



Economics and the Enforcement of European Competition Law

Christopher Decker

Economics and the Enforcement of European Competition Law

Christopher Decker

Regulatory Policy Institute and University of Oxford, UK

Edward Elgar

Cheltenham, UK • Northampton, MA, USA

© Christopher Decker 2009

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical or photocopying, recording, or otherwise without the prior permission of the publisher.

Published by
Edward Elgar Publishing Limited
The Lypiatts
15 Lansdown Road
Cheltenham
Glos GL50 2JA
UK

Edward Elgar Publishing, Inc.
William Pratt House
9 Dewey Court
Northampton
Massachusetts 01060
USA

A catalogue record for this book
is available from the British Library

Library of Congress Control Number: 2009930877



ISBN 978 1 84844 307 5

Typeset by Cambrian Typesetters, Camberley, Surrey
Printed and bound in Great Britain by MPG Books Group, UK

Tables

3.1	Position of surveys of factors that facilitate or hinder collusion	48
3.2	Comparison of interpretation of factors in surveys, broader literature and the position adopted	51
4.1	Comparison of the interpretation of factors from economic theory and in the Commission's ECMR decisions	56
4.2	Summary of the interpretation of factors from economic theory and in the Commission's ECMR decisions	57
4.3	Economic factors examined under the ECMR by the Commission	62
4.4	'Low-tech' methods used in factor assessments by the Commission under the ECMR	74
4.5	'High-tech' methods used in factor assessments by the Commission under the ECMR	75
4.6	Frequency of use of different sources of data in Commission decisions under the ECMR	77
4.7	Sources of data for specific factors in Commission decisions under the ECMR	78
4.8	Comparison of the interpretation of factors from economic theory and in the Commission's Article 82 decisions	83
4.9	Summary of the interpretation of factors from economic theory and in the Commission's Article 82 decisions	84
4.10	Comparison of the interpretation of factors from economic theory and in the Commission's decisions under Article 82 and the ECMR	87
4.11	Comparison of frequency of examination of economic factors under Article 82 and the ECMR by the Commission	88
4.12	'Low-tech' methods used in Article 82 assessments by the Commission	92
4.13	'High-tech' methods used in Article 82 assessments by the Commission	92
4.14	Frequency of use of different sources of data by the Commission in Article 82 decisions	93
4.15	Sources of data for specific factors in Commission decisions under Article 82	94

4.16	Comparison of the interpretation of factors from economic theory and in the Courts' ECMR decisions	98
4.17	Comparison of the interpretation of factors from economic theory and the Courts' decisions under Article 82 and the ECMR	99
4.18	Use of different sources of data by the Courts under the ECMR	104
5.1	Economics in case selection	153
5.2	Economics in case construction	154
5.3	Economics in final decision and remedies	155
5.4	Economics in the Courts	156
A1.1	Surveys of factors that facilitate or hinder collusion (academic/consultant studies)	226
A1.2	Surveys of factors that facilitate or hinder collusion (Member State guidelines)	228
A1.3	Surveys of factors that facilitate or hinder collusion (international bodies)	230
A1.4	Surveys of factors that facilitate or hinder collusion (European academic papers and texts)	232
A1.5	Surveys of factors that facilitate or hinder collusion (other academic texts)	234

Abbreviations

Article 81	Article 81 of the EC Treaty
Article 82	Article 82 of the EC Treaty
Bundeskartellamt	German Federal Cartel Office
CET	Chief Competition Economists Team of the Directorate General of the European Communities responsible for competition policy
CFI	Court of First Instance of the European Communities
Commission	Directorate of the European Commission responsible for competition policy
Courts	Courts of the European Communities (includes the Court of Justice and the Court of First Instance)
DG Comp.	Directorate of the European Commission responsible for competition policy
DG Economic & Financial Affairs	Directorate of the European Commission responsible for economic and monetary policy
DG Enterprise	Directorate of the European Commission responsible for policies which relate to the competitiveness of EU enterprises.
EC Treaty	Treaty of Rome establishing the European Economic Community as amended. Treaty Articles as renumbered by the Treaty of Amsterdam
ECHR	European Convention on Human Rights
ECJ	Court of Justice of the European Communities
ECMR	European Community Merger Regulation
ECSC Treaty	Treaty of Paris establishing the European Coal and Steel Community
FTC	United States Federal Trade Commission
ICN	International Competition Network
Merger Regulation	Council Regulation on the Control of Concentrations Between Undertakings
MMC	United Kingdom Monopolies and Mergers Commission (formerly the Monopolies Commission)

MTF	Merger Task Force of the Competition Directorate of the European Commission
OECD	Organisation for Economic Cooperation and Development
OFT	United Kingdom Office of Fair Trading
Shipping Regulation	Council Regulation (EC) 4056/86 Application of the competition rules to maritime transport
UNCTAD	United Nations Conference on Trade and Development
US Merger Guidelines	U.S. Department of Justice and the Federal Trade Commission 1992 Horizontal Merger Guidelines

Table of cases

EUROPEAN COURT DECISIONS

Court of Justice

- Case 48-69 *ICI v Commission (Dyestuffs)* [1972] ECR 619 **17**
- Case 6/72 *Europemballage Corp and Continental Can Co Inc v Commission* [1973] ECR 215 **35, 37**
- Cases 40-48, 50, 54-56, 11, 113, 114/73 *Cooperatieve Vereniging Suiker Unie UA v Commission (European Sugar Cartel)* [1975] ECR 1663 **37**
- Case 27/76 *United Brands Co and United Brands Continental BV v Commission* [1978] ECR 207 **35, 37**
- Case 85/76 *Hoffman-La Roche & Co. AG v Commission* [1979] ECR 461 **34, 35, 36, 37**
- Case 210/81 *Demo-Studio Schmidt v Commission* [1983] ECR 3045 **130**
- Case 322/81 *Nederlandsche Banden-Industrie Michelin NV v Commission* [1983] ECR 3461 **36, 37**
- Case 298/83 *CICCE v Commission* [1985] ECR 1105 **37**
- Case 311/84 *Centre Belge d'Etudes du Marché Télémarketing v CLT and Information Publicile Benelux SA* [1985] ECR 3261 **37**
- Case C-41/90 *Höfner and Elser v Macroton* [1991] ECR I-1979 **34**
- Case C-62/86 *AKZO Chemie BV v Commission* [1991] ECR I-3359 **35, 37**
- Cases C-89/85, C-104/85, C-114/85, C-116/85, C-117/85 and C-125/85 to C-129/85 *A. Ahlström Osakeyhtiö and others v Commission of the European Communities*. [1993] ECR I 01307 **17, 136**
- Case C-393/92 *Municipality of Almelo and others v NV Energiebedrijf Ijsselmij* [1994] ECR I-01477 **35, 96, 100, 102**
- Cases C-140/94, C-141/94 and C-142/94 *DIP SpA v Comune di Bassano del Grappa, LIDL Italia Srl v Comune di Chioggia and Lingral Srl v Comune di Chioggia* [1995] ECR I-03257 **96, 102**
- Case C-299/95 *Friedrich Kremzow v Republik Österreich* [1997] ECR I-02629 **144**
- Cases C-68/94 and C-30/95 *French Republic and Société commerciale des potasses et de l'azote (SCPA) and Entreprise minière et chimique (EMC) v Commission of the European Communities*

- [1998] ECR I-01375 **2, 20, 32, 33, 34, 97, 98, 101, 103**
- Joined cases C-215/96 and C-216/96 *Carlo Bagnasco and Others v Banca Popolare di Novara soc. coop. arl. (BNP) (C-215/96) and Cassa di Risparmio di Genova e Imperia SpA (Carige) (C-216/96)* [1999] ECR I 00135 **96**
- Cases C-395/96 P and C-396/96 P *Compagnie maritime belge transports SA (C-395/96 P), Compagnie maritime belge SA (C-395/96 P) and Dafra-Lines A/S (C-396/96 P) v Commission of the European Communities* [2000] ECR I-01365 **29, 33, 36, 37, 100, 102**
- Case C-309/99 *J. C. J. Wouters, J. W. Savelbergh and Price Waterhouse Belastingadviseurs BV v Algemene Raad van de Nederlandse Orde van Advocaten* [2002] ECR I-01577
- Case C-12/03P *Commission of the European Communities v Tetra Laval BV* [2005] ECR I-00000 **20, 143, 147, 149, 196**
- Case C-413/06P *Bertelsmann AG and Sony Corporation of America v Independent Music Publishers and Labels Association (Impala)* [2008] ECR-00000 **9, 147, 149, 150, 152**
- Court of First Instance**
- Case T30/89 *Hilti AG v Commission* [1991] ECR II 1439 **35, 37**
- Case T 51/89 *Tetra Pak Rausing SA v Commission* [1991] ECR II 309 **35, 36**
- Cases T 68/89, T 77/89 and T 78/89 *Società Italiana Vetro SpA, Fabbrica Pisana SpA and PPG Vernante Pennitalia SpA v Commission of the European Communities* [1992] ECR II 01403 **2, 34, 35, 36, 37, 82, 90**
- Case T65/89 *BPB Industries PLC and British Gypsum Ltd v Commission* [1993] ECR II 00389 **37**
- Case T 83/91 *Tetra Pak Rausing SA v Commission (Tetra Pak II)* [1994] ECR II 755 **35, 37**
- Cases T 24/93, T 25/93, T 26/93 and T 28/93 *Compagnie maritime belge transports SA and Compagnie maritime belge SA, Dafra Lines A/S, Deutsche Afrika Linien GmbH & Co. and Nedlloyd Lijnen BV v Commission of the European Communities* [1996] ECR II 01201 **102, 105**
- Case T-348/94 *Enso Espanola v Commission* [1998] ECR II-1875 **144**
- Case T 102/96 *Gencor Ltd v Commission of the European Communities* [1999] ECR II 00753 **29, 33, 98, 100, 101, 103, 104**
- Case T 228/97 *Irish Sugar plc v Commission of the European Communities* [1999] ECR II 02969 **38, 102**
- Joined cases T-25/95 *Cimenteries CBR and Others v Commission of the European Communities* [2000] ECR II-00491 **144, 145**
- Case T-112/98 *Mannesmannröhren-Werke AG v Commission of the*

- European Communities* [2001] ECR II-00729 **144**
- Case T 77/02 *Schneider Electric SA v Commission of the European Communities* [2002] ECR II 04071 **2, 7, 147**
- Case T 80/02 *Tetra Laval BV v Commission of the European Communities* [2002] ECR II 04381 **2, 7, 147**
- Case T 342/00 *Petrolessence and SG2r v Commission* [2002] ECR II 1161 **20**
- Case T 342/99 *Airtours plc v Commission of the European Communities* [2002] ECR II 02585 **2, 6, 7, 25, 30, 34, 54, 68, 76, 77, 100, 101, 103, 104, 119, 129, 147, 149, 152, 162, 170, 178**
- Cases T 191/98, T 212/98 to T 214/98 *Atlantic Container Line AB and Others v Commission of the European Communities* [2003] ECR II 03275 **26, 90, 102, 103, 104, 105**
- Case T 193/02 *Laurent Piau v Commission of the European Communities* [2005] ECR II-00209 **100, 102**
- Case T-210/01 *General Electric Co v Commission of the European Communities* [2005] ECR II 00000 **145**
- Case T464/04 *Independent Music Publishers and Labels Association (Impala, International Association) v Commission of the European Communities* [2006] ECR II-02289 **2, 6, 7, 25, 34, 72, 77, 79, 101, 102, 103, 104, 147, 149, 150, 152, 178, 195**
- Case T282/06 *Sun Chemical Group BV v. Commission of the European Communities* [2007] ECR II - 02149 **61, 97, 101**

EUROPEAN COMMISSION DECISIONS

Article 82 Decisions

- Re Continental Can Co Inc* (Case IV/26 811) [1972] JO L 7/25 **35, 37**
- European sugar industry* (Case No.IV/26 918) [1973] OJ L140/17 **23, 89**
- Chiquita* (Case IV/26 699) [1976] OJ L095/1 **35**
- Eurofix-Bauco v Hilti* (Case No. IV/30.787 and 31.488) [1988] OJ L65/19 **37**
- Flat Glass* (Case No IV/31. 906) [1989] OJ L033/44 **82, 85, 89, 90, 91, 92, 95**
- French-West African shipowners' committees* (Case No.IV/32.450) [1992] OJ L134/1 **89, 90, 91, 92, 95**
- Cewal, Cowac and Ukwai* (Case No. IV/32.448 and IV/32.450) [1993] OJ L034/20 **89, 90, 92, 95, 100, 134, 135, 139, 141**
- Irish Sugar plc* (Case No. IV/34.621, 35.059/F-3) [1997] OJ L258/1 **89, 91**
- P & I Clubs, IGA* (Case No. IV/D-1/30.373) and *P & I Clubs, Pooling Agreement* (Case No IV/D- 1/37.143) [1999] OJ L125/12 **89, 92, 93**

Trans-Atlantic Conference

Agreement (Case No IV/35.134)
[1999] OJ L095/ **85, 86, 90, 91,**
92, 93, 95, 102, 135, 136, 137,
138, 139, 141, 142

**Decisions under the European
Community Merger Regulation**(a) Decisions referenced in the
text

Alcatel/AEG Kabel (Case No
IV/M.165) [1992] OJ C006/0
23, 65, 70

Nestlé/Perrier (Case No IV/M.190)
[1992] OJ L356/1 **59, 70, 74,**
75, 79, 80

Thorn EMI/Virgin Music (Case No
IV/M.202) [1992] OJ C120/0
80

Knorr-Bremse/Allied Signal (Case
No IV/M.337) [1993] OJ C298/0
70, 74

Mannessman/Ilva/Vallourec (Case
No IV/M.315) [1994] OJ L102/15
59, 64, 71

Pilkington- Techint/SIV (Case No
IV/M.358) [1994] OJ L158/24
59, 60, 73, 79, 80

*Krupp/Thyssen/Riva/Falck/Tadfin/AS
T* (Case No IV/M.484) [1995] OJ
L251/18 **66**

Akzo Nobel / Monsanto (Case No
IV/M.523) [1995] OJ C037/3 **66**

ABB/Daimler-Benz (Case No
IV/M.580) [1997] OJ L011/1 **59,**
63, 67, 69, 72, 73, 74

Gencor/Lonrho (Case No IV/M.619)
[1997] OJ L011/30 **29, 58, 64,**
67, 73, 74, 79, 80, 86, 113, 127

Kali + Salz/MDK/Treuhand (Case
No IV/M.308) [1998] OJ C275/3
68

GEC Alsthom/Cegelec (Case No
IV/M.1164) [1998] OJ C181/3
72

*TYCO International/US Surgical
International Corp.* (Case No
IV/M.1223) [1998] OJ C282/5
63, 66, 70

Glaverbel/PPG (Case No
IV/M.1230) [1998] OJ C282/2
65, 74

VALEO/ITT Industries (Case No
IV/M.1245) [1998] OJ C288/5
70

*Price Waterhouse/Coopers &
Lybrand* (Case IV/M.1016)
[1999] OJ L050/27 **26, 29, 58,**
96

Enso/Stora (Case No IV/M.1225)
[1999] OJ L254/9 **70**

Kodak/Imation (Case No
IV/M.1298) [1999] OJ C017/2
66

DUPONT/Hoechst/Herberts (Case
No IV/M.1363) [1999] C064/2
66

BAT/Rothmans (Case No
IV/M.1415) [1999] OJ C120/21
71

Agfa-Gevaert/Sterling (Case No
IV/M.1432) [1999] OJ L228/11
59, 64, 66, 70, 71

*Lucent Technologies/Ascend
Communications* (Case No
IV/M.1440) [1999] OJ C139/4
72

Rohm and Haas/Morton (Case No
IV/M.1467) [1999] OJ C157/7
66

Rhodia Chemie/Albright & Wilson
(Case No IV/M.1517) [1999] OJ
C248/10 **59, 65, 67, 71, 72**

Otto Versand/Freemans (Case No

- IV/M.1527) [1999] OJ C211/15
80
- CVC/Danone/Gerresheimer* (Case No IV/M.1539) [1999] OJ C214/7 **60, 64**
- Danish Crown/Vestjyske Slagterier* (Case IV/M.1313) [2000] OJ L020/1 **60, 64, 65, 70, 74, 75, 76, 79, 80**
- Airtours/First Choice* (Case IV/M.1524) [2000] OJ L093/135 **29, 30, 60, 64, 65, 69, 73, 75, 76, 79, 80, 86, 88, 97, 110, 113, 118, 122, 126, 169**
- New Holland/CASE* (Case No IV/M.1571) [2000] OJ C130/11 **65, 71**
- Akzo Nobel/Hoechst Roussel Vet* (Case No IV/M.1681) [2000] OJ C011/5 **65, 71, 74**
- BP Amoco/Castrol* (Case No IV/M.1891) [2000] OJ C301/23 **66**
- ALCOA/British Aluminum* (Case No IV/M.2111) [2000] OJ C348/14 **64**
- Outokumpu/Avesta Sheffield* (Case No IV/ECSC 1342) [2001] OJ C083/14 **169**
- VA Stahl/Thyssen Schienen Technik* (Case COMP/ECSC.1357) [2001] OJ C236/12 **66**
- TotalFina/Elf* (Case No COMP/M.1628) [2001] OJ L143/1 **79**
- Rexam (PLM)/American National Can* (Case No IV/M.1939) [2001] OJ C325/11 **64, 66, 70**
- Outokumpu/Norzink* (Case No IV/M.2348) [2001] OJ C175/12 **60, 64, 66, 75**
- Alcan/Alusuisse* (COMP/M.1663) [2002] OJ L090/1 **59, 65, 74, 80**
- SCA/Metsä Tissue* (Case COMP/M.2097) [2002] OJ L057/1 **65, 68, 73, 79**
- Bombardier/Adtranz* (Case COMP/M.2139) [2002] OJ L069/50 **69**
- MAN/Auwärter* (Case No COMP/M.2201) [2002] OJ L116/35 **59, 63, 67, 71, 75, 76, 88**
- UPM-Kymmene/Haindl* (Case No COMP/M.2498) [2002] OJ L233/38 **66, 67, 70, 74, 75, 76, 79, 80, 88, 115, 119, 122, 123, 170**
- BP/E.ON* (Case No COMP/M.2533) [2002] OJ L276/31 **70, 74, 75, 80**
- Johnson Professional Holdings/Diverseylever* (Case No IV/M.2665) [2002] OJ C079/11 **69**
- Solvay/Montedison-Ausimont* (Case No IV/M.2690) [2002] OJ C153/11 **66, 70, 71, 73, 74, 80**
- P & O Stena Line(Holding) Limited* (Case No IV/M.2838) [2002] OJ C206/ **64, 80**
- Staples/Guilbert* (Case No IV/M.2965) [2002] OJ C262/17 **71**
- Usinor/Arbed/Aceralia* (Case COMP/ECSC.1351) [2003] OJ L088/1 **63**
- MCI WorldCom/Sprint* (Case COMP/M.1741) [2003] OJ L300/1 **67, 75, 88**
- Shell/DEA* (Case COMP/M.2389) [2003] OJ L015/35 **64, 70, 74, 75, 80**
- Wallenius Lines AB/Wilhelmsen ASA/Hyundai merchant Marine*

- (Case No IV/M.2879) [2003] OJ L030 /31 **79**
- State Street Corporation/Deutsche Bank Global Securities* (Case No IV/M.3027) [2003] OJ C048/14 **66, 67, 71, 72**
- Procter & Gamble/Wella* (Case No IV/M.3149) [2003] OJ C195/6 **80**
- Candover/Cinven /Bertelsmann-Springer* (Case No IV/M.3197) [2003] OJ C207/25 **60, 64**
- UCB / Solutia* (Case No IV/M.3060) [2003] OJ C078/6 **66**
- Exxon/Mobil* (Case No IV/M.1383) [2004] OJ L103/1 **22, 26, 58, 59, 63, 68, 69, 74, 79, 80, 170**
- Air Liquide/BOC* (COMP/M.1630) [2004] OJ L092/1 **80**
- Mitsui/CVRD/Caemi* (Case COMP/M.2420) [2004] OJ L092/50 **79**
- Grupo Villar Mir/EnBW/Hidroeléctrica del Cantábrico* (Case COMP/M.2434) [2004] OJ L048 **60, 75**
- Oracle/Peoplesoft* (Case No COMP/M.3216) [2005] OJ L218 **69**
- SONY/BMG* (COMP/M.3333) [2005] OJ L062/30 **75, 75, 76, 113, 122**
- Sony/BMG* (Case COMP/M.3333) [2008] OJ C94 **74, 75**
- EDF/AEM/Edison* (Case COMP/M.3729) [2005] OJ C222 **59, 68, 75**
- Amer/Salomon* (Case No IV/M.3765) [2005] OJ C318 **58, 68, 70**
- Cargill/Degussa* (Case COMP/M.3975) [2007] OJ L316 **59, 67**
- Korsnē /Assidomd' Cartonboard* (Case No IV/M.4057) [2006] OJ C209 **58, 74, 75**
- Linde/BOC* (Case COMP/M.4141) [2006] OJ C181 **58, 59, 65, 75, 129**
- Degussa/Dow* (Case No IV/M.4154) [2006] OJ C177 **67**
- LSG Lufthansa Service Holding / Gate Gourmet Switzerland* (Case No IV/M.4170) [2007] OJ C11 **66, 67, 74**
- MAN/Scania* (Case No IV/M.4336) [2007] OJ C100 **59, 63, 66, 68**
- Umicore/Zinifex/Neptune* (Case No IV/M.4450) [2007] OJ C65 **67**
- Lite-On/PBDS* (Case No IV/M.4502) [2007] OJ C72 **66**
- Travelport/Worldspan* (Case COMP/M.4523) [2007] OJ L314 **68**
- Vinnolit/Ineos CV Specialty PVC Business* (Case No IV/M.4572) [2007] OJ C160 **65**
- TUI/First Choice* (Case No IV/M.4600) [2007] OJ C137 **68, 74, 75**
- Karstadtquelle/Mytravel* (Case No IV/M.4601) [2007] OJ C113 **68, 74, 75**
- Nestle/Gerber* (Case No IV/M.4688) [2007] OJ C203 **59**
- Superior Essex/Invex* (Case No IV/M.4706) [2007] OJ C217 **65**
- Heidelbergcement/Hanson* (Case No IV/M.4719) [2007] OJ C221 **66**
- Antalis/Map* (Case No COMP/M.4753) [2007] OJ C289 **68, 129**

Fortis/ABN AMRO Assets (Case No COMP/M.4844) [2007] OJ C265
74

- (b) Decisions not referenced in the text but included in the analysis of Chapter 4

Harrisons & Crosfield/AKZO (Case No IV/M.310) [1993] OJ C128/0.

SNECMA/ TI (Case No IV/M.368) [1993] OJ C042/0.

Akzo / Nobel Industrier (Case No IV/M.390) [1994] OJ C019/1.

Zeneca / Vanderhave (Case No IV/M.556) [1996] OJ C188/10.

Bertelsmann / CLT (Case No IV/M.779) [1996] OJ C364/3.

Baxter / Immuno (Case No IV/M.821) [1996] OJ C386/11.

Cardo / Thyssen (Case No IV/M.818) [1997] OJ C018/13.

P&O / Royal Nedlloyd (Case No IV/M.831) [1997] OJ C110/7.

DuPont/ICI (Case No IV/M.984) [1998] OJ C004/4.

Allianz/AGF (Case No IV/M.1082)) [1998] OJ C246/4.

Nestle/Dalgety (Case No IV/M.1127) [1998] OJ C143/28.

Seagram/Polygram (Case No IV/M.1219) [1998] OJ C309/8.

Pirelli/Siemens (Case No IV/M.1271) [1998] OJ C336/11.

American Home Products/Monsanto (Case No IV/M.1229) [1999] OJ C109/4.

Thomson/Lucas (Case No IV/M.1332) [1999] OJ C061/3.

Robert Bosch/Magnetti Marelli (Case No IV/M.1491) [1999] OJ C183/3.

SAIR Group/AOM (Case No IV/M.1494) [1999] OJ C245/29.

British Steel/Hoogovens (Case No IV/M.1595 and IV/ECSC.1310) [1999] OJ C277/5.

MAERSK/SEA-LAND (Case No IV/M.1651) [1999] OJ C313/6.

Castrol/Carless/JV (Case No IV/M.1597) [2000] OJ C016/5.

Monsanto/Pharmacia & Upjohn (Case No IV/M.1835) [2000] OJ C143/4.

France Telecom/Orange (Case No IV/M.2016) [2000] OJ C261/6.

Interbrew/Bass (Case No IV/M.2044) [2000] OJ C293/11.

Philips/Marconi Medical Systems (Case No IV/M.2537) [2001] OJ C321/12.

Pernod Ricard/Diageo/Seagram Spirits (Case No IV/M.2268) [2002] OJ C016/13.

BASF/Eurodiol/Pantochim (Case COMP/M.2314) [2002] OJ L132/45.

Norske Skog/Parenco/Walsum (Case No COMP/M.2499) [2002] OJ L233/38.

Cargill /Cerestar (Case No IV/M.2502) [2002] OJ C040/7.

Norsk Hydro/ VAW (Case No IV/M.2702) [2002] OJ C089/6.

Deloitte & Touche/Andersen UK (Case No IV/M.2810) [2002] OJ C200/8.

Ernst & Young France/Andersen France (Case No IV/M.2816) [2002] OJ C232/6.

Ernst & Young/Andersen Germany (Case No IV/M.2824) [2002] OJ C246/21.

Bunge /Cereol (Case No IV/M.2886) [2002] OJ C250/3.

- JCI / Bosch / VB Autobatterien JV* (Case No IV/M.2939) [2002] OJ C284/4.
- Pirelli/BICC* (Case COMP/M.1882) [2003] OJ L070/35.
- Newscorp/Telepiù* (Case COMP/M.2876) [2004] OJ L110/73.
- Arla Foods/Express Dairies* (Case No IV/M.3130) [2003] OJ C297
- Anglo American/Kumba Resources* (Case No IV/M.3276) [2004] OJ C009
- Outokumpu/Boliden* (Case No IV/M.3284) [2004] OJ C025
- Agco/Valtra* (Case No IV/M.3287) [2004] OJ C011
- Schneider Electric/MGE-UPS* (Case No IV/M.3347) [2004] OJ C049
- Toshiba/Samsung/JV* (Case No IV/M.3349) [2006] OJ C25
- Agfa-Geaert/Lastra* (Case No IV/M.3439) [2004] OJ C304
- Seiko Epson / Sanyo / Sanyo Epson Imaging Devices JV* (Case No IV/M.3459) [2004] OJ C215
- Kesko/Ica/JV* (Case No IV/M.3464) [2005] OJ C8
- Repsol YPF/Shell* (Case No IV/M.3516) [2004] OJ C272
- Siemens/V A Tech* (Case No COMP/M.3653) [2006] OJ L353
- Reuters/Telerate* (Case No IV/M.3692) [2005] OJ C154
- Pernod Ricard/Allied Domecq* (Case No IV/M.3779) [2005] OJ C196
- Maersk/Ponl* (Case No IV/M.3829) [2005] OJ C207
- Sea-Invest/EMO-EKOM* (Case COMP/M.3848) [2007] OJ L282
- Vattenfall/Elsam and E2 Assets* (Case No IV/M.3867) [2006] OJ C184
- Aster2/Flint Ink* (Case No IV/M.3886) [2005] OJ C263
- T-Mobile Austria/tele.ring* (Case COMP/M.3916) [2007] OJ L88
- OMV/Aral-CR* (Case No IV/M.4002) [2006] OJ C25
- Telenor/Vodafone Sverige* (Case No IV/M.4034) [2006] OJ C71
- Toepfer/Invivo/Soulès* (Case No IV/M.4042) [2006] OJ C68
- SKF/SNFA* (Case No IV/M.4062) [2006] OJ C156
- Apollo/Akzo Nobel IAR* (Case No IV/M.4071) [2006] OJ C176
- E.ON/Endesa* (Case No IV/M.4110) [2006] OJ C114
- Toshiba/Westinghouse* (Case No IV/M.4153) [2007] OJ C10
- Sonae Industria/Hornitex* (Case No IV/M.4165) [2006] OJ C184
- Gaz de France/Suez* (Case COMP/M.4180) [2007] OJ L88
- E.ON / Prazsk`Plynrenski* (Case No IV/M.4238) [2006] OJ C242
- Abertis/Autostrade* (Case No IV/M.4249) [2006] OJ C268
- Axa/Winterthur* (Case COMP/M.4284) [2006] OJ C239
- Nokia/Siemens* (Case No IV/M.4297) [2007] OJ C0
- Johnson & Johnson/Pfizer Consumer Healthcare* (Case COMP/M.4314) [2007] OJ C39
- Cinven/Warburg Pincus/Casema/Multikabel* (Case No IV/M.4338) [2006] OJ C243
- JT/Gallaher* (Case No IV/M.4424) [2007] OJ C114
- En+ / Glencore / Sual / Uc Rusal* (Case No IV/M.4441) [2007] OJ C71
- Mahle/Dana EPG* (Case No IV/M.4456) [2007] OJ C94

Lagadere/Sportfive (Case No IV/M.4519) [2007] OJ C27
Nestle/Novartis (Medical Nutrition Business) (Case No IV/M.4540) [2007] OJ C229
Statoil/Hydro (Case No IV/M.4545) [2007] OJ C130
Dow Chemical Company/Wolff Walsrode (Case No IV/M.4550) [2007] OJ C157
Rewe/Delvita (Case No COMP/M.4590) [2007] OJ C302
Enel/Acciona/Endesa (Case No IV/M.4685) [2008] OJ C170
Apax Partners/Telenor Satellite Services (Case No IV/M.4709) [2007] OJ C230
Ineos/Kerling (Case COMP/M.4734) [2008] OJ C219
Osram/Sunny World (Case No COMP/M.4735) [2007] OJ C290
T-Mobile/Orange Netherlands (Case No COMP/M.4748) [2007] OJ C243
STM/Intel/JV (Case No IV/M.4751) [2007] OJ C212
Yara/Praxair/JV (Case No COMP/M.4823) [2007] OJ C310
Rio Tinto/Alcan (Case No COMP/M.4827) [2008] OJ C59

Danone/Numico (Case No COMP/M.4842) [2007] OJ C284
Vodafone /Tele2 Italy/Tele2 Spain (Case No COMP/M.4947) [2007] OJ C300
Sonepar/Hagemeyer (Case No COMP/M.4949) [2008] OJ C108
Acer/Packard Bell (Case No COMP/M.4979) [2008] OJ C112

UNITED STATES COURT DECISIONS

Daubert v Merrell Dow Pharmaceutical Inc 509 U.S. 579, 113 S. Ct. 2786 (1993) **164, 165, 193**
In re Baby Food Antitrust Litigation 166 F.3d 112 (3rd Cir. 1999) **179**
In re Aluminum Phosphide Antitrust Litigation 893 F.Supp.1497 (1995) (D Kansas) **118**
Lantec, Inc. v Novell, Inc. 146 F.Supp.2d 1140 (2001) (D Utah) **118**
In re Brand Name Prescription Drugs Antitrust Litigation No. 94 C 897, MDL 997, WL 33889 (1999) (N.D. Ill.) **117, 118, 179**

Table of treaties and regulations

TREATIES

EC Treaty (Treaty of Rome, as amended) [1957] 298 UNTS 11.
Treaty Articles as renumbered by the Treaty of Amsterdam (EC Treaty) [1997] OJ C340/1

Article 81 3, 17, 20, 38, 89, 90, 93, 130, 182

Article 81(1) 17, 38, 89, 90

Article 81(3) 38, 89, 93, 95

Article 82 6, 7, 10, 17, 18, 20, 22, 23, 24, 27, 29, 31, 33, 34, 36, 38, 39, 51, 52, 53, 54, 82, 83, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 102, 103, 104, 105, 106, 108, 130, 131, 132, 133, 134, 135, 136, 137, 139, 140, 141, 142, 143, 144, 145, 152, 153, 154, 155, 156, 157, 161, 182

Article 230 143

Article 234 20

Convention for the protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) [1950] 213 UNTS 220

Article 6 144, 145

REGULATIONS

European Council

Council Regulation (EEC) 17/62 First regulation implementing Articles 85 and 86 [now Articles 81 and 82] of the Treaty [1962] OJ Spec Ed 87 as amended [1999] OJ C148/5 38, 39, 130, 144

Council Regulation (EC) 4056/86 Application of the competition rules to maritime transport [1986] OJ L378/4 93

Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules of competition laid down in Articles 81 and 82 of the Treaty [2003] OJ L1/1 20, 38, 39, 130, 132

Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) [2004] OJ L24/1 6, 19, 23, 31, 32, 108

European Commission

Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty [2004] OJ L123/18 130