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WORLD COMPETITION

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Volume 35	September 2012	Number 3
Editor's note September 2012		393
The Oral Hearing in Competition Proceedings before the European Commission	<i>Wouter P.J. Wils</i>	397
The Role of the Hearing Officer in Competition Proceedings before the European Commission	<i>Wouter P.J. Wils</i>	431
State Aid Modernization: Institutions for Enforcement of State Aid Rules	<i>Phedon Nicolaidis</i>	457
'Did They Do It?' The Interplay between the Standard of Proof and the Presumption of Innocence in EU Cartel Investigations	<i>Maria João Melícias</i>	471
Price Fixing in Crisis: Implications of an Economic Downturn for Cartels and Enforcement	<i>Andreas Stephan</i>	511
Collective Redress in EU Competition Law: An Open Question with Many Possible Solutions	<i>Adrianna Andreangeli</i>	529
<i>Book Reviews</i>		559

‘Did They Do It?’ The Interplay between the Standard of Proof and the Presumption of Innocence in EU Cartel Investigations

Maria João MELÍCIAS*

This article examines the need for EU Courts to clarify the appropriate standard of proof in cartel proceedings. It discusses the usefulness of this legal benchmark in antitrust procedure, having regard to the Member States different legal traditions re the rules of evidence and the implications of a dissimilar approach to the problem across the EU, in a system of parallel enforcement regimes. In the absence of an EU provision on the matter, the article observes that the presumption of innocence, which is a generally recognized international standard, provides for a workable solution, considering the evidence based safeguards that stem from it, in light of both the Strasbourg and the EU courts case law. Bearing in mind the intrinsic distinctive nature between competition law cases, the article finally explores whether it is appropriate to argue the existence of a single uniform standard of proof and review and submits that these inevitably vary according to the subject matter of each case, notably, to whether the presumption of innocence is applicable or not.

1 INTRODUCTION

After over five decades of case law, the European Union (EU) courts have always seemed reluctant to clearly define the appropriate *standard of proof* within cartel cases, that is, as understood within the common law tradition, the degree of certainty that is required in order to establish the existence of an infringement to Article 101 of the Treaty on the Functioning of the EU (TFEU) (ex 81 EC). There are, of course, numerous judgments in which the Courts have expressed the opinion that the Commission must demonstrate the existence of an infringement to the ‘required legal standard’. But instead of actually identifying what such standard is supposed to be, the Courts have simply preferred to state, in a formulation that may slightly vary, that the Commission must produce a

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