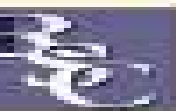




# European Competition Law Annual 2003: *What Is an Abuse of a Dominant Position?*

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# European Competition Law Annual 2003 What Is An Abuse Of A Dominant Position

**Pablo Ibáñez Colomo**



## **European Competition Law Annual 2003 What Is An Abuse Of A Dominant Position:**

*European Competition Law Annual 2003* Claus-Dieter Ehlermann, Isabela Atanasiu, 2006-03-14 The European Competition Law Annual 2003 is the eighth 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 in Florence The volume reproduces the materials of the roundtable debate that took place at the eighth Workshop and is dedicated to the question What is an Abuse of a Dominant Position It contains the usual mix of expert discussion and expert papers presented by the participants at this annual gathering of leading EU and international experts on competition law A Principled Approach to Abuse of Dominance in European Competition Law Liza Lovdahl Gormsen, 2010-03-04

Three questions surround the interpretation and application of Article 82 of the EC Treaty What is its underlying purpose Is it necessary to demonstrate actual or likely anticompetitive effects on the market place when applying Article 82 And how can dominant undertakings defend themselves against a finding of abuse Instead of the usual discussion of objectives Liza Lovdahl Gormsen questions whether the Commission's chosen objective of consumer welfare is legitimate While many Community lawyers would readily accept and indeed welcome the objective of consumer welfare this is not supported by case law The Community Courts do not always favour consumer welfare at the expense of economic freedom This is important for dominant undertakings ability to advance efficiencies and for understanding why the Chicago and post Chicago School arguments cannot be injected into Article 82 **Firm Dominance**

**in EU Competition Law** Jorge Marcos Ramos, 2020-02-20 How does it come about that a certain firm dominates a market Can an understanding of this process lead to a more effective enforcement of competition law That is the question approached in this compelling book The author reviews the European Union's EU's Article 102 case law comparing it with United States US provisions demonstrating that new ways of looking at market power are needed today's tech giants differ from older monopolies He clarifies the role of dominant firms in the competitive process proposing that conduct should be scrutinized differently depending on the source of market power rather than using the same approach for all dominant undertakings Supporting his contention that the legal consequences that derive from holding a dominant position cannot be disassociated from the sources of that market power that a dynamic understanding of dominance requires looking both forwards and backwards in time the author examines such sources of dominance as the following statutory dominance derived from explicit protectionist measures or subtler geoeconomic strategies legacy firms such as the telecommunications or transport industries natural monopolies e.g. the exploitation of a mine investment efforts undertaken in a competitive environment intangible resources such as timing reputation experience innovation capabilities or managerial processes lucky monopolies and anticompetitive behavior on the road to dominance Drawing insights from EU and US case law industrial organization scholarship and strategic management literature the book resolves questions related to the role that the origins of market power have played and should play in the enforcement of EU competition rules against dominant firms It concludes

with a list of policy recommendations bringing the application of Article 102 TFEU against dominant firms more in line with the objective of protecting the competitive process. With its focus on how EU competition law enforcement should be fine-tuned to adequately incorporate the origins of firm dominance into the analysis of single firm behavior, the book makes a major contribution to the analysis of anticompetitive effects. Practitioners, competition authorities and academics in competition law will greatly appreciate the book's combination of legal analysis and recommendations for policy reform.

**The Concept of Abuse in EU Competition Law** Pinar Akman, 2012-02-03. The objectives of Article 102 TFEU, what exactly makes a practice abusive and the standard of harm under Article 102 TFEU have not yet been settled. This lack of clarity creates uncertainty for businesses and coupled with the current state of economics in this area raises an important question of legitimacy. Using law and economic approaches, this book inquires into the possible objectives of Article 102 TFEU and proposes a modern approach to interpreting abuse. In doing so, this book establishes an overarching concept of abuse that conforms to the historical roots of the provision, to the text of the provision itself and to modern economic thinking on unilateral conduct. This book therefore inquires into what Article 102 TFEU is about, what it can be about and what it should be about regarding both objectives and scope. The book demonstrates that the separation of exploitative abuse from exclusionary abuse is artificial and unsound. It examines the roots of Article 102 TFEU and the historical context of the adoption of the Treaty, the case law, policy and literature on exploitative abuses and where relevant on exclusionary abuses. The book investigates potential objectives such as fairness and welfare as well as the potential conflict between such objectives. Finally, it critically assesses the European Commission's modernisation of Article 102 TFEU before proposing a reformed approach to abuse which is centred on three necessary and sufficient conditions: exploitation, exclusion and a lack of an increase in efficiency.

*Jones and Sufrin's EU Competition Law* Alison Jones, B. E. Sufrin, Niamh Dunne, 2019. The most comprehensive resource for students on EU competition law, extracts from key cases, academic works and legislation are paired with incisive critique and commentary from an expert author team.

**European Competition Law Annual 2005** Claus-Dieter Ehlermann, Isabela Atanasiu, 2007-03-12. This is the tenth in a series of volumes based on 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 which examined the interaction between competition law and intellectual property law. The workshop participants, a group of senior representatives of the Commission and the national competition authorities of some EC Member States, renowned international academics and legal practitioners, discussed the economic and legal issues that arise in this particular area of application of the EC competition rules under the following headings: 1 whether the characteristics of intellectual property products markets justify special treatment under the competition rules; 2 a critical assessment of the Block Exemption Regulation and corresponding Guidelines recently adopted in this area of EC competition law enforcement; 3 the specific enforcement issues that arise in relation to patent pools and

collecting societies and 4 specific problems related to IP in the domains of merger control and application of Article 82 EC

*European Competition Law Annual 2007* Claus-Dieter Ehlermann, Mel Marquis, 2008-11-28 This is the twelfth in a series on EU Competition Law and Policy produced by the Robert Schuman Centre of the European University Institute in Florence The volume reproduces the written contributions and transcripts in connection with a roundtable debate which examined the EU's enforcement policy as regards the abuse of a dominant position under Article 82 EC The workshop participants included senior enforcement officials and policy makers from the European Commission from the national competition authorities of certain EU Member States and from the US Department of Justice and Federal Trade Commission and renowned international academics legal practitioners and professional economists In an intense intimate environment this group of experts debated a number of legal and economic issues structured according to three broad lines of discussion 1 comparisons of the concept of monopolization under Section 2 of the Sherman Act with that of abuse of dominance under Article 82 EC 2 a reformed approach to exclusionary unilateral conduct and 3 exploitative unilateral conduct and related remedies

*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 renowned 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

*Identifying Exclusionary Abuses by Dominant Undertakings Under EU Competition Law* Eirik Østerud, 2010-01-01 The author also contrasts the Commission's decisional practice with the case law assesses approaches under US antitrust law to similar forms of conduct and incorporates insights from economic theory

**Jones and Sufrin's EU Competition Law** Brenda Sufrin, Alison Jones, Niamh Dunne, 2023 The complete guide to EU competition law combining key primary sources with expert author commentary The most comprehensive resource for students on EU competition law extracts from key cases academic works and legislation are paired with incisive critique and commentary from an expert author team New to this Edition Full analysis of important developments in competition law and policy since 2019 including relevant case law new EU legislation and

notices and competition law goalsA comprehensive discussion of the evolving law and policy governing market definition vertical horizontal cooperation and sustainability agreementsA new chapter on competition law in the digital economy incorporating a discussion of the Digital Markets Act      *The Shaping of EU Competition Law* Pablo Ibáñez

Colomo,2018-07-12 Based on a unique and comprehensive database The Shaping of EU Competition Law combines qualitative and quantitative approaches to shed light on the evolution of EU competition law It brings a new perspective to some of the most topical issues in the field including due process and the intensity of judicial review The author s main purpose is to examine how the institutional structure influences the substance of EU competition law provisions He seeks to identify patterns in the behaviour of the European Commission and the EU Courts and how they interact with each other In particular his analysis considers how the European Commission reacts to the case law and whether and in what instances the EU courts defer to the analysis of the administrative authority The analysis is supported by the database and an unprecedented array of statistics and figures free to view online      **The Foundations of European Union Competition**

**Law** Renato Nazzini,2011-12-01 Article 102 TFEU prohibits the abuse of a dominant position as incompatible with the internal market Its application in practice has been controversial with goals as diverse as the preservation of an undistorted competitive process the protection of economic freedom the maximisation of consumer welfare social welfare or economic efficiency all cited as possible or desirable objectives These conflicting aims have raised complex questions as to how abuses can be assessed and how a dominant position should be defined This book addresses the conceptual problems underlying the tests to be applied under Article 102 in light of the objectives of EU competition law Adopting an interdisciplinary approach the book covers all the main issues relating to Article 102 including its objectives its relationship with other principles and provisions of EU law the criteria for the assessment of individual abusive practices and the definition of dominance It provides an in depth doctrinal and normative commentary of the case law with the aim of establishing an intellectually robust and practically workable analytical framework for abuse of dominance      *European Communications Law and Technological Convergence* Pablo Ibáñez Colomo,2011-12-14 This book presents a thorough critical examination of the European regulatory reaction to technological convergence tracing the explicit and implicit mechanisms through which emerging concerns are incorporated into regulation and competition law and then goes on to identify the patterns that underlie these responses so as to establish the extent to which the issues at stake and the implications of intervention are fully understood and considered by authorities Focusing on conflict points areas of tension inevitably arising among overlapping regimes the analysis covers such elements as the following the provision of multiple play services the advent of convergent devices the interchangeability of transmission networks subscription based pay television services the diversification of television services such as on demand and niche theme channels the relative scarcity of premium content the migration of television content with cultural and social relevance to pay television and the emergence of bottleneck segments in the communications

value chain Endorsing the adjustment of existing rules to meet pluralist objectives the author outlines a single coherent regulatory approach He shows how a careful analysis of the implications of technological convergence helps to solve conflicts between regimes Specifically the analysis addresses the level national or EU at which particular regulatory responses should emerge the objectives guiding action and the tools through which these objectives may be pursued These conclusions command the attention of policymakers regulators and lawyers active in the ongoing development of communications law

**EU Competition Law** Alison Jones, Brenda Sufrin, 2016 The essential guide to EU competition law for students in one volume extracts from key cases academic works and legislation are paired with incisive critique and commentary from two leading experts in the field In this fast paced subject area Alison Jones and Brenda Sufrin carefully highlight the most important cases legislation and developments to allow students to navigate the breadth of legislation and case law With their clear explanations and commentary the authors provide invaluable support to students as they approach this complex and highly technical area of law Extracts provide opportunities for students to understand the law in practice and to see its relevance to business Indispensable for undergraduate and postgraduate students alike this is the standalone guide to the competition law of the EU The text is accompanied by an Online Resource Centre containing An additional chapter on State Aid An interactive map and timeline of the EU Web links Updates in the law     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     **China and EU Antitrust Review of Refusal to License IPR** Dr. Tiancheng Jiang, 2015 Striking a proper balance between unilateral exercise of intellectual property rights on the one hand and

competition rules on the other hand is not an easy exercise The right owners unilateral behaviour of refusal to license is one such delicate issue particularly for China considering that it has not been clarified within existing competition rules how to assess a right owner's specific unilateral practices In a series of cases the EU courts have established the exceptional circumstances in which the right owners refusal conduct might be considered as an infringement of EU competition rules In general Chinese competition law has been modelled after the EU competition rules This book firstly examines the EU approaches on dominant undertakings refusal to license intellectual property rights and the follow on pricing issue and then explores to what extent the EU model could contribute to China's anti monopoly practice

*The Oxford Handbook of International Antitrust Economics, Volume 2* Roger D. Blair, D. Daniel Sokol, 2014-11-03 More than any other area of regulation antitrust economics shapes law and policy in the United States the Americas Europe and Asia In a number of different areas of antitrust advances in theory and empirical work have caused a fundamental reevaluation and shift of some of the assumptions behind antitrust policy This reevaluation has profound implications for the future of the field The Oxford Handbook of International Antitrust Economics has collected chapters from many of the leading figures in antitrust In doing so this two volume Handbook provides an important reference guide for scholars teachers and practitioners However it is more than a merely reference guide Rather it has a number of different goals First it takes stock of the current state of scholarship across a number of different antitrust topics In doing so it relies primarily upon the economics scholarship In some situations though there is also coverage of legal scholarship case law developments and legal policies The second goal of the Handbook is to provide some ideas about future directions of antitrust scholarship and policy Antitrust economics has evolved over the last 60 years It has both shaped policy and been shaped by policy The Oxford Handbook of International Antitrust Economics will serve as a policy and research guide of next steps to consider when shaping the future of the field of antitrust

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Handbook of International Antitrust Economics will serve as a policy and research guide of next steps to consider when shaping the future of the field of antitrust *International Antitrust Law & Policy: Fordham Competition Law 2008* Barry E. Hawk, 2009-03-01 Every October the Fordham Competition Law Institute brings together leading figures from governmental organizations leading international law firms and corporations and academia to examine and analyze the most important issues in international antitrust and trade policy of the United States the EU and the world This work is the most definitive and comprehensive annual analysis of international antitrust law and policy available anywhere Each annual edition sets out to explore and analyze the areas of antitrust competition law that have had the most impact in that year Recent hot topics include antitrust enforcement in Asia Latin America competition enforcement in the areas of telecommunications media and information technology All of the chapters raise questions of policy or discuss new developments and assess their significance and impact on antitrust and trade policy The chapters are revised and updated before publication when necessary As a result the reader receives up to date practical tips and important analyses of difficult policy issues The annual volumes are an indispensable guide through the sea of international antitrust law The Fordham Competition Law Proceedings are acknowledged as simply the most definitive US EC annual analyses of antitrust competition law published

**Compulsory Licensing** Reto M. Hilty, Kung-Chung Liu, 2014-11-19 Under the auspices of the Max Planck Institute for Intellectual Property and Competition Law now the Max Planck Institute for Innovation and Competition And Institutum Iurisprudentiae Academia Sinica a group of twenty scholars from around the world gathered to study the experiences made with regards to compulsory licensing The results are demonstrated in this book Different articles analyze how the international conventions on intellectual property may be interpreted and explore the related doctrinal groundwork surrounding compulsory patent licensing and beyond It is shown how the compulsory licensing regime could be transformed into a truly workable mechanism facilitating the speedy use and dissemination of innovation and other subject matters of protection

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