

BOOK REVIEW:

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EU COMPETITION LAW (4 volume treatise published by Claeys & Casteels)

Under the radar-screen, a formidable new treatise on EU competition law has developed under the care of Belgian publishers Claeys & Casteels. This four-volume treatise, *EU Competition Law*, was rolled out over a period of several years. The treatise is co-written by a number of EU enforcement officials as well as by private practitioners and academics. The result is an impressive product by which a thorough exposition of law is filtered through the lens of experienced antitrust enforcers and private practitioners, often revealing the inner workings of DG Comp in subtle, but very useful, ways.

The treatise began with publication in 2006 of Volumes I and II on “Procedure” and “Mergers and Acquisitions.” Volume I dealt with principally with the administrative procedure of DG Comp as applied not only to behavioural cases (i.e. EC Treaty Articles 81-82), but also to mergers and state aid cases. This filled a vacuum the market, as no work, to this writer’s knowledge, has focused on procedure from all of these angles. As if that were not interesting enough, Volume I also addressed the procedures of the UK competition authorities, and those of the European Court.

Through a separate group of authors, Volume II focused exclusively on EU merger control, providing an in-depth analysis of the procedural and substantive issues, but again, with many invaluable insights on the internal practice of DG Comp. For example, Volume II contains a large segment devoted to fashioning remedies and their implementation, which is atypical for a treatise of this genre. Volume II also provides analysis of relevant markets, substantive assessment and remedies in specific sectors, notably: financial services, telecommunications and media, electricity and gas and transport. Volume II ends with an excellent discussion on judicial review of mergers in the European Court and on the international comity and cooperation aspects.

In 2007, Claeys & Casteels published Volume III on “Cartels,” which contains almost 800 pages of clear, well-organized discussion of how EU cartel enforcement works both at Commission level and in the European Court. As cartel specialists are aware, the case law in this field is voluminous, complex and opaque. Since there is no EU Bill of Rights as such, the case law of the European Court must be sifted through, sometimes painfully, in order to ascertain when evidence is not considered “admissible” or probative, when the Commission has committed an “abuse of process” (which is expressed through obscure notions such as rights of legal certainty, personal responsibility, equal treatment and legitimate expectations) or when an argument in mitigation of a fine is considered valid. It is this particular minefield that Volume III picks apart with a degree of clarity and vision which makes it invaluable to anyone whose client is involved in Commission or Court proceedings. The only drawback of Volume III is that does not address in sufficient detail the concept of “single and continuous” infringement, which in recent

years has been subject to close scrutiny by the European Court. No doubt that this will be cured in the next edition.

In 2008, the publishers extended their series with Volume IV, which focuses exclusively on “State Aid.” Due to the severe global recession, this area of the law has been resurgent in recent years. EU State aids law, more than any other area of EU competition law, has a distinctly political character—given that the aid in question is provided by a Member State, usually to address a national economic priority or crisis that has public traction. The treatise’s format of rigorous case law synthesis, combined with strong insights into the DG Comp framework for assessing these cases, works extremely well here. Neophytes to the area of State aid will be pleasantly surprised to find that with this treatise under their arm, they can navigate these issues with confidence. More experienced practitioners will be grateful that skilful authors have synthesized this case law for them and provided them with many useful insights.

U.S. antitrust lawyers with any interest in European competition law should not hesitate to add *EU Competition Law* to their library. It is a unique work of quality that is capable of delivering insights that will matter to lawyers facing “real” issues—even several years after the treatise was published. One could only hope that Claeys & Casteels will follow up with a second edition in the not distant future.