

Oncioiu, Ionica

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BOOK REVIEW

CONSUMER INVOLVEMENT IN PRIVATE EU
COMPETITION LAW ENFORCEMENT

Ionica Oncioiu*

Titu Maiorescu University, Bucharest, Romania

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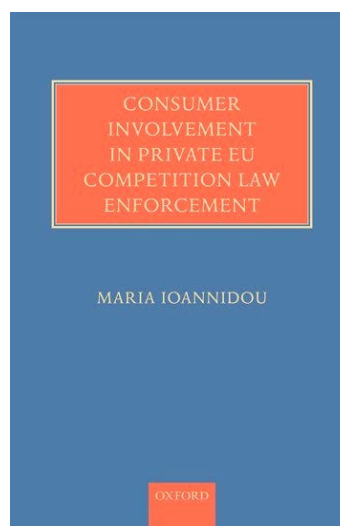
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The past 15 years have brought about radical changes to the competition law in the European Union, both materialistically and procedurally. These changes were highlighted by the European Commission's efforts to imbue the competition law within the European Union with a more economic approach, resulting in the adoption of the European Directive for Granting Compensation, Directive 2014/104/EU. All of these represent a challenge both for the overall functionality of the single market and for its ability to bring European consumers - both the old and new Member States - real benefits and not additional restrictions.

In this context, the consumers' welfare in the competitive world involves many legislative, institutional, economic and social facets which give the **"Consumer Involvement in Private EU Competition Law Enforcement"** a seductive power to catch attention very easily, no matter the professional field one belongs to, but at the same time calls for a gradual introspection positioned at the junction between the best interests of consumers and their participation to the enforcement of competition law in the European Union. Through this approach, Maria Ioannidou justifies the need for a more active involvement of consumers in the competition law enforcement, which will facilitate the creation of mechanisms that will lead precisely to the fulfillment of the criteria concerning consumers' rights.



* Author's contact: nelly_oncioiu@yahoo.com

The paper that assigns full sovereignty to the consumer, however subtly warns the reader that the more attractive the subject of competition law granting compensation appears to be in theory, the more threatened its practical validity is within the real economic context.

This is the background on which Maria Ioannidou sets the book in two parts: the first part sets up the frame of the political involvement and normative justifications for increasing consumer involvement in the competition law; the second part, procedural, highlights the measures that have to be taken and applied in order to increase this consumer implication.

Although the author starts the presentation with an orthodox view on the consumer, she regards their involvement through their initiatives, both the public and private, positioning the present work among the most updated debates in the European Union in terms of complexity of approach and wording of the appropriate measures to facilitate and increase this involvement. The complexity is based on an integrated approach to competition law in the European Union. However, it is not intended to provide a perspective only in terms of meeting the individual interests of consumers by trying to remove the non-compliance with competition law in the European Union, but by its integrated approach, which creates interdependence between the consumer and the principles of competition law enforcement. By assuming the participant role of the consumers, they can improve competition law enforcement mechanisms, both in the public and private sector. The consumer must overcome their mere role of beneficiary of the proper functioning of the single market mechanisms by taking an active contributor role in promoting and supporting these mechanisms.

Maria Ioannidou argues that by increasing the active role of the consumer, the claims to reduce the amount submitted to competent institutions by consumers will be discouraged, thus achieving a rapprochement of the EU institutions with the private sector of competition law. The controversy comes at the junction of the harmonization requirements of measures regarding the consumer involvement in competition law and private law matters set out in various Community Member States of the European Union. In order to eliminate this controversy, the author takes into account in this analysis, on the one hand, the official documents of competition policy issued by the competent institutions of the European Union, the approaches of various Member States of the European Union to civil proceedings of competition law enforcement, and on the other hand, the federal action model of the USA.

“Consumer Involvement in Private EU Competition Law Enforcement” refers to both the European Commission's reports, as well as the national reports, the opinion of stakeholders and academic reports presenting a point of view both quantitative and qualitative upon the legislative systems of the Member States and the litigation arising from the application of law in the competition field.

Starting with **chapter 2 – “‘Consumer Interest’ and the Aims of the EU Competition Law”**, the author enters the complexity of the concrete approaches, defines the concepts of “consumer”, “consumer interest” and “consumer welfare”, in the context of competition law in the European Union, thus illustrating the relationship between consumer and competition law by marking the interdependencies that occur between the enforcement of competition law and that of the consumer law. In terms of applicability, there is a discrepancy on the role of consumer, comparing the mismatch arising from the policies issued by the European Commission competition background and the application of the

provisions of these policies. This inconsistency may have a negative impact not only on protecting the interests of consumers but also on the consistency of competition law enforcement in the European Union. Strengthening and increasing the role of consumers in competition law becomes a way of bringing to the fore the consumer's interest in adopting documents regulating this aspect. Through the voice of the author, the book proposes a deepening of the measures that support the consumers' welfare in the European jurisprudence, taken in close connection with the results of an analysis of consumers' interests in relevant markets. Even if consumers are not the final beneficiaries, their contribution to the competition law should be an active one, especially procedurally. Therefore, the European Commission supported, in the discussions held on numerous occasions, the importance of the final consumers in relation to the competition law and policy at European Union level by designing the necessary measures to allow stakeholders to take a more active role.

The **third chapter – “Normative Justifications for Increased Consumer Involvement”** brings to the forefront of discussion the objectives of for the action liabilities in cases heard by the Court of Justice of the European Union by applying the provisions of the European Commission Policies. The mentioned objectives are: deterrence and compensation in disputes arising from the application of the competition law. Both objectives are considered equal, but in formulating the procedural measures, the focus is on the deterrence by increasing the role of the consumer. Procedurally however, this orientation is a complex one, due to the fact that it concerns legal, economic, political and social aspects and it was constituted on a minefield which lawyers and economists fought for, each taking into account the specificities of the competition law at the EU member state level. Promoting competition and achieving economic efficiency are the two key objectives of the competition law. But these two score extreme variations due to different jurisdictions. To support these differences, the book refers to specific cases where there were discrepancies between the objectives of competition policy at a European level and the consumers' welfare – T-Mobile, GlaxoSmithKline, Football Cup 1998, Continental Can, Microsoft, Deutsche Telekom, Post Danmark.

If the first two chapters present the theoretical justification of increasing the role of the consumer, the following two chapters approach the practical proposals that can support a greater involvement of consumers by assuming their role in enforcing private competition law.

The thorough analysis conducted in **Chapter 4 – “Improving Consumers' Role: 'Standing' and 'Access to Evidence'”** allows the author to put forward attack and defense procedural measures to address situations of dispute. The highlight of this chapter is the importance of adopting the Directive for Compensation Granting, a directive that brought exact procedural solutions by introducing the simple presumption of indirect purchases, showing a rational deterrent and offering the possibility to grant consumers a reward if they are part of competition litigation. But this presumption does not help to increase consumer involvement, it rather promotes individual actions to claim damages. The book discusses the controversy between the national courts which, in order to meet the consumers' interest, encourage the access to the Commission's document at the moment of the dispute, while the Commission considers that this access should be somewhat protected in favour of the business environment. The public interest to increase the active role of the consumer to participate in the application of competition law should be seen as a facilitator of access to

documents. Also, the idea of treating the consumer demands differently and even undertaking separate policy initiatives to boost the enforcement of competition law within the European Union is promoted.

Chapter 5 – “Improving Consumers’ Role: Collective Actions” complements the previous one and refers to the collective action procedures for low-value consumer demands and to the difficulties in finding a legislative harmonization by adopting certain measures by each individual Member State at a European level. By reviewing the policy’s efforts to improve the mechanisms of collective action in case of dispute, Maria Ioannidou warns that these mechanisms of competition policy must be developed differently based on the different access to justice. Moreover, the author emerges into logic the three types of interventionist mechanisms: the first one improves efficiency in terms of procedure application, the second mechanism focuses on the consumer rights resulting from their demands, and a third one highlights applications that would have not been known unless its implementation. Since there are different mechanisms of acting, the author believes that, in terms of the common interest of consumers, the model used may be the USA federal model and in terms of the individual interest of the consumers, one must consider the specifics of each Member State when enforcing the competition law.

In **Chapter 6 – “Consumer Involvement in Public Competition Law Enforcement: Towards Acceptable Alternatives”** are examined alternatives of the consumer involvement in the competition law enforcement in the public domain, alternatives that are intended to be applied in the Member States in accordance with the provisions of the European institutions. The orientation towards the public domain of competition law takes into consideration the fact that the application of the competition law, both in the public and private sectors, regard the same goals of deterrence and compensation, but also that these objectives have different intensities of manifestation. Consumer involvement in the public domain of competition enforcement can be seen as a means by which the competent institutions regarding violations of legal provisions in direct actions on the market are understood. Direct participation enables consumers to engage in the competition law in public, offering changes in the development of the intervention mechanisms.

Chapter 7 - “Overcoming Institutional and Political Limitations: Appropriate Instruments for the Introduction of European-wide Measures” offers the conclusions of this analysis and aims to find in the Treaty which lays the foundation of the European Union, the legal aspects concerning the harmonization of rules of civil procedure, in order to improve the best interest of the consumers and to increase their involvement in the enforcement of competition law. The concerted efforts of the European Commission have generated both the adoption of the Directive on the consumer involvement in private competition law, and certain amendments to the already existing legislation (Regulation 1/2003 and Regulation 773/2004) in the public domain of the competition law. What the book reveals is that the legislation adopted by the Commission must keep in mind the objections made by the Member States, which, through legal instruments specific to every jurisdiction, can participate in creating a common interventionist mechanism applicable to the breach of the competition law at a European level. Increasing the public involvement role of the consumer will improve the engagement rate in the private area of the competitive law, where the consumer participates now only through specific legal instruments.

Since, contextually, this analysis is conducted in a multi-level system, as the European

Union is, Maria Ioannidou considers it essential to find new applicable methods in governance so that the objectives of the law of competition policy may be achieved.

The conclusions of **“Consumer Involvement in Private EU Competition Law Enforcement”** are an extra training for a researcher in the author’s field, who managed to present rigorously and aplomb on the theme announced by the title, increasing its content, coherence and ability to be applicable. Personal opinions, though they have been spread out within the whole work to sharpen the perception of the analyzed phenomena, are predominant in this last part, mainly as a possible alternative proposal to enhance the role of the consumers in the enforcement of the private competition law.

The book is intended to be a thorough reflection on the competition law at a European level, on the existing theoretical and legislative framework, as well as on the intervention mechanisms. To this end, **“Consumer Involvement in Private EU Competition Law Enforcement”** is rich in academic and legislation references which are relevant for the adopted subject, the author thus becoming a keen observer both from within the EU and from the perspective of the Member States.

About the Author



Dr. Maria Ioannidou

Maria Ioannidou is a Lecturer in competition law at the School of Law of Queen Mary University of London where she also serves as Deputy Director of the Interdisciplinary Centre for Competition Law and Policy. Maria is also a visiting Lecturer at Lund University, Sweden. Previously, she was a lecturer at the University of Surrey. Maria studied law in Athens (LLB, LLM) and Oxford (MJur, MPhil, DPhil).

Her areas of interest include EU and UK competition law, competition law enforcement, the interaction between competition and consumer law and also competition law in the energy sector. Maria serves as the managing editor for the Journal of Antitrust Enforcement and for the World Competition Law and Economics Review.