

## **Conference on EU Competition Law and the New Private Enforcement Regime: First Experiences from its Implementation. Uppsala, 13–14 June 2017**

On 13–14 June 2017, a two-day conference entitled ‘EU Competition Law and the New Private Enforcement Regime: First Experiences from its Implementation’ was held at Uppsala University (Sweden). The conference, organized by the Swedish Network for Legal Studies (‘SNELS’) in collaboration with Uppsala University, was a follow-up to a 2014 conference on the, at that time, recently adopted EU directive on damages actions for breaches of competition law (Directive 2014/104/EU; ‘the Damages Directive’). The deadline for implementing the Damages Directive into national law lapsed on 27 December 2016, and the conference gathered practitioners and scholars from all over Europe to discuss first experiences with its implementation. As noted by the organizers, the Damages Directive (and the soft-law instruments accompanying it) does not only mark a new phase for competition law enforcement but also, more generally, a fresh instance of EU harmonization of certain aspects of private law and civil litigation.

The conference was opened by its three organizers: Magnus Strand, Vladimir Bastidas Venegas (both Uppsala University) and Marios C. Iacovides (Swedish Competition Authority) welcoming the conference participants to Uppsala. The opening speech was delivered by Professor Antonina Bakardjieva Engelbrekt (Stockholm University), chairman of the SNELS. The floor was then left open to the keynote speaker, Dr Ulrich Classen, partner at CDC Cartel Damages Claims, who shared his practical experiences from litigating cartel damages claims. Noting that this second pillar of EU antitrust enforcement is still under construction, Dr Classen discussed the remaining hurdles, identifying a potential need for parental liability and the adoption of a Leniency+ regime, where leniency applicants would be able to receive immunity from both fines and damages. Dr Classen also discussed the availability and conservation of evidence, and problems associated with the fact that it may take the Commission more than a decade to publish extended versions of its infringement decisions.

The keynote speech was followed by a plenary address made by Filip Kubik, policy analyst at DG COMP, who gave an update on the state of private enforcement from the Commission’s perspective. Taking note of the fact that 18 Member States had so far transposed the Damages Directive into national law, Kubik declared that evidence would now be more easily accessible for cartel victims. Accessing evidence from the

files of the Commission or NCAs may prove an uphill battle, as the authorities are prevented from publishing or otherwise disclosing confidential information. Kubik predicted that the new rules on disclosure will remedy this problem as cartel victims should now be able to access information directly from the cartel participants. The final plenary address was made by Professor Alison Jones (King's College London) who had been given the task of predicting the implications of Brexit on the private enforcement system envisaged by the Damages Directive. Professor Jones noted that a number of features of the English system have made it an attractive forum for litigations involving Articles 101 and 102 TFEU. However, Brexit will certainly affect the possibilities to claim damages under the Damages Directive before UK Courts.

After the plenary speeches, the afternoon continued with panel sessions. The first panel, chaired by Associate Professor Judge Eva Edwardsson, discussed the interfaces of public and private enforcement. The first speaker on this topic was Professor Torbjörn Andersson (Uppsala University) who deliberated on the binding effects of decisions and judgments in EU competition law. Per Karlsson, Head of Legal Department at the Swedish Competition Authority, shared his views next on the practical and legal effects of national decisions in subsequent damages actions. The first panel session ended with Katharina Voss (Stockholm University) discussing whether the enforcement of Articles 101 and 102 TFEU as carried out by the Commission is facilitating private enforcement, or whether the increased application of settlement procedures and other transactional resolutions has the opposite effect. Voss noted that private and public enforcement have different but complementary tasks, and that the two enforcement pillars may sometimes collide. For private enforcement, more infringement decisions would be beneficial Voss concluded.

The second panel session of the day was chaired by Dr Anna Södersten (Uppsala University) and concerned the limits of the private enforcement package. Professor Giorgio Monti discussed liability issues that have not been codified by the Damages Directive, and whether it is possible to fill these gaps, noting that some loosening of the reins of national judges might be in order. The floor was then left to Dr Julian Nowag (Lund University) who discussed EU competences and issues surrounding maximum and minimum harmonization. The last speech of the day was given by one of the organizers, Dr Magnus Strand, on the topic 'Labours of Harmony: Unresolved issues and Alternative Remedies'. The panel sessions were followed by panel discussions.

During the second day of the conference, Stefan Johansson and Associate Professor Ingeborg Simonsson, both judges at the Patent and Market Court in Stockholm, addressed private enforcement issues from a national court's perspective, discussing follow-on actions in the wake of the *TeliaSonera* margin squeeze case. The conference then proceeded into two parallel sessions. One session, which was chaired by Professor Hans-Henrik Lidgard (Lund University), was entitled 'Incentives and Strategies in Private Enforcement'. The other session, chaired by Professor Xavier Groussot (also Lund University), compared national experiences in the transposition of the Damages Directive. Both sessions were followed by panel discussions. In Panel I, Associate Professor Vladimir Bastidas Venegas (Uppsala University) gave an update on the state of play of implementation and also discussed whether the aims of the Damages

Directive are likely to be attained. He was followed by Professor Lars Henriksson (Stockholm School of Economics) who deliberated on the question of how to privately enforce public mandatory law, and whether there is a non-consistent approach to remedies. The session ended with Associate Professor Björn Lundqvist (Stockholm University) discussing defendant strategies and risk management in public and private enforcement. The other panel, Panel II, was represented by scholars from Poland, the Netherlands and Portugal. While Professor Sofia Pais (Portuguese Catholic University) presented the Portuguese law implementing the Damages Directive, Professor Anna Piszcz (University of Białystok) discussed controversial aspects of its transposition in Poland against the background of other Central and Eastern European countries. Dr Agis Karpetas (University of Leiden) then shared topical issues from the transposition in the Netherlands and Greece, and discussed the controversies in the limitation of liability for successful leniency applications.

The afternoon of the second day was also divided into parallel sessions. Panel III was chaired by Associate Professor Eva Storskrubb (Uppsala University/Roschier) and the session focused on lingering issues of procedure and evidence. Professor Pieter van Cleynenbreugel (University of Liège) deliberated on the question whether harmonization of procedural rules can indirectly lead to a harmonization of substantive rules, taking the presumption of harm as an example. Van Cleynenbreugel was followed by Judge Karin Wistrand (Svea Hovrätt, Court of Appeal) who addressed issues of leniency statements as well as the disclosure and rejection of evidence from a national court's perspective. The panel session ended with Dr Helene Andersson (Stockholm University) elaborating on the possibilities for cartel victims to access evidence and the Commission's efforts to publish more detailed versions of cartel decisions in order to facilitate damages actions. The other panel, Panel IV, was chaired by Dr Magnus Strand (Uppsala University) and entitled 'Private Law Aspects Solved and Unsolved'. Featured here were papers by Dr Katri Havu from the University of Helsinki (Causation and Damage: What the Directive Does not Solve – Remarks on Relevant EU Law and on Finnish Implementation), Dr Marios C. Iacovides from the Swedish Competition Authority (Article 17 of the Directive and the Possibility for Competition Authorities to Assist in the Quantification of Harm) and Elisabeth Eklund, partner at Delphi (National Conditions of Culpability – Allowed under the Directive and/or the TFEU?).

After the panel sessions, the participants reassembled for the closing address, which was delivered by Professor Ulf Bernitz (Stockholm University). The conference then closed with a goodbye speech by the organizers and a round of applause for everyone who had put so much effort into planning, organizing and hosting a conference on this new and potentially very important area of antitrust enforcement. Hopefully, there will be yet another conference on the new private enforcement regime once all Member States have transposed the Damages Directive and its effects have become even more visible.

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