

HARIS SYNODINOS*

BERNARDO CORTESE (ed.), *EU Competition Law. Between Public and Private Enforcement*, Wolters Kluwer, Law & Business, 2013, ISBN: 9041146776, ISBN 13: 9789041146779 <http://www.kluwerlaw.com/Catalogue/titleinfo.htm?ProdID=9041146776>

THIS collective work, under the care and supervision of Prof. Bernardo Cortese, aims at depicting the interface between the private and the public/administrative enforcement of EU Competition Law and underlines that, despite the inherent tensions (*e.g.* the protection awarded by the leniency program), these two concepts should be rather seen as complementary to each other, than as separate, autonomous aspects in the event of breach of EU Competition Law, so that a more effective enforcement of EU Competition Law may be achieved.

The particularity of the book, which is divided into five parts, consists, not only in the range of issues thoroughly covered regarding this very interesting and recently rising topic (because of the Directive No 2014/104/EU *on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union* [EE L 349/5.12.2014], which has been adopted in the meanwhile and has to be transposed into National Laws until 27.12.2016), but also in the structure of the book itself, which is extremely helpful in assisting any reader lacking adeptness and familiarity in EU Competition Law, to achieve a good understanding of the debated issues. Essentially, the issue at stake is the *private enforcement*, which is of particular concern both for the European Commission (see among other: Green Paper on Damages actions for breach of the EC antitrust rules, COM[2005] 672, White Paper on Damages actions

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for breach of the EC antitrust rules, COM[2008] 165, Communication from the Commission on quantifying harm in actions for damages based on breaches of Art. 101 or 102 of TFEU, C[2013] 3440) and for the CJEU, which has during the last years, increasingly given preliminary rulings on relevant questions submitted by national courts (see indicatively judgments, Grand Chamber, C-453/99 GC (20.9.2001) *Courage and Crehan*, C-295/04 to C-298/04 (13.7.2006) *Manfredi*, C-360/09 GC (14.6.2011) *Pfleiderer*, C-536/11 GC (6.6.2013) *Donau Chemie*, C-199/11 GC (6.11.2013) *Otis*, C-557/12 (5.6.2014) *Kone*).

In particular, *Part I* of the book focuses on the general problematic surrounding the goals and scope of EU Competition Law: Pietro Manzini offers a deeper analysis of its goals as evolved by the European Courts' jurisprudence, while Filippo Amato addresses the issue of defining agreements and concerted practices restricting competition. Following in the same Part, Igor Taccani covers the issue of delimiting the scope of application between EU and National Competition Law, explaining how the criterion of effect on interstate trade has been applied. Finally, Bernardo Cortese deals with the parent-subsidiary relationship and antitrust liability.

Part II of the book deals with the difficult relationship between Administrative and Judiciary Authorities in the field of antitrust private enforcement; Bernardo Cortese highlights the procedural reforms which have been recently introduced in Italy as regards private enforcement of competition law and examines these reforms as a potential model to be followed by other Member States. Francesco Munari examines how competition law enforcement has evolved following the entry into force of Regulation No. 1/2003 and points out on the one hand that the decentralized application is still a work in progress, concluding that there is a necessity for the national Courts to be awarded a more active role in their capacity as EU competition law enforcers. On the other hand, the interplay between the Commission and the National Competition Authorities (NCAs) and the need for an enhanced role of national Courts is presented. Dario Ruggiero is exhibiting the Italian perspective of the issue and, particularly, the existing case law. Bernardo Cortese, finally, is defining the role of Courts and Administrative Bodies in the private

enforcement process, wondering whether their respective roles are united in diversity. The author assesses the utilization by the national Courts of the tools provided by Article 15 of Regulation 1/2003 for the cooperation with the public enforcement (administrative) authorities, as well as the utilization of the complementary mechanisms provided by the various Member States' legal systems.

Part III of the book, which is divided in three chapters, focuses on the interaction between national Judges and the CJEU (ECJ), *i.e.* the relationship between private enforcement and the mechanism of preliminary rulings: In particular, Daniele Domenicucci provides an extensive analysis and evaluation of the procedural framework of the preliminary ruling under Article 267 TFEU, while demonstrating a decline of recourse to this mechanism since the entry into force of Regulation 1/2003. Then, Paolo Iannuccelli provides the reader with an excellent analysis of the effect of the CJEU preliminary rulings on the shaping of the framework of private enforcement at the national level, examines the various issues which have arisen and those that might arise in this context and finally expresses his ideas regarding the existence of a hierarchical relationship between public and private enforcement. Finally, Lorenzo Pace expresses the standpoint that the failure of the European legislator to enact provisions which would facilitate private competition law enforcement has actually led the CJEU to establishing new principles. He explains how the CJEU tried to strike a fair balance between two conflicting interests, *i.e.* that of public interests and that of private interests, while leaving the final decision to the European legislator whether one of the two should prevail.

Part IV of the book comprises of four reports drafted by senior national judges who specialize in competition law and deal with damages actions in private antitrust enforcement: Alice Pezard, Iannis Symplis, William McKechnie, Gabriella Muscolo provide the French, Greek, Irish, Italian reports respectively. All four reports are focused on the same aspects of private antitrust enforcement. The first issue concerns the influence of EU Commission's and NCA's decisions regarding damage quantification in follow-on actions, on the rulings of the national Courts. Then, an assessment

is made on the Commission/NCA cooperation in the frame of damage quantification in private enforcement actions. Finally, the national judges evaluate the role of general procedural tools provided in the national legal systems, such as provisions on expertise, the role of economists as experts, in private enforcement judicial proceedings. All in all, Part IV makes an interesting contribution to the whole attempt of the present book, as it provides an insight into the reality of private antitrust enforcement judicial procedures in different Member States, making it easier to point out what issues should be addressed, in order for the private enforcement aspect to evolve.

In *Part V* the authors examine the approaches followed in some specific sectors of economic activity in the internal market, where the relationship between competition law and regulatory practice plays a very important role, and attempt to draw valuable conclusions regarding public and private enforcement in those sectors. To this end, Fabio Filpo deals with the anticompetitive behavior of margin squeeze in the highly regulated Electronic Communications Sector, where he finds that private enforcement is most effective in the form of follow-on actions. Then, Roberto Mastroianni focuses on the partially regulated audiovisual industry, where a delicate balance between competition and regulation has been struck, taking into account the importance of the protection of information pluralism. He finds the current framework to be insufficient and suggests the need for a harmonization of national laws in order to achieve full protection of pluralism and its broadest promotion within the EU. Francesco Liberatore is devoted to the recent case law on pharmaceuticals parallel imports, a highly controversial topic, highlighting the wide discretion given to the competent administrative authorities and/or Courts in determining the admissibility of such practices and concluding that the interpretative role of national Courts will prove to be decisive for the evolution of the approach to be taken by the EU in the future. Finally, Stefano Nicolin deals with the application of EU Competition Law in the financial services sector, where the EU Commission has demonstrated a proactive stance by initiating various proceedings, and expresses the opinion that the efficient application of competition law in the sector does not conflict with the goal of financial intermediary stability. In con-

clusion, it seems that not only is public enforcement growing in the sector, but that also private enforcement has good chance of growing in the form of follow-on actions.