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Jos van Doormaal

# Nonlegal Sanctioning in Private Legal Systems

Limits in US Antitrust Law and EU Competition Law

Nomos

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# Preface

This work was accepted as a doctoral dissertation by the law faculty of the University of Bremen. The literature and case law are current to January 2020.

First and foremost, I would like to thank my doctoral supervisor Prof. Dr. Gralf-Peter Calliess. He has inspired and supported me throughout my work and has given me the academic freedom to complete my dissertation. I would also like to thank Prof. Dr. Christoph Schmid for writing a second expert opinion (*Zweitgutachten*).

Special thanks also go to all my family and friends who have so strongly supported me throughout my dissertation. They were especially important at the end of my dissertation and motivated me to finish the process.

Lastly, I would like to thank my parents and my wife who have given me all the support and assistance possible. They were there when I needed them the most.

Bremen, February 2021 *Jos van Doormaal*

# Table of Contents

*Part IV: Summary, Conclusions and Best Practice Guidelines*

# List of abbreviations and principal concepts

| | |
|---|---|
| Commission | Directorate General for Competition of the European Commission |
| GC | General Court (constituent court of the EU which allows parties to the proceedings to lodge a complaint against a Commission decision; formerly known as the CFI before the entry into force of the Lisbon Treaty on 1 December 2009) |
| ECJ | European Court of Justice (constituent court of the EU which handles second level appeals by reviewing a GC judgment; before 2009 it was the appellate body to uphold, modify or reverse the findings of a CFI judgment; for reasons of clarity, court judgments before 1989 are also mentioned as coming from the ECJ in this research |
| CJEU | The Court of Justice of the European Union (the collective term for the judicial arm of the EU, consisting of the GC and the ECJ despite this definition dating from 2009, for the purpose of elucidation the CFI and the ECJ combined are mentioned as the CJEU in this research |
| CFI | Court of First Instance of the European Communities (precursor of the GC before the entry into force of the Lisbon Treaty on 1 December 2009) |
| PLSs | Private Legal Systems |
| NCAs | National Competition Authorities |
| Members | Member undertakings of the trade associations researched |
| ICA | International Cotton Association |
| ADB | Antwerp Diamond Bourse |
| DDC | Diamond Dealers Club |
| GAFTA | Grain and Feed Trade Association |
| FCC | Federation of Cocoa Commerce |
| LME | London Metal Exchange |
| FOSFA | Federation of Oils, Seeds and Fats Associations |
| BIMCO | Baltic and International Maritime Council |

| | |
|---|---|
| Guidelines on Horizontal Co-operation Agreements | Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements |
| Guidelines on Inter-State Trade | Guidelines on the effect on trade concept contained in Articles [101 and 102 TFEU] |
| The Commission Recommendation on SMEs | The Commission Recommendation concerning the definition of micro, small and medium-sized enterprises or any future recommendation replacing it |
| The De Minimis Notice | Commission Notice on Agreements of Minor Importance which do not Appreciably Restrict Competition under Article 101 (1) TFEU |
| 1999 White Paper | White Paper on Modernisation of the Rules implementing Articles 85 and 86 of the Treaty (now Articles 101 and 102 TFEU) |
| RDBER | Research & Development Block Exemption Regulation |
| SABER | Specialization Agreements Block Exemption Regulation |
| Commission's Guidance | Commission's Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty [now Article 102 TFEU] to abusive exclusionary conduct by a dominant undertaking |
| Discussion Paper | Commission's Discussion Paper on the application of Article 82 [now Article 102 TFEU] to exclusionary abuses |
| Rome Treaty/ EEC | Treaty Establishing the European Economic Community |