

CONTENT

LIST OF ABBREVIATIONS	15
ABOUT AUTHORS	24
LIST OF LEGISLATION	31
1. European Union	31
2. Bulgaria	33
3. Czechia	33
4. Croatia	34
5. Lithuania	34
6. Latvia	35
7. Poland	35
8. Romania	36
9. Slovenia	38
10. Slovakia	40
LIST OF CASES	43
1. Competition Law	43
1.1 CJEU	43
1.2 EUROPEAN COMMISSION	43
1.3 Bulgaria	44
1.4 Czechia	45
1.5 Lithuania	47
1.6 Latvia	48
1.7 Poland	50
1.8 Romania	50
1.9 Slovenia	51
1.10 Slovakia	51
2. Public Procurement	53
2.1 CJEU	53
2.2 Czechia	53

2.3 Croatia	55
2.4 Poland.....	56
2.5 Romania.....	57
2.6 Slovenia	57
2.7 Slovakia	58
FOREWORD	60
A. COMPETITION LAW	
CHAPTER 1	
Private enforcement of competition law in Bulgaria: Between legislative reform and judicial restraint	66
1. Overview of applicable laws and court system	66
2. Types of damages that can be recovered	69
3. Legal presumptions	70
4. Limitation periods and consensual dispute settlement	73
5. Disclosure of evidence and protection of confidential information	74
6. Collective and representative actions	76
7. Private enforcement in practice	78
8. Summary	81
CHAPTER 2	
Private enforcement of competition law in Czechia: Good teeth, but not much biting	84
1. Introduction	84
2. Legislative framework	85
2.1 Pre-DD legislation	85
2.2 Transposition of the DD	86
2.3 Post-DD adjustments	96
3. Types of private enforcement measures	97
4. Case law relevant for private enforcement of competition law	99
4.1 Case-law on causality	99
4.2 Case-law on harm	100

4.3 Case-law on nullity	102
5. Private enforcement cases	103
6. Evaluation of the environment for private enforcement of competition law	112
7. Suggestions for further development	113
8. Summary	114

CHAPTER 3

Private enforcement of competition law in Lithuania:

Any success stories?.....	115
1. Introduction	115
2. Legislative framework	117
2.1 Substantive law issues	118
2.1.1 Limitation periods	118
2.1.2 Joint and several liability	119
2.1.3 Quantification of harm	119
2.1.4 Passing-on of overcharges	120
2.2 Procedural law issues	121
2.3 Pre-DD legislation	123
3. Transposition of the DD.....	125
4. Types of private enforcement measures	125
5. Case law relevant for private enforcement of competition law	127
6. Private enforcement cases	128
7. Evaluation of the environment for private enforcement of competition law	132
8. Suggestions for further development	133
9. Summary	134

CHAPTER 4

Private enforcement of competition law in Latvia

1. Introduction	135
2. Legislative framework	135
2.1 Pre-DD legislation	136

2.2	Transposition of the DD	139
2.3	Post-DD adjustments	141
3.	Types of private enforcement measures	141
4.	Case law relevant for private enforcement of competition law	142
5.	Private enforcement cases	143
5.1	Procedural patterns	143
5.2	Probatory value of NCA decisions	145
5.3	Quantification of damages	146
6.	Evaluation of the environment for private enforcement of competition law	152
7.	The future of private enforcement in Latvia	153
8.	Summary	154

CHAPTER 5

	Private enforcement of competition law in Poland: Where we are and how to accelerate the use of private litigation	155
1.	Introduction+	155
2.	Legislative framework.....	156
2.1	General issues	156
2.1.1	Pre-DD legislation	156
2.1.2	Transposition of the DD	157
2.2	Substantive law issues	158
2.2.1	Pre-DD legislation	158
2.2.2	Transposition of the DD	160
2.3	Procedural issues	164
2.3.1	Pre-DD legislation	164
2.3.2	Transposition of the DD	165
3.	Post-DD adjustments	168
4.	Types of private enforcement measures	169
5.	Case law relevant for private enforcement of competition law	169
6.	Private enforcement cases	171

7. Evaluation of the environment for private enforcement of competition law	173
8. Suggestions for further development	175
9. Summary	176

CHAPTER 6

Private enforcement of competition law in Romania:

Troubleshooting compatibility with the Romanian legal frame	177
1. Introduction	177
2. Legislative framework.....	180
2.1 Manner of transposition the DD	180
2.2 Scope of the transposition	182
2.3 Competent courts	183
2.4 Substantive law issues	184
2.4.1 Limitation periods	184
2.4.2 Joint and several liability	185
2.4.3 Quantification of harm	186
2.4.4 Passing-on of overcharges	187
2.5 Procedural law issues	187
2.5.1 Standing	187
2.5.2 Disclosure of evidence	187
2.5.3 Effect of national decisions	188
2.5.4 Collective redress	189
2.6 Consensual dispute resolution in antitrust enforcement	190
2.6.1 Pre-DD (and mid-DD) legislation	190
2.6.2 Transposition of the DD	191
3. Post-DD adjustments.....	192
4. Types of private enforcement measures	193
5. Case law relevant for private enforcement of competition law	194
6. Private enforcement cases	194
7. Evaluation of the environment for private enforcement of competition law	196
8. Suggestions for further development	197

9. Summary	197
-------------------------	------------

CHAPTER 7

Private enforcement of competition law in Slovenia:

A finely carved wooden sword	199
---	------------

1. Introduction	199
------------------------------	------------

2. Legislative framework for private enforcement of antitrust.....	200
---	------------

2.1 Pre-DD legislation	200
------------------------------	-----

2.2 Transposition of the DD	202
-----------------------------------	-----

2.3 Post-DD adjustments	203
-------------------------------	-----

3. Types of antitrust private enforcement measures	203
---	------------

3.1 Damages actions	203
---------------------------	-----

3.1.1 Competent courts	203
------------------------------	-----

3.1.2 Standing	205
----------------------	-----

3.1.3 Limitation periods	207
--------------------------------	-----

3.1.4 Effect of competition authority infringement decisions	209
--	-----

3.1.5 Fault	210
-------------------	-----

3.1.6 Joint and several liability	211
---	-----

3.1.7 Quantification of harm	211
------------------------------------	-----

3.1.8 Passing on the overcharges	213
--	-----

3.1.9 Disclosure of evidence	213
------------------------------------	-----

3.1.10 The effects of consensual dispute resolution	214
---	-----

3.1.11 Cooperation of the courts with competition authorities	214
---	-----

3.2 Annulment actions	216
-----------------------------	-----

3.3 Interim measures	217
----------------------------	-----

3.4 Actions seeking injunctions	218
---------------------------------------	-----

4. Private enforcement cases	219
---	------------

4.1 Telecommunications sector	220
-------------------------------------	-----

4.2 Cinematographic sector	226
----------------------------------	-----

4.3 Postal services sector	228
----------------------------------	-----

4.4 Maritime transport sector	230
-------------------------------------	-----

4.5 Food sector	230
-----------------------	-----

5. Summary	231
-------------------------	------------

CHAPTER 8

An ornamental legal framework: Private enforcement of competition law in Slovakia	233
1. Introduction	233
2. Legislative framework	235
2.1 Pre-DD legislation, yet still applicable	238
2.1.1 Civil Code – a general law to the general liability for damages	238
2.1.2 Commercial Code – both specific and general liability for damages in competition cases	241
2.2 Transposition of the DD	245
2.2.1 SkADAA – the solution?	245
2.3 Substantive law issues	251
2.4 Procedural law issues	256
2.5 Post-DD adjustments	259
3. Types of private enforcement measures	259
4. Private enforcement cases	262
4.1 State aid	263
4.2 Antitrust	266
5. Evaluation of the environment for the private enforcement of competition law	270
6. Suggestions for further development	272
7. Conclusions.....	273

B. PUBLIC PROCUREMENT

CHAPTER 9

Private enforcement of public procurement law in Czechia: Has anybody seen it yet?	276
1. Introduction	276
2. Legislative framework	277

3. Types of private enforcement measures	277
3.1 Unfair competition	278
3.2 Nullity	279
3.3 Damages	280
3.4 Unjustified enrichment	282
3.5 Injunctions and restitutions	283
3.6 Satisfaction	283
4. Case law relevant for private enforcement of public procurement law	284
5. Private enforcement cases	285
5.1 Jurisdiction of civil courts	285
5.2 Damages	286
5.3 Unjustified enrichment	287
5.4 Satisfaction	288
6. Evaluation of the environment for private enforcement of public procurement law	289
7. Suggestions for further development	289
8. Summary	290

CHAPTER 10

Private enforcement of public procurement law in Croatia: Administrative and civil law compete	291
1. Introduction	291
2. Legislative framework.....	293
3. Types of private enforcement measures	295
3.1 Damages	295
3.2 Contract (performance) disputes	298
4. Relevant case law.....	299
4.1 Damages case-law	300
5. Evaluation of (private) enforcement	302
6. Suggestions for further development	304
7. Summary	305

CHAPTER 11

Private enforcement of public procurement law in Poland	307
1. Introduction	307
2. Legislative framework	308
3. Types of private enforcement measures	309
3.1 Overview of private enforcement measures in public procurement	309
3.2 Damages in public procurement cases	311
3.3 Procedural law issues	316
4. Consensual dispute resolution.....	318
5. Case law relevant for private enforcement of public procurement law	319
6. Private enforcement cases	321
7. Evaluation of the environment for private enforcement of public procurement law	322
8. Suggestions for further development	322
9. Summary	324

CHAPTER 12

The eye of the beholder: Private enforcement of public procurement law in Romania	325
1. Introduction	325
2. Legislative framework.....	326
3. Types of private enforcement measures	330
3.1 Competent courts and types of claims	330
3.2 Substantive law issues	332
3.3 Procedural law issues	334
4. Private enforcement cases	335
5. Evaluation of the environment for private enforcement of public procurement law	338
6. The end of the concept of private enforcement as an abuse of law.....	340
7. Summary	341

CHAPTER 13

Private enforcement of public procurement law in Slovenia:

A supplementary mechanism in a public-law dominated system	342
1. Introduction	342
2. Legislative framework	343
3. Types of private enforcement measures	348
3.1 Private enforcement through contract invalidity	348
3.2 Private enforcement through damages claims	351
4. Case law relevant for private enforcement of public procurement law	354
5. Private enforcement cases	357
6. Evaluation of the environment for private enforcement of public procurement law	358
7. Suggestions for further development	359
8. Summary	360

CHAPTER 14

Private enforcement of public procurement law in Slovakia: Another ornamental law?

1. Introduction	362
2. Legislative framework.....	364
2.1 The civil-law regime	367
2.2 The commercial-law regime	368
2.3 State liability for damages claims regime.	369
3. Types of private enforcement measures	370
3.1 What tools can be used?	371
3.2 Where to claim (competent courts)?	373
3.3 What damage can be claimed?	376
4. Private enforcement cases	378
4.1 MIHO saga	378
4.2 ANTES PLUS v Slovak Republic	381
4.3 I v Slovak Republic (Regional Forestry Office in Trnava tender)	382
4.4 RELCO	383

4.5 ANITRAM EXPOS	385
4.6 E. v U. (Faculty of Social and Economic Sciences tender)	386
4.7 EUREA	388
4.8 CEVEO v Združenie miest a obcí, región JE Jaslovské Bohunice ...	389
4.9 P v Q (Reconstruction of the building tender case)	390
4.10 Medika SK v Slovak Republic	392
4.11 Soft v Slovak Republic	394
4.12 Procu v Národný ústav celoživotného vzdelávania	395
5. Evaluation of the environment for private enforcement of public procurement law	396
6. Suggestions for further development	398
7. Summary	398

C. CONCLUSIONS

CHAPTER 15

Damages arising from violation of competition law and public procurement rules in selected Central and Eastern European EU countries: Solutions and challenges	402
1. Introduction	402
2. Substantive elements of damages claims	404
2.1 Existence of infringement and effects of decisions of public enforcement body	406
2.2 Fault	408
2.3 Causality	410
2.4 Existence of harm and quantification of harm	412
2.5 Damages	416
3. Limitation periods in damages claims	417
3.1 Competition law	417
3.2 Public procurement	420
4. Selected procedural elements in private enforcement of competition law	420
4.1 Disclosure of evidence	420
4.2 Competent court	421

5. Evaluation of environment for enforcement of competition law and public procurement rules in selected CEE EU countries and suggestions for further development	423
5.1 Competition law	423
5.2 Public procurement rules	425
6. Conclusion	426
BIBLIOGRAPHY	428