

Introduction

This book constitutes the final output of the COMP.EU.TER Project (Public and Private Enforcement of EU Competition Law in the Age of Big Data), co-funded by the Training of National Judges Programme of the European Union (GA HT.6149 SI2.858159).

Over two years, the COMP.EU.TER Project provided training to national judges and apprentice judges on the enforcement of EU competition law in the digital era. Training activities were organized by the Universities of Turin, Milan and Genoa in the form of seminars, lectures and online materials made available on the project's e-learning platform (www.computer.unito.it). In addition, the project benefitted from a wider network of associated partners (the Universities of Antwerp, Ferrara, Aberdeen, Rotterdam, Warsaw and Zaragoza) which contributed by providing materials for the COMP.EU.TER e-learning platform and promoting the training activities among the respective national judiciaries.

On 30th November and 1st December 2023, the Final Conference of the COMP.EU.TER Project was held at the Palazzo di Giustizia in Milan, which houses both the Court of Milan and the Court of Appeal of Milan. Over two days, the speakers addressed a selected audience of national judges from over ten Member States, tackling the most relevant developments in the public and private enforcement of EU competition law in the context of digital markets.

The aim of the COMP.EU.TER Project has been, primarily, to raise the awareness of national judges about the challenges posed by the application to the digital world of traditional competition law concepts developed in the “analogic” world. Not only do the big data revolution and the up-surging diffusion of data analytics facilitate the commission of existing antitrust violations, but they also originate new types of anticompetitive behaviours that could not be committed in the analogic world (e.g. algorithmic collusion, behavioural discrimination). In addition, the structure and the dynamics of digital markets put traditional tools of competi-

tion law enforcement under strain, increasing the burden of both administrative authorities and courts.

Against this backdrop, the COMP.EU.TER Project has sought to better prepare national judges for the task of enforcing EU competition law in digital markets, by helping them familiarise with the most recent legislation, case law and practice. The book shares this goal, and its primary targets are national judges dealing with competition law in the courts of the Member States. We hope that the book may guide them in this difficult task, in a context where profound transformations in technology, market structure and regulatory landscape present the enforcers with unprecedented challenges. For similar reasons, we expect it to provide useful insights to legal practitioners and academics interested in understanding the way EU competition law is and will be applied to digital markets.

The structure of the book broadly reflects the programme of the COMP.EU.TER Final Conference, and covers three major themes.

The first three chapters guide the reader through the structural features of digital markets and their impact on competition, addressing cross-cutting issues and presenting the general framework for the application of EU competition law to digital markets.

In the introductory chapter, Francesco Munari addresses, with ample references from practice, the specificities of digital markets in terms of economies of scale, network effects, multi-sidedness, value of data and vertical integration. He shows how those factors lead to the emergence of digital ecosystems – rather than mere dominance or even super-dominance – built by the largest market players. The concluding paragraph highlights the shortcomings of traditional *ex post* enforcement with respect to anticompetitive conducts of the largest digital service providers and hints to the paradigm shift represented by *ex ante* regulatory schemes.

Building on Munari's overview, Valeria Caforio and Laura Zoboli zoom in on the effects that those specific features of digital markets have on the creation and the preservation of market power. Based on a careful analysis of the role data generation and collection perform in building market power, they argue that big data operate as a set of entry barriers that can fortify dominance in markets where goods and services are enhanced through data utilisation.

In a similar vein, in light of the societal transformations brought about by digital technology, María Campo Comba examines the expansion of the goals of EU competition law to non-economic objectives, offering a comprehensive and detailed analysis of the relevant practice of the

Commission and some National Competition Authorities as well as of the case law of the Court of Justice.

Another set of chapters focuses on specific obligations imposed on undertakings in digital markets either by Articles 101 and 102 TFEU or by the recently adopted Digital Markets Act (DMA).

Daniel Mandrescu discusses in detail the challenges of applying Article 102 TFEU to multisided online platforms, focusing in particular on market power leveraging and discriminatory strategies implemented by platforms. The chapter emphasises the flexibility of Article 102 TFEU due to its open-ended character, while at the same time inviting caution in its application to new practices emerging in digital markets.

The chapter by Jan Blockx shifts emphasis from Article 102, which has so far dominated EU competition law enforcement in the context of digital markets, to Article 101 TFEU, providing a comprehensive account of cases where competition authorities and courts have investigated possible instances of algorithmic collusion.

Finally, Claudio Lombardi presents the brand-new regulatory approach introduced by the DMA, analysing its scope of application and dissecting the complex legal regime of gatekeepers. He concludes that the DMA, with its emphasis on speed, flexibility, and certainty, is «a significant step towards ensuring a fair and competitive digital market».

In keeping with the COMP.EU.TER Project's focus, all remaining chapters specifically address the role of national courts, focussing on the private enforcement of competition and quasi-competition rules and, more generally, of legislation applicable to digital markets, also taking into account interferences with other sets of rules, such as data protection law.

Alberto Miglio's chapter provides an overview of issues of jurisdiction and applicable law that may arise in competition law cases in the digital domain, from the characterisation of claims between platforms and users to the lack of coordination between the DMA and EU legislation on private international law.

Luca Calzolari discusses the impact that commitment decisions, firstly introduced in the realm of EU competition law by Article 9 of Council Regulation (EC) 1/2003 and recently included also among the enforcement tools of the DMA, have had on public and private enforcement of EU competition rules. The chapter focuses on the application of commitment decisions by national courts and, in particular, on their evidential value in the context of follow-on actions brought by third parties to, *inter*

alia, secure compliance with the commitments or seek damages in case of default.

Filippo Croci's chapter on the private enforcement of the DMA complements the substantive analysis by Lombardi, pointing to the many questions left open by the (deafening) silence of the DMA with regard to its private enforceability before national courts. In particular, Filippo Croci highlights to what extent the lack of a proper legislation on private enforcement can be only partially overcome by the general provisions enshrined in Article 39 of the DMA and by the extension of the applicability of Directive (EU) 2020/1828 on representative actions to violations of the DMA. On these bases, the chapter investigates the possible features and prospects of the private enforcement of the DMA.

Last but not least, Chiara Cellerino discusses the interplay between private enforcement of competition law and data protection claims, a highly relevant topic especially after the judgment of the Court of Justice in *Meta Platforms* (C-252/21).

Like every collective enterprise, this book owes its existence to the shared effort of various people and institutions, to whom our gratitude goes.

First, the whole COMP.EU.TER Project would not have been possible without the generous funding provided by the European Commission under the call "Training of National Judges in EU Competition Law".

We are also grateful to all the judges who took part in the training activities despite their numerous and intense commitments, for their interest in the COMP.EU.TER Project and the precious feedback they gave us.

We were honoured to receive the support of the Association of European Competition Law Judges (AECLJ) and, in particular, of its President Dr. Adam Scott OBE TD, who enthusiastically accepted to help us promote our training activities and to take part in the Project's Final Conference. Moreover, the Past President of AECJLJ, Marina Tavassi (former President of the Court of Appeal of Milan), and the current Member of the Executive Committee, Silvia Giani (former Judge of the Court of Appeal of Milan and recently appointed as President of the Chamber specialised in business matters and competition law of the Court of Milan), were also essential for the success of the Conference.

We are also grateful to the Italian School for the Judiciary (Scuola Superiore della Magistratura, SSM), local sections of Turin, Genoa and Milan, that has supported us through the implementation of the Project.

We are obviously indebted to all those (speakers, chairs, judges, and

other participants) who took part in the Final Conference and to the Milan Bar Association that hosted the main conference in the wonderful venue of the Biblioteca Ambrosoli at the Palazzo di Giustizia of Milan, and would like to acknowledge the contribution of ITA.CA – Italian Case-Law on Private Antitrust Enforcement¹ to its organisation.

Finally, we are grateful to Silvia Giudici and Mario Barbano for their invaluable support in multiple stages of the implementation of the COMP.EU.TER Project and for their help in the editing process.

The book is updated to 15 February 2024.

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¹ Available at <https://itaca.europeanlitigation.eu/>.

