The underlying concept of security is not adequately elaborated, because it covers a series of different legal problems, which are not touched in the same manner by social and political change. There are institutional dimensions, the problem of acquired rights and the protection of trust in the reliability of public administrations. As to the most relevant facet of the topic dealt with, the country reports show a plethora of answers. A wide range of reactions may be identified – from merely ignoring social policy at the level of the constitution up to a coherent system of fundamental social rights. Further approaches are the guarantee of the "socially responsible State" or "civil human rights", which the courts interpret so as to allow the integration of social rights in the framework of civil rights. Under the auspices of a functional approach – and under this aspiration the whole study was launched – it would be extremely worthwhile to analyse the similarities and differences of the various approaches. But, unfortunately, this chance was not adequately used. For the reader of the summarizing chapters it is a little bit disappointing, that the differences between the countries prevail as to the various approaches of constitutional protection of social security rights. Are there no functional equivalents between the different approaches? Is it enough to state that fundamental social rights and the guarantee of property are different legal concepts, when the outcome of human rights protection is more or less alike?

As far as the administrative law provisions are affected, a homogenous solution can be seen: trust in the legality of administrations is protected for those who legitimately trust, but not in the case of betrayals. The overall importance of the book lies in the in-depth description of the procedures for legal protection of social entitlements. Based on a common list of questions the book draws a vivid picture, worth being studied.

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Ekaterina Rousseva, *Rethinking Exclusionary Abuses in EU Competition Law*. Oxford: Hart Publishing, 2010. 547 pages. ISBN 978-1-84113-926-5. GBP 75.

Rousseva's study on exclusionary abuses in EU competition law was initiated by growing demands for a revision of Article 102 TFEU (ex 82 EC) voiced by academics, as well as by efforts at reform shown by the European Commission since 2003. Following a Discussion Paper on the application of Article 82 EC to exclusionary abuses, published in December 2005, the European Commission in December 2008 adopted the Guidance Paper on the Commission's enforcement priorities in applying Article 82 EC to abusive exclusionary conduct by dominant undertakings (O.J. 2009, C 45/7). In this Guidance Paper, the European Commission confirms its economic, effects-based and consumer-welfare-oriented approach to exclusionary conduct already indicated in recent decisions. Rousseva closely followed and examined the process that finally led to the adoption of the Guidance Paper and uses the Commission's efforts at reform as starting and anchor point of her analysis of exclusionary abuses in EU competition law. She spent several months at the Directorate General for Competition in 2005 when the Discussion Paper on the application of Article 82 EC to exclusionary abuses was being prepared and updated, and finished her study after having joined DG Competition in 2008.

Only in the past few years, Article 102 TFEU has reappeared on the agenda of academics and the European Commission. Consequently, Community courts have had few opportunities to give rulings and develop a line of case law on exclusionary abuses. However, since the Discussion Paper was published in 2005, articles and contributions dealing with abuse of dominance through exclusionary conduct have increased significantly. Rousseva attempts to make a novel contribution to the ongoing debate (by e.g. Paul, O'Donoghue, Padilla, Ehlermann, Marquis and Ezrachi). The purpose of her book is "first and foremost to analyse

critically the full range of the Community Courts' jurisprudence regarding exclusionary conduct under Article 102 TFEU, with a view to identifying the evolution and the outstanding problems." The result of this analysis is used "as basis for the assessment of the reform carried out by the Commission, and for considering an alternative option … which enables the provision to best serve the interests of consumers."

The book is structured according to this purpose. It is divided into two parts. While the first part deals with the evolution and problems of the case law on exclusionary abuses, the second part attempts to show "paths to modernization" by scrutinizing the modernization efforts made so far by the European Commission and by proposing an alternative normative approach to exclusionary abuses. The book follows a coherent and logical structure. The first two chapters lay the foundations for the discussion, by portraying the historical and theoretical background and reviewing seminal case law and fundamental concepts of Article 102 TFEU. The following chapters discuss the most common forms of exclusionary abuses with regard to the development of fundamental concepts common to all types of exclusionary practices on the one hand and developments concerning only individual types of abuses on the other hand. In these four chapters, Rousseva provides a comprehensive and well-structured overview of the case law and points to yet unresolved problems of the various forms of exclusionary abuses. The first part of the book closes with an analysis of the concept of objective justification in the Community Courts' case law.

Building on the comprehensive analysis of the past and present case law provided in the first part, the second part of the book depicts approaches to reform of the application of Article 102 TFEU to exclusionary abuses. In Chapter 8, Rousseva provides an overview of the modernization process undergone by Article 101 TFEU (ex 81 EC) and Merger Control. This is extremely valuable for understanding the efforts at reform undertaken by the Commission with regard to Article 102. On this basis, in Chapter 9, Rousseva examines the specific difficulties which a reform of Article 102 poses and analyses the various tests proposed in American and European literature for assessing exclusionary conduct. The core of the book's second part is a careful analysis of the Commission's Guidance Paper on its enforcement priorities with regard to abusive exclusionary conduct in Chapter 10, in which Rousseva points out the challenges posed by a reform before discussing the various forms of exclusionary conduct. Rousseva links this second part of her study to the first part by examining on the one hand differences from the case law and on the other hand deviations from the former enforcement policy of the European Commission. Rousseva reaches the conclusion that, while the Commission succeeded in establishing a framework for a modern and effects-based application of Article 102 that very likely will meet with acceptance and even approval of the Community Courts, in no way have all conceptual problems and inconsistencies been cleared. In the eleventh and final chapter, Rousseva proposes an alternative way of modernizing the application of Article 102 by refraining from applying the provision to contractual practices and reserving it for the evaluation of unilateral conduct. Under the test proposed by Rousseva, exclusionary unilateral conduct shall be abusive if it is capable of excluding an equally efficient competitor and if, at the same time, it is not motivated by legitimate aims. The author concludes her study with final remarks that – together with the introduction – frame her thoughts and give a short but meaningful summary which provides valuable orientation for readers.

The book was prepared for publication prior to the entry into force of the Treaty of Lisbon. As the renumbering of the competition law provisions was not accompanied by changes in substance, this has no detrimental effect on the actuality of the study. Of greater importance is, however, that the Commission's *Intel* decision (Commission Decision C(2009) 3726 final of 13 May 2009 in Case COMP/C-3/37.990 – Intel), the first decision in which the Commission addresses its Guidance Paper, could not be taken into account. In its decision, the Commission thoroughly analyses discounts granted by Intel according to the as-efficient-competitor test delineated in the Guidance Paper. It would have been particularly interesting to know Rousseva's opinion on whether the application of the test made sense in the case of *Intel*.

It is striking that Rousseva mainly draws from older literature, sometimes not even using the newest available editions of the books she cites (e.g. Faull and Nikpay, The EC Law of Competition in first edition 1999 although a second edition of 2007 is available, Bishop and Walker, Economics of EC Competition Law in first edition 1999 although in 2002 a second edition was published, Gellhorn and Kovacic, Antitrust Law and Economics cited in first edition 1994 although the book was available in its fourth edition 2004). Allegedly, law and literature are stated as of May 2009. Altogether, at least from a German point of view, Rousseva insufficiently supports her statements with citations, which makes the book seem, in part, to be more of a practice report than a scientific work. The book's structure, which is complicated because of being evolutionary and not subject-oriented, and the comprehensive, but confusing index are academically appropriate, but make the handling of the book difficult. The separate table of cases is helpful. The framing of the main text and its individual chapters with introductions and conclusions or final remarks is also reader-friendly. Altogether, the various chapters complement each other well and there is a logical progression to the discussion. Although using the book requires its intensive study and previous knowledge of competition law, the structure of the book seems to be well thought through and sophisticated. Its subject and complicated structure, however, might not be entirely suitable for students, who are explicitly named as potential readers.

The book's main strengths and its scientific value lie in the comprehensive analysis and interpretation of the Community courts' case law on exclusionary abuses. Rousseva shows exceptional insight into the functioning and application of Article 102 TFEU. The analysis of the most common forms of exclusionary abuses is followed by suggestions to improve legal practice. Unfortunately, however, these are not emphasized clearly and consistently and therefore are easily missed. This is a pity since even on this level Rousseva presents very good solutions. The emphasis of her presentation is on the case law of EU courts. This makes sense since both the Discussion Paper and the Guidance Paper are legally non-binding statements by the Commission on its enforcement priorities. As such, they do not influence the EU courts' jurisprudence other than by the Commission's potential self-restraint of only taking upon certain cases and thereby limiting the courts' reach to these cases.

Contrary to what could be expected by the author's introduction, Rousseva conducts only a brief analysis of the Commission's reformed approach to exclusionary abuses. She extensively considers the political background, motivations and goals of the reform efforts and gives proof of her background knowledge. However, she only briefly deals with the most frequent types of abusive behaviour analysed in the first part and does not present in detail the changes in jurisprudence. Altogether, the analysis with regard to the Guidance Paper does not reach far beyond what has been achieved in the comprehensive discussion that took place after the Discussion Paper and later the Guidance Paper had been issued (most recently at a conference on recent developments in the enforcement of Art. 102 TFEU, in Rome, April 2010).

In concluding, Rousseva presents her suggestion for a new regulatory regime. She begins her observation with the unclear line drawn between Articles 101 and 102 TFEU with regard to especially vertical agreements. She bases her thoughts on the premise that a sensible abuse control first of all requires that the dividing line between the coverage of Articles 101 and 102 TFEU be drawn clearly. Unfortunately, she does not give further reasons for this presumption, and does not succeed in convincing the reader of its necessity. The sudden focus on the treatment of (vertical) agreements comes as a surprise since, on p. 433, Rousseva herself assesses that "the main preoccupation of Article 82 EC is unilateral conduct". She suggests to generally exclude agreements from abuse control and finally proposes a test for the treatment of the remaining unilateral acts under Article 102 TFEU. By focusing on defining a clear line between cartel ban and abuse control, Rousseva moves the discussion far away from the analysis in the first ten chapters. She seldom ties her suggestion to the results achieved there, but develops her own solution for a problem hardly discussed before. While an in-depth investigation of the borderline between Articles 101 and 102 would justify its own study, it cannot in its entirety

be dealt with in one chapter. In doing so, Rousseva misses the chance to coherently conclude the diligent analysis of the case law and the Guidance Paper she conducted in the first ten chapters of her book. Overall, the last chapter appears not to fit into the account.

However, keeping in mind that the author's purpose first and foremost was to analyse critically the Community courts' jurisprudence regarding exclusionary conduct and to identify the evolution and the not yet resolved problems in the courts' case law, the reader finds a very useful, comprehensive and essentially up-to-date overview and analysis of exclusionary abuses under Article 102 TFEU. Overall, Rousseva shows exceptional insight into the functioning and application of Article 102 which she undoubtedly acquired through her work at DG Competition. Altogether, this book constitutes a timely and stimulating contribution to the ongoing debate on modernization of Article 102 TFEU.

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Tobias Zuberbühler and Christian Oetiker (Eds.), *Practical Aspects of Arbitrating EC Competition Law.* Zurich, Basle, Geneva: Schulthess, 2007. 236 pages. ISBN: 978-3-7255-5356-3. CHF 128.

This publication brings together the papers presented at the 2006 Annual Congress of the International Association of Young Lawyers (AIJA) on arbitration and EU competition law. As the title suggests, the book deals only with the "practical aspects" of the relationship between EU competition law and arbitration, but the contributions in reality deal also, to some extent, with the theoretical background behind such questions as the mandatory nature of the EU competition rules or their characterization as public policy (*ordre public*). Eleven contributions identify two main topics that one is bound to confront when examining this relationship.

The first broad topic concerns the basis, scope and modalities for the submission of EU competition law-related disputes to arbitrators. Although EU competition law is considered mandatory in nature, it is not necessarily applicable in an international arbitration. Landolt touches upon this and refers to the private international law methods that are available so as to consider EU competition law as "applicable" to a particular dispute. A connected topic is whether the arbitrators should in some circumstances apply EU competition law *ex officio*, i.e. when it is not part of the *lex contractus* and the parties fail to invoke it. The ECJ in *Eco Swiss* did not directly rule on this question, however, as Hukkinen notes, the Court pointed to the arbitrators' duty to apply EU competition law *ex officio*, because of the consequences that an arbitral award would suffer if considered in violation of such law. Other questions are the application of Article 101(3) TFEU and of Block Exemption Regulations by arbitrators in the post–2004 system of enforcement (Steinle and Beutelmann), access to competition-related evidence (Hiltunen, Ramm-Schmidt and Forss), and expert determination of competition issues – as opposed to formal arbitration (Peyrot). A most interesting development, examined by Hofmann and Kunz, is the use of arbitration by the European Commission as a procedural remedy that ensures that parties comply with their commitments. This has mostly happened in the merger area (see e.g. Blanke, *The Use and Utility of International Arbitration in EC Commission Merger Remedies, A Novel Supranational Paradigm in the Making?* (Groningen, 2006)), but there are examples also of old exemption decisions pursuant to Article 101(3) TFEU and some new commitment decisions pursuant to Article 9 of Regulation 1/2003, which contain commitments to arbitrate.

The second broad topic of this book concerns the safeguards in place for ensuring that the arbitral award does not violate EU competition law. This is a difficult question, because of the limited review of awards by State courts, which is now considered a principle of international law. At the same time, competition law is public policy, which means that conflicting awards