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Competition Law, Climate Change & Environmental Sustainability, edited by Simon Holmes, Dirk Middelschulte and Martijn Snoep

New York: Concurrence, 2021

496 pp, €230 (hardcover)

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Climate change and sustainability have become 'hot topics' in competition law. Competition law is often perceived as a hindrance to achieving climate-related or sustainability-related goals. Margrethe Vestager, Executive Vice-President and Commissioner for Competition of the European Commission, stated in October 2019 that 'sustainability is at the centre of our politics'¹, but later clarified that 'competition policy is by no means the main tool to reach our green goals'² and, thus, disappointed those hoping for a radical and fundamental 'green' change in EU competition law lead by the European Commission. Still, it is expected that the interpretation of EU competition law will become 'greener', the extent to which is subject to a lively debate.

This book fits well in this current debate. It offers an extensive discussion of the opportunities, challenges and policy considerations when implementing sustainability aims in competition law, with a focus on climate-related or environmental sustainabil-

ity aims. Although the sustainability debate in the EU tends to focus on horizontal cooperation under Article 101 TFEU, this book also touches upon other areas of competition law: from abuse of dominance to EU merger control and state aid (including a discussion of public procurement). It is a wide-ranging collection of various perspectives and insights from many different stakeholders (academics, enforcers, lawyers, economists and representative of various industries).

The book is structured into four parts. Part I covers the legal themes and is organized in four chapters according to the different areas of competition law. Chapter 1 focuses on horizontal cooperation between undertakings. The discussion is timely, as the European Commission is currently reviewing its rules and guidelines on horizontal cooperation at EU level to update the framework in 2022. The book's discussion is well-balanced and offers arguments from both sides of the current debate on whether competition law should become (or least be interpreted) 'greener' or not. Maurits Dolmans, for instance, argues that regulation alone is not sufficient for the green transformation, but that competition law should enable private cooperation that merely reflect the 'polluter pays' principle.³ Conversely, Maarten Pieter Schinkel and Leonard Treuren argue that 'greener' competition law is a counterproductive attempt to solve the climate crises. Although relaxing the rules of horizontal cooperation may overcome one market failure (environmental externalities), they assert this will create another market failure (market power).⁴ Chapters 2 to 5 then explore the application of sustainability in the other areas of competition: abuse of dominance, EU merger control, state aid and also – although not competition law in the strict sense – public procurement. The discussion in these chapters is not as comprehensive as in chapter 1, but this reflects the general trend that these areas are less represented in the sustainability debate.

Part II of the book addresses various industry perspectives and, thus, offers practical perspectives on the topic. The 16 contributions in Part II cover a broad number of different industries – automotive and transportation, banking and finance, consumer goods, energy, food supply chains and industrial

DOI: 10.21552/cclr/2021/4/11

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1 Margrethe Vestager, 'Competition and sustainability' (GCLC Conference on Sustainability and Competition Policy, Brussels, 24 October 2019).

2 Margrethe Vestager, 'Competition Policy and the Green Deal' (Conference on Competition Policy Contributing to the European Green Deal, 4 February 2021).

3 See Maurits Dolmans, 'Sustainable Competition Policy and the "Polluter Pays" Principle' in Simon Holmes, Dirk Middelschulte and Martijn Snoep (eds), *Competition Law, Climate Change & Environmental Sustainability* (Institute of Competition Law, 2021) 17.

4 See Maarten Pieter Schinkel and Leonard Treuren, 'Green Antitrust: Friendly Fire in the Fight Against Climate Change' in Holmes et al (n 3) 69.

products – with valuable insights, not just from industry representatives, but also from academics and enforcers, even if to a lesser extent. This part offers practical examples of the tensions and opportunities between sustainability efforts of undertakings and competition law. Most authors in this part focus on horizontal cooperation, the area which also receives more in-depth coverage in Part I than other areas. This is in keeping with the broader sentiment that this area of competition law has the most potential to be made ‘greener’.

Part III, which has fewer contributions than Part I and II, explores the public enforcement perspective of selected jurisdictions in Europe (the EU, the Netherlands, France, Greece and the UK) and outside of Europe (Australia and South Africa). Many of the authorities in these jurisdictions have actively contributed to the sustainability debate on a policy level, which is likely the basis for their inclusion.⁵ Although key jurisdictions such as Germany are missing, the discussion is not merely one-sided. Martijn Snoep (chair of the Dutch Authority for Consumer & Markets)⁶ and Ioannis Lianos (President of the Hellenic Competition Commission)⁷ plea for a ‘greener’ interpretation of competition, away from, as put by Martijn Snoep, ‘the prevailing short-term consumer welfare’.⁸ Other authors, such as Luc Peepkorn (a former European Commission official)⁹ as well as Sandrine Delarue and Mike Walker (both from the UK Competition & Markets Authority),¹⁰ are more cautious. Where all authors seem to agree, however, is that generally more guidance is needed for undertakings to assess sustainability considerations under competition law rules.

The last part, Part IV, rounds off the book with two articles that offer ‘alternative perspectives’ on the topic and (as it seems) did not really fit into the other parts of the book. These articles plea quite strongly for a ‘greener’ competition law and urge to not waste time in doing so.

Overall, the book offers a detailed and balanced discussion of a topic that already is and will continue to be immensely important for competition law. It offers insights from a wide variety of actors and industry sectors. The book is distinct in that it brings together these voices and perspectives into one single book. In doing so, it offers a mix of theoretical

and practical contributions with some contributions focusing on legal aspects, others on economic aspects and others on policy considerations. It also offers insights for areas of competition law that typically receive less attention in the sustainability debate (particularly the area of abuse of dominance). While it gives voices to those that are more cautious¹¹ (if not sceptical¹²) about making competition law ‘greener’, those voices are certainly less represented in this book. The book focuses predominately on those voices that urge a ‘greener’ interpretation of competition law. In that sense, the book can give guidance to those looking for arguments on why competition law should be interpreted ‘greener’. While the book focuses predominately on climate-related or other environmental sustainability aims in competition law, the book also offers some discussion about sustainability and competition more broadly. The book is meant primarily for academics, enforcers and practitioners, and is less geared towards economists that look for in-depth discussion of different models on how to quantify sustainability claims. Still, the book implements on many occasions economic thinking and offers at least an overview of some of the economic models that could be used.

In summary, the book offers not just guidance for those that are new to the sustainability debate in competition law, but also food for thoughts and fresh ideas for those already familiar with the debate.

5 See for instance for the Netherlands and Greece: Dutch Authority for Consumer & Markets, ‘Draft Guidelines for sustainability agreements’ (2020) <<https://www.acm.nl/sites/default/files/documents/2020-07/sustainability-agreements%5B1%5D.pdf>>; and Hellenic Competition Commission; ‘Staff Discussion Paper on Sustainability Issues and Competition Law’ (2020) <https://www.epant.gr/en/enimerosi/competition-law-sustainability/item/download/1896_9b05dc293adbae88a7bb6cce37d1ea60.html>.

6 See Martijn Snoep, ‘Preface: Can Competition Authorities Consider Sustainability in their Decision-Making?’ in Holmes, Middelschulte and Snoep (n 3) 391.

7 See Ioannis Lianos, ‘Greece’ in Holmes, Middelschulte and Snoep (n 3) 423.

8 Snoep (n 6) 392.

9 See Luc Peepkorn, ‘European Union’ in Holmes, Middelschulte and Snoep (n 3) 405.

10 See Sandrine Delarue and Mike Walker, ‘United Kingdom’ in Holmes, Middelschulte and Snoep (n 3) 441.

11 See Peepkorn (n 9).

12 See Schinkel and Treuren (n 4).