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978-0-521-88110-4 - The Enforcement of Competition Law in Europe
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The Enforcement of Competition Law in Europe

In the debate on the enforcement of competition law, many take the view that Europe should avoid the traps US law has fallen into by admitting excessive litigation. European law should not pave the way for judicial proceedings which ultimately serve the interests of lawyers or other agents rather than injured parties.

This inquiry describes the state of remedies in competition law in fifteen European countries, analyses the underlying determinants, and proposes ways of improving the enforcement of competition law. The international and European legal frameworks are presented, as is the approach of US–American law. It is argued that efforts to strengthen private enforcement of antitrust law should benefit from the rich European experience in unfair competition law. The divergence between the two fields of law is not so huge that a completely different treatment is justified. Thus, a specifically European way of competition law enforcement could be developed.

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ANDREAS HEINEMANN is Professor of Commercial and Economic Law at the University of Zürich.

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The Common Core of European Private Law

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For the transnational lawyer the present European situation is equivalent to that of a traveller compelled to cross legal Europe using a number of different local maps. To assist lawyers in the journey beyond their own locality *The Common Core of European Private Law Project* was launched in 1993 at the University of Trento under the auspices of the late Professor Rudolf B. Schlesinger. This is its seventh book published by Cambridge University Press.

The aim of this collective scholarly enterprise is to unearth what is already common to the legal systems of European Union Member States. Case studies widely circulated and discussed between lawyers of different traditions are employed to draw at least the main lines of a reliable map of the law of Europe.

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Edited by

Thomas M. J. Möllers
and
Andreas Heinemann

With an essay by

David J. Gerber

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Preface

From the very beginning the Treaty of Rome included basic rules on competition law. However, these rules only covered restraints of competition ('antitrust law'), not unfair competition law. Since then, the situation has considerably changed. The fundamental freedoms of the treaty as well as secondary community legislation have heavily influenced both fields of law. Even if this development led to an important harmonization of competition law in the Member States, one aspect has stayed rather untouched: the legal consequences of a competition law violation have been left to a large extent to the disposal of the national legislature. As far as the legal consequences in private law are concerned every national legal order has tried to integrate competition law violations into its national tort law (or in some respects contract law) system. In this process, private remedies for violations of unfair competition law have gained a greater practical importance in Europe than those for violations of antitrust law. But even in the latter branch of law, public enforcement is increasingly complemented by private law mechanisms.

The wide variety of solutions which are proposed by national law were the reason for the editors to start the comparative venture within the Trento project on the *Common Core of European Private Law*. Based on the Common Core methodology (elaborated by Ugo Mattei and Mauro Bussani in the tradition of Rudolf B. Schlesinger and Rodolfo Sacco), i.e. on a questionnaire containing several cases which are discussed and answered by national reporters pursuant to their respective national legal systems and taking into account all legal and extra-legal formants, we have compared the state of the law in fifteen EU Member States. Based on the weak points and gaps resulting from the comparative analysis, we submit proposals which could lead to an improvement of

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private remedies in unfair competition law (Thomas M. J. Möllers) as well as in private antitrust enforcement (Andreas Heinemann). Recent initiatives on the European level for the improvement of European antitrust law triggering corresponding reforms in many member states were taken into account.

The project that has been running several years would not have been possible without the support of so many colleagues and friends. First of all, we would like to thank Wolfgang Fikentscher, who at the Trento annual meeting in 2000 inspired the birth of the competition law project. Walter van Gerven, the author of a draft EC regulation on private remedies, supported the project with his invaluable advice. David Gerber, the leading scholar in comparative competition law, drew our attention to so many aspects of the subject and contributed to this volume a comparative essay on private remedies in antitrust law. We would like to thank the country reporters for their constant engagement and the patience with which they responded to the numerous questions we had. And finally, we are deeply indebted to the participants of the Trento torts group (subsequently chaired by Mathias Reimann and Franz Werro) with whom we intensively discussed the questionnaire and the comparative details. The Common Core project has thus become a forum for us which has produced intercultural insights far beyond law.

We would also like to thank James Faulkner, Matthew Firth, Jacques Großkreuz, Thomas Wenninger and Georg S. Münzenrieder for their support in the preparation of the manuscript.

Finally, we are very grateful to Cambridge University Press for its tremendous contribution in presenting the Common Core project to the interested public.

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[1] The contributions reflect the personal opinions of their authors and are not necessarily the views of their employers or institutions.

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General (including European and international law)

CFR	Common Frame of Reference
CMLR	Common Market Law Review (law journal)
CPL	Competition Policy Newsletter
EIPR	European Intellectual Property Review (law journal)
EC	(Treaty of the) European Community
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECR	European Court Reports (official journal of the ECJ)
EEC	European Economic Community
EP	European Parliament
EU	(Treaty of the) European Union
GATT	General Agreement on Tariffs and Trade
ICC	International Chamber of Commerce
ICLQ	International and Comparative Law Quarterly (law journal)
IIC	International Review of Intellectual Property and Competition Law (law journal)
lit.	Litera
PC	Paris Convention for the Protection of Industrial Property of 1883/1984
TCE	Treaty of a Constitution of Europe
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
WTO	World Trade Organisation

Austria

ABGB	Allgemeines Bürgerliches Gesetzbuch (Civil Code)
BB	Betriebsberater (law journal)

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BGBl	Bundesgesetzblatt
BMJ	Bundesministerium für Justiz (Ministry of Justice)
BWG	Bankwesengesetz
ecolex	Fachzeitschrift für Wirtschaftsrecht (Law Journal)
EO	Exekutionsordnung (rules on execution)
EvBl	Evidenzblatt
GRUR Int.	Gewerblicher Rechtsschutz und Urheberrecht Internationaler Teil (law journal)
JBl	Juristische Blätter (law journal)
KartG 1988	Kartellgesetz 1988 (Antitrust Code 1988)
KartG 2005	Kartellgesetz 2005 (Antitrust Code 2005)
KOG	Kartellobergericht (Superior Cartel Court)
KWG	Kreditwesengesetz
MR	Zeitschrift für Medien und Recht (law journal)
MSchG	Markenschutzgesetz (Trademark Code)
ÖBl	Österreichische Blätter für Gewerblichen Rechtsschutz und Urheberrecht (law journal)
ÖBl-LS	ÖBl-Leitsätze
ÖJZ-LSK	Österreichische Juristenzeitung – Leitsatzkartei (law journal)
OGH	Oberster Gerichtshof (Highest Supreme Court)
RdW	Recht der Wirtschaft (law journal)
StGB	Strafgesetzbuch (Criminal Code)
StPO	Strafprozeßordnung
SZ	Amtliche Sammlung von Entscheidungen des OGH in Zivilsachen (official journal of decisions of the Highest Supreme Court, civil cases)
UWG	Bundesgesetz gegen den unlauteren Wettbewerb 1984 (Federal Act against Unfair Competition)
WBL	Wirtschaftsrechtliche Blätter (law journal)
WRP	Wettbewerb in Recht und Praxis (law journal)
ZPO	Zivilprozessordnung (Code of Civil Procedure)

Belgium

cc	Code civil
LPC	Loi sur les practiques du commerce et sur l'information et la protection du consommateur

Denmark

CA	Competition Act
DKK	Danish Kroner (currency)

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DRN	Dansk Reklame Neve (council for advertising self-regulation)
FO	Forbrugerombudsmand (consumer ombudsman)
MFL	Lov om Markedsføring / Markedsføringslov (Marketing Practices Act)

England

AC	Appeal Cases
ADR	Alternative Dispute Resolution
All ER	All England Reports
ASA	Advertising Standards Authority
CA	Competition Act 1998
CAP	Committee of Advertising Practice
CAT	Competition Appeal Tribunal
CMAR	Control of Misleading Advertisements Regulations 1988/2000
Code	British Codes of Advertising and Sales Promotion
CPA	Consumer Protection Act 1987
DGFT	Director General of Fair Trading
EA	Enterprise Act 2002
EAT	Employment Appeal Tribunal
ECLR	European Competition Law Review
EHRR	European Human Rights Reports
EMLR	Entertainment and Media Law Reports
EWCA	England and Wales Court of Appeals Decisions
EWHC	England and Wales High Court Decisions
FSR	Fleet Street Reports
FTA	Fair Trade Act 1973
IRLR	Industrial Relations Law Reports
ITC	Independent Television Commission
JCP	Journal of Consumer Policy (law journal)
OFT	Office of Fair Trading
QB	Queen's Bench Division
RA	Radio Authority
RTR	Road Traffic Reports
SI	Statutory Instrument
TDA	Trade Descriptions Act 1968
TLR	Times Law Reports
TMA	Trade Marks Acts 1994
UKHL	United Kingdom House of Lords
UTCCR	Unfair Terms in Consumer Contract Regulations 1994/1999
WLR	Weekly Law Reports

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KSL	Kuluttajansuojalaki (Finnish Consumer Protection Act)
MC	Markkinatuomioistuin (Market Court)
MCA	Laki markkinatuomioistuimesta (Market Court Act)
SopMenL	Laki sopimatoomasta menettelystä elinkeinotoiminnassa (Finnish Unfair Trade Practices Act)

France

Bull.civ.	Bulletin des arrêts des chambres civiles de la Cour de Cassation
BVB	Bureau de Vérification des Publicités
BVP	Bureau de Vérification de la Publicité
Cass.	Cour de Cassation
cc	Code Civil
CCons	Code de la Consommation
CNP	Conseil National de Publicité
CP	Code Pénal
DGCCRF	Direction Générale de la Concurrence, de la Consommation et de la Répression de Fraudes
Fasc.	Fascicule
ICC	Chambre internationale du commerce
NCPC	Nouveau Code de Procédure Civile
PIBD	Propriété industrielle – Bulletin documentaire (law journal)
RTDcom	Revue de droit commercial (law journal)
TGI	Tribunal de grande instance
Trib	Tribunal
Trib.com.	Tribunal commercial
UDA	Union National des Annconceurs

Germany

AcP	Archiv für die civilistische Praxis (law journal)
BB	Betriebsberater (law journal)
BGB	Bürgerliches Gesetzbuch (Civil Code)
BGBl.	Bundesgesetzblatt (official journal of the Federal Legislature)
BGH	Bundesgerichtshof (Federal Supreme Court)
BGHSt	Amtliche Sammlung des Bundesgerichtshofs (official journal of the Federal Supreme Court, criminal cases)

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BGHZ	Amtliche Sammlung des Bundesgerichtshofs (official journal of the Federal Supreme Court, Civil cases)
BKartA	Bundeskartellamt (Federal Cartel Office)
BR-Drs.	Bundesrat-Drucksachen (official journal of the Federal Council)
BT-Drs.	Bundestag-Drucksachen (official journal of the Federal Parliament)
BVerfG	Bundesverfassungsgericht (Federal Constitutional Court)
BVerfGE	Amtliche Sammlung des Bundesverfassungsgerichts (official journal of the Federal Constitutional Court)
EuR	Europarecht (law journal)
EuZW	Europäische Zeitschrift für Wirtschaftsrecht (law journal)
EWS	Europäisches Wirtschafts- und Steuerrecht (law journal)
FCO	Federal Cartel Office (Bundeskartellamt)
GG	Grundgesetz (Fundamental Law)
GPR	Zeitschrift für Gemeinschaftsprivatrecht (law journal)
GRUR	Gewerblicher Rechtsschutz und Urheberrecht (law journal)
GRUR Int.	Gewerblicher Rechtsschutz und Urheberrecht, Auslands- und internationaler Teil (law journal)
GWB	Gesetz gegen Wettbewerbsbeschränkungen (Act against Restraints of Competition – Antitrust Code)
JZ	JuristenZeitung (law journal)
NJW	Neue Juristische Wochenschrift (law journal)
NJW-RR	Neue Juristische Wochenschrift – Rechtsprechungsreport (law journal)
OLG	Oberlandesgericht (Court of Appeals)
PreisAngV	Preisangabenverordnung
RabelsZ	Rabels Zeitschrift (law journal)
StGB	Strafgesetzbuch (Criminal Code)
StPO	Strafprozessordnung (Criminal Procedure Code)
UWG	Gesetz gegen den unlauteren Wettbewerb von 1896/2004 (Act against Unfair Competition – Unfair Competition Code)[2]
Ex-UWG	Gesetz gegen den unlauteren Wettbewerb (UWG until 2004; earlier version)
WRP	Wettbewerb in Recht und Praxis (law journal)

[2] A synopsis of the old UWG and the UWG 2004 may be found in Begr. RegE, BT-Drs. 15/1487, p. 13.

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WuW	Wirtschaft und Wettbewerb (law journal)
ZEuP	Zeitschrift für Europäisches Privatrecht (law journal)
ZGS	Zeitschrift für das gesamte Schuldrecht (law journal)
ZHR	Zeitschrift für das gesamte Handels- und Wirtschaftsrecht (law journal)
ZPO	Zivilprozessordnung (Civil Procedure Code)
ZWeR	Zeitschrift für Wettbewerbsrecht (law journal)

Greece

AK	Astikos Kodikas (Civil Code)
Arm.	Armenopoulos (law journal)
CC	Civil Code
CCP	Code of Civil Procedure
CFI	Court of First Instance
DEE	Dikaio Epicheirisseon kai Etairion (law journal)
EEmpD	Epitheorisis Emporikou Dikaiou (Commercial Law Review)
EllDni	Elliniki Dikaiossini (Greek Justice)
L.	Law
NoV	Nomiko Vima (law journal)
PD	Presidential decree

Hungary

CPA	Törvény a fogyasztóvédelemr (Act CLV of 1997 on Consumer Protection)
HAA	Reklámörveny (Act LVIII of 1997 on Business Advertising Activity)
HCA	Versenytörvény (Hungarian Competition Act: Act No. LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices)
HCC	Hungarian Civil Code: Act IV of 1959
HCP	Hungarian Civil Procedure: Act III of 1952
OEC	Gazdasági Versenyhivatal (Office of Economic Competition)

Ireland

IAC	Irish Appeal Cases
App. Cas.	Appeal Cases
ASI	Code of Advertising Standards for Ireland
EIPR	European Intellectual Property Review
FSR	Fleet Street Reports
Ir Jur Rep	Irish Jurist Reports

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ILRM	Irish Law Reports Monthly
IR	Irish Reports
ODCA	Office of the Director of Consumer Affairs
SGSSA	Sale of Goods and Supply of Services Acts 1893 and 1980
TMA	Trade Marks Act 1996

Italy

App.	Court of appeal
Arch. civ.	Archivio civile (law journal)
art.	Article (in a piece of legislation)
Autorità Garante	Autorità Garante della Concorrenza e del Mercato (Antitrust authority)
CAP	Codice dell'autodisciplina pubblicitaria (Code of Self-Control of Advertising)
cass.	Corte di Cassazione (Highest Court)
cc	Codice civile (Civil Code)
c.p.	Codice penale (Criminal Code)
Cons. Stato	Consiglio di Stato (highest administrative court)
cpc	Codice di procedura civile (Code of Civil Procedure)
Danno e resp.	Danno e responsabilità (law journal)
d.lgs.	Decreto legislativo (legislative decree)
Foro it.	Il Foro italiano (law journal)
Giur.ann.dir.ind.	Giurisprudenza annotata di diritto industriale (law journal)
Giur. it.	Giurisprudenza italiana (law journal)
Giurì	Giurì dell'Autodisciplina Pubblicitaria (panel of Self-Control of Advertising)
Giust. civ.	Giustizia civile (law journal)
IAP	Istituto dell'autodisciplina pubblicitaria (Institute of Self-Control of Advertising)
l.	Law
Riv.dir.ind.	Rivista di diritto industriale (law journal)
TAR	Tribunale Amministrativo Regionale (administrative tribunal)
Trib.	Tribunale (tribunal)

Netherlands

BRv	Burgerlijke Rechtsvordering (Code of Civil Procedure)
BW	Burgerlijk Wetboek (Dutch Civil Code)

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DCA	Dutch Competition Act
RCC	Reclame Code Commissie (Advertising Code Commission)
NCA	Netherlands Competition Authority
NRC	Nederlands Reclame Code (Dutch Advertising Code)
Sr	Wetboek van Strafrecht (Penal Code)

Poland

k.c.	Kodeks Cywilny (Civil Code)
k.p.c.	Kodeks Postepowania Cywilnego (Code of Civil Procedure)
k.p.k.	Kodeks Postepowania Karnego (Criminal Procedure Code)
OCCP	Office of Competition and Consumer Protection
p.p.	Prawo prasowe (Press Law)
u.o.k.k.	Ustawa o ochronie konkurencji i konsumentow (Act on Competition and Consumer Protection of 2000)
u.z.n.k.	Ustawa o zwalczaniu nieuczciwej konkurencji (Act on Fighting Unfair Competition of 1993)

Portugal

CC	Código Civil (Civil Code)
CP	Código Penal (Criminal Code)
CPC	Código de Processo Civil (Code of Civil Procedure)
CPI	Código de Propriedade Industrial (Industrial Property Code)
CPP	Código de Processo Penal (Code of Criminal Procedure)
CPub	Código da Publicidade (Advertising Code)
DGCC	Direcção Geral do Comércio e da Concorrência
Instituto do Consumidor	Instituto Nacional da Defesa do Consumidor (National Consumer Protection Institution)
LAV	Lei 31/86 de Arbitragem Voluntária (Voluntary Arbitration Law)
LDC	Lei de Defesa da Concorrência (Antitrust Code)
LDCons	Lei de Defesa do Consumido (Consumer Protection Act)

Spain

AAP	Asociación de Autocontrol de la Publicidad (Association for the Self-Regulation of Commercial Communication)
CC	Código Civil (Civil Code)
CC.AA.	Communidades Autonómas (autonomous regions)
CP	Código Penal (Criminal Code)

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LCD	Ley 3/1991 de Competencia Desleal (Unfair Competition Act)
LDC	Ley 16/1989 de Defensa de la Competencia (Act for the Defence of Competition)
LEC	Ley de Enjuiciamiento Civil (Code of Civil Procedure)
LECr	Ley de Enjuiciamiento Criminal (Code of Criminal Procedure)
LGDCU	Ley 26/1984 General para la Defensa de los Consumidores y Usarios (Act for the Defence of Consumers and Users)
LGP	Ley 34/1988 General de Publicidad (Advertising Act)
LMa	Ley de Marcas (Spanish Trademark Act)
LOCM	Ley de Ordenación del Comercio Minorista (Act of Retail Organization)
SDC	Servicio de Defensa de la Competencia (Service for the Defence of Competition)
TDC	Tribunal de Defensa de la Competencia (Competition Court)

Sweden

ARN	Allmänna Reklamationsnämnd (Public Complaints Tribunal)
KL	Konkurrenslagen (Competition Act)
KO	Konsumentombudsmannen
MD	Swedish Market Court
MFL	Marknadsföringslagen 1995:450 (Act on Marketing)

Switzerland

BBl.	Bundesblatt der Schweizerischen Eidgenossenschaft (official journal of the Legislature)
OR	Obligationenrecht (contract and torts law)
SJZ	Schweizer Juristenzeitung (law journal)
UWG	Lauterkeitsgesetz (Unfair Competition Law)

USA

BBB	Better Business Bureau
C.F.R.	Code of Federal Regulations
FTC	Federal Trade Commission
FTCA	Federal Trade Commission Act
H.R.	House of Representatives
ITC	International Trade Commission
NAD	National Advertising Division
RICO	Federal Rackeeter Influenced and Corrupt Organzisation provisions of the Organzied Crime Control Act of 1970

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TCPA	Telephone Consumer Protection Act 1991
U.S.C.	United State Code
U.S.C.A.	United States Code Annotated
U.S.P.Q.	United States Patent Quarterly
UDAP	Unfair and Deceptive Acts or Practices (abbreviation for State Unfair Trade Act)

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