

1

2

Cambridge University Press 978-0-521-76714-9 - A Principled Approach to Abuse of Dominance in European Competition Law Liza Lovdahl Gormsen Table of Contents More information

CONTENTS

Preface page ix			
Acknowledgments xi			
Table of cases xiii			
Introduction 1			
. The book's aim 1			
The structure of the book 7			
The interpretation of Article 82 8			
Tools available for reforming Article 82 11			
. Article 82 review 13			
6. Protecting competition versus protecting competitors 1			
Consumer welfare theory, different schools of			
thought and efficiencies 20			
Introduction 20			
2. Efficiency and welfare standards 22			
2.1 Allocative, productive and dynamic efficiency 23			
2.2 The different welfare standards and their correlation with efficiency 26			
3. Different schools of thought in law and economics 28			
3.1 The Harvard School 29			
3.2 The Chicago School 32			
3.3 Main critique of the Chicago School: the			
Post-Chicago School 37			
3.4 Ordoliberalism 39			
3.4.1 Ordoliberal ideology 40			
3.4.2 Ordoliberal competition policy 42 3.4.3 Complete competition 45			
3.5 Is ordoliberalism in effect the Harvard School? 47			
4. Efficiency considerations under Article 82 48			
4.1 The structure of Article 82 49			
4.2 Efficiencies as a 'defence' or a 'factor' and the link			
to consumer welfare 54			
5. Conclusion 57			
v			



vi

Cambridge University Press 978-0-521-76714-9 - A Principled Approach to Abuse of Dominance in European Competition Law Liza Lovdahl Gormsen Table of Contents More information

CONTENTS		
3	Οŀ	ojectives 59
3	1.	Introduction 59
	2.	Undistorted competition 60
	3.	Market integration 64
	4.	Consumer welfare 69
		4.1 Signs of consumer welfare in early jurisprudence 71
		4.2 Signs of consumer welfare in recent jurisprudence 74
	5.	Freedom of competition 76
		5.1 Traces of economic freedom in jurisprudence 76
	6.	Conclusion 82
4	Th	e legitimacy of the consumer welfare goal in Article 82 84
	1.	Introduction 84
	2.	Economic freedom and consumer welfare 85
		2.1 The potential conflict 85
		2.2 Protecting the competitive process as a means to an end or an end in itself 87
		2.3 Summary of section 2 94
	3.	Freedom of competition 94
		3.1 The ordoliberal economic constitution and
		freedom of competition 95
		3.2 The Community legal order and the ordoliberal economic 'constitution' 98
		3.3 Freedom of competition as a fundamental right in the
		Community legal order 101
		3.4 Summary of section 3 104
	4.	Protecting other trading parties in Article 82(2)(c) 105
		 4.1 The three conditions of Article 82(2)(c) 4.2 Other trading parties must be placed at a
		competitive disadvantage 107
		4.3 Summary of section 4 110
	5.	Conclusion 110
5	Th	e role of effects in Article 82 113
	1.	Introduction 113
	2.	Anticompetitive foreclosure 114
		2.1 Foreclosure and consumers 115
		2.2 Foreclosure and customers and competitors 1172.3 Choice 119
	3.	Effects in relation to structure of the market or to consumers 121
	Э.	3.1 Actual or likely effects 122
		3.2 Effects on which part of the market? 123
		3.3 Tying part of the <i>Microsoft</i> case as an illustrative
		example of effects on the structure of competition 125



Cambridge University Press 978-0-521-76714-9 - A Principled Approach to Abuse of Dominance in European Competition Law Liza Lovdahl Gormsen Table of Contents More information

CONTENTS vii 3.4 What is the Commission hoping to achieve by examining the structure of competition? 130 Some case-law-developed assumptions 4.1 Intent as a proxy for abuse 4.2 Intent and consumer welfare 137 Risk of elimination of competition as a proxy for abuse 4.3 142 Consequences of these presumptions Conclusion 147 Guidelines 150 Introduction 150 Part I 152 The role of guidelines 152 Legal certainty 154 2.2 Legitimate expectations and equality 154 The legitimacy of priority guidelines The aim of the Guidance Paper 157 Consumer welfare as a priority as opposed to 3.2 a rule of substance 3.3 The Commission's framework 162 Part II The uncertainties surrounding the application of Article 82 164 The story of uncertainty continues Effects on the structure of competition or on consumers 168 The consequences of continuous uncertainty The way forward 172 The way forward 175 A change of objectives and/or methodology 177 Presumptions of harm Policy recommendations 181 Overall conclusion Bibliography 186 Index 198