

Member States. In France, for instance, the government was mainly pushed along by the European Commission, through several infringement proceedings, and by the decisions of its own national courts at all levels, especially the *Cour de Cassation* (pp. 166, 187). In Germany, numerous semi-official working groups were, after 1998, preoccupied with the ECJ case law (p. 160). This gradually led to a shift of the governmental position toward compliance with the ECJ rulings. Party political preferences played a role, too. A pioneer like the SBK (Siemens-Betriebskrankenkasse) went so far, between 2001 and 2003, as to reimburse health care costs incurred abroad for its voluntarily insured customers for out-patient and in-patient health care without prior authorization (p. 182). In England and Wales, the Administrative Court of the Queen's Bench Division of the High Court with its *Watts* decision was the main driving force (p. 161). Several hundreds of British patients were reimbursed by the NHS (National Health Service) for treatments abroad outside the coordination regulations (p. 182).

Obermaier comes to the conclusion "that national courts are a key variable for understanding and explaining national implementation: they are able to kick-start and accelerate implementation." In his view, the role of the ECJ as a motor of progress is over-emphasized, since it restrained itself with the rulings that followed *Kohll/Decker* until 2007 (p. 142 et seq.). On the other hand, this self-restriction was, he writes, a prerequisite for the implementation of the rulings into national law (p. 171).

This is not the place to go into the details of Obermaier's final results. The study is highly recommended to all those who want to be informed about how the *Kohll/Decker* jurisprudence of the ECJ and the decisions which followed until 2007 were implemented into health care provision in Great Britain (England and Wales), France and Germany, to what extent and at what time, and – in his view most important – which other factors were relevant for reforms. Obermaier describes his impressions very vividly and fascinates both the informed and the less informed reader in a very comprehensible way. He appears a very well informed author, thoroughly equipped with much material from both the national and EU level, he does not omit details, and at the end of the book answers all the above questions.

Günther Lorff  
Munich

Anne-Lise Sibony, *Le juge et le raisonnement économique en droit de la concurrence*. Paris: L.G.D.J. Montchrestien, 2008. 883 pages. ISBN: 978-2-275-03199-6. EUR 87.

One rarely comes across a competition law book which is both a pleasure to read and opens up a truly new perspective on the understanding of this complex and still somewhat obscure subject. This is such a book. Its main theme is how economic reasoning is, can, and should be integrated in the legal framework and the process of the application of the competition rules. This starting point is important. Many of the innumerable publications which, over the past few decades, have addressed the issue of the relationship between competition law and economics take quite a different, and ultimately sterile, approach. They argue, or imply, what economic goals competition law should pursue. They then try to show that the law does in fact pursue those goals, or that it does not and, therefore, is a bad law. But this approach is oblivious of the fundamental truth that our law is the embodiment of values taking absolute precedence over any economic policy or belief which happens to be supported, from time to time, by economists, policy makers, and business quarters who are better than others at making their voices heard. This does not mean that economics has no role to play in competition law. On the contrary, as Sibony's book demonstrates, EU competition law is open to economics and may be enriched and clarified by the contribution of economic theories and economic analysis. With clarity of language and rigour of reasoning, Sibony shows how this happens, mastering the substantive and procedural law of the EU as well as French law, which allows her to draw

comparisons which will be instructive to all students of competition law even beyond those legal systems. Nor is the author any less confident in dealing, in a crystalline prose, with economic concepts, thus providing a truly joined-up discussion of all the main economic problems of competition law, from the noble quest for the objective of the law to the technicalities of market definition.

The substantive analysis starts with a discussion of the obstacles to the adoption of economic reasoning by the courts. She examines three types of obstacles: 1) obstacles relating to the objectives of competition law; 2) obstacles relating to the structure of economic reasoning; 3) obstacles relating to the legal framework. This analysis already reveals one important feature of this book. While the aim of the author is to discuss how economic reasoning is taken into account by the courts, the book achieves much more than this. Without ever losing its main focus, it discusses the key elements of competition law, offering views which are interesting and well argued and in themselves constitute a contribution to the clarification and development of the law. For instance, when dealing with whether the objectives of EU competition law constitute an obstacle to the adoption of economic reasoning by the courts, it presents an extremely interesting analysis of those objectives. Or, to give but one more example, still in the context of the examination of the obstacles to the adoption of economic reasoning, it discusses the perceived tension between economics and the presumption of innocence and the principle of legal certainty, and how economic reasoning interacts with the rules of evidence and the process of evaluating evidence. Not surprisingly, the author argues that the obstacles to the adoption of economic reasoning in competition law are perceived and not real.

If there are no obstacles to the courts' adoption of economic reasoning, it becomes necessary to explain how the courts have approached economics in interpreting and applying competition law. The author gives two examples: the interpretation of "restriction of competition" and the definition of the relevant market. Here too, the contribution of the book to legal scholarship and development is two-fold. Not only does the author explain, in a historical, doctrinal, and inter-disciplinary perspective, how economic concepts have been used in legal reasoning, but she also writes valuable pages on the concept of "restriction of competition" and the definition of the relevant market which are in themselves a significant contribution to legal thinking on these subjects.

The central theme of the book is addressed in its second part. Economic reasoning is relevant at different stages of the legal process. First, it informs the identification of the applicable legal rules. For instance, the concept of abuse of a dominant position is general and undefined under Article 102 TFEU. Economics provides the categories under which a specific type of abuse, say, predation, may be defined and further classified as financial predation, reputational predation, and signal-jamming predation. Much to the delight of the Anglophone readers, the author explains the role of economics in the identification of legal rules by relying on the concept of "test de qualification", defined as "a structured answer to a legal question". The development of the collective dominance test or the predation test shows how economic reasoning has provided substance for vague legal concepts by identifying a number of material elements of fact which are either necessary or sufficient to establish the relevant qualification. Second, economics provide arguments to the parties to shed light on the material facts. For instance, when intention is a constituent element of abuse, economic arguments may tend to show that a dominant undertaking could not possibly intend to exclude a competitor, because it did not have any plausible or rational reason for doing so. Third, because only contested material facts must be proven, economics may have an impact on the burden of proof, because it contributes to the identification of material facts and provides the parties with arguments to challenge those facts. And, finally, economics is relevant at the stage when the court evaluates the evidence. The author deals with these issues in depth before going on to discuss the ways in which economic evidence and knowledge may be obtained in the proceedings, including expert evidence, intervention of an *amicus curiae*, and appointment of specialist judges. Finally, the author discusses the extent of the powers of the EU and French courts to review

economic reasoning, including both the review of the decision of a competition authority and the review of the legality of the decision of a lower court.

This is a thoughtful and original book which is to be recommended without hesitation to academics and students of competition law as an extraordinarily rigorous and insightful piece of scholarship. Not only does it deal with the relationship between competition law and economics adroitly but it also contains many pages on key aspects of competition law, from abuse of dominance to market definition, which are valuable in their own right. Because of its scholarly approach, it is not intended to be the kind of book that practitioners can use in advice. But any lawyer who wishes to understand more about the development of EU competition law in the past forty years would benefit enormously from reading it.

Renato Nazzini  
Southampton

Laurence Gormley, *EU Law of Free Movement of Goods and Customs Union*. Oxford: OUP, 2009. 637 pages. ISBN: 978-0-19-922900-0. GBP 145.

This book by Gormley is a new addition to the Oxford legal textbook series. The book surveys key aspects of the legal framework governing the movement of goods into, out of, within, and passing through the European Union. This area of regulation forms part of the inner core of EU law and is at an advanced stage of development. In this important new work, Gormley brings increased clarity and coherence to this complex and highly technical field of European market integration.

Following its title, the book examines two aspects of EU law: the Customs Union and the intra-EU movement of goods. Starting with the Customs Union, Gormley guides the reader in chapters 1–9 through the numerous EU instruments regulating, for customs purposes, the movement of goods across the external border of the Union. The approach adopted is extremely logical. Following a brief introduction, the book begins with the definition of key terms and discussion of the rules on the origin of products and their valuation (chapters 1–3). Thereafter, the author reviews in turn the EU rules regulating the entry of products into the territory of the Union (Chapter 4), the processing of goods for entry into, exit from or transit through the Union customs territory (Chapter 5) and the export of products from the EU market (Chapter 6). Chapter 7 deals with specific privileged operations. Chapters 8 and 9 then examine, respectively, the liability and settlement of customs debts and the procedure for appeals against decisions of the customs authorities. Finally, chapter 15 completes the review of EU customs law by returning to examine the system for cooperation and mutual assistance in this field. This covers both co-operation between Member State authorities and also between the latter and the Commission.

The analysis of the legal framework of the EU Customs Union is concerned primarily with unpacking the detailed rules contained within a vast array of EU legislation. In this task, Gormley works the footnotes hard and to considerable effect to ensure that overall ease of comprehension is not compromised by the technical and (often) exhaustively regulated nature of the legislation concerned. Of the various EU legal instruments, Council Regulation 2913/92/EEC, establishing the Community Customs Code (CCC) is examined in particular detail. As the author notes, this core instrument in EU customs law has been recently recast as the Modernised Customs Code (MCC) through Regulation 450/2008/EC. Gormley's work examines the legal regime as it applied at the date of publication. This, of course, includes earlier amendments to the CCC, but not the MCC, which is yet to be fully implemented. However, in anticipation of the pending transition from the CCC to the Modernised Customs Code (scheduled for June 2013 at the latest), the author includes a useful table of correspondence in the Annex.

Reproduced with permission of the copyright owner. Further reproduction prohibited without permission.