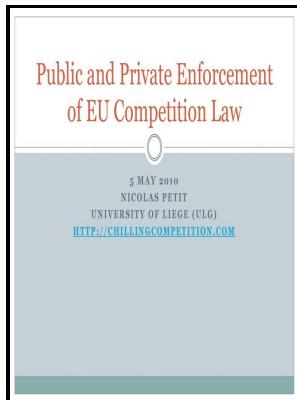


Private enforcement of EC competition law

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Private enforcement of EC competition law

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Very broad or generalised disclosure requests will likely fail to meet such requirements. Since, as such, public undertakings are subject to Arts.

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Confidentiality rings as an effective means for protecting confidentiality 51.

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Therefore, a sort of a litigation truce came to be observed. Redaction of confidential information without replacing the information by a non-confidential text may not strike the right balance between the right of a party to protect its confidential information and the right of the party requesting access to the evidence to substantiate its claim or defence.

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In particular, for damages actions, the Damages Directive requires Member States to provide for the right for claimants and defendants to obtain disclosure of evidence relevant to their claim or defence under the following conditions. Accordingly, questions regarding the interpretation of the severability threshold may be — and eventually need to be — submitted to the CJEU as a matter of ensuring uniformity of the law Art. Finally, to ensure that confidential information disclosed in a confidentiality ring is protected throughout the proceedings, national courts may request that parties submit both a confidential and a non-confidential version of their pleadings the latter, for instance, only including quantitative data in an

aggregated or anonymised form, that confidential information is only referred to in a confidential annex, or that other measures are taken to protect the confidential nature of the information.

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Furthermore, the court may instruct the expert on the type of report to be produced and on whether both a confidential and a non-confidential version of the report may be needed. However, national courts may find that redaction is a less efficient measure in those cases where the request includes a large number of third party documents because the process of liaising with third parties in this respect might add complexity to the task. A remaining particularity of importance is the extension of control to exclusionary or discriminatory practices by firms enjoying relational or simply superior market power, Sec.

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Given the broadly varying conditions of competition and restrictive agreements, a case-by-case approach is recommendable. Besides, the general acceptance of a right to termination instead of an outright no-challenge clause has turned out to be questionable in itself; see Art. The principle of equivalence was established early on by the CJEU in cases where EU law does not provide for sanctions, but implementing national laws do or should establish sanctions.

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As third parties they would have to bear the risks of a lack of transparency and legal certainty, because they have no way of telling whether transactions by their competitors that come with anticompetitive elements will be severable from the latter or whether such elements might be re-read by a court in ways that make their hypothetically redrafted terms acceptable under competition law. Chapter 14 Damages Actions in Private Antitrust Enforcement: Italian Report Gabriella Muscolo.

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