INSTITUTIONS AND MECHANISMS TO FACILITATE COMPETITION LAW PRIVATE ENFORCEMENT ACROSS THE EU: SPECIALIST COURTS AND FOLLOW-ON ACTIONS

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Abstract

This article outlines a key aspect of a recent AHRC funded project concerning the application of competition law in the national courts of the European Union Member States. This was an empirical project with rapporteurs for 27 Member States entrusted with the task of identifying competition case-law judgments in their national courts in the period between 1 May 1999 and 1 May 2012. Each national report also outlined key aspects of the wider legal context within which private enforcement of competition law operates in that jurisdiction. The general hypothesis that underlies the dual approach to the project is that private enforcement practice across the legal systems of the EU Member States may at least partly be explained by the existence or availability of particular institutions, mechanisms and cultural factors in relation to the particular legal system. In this article we considered two particular institutions or mechanisms: the specialist court/tribunal and the competition litigation follow-on action mechanism.

The picture presented by the data together with the national reports is one of evolving national stories and contexts - which appear to be affected to a greater or lesser extent in different Member States by a combination of national cultures, competition law architecture and civil procedural rules. It is not claimed that there are any direct causal relationships between the insights provided by the empirical data and the national narratives on institutional mechanisms, but the analysis indicates ways and contexts in which competition litigation cultures may develop in the wake of specific institutional mechanisms. The article concludes that it is inevitable that patterns of competition litigation will continue to vary considerably across the EU for the foreseeable future, reflecting, to a great extent, the variable landscape of legal and institutional provision for private enforcement in the EU Member States.

Keywords:

Competition law, antitrust law, private enforcement, institutions, specialist courts, follow-on actions.

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JEL Classification:
K12, — Contract Law; K13 — Tort Law and Product Liability; K21 — Antitrust Law; K40 — Legal Procedure, the Legal System, and Illegal Behavior; K41 — Litigation Process; K42 — Illegal Behavior and the Enforcement of Law; K49 — Legal Procedure, the Legal System, and Illegal Behavior; L49 — Antitrust Policy.


1. Introduction.

This article outlines a key aspect of an AHRC funded project (1) concerning the application of competition law in the national courts of the European Union Member States (2). The article considers how private enforcement practice may at least partly be explained by the existence or availability of particular institutions and mechanisms in the legal systems of the EU Member States. Competition law seeks to regulate the market

(1) See www.clpcreu.co.uk. For a full account of the project and outcomes, see B. Rodger (edited by), Comparative Private Enforcement and Collective Redress Across the EU, Alphen aan den Rijn, Kluwer Law Publishing, 2014.
(2) 27 Member States, excluding Croatia, which joined the EU in 2013, after the project had commenced.