Book Review: “Populism and Antitrust: The Illiberal Influence of populist Government on the Competition Law System.” (2022) Cambridge University Press; Cambridge-Maciej Bernatt

By:

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During the last 6 years – at least – many lectures, journal articles, columns, blogs, and panels have discussed that Competition Law - or maybe the policy focus of agencies - is changing in many countries, due to several reasons. (Wu, 2018; Baker, 2019; Edwards & Wright, 2016; Ibañez & Lamadrid, 2016; Petit, 2021). It's worthy to mention the bumpy approach to many “key concepts” that, in the framework of Competition Law, were built into a well-established tradition of principles or values, supported upon a wide economic and legal consensus. For instance, on the one hand, think of the intensive debate about

the consumer welfare standard in the United States and in part of Europe; on the other hand, the expansion of digital markets, and the treatment and analysis by different Competition agencies about digital platforms has generated a new legal framework (DMA), tailored upon the influence of several experts' reports generated in the European context. At the same time, Competition Law is facing these new challenges under the threat of populism.

In this context, we welcome the new book written by Polish scholar, Dr. Maciej Bernatt, who is the author of many specialized articles on economic law, European Competition Law and Constitutional Law. He has recently published a work entitled "Populism and Antitrust. The Illiberal Influence of Populist Government on the Competition Law System" (Cambridge University Press, 2022). Dr. Bernatt is a Professor of the University of Warsaw, Director of the Center for Antitrust and Regulatory Studies at the Faculty of Management of the University of Warsaw, and the head of the Department of European Economic Law.

The structure of "Populism and Antitrust…" is the following. The first part discusses general topics on Populism, Democracy and Economy. The second part entitles "populist influence on competition law", in which the author exposes the effects of populism on institutions and enforcement. The third part studies the EU system of competition Law and, the fourth and final part, develops conclusions and projections for the future. This organization is very appropriate for a good understanding of the topics, considering that the convergence of a political phenomenon with some aspects of a very technical legal/economic discipline is a tough goal, but Barnett catch the peak.

At the very first view – attracted by a very artistic and well-designed cover - the reader can think that this is an exclusively legal book. But when the pages are passing by, it is possible to access a wider approach that harmonically combines legal, economic, and political science factors. The writing process of a book about Antitrust Law is challenging, due to the high level of specialization of these topics. In this sense, Professor Barnett begins with the idea that Competition Law is a complex construction that results in a "institutional and procedural organization" designed on "open ended legal provisions constantly evolving, regarding the case law and practice of competition agencies, very much linked to solving real life legal problems. (p.xv) So, the "Bernattian"

approach to competition law is regarding down to earth issues (practical problems) but it does not give up to a strong theoretical framework about institutional (and constitutional) roots.

For instance, in the second part of the book - regarding the impact of populism in Antitrust Law – Professor Barnett attempts a structure of analysis divided into Variables, Institutions and Enforcement. In relation to the first topic – Variables – Barnett argues that there is a general factor ("extent of dismantling checks and balances and the Rule of Law") and this reason can lead to the reevaluation of the free market economic model. This is a really interesting topic, because it seems the current European scenario is facing the danger of a deep doubt about the market economy. Thirty-one years ago, especially in 1991, it was usual to see Eastern European countries as fertile land for free market reforms. But it seems that everything has changed now, because of populism.

The literature about regulatory agencies can find a very deep input and source in this book. If we compare many institutional designs, in search of which of them was the best model, the topic of independence and autonomy is again on the carpet. In this book, Dr. Barnett expresses a concern about the "negative perception of this autonomy". From this reading, one can ask if populism is, maybe the end (or the final step) for these successful independent institutional designs.

Professor Bernatt has a recognized experience on legal, political science and international relations topics; so, he can propose an interesting approach to the classical view of competition law, most of the times, very aseptic of the political/ institutional visions. It means that the influence of populist government "is challenging the foundations of competition law in unprecedented ways."

This book is a great opportunity to swim in a new ocean. Few authors and scholars can combine, with elegance, efficiency and intellectual strength, a very attractive analysis of the influence of a political phenomenon (populism) and a technical/legal/ microeconomic field as the Competition Law.

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