEC 3-31
[c] Exports to Third Countries .....	EEC 3-33
§ 3.03 Substantive Elements .....	EEC 3-36
[1] Introduction .....	EEC 3-36
[2] Agreement; Decision by an Association of Undertakings; Concerted Practice .....	EEC 3-36
[a] Generally .....	EEC 3-36
[b] Plurality of Actors .....	EEC 3-37
[i] Generally .....	EEC 3-37
[ii] The Undertaking and its Employees or Agents .....	EEC 3-37
[iii] Related Companies .....	EEC 3-40

(Rel.3-1/81 Pub.831)

## TABLE OF CONTENTS

viii

[c]	Agreement, Decision and Concerted Practice	
	Defined	EEC 3-45
[i]	Agreement	EEC 3-45
[ii]	Decision by Associations of Undertakings	EEC 3-47
[iii]	Concerted Practice	EEC 3-48
[3]	Which Have as Their Object or Effect the Prevention, Restriction or Distortion of Competition Within the Common Market	EEC 3-54
[a]	Generally	EEC 3-54
[b]	Restriction of Competition	EEC 3-54
[c]	Object or Effect	EEC 3-59
[d]	Meaning of "Appreciable" – The "De Minimis Rule"	EEC 3-62
§ 3.04	Exemption Under Article 85(3)	EEC 3-67
[1]	Introduction	EEC 3-67
[2]	Conditions for Exemption Under Article 85(3)	EEC 3-76
[a]	First Condition: Improvement of Production or Distribution, Promotion of Technical or Economic Progress	EEC 3-76
[b]	Second Condition: Benefits for Consumers	EEC 3-80
[c]	Third Condition: Indispensability of the Restriction	EEC 3-81
[d]	Fourth Condition: No Elimination of Competition	EEC 3-83
[3]	Duration of Exemption	EEC 3-85
[a]	Generally	EEC 3-85
[b]	Retroactive Effect	EEC 3-85
[c]	Period of Exemption, Renewal	EEC 3-88
[d]	Revocation	EEC 3-88
[4]	Conditions Imposed by the Commission	EEC 3-89
§ 3.05	Defenses	EEC 3-93
[1]	Generally	EEC 3-93
[2]	State Action	EEC 3-94
Appendix		EEC 3A-1

---

## Chapter 4

### ARTICLE 86—ABUSES OF A DOMINANT POSITION

§ 4.01	Introduction	EEC 4-1
[1]	General Principles	EEC 4-1
[2]	Article 86 Compared with Article 85	EEC 4-4
§ 4.02	Jurisdictional Elements	EEC 4-7

(Rel.3-1/81 Pub.831)

## TABLE OF CONTENTS

[1]	Generally .....	EEC 4-7
[2]	The Concept of "Undertaking" .....	EEC 4-7
[3]	The Concept of "Trade" .....	EEC 4-9
[4]	Trade Between Member States .....	EEC 4-9
[5]	Trade with Third Countries .....	EEC 4-10
§ 4.03	Substantive Elements .....	EEC 4-12
[1]	Generally .....	EEC 4-12
[2]	Relevant Market .....	EEC 4-13
[a]	Relevant Product Market .....	EEC 4-13
[b]	Relevant Geographic Market .....	EEC 4-18
[3]	The Concept of Dominant Position .....	EEC 4-19
[a]	Relative Size; Percentage of Market Control ....	EEC 4-21
[b]	Absolute Size; Economic Significance and Competitive Advantage .....	EEC 4-21
[c]	Dominant Position Resulting From a Shortage ..	EEC 4-27
[4]	The Concept of Abuse .....	EEC 4-28
[5]	Abuse Resulting from Concerted Action Distinguished from Abuse Resulting From Individual Action ....	EEC 4-34
§ 4.04	Defenses .....	EEC 4-36

---

**Chapter 5**
**PRICING PRACTICES**

§ 5.01	Introduction .....	EEC 5-1
§ 5.02	Price-Fixing .....	EEC 5-4
[1]	Generally .....	EEC 5-4
[2]	Horizontal Price-Fixing .....	EEC 5-4
[3]	Price Uniformity .....	EEC 5-11
[4]	Exchange of Price Information .....	EEC 5-17
[5]	Vertical Price-Fixing .....	EEC 5-20
§ 5.03	Discrimination in Pricing .....	EEC 5-24
[1]	Introduction .....	EEC 5-24
[2]	Discriminatory Pricing Under Article 85 .....	EEC 5-24
[a]	Generally .....	EEC 5-24
[b]	Agreements to Discriminate .....	EEC 5-24
[c]	Price Discrimination by Single Seller Used as a Form of Export Ban .....	EEC 5-26
[3]	Discriminatory Pricing Under Article 86 .....	EEC 5-28
[a]	Generally .....	EEC 5-28
[b]	Article 86(c) .....	EEC 5-29
[c]	Loyalty Rebates .....	EEC 5-31

## TABLE OF CONTENTS

x

[d] Geographical Price Discrimination .....	EEC 5-34
§ 5.04 Predatory Pricing .....	EEC 5-39
§ 5.05 Excessive Prices .....	EEC 5-40

---

## Chapter 6

### DISTRIBUTION PRACTICES

§ 6.01 General Considerations; Types of Marketing Practices Considered .....	EEC 6-2
§ 6.02 Refusals to Deal .....	EEC 6-5
[1] Generally .....	EEC 6-5
[2] Specific Conduct .....	EEC 6-6
[a] Unilateral Refusals to Deal .....	EEC 6-6
[b] Vertical Refusals to Deal .....	EEC 6-14
§6.03 Vertical Market Allocation .....	EEC 6-22
[1] Generally .....	EEC 6-22
[2] Specific Conduct .....	EEC 6-23
[a] Territorial Allocation .....	EEC 6-23
[i] Export Prohibitions .....	EEC 6-23
[ii] Differential Pricing .....	EEC 6-34
[iii] Aggregated Rebates .....	EEC 6-36
[iv] After-Sales Service .....	EEC 6-37
[v] Industrial Property Rights .....	EEC 6-37
[vi] Other Rights Derived from National Laws .....	EEC 6-38
[b] Customer Allocation .....	EEC 6-42
§ 6.04 Exclusionary Arrangements .....	EEC 6-47
[1] Generally .....	EEC 6-47
[2] Exclusive Dealings Arrangements .....	EEC 6-49
[a] Introduction .....	EEC 6-49
[b] Collective Exclusive Dealings Arrangements ....	EEC 6-57
[c] Bilateral Exclusive Dealings Agreements .....	EEC 6-65
[i] Scope of Application of Regulation No. 67/67 .....	EEC 6-70
[A] Bilateral Agreements .....	EEC 6-70
[B] Between Firms not Located in One Member State .....	EEC 6-71
[C] Exclusive Supply and/or Purchase ...	EEC 6-72
[D] Of Goods for Resale .....	EEC 6-73
[E] Within a Defined Area of the Common Market .....	EEC 6-73

## TABLE OF CONTENTS

[ii]	Conditions of Exemption Under Regulation No. 67/67 .....	EEC 6-75
[A]	Competing Manufacturers .....	EEC 6-76
[B]	Parallel Imports .....	EEC 6-77
[C]	Unauthorized Restrictions .....	EEC 6-79
[D]	Revocation of Exemption .....	EEC 6-80
[3]	Requirements Contracts .....	EEC 6-82
[a]	Requirements Contracts and Article 85 .....	EEC 6-82
[b]	Requirements Contracts and Article 86 .....	EEC 6-87
[4]	Tying Arrangements .....	EEC 6-92
§ 6.05	Exclusive Distributorships .....	EEC 6-95
[1]	Introduction .....	EEC 6-95
[2]	Antitrust Aspects of Exclusive Distributorships .....	EEC 6-97
[a]	Generally .....	EEC 6-97
[b]	The Commission's Approach Toward Selective Distribution .....	EEC 6-99
[i]	Qualitative Requirements: Technical Standards .....	EEC 6-103
[A]	Specific Scope .....	EEC 6-107
[B]	Objectively Necessary .....	EEC 6-108
[C]	Uniform Application .....	EEC 6-110
[ii]	Additional Obligations .....	EEC 6-110
[iii]	Quantitative Requirements .....	EEC 6-128
[c]	Standard Clauses in Distributorship Contracts ..	EEC 6-130
[i]	Exclusive Dealings .....	EEC 6-130
[ii]	Non-Competition Clause .....	EEC 6-132
[iii]	Territorial Restrictions .....	EEC 6-133
[iv]	Customer Restrictions .....	EEC 6-134
[v]	Further Restrictions as to Use or Resale of Product .....	EEC 6-136
[vi]	Business Premises .....	EEC 6-136
[vii]	Full Product Line .....	EEC 6-137
[viii]	Packaging, Presentation, Trademarks ..	EEC 6-137
[ix]	After-Sales and Warranty Services .....	EEC 6-137
[x]	Spare Parts .....	EEC 6-138
[xi]	Sales Promotion and Advertising .....	EEC 6-139
[xii]	Quantities .....	EEC 6-140
[xiii]	Resale Price Maintenance .....	EEC 6-141
[xiv]	Supply of Information .....	EEC 6-141
[xv]	Termination .....	EEC 6-141
Appendices	.....	EEC 6A-1

## Chapter 7

## MERGERS, JOINT VENTURES AND VARIOUS COOPERATION AGREEMENTS

§ 7.01	Introduction .....	EEC 7-2
§ 7.02	Mergers and Acquisitions .....	EEC 7-4
§ 7.03	Joint Ventures .....	EEC 7-11
[1]	Generally .....	EEC 7-11
[2]	Conditions Under Which a Joint Venture Will Fall Outside the Scope of Article 85 .....	EEC 7-11
[3]	Joint Ventures Under Article 86 .....	EEC 7-17
[4]	Joint Ventures Under Article 85 .....	EEC 7-18
§ 7.04	Specialization Agreements .....	EEC 7-31
[1]	Generally .....	EEC 7-31
[2]	Regulation No. 3604/82 .....	EEC 7-35
[a]	Specialization Agreements .....	EEC 7-35
[i]	Reciprocal Obligation .....	EEC 7-36
[ii]	Not to Manufacture Certain Products or to Manufacture Jointly .....	EEC 7-36
[iii]	For the Duration of the Agreements .....	EEC 7-37
[c]	Quantitative Limits .....	EEC 7-40
[3]	Individual Exemptions Under Article 85(3) .....	EEC 7-42
[a]	Nature of Exempted Specialization Agreements .....	EEC 7-43
[i]	Scope of Agreement May be Broader than under Regulation No. 2779/72 .....	EEC 7-43
[ii]	Restrictive Covenants Other Than Author- ized in Regulation No. 2779/72 Have Those Also Been Exempted .....	EEC 7-44
[b]	Market Position of Beneficiaries of Exemption .....	EEC 7-46
[c]	Application of Criteria of Article 85(3) .....	EEC 7-47
[i]	Economic Benefits .....	EEC 7-50
[ii]	Benefits Shared by Consumers .....	EEC 7-52
[iii]	Restrictions Indispensable to Obtain Benefits .....	EEC 7-53
[iv]	Conditions Attached to Exemptions .....	EEC 7-56
§ 7.05	Joint Research and Development .....	EEC 7-62
§ 7.06	Other Forms of Cooperation .....	EEC 7-70
[1]	Joint Purchasing Agreements .....	EEC 7-70
[2]	Joint Selling Agreements .....	EEC 7-72
[3]	Joint After-Sales Service .....	EEC 7-77
[4]	Sub-Contracting Agreements .....	EEC 7-78
[5]	Joint Trademarks .....	EEC 7-78
Appendix 7A	.....	EEC 7A-1



Appendix 7B .....	EEC 7B-1
Appendix 7C .....	EEC 7C-1
Appendix 7D .....	EEC 7D-1

## **Chapter 8**

### **MONOPOLIES AND DOMINANT POSITIONS**

§ 8.01 Monopolies and Dominant Positions .....	EEC 8-1
--	---------

## **VOLUME B2**

### **European Economic Community (Cont.)**

Topical Index

Chapter 9: Licensing

Chapter 10: Unfair Trade Practices and Agreements Not To Compete

Chapter 11: Trade Associations

Chapter 12: Horizontal Market Division and Boycotts

Chapter 13: Enforcement Abbreviations

General Appendices

List of Abbreviations

Table of Devisions and Rulings

Chronological Table