

INFORMATION EXCHANGE AS AN ANTICOMPETITIVE AGREEMENT: THIN ICE BETWEEN GOOD AND BAD INFORMATION EXCHANGE

ABSTRACT:

The information exchange between competitors is one of the most controversial horizontal practices in competition law. Indeed, any exchange may have positive effects on competition as well as purely anti-competitive effects. Knowing the exact boundaries of a permissible and prohibited information exchange is absolutely crucial for entrepreneurs, as a clearly defined approach by competition authorities largely determines their own business (e.g., data aggregators and financial traders) and potentially beneficial communication such as benchmarking or information exchange enabling entrepreneurs to make better decisions on prices, demand, investment, business strategies, marketing and research & development.

It is therefore absolutely crucial that the balance between good and bad information exchange is set correctly. On the one hand, there is a risk of so-called false positive conclusions (type I error), when behaviour that actually contributes to effective competition is condemned by the authorities as illegal. On the other hand, the price that society would pay for ignoring anti-competitive business practices, i.e., for the so-called false negative conclusions (type II error), is no less important.

The submitted rigorous thesis aims to (i) analyse the legal framework and practice of assessing the information exchange between competitors, especially in the framework of EU competition law; (ii) analyse European case law, decision-making practice and soft law and assess whether there are any significant trends and identify problems of their application in practice; and (iii) evaluate the current legal standard vis-à-vis the most controversial business practices regarding the information exchange. In order to meet these objectives, the available academic resources regarding the information exchange in competition law as well as relevant decision-making practice and case law have been analysed, not only by the Commission and the CJEU, but also by national competition authorities, which has recently played an increasing role.