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Introduction

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I. Context

This book is the result of a research project funded by the European Commission in the frame of the 'Civil Justice Programme 2007–2013'. The funding was solicited by three partner institutions: (i) the Max Planck Institute for Comparative and International Private Law (Hamburg, Germany); (ii) the Université Catholique de Louvain, Chair of European Law (Louvain-la-Neuve, Belgium); (iii) the University Paris II-Panthéon Assas, Collège européen de Paris (Paris, France). The project was coordinated by the Université Catholique de Louvain.

The book focuses on a specific type of litigation: international antitrust litigation, i.e. litigation, mainly of civil nature, which follows violations of antitrust law and involves factual patterns spread across various countries. As such, State Aid and mergers are not dealt with.

The object of the book is to inquire into the functioning and potential development of private international law techniques and instruments applicable for this specific kind of litigation.

The introduction explains the reasons underlying the need for this analysis (II), the goals of the research project (III), the structure and content of the book (IV), as well as the working method (V).

II. Why Analyse Antitrust Disputes in the Light of Private International Law?

A. The International Aspect of Antitrust Litigation

The context of competition law enforcement in the European Union has changed radically in the last few years. The decentralisation of antitrust law enforcement and the development of private damages actions have the effect of increasing the number of involved authorities, be they of an administrative or judicial nature. In addition, disputes raising competition law issues are becoming increasingly international. Public and private actions
pursued against anti-competitive practices often involve companies located in different countries, business practices of global reach, procedures in more than one State and evidentiary material spread across multiple jurisdictions. As a result, judicial and administrative authorities of various countries may have to deal with antitrust infringements demonstrating similar patterns and will inevitably encounter specific difficulties linked to the international character of the proceedings. As a result, there is a growing concern about not only rules on jurisdiction, the applicable law and recognition of decisions, but also about the sharing of evidence, protection of business secrets and the interplay between administrative and judicial procedures.

The growing international nature of antitrust litigation therefore deserves an analysis from the point of view of private international law rules and techniques, which are especially devoted to solving difficulties typically resulting from the international nature of private relationships. Before turning to these specific questions, some clarification on the relationship between public and private aspects of antitrust litigation and on the exact reach of private international law in antitrust litigation needs to be made.

B. The Characteristics of Antitrust Litigation

The implementation of competition law can take two, a priori separate, paths: enforcement of competition law can be the domain of either public authorities or private parties. The distinction between public and private enforcement is fundamental, at least on the European continent where the role of competition authorities is central to the conception of competition law enforcement.

Public enforcement corresponds to the implementation of Articles 101 and 102 TFEU or analogous national provisions by specialised authorities which are often of an administrative nature and which act on behalf of the public/general interest. Competition law being understood as prompting the common good, violations of competition law are therefore prosecuted and subject to sanctions of an administrative nature and in some national legal systems, incidentally, of a criminal nature. The European Commission and National Competition Authorities (NCAs) are in charge of public enforcement in the EU. Public enforcement is thus regulated by rules of public law so that private international law reasoning and specific provisions of private international law have a priori no impact. In the EU, public enforcement (and the international aspects thereof) is mainly organised by Regulation 1/2003 and by the Commission Notice on cooperation within the Network of Competition Authorities (ECN Notice).

Private enforcement, by contrast, is initiated by private parties who are either victims of a violation of competition law or who were party to an agreement violating competition law of which they want to be freed. Parties are thus defending their own private interest, but by doing so they take part in the identification and redress of antitrust violations. Civil judges apply competition law rules in private actions based on contractual or non-contractual claims. A violation of competition law can either form the ground of the claim or be called upon incidentally in a claim concerning primarily the enforcement of a contract for instance. Since, as mentioned above, most private enforcement proceedings involve parties, facts and evidence spread throughout various countries, private international law rules and techniques are necessarily relied on.

Private enforcement therefore constitutes the core of this book.
Public and private enforcement cannot however be considered as entirely hermetic spheres. Indeed, most non-contractual claims for damage based on a violation of competition law follow the decision of a competition authority condemning the practice. Claims for damages are thus, in the vast majority of cases, so-called ‘follow-on actions’. Parties to this kind of private litigation will need to have access to the files and evidence possessed by the public authority and will need to ensure that the administrative decision will be recognised by the civil judge. Even in the case of so-called ‘stand-alone’ litigation, where the dispute concerns the enforcement of a contract which is, according to one party, contrary to competition law, the judge might need either to have access to the files or to ask for the intervention of a public authority. The difficulty is exacerbated by the fact that the private litigation will not necessarily be pending in the same State where public enforcement has taken place. The coordination between public and private enforcement is thus becoming not only an important issue, but also an issue which presents international aspects. Private international law instruments and reasoning could help in solving these practical concerns.\(^1\)

In a more general way, it could be questioned whether in some respects the logic sustaining private international law could not (or does not) inspire the cooperation between competition authorities, especially within the European Competition Network (ECN), be it in regard of case allocation, in regard of the transmission of evidence and documents, or concerning the reach and recognition of a competition authority decision by other members of the ECN.\(^2\)

This is the reason why the object of this research is not strictly limited to private enforcement but instead also covers coordination issues between private and public litigations as well as some coordination issues within the ECN.

A few examples help clarify the object of the book.

C. Examples and Issues

As mentioned in the previous section, private enforcement litigations can have their source in- or outside of a contractual setting. They can follow an administrative decision, but they may not. They can derive from cartel practices or the abuse of a dominant position.

i. Example A

A group of wood pulp producers agree, during a secret meeting in a hotel in Singapore, on a minimum price for their products. The wood pulp producers are established in several EU countries and the US. Wood pulp producers sell directly to paper producers, ie their final clients, all over the world. Papers producers buy the wood pulp at an artificial price for years and subsequently claim for the price difference. Many of the contracts signed between wood pulp producers and paper producers contain a choice-of-jurisdiction clause. Competitors, mainly a group of competitors eager to be active on the EU market who have been supplanted on this market by members of the cartel, consider claiming for damages.

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\(^1\) See the contributions of L Idot, R Moldén and J Basedow (‘Recognition of Foreign Decisions’).

\(^2\) See the contributions of D Gerard, B Rodger and J Basedow (‘Recognition of Foreign Decisions’).
ii. Example B

A US manufacturer enjoys a worldwide dominant position on the market for central processing units. The central processing unit manufacturer offers rebates to major computer manufacturers – located in various countries such as Japan, the US and a number of EU countries – if the latter agrees to equip their computers exclusively or almost exclusively with the processing unit it produces. The dominant US manufacturer also offers money to major computer sellers if they agree to exclusively sell computers equipped with its processing units. As a result, competitors (located in the US and the EU) producing central processing unit for computers can hardly have access to the market and consider claiming for damages.

iii. Example C

A major beer brewer established in the UK has organised a closed distribution network. According to the exclusivity clause found in the supply contract, the distributors can only sell the beer of the UK brewer. Beer sales are also subject to a minimum price clause. One distributor located in France decides to establish commercial relationships with a Belgian beer brewer and, in order to keep both beers attractive, lowers the price of the English beer. The English beer producer sues the distributor for breach of contract. The distributor alleges the exclusivity clause and the minimum price clause are void because they infringe competition law.

iv. Example D

A nylon producer established in the US enters into a joint venture with an English fuel and petrochemical producer in order to establish a plant producing nylon in the Netherlands. Parties to the joint venture agree to share the US and the EU markets: the EU market should be reserved for the plant located in the Netherlands while the US market is reserved for the US nylon producer, who is obliged to sell only in the US and not to penetrate the European market. The joint venture contract contains an arbitration clause. Two years after the implementation of the joint venture, the English party observes that the US nylon producer is selling his products directly in Hungary and Slovenia. The parties disagree on the territorial reach of the non-competition clause.

In the preceding examples, different types of private claims could be brought:

– Example A: (i) claim raised by the paper producers against the wood pulp producers for the price difference; (ii) damage claim brought by competitor(s) against members of the cartel;
– Example B: damage claims of competitors against the US producer of central processing units;
– Example C: the claim is actually brought by the principal (the beer brewer) against its distributor for breach of contract; competition law is used as a defence in this litigation;
– Example D: a claim by the UK petrochemical producer against the US nylon producer for breach of contract.

In each case, the international aspect of these litigations will raise specific questions. Initially, victims of the anti-competitive practice, whether or not contractual partners, will have to identify jurisdictional grounds allowing them to seize a civil court. In Example A,
some of the sale contracts concluded between paper producers and members of the cartels designate the competent court. It is, however, unclear whether this agreement could or should be regarded as also covering disputes related to a competition law infringement.\textsuperscript{3} Indeed, depending on the formulation of the jurisdiction clause, respecting the clause may force related claims to be brought in different fora. If no court was chosen (in Examples A and B for instance, there is no jurisdiction agreement between the members of the cartels and their potential competitors, nor is there one between the processing unit producer in dominant position and its competitors), the identification of the court will rest on factors other than party autonomy, such as the domicile of the defendant, the place of implementation of the contract (for contractual claims), the place of acting and the place of injury (for non-contractual claims) or, in the US, pursuant to the factor known as ‘targeting’.\textsuperscript{4} It appears clear that some of these factors are difficult to implement in antitrust litigations. The place of acting, for instance, in a case like the wood pulp cartel (Example A) or the abuse of dominant position by the central processing unit producer (Example B) explained above, is difficult to localise: should it be localised in the Singapore hotel in Example A? Where could the place of acting be localised in Example B, when the act of causation comprises a multitude of behaviours which can be localised all over the world and have an impact in just as many countries? Other procedural difficulties may appear as well. For instance, in Example B two claims could be raised against the central processing unit producer by different competitors for the same breach of competition law – but in different countries. This raises the danger of parallel proceedings and the need for \textit{lis pendens} or similar mechanisms. Also, one civil victim (for instance, a paper producer having purchased wood pulp from different members of the cartel in Example A) could choose to bring an individual claim for damages (contractual or non-contractual) against several members of the cartel: this case would raise the issue of the consolidation of related claims against different defendants.\textsuperscript{5}

In the first two examples (A and B), one of the core difficulties for claimants will be to prove the existence of an anti-competitive practice. Access to evidence is, for the claimants, the deciding element on the question whether the action has any chance of success. In these examples, it is almost certain that the civil proceeding will follow a condemnation by a public authority (follow-on action) and raise the coordination issues mentioned above:

1. Recognition of the decision of a competition authority by a civil judge: for instance, in Example A, is the decision of a German competition authority binding on a French judge? And if yes, is the impact of the administrative decision to be limited according to the territorial reach of the competition authority’s power?
2. Access to files, documents and evidence held by the competition authorities:\textsuperscript{6} for instance, in order to assess the exact amount of the damages, the claimant might need to have access to precise information possessed by the competition authority. The administrative decision as such might prove insufficient in this respect.

At a second stage, the law applicable to the merits will need to be identified. This question is a classical question of private international law, but in antitrust litigation it is double-sided: identification of the applicable law demands not only the identification of

\textsuperscript{3} See the contribution of M Wilderspin.
\textsuperscript{4} See the contributions of B Vilà Costa, J Basedow (‘International Cartels and the Place of Acting’) and HL Buxbaum & R Michaels.
\textsuperscript{5} See the contributions of M Wilderspin and HL Buxbaum & R Michaels.
\textsuperscript{6} See the contributions of L Idot, R Moldén, J Basedow (‘Recognition of Foreign Decisions’) and M Stucke.
the law applicable to the damage claims but also a determination of the law applicable to the assessment of the legality of an anti-competitive business practice affecting various jurisdictions. For instance, in Example A (wood pulp cartel), can EU competition law be applied to assess the legality of a behaviour which also has an anti-competitive impact on the US market? If yes, to what extent? Can French law be applied to the damage action brought by competitors of the wood pulp cartel members (Example A), including to the damages which are related to a restriction of competition on the US market? We shall see that in both the US and the EU specific solutions have been crafted in order to answer these questions. Despite all normative efforts for clear solutions, just like for the formulation of jurisdiction grounds, the criteria used for identifying the applicable law rests on factors calling for interpretation. For instance, in Examples A and B, if one refers to the ‘affected market’ for designating the applicable law, it is clear in the illustrative cases at hand that the ‘affected market’ can cover two continents . . .

Depending on the factual patterns, the proceeding may be more or less complicated. For instance:

1. In Example D, the parties to the joint venture have included an arbitration clause in the contract. This raises specific questions: is the clause covering this litigation also controlling for competition law issues? Should the arbitrators be allowed to apply competition law? How are they to determine the applicable law for this specific kind of litigation?

2. Several claimants (multiple competitors of the wood pulp cartel members in Example A, a group of competitors of the processing unit producer in Example B, or – more likely – consumer groups believing that they have purchased computers at an artificial price in Example B) could wish to gather their claims against one or more member of the cartel and thus bring a so-called ‘class action’ suit. Favouring the role of consumers as private enforcement actors is dependent on the existence of either class actions or representative actions, but the functioning of these collective redresses in international proceedings raises extremely thorny questions.

It is clear from the facts that proceedings in all four examples could be initiated in various locations and be submitted to different laws, on the merits as well as on the procedural aspects.

The international setting of the potential proceedings will inevitably trigger issues familiar to internationalists such as:

1. A race to the court in international settings and the pursuit of strategies for undermining the chance of success of proceedings in other locations more favourable to the other party.

2. Forum shopping: forum shopping is the practice according to which parties tend to bring their claim before the jurisdiction that is most favourable to them, in terms of procedure or substance. It is not necessarily a condemnable practice. To a certain extent, claimants need to plan the strategic development of the proceedings. For instance, in Examples A and B proposed above, proceedings could probably be brought both in the EU and in the US. It might be more advantageous (especially in Example B where the

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7 See the contributions of M Fallon & S Francq, S Francq & W Wurmnest and HL Buxbaum & R Michaels.
8 See the contribution of AP Komninos.
9 See the contributions of DP Tzakas and HL Buxbaum & R Michaels.
10 See the contributions of B Vilà Costa and M Wilderspin. See also the contribution of HL Buxbaum & R Michaels (on the point of forum non conveniens).
headquarters of the processing unit manufacturer are located in the US) for the European victims to bring their claim in the US in order to benefit from the discovery procedure in a case where the victims’ access to evidence entails significant complexity.\textsuperscript{11} Alternatively, during a proceeding pending in Europe, the delivery of evidence and documents located in the US may be requested.\textsuperscript{12}

3. Recognition and enforcement of foreign decisions originating from private enforcement actions. For instance, in Example B, prejudiced competitors may decide to sue the processing unit manufacturer in the US and will subsequently need to seise assets or bank accounts located in Europe. Enforcement of the US civil judgment would therefore be necessary. Whereas recognition and enforcement of foreign decisions has become an almost automatic procedure among Member States, the recognition and enforcement procedure (concerning, for instance, the possible enforcement of a US decision which stems from a private enforcement and which condemns members of the cartel, settled in Europe, to significant damages and perhaps even to punitive damages), still faces uncertainties in cases encompassing transatlantic relations.\textsuperscript{13}

The nature of all these issues is identical in the US and in the EU, but the solutions and the corresponding legal provisions differ.

\section*{D. The Normative Context}

It cannot be said that the specific questions linked to the international setting of most private enforcement procedures face a legislative lacuna. Quite to the contrary, both in the US and the EU, litigants can rely either on existing general provisions in the field of private international law or on specific provisions concerning private enforcement.

In the European Union, a claimant willing to initiate civil claims linked to breach of competition law will rely on the Brussels I Regulation concerning the identification of the court (Regulation 44/2001); for determination of the applicable law, recourse will be taken to the Rome I Regulation (Regulation 593/2008) if the claim is of contractual nature, and to the Rome II Regulation (Regulation 864/2007) if the claim is non-contractual. Except for Article 6(3) Rome II, the provisions of these Regulations have not been formulated in regard of international antitrust litigations. As shown by the list of relevant instruments, depending on the characterisation of the claim, different provisions will come into play. For instance, in Example A, members of the wood pulp cartel and paper producers are bound by sale contracts: because different provisions apply, it is necessary to decide whether the claim of the paper producers is contractual or non-contractual. Characterisation will thus prove to be a central issue of interpretation in the European context. The need for this distinction and for different regimes for contractual and non-contractual claims is thus questioned.\textsuperscript{14} Once the question of characterisation is solved, the use of the relevant provisions of these Regulations (and mainly of the Brussels I Regulation) requires reference to case-law of the European Court of Justice. Other instruments of EU private international law may also be relied on for more specific problems: such is the case regarding Regulation 1206/2001 on the taking of evidence abroad.

\textsuperscript{11} See the contribution of M Stucke.
\textsuperscript{12} ibid.
\textsuperscript{13} See the contributions of C Kessedjian and J Basedow (‘Recognition of Foreign Decisions’).
\textsuperscript{14} See in this book the contribution and proposals of S Poillot-Peruzzetto & D Lawnicka. cp for the US, the contribution of HL Buxbaum & R Michaels.
In the US, issues of jurisdiction and applicable law are intermingled: the application of US competition law, which depends upon the effects doctrine (the reach of which is defined by case-law), determines the substantive jurisdiction of US federal courts. Parties will have regard to Titles 15 and 28 of the United States Code (USC) and to the general due process limitations. Forum non conveniens will also be taken into consideration. Discovery is governed by Title 28 USC Section 1782 and by the Federal Rules of Civil Procedures, such as interpreted by case-law, and by the 1970 Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters.

Class actions, up to now, have not been organised as such in a European act, in contrast to US law where class actions are governed primarily by Rule 23 of the Federal Rules of Civil Procedure.

Arbitration as such is not regulated by EU law instruments; instead, it is governed directly by national provisions and case-law and by the New York Convention.

As far as public enforcement is concerned, the directly relevant provisions are to be found in Regulation 1/2003. Coordination issues mentioned above, concerning the interplay between the public and the private spheres, are partially addressed by Regulation 1/2003 and by some Notices of the European Commission.

At first sight, it appears that the difficulties raised by the international nature of antitrust litigation are broadly covered by legal provisions. A closer look, however, shows that some issues remain unaddressed and that the existing provisions themselves raise new issues, ie numerous questions of interpretation.

Here, one can readily identify a number of examples where the lawmaker has failed to consider the international aspects of antitrust litigation. The White Paper on damages actions for breach of antitrust rules (COM (2008) 165 final) does not even address the international aspect of damages actions. Also, for private parties, access to evidence gathered by a competition authority is currently not covered by any legal provisions. Another problem is that the legal framework governing the protection of business secrets in the case of an exchange of information among the NCAs is unclear. Collective redress is, up to now, not covered by any provision at the EU level.

Besides normative lacuna, some of the existing provisions dedicated to solving the problems of international antitrust litigation raise severe difficulties of interpretation. This is, among others, the case for Article 6(3) Rome II Regulation – the core conflict-of-law provision for private enforcement in the EU – and for the relevant provisions of the Brussels I Regulation, such as Articles 5(1) and 5(3). The need for interpretation is also clear in the US where case-law, while essential to the proper application of the provisions mentioned above, sometimes leads to further uncertainty.

Therefore, at least in the EU, the normative context is as it currently stands neither sufficient nor self-supporting.

III. Aims of the Research Project

Since the project was financed by the European Commission, the research mainly focused on the current and coming EU instruments in the dedicated field. However, it proved impossible to analyse the international aspects of antitrust enforcement without an in-depth analysis of transatlantic situations. Moreover, the solutions developed in the US
are on some points more advanced than the European ones. For these reasons, the research also covers some aspects of antitrust litigations in the US as well as in transatlantic relationships.

Against this background, the aims of the research project are threefold.

1. The identification and highlighting of the problems linked to the international dimension of antitrust litigations. The reason that specific issues related to the international character of antitrust litigation are frequently overlooked is that these issues have, for the most part, not been clearly identified. Identifying which present the real difficulties (in contrast to issues that can easily be solved with existing instruments) constituted therefore the first goal of the project, thus ensuring that individuals confronted with these problems in practice benefit from a thorough assessment of problematic instances.

2. Testing the adequacy of existing EU instruments. The second aim of the research project is to inquire whether the existing pieces of legislation adequately answer the needs of international antitrust litigation. On the one hand, international litigation is already largely dealt with in a set of EU Regulations, which – with the exception of Article 6(3) Rome II – have not been drafted with regard to litigations based on competition law infringements (Brussels I, Rome I, Rome II, etc). On the other hand, Regulation 1/2003, subsequent Commission Notices, block exemption regulations and future projects of the Commission (ie the pre-draft Directive on damage actions) have been (or will be) formulated with a view to improving the efficiency of implementation of competition law, but they do not address the specific difficulties raised by international litigation. It is therefore necessary to inquire whether the instruments adopted in the ‘Justice-Liberty-Security’ (JLS) area and the instrument adopted (or to be adopted) in the area of competition law provide for a satisfactory legal framework, create specific difficulties or leave some issues open. This exercise is especially useful in view of the forthcoming revision of several JLS instruments and the current developments in the field of private enforcement.

3. Proposing practical solutions. The final aim of the research project is to suggest practical solutions and tools for practitioners, courts, authorities and lawmakers. Practitioners should find clear directions on the interpretation of the existing instruments and ideas on how to use them in the evolving context of international antitrust litigations. Where needed, the members of the research group identified the points on which legislative intervention is necessary and have formulated first proposals or guidelines.

In this respect, the recommended interpretations and proposed amendments have been formulated so far as possible in a broad perspective, meaning in a way that renders these solutions adequate for litigation not involving competition law as well. As such, the proposals should be able to sustain legislative efforts in a general way.

IV. Content and Structure of the Book

The book directly reflects the goals of the research project.

The book is concluded by the proposals of the members of the research group. As mentioned above, the proposals aim at (i) providing some interpretative guidelines for both the
existing instruments in the EU and on some points which are not covered by legal provisions, and, above all (ii) suggesting necessary legislative amendments or clarifications. They have been formulated with regard to international antitrust litigations but could, in some respects, be used in other fields.

The proposals cannot, however, be read independently from the rest of the book. The identification of the specific difficulties raised by international antitrust litigation, the explanations as to the current state of affairs and the reasoning behind the proposals is found in the contributions rather than in the proposals. The proposals thus do not reflect all the issues discussed in the contributions, but only the few points on which the authors felt that it was necessary and feasible to formulate interpretative and/or normative guidelines at this stage.

The proposals do not include recommendations to the US lawmaker as the contributors and organisers considered this research project not the proper forum for such an effort. Readers will find, in the collection of contributions constituting the bulk of the book, answers concerning seven major issues concerning antitrust litigations: (i) allocation of jurisdiction (in civil and administrative litigation); (ii) applicable law; (iii) obtaining evidence; (iv) recognition and enforcement of foreign decisions (civil and administrative decisions); (v) collective redress; (vi) coordination of proceedings and cooperation between authorities; (vii) arbitration.

Some contributions cover several of these issues, which are interdependent, while other issues needed to be considered independently. For instance, contributions on the taking of evidence necessarily deal with cooperation between authorities, while contributions on the applicable law do not necessarily do so.

The issues are analysed with regard to both the EU and the US experience. Readers will thus find helpful insights for intra-EU, transatlantic and intra-US litigation.

The table of contents found at the beginning of the book will help readers to identify the contribution(s) corresponding to their particular needs; references to contributions made in the preceding footnotes (see points B, C and D of the introduction) will provide similar assistance.

V. Working Method

A. Who is Who?

The project was initiated and conceived by its three organisers, Professor Jürgen Basedow, Professor Stéphanie Francq and Professor Laurence Idot, who obtained the generous financial support of the Commission and who defined the project goals and limits.

The organisers form the scientific committee together with three members of the partner institutions, Professor Marc Fallon, Professor Catherine Kessedjian and Professor Wolfgang Wurmnest, who were closely involved in the development of the project. They were consulted on the major issues concerning the evolution of the research project.

The contributors were chosen on the basis of their expertise in the field of competition law and/or private international law. One of the core methodological choices of the project was to gather experts from both disciplines and combine the views of practitioners and academics from various EU countries.
The members of the research group are:

Professor Jürgen Basedow, Director of the Max Planck Institute for Comparative and International Private Law, Hamburg
Professor Hannah Buxbaum, Indiana University Maurer School of Law
Professor Stéphanie Francq, Université Catholique de Louvain, Holder of the Chair of European Law
Professor Marc Fallon, Université Catholique de Louvain, President of the Institut pour la recherche interdisciplinaire en sciences juridiques
Damien Gerard, Research Fellow, Université Catholique de Louvain, Chair of European Law
Professor Laurence Idot, University Paris II-Panthéon Assas, Collège européen de Paris
Professor Catherine Kessedjian, University Paris II-Panthéon Assas, Collège européen de Paris
Dr Assimakis Komninos, Local Partner, White & Case LLP, Brussels; Visiting Research Fellow, University College London; Visiting Professor, IREA Université Paul Cezanne Aix-Marseille III; former Commissioner and Member of the Board, Hellenic Competition Commission.
Dominika Lawnicka, Université Toulouse 1 Capitole, Institut de recherche en droit européen, international et comparé
Professor Ralf Michaels, Duke University School of Law
Robert Moldén, Head of the Competition Law Practice Group, Gärde Wesslau; Doctoral Candidate in competition law, University of Lund; former Senior Case Officer, Swedish Competition Authority.
Professor Sylvaine Poillot-Peruzzetto, Université Toulouse 1 Capitole, Institut de recherche en droit européen, international et comparé
Professor Barry Rodger, University of Strathclyde, Glasgow
Professor Maurice Stucke, University of Tennessee College of Law
Dr Dimitrios Tzakas, Advocate (Athens Bar), LL.M., former Research Fellow, Université Catholique de Louvain, Chair of European Law.
Professor Blanca Vilá Costa, Universitat Autònoma de Barcelona
Michael Wilderspin, European Commission, Legal Service
Professor Wolfgang Wurmnest, Leibniz Universität Hannover

In addition, the research group benefited from the input of observers from the EU Commission (E De Smijter, R Becker, DG COMP) and from a Japanese university (Professor M Nagata, Osaka University, Graduate School of Law and Politics).

Of final note, 28 PhD students from several EU and non-EU countries were invited to the conference ultimately organised to present the results of the research project. Along with the comments of highly qualified members of the audience, their expertise enriched the conference debate.

B. Working Method

At a first stage, the contributors worked individually on the topics proposed by the organisers. A first draft of each contribution was circulated among members of the group before they met for a two-day research seminar in December 2009. During the seminar, each contribution was presented and discussed. At a second stage, on the basis of this exchange of ideas, each contributor adapted his or her paper and drafted preliminary conclusions.
The preliminary conclusions were circulated among the members of the group and each member was free to comment on them. At a third stage, the members of the scientific committee met to discuss the preliminary conclusions and offered their comments to each contributor. These were mainly concerned with ensuring the methodological consistency of the conclusions and also contained a handful of substantive suggestions or questions. The contributors were invited to adapt their conclusion on this basis. The academic freedom of each contributor has, naturally, been respected so as to make allowance for the specificities and the heterogeneity of the topics brought together in this project. At a fourth stage, all the contributions and conclusions were reworked and finalised on the basis of the discussions during the conference.

C. Methodological Premises

The organisers of the projects aimed at setting the foundations of a dialogue – rendered necessary by current practice – between the disciplines of competition law and private international law.

Some methodological guidelines therefore presided at the constitution of the group, mainly: (i) mixing experts of both disciplines and, as far as possible, finding members with mastery in both disciplines; (ii) mixing practitioners (having various backgrounds in competition law, eg lawyers and members of competition authorities) and academics from various countries; (iii) mixing legal backgrounds, achieved through the international composition of the group; (iv) mixing established experts with their younger colleagues.

Some methodological guidelines also guided the work of each contributor. Contributors were asked to work from a comparative perspective: legal developments in the EU were to be analysed and elaborated in regard of the experience of the Member States, especially in the field of private international law where the EU efforts are more recent. Contributors working on the EU legislative instruments could take advantage of the inputs provided by their American colleagues. The US members of the group drafted their contributions under a comparative perspective as far as it was relevant and with regard to international, especially transatlantic litigation. Contributors were also invited to work intensively with case-law: considering case-law from various jurisdictions is a requirement of comparative analysis, but also a way of remaining in tune with practice. Finally, respect for the goals of the research project was requested. This implied presenting the questions concerning individual topics in a clear and understandable way; showing how far the existing EU instruments and case-law solve the identified difficulties; and, for difficulties not easily solved, first favouring legislative interpretation over the formulation of proposed amendments and then, as necessary, presenting proposed amendments concisely.

Concerning the proposals of each contributor, some methodological choices were set from the start. As far as possible, the contributors favoured interpretative solutions that would avoid long legislative procedures and could provide direct answers for practitioners. Secondarily, necessary clarifications or legislative amendments were also to be highlighted. The proposals reflect the personal opinion of each contributor. No general group solution is presented since members of the group considered it premature to do so in view of the stage of development of norms and practice in the dedicated area.

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The contributions were last updated in September 2010. Subsequent legal and jurisprudential developments have not been incorporated.

Only one major legislative event has occurred in the meantime. The EU Commission issued a proposal for the revision of the Brussels I Regulation in December 2010 (COM (2010) 748 final). The conclusions reached by the authors are still relevant in regard of the proposal of the Commission, which leaves some of the major provisions discussed in the book unchanged. To a certain extent, the document of the Commission reflects the proposals of some contributors to this research project.

As to other related matters, DG Competition did not proceed on the path toward a Directive on damages actions and launched a public consultation in the field of collective redress (SEC (2011) 173 final). The latter document only contains a series of questions addressed to the public.

All issues addressed and the comments made in the book are therefore unaffected by the most recent activities of the Commission.