Book Reviews

David Palmeter and Petros C. Mavroidis, *Dispute Settlement in the World Trade Organization – Practice and Procedure,* The Hague et al.: Kluwer Law International (1999), pp. vii–xvi and 1–313

The authors follow the 'thickening of legality' in the dispute resolution process from GATT to the WTO Agreement. If 'conciliation' under GATT was a diplomatic process, gradually it has become more legalistic, and under the WTO Agreement this has resulted in an almost judicial system. The Panel and the Appellate Body, established for the purposes of dispute resolution, bear a striking resemblance to courts. The book suggests that diplomacy and negotiation still remain central but the focus is now transposed to the various legalistic procedures. As the authors 'peel off' the layers of procedural legality they also provide the principal theoretical and historical information.

The first chapter introduces the main concepts and briefly meanders from Bretton Woods and the Havana Charter to the Marrakesh Agreement. The WTO structure is complicated indeed and the tabular map of councils, bodies, groups and committees give the reader a bird's-eye view of the organization and the relative position of the main actors, the Dispute Settlement Panels and the Appellate Body.

In the second chapter the authors also examine the conflict among agreements and their simultaneous application, regional and local government measures as well as the specific legal interest requirements. As any jurist will point out, jurisdiction is of paramount concern to all courts in the world. The Dispute Settlement Body is no exception in this respect. The Dispute Settlement Understanding (DSU) applies to all disputes concerning the 'covered agreements'. The covered agreements and the Understanding itself are conveniently reproduced in the appendix.

Chapter three is a detailed study of the various sources of law in the WTO. The authors scrutinize the covered agreements, the reports of prior panels, the customary interpretation of international law, the writings of the most highly qualified scholars and general principles of law. Although highly theoretical, the chapter is understandable and easy to read.

A substantial part of the book is dedicated to the Panel and the Appellate process. The authors follow it from the initial consultation request and the request for the establishment of a panel through the subject matter jurisdiction and to the rules on evidence, experts, and burden of proof. The chapters follow the classic law book approach – a step-by-step analysis of the procedure with definitions and examples.

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Here, the authors also offer scores of practical details and emphasize the unique character of the dispute settlement process. As always, the flow charts come in handy.

The authors further look at the special rules and procedures that the 1996 Understanding provides as an alternative to some of the DSU articles. As a general proposition, the special rules will prevail if there is a conflict between them and the provisions of the DSU. In addition, the DSU contains several special provisions applicable to dispute involving developing countries, special rules that apply to 'non-violation' and 'other situations', and arbitration.

Arguably the most significant part of the DSU is the adoption and implementation of reports. Under the GATT, the dissatisfied party could block the consensus and prevent the adoption of the report. The WTO Agreement takes a different stance – the report is adopted *unless* all parties agree that the report should *not* be adopted ('negative consensus'). Chapter seven further considers the notification of implementation intentions, 'the reasonable period of time' and its three alternatives, the disputes regarding implementation, and 'other situation' complaints.

In chapter eight the authors scrutinize the long-recognized duty of governments to repair or remedy damage they have caused. The chapter is conveniently divided into GATT practice and WTO practice, with additional paragraphs on compensation, concession, subsidies and 'other situation' reports.

David Palmeter and Petros Mavroidis sought to address the procedural questions that confronted them in the practical world of dispute settlement and undeniably succeeded in achieving their objective in a very comprehensible manner. Their book can be usefully studied without detailed prior knowledge of WTO law. The conceptual foundation of the problems is invariably explained at the beginning of each chapter and the legal analysis flows naturally from there.

The procedural bent of the work will serve the need of every practitioner who prepares and presents cases to the dispute settlement panels of the WTO. The appendices contain all agreements that are discussed in the text and constitute roughly half the volume of this book.

Dimiter Blyangov

A Review of Recent Important Publications in the Area of European Competition Law, *Frank Emmert*

Peter M. Roth (ed.), *Bellamy & Child – European Community Law of Competition*, London: Sweet & Maxwell, 5th ed. (2001), pp. i-clxx and 1–1339 (hardcover) and 850 pp. appendices (paperback)

Bellamy & Child is *the* classic treatise on EC competition law. It is now in its 5th edition. The book is hardcover, some 1.500 pages, and comes with an 850-page documents supplement. Bringing together the expertise of some 20 authors, with P.M. Roth QC acting as overall editor, the fifth edition was eagerly awaited by all those who had used earlier editions, particularly as the usefulness of the 1993 4th edition had become very limited due to the rapid development of the field. The big questions about the 5th edition obviously are whether it fulfills the expectations created by the earlier editions and whether it is worth its hefty price sticker of 240£. In the opinion of this reviewer, the answer could hardly be more affirmative.

The first chapter provides an overview of Community law for those readers who need such a foundation before being able to understand the specific issues of EC competition law. Chapter two deals with the prohibition of anti-competitive collusion in Article 81 (1) of the Treaty. Chapter three introduces the rules of Article 81 (3) on individual and block exemptions. Chapter four is dedicated specifically to 'common' horizontal agreements that may fall foul of Article 81 (1), such as collective buying or selling arrangements. Chapters five and six cover more formalized ways of collaboration between enterprises, namely joint ventures and mergers, and the rules on distinguishing the one from the other. The seventh chapter deals with vertical agreements affecting distribution or supply. Typical examples are agency and franchising agreements, as well as exclusive and selective distribution systems. The specific problems arising out of national-law based patents, trademarks, copyrights and design rights in the internal market and their treatment under EC competition law and the rules on the free movement of goods are treated in chapter eight. The ninth chapter is dedicated to the prohibition of the abuse of a dominant position in Article 82 of the Treaty. These nine chapters form the heart of the book, and some 750 pages deal with all issues of general EC competition law that have arisen in one way or another before the EU Commission, the European Court of Justice, the Court of First Instance, and the national courts and authorities. There is no other work to rival this one in clarity, wealth of documentation, and coverage (the only one to come close would be the German text by Immenga and Mestmäcker).

The remaining ten chapters of the book can be divided into two groups: five horizontal chapters, with relevance for a variety of industries, namely two on the enforcement of EC competition law by national and Community authorities, one dealing specifically with notifications of potentially anti-competitive agreements by undertakings and their effects, one on state-regulated industries and public

undertakings, and one on state aids. The remaining five are sector-specific, covering telecommunications, transport, energy, coal and steel, and agriculture, respectively.

Beyond these nineteen chapters, the main volume contains extensive tables of European and national judgments, and Commission decisions (in alphabetical order and by numbers), as well as tables of legislation, and a sophisticated 40-page index. All relevant pieces of European legislation, including all important Commission notices and communications, are included in the second volume.

In its updated form, Bellamy & Child is 'the Bible' of EC competition law more than ever. This is not only required reading for anybody who is providing legal services in the field of EC competition law. This is a book that every serious competition lawyer will want to have on his or her desk, as a personal copy for regular consultation.

Jonathan Faull and Ali Nikpay (eds), *The EC Law of Competition*, Oxford: Oxford University Press (1999), pp. i-cxviii and 1-961

While Bellamy & Child have traditionally relied on authors who are practitioners with broad experience in the representation of private firms before the Commission and Court of Justice, Faull & Nikpay can be seen as the answer 'from the other side'. The 28 contributors to this volume all worked or still work at the European Commission's Directorate General for Competition. While the editors warn us that 'readers will look in vain for secrets and indiscretions', the book nevertheless presents a different perspective of competition law from the one reviewed above and this makes it more than just an alternative to Bellamy & Child.

As expected, the coverage is quite similar. The first and general chapter has a markedly more economic approach to competition policy. The second, third and fourth chapters deal with Article 81, Article 82, and merger control respectively. By and large the analysis is similar to Bellamy & Child, although the reader will find this book more readable. The trade-off is less detail and less references. Chapter five on Article 86 (public undertakings and undertakings with special and exclusive rights) is more than twice as long as the counterpart in Bellamy & Child and offers useful additional insight into this thriving field.

Next, there are three chapters on specific problems under Article 81 and 82, namely horizontal agreements, vertical agreements, and intellectual property rights. This part is again similar in scope and coverage to Bellamy & Child, even if the perspective is notably different in detail. Some interesting differences can also be found in the sector-specific chapters. While Bellamy & Child included coal and steel, agriculture, and state aids in addition to telecommunication, energy and transport, Faull & Nikpay focus on financial services and communications (specifically including telecoms, media, and the Internet), besides energy and transport.

The incomprehensible omission in Faull & Nikpay is the enforcement procedure with the powers of the Commission, the duties of the Member States, and the rights of the undertakings concerned. Since the merger control procedure is described on some 15 pages, the authors must have deliberately omitted the procedure under Regulation 17 in light of the fact that it is currently being revised. However, there are many fundamental principles, particularly regarding the procedural safeguards for the undertakings under review and these will not go away, even if the enforcement is indeed decentralized in future and handed back to the Member States.

In many respects, the book is an excellent complementary volume to Bellamy & Child. Even at 125£ it is well worth the investment and will be consulted frequently by anyone seriously dealing with EC competition law. That being said, I would still go for Bellamy & Child, if I could have only either-or.

Alison Jones and Brenda Sufrin, *EC Competition Law – Text, Cases and Materials*, Oxford: Oxford University Press (2001), pp. i–xcix and 1–1159

Any overview of noteworthy books dealing with EU Competition law would be incomplete without a look at this volume, one of the few entirely new editions to appear in this field in recent years. With the subtitle 'Text, Cases, and Materials', the book is addressed primarily at the educational market, i.e. advanced undergraduate and in particular the increasing number of graduate courses dealing with the law of the European Union in a more or less comprehensive manner. With its subtitle and coming from Oxford University Press, the book is obviously also hoping to capitalize on the considerable success enjoyed by its sister publication, Craig and de Burca's *EU Law – Text, Cases, and Materials*, which is already available in its 3rd edition from Oxford. Just like Craig and de Burca's book, Jones and Sufrin will also attract at least some interest from professionals in London, Brussels, and elsewhere. The question thus becomes whether this book is going to satisfy these two groups of readers, and whether it is able to meet the standards set by Craig and de Burca. The short answer to both is no.

The volume begins with a general introduction to competition law and another to the legal system of the European Communities and its rules on competition. Pages 85 to 136 are devoted to Article 81 (1) and (2), to be followed by just under a hundred pages on Article 81 (3), i.e. the possible exemptions from the prohibition of agreements that restrict competition. Then there are 200 pages on Article 82, the provision against abuse of dominant positions. This is followed by a chapter on public undertakings and their position in the context of competition law. So far so good. To the surprise of this reader, the next chapter deals with 'distribution agreements' on some 80 pages. This brings us back to Article 81. Then follows a chapter on intellectual property rights and competition law, which is useful since it shows the complicated interface with the free movement of goods. Again surprisingly, the subsequent chapter deals with cartels and oligopoly, bringing us back to Article 81 once more, lest we should forget this important provision. Pages 699 to 810 deal with merger control, again a sensible chapter as such. Once again surprisingly, however, there is another chapter on Article 81 to follow, this time entitled 'joint ventures and other beneficial horizontal arrangements'. The remainder of the book is dedicated to enforcement powers of the Commission, the relevance of national law and enforcement mechanisms, as well as the global context. A shorter chapter deals with the future of the enforcement mechanism and the various proposals for modernization of the rules implementing Articles 81 and 82. The authors may have had their reasons for dealing with Article 81 in this piecemeal fashion, but they did not become apparent, let alone persuade this reader.

If the overall structure of the book is less than persuasive, the same is true for the construction of the various chapters. Essentially, the authors say everything three times. There are usually more or less lengthy passages taken from the case law of the

European Court, followed by some explanations by the authors – or shall we say 'restatements' of this case law – and then there are some passages taken from the works of other authors, confirming the same approach once again. In principle, there is merit in quoting original language from the Court's judgments, commenting on those and then giving the floor also to other voices. However, this makes sense only if the same issue is highlighted from different angles and if different possible outcomes for controversial questions are thus presented. More often than not, this is not the case in the present volume, unfortunately. This reader rather got the impression that the authors sought to legitimize their views by showing that this was just what the Court had done and what others also wrote. In the end, the reader gets bored and annoyed at having to read the same ideas – and sometimes almost the same sentences – three times over. It is probably not unfair to say that the book could be 200 pages shorter, if these redundancies had been eliminated throughout. Where the book is critical of the Commission or the Court, for example with respect to the Commission's decision in Consten and Grundig (pp. 149-154), the authors do not give the reader the full picture. Rather, it seems that the authors subscribe to the criticism of others that have gone before them – in this case Valentine Korah – and expect their readers to do the same.

Structure aside, there are further weaknesses, most notably typing errors and other editorial mishaps. Given the fact that law students and practitioners are not normally very familiar with EU law, let alone EU competition law, one would hope for particularly careful referencing in a book such as the present one. However, small mistakes abound, for example in the references to ECJ case-law (fn. 24 on p. 561, fn. 33 on p. 566, fn. 64 on p. 573, and fn. 288 on p. 627, to give but a few random examples) and in the bibliographic references.

Reading this book as a practitioner, one would look for a neutral presentation of the facts in an important case, an equally neutral presentation of various possible solutions (with reference to other authors), and – ideally – a persuasive critique with some suggestions why the outcome was good or bad and what should be done in similar cases in future. The idea would be that the authors empower the reader to form an opinion of his or her own and defend it with arguments presented in the book. Instead, Jones and Sufrin are regularly not giving enough facts for the practitioner. As a consequence, their more or less subjective critique is quite often not persuasively supported by the facts and arguments that were presented. And finally, there is no systematic attempt at disclosing other possible opinions and outcomes and explaining why a certain approach was or was not pursued.

Reading this book as a student of EU law or a novice to EU competition law, one would look for a structured introduction to a given topic in the field, e.g. the prohibition under Article 81 (1) and the possible exemptions in Article 81 (3), to be followed by case-law and commentary. In spite of the very substantial volume of the book, however, structured explanations are not included.

The present reader tried this book as primary assignment for his regular course on EU competition law but regretted it rather rapidly and ruefully went back to the traditional assignment of Korah's *An Introductory Guide to EC Competition Law and*

Practice (for the structure and background) and that same author's *Cases and Materials on EC Competition Law* (for the case-law and commentary). Both books of Valentine Korah together are not only doing a better job at meeting the demands presented in this review but are doing it on fewer pages. While Korah's questions with regard to the case-law stimulate critical and independent thinking, the present volume has almost the contrary effect. It would seem that Jones and Sufrin need to do some very substantial revisions for their next edition before their work can be seriously recommended as an alternative to Korah's or Richard Wish's books.

Simon Bishop and Mike Walker, *The Economics of EC Competition Law – Concepts, Application and Measurement,* London: Sweet & Maxwell, 2nd ed. (2002), 504 pp.

Is this a book by an economist for economists, or is it worth a second look by lawyers trying to better understand the impact of competition law on a given firm, sector, or economy (and possibly developing some creative arguments for their advice to clients, courts, and policy makers)? The answer to this question is ambiguous.

On the one hand, the authors are very high-profile economists, both active as consultants, and both listed among the top competition economists by the Global Competition Review. And they write as economists. On the other hand, economic analysis has been invading competition law at an ever-accelerating pace and simply cannot be ignored any more even by those lawyers who went to law school precisely because they wanted nothing to do with mathematics, whatever its form or function.

The book starts with an introduction to the goals of EU competition policy and the use of empirical techniques. Subsequently, the main concepts of competition policy, such as effective competition, market definition, and market power, are introduced from an economic perspective. Part II is dedicated to the application of economic concepts to competition law, covering Articles 81, 82 and merger control. It is well written, persuasive, and insightful. This first half of the book is highly recommended for every lawyer working in competition policy, whether at the national or at the European level.

The remainder of the book is entitled 'measurement'. Its goal is to enable the reader to engage in an empirical analysis of a certain market and its principal players. The authors argue correctly that economic theory is often too general, too blunt, and too controversial, when it comes to determining the framework for assessment of a competitive situation and of desirable and undesirable changes. Ultimately a case-by-case analysis is required, and that cannot be done without empirical analysis. The European Commission and the Court of First Instance have certainly realized this need and are increasingly applying complex economic and econometric analysis when determining whether and how to intervene in the markets. Thus, the second half of the book should also be required reading for legal professionals who are advising clients and providing other services in this area of law. However, potential readers have to be warned that this part is not for the faint of heart. While it should be possible for a lawyer with professional experience in competition policy to read and understand this text on its own, the usefulness of a solid foundation in micro- and macroeconomics can hardly be overstated. The conclusion to be drawn, however, cannot be that the lawyers amongst us should ignore the book or at least its second half. The conclusion, rather, ought to be that micro- and macroeconomics have to become mandatory subjects in law school (again) and that lawyers working in competition policy without a sound understanding of the

economic aspects of their work had better fill this knowledge gap before they get caught in a malpractice case.

The present volume is useful not only because it highlights the need for economic analysis in competition law and policy but also because it offers help to those lawyers who are willing to face this need and to evolve their work accordingly.