



JONES . VAN DER WOUDE

EU COMPETITION LAW HANDBOOK

2011 Edition

Including a selection of key national competition cases



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PREFACE TO THE FIRST EDITION

Council Regulation No. 17/62 foresees, inter alia, the possibility for undertakings to notify to the Commission their agreements and practices in order to obtain a negative clearance or an exemption. This Regulation has equally opened to natural or legal persons the right to file complaints regarding restrictive practices.

Corresponding to these rights and obligations is the requirement that the Commission examines the compatibility of these agreements and practices with European Competition Law and also undertakes the relevant procedures with a view to the termination of illegal practices.

At present, approximately 220 agreements are notified to the Commission each year. In addition to this, an ever-increasing number of proceedings which result from complaints or which are opened on the Commission's own initiative must be taken into account.

This represents a considerable workload when seen in the light of the fact that only 85 European civil servants work in the anti-trust section of the Commission. All this becomes even more significant if one compares the number of these "fonctionnaires"—competent for all the 12 Member States—to those in analogous national administrations, certain of which employ more than twice this number.

One of the main preoccupations of the Commission has always been to reconcile the need to take a position rapidly on notifications by undertakings with this very limited level of human resources. In this context, the Commission has striven, where possible, to make use of Regulations giving exemption by category and explanatory notices intended for the benefit of companies active on the European market. The adoption of such texts has the intention, insofar as possible, of reducing the number of agreements notified, whilst guaranteeing the legal security of undertakings participating in an agreement or concerted practice.

The work undertaken by the authors of this book, all fonctionnaires at the Directorate-General for Competition, may be interpreted as a confirmation of the wish of the Commission to facilitate as far as possible the application of European competition law, by permitting an easier access and a better comprehension of this law to those who wish to deepen their knowledge of this subject matter or must, through professional vocation, advise companies on matters being considered by Community authorities.

The effort accomplished by these fonctionnaires is all the more admirable in that it was accomplished in addition to the many daily tasks demanded of them. Their work involves the preparation of legal and administrative acts of the Commission in the sector of anti-trust.

I hope that the sense of public service that has led the authors to write this book may find its confirmation and justification in the practical usage that the reader makes of it.

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EU COMPETITION LAW

HANDBOOK—2011 EDITION

USER GUIDE

The Handbook is designed with the practitioner in mind. It is organised so as to enable the swift identification of cases, legislation and other documents relevant to any question of EU competition law.

How to identify cases and legislation relevant to a specific issue

The starting point for a search is the table of contents. This is structured in such a way that each section of the Handbook deals with a specific issue of competition law. A tree structure is used to allow the practitioner quickly to narrow down the search to the relevant section. Within each section the practitioner will find an exhaustive overview of European Union cases relevant to the issue in question, and a selection of the most important national cases.

The tree structure is built up as follows. The Handbook consists of two Books. **Book One** deals with the behavioural competition rules. **Book Two** is concerned with merger control.

Book One is divided into eleven Parts by broad subject area. For example, Book One, Part VII, deals with abuse of dominance whereas Book One, Part X, covers Procedure and Remedies. Each Part is further subdivided into chapters and sections, each covering a specific type of practice or legal issue. For example:

- Book One, Part VII, chapter 2, section B.19, lists cases on abuse of intellectual/industrial property rights, such as the various decisions and judgments in the *Microsoft* case;
- Book One, Part X, chapter 2, section C.4.1, lists cases on legal professional privilege, such as the *Akzo* judgment.

Book Two is similarly structured in chapters and sections (though the “Part” level is omitted). For example:

- Book Two, chapter 3, section B.4.2 lists cases on bundling/portfolio effect, including e.g. *General Electric/Honeywell*;
- Book Two, chapter 4, section 9.3, lists cases on the calculation of time periods.

Within each section the most important cases are marked with an asterisk.

References to legislation are included where relevant. For example, Book One, Part IV (Vertical Agreements), first provides a reference to Regulation 330/2010 (the Block Exemption regulation for vertical agreements) and to the European Commission's guidelines on vertical restraints, and then goes on to give a list of cases on vertical agreements, broken down by type of agreement (exclusive distribution, non-exclusive distribution, etc.) and by type of clause (e.g. exclusive territories, non-compete clauses, resale price maintenance, etc.).

How to find the text of decisions and judgments listed in the Handbook

Judgments of the European Court of Justice and General Court are identified both by a name and by the official case number. For example, the section on legal professional privilege contains a reference to *Akzo Nobel* T-125 & 253/03, and the section on abuse of intellectual/industrial property rights includes a reference to *Microsoft* T-201/04. This allows the text of the judgment to be found immediately online.

Cases quoted in the European Commission's Annual Competition Report are quoted with reference to the report and paragraph in question, e.g. Sarabox 8th Comp. Rep. (paras 35–37).

For **European Commission decisions and national cases**, where the official case number is generally less useful, conventional identifiers are used, e.g. Microsoft 528, Volvo/Scania M.1672 (where the M denotes a merger decision) or Argos v OFT UK8 (where UK denotes the Member State in question). The text of such decisions can be located via the tables at the back of the Handbook.

Comprehensive tables

The publication reference (O.J., E.C.R., national sources) for all judgments and decisions is provided in a series of comprehensive tables at the back of the Handbook. Thus Table 1 (pages 271–299) provides a full list of European Commission decisions regarding Articles 101, 102 or 106; Table 4 (pages 343–361) provides a full list of Court of Justice judgments; and Tables 11 and 12 (pages 575–634) provide a list of all national cases quoted in the Handbook.

Besides the publication references these tables also provide information such as the type of decision or procedure, the product or service in question and the subject matter of the case. For example, Table 1 (Commission decisions) (pages 271–299) contains the following entry;

| No. | Name | Date | O.J. | C.M.L.R. | TYPE OF DECISION | PRODUCT | SUBJECT |
|------|--------|----------|--------------|--------------|------------------|-----------|-------------------------------|
| 307. | Magill | 21.12.88 | [1989] L78/3 | 4 [1989] 757 | Infringement 86 | TV Guides | Intellectual Property Rights" |

Thus besides providing publication references these tables also allow the user to narrow down a search by relevant product/service or period.

Table of fines

Table 13 is different from the others, in that it deals exclusively with fines. For the practitioner faced with a question on this subject, a case citator based on legal issues is often not enough: he or she needs to know the actual amount of the fines imposed in individual cases. To cater for this Table 13 (pages 635–683) provides an overview of the fines imposed by the European Commission in each case, both in total and per undertaking. The outcome of any appeal to the General Court and Court of Justice is also specified, again in total and per undertaking.

National decisions

Tables 11 and 12 (national cases) (pages 575–634) are also different from the others, in that not all jurisdictions have the same standard of internet infrastructure available for accessing their key decisions and in some instances the cases reported have not been published on the internet. Finding the text of these decisions may be less straightforward. For this *e-Competitions* is recommended. The *e-Competitions* bulletin is in the process of commenting on all the national decisions that are included in the Handbook. The text of most of these is available in the original language, with an English summary, on the *e-Competitions* website www.concurrences.com. *e-Competitions* is the first bulletin exclusively dedicated to the implementation of EU competition rules in the 27 Member States of the European Union. It is a twice-monthly electronic news bulletin and appears in English and on the internet only. The bulletin deals exclusively with national competition laws. *e-Competitions* is published by Transactive, a subsidiary of Thomson Reuters, in partnership with the Institute of Competition Law.

The 2011 Handbook is up to date to June 15, 2010.

A new edition of the EU Competition Law Handbook is published every year. This is the twentieth edition of the Handbook.

An online version of the Handbook is now available on EU Competition Law Online. For further information please visit www.ellis.thomson.com.

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BOOK ONE

COMPETITION RULES

USER GUIDE FOR BOOK ONE

Book One is divided into 11 Parts. For example, Book One, Part III, deals with Horizontal Agreements, whereas Book One, Part X, covers Procedure and Remedies.

Each Part is further subdivided into chapters covering particular types of agreement, practice or legal question, and should contain references to all legislation, documents and cases necessary for a practitioner's daily work. Thus, for example, Book One, Part III, Chapter 4, on research and development agreements contains a list of relevant cases under heading A, next under heading B a reference to Regulation 2659/2000, and then under headings C to E a case citator organised on an agreement-by-agreement and clause-by-clause basis.

Each case or judgment bears its *official case number* next to it, except for European Commission and national decisions where a *unique identifier* has been given. When an official case number is provided, users should be able to either move straight from the digest to an online search for the full text of the judgment or can consult the corresponding Tables to find its full reference. The most important or interesting cases are marked with an asterisk.

Key National Decisions of almost all EU jurisdictions are also reported under the relevant subject heading. National cases have been selected on the basis that they should be of relevance for a competition lawyer in other jurisdictions. The missing jurisdictions will be added in the future editions of the Handbook. National Cases are presented with *unique identifiers* (e.g. for France: F1, F2, etc.). The cases may subsequently be traced by locating them in the corresponding Tables which give the relevant references to source them (including their web address).

Not all jurisdictions have the same standard of internet infrastructure available for accessing their key decisions and in some instances the cases reported have not been published on the internet. It may therefore take more time to trace the relevant decisions. The *e-Competitions* bulletin is in the process of commenting on all of the National Cases that are included in this chapter. The text of most of these cases in their original languages with English summaries is available on the *e-Competitions* website <http://www.concurrences.com>.

e-Competitions is the first bulletin exclusively dedicated to the implementation of EU competition rules in the 27 Member States of the European Union. It is a twice-monthly electronic news bulletin and appears in English and on the internet only (<http://www.concurrences.com>). The bulletin exclusively deals with national competition laws.

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NATIONAL ABBREVIATIONS

| | | | | | |
|-----|----------------|----|------------|----|-----------------|
| A | Austria | F | France | ML | Malta |
| BE | Belgium | DE | Germany | NL | The Netherlands |
| BG | Bulgaria | GR | Greece | PL | Poland |
| CY | Cyprus | H | Hungary | PT | Portugal |
| CZ | Czech Republic | IE | Ireland | SK | Slovakia |
| DK | Denmark | I | Italy | ES | Spain |
| EST | Estonia | LV | Latvia | SE | Sweden |
| FI | Finland | L | Luxembourg | UK | United Kingdom |

BOOK ONE: COMPETITION RULES

PART I

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