

JUR1310/JUS5310 EU Competition Law

Exam Autumn 2020

Autoinfo is a company located in Drivinia, a Member State of the European Union. The company is active in the market for market-intelligence, surveys and analytics in the car and motor vehicle sector. In 2018 it set up a database; Spareparts365. The database worked as a price-comparison service for spare parts. Subscription to Spareparts365 was offered to car repair shops and dealers of spare parts.

Initially, the database was based on Autoinfo's own market intelligence on prices for spare parts. Soon, Autoinfo also offered manufacturers of spare parts the possibility to make their own entries in the database. A particular functionality made it possible for the manufacturers of spare parts to register and announce future prices and future price changes in Spareparts365. The future prices and price changes registered in Spareparts365 were not binding offers, but could in principle be changed or adjusted at any time by the manufacturer.

Autoinfo started to offer subscriptions to Spareparts365 also to the five manufacturers of spare parts. A subscription for manufacturers gave access to all information available in Spareparts365, including any registered future prices of competing manufacturers' spare parts. The five manufacturers of spare parts all subscribed to Spareparts365.

Q 1 (MA and BA students): Discuss whether the five manufacturers subscribing to the Spareparts365 and/or Autoinfo infringe Article 101 TFEU.

Two of the spare parts manufacturers, Widgets and Gadgets, set up a new and empty limited liability company named Newco LLC. Widgets and Gadgets each controlled 50 % of the shares and voting rights, and each appointed 50 % of the board of directors, in Newco LLC. Subsequently, Newco LLC entered into a sale and purchase agreement with Autoinfo whereby the database Spareparts365 and accompanying subscriptions would be acquired and transferred to Newco LLC. None of Autoinfo's employees or management would be transferred to Newco LLC, but were to be seconded from the parent companies.

Q 2 (MA students only): Discuss whether the operation qualifies as a "concentration" within the meaning of Article 3 of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the Merger Regulation)

The operation was approved by the European Commission under the Merger Regulation. In 2020, the Drivinian market for car spare parts faced aggressive competition from the Chinese spare part manufacturer Wheeler. In a board of directors meeting in Newco LLC, which now operated Spareparts365, it was decided to refuse to grant Wheeler access to making entries in the Spareparts365 database. As Spareparts365 had become the preferred database for information on spare parts, it would not be possible for Wheeler to enter the Drivinian spare parts market without access to Sparepart365's services.

Q 3 (MA and BA students): Discuss whether the refusal to let Wheeler make entries in Spareparts365 infringes Article 101 and/or 102 TFEU.

After the Drivinian Competition Authority had issues a Statement of Objection, the European Commission decided to initiate proceedings, as part of a sector inquiry. The Drivinian Competition Authority argued that its proceedings under Drivinian and EU Competition Law had come too far, so that it could continue the investigation, at least under Drivinian Competition Law.

Q 4 (MA and BA students): Advice the Drivinian Competition Authority on its competence under Article 11.6 of regulation 1/2003.

MA students answer questions 1, 2, 3 and 4.

BA students answer questions 1, 3 and 4.