

HART STUDIES IN COMPETITION LAW



ANTI-CARTEL
ENFORCEMENT IN A
CONTEMPORARY AGE

Leniency Religion

Edited by
Caron Beaton-Wells
and Christopher Tran

B L O O M S B U R Y

Online Anti Cartel Enforcement Contemporary Age Competition

Angela Daly



Online Anti Cartel Enforcement Contemporary Age Competition:

Anti-Cartel Enforcement in a Contemporary Age Caron Beaton-Wells, Christopher Tran, 2015-09-24 Leniency policies are seen as a revolution in contemporary anti cartel law enforcement Unique to competition law these policies are regarded as essential to detecting punishing and deterring business collusion conduct that subverts competition at national and global levels Featuring contributions from leading scholars practitioners and enforcers from around the world this book probes the almost universal adoption and zealous defence of leniency policies by many competition authorities and others It charts the origins of and impetuses for the leniency movement captures key insights from academic research and practical experience relating to the operation and effectiveness of leniency policies and examines leniency from the perspectives of corporate and individual applicants advisers and authorities The book also explores debates surrounding the intersections between leniency and other crucial elements of the enforcement system such as compensation compliance and criminalisation The rich critical analysis in the book draws on the disciplines of law regulation economics and criminology It makes a substantial and distinctive contribution to the literature on a topic that is highly significant to a wide range of actors in the field of competition law and business regulation generally From the Foreword by Professor Fr d ric Jenny fundamental questions are raised and thoroughly discussed in this book which is undoubtedly the most comprehensive scholarly work on leniency policies produced so far the book should be required reading for all seeking to acquire a deeper insight into the issues related to leniency policy It is a priceless contribution

Private Power, Online Information Flows and EU Law Angela Daly, 2016-12-01 This monograph examines how European Union law and regulation address concentrations of private economic power which impede free information flows on the Internet to the detriment of Internet users autonomy In particular competition law sector specific regulation if it exists data protection and human rights law are considered and assessed to the extent they can tackle such concentrations of power for the benefit of users Using a series of illustrative case studies of Internet provision search mobile devices and app stores and the cloud the work demonstrates the gaps that currently exist in EU law and regulation It is argued that these gaps exist due in part to current overarching trends guiding the regulation of economic power namely neoliberalism by which only the situation of market failure can invite ex ante rules buoyed by the lobbying of regulators and legislators by those in possession of such economic power to achieve outcomes which favour their businesses Given this systemic and extra legal nature of the reasons as to why the gaps exist solutions from outside the system are proposed at the end of each case study This study will appeal to EU competition lawyers and media lawyers

Evidence Standards in EU Competition Enforcement Andriani Kalintiri, 2019-02-07 What rules or principles govern the assessment of evidence in EU competition enforcement This book offers for the first time a comprehensive academic study on the topic Its aim is twofold Firstly it produces a typology of evidence standards in competition proceedings at the EU level thereby systemising the guidance that is currently dispersed in the case law of the

EU Courts Secondly it examines the applicable evidence rules and principles with a view to better understanding their role in EU competition enforcement In so doing the book illustrates that evidence standards are not mere technicalities and their significance should not be underestimated Rigorous and engaging this work provides a much needed analysis of a key question of EU competition enforcement

Competition, Effects and Predictability Bruce Wardhaugh,2020-04-16 In the US and EU legal analysis in competition cases is conducted on a case by case approach This approach assesses each particular practice for both its legality and its welfare effects While this analytic method has the merits of getting the result right by inter alia reducing error costs in antitrust adjudication it comes at a cost of certainty predictability and clarity in the legal principles which govern antitrust law This is a rule of law concern This is the first book to explore this tension between Europe s More Economic Approach the US s Rule of Reason and the Rule of Law The tension manifests itself in the assumptions in and choice of analytic method the institutional agents driving this effects based approach and their competency to use and assess the results of the methodology they demand and the nature and stability of the legal principles used in modern effects based competition analysis The book forcefully argues that this approach to competition law represents a threat to the rule of law Competition Effects and Predictability will be of interest to European and American competition law scholars and practitioners legal historians policy makers and members of the judiciary

Access and Cartel Cases Helene Andersson,2021-01-14 This book examines the legislative patchwork surrounding access to the European Commission s cartel case files Recent legislative changes have increased the value of the files and have also highlighted the inherent tension between a number of competing interests affecting their accessibility The Commission is undoubtedly caught between a rock and a hard place charged with the task to ensure due process transparency and effectiveness while at the same time promoting both public and private enforcement of the EU competition rules The author considers how best to ensure a proper balance between the legitimate but often diverging interests of parties third parties and national competition authorities in these cases The book provides a unique and comprehensive presentation of the EU legislation and case law surrounding access to the Commission s cartel case files The author examines the question of accessibility from three different perspectives that of the parties under investigation cartel victims and national competition authorities The author also considers the EU leniency system and whether any legislative changes could make the attractiveness of the system less dependent on the possibilities of cartel victims to access the evidence contained in the Commission s case files

The Role of Competitors in the Enforcement of State Aid Law Fernando Pastor-Merchante,2017-04-20 This book explores the tools that the European rules on State aid place in the hands of competitors when it comes to fighting subsidies and other state measures of financial assistance to firms In order to do so the book scrutinises the means of redress available to competitors before national courts private enforcement as well as the opportunities that they have to make their voice heard in the course of the European Commission s enforcement procedures

public enforcement The insights provided by the book lead to a better understanding of the rights of private parties under the rules and practices that govern the enforcement of State aid law Experimentalist Competition Law and the Regulation of Markets Yane Svetiev, 2020-11-26 This book charts the emergence of experimentalist governance in the implementation of EU competition law as a response to uncertainty and the limits of hierarchical enforcement in an increasingly dynamic and heterogeneous economic environment It contributes to ongoing debates about the current state of EU competition law and provides an innovative account of emergent enforcement trends and its future direction It also argues that an experimentalist evolution of competition law and market regulation attenuates concerns about the competitive strictures of EU law on national economic and regulatory institutions Through its focus on experimentalist governance the book provides guidance on completing experimentalist infrastructures for market regulation as well as on the role of courts in triggering and sustaining experimentalist solutions As such it offers a novel perspective on implementing competition law in the EU and beyond *Competition Law and Economic Inequality* Jan Broulík, Katalin Cseres, 2022-12-15 The gap between the rich and poor is widening across the globe This book explores whether this major societal challenge of our time can be addressed by the means of competition law The primary goal of today's competition law is to ensure that market power does not lead to an inefficient production of goods and services Nevertheless even such efficiency oriented curbing of market power may arguably contribute to the reduction of differences in how much people own and earn Furthermore many competition law regimes do take into account distributive considerations too The chapters investigate the relationship between competition law and economic inequality from philosophical historical and economic perspectives Their inquiries concern the conceptual foundations of competition law and doctrinal frameworks of individual jurisdictions as well as specific problems and markets As such the book provides a novel and comprehensive overview of whether and how competition law can contribute to more equality in both developed and developing countries The book is a must read for researchers public officials judges and practitioners within the competition law community It will also appeal to anyone more broadly interested in issues of inequality and economic policy **Fighting Cross-Border Cartels** Pierre Horna, 2020-03-19 This book is the first detailed treatment of the approaches taken to enforce competition laws against cross border cartels CBCs from the perspective of young and small competition authorities more than 70% of the total number of authorities worldwide No other legal or inter disciplinary scholarship exists in the market that deals with the issue of a taxonomy of CBCs combined with young small competition authorities problems The book looks at the extent of the harms caused by CBCs and issues associated with tackling them at a transnational level It explains why past solutions to problems with cooperation have failed and proposes novel ideas on how to improve cooperation and coordination in certain types of CBC investigations transnational and regional CBCs The proposals are based on primary source information and observations made by the author as part of his work in the UN and interviews with leading enforcers from young small old and large jurisdictions

Young small competition authorities competition lawyers and economists scholars and students within the fields of competition law and international law and those interested in international cooperation and coordination in the area of cartel enforcement in emerging markets will greatly benefit from this book It is clearly structured and extensively referenced providing a valuable guide to the topic *Competition Law's Innovation Factor* Viktoria H S E Robertson, 2020-02-06 In recent years market definition has come under attack as an analytical tool of competition law Scholars have increasingly questioned its usefulness and feasibility That criticism comes into sharper relief in dynamic innovation driven markets which do not correspond to the static markets on which the concept of the relevant market was modelled This book explores that controversy from a comparative legal perspective taking into account both EU competition and US antitrust law It examines the manifold ways in which courts and competition authorities in the EU and US have factored innovation related considerations into market delineation covering innovative product markets product differentiation future markets issues going beyond market definition proper such as innovation competition innovation markets and potential competition intellectual property rights innovative aftermarkets and multi sided platforms This book finds that going forward the role of market definition in dynamic contexts needs to focus on its function of market characterisation rather than on the assessment of market power *A Framework for European Competition Law* Christopher Townley, 2018-11-29 This book asks whether the current push to increase uniformity in substantive and procedural competition policy and enforcement in Europe as well as in related institutional structures is desirable It focuses on European Union EU competition policy and enforcement related to Articles 101 and 102 TFEU and the merger rules the equivalent rules in the Member States and the relationships between these different legal orders Uniformity has many benefits yet the advantages of diversity are also legion enabling more policy experimentation and innovation and improving the ability to accommodate national preferences Contrary to the overwhelming view of academics practitioners and regulators in this area the book argues that uniformity is insufficient and examines ways of achieving a better mix of uniformity and diversity the EU's motto is United in Diversity To achieve this better mix the book offers a new framework for European competition law Coordinated Diversity Finally this book discusses whether Coordinated Diversity fits with the current legal order in the EU as well as the EU constitutional settlement more generally and suggests some ways that it might be made compatible with this order with relative ease The book's impact could be significant changing the results in individual cases the way cases are argued and what information is relevant More importantly it builds the theoretical foundations for fundamentally altering the way in which the EU and the Member States competition authorities interact allowing space for disagreement and uncertainty The aim is to improve the efficiency and effectiveness of competition policy making and enforcement in Europe It should also increase the legitimacy in this field rebalancing towards the Member States Coordinated Diversity provides a new way of seeing the EU that better blends difference when this is demanded with uniformity and its benefits as necessary A timely and ambitious work this book will be

read with interest by all practitioners and academics interested in EU competition law as well as the related fields of political science and economics

Dawn Raids Under Challenge Helene Andersson, 2018-06-28 This book examines the European Commission's dawn raid practices in competition cases from a fundamental rights perspective. In recent years the Commission has adopted a new and more aggressive enforcement policy amid a growing awareness that cartels and abuse of market power represent an economic harm and need to be punished. In response, enforcement has been strengthened by the grant of more wide-reaching powers to competition authorities. But how does this impact on the framework of fundamental rights? This study seeks to answer that question by examining the obligations imposed by the Charter and the ECHR and the response of the Luxembourg and Strasbourg Courts. It shows that where the Strasbourg Court has managed to strike a balance between efficiency concerns and the rights of undertakings, the EU courts' judicial control is not equally balanced. This book is an essential and timely examination of this important question.

The Metaphysics of Market Power George Raitt, 2019-05-02 Australian competition law has just emerged from a significant period of reform which has seen controversial changes to the legal test to distinguish between normal competitive conduct and conduct that should be condemned. The controversy continues, arguably because the traditional legal conception of market power does not provide a useful standard in real world markets. This important new book offers a radical interpretation of market power based on the power to manipulate. Seeing it in this way allows for positive and normative standards within which to frame a legal theory of liability for misuse of that power. The book provides suggestions to improve the forensic assessment of conduct that should be condemned as misuse of market power.

The Legality of Bailouts and Buy Nationals Kamala Dawar, 2017-09-21 This book offers a well-argued and insightful critical assessment of the shortcomings of international trade and competition rules in tackling interventionist State measures in the context of an economic crisis. Dawar offers an evidence-rich account of the challenges that State protectionism creates for international trade liberalisation and for the protection of competition in international markets. Her insights will be particularly interesting in the context of current events leading to another surge of State economic interventionism both for academics and for policy makers with an interest in international trade.

Dr Albert Sanchez Graells, University of Bristol Law School. This book bursts the bubble of the self-congratulatory attitude that existing institutions which were set up to discipline governments from a race to the bottom on economic policy worked well after the financial crisis. These institutions may have prevented tariff wars, a big achievement compared to the time of the Great Depression. But they went along with the subsidies and state aid that governments put in place after 2007. Such flexibility on economic policy is essential in turbulent times. But these institutions are undermined if flexibility comes with a race to the bottom that shifts money away from policies for the more marginalized sections of society. At a time when the left behinds are changing the political landscape of the world, Kamala's book debunks the myth of the success of existing institutions in containing the economic fallout of the global financial crisis. It gives a sobering warning of what might unfold when

institutions deal with economic challenges by turning a blind eye to their own rules for checking unfair competition Dr Swati Dhingra Senior Lecturer at the Department of Economics London School of Economics An impressive contribution to our understanding of the financial crisis Dawar s reading of bailouts and buy national through the lens of competition law and government procurement law and policy is inspirational Professor Mary E Footer University of Nottingham School of Law The diplomatic fiction that during the crisis years regional and global trade rules ensured a level commercial playing field is skewered by Dawar s trenchant legal analysis Professor Simon Evenett University of St Gallen This book examines the international regulation of crises bailouts and buy national policies It undertakes this research with specific reference to the crisis years 2008 2012 The book includes a comparative analysis of the regulation of public procurement and subsidies aid at both multilateral and regional levels identifying the strengths and weakness in the WTO legal framework and selected regional trade agreements RTAs Ultimately the aim of this work is to provide options for improving the consistency of these laws and the regulation of these markets This is of immediate relevance for good economic governance as well as for managing future systemic financial crises in the interests of citizens as tax payers and consumers *Global Competition Enforcement* Paulo Burnier da Silveira, William Evan Kovacic, 2019-10-17 Global Competition Enforcement New Players New Challenges Edited by Paulo Burnier da Silveira the digital economy s challenges to competition authorities convergent aims and rules among different competition authorities regional organizations with competition mandates competition neutrality and state owned enterprises and leniency programmes Although necessarily there is considerable information on major antitrust regimes like those of the United States and the European Union chapters by local experts highlight lessons to be learned from the work of competition authorities in five continents including Argentina Australia Brazil China Colombia India Japan Mauritius Mexico Peru and South Africa The contributors include competition enforcers regulators academics practitioners and leading commentators from a range of jurisdictions Adding up to an authoritative analysis from the enforcer s perspective the studies presented in the book clarify the approaches and priorities of competition enforcement authorities including those of major emerging economies and provide expert guidance on dealing with transnational investigations Antitrust lawyers corporate counsel and interested academics as well as policymakers will benefit immeasurably from this book s wealth of informative detail Conceptualising Procedural Fairness in EU Competition Law Haukur Logi Karlsson, 2020-09-17 What constitutes a fair procedure when it comes to EU competition law This innovative book seeks to understand the philosophical considerations at the core of conflicting procedural fairness arguments in EU competition law practice The author argues for a conceptualisation of procedural fairness as a distributional issue that can be solved by a practical fairness theory and a comprehensive methodology To illustrate the usefulness of the conceptualisation three procedural fairness problems from recent EU competition law practice are analysed the KME Chalkor cases the Groupe Gascogne cases the regulatory question about using a collective redress mechanism for private enforcement of EU

competition law This unique approach provides a robust philosophical and methodological foundation for arguing about a wide range of procedural fairness dilemmas The book is a must read for academics and practitioners seeking an imaginative perspective on the philosophical foundations of arguments about procedural fairness in EU competition law and beyond

A Critical Account of Article 106(2) TFEU Jarleth Burke, 2018-03-22 A Critical Account of Article 106 2 TFEU Government Failure in Public Service Provision offers a sceptical perspective on how EU law applies to public services Article 106 2 provides that other Treaty rules may be disapplied in order to sustain a Service of General Economic Interest SGEI The rhetorical presentation of Article 106 2 is as a strict exception As a result Article 106 2 is often presented as a threat to Europe s public service tradition This book challenges those shibboleths by using the concept of government failure It is concerned with instances of government intervention that are unnecessary generate avoidable inefficiencies or that can be bettered so as to realise general interest goals more efficaciously As an element of the government failure critique a market feasibility test incorporating the concept of market failure is used to expose laxity in the review of general interests under Article 106 2 Complementing that the process of disapplying other Treaty rules under Article 106 2 is shown to have evolved from being strict to being highly indulgent of SGEI providers with a relatively recent but only partial correction post Altmark Overall the strict exception label for Article 106 2 does not hold Moreover it is contingent and presents no legitimate general interest related threat to the organisation and delivery of public services A comprehensive re orientation of Article 106 2 on issues of proof is required as is greater reliance on market counterfactuals and much more careful separation of objectives and means in SGEI operation and design Through these measures the toleration of government failure can be stemmed and Article 106 2 s contingency reduced

Competition Rules for the 21st Century Ky Ewing, Ky P. Ewing, 2006-01-01 Ky Ewing and s magisterial work on international competition law is here updated to take stock of the prodigious expansion of anti cartel enforcement throughout the world in the intervening years Although the book has been highly regarded as a major reconsideration of the foundations of competition law and policy it has also proven enormously valuable for its wealth of information and practical guidance Among its most useful features some new to the second edition are the following and a vast amount of statistical and other information about public competition law enforcement agencies and their resources around the world and in depth analysis of the differences in competition law regimes and the various economic and legal theories from which they derive and detailed attention to jurisprudence and legal commentary over many decades and probing of the meaning of and low and and fair and as applied to prices and suggestions for carrying out re evaluation of policies on the basis of empirical evidence and formulation of a model new U S competition law preempting state laws and and guidelines on distinguishing useful collaboration from collusive activity Nine new appendices have been added to this edition covering such informative material as new statistical data about U S enforcement details on the dramatic cooperation now taking place among nations in anti cartel enforcement and suggestions on how companies and practitioners should

respond to multinational investigations Anti-Cartel Enforcement in a Contemporary Age Caron Beaton-Wells, Christopher Tran, 2015-09-24 Leniency policies are seen as a revolution in contemporary anti cartel law enforcement Unique to competition law these policies are regarded as essential to detecting punishing and deterring business collusion conduct that subverts competition at national and global levels Featuring contributions from leading scholars practitioners and enforcers from around the world this book probes the almost universal adoption and zealous defence of leniency policies by many competition authorities and others It charts the origins of and impetuses for the leniency movement captures key insights from academic research and practical experience relating to the operation and effectiveness of leniency policies and examines leniency from the perspectives of corporate and individual applicants advisers and authorities The book also explores debates surrounding the intersections between leniency and other crucial elements of the enforcement system such as compensation compliance and criminalisation The rich critical analysis in the book draws on the disciplines of law regulation economics and criminology It makes a substantial and distinctive contribution to the literature on a topic that is highly significant to a wide range of actors in the field of competition law and business regulation generally From the Foreword by Professor Fr d ric Jenny fundamental questions are raised and thoroughly discussed in this book which is undoubtedly the most comprehensive scholarly work on leniency policies produced so far the book should be required reading for all seeking to acquire a deeper insight into the issues related to leniency policy It is a priceless contribution

Competition, Innovation, and Public Policy in the Digital Age United States. Congress. Senate. Committee on the Judiciary, 1998

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Table of Contents Online Anti Cartel Enforcement Contemporary Age Competition

1. Understanding the eBook Online Anti Cartel Enforcement Contemporary Age Competition
 - The Rise of Digital Reading Online Anti Cartel Enforcement Contemporary Age Competition
 - Advantages of eBooks Over Traditional Books
2. Identifying Online Anti Cartel Enforcement Contemporary Age Competition
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Online Anti Cartel Enforcement Contemporary Age Competition
 - User-Friendly Interface
4. Exploring eBook Recommendations from Online Anti Cartel Enforcement Contemporary Age Competition
 - Personalized Recommendations
 - Online Anti Cartel Enforcement Contemporary Age Competition User Reviews and Ratings
 - Online Anti Cartel Enforcement Contemporary Age Competition and Bestseller Lists
5. Accessing Online Anti Cartel Enforcement Contemporary Age Competition Free and Paid eBooks
 - Online Anti Cartel Enforcement Contemporary Age Competition Public Domain eBooks
 - Online Anti Cartel Enforcement Contemporary Age Competition eBook Subscription Services
 - Online Anti Cartel Enforcement Contemporary Age Competition Budget-Friendly Options
6. Navigating Online Anti Cartel Enforcement Contemporary Age Competition eBook Formats

- ePub, PDF, MOBI, and More
- Online Anti Cartel Enforcement Contemporary Age Competition Compatibility with Devices
- Online Anti Cartel Enforcement Contemporary Age Competition Enhanced eBook Features
- 7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Online Anti Cartel Enforcement Contemporary Age Competition
 - Highlighting and Note-Taking Online Anti Cartel Enforcement Contemporary Age Competition
 - Interactive Elements Online Anti Cartel Enforcement Contemporary Age Competition
- 8. Staying Engaged with Online Anti Cartel Enforcement Contemporary Age Competition
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Online Anti Cartel Enforcement Contemporary Age Competition
- 9. Balancing eBooks and Physical Books Online Anti Cartel Enforcement Contemporary Age Competition
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Online Anti Cartel Enforcement Contemporary Age Competition
- 10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
- 11. Cultivating a Reading Routine Online Anti Cartel Enforcement Contemporary Age Competition
 - Setting Reading Goals Online Anti Cartel Enforcement Contemporary Age Competition
 - Carving Out Dedicated Reading Time
- 12. Sourcing Reliable Information of Online Anti Cartel Enforcement Contemporary Age Competition
 - Fact-Checking eBook Content of Online Anti Cartel Enforcement Contemporary Age Competition
 - Distinguishing Credible Sources
- 13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
- 14. Embracing eBook Trends
 - Integration of Multimedia Elements
 - Interactive and Gamified eBooks

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