

**Seminar ‘Private Antitrust Enforcement – Mapping Challenges’
Centre for Antitrust and Regulatory Studies (CARS)
Faculty of Management, University of Warsaw
Warsaw, 30 March 2022**

On 30 March 2022, the Centre for Antitrust and Regulatory Studies at the Faculty of Management of the University of Warsaw organised an online seminar entitled ‘Private Antitrust Enforcement – Mapping Challenges’. The event was led by Dr Dominik Wolski (CARS, Katowice Business University). The conference gathered prominent international and Polish academics researching the issue of private antitrust enforcement, as well as practitioners from both the public and private sector. The seminar provided an opportunity to reflect on the developments in private antitrust enforcement as well as discuss the remaining challenges facing this field.

The seminar began with introductory remarks from Dr Laura Zoboli (CARS, University of Warsaw), welcoming the participants on behalf of the Centre, and Dr Dominik Wolski, who introduced the topic of the conference and explained its relevance within CARS’s research project entitled ‘Status of private enforcement of competition law in CEE countries’¹. This project, ongoing since 2021, aims to examine the impact exercised on the current state of private antitrust enforcement by the transposition of the Damages Directive² into the legal systems of EU Member States. This project has laid down the framework for the seminar and for the fruitful discussions on the state of the transposition of the Directive as well as on the unresolved issues therein. It also proves CARS’s constant and long term presence in the discussion on private antitrust enforcement reflected by many publications edited by this research Centre.

The first panel, moderated by D. Wolski, consisted of two presentations touching upon the aims of the Directive and the extent to which they have been met. First, Dr Małgorzata Kozak (Utrecht University) presented her paper entitled ‘Private Enforcement of Competition Law – a Need for Effective Implementation of Directive 2014/104’. She reminded the participants of the history of private enforcement, which resulted from the codification of the consistent approach of the Court of Justice of the European Union (CJEU) in promoting the effectiveness of Articles 101 and 102 TFEU. The presentation underlined the difficulty of balancing EU principles of effectiveness and equivalence with the principle of national procedural autonomy of Member States, and the risks it brings to effective enforcement of individuals’ right to file damages actions across EU countries. In the following presentation titled ‘The challenges of Private Antitrust Enforcement in the Baltic states: proving causation and quantifying damages’, Prof. Jurgita Malinauskaite (Brunel University, London) outlined the developments in the transposition of the Damages Directive in Lithuania, Latvia and Estonia. She noted that despite certain

¹ See more about the project: <https://cars.wz.uw.edu.pl/en/research-and-expertise/research-projects/1161-11-status-of-private-enforcement-of-competition-law-in-cee-countries.html>.

² Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European, OJ L 349, 5.12.2014, p. 1–19 (hereinafter: ‘Damages Directive’ or ‘Directive 2014/104’).

improvements, private litigation in these countries remains scarce, highlighting the difficulties in proving a 'causal link' as well as in 'quantifying' damages as the key remaining issues to be resolved.

The second panel, moderated by Dr Anna Laszczyk (Linklaters), featured three presentations delving more into the specific issues of the transposition of the Directive. This round was opened by Mr. Jarosław Sroczyński (Markiewicz & Sroczyński), who presented the topic of 'Passing-on in competition damages cases'. Second, Dr Caroline Cauffman (Maastricht University) delivered her paper entitled 'Liability for antitrust damages: what goes up must come down?'. The presentation referred to the CJEU judgment in Case C 882/19, *Sumal SL v Mercedes Benz Trucks España SL*, which served as a ground for a discussion on the scope of the attribution of antitrust and/or civil liability that results in allowing individuals to bring an action for damages against a subsidiary of a parent company, when the latter was punished by the Commission, when they form part of a single economic unit. Finally, in his presentation on 'Competition litigation funding', Prof. Sebastian Peyer (University of East Anglia) discussed litigation funding in general, as well as explored the funding models encountered so far. Arguing that external funding of competition litigations is becoming an essential component of private antitrust enforcement, and in certain cases appears to be the only possibility for victims to access justice, he drew attention to the relevance of the increasing role litigation funding plays in debates on the necessary developments in private antitrust enforcement. This topic is particularly interesting, because litigation funding becomes increasingly popular in private enforcement in common law legal setting, such as the UK. In EU Members States, however, this is not only a novelty, but also raises some ethical questions.

The third and final panel, moderated by Dr Tomasz Bagdziński (Polish Office of Competition and Consumer Protection (UOKIK)), consisted of three presentations that highlighted the perspective of practitioners on the challenges of private antitrust enforcement. First, Dr Marta Mackiewicz (Maruta Wachta) discussed the issue of 'Limitation period in private antitrust enforcement', providing insights arising from current case-law. Second, Aleksander Stawicki (WKB Lawyers) delivered a presentation entitled 'Is private enforcement of competition law a good investment (in Poland)? Practitioner perspective'. Drawing from his professional experience, he discussed the current business perspective and considered the small number of damages cases brought before Polish courts. He then outlined crucial aspects private antitrust enforcement in Poland faces in terms of 'standalone' claims and 'follow-on' claims; he also suggested some improvements to the current system. The panel ended with a presentation entitled 'Proving the violation of competition law causing the damage – how far does the private claimant's access to the files of the competition case extend?'. Marcin Trepka (Baker McKenzie) elaborated therein on issues concerning the 'burden of proof', arguing that an information asymmetry between the plaintiff and the defendant exists in private enforcement cases, despite the assistance offered by law. While noting the temptation for further facilitation this issue through access to UOKIK's investigation case-files, he concluded that the right to access files of an appeal case against a UOKIK decision, should be withheld until the motion to be included as an intervener is granted or denied.

The seminar was closed by Dr Dominik Wolski who shared his final thoughts on the challenges facing private competition law enforcement and thanked all of the panelists. Overall, the

event, featuring renowned international and Polish academics and practitioners, offered a unique exchange platform for thoughts and experiences on the highly relevant topic of the remaining challenges in the transposition of the Damages Directive, and the state of private antitrust enforcement across European jurisdictions. The complexity of the papers presented and the vivid nature of the discussions during the seminar, only stress the importance of the debate on private antitrust enforcement, which ought to have a Europe-wide and cross-legal professions dimension.

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