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# The Role of Economic Analysis in the EC Competition Rules

Third Edition

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Doris Hildebrand



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Law & Business

# Role Of Economic Analysis In The Ec Competition Rules

**Doris Hildebrand**



## **Role Of Economic Analysis In The EC Competition Rules:**

*The Role of Economic Analysis in the EC Competition Rules* Doris Hildebrand, 2009 The thesis of this now classic work that the European Commission and the Community Courts under the necessity of forging an effective competition policy created an entire new school of thought in economic theory that permeates the disciplinary boundary between law and economics has been gaining ground among competition law practitioners and their government counterparts over the last decade Now in the book's third edition the author explores the full spectrum of this development in detail uncovering its multiple rationales as it has gradually formulated the legal principles of competition economics that have come to underlie all matters related to Article 81 1 Article 81 3 Article 82 the Merger Regulation and the State Aid provisions *The Role of Economic Analysis in the EC Competition Rules: The European School* Doris Hildebrand, 2002-03-20 The scope is on Articles 85 and 86 and the Merger Regulation because those are the EC competition rules applying to businesses **The Role of Economic Analysis in EU Competition Law: the European School, Fourth Edition** Doris Hildebrand, 2016 International Competition Law Series Volume 66 The Role of Economic Analysis in EU Competition Law Fourth Edition and in its revised and updated fourth edition explores the full spectrum of the development of European economic approach in competition law Almost two decades after the arrival of the and more economics based approach and to EU competition law this economic school of thought the European School has been properly defined and is now in general used among competition law practitioners and their government counterparts This approach studied by Doris Hildebrand since the first edition of this now classic work implements the European cornerstones of the social market economy concept such as freedom of contract social fairness and the equality principle In this edition the author uncovers its multiple rationales as it has gradually formulated the legal principles of and competition economics and that have come to underlie all matters related to Article 101 1 Article 101 3 Article 102 the Merger Regulation and the State Aid provisions As in previous editions the book and its interdisciplinary approach integrates law and economics in such a way that economics in competition proceedings becomes easier to understand for lawyers not trained in economic theory or economic school of thoughts It offers an in depth description of and European School and theories and applications particularly with respect to vertical and horizontal agreements In addition the book provides solid guidance on the definition of the relevant antitrust markets with a detailed description of the hypothetical monopolist test What and s in this book Among the fundamental elements discussed are the following application of economics in the competition test as developed by the EU Courts concrete economic analysis companies need to perform in order to qualify for an exemption test procedures to assess whether a certain behaviour constitutes an abuse under Article 82 various methodologies to define markets contrasting the European and Chicago schools practical implementation of the EU social market economy objective in EU competition law workable competition vs effective competition changes in the enforcement system use of evidence in market definition practice State Aid provisions and empirical techniques used to

evaluate a merger All significant cases contributory to the development of European competition economics are discussed and analysed in detail and The Frameand the first chapter that has been included in this edition clearly demonstrates all the ways in which EU competition policy represents an essential foundation of the EU Moreover and The Frameand elaborates that the social market economy objective as defined in the Lisbon Treaty is from the economic perspective the appropriate benchmark in any EU competition law assessment This benchmark requires a holistic approach by taking into account and utilitiesand of EU citizens instead of focusing on price elements only How will this help you This new updated and revised edition has been greatly anticipated and will be widely welcomed The book helps to develop expertise in applying the and more economics based approachand by citing the relevant case law Competition lawyers corporate in house counsel competition authorities and courts will appreciate the bookand s clear understandable discussion of the relevant European competition theory authoritative guidance on the application of economic analysis and practical insight in dealing with these subjects in real world cases and *The More Economic Approach to EU Antitrust Law* Anne C Witt,2016-11-17 In the late 1990s the European Commission embarked on a long process of introducing a more economic approach to EU Antitrust law One by one it reviewed its approach to all three pillars of EU Antitrust Law starting with Article 101 TFEU moving on to EU merger control and concluding the process with Article 102 TFEU Its aim was to make EU antitrust law more compatible with contemporary economic thinking On the basis of an extensive empirical analysis of the Commission s main enforcement tools this book establishes the changes that the more economic approach has made to the Commission s enforcement practice over the past fifteen years It demonstrates that the more economic approach not only introduced modern economic assessment tools to the Commission s analyses but fundamentally changed the Commission s interpretation of the law Emulating one of the key credos of the US Antitrust Revolution thirty years earlier the Commission reinterpreted the EU antitrust rules as aiming at the enhancement of economic consumer welfare only and amended its understanding of key legal concepts accordingly This book argues that the Commission s new understanding of the law has many benefits Its key principles are logical translate well into workable legal concepts and promise a great degree of accuracy However it also has a number of serious drawbacks as it stands Most worryingly its revised interpretation of the law is to large extents incompatible with the case law of the European Court of Justice which has not been swayed by the exclusive consumer welfare aim This situation is undesirable from the point of view of legal certainty and the rule of law *Public Procurement and the EU Competition Rules* Albert Sánchez Graells,2015-06-25 Public procurement and competition law are both important fields of EU law and policy intimately intertwined in the creation of the internal market Hitherto their close connection has been noted but not closely examined This work is the most comprehensive attempt to date to explain the many ways in which these fields often considered independent of one another interact and overlap in the creation of the internal market This process of convergence between competition and public procurement law is particularly apparent in the

2014 Directives on public procurement which consolidate the principle of competition in terms very close to those advanced by the author in the first edition This second edition builds upon this approach and continues to ask how competition law principles inform and condition public procurement rules and whether the latter in their revised form are adequate to ensure that competition is not distorted The second edition also deepens the analysis of the market behaviour of the public buyer from a competition perspective Proceeding through a careful assessment of the general rules of competition and public procurement the book constantly tests the efficacy of these rules against a standard of the proper functioning of undistorted competition in the market for public procurement It also traces the increasing relevance of competition considerations in the case law of the Court of Justice of the European Union and sets out criteria and recommendations to continue influencing the development of EU Economic Law

*The Reform of EC Competition Law* Ioannis Kokkoris, Ioannis Lianos, 2010-01-01 This book represents a fresh approach to EC competition law one that is of singular value in grappling with the huge economic challenges we face today As a critical analysis of the law and options available to European competition authorities and legal practitioners in the field it stands without peer It will be greatly welcomed by lawyers policymakers and other interested professionals in Europe and throughout the world

**The Conceptual Structure of EU Competition Law** Csongor I. Nagy, 2024-10-03 This is an Open Access title available under the terms of a CC BY NC ND 4.0 License It is free to read download and share on Elgaronline thanks to generous funding support from the Ministry of Culture and Innovation of Hungary and the National Research Development and Innovation Fund The Conceptual Structure of EU Competition Law provides a systematic overview of the key theoretical issues of restrictive agreements by means of doctrinal analysis and comparative law Engaging in both positivist and evaluative approaches Csongor Istvan Nagy conceptualizes case law in practical terms outlining its paradigmatic changes and apparent contradictions

**The Optimal Enforcement of EC Antitrust Law: A Study in Law and Economics** Wouter Wils, 2002-02-13 This text provides clear answers to the major questions concerning the modernization of EC antitrust enforcement such as should a notification system be maintained or should the antitrust rules be enforced exclusively through deterrence and at what levels should fines be set

*The 'Right to Damages' under EU Competition Law* Veljko Milutinovic, 2010-11-19 It is the provocative thesis of this book that the Commission's struggle for a more effective system of private enforcement has gone from being a mere enhancement of a single EU policy competition to slowly but surely fuelling a paradigm shift in EU law

EU Competition Law and the Information and Communication Technology Network Industries Andrej Fatur, 2012-03-08 Competition policies have long been based on a scholarly tradition focused on static models and static analysis of industrial organisation However recent developments in industrial organisation literature have led to significant advances moving beyond traditional static models and a preoccupation with price competition to consider the organisation of industries in a dynamic context This is especially important in the field of information and communication technology ICT network industries where competition centres on

network effects innovation and intellectual property rights and where the key driver of consumer benefit is technological progress Consequently when an antitrust intervention is contemplated a number of considerations that arise out of the specific nature of the ICT sector have to be taken into account to ensure improved consumer welfare This book considers the adequacy of existing EU competition policy in the area of the ICT industries in the light of the findings of modern economic theory Particular attention is given to the implications of these dynamic markets for the competitive assessment and treatment of the most common competitive harms in this area such as non price predatory practices tying and bundling co operative standard setting platform joint ventures and co operative R D

**Identifying Exclusionary Abuses by Dominant Undertakings under EU Competition Law** Eirik Østerud, 2010-11-15 Under Article 102 TFEU dominant firms are allowed to compete but only to the extent their market behaviour does not constitute an abuse Needless to say the wording of the article neither explains what an abusive restriction of competition is nor how such a practice can be identified Rather than developing a one size fits all test applicable to all forms of market behaviour by dominant firms the European Court of Justice ECJ and the General Court ex Court of First Instance have set out a system of tests for separate categories of conduct Drawing on the full range of the EU Courts relevant case law this very useful book analyses the conditions that must be fulfilled for a broad range of business practices to be deemed abusive within the meaning of Article 102 TFEU and also identifies the criteria that must be fulfilled for a practice to be objectively justified The potentially abusive practices studied here as defined in the relevant case law include the following predatory pricing margin squeezing exclusivity agreements loyalty rebates refusals to supply to induce exclusivity secondary line price discrimination vexatious litigation acquisitions of intellectual property rights IPRs refusals to supply necessary inputs provision of storage equipment on the condition of exclusive use selective above cost price cuts tying technological integration and refusal to license IPRs The author also contrasts the Commission's decisional practice with the case law assesses approaches under U S antitrust law to similar forms of conduct and incorporates insights from economic theory This study greatly enhances our understanding of the distinction between abusive conduct and lawful competition In the course of its clarification of the EU Courts responses to individual forms of market behaviour an overall approach to the identification of exclusionary abuses under Article 102 TFEU begins to come into view Apart from the important new synthesis the work offers legal scholars there can be little doubt this book will prove a valuable asset and even an inspiration to competition lawyers

**Research Handbook on European State Aid Law** E. Szyszczak, 2011-11-01 Erika Szyszczak and the team have come up trumps with a modern comment on state aid and policy Thank you Phillip Taylor MBE and Elizabeth Taylor The Barrister Magazine This fine collection of essays demonstrates in a very articulate way why EU State aid law has taken the centre stage of EU law In eighteen chapters the reader is provided with a fascinating snapshot of the main issues and developments of the law The key elements of the EU policy are analysed in a critical way often leading to new insights In addition the book contains a wealth of material greatly

facilitating further research Piet Jan Slot University of Leiden The Netherlands European state aid law needs more self questioning and more intellectual debate In my view this Research Handbook is a very valuable contribution to this necessary process It correctly identifies the most intellectually problematic issues within state aid law and asks the right questions This may be due to the balance in the excellent selection of contributors coming both from the academia and from practice This guarantees on the one hand that the questions are relevant in practice and not purely theoretical but also provides on the other hand for a rigorous analytical approach when confronting the issues The result is a fresh and interesting new look to many of the basic issues of state aid law Jos Luis Buendia Sierra Garrigues Brussels Belgium and King s College London UK This Research Handbook provides an in depth exploration of some of the most difficult and controversial issues in current State aid law and policy It is unusual in providing not only a legal but also an economic and political science perspective on this rapidly developing area of EU law The Handbook will be a welcome addition to the shelves of State aid practitioners and academics alike Kelyn Bacon Brick Court Chambers London UK This timely new Handbook reflects on current issues that confront State aid law and policy in the EU State aid was a neglected area of competition law until attempts to modernise it became central to the Lisbon process 2000 where the aim was to encourage intelligent State aid by reducing aid to specific sectors and by making better use of aid for horizontal projects central to EU integration concerns This policy framework has underpinned the new approach to State aid policy in the EU in recent years and informs many of the chapters in this book Contributions from leading academics regulators and practising lawyers discuss topics devoted to modernisation problems faced by recent enlargements of the EU the role of State aid in the fiscal crisis and recession the role of the private market investor test regional aid environmental aid and the review of the Altmark ruling Perspectives on State aid law and policy from the disciplines of economics and political science are also explored in detail Research Handbook on European State Aid Law will appeal to academics regulators national and EU government officials practitioners and postgraduate students who are involved in State aid law

**EC Competition Law** Giorgio Monti, 2007-08-06 Monti explores the development of EC competition law through an interdisciplinary approach focusing on the political and economic considerations that affect the way the rules are interpreted Written with competition law students in mind it should also be of interest to undergraduate and postgraduate students of EU politics and economics

European Competition Law Annual 2004 Claus-Dieter Ehlermann, Isabela Atanasiu, 2006-06-02 The European Competition Law Annual 2004 is ninth in a series of volumes following the annual workshops on EU Competition Law and Policy held at the Robert Schuman Centre of the European University Institute in Florence The volume reproduces the materials of the roundtable debate that took place at the ninth edition of the workshop 11-12 June 2004 which examined the relationship between competition law and the regulation of liberal professions The liberal professions and the rules governing their functioning have become of interest for EC competition law enforcement since the early nineties making the object of a series of Commission decisions and judgments of the European

courts The subject has gained in importance in the perspective of the recent decentralisation of EC antitrust enforcement The regulation of liberal professions is also a matter of increasing concern from the perspective of freedom of services in the internal market The workshop participants a group of senior representatives of the Commission and the national competition authorities of some Member States reknown international academics and legal practitioners discussed the economic legal and political institutional issues that arise in the relationship between competition law and the regulation of liberal professions

Joint Ventures and EU Competition Law Luís Morais, 2014-07-18 This book examines the treatment of joint ventures JVs in EU Competition Law and at the same time provides a comparison with US law It starts with an analysis of the rather elusive concept of JV encompassing both concentrative JVs subject to merger control and non concentrative JVs Although focused on possible definitions of joint ventures in terms of competition law it also includes a broader perspective going beyond competition law on the different legal models of structuring cooperation links between undertakings At the core of the book is an attempt to build an analytical model for the assessment of JVs in terms of antitrust law especially as regards Article 101 of the TFEU The analytical model used proposes a set of sequential analytical levels taking into account structural factors and specific factors related to the main constituent elements of the functional programmes of JVs The model is applied to a substantive assessment of four main types of JVs identified on the basis of their prevailing economic function research and development JVs production JVs commercialization JVs and purchasing JVs Also covered are particular situations of joint ownership of undertakings falling short of joint control In the concluding part of the book recent developments in JV antitrust law are put into context within the wider reform of EU Competition Law The book is also comprehensively updated with the latest developments concerning the reform of the EU framework of horizontal cooperation between undertakings that took place at the end of 2010

**EU and US Competition Law: Divided in Unity?** Csongor István Nagy, 2016-04-22 This book examines the structure of the rule on restrictive agreements in the context of vertical intra brand price and territorial restraints analysing comparing and evaluating their treatment in US antitrust and EU competition law It examines the concept of agreement as the threshold question of the rule on restrictive agreements the structure and focus of antitrust competition law analysis the treatment of vertical intra brand price and territorial restrictions and their place in the test of antitrust competition law The treatment of vertical intra brand restraints is one of the most controversial issues of contemporary competition law and policy and there are substantial differences between the world s two leading regimes in this regard In the US resale price fixing merits an effects analysis while in the EU it is prohibited almost outright Likewise territorial protection is treated laxly in the US while in the EU absolute territorial protection due to the single market imperative is strictly prohibited Using a novel approach of legal analysis this book will be of interest to academics and scholars of business and commercial law international and comparative law

*EC Competition Law Reform* Barry E. Hawk, 2002-10-01 1 Hardcover Volume This volume includes selected chapters from the annual proceedings of the Fordham



Corporate Law Institute The general subject is the reform of EC competition law enforcement This has been the subject of many Fordham conferences over the years Indeed EC Commission officials have stated that the modern reform proposals presently being considered had their roots at Fordham The present volume includes seminal articles and critiques of the EC competition law regime as well as very recent discussions of the Commission's proposal for reform Because much of the literature on EC competition law reform is scattered the present volume should be useful in including in one place a broad selection of articles and roundtable discussions The chapters cover not only institutional and jurisdictional issues like decentralization and sharing of powers between the Commission and the EC member states but also substantive issues like the scope of Article 81 and the rule of reason These and other issues are examined from both an analytical and historical perspective which greatly facilitates understanding of the future implications of the reform measures presently being debated In sum the chapters are not merely of historical interest problems and questions of ongoing importance are discussed

*Competition Law and Environmental Protection in Europe* Hans Vedder, 2003 Article 6 of the EC Treaty requires an integration of environmental protection requirements into the European Community's policies As a result environmental concerns must also be integrated into Community competition law and policy Taking Article 6 EC as a starting point this book begins with the construction of a model of integration This model requires that environmental concerns are awarded a role that will ultimately result in the internalisation of environmental concerns and therefore lead to a mutually reinforcing relation between competition and environmental protection After an examination of Articles 81 82 86 and 87 of the EC Treaty the useful effect doctrine Article 10 in connection with 81 EC and the Merger Regulation as well as the application of these competition rules in cases that involve environmental protection concerns some conclusions are drawn with regard to the integration of environmental protection requirements and EC competition law These conclusions are followed by a comparative legal research in which their validity is tested On the basis of these findings it is concluded that the model of integration is being applied in parts of EC competition law In those areas competition policy towards environmental restrictions of competition actually increases the chances of a competition for the environment coming about This it is submitted is an important step in the direction of achieving sustainable development About the author Hans Vedder 1974 graduated from the University of Groningen in 1997 From 1998 to 2001 he worked as a researcher at the Centre for Environmental Law of the University of Amsterdam Since 2001 he is lecturer in European law at the University of Groningen He has published several articles and chapters in books on various aspects of competition and environmental law

*EU Energy Law and Policy* Kim Talus, 2013-09-05 A critical overview of European Union energy law and policy this book takes a law in context approach as it examines the development of EU energy law from the 1950s to the present day It discusses the development of EU energy law the application of general EU law into energy the regulation of EU energy markets international aspects of EU energy law and policy sustainability and energy regulation Presenting an up to date overview of

EU energy law and policy and a critical analysis of its sub areas the book extends the discussion from electricity and natural gas markets to other areas of energy including oil This holistic approach to the subject is then placed within the broader context of the international geopolitical sphere which EU energy law and policy operates as the author considers the impact of regional and international energy policies and markets on the EU markets and the overall EU policy He also draws on the wider context and takes into account non legal factors such as the impact of unconventional the rise of the BRICS and the Arab spring The book frames EU energy law as a topic that can provoke intellectual political and professional discussion about the slowly moving train of economic regulation under the typical pressures and contradictions of countries and the European Union in the global economy

Market Power in EU Antitrust Law Luis Ortiz Blanco, 2011-12-02 The notion of market power is central to antitrust law Under EU law antitrust rules refer to appreciable restrictions of competition Article 101 1 Treaty on the Functioning of the European Union TFEU ex Article 81 1 EC Treaty the elimination of competition for a substantial part of the market Article 101 3 TFEU ex Article 81 3 EC dominant positions Article 102 TFEU ex Article 82 EC and substantial impediment to effective competition in particular by creating or reinforcing a dominant position Article 2 of the EU Merger Regulation At first sight only the concept of dominant position relates to market power but it is the aim of this book to demonstrate that the other concepts are directly linked to the notion of market power This is done by reference to the case law of the EU Courts and the precedents of the European Commission The author goes on to argue that for very good reasons clarity and enforceability among others the rules should be interpreted in this way Beginning with market definition the book reviews the different rules and the different degrees of market power they incorporate Thus it analyses the notion of appreciable restriction of competition to find a moderate market power obtained by agreement among competitors to be the benchmark for the application of Article 101 TFEU ex Article 81 EC It moves on to the concept of dominance under Article 102 TFEU ex Article 82 EC which is equivalent to substantial or significant market power and then focuses on the old and new tests for EU merger control Finally it addresses the idea of elimination of competition in respect of a substantial part of the market Article 101 3 TFEU ex Article 81 3 b EC in which the last two types of market power Article 102 TFEU ex Article 82 EC and EU Merger Regulation converge To exemplify this an in depth study of the notion of collective dominance is conducted The book concludes that a paradigm of market power exists under the EU antitrust rules that both fits with past practice and provides for a useful framework of analysis for the general application of the rules by administrative and even more importantly judicial authorities in the Member States under conditions of legal certainty

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