

Diagonal competence conflicts between European competition law and national regulation—a conflict of laws reconstruction of the dispute on book price fixing.

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### Abstract

This contribution attempts to reconstruct methodologically, with the help of conflict of laws tools, the dispute between European competition law and national cultural policy in the case of book price fixing in the German language area. On the basis of the cross-section clause for culture, which is interpreted as a *renvoi* to national cultural policy, a wide interpretation of the exemption in Article 81(3) EC Treaty is advocated, in order to cope with the double function of books as economic and cultural goods. Since the private price fixing scheme applied in Germany and Austria may be considered as a legitimate implementation of national cultural policy, it is submitted that the legal scrutiny under competition law should, as regards the

allocation of burden of proof and the reduction of the Commission's scope for discretion, be assimilated to the doctrinal system of the basic freedoms.

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