

## **EU Competition Law and the Emerging Harmonization of Private Enforcement: The Proposed Directive and Beyond. Conference at Uppsala University. Report**

A conference entitled ‘EU Competition Law and the Emerging Harmonization of Private Enforcement: The Proposed Directive and Beyond’ took place on 15-16 May 2014 at the Uppsala University (Sweden). The conference was co-organized by the Swedish Network for European Legal Studies and the Faculty of Law at Uppsala University.

The participants of the conference were welcomed and the speakers introduced by Associate Professor Maria Bergström (Uppsala University) accompanied by one of the conference organizers – Marios Iacovides. The opening speech was delivered by Professor Ulf Bernitz (Stockholm University) who presented key policy issues concerning private enforcement and the history of the European debate on private enforcement of competition law. He stressed that the new Directive on private enforcement is a combination of the harmonisation of antitrust law, private law and procedural law. Per Karlsson (Chief Legal Officer of the Swedish Competition Authority) delivered the first keynote address of the conference on the theme of ‘Private enforcement challenges for National Competition Authorities’. He mentioned issues such as the safeguarding of the leniency programme, access to files of the Swedish Competition Authority, follow-on actions and stand-alone actions, effect of national decisions, joint and several liability as well as the estimation of harm.

The morning plenary session was chaired by Professor Bengt Domeij (Uppsala University) and included details of the new Directive on private enforcement. Dr Daniele Calisti from DG-Comp of the European Commission gave an update on the new Directive’s adoption, outlined the objectives of this initiative and provided an overview of the new measures for injured parties. Elisabeth Eklund (Delphi) spoke next on ‘Introducing indirect purchasers and what is (not) new’. Judge Karin Wistrand (Svea Hovrätt, Court of Appeal) considered the Swedish perspective on access and limits to the use of documents from the file of the NCA. The floor was then opened to a panel discussion. The morning plenary sessions ended with Professor Alison Jones (King’s College London) giving a comparison of the EU and the US approaches to private enforcement titled ‘Why is private enforcement problematic in the EU?’.

The first afternoon plenary session was chaired by Associate Professor Sanna Wolk (Uppsala University). It focused on public and private enforcement from the perspective of law and economics. Professor Lars Henriksson (Stockholm School of

Economics) showed welfare-enhancing aspects of private enforcement, gave reasons why private enforcement makes sense and outlined some alternative roads ahead. The presentation of doctoral candidate Marios Iacovides (Uppsala University) mapped the challenges in understanding Article 17 of the Directive (the presumption of harm and the methodology of its quantification). The session ended with a panel discussion. Assistant Professor Pieter van Cleynenbreugel (Europa Institute, Leiden University) addressed in conclusion the relationship between private enforcement and national procedural autonomy.

The first day of the conference proceeded into two parallel sessions. One was entitled ‘The new Directive and transparency: national and European leniency programs, administrative law and human rights’ (chaired by Professor Xavier Groussot from Lund University). The second session was entitled ‘Practical Private Enforcement: Enforcing EU Law through national actions’ (chaired by Dr. Vladimir Bastidas from Uppsala University). Both were followed by panel discussions.

Panel I consisted of Professor Jane Reichel (Uppsala University) who deliberated on ‘The European composite administration and the right to access to files’, Associate Professor Björn Lundqvist (Copenhagen Business School) who spoke of ‘Right of defence and access to the file’ and doctoral candidate Heléne Andersson (Stockholm University) who gave a paper entitled ‘The Directive vs. the CJEU – will we have two different standards of application?’.

Panel II included representatives of Portugal, Poland, Finland as well as Greece and the Netherlands. Professor Sofia Oliveira Pais (Portuguese Catholic University) put great emphasis on difficulties in the harmonisation of the national legal framework for collective redress resulting from the Portuguese opt-out model of group proceedings. Assistant Professor Anna Piszcz (University of Białystok) presented developments in Polish private antitrust enforcement. She stressed that, in spite of recital 10 of the Directive’s preamble, one should expect that national legal frameworks for damages actions for infringements of not only EU competition rules but also national competition laws will be modelled on the Directive. Dr Katri Havu (Helsinki University) presented the legal context of damages actions and private enforcement of EU competition. She also outlined the current state of competition damages litigation in Finland emphasising the relatively open legal *status quo* with several potential legal bases for claims. Doctoral candidate Agis Karpetas (Europa Institute, Leiden University) focused his presentation on access to evidence, the passing-on defence and indirect purchasers as well as consensual dispute resolution in the light of the competition law enforcement framework existing in Greece and the Netherlands.

The first day of the conference drew to a close with a roundtable discussion chaired by Professor Torbjörn Andersson (Uppsala University) and summarising the key findings of the panels.

The second day of the conference began with the introduction of speakers by Professor Carl Fredrik Bergström (Uppsala University). Judge Carl Wetter of the General Court delivered the second keynote address on the view from the bench about private enforcement of competition law. Judge Dr Ingeborg Simonsson of the Stockholm District Court presented particular challenges for national judges (from

the perspective of the Swedish judiciary) and explored whether the new Directive will help. Professor Alison Jones chaired the morning plenary session on promoting indirect purchaser actions. Featured here were papers of doctoral candidate Magnus Strand from Uppsala University ('Open to any individual? Lingering doubts on locus standi'), Dr Ioannis Lianos from University College London ('The hurdle of causation: a comparative perspective') and Professor Giorgio Monti from EUI ('Locus standi and risk of multiple recovery: how does the new Directive manage the relationship between direct and indirect buyers?'). The session ended with a panel discussion.

Professor Paul Torremans (University of Nottingham) outlined afterwards private enforcement of competition law by way of a defence to an intellectual property infringement claim. Dr Johanna Engström from DG-Just of the European Commission gave a presentation entitled 'Beyond the New Directive on damage actions for breaches of EU Competition law: Lessons for the Emerging Harmonization of Private Enforcement of EU law and Member States' Procedural Autonomy'.

The conference closed with a goodbye speech by the organizers and a round of applause for everyone who had worked so hard to plan, organize and host the conference on such an important subject. Harmonization of private enforcement generates a great deal of interest and discussions at the moment, in particular seeing as the European Parliament has approved the Commission's proposal for a Directive on damages actions for breaches of EU competition law on 17 April 2014, which is meant to promote actions for compensation by victims of EU competition law infringements. The text of the Directive has now been sent to the EU Council of Ministers for final approval. Once the Directive comes into effect, EU Member States will have two years to transpose the provisions of the Directive into their national legal systems. Moreover, the Commission issued in 2013 a recommendation on collective redress that should be implemented in national collective redress systems by 26 July 2015, at the latest.

These issues are of particular interest to the Central and Eastern European (CEE) Members of the European Union, especially since they do not seem to have managed to develop efficient private enforcement of EU competition law yet.

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