

# **SCHRIFTENSPIEGEL**

**Bibliothek Recht D3**

**Festschriften, Konferenzschriften, Sammelwerke**

**November 2020**

## **November**

Umwelt-Wirtschaftsstrafrecht 9. Schweizerische Tagung zum Wirtschaftsstrafrecht Herausgeber:  
Jürg-Beat Ackermann, Marianne Johanna Hilf

Yannis Katsoulacos/ Excessive Pricing and Competition Law Enforcement

Adriana Almasan/ The Consistent Application of EU Competition Law – Substantive and Procedural Challenges (2017)

Madeleine de Cock Buning/ Private Regulation and Enforcement in the EU – Finding the Right Balance from a Citizens Perspective

Tanja Aalberts/ The Changing Practices of International Law

Madalina Moraru/ Law and Judicial Dialogue on the Return of Irregular Migrants from the European Union

Jürgen Brandt/ Steuerentwicklung und Steuerverwendung im Fokus der Praxis (17. Deutscher Finanzgerichtstag 2020)

Gabriella Muscolo/ The Interplay Between Competition Law and Intellectual Property – An International Perspective

Der Einfluss des Europäischen Gerichtshofs auf das Umwelt- und Infrastrukturrecht aktuelle Entwicklungslinien herausgegeben von Martin Kment

**17. Deutscher Finanzgerichtstag 2020 : Steuerentwicklung und Steuerverwendung im Fokus der Praxis**

Deutscher Finanzgerichtstag, 17., 2020, Köln [VerfasserIn]; Brandt, Jürgen [HerausgeberIn]

Stuttgart : München : Hannover : Berlin : Weimar : Dresden : Boorberg; 2020

# Inhalt

Vorwort . . . . .	7
Programm . . . . .	9
<b>Eröffnung</b>	
Richter am Bundesfinanzhof a. D. Prof. Jürgen Brandt, Präsident des Deutschen Finanzgerichtstages . . . . .	11
<b>Grußworte</b>	
Justizminister des Landes Nordrhein-Westfalen Peter Biesenbach . .	13
Präsident des Bundesfinanzhofs Prof. Dr. h. c. Rudolf Mellinghoff . .	19
Präsident des Deutschen Steuerberaterverbandes Wirtschaftsprüfer und Steuerberater Harald Elster . . . . .	27
<b>Deutsche Interessen im Steuerwettbewerb Internationale Koopera- tion, EU-Harmonisierung oder nationale Gesetzgebung?  </b>	
Univ.-Prof. Dr. Johanna Hey . . . . .	31
<b>Steuerlast, Haushaltsdisziplin und Steuerverschwendung in Deutschland   Vorsitzender des Bundes der Steuerzahler</b>	
Reiner Holznagel . . . . .	45
<b>Grundsteuer 2025 – Analyse, Kritik und Perspektiven  </b>	
Univ. Prof. Dr. Franz Jürgen Marx . . . . .	69
<b>Gutgläubenschutz im Umsatzsteuerrecht   Richter am Bundes- finanzhof Dr. Christoph Wäger . . . . .</b>	89
<b>Die erweiterte Kürzung im Gewerbesteuerrecht   Vorsitzender Richter am Bundesfinanzhof Michael Wendt . . . . .</b>	101
<b>Die verdeckte Gewinnausschüttung in der steuerlichen Praxis  </b>	
Richterin am FG Köln Dr. Claudia Neitz-Hackstein . . . . .	115
<b>Aktuelle Streitfragen der Arbeitnehmerbesteuerung   Richter am Bundesfinanzhof Dr. Roland Krüger. . . . .</b>	127

[Der Einfluss des Europäischen Gerichtshofs auf das Umwelt- und Infrastrukturrecht : aktuelle Entwicklungslinien](#)

Kment, Martin [HerausgeberIn]

Tübingen : Mohr Siebeck; 2020

# Inhaltsverzeichnis

Vorwort . . . . .	V
<i>Martin Kment</i> Auslegung und Fortbildung des EU-Rechts durch den EuGH . . . . .	1
<i>Kurt Faßbender</i> Die Rechtsprechung des EuGH zu Art. 4 WRRL – Segen oder Fluch?. . . . .	25
<i>Thomas Schmidt-Kötters</i> Nationale Förderung erneuerbarer Energien und europäisches Beihilfenrecht . . . . .	45
<i>Bettina Hoffmann</i> Vorgaben zum Verständnis des Art. 6 Abs. 3 und 4 FFH-RL aus Luxemburg – Auswirkungen der höchstrichterlichen Rechtsprechung auf Großprojekte . . . . .	75
<i>Alexander Schink</i> Nichteinhaltung der Grenzwerte der Luftqualitätsrichtlinie – Welche Gestaltungsspielräume belässt das Unionsrecht?. . . . .	121
<i>Karl Stöger</i> Rechtsschutz von Umweltverbänden unter Berücksichtigung der EuGH-Rechtsprechung – Ein Blick aus Österreich nach Protect . . . . .	151
Autorenverzeichnis . . . . .	175
Sachregister . . . . .	177

**Excessive pricing and competition law enforcement**

Katsulakos, Giannēs S. [HerausgeberIn]; Jenny, Frédéric [HerausgeberIn]

Softcover re-print.; Cham : Springer; 2018

# Contents

<b>Introduction</b> . . . . .	1
Frederic Jenny and Yannis Katsoulacos	
<b>Abuse of Dominance by Firms Charging Excessive or Unfair Prices: An Assessment</b> . . . . .	5
Frederic Jenny	
<b>Another Look at the Economics of the UK CMA’s Phenytoin Case</b> . . . .	71
John Davies and Jorge Padilla	
<b>A Coherent Approach to the Antitrust Prohibition of Excessive Pricing by Dominant Firms</b> . . . . .	99
David Gilo	
<b>Antitrust Enforcement of the Prohibition of Excessive Prices: The Israeli Experience</b> . . . . .	127
Yossi Spiegel	
<b>Working Out the Standards for Excessive Pricing in South Africa</b> . . . .	159
Liberty Mncube and Mfundo Ngobese	
<b>The Brazilian Experience with Excessive Pricing Cases: Hello, Goodbye</b> . . . . .	173
E. P. Ribeiro and C. Mattos	
<b>Enforcement Against Excessive Pricing in the Russian Federation</b> . . . .	189
Svetlana Avdasheva and Dina Komeeva	
<b>Anti-monopoly Cases on Unfair Pricing in China</b> . . . . .	211
Xiao Fu and Heng Ju	
<b>Excessiveness of Prices as an Abuse of Dominant Position: The Case of India</b> . . . . .	231
Augustine Peter and Neha Singh	



[Law and judicial dialogue on the return of irregular migrants from the European Union](#)

Moraru, Madalina [HerausgeberIn]; Cornelisse, Galina [HerausgeberIn]; De Bruycker, Philippe [HerausgeberIn]

Oxford : London : New York : New Delhi : Sydney : Hart; 2020

---

# CONTENTS

---

<i>Acknowledgements</i> .....	v
<i>List of Contributors</i> .....	xi
<i>Prologue: The Genesis of the EU's Return Policy</i> .....	1
<b>Fabian Lutz</b>	
<i>Introduction: Judicial Dialogue on the Return Directive – Catalyst for Changing Migration Governance?</i> .....	17
<b>Galina Cornelisse and Madalina Moraru</b>	

## PART 1

### STAGES OF THE EU RETURN PROCEDURE: THE ROLE OF JUDGES IN ENSURING AN EFFECTIVE IMPLEMENTATION OF THE RETURN DIRECTIVE

**Edited by Madalina Moraru**

1. <i>The Scope of the Return Directive: How Much Space is Left for National Procedural Law on Irregular Migration?</i> .....	41
<b>Galina Cornelisse</b>	
2. <i>Return Decisions and Domestic Judicial Practices: Is Spain Different?</i> .....	63
<b>Cristina Gortázar Rotaèche</b>	
3. <i>Voluntary Departure as a Priority: Challenges and Best Practices</i> .....	83
<b>Ulrike Brandl</b>	
4. <i>The Legal Requirements of the Entry Ban: The Role of National Courts and Dialogue with the Court of Justice of the European Union</i> .....	105
<b>Aniel Pahladsingh</b>	
5. <i>Judicial Dialogue in Action: Making Sense of the Risk of Absconding in the Return Procedure</i> .....	125
<b>Madalina Moraru</b>	
6. <i>Cypriot Courts, the Return Directive and Fundamental Rights: Challenges and Failüres</i> .....	149
<b>Corina Demetriou and Nicos Trimikliniotis</b>	

PART 2  
IMMIGRATION DETENTION IN THE EU: THE ROLE OF JUDGES  
IN SHAPING EFFECTIVE STANDARDS OF CONTROL

Edited by Galina Cornelisse

7. *Alternatives to Immigration Detention in International and EU Law: Control Standards and Judicial Interaction in a Heterarchy* .....167  
Evangelia (Lilian) Tsourdi
8. *Scope and Intensity of Judicial Review: Which Power for Judges within the Control of Immigration Detention?*.....191  
Adam Blisa and David Kosař
9. *The Civil Judge as Administrator of Return Detention: The Case of Germany*.....213  
Jonas Bornemann and Harald Dörig
10. *The Administrative Judge as a Detention Judge: The Case of Lithuania* .....237  
Irmantas Jarukaitis and Agnė Kalinauskaitė
11. *Detention of Migrants in Belgium and the Criminal Judge: A Lewis Carroll World*.....257  
Sylvie Sarolea
12. *Can the Return Directive Contribute to Protection for Rejected Asylum Seekers and Irregular Migrants in Detention? The Case of Greece* .....281  
Angeliki Papapanagiotou-Leza and Stergios Kofinis
13. *Can a Justice of the Peace be a Good Detention Judge? The Case of Italy*.....301  
Alessia Di Pascale
14. *Duality of Jurisdiction in the Control of Immigration Detention: The Case of France/Trois Hautes Juridictions Nationales pour une Directive: Une Interaction Judiciaire en Trompe l'œil*.....317  
Serge Slama

PART 3  
RIGHTS AND SAFEGUARDS IN THE APPLICATION  
OF THE RETURN DIRECTIVE: THE ROLE OF JUDGES  
IN SAFEGUARDING PROCEDURAL AND FUNDAMENTAL  
RIGHTS PROTECTION

Edited by Madalina Moraru and Galina Cornelisse

15. *The Right to be Heard: The Underestimated Condition for Effective Returns and Human Rights Consideration*.....351  
Valeria Ilareva

16. <i>Impact of Judicial Dialogue(s) on Development and Affirmation of the Right to Effective Legal Remedy from Articles 13 and 14 of the Return Directive</i> .....	369
<b>Boštjan Zalar</b>	
17. <i>A Lawyer's Perspective on Access to Classified Evidence in Return Cases: A View from Poland</i> .....	397
<b>Jacek Białas</b>	
18. <i>The Return of the Children</i> .....	415
<b>Carolus Grütters</b>	
19. <i>Unremovability under the Return Directive: An Empty Protection?</i> .....	437
<b>Jean-Baptiste Farcy</b>	
20. <i>The Prohibition of Collective Expulsion as an Individualisation Requirement</i> .....	455
<b>Luc Leboeuf and Jean-Yves Carlier</b>	
<i>Index</i> .....	475

**Private regulation and enforcement in the EU : finding the right balance from a citizen's perspective**

Cock Buning, Madeleine de [HerausgeberIn]; Senden, Linda [HerausgeberIn]

Oxford : Hart Publishing; 2020

---

# CONTENTS

---

<i>Preface</i> .....	v
1. <i>Introduction: EU Private Regulation and Enforcement – Mapping its Contextual, Conceptual, Constitutional and Citizens’ Dimensions</i> .....	1
<b>Madeleine de Cock Buning and Linda Senden</b>	
PART I POLICY DOMAINS	
2. <i>The Special Position of Agreements by Social Partners in EU Law</i> .....	37
<b>Frans Pennings</b>	
3. <i>Private Regulation in the Internal Market: Assessing European Technical Standardisation Through a Citizen’s Eye</i> .....	57
<b>Mariëtte Hiemstra and Linda Senden</b>	
4. <i>The Role of Private Actors in Data Protection Law and Data Protection Practice</i> .....	95
<b>Peter Blok</b>	
5. <i>Private Actors in European Consumer Law</i> .....	121
<b>Ewoud Hondius and Esther van Schagen</b>	
6. <i>Of the People, by the People, for the People? The European Union’s Experience with Private Environmental Regulation and Enforcement</i> .....	165
<b>Suzanne Kingston and Edwin Alblas</b>	
7. <i>Unfolding the Private–Public Dynamics of Regulation and Enforcement in EU Food Law</i> .....	191
<b>Michele Simonato and Salvatore F. Nicolosi</b>	
8. <i>Engaging Private Actors in the Production of EU Financial Regulation: Advantages and Disadvantages from a Citizen’s Perspective</i> .....	219
<b>Andrea Minto</b>	
9. <i>Trust through Responsibility: Advertising and Self-Regulation in Europe</i> .....	243
<b>Oliver Gray</b>	

10. <i>Private Regulation and Enforcement in the EU: Finding the Right Balance from a Citizen's Perspective – The Protection of Minors against Online Harms</i> .....	295
<b>Madeleine de Cock Buning</b>	
11. <i>Internet Liability Law Case Study: Private Regulation and Enforcement in the EU from the Citizens' Perspective</i> .....	327
<b>Christopher T. Marsden</b>	
12. <i>The Role of Private Actors in the Regulation and Enforcement of Corporate Environmental Harm</i> .....	353
<b>Judith van Erp</b>	

PART II  
CROSS-CUTTING ISSUES

13. <i>The Constitutional Authority of Private Regulation in the Light of the EU's Competence Order</i> .....	375
<b>Kilian Klinger</b>	
14. <i>Private Regulation and Enforcement within the Single Market's Legal Framework: The Need for a More Holistic Approach</i> .....	411
<b>Frederick Brouwer</b>	
15. <i>European Union Co- and Self-Regulation and the Protection of Fundamental Rights</i> .....	443
<b>Jessy M. Emaus</b>	
16. <i>EU Competition Law versus Private Regulation: Restrictive or Enabling?</i> .....	475
<b>Jotte Mulder</b>	
17. <i>The Democratic Challenges of Effective Private Regulation and Enforcement</i> .....	497
<b>Colin Scott</b>	
18. <i>Conclusions: Drawing the Lines Together of Regulatory Choice, Public-Private Dynamics and Citizens' Trust in Private Regulation and Enforcement in the EU</i> .....	519
<b>Madeleine de Cock Buning and Linda Senden</b>	
<i>Index</i> .....	563

[The changing practices of international law](#)

Aalberts, Tanja E. [HerausgeberIn]; Gammeltoft-Hansen, Thomas [HerausgeberIn]

Cambridge : Cambridge University Press; 2018



## CONTENTS

<i>List of Figures and Tables</i>	<i>page vii</i>
<i>Notes on Contributors</i>	viii
<i>Preface</i>	xi
<i>Table of Cases</i>	xiii
1 Introduction: The Changing Practices of International Law	1
THOMAS GAMMELTOFT-HANSEN AND TANJA AALBERTS	
2 Sovereignty Games, International Law and Politics	26
TANJA AALBERTS AND THOMAS GAMMELTOFT-HANSEN	
3 Abandonment, Construction and Denial: The Formation of a Zone	45
MARGARETA BRUMMER	
4 Backlash and State Strategies in International Investment Law	70
MALCOLM LANGFORD, DANIEL BEHN AND OLE KRISTIAN FAUCHALD	
5 'Part of the Game': Government Strategies against European Litigation Concerning Migrant Rights	103
MORITZ BAUMGÄRTEL	
6 The Disaggregated Law of Global Mass Surveillance	129
ITAMAR MANN	
7 Legalization in International Environmental Law	158
JAYE ELLIS	
8 Search and Rescue as a Geopolitics of International Law	188
THOMAS GAMMELTOFT-HANSEN AND TANJA AALBERTS	

9	Conclusion: The Dark Side of Legalization	208
	TANJA AALBERTS AND THOMAS GAMMELTOFT-HANSEN	
	<i>Bibliography</i>	220
	<i>Index</i>	240

[The consistent application of EU competition law : substantive and procedural challenges](#)

Almășan, Adriana [HerausgeberIn]; Whelan, Peter [HerausgeberIn]

Cham : Springer International Publishing; 2017

# Contents

<b>Part I EU Competition Policy and the Harmonized Enforcement of Articles 101 and 102 TFEU</b>		
<b>1</b>	<b>Convergence Within the European Competition Network: Legislative Harmonization and Enforcement Priorities.....</b>	<b>3</b>
	Bogdan M. Chirițoiu	
<b>2</b>	<b>The Commission Communication on Ten Years of Antitrust Enforcement Under Regulation 1/2003 – Prospective Priorities and Challenges .....</b>	<b>23</b>
	Cătălin S. Rusu	
<b>Part II Court of Justice Jurisprudence as an Instrument of Harmonization</b>		
<b>3</b>	<b>Of Cattle, Crashes &amp; Cards – Recent Case-Law of the Court of Justice on Restrictions by Object .....</b>	<b>43</b>
	Anthony M. Collins	
<b>4</b>	<b>The Concept of Anti-competitive Object Under EU Competition Law: Comparative Perspectives and European Realities.....</b>	<b>55</b>
	Csongor István Nagy	
<b>5</b>	<b>Public Investments and the Application of Articles 101 and 102 TFEU.....</b>	<b>71</b>
	Simona Gherghina	

<b>Part III Jurisdictional Challenges to the Consistent Application of Articles 101 and 102 TFEU</b>	
<b>6</b>	<b>European Cartel Criminalization and Regulation 1/2003: Avoiding Potential Problems</b> ..... 109 Peter Whelan
<b>7</b>	<b>Regulation Brussels 1 and the Application of Articles 101 and 102 TFEU by National Courts</b> ..... 131 Jean-Marc Thouvenin
<b>8</b>	<b>The Arbitrability of Articles 101 and 102 TFEU</b> ..... 141 Adriana Almășan
<b>Part IV Preliminary Rulings – Instruments for the Consistent Application of Articles 101 and 102 TFEU</b>	
<b>9</b>	<b>The National Judge and Preliminary Rulings: Recent CJEU Case Law on Articles 101 and 102 TFEU</b> ..... 165 Camelia Toader
<b>10</b>	<b>The Role of Preliminary References in the Uniform Application of EU Competition Law</b> ..... 177 Jules Stuyck
<b>Part V Selected National Application of Articles 101 and 102 TFEU</b>	
<b>11</b>	<b>The Uniform Application of Articles 101 and 102 TFEU in German Competition Law</b> ..... 195 Bernd Oppermann and Ahmad Chmeis
<b>12</b>	<b>Recent Developments in the Application of Articles 101 and 102 TFEU by French Courts</b> ..... 221 Rafael Amaro
<b>13</b>	<b>Recent Developments in Romanian Jurisprudence Regarding the Application of Articles 101 and 102 TFEU</b> ..... 243 Sorin David
<b>14</b>	<b>Application of EU Competition Law by the Hungarian Judiciary: Cooperation with the ECJ and Relying on the Case Law of the ECtHR</b> ..... 255 Mónika Papp
<b>15</b>	<b>The Application of EU Competition Law in Poland</b> ..... 271 Krystyna Kowalik-Bańczyk

[The interplay between competition law and intellectual property : an international perspective](#)

Muscolo, Gabriella [HerausgeberIn]; Tavassi, Marina [HerausgeberIn]

Alphen aan den Rijn : Wolters Kluwer; 2019

# Table of Contents

Editors	v
Contributors	vii
Foreword	xli
Preface	xliii
<b>PART I</b>	
Competition, Intellectual Property and Economics	1
<b>CHAPTER 1</b>	
Collaborative Standardisation and SEP Licensing: A EU Policy Perspective <i>G. Bruzzone &amp; S. Capozzi</i>	3
§1.01 Collaborative Standardisation in the Digital Single Market Strategy	3
§1.02 The Role of Competition Policy	5
§1.03 The Initiatives of DG Growth and DG Connect	8
[A] The Consultation on Patents and Standards	8
[B] The JRC Reports on Patent Assertion Entities and SEP Licensing Terms	9
[C] The CRA Report on Standardisation and SEP Licensing	10
[D] Towards the 2017 IPR Package	12
§1.04 The SEP Guidelines	13
[A] Transparency: Enhancing the Quality of SEP Databases	14
[B] Principles for FRAND Licensing	15
[C] A Predictable and Balanced Enforcement Environment	17
[D] Open Source and Standards	18
§1.05 Looking at the Future: The Remaining Challenges	18
[A] Implementing the Guidelines	18
[B] The Approach to Controversial Issues	19

## Table of Contents

---

[C]	Learning from National Courts and Supporting Them	20
[D]	The EU Approach in a Global Perspective	21
CHAPTER 2		
Economic Considerations on Mergers, IPR Licensing and Litigation: A EU Perspective		
<i>C. Caffarra &amp; P. Régibeau</i>		
§2.01	Introduction	23
§2.02	The ‘Standard’ Use of Licensing as a Remedy for Product Line ‘Overlaps’	24
§2.03	Mergers That Increase Concentration in Technology Markets	25
[A]	Patents	25
[B]	Standard Essential Patents	26
[C]	Copyright	28
§2.04	Merger Theories of Harm Around Decreased Incentives to License (and Impact on Innovation)	28
[A]	Mergers and ‘Standard’ Foreclosure Concerns Around Licensing	29
[B]	Licensing in a Merger of Complements: Qualcomm-NXP	31
§2.05	Mergers and Litigation Incentives?	35
§2.06	Conclusions	36
CHAPTER 3		
Alternative Dispute Resolution in FRAND Licensing: Economic Considerations for an Effective Framework		
<i>A. Chowdhury</i>		
§3.01	Introduction	39
§3.02	Arbitration as an ADR Mechanism	40
§3.03	Economic Considerations for an Effective Design of ADR	42
[A]	Final Offer Arbitration, Conventional Arbitration and Related Aspects	42
[B]	The Treatment of Validity During the Arbitration	45
[C]	Disclosure of FRAND Determinations	46
§3.04	Concluding Remarks	47
CHAPTER 4		
The “ <i>New Madison</i> ” <i>v. the “Old Europe</i> ” Doctrine: On Re-balancing Competition Policy Towards SEPs		
<i>A. Nicita &amp; G. Corda</i>		
§4.01	Introduction	49
§4.02	Innovation, Post-contractual Opportunism and (under) Investment	51
§4.03	SSOs, FRAND and Holdup	53



§4.04	The “Old Europe” Approach	56
	[A] <i>Samsung and Motorola Cases</i>	56
	[B] <i>The Huawei/ZTE Case</i>	58
§4.05	Conclusions	59
CHAPTER 5		
Proprietary Systems, Innovation and Competition: Is There Any Scope for Aftermarkets?		
	<i>A. Pezzoli &amp; C. D’Amore</i>	61
§5.01	Preliminary Remarks	61
§5.02	What Do We Need for Aftermarkets to Exist?	63
	[A] Basic Ingredients	63
	[B] The Reasons Why Aftermarket Cases Are Not Common	63
	[C] At Least in Principle...	64
§5.03	Aftermarkets and Innovation	65
	[A] It Is Not Only a Question of IP Rights	65
	[B] The Balance Between Protecting IP Rights and Encouraging Innovation in Aftermarkets	65
§5.04	The Standard of Proof: A Kind of Trouble to Enjoy	66
§5.05	Innovation and Aftermarkets in the IoT	67
	[A] Absence of Standardization and Interoperability	68
	[B] The IoT Platforms’ Market Power	70
§5.06	Concluding Remarks	71
PART II		
Competition, Intellectual Property and the Legal Doctrines		
73		
CHAPTER 6		
Rethinking Monopolies		
	<i>C. Birss</i>	75
§6.01	Introduction	75
§6.02	Some History	76
§6.03	Patents or Prizes?	77
§6.04	Today: Telecommunications Standards and FRAND	79
§6.05	The Nature of the FRAND System Applied to Patents	80
CHAPTER 7		
Intellectual Property and Constitution with Particular Reference to the Italian System		
	<i>B. Caravita</i>	83

## Table of Contents

---

### CHAPTER 8

#### Recent Shots on a Familiar Battlefield: Standard Essential Patents

<i>I. Forrester &amp; M. Domecq</i>	87
§8.01 Introduction	87
§8.02 Implementing the FRAND Commitment	89
§8.03 <i>Orange Book v. Samsung and Motorola</i>	90
§8.04 The Huawei Judgment	91
§8.05 Looking to the Future: Some Unanswered Questions	93
§8.06 Timing of the Dialogue	95
§8.07 Conclusion	96

### CHAPTER 9

#### Antitrust and Intellectual Property in the United States and The European Union

<i>D.H. Ginsburg, D. Geradin &amp; K. Klovers</i>	99
§9.01 Introduction	99
§9.02 United States	99
[A] Background	100
[B] Substantive U.S. Law	101
[1] Section 1 of the Sherman Act: Contracts, Combinations, and Conspiracies	101
[a] Contracts Involving Patents	102
[i] Royalties	102
[ii] Vertical Non-price Restraints	103
[iii] Vertical Price Restraints	103
[iv] Tying	104
[b] Combinations Involving Patents	105
[c] Conspiracies Involving Patents	105
[2] Section 2 of the Sherman Act: Monopolization	106
[a] Limitations on the Creation of Patents	106
[b] Limitations on Patent Licensing	107
[c] Other Limitations on Patentees	108
[3] Section 7 of the Clayton Act: Mergers	109
§9.03 European Union	109
[A] Background	110
[B] Substantive EU Law	111
[1] Article 101 TFEU: Anticompetitive Agreements	111
[a] Contracts Involving Patents	112
[i] Royalties	112
[ii] Vertical Non-price Restraints	113
[iii] Vertical Price Restraints	114

	[iv] Tying	114
	[b] Combinations Involving Patents	114
	[c] Conspiracies Involving Patents	115
[2]	Article 102 TFEU: Abuses of a Dominant Position	115
	[a] Limitations on the Creation of Patents	115
	[b] Limitations on Patent Licensing	116
	[c] Other Limitations on Patentees	117
[3]	Mergers	118
§9.04	Conclusion	119
CHAPTER 10		
SEPs Licensing: A Pro-competitive Determination of FRAND Royalties		
	<i>G. Ghidini &amp; G. Trabucco</i>	121
§10.01	A Basic Pro-competitive Rationale	121
§10.02	A Seeming Paradox and a Truly Regulatory Approach	123
§10.03	The Heart of the Matter Today: Defining FRAND Terms, Royalties in Particular	125
§10.04	Three Pro-competitive Criteria for Assessing FRAND Royalties	126
	[A] Verification of the SEPs' 'Essentiality' and Precise Identification of the Technology Adopted by Potential Licensees	127
	[B] Taking into Account the Value of the Patent at the Time of the Standard Setting (Ex Ante Approach)	131
	[C] Looking at the Overall Licensing Scenario: The Issue of Royalty Stacking	133
§10.05	Landmark Case Law	135
	[A] Top-Down Approach	135
	[B] <i>Innovatio</i>	136
	[C] <i>Unwired Planet v. Huawei</i>	137
	[D] <i>TCL v. Ericsson</i>	139
§10.06	Conclusions	141
CHAPTER 11		
Unified Patent Court & Antitrust		
	<i>G. Muscolo</i>	143
§11.01	Introduction: Litigating at the Crossroad Between IP & Competition	143
§11.02	Landmark Cases on the Antitrust Defense	147
§11.03	The UPC Competence on the Antitrust Exception	154
§11.04	Conclusions: The Unified Patent and the Unified Patent Court: A Procompetitive Package	159

## Table of Contents

---

### CHAPTER 12

#### Online Platforms and Antitrust: Where Do We Go from Here?

<i>R. Nazzini</i>	161
§12.01 Introduction	161
§12.02 Definition of Online Platforms	162
§12.03 Analytical Framework	163
[A] Error Costs Analysis	163
[B] Objective of the Competition Rules	164
[C] Relative Weight of Different Types of Efficiency	167
[D] Conclusions on the Analytical Framework	171
§12.04 Antitrust Analysis of Online Platforms	171
[A] Market Definition and Market Shares	171
[B] Barriers to Entry	173
[C] Innovation	175
§12.05 Conclusion	177

### CHAPTER 13

#### Reflections on the Legal Assessment of Excessive Prices in EU Competition Law

<i>C. Osti</i>	179
§13.01 The Case-Law of the European Courts	179
§13.02 Developments at the National Level	185
§13.03 Conclusions	189

### PART III

#### The Interplay Between Competition and Intellectual Property on the Relevant Markets

195

#### SUB-PART A

##### The High-Technology Market

197

### CHAPTER 14

#### Automatic Injunction in Patent Cases and European (Competition) Law

<i>W. Hoyng &amp; A.-C. Hoyng</i>	199
-----------------------------------	-----

### CHAPTER 15

#### SEP, NPE, PAE, Trolls and *Huawei v. ZTE*

<i>M. Franzosi</i>	209
§15.01 Centrafarm	209
§15.02 Right to Exclude	209
§15.03 SEP, Thickets, Trolls, NPE, PAE	210
§15.04 Abolish or Strengthen Patents?	212

[A]	Boldrin and Machlup's Views	212
[B]	US DoJ's View	212
[C]	Commission's Communication: Some Remarks	213
§15.05	Huawei and NPE	214
SUB-PART B		
	The Energy Market	217
CHAPTER 16		
	The Electricité De France 'Blue Ciel' Trademark Case Between Competition and Intellectual Property: Old or New Form of Abuse of Dominance?	
	<i>M. Siragusa &amp; F.M. Salerno</i>	219
§16.01	Introduction	219
§16.02	Emerging Trends in Abuse of Dominance and IP: Old and New Cases at EU Level	220
§16.03	The EDF 'Blue Ciel' Trademark Case	223
[A]	Facts of the Case	224
[B]	The FCA Decision	225
[C]	The Judgments of the Court of Appeal of Paris and the Court of Cassation	226
[D]	The EDF 'Blue Ciel' Case: A Few Remarks	227
§16.04	Conclusion	229
SUB-PART C		
	The Pharmaceutical Market	231
CHAPTER 17		
	Current Issues on Antitrust Enforcement in the UK Pharmaceutical Sector	
	<i>A. Coscelli, A. Groves &amp; L. Ventura</i>	233
§17.01	Introduction	233
§17.02	Public Policy Considerations Supporting Intervention in Pharmaceutical Markets	234
§17.03	The Drug Life cycle and the Impact of Generic Competition	235
[A]	The Drug Life cycle	235
[B]	Impact of Generic Competition	236
§17.04	UK Investigations into the Pharmaceutical Sector	237
[A]	UK Investigations Involving Strategies to Restricting Generic Entry	237
[B]	UK Investigations and Cases Involving Abusive Behaviour at Other Points in the Drug Cycle	239
§17.05	The Generic Counter-Cycle, a New Frontier in Enforcement?	240
[A]	Excessive and Unfair Pricing Investigations	241

## Table of Contents

---

	[B]	Investigations into Suspected Anticompetitive Agreements in the Generics Sector	244
§17.06		Conclusion	245
CHAPTER 18			
Competition Law and IP Rights in the Pharmaceutical Sector Between Technological Development, Consumer Protection and Health Care Costs: The Italian Experience			
		<i>E.A. Raffaelli</i>	247
§18.01		Introduction	247
§18.02		The Main Peculiarities of the Pharmaceutical Sector	248
§18.03		The Italian Case Law Concerning the Intersection Between IP Rights and Competition Law	252
	[A]	The Refusal to License	253
	[B]	The Misuse of the Rules Governing Intellectual Property: Strategic Patenting and Protection of Competition	259
	[C]	Licensing Agreement, Regulatory Compliance, and Violation of Competition Law	266
§18.04		Conclusions	272
SUB-PART D			
		Online Markets	273
CHAPTER 19			
Online Markets, Geo-blocking and Competition			
		<i>M. Tavassi &amp; G. Bellomo</i>	275
§19.01		Introduction	275
§19.02		The Digital Market and Two-Sided Markets in Digital Economy	278
§19.03		European Digital Single Market Strategy and Related Legislation	282
§19.04		Vertical Restraints in the Online Market	284
§19.05		Geo-blocking	287
§19.06		Copyright in the Digital Market	293
§19.07		Illegal Content Online: Recent Remedies	296
CHAPTER 20			
Patent Pools in the ERA of the ‘Internet of Things’: A Fine Line Between Collusion, Market Power and Efficiencies			
		<i>M. Lo Bue</i>	299
§20.01		Introduction	299
§20.02		What Are Patent Pools?	301
§20.03		Why Joining? The Economic Rationale Behind a Patent Pool	302
	[A]	Patentee’s Business Model	303
	[B]	Rent-Sharing Rules Within the Pool	304

	[C] Symmetry Among SEP Portfolios and the Characteristics of the Market in Which the Pool Is Set Up	305
§20.04	Do Patent Pools Comply with EU Competition Law?	306
	[A] Formation of Technology Pools	307
	[B] Relationships Between Patent Pool and Third Party Licensees	308
§20.05	The November 2017 Communication from the European Commission	313
§20.06	Avanci: A New Pool Concept for the New IoT Industry?	314
§20.07	Conclusion	315
SUB-PART E		
	Agricultural Markets	317
CHAPTER 21		
	The Interaction of Competition, Regulation and IP Rights in Agriculture: Towards a Dynamic Equilibrium?	
	<i>I. Lianos</i>	319
§21.01	Introduction	319
§21.02	The Propertization of Nature and the Shrinking of the Public Domain	321
	[A] IP Regimes in Agricultural Production	321
	[1] Plant Variety Rights	322
	[2] Patents	325
	[3] Beyond IP: Technological Means of Protecting Innovation	329
	[B] The Appropriability-Commons Continuum	330
§21.03	The Gene-Editing Revolution and the Changing Regulatory Framework	334
§21.04	Increasing Concentration in the Seeds and Agro-chem Sector	344
§21.05	The Socio-Economic Effects of the Rising Levels of Concentration in Agro-Chem Markets	351
§21.06	Assessing the Innovation Effects of the Agro-chem Mergers	355
§21.07	Conclusion	366
PART IV		
	An Update on Law and Case-Law in the National Systems	367
SUB-PART A		
	Europe	369
CHAPTER 22		
	Does the Application of the Exhaustion of Rights Doctrine in French Law Ensure a Balanced and Effective Compromise Between the Free Movement of Goods and the Protection of Intellectual Property Rights?	
	<i>M. Karsenty-Ricard</i>	371

## Table of Contents

---

§22.01	Does the Application of the Exhaustion of Rights Doctrine in French Law Ensure a Balanced and Effective Compromise Between the Free Movement of Goods and the Protection of Intellectual Property Rights?	371
§22.02	Do the Rules on Evidence for the Exhaustion of Rights Afford Full Effectiveness to the Exhaustion Doctrine or Do They Give an Advantage to the Proprietor of the Rights?	374
§22.03	Assessment by the French Courts of the Legitimate Grounds That Justify Restoring the Exhausted Right to the Proprietor?	379
§22.04	Conclusion	382

### CHAPTER 23

#### Enforcement of FRAND Commitments and Competition Law Litigation of Standard-Essential Patents in Germany Post-*Huawei*

*H. Tsilikas* 385

§23.01	Introduction	385
§23.02	Litigation of SEPs Prior <i>Huawei</i>	387
§23.03	Applying <i>Huawei</i> : German Case-Law Post- <i>Huawei</i>	388
	[A] The <i>Huawei</i> Ruling of the CJEU	388
	[B] Ambiguities of <i>Huawei</i>	390
	[C] The Decisions of German Courts after <i>Huawei</i>	391
	[1] Transitional Cases	391
	[2] Market Definition and Dominant Position	392
	[3] Abuse of Dominant Position: Theory of Harm	393
	[4] Abuse of Dominant Position: The ‘Steps’ Approach	394
	[a] Notification	394
	[b] FRAND Offer	395
	[c] Counter-Offer and Appropriate Security	397
§23.04	Implications of German Case-Law	398
	[A] Harmonisation of SEPs Litigation Framework	398
	[B] Behavioural FRAND	399
	[C] Alternative Legal and Institutional Frameworks	400
§23.05	Conclusions	401

### CHAPTER 24

#### Italian Competition Authority’s News Review Service Case: Essential Facilities and FRAND Determination at the Intersection Between Competition and IPR

*A. Minuto Rizzo & C. Noto* 403

§24.01	Relevant Facts	403
	[A] Before the ICA Investigations	403
	[B] Procedure Before the ICA	404
§24.02	Assessment	406
§24.03	Final Remarks	409



---

CHAPTER 25	
Reconciling Competition and IP Law: The Case of Patented Pharmaceuticals and Dominance Abuse	
<i>C. Fonteijn, I. Akker &amp; W. Sauter</i>	411
§25.01 Introduction	411
§25.02 Initial Reading of the Problem and Proposed Solution	412
§25.03 Arguments for Addressing Pharmaceuticals	412
[A] Market Context	412
[B] Academic Theory	413
§25.04 The Case Law on Dominance Regarding IP-Protected Pharmaceuticals	415
[A] Exclusion Cases	415
[B] IP Cases and Parallel Trade	415
[C] Pay for Delay	416
[D] Exclusionary Price Abuses	417
[E] Abuse of Patent	418
[F] Exploitation Cases	418
[G] Non-patented Pharmaceuticals	419
§25.05 Excessive Pricing for IP-Protected Pharmaceuticals	420
[A] Price Constraints on Pharmaceutical Products	421
[B] Applying the Excessive Pricing Assessment to IP-Protected Pharmaceuticals	423
§25.06 Conclusions	424
CHAPTER 26	
Public Enforcement and Private Litigation in the UK: Pfizer and Flynn Pharma	
<i>G. Barling &amp; R. Reumerman</i>	427
§26.01 Introduction	427
§26.02 The CMA Decision on Excessive Pricing	428
§26.03 High Court Litigation Relating to Parallel Imports	432
§26.04 Commentary	435
SUB-PART B	
Worldwide	439
CHAPTER 27	
The Interplay Between Competition Law and Intellectual Property: The Brazilian Experience	
<i>A. Martinez</i>	441
§27.01 Overview of Competition Law and Practice in Brazil	441
§27.02 CADE's Views on the Interplay Between Competition Law and Intellectual Property	444

## Table of Contents

---

[A]	IP Rights in the Auto Parts Aftermarket	445
[B]	Standard-Essential Patents	446
[C]	Cases in the Pharmaceutical Industry	447
[1]	Extension of Pipeline Patent Protection	447
[2]	Refusal to Deal	448
[3]	Extension of EMR Due to New Use	448
[4]	Abuse of Data Protection Rights	449
[5]	Ring-Fencing Practices	450
[6]	Launch of Second Generation Drugs	450
§27.03	Expected Future Developments	451
CHAPTER 28		
The Interplay Between Competition Law and Intellectual Property: A Perspective from Canada		
<i>A. Gunderson</i>		453
§28.01	Introduction	453
§28.02	Overview of the Competition Act	454
§28.03	Early Canadian Unilateral Conduct Cases Involving IP	455
[A]	Nutrasweet	455
[B]	Tele-Direct	457
[C]	Warner	457
§28.04	Bureau Intellectual Property Enforcement Guidelines	459
§28.05	Toronto Real Estate Board	460
§28.06	Conclusions	461
CHAPTER 29		
The Interplay Between Competition Law and Intellectual Property: Updates from India		
<i>N.S. Chopra &amp; A.S. Sethi</i>		463
§29.01	Introduction	463
§29.02	The Competition Commission of India	464
[A]	Overview of the Competition Act	464
[B]	The CCI's Approach to Jurisdictional Issues	464
§29.03	Delhi High Court Upholds the CCI's Jurisdiction	465
§29.04	Notable Cases Before the CCI	468
[A]	Scope of the IP Carveout	468
[B]	Decided Cases Involving Parallel IP Proceedings	469
[C]	Ongoing Investigations	470
§29.05	Concluding Remarks	472

CHAPTER 30	
Russia and Global Challenges for Competition Law and Policy in the New Economy: <i>Yandex v. Google</i> , <i>Kaspersky v. Microsoft</i> , the Bayer-Monsanto Merger and Beyond	
<i>A. Ivanov</i>	473
§30.01 Introduction	473
§30.02 Intellectual Property Fetishism	476
§30.03 Outmaneuvering the Law	481
§30.04 Conclusions	489
CHAPTER 31	
Intersection Between Intellectual Property Law and Competition Law in South Africa	
<i>D. Dingley</i>	491
§31.01 Introduction	491
§31.02 Alignment of IP and Competition Policy in South Africa	492
§31.03 Competition Law Exemptions for the Exercise of IP Rights	497
§31.04 Notifiable Mergers in Terms of the Competition Act That Involve the Acquisition of IP Rights	500
§31.05 Prohibited Practice and Abuse of Dominance Contraventions under the Competition Act Involving IP Rights	502
§31.06 Remedies for Contraventions of Competition Law in Relation to IP	509
§31.07 Conclusions	509
CHAPTER 32	
U.S. Intellectual Property and Competition Law	
<i>M.A. Carrier</i>	511
§32.01 Introduction	511
§32.02 Tension	511
§32.03 Refusals to License	512
§32.04 Pharmaceutical Industry	513
§32.05 Settlements	515
[A] <i>Actavis</i>	515
[B] Post- <i>Actavis</i> Caselaw	516
[1] Payment	516
[2] Patent Merits	517
[3] Rule of Reason	518
[4] Pleading Requirements	519
[5] Causation	520
§32.06 Product Hopping	521
§32.07 Standard Setting	523
§32.08 Standard-Essential Patents	525

## Table of Contents

---

§32.09 Patent Pools	527
§32.10 Conclusion	528
Epilogue	
<i>Richard Whish</i>	529
Index	531

**Umwelt-Wirtschaftsstrafrecht : 9. Schweizerische Tagung zum Wirtschaftsstrafrecht**

Schweizerische Tagung zum Wirtschaftsstrafrecht, 9., 2016, Zürich [VerfasserIn]; Ackermann, Jürg-Beat [HerausgeberIn]; Hilf, Marianna Johanna [HerausgeberIn]

Zürich : Basel : Genf : Schulthess; 2017

# Inhalt

<b>Umwelt-Wirtschaftsstrafrecht Rechtsgüter – Normkonzepte – Sanktionen</b>	9
<b>Europäisches Umwelt-Wirtschaftsstrafrecht – Fokus: praktische Bedeutung für Schweizer Unternehmen</b>	25
<b>Schweizerisches Umwelt-Wirtschaftsstrafrecht – Dogmatik für die Praxis. Verwaltungsakzessorietät am Beispiel bewilligungsbezogener Straftatbestände</b>	59
<b>Umwelt-Wirtschaftsstrafrecht – Unternehmensstrafbarkeit im Bereich der Umwelt(schutz)delikte</b>	89
<b>Legal Compliance im Umwelt-Wirtschaftsstrafrecht</b>	115
<b>Umweltstrafverfahren in der Praxis – Teil 1</b>	127
<b>Umweltstrafverfahren in der Praxis – Teil 2</b>	137

<b>Umwelt-Wirtschaftsstrafrecht aus staatsanwaltschaftlicher Sicht</b>	157
<b>Umwelt-Wirtschafts-Strafrecht – Sicht des Anwalts. Ein rechtspolitischer Werkstattbericht</b>	165