

RECENT DEVELOPMENTS IN ANTITRUST POLICY

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RECENT DEVELOPMENTS IN ANTITRUST POLICY

STRUCTURE OF PRESENTATION

- ◉ CARTELS
- ◉ RESTRICTIONS OF COMPETITION BY OBJECT
- ◉ VERTICAL AGREEMENTS
- ◉ ABUSE OF DOMINANCE

RECENT DEVELOPMENTS IN ANTITRUST POLICY

CARTELS

- ◉ Note the decisions of the Commission in 2014, pages 3 to 6 of Recent Developments: fines in excess of €1.6bn
- ◉ Note on pages 2 and 3 how many other (alleged) cartels the Commission is investigating: in particular *Container liner shipping*/price signalling
- ◉ On price signalling note the Dutch competition authority's case against *Mobile operators*, commitments decision, January 2014

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CARTELS

- ◉ Also on price signalling note the UK market investigation into *Aggregates*, page 22 of RD
- ◉ Note that of the 10 cartel decisions in 2014, 8 were **settlements**
- ◉ And note that *Steel abrasives* and *Canned mushrooms* were **partial** as opposed to **total** settlements
- ◉ Note the fine on Goldman Sachs in *Power Cables* as a parent of the cartel

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RESTRICTIONS OF COMPETITION BY OBJECT

- ◉ Note *GCB v Commission* (page 9 of RD)
- ◉ The General Court had made two errors of law in concluding that the higher fee for challenger banks was a restriction by object
 - Object SHOULD be construed narrowly
 - Insufficient that the fees had a 'potential impact on competition'
- ◉ Where does GCB leave *Allianz Hungaria*? Or even *T-Mobile*?
- ◉ Has the tide turned on object restrictions?

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RESTRICTIONS OF COMPETITION BY OBJECT

- ◉ Since *Cartes Bancaires* see *Dole v Commission*: page 10 of RD
- ◉ And also watch out for *Lundbeck* and *Servier* (p 4 of RD) on appeal: can patent settlements/'reverse payment' agreements restrict by object?

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VERTICAL AGREEMENTS

- ◉ No decisions from the European Commission
- ◉ But note its investigation into cross-border TV services
 - Are restrictions on the supply of subscriptions to consumers outside the territory to which the licence applies caught by Article 101?
 - That is to say an unlawful ban on passive sales?
 - Note the earlier *Murphy* case - ban on broadcasting of the Greek signal in the UK held to infringe Article 101 by object

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VERTICAL AGREEMENTS

⦿ Note also:

- In the UK *Discounts on hotel rooms* - commitments in relation to non-discount policy: quashed on appeal to the Competition Appeal Tribunal
- Investigations elsewhere into online sale of hotel rooms (!)
- Why is this matter not being investigated by the European Commission?

⦿ And note *Tooltechnic*, p 10 of RD:
authorisation of rpm by the ACCC

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ABUSE OF DOMINANCE

- ◉ See pages 10 to 13 of Recent Developments
- ◉ Note *Motorola Mobility*: it can be abusive to seek an injunction to prevent the use of standard-essential patents where the would-be licensee has agreed to submit the FRAND dispute to third-party determination, for example by a court
- ◉ No fine in *Motorola* as the point was novel and there might have been different conclusions in different Member States

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ABUSE OF DOMINANCE

- ◉ Read *Motorola* in conjunction with the commitment decision in *Samsung*, page 15 of RDs: example of how such disputes could be resolved
- ◉ Note *Servier* (see earlier slide)
- ◉ Note also *Slovak Telekom* and *Telefónica v Commission*: Commission and Court of Justice respectively on margin squeezing
- ◉ Note the recidivist uplift of the fine on Deutsche Telekom in the *Slovak* case

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ABUSE OF DOMINANCE

- ◉ And note *Intel v Commission*: Commission decision upheld in its entirety
- ◉ 'Exclusivity' rebates - unlawful *per se* unless there is an objective justification
- ◉ Note also that *Intel* says that no cost-price analysis needed for exclusivity rebates; and the AEC test does not apply
- ◉ And that there is no *de minimis* doctrine in Article 102 (para 112): is that correct?
- ◉ Await Case C-23/14 *Post Danmark*!!

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THANK YOU FOR YOUR ATTENTION!