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Antitrust Damages Actions in National Courts: An Academic Analysis of Trends in the CJEU's Case-Law

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In recent years, the landscape of antitrust damages actions in the European Union has evolved significantly, guided by landmark rulings from the Court of Justice of the European Union (CJEU). Our recent paper provides a comprehensive overview of these developments as part of the Yearbook on Procedural Law of the Court of Justice of the European Union. The Yearbook for 2023 has recently been published and is available [open access here](#).

This blog post summarizes the key findings of their analysis, highlighting the transitional phase of antitrust damages actions, the critical role of evidence disclosure, and other emerging trends in the CJEU's jurisprudence.

Transitional Phase for Antitrust Damages Actions

Antitrust damages law in the EU is currently in a transitional phase, where cases before national courts and the CJEU span both pre- and post-Damages Directive law. This transitional period is primarily due to the staggered implementation of the EU Damages Directive, adopted in 2014 and required to be transposed by Member States by December 2016. However, many cases still being litigated involve infringements that occurred before this transposition deadline, necessitating reliance on primary law principles, particularly the principle of effectiveness as far as the Directive is not applicable. The temporal applicability has been an issue in most of the rulings by the Court of Justice so far as the author's outline.

The CJEU's jurisprudence underscores that the principle of effectiveness continues to play a pivotal role even in the post-Damages Directive era. This principle ensures that national rules facilitate the effective enforcement of EU competition law. In cases where the Directive is not applicable, the ECJ has reaffirmed that national courts must still adhere to this principle, ensuring that private enforcement remains robust and effective.

Disclosure of Evidence: A Procedural Evolution

One of the most significant procedural advancements introduced by the Damages Directive are the

enhanced rules on the disclosure of evidence. This evolution aims to address the inherent information asymmetry in antitrust damages actions, where the necessary evidence often lies with the infringers or third parties, not the injured parties. The CJEU has emphasized the importance of these disclosure rules in recent judgments, advocating for a broad interpretation to ensure effective private enforcement. See for example the judgments in *PACCAR* and *RegioJet* which were both discussed on this blog in detail (see [here](#) and [here](#)).

Quantification of Harm: Ongoing Challenges

Quantifying harm in antitrust damages actions remains a complex and contentious issue. National courts often face difficulties in precisely determining the extent of damages, leading to reliance on judicial estimation. The CJEU has addressed this challenge by linking the quantification process closely with the principle of effectiveness and the Directive's disclosure rules.

The *Tráficos* judgment illustrates this approach. The CJEU held that judicial estimation of damages should only be a last resort when precise quantification is practically impossible, even after comprehensive disclosure (for more details, see also [this blog](#)).

Forum Shopping and Private vs. Public Enforcement

The ECJ's jurisprudence has also highlighted the potential for forum shopping in antitrust damages actions, particularly due to variations in national implementation of the Damages Directive. This potential has raised concerns about inconsistencies in the application of competition law across Member States. Additionally, the relationship between private and public enforcement of competition law remains a critical area of focus. The Court of Justice has consistently emphasized the complementary roles of these enforcement mechanisms, advocating for a balanced approach that ensures effective deterrence and compensation.

Conclusion and Outlook

The current trends in antitrust damages actions reflect a dynamic and evolving legal landscape in the EU. The transitional phase, ongoing challenges in evidence disclosure and harm quantification, and the interplay between private and public enforcement underscore the complexity of this field. The CJEU's role in interpreting and shaping the application of the Damages Directive and primary EU competition law remains crucial in navigating these challenges.

As we look to the future, continued judicial clarification and legislative developments will be essential in addressing the unresolved issues and ensuring that the objectives of effective enforcement and full compensation for antitrust damages are achieved. The analysis by *Hornkohl* and *Imgarten* provides insights into these ongoing developments, some of which were briefly outlined above.

The full academic paper with more detailed analysis and complete sources can be found [here](#), aside with more scholarly written articles on other current issues of procedural law outside the sphere of

competition law.

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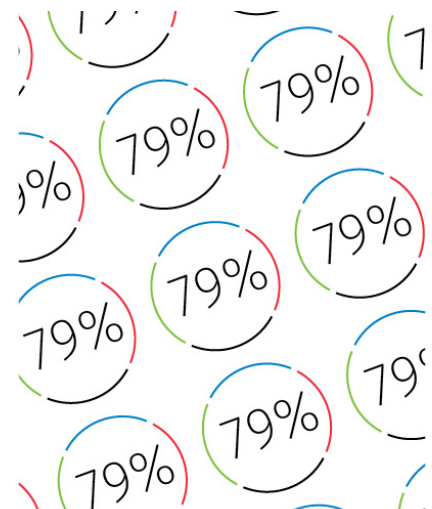
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