e-Competitions
Antitrust Case Laws e-Bulletin

Concurrences
Antitrust Publications & Events

Utilities & Cartels

Cartels in the utility sectors: An overview of EU and national case law

ANTICOMPETITIVE PRACTICES, BID RIGGING, CARTEL, EXCHANGE OF INFORMATION, JOINT-VENTURE, UTILITIES, SANCTIONS / FINES / PENALTIES, FOREWORD, JUDICIAL REVIEW, PRICE INCREASE

Peter Alexiadis

e-Competitions Special Issue Utilities & Cartels

I. Introduction

A number of years have passed since I was invited to write the first edition of the Foreword in e-Competition publication. Since that time, the case-law at EU and Member State level has expanded significantly, with an ever-wider net being drawn over anti-competitive practices such as bid rigging and information sharing, on the one hand, and those problematic commercial practices featuring the active involvement of trade associations, on the other. We have also witnessed a range of cases where the dynamics of network industries have given rise to very particular restrictions of competition and where the public policy concerns justifying those restrictions are finely balanced. Finally, we have seen the inexorable rise of cartel prosecutions taking place in utility sectors which had, at least until recently, been associated with the abusive practices of dominant firms rather than incentives to collude.

The compendium of case reviews covered in this publication covers all of the above themes, and a host of important procedural issues ranging from whether Government bodies can be found guilty of distorting national law through their anti-competitive actions [*1*], the interaction between sector-specific regulation and competition policy [*2*], the extent to which the 'single economic entity' doctrine insulates anti-competitive agreements entered into between different members of the same corporate group [*3*], whether adherence to 'standard terms' used across an industry can be treated as collusion [*4*], and the roles played by sectoral enquiries [*5*], follow-on civil damages actions [*6*] and on-site inspections [*7*].

An attempt has been made to make sense of the significant body of case-law by clustering the various EU and national precedents around commonly recurring themes. On a number of occasions, the precedents considered pre-date the last edition of this publication, in an effort to bring together those themes and to provide the reader with a clearer understanding of the trial history underpinning each precedent.

II. Common Themes

A review of EU and Member State case-law and administrative practice in the utility sectors yields a number of common themes which are discussed below, namely:

• theories of harm which give rise to particular competition concerns, including:

a. the potential for companies to engage in discriminatory practices;

b. the tendency for exclusivity arrangements to isolate national markets; and

c. restrictions of competition arising from network sharing;

• the role of trade associations in acting as focal points for anti-competitive behaviour by their members;

• the proliferation of bid-rigging practices or other forms of coordinated tendering by competitors;

• the role of environmental policy in justifying otherwise anti-competitive commercial practices;

• the risks of competitive coordination which require the management of capacity;

• the anti-competitive implications of price signalling and other forms of information sharing; and

• more traditional investigations into allegedly cartel-like behaviour or collective boycotts.

1. Theories of harm uniquely associated with utility sectors

Firms in utility sectors engaging in collusive practices have the tendency to generate very particular competition concerns, with implications going well beyond traditional notions of consumer harm associated with the raising of prices or restrictions in production. Given the existence of vertical integration, the tendency of utilities to generate network effects, and existing regulatory obligations to grant wholesale access to competitors, there is a tendency for collusive practices to produce a more varied cocktail of anti-competitive effects given that different parts of the value chain can be affected by individual instances of anti-competitive arrangements. The variety in the theories of harm that are associated with collusive practices in utility sectors is illustrated by the examples discussed below.

A. Discriminatory Practices

Network industries, given the economies of scale and scope which characterise them, are often associated with differential pricing practices [*8*]. However, it is also the case that such practices can have foreclosing effects on competitors in certain situations. Competition regulators have had cause to review a number of discriminatory pricing claims in utility sectors, especially where such practices are practised in parallel by firms in highly concentrated sectors.

In 2008, the UK energy regulator ("Ofgem") launched an "Energy Supply Probe" into both the electricity and gas supply markets for households and small businesses, based on the preliminary view that the market was giving rise to cartel-like behaviour among the "Big 6" energy suppliers (*i.e.*, as evidenced by price increases) [*9*]. Following its investigation, Ofgem concluded that the Big 6 energy suppliers' pricing decisions had been taken independently and without unlawful agreement or any information exchange between suppliers, although it was also found that suppliers had taken into consideration the pricing policies of their competitors, and their possible reactions to price changes, when reaching these decisions [*10*].

There were nevertheless a number of structural features (reinforced by the behaviour of the suppliers and weak consumer buyer-power) of the market which were considered to have generated a weakening of competition among the Big 6 suppliers. As a result, Ofgem developed a set of remedies (which formed part of the suppliers' licences as from October 2009) that were designed to improve the efficiency of the UK energy market. A portion of the remedies package addressed concerns about price differentials which: (i) required that any difference in the terms and conditions offered by suppliers regarding different payment methods should reflect actual differences in costs; and (ii) prohibited undue discrimination under any terms and conditions offered to consumers. A new licence condition was also introduced requiring greater transparency as to profits, underlying costs and revenues for the supply and generation businesses of the Big 6 [*11*]. The policy goal underpinning these measures was to subject energy suppliers to greater transparency obligations designed to identify the real costs incurred by them, thereby permitting instances of unlawful discrimination to be identified more readily.

Following the implementation of the revised remedies, the National Housing Federation identified a series of discriminatory practices, consisting of five of the Big 6 energy suppliers overcharging customers who used pre-pay meters, which did not reflect suppliers' costs (*i.e.*, they applied different payment methods – and a different price - for the provision of the same service) [*12*]. Further to its investigation in June 2015, Ofgem reported that [*13*]: (i) approximately 60% of suppliers were not charging consumers for pre-pay meter installations, while 95% of meter removals were carried out free of charge (of those suppliers who charged for this service, an installation charge up to £180 was set and a charge of up to £160 was imposed for the removal of the pre-pay meters); and (ii) over 40% of the suppliers did not charge security deposits where customers decided to pay by standard credit or direct debit (of those who did charge, the average cost for consumers was around £211) [*14*]. As a result, Ofgem proposed to work with energy suppliers to remove installation/removal charges and to put an end to the use of security deposits.

The Competition and Markets Authority ("CMA") also closed its investigation in the summer of 2016 (which was opened in the summer of 2014) into the UK energy market, which included uncovering whether there was active price discrimination and tacit coordination on the part of the Big 6 suppliers [*15*]. The CMA considered the application of *two* approaches: (i) *first*, specific suppliers enjoyed a position of 'unilateral' market power and thus each had the ability to exploit such a position (e.g., through price discrimination); and (ii) *second*, suppliers were tacitly coordinating in retail markets via public price announcements. As regards (i), the CMA concluded that the Big 6 enjoy a position of unilateral market power over their inactive customer base and have the ability to exploit such a position through their pricing policies by engaging in price discrimination (through the pricing of their standard variable tariffs materially above a level that can be justified by cost differences from their non-standard tariffs); and/or by pricing above a level that can be justified on the basis of costs incurred in operating an efficient domestic retail supply business [*16*]. In addition, as regards (ii), the CMA concluded that there was no specific evidence of tacit coordination between domestic retail energy suppliers in relation to price announcements. No concrete evidence had been identified that the suppliers had used price announcements to signal their pricing intentions in relation to the pricing of their standard variable tariff to rival suppliers. Further, the CMA expressed the view that there are particular characteristics in the supply of gas and electricity to domestic customers that may be conductive to tacit coordination, while also identifying those factors that make it difficult to sustain tacit collusion [*17*].

In March 2008, following complaints about high energy prices in Germany, the Bundeskartellamt (the "Federal Cartel Office") investigated and initiated proceedings against 33 gas suppliers (of different sizes and active in different regions in Germany) on suspicion of their engagement in anti-competitive pricing practices over the period 2007-2008 [*18*]. The Federal Cartel Office compared the 33 gas suppliers' individual turnovers achieved in 2007 to those gas suppliers across Germany who were, at the time, offering lower prices. For the period covering 2008, the Federal Cartel Office based its analysis on a comparison of the tariffs used by the majority of customers and offered by comparably situated companies [*19*]. The suppliers argued that the price rises were "objectively justified", especially given that their procurement costs had risen. However, the Federal Cartel Office compared the procurement costs of those suppliers involved in the investigation to those procurement costs incurred by other suppliers, and identified differences between them. In 29 out of the 33 cases, the companies offered monetary compensation to consumers amounting to EUR 127 million [*20*], as well as committing themselves to not passing on to consumers any increases in their procurement costs. Although commitments were agreed, a number of private damages claims against energy firms were nevertheless triggered [*21*] .

In November 2015, the French Competition Authority subjected the electronic telecommunications provider SFR (third largest player in France) and its subsidiary SRR (active in La Réunion and Mayotte) [*22*] to a joint fine of EUR 10.7 million for unfair pricing practices in the mobile telephony market aimed at the business customer segment [*23*]. The Authority concluded that SFR and SRR had charged higher prices – sometimes 10 times more than their actual cost for SFR (in La Réunion) – to customers making "off-net" calls (*i.e.*, calls on a competitors' network) and had charged lower prices to those customers who made "on-net" calls (*i.e.*, calls on SRR's network) in both the La Réunion and Mayotte regions [*24*]. According to the Authority, while some degree of price differentiation to the benefit of one's own network might be acceptable, it must nevertheless be "objectively justifiable" under the particular circumstances of the case (*i.e.*, relative to the operator's costs). In addition, the Authority held that these unfair pricing practices carried out by SFR/SRR affected nearly all small and medium-sized companies in both regions, as well as creating the customer perception that SFR's competitors provided a much more expensive service.

In an earlier Decision adopted by the Authority in 2014, SFR and SRR were fined almost EUR 46 million for similar practices aimed at another customer segment – household/residential customers [*25*]. In that case, the Authority again held that the price differentiation in question was not harmful in and of itself, but can be anti-competitive where the price differential goes well beyond the cost differences incurred by the network operator (*e.g.*, charges which are three times greater (La Réunion) or 50% more (Mayotte) than the cost differences borne by the network operator cannot be deemed to be "objectively justified") [*26*].

The Authority did not find that the latest incidence of infringement involved recidivism, presumably since it involved a different customer segment. Despite the seriousness of the breach and the market power held by SFR respectively in the La Réunion and Mayotte regions, the Authority took into consideration the limited amount of damage that had occurred to the market (especially given that competitors had not been excluded), and it also reduced the financial penalty by 10% because its findings were not contested.

B. Exclusivity insulating competition in certain territories

The liberalisation of network industries across the European Union has often been followed with industry responding by appointing exclusive distributors for national Member State territories. When this is done in a coordinated manner, its effect can be particularly harmful to inter-Member State trade flows.

In February 2015, the Portuguese Competition Authority (PCA) imposed a fine (EUR 9.29 million) on the Galp Energia group ("Galp") for imposing anti-competitive clauses in the Portuguese gas bottle market (used for household consumption) [*27*]. The Authority identified that Galp and its subsidiaries incorporated clauses in their contracts with distributors granting them absolute territorial exclusivity, thereby eliminating competition with neighbouring suppliers (*i.e.*, removing all the competitive pressure otherwise imposed by competing distributors). These clauses were included in a large majority of its distribution contracts for lengthy periods of time (for at least 15 years) and prevented Galp's distributors from competing with other distributors in neighbouring territories. As a result, the clauses led to an increase in prices and other unfavourable commercial conditions for consumers, resulting in an infringement of Article 101 TFEU and its national equivalent.

In Germany, the wholesale gas market was liberalised following a report of January 2005 on long-term gas supply agreements by Germany's Cartel Office. Prior to that liberalisation, the Cartel Office had unsuccessfully tried to broker a settlement with E.ON to abandon its long-term supply contracts and non-compete clauses so as to allow other competitors to enter the market [*28*], concluding that around 70% of all contracts with the distributors served by E.ON contained such restrictions and accounted for a disproportionately high percentage of total demand in the overall market. The Cartel Office also highlighted that many long-term supply agreements with distributors were for long periods (usually between 10-15 years, with some even as long as 25 years). The imposition of long term supply agreements and non-compete obligations, concluded the Cartel Office, resulted in the foreclosure of the German market to potential new gas suppliers (which had previously tried to enter) which led to higher prices for consumers. Also, in accordance with Article 3(1) and Article 5(a) of the EU's *Vertical Agreements Regulation* [*29*], given that E.ON held a market share well above 30%, there were no efficiency reasons which could justify the grant of an exemption under Article 101(3) TFEU.

Accordingly, on 17 January 2006, the Cartel Office adopted a prohibition Decision declaring E.ON's long-term supply contracts with gas distributors to have violated German and EU competition rules (both Articles 101 and 102 TFEU), concluding that E.ON: (i) should not include minimum purchase obligations within existing supply contracts (as from November 2006); (ii) should not enter into any new supply contracts with distributors that exceeded 4 years where the quantities purchased by the distributor represent 50% or more of its total demand or, if they covered a period of more than two years, where the quantities accounted for 80% or more of the distributor's requirements; and (iii) should not contract for additional volumes with distributors if a long-term contract was already in place for the existing amounts [*30*].

Given that the EU's gas supplies are largely sourced outside the EU (*i.e.*, Russia), concerns about exclusive relationships in the role of gas at Member State level (and its resale within the EU) have been the focal point of the European Commission's concerns about Gazprom's unilateral and multilateral practices in its upstream supply of gas to Central and Eastern European Member States. In 2011, the European Commission ("Commission") undertook a series of "dawn raids" or unannounced inspections at the premises of several natural gas companies located in ten different Member States [*31*], who were active in the supply, transmission and storage of natural gas. The Commission had concerns that the companies were carrying out anti-competitive practices (*i.e.*, both exclusionary and exploitative behavior) in the upstream supply of natural gas to Central and Eastern European Member States. In addition, following its preliminary enquiries in 2012, the Commission opened an antitrust investigation against Gazprom for its alleged abuse of a dominant position (April 2015), resulting in the release of a Statement of Objections to Gazprom for its alleged abuse of dominance on Central and Eastern European gas supply markets [*32*]. Following these initial concerns, however, there have as yet been no definitive findings of any collusive behaviour or restrictive practices amongst suppliers on the upstream market for the supply of natural gas to Central and Eastern European Member States [*33*].

C. Network sharing

While the usual policy orientation in all utility sectors is the promotion of network competition, the mobile communications sector has acknowledged that the huge investments needed to deploy new generations of technology and the growing environmental concerns associated with the building of new base stations necessitate a degree of network sharing among competitors. Given the concentrated nature of the industry, however, regulators' positive disposition to such network sharing is tempered with concerns that the necessary cooperation between competitors does not spill over into anti-competitive forms of cooperation.

Towards the end of 2013, Spain's Competition and Markets Authority opened a formal investigation (following complaints made by mobile operators Orange and Vodacom to the former National Competition Commission) into an agreement concluded between electronic telecommunications providers Telefónica (the largest telecommunications provider in Spain) and Yoigo (the fourth largest operator, with a 7% market share), for the use and commercialisation of their respective mobile networks [*34*]. The agreement allowed Telefónica to use its rival's 4G network in exchange for the grant of access to its broadband infrastructure, thereby permitting Yoigo to offer "triple-play" packages (*i.e.*, mobile, fixed and broadband packages). It was argued by the complainants that the agreements involved coordinated behaviour, the exchange of commercially sensitive information and a refusal to compete with one another, thereby harming competition. The complainants further contended that new packages launched by Telefónica and Yoigo were suspiciously similar in terms of content and price. Following the Authority's investigation into network sharing agreements, both Telefónica (EUR 6 million) and Yoigo (EUR 300,000) were fined for the anti-competitive nature of this bilateral network sharing agreement [*35*]. The bilateral nature of the network sharing arrangement clearly had an impact on network operators' incentives to compete, whereas a more usual unilateral decision to share one's network is unlikely to raise a similar range of concerns.

2. Trade associations serving as focal points for collusion

Despite the many pro-competitive impacts of trade associations, there are numerous precedents at European and national levels where a finding of collusion between competitors has involved the active or tacit involvement of their trade association. In certain extreme cases, the trade association has been found to be the facilitator of the anti-competitive activity in question.

With the liberalisation of utility sectors, there has been a parallel rise in the creation of trade associations which represent their members, which *inter alia* play a critical role in terms of the development of common industry standards which facilitate interconnection and transparency for customers. Trade associations representing utilities are thus arguably more vulnerable to such competition concerns, especially when adopting positions facilitating connectivity between members of the trade association and non-members. Given that these standards often also serve as the basis upon which competitive wholesale access is granted or upon which non-price dimensions of competition will be based, it is not surprising to find that the past few years have witnessed an escalation in the number of actions brought under Article 101 TFEU or its national equivalents, where alleged anti-competitive activity has also included trade associations.

Examples of such concerns in utility sectors are illustrated in the following:

• In April 2010, the Commission (working together with the French Competition Authority) carried out dawn raids in France on various firms active in the water and waste management sector, on suspicion that they had imposed unfair prices for their water and waste management services on local authorities, thereby harming consumers [*36*]. Following its preliminary investigation, the Commission opened formal proceedings in January 2012 under Article 101 TFEU against the companies SAUR, Suez Environnement, Lyonnaise des Eaux, Veolia, and the trade association Fédération Professionelle des Entreprises de l'Eau for suspected collusive practices in French water and waste management markets [*37*]. However, on 23 April 2013, the French Competition Authority decided to close the antitrust proceedings against the companies under investigation [*38*].

• Following a public announcement by the Chairman of the Association of Building Constructors ("EKEE") [***39***], who requested from the members of the association to withhold their construction of new buildings unless they were able to sell already constructed buildings (*i.e.*, supply limitations), the Greek Hellenic Competition Commission launched an investigation into the association's dealings. The Commission's investigation revealed that, during the period 2002-2009, the EKEE had made recommendations to its members not to construct any new houses without having first sold 70% of the houses that had already been constructed [***40***]. The individual members were therefore found to have fixed property prices *indirectly*. It was argued by the EKEE that: (i) the financial conditions in Greece had compelled them to prevent the building of new homes in order to protect even further price erosion in the value of existing home prices (*i.e.*, an Article 101(3) public policy argument); and (ii) its members were asked not to alter their usual pricing practices, as this could have otherwise possibly led to a price war which would have led to the further erosion of property prices [***41***]. The Commission concluded that, irrespective of the fact that the EKKE believed that its actions would have positive implications on the housing market, it had prevented its individual members from taking their commercial decisions freely. Accordingly, the Commission imposed a fine of EUR 18.4 million on the EKEE in September 2013 for its infringement of the Greek national law equivalents of Article 101 and 102 TFEU.

• In August 2015, Germany's Cartel Office imposed a series of fines (totalling approximately EUR 4.56 million) [***42***] on seven firms (as well as on the individuals responsible within those firms), including a trade association [***43***], based on alleged concerted practices regarding the provision of container transport services in the areas around the German seaports of Hamburg, Bremen, and Bremerhaven [***44***]. The Cartel Office investigation revealed that the concerted practices were orchestrated through FCDS's general meetings and general communications between the members of the association. The FCDS members were able to reach agreement on key issues, whereby they could pass on cost increases in the container transport services sector, and discussed coordinated measures through which they could deal with a range of cost increases. The association's members also reaches coordinated agreement on the introduction of additional surcharges on freight rates, as well as common settlement rates where another FCDS member would be involved. Importantly, the investigation was triggered by a joint statement released by the members of the FCDS association in April 2014, which announced that they were going to introduce a "Hamburg traffic congestion charge".

• In December 2015, it was announced that the Commission had conducted dawn raids into the Austrian railway service provider Österreichische Bundesbahnen ("ÖBB"), along with the trade associations VOR, OÖ, and Sbg [***45***], based on Commission concerns that the firms involved had violated Articles 101 and 102 TFEU. It is understood that the Commission's investigation is focused on certain legal disputes with the private railway company, WESTbahn, concerning: (i) discriminatory access to routes; and (ii) pricing levels. In addition, on 28 June 2016, the European Commission (joined by the relevant National Competition Authorities) carried out dawn raids in the rail passenger transport sector within several different Member States, on concerns that rail passenger operators may have entered into anti-agreements which had the objective of barring new entrants and competing operators from entering the marketplace [***46***].

• In April 2014, the Spanish Competition Authority conducted dawn raids at the premises of the trade association Balearic Business Federation of Transport ("FEBT") and three other different organisations suspected of involvement in anti-competitive practices in passenger road bus transport services in the Balearic Islands [***47***]. This resulted in the opening of a formal investigation in September 2015 into 16 bus transport companies (as well as the FEBT) for their participation in a series of anti-competitive practices consisting of price-fixing, market sharing and the exchange of commercially sensitive information in road passenger transport [***48***]. It is understood that the investigation is still ongoing (the Authority has a maximum period of 18 months in which to deliver a final Decision).

• On March 2012, the Italian Competition Authority imposed fines of EUR 4 million against 15 shipping agents and two trade associations (Assagenti shipping agents and Spediporto forwarding Agents), which had allegedly entered into a cartel at the Port of Genoa lasting five years (2004-2009) [***49***]. The members of the cartel had been involved in price-fixing for their forwarding agency services (*i.e.*, those entities who prepare and issue documents, such as bills of lading for exported goods and 'delivery orders' for imported goods – 'fixed duties'), as well as the imposition of loyalty discounts to forwarding agents which were found to be clear violations of Article 101 TFEU. The Authority revealed that although the price-fixing agreements and meetings were physically restricted to the Port of Genoa, they had an adverse effect on other port prices (*i.e.*, the prices were considered to act as reference values for other maritime agents in the Mediterranean ports and the Italian port system in general). In addition, it was concluded by the Authority that the trade associations had played a very active role in facilitating the horizontal price-fixing agreements insofar as: (i) Assagenti circulated announcements to inform its members about the decisions which had been adopted within the association, to facilitate their implementation; and (ii) Spediporto also circulated announcements to its forwarding members recommending that they apply to the shipping agents for the grant of fidelity discounts, whereby the increase in the shipping agents' fees was directly passed on to the customers, thereby allowing the forwarding agents to share in the profit.

• In late 2015, the Commission closed its competition law investigation into the so-called CDS investigation [***50***]. This case had been pursued by the Commission against 13 banks and two financial organisations on the understanding that the defendant banks had colluded, under the auspices of Markit (a financial information and services company) and the International Swaps and Derivatives Association ("ISDA", a trade association), in order to protect their position as traders of Credit Default Swaps ("CDS"). Based on the Commission's understanding of the ways in which the various parties interacted in relation to the licensing procedures adopted for the provision of bespoke over–the-counter ("OTC") CDS trades, the Commission issued a Statement of Objections in the summer of 2013 against the 13 banks, Markit and ISDA for allegedly coordinating their behaviour over the period 2006 to 2009 by jointly preventing exchanges from providing an OTC options for CDS trades [***51***]. After having heard the parties' defences at an Oral Hearing and having conducted a series of additional fact-finding inspections [***52***], the Commission ultimately withdrew its case against the 13 defendant banks on 4 December 2015, concluding that "*[t]he evidence was not sufficiently conclusive to confirm the Commission's concerns with regards to the 13 investment banks* [***53***]." While the Commission did not close its case at that juncture against the two financial organisations, Markit and ISDA, a settlement has now been brokered between the Commission and those organisations under "Article 9" commitments procedure [***54***]. The focal point of the settlement is understood to be the establishment of a series of governance conditions for both of those bodies, with a view to ensuring that they take objective, independent decisions in the future.

3. Bid rigging/coordinated tenders

The existence of so-called "bidding markets" is usually seen as the best means of ensuring price and non-price competition among the members of concentrated industries. Given that utility sectors are prone to high levels of concentration, it is often a policy priority in such affected markets for antitrust regulators to ensure that effective bidding mechanisms are in place, especially where purchasers are also concentrated in number. It therefore comes as no surprise that some firms might be tempted to manipulate bidding or public procurement procedures in such a manner that seeks to preserve their "fair share" of the market in what would otherwise be highly uncertain bidding conditions. The incentives for firms to engage in such practices are clear, as is illustrated by the range of cases discussed below:

• In 2012, the Italian Competition Authority investigated possible tacit collusion between three electricity producers in Italy [***55***]. The three producers (Repower Italia, EGL Italia and Tirreno Power) were (and are) the only operators which can provide balancing services over weekends and public holidays in the Campania region. It was contended that the three producers tacitly colluded to manipulate their respective bids in a way that allowed them to take turns in providing their balancing services during weekends and public holidays; this in turn would trigger price increases for the period April to August 2010. The Authority also established that the three operators in question had switched between "three-day holiday cycles" during the bids. The result of the tacit collusion resulted in EUR 900,000 in additional costs (amounting to 5%) for the grid operator Terna.

• In April 2012, the Danish Competition Council found that the trade association Skive og Omegns Vognmandsforening (comprised of 40 members) [***56***] had coordinated and fixed tenders concerning the provision of winter road maintenance services (*i.e.*, the clearing of snow and salting) within the Skive Commune [***57***]. In 2010, the Skive Commune published tenders for the provision of winter road maintenance services on a total of 11 different routes for the period 1 October 2010 until 30 April 2014. The trade association Skive og Omegns Vognmandsforening submitted bids for all 11 routes, and managed to win 9 of those tendered routes; in doing so, it allocated the winning tenders to 10 of its members. The Council concluded that the trade association, by making coordinated offers for its members, as well as selectively allocating the respective routes between its members of the association, had violated Section 6 of the Danish Competition Act (the equivalent of Article 101 TFEU). Such actions removed any incentive for the individual members of the association to compete by making their own individual offers, possibly resulting in higher prices for consumers. The Council ordered that the contract agreed between the trade association and Skive Commune for the provision of winter road maintenance services was not to be extended beyond the existing deadline, without any fine being imposed.

• In 2010, Denmark's Competition Council carried out dawn raids which resulted in formal charges being brought against 28 construction companies for bid rigging which had affected a number of construction projects, in contravention of Section 6 of the Danish Competition Act (the equivalent of Article 101 TFEU). In July and November 2014, the Council imposed fines (the largest ever recorded in Denmark) on two of those construction companies (Elindco Byggefirma A/S ("EB") and N.H. Hansen & Søn, both of which settled with the Council) for bid rigging over the period 2007-2009 [***58***]. It was concluded by the Council that, in 12 different construction-related tenders, EB had: (i) exchanged pricing information (as well as other information); and (ii) entered into a series of agreements with its competitors on the allocation of calculation costs. It is understood that 24 of the 28 companies and 22 executives originally investigated have settled with the Council and have agreed to pay the fines imposed, totalling DKK 31 million (of the remaining ongoing cases, four of the companies have declared bankruptcy and one was removed from the investigation due to the lack of evidence). Although two of the companies appealed the fines imposed by the Council, the Danish High Court has recently upheld the findings of the Council in one of those appeals [***59***].

• In August 2014, the German Cartel Office imposed fines totaling EUR 17.4 million on five providers of specialist underground mining services (BeMo Tunnelling GmbH, Deutschland, Deilmann-Haniel GmbH, Feldhaus Bergbau GmbH & Co. KG, Schachtbau Nordhausen GmbH, and Thyssen Schachtbau GmbH) for various price fixing and bid-rigging practices, in contravention of the relevant section of the German Competition Act (the equivalent of Article 101 TFEU) [***60***]. Following dawn raids in April 2013 (Operta Gmbh successfully applied for leniency), the Cartel Office uncovered evidence of anti-competitive price fixing and bid rigging activities being carried out by the parties, consisting of: dividing incoming orders for service (and set quotas for) contracts among themselves; and, during tender procedures, dividing specific lots among themselves and coordinating price levels for their individual bids (thereby avoiding any future price war).

• In December 2012, the Polish Competition Authority found that two firms (MPO and Astwa) providing municipal waste services in the city of Bialystok had formed a bid rigging consortium. As a result, they had successfully submitted the winning bid for the collection and transportation of waste (which was tendered by the Municipal Property Management) [***61***]. Given that Article 23 of the Public Procurement Law of 2004 provided that operators may bid jointly for contracts (*i.e.*, as a consortium), [***62***] the parties argued that their actions were justified under the Public Procurement Law because they were unable to bid independently due to the "technical limitations" of their individual bids. The Authority did not accept this line of defence, confirming that it had uncovered the existence of an agreement concluded between the two parties which aimed to distort competition (*i.e.*, having minimised the risk because individual offers were not submitted) in the marketplace, and that they did not need to cooperate together for the purposes of the tender in question (having cooperated in the past). The PCA did not fine either of the parties in the specific circumstances of the case.

• In October 2012, the Romanian Competition Council imposed fines totaling EUR 5.6 million on four companies (Condmag, Inspet, Moldocor and TMUCB) for bid rigging in two separate contracts tendered by Transgaz for the construction, repair and maintenance of natural gas pipelines in Romania [***63***]. Following an investigation by the Council in 2011, it was concluded that: (i) Condmag and Inspet had both rigged their bids in the tender for the "Butimanu-Brazi natural gas connection for the gas-supply of Brazi cogeneration power plant"; and (ii) Moldocor and TMUCB had both coordinated their bids for the "Giurgiu Ruse 20" gas transport pipeline tender. The Council found that all four companies had exchanged sensitive information, as well as coordinating their conduct in the marketplace, thereby removing commercial uncertainty from their relationship in contravention of Article 5 of the Romanian Competition Law (the equivalent of Article 101 TFEU).

• In December 2012, the Romanian Competition Council imposed fines on five companies totalling EUR 660, 000 for bid rigging in relation to tenders which were organised by the Romanian National Company of Motorways and National Roads for the provision of road marking services [***64***]. In 2006, the tenders in question were organised into 7 lots comprising selected roads in different regions across Romania. In 2011, following suspicions of bid-rigging, the Council launched a formal investigation to assess whether the participating companies had coordinated their activities during the procurement procedure in a way which distorted competition in contravention of Article 5 of the Romanian Competition Law. The Council's investigation revealed that the five companies involved had organised themselves into two associations, through which they agreed to submit coordinated bids (resulting in an increase of the tendered prices) so as to allocate the contracts between themselves. For example, one of the methods used by these associations was to submit a faulty bid so that the procurement procedure would be considered to be competitive, whereas simultaneously the faulty individual bid would not satisfy the selection/qualification criteria (*i.e.*, so-called "courtesy bids"). This technique was used to undermine national public procurement rules, according to which the contracting authority would need to repeat the procurement procedure if less than two bidders submitted tender offers. In addition, the Council also adduced evidence of communications between the five companies, as well as the exchange of sensitive information, thereby confirming their cooperation in manipulating the tenders (*e.g.*, their tender documents contained similar typos/formatting, and a single receipt was issued for the notarisation of documents relating to both associations).

• In 2006, the Italian Competition Authority opened a formal investigation on the understanding that ACEA and Suez Environnement had infringed Article 101 TFEU, ultimately imposing fines totaling EUR 11.3 million on those parties for bid-rigging and market sharing practices [***65***]. According to the Authority's findings, ACEA and Suez Environnement were found guilty of bid-rigging in a tender to acquire 40% of the shares of a public-private-partnership ("PPP") which managed the public water utility services of the Municipality of Florence. It was found that they had illegally (in contravention of Article 101 TFEU) agreed to cooperate in their responses to invitations in other tenders (approximately one-quarter of the total) as regards the provision of public water utility management in Italy. The case was subsequently appealed to the Italian Tribunal of First Instance, where both parties succeeded in their appeals; however, its ruling was subsequently reversed by the Italian Administrative Court of Appeal in 2012, which was subsequently upheld by the Italian Supreme Court in 2014 [***66***].

• In 2006, the Slovak Antimonopoly Office imposed fines totalling approximately EUR 45 million on six construction companies for bid-rigging [***67***]. The Slovak National Highway Company had issued a public tender for the construction of two sections of a 25km highway ("Highway D1") in 2004. However, it subsequently withdrew both tenders because they exceeded the government construction budget for this particular project. The six companies involved submitted bids through two trade associations (created for the specific purpose of preparing and submitting the bids); however, one of the companies involved also submitted its tender independently, which meant that there was a total of three bids. The tenders were re-issued a few months later, with the offers received being lower than the original tenders. Following this incident, the Office opened a formal investigation based on the suspicion of collusive bid-rigging between the tenderers in violation of the Slovak Act on Protection of Competition and Article 101 TFEU. The Office investigated and compared the individual bids and concluded that there were certain parallel characteristics (*i.e.*, in terms of consistency) in the complex pricing structures of the submitted bids. The respective Decisions of the Office were subsequently appealed, with the Regional Court of Bratislava annulling the Decisions in 2008. However, the Supreme Court reversed the Judgment of the Regional Court, and upheld the findings of the Office.

• In September 2005, the Hungarian Competition Authority imposed fines totalling EUR 27.7 million on eight construction companies (Alterra, Betonút, EGÚT, Hídépítő, Mélyépítő, Mota, Strabag and Swietelsky) in relation to the tenders issued in 2002 by the Municipality of Budapest (specifically by National Motorway Co.), for the construction of sections of motorway totalling 59.91km [***68***]. The Authority opened a formal investigation in 2001, uncovering anti-competitive practices in 11 issued tenders (with two exceptions), as well as 11 others issued in 2002. In addition, the Authority concluded that the eight companies had entered into an agreement (evidenced by the private records of board members from two of the companies concerned) covering issues such as the identity of the winner of the contract, and the employment of other parties such as subcontractors for the construction of the sections of the motorway. These anti-competitive actions were held to be in contravention of Article 11 of the Hungarian Competition Act (the equivalent of Article 101 TFEU) as they had the effect of raising prices, removing commercial uncertainty, as well as manipulating and restricting competition in the marketplace. The Decision of the Authority was subsequently appealed (by Betonút, Strabag, EGUT, Hídépítő and DEBUT) to the Metropolitan Court of Appeal, which upheld the findings of the Authority and the Judgment at First Instance in June 2008, [***69***] as well as to the Supreme Court of Hungary, which upheld the findings of the Authority [***70***].

• In June 2004, the Hungarian Competition Authority initiated a formal investigation (following dawn raids) on the suspicion that two construction companies, Construm and Royal Bau, had infringed Article 11 of the Hungarian Competition Act (the equivalent of Article 101 TFEU) by entering into a market-sharing agreement (achieved through the bid-rigging of a public procurement tender) [***71***]. The Authority had suspected that, in 2002, Construm and Royal Bau had colluded during the public procurement procedure concerning the tender for the construction of a block of flats issued by the Municipality of Terézváros (in which a total of 5 companies had submitted offers). According to the evidence uncovered by the Authority, an email sent from Construm to Royal Bau on 1 February 2002 reflected the cooperation agreement in question. That agreement confirmed that both parties would cooperate in constructing the block of flats for the duration of the project. In addition, it was agreed that: (i) Construm would submit a much more attractive offer than Royal Bau; and (ii) if Royal Bau's offer was second to that of Construm, it would withdraw its offer. Penalties were also agreed for the failure to execute the agreement, as well as the creation of a joint bank account. As a result of its findings of an infringement of Article 101 TFEU, the Authority imposed a fine on Construm of EUR 66, 000, while not imposing any fine on Royal Bau (as it successfully applied for leniency). Following an appeal of the Decision by Construm, the Hungarian Court of Appeal upheld the findings of the Authority in June 2007 [***72***].

• In March 2004, the Hungarian Competition Authority imposed fines totalling EUR 0.98 million on three construction companies (Strabag, Ring and EGÚT) for bid-rigging tenders issued for the road and tramway reconstruction of the prominent street junction in Budapest (in connection with the construction of "Line 4" of the Budapest Underground) [***73***]. While the Authority had initially brought proceedings against eight construction companies (who had placed bids in different forms *i.e.*, as competing bidders or as cooperating partners), only Strabag, Ring and EGÚT were considered to have cooperated through the exchange of sensitive information, as well as contacting each other through fax messages prior to the submission of their respective bids. The Authority held that such practices by the three companies removed uncertainty in the marketplace through the manipulation of bids, with the intention of influencing market conditions to restrict competition in contravention of the relevant provision of the Hungarian Competition Act (*i.e.*, the equivalent Article 101 TFEU).

• In July 2005, the French Competition Authority imposed maximum fines totalling EUR 11.96 million on three large French companies (Kéolis, Connex and Transdev) providing urban public transport bus services in a number of regions in France, because they had entered into an anti-competitive market-sharing agreement covering the period 1996-1998 [***74***]. The object of the market-sharing agreement was to divide the regional public transport markets between the parties. The three companies sought to realise their agreement through the big-rigging of tenders issued by the local and regional administrations. In addition, the Authority uncovered that the directors of the three companies intended to divide the market between them (also by means of subcontracting relationships) and refrained from competing amongst each other whenever a contract would be re-tendered by the local or regional authority (following the contract's expiry date). In other words, when the tenders were re-issued by the public authorities, the three companies agreed to refrain from submitting any tenders, or to withdraw existing tenders, or to submit tenders that did not threaten the existing incumbent contract holder (*i.e.*, one of the three companies concerned). In addition, the three companies would swap regions on the basis of where they had an "objective advantage" or where their specific interests lay [***75***]. These practices allowed them to manipulate market conditions in such a way so as to remove uncertainty and to permit the imposition of their own (higher) prices on the local and regional administrations for the provision of public bus transportation services (*i.e.*, they obliged the public authorities, and ultimately consumers, to pay higher prices than would have been the case had competitive dynamics been effective). The Authority imposed fines on the parties, concluding that, based on the evidence, the companies under investigation had infringed A L. 420-1 of the French Commercial Code and Article 101 TFEU. The three companies appealed the Decision of the Authority to the Paris Court of Appeal, which was subsequently upheld on 7 February 2006 [***76***]. In 2010, the matter reached the Paris Court of Appeal, which delivered its Judgment confirming the Authority's findings [***77***].

• In June 2009, five individuals and three companies were acquitted of charges of customer and market-sharing that allegedly occurred in conjunction with the joint submission of a tender for waste collection services in Ireland's County Mayo [***78***]. Following a complaint lodged in 2006, the Irish Competition Authority carried out dawn raids at the three firms involved (Bourke Waste Removal, Wheeley Environmental Refuse Services and McGrath Industrial Waste) and found that these firms had organised meetings on a number of occasions, having entered into an agreement for the period August 2005 to September 2005 (*i.e.*, a month before the tender submission deadline). During those meetings, the directors of the three firms had agreed to form a consortium to submit a joint tender for the provision of waste collection services to the County Council in County Mayo. Fearing that the jointly submitted tender would be unsuccessful, one of the parties, McGrath Industrial Waste, also submitted a bid which amounted to EUR 1 less than the tender submitted by BGM Ltd. When the case went to the Central Criminal Court, the bid-rigging claim was not heard, with only the arguments for market-sharing and customer allocation being considered.

The past ten years have thus witnessed a relative explosion in bid-rigging prosecutions, especially in the utility sectors such as road building and other large infrastructure projects driven by government contracts that are subject to tight tendering rules. Increased awareness of such practices by competition authorities has no doubt led to their prominence in terms of antitrust enforcement, as has the fact that there are increasingly tight State budgets over the course of the protracted recession in which Europe finds itself relative to over the large costs incurred in such projects.

4. Environmental rationale for capacity restrictions

Certain utility sectors struggle to balance the desire to generate competitive outcomes, on the one hand, with the satisfaction of fundamental environmental policy goals (renewable energy quotas, pollution levels, and so forth). Managing this delicate balancing exercise often needs to be analysed by reference to whether the primary goal of the cooperation between firms is driven by legitimate aims, in such a way that restrictions of competition that might arise from such cooperation can benefit from the 'ancillary restraints' doctrine. The legal standard employed to explain the rationale behind such a balancing exercise is whether or not the pro-environment goals allegedly being pursued by competitors are in fact capable of "*[promoting] technical or economic progress*" which are "*indispensable to the attainment of these objectives*", as those expressions are understood in the context of Article 101(3) TFEU [***79***].

A number of cases have focused on the issue of how the pursuit of environmental concerns might be capable of justifying what would otherwise be considered to be anti-competitive practices, and the legal standards which such practices must satisfy in order to justify the application of an exemption under Article 101(3) TFEU to the prohibition on anti-competitive practices otherwise imposed under Article 101(1) TFEU:

• In September 2013, the Dutch Competition Authority launched a formal investigation into the proposed agreement between the members of a trade association (Energie Nederland), which concerned the closure of 5 coal power plants forming part of the Social and Economic Council of Netherlands ("SER Energieakkoord") [***80***]. The members of Energie Nederland had notified the agreement to the Authority, requesting that it formally assess whether the agreement in question fell within the cartel prohibitions of the Dutch Competition Act (as well as Article 101 TFEU). While the agreement was aimed at reducing electricity production capacity by 10%, Energie Nederland argued that: (i) the Netherlands was suffering from heavy overcapacity, which was set to increase over the next few years; and (ii) production levels were well below the average. Nevertheless, the Authority held that, based on the facts in question, the agreements fell within the scope of the Dutch Competition Act, as well as Article 101 TFEU. The Authority did, however, examine in detail whether the agreement satisfied the terms of Article 101(3) (*i.e.*, comparing the price rises with the environmental benefits gained from shutting down the power plants). Following its analysis of the particular fact of the case, it came to the conclusion that the benefits attached to the proposed agreement were insufficient to offset the drawbacks to Dutch electricity buyers [***81***].

• Following its sector inquiry in 2008 into the waste paper industry, [***82***] the Italian Competition Authority in March 2010 launched a formal investigation into whether the consortium "Comieco" (National Consortium for the Recovery and Recycling of Cellulose-based Packaging) had entered into an agreement going well beyond its statutory mandate for the recovery and recycling of cellulose packaging in Italy under Decree No. 152/06 in contravention of Article 101 TFEU by apparently: (i) establishing criteria which led to the allocation of paper waste to each of its respective members (*i.e.*, imposing quotas); (ii) thereby fixing prices for waste paper; and (iii) adopting a sanctions regime according to which members who did not adhere to points (i) and (ii) were punished [***83***]. According to the findings of the Authority, each of the members of Comieco received an agreed pre-determined quantity of waste paper in accordance with the quantity of packaging produced in the previous year. These pre-determined quota levels that were assigned to each member were deemed to have a negative effect on the expansion of the paper mills by reducing capacity in the marketplace. The agreements were found to have stagnated competition by preventing both the expansion of existing firms and the entry of potential competitors, thereby preventing the growth of the industry. To resolve the Authority's competition concerns, Comieco offered binding commitments to sell 40% of all of the waste paper it collects/processes through a competitive bidding process (rather than being assigned directly to Comieco members) [***84***]. The Authority also found that the remaining 60% of the waste paper quota allocation should remain in place for both public interest and environmental reasons. Thus, the pre-determined quota, while preventing the market from collapsing in the event the bidding process failed, had the likely effect of harming the market dynamics even further.

• In August 2002, the Bundeskartellamt launched formal proceedings into whether the contract system of Der Grüne Punkt – Duales System Deutschland AG ("DSD", "The Green Dot") was compatible with the Article 101 TFEU equivalent under the German Competition Act [***85***]. DSD (at the relevant time) was the only company that operated a nation-wide system across Germany for the "take-back" and disposal of sales packaging. While not operating the waste disposal services itself, DSD concluded contracts with the waste disposal firms in question [***86***]. Following its investigation into the market in January 2003, the Bundeskartellamt imposed fines of EUR 4.4 million on DSD, the Trade Mark Association ("Markenverband"), the Confederation of German Trade Associations ("BDH"), the German Waste Management Association ("BDE"), as well as Metro AG, RWE Umwelt AG and Rethmann Entsorgungs AG & Co., because they had called for a boycott and had entered into agreements restricting the entry of potential competitors. By doing so, BDE and several waste management companies had prevented the establishment of a *second* dual system to operate alongside DSD. For example, Landbell had been trying to establish a dual system beside DSD in the region of Hesse, but was dependent on the co-utilisation of collection facilities provided by DSD. Despite complaints by the competent Environmental Authority in the region of Hesse, DSD and BDE called several times upon the disposal firms active in Hesse to deny Landbell the co-utilisation of the existing collection facilities (*i.e.*, under the command of DSD and supported by the BDE, the disposal companies agreed between themselves not to work for Landbell) [***87***].

5. Coordination focusing on the management of capacity

The aviation and maritime sectors are characterised by the need to regularise and manage capacity efficiently. This commercial and technical imperative is often designed to deal with dramatic fluctuations in capacity demands (*e.g.*, seasonal holiday travel, "*prime time*" business travel, "*just in time*" deliveries of commercial goods), and the need to adjust business models in order to maintain volumes on both bilateral routes and "hub and spoke" transport networks (based on the capacity constraints of particular ports and airports, the nature of the goods or passenger profiles, *etc.*). Accordingly, various forms of loose or extensive cooperation between horizontal competitors are commonplace, with a view to achieving these commercial aims; the pursuit of such aims is often welfare-enhancing, but might also be capable of having negative implications for consumers in certain circumstances. The need to weigh competitive pros and cons when granting clearance to such cooperation arrangements is reflected in a series of joint venture arrangements in the aviation and maritime sectors, as illustrated in the following precedents:

• In January 2012, the Commission opened a probe [***88***] into whether the joint venture between the airlines Air France-KLM, Alitalia, and Delta, all members of the SkyTeam airline alliance [***89***], resulted in the coordination of their trans-Atlantic operations in such a way as to infringe Article 101 TFEU [***90***]. The Commission was mainly concerned that the level of cooperation might harm consumers on several EU-US routes (*i.e.*, capacity, schedule and pricing concerns). The investigation was in relation to joint venture agreements signed in 2009 and 2010 by the members of SkyTeam, as a result of which the joint ventures were able to coordinate their flight operations (capacity, schedules, pricing, profit, as well as the sharing of profits and any losses incurred). Given that this investigation is ongoing, the Commission decided to close its earlier investigation into the members of SkyTeam (which had been opened in 2006) [***91***]. That earlier investigation had given rise to a similar range of concerns, which resulted in a Statement of Objections being issued in which the Commission was primarily concerned that the cooperation agreements would confer upon the members of SkyTeam a strong market position, while also strengthening existing entry barriers (*i.e.*, slot constraints, frequency advantage, hub dominance, and network effects arising from joint Frequent Flyer Programs). Although SkyTeam proposed commitments to remove the competition concerns on the affected routes, the market test was not satisfied in relation to the EU-US routes [***92***].

• In February 2011, the Commission opened a formal investigation into 'code-sharing' agreements between Lufthansa and Turkish Airlines, in addition to those concluded between Brussels Airlines and TAP Portugal [***93***]. Unlike other common forms of code-sharing agreements [***94***], these code-sharing agreements allowed both parties to sell as many seats as they sought on each other's flights (*i.e.*, capacity sharing), provided that there were available seats on their respective routes/connecting hubs (*i.e.*, "parallel hub-to-hub code-sharing"). In this particular case, the Commission was concerned that code-sharing agreements described above (between Brussels Airlines and TAP Portugal) on routes to and from Belgium and Portugal were in contravention of Article 101 TFEU [***95***]. The investigation by the Commission is still ongoing.

• In November 2012, the Spanish Competition Authority fined 6 shipping companies (active in both the passenger and cargo sectors) EUR 88.5 million for forming a cartel (for the period 2002-2010) in the passenger and cargo maritime transport market between the Spanish peninsula and Morocco, in contravention of Article 101 TFEU and its equivalent under the Spanish Competition Act [***96***]. According to the evidence at the disposal of the Authority, the members of the cartel had participated in several meetings in which information was exchanged, prices were fixed, and certain commercial conditions were agreed for both cargo and passenger travel between the Spanish peninsula and Morocco. These anti-competitive agreements in effect removed all competition between the Spanish peninsula and Morocco for a period of nine years, providing the firms involved with high profit margins.

6. The impact of price signalling and information sharing

In the context of highly concentrated, regulated utility industries, it is not uncommon for allegations to arise that instances of 'price signalling' are taking place or that information exchanges are occurring which lead to the alignment of prices and/or other competitive conditions between competitors. These exchanges can take a variety of forms, as the recent administrative practice at EU and national levels suggest. For example:

• In 2013, the Dutch Competition Authority concluded an investigation into possible price-fixing agreements as well as other cartel-like behaviour among mobile network operators in the Dutch mobile telecommunications sector [***97***]. While the Authority did not find direct evidence of illegal price-fixing agreements (or other violations of the Dutch Competition Act), it did uncover a common practice by mobile operators concerning the release of public statements (*e.g.*, future price increases or other supply conditions that were not as yet finalised) which it considered amounted to collusive behaviour in contravention of Section 6(1) of the Dutch Competition Act and Article 101(1) TFEU. For example, mobile operator KPN's public announcement of its intention to re-introduce connection fees was believed to alter market conditions by creating clear commercial expectations among competitors. On the basis of the Authority's findings [***98***], the *three* largest mobile network operators (KPN, T-Mobile and Vodafone) submitted binding commitments (incorporated within their compliance programmes) to refrain from the making of any such public statements in order to avoid the possibility of similar future collusive behaviour [***99***].

• In June 2013, the European Commission carried out dawn raids at the premises of a number of firms active in the provision of cargo (freight) train transport services to South Eastern Europe, on the understanding that they may have infringed Article 101(1) TFEU by engaging in price-fixing and customer allocation practices [***100***]. Following a formal investigation and subsequent settlement discussions [***101***], the Commission adopted a Statement of Objections on 26 May 2015 which concluded that the firms had infringed Article 101(1) TFEU. In that document, it found that the freight train operators over the period 2004-2012 had: [***102***] (i) allocated existing and new customers; (ii) established a customer protection scheme, including a notification system for new customers; (iii) exchanged confidential information on specific customer requests; (iv) shared transport volumes; and (v) coordinated prices through the provision of cover bids and price discussions for specific customers [***103***]. As a result, the Commission in July 2015 imposed fines totalling EUR 49.15 million on the *three* companies providing the cargo blocktrain services. However, Kühne + Nagel received full immunity from fines under the EU's leniency programme, while both Express Interfracht and Schenker received fine reductions for their cooperation during the investigation. The three participants also settled the case with the Commission, resulting in further fine reductions of 10% in exchange for their acknowledgement of the participation in the cartel and accepting liability [***104***].

• In May 2013, the European Commission carried out dawn raids in two Member States at the premises of several companies (BP, Statoil and Royal Dutch Shell, Glencore and ENI) active in the exploration of crude oil, refined oil products and biofuels sectors, on suspicion that they had, contrary to Article 101 TFEU, colluded in reporting distorted prices to the Price Reporting Agencies ("PRA") [***105***]. The effect of doing so was to manipulate the publicly listed prices for a number of oil and biofuel products, as well as preventing potential market entrants from entering and participating in the price assessment process [***106***]. Consumers and businesses alike would be harmed even by the smallest alterations to the assessed prices, which could possibly influence/affect the global price of crude oil, refined oil products, biofuels, and so forth. Based on its findings, the Commission opened a formal investigation under Article 101(1) TFEU [***107***] on 7 December 2015 in the biofuels sector regarding the possible manipulation of ethanol benchmarks by Abengoa S.A. of Spain, Alcogroup SA of Belgium and Lantmännen ek för of Sweden, together with their relevant subsidiaries [***108***]]. According to the Commission, these firms colluded to manipulate ethanol benchmarks published by the PRA Platts (*e.g.*, by agreeing to submit or support bids to influence the benchmarks), with the result that price levels of ethanol were raised, thereby causing harm to both the environment and to consumers.

• In November 2013, the Commission initiated formal proceedings against several container liner shipping [***109***] companies because of their regular public price announcements ("General Rate Increase Announcements" or "GRI Announcements") through press releases on their websites, as well as in the specialised shipping trade press since 2009 [***110***]. In addition, these GRI announcements were made several times a year, specifying the level of price increase and the date of implementation, thereby removing commercial uncertainty and the incentives to compete in the marketplace. The GRI Announcements were also made typically 3 to 5 weeks before their intended implementation date, and during that time some or all parties announced very similar intended rate increases for the same or similar routes and in relation to the same or similar implementation date [***111***]. The Commission held that such actions could possibly allow the container liner shipping companies to signal their intentions to engage in future price increases. This could harm competition and have a negative impact on customers in terms of price rises on container line routes to and from Europe in contravention of Article 101 TFEU (*i.e.*, amounting to coordinated behaviour). In February 2016, the Commission accepted binding commitments from the parties involved, under which they offered to: (i) stop publishing and communicating GRI Announcements (*i.e.*, changes to prices expressed solely in terms of the amount or percentage of the change); and (ii) when making certain price announcements (which they are not obliged to publish) [***112***], to ensure that they are clear and simple for customers to understand, and not to be announced more than 31 days before their implementation. The binding commitments are to apply for three years on all routes to and from the EEA.

7. Traditional cartel investigations

The more mature and the more commoditised an industry becomes (especially where costs commonly incurred are high), the more susceptible it becomes to traditional cartelised behaviour. Utility networks are a particular case in point. The same also holds true where an industry relies on high levels of cooperation and interaction between competitors in order to offset high levels of risk or where there is a need to provide an integrated product or service or complementary set of products or services (*e.g.*, a range of financial services). Thus, cartelised behaviour has been witnessed in a range of utility or regulated sectors in the recent past, including:

• In April 2012, the Office of Fair Trading imposed a fine totalling £58.5 million on British Airways ("BA") in relation to its collusive pricing practices from August 2004 to January 2006 with Virgin Atlantic ("VA") regarding passenger fuel surcharges, in violation of Chapter I of the Competition Act 1998 and Article 101 TFEU [***113***]. In response to the rise in oil prices, BA had colluded with VA (by exchanging pricing and other commercially sensitive information), agreeing to pass on the surcharges in the form of higher ticket prices for consumers. The Office found that, during the infringement period, BA and VA surcharges imposed had increased from £5 per ticket to £60 for a standard BA or VA long-haul return flight. In 2007, VA approached the Office and disclosed the fact that both itself and BA were involved in collusive pricing practices regarding fuel surcharges. As a result, VA successfully applied for leniency and did not receive any fine. BA was originally faced with a fine of £121.5 million, which was subsequently reduced to £58.5 million due to legal developments regarding penalty setting, as well as BA's cooperation and its admission of wrongdoing to the Office [***114***].

• In November 2010, the European Commission imposed fines totaling approximately EUR 799 million on eleven airfreight carriers [***115***] for their coordination of fuel surcharge prices (as well as the payment of commission on the surcharges) for a period of approximately six years (December 1999 – February 2006), in contravention of Article 101 TFEU [***116***]. A small number of carriers had contacted each other initially with respect to the application of fuel surcharges, which spread to a larger group over time (*i.e.*, to the 11 carriers fined). The airfreight carriers agreed amongst themselves: (i) to ensure that they impose a 'flat-rate' surcharge per kilo for *all* shipments; and (ii) that any increases (or decreases) were to be applied in a coordinated manner. The airfreight carriers then began to cooperate in other areas, for example, by introducing and applying a 'security surcharge' – which also had an effect on the overall price when combined with the fuel surcharge. They also refused to pay any commission to their customers (*i.e.*, freight forwarders) on surcharges, thereby ensuring that the fuel surcharges were not subject to competition through applied discounts negotiated with customers. Typically, contacts between the parties involved one-on-one phone calls, the exchange of emails and meetings with two or more representatives of the eleven carriers (including meetings held through trade associations). However, on 16 December 2015, the General Court annulled in their entirety the fines imposed by the Commission [***117***]. The General Court found a contradiction between the grounds set out in the Commission's Decision and the operative part of that Decision. Whereas in the body of the Decision the Commission had described a single cartel, constituting a single and continuous infringement regarding all the routes covered by the cartel in which all carriers took part, the operative part referred to either four separate infringements or to one single and continuous infringement, with liability being attributable differently as between the carriers. The General Court held that the operative part of a Decision concluding that an infringement had occurred must be particularly clear and precise, since the entities concerned (as well as the national courts of the Member States of the EU, which are bound by the operative part of the Decision) must be in a position to understand the Decision (this legal standard had not been met in the circumstances).

• In June 2012, the European Commission imposed fines totalling EUR 13.661 million on two companies for their coordination of prices for water management products [***118***] which are used in heating, cooling and sanitation systems [***119***]. For the period 2006-2008, three firms (Flamco, Reflex and Pneumatex) coordinated prices for water management products in 14 EU Member States. The Commission's investigation found that the parties exchanged commercially sensitive information (through bilateral contacts) including the specific amount and date of the price increases. The three defendant firms were found to have violated Article 101 TFEU by entering into price-fixing arrangements in the various affected Member States. Pneumatex successfully applied for leniency (and was therefore not subject to any fine), while Flamco and Reflex settled with the Commission (resulting in the reduction of their respective fines), acknowledging their participation in the cartel and cooperating with the Commission's investigation.

• In December 2013, the European Commission imposed fines totalling EUR 1.49 billion on eight financial institutions for coordinating their behaviour and manipulating the financial derivatives market, in contravention of Article 101 TFEU [***120***]. Specifically, the investigation involved two separate cartel agreements: (i) four of the institutions were involved in coordinating the interest derivatives denominated in the Euro currency (EIRD); and (ii) the other six institutions coordinated their behaviour in the interest rate derivatives denominated in Japanese yen (YIRD). The EIRD cartel agreement lasted for almost three years and was aimed at the manipulation of the normal pricing dynamics for the components of the derivatives market. The traders of the different financial institutions would regularly discuss through online platforms the submissions for the calculation of the EURIBOR, including their trading and/or future pricing strategies. As regards the YIRD cartel, the Commission's investigation revealed a total of seven separate bilateral infringing agreements during the period 2007-2010 (lasting between one to ten months). Similar to the EIRD cartel arrangements, traders would discuss and exchange commercially sensitive information through online platforms concerning their Japanese yen LIBOR submissions. Barclays, which participated in the EIRD cartel, received immunity for revealing the existence of the cartel to the Commission, as did UBS in the YIRD cartels arrangements. The other parties to the various agreements settled with the Commission, resulting in the reduction of their fines as a result of the acknowledgment of their participation in the cartel and their cooperation with the Commission's investigation.

• In a Decision of 2009, the Croatian Competition Authority found that several companies providing residential management services in the city of Split (and neighbouring towns) had concluded an anti-competitive agreement contrary to the Competition Act and Article 101 TFEU, with the parties explicitly fixing the prices charged to customers [***121***]. The parties to the agreement had decided on a set price increase as of 1 January 2008, following a meeting held in the city of Split in December 2007 (at one of the company's premises). The Authority held that such practices undermined competition in the market, especially given that the parties jointly held market shares totalling over 90% of the affected market. The Decision of the Authority was subsequently appealed by four of the parties to the Croatian High Administrative Court, which upheld the Authority's findings [***122***].

III. Conclusion

The case-law is replete with examples of complex policy trade-offs being made in which strict compliance with the letter of the law on cartels and collusive practices does not always accord with the pursuit of other legitimate public policy goals in many utility sectors. Competition Authorities in these cases are challenged to apply theory to practice, with the results being anything but consistent.

The author would like to thank his colleague, Charles Clarke, for his invaluable assistance in marshalling the research necessary to put this paper together. The text, however, remains the sole responsibility of the author.

Note from the Editors: although the e-Competitions editors are doing their best to build a comprehensive set of the leading EU and national antitrust cases, the completeness of the database cannot be guaranteed. The present foreword seeks to provide readers with a view of the existing trends based primarily on cases reported in e-Competitions. Readers are welcome to bring any other relevant cases to the attention of the editors.

[*1*] See the Judgment of the Irish High Court in Case n° 2008/420 JR, *Nurendale Limited (trading as Panda Waste Services) v. Dublin City Council, Dun Laoghaire/Rathdown County Council, Fingal County Council and South Dublin County Council*, 21 December 2009 (available at: *http://www.concurrences.com/docrestreint.api/8512/53125ff33ce97c697d3b7c07beb2393dd609ec56/pdf/20100305Ireland01DocPS-81_.pdf* ↗). See ***Peppe Santoro***, *The Irish High Court finds that four Dublin local authorities acted in breach of Irish competition law in proposing changes to how the domestic waste sector is regulated (Nurendale Limited - Panda Waste Services), 21 December 2009, e-Competitions Bulletin December 2009, Art. N° 30707*

[*2*] See the German reforms regarding Price control: "Eighth Law amending the Law against Restraints of Competition (GWB 8. ÄndG), June 2013 (available: *http://dipbt.bundestag.de/extrakt/ba/WP17/438/43819.html* ↗). Refer also to the Bundeskartellamt Press Releases, "Bundeskartellamt imposes first fines in rail case", 5 July 2012 (available: *http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2012/05_07_2012_Schienenkartell.html* ↗); "€ 10 million fine imposed on Moravia Steel in rail cartel case", 11 July 2013 (available: *http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2013/11_07_2013_Moravia-Steel.html* ↗); and "Bundeskartellamt concludes proceedings against manufacturers of railway sleepers", 25 February 2016 (available at: *http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Meldungen%20News%20Karussell/2016/25_02_2016_Bahnschwellen.html* ↗).

[*3*] See the Decision of the Estonian Competition Authority in Case n° 3.1-7/0021-1 and n° 3.1-7/0021, *AS Oiltanking Tallinn*, of 17 January 2008 (available at: *http://www.concurrences.com/docrestreint.api/6838/2c80a884c15e50593ce1bb47344d4a9216ae29d2/pdf/o2008_0021_1.pdf* ↗; and the Judgment of the Supreme Court in Case Texaco Inc. v. Dagher, 547 U.S. 1, 28 February 2006 (available at: *https://supreme.justia.com/cases/federal/us/547/1/* ↗). See ***Vaido Põldoja***, *The Estonian Competition Authority ends proceedings against two oil tanking terminal operators without finding existence of anticompetitive agreements (Oiltanking Tallinn v. Alexela Terminal), 17 January 2008, e-Competitions Bulletin January 2008, Art. N° 26363*

[*4*] See the Judgment of the Swedish Supreme Court in Case n° T 2280-02, *Boliden Mineral Aktiebolag and AB Fortum Värme samägt med Stockholms stad*, 23 December 2004 (available at: *http://www.concurrences.com/docrestreint.api/7702/7711e44e3587e5f51b6b337fb6977f3a7316f65b/pdf/eComp-ECCLH_Sweden_21213Doc.pdf* ↗). And see ***Carl Wetter, Carl Johan Sundqvist***, *The Swedish Supreme Court declares that a concerted practice cannot be subject to nullity under section 7 of the Swedish Competition Act (Boliden Mineral Aktiebolag/AB Fortum Värme samägt med Stockholms stad), 23 December 2004, e-Competitions Bulletin December 2004, Art. N° 21213*

[*5*] See the Competition and Markets Authority ("CMA") Press Release, "Energy market investigation: CMA publishes issues statement", of 24 July 2014 (available at: *https://www.gov.uk/government/news/energy-market-investigation-cma-publishes-issues-statement* ↗).

[6] See the Judgment of the European Court of Justice ("CJEU") in Case C-557/12 - *Kone and Others v ÖBB-Infrastruktur AG.*, 5 June 2014. Refer also to the Opinion of the Advocate General Kokott in Case C-557/12, of 30 January 2014 (available at: *http://curia.europa.eu/juris/document/document.jsf?text=&docid=153312&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1005137* ↗ ;*http://curia.europa.eu/juris/document/document.jsf?text=&docid=147064&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1005137* ↗. See ***Frederic Depoortere, Ingrid Vandenborre, James S. Venit***, *The EU Court of Justice rules that cartel members are liable for 'Umbrella Claims' (Kone), 5 June 2014, e-Competitions Bulletin June 2014, Art. N° 67169*

[7] See the European Commission Press Release, "Antitrust: Commission confirms inspections in the sector of cargo train transport services", of 19 June 2013 (available at: *http://europa.eu/rapid/press-release_MEMO-13-586_en.pdf* ↗).

[8] See W. J. Baumol & D. G. Swanson, "The New Economy and Ubiquitous Competitive Price Discrimination: Identifying Defensible Criteria of Market Power", Antitrust Law Journal 70 (2003), at pp. 661-685.

[9] Refer to the Report published by Ofgem, "Energy Supply Probe - Initial Findings Report", of 6 October 2008, at pp.1 and 5 (available at: *https://www.ofgem.gov.uk/sites/default/files/docs/2008/10/energy-supply-probe---initial-findings-report.pdf* ↗).

[10] Ibid., at p. 8.

[11] Refer to the Decision of Ofgem, "Energy Supply Probe - Proposed Retail Market Remedies", of 7 August 2009 (available at: *https://www.ofgem.gov.uk/ofgem-publications/38335/retail-package-decision-document.pdf* ↗).

[12] See ***Yasmin Arshed***, *The UK OFGEM is to enquire on pre-pay energy meters alleged overcharges despite introduction of new market rules (National Housing Federation), 28 September 2009, e-Competitions Bulletin September 2009, Art. N° 29829.*

[13] Refer to the Report published by Ofgem, "Prepayment review: understanding supplier charging practices and barriers to switching", of 23 June 2015. (Available at: *https://www.ofgem.gov.uk/sites/default/files/docs/2015/06/prepayment_report_june_2015_finalforpublication.pdf* ↗

[14] Refer to the Press Release of Ofgem, "Ofgem calls for a level playing field for prepayment customers", of 25 June 2015. (Available at: *https://www.ofgem.gov.uk/publications-and-updates/ofgem-calls-level-playing-field-prepayment-customers* ↗).

[15] Refer to the CMA's Press Release, "CMA publishes final energy market reforms", 24 June 2016 (available at: *https://www.gov.uk/government/news/cma-publishes-final-energy-market-reforms* ↗).

[16] Refer to the Report published by the CMA, "Energy market investigation – Final report", of 24 June 2016, at pp. 524-538. (Available at: *https://assets.publishing.service.gov.uk/media/5773de34e5274a0da3000113/final-report-energy-market-investigation.pdf* ↗

[17] Ibid., at pp. 538-544.

[18] Refer to the Bundeskartellamt Press Release, "Most price abuse proceedings against gas suppliers terminated", 1 December 2008 (available at: *http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2008/01_12_2008_Gaspreisverfahren.html* ↗).

[19] Ibid.

[20] Around 50% of the EUR 127 million was compensated through bonus payments and credits that were to be granted to consumers in their next annual statement of the customers' final account. The other 50% was transferred back to customers through price reductions or through the postponement of any future price increases.

[21] See ***Sebastian Peyer***, *The German Federal Cartel Office settles a number of proceedings against gas suppliers for alleged abuse of dominance and accepts commitments offering compensation to consumers worth € 127 M (Gas price procedures), 1er décembre 2008, e-Competitions Bulletin May 2009, Art. N° 26132*

[22] SFR held a 60% market share in mobile retail services in La Réunion (2000-2013) and 80% in Mayotte (2007-2013) at the time of the infringement.

[23] Refer to: "Décision n° 15-D-17 du 30 novembre 2015 relative à des pratiques mises en œuvre sur le marché de la téléphonie mobile à destination de la clientèle non résidentielle à La Réunion et à Mayotte" (available at: *http://www.autoritedelaconcurrence.fr/pdf/avis/15d17.pdf* ↗).

[24] Refer to the Press Release of the FCA, "The Aurorité de la Concurrence Fines SFR and its Subsidiary in La Réunion 10.7 Million Euros for Implementing Abusive Practices on the "Business" Market" of 30 November 2015 (available at: *http://www.autoritedelaconcurrence.fr/user/standard.php?id_rub=607&id_article=2670* ↗). For example, for the "*Forfait Flotte*" package offered by SRR, which from 2000 to 2004 was the only offer made to SMEs, the pricing difference between "on-net" and "off-net" calls was maintained at 21.2 euro cents over the period under consideration, while costs borne were approximately 6.24 euro cents.

[25] Refer to "Decision 14-D-05 on practices implemented in the mobile telephone sector vis-à-vis residential customers in Réunion and Mayotte", 13 June 2014 (available at: *http://www.autoritedelaconcurrence.fr/user/avisdec.php?numero=14-D-05* ↗).

[26] Refer to the FCA Press Release, "The Autorité de la concurrence fines SFR and its subsidiary in La Réunion SRR nearly 46 million euros", 13 June 2014 (available at: *http://www.autoritedelaconcurrence.fr/user/standard.php?id_rub=592&id_article=2373* ↗).

[27] Refer to the PCA Press Release, "The Portuguese Competition Authority has imposed a total fine of €9.29 million on Galp Energia for anticompetitive practices in the bottled LPG market", 6 February 2015 (available at: *http://www.concorrencia.pt/vEN/News_Events/Comunicados/Pages/PressRelease_201501.aspx?lst=1&Cat=2015* ↗). See ***Nuno Carrolo dos Santos***, *The Portuguese Competition Authority fines €9.29 million three companies operating in the bottled LPG market for restricting passive sales (Galp Energia), 3 February 2015, e-Competitions Bulletin February 2015, Art. N° 72363*

[28] Refer to the Cartel Office Press Release, "No agreement with E.ON Ruhrgas on opening up long-term gas supply contracts", 29 September 2005 (available at: *http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2005/27_09_2005_Scheitern%20Langfristvertr%C3%A4ge.html* ↗).

[29] Refer to Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices, OJ L 336, 29.12.1999, pp. 21–25.

[30] Refer to the Cartel Office Press Release, "Bundeskartellamt prohibits E.ON Ruhrgas' long-term gas supply contracts with distributors", 17 January 2006 (available at: *http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2006/17_01_2006_EON_Langfristvertr%C3%A4ge_eng.html* ↗). See ***Helmut Bergmann, Frank Röhling***, *The German Federal Cartel Office issued a statement of objections against Germany's major gas company with the aim of prohibiting certain long term supply agreements with regional and local gas distributors that violate European and German competition law (E.ON Ruhrgas), 13 December 2005, e-Competitions Bulletin December 2005, Art. N° 397*

[31] See Commission Press Release, "Antitrust: Commission confirms unannounced inspections in the natural gas sector", of 27 September 2011 (available at: *http://europa.eu/rapid/press-release_MEMO-11-641_en.htm* ↗).

[32] According to the Commission's Press Release, Gazprom is a dominant gas supplier in a number of Central and Eastern European Member States, with a market share well above 50% and in some cases up to 100% in these markets. The Commission's preliminary view is that Gazprom is hindering competition in the gas supply markets in eight Central and Eastern European Member States (Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland and Slovakia). Refer to Case AT. 39816 - *Upstream gas supplies in Central and Eastern Europe*.

[33] In 2009, for example, the Commission fined EDF and E.ON under Article 101 TFEU as these parties had both agreed not to sell gas transported over the MEGAL pipeline into each other's home markets (i.e., territorial restrictions). In addition, in 2004, the Commission adopted two decisions regarding contracts concluded by GDF with Italian companies ENI and ENEL, confirming that territorial restriction clauses in the gas sector dampens and restricts competition in the marketplace. The territorial restriction clauses prohibited ENI and ENEL from selling in France the natural gas which GDF transported on their behalf. As a result, the clauses prevented French consumers from obtaining their supplies from the two Italian operators and hindered competition in the upstream supply market for natural gas.

[34] Refer to the Decision of the CNMC, "Resolución (Expte. S/0490/13 Acuerdos Telefónica/Yoigo)", of 16 July 2015. (Available at: *https://www.cnmc.es/desktopmodules/buscadorexpedientes/mostrarfichero.aspx?dueno=1&codigoMetadato=671207* ↗)

[35] Ibid., at pp. 115 and 117.

[36] Refer to Commission Press Release, "Antitrust: Commission confirms inspections conducted in France with several companies active in the water sector and sanitation", 16 April 2010 (available at: *http://europa.eu/rapid/press-release_MEMO-10-134_fr.htm?locale=en* ↗).

[37] Refer to Case AT.39756 - *French Water and Waste Water Markets*. See Commission Press Release, "Antitrust: Commission opens proceedings against companies in French water sector", 18 January 2012.

[38] Following the dawn raids that took place in April 2010, the Commission fined Suez Environnement and its subsidiary Lyonnaise des Eaux (EUR 8 million) for the breach of a seal during an on-site inspection at Lyonnaise des Eaux's premises. See ***Martin Favart***, *The European Commission fines two leading company in the environment sector € 8 M for breach of a seal during an inspection (Suez Environnement/Lyonnaise des Eaux), 24 May 2011, e-Competitions Bulletin May 2011, Art. N° 41126*

[39] The EKEE represents a large number of SME construction companies operating in the Greek region of Attika, which also includes Athens.

[40] Refer to the Press Release of the HCC, "Έκδοση Απόφασης της Επιτροπής Ανταγωνισμού επί της αυτεπάγγελτης έρευνας στην Ένωση Κατασκευαστών Κτιρίων Ελλάδος (Ε.Κ.Κ.Ε)", 13 September 2013 (available at: *http://www.epant.gr/news_details.php?Lang=gr&id=19&nid=556* ↗).

[41] Refer to the HCC Decision 561/VII/2013 (available at: *http://www.epant.gr/img/x2/apofaseis/apofaseis705_1_1380523535.pdf* ↗).

[42] Several companies cooperated with the Cartel Office and were granted a reduction in fines in accordance with the terms of the leniency program.

[43] The association involved was the FCDS ("Fachgruppe Containerverkehre der deutschen Seehäfen e.V."), which represents the interests of providers of container transport services in the German sea transport industry.

[44] See the Cartel Office Press Release, "Bundeskartellamt concludes proceedings and fines providers of container transport services in the area of the German seaports", 25 August 2015.

[45] Refer to Commission Press Release, "Antitrust: Commission confirms unannounced inspections in rail passenger transport sector", 2 December 2015 (available at: *http://europa.eu/rapid/press-release_STATEMENT-15-6222_en.htm* ↗) See ***European Commission***, *The EU Commission confirms several unannounced inspections carried in the rail passenger transport market, 2 December 2015, e-Competitions Bulletin December 2015, Art. N° 76998*

[46] Refer to the Commission Press Release, "Antitrust: Commission confirms unannounced inspections in rail passenger transport sector", 6 July 2016 (available at: *http://europa.eu/rapid/press-release_STATEMENT-16-2438_en.htm* ↗). See ***European Commission***, *The EU Commission carries out an unannounced inspection in rail passenger transport sector, 6 July 2016, e-Competitions Bulletin June 2016, Art. N° 80139*

[47] Refer to the CNMC Press Release, "La CNMC inspecciona las sedes de varias empresas de transporte discrecional de viajeros y de la Federación del Sector en las Islas Baleares", 25 April 2014 (available at: *https://www.cnmc.es/es-es/Competencia/novedadesCompetencia/novedadesCompetenciadetalle.aspx?id=3502* ↗)

[48] Refer to the CNMC Press Release, "La CNMC incoa expediente sancionador contra varias empresas de autobuses y la Federación Empresarial Balear de Transportes (FEBT) por posibles prácticas restrictivas de la competencia. La Comisión realizó inspecciones en las sedes de las Empresas Roig Bus, S.A., Transacobo, S.L. y Transunion Mallorca, S.L., así como en la sede de la Federación Empresarial Balear de Transportes (FEBT)", 3 September 2015 (available at: *https://www.cnmc.es/es-es/competencia/novedadescompetencia.aspx* ↗).

[49] Refer to the AGCM Press Release, "Over 4 million euros in sanctions for a secret cartel of shipping agents at the Port of Genoa", 16 March 2012. See ***Michele Giannino***, *The Italian Competition Authority fines 15 shipping agents firms and two trade associations for a cartel at the port of Genoa (Servizi di Agenzia Marittima), 22 February 2012, e-Competitions Bulletin February 2012, Art. N° 45009* ; and ***Sara Lembo***, *The Italian Competition Authority finds 15 shipping agencies and 2 trade associations to have infringed Art. 101 TFEU (Shipping agencies services), 22 February 2012, e-Competitions Bulletin February 2012, Art. N° 45010*

[50] See Case COMP/39.745 – *CDS Information market.*

[51] Refer to Vice President of the European Commission responsible for Competition Policy Joaquín Almunia speech, "Statement on CDS (credit default swaps) investigation", 1 July 2013 (available at: *http://europa.eu/rapid/press-release_SPEECH-13-593_en.htm* ↗).

[52] Refer to the Bloomberg article, "Goldman, BofA Among Banks Said to Face Fresh Swaps Scrutiny", 11 September 2015 (available at: *http://www.bloomberg.com/news/articles/2015-05-13/swaps-probe-reviewed-as-eu-said-to-weigh-new-antitrust-complaint* ↗).

[53] Refer to the Commission Press Release, "Antitrust: Commission closes proceedings against 13 investment banks in credit default swaps case", 4 December 2015 (available at: *http://ec.europa.eu/competition/antitrust/cases/dec_docs/39745/39745_13719_14.pdf* ↗).

[54] Refer to the Commission Press Release, "Antitrust: Commission seeks feedback on commitments by ISDA and Markit on credit default swaps", 28 April 2016 (available at: *http://europa.eu/rapid/press-release_IP-16-1610_en.htm* ↗), which refers to the adoption of a Decision pursuant to Article 9 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1, 4.1.2003, pp. 1-25. See also the Reuters article, "EU accepts Markit, ISDA concessions in credit default swaps probe", 20 July 2016 (available at: *http://www.reuters.com/article/eu-markit-isda-antitrust-idUSB5N19N008* ↗). See ***European Commission***, *The EU commission accepts remedies proposed by companies active on the credit default swaps market (ISDA / Markit), 20 juillet 2016, e-Competitions Bulletin July 2016, Art. N° 80283*

[55] Refer to the Press Release of the AGCM, "Electricity market: Repower Italia, EGL Italia and Tirreno Power penalised for agreement restricting competition", 14 June 2012 (available at: *http://www.agcm.it/en/newsroom/press-releases/2000-electricity-market-repower-italia-egl-italia-and-tirreno-power-penalised-for-agreement-restricting-competition.html* ↗.

[56] The members of the trade association are individual carriers providing the transportation of goods, as well as maintenance services such as the clearing of snow and salting.

[57] Refer to the press Release of the DCC, "Association of undertakings has coordinated tenders illegally", 30 April 2014 (available at: *http://en.kfst.dk/Indhold-KFST/English/Decisions/20140430-Association-of-undertakings--has-coordinated-tenders-illegally?tc=E54958826ADF4DA190FADFA134162E12* ↗).

[58] Refer to the DCC Press Release, "Denmark: "Largest fine ever imposed in a competition case - Construction company pays fine in settlement for bid rigging", 5 November 2014 (available at: *http://en.kfst.dk/Indhold-KFST/English/Decisions/20141105-Largest-fine-ever-imposed-in-a-competition-case?tc=C4B4A4263E6147FCB14D4C1268C2E74B* ↗). See ***Danish Competition Authority***, *The Danish Public Prosecutor settles with a construction company guilty of bid rigging and imposes the largest fine ever pronounced in a Danish competition case (Elindco Byggefirma), 3 novembre 2014, e-Competitions Bulletin November 2014, Art. N° 69910*

[59] Refer to the DCC Press Release, "Storkøbenhavnske byggekarteller afgjort ved første retsinstans", 24 August 2016 (available at: *http://www.kfst.dk/Indhold-KFST/Nyheder/Pressemeddelelser/2016/20160824-Storkoebenhavnske-byggekarteller-afgjort-ved-foerste-retsinstans?tc=E538038EB1E04A96B9964BE4C0F85F46* ↗).

[60] Refer to the German Cartel Office Press Release, "Providers of specialist mining services fined for price fixing and bid-rigging", 28 August 2014 (available at: *http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2014/28_08_2014_Bergbau.html?nn=3591568* ↗).

[61] Refer to the PCA Decision RLU - 38/2012: *Bid-rigging by consortium members*, 31 December 2012. See ***Anna Gulinska***, *The Polish competition authority issues a precedent on antitrust assessment of bidding consortia (ASTWA / MPO), 31 décembre 2012, e-Competitions Bulletin December 2012, Art. N° 57299*

[62] Refer to Article 23 of Public Procurement Law - Act of 29 January 2004w (Journal of Laws of 2013, item 907, 984, 1047) (available at: *http://artmuseum.pl/public/upload/files/Public-Procurement-Law_2013_consolidated-text.pdf* ↗).

[63] Refer to the RCC Press Release, "Consiliul Concurenţei A Amendat 4 Companii Pentru Participarea Cu Oferte Trucate La Două Licitaţii Organizate De Transgaz", November 2012 (available at: *http://www.consiliulconcurentei.ro/uploads/docs/items/id8079/comunicat.pdf* ↗). See ***European Competition Network Brief***, *The Romanian Competition Authority imposes fines on bid rigging cartel in natural gas pipelines sector (Condmag and Inspet), 17 octobre 2012, e-Competitions Bulletin October 2012, Art. N° 50265*

[64] Refer to the RCA Decision Nr. 82/2012 of 13 December 2012 (available at: file:///C:/Users/18605/Downloads/d_82_2012.pdf).

[65] Refer to the AGCM Press Release, "Water Industry: Antitrust Authority Fines Acea and Suez Environnement over Anti-Competitive Arrangement Intended to Coordinate Their Commercial Strategies", 28 November 2007 (available at: *http://www.agcm.it/en/newsroom/press-releases/1144-i670-acea-suez-environnementpubliacqua-investigation-completed.html* ↗). See ***Luciano Vasques, Annalisa Luciani***, *The Italian Competition Authority starts an in depth investigation in the water management services market for alleged infringements of Art. 81 EC (Acea / Suez / Publiacqua), 31 mai 2006, e-Competitions Bulletin May 2006, Art. N° 12622*

[66] Refer the TAR judgment n. 149 of May 7, 2008; Italian Administrative Court of Appeal judgment n. 5067 of September 24, 2012; and the Italian Supreme Court judgment n. 1013 of 20 January 2014.

[67] Refer to the SAO Press Release, "The Supreme Court upheld the decisions of the Antimonopoly Office of the Slovak Republic in the matter of cartel of six construction companies", 30 December 2013. See decision No. 2006/KH/R/2/116 and decision No. 2005/KH/1/137).

[68] Refer to the GVH Press Release, "Fines for bid rigging on eight construction companies", 16 September 2005 (available at: *http://www.gvh.hu/en/press_room/press_releases/press_releases_2005/210_en_fines_for_bid_rigging_on_eight_construction_companies.html?query=Egut* ↗).

[69] Refer to Hungarian Metropolitan Court of Appeal (Fővárosi Ítélőtábla), 11 June 2008, case n° 2.Kf.27.052/2007, Egút Egri Útépítő, Strabag Építő and Hídépítő (available at: *http://www.concurrences.com/spip.php?action=acceder_document&arg=5403&cle=9beaca14e039724167cbb16d5dc1c8f721e0adb6&file=pdf%2F2008_09_07_Hungary01Doc_LVS-81_.pdf* ↗).

[70] Refer to the GVH Press Release, "The decision of the Curia confirmed the cartel behaviour of road construction companies in Budapest", 9 February 2012 (available at: *http://www.gvh.hu/en/press_room/press_releases/press_releases_2012/7501_en_the_decision_of_the_curia_confirmed_the_cartel_behaviour_of_road_construction_companies_in_budapest.html?query=Egut* ↗). See ***European Competition Network Brief***, *The Hungarian Supreme Court confirms the Competition Authority decision on the road construction cartel (Strabag, Hidépit, Betonut, EGUT), 6 février 2012, e-Competitions Bulletin February 2012, Art. N° 46709*

[71] Refer to the GVH Decision Vj-74/2004/58 (available at: *http://www.concurrences.com/spip.php?action=acceder_document&arg=96&cle=f821d3bdcb9fc330035c46447b7b6fdb0e08c397&file=pdf%2FHungary_Text_7-2005.pdf* ↗).

[72] Refer to the Judgment of the Hungarian Court of Appeal (Fővárosi Ítélőtábla), 20 June 2007, Construm vs. Competition Council (Gazdasági Versenyhivatal), Decision 2.Kf.27.798/2006/7 (available at: *http://www.concurrences.com/spip.php?action=acceder_document&arg=3664&cle=b13496caf0de9d500f053c7e6dbb84bf65c586ba&file=pdf%2F2008-01-Hungary01Doc_UCL-81_.pdf* ↗). See ***Tamas Szabados***, *The Hungarian Court of Appeal confirms the NCA's decision having fined anticompetitive cooperation agreement in the course of a public procurement procedure (Construm-Royal Bau), 20 juin 2007, e-Competitions Bulletin June 2007, Art. N° 15160*

[73] Refer to the GVH Decision Vj-138/2002/79, 18 March 2004.

[74] Refer to the FCA Press Release, "The Conseil de la concurrence fines the companies Kéolis, Connex and Transdev 12 million Euros for entering into an anticompetitive agreement", 7 July 2005 (available at: *http://www.autoritedelaconcurrence.fr/user/standard.php?id_rub=160&id_article=560* ↗); See also the Decision 05-D-38 of 5th July 2005 relative to practices implemented in the urban public transport market (available at: *http://www.autoritedelaconcurrence.fr/user/avis.php?avis=05D38* ↗). See ***Jean-Patrice de La Laurencie, Maly Courtaigne-Op***, *The French Competition Authority fines three major national companies for implementing a cartel in the public passenger urban transport market, with potential appreciable effect on trade between member States (Keolis, Connex and Transdev), 7 juillet 2005, e-Competitions Bulletin July 2005, Art. N° 251*

[75] The agreement between the three companies affected local public transport contracts in Bordeaux, Bar-le-Duc, Epernay, Laval, Chalon-sur-Saône, Saint-Claude, Oyonnax and Sens.

[76] Refer to the Judgment of the Paris Court of Appeal, First Chamber - Section H (Cour d'Appel de Paris), February 7th, 2006, *Transdev (Keolis et Connex) v. Conseil de la Concurrence (Communauté urbaine de Bordeaux (CUB) et Minstre de l'économie, des Finances et de l'Industrie)*, RG n° 2005/15051. See ***Noëlle Lenoir, Dan Roskis***, *The Paris Court of Appeal upholds the NCA decision fining a cartel in the public passenger urban transport market with reference to the EC Commission's notice on effect on trade (Keolis - Connex - Transdev), 7 février 2006, e-Competitions Bulletin February 2006, Art. N° 471*

[77] Refer to the Judgment of the Paris Court of Appeal (Chamber 5-7), RG n° 2009/20624; and the judgment of the Cour de cassation (Supreme Court of appeals) Arrêt n°1085 FS-D, 9 October 2007.

[78] Refer to the Irish Central Criminal Court Case, *DPP v Hughes, Bourke, McGrath & Gleeson*, 3 July 2009. See ***Orla Lynskey***, *An Irish jury acquits the directors of three waste disposal companies of breaching competition law by jointly tendering for the provision of local waste disposal services (DPP v. Hughes, Bourke, McGrath & Gleeson), 3 juillet 2009, e-Competitions Bulletin July 2009, Art. N° 27844*

[79] Refer to the discussion in C. Townley, "Article 81 EC and Public Policy", Hart Publishing (Oxford) (2009).

[80] Refer to ACM Press Release, "ACM: deal over closing down coal power plants harms consumers", 26 September 2013 (available at: *https://www.acm.nl/en/publications/publication/12046/ACM-deal-over-closing-down-coal-power-plants-harms-consumers/* ↗). The SER Energieakkoord can be found on: *http://www.ser.nl/en/publications/publications/2013/energy-agreement-sustainable-growth.aspx* ↗.

[81] Refer to ACM Decision, "Analysis by the Netherlands Authority for Consumers and Markets (ACM) of the planned agreement on closing down coal power plants from the 1980s as part of the Social and Economic Council of the Netherlands' SER Energieakkoord", 26 September 2012 (available at: *https://www.acm.nl/en/download/publication/?id=12082* ↗).

[82] Refer to the AGCM's Report, "Autorità Garante della Concorrenza e del Mercato, IC26 - Mercato dei rifiuti di imballaggio, Provvedimento n. 18585" 3 July 2008 (available at: *http://www.agcm.it/indagini-conoscitive-db/open/C12564CE0049D161/2EF46FF24C4A2A64C12574A500347046.html* ↗).

[83] Refer to AGCM Press Release, "Paper Recycling: Antitrust Authority Launches Investigation Into Comieco Consortium For Possible Competition-Restricting Agreement", 30 March 2010 (available at: *http://www.agcm.it/en/newsroom/press-releases/1864-comieco-consortium--paper-waste-management-investigation-launched.html* ↗).

[84] Refer to the AGCM's Press Release, "Paper Recycling: Antitrust Accepts and Makes Binding Comieco Commitments. 40% Of Consortium-Managed Waste To Be Assigned Through Competitive Auctions", 1 April 2011 (available at: *http://www.agcm.it/en/newsroom/press-releases/1944-i730-paper-recycling-comieco-commitments-accepted-and-made-binding.html* ↗). See ***Andrea Usai***, *The Italian Competition Authority accepts and makes binding commitments to avoid further proceedings into an alleged anticompetitive practice in the paper waste and raw paper material sector (COMIECO), 16 mars 2011, e-Competitions Bulletin June 2011, Art. N° 36696*

[85] Refer to the Cartel Office Press Release, "Bundeskartellamt examines whether DSD is compatible with competition law", 23 August 2002 (available at: *http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2002/23_08_2002_DSD_eng.html* ↗). See [***German Competition Authority***, *The German Competition Authority examines in formal proceedings whether a contract system for acquiring waste services is compatible with competition law (Der Grüne Punkt Duales System), 23 août 2002, e-Competitions Bulletin August 2002, Art. N° 66676*

[86] A revised provision (Section 7) in the German Competition Act, refers to cooperation for the purposes of meeting take-back and disposal obligations under the law of the protection of the environment (now abolished) (i.e., an equivalent of one of the criteria under Article 101(3) – environmental protection). Refer to the Cartel Office Press Release, "Bundeskartellamt examines ex officio compatibility of DSD with the competition law", 30 October 2002 (available at: *http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2002/30_10_2002_DSD_eng.html* ↗).

[87] Refer to the Cartel Office Press Release, "Bundeskartellamt imposes fines totalling more than 4 million Euro for inducing a boycott in the waste management sector", 23 January 2003 (available at: *http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2003/23_01_2003_Bu%C3%9Fgeld_DSD_eng.html* ↗).

[88] Refer to Case COMP/37.984 - *SkyTeam*. See ***Eduardo Martínez-Rivero, Michel Lamalle***, *The European Commission raises competition concerns about cooperation agreement between French and Italian airlines companies (Air France, Alitalia), 8 mai 2002, e-Competitions Bulletin May 2002, Art. N° 36941*

[89] As of March 2014, SkyTeam members are: Aeroflot, Aerolíneas Argentinas, Aeromexico, Air Europa, Air France, Alitalia, China Airlines, China Eastern, China Southern, Czech Airlines, Delta Air Lines, Garuda Indonesia, Kenya Airways, KLM Royal Dutch Airlines, Korean Air, Middle East Airlines, Saudia, TAROM, Vietnam Airlines and Xiamen Air (see: *http://www.skyteam.com/en/about/faq/general-alliance-questions/* ↗).

[90] Refer to Commission Press Release, "Antitrust: Commission opens a probe into transatlantic joint venture between Air France-KLM, Alitalia and Delta and closes proceedings against eight members of SkyTeam airline alliance", 27 January 2012 (available at: *http://europa.eu/rapid/press-release_IP-12-79_en.htm* ↗).

[91] Refer to Case COMP/37.984 - *SkyTeam*. (*http://ec.europa.eu/competition/antitrust/cases/dec_docs/37984/37984_1447_8.pdf* ↗).

[92] Refer to the Notice published pursuant to Article 27(4) of Council Regulation (EC) No 1/2003 in Case COMP/37.984 - *SkyTeam*, OJ C 245, 19.10.2007, pp. 46–48.

[93] Refer to Case AT. 39860 – *Brussels Airlines/TAP Air Portugal*. See also Commission Press Release, "Antitrust: Commission probes certain co-operation agreements between Lufthansa and Turkish Airlines and between Brussels Airlines and TAP Air Portugal", 11 February 2011 (available at: *http://europa.eu/rapid/press-release_IP-11-147_en.htm?locale=en* ↗).

[94] Other more common forms of code-sharing agreements (although not between the parties in this case) allow, for example, airline A to sell seats to its customers on airline B's routes, whereby airline A does not operate those routes and allows it to expand its service for the benefit of customers.

[95] Refer to Commission Press Release, "Antitrust: Commission confirms unannounced inspections in TAP-Brussels Airlines cooperation investigation", 19 December 2011 (available at: *http://europa.eu/rapid/press-release_MEMO-11-926_en.htm?locale=en* ↗).

[96] See proceedings in S/0331/11 (in Spanish). *https://www.cnmc.es/expedientes/vs033111* ↗

[97] Refer to Press Release of the ACM, "Investigation into mobile operators concluded", 21 November 2013 available at: *https://www.acm.nl/en/publications/publication/12311/Investigation-into-mobile-operators-concluded/* ↗).

[98] The ACM also analysed whether the public announcements gave rise to possible efficiencies that were/are passed on to consumers. The ACM concluded that a public announcement as such could promote efficiencies "*if, for example, information is provided about future demand. However, it is difficult to understand how information about possible future prices provides information about upcoming trends in demand. For this reason alone, it is not plausible that this efficiency benefit will follow from public announcements as meant in this decision*". It was concluded that the public announcements in this case did not provide valuable information to consumers or any information about the future trends in demands that was of future use.

[99] Refer to the Press Release of the ACM, "Commitment decision regarding mobile operators", 9 January 2014 (available at: *https://www.acm.nl/en/publications/publication/14326/Commitment-decision-regarding-mobile-operators/* ↗). See ***European Competition Network Brief***, *The Dutch Competition Authority reaches final decision in mobile operators case (KPN Mobile, T-Mobile and Vodafone), 26 octobre 2011, e-Competitions Bulletin October 2011, Art. N° 44835* and ***Sebastian Vos***, *A Dutch Court quashes the decision of the national competition authority in the mobile operators case for unsufficient motivation (KPN Mobile, Orange, T-Mobile, Vodafone Libertel), 13 juillet 2006, e-Competitions Bulletin July 2006, Art. N° 12135*. See also the Commitments Decision: "Decision of the Board of the Netherlands Authority of Consumers & Markets within the meaning of Section 49a of the Dutch Competition Act".

[100] Refer to the Commission Press Release, "Antitrust: Commission confirms inspections in the sector of cargo train transport services", 19 June 2013 (available at: file:///C:/Users/18605/Downloads/MEMO-13-586_EN.pdf).

[101] Refer to Case AT. 40098 – *Blocktrains*.

[102] Specifically, block trains bundle cargo onto one or more trailers from different origins into a single train at certain loading hubs. These block trains then take the cargo directly to specific unloading hubs, where they are again split up for transport to the final destination.

[103] Refer to the Commission Decision in Case AT. 40098 – *Blocktrains*, at para. 20.

[104] Ibid., at paras. 75-102. See also Commission Press Release, "Antitrust: Commission fines cargo train operators € 49 million for cartel", 15 July 2015 (available at: *http://europa.eu/rapid/press-release_IP-15-5376_en.htm* ↗). See ***Richard Pike, Yulia Tosheva***, *The EU Commission fines cargo train operators in cartel settlement (Express Interfracht & Schenker), 15 juillet 2015, e-Competitions Bulletin July 2015, Art. N° 74457*

[105] Importantly, the prices assessed and published by Price Reporting Agencies are trading benchmarks in the physical and financial derivative markets for a number of commodity products in Europe/globally.

[106] Refer to Commission Press Release, "Antitrust: Commission confirms unannounced inspections in oil and biofuels sectors", 14 May 2013.

[107] Refer to Case AT. 40054 – *Ethanol benchmarks*.

[108] Refer to Commission Press Release, "Antitrust: Commission opens formal investigation in the biofuels sector concerning ethanol benchmarks", 7 December 2015 (available at: *http://europa.eu/rapid/press-release_IP-15-6259_en.htm* ↗). See ***European Commission***, *The EU Commission opens formal antitrust investigation in the biofuels sector (Abengoa), 7 décembre 2015, e-Competitions Bulletin December 2015, Art. N° 77001*

[109] Container liner shipping consists in the transport of containers by ship at a fixed time schedule on a specific route between a range of ports at one end and another range of ports at the other. The Commission had initiated proceedings against the following container liner shipping companies: China Shipping (China), CMA CGM (France), COSCO (China), Evergreen (Taiwan), Hamburg Süd (Germany), Hanjin (South Korea), Hapag Lloyd (Germany), HMM (South Korea), Maersk (Denmark), MOL (Japan), MSC (Switzerland), NYK (Japan), OOCL (Hong Kong), UASC (UAE), and ZIM (Israel).

[110] Refer to Case AT. 39850 – *Container Shipping*. See also the Commission Press Release, "Antitrust: Commission opens proceedings against container liner shipping companies", 22 November 2013 (available at: *http://europa.eu/rapid/press-release_IP-13-1144_en.htm* ↗).

[111] Refer to the Communication of the Commission published pursuant to Article 27(4) of Council Regulation (EC) No 1/2003 in Case AT.39850 - *Container Shipping*, OJ C 60, 16.2.2016, pp. 7–9.

[112] In addition, when making price announcements, the container liner shipping companies involved, are bound by their price announcements during their validity period as maximum prices (but are free to offer lower prices).

[113] Refer to the OFT Press Release, "British Airways to pay £58.5 million penalty in OFT fuel surcharge decision", 19 April 2012 (available at: *http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.oft.gov.uk/news-and-updates/press/2012/33-12* ↗).

[114] Refer to the OFT Decision No. CA98/01/2012, in Case CE/7691-06 (Airline passenger fuel surcharges for long-haul flights), 19 April 2012 (available at: *http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.oft.gov.uk/shared_oft/ca98_public_register/decisions/fuel-surcharges.pdf* ↗).

[115] The 11 airfreight carriers are: Air Canada, Air France-KLM, British Airways, Cathay Pacific, Cargolux, Japan Airlines, LAN Chile, Martinair, SAS, Singapore Airlines and Qantas.

[116] Refer to Commission Decision Case COMP/39258 – Airfreight, 9 November 2010. See also the Commission Press Release, "Antitrust: Commission imposes eleven air cargo carriers fines amounting to 799 Million EUR", 9 November 2010 (available at: *http://europa.eu/rapid/press-release_IP-10-1487_fr.htm?locale=en* ↗). See ***Richard Burton***, *The European Commission fines 11 air cargo carriers more than € 799 M for price-fixing cartel (Airfreight cartel), 9 November 2010, e-Competitions Bulletin November 2010, Art. N° 41287*

[117] See Cases T-9/11, *Air Canada*, T-28/11, *Koninklijke Luchtvaart Maatschappij*, T-36/11, *Japan Airlines*, T-38/11, *Cathay Pacific Airways*, T-39/11, *Cargolux Airlines International*, T-40/11, *Latam Airlines Group and Others*, T-43/11, *Singapore Airlines and Others*, T-46/11, *Deutsche Lufthansa and Others*, T-48/11, *British Airways*, T-56/11, *SAS Cargo Group and Others*, T-62/11, *Air France-KLM*, T-63/11, *Société Air France* and T-67/11, *Martinair Holland v Commission*. Refer to General Court Press Release, "The General Court annuls the decision by which the Commission imposed fines amounting to approximately €790 million on several airlines for their participation in a cartel on the airfreight market", 16 December 2015 (available at: *http://curia.europa.eu/jcms/upload/docs/application/pdf/2015-12/cp150147en.pdf* ↗). See ***Collette Rawnsley, Stephen C. Mavroghenis, Geert Goeteyn***, *The EU General Court annuls the Commission's decision fining a number of cargo airlines for a price fixing cartel (Airfreight cartel), 16 December 2015, e-Competitions Bulletin December 2015, Art. N° 77425* and ***Richard Burton***, *The EU General Court rules on appeals brought by several airlines against the Commission's 2010 decision imposing fines totalling € 799 million for their alleged participation in a cartel (Airfreight cartel), 16 December 2015, e-Competitions Bulletin December 2015, Art. N° 78290*

[118] Water management products include expansion vessels, pressure maintenance systems, water make-up systems, degassers, air vents, separators and safety valves.

[119] Refer to Case COMP/39611 – *Water management products*. See also to the Commission Press Release, "Antitrust: Commission fines producers of water management products € 13 million in sixth cartel settlement", 27 June 2012 (available at: *http://europa.eu/rapid/press-release_IP-12-704_en.htm?locale=enncid=4678385* ↗). See ***Richard Burton***, *The EU Commission fines producers of water management products € 13.7 M in sixth cartel settlement case (Flamco, Reflex and Pneumatex), 27 June 2012, e-Competitions Bulletin June 2012, Art. N° 58295*

[120] Refer to the Commission Press Release, "Antitrust: Commission fines banks € 1.49 billion for participating in cartels in the interest rate derivatives industry", 4 December 2013 (available at: *http://europa.eu/rapid/press-release_IP-13-1208_en.htm* ↗).

[121] Refer to the Decision of the Croatian Competition Agency, UP/I 030-02/2008-01/03, 24 November 2009 (available at: *http://www.aztn.hr/uploads/documents/eng/documents/decision/TN/UPI-030-022008-01003.pdf* ↗).

[122] Refer to the Judgment of the Croatian High Administrative Court of the Republic of Croatia, Stano-uprava d.o.o., Novi dani d.o.o., Dub-inŽenjering d.o.o., 13 December 2012 (available at: *http://www.concurrences.com/spip.php?action=acceder_document&arg=20005&cle=ab00d88afe60eb22091f783de1cd605c9f22e37b&file=pdf%2F20_20.02.2013_presuda_visokog_upravnog_suda_republike_hrvatske_poslovni_broj_us-1700_2010-6_od_13._prosinca_2013.pdf* ↗). See ***Jasminka Pecotic Kaufman***, *The Croatian High Administrative Court confirms the decision of Competition Agency on illegal price fixing agreement in the residential management services market (Stano-uprava), 13 December 2012, e-Competitions Bulletin December 2012, Art. N° 57715*