EC COMPETITION LAW AND POLICY pdf

1: EC Competition Law and Policy

It is divided into three main parts, looking at the foundations of EC competition law, anti-competition agreements, abuse of dominant position, and the enforcement of EC competition law. The book focuses on the two main Treaty Articles which are concerned with competition law.

What does it mean for EU and UK competition law and policy? It still has to negotiate and agree the legal arrangements underpinning the future relationship. These negotiations have not yet started. As far as competition law and policy are concerned, the possible outcomes of the negotiations range from: If there is a separation, we would expect transitional rules to be agreed to deal with issues such as liability for pre-Brexit breaches of EU competition law. Rules regarding which authority has jurisdiction over investigations and leniency applications which were on-going at the time of Brexit will need to be adopted. There may also have to be detailed consideration of how to deal with damages claims in which the cause of action arises pre-Brexit but the claims are brought post-Brexit. Going-forward, a key issue is whether there will be mutual recognition of competition decisions in the national courts. Separation could also tempt regulators on both sides of the Channel to take broader political issues into account in their deliberations to protect national interests. We would also expect the UK to enter into cooperation agreements with competition authorities in other countries such as the US, China and Canada. However, none of these changes is imminent. For the time being we expect any change to be relatively nuanced, but potentially important. The jurisdictional, substantive and procedural rules will remain the same. Most deals will not be affected. Regulatory attitudes may also become more challenging to predict, particularly where the deal involves economically or politically sensitive sectors, companies or assets. Cartels, abuse of dominance and other behavioural cases The current jurisdictional guidelines, substantive tests and procedural rules are expected to apply whilst the UK remains a member of the EU. We may see the UK authorities become more prominent in enforcement activities involving the UK including issuing more information requests and opening more proceedings with the EU taking more of a back seat. These considerations may bring into sharper focus your decision as to which competition authority is the recipient of your leniency application or complaint. New claims are likely to continue to be brought post-Brexit where claims arise from pre-Brexit infringements of EU law. If a valid claim has arisen pre-Brexit, the ability to make the claim is unlikely to be lost because of Brexit. It is uncertain to what extent claimants seeking damages in UK courts in relation to post-Brexit infringements will be able to recover damages for their EU losses. Parallel damages actions may therefore be brought in the UK as well as in an EU jurisdiction. State aid The current state aid rules will continue to apply whilst the UK remains a member of the EU. But state aid issues are frequently a relatively politicised area of the law so attitudes towards strict compliance by the UK and enforcement of the rules by the EU Commission may be affected, raising strategic timing issues. Should you be lobbying the UK government, other governments or the EU Commission for any particular outcome to the negotiations, either generally or in relation to any particular sector? How are those deals which previously looked too difficult to do based purely on competition grounds going to be assessed if merger control decisions do take broader national interests into consideration? Is the converse true? Might UK competition claims be brought more quickly against your company and should you consider accelerating any such claims you may have? Where should you lodge your leniency application or complaint? How will the EU Commission react and when? Next steps As the UK and EU begin to prepare to negotiate the terms of Brexit, the practical implications of these changes will become clearer. For more detail on any of the issues at any stage, please get in touch with your usual contacts in our antitrust, competition and trade team.

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2: Centre for Competition Law and Policy | Oxford Law Faculty

EC Competition Law and Policy A fifth and sixth examples comprise the related and similar cases of Strintzis Lines Shipping v Commission and Minoan Lines v Commission appealing the decision of the Commission to impose fines on these two shipping companies together with other ferries dubbed the Greek Ferries case.

Subjects Description Competition Law and Policy in the EU and UK provides a focused guide to the main provisions and policies at issue in the EU and UK, including topics such as enforcement, abuse of dominance, anti-competitive agreements, cartels, mergers, and market investigations. The fifth edition provides a full update for this well-established title, presenting and contextualising the impact of key cases, as well as changes to enforcement practice, and at a legislative and institutional level. There are new, separate chapters in this edition on private enforcement and UK market investigations to reflect the increasing significance of these key areas of competition law practice. Competition Law and Policy in the EU and UK integrates useful pedagogical features to help clarify topics and reinforce important points: Each chapter provides a helpful overview in the beginning and finishes with a summary of key points, a discussion of relevant questions and a list of further reading. This is extremely helpful. The text is extremely comprehensive covering all of the most interesting and challenging aspects of the competition law syllabus from policy objectives, cartels, abuse of dominance, and mergers to include both public and private enforcement of competition law, as well as details of market investigations. A great advantage of this book lies in its strong and fully up-to-date focus on most recent developments in the UK competition law regime which includes the recently established UK Competition and Markets Authority. In particular its novel chapter on private enforcement of competition law follows recent trends in EU competition law. The text includes useful overviews and cogent summaries as well as further recommended readings. The writing style makes this text highly accessible, while its detailed analysis enables readers to select further key developments in both jurisdictions. It is a very much welcome addition to the literature on competition law and policy and a highly recommended read to students, academics, and practitioners involved in the area of competition law, policy and economics. Its clear and reader-friendly style allows students to decipher the â€¦ most recent developments alongside a profound commentary of the key case law. Discussion points at the end of each chapter and further reading materials provide avenues for exploration and discovery and enable students to reflect on their knowledge and understanding. This is the only accessible textbook for Competition Law Modules covering national and EU competition law and provides a clear explanation of the theory behind the substantive law. The content innovations and structural changes strengthen what was an already excellent wide ranging undergraduate textbook. The real -world examples make the subject relatable and remove the traditional barriers created by the economic theory underpinning the subject. Unlike other publications, it includes very strong chapters on cartel enforcement and private enforcement, making it one of the most complete competition law textbooks available. Introduction to competition policy and practice, Chapter 2. Private Enforcement, Chapter 4. The control of abuse of dominance, Chapter 5. Market Investigations, Chapter 6. Control of anti-competitive agreements, Chapter 7.

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3: Competition Law and Policy: Controlling Private Power

Get this from a library! EC Competition Law and Policy.. [Albertina Albors-Llorens] -- This book provides a clear overview of the main issues in EC competition law and policy and an up to date text for students and practitioners with an interest in this subject.

Zeno rescinded all previously granted exclusive rights. Under Henry III an act was passed in [17] to fix bread and ale prices in correspondence with grain prices laid down by the assizes. Penalties for breach included amercements , pillory and tumbrel. On top of existing penalties, the statute stated that overcharging merchants must pay the injured party double the sum he received, an idea that has been replicated in punitive treble damages under US antitrust law. Also under Edward III, the following statutory provision outlawed trade combination. In continental Europe, competition principles developed in lex mercatoria. In , Henry VIII of England reintroduced tariffs for foodstuffs, designed to stabilize prices, in the face of fluctuations in supply from overseas. So the legislation read here that whereas, it is very hard and difficult to put certain prices to any such things The privileges conferred were not abolished until the Municipal Corporations Act Early competition law in Europe[edit] Judge Coke in the 17th century thought that general restraints on trade were unreasonable. The English common law of restraint of trade is the direct predecessor to modern competition law later developed in the US. A dyer had given a bond not to exercise his trade in the same town as the plaintiff for six months but the plaintiff had promised nothing in return. Europe around the 16th century was changing quickly. The new world had just been opened up, overseas trade and plunder was pouring wealth through the international economy and attitudes among businessmen were shifting. In a system of Industrial Monopoly Licenses, similar to modern patents had been introduced into England. But by the reign of Queen Elizabeth I , the system was reputedly much abused and used merely to preserve privileges, encouraging nothing new in the way of innovation or manufacture. The statute followed the unanimous decision in Darcy v. The court found the grant void and that three characteristics of monopoly were 1 price increases, 2 quality decrease, 3 the tendency to reduce artificers to idleness and beggary. This put an end to granted monopolies until King James I began to grant them again. In Parliament passed the Statute of Monopolies , which for the most part excluded patent rights from its prohibitions, as well as guilds. Sandys it was decided that exclusive rights to trade only outside the realm were legitimate, on the grounds that only large and powerful concerns could trade in the conditions prevailing overseas. At the same time industrialisation replaced the individual artisan , or group of artisans, with paid labourers and machine-based production. Commercial success increasingly dependent on maximising production while minimising cost. Therefore, the size of a company became increasingly important, and a number of European countries responded by enacting laws to regulate large companies which restricted trade. Following the French Revolution in the law of 14â€”17 June declared agreements by members of the same trade that fixed the price of an industry or labour as void, unconstitutional, and hostile to liberty. Similarly the Austrian Penal Code of established that "agreements Austria passed a law in abolishing the penalties, though such agreements remained void. However, in Germany laws clearly validated agreements between firms to raise prices. Throughout the 18th and 19th century, ideas that dominant private companies or legal monopolies could excessively restrict trade were further developed in Europe. However, as in the late 19th century, a depression spread through Europe, known as the Panic of , ideas of competition lost favour, and it was felt that companies had to co-operate by forming cartels to withstand huge pressures on prices and profits. The Act for the Prevention and Suppression of Combinations formed in restraint of Trade was passed one year before the United States enacted the most famous legal statute on competition law, the Sherman Act of It was named after Senator John Sherman who argued that the Act "does not announce a new principle of law, but applies old and well recognised principles of common law. United States antitrust law Senatorial Round House by Thomas Nast , The Sherman Act of attempted to outlaw the restriction of competition by large companies, who co-operated with rivals to fix outputs, prices and market shares, initially through pools and later through trusts. Trusts first appeared in the US railroads, where the capital requirement of railroad construction precluded competitive services in then

scarcely settled territories. This trust allowed railroads to discriminate on rates imposed and services provided to consumers and businesses and to destroy potential competitors. Different trusts could be dominant in different industries. The Standard Oil Company trust in the s controlled a number of markets, including the market in fuel oil , lead and whiskey. A primary concern of this act is that competitive markets themselves should provide the primary regulation of prices, outputs, interests and profits. Instead, the Act outlawed anticompetitive practices, codifying the common law restraint of trade doctrine. Since the enactment of the Sherman Act enforcement of competition law has been based on various economic theories adopted by Government. Following the enactment in US court applies these principles to business and markets. Courts applied the Act without consistent economic analysis until , when it was complemented by the Clayton Act which specifically prohibited exclusive dealing agreements, particularly tying agreements and interlocking directorates, and mergers achieved by purchasing stock. From onwards the rule of reason analysis was frequently applied by courts to competition cases. However, the period was characterized by the lack of competition law enforcement. Since game theory has frequently been used in anti-trust cases. European Union competition law Competition law gained new recognition in Europe in the inter-war years, with Germany enacting its first anti-cartel law in and Sweden and Norway adopting similar laws in and respectively. However, with the Great Depression of competition law disappeared from Europe and was revived following the Second World War when the United Kingdom and Germany, following pressure from the United States, became the first European countries to adopt fully fledged competition laws. The agreement aimed to prevent Germany from re-establishing dominance in the production of coal and steel as it was felt that this dominance had contributed to the outbreak of the war. Article 65 of the agreement banned cartels and article 66 made provisions for concentrations, or mergers, and the abuse of a dominant position by companies. The Treaty of Rome established the enactment of competition law as one of the main aims of the EEC through the "institution of a system ensuring that competition in the common market is not distorted. The treaty also established principles on competition law for member states, with article 90 covering public undertakings, and article 92 making provisions on state aid. Regulations on mergers were not included as member states could not establish consensus on the issue at the time. According to Article 2 any such agreements are automatically void. Article 3 establishes exemptions, if the collusion is for distributional or technological innovation, gives consumers a "fair share" of the benefit and does not include unreasonable restraints that risk eliminating competition anywhere or compliant with the general principle of European Union law of proportionality. Article prohibits the abuse of dominant position , [37] such as price discrimination and exclusive dealing. Article lays down a general rule that the state may not aid or subsidize private parties in distortion of free competition and provides exemptions for charities , regional development objectives and in the event of a natural disaster. The Competition Act, and Competition Commission of India India responded positively by opening up its economy by removing controls during the Economic liberalisation. As a result, Indian market faces competition from within and outside the country. But after the economic reforms in , this legislation was found to be obsolete in many aspects and as a result, a new competition law in the form of the Competition Act, was enacted in The Competition Commission of India , is the quasi judicial body established for enforcing provisions of the Competition Act. In Korea and Japan , the competition law prevents certain forms of conglomerates. In addition, competition law has promoted fairness in China and Indonesia as well as international integration in Vietnam. While there remains differences between regimes for example, over merger control notification rules, or leniency policies for whistle-blowers , [45] and it is unlikely that there will be a supranational competition authority for ASEAN akin to the European Union , [46] there is a clear trend towards increase in infringement investigations or decisions on cartel enforcement. World Trade Organization and International Competition Network There is considerable controversy among WTO members, in green, whether competition law should form part of the agreements At a national level competition law is enforced through competition authorities, as well as private enforcement. The United States Supreme Court explained: This system depends on strong competition for its health and vigor, and strong competition depends, in turn, on compliance with antitrust legislation. In enacting these laws, Congress had many means at its disposal to penalize violators. It could have, for example, required violators to compensate

federal, state, and local governments for the estimated damage to their respective economies caused by the violations. But, this remedy was not selected. Instead, Congress chose to permit all persons to sue to recover three times their actual damages every time they were injured in their business or property by an antitrust violation. This was done to facilitate quicker resolution of competition-related inquiries. In the Commission issued a Green Paper on Damages actions for the breach of the EC antitrust rules, [50] which suggested ways of making private damages claims against cartels easier. As analysed by Professor Whelan , these types of sanctions engender a number of significant theoretical, legal and practical challenges. Office of Fair Trading Director and Professor Richard Whish wrote sceptically that it "seems unlikely at the current stage of its development that the WTO will metamorphose into a global competition authority. While it is incapable of enforcement itself, the newly established International Competition Network [56] ICN is a way for national authorities to coordinate their own enforcement activities.

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4: EC Competition Law and Policy - Albertina Albors-Llorens - Google Books

As part of the overall enforcement of EU competition law, the Commission has also developed and implemented a policy on the application of EU competition law to actions for damages before national courts.

Certainly, the financial status of these corporations, coupled with their global reach and control of new technologies contribute to their tremendous influence in the society 2. Abusive practices by such businesses may have more impact on international trade than the activities of the smaller state governments3. Competition serves as the best stimulant of economic activity6 with a view to ensuring both an optimum allocation of resources and maximum consumer welfa 7re. Yet, society continuously strives to overcome capital? Defending competition process seems to be the only effective way of doing this 8? Arguably, the European Union has promoted? Fairhurst Law of the European Union 5th edn: Pearson, Longman, p. Thus, laws aimed at protecting competition have long been tagged? The Case of Merger Control? Fairhurst op cit p. Competition Policy and the Shaping of the Single Market? In this discourse, recourse will be made to the two fundamental competition articles of the European Commission Treaty hereinafter referred to as EC Treaty - Articles 81 and as well as other relevant Articles in the treaty in other to analyse the view of competition policy set out in the above quotation. As such, a brief overview of the development of Competition law and policy within the EU will be explored accompanied by a subjective analysis of the effects of Articles 81 and 82 of the EC Treaty, together with other relevant articles of the Treaty. Other secondary legislations and soft laws will also be used to achieve the aim of this essay. There shall also be a comparison of the US and EU competition policies. The influence of the European courts- the European Court of Justice hereinafter referred to as ECJ and the Court of First Instance hereinafter referred to as CFI - and the European Commission hereinafter referred to as Commission in furthering the objectives of Competition law and policy set out, cannot be left out. This concept shall also be looked into. The prolonged economic malaise of Europe appears to have led the Commission to conceive of competition policy as part of a broader strategy to deliver greater economic growth and sustainable employment 12? It was the principal focus of the Rome treaty of and it was a conscious decision after the failures of the more ambitious attempts at European integration of the mids Many economic advantages were expected to flow from the establishment of the European common market embracing an area that had been divided by national custom duties and quotas for over a century Herr Von der Groben16, believed that these rules also had a longer term function- to encourage the expansion of efficient firms and sectors of the economy at the expense of those good at supplying what the people want 7 to pay fo 1r? But should small firms be assisted in competing with supermarkets, even if they are less efficient in providing what consumers want to buy and even charge more18? An analysis of the prohibition provisions of the Treaty appears indispensable. Antitrust has one objective: Thus, the consumer ends the market chain. In order to establish a system which ensures that competition in the common market is not distorted, Articles 81 and 82 must be applied effectively and uniformly in the community 20? Both Articles have as their objective the protection of competition on the common marke 21t ; and 13 V. Evolution of the Single Market?. In Barnard and Scott eds. The Law of the Single European Market. Korah op cit 18 ibid 19 M. Legal Challenges for transatlantic economic integration? Wils has identified the principal development of competition law as the Commission? This is reflected both in the significant increase in the number of cases and in the revision of its notices on fines and leniency to improve enforcement Marquis contends that the competition rules must be read in the light of Article 3 1 g and ultimately, Article 2, EC Treaty The later establishes a common market, while the former refers to a system ensuring that competition in the internal market is not distorted. Article 4 1 EC Treaty refers to the activities of the community and the member states which include adoption of an economic policy conducted in accordance with the principle of open market economy with free competition. Three elements are indispensable in the application of Article 81 1 EC Treaty; a form of co-operation among undertakings, an anti-competitive object or effect and an effect on trade between Member States Article 81 2 EC Treaty renders any of such null and void26 while they may, withal, benefit from the exemption offered by Article 81 3 EC Treaty. Articles 81 and 82, EC Treaty are applicable to horizontal Cartels and vertical

agreements In recent years, the balance of emphasis of EC competition policy towards agreements between firms has shifted, at least to some degree, from vertical to horizontal agreements and from legal form to economic effect 28? Weatherill stated that the requirement contained in Article 3 and 81 of the EC Treaty that competition shall not be distorted implies the existence on the market of workable competition, that is to say the degree of competition necessary to ensure the observance of the basic requirements and attainment of the objectives of the Treaty, in particular the creation of a single market achieving conditions similar of a domestic market. Marquis, op cit, p. Albors-Llorens op cit p. Abuse of Market Power? Under European law, economic factors are not merely an extra-legal justification for legal rules, but they are genuinely integrated with them 29? Economic theory goes to the very foundation of competition law itself: Instead of competing with each other, cartel members rely on each other? In the context of cartels, there is no need to establish anti-competitive effects as the object is to restrict competition? Between and , the Commission has taken decisions on a total of undertakings with fines amounting to a total of? The Commission has issued new guidelines on the method of setting fines38 which are geared towards imposing tougher fines on cartels complimented with a leniency and settlement plans. A Capture Theory of Antitrust Federalism? Vallindas op cit , at p. Vallindas op cit, at p. The reaction of the Commission to the recent ECJ judgement involving sodium gluconate cartels where the court upheld the Commission decision imposing fines of a total of? The suggestions in this white paper are about justice for consumers businesses that lose their billions of euro each and every year as a result of companies breaking antitrust rules; these people have a right to compensation through an effective system that compliments enforcement ? One important lingering bit of formalism in the? In applying Article 81 to an agreement, the first step is to consider the objective of the agreement in the light of its economic context to ensure whether its intended effect is appreciably to restrict competition Article 81 1 cannot be applied without taking account of the relevant economic circumstances surrounding a given agreement or a concerted practice This requires an examination of relevant market conditions 40 DG Competition Annual Management Plan, delivered on the 28th of November, and available on http: Vallindas, op cit, at p. Competition means the competition which would exist in the absence of the agreement. The ECJ dismissed the complaint and held that? It is only to the extent to which the agreement may affect trade between Member states that the deterioration in competition caused by the 7 which must be evaluated within the framework of a counterfactual analysis However, a discussion on the economic test and relevant market shall be done later on. For a better understanding of the wording of Article 81 EC Treaty, I shall explain briefly forms of co-operation namely agreement, undertaking and concerted practice. The question whether an agreement has the object of preventing, restricting or distorting competition is a question of foreseeable effects of the agreement, not of the subjective intentions of the parties 48? An agreement can be caught under Article 81 before it comes into effec 49t , whether or not the restrictive effect is complied with50 or enforced51, or the attempt to restrict competition succeeds52, or the parties had a common purpose or one or more of them was apathetic and unwilling Proof that the agreement had an actual impact on trade is not necessary An Undertaking covers any entity engaged in an economic activity regardless of its legal status and the way in which it is financed Liberal professionals can qualify as undertakings56 or advocates Any form of conduct between undertakings which without having been taken to the stage where an agreement properly so-called has been concluded, agreement falls under the prohibition of Community law contained in Article 85 now Article 81 ; otherwise, it escapes the prohibition Whish, op cit, at p. Commission ECR I- , para. Commission ECR I- , paras. Murray stated that in assessing the effect of an agreement upon competition, the agreement must be viewed in its economic and legal context, taking into account, all relevant facts. A circular restricting parallel import was held to be an agreement though it was not a contractual document The inserting of a General sales condition clause in a contract to prevent parallel exports was held to be insufficient to find an anticompetitive objec 60t. However, Article 81 3 EC exempts conducts, from prohibitions under Article 81 1 EC, if consumers benefit from such and which do not impose on the undertaking concerned restrictions which are not indispensable to the attainment of its objects and afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question However, due to the circumscribed nature of this essay, I shall proceed to discuss Article 82 EC Treaty. Article 82 EC Treaty This

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Article prohibits an abuse of a dominant position and it relates to the position occupied by the undertaking at the time when the alleged abuse occurs It only prohibits abuse and not dominance Thus, a dominant position must have been abused The ECJ defined dominance as? Article 81 EC does not apply to an agreement unless its effects, both upon competition and upon inter-state are appreciable and not de minimis. Guidelines on the effect of trade concept contained in Articles 81 and 82 EC [] O. Murray et al, op cit, p. Market share is the primary element in determining economic strength Large or small market shares may be important evidence of a dominant position The relevant market where dominance is to be tested need not be the same in which the alleged abuse is committed It means determining the scope of the competition rules in respect of restrictive practices and abuse of dominant position It combines the product and geog 70raphic market. Case-law identified a third one- temporal marke 71t-. Under the product market, the general approach is that of interchangeability72 and is addressed both from the demand and supply side. R , [] 4 CMLR See also United Brands case op cit. Also, on the notice on market definition cited op cit, the commission begins by stating that a total market size and shares for each supplier can be calculated on the basis of their sales of the relevant products on the relevant area. In practice, the total market size and shares are often available from the market sources.

5: Brexit: What does it mean for EU and UK competition law and policy? | Freshfields knowledge

This book provides a clear overview of the main issues in EC competition law and policy and an up to date text for students and practitioners with an interest in this subject.

6: Competition law - Wikipedia

The University of Oxford Centre for Competition Law and Policy (CCLP) provides a centralised platform for teaching and research of competition law and policy at the University of Oxford. Activities and courses focus on regulation of competition in the UK, EU and US, international aspects of competition law and antitrust economics.

7: European Union competition law - Wikipedia

Competition law involves the use of legal tools to control the exercise of market power by economic actors, in order to protect the competition forces within the market. The competition rules present a powerful set of tools for public enforcement agenciesâ€"and, indeed, private litigantsâ€"to.

8: Competition Law and Policy in the EU and UK: 5th Edition (Paperback) - Routledge

industries, advocating and enforcing competition policy and law and opening external and internal markets to trade and investment. This report on The Role of Competition Policy in Regulatory Reform analyses the institutional set-up.

9: News - Competition Law And Policy 3rd Quarter - Anti-trust/Competition Law - European Union

European competition law is the competition law in use within the European Union. It promotes the maintenance of competition within the European Single Market by regulating anti-competitive conduct by companies to ensure that they do not create cartels and monopolies that would damage the interests of society.

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