Concurrences

REVUE DES DROITS DE LA CONCURRENCE | COMPETITION LAW REVIEW

Untangling the inextricable: The notion of "same offence" in EU competition law

Article | Concurrences N° 3-2020 | pp. 59-68

Pierpaolo Rossi
pierpaolo.rossi@ec.europa.eu
Senior Legal Expert
European Commission, Legal Service, Brussels

Valentina Sansonetti
valentina.sansonetti@gmail.com
Legal Expert
Single Resolution Board, Brussels

INSTITUT de droit de la concurrence

Article

Pierpaolo Rossi*
pierpaolo.rossi@ec.europa.eu
Senior Legal Expert
European Commission, Legal Service, Brussels

Valentina Sansonetti*
valentina.sansonetti@gmail.com
Legal Expert
Single Resolution Board, Brussels

Untangling the inextricable: The notion of "same offence" in EU competition law

ABSTRACT

In the EU, the *ne bis in idem* principle restricts the ability of enforcement authorities to prosecute or punish the same defendant for the same criminal offence more than once. That protection applies to competition fines due to its punitive and deterrent nature and its degree of severity. While in that area, the ECJ has traditionally held notably in the field of competition that the notion of same offence entails that the legal interest protected must be the same, the ECJ has also affirmed, in apparently contradictory terms, that in other circumstances, the legal interest protected is not relevant for the purposes of establishing the existence of a same offence.

Le principe ne bis in idem *dans l'UE limite la capacité des autorités compétentes de poursuivre ou de punir le même accusé pour une même infraction pénale plus d'une fois. Cette protection s'applique aux amendes de concurrence en raison de leur caractère punitif et dissuasif ainsi que de leur gravité. Alors que dans ce domaine, la CJUE a traditionnellement jugé que dans le domaine de la concurrence la notion de 'idem' implique que l'intérêt juridique protégé doit être le même, la CJUE a également affirmé, en termes apparemment contradictoires, que dans d'autres circonstances, l'intérêt juridique protégé n'est pas pertinent aux fins d'établir l'existence d'une même infraction.*

I. The *ne bis in idem* principle and EU law

1. *Ne bis in idem* is an established general principle of EU law, restricting the ability of law enforcement authorities to prosecute or punish a same defendant for a same criminal offence more than once.[1] The aim of the principle is to prohibit the repetition of criminal proceedings after a first absolution or conviction, as reflected by the wording of Article 50 of the Charter of Fundamental Rights ("Charter").[2]

2. Preceding the Charter, on 22 November 1984 the Contracting States of the European Convention on Human Rights (ECHR) signed Protocol 7 to the ECHR. Article 4 of this Protocol includes the *ne bis in idem* principle,[3] with an equivalent formulation but the scope limited to a same Contracting State.

3. Article 4 of Protocol 7 to the ECHR is relevant for interpreting Article 50 of the Charter. In accordance with Article 6(1) TEU, the provisions of the Charter "*have the same legal value as the Treaties*." Moreover, pursuant to Article 52(3) of the Charter "[i]*n so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention*."

4. A different version of the *ne bis in idem* protection is laid down in Article 54 of the Convention Implementing the Schengen Agreement (CISA), forbidding successive prosecutions for the "*same acts*" but only if the first penalty was

1 B. van Bockel (ed.), *Ne Bis in Idem in EU Law* (Cambridge: Cambridge University Press, 2016).

2 Article 50—"Right not to be tried or punished twice in criminal proceedings for the same criminal offence"—provides: "No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law."

3 Article 4 of Protocol 7 to the ECHR—"*Right not to be tried or punished twice*"—provides:
"1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.
2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.
3. No derogation from this Article shall be made under Article 15 of the Convention."

*All views expressed in this article are strictly personal. This article was completed on 1 June 2020.

enforced or can no longer be enforced in another jurisdiction.[4] That provision indisputably offers a broader protection against the risks of double jeopardy as it protects against the same facts being prosecuted twice, rather than the same offence. That can be explained, since Article 54 CISA was intended to minimise the risks of duplicate prosecutions of a same crime even if qualified as a different offence in a second Schengen State.

5. Although originally limited to national criminal law, the *ne bis in idem* principle in EU law has registered significant developments with the multiplication of disciplines in the economic and financial areas, such as the protection of the EU financial interests, market abuse, money laundering,[5] and, most importantly, competition that constitutes the sole example in the EU of a complete punitive law system subject to judicial review by the EU Courts.

6. In determining the notion of criminal offence to which the *ne bis in idem* principle applies, the EU courts, following the jurisprudence of the ECtHR, take into account the punitive and deterrent nature and the degree of severity of penalties which may be imposed under the law, besides the *nomen juris* of the offence. In *Engel*, the ECtHR established that to qualify an offence as criminal it is necessary to look at two other criteria, namely, its nature and the intensity or degree of severity of the penalty imposed on the offender.[6]

7. The debate about the scope of the *ne bis in idem* principle reflects the differences in the way the principle is construed in the different national traditions.[7] On the one hand, the prohibition of double punishment or *Anrechnungsprinzip*—literally the principle of crediting—means that a first punishment inflicted in criminal proceedings should be credited or offset against a second punishment, so that there is no cumulation. On the other hand, the prohibition of double prosecution or *Erledigungsprinzip*—literally the principle of settlement—means that once a penalty proceeding is finalised with either conviction or acquittal, no new trial can be initiated.[8]

8. The wording of both Article 4 of Protocol 7 to the ECHR and Article 50 of the Charter may suggest that the two principles apply jointly, covering different aspects of the *ne bis in idem* protection. However, crediting and settlement cannot be seen as cumulative. While there cannot be a second trial without a first trial, there can certainly be two punishments in a single trial, without any crediting of the first punishment against the second punishment but just the cumulation of the two. This is the case of concurring offences (*concours d'infractions*) being sanctioned in the same trial, which is the norm in national punity systems. Should one take the view that the two principles (crediting and settlement) are cumulative, then the effective scope of application of the principle would be unnecessarily broader, since no concurrent penalties could be imposed even in the same trial. But since this is not acceptable, it follows that the 'true' *ne bis in idem* is limited at avoiding duplication of proceedings even if two penalties are applied. It is a principle inspired to procedural efficiency and legal certainty that forbids the repeat of final proceedings (*res judicata*).

9. The case law of the ECJ in the area of competition confirms that finding. In *PZU*,[9] the ECJ acknowledged that a national competition authority could impose two separate fines in a same decision, one under national law and the second for violating EU law, for one anticompetitive conduct. The case concerned a preliminary ruling reference dealing with proceedings by the Polish competition authority against an insurance company for an abuse of dominant position on the basis of infringements of both national and EU competition laws. Asked about the legality of double punishments for the same acts, the ECJ ruled, in essence, that *non bis in idem* does not preclude a national competition authority from fining an undertaking for an infringement of national competition law and Article 102 TFEU in a single decision.

10. The ECJ recalled its previous case law according to which the principle of *ne bis in idem* only applies when there is a repetition of proceedings. Accordingly, that is not the case when a national authority applies both national and EU competition law in a single decision. That interpretation is coherent with the objectives of the principle of *ne bis in idem* to ensure legal certainty and fairness, so that once a person has been tried in accordance with the applicable laws, it will not be tried again for the same offence in a second proceedings. The ECJ therefore confirmed a narrower interpretation of Article 50 of the Charter, as "*that article thus specifically targets the repetition of proceedings concerning the same material act which have been concluded by a final decision. In a situation where, in accordance with the second sentence of Article 3(1) of Regulation No 1/2003, a national competition authority applies national competition law and Article* [102] *in parallel, there is in fact no such repetition.*"[10]

11. That judgement confirms that pursuing two concurring offences (*concours d'infractions*) in the same proceeding does not violate the *ne bis in idem* principle.

---

4 Convention signed in Schengen on 19 July 1990, OJ L 239, 22.9.2000, p. 19. Article 54 in Chapter 3 of that Convention, entitled "*Application of the ne bis in idem principle*," provides: "*A person whose trial has been finally disposed of in one Contracting Party may not be prosecuted in another Contracting Party for the same acts provided that, if a penalty has been imposed, it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing Contracting Party*."

5 G. Di Federico, EU Competition Law and the Principle of Ne Bis in Idem, *European Public Law*, Vol. 17(2), 2011, pp. 241–260.

6 ECtHR, judgement of 8 June 1976, *Engel a. O. v. Netherlands*, CE:ECHR:1976:0608JUD000510071, para. 82.

7 J. A. E. Vervaele, The transnational *ne bis in idem* principle in the EU: Mutual recognition and equivalent protection of human rights, *Utrecht Law Review*, Vol. 1(2), December 2005, p. 100.

8 A. Klip & H. van der Wilt, The Netherlands *non bis in idem*, *Revue internationale de droit pénal* 2002-3/4, Vol. 73, p. 1094; C. van den Wyngaert & G. Stessens, The International *Non Bis in Idem Principle*: Resolving Some of the Unanswered Questions, International and Comparative Law Quarterly, Vol. 48(4), 1999, p. 781.

9 Judgement of 3 April 2019, *Powszechny Zakład Ubezpieczeń na Życie (PZU)*, Case C-617/17, EU:C:2019:283.

10 Ibid., pt 32. In such circumstances, the ECJ held that the severity of the two fines imposed must not be disproportionate; but this relates to the observance of Article 49(3) of the Charter.

Arguably, the same is true if two successive proceedings are necessary to separately pursue the two concurring offences provided that there is no repetition of proceedings. On the other hand, when the two successive penalty proceedings concern a same offence the *ne bis in idem* principle is infringed because there is repetition of proceedings. However, the ECJ has ruled that when the two offences are manifestly identical, they should be pursued by single proceedings to avoid repetitions.

II. Pursuing two materially identical offences in two different legal orders for the ECJ

12. Although initially confined to the realm of national law, in the EU *ne bis in idem principle* found recognition in cross-border cases where two legal orders are concerned, however, with two different connotations, respectively in the area of judicial cooperation and competition.

13. In *Van Esbroeck*,[11] a case relating to the application of Article 54 CISA, the ECJ held that in the case of parallel prosecutions under two distinct national legal orders of a same conduct with cross-border connotations the notion of same offence entails the identity of the facts (*idem factum*), not of the offences (*idem crimen*), since accepting the separate qualifications of the same criminal conduct by two countries would lead to systematically hinder the free movement between Member States by artificially doubling the penalties for the same material offence.[12] This was to preserve the free movement of citizens embedded in the Schengen Agreement. The case dealt with a preliminary ruling reference from a Belgian court, where, after having served a sentence in Norway for importation of narcotics into that country, Mr Van Esbroeck was subject to trial upon his re-entry in Belgium for exporting narcotics to Norway. It was evident that Mr Van Esbroeck was being tried again for the same material offence corresponding to the same cross-border crime of exporting/importing narcotics. In such circumstances, the ECJ deemed irrelevant the different legal qualifications of the same material offence by the two legal orders (Belgium and Norway).

14. The ECJ has developed a different jurisprudence in the area of competition. That case law concerns the exercise of concurrent competences to enforce EU antitrust rules by the Commission and a Member State, both pursuing a same anticompetitive conduct, infringing both national and EU law. Such parallel proceedings were lawful under Regulation 17/62/EEC, the first regulation governing EU antitrust proceedings. Now, under Article 3(1) of Regulation No. 1/2003,[13] when national authorities consider that an anticompetitive behavior falling under their jurisdictional competence constitutes an offence of EU antitrust rules, they shall also apply Articles 101 or 102 TFEU, in addition to their national rules. It follows that in the EU system, parallel proceedings can be necessary to pursue the same infringement of Articles 101 or 102 TFEU by either two national competition authorities or a competition authority and the Commission, since each proceedings will concern a separate offence.

15. Regulation No 1/2003 thus provides for a common system of enforcement, whereby a national authority sanctions an offence of Articles 101 or 102 TFEU, in parallel with its national offence. That double enforcement of EU and national antitrust rules should take place in the same proceedings pursuant to Article 3(1) of Regulation No. 1/2003.[14]

16. Since under Article 3(1) of Regulation No. 1/2003 the enforcement of Articles 101 and 102 TFEU is decentralised, without there being a one-stop-shop system, it follows that national authorities and the Commission are empowered to conduct successive proceedings to sanction an infringement, yet each under its own prerogatives. This entails that, in the case of a cross border anticompetitive conduct or in case of a conduct with transnational effects, another national competition authority may pursue the same infringement for the aspects of relevance in its own jurisdiction. Moreover, the Commission may pursue the same infringement, for the aspects of it that have not been previously pursue by any other national authority. In such situations of multiple prosecutions, however, the system of concurring competences in EU antitrust law entails that each proceeding should only take place with respect to the different aspects or act of

11 Judgement of 9 March 2006, *Van Esbroeck*, Case C-436/04, EU:C:2006:165, pt 36.

12 At pts 35–36 and 38 of the *Van Esbroeck* judgement, the ECJ held:
"35. Because there is no harmonisation of national criminal laws, a criterion based on the legal classification of the acts or on the protected legal interest might create as many barriers to freedom of movement within the Schengen territory as there are penal systems in the Contracting States.
36. In those circumstances, the only relevant criterion for the application of Article 54 of the CISA is identity of the material acts, understood in the sense of the existence of a set of concrete circumstances which are inextricably linked together. (…)
38. (…) the definitive assessment in that regard belongs (…) to the competent national courts which are charged with the task of determining whether the material acts at issue constitute a set of facts which are inextricably linked together in time, in space and by their subject-matter."

13 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, p. 1). Under the pre-existing Regulation 17/62/EEC, the first regulation implementing antitrust rules in the EU, the competition authorities of the Member States only rarely prosecuted infringements under Articles 81 or 82 EC. Instead their intervention was limited to apply their national competition laws, while the Commission applied EU competition rules including with respect to aspects of a same anticompetitive conduct that had not been already investigated by any national authority. Pursuant to Article 3(1) of Regulation No. 1/2003, since 1 May 2004 national competition authorities, when applying national competition law to agreements or practices also covered by then Articles 81 or 82 EC (now Articles 101 and 102 TFEU), should also apply those provisions.

14 That was precisely the case in the situation of the *PZU* judgement. It is not by coincidence that the ECJ ruled at pt 32 that Article 50 of the Charter "*specifically targets the repetition of proceedings concerning the same material act which have been concluded by a final decision.*" The reference to a "*same material act*" (different from "facts," but in our view corresponding to "same material offence") allows distinguishing the two offences, respectively of national and EU laws.

a same competition infringement falling under the jurisdiction of different competent authorities. Such a decentralized system postulates the possibility of successive enforcement proceedings by different competent authorities for the same anticompetitive acts. The question is then whether the *ne bis in idem* principle stands in the way of such parallel proceedings.

17. As noted by Wils,[15] in the system of concurrent competences in the EU within the area of competition, the Commission and national competition authorities share parallel competences to apply EU competition rules, and, as far as the national competition authorities are concerned, to also apply national competition rules. More particularly, when applying EU competition rules, a national authority has only the limited possibility to pursue the aspects of the competition infringement falling within its jurisdiction. Therefore, should another national authority decide to separately pursue a same infringement of Articles 101 or 102 TFEU that another authority has pursued, it could only do so with respect to other aspects of the infringement not covered already by the first national authority, to avoid conflicts. That system is therefore better defined as a system of shared competences, where the actions of the different authorities are designed not to overlap. On the other hand, the Commission which in applying Articles 101 and 102 TFEU has jurisdiction encompassing all Member States and the EEA Countries, should also respect the national prerogatives being inherent in the system of shared competences, and only pursue offences that concern aspects of the infringement not covered already by another national authority, to avoid itself violating the system of shared competences embedded in Regulation No 1/2003.

18. That system tends to optimise the allocation of cases between the national competition authorities and the Commission within the European Competition Network (ECN) laid down in Article 13 of Regulation No. 1/2003. For example, to ensure that the infringements of Articles 101 and 102 TFEU are dealt with by the most appropriate authority within the ECN, Article 13 of Regulation No. 1/2003 allows a competition authority to suspend or close its case on the ground that another authority is dealing with it or has already dealt with it. The objective of that arrangement is that each case is handled by a single authority. That objective is, however, only a possibility, since it is without prejudice to the other possibility, expressly foreseen by Article 3 of Regulation No. 1/2003, that the national authorities concurrently apply national competition law, each one within its respective jurisdiction, in parallel with other authorities and the case being, the Commission.

19. The EU system of shared competences should be understood as complete. If the *ne bis in idem* principle is intended to protect offenders against duplicate proceedings resulting from duplicative criminal trials, no duplication arises when each authority investigates different and separate aspects of a same anticompetitive conduct, because each authority would prosecute a different offence.

20. The case law of the ECJ in the area of competition in fact confirms that separate proceedings can legitimately take place if pursuing different aspects of a same infringement for which each authority is separately competent, provided that there is no overlap. The seminal *Walt Wilhelm* judgement[16] concerned a preliminary ruling reference by a German court where a decision by the *Bundeskartellamnt* (Federal Cartel Bureau) had imposed fines on certain undertakings for their participation in a cartel after the Commission had, on its own motion, initiated separate proceedings against four of the concerned undertakings, for which the German authority had then also acted but for separate aspects of the agreements in question. In such circumstances, the ECJ held that the *ne bis in idem* principle did not restrain the possibility for the national authority to act despite imposing a second penalty for the same anticompetitive agreement. This was because "*The possibility of concurrent sanctions need not mean that the possibility of two parallel proceedings pursuing different ends is unacceptable.*" That possibility "*follows in fact from the special system of the sharing of jurisdiction between the Community and the Member States with regard to cartels.*" [17]

21. The ECJ held that the then applicable Regulation (EEC) No 17/62 only dealt with the competence of the authorities of the Member States in so far as they were authorised to apply the then applicable Article 85(1) and 86 EEC (now Articles 101(1) and 102 TFEU), in situations in which the Commission had not taken action, while it did not apply to situations in which national competition authorities apply national competition laws only. In such circumstances, the ECJ held that both the Commission and the national authority were pursuing different offences, which excluded the risk of *bis in idem* because "*Community and national law on cartels consider cartels from different points of view. Whereas article (…)* [101(1) TFEU] *regards them in the light of obstacles which may result for trade between the Member States, each body of national legislation proceeds on the basis of the considerations peculiar to it and considers cartels only in that context.*"[18]

22. In *Aalborg Portland*,[19] the ECJ again dealt with the legality of distinct proceedings brought by the Commission against a cartel between producers of cement throughout the EU that had already been sanctioned for a part by the Italian competition authority. In that case, the Commission had imposed fines on tens of undertakings active in the production of grey and

15 W. P. J. Wils, The Principle of 'Ne Bis in Idem' in EC Antitrust Enforcement: A Legal and Economic Analysis, *Concurrences* 1, 2004, pp. 1-9

16 Judgement of 13 February 1969, *Walt Wilhelm and others v. Bundeskartellamt*, Case 14/68, EU:C:1969:4.

17 Ibid., pt 11.

18 Ibid., pts 3–6.

19 Judgement of 7 January 2004, *Aalborg Portland and others v. Commission*, Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P, EU:C:2004:6.

white cement. In an appeal before the ECJ, two of the undertakings involved complained that the Commission proceedings had led to investigate certain contracts and agreements that had already been examined by the Italian competition authority, resulting in them being held responsible twice for the same conduct, allegedly contrary to the principle *ne bis in idem*.

23. In his Opinion in one of the cases on appeal,[20] the AG Ruiz-Jarabo Colomer made a detailed examination of the concurrent enquiries by the Italian competition authority and the Commission and advised the ECJ to hold that, although the notion of "*identity of the protected legal interest*" was fulfilled since both prosecutions had the same subject matter, namely the protection of free competition in the EU,[21] there was no breach of the *ne bis in idem* principle because the sanctions imposed by the Italian authorities had a different object than those imposed by the Commission as these concerned different agreements than those for which the Commission has imposed fines and ultimately different facts.[22]

24. The ECJ found that the contested decision did not commit any violation of the *ne bis in idem principle* since "*the application of this principle is subject to the threefold condition that in the two cases the facts must be the same, the offender the same and the legal interest protected the same*,"[23] confirming that the Commission decision "*had a different object from that pursued by the decision of the Italian competition authority*" concerning different anticompetitive aims, although the same supply contracts.[24]

25. The *Aalborg Portland* judgment shows how the distinction between differing 'objects or aims' of an infringement and differing 'facts' is quite blurred in the area of competition, and this is a specificity of competition. It is the separate aims or objects in a same agreement that allows distinguishing different offences as national or EU centred. Without consideration to such different aims, it would be difficult to distinguish an offence from the facts. It is possible to conclude from *Aalborg Portland* that only some of the anticompetitive acts of the conduct were pursued by the Italian national authority and therefore, the Commission could pursue other aspects of the same conduct not investigated by the Italians, without violating the *ne bis in idem* principle.

26. The threefold condition was last confirmed by the ECJ in *Toshiba*,[25] where the ECJ again dealt with a global, lasting cartel that was pursued by the Commission under EU law and a Czech competition authority under national law. The case originated from a preliminary ruling reference relating to the compatibility of the *ne bis in idem* rule with a decision by the Czech authority. The authority fined certain undertakings accused of participating in an international cartel between 1988 and 2004 on the market for gas insulated switchgear. Such undertakings had also been sanctioned by the Commission for a violation of Article 101 TFEU. As background, the Commission had informed the Czech authorities of an enquiry concerning the activities of the cartel in the EU territory until May 2004, i.e., until the accession of the Czech Republic to the Union. The Commission had adopted a decision in January 2007 finding that certain undertakings had taken part in a complex EU cartel between January 1988 and May 2004. In February 2007, the Czech competition authority also decided to sanction the Czech side of the cartel by applying Czech law. The Czech authorities established that that cartel had taken place from July 2001 to March 2004, i.e., before accession, and sanctioned it accordingly.

27. Against such facts, the preliminary ruling questions in *Toshiba* concerned the interpretation of the rules governing the relationship between Article 101 TFEU and the national cartel prohibition. More particularly, the main question raised in *Toshiba* was whether, under EU law, the same cartel violating both Article 101 TFEU and the applicable national provision could only be sanctioned by the Commission, which had acted first.

28. The ECJ confirmed the possibility of concurring sanctions being applied by separate competent authorities, each acting within the different scope of its respective jurisdictions and laws—namely, EU and national competition laws—because each was dealing with a different set of facts. The ECJ recalled that "*in competition law cases,* (…) *the application of this principle is subject to the threefold condition that in the two cases the facts must be the same, the offender the same and the legal interest*

20 Opinion of AG Ruiz-Jarabo Colomer of 11 February 2003, *Buzzi Unicem v. Commission*, Case C-217/00 P, EU:C:2003:85.

21 Ibid., pts 173–179. The AG observed that "there are three identities, therefore, which must be present in order for the principle to apply: the same facts, the same offender and a single legal right to be protected (…) The unity of the legal right to be protected is beyond doubt. The rules which guarantee free competition within the European Union do not allow a distinction to be drawn between separate areas, the Community area and the national areas, as though there were watertight compartments. Both sectors are concerned with the supervision of free and open, competition in the common market, one contemplating it in its entirety and the other from its separate components, but the essence is the same."

22 Ibid., pts 180–184. The AG noted that "the decision of the [Italian competition authority] related to the supply contracts and the cooperation agreements between the three Italian producers (Unicem, Cementir and Italcementi) and Calcestruzzi, whereas the intervention of the Community authorities concerned the agreement concluded between those cement producers to prevent Calcestruzzi importing cement from Greece (…) There were two separate practices: one with external significance, which sought to prevent imports of Greek cement by Calcestruzzi and the other being merely of national significance, namely the agreement between the three cement producers and Calcestruzzi itself. In the first, the parties responsible were Unicem, Italcementi and Cementir, since Calcestruzzi appeared as a victim, while in the second the four companies formed part of the agreement. The agreement between the three cement producers to bring pressure to bear on the party who later signed the contracts of supply is in itself a [different] agreement which would attract a penalty."

23 ECJ, Aalborg Portland, pt 338: "(…) Under that principle, therefore, the same person cannot be sanctioned more than once for a single unlawful course of conduct designed to protect the same legal asset."

24 Ibid., pt 339: "The Court of First Instance merely pointed out the difference in object between, on the one hand, the supply contracts and the cooperation agreements signed between Calcestruzzi and the three Italian cement producers and, on the other hand, the part of the agreement between those cement producers which sought to prevent imports of cement from Greece by Calcestruzzi. Participation in the Cembureau Agreement on non-transhipment to home markets constitutes the infringement sanctioned by the Cement Decision and the Court of First Instance considered that the Cement Decision had a different object from that pursued by the decision of the Italian competition authority in respect of the supply contracts and the cooperation agreements between Calcestruzzi and the Italian cement producers."

25 Judgement of 14 February 2012, *Toshiba Corporation*, Case C-17/10, EU:C:2012:72.

protected the same."[26] That was not an anodyne conclusion since, in her opinion in that case, the AG Kokott had expressly invited the ECJ to unify its case-law as to the *ne bis in idem* protection in competition with the one in the area of justice, with specific reference to the *Van Esbroeck* judgement.[27] The ECJ could have repealed the unity of legal interest condition but instead confirmed that unity.[28] This is arguably even more important since the ECJ eventually concluded in *Toshiba* that in "*the case at issue in the main proceedings,* (…) *in any event, one of the conditions thus laid down, namely identity of the facts, is lacking.*"

29. The judgement shows how close the two prongs of *idem*, namely the *idem factum* and *idem crimen*, are in the area of competition. In *Toshiba*, the ECJ held, it was impossible to determine the anticompetitive nature of the facts without qualifying them under the different lenses of Article 101 TFEU and the Czech law. It confirms that the 'same acts' are undiscernible from the 'offence', without a legal analysis of the aims, objectives and market effects of the conduct, the material facts alone are meaningless.

III. What a "same offence" is for the ECtHR

30. Article 4 of Protocol 7 ECHR prohibits a second prosecution of a same offence within the legal order of a same Contracting State.

31. Over the years, the ECtHR had alternated between placing the emphasis on the unity of the facts and of their legal qualifications. With its *Zolotukhin* judgement[29] the ECtHR decided to impose the unity of facts as the sole requirement for *idem*. The case concerned successive administrative (disciplinary) and criminal penalty proceedings to sanction a continuous and complex conduct and repeated acts of military disobedience in close time and space circumstances. The first disciplinary proceedings excluded their criminal qualification of the facts, while a second trial added criminal charges to the first disciplinary punishment. In such circumstances, the ECtHR ruled that the notion of "*same offence*" was to be intended as including all "*those facts which constitute a set of concrete factual circumstances involving the same defendant and inextricably linked together in time and space, the existence of which must be demonstrated in order to secure a conviction or institute criminal proceedings.*" Accordingly, the ECtHR held that the *ne bis in idem* principle prohibited "*the prosecution or trial of a second 'offence' in so far as it arises from identical facts or facts which are substantially the same.*"[30]

32. The ECtHR in *Zolotukhin* is evocative of the *Van Esbroeck* case law of the ECJ relating to the application of Article 54 CISA,[31] in which the *ne bis in idem* protection was applied in a cross-border context with a view to preserving the free movement of citizens embedded in the Schengen Agreement. In *Zolotukhin*, the ECtHR held instead that multiple offences resulting from different legal classifications as administrative or criminal of a unitary conduct given in a same legal order, were in fact a single offence.

33. Although the appraisal of the "*identical facts or from facts that are substantially the same*" was specific to the *Zolotukhin* facts, the ECtHR presented it as a general standard. In principle a single legal order is designed so that identical facts or facts that are substantially the same are seldom qualified as separate offences. That would be illogical since for a legislator to each criminal conduct corresponds a punishable offence. However, when the same facts give rise to different offences like in a *concours d'infractions* it is certainly legitimate to apply two penalties to sanction two concurring offences arising from the same facts. Different aspects of the same acts and repeated acts of the same kind constitute concurring offences giving rise to a real *concours*."[32]

34. However, the *Zolotukhin* case dealt with specific circumstances where there was no real *concours d'infractions*, but rather a *concurs apparent d'infractions*,[33] as same conduct was qualified as two offences, both criminal and administrative (disciplinary). Since these proceedings were staggered, as if they were happening in two separate legal orders, the ECtHR held, by analogy to *Van Esbroeck*, in such circumstances Article 4 of Protocol 7 was to be understood as prohibiting the prosecution or trial of an individual for a second offence in so far as it arose from identical facts or facts which were substantially the same as those underlying the first offence. It should be stressed, however, that the two concurring

26 Ibid., pt 97.

27 See Opinion of AG Kokott of 8 September 2011 in Toshiba, Case C-17/10 EU:C:2011:552, pt 118: "There is no objective reason why the conditions to which the ne bis in idem principle is subject in competition matters should be any different from those applicable to it elsewhere. For, in the same way as, within the context of Article 54 of the CISA, that principle serves to guarantee the free movement of EU citizens in EU territory as a 'single area of freedom, security and justice' so, in the field of competition law, it helps to improve and facilitate the business activities of undertakings in the internal market and, ultimately, to create uniform conditions of competition (a 'level playing field') throughout the EEA."

28 Ibid., pt 115.

29 ECtHR [GC], 10 February 2009, *Sergey Zolotukhin v. Russia*, No. 14939/03, ECHR 2009, paras. 79–82.

30 Ibid., para. 82.

31 ECJ *Van Esbroeck*, pt 36.

32 A "*concours d'infractions*" occurs when a single (*concursus idealis*), or several acts (*concursus realis*) are qualified as different criminal offences, pursuing different legal interests, so that different criminal penalties must be applied. This is the case, for example, of a driver that by exceeding the speed limit causes a fatal accident and kills a pedestrian. Speeding is a separate offence from homicide and is separately punished.

33 A "*concours apparent d'infractions*" occurs when a single criminal act is qualified as constituting several different criminal offences. This could seem an impossibility as in most cases to each criminal act corresponds one criminal offence. But the applicable criminal law may consider an element of a more complex criminal conduct as a separate offence if taken in isolation. This is the case, for example, of someone beating his victim to death. It is clear that the offender is responsible, with the same conduct, of inflicting his victim both injuries and death. If injury and death are taken in isolation, they constitute separate criminal offences. But the offender will only be tried for homicide, not for both because death absorbs the injuries.

proceedings concerned exactly the same conduct, so that there was a *concurs apparent d'infractions*, between administrative and criminal offences.

35. The specific *concours apparent* in *Zolotukhin* follows from the proliferation of offences due to the fading distinction between administrative penalties and crimes under the *Engel* jurisprudence of the ECtHR. The transformed nature of administrative offence into criminal, because of its deterring aim and the degree of severity of the penalties involved, comes at the expense of the internal consistency of a punitive order and creates an unintended *concours apparent d'infractions*, with duplication of offences for a same conduct. However, under the system of shared competences for the enforcement of Articles 101 and 102 TFEU, the national competition authorities cannot apply criminal penalties in parallel with administrative fines. In fact, pursuant to Article 3(2) of Regulation No 1/2003, the ability of applying stricter penalties than administrative fines is limited to national competition infringements and does not concern the application of Articles 101 and 102 TFEU. It follows that when only pursuing infringements of Articles 101 and 102 TFEU the competent authorities would not incur in a duplication of administrative/criminal penalties for the same facts.

IV. Same offence in a same legal order for the ECJ

36. After an initial hesitation in the *Fransson* judgement,[34] with three contemporaneous judgements the ECJ also confirmed that a "*concours apparent*" between two offences, one administrative and one criminal, concerned the same *idem*. The three judgements dealt with separate preliminary ruling references by Italian courts, all raising the same issue of concurring criminal and administrative proceedings of a criminal nature in the same legal order. In *Menci* the dual administrative/criminal offence was the non-payment of VAT, which is also a EU own resource.[35] In *Garlsson* and *Di Puma*[36] the concerned offences were market abuse.

37. In *Menci*, taken as reference, Mr. Menci as sole owner of his firm had failed to pay within the prescribed deadlines a VAT debt he had declared and was therefore charged of committing both a tax offence and a crime, as the non-payment exceeded a certain amount. Since the incriminated facts concerned the same acts, the national court in the criminal proceedings asked to the ECJ whether in the circumstances of that case the *ne bis in idem* protection would prohibit the criminal prosecution in so far as it arose from facts which were substantially the same as those underlying the administrative offence for which the same individual had already been sanctioned.

38. Given that the EU financial interests were at stake, the ECJ had to balance the effectiveness of EU law with the protection against double incriminations for the same facts as held in *Zoulotukhin*. Besides, Member States were required to take all legislative and administrative measures to ensure the timely collection of VAT and to fight against fraud and all other illegal activities by sufficiently dissuasive, effective and proportionate measures.[37] To fight against fraud and other irregularities, Member States have freedom to choose the penalties, which may take the form of administrative penalties, criminal penalties or a combination of the two. [38]

39. The choice to impose cumulate penalties in Italy was therefore legitimate,[39] but was it allowed even if it resulted in two successive prosecutions? In *Fransson* the ECJ held that "*the* ne bis in idem *principle* (…) *does not preclude a Member State from imposing successively, for the same acts of non-compliance* (…) *in the field of VAT, a tax penalty and a criminal penalty in so far as the first penalty is not criminal in nature.*" But, it was clear in *Menci* that both penalties were criminal in nature. Therefore, in his opinion,[40] AG Sanchez-Bordona advised the ECJ to declare that the *idem* condition was fulfilled. In its observations, the Commission agreed, but requested to leave out the area of competition, "*until the arrival of other cases more suitable for discussion of this issue*".[41]

40. With a landmark judgement, the ECJ avoided referring to the area of competition but decided that in the circumstances of the *Menci* case the notion of *idem* was to be intended as only requiring the "*identity of the material facts, understood as the existence of a set of concrete circumstances which are inextricably linked together which resulted in the final acquittal or conviction of the person concerned.*"[42] The ECJ held however that the second prosecution was a legitimate limitation of the *ne bis in idem* protection because justified *"for the purpose of achieving … complementary aims relating, as the case may be, to different aspects of the same unlawful conduct at issue,"*[43] pursuant to Article 52(1) of the Charter.

---

34 Judgement of 26 February 2013, *Åkerberg Fransson*, Case C617/10, EU:C:2013:105.

35 Judgement of 20 March 2018, *Menci*, Case C-524/15, EU:C:2018:197.

36 Judgements of 20 March 2018, *Garlsson and Others*, Case C-537/16, EU:C:2018:193; and *Di Puma and Others*, Joined Cases C-596/16 and C-597/16, EU:C:2018:192.

37 The financial interests of the EU include, in particular, revenue arising from VAT (*see*, to that effect, judgement of 5 December 2017, *M.A.S. and M.B.*, Case C42/17, EU:C:2017:936, pts 30 and 31, and the case law cited).

38 ECJ *Åkerberg Fransson*, pts 34-36..

39 In this respect, the ECJ has held that criminal penalties may be essential to combat certain cases of serious VAT fraud in an effective and dissuasive manner. Accordingly, in that regard, Member States are required to adopt criminal penalties that are effective and dissuasive (*see*, to that effect, ECJ, *M.A.S. and M.B.*, pts 34 and 35.

40 Opinion of AG Sánchez-Bordona of 12 September 2017, *Menci*, Case C-534/15, EU:C:2017:667.

41 Ibid., footnote 86.

42 ECJ, *Menci*, pt 35.

43 ECJ, *Menci*, pt 44.

41. In *Menci*, the double penalty proceedings met an objective of general interest and contained rules ensuring that the duplicate administrative/criminal proceedings were proportionate and would only lead to cumulative punishments where strictly necessary under the law.[44] After an attentive review of the circumstances of the *Menci* case and subject to the confirmation by the national referring court, the ECJ held that the double penalty system like the one applicable in Italy could be considered proportionate and did not go beyond what was strictly necessary to sanction a same non-payment of VAT.

42. In sum, it appears that even if the differing legal interests protected were irrelevant in the circumstances of the dual administrative/criminal prosecution in *Menci*, they were found to be a legitimate reason to exceptionally derogate from a strict standard of *idem* based on the sole relevance of the identity of the facts pursuant to Article 52(1) of the Charter.

V. The relevance of the "unity of the legal interest protected" in the area of competition

43. To understand *Menci*'s idea of *idem*, one should start by recalling the *dicta* on the irrelevance of the unity of the legal interest:

"*35. According to the Court's case-law, the relevant criterion for the purposes of assessing the existence of the same offence is identity of the material facts, understood as the existence of a set of concrete circumstances which are inextricably linked together which resulted in the final acquittal or conviction of the person concerned* (…). *Therefore, Article 50 of the Charter prohibits the imposition, with respect to identical facts, of several criminal penalties as a result of different proceedings brought for those purposes.*

36. Moreover, the legal classification, under national law, of the facts and the legal interest protected are not relevant for the purposes of establishing the existence of the same offence, in so far as the scope of the protection conferred by Article 50 of the Charter cannot vary from one Member State to another."

44. Although that seems to represent a general standard for *idem*, in point 36, the ECJ explains that the reason for the irrelevance of the unity of the legal interest criterion is in fact limited to situations, like the one in *Menci*, where the scope of the protection could vary from one Member State to another.

45. That *dictum* recalls the *Van Esbroeck* judgement,[45] where a same offence being qualified differently because two legal orders were concerned and explained that the reason for disregarding the legal qualification was because national criminal laws were not harmonised. But what is the sense of that statement in a case where both proceedings concern the same Member State?

46. One understands that it was the lack of harmonisation between the punitive systems for VAT non-payments in Italy that entailed the dual administrative/criminal proceedings for a same offence. In other Member States however the VAT non-payment could only be subject to a single punishment as a tax offence or a crime. The ECJ then rightly concluded that that lack of harmonisation was the cause of a lesser *ne bis in idem* protection in Italy. A uniform protection under Article 50 of the Charter could be achieved if, in the circumstances of concurrent administrative/criminal trials, the legal classification of the offence under national law was considered irrelevant and instead the unity of the material facts was only considered. However, if, as it is the case in the area of competition, the enforcement of Articles 101 and 102 TFEU is harmonised with competences being shared between the national authorities and the Commission, there would normally be no need to disregard the legal interest protected as requirement for the *idem*. Consideration for such different interests protected consisting in either the protection of EU trade or national trade is indeed the distinguishing element under EU law which avoids risks of duplicate penalty proceedings for a same offence.

47. It appears that in the system of enforcement of Articles 101 and 102 TFEU laid down in Article 3 of Regulation No 1/2003, the Commission is only competent to pursue infringements of Articles 101 and 102 TFEU where trade between Member States is affected. If EU trade is not affected, the national competition authorities are solely competent, under their national rules and within their corresponding jurisdictions to pursue national competition offences. On the other hand, if EU trade is affected, the national authorities and courts are obliged to apply EU competition rules to the agreements and practices these investigate under their national laws. In doing so, to ensure the uniform implementation of EU competition rules, the national authorities and courts are not "*precluded from adopting and applying on their territory stricter national competition laws which prohibit or impose sanctions on unilateral*

44 Ibid., pts 63 and 65. A derogation under Article 52(1) of the Charter could be made if the national referring court ascertained that the second proceedings and/or penalties:
(i) pursued an objective of general interest which is such as to justify such a duplication of proceedings and penalties, making it necessary for those proceedings and penalties to pursue additional objectives;
(ii) contained rules ensuring coordination which limits to what is strictly necessary the additional disadvantage which results, for the persons concerned, from a duplication of proceedings, and
(iii) provided for rules making it possible to ensure that the severity of all of the penalties imposed is limited to what is strictly necessary in relation to the seriousness of the offence concerned.

45 In *Menci*, pt 35, the ECJ recalls its case law in the area of freedom security and justice mirroring *Van Esbroeck*. *See* judgements of 18 July 2007, *Kraaijenbrink*, Case C-367/05, EU:C:2007:444, pt 26 and the case law cited including *Van Esbroeck*, and of 16 November 2010, *Mantello*, Case C-261/09, EU:C:2010:683, pts 39 and 40, which also recalls *Van Esbroeck*.

[individual] *conduct engaged in by undertakings*,"[46] but only with respect to their national rules. It follows that in as far as Articles 101 and 102 TFEU are concerned, in principle there can be no duplicate administrative/criminal proceedings in the sense that would limit the Article 50 protection, as stated in *Menci*. In other words, while the dual administrative/criminal proceedings could be seen as an example of *concours apparent d'infractions* (where two separate offences are absorbed into one), the two offences in competition cases can be seen as a real *concours d'infractions* where the legal interest protected is necessary to distinguish between two offences.

48. Under the harmonised system for the shared enforcement of Articles 101 and 102 TFEU, the Commission and the national authorities apply competition rules in parallel, without in principle overlapping. It is arguably for that that the ECJ has maintained that the unity of legal interest is a necessary requirement for finding an infringement of the *ne bis in idem* principle.[47] That is so because the Commission and the Member State view competition restrictions from different angles and their areas of application do not coincide. It follows that the Commission and the national authorities can deal with separate aspects of a same anticompetitive fact and therefore pursue separate offences, as the ECJ held in *Aalborg Portland*,[48] and like in a "real" *concours d'infractions*.

49. Unlike in the *Menci* situation, "*in the area of competition*" the unity of the legal interest protected is therefore still a necessary requirement to determine the notion of *idem*, as the *Walt Wilhelm*, *Aalborg Portland* or *Toshiba* judgements have confirmed. Because of the high level of harmonisation in the EU, when competition law is applied, the scope of the protection conferred by Article 50 of the Charter would not change from one Member State to another. It follows that under the EU system of shared enforcement of Articles 101 and 102 TFEU there can be no systematic risk of duplicative penalty proceedings when EU competition law is involved that would justify disregarding the unity of the legal interest as necessary requirement for *idem*.

50. That conclusion is also strengthened by the settled case law on the primacy of EU law in areas which are harmonised, including when applying the fundamental rights protected by the Charter.[49] That was emphasized by the ECJ in *Melloni*, holding that, in interpreting Article 53 of the Charter, "*the application of national standards of protection of fundamental rights must not compromise the level of protection provided for by the Charter or the primacy, unity and effectiveness of EU law.*"[50] It follows that the primacy of EU law imposes that the unity of the legal interest protected as the standard applicable in competition cases is to be followed also when the enforcement of competition overlaps with another area of EU law where the enforcement is not harmonised.

51. As regards to the requirement that the rights contained in the Charter conform to the rights guaranteed by the ECHR and the need to have the same meaning and scope as those laid down by that Convention, one should note that "*at the heart of th*[e EU] *legal structure*" is the protection of fundamental rights, which, as clarified in *Fransson*,[51] binds not only the EU institutions but also the Member States when they are acting within the scope of EU law. In that framework, "[t]*he autonomy enjoyed by EU law in relation to the laws of the Member States and in relation to international law requires that the interpretation of* [the] *fundamental rights be ensured within the framework of the structure and objectives of the EU.*"[52] Against this background, it follows from the unique nature of the EU legal system as envisaged by the ECJ in Opinion 2/13[53] that cannot be considered contrary to the consistency between the Charter and the ECHR an interpretation of the notion of same offence in Article 50 of the Charter that ensures that the legal interest protected is a relevant requirement to apply the *ne bis in idem* protection in the fields of EU law that are harmonised such as in the area of competition.

52. Besides antitrust being the sole harmonised area of punitive EU law with a common system of enforcement and juridical review, competition is also an horizontal discipline that overlaps with other regulations governing specific sectors of the economy. That systematically results in antitrust proceedings that concur with materially different offences from competition, for example, with banking rules, trade regulations or privacy rules. Should the *ne bis in idem* protection be interpreted as pre-empting parallel proceedings in the different legal areas concerned, that would effectively lead to situations where the law enforcement of competition rules is impeded.

53. Since, as we have seen, the unity of the legal interest protected should be regarded as the standard applicable where harmonised EU punitive law is applicable, the primacy of EU law demands that infringements of Article 101 and 102 TFEU are duly sanctioned. There, the *ne bis in idem* protection would only apply to repeating afresh proceedings sanctioning a same competition offence because the unity of the legal interest protected is violated. It follows that the irrelevance of the legal qualification of twin offences should be limited to dual proceedings that due to the lack of legal harmonisation risk punishing the same material offence twice (e.g. *concours apparent d'infractions*), but excludes the

46 Regulation No. 1/2003, recital 8.

47 ECJ, *Walt Wilhelm*, pt 3.

48 ECJ, *Aalborg Portland*, pt 338.

49 Judgement of 17 December 1970, *Internationale Handelsgesellschaft*, Case 11/70, EU:C:1970:114, pt 3.

50 Judgement of 26 February 2013. *Stefano Melloni v. Ministerio Fiscal*, Case C-399/11, EU:C:2013:107, pt 60.

51 ECJ, *Fransson*, pts 17–21.

52 Opinion 2/13 of the Full Court of 18 December 2014 on a draft agreement for the EU to accede to the ECHR, EU:C:2014:2454, pt 170.

53 Ibid., pt 169.

concurring proceedings instated for different legal aims, one of which is the enforcement of EU competition rules.

55. In conclusion, we argue, the *Menci* case law applies to areas of punitive law which are not harmonised, and in any event only to situations where a same material offence is duplicated into twin administrative and criminal offences, constituting *concours apparent d'infractions*. There, the *idem* is fulfilled because the material legal interests protected coincide, irrespective of their legal qualification. However, the irrelevance of the legal qualification cannot be maintained to the cases of a real *concours d'infractions*, such as in *Walt Wilhelm*, *Aalborg Portland* or *Toshiba* since these cases show that concurring infringements are being pursed, constituting genuine different offences one of which is a EU offence.

56. The application of the *ne bis in idem* principle being the expression of legal certainty, it must be predicable and cannot depend on nebulous formulas such as determining whether or not dual punishments pursue complementary objectives or are strictly necessary or proportionate. In the area of competition law, that is the sole area of EU penalty law where enforcement is harmonised, the imperatives of legal certainty, effectiveness and primacy jointly confirm that the notion of same offence cannot prescind from considering the legal interest protected, without which the material facts alone are in law meaningless. ■

Concurrences

Concurrences est une revue trimestrielle couvrant l'ensemble des questions de droits de l'Union européenne et interne de la concurrence. Les analyses de fond sont effectuées sous forme d'articles doctrinaux, de notes de synthèse ou de tableaux jurisprudentiels. L'actualité jurisprudentielle et législative est couverte par onze chroniques thématiques.

Editoriaux

Jacques Attali, Elie Cohen, Claus-Dieter Ehlermann, Jean Pisani Ferry, Ian Forrester, Eleanor Fox, Douglas H. Ginsburg, Laurence Idot, Frédéric Jenny, Arnaud Montebourg, Mario Monti, Gilbert Parleani, Jacques Steenbergen, Margrethe Vestager, Bo Vesterdorf, Denis Waelbroeck, Marc van der Woude...

Interviews

Sir Christopher Bellamy, Lord David Currie, Thierry Dahan, Jean-Louis Debré, Isabelle de Silva, François Fillon, John Fingleton, Renata B. Hesse, François Hollande, William Kovacic, Neelie Kroes, Christine Lagarde, Johannes Laitenberger, Emmanuel Macron, Robert Mahnke, Ségolène Royal, Nicolas Sarkozy, Marie-Laure Sauty de Chalon, Tommaso Valletti, Christine Varney...

Dossiers

Jacques Barrot, Jean-François Bellis, David Bosco, Murielle Chagny, John Connor, Damien Géradin, Assimakis Komninos, Christophe Lemaire, Ioannis Lianos, Pierre Moscovici, Jorge Padilla, Emil Paulis, Robert Saint-Esteben, Jacques Steenbergen, Florian Wagner-von Papp, Richard Whish...

Articles

Guy Canivet, Emmanuelle Claudel, Emmanuel Combe, Thierry Dahan, Luc Gyselen, Daniel Fasquelle, Barry Hawk, Nathalie Homobono, Laurence Idot, Frédéric Jenny, Bruno Lasserre, Luc Peeperkorn, Anne Perrot, Nicolas Petit, Catherine Prieto, Patrick Rey, Joseph Vogel, Wouter Wils...

Pratiques

Tableaux jurisprudentiels : Actualité des enquêtes de concurrence, Contentieux indemnitaire des pratiques anticoncurrencielles, Bilan de la pratique des engagements, Droit pénal et concurrence, Legal privilege, Cartel Profiles in the EU...

International

Belgium, Brésil, Canada, China, Germany, Hong-Kong, India, Japan, Luxembourg, Switzerland, Sweden, USA...

Droit & économie

Emmanuel Combe, Philippe Choné, Laurent Flochel, Frédéric Jenny, Gildas de Muizon, Jorge Padilla, Penelope Papandropoulos, Anne Perrot, Nicolas Petit, Etienne Pfister, Francesco Rosati, David Sevy, David Spector...

Chroniques

Ententes

Ludovic Bernardeau, Anne-Sophie Choné Grimaldi, Michel Debroux, Etienne Thomas

Pratiques unilatérales

Laurent Binet, Frédéric Marty, Anne Wachsmann

Pratiques commerciales déloyales

Frédéric Buy, Valérie Durand, Jean-Louis Fourgoux, Rodolphe Mesa, Marie-Claude Mitchell

Distribution

Nicolas Ereseo, Dominique Ferré, Didier Ferrier, Anne-Cécile Martin

Concentrations

Jean-François Bellis, Olivier Billard, Jean-Mathieu Cot, Ianis Girgenson, Sergio Sorinas, David Tayar

Aides d'État

Jacques Derenne, Bruno Stromsky, Raphaël Vuitton

Procédures

Pascal Cardonnel, Alexandre Lacresse, Christophe Lemaire

Régulations

Orion Berg, Hubert Delzangles, Emmanuel Guillaume

Mise en concurrence

Bertrand du Marais, Arnaud Sée

Actions publiques

Jean-Philippe Kovar, Francesco Martucci, Stéphane Rodrigues

Droits européens et étrangers

Walid Chaiehloudj, Sophie-Anne Descoubes, Marianne Faessel, Pierre Kobel, Silvia Pietrini, Jean-Christophe Roda, François Souty, Stéphanie Yon-Courtin

Livres

Sous la direction de Stéphane Rodrigues

Revues

Christelle Adjémian, Mathilde Brabant, Emmanuel Frot, Alain Ronzano, Bastien Thomas

Tarifs 2020

Abonnement Concurrences +

Devis sur demande
Quote upon request

Revue et Bulletin : Versions imprimée (Revue) et électroniques (Revue et Bulletin) (avec accès multipostes pendant 1 an aux archives)
Review and Bulletin: Print (Review) and electronic versions (Review and Bulletin)
(unlimited users access for 1 year to archives)

Conférences : Accès aux documents et supports (Concurrences et universités partenaires)
Conferences: Access to all documents and recording (Concurrences and partner universities)

Livres : Accès à tous les e-Books
Books: Access to all e-Books

Abonnements Basic

	HT Without tax	TTC Tax included
e-Bulletin e-Competitions | **e-Bulletin** e-Competitions		
☐ Version électronique (accès monoposte au dernier N° en ligne pendant 1 an, pas d'accès aux archives) *Electronic version (single user access to the latest online issue for 1 year, no access to archives)*	825,00 €	842,50 €
Revue Concurrences | **Review** Concurrences		
☐ Version électronique (accès monoposte au dernier N° en ligne pendant 1 an, pas d'accès aux archives) *Electronic version (single user access to the latest online issue for 1 year, no access to archives)*	630,00 €	643,50 €
☐ Version imprimée (4 N° pendant un an, pas d'accès aux archives) *Print version (4 issues for 1 year, no access to archives)*	665,00 €	679,00 €

Pour s'assurer de la validité des prix pratiqués, veuillez consulter le site www.concurrences.com ou demandez un devis personnalisé à webmaster@concurrences.com.

To ensure the validity of the prices charged, please visit www.concurrences.com or request a personalised quote from webmaster@concurrences.com.

Renseignements | Subscriber details

Prénom - Nom | *First name - Name* . . . . . .
Courriel | *e-mail* . . . . . .
Institution | *Institution* . . . . . .
Rue | *Street* . . . . . .
Ville | *City* . . . . . .
Code postal | *Zip Code* . . . . . Pays | *Country* . . . . . .
N° TVA intracommunautaire | *VAT number (EU)* . . . . . .

Formulaire à retourner à | Send your order to:

Institut de droit de la concurrence
19 avenue Jean Aicard - 75011 Paris - France | webmaster@concurrences.com

Conditions générales (extrait) | *Subscription information*
Les commandes sont fermes. L'envoi de la Revue et/ou du Bulletin ont lieu dès réception du paiement complet. Consultez les conditions d'utilisation du site sur www.concurrences.com ("Notice légale").

Orders are firm and payments are not refundable. Reception of the Review and on-line access to the Review and/or the Bulletin require full prepayment. For "Terms of use", see www.concurrences.com.

Frais d'expédition Revue hors France 30 € | *30 € extra charge for shipping Review outside France*