

Private competition enforcement in the EU and the United Kingdom: obstacles and incentives

Collective actions

Financing arrangements

Interplay with public enforcement: the leniency problem...

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EU competition law: private enforcement, compensation and redress of “diffuse injuries”

- From Courage to the 2014 Directive—a complex story...
 - A tale of national autonomy and effectiveness: to harmonise or not to harmonise?
 - Issues of competence and legal basis...
 - ... And what about subsidiarity and proportionality?
- The 2014 Directive as a compromise solution...
 - More focused but equally ambitious:
 - Limitation periods;
 - Standing and passing on;
 - Evidence and the relationship with NCAs...
 - A “noisy absentee”: collective redress and group litigation!

Collective redress and group litigation: EU debates...

- From the “particular” to the “general”: reframing the debate—key drivers:
 - Concerns as to the legal basis for action in this area;
 - A changing legal landscape: from the “vacuum” to a crowded background—the role of domestic legislatures...
 - ➔ The 2013 Recommendation: encouraging gradual convergence around a set of “established principles”...
- But is it going to work?
 - From collective litigation to collective redress: fitting court actions within a wider framework, including ADR, easier settlements and voluntary redress schemes...
 - BUT is soft law the answer?

Collective redress and group litigation in UK Competition Law: from opt-in actions to the “evidence of need” for reform

- The Competition Act 1998: the experience of the opt-in, follow-on lawsuits...
- Momentum for change: building the “evidence of need” for reform...
 - The Woolf Report and alternative forms of collective litigation...
 - A “competition regime for growth”: group lawsuits as one among many tools for granting relief to loss suffered as a result of anti-competitive practices...
 - The Jackson report: costs and financing as “practical obstacles” to the redress of antitrust injuries?
- Going beyond multi-party litigation mechanisms: Emerald Supplies and its impact...

From the 2012 BIS Consultation to the Consumer Rights Act 2015: cautious yet bold responses to the “evidence of need”

- A “competition regime for growth”: the ‘new’ CMA... And greater emphasis on the role of the Competition Appeals Tribunal...
- From group litigation to collective redress: court proceedings as “only one” of the tools available to antitrust victims... The role of ADR and settlements...
- The “guarded opt out” action model:
 - the CAT as the “judge of admissibility” as to whether actions should be litigated according to opt-in or opt-out...
 - Strict criteria of admissibility: common questions, adequacy... And ultimately, what would be ‘fit and reasonable’, in the interest of justice!
 - Exclusion of “financial incentives”... Not just punitive damages, but also damage-based agreements...
 - ... And what about third party funding?

“Coordinating” civil litigation and public enforcement—issues of evidence and leniency documents

- The information asymmetry problem...
 - Bridging the gap between “weaker plaintiffs” and defendants...
 - ... And between legal traditions? Discovery as a groundbreaking change for many countries!
- Article 5 of the 2014 Directive: a “compromise solution”...
 - Central role of the trial court in assessing individual requests...
 - No fishing expeditions—“sufficiently detailed, reasoned justification... Reasonably available factual elements...”.
 - Need to make a show of “plausibility of the claim”.
- Leniency applicants: from ‘Pfleiderer’ to Article 6 of the 2014 Directive...
 - A very “pro-public enforcement solution”...
 - The 2013 BIS response: looking for a more nuanced approach?

Private enforcement of competition claims in the UK and the EU—where do we go from here?

- Between effet utile, access to justice and fairness: different solutions to the same questions?
 - The path of development from the Competition Act 1998 to the Consumer Rights Act 2015: evolving approaches—between continuity and change...
 - The “opt-out” with brakes...
 - “Conservative” choices in terms of funding...
 - The CAT: going from strength to strength!
 - The EU 2014 Damages Directive: a less wide-ranging but still ambitious, focused instrument...
 - ... And what about collective redress? From the desire of “hard harmonisation” to the choice of moral suasion...
 - But will it work?