

POPULISM AND ANTITRUST

Competition law is designed to promote a consumer-friendly economy, but for the law to work in practice, competition agencies – and the courts who oversee them – must enforce it effectively and impartially. Today, however, the rule of populist governments is challenging the foundations of competition law in unprecedented ways. In this comprehensive work, Maciej Bernatt analyses these challenges and describes how populist governments have influenced national and regional (EU) competition law systems. Using empirical findings from Poland and Hungary, Bernatt proposes a new theoretical framework that will allow the illiberal influence of populism on competition law systems to be better measured and understood. *Populism and Antitrust* will be of interest not only to antitrust and constitutional law scholars but also to those concerned about the future of liberal democracy and free markets.

MACIEJ BERNATT is an Associate Professor at the University of Warsaw. He holds Habilitation, PhD, and MA titles in law and a second MA title in international relations (political sciences). He is the Director of the Centre for Antitrust and Regulatory Studies, Faculty of Management, University of Warsaw (Poland). He held several visiting fellow appointments at academic institutions in Australia, Germany, and the USA. Maciej's research interests lie at the intersection of competition law and constitutional law, administrative law and EU law. His research builds on many years of professional experience gained at the Constitutional Tribunal of Poland, the Supreme Court of Poland, and the Helsinki Foundation for Human Rights as well as broader interests in politics, economics, and history.

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Populism and Antitrust

THE ILLIBERAL INFLUENCE OF POPULIST
GOVERNMENT ON THE COMPETITION LAW SYSTEM

MACIEJ BERNATT

University of Warsaw



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For Magda

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Acknowledgments

My interest in law has always been from multiple perspectives. During my studies of law and international relations at the University of Warsaw I enjoyed studying different areas of law while at the same time taking care of my passion for history and foreign politics. My professional experience, first as a human rights lawyer and then as *référéndaire* in the Constitutional Tribunal of Poland and the Supreme Court of Poland, reinforced my belief that the law cannot be perceived in isolation from political, societal, and economic dynamics, and that the focus on the text of legal provisions rarely helps in solving real-life legal problems. This is probably why as an academic I liked competition law so much. It is built around open-ended legal provisions and is constantly evolving, as reflected in the case law and practice of competition agencies. The institutional and procedural organization of competition law systems, which were always at the core of my interests, very much dictate what is the real role of competition law in a given country. Indeed, my academic stays abroad always sparked my curiosity about what informs the success and mainstream role of competition law in one country, and what leads to its relatively niche character in another. This book builds on such an approach to law in general and views competition law in such a broader context.

The idea to write this book was born in 2015 when I witnessed first-hand the far-reaching legal changes in Poland resulting from the political shift. These changes took many by surprise, including foreign observers, who often perceived Poland as a model of a successful democratic and economic transformation after 1989. The question of how competition law would function in this new reality became increasingly intriguing to me. I was also asking myself whether the developments in Poland fit into the broader processes present in other countries in the world, in particular those with a similar transformation history. Indeed, the second decade of the 2000s was bringing about changes that very few could have predicted in many countries in the world. Liberal democracy and liberal markets were often under pressure.

When first studying the topic, then developing a proposal and researching, and finally working on this book, I enjoyed the support of and/or inspiration from many people, both professionally and privately. Among many others, I am particularly grateful to Marco Botta and Eleanor Fox, as well as to Caron Beaton-Wells, Kati Cseres, Josef Drexler, Deborah Healey, Michael Jacobs, Barry Sullivan, Tihamér Tóth, Márton Varju, Spencer Waller, Peter Whelan, and Laura Zoboli. I am also grateful to all those who provided me with feedback or helped in other ways. The list, while certainly not complete, would include Francisco Beneke, Or Brook, Tom Daly, Amber Darr, Ros Dixon, Łukasz Grzejdziak, Allan Fels, János Gyekiczki, James Hartzell, Katharine Kemp, Tarun Khaitan, Imre Kovács, Martin Krygier, Bartosz Kwiecień, Marek Martyniszyn, Csongor Nagy, Wendy Ng, Martyna Obarska, William Partlett, Yane Svetiev, and Haris Tsilikas. I am also grateful to my interviewees, who helped me so much to develop an understanding of the actual dynamics that inform the functioning of competition law systems. I would also like to thank the editorial team at Cambridge University Press for their support.

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Any omissions or errors in the book are mine.