

**Maciej Gac, *Group litigation as an instrument of competition law enforcement – analysis based on European, French and Polish experiences*, University of Warsaw Faculty of Management Press, Warsaw 2017, 532 pages**

A key theme of the book under review here is the engagement of individuals (mainly consumers) in the enforcement of competition law. The involvement of consumers in a competition case, and their will to initiate proceedings against antitrust infringers before civil courts, seems to be natural fuel for the development of private enforcement of competition law – Maciej Gac confirms this straight in the title of his book by presenting group litigations as an instrument for the enforcement of competition law. However, the author does not describe this instrument in the title of the book as effective or efficient – this seems to be an intentional omission, because one of the hypothesis of this book is that – despite good prospects – group litigations do not play a sufficient role in competition law enforcement (‘National solutions on group litigations do not ensure effective protection of individuals against competition law infringements, and, if not empowered with a coherent and binding approach to collective redress at the EU level, may lead to limited and unequal protection of EU citizens against competition law infringements’, page 29).

The structure of the book reflects its title and consists of two parts: the first focuses on general issues of competition law enforcement; the second provides an analysis of the EU and national legislative approach towards group litigations. Both of these general parts are divided into chapters. The structure is largely motivated by the author’s research goals and his clearly formulated hypothesis (Introduction, pages 19-31). What is valuable, and makes the book more intriguing for readers, are the titles of individual chapters – they are not simply descriptive but each of them reflects the author’s preliminary considerations about a certain topic (such as: Part. I, Chapter 2: *Private Enforcement of Competition Law in Europe: Towards Coherent Regime of Antitrust Law Enforcement*) or pose a question (for instance, Part II. Chapter 1: *The European Way Towards Common Approach to Collective Redress – What is the Direction?*). The style in which the titles of the chapters are formulated allows readers to follow easily the author’s perspective upon the analyzed issues. This approach seems to be highly useful, although some readers can find it annoying.

The first part of the book presents and analyses the general background for further, detailed considerations on group litigations (or to be precise: collective redress). The author starts with posing a question on the mutual relationships between public

and private enforcement of competition law (Chapter 1: *Between Public and Private Enforcement – Inconsistency or Mutual Complementing?*). Presently in 2018, but also at the end of 2016 (which the author declared to be the date of completing the book) the answer to the question from the chapter's title was rather obvious: public and private enforcement of competition law are not equal modes, but they can complement each other. The title of the second chapter focusing on the way 'towards a coherent regime of antitrust law enforcement' confirms this conclusion. The considerations presented in the commencing two chapters of the first part do not go beyond a summary of well-known thesis, opinions and ideas – nothing new for antitrust lawyers and antitrust academics, although readers who are not well-acquainted with the long-standing debate on the model of competition law enforcement can find it interesting.

In my view, the real intellectual adventure starts with chapter 3 where the author provides the characteristics of group litigations in the context of 'a modern system of competition law enforcement'. In the subchapter titled *The concept of a group litigation* (page 144), the author provides a pretty long list of those features of group litigations that make it possible to consider this enforcement mode as a 'solution to the problems of individual claims' (page 147). It is correctly underlined that a group litigation increases individuals' access to justice in many ways: by lowering the cost of litigation, by overcoming 'rational apathy' of injured individuals, by limiting the 'diffuse of interests', etc. The author also underscores that a group litigation reduces asymmetry between the victims of law infringements and the perpetrators. In the author's view, even if I am slightly sceptical about this point, a group litigation can also contribute to a better detection, prosecution and deterrence of anticompetitive behaviours. Finally, a group litigation means greater judicial economy and predictability. In the further part of chapter 3, the author presents a classification of various types of litigation mechanisms, including a division into opt-in and opt-out mechanisms. The analysis of these mechanisms was conducted with references to a few foreign legislations including, for example Denmark, Norway and Brazil. The list of 'typical problems of group litigation mechanisms' is contained in subchapter 4. (pages 178–198). What this part of the book lacks is, in my view, an explanation if the list of problems presented in this book is exhaustive, and why these particular types of problems were considered by the author as worth analyzing. It is likely that all the crucial problems of group litigations, including the sensitive issue of financing a litigation, are covered by the content of this book.

The further part of the third chapter in the first part of the book is dedicated to the American system of class actions, since it is treated by Maciej Gac as 'a starting point in the introduction of a group litigation mechanism in the area of competition law' (page 199). The author is rather successful in proving that an effective mechanism of class actions can contribute to a better enforcement of the law so – regarding these issues – the European Union should generally follow the American example. However, it should exclude all the weaknesses of the American system that were recognized in the practice, especially abuses of the group litigation model. Indeed, as the author proves in the further part of the book, the criticism of the American model of class actions became an inspiration for the origins of the EU model of collective redress.

The first part of the book finishes with the author's statement that 'only through further changes in the area of private enforcement, and introduction of a wide and uniform mechanism of group litigation, the previously described hybrid model of competition law enforcement may be fully achieved (...)' (page 237). As a supporter of a balanced coexistence of public and private enforcement of competition law, I fully agree with this opinion.

The second part of the book (*Towards increased efficiency of competition law enforcement in Europe – a need for a common approach to collective redress*) deals with detailed solutions found in a set of legislation issued at the EU and at the national level. Firstly, the author presents developments of the idea of collective redress in the EU using either a historical or functional perspective. Maciej Gac focuses his criticism of the European model partly on formal aspects of introducing a collective redress model; the latter has been done through a non-binding instrument – a recommendation that leaves Member States with a vast area of choices of what individual solutions to apply – Member States are not obliged to implement the Recommendation on collective redress. Obviously, the formal status of the act dealing with group litigation mechanisms in Europe is not the only reason for the author's critical attitude towards the European solutions. Taking under consideration either formal or substantive aspects of the Recommendation on collective redress, he directly calls this approach of the EU institutions (mainly the European Commission and the European Parliament) as 'disappointing' (page 303).

The second chapter in the second part of the book considers 'selected national solutions' on collective redress. However, readers do not find here a wide selection of national legislations. Even if Maciej Gac writes in the title of the chapter 'from French dilemmas to Polish clear-cut solution', there is, in fact, nothing in between – the selection is actually limited to France and Poland only. Surely, this fact does not undermine the content and the meaning of the book under review – Polish and French legislations are juxtaposed on the basis of rational arguments, and the objectives of the comparisons between two elements are easily identifiable.

What is valuable in the analysis of national laws is the fact that the author does not solely focus on existing or proposed solutions; he also tries – in compliance with the title of the book – to refer these considerations to the enforcement of competition law, sometimes widening his conclusions to consumer protection (for example Part. II. Subchapter 3.1. *Specific based approach – consumers and competition protection*, p. 347–350). Such references to competition/antitrust law can be easily found in the French part of the book (Part II. Chapter 2.I. *French ways towards group litigation – how to find a proper equilibrium*) and in the European part (Part II. Chapter 3. *The European Way Towards a Common Approach to Collective Redress – How to Achieve the Goal?*). I am slightly disappointed that in the Polish part (Part II. Chapter 2.II. *Polish solution on collective redress – a step towards protection of individuals against competition law violations*) references to competition law cases are so modest, they are also not identifiable in the list of content, even if the case law in this area is non-existent. However, it must be underlined that the Polish chapter on collective redress is more empirical by its nature because it presents cases judged by Polish courts (see Part II.

Chapter 2.II.3.1.1. and 3.1.2.). The author is quite enthusiastic about the solutions found in Polish legislation, which in his view can be – after some improvements – an example to follow for future European legislation on collective redress. Personally I do not share his high opinion about the Polish rules on collective redress since I think that this law failed the ‘efficiency test’. Still, Maciej Gac seems to be aware of the weaknesses of the Polish solutions. In his proposals for EU legalisation (Part II, Chapter 3), he tries to eliminate the imprecision of the Polish law that negatively influences the efficiency of the regulation.

The book written by Maciej Gac is certainly worth recommending and not only for antitrust lawyers as the title may suggest. Regarding the issue of group litigations, the book goes far beyond competition law. The author presents broad, overall characteristics of national legislations on collective redress in Poland and France, where competition law is only an exemplary field where the application of national rules can be verified and checked. Undoubtedly, the real value of the book is the unequivocal and well-founded assessments of national solutions on collective redress expressed by the author. While reading that ‘All these arguments allow us to claim that the recent French solution in the area of group litigation has limited chances of success’ (page 362) or ‘As the Polish experience with group litigation shows, due to the lack of greater precision in the formulation of the group litigation mechanism (...), the individuals are still reluctant to refer to this method of law enforcement’ (page 430), readers are convinced that they are facing the mature opinions of a person who conducted a very deep research project into the topic and so his opinions can be relied on.

The book is well-structured and accompanied by a sufficient selection of sources (the literature on group litigations is vast so it is easy to get lost in the multitude of materials). It is written in an accessible language that can be easily understood even by non-lawyers or lawyers not well-acquainted with competition law or group litigations.

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