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This section selects books on themes related to competition laws and economics. This compilation does not attempt to be exhaustive but rather a survey of themes important in the area. The survey usually covers publication over the last three months after publication of the latest issue of Concurrences. Publishers, authors and editors are welcome to send books to stephane.rodrigues-domingues@univ-paris1.fr for review in this section.

Cette rubrique recense et commente les ouvrages et autres publications en droit de la concurrence, droit & économie de la concurrence et en droit de la régulation. Une telle recension ne peut par nature être exhaustive et se limite donc à présenter quelques publications récentes dans ces matières. Auteurs et éditeurs peuvent envoyer les ouvrages à l'intention du responsable de cette rubrique : stephane.rodrigues-domingues@univ-paris1.fr

Les amendes en droit de la concurrence. Pratique décisionnelle et contrôle juridictionnel du droit de l'Union
BERNARDEAU Ludovic et CHRISTIENNE Jean-Philippe
Larcier, 2013, 1184 p.

Les auteurs de ce livre travaillent en qualité de référendaires au Tribunal de l'Union européenne. Ils ont une connaissance approfondie des amendes en droit de la concurrence. Selon Marc Jaeger (président du Tribunal de l'Union européenne), cet ouvrage "*que l'on hésite à qualifier de traité, de précis ou de somme, est, quoi qu'il en soit, considérable. Il l'est non seulement par son ampleur, mais aussi – et surtout – par l'étude unique qu'il offre sur une thématique dont l'importance et la complexité sont croissantes*". Par ailleurs, dans la préface du livre, Koen Lenaerts (vice-président de la Cour de justice de l'Union européenne) dit qu'à sa connaissance "*le présent ouvrage est l'œuvre la plus complète sur les amendes en droit de la concurrence de l'Union qui ait jamais vu le jour*".

Ce livre comporte deux parties. La première décrit la pratique décisionnelle de la Commission dans l'imposition des amendes aux entreprises ayant enfreint les règles de la concurrence tandis que la deuxième se concentre sur le contrôle de légalité et la compétence de pleine juridiction que les juridictions de l'Union européenne exercent par rapport aux décisions de la Commission.

Dans la première partie, les auteurs présentent à titre introductif les lignes directrices de 1998 et 2006 pour le calcul des amendes infligées. De fait, afin de fixer le montant des amendes, la nature propre, l'étendue géographique et l'impact économique concret de l'infraction sont pris en compte. Aussi, la gravité de l'infraction doit être qualifiée sur la base des critères de gravité et le montant de départ général. Les auteurs notent qu'un montant de départ spécifique peut être appliqué en fonction d'une répartition des entreprises en catégories. En outre, les auteurs s'interrogent sur l'ajustement du montant de base de l'amende. Dans certains cas, la Commission devra prendre en compte les circonstances aggravantes (la récidive, le refus caractérisé de coopération, l'activisme dans l'infraction et la persistance dans l'infraction) et atténuantes (l'inapplication de l'infraction, la cessation de l'infraction et le défaut de volonté infractionnelle) de l'infraction.

Par ailleurs, les auteurs analysent la coopération des entreprises avec la Commission durant la procédure administrative. Ils mettent en exergue le champ d'application *rationae loci*, *personae*, *materiae* et *temporis* des programmes dits "de clémence". Dans ce contexte, les mesures de clémence comme les conditions de l'immunité sont analysées ainsi que la procédure afférente. Les auteurs d'ajouter un examen des cas de rejet de la demande d'immunité. Les auteurs soulignent que les amendes peuvent être réduites si l'entreprise est loyale et coopère de façon efficace. Dans cette optique, l'assiette du montant de base de l'amende peut être réduite pour autant que certaines conditions soient remplies et la procédure respectée. Aussi, les auteurs rappellent qu'il existe des cas de transaction durant la procédure administrative et ils présentent la procédure transactionnelle. Finalement, les auteurs abordent le principe du paiement immédiat de l'amende et précisent que des aménagements existent, comme l'astreinte, la garantie, le sursis au paiement immédiat et les procédures de référé.

La deuxième partie se concentre sur le contrôle juridictionnel des amendes infligées par la Commission. Pour commencer, les auteurs analysent le contrôle de légalité externe et interne du cadre législatif en la matière. Du point de vue du contrôle de la légalité externe, les auteurs analysent les règles de compétence et l'obligation de motivation au regard des traités ainsi que le principe général du respect des droits de la défense, le droit à un procès équitable au regard de la Charte des droits fondamentaux de l'Union européenne et des principes généraux du droit. Aussi, les auteurs examinent le déroulement de l'enquête par la Commission et la procédure administrative au regard du droit dérivé.

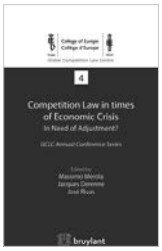
Du point de vue du contrôle de la légalité interne, les auteurs analysent les éléments constitutifs des infractions et les amendes imposées pour infraction aux articles 101 et 102 du traité sur le fonctionnement de l'Union européenne (TFUE). Aussi, au regard de la Charte et des principes généraux du droit, ils rappellent qu'il existe des exceptions d'illégalité au regard des principes généraux du droit. De plus, les normes relatives à la caractérisation de l'infraction et à la sanction de l'infraction doivent être conformes au droit dérivé. Dans certains cas, les auteurs notent que la sanction est impossible puisqu'il y a prescription.

Par ailleurs, les auteurs analysent l'opposabilité des sanctions et des communications sur la coopération avant de s'intéresser à la condition procédurale du recours en annulation et à la condition de fond de pleine juridiction objective du contrôle de l'illégalité pouvant entacher la décision attaquée. De plus, les auteurs examinent le remboursement du montant de l'amende à la suite d'une décision juridictionnelle ou d'une décision de "ré-adoption" de la Commission. Finalement, ils analysent la "justiciabilité" du droit de la concurrence de l'Union européenne par le biais des actions individuelles et des actions collectives (*class actions* américaines et recours collectifs au sein de l'Union européenne). Aussi, ils rappellent les conditions de la responsabilité civile (faute, dommage et lien de causalité) et la responsabilité pénale au niveau national et de l'Union européenne.

Cet ouvrage comprend aussi une table alphabétique et chronologique des décisions de la Commission, du Tribunal et de la Cour citées jusqu'au 31 décembre 2012.

En définitive, tout praticien ou chercheur se doit de consulter cet ouvrage d'une extrême richesse pour mieux comprendre les questions juridiques complexes que soulèvent les amendes en droit de la concurrence. En outre, il connaîtra mieux la jurisprudence, la législation et le "*soft law*" (lignes directrices et communications) touchant à cette question.

D. L.



Competition Law in Times of Economic Crisis: in Need of Adjustment?
DERENNE Jacques, MEROLA Massimo et RIVAS José (dir.)
Bruylant, 2013, 652 p.

In November 2012, the 8th Conference of the Global Competition Law Centre (GCLC) dealt with the question of the economic crisis within the European Union in the framework of competition law. The content of this highly rated conference was summarized in this book. The directors of this contribution are some of the most renowned experts in this field. They made use of both their academic and professional experiences.

The foreword of this book is written by Ben Smulders, director at the Legal Service of the European Commission. He stresses the quality of this book, arguing that it brings "*creative and critical thinking*" to the current economic crisis. Moreover, according to him, this book allows "*the European Commission to improve its output, to adapt to the constantly changing environment in which it operates and to remain as much as possible business relevant.*"

The book is divided into five parts. The first and second parts concern antitrust law and merger control in times of economic crisis. The third and fourth parts focus on State aid, more specifically on its enforcement in the financial sector and in the real economy in times of economic crisis. The fifth part points out the nexus between competition, industrial and trade policies.

The first part, which concerns antitrust law in times of economic crisis, is very instructive and complete. José Rivas presents the views of the GCLC, Kris Dekeyzer the views of the EU enforcement officers and Donald C. Klawiter the views from the USA. First, José Rivas gives an overview of the anticompetitive agreements in times of crisis by analyzing article 101 TFUE (restrictions, exemptions), national precedents (such as the *BIDS* [Ireland], the *Greek fishing farms*, the *Spanish olive oil storage* and the *Dutch shrimp* cases) and procedural issues. Second, José Rivas analyzes unilateral behavior in times of crisis with the enforcement of competition rules on unilateral conduct in the EU with the EU Commission and national competition authorities' recent practices. Also, he compares unilateral conduct to State aid, anticompetitive agreements and mergers. Third, he redefines EU antitrust fining policy in times of crisis. He stresses the current fining practice and proposes alternative tracks for a fining policy by taking into account profits when calculating fines, the use of alternative sanctions and the reflection of damage compensation. Fourth, he asks whether a sector focus is needed in a recession by looking at collusive behavior and exclusionary behavior. He questions whether the financial crisis affects the current sector focus by analyzing the financial sector (LIBOR/EURIBOR, credit default swaps, S&P/Reuters, online payments, multilateral interchange fees and recommendations), information and telecommunication technologies, pharmaceutical sector, energy, food, and other basic industry sectors. Kris Dekeyzer in turn looks at the notion of "crisis cartels" and the underlying economic problem. Also, he assesses industrial restructuring agreements under Article 101 TFEU with the efficiency gains. He also underlines that the consumers must receive a fair share of the resulting benefits. Finally, Donald C. Klawiter recalls the incentive to collude in an economic downturn and he underlines the U.S. reaction to crisis cartels. He stresses that preserving and enhancing competition is the highest enforcement priority.

The second part, which concerns merger control in times of economic crisis, is coordinated and introduced by Robbert Snelders. To begin with, the merger enforcement challenges during economic crisis are addressed by Hans Zenger, who looks at the standard of review in merger control in times of economic crisis by pointing out the antitrust laxity as a response to economic crisis and by analyzing the case *Lloyds TSB v. HBOS* (2008). Then, he stresses the outcome of review in merger control by reflecting on the impact of economic crisis on market realities and he looks at the case *Olympic v. Aegean* Airlines (2011). After he turns to the question of mergers in declining industries with the interaction of pre-crisis decline, post-crisis mergers and the cases *UPM/Myllykoski and Rhein Papier* (2011). Then, Enrique González-Díaz shares interesting thoughts on merger defenses in times of crisis. He presents the current regulatory framework of the efficiency defense and the Commission practice. Additionally, he raises the question of whether it is time to take efficiency defenses more seriously. Furthermore, Eric Barbier de La Serre analyzes the national merger enforcement during the crisis and he affirms that there are a few instances of legislative and political intervention (for instance, the legislative intervention to protect the financial system and certain sectors). Also he argues that there are no signs of increased flexibility on the substance beyond the failing firm defense. According to him, more pragmatism is necessary for remedies and procedure.

The third part is coordinated by Jacques Derenne and it focuses on the enforcement of State aid in the financial sector. First, Damien Gérard gives an overview of the management of the financial crisis in Europe and stresses the role of EU State aid law enforcement. He starts from the premise that the financial crisis is a market failure and that State aid is a remedy. State aid enforcement can be considered as a coordination tool. He advises to salvage EU State aid rules to the benefit of certainty and stability. Finally, he underlines that State aid enforcement and the crisis are not totally intertwined. Second, Hans Gilliams looks at the notion of aid in the financial crisis, more specifically the market economy investor principle test, the advantage resulting from modification of terms of previously granted aid, the beneficiary of aid measures, the extension of deposit guarantee schemes, the imputability to the State of liquidity lines granted by national central banks and the implication of State resources. Third, Andreas von Bonin and Ulrich Soltész concentrate on the compatibility assessment, namely the return to long-term viability as the primary goal of banking restructuring with the Banking Restructuring Communication of 23 July 2009, the role assumed by DG COMP as a watchdog in the financial crisis and the assessment of long term viability by DG COMP in practice. Then Andreas van Bonin looks at rescue measures and restructuring measures. He also analyzes the opening of in-depth investigations opposed to fast track from the point of view of procedural differences. Additionally, he talks about structuring and duration of procedures (portfolio evaluation and viability assessment). Finally, he points out the role of the ECB as the central European banking supervisor. Fourth, François-Charles Laprévote underlines the role of judicial review (States, beneficiary and third parties) while Ulrich Soltész and Andreas von Bonin look at the future procedural challenges with the monitoring and reopening of proceedings (e.g. in case of new aid) and abuse decisions. Andreas von Bonin also examines the procedural specificities in the financial sector and analyzes in-depth assessment of business models, portfolios and long-term monitoring. Fifth, economic issues are analyzed by James Kavanagh and Lorenzo Coppi, who look at the economic characteristics of the State aid enforcement in the financial sector. They stress the three peculiarities of Article 107(3)(b) aid to the financial sector. They point out the relationship between State aid control and financial stability as well as the interaction between State aid policy, competition policy and regulation. Sixth, Edurne Navarro Varona and Luis Moscoso investigate social cost of restructuring with limits and adequate control by the Commission. Seventh, Leonardo Armati

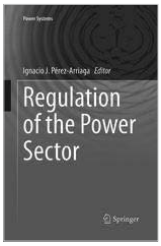
and François-Charles Laprévote assess the question from the point of view of internal market by looking at the interaction between new financial regulatory measures and State aid in the financial crisis. They point out the pre-crisis and crisis situations with fragmented regulatory landscape in opposition to exclusive competence of the Commission on State aid clearance. They propose to move towards a more harmonized regulatory and supervision landscape by taking into account the EU initiatives and potential impact on State aid control (the Commission proposal for a "banking union"). They also address the sovereign issue with European Stabilisation Actions since May 2010 and interactions with State aid with the "feedback loop" between the banking and the sovereign crisis and its impact on State aid control, the EU and euro-area actions in the sovereign crisis and possible interaction with State aid process.

The fourth part is coordinated by Massimo Merola and it concerns State aid policy in the real economy in times of economic crisis. First, Bernard van de Walle de Ghelcke and Simon Pilsbury look at the relationship between State aid rules and competitiveness while recalling the Europe 2020 Strategy and the European Union industrial policy initiatives to enhance competitiveness and the role of the State aid rules in view of strengthening growth and competitiveness, the basic objectives of the State aid rules and limitations deriving thereof, the EU State aid Modernisation and the link with common commercial policy, trade rules and reciprocity. Second, Marc Pittie and Guillaume Fabre describe the real economy temporary framework and assess the impact and phasing out of the latter. Third, José Luis Buendía Sierra, María Muñoz de Juan and Matthijs Visser study the public intervention in the economy in times of crisis and the MEIP and private creditor principle in traditional EU practice and case law, whereas Isabel Taylor and Luisa Affuso look at State guarantees in times of crisis and compare "normal rules" with "exceptional policy response." Fourth, Gianni Lo Schiavo gives an overview of the rules for recovering unlawful aids (legislation and case law) and he assesses the effects of the financial crisis on it (Commission practice and case law) and concludes that there is a substantial status quo; finally, he proposes some alternatives. Fifth, Eric Morgan de Rivery and Barbara Veronese are interested in rescue and restructuring guidelines and give some preliminary thoughts, raising the question of whether there is a need to redefine the definition of a firm in financial difficulty. After, they propose three different options: keeping, broadening or narrowing the definition. They also question whether the distinction between rescue and restructuring aid should be maintained and they propose a renewed criterion: long-term viability of the undertaking. Sixth, Alix Müller-Rappard and Matthijs Visser look at compensatory measures in restructuring aid cases during the financial crisis. They compare the Commission's use of its power to impose compensatory measures under the Guidelines before and under the financial crisis. Seventh, Isabel Taylor and Luisa Affuso write about the new R&R Guidelines and give an overview of the requirements that should be fulfilled and the Commission practice on the matter. Eighth, Philipp Werner and Matthijs Visser analyze the problem of distortion of competition and assess the latter prior to the crisis and the Commission practice during the crisis. Ninth, Thomas Jestaedt looks at the Treaty provisions and current R&R Guidelines and the standard economic balancing test of the Commission. He remarks the non-applicability of that test under the current guidelines and he would like to introduce a general balancing test in R&R Guidelines in order to improve the economic underpinnings of the requirement of compensatory measures. Tenth, Massimo Merola, Luigi Cappelletti and Barbara Veronese deal with the "one time, last time" principle in times of crisis prior to the crisis and during the latter. They recall the normative background (the R&R Guidelines of 1994, 1999 and 2004, and the *Deggendorf* doctrine). They question the future for the "one time, last time" principle in the revised R&R Guidelines for non-financial institutions.

The fifth part points out the nexus between competition, industrial and trade policies. It has been coordinated and introduced by Jacques Bourgeois and Nicoleta Tuominen. They highlight the policy and legal sides on the question. They put competition law in a historic perspective with other economic policies in order to address the deep economic and monetary crisis. They are convinced that enforcement of competition law has become clearer after the economic crisis. The EU needs markets that work well in order to face global challenges and competition law is an essential tool for that. Then, Nicolas Petit and Norman Neyrinck question the understanding of the nexus between industrial policy, trade policy and competition law enforcement. Also, Yves Melin asks himself whether competition policy and trade defense policy are two different worlds in times of economic crisis. Finally, Marco Bronckers look at the Euro preference in EU trade and competition law.

To sum up, this contribution highlights that the current economic crisis could be considered as an opportunity to carry out reforms in the enforcement of competition rules. It does not mean that the principles upon which competition law is founded should be amended; yet the rules of procedure may be more flexible for instance. Reforms have to be undertaken by the Commission, since the EU has to become more competitive at a global scale and to ensure growth and innovation. Moreover, Member States must be committed and able to implement the necessary structural reforms in order to increase their competiveness up to a level allowing their trade and industry to grow again. Furthermore, State aid rules may be used as tools in order to improve the economic situation of the EU. Finally, competition policy should be conducted in conjunction with other policies such as trade and industry in order to respond to the highly complex problems that may arise in the context of the current economic crisis.

D. L.



Regulation of the Power Sector
PÉRZ-ARRIAGA
Ignacio J. (dir.)
Springer, 2013, 728 p.

This comprehensive book on the regulation of the power sector, edited by Professor Ignacio Pérez-Arriaga, is presented as a collective work of researchers at the Institute for Research in Technology at Comillas Pontifical University of Madrid, Spain. They are a group of experts in engineering, economics and regulation of the electric power sector with extensive experience on teaching, researching and consulting across the world. The book contents have been tested during the past years throughout the annual training course of the Florence School of Regulation, which was started in 2002 at the request of the Council of European Energy Regulators. Precisely, the book adopts the point of view of the regulator, whose goal is to promote the public interest. The same contents have been tested at the Massachusetts Institute of Technology as well as in other courses and places. The authors dedicated the book to their students, who have been exposed to limited teaching material. However, the book is not an introductory text since it goes further into the complexities of power regulation. The book is geographically imbalanced in the sense that case studies often refer to Spain, Latin America, the European Union and North America, but much less to other regulatory experiences from Africa, Asia and Oceania. This drawback is explicitly recognized by the authors, who commit to correct it in possible future editions.

The technical and economic analysis reflects the research interests and specialization of the authors. The book is directed to regulators, policy decision makers, business managers and researchers. But energy market regulation is also very important for lawyers, as it is competition law. In fact, regulation aims to supplement the insufficiency and limitations of competition. As expressed eloquently by A.E. Kahn in the last chapter: "*All competition is imperfect; the preferred remedy is to try to diminish the imperfection. Even when highly imperfect, it can often be a valuable supplement to regulation. But to the extent that it is intolerably imperfect, the only acceptable alternative*

is regulation. And for the inescapable imperfections of regulation, the only available remedy is to try to make it work better." Consequently, regulation and competition are complementary in pursuing the functioning of efficient power markets. The book covers both traditional and liberalized regulatory frameworks. It gives a broad characterization of the power sector and presents the economic fundamentals of regulation. It also looks in detail at the regulation of particular components of the power sector and at advanced and transversal topics. It is obvious that most of the issues addressed in this book are of high interest to lawyers.

Chapters 1 to 3 provide an introduction to the power sector from an engineering, economic and regulatory perspective. As an introduction to the entire book, the components of a power system are described: generation, transmission and distribution. The technological characteristics of the power system influence the way the system is managed in terms of investments and system operation. The two major regulatory approaches to organize the power system are traditional *versus* liberalized regulation. While the traditional centrally planned system is based on the regulation of a vertically integrated monopoly, the liberalization and restructuring of the power sector introduce a new decision-making process that is free-market oriented. The reasons why the various activities of the power industry are structured as competitive markets or monopolies are explained using economic fundamentals, including consumer and supply behavior. The liberalized power systems are subject to a very detailed and complex regulation. The implementation of the act restructuring the sector is entrusted to new independent regulatory authorities.

Chapter 4 tackles the fundamentals and principles of monopoly regulation. Building and maintenance of network infrastructures operate as natural monopolies. The variables that can be regulated are company revenues, quality of service standards, investments and the conditions to be met by the exclusive licensee. As an alternative to the traditional cost-of-service (or rate-or-return) regulation, the unbundling of the electricity sector justifies the implementation of incentive-based regulation to enhance market efficiency, using either price or revenue caps.

Chapters 5 and 6 address distribution and transmission regulation. Those activities are treated as regulated monopolies as it makes no economic sense to develop parallel networks to provide electricity supply. Distribution and transmission companies enjoy enormous market power, since they are indispensable for the supply of electricity. In a competitive framework, network companies are obliged to provide open and non-discriminatory access. To avoid conflicts of interest, unbundling and independence between network and competitive activities are necessary. However, despite the physical similarities and common treatment of transmission and distribution as regulated monopolies, a differentiated approach is justified.

While regulators can examine individually the small number of significant new assets per year, this is not possible with the huge volume of components in the distribution grid. Transmission grid regulation primary concern is to enable wholesale market competition. It focuses on investments (planning, business models and siting), allocation of costs (incurred in building, maintaining and operating the grid) and fair and non-discriminatory network access. Regulators often opt for simple transmission tariffs in a way that the network costs are socialized. Yet, energy prices in power systems vary in space and time. The book authors elaborate extensively on the concept of nodal or location pricing and how it affects investments, access and cost allocation. On the other hand, in electricity distribution, where the majority of end consumers are connected, service quality (continuity of supply and product quality) is an issue of high importance and it is closely related to investment and maintenance costs. Distribution infrastructure growth is evaluated as a whole and linked to the growth in demand and reliability requirements.

Electricity wholesale market, as explained in Chapter 7, is composed of all the commercial transactions of buying and selling electricity and other ancillary services concerning the aspects of security and quality. The transactions are organized around a sequence of successive markets: long-term markets (physical and financial), day-ahead markets, and intraday plus balancing markets. The core activity of the wholesale electricity market is the day-ahead or spot market, where organized auctions and bilateral contracts take place the day before the delivery of electricity. In a competitive context, market monitoring is critical. Arguably, market power depends on the structure of the market rather than the rules. Several regulatory measures for mitigation of market power may apply in the short-term, such as price and bid caps, and in the long-term, such as divestment of assets and energy release or virtual power plants auctions.

Chapters 8 and 9 deal with electricity tariffs and retailing (also known as supply and commercialization) and assess how final consumers may benefit from a competitive environment. The regulatory authority determines the costs of the regulated activities (e.g. networks, research, renewables, efficiency, domestic sources) and also how these costs are charged with a regulated tariff or "access tariff" to final consumers. Under traditional regulation, also the costs of electricity production and supply are regulated, which are determined by the regulatory authority and included in an "integral tariff." Under a competitive regulatory framework, consumers are free to choose a supplier and pay the agreed price for the energy and the commercialization service. But consumers may also be allowed to opt for a regulated integral tariff called the "default tariff." Finally, a "last resort tariff" must apply when a consumer is left without a supplier in emergency situations. Key issues in regulation of retail markets are how to deal with vulnerable customers and energy poverty and, on the other hand, ensure that the default tariff is not a superfluous and unnecessary barrier to retail market development.

Chapters 10 to 14 address some horizontal and advanced topics on electricity regulation. First, the creation of regional electricity markets has evolved from enhancing reliability to the increase of competition and security of supply. By way of illustration, the features of the internal electricity market in the European Union are presented. Second, regulation focuses on the measures that can be adopted to mitigate the environmental impact of electricity supply and consumption, especially with regard to the expected role of renewable sources in the future energy mix. Third, in restructured electricity markets, the intervention of the regulator amounts to an additional set of rules in order to ensure security of supply in electricity generation, particularly concerning firmness (the ability of installed facilities to meet demand in the short- to mid-term) and adequacy (the existence of available capacity in the long-term). Forth, regulation of electricity and natural gas converge in the areas of downstream business, security of supply and market power.

Finally, the last chapter presents the challenges in power sector regulation. In the midst of restructuring and liberalization of electricity markets, a new revolution erupted from different angles. The transition to a sustainable energy model, the decarbonization of the power systems, the integration or coordination of neighboring markets, the deployment of large amounts of intermittent renewable generation, demand response facilitated by information and communication technologies, new business models and universal access to electricity supply are all at the top of the agenda.

In conclusion, this book makes a substantial contribution to the design of loud, long and legal regulation of the power sector. It aims to bring the reader to the current frontier of knowledge. As professor Pérez-Arriaga acknowledges, that frontier changes quickly and therefore he puts forward the need to frequently update the book if well accepted. This is most welcome!

E. B.

À SIGNALER

Ouvrages reçus
pour recension ultérieure

Stratégies d'instrumentalisation juridique et concurrence
DE BEAUFORT Viviane, BOUTHINON-DUMAS Hughes, JENNY Frédéric et MASSON Antoine (dir.)
Larcier, 2013, 368 p.

Patent Misuse and Antitrust Law. Empirical, Doctrinal and Policy Perspectives
LIM Daryl
Edward Elgar, 2013, 491 p.

Joint Ventures and EU Competition Law
SILVA MORAIS Luis
Hart Publishing, 2013, 549 p.

Professeur à l'Université de Lisbonne et avocat praticien, Luis Silva Morais consacre son nouvel ouvrage à l'appréhension par le droit de la concurrence de l'Union européenne des *joint ventures* ("JV") (coentreprises ou entreprises communes), dont le concept même n'est pas des plus aisés à définir, comme il s'en explique dans le premier chapitre. L'auteur propose ensuite un modèle analytique à trois niveaux pour évaluer les JV dans leur dimension concurrentielle (chapitre 2) avant de passer en revue les différentes catégories de JV (de R&D, de production, de commercialisation, etc.) à l'aune de l'article 101 du traité sur le fonctionnement de l'Union européenne relatif à l'interdiction des ententes anticoncurrentielles. Un ouvrage qui devrait vite s'imposer comme de référence sur le sujet.

S. R.

AUTRES OUVRAGES SIGNALÉS

China's Anti-Monopoly Law: The First Five Years
EMCH Adrian et STALLIBRASS David
Kluwer Law International, 2013, 512 p.

The authors of this book are both competition practitioners in Beijing (China) and they have a strong academic background and expertise in the field of Chinese competition. Adrian Emch is a partner at Hogan Lovells, whereas David Stallibrass is a senior affiliated consultant at Charles River Associates (CRA).

The book is divided in nine chapters. The first gives a general introduction and mainly focuses on Chinese competition policies that lie between fragmentation and consolidation. The second sets the background and the context of the Chinese competition policy by pointing out the institutional dynamics of China's competition regime, the policy objectives of public enforcement of the anti-monopoly law (AML) and the role of China's unique economic characteristics in antitrust enforcement. The third focuses on the monopoly agreements and abuse of dominance. It looks at the relationship between the AML and the price law and at the anti-cartel law and its enforcement in China. Moreover, it analyses information exchanges between competitors under the AML. The fourth concentrates on the merger control, and more specifically on Chinese merger control practices in a comparative perspective, the substance and the procedure of the merger remedies in China and the joint ventures under Chinese merger control rules. The fifth explains the government restrictions to competition, the relation between business and government with the addressees of obligations under the AML, the uneasy relationship between antitrust enforcement and industry-specific regulation in China and finally the judicial and administrative remedies against administrative monopoly. The sixth takes a close look at the Supreme People's Court's Guidance for private antitrust litigation and the private rights of action under the AML. The seventh assesses the convergence and divergence about the Chinese companies' navigation of outbound investment. The eighth deals with the SAIS's antitrust enforcement practice with the progress made in the past five years, the vertical restraints under the AML and the application of the AML in the context of intellectual property rights. The ninth looks at the *China telecom & China Unicom* case and the future of Chinese antitrust.

The book contains also an appendix with the text of the AML in two languages (Chinese and English) and a table of legislation.

To summarize, the authors stress that China has a proper antitrust law with the AML, yet it does not have a coherent antitrust policy and the enforcement of the AML is not satisfactory. They advise the establishment of an antitrust enforcement body that is "*well resourced, well advised and placed in an influential position within China's economic governance structure*." The strength of this book is that it assesses the provisions of the AML from a legal and economic point of view. It is the most complete study on the question and it gives the reader the feeling that he understands the working of the Chinese competition system that is still evolving. Better, this book tempts academics and practitioners to specialize in Chinese competition law.

D. L.

Les inspections de concurrence
JALABERT-DOURY Nathalie
Bruylant, 2013, 2ème édition, 504 p.

Brazilian Competition Law: A Practitioner's Guide
MOLAN GABAN Eduardo et OLIVEIRA DOMINGUES Juliana
Kluwer Law International, 2013, 434 p.

In December 2011, the renowned Brazilian competition law practitioners Eduardo Molan Gaban and Juliana Oliveira Domingues published a book called *Antitrust Law in Brazil. Fighting Cartels*. It was the first publication to give an overview of the question. Following the book's success, the authors decided to analyze other aspects of Brazilian competition law. Indeed, Brazil is a growing global economic power and its competition system evolves quickly.

This book is divided in four parts. The first recalls the evolution of the Brazilian competition policy while at the same time explaining the principles applied in Brazilian legal order for the control of mergers and behaviors of undertakings. The second stresses the role of Brazilian competition law in the world by looking at the bilateral and regional agreements that are concluded. The third part gives a picture of the new trends and issues that may arise in practice such as private damages and the relations between competition and intellectual property. The fourth part is an analysis of some case studies (e.g. mergers, leniency).

We strongly recommend this book to anyone who has a keen interest in new competition systems, since it cross-fertilizes to look at new competition rules and issues that arise in the Brazilian legal order. Moreover, this book thoroughly examines the Brazilian competition regime and its procedure. Finally, this study may inspire competition practitioners and researchers as it makes comparisons between EU and U.S. competition legal regimes.

D. L.

Droit européen de la concurrence. Ententes et abus de position dominante
PRIETO Catherine et BOSCO David
Collection Droit de l'Union européenne, Bruylant, 2013, 1520 p.

Une fois n'est pas coutume, ce nouveau manuel sur le droit européen de la concurrence mérite quelques lignes de présentation. On attirera l'attention sur le titre premier de cet ouvrage de plus de 1500 pages, consacré aux politiques de concurrence avec un long chapitre joliment intitulé "Quêtes de politique de concurrence, tout particulièrement stimulant en raison de son approche historique. On voyage d'abord dans le temps : depuis l'Antiquité, dont plusieurs textes stigmatisaient déjà les formes d'accaparement du marché (*Lex Julia de annona* de Jules César, *Édit sur le Maximum* de l'empereur Dioclétien, etc.), mais on voyage aussi dans l'espace, d'abord en Angleterre, avec le Monopoly Act de 1624, puis en France, avec la pensée particulièrement moderne de Jean Domat (exprimée notamment dans son ouvrage de 1697 sur les "*loix civiles dans leur ordre naturel* " qui s'intéresse tout particulièrement aux "*devoirs de ceux qui exercent quelque commerce*"), bien qu'elle ne fût guère pleinement exploitée par le législateur révolutionnaire (*cf.* décret d'Allarde et Loi Le Chapelier) ou napoléonien (*cf.* délit de coalition visé à l'article 419 du Code pénal de 1810) ; puis ensuite en Autriche et en Allemagne, où les auteurs voient dans la promotion de l'ordo-libéralisme les sources de la politique européenne de concurrence et enfin aux États-Unis, autour du texte de référence qu'est le *Sherman Act* de 1890.

Éclairé par cette mise en perspective historique et philosophique, le manuel de Catherine Prieto et David Bosco est consacré à l'étude des seuls articles 101 (ententes) et 102 (abus de position dominante) du traité sur le fonctionnement de l'Union européenne (hors donc le régime de contrôle des concentrations et la discipline des aides d'État), avec, notamment, d'intéressants développements sur les restrictions relatives à l'innovation et deux titres consacrés à la mise en œuvre procédurale de ces dispositions, respectivement dans la sphère publique (le *public enforcement*, qui concerne les rôles respectifs de la Commission européenne et des autorités nationales de concurrence) et dans la sphère privée (le *private enforcement*, qui renvoie à l'intervention des juridictions nationales et des arbitres). Une nouvelle "brique" incontournable pour à la fois appréhender et approfondir l'étude des règles de concurrence de l'Union européenne.

S. R.

EU Cartel Enforcement: Reconciling Effective Public Enforcement with Fundamental Rights
SCORDAMAGLIA-TOUSIS Andreas
Kluwer Law International, 2013, 592 p.

The author of this book is currently an associate at the Brussels office of Latham & Watkins and he practices EU and Greek competition law. Moreover, he holds a Ph.D. in law from the European University Institute in Florence, where he studied the interaction between EU competition law enforcement and fundamental rights.

This book is divided in nine chapters. The first introduces the topic at issue and raises several questions in order to draw the reader's attention. The second gives an overview of fundamental rights protection in EU competition law. The third stresses the European enforcement system and the due process institutional requirements. The fourth concentrates on cartel investigations and fundamental rights. The fifth gives more information on the legal qualification of a cartel infringement and effective enforcement. The sixth explains the rules of evidence in EU cartel proceedings and fundamental rights. The seventh deals with the rules of attribution of liability and the reconciliation of effective deterrence with the principle of the presumption of innocence. The eighth highlights the rules of cartel fining and fundamental rights. The ninth draws a general conclusion.

The author demonstrates that "*EU cartel law is a topical issue*" (cf. *Menarini* decision and the *Schindler* case) and that it is time to assess its enforcement and compatibility with the due process requirement and article 6 ECHR. The EU cartel law is subject to a test of legitimacy and rationality in this book. The author considers that the balance between a full protection of human rights and the effective enforcement of cartel law constitutes a challenge which has been respected more or less until now. Nevertheless, further incentives for improvement are still necessary.

To sum up, the legal analysis of the author is impressive (various references), nuanced and accurate. He goes directly to the point in a clear language. Furthermore, he enables the reader to fully grasp the cartels' case law of the EU General Court, the European Court of Justice and the European Court of Human Rights. This book is highly useful for academics and practitioners and it has the potential to become a key reference for this topic.

D. L.

Concurrences est une revue trimestrielle couvrant l'ensemble des questions de droits de l'Union européenne et interne de la concurrence. Les analyses de fond sont effectuées sous forme d'articles doctrinaux, de notes de synthèse ou de tableaux jurisprudentiels. L'actualité jurisprudentielle et législative est couverte par onze chroniques thématiques.

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