European Competition Law 2011

Materials and Case Extracts

Contributors:

T. Boesman
H.M. Cornelissen
M.C. van Heezik
R. van Hutten
E. Oude Elferink
A.A.J. Pliego Selie
H.M.F.F. Speyart

Kluwer
a Wolters Kluwer business

Deventer – 2011

Introduction

There are probably few rules that have generated as much case law as the European Treaty rules on competition.

This book aims to explain the European competition rules by presenting the relevant provisions together with a selection of case extracts pertaining to those provisions. These extracts were carefully selected for their interpretative value. They are not meant to be exhaustive. They originate mostly from the European Commission, the General Court, the Court of Justice and the European Court of Human Rights. Most come from landmark cases, but some have been taken from decisions or judgments that are less well known but shed new light on the interpretation of the Treaty or that otherwise fill a gap of some kind. In all instances, however, it is the extract that explains the law, rather than the authors of this book. To that end, the ambition of the authors is to present a compilation of concise extracts that are both objective and comprehensible. Admittedly, achieving comprehensibility was challenging at times.

The book is divided into four main parts: (i) the relevant provisions of the EU Treaties, (ii) general (secondary) legislation, (iii) sector specific legislation, and (iv) the relevant provisions of the European Convention on Human Rights. The Treaties, the Convention and several regulations are supplemented with hundreds of case extracts. For the convenience of the reader, the references in the case extracts to the articles of the various treaties have been renumbered so that they are in accordance with the Lisbon Treaty. The new numbering has been placed between brackets. None of the legislative texts (including the regulations, decisions, guidelines and notices) have been edited or amended.

The documents and case extracts reproduced in this book are current up to and including 31 August 2010 (although in some instances it has been possible to include later updates). Our intention is to update the book annually.

The scope of European competition law and the volume of the case law require a larger team to keep track of all developments. We wish to acknowledge the invaluable contributions of the following contributors:

Introduction

- Tim Boesman on state aid;
- Rick Cornelissen on vertical restraints;
- Greetje van Heezik on Regulation 1/2003 and agriculture;
- Rutger van Hutten on merger control;
- Edmon Oude Elferink on horizontal restraints;
- Alvaro Pliego Selie on abuse of dominance and public undertakings;
- Herman Speyart on human rights.

The final editing was ours. We welcome any suggestions for amendments or improvements. Please send these to us by e-mail at weijer@verlorenvanthemaat.com.

Amsterdam, February 2011.

Weijer VerLoren van Themaat and Berend Reuder

Table of Contents

List of Abbreviations

CMLR	Common Market Law Reports
Commission	European Commission
EEC	European Economic Community
EC	European Community
EEA	European Economic Area
EEIG	European Economic Interest Grouping
EAEC	European Atomic Energy Community (Euratom)
ECSC	European Coal and Steel Community
Eur. Commission H.R.	European Commission of Human Rights
Eur. Court H.R.	European Court of Human Rights
EAGGF	European Agricultural Guidance and Guarantee Fund
EU	European Union
EFTA	European Free Trade Association
ECHR	European Convention on Human Rights
General Court	General Court of the European Union (prior to 1 December 2009 the Court of First Instance of the European Communities)
CoJ	Court of Justice of the European Union (prior to 1 December 2009 the Court of Justice of the European Communities)
ECR	European Court Reports
OECD	Organisation for Economic Co-operation and Development
OJ	Official Journal of the European Union
Pres.	President
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

Treaty on the Functioning of the European Union (TFEU)

(relevant articles)

Treaty of 25 March 1957, last amended 13 December 2007 (OJ 2007 C 306/1)

PART THREE
Union policies and internal actions

TITLE VII
Common rules on competition, taxation and approximation of laws

CHAPTER 1
Rules on competition

SECTION 1
Rules applying to undertakings

Article 101

1. The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:

a. directly or indirectly fix purchase or selling prices or any other trading conditions;

b. limit or control production, markets, technical development, or investment;

c. share markets or sources of supply;

d. apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

e. make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

– any agreement or category of agreements between undertakings,
– any decision or category of decisions by associations of undertakings,
– any concerted practice or category of concerted practices, which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:
a. impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
b. afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Overview

A. General

1. Direct effect

– As the prohibitions of Articles [101(1) TFEU and 102 TFEU] tend by their very nature to produce direct effects in relations between individuals, these Articles create direct rights in respect of the individuals concerned which the national courts must safeguard.

CoJ 30 January 1974 (BRT I, 127/73), ECR 1974, p. 51, para. 16.

– Moreover, where, as in the present case, the Commission does not have exclusive competence to find contractual clauses to be incompatible with Article [101](1) of the Treaty, national courts also having such competence owing to the fact that that provision has direct effect, a complainant does not have the right to obtain from the Commission a decision under Article [288 TFEU] regarding the existence or otherwise of the infringements alleged.

General Court 21 January 1999 (Riviera Auto Service Etablissements Dalmasso and others v. Commission, Joined Cases T-185 and 190/96), ECR 1999, p. II-93, para. 48.

2. Ratione personae

– Articles [101 TFEU] and [102 TFEU] apply only to anti-competitive conduct engaged in by undertakings on their own initiative [...].

CoJ 11 November 1997 (Commission and France v. Ladbroke Racing, Joined Cases C-359 and 379/95P), ECR 1997, p. I-6265, para. 33.

– Apart from those considerations concerning size, there is no reason to treat SMEs differently from other undertakings. The fact that the undertakings concerned are SMEs does not exempt them from their duty to comply with the competition rules, [...].

General Court 29 November 2005 (SNCZ v. Commission, T-52/02), ECR 2005, p. II-5005, para. 84.

– [T]he Court concludes that any undertaking which has adopted collusive conduct, including consultancy firms which are not active on the market affected by the restriction of competition, could reasonably have foreseen that the prohibition laid down in Article [101(1) TFEU] was applicable to it in principle. Such an undertaking could not have been unaware, or was in a position to realise, that a sufficiently clear and precise basis was already to be found, in the former decision-making practice of the Commission and in the existing Community case-law, for expressly recognising that a consultancy firm is liable for an infringement of Article [101(1) TFEU] where it contributes actively and intentionally to a cartel between producers which are active on a market other than that on which the consultancy firm itself operates.

General Court 8 July 2008 (AC-Treuhand v. Commission, T-99/04), ECR 2008, p. II-1501, para. 150

3. Ratione materiae

Coal and steel

– The Court points out that the Community Treaties established a single legal order [...], in which, as reflected in Article 305(1) EC, the ECSC Treaty constituted a specific regime derogating from the rules of general application established by the EC Treaty. Pursuant to Article 97, the ECSC Treaty expired on 23 July 2002. Consequently, on 24 July 2002 the scope of the general regime resulting from the EC Treaty extended to the sectors which were initially governed by the ECSC Treaty.

Thus, the pursuit of the aim of undistorted competition in the sectors which initially fell within the common market in coal and steel is not suspended by the fact that the ECSC Treaty has expired, since that objective is also pursued in the context of the EC Treaty, by the same institution, namely the Commission, the administrative authority responsible for implementing and developing competition policy in the general interest of the Community.

General Court 31 March 2009 (ArcelorMittal Luxemburg and others v. Commission, T-405/06), ECR 2009, p. II-789, paras. 57, 58 and 61.

Atomic energy
The rules on competition apply to this sector, notwithstanding the Euratom Treaty.

Agriculture
See Regulation No 1184/2006 of 24 July 2006 applying certain rules of competition to the production of, and trade in, agricultural products (OJ 2006 L 214/7, last amendment OJ 2009 L 15/32) and Regulation No 1234/2007 of 22 October 2007, known as the 'Single Common Market Organisation (CMO) Regulations' (OJ 2007 L 299/1).

Transport
See for air transport Regulation No. 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003, L1/1), that applies to all air transport services, including routes between the EU and third countries. This was achieved through Regulation No 411/2004 of 26 February 2004 (OJ 2004 L 68/1). See also Regulation No 487/2009 of 25 May 2009 on the application of Article 81/(3) of the Treaty on certain categories of agreements and concerted practices in the air transport sector (OJ 2009 L 148/1).

See for marine transport Regulation No 1/2003, that applies to all maritime transport services including to cabotage and international tramp services. This was achieved through the adoption of Regulation No 1419/2006 of 25 September 2006 (OJ 2006 L 269/1 and OJ 2008 L 352M/482). See also Regulation No 246/2009 of 26 February 2009 on the adaption of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (OJ 2009 L 79/1) and Commision Regulations No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (OJ 2009 L 256/31) and the Guidelines on the application of Article 81 of the EC Treaty to maritime transport services (OJ 2008 C 245/2).

For rail, road and inland waterways, Regulation No 1/2003 sets out the general antitrust procedural framework. See also Regulation No 169/2009 of 26 February 2009 applying rules of competition to transport by rail, road and inland waterway (OJ 2009 L 61/1 (Codified Version)° and Regulation No 1017/68 applying rules of competition to transport by rail, road and inland waterway. Only Article 13(3) of that Regulation continues to apply to the extent specified in Article 4(1) of Regulation No 169/2009.

– It is clear [...] that the objectives of the Treaty, including that set out in Article 3(g) [cf. Protocol No 27 on the internal market and competition], namely the institution of a system ensuring that competition in the common market is not distorted, are equally applicable to the transport sector. [...].

It must therefore be concluded that the rules in the Treaty on competition in particular Articles [101 TFEU] to [106 TFEU], are applicable to transport. [...]

It follows that air transport remains, on the same basis as the other modes of transport, subject to the general rules of the Treaty, including the competition rules.

CoJ 30 April 1986 (Asjes and others, Joined Cases 209-213/84), ECR 1986, p. 1425, paras. 36, 42, 45.

– [T]he Community rules which have been adopted with regard to air transport apply only to international air transport services between Community airports. It must be inferred from this that domestic air transport and air transport to and from airports in non-member countries continue to be subject to the transitional provisions laid down in Articles [104 TFEU] and [105 TFEU], and that with respect to those air transport services the system described in the judgment of 30 April 1986 still applies.

CoJ 11 April 1989 (Saeed Flugreisen, 66/86), ECR 1989, p. 803, para. 21.

Books

– Its view is however that the special features of that market [for books] do not permit the two associations to set up, in their mutual relations, a restrictive system whose effect is to deprive distributors of all freedom of action as regards the fixing of the selling price up to the level of the final price to the consumer. Such an arrangement would indeed infringe Article [101(1) (a) TFEU].

CoJ 17 January 1984 (VBVB and VBBB, Joined Cases 4 and 63/82), ECR 1984, p. 19, para. 45.

Banks

– Although the transfer of customers' funds from one member state to another normally performed by banks is an operation which falls within the special task of banks, particularly in connexion with international movements of capital, that is not sufficient to make them undertakings within the meaning of Article [106 (2) TFEU] unless it can be established that in performing such transfers the banks are operating a service of general economic interest with which they have been entrusted by a measure adopted by the public authorities.

As to Article 104 et seq. [EEC], those provisions in no way have the effect of exempting banks from the competition rules of the [EEC-]Treaty. They appear in Chapter 2 of Title II of the [EEC-]Treaty, which concerns "balance of payments", and are restricted to stipulating that there must be coordination between the member states on economic policy, and to that end they provide for collaboration between the appropriate national administrative departments and the central banks of the Member States in order to attain the objectives of the [EEC-] Treaty.

CoJ 14 July 1981 (Züchner, 172/80), ECR 1981, p. 2021, paras. 7 and 8.

Insurance

See Council Regulation 1534/91 of 31 May 1991, the enabling regulation (OJ 1991 L 143/2) and Commission Regulation No 267/2010 of 24 March 2010 on the application of Article 101(3) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector (OJ 2010 L 83/1), under Sector Specific Legislation EU, under Insurance, as well as the explanatory communication from the Commission (OJ 2010 C 82/20).

– Consequently, it must be concluded that the Community competition system, as set out in particular in Articles [101 and 102 TFEU] and in the provisions of Regulation No 17 [now Regulation No 1/2003], applies without restriction to the insurance industry. That conclusion in no way implies that community competition law does not permit the special characteristics of certain branches of the economy to be taken into account. It is for the Commission, within the framework of its power under Article [101(3) TFEU] to grant exemption from the prohibitions contained in Article [101(1) TFEU], to take account of the particular nature of different branches of the economy and the problems peculiar to them.

CoJ 27 January 1987 (Verband der Sachversicherer v. Commission, 45/85), ECR 1987, p. 405, paras. 14 and 15.

Motor vehicles

See Regulation No 1400/2002 of 31 July 2002 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector, that will apply until 31 May 2013, (OJ 2002 L 203/30) and Regulation No 461/2010 of 2 May 2010 on the application of Article 101(3) of the Treaty to categories of vertical agreements and concerted practises in the motor vehicle sector (OJ 2010 L 129, p. 52), both under Sector Specific Legislation EU, under Motor vehicles, as well as the Supplementary guidelines on vertical restraints in agreements for the sale and repair of motor vehicles and for the distribution of spare parts for motor vehicles (OJ 2010 C 138/16).

– It follows that, contrary to what the applicants maintain, it cannot be said, in general terms, that motor-vehicle distribution has been exempted from the application of Article [101(1) TFEU]. [...].

Pres. General Court 21 May 1990 (Automobiles Peugeot and others v. Commission, T-23/90) ECR 1990, p. II-195.

Postal Services

See Commission Notice on the application of the competition rules to the postal sector (OJ 1998 C 39/2).

Social policy

– Next, it is important to bear in mind that, under Article 3(g) EC [cf. Protocol No 27 on the internal market and competition] and 3(i) EC [cf. Article 4(2)(c) TFEU], the activities of the Community are to include not only a 'system ensuring that competition in the internal market is not distorted' but also 'a policy in the social sphere'. Article 2 of the EC Treaty [cf. Article 3 TEU] provides that a particular task of the Community is 'to promote throughout the Community a harmonious and balanced development of economic activities' and 'a high level of employment and of social protection'.

In that connection, Article [153 TFEU] provides that the Commission is to promote close cooperation between Member States in the social field, particularly in matters relating to the right of association and collective bargaining between employers and workers.

Article [155 TFEU] adds that the Commission is to endeavour to develop the dialogue between management and labour at European level which could, if the two sides consider it desirable, lead to relations based on agreement. [...]

It is beyond question that certain restrictions of competition are inherent in collective agreements between organisations representing employers and workers. However, the social policy objectives pursued by such agreements would be seriously undermined if management and labour were subject to Article [101(1) TFEU] in seeking jointly to adopt measures to improve conditions of work and employment.

It therefore follows from an interpretation of the provisions of the Treaty as a whole which is both effective and consistent that agreements concluded in the context of collective negotiations between management and labour in pursuit of such objectives must, by virtue of their nature and purpose, be regarded as not falling within the scope of Article [101(1) TFEU].

CoJ 21 September 1999 (Drijvende Bokken and others, C-219/97), ECR 1999, p. I-6121, paras. 41-43, 46 and 47.

– It should be borne in mind that, at paragraphs 64, 61 and 51 respectively of the judgments in Albany, Brentjens' and Drijvende Bokken, the Court held that agreements concluded in the context of collective bargaining between employers and employees and aimed at improving employment conditions are not, by reason of their nature and purpose, to be regarded as falling within the scope of Article [101(1) TFEU].

Such exclusion from the scope of Article [101(1) TFEU] cannot be applied to an agreement which, whilst being intended, like the agreement at issue in the main proceedings, to guarantee a certain level of pension to all the members of a profession and thus to improve one aspect of their working conditions, namely their remuneration, is not concluded in the context of collective bargaining between employers and employees.

On this point, it should be emphasised that the Treaty contains no provisions, like Articles [153 and 155 TFEU] [...] or Articles 1 and 4 of the Agreement on social policy (OJ 1992 C 191/91), encouraging the members of the liberal professions to conclude collective agreements with a view to improving their terms of employment and working conditions and providing that, at the request of members of the professions, such agreements be made compulsory by the public authorities, for all the members of the profession in question.

That being so, Article [101(1) TFEU] must be interpreted as meaning that a decision taken by the members of a liberal profession to set up a pension fund responsible for managing a supplementary

pension scheme and to request the public authorities to make membership of that fund compulsory for all the members of that profession does not, by reason of its nature or purpose, fall outside the scope of that provision.

CoJ 12 September 2000 (Pavlov and others, Joined Cases C-180-184/98), ECR 2000, p. I-6451, paras. 67-70.

Sports

– Thus, where engagement in the sporting activity must be assessed in the light of the Treaty provisions relating to freedom of movement for workers or freedom to provide services, it will be necessary to determine whether the rules which govern that activity satisfy the requirements of Articles [45 and 56 TFEU], that is to say do not constitute restrictions prohibited by those articles [...].

Likewise, where engagement in the activity must be assessed in the light of the Treaty provisions relating to competition, it will be necessary to determine, given the specific requirements of Articles [101 en 102 TFEU], whether the rules which govern that activity emanate from an undertaking, whether the latter restricts competition or abuses its dominant position, and whether that restriction or that abuse affects trade between Member States.

Therefore, even if those rules do not constitute restrictions on freedom of movement because they concern questions of purely sporting interest and, as such, have nothing to do with economic activity [...], that fact means neither that the sporting activity in question necessarily falls outside the scope of Articles [101 en 102 TFEU] nor that the rules do not satisfy the specific requirements of those articles.

However, in [...] of the contested judgment, the [General Court] held that the fact that purely sporting rules may have nothing to do with economic activity, with the result that they do not fall within the scope of Articles [45 en 56 TFEU], means, also, that they have nothing to do with the economic relationships of competition, with the result that they also do not fall within the scope of Articles [101 en 102 TFEU].

In holding that rules could thus be excluded straightaway from the scope of those articles solely on the ground that they were regarded as purely sporting with regard to the application of Articles [45 en 56 TFEU], without any need to determine first whether the rules fulfilled the specific requirements of Articles [101 en 102 TFEU], as set out in [...] the present judgment, the [General Court] made an error of law.

CoJ 18 July 2006 (Meca-Medina and Majcen v. Commission, Case C-519/04P), ECR 2006, p. I-6991, paras. 29-33.

Telecommunications

See Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services (OJ 2002 C 165/6), the notice on the application of the competition rules to access agreements in the telecommunications sector-framework, relevant markets and principles (OJ 1998 C 265/2) and the guidelines on the application of EEC competition rules in the telecommunications sector (OJ 1991 C 233/2).

4. Ratione loci

See Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty (OJ 2004 C 101/81), under General Legislation EU, under General Notices and Guidelines.

– To be incompatible with the common market and prohibited under Article [101 TFEU], an agreement must be one which "may affect trade between Member States" and have "as (its) object or effect" an impediment to "competition within the common market". The fact that one of the undertakings which are

parties to the agreement is situated in a third country does not prevent application of that provision since the agreement is operative on the territory of the common market.

An exclusive dealing agreement entered into between a producer who is subject to the law of a third country and a distributor established in the common market fulfils the two aforementioned conditions when, de jure or de facto, it prevents the distributor from re-exporting the products in question to other Member States or prevents the products from being imported from other Member States into the protected area and from being distributed therein by persons other than the exclusive dealer or his customers.

CoJ 25 November 1971 (Béguelin Import, 22/71), ECR 1971, p. 949, paras. 10-12.

– A restrictive agreement between traders within the common market and competitors in third countries that would bring about an isolation of the common market as a whole which, in the territory of the community, would reduce the supply of products originating in third countries and similar to those protected by a mark within the community, might be of such a nature as to affect adversely the conditions of competition within the common market. In particular if the proprietor of the mark in dispute in the third country has within the community various subsidiaries established in different Member States which are in a position to market the products at issue within the common market such isolation may also affect trade between Member States.

CoJ 15 June 1976 (EMI, 51/75), ECR 1976, p. 811, paras. 28 and 29.

– As has just been stated, a measure such as that in question which is specifically directed at exports of oil to a non-member country is not in itself likely to restrict or distort competition within the common market. It cannot therefore affect trade within the Community and infringe Articles 3(f) EC [cf. Protocol No 27 on the internal market and competition], [4(3) TEU] and [101 TFEU].

CoJ 18 February 1986 (Bulk Oil, 174/84), ECR 1986, p. 559, para. 44.

– It should be observed that an infringement of Article [101 TFEU], such as the conclusion of an agreement which has had the effect of restricting competition within the common market, consists of conduct made up of two elements, the formation of the agreement, decision or concerted practice and the implementation thereof. If the applicability of prohibitions laid down under competition law were made to depend on the place where the agreement, decision or concerted practice was formed, the result would obviously be to give undertakings an easy means of evading those prohibitions. The decisive factor is therefore the place where it is implemented.

The producers in this case implemented their pricing agreement within the common market. It is immaterial in that respect whether or not they had recourse to subsidiaries, agents, sub-agents, or branches within the Community in order to make their contacts with purchasers within the Community.

Accordingly the Community's jurisdiction to apply its competition rules to such conduct is covered by the territoriality principle as universally recognized in public international law.

CoJ 27 September 1988 (Ahlström Osakeythoe and others v. Commission, Joined Cases 89, 104, 114, 116, 117 and 125-129/85), ECR 1988, p. 5193, paras. 16-18.

– It follows that an agreement in which the reseller gives to the producer an undertaking that he will sell the contractual products on a market outside the Community cannot be regarded as having the object of appreciably restricting competition within the common market or as being capable of affecting, as such, trade between Member States.

Consequently, the agreements at issue, in that they prohibit the reseller Javico from selling the contractual product outside the contractual territory assigned to it, do not constitute agreements which, by their very nature, are prohibited by Article [101(1) TFEU]. Similarly, the provisions of the agreements

in question, in that they prohibit direct sales within the Community and re-exports of the contractual product to the Community, cannot be contrary, by their very nature, to Article [101(1) TFEU].

Although the contested provisions of those agreements do not, by their very nature, have as their object the prevention, restriction or distortion of competition within the common market within the meaning of Article [101(1) TFEU], it is, however, for the national court to determine whether they have that effect. Appraisal of the effects of those agreements necessarily implies taking account of their economic and legal context [...] and, in particular, of the fact that YSLP has established in the Community a selective distribution system enjoying an exemption.

CoJ 28 April 1998 (Javico, C-306/96), ECR 1998, p. I-1983, paras. 20-22.

– Moreover, in so far as Zwicky's complaint is to be understood as meaning that only undertakings which are active in the geographic market in the Nordic countries as competitors, or on the side of supply or demand, are capable of coordinating their conduct as undertakings which are the (co-) perpetrators of an infringement, it must be pointed out that an undertaking can infringe the prohibition laid down in Article [101 TFEU] where the purpose of its conduct, as coordinated with that of other undertakings, is to restrict competition on a specific relevant market within the common market, and that does not mean that the undertaking has itself to be active on that relevant market [...].

General Court 28 April 2010 (Gütermann and Zwicky v. Commission, Joined Cases T-456 and 457/05), ECR 2010, p. II-0000, para. 53.

5. Ratione temporis

– [The question is] whether Article [101 TFEU] has been applicable from the time of entry into force of the Treaty. The answer to this question must in principle be in the affirmative. Articles [104 TFEU] and [105 TFEU], which confer powers on the national authorities and on the Commission respectively for the application of Article [101 TFEU], presuppose its applicability from the time of entry into force of the Treaty.

CoJ 6 April 1962 (Kledingverkoopbedrijf De Geus and Uitdenboogerd, 13/61), ECR 1962, p. 93.

– If the restrictive practices arose before the Treaty entered into force, it is both necessary and sufficient that they continue to produce their effects after that date.

CoJ 18 February 1971 (Sirena, 40/70), ECR 1971, p. 69, para. 12.

6. Concepts

Concept of 'competition'

– The function of price competition is to keep prices down to the lowest possible level and to encourage the movement of goods between the member states, thereby permitting the most efficient possible distribution of activities in the matter of productivity and the capacity of undertakings to adapt themselves to change. Differences in rates encourage the pursuit of one of the basic objectives of the Treaty, namely the interpenetration of national markets and, as a result, direct access by consumers to the sources of production of the whole Community.

CoJ 14 July 1972 (ICI v. Commission, 48/69), ECR 1972, p. 619, paras. 115 and 116.

– The criteria of coordination and cooperation [...], which in no way require the working out of an actual plan, must be understood in the light of the concept inherent in the provisions of the Treaty relating to competition that each economic operator must determine independently the policy which he intends to adopt on the common market including the choice of the persons and undertakings to which he makes offers or sells.