

The private enforcement of competition law with particular reference to the right for damages

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The objective of this work is to examine the nature and the development of private enforcement of competition law in the European legal order by referring to the UK and principally to the more developed American private antitrust enforcement system. The aim was to pay special attention to the existence of a subjective right to claim damages and the implications of the Court of Justice's decision in *Courage v. Crehan* which seemingly created a qualified right for co-contractors to rely on their own illegal action in order to recover damages from their contracting parties.

This work tries to point out the importance of the private enforcement of competition law for the development and the effectiveness of a mature competition law system. The huge efforts made by the ECJ and the welcome decentralisation of the enforcement procedure through the declaration of the direct effectiveness of Article 81(3) have been shown as being insufficient for the creation of a private litigation culture where a consistent remedy is not available or its application hampered by the principle of national procedural autonomy. The inefficiency of the American system during its first 50 years could suggest this conclusion and the Court of Justice has apparently understood that an efficient system cannot work without effective means to protect competitors, consumers and even co-contractors interests.

For this reason the Court of Justice has first emphasised the public policy character of the EC competition rules in *Eco Swiss* and has then awarded a damage claim to co-contractors who participated in an agreement in breach of EC competition law, however under a very strict conditionality.

The present work endeavours to point out the interpretation of the major EC competition law experts and to explain their reasoning. As a matter of fact, the author's

analysis is not always in line with the solutions suggested by the doctrine and gives therefore its own interpretation to the Court's reasoning and to the possible development of private enforcement in the future.