SELECTION OF RECENT DEVELOPMENTS
IN EU COMPETITION LAW
(YEAR 2013)

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Abstract

This article offers an overview of the main EU Competition Law developments that occurred in 2013 at the level of the European Commission (« Commission ») and the Court of Justice of the European Union (including both the General Court and the Court of Justice), through a selection of relevant cases in relation to the application of Articles 101 and 102 of the Treaty on the Functioning of the European Union (« TFEU »), EU merger control rules, State aid provisions and procedural issues.

Keywords:
Cartels; horizontal agreements; vertical agreements; abuses of dominant positions; merger control; State aids; antitrust policy.

JEL Classification:
K21 — Antitrust Law; K42 — Illegal Behavior and the Enforcement of Law

SUMMARY: 1. Article 101 TFEU. — 1.1. Cartels. — 1.1.1. Developments in the Commission’s fight against cartels. — 1.1.2. Selection of judgments in cartel cases. — 1.1.2.1. Copper fittings (liability of the parent company stemming solely from the unlawful conduct of its subsidiary; principle of ne ultra petita). — 1.1.2.2. Bananas (concept of a concerted practice having an anti-competitive object; imputation of the infringement). — 1.1.2.3. Italian Raw Tobacco (interest in bringing proceedings). — 1.1.2.4. Marine hose cartel (attributability of unlawful conduct). — 1.1.2.5. Aalbertsand Coppens: two divergent rulings in relation to the concept of a “single and continuous infringement”. — 1.2. Horizontal Agreements. — 1.2.1. Commission’s enforcement of Article 101 (and Article 102) TFEU in the pharmaceutical sector. — 1.2.2. The Court of Justice establishes that legal advice given by a law firm or a decision of a national competition authority does not exempt an undertaking from anti-competitive conduct or from imposition of a fine. — 1.2.3. Consiglio nazionale dei geologi. — 1.3. Vertical Agreements. — 1.3.1. The Court of Justice rules that agreements concerning the price of repairs of insured vehicles concluded between insurance companies and repair shops have an anti-competitive object where they are, by their very nature, injurious to the proper functioning of normal competition. — 1.4. Intellectual Property and Licensing. — 1.4.1. The General Court partially

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1. Article 101 TFEU

1.1. Cartels.

1.1.1. Developments in the Commission’s fight against cartels.

In 2013, the Commission issued four cartel decisions, imposing a grand total of €1.882.975.000 in fines. (1)

While the number of cartel decisions has decreased in comparison with 2012, the amount of the overall fines has slightly increased. (2) In particular, last year, the Commission imposed one of the highest cartel fines per case since 1969, (3) fining four international financial institutions a total of €1.042.749.000 for engaging in cartel behavior in the markets for financial derivatives covering the European economic area (« Eea »). (4)

Several cartel proceedings remain pending and the Commission also launched a significant number of new investigations. Indeed, in 2013, the Commission carried out inspections and confirmed ongoing cartel investigations in several sectors, including: cargo train transport services (case AT/40098 — Blocktrains; see Commission MEMO/13/586 of June 19, 2013); sugar (case AT/40017 — Sugar; see Commission MEMO/13/443

(1) See Commission decisions: (i) AT/39914 — Euro interest rate derivatives (Eird), 4 December 2013 (total fine of €1.04 billion), not yet published; (ii) AT/39861 — Yen interest rate derivatives (Yird), 4 December 2013 (total fine of €669 million), not yet published; (iii) AT/39633 — Shrimps, 27 November 2013 (total fine of €29 million), not yet published; (iv) AT/39748 — Automotive wire harnesses, 10 July 2013 (total fine €141 million), OJ 2013 C 283.

(2) In 2012, the Commission issued five cartel decisions, imposing a grand total of €1.875.694.000 in fines.


(4) See Commission, AT/39914 — Euro interest rate derivatives (Eird), 4 December 2013. It must be noted that in the field of interest rate derivatives the Commission adopted another decision fining six international financial institutions a total of €669.719.000 for participating in one or more bilateral cartels relating to interest rate derivatives denominated in Japanese yen (see Commission, case AT/39861 — Yen interest rate derivatives (Yird), 4 December 2013). The fine for these two interrelated decisions amounts to €1.712.468.000.