The new concept of anti-competitive object: a loose cannon in EU competition law

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Anti-competitive practices; De minimis; EU law; Vertical agreements

1. Introduction

The concept of "anti-competitive object" is certainly one of the most important doctrines of competition law; and not only in Europe: this notion, labelled as the "*per se* rule", also has a central role in US antitrust law.[1] Its practical significance is simply invaluable, since it draws the line between those antitrust evils that are automatically condemned and, legally, cannot be justified under art.101(1) TFEU and those arrangements that merit a full-blown effects-analysis. In the realm of competition law, clear-cut rules are very rare and particularly precious for the legal counsel. The consequences of being characterised as anti-competitive by object are devastating; competition authorities tend to focus their law-enforcement on hardcore agreements, where the highest fines are imposed.

Until recently, anti-competitive object has been the competition lawyer's dangerous but reliable friend: albeit that the consequences were harsh, the operation of the doctrine was predictable. It was based on category-building: there was an amplifiable but relatively exhaustive list of hard-core restraints created on the basis of the general doctrine of anti-competitive object; the concept was used to create categories for the list and was not applied to concrete cases; and there was no need to inspect the intricacies of the market in case of anti-competitive object. The competition law analysis, roughly speaking, remained within the four angles of the contract, since it sufficed to read the agreement and check whether it is black-listed or not; of course, an inquiry into the market context was sometimes inevitable to comprehend what the agreement meant in economic terms. However, no market analysis had to be carried out.

Unfortunately, recent developments suggest that EU competition law is gradually losing this kind of thinking and entering into an era where any unlikeable restriction can be automatically condemned after a truncated and superficial economic analysis. Breaking loose of its moorings, the concept of anti-competitive object became, indeed, a loose cannon.

The solidity of the doctrine of anti-competitive object started cracking in *Allianz*[2]; although it was hoped that the purview of this ruling would remain, at the utmost, limited. Some consider the judgments of the ECJ in *Cartes bancaires*[3] and *MasterCard*[4] as signs that the Court "regretted" the *Allianz* ruling and is trying to follow a more restrictive construction as to anti-competitive object, but in fact, *Allianz* has not been overruled and it has remained part of EU competition law. The European Commission's new De Minimis Notice[5] is clearly based on the elusive notion of anti-competitive object, as established in *Allianz*, and, thus, deprives one of the most important safe harbours of a considerable part of its practical value.

In the following, first, the traditional concept of anti-competitive object will be briefly presented, followed by the presentation of the emergence and the permeation of the new, elusive notion. The article ends with a critical evaluation and proposals.

2. The traditional doctrine of anti-competitive object

Perhaps the most important feature and virtue of the traditional (and hopefully still valid) doctrine of anti-competitive object is that it follows a "box" approach; that is, it is based on category-building and not on case-by-case assessment; and restraints anti-competitive by object are automatically condemned: they are outright prohibited under art.101(1) TFEU and have an insignificant (rather theoretical) chance to obtain an individual exemption under art.101(3) TFEU. Agreements "anti-competitive by nature" qualify as "object-type" restraints; however, concrete agreements are not subjected to a comprehensive assessment but a relatively clear list of restrictions that qualify as anti-competition by object is created. The general definition of anti-competitive object operates indirectly: it is used to establish categories of automatically condemned restrictions and, subsequently, these categories are applied to flesh and

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[1] There is a rather minuscule difference between US antitrust law's per se illegality and anti-competitive object: in EU competition law, any object-type agreement might benefit from an individual exemption under art.101(3) TFEU; however, this is rather a theoretical possibility, since the chance that an agreement anti-competitive by object could meet the requirements of art.101(3) TFEU is trivial. See Csongor István Nagy, *EU and US Competition Law: Divided in Unity?* (Ashgate, 2013), p.125.

[2] *Allianz Hungária Biztosító Zrt v Gazdasági Versenyhivatal* (C-32/11) [2013] 4 C.M.L.R. 25.

[3] *Groupement des cartes bancaires (CB) v European Commission* (C-67/13 P) [2014] 5 C.M.L.R. 22.

[4] *MasterCard Inc v European Commission* (C-382/12 P) [2014] 5 C.M.L.R. 23 at [186].

[5] Notice on agreements of minor importance which do not appreciably restrict competition under Article 101(1) of the Treaty on the Functioning of the European Union [2014] OJ C291/1.

blood cases. The relevant question is not whether the arrangement at stake meets the conditions set out by the general doctrine of anti-competitive object (that is, whether it is "anti-competitive by nature" or not); the relevant question is whether one of the categories (types of agreement) worked out on the basis of the notion of anti-competitive object (e.g. price fixing, market-sharing) subsumes the arrangement.

The "object" analysis remains mainly textual and not contextual (in the sense that no effects-analysis is carried out): in most cases the lawyer can remain within the four angles of the contract and the economic context is not used to ascertain the actual or potential effects but to comprehend the agreement. As a consequence, and this is a tremendous merit, even a legal counsel with a rudimentary understanding of economics is able to assess whether the agreement has an anti-competitive object or not. Of course, the examination of the legal and economic context sometimes cannot be saved but this is relevant only to the extent it is necessary for understanding of the agreement's economic logic, mechanism and function. Context helps to "understand" the agreement but this is the most function it may have.

As the *Guidelines on Horizontal Cooperation Agreements* put this: "[i]t is not necessary to examine the actual or potential effects of an agreement on the market once its anti-competitive object has been established."[6] It is to be noted that competition authorities and courts, quite often, examine certain circumstances (e.g. market power, market structure) as surrogates of effect, because they are considered to carry strong potential for anti-competitive effects. So the notion that it is needless to examine the actual and potential effects implies that it is needless to examine the effects and their surrogates (i.e. market circumstances). This merit would be lost if market circumstances had to be scrutinized in order to decide whether the agreement has anti-competitive effects or not. What would be the point in saying that the merit of anti-competitive object is that it lifts the need to examine the effects, while a decision on whether the agreement is anti-competitive by object or not can be made only after an inquiry into the effects; an inquiry that was to be saved.[7]

The rationale behind this plainness is that in competition law (as far as collusion is concerned) those agreements are automatically condemned that have an anti-competitive nature. Anti-competitive "by nature" means that the serious anti-competitive potential originates from the agreement's characteristics and not from the conjunct effect of the agreement and the market circumstances it operates in; that is, such agreements restrict competition whatever the market structure is, whether the parties have market power or not, etc.[8] This is reinforced by the notion that agreements anti-competitive by object have *per definitionem* perceivable negative effects on competition and are prohibited irrespective of market share[9]; although agreements between "weak" enterprises may not be susceptible of harming competition, there is no point in countenancing these as "impossible crimes", since such agreements have no virtue at all.

This *modus operandi* is, in principle, in accord with US antitrust law's *per se* illegality.[10] An agreement is *per se* illegal if it is always or almost always anti-competitive without any redeeming virtue.[11] However, this does not imply that the court would scrutinize in each case whether the agreement at stake is always or almost always anti-competitive without any redeeming virtue, since this part of the doctrine is not applied to flesh and blood arrangements, it is merely used to create categories of agreements.

Of course, competition authorities and plaintiffs are always tempted to push the practice towards automatic condemnation. However, the doctrine of anti-competitive object is certainly not meant to make their life more comfortable. It is meant to single out arrangements where effects-analysis is indeed superfluous.

3. The (new) elusive concept of anti-competitive object

The new doctrine of anti-competitive object was established in *Allianz*,[12] where the ECJ faced an arrangement (fee agreements between insurance companies and brokers) that appeared on none of the lists of object-type agreements. The Court established that anti-competitive object is not a category-building principle but has to be examined on a case-by-case basis whether the agreement at stake is anti-competitive by nature, and within the frame of this a truncated effects-analysis has to be carried out.

Soon after, the ECJ had the chance to revisit the conceptual question of anti-competitive object in *Cartes bancaires*. Although many regard this judgment as the sign of the Court's recoiling from *Allianz*, such desires seem to be vain hopes rather than the judgment's objective assessment. The Court did not overrule *Allianz*, it simply applied it cautiously.

[6] Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements [2011] OJ C11/1, para.24. See *Competition Authority v Beef Industry Development Society Ltd* (C-209/07) [2008] E.C.R. I-8637 at [16]. ("In deciding whether an agreement is prohibited by Article 81(1) EC, there is (…) no need to take account of its actual effects once it appears that its object is to prevent, restrict or distort competition within the common market".)
[7] Csongor István Nagy, "The Distinction between Anti-Competitive Object and Effect after Allianz: The End of Coherence in Competition Analysis?" (2013) 36(4) *World Competition: Law and Economics Review* 541, 554–555.
[8] See Nagy, "The Distinction between Anti-Competitive Object and Effect after Allianz" (2013) 36(4) *World Competition: Law and Economics Review* 541, 553.
[9] See *Expedia Inc v Autorité de la concurrence* (C-226/11) [2013] 4 C.M.L.R. 14.
[10] With the qualification that under EU competition law *per se* condemnation is formally confined to art.101(1) TFEU, albeit it is to be noted that, as a matter of practice, if it is highly unlikely that an object-type agreement could meet the conditions of art.101(3) TFEU.
[11] *Northern Pac. Ry. Co. v U.S.* , 356 U.S. 1, 5 (1958).
[12] For a detailed note on the Hungarian procedure see Katalin J. Cseres and Pál Szilágyi, "The Hungarian Car Insurance Cartel Saga" in Barry Rodger (ed.), *Landmark Cases in Competition Law — Around the World in Fourteen Stories* (Kluwer Law International, 2013), pp.145–166.

Finally, it is noteworthy that recent developments outside the realm of EU courts clearly suggest that the *Allianz* doctrine is effective. The Commission's new De Minimis Notice was captured by the *Allianz* monster, causing one of the most important safe harbours of EU competition law to deteriorate: the Notice contains no exhaustive checklist on agreements not benefiting from de minimis, it has to be analysed on a case-by-case basis (by means of a truncated effects-analysis) whether the agreement has an anti-competitive object and, thus, loses the benefit of de minimis. Furthermore, there is a well-founded fear that national competition authorities and courts will not be able to resist the temptation of automatic condemnation and will apply the general doctrine in a less restrictive manner than the ECJ did in *Cartes bancaires*.

3.1. Allianz

In *Allianz*, two leading Hungarian insurance companies concluded contracts with insurance brokers setting selling targets determined in the percentage of the broker's sales.[13] In respect of repair shops, which also functioned as licensed brokers, intermediating between clients and insurers, the scheme contained an additional twist: the target fee was wrapped in the reparation hourly rate. The insurance companies agreed with numerous repair shops that if the repair shop reaches the sales target, it will be entitled to charge a higher hourly rate for the reparation services covered by the company's insurance. There was no evidence suggesting that the insurers engaged in concerted practice, hence these contracts were examined solely from a vertical perspective.

The Hungarian Supreme Court submitted a preliminary question to the CJEU in respect of the practice concerning the hourly reparation rates (but not in respect of the rest of the target fees).[14]

The ECJ established that, after carrying out a truncated effects-analysis, it has to be examined individually and on a case-by-case basis whether an agreement has an "anti-competitive object". The Court held that

> "[i]n order to determine whether an agreement involves a restriction of competition 'by object', regard must be had to the content of its provisions, its objectives and the economic and legal context of which it forms a part (…). *When determining that context, it is also appropriate to take into consideration the nature of the goods or services affected, as well as the real conditions of the functioning and structure of the market or markets in question*."[15] (emphasis added)

While the first sentence of the above excerpt simply repeats the well-established jurisprudence of the Court, the second sentence goes further and enumerates completely new factors; it establishes that when applying the concept of anti-competitive object, under the label of "context", a limited effects-analysis has to be carried out. The factors to be taken into consideration are the following: nature of the goods (services), "the real conditions of the functioning" of the market and the structure of the market. Paragraph 48 of the ruling reinforces this, providing that the

> "court should in particular take into consideration the structure of that market, the existence of alternative distribution channels and their respective importance and the market power of the companies concerned."

As noted above, effects-analysis is often limited to the examination of circumstances that serve as proxies (e.g. market power, market structure) of negative effects (or the potential thereof) on competition. Sometimes, the reason for this is that the effects have not materialised yet and it needs to be ascertained whether they may potentially emerge (potential effects); sometimes, the effects have already occurred but certain circumstances are used as surrogates of anti-competitive consequences due to the lack of proper market data (indirect proof of actual effects).[16]

Paragraph 48 of the ruling repeats the above principle and provides that it is to be assessed on a case-by-case basis whether an anti-competitive object exists and such a decision can be made only after some kind of a market analysis; this analysis is expected to cover, in particular, the structure of the market and the parties' market power, presumably including absolute and relative market shares and the examination of alternative distribution channels.

> "48. Furthermore, those agreements would also amount to a restriction of competition by object in the event that the referring court found that it is likely that, *having regard to the economic context, competition on that market would be eliminated or seriously weakened following the conclusion of those agreements. In order to determine the likelihood of such a result,*

[13] Under Hungarian insurance law, contrary to insurance agents, brokers are the professional advisers of the client: they are required to give impartial and professional advice to clients and have civil liability in case they breach this duty. Nonetheless, it is normal industry practice that the broker is paid by the insurance company and not by the client: if the client concludes the insurance contract as recommended by the broker, the insurance company pays a fee to the broker. Although this financing method may entail a conflict of interest, it has been tolerated by the supervisory authority. The defendant Hungarian insurers topped this method with the introduction of target bonuses: if a certain percentage of the sales the broker executed was made up of the insurance company's products, the broker was entitled to a higher fee.

[14] "Do bilateral agreements between an insurance company and individual car repairers, or between an insurance company and a car repairers' association, under which the hourly repair charge paid by the insurance company to the repairer for the repair of vehicles insured by the insurance company depends, among other things, on the number and percentage of insurance policies taken out with the insurance company through the repairer, acting as the insurance broker for the insurance company in question, qualify as agreements which have as their object the prevention, restriction or distortion of competition, and thus contravene Article 101(1) TFEU?" Although the case was tried solely on the basis of Hungarian competition law, the Supreme Court considered Section 11 of the Hungarian Competition Act to be the equivalent of art.101(1) TFEU and the legislative intent to follow the rules and principles of EU competition law could be established. The ECJ found that the preliminary question was admissible.

[15] *Allianz* [2013] 4 C.M.L.R. 25 at [36].

[16] Nagy, "The Distinction between Anti-Competitive Object and Effect after Allianz" (2013) 36(4) *World Competition: Law and Economics Review* 541, 559.

> *that court should in particular take into consideration the structure of that market, the existence of alternative distribution channels and their respective importance and the market power of the companies concerned*." (emphasis added)

After *Allianz*, it was sincerely hoped that the purview of this ruling would remain limited at the utmost: it was rendered in a highly special case and it could have been argued that, notwithstanding the judgment's language, it should not have general application. However, these hopes proved to be vain.

3.2. Cartes bancaires

In *Cartes bancaires*, French banks founded an economic interest grouping in order to achieve the interoperability of the members' systems for card payment and cash withdrawals. In December 2002, the grouping adopted various measures with the purpose of encouraging members to engage in acquiring activity, thus maintaining the balance of the system and tackling the problem of external economic effects. These measures were notified to the Commission. First, banks whose acquisition activities were significantly lower in comparison to their issuing activities had to pay a contribution, which was distributed among those members who were not charged any such sum. Secondly, in addition to a fixed sum, new members had to pay a fee per active card issued in the three years following membership and a supplementary membership fee payable in case the member tripled the number of its cards in the course or at the end of the sixth year of membership in comparison to the number of cards in stock at the end of the third year of membership. Thirdly, the "dormant member 'wake-up'" fee was introduced: members not active or not very active before the entry into force of the new measures had to pay a specific fee per card.

The ECJ followed a restricted approach and stressed that the concept of object-type agreement is the exception and not the rule and its purview has to be grasped restrictively, covering solely the most serious mischiefs of competition law which are, "by their very nature", "harmful to the proper functioning of normal competition",[17] and where the anti-competitive implications are sufficiently clear.

> "The concept of restriction of competition 'by object' can be applied only to certain types of coordination between undertakings which reveal a sufficient degree of harm to competition that it may be found that there is no need to examine their effects".[18]

Albeit that in *Cartes bancaires* the ECJ held that the notion of anti-competitive object has to be grasped restrictively and established that the arrangement at stake did merit an effects-analysis, the Court was very far from overruling *Allianz*. It is noteworthy that *Allianz* is cited six times (in a clearly confirmatory manner) in various parts of the Court's reasoning in *Cartes bancaires*. Most importantly, the Court expressly confirmed the proposition that a limited effects-analysis has to be carried out on a case-by-case basis in order to ascertain whether the agreement is anti-competitive by object.

> "When determining that context, it is also necessary to take into consideration the nature of the goods or services affected, *as well as the real conditions of the functioning and structure of the market or markets in question*."[19] (emphasis added)

This seems to be irreconcilable with the Court's statement in [57]: a restriction of competition by object "reveals in itself a sufficient degree of harm to competition". If such co-ordination is in itself anti-competitive, the inspection of the structure of the market seems to be obviously redundant.

All in all, the analytical framework did not change, the general notion of anti-competitive object was applied directly to a flesh and blood case and it was not used for category-building (albeit the traditional cartel categories of competition law remained intact: this jurisprudence seems not to alter the status of cartels concluded in smoke-filled hotel rooms). It should not be disregarded that *Allianz* was a preliminary ruling, where the ECJ established the general legal test, while *Cartes bancaires* was an action for annulment where the ECJ not only confirmed the general test but also applied it "personally". Accordingly, the circumstance that the Court applied the general legal test in an allegedly restrictive manner is far from implying that the general legal test was impaired in any sense. All in all, the tone changed but the language did not.

Irrespective of the hope some may attach to the *Cartes bancaires* judgment, the *Allianz* monster did exit the ECJ's sphere of control and became a loose cannon. First, national competition authorities may apply the *Allianz* doctrine in the tone of *Cartes bancaires*, or may not. Secondly, the Commission's new De Minimis Notice clearly shows how flawed the *Allianz* doctrine is and what devastating consequences it will have for legal practice.

3.3. Allianz before national competition authorities and courts

It is highly dubious whether national competition authorities and courts will be able to resist the temptation of automatic condemnation and will apply the general doctrine in a restrictive manner as the ECJ did in *Cartes bancaires*. The follow-on judgment of the Hungarian Supreme Court in *Allianz* reveals this: the Supreme Court was very quick in establishing anti-competitive object; and contented itself with a perfunctory reasoning instead

[17] *CB* [2014] 5 C.M.L.R. 22.
[18] *CB* [2014] 5 C.M.L.R. 22 at [58]. See also [49].
[19] *CB* [2014] 5 C.M.L.R. 22 at [53].

of a detailed analysis.[20] This peril was clearly perceived by AG Wahl in *Cartes bancaires*, who put this very distinctly: a precautionary approach

> "is all the more necessary because the analytical framework that the Court is led to identify will be imposed both on the Commission and on the national competition authorities, whose awareness and level of expertise vary".[21]

3.4. The new De Minimis Notice

The Commission's old De Minimis Notice[22] followed a simple structure and served the purpose of predictability: it provided that agreements under a certain market share (15 per cent in respect of horizontal restraints and 10 per cent in respect of non-horizontal ones)[23] benefit from the safe harbour of de minimis, with the exception of restraints anti-competitive by object[24] (and in *Expedia* the ECJ made it clear that hard-core restrictions are prohibited irrespective of market share); and the old De Minimis Notice contained an exhaustive list of hard-core agreements, creating a negative checklist. If the legal counsel went through this checklist and established that the agreement at stake did not come under any of the categories listed here, he could be sure that the agreement would definitely benefit from the safe harbour (provided, of course, the relevant market share threshold was not exceeded). This predictability was destroyed by the new De Minimis Notice and the exhaustive list of yore was degraded to a mere illustrative list.

> "13. In view of the clarification of the Court of Justice referred to in point 2, this Notice does not cover agreements which have as their object the prevention, restriction or distortion of competition within the internal market. The Commission will thus not apply the safe harbour created by the market share thresholds set out in points 8, 9, 10 and 11 to such agreements. *For instance*, as regards agreements between competitors, the Commission will not apply the principles set out in this Notice to, *in particular*, agreements containing restrictions which, directly or indirectly, have as their object: a) the fixing of prices when selling products to third parties; b) the limitation of output or sales; or c) the allocation of markets or customers. *Likewise*, the Commission will not apply the safe harbour created by those market share thresholds to agreements containing any of the restrictions that are listed as hardcore restrictions in any current or future Commission block exemption regulation, which are considered by the Commission to generally constitute restrictions by object." (emphasis added)

Although the Commission adopted guidance on the interpretation of anti-competitive object[25] for the purpose of the application of the De Minimis Notice, this contains, likewise, only an illustrative list. The guidance "is without prejudice to any developments in the case law and in the Commission's decisional practice" and "does not prevent the Commission from finding restrictions of competition by object that are not identified below".[26] While the Commission's soft-law documents certainly cannot bind or constrain EU courts, the Commission could have promised "investigative abstinence" as to cases involving a novel object type restraint, not listed as hardcore in any parcel of EU competition law. Such an investigative wisdom would have been highly justified: if the parties' market share is very low, their collusion is normally not susceptible of influencing the market; the reason of the seamless prohibition is that there is no point in countenancing these "impossible crimes", since they have no virtue at all, so the prohibition of agreements anti-competitive by object does not preclude any pro-competitive arrangement, while creating a clear-cut rule.

Interestingly and perversely, the title of the Guidance is obviously flawed: "Guidance on restrictions of competition 'by object' for the purpose of defining *which agreements may benefit from* the De Minimis Notice" [emphasis added]. Namely, the Guidance, the same as the new De Minimis Notice, does quite the contrary: it defines those *agreements which cannot benefit* from the de minimis; the main trouble is that those *agreements which may benefit from* this are not defined anywhere.

It seems that the agreements of minor importance no longer benefit from a safe harbour; they have to content themselves with a "simple" harbour. Today, one knows which restraints are not covered by the benefit of de minimis (the illustrative list); however, instead, one should know which ones are. If the agreement does not come under one of the categories of the illustrative list, it has to be analysed on a case-by-case basis whether it can benefit from the de minimis rule or not; it is exactly this kind of analysis a safe harbour should avoid.

4. Conclusions

Although the ECJ confined the purview of the concept of "anti-competitive object" in *Cartes bancaires* and indicated that this doctrine is to be interpreted restrictively

[20] Case *Kfv:II.37.268/2013/8*.
[21] *CB* [2014] 5 C.M.L.R. 22 at [59].
[22] Commission Notice on agreements of minor importance which do not appreciably restrict competition under Article 81(1) of the Treaty establishing the European Community (de minimis) [2001] OJ C368/13.
[23] Paragraph 8.
[24] Paragraph 2.
[25] Guidance on restrictions of competition "by object" for the purpose of defining which agreements may benefit from the De Minimis Notice. SWD(2014) 198 final.
[26] Guidance, p.5.

and should be a tool of last resort, anti-competitive object has still remained a loose cannon in EU competition law. In *Allianz*, the ECJ committed two fundamental flaws. First, it ignored that the concept of anti-competitive object is a category-building principle and was not meant to be applied to concrete cases. Secondly, it established that "sorting" (i.e. the decision on whether the agreement at stake is anti-competitive by object or merits an effects-analysis) occurs on the basis of a case-by-case market analysis. Thirdly, it held that this analysis, contrary to its tremendous consequences, suffices to be truncated. While in *Cartes bancaires* the Court did a lot to confine the ambit of *Allianz* and some may have hoped that it recoiled from its own creature, these points of the case law were not overruled and these flaws were not eliminated.

In fact, in *Cartes bancaires*, the tone was changed but the language was not. This is the more regrettable since EU competition law is also applied by national competition authorities and national courts and it seems that this difference in terms of tone does not meet the ear in the provinces of the realm. The Hungarian Supreme Court's follow-on judgment in *Allianz* clearly confirms this: the Supreme Court did not embark on any detailed analysis (not even on a truncated effects-analysis) and condemned the restraint at stake rather summarily.[27]

The devastating consequences of the *Allianz* doctrine became very salient in the new De Minimis Notice, which, as a corollary, was degraded from a safe harbour to a "simple" harbour. The value of the Notice had relied on its explicitness: agreements not exceeding the market share thresholds set out in the Notice and not coming under one of the hard-core categories of the Notice's exhaustive list were guaranteed legality. The scheme was closed and predictable. The new De Minimis Notice did away with the exhaustive list and provides that anti-competitive object has to be established on a case-by-case basis. Although it does contain an illustrative list on hard-core restraints, it contains no clear-cut rule on those agreements which are surely not excluded from the benefit of de minimis. Since the virtue of the de minimis rule relies in the positive formulation of what is not caught in the net of art.101(1) TFEU, this deprives the new Notice of much of its use and value.

It can only be hoped that EU competition law will soon revert to the century-long wisdom of antitrust law's *per se* rule.

[27] Case *Kfv.II.37.268/2013/8*.