

## BOOK REVIEW

*Boytha Györgyné* (ed.): **Versenyjogi jogsértések esetén érvényesíthető magánjogi igények** (Private enforcement of competition law). HVG-ORAC, Budapest, 2009. 329 pp.

“Private enforcement” of competition law is generally understood to cover all the legal steps that a victim of an anti-competitive conduct (be it a world-wide market sharing cartel or an individual instance of unfairly high pricing by a dominant company) may take under civil law. The term, which is generally used as the opposing pair of “public enforcement” of competition law (namely the legal steps by public authorities to investigate and sanction anti-competitive conduct), has become a kind of a “philosopher’s stone” for those writing about current trends in competition law. One will find the phrase in almost every book, article or comment published recently on competition law matters: even competition agencies now regularly put a notice on private enforcement into their press releases about major decisions.

Despite all these extensive efforts, there has been very few instances—especially in the Hungarian legal literature and concerning Hungarian civil law –, where the reader (an academic or an attorney wishing to give up-to-date advice to its client) received a clear and instructive picture as to the legal situation concerning this important topic. This book was designed precisely to fill this loophole: its structure and method of analysis are perfectly fit to provide a comprehensive overview taking each of the most important issues in turn that a Hungarian civil lawyer may face when assessing a possible private enforcement claim in Hungary. The book is divided into nine chapters: in addition to the helpful introduction, it analyses, in particular, the following topics: what are the possible civil law heads of sanctions? How can the claimant quantify the damages suffered? How will the causal connection be established between the infringing conduct and the damages suffered? Who can initiate a damages claim (individual parties or even consumers collectively)? These (and further equally relevant) questions receive an adequate and very well researched answer in each and every chapter.

The book and its individual articles are, however, not entirely without flaws. First, the book is also not entirely consistent as to the precise focus of

its analysis: the introductory chapter first discusses—when delineating the subject of the book—the “two ways of enforcing claims deriving from antitrust rules” (21.) (meaning private and public claims stemming from infringements of the prohibition of anti-competitive agreements and of the abuse of a dominant position), while the same chapter latter also brings the breach of the rules of unfair competition (eg individual boycott) and the breach of the Hungarian Act on Commerce into the equation (29–31). In addition, Chapter 2 (under the title: “competition law infringement—civil law sanctions...”) extensively deals with the unique and highly interesting subject of the enforcement of commitment decisions; even though, despite the title of the chapter, a commitment decision by an antitrust authority clearly does not result in a finding of competition law infringement by the authority. Second, although the quality of the articles is consistently very high, the depth and length of the legal analysis varies and in certain instances without due reason. Therefore, for example, the highly important and controversial topic of calculating the quantum of damages (that is highly relevant for any Hungarian lawyer or judge dealing with a future private enforcement case) receives less than half of the pages used for the issue of multiple damages in the USA. Although this latter topic may indeed be rather exotic, it is clearly the latter that would have deserved a better coverage from the perspective of the Hungarian reader [especially considering that multiple damages are not expected soon in civil law system due to the deep rooted principle of prohibition of profiting from damages (“káronszerzés tilalma”)].

Even with the minor shortcomings stated above, the new book on private enforcement can be considered as a pioneer in its genre. The collection of articles and essays provides immense value to the reader in all respects: it is extremely useful both for those wishing to merely to quickly look up a single practical aspect when they feel “lost” in the jungle of a private enforcement case and also for those who use the book as a basis for further research (especially in light of the consistent and detailed footnotes as well as the bibliography at the end of the book providing further stepping stones for law students, professors or researchers). Although the publication will certainly not be sufficient in itself to create the philosopher’s stone on the Hungarian legal market and turn the country into a virtual goldmine of private enforcement, it clearly seems that the authors have already mastered quite a number of important steps of alchemy towards the completion of the desired element.

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