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### Antitrust and the Bounds of Power-25 Years On

Cseres, K.J.

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Oles Andriychuk (Ed.), *Antitrust and the Bounds of Power – 25 Years On*. Oxford: Hart Publishing, 2023. vii + 236 pages. ISBN: 9781509962136. GBP 90.

*Antitrust and the Bounds of Power – 25 Years On*, edited by Andriychuk, is an inspiring collection of essays that are joined by the aim to reflect on the ideas seeded by Amato in his book *Antitrust and the Bounds of Power: The Dilemma of Liberal Democracy in the History of the Market* (1997).

Amato's book has attracted consecutive generations of competition law scholars, policy makers, and practitioners to read and lament on a simple, but fundamental, dilemma in democratic societies: how to protect individuals' economic freedom against abusive use and prevent arbitrary and illegitimate private power, while safeguarding the legitimacy of public power which is used to control such situations.

Amato directed our attention to think about the root causes of illegitimate private power, while being aware of the risk that public power and State intervention that addresses such instances may become intrusive and arbitrary. This fundamental constitutional question of the demarcation of private and public action in the interest of safeguarding well-functioning markets, has not aged at all. On the contrary, its centrality has been magnified by various crises, as well as legal, economic, and political changes and developments over the past twenty-five years. Competition law became a fundamental part of economic law and policies far beyond the EU and the US, reaching from the Global North to numerous countries in the Global South, and bringing the East and West closer to each other in Europe, with rapidly growing and maturing

Eastern European competition law systems. A significant number of jurisdictions implemented competition laws and created regulatory authorities to administer these laws. The epistemic community in competition law has doubled if not tripled since the end of the 1990s. This also means that, today, the use of competition laws and which criteria and which limitations they are subject to is a much bigger responsibility, certainly for the “role model” jurisdictions such as the EU and the US, than it was twenty-five years ago.

It is in this context that Andriychuk’s edited volume not only provides an important contribution to the discussion of Amato’s ideas and dilemmas in today’s economies and societies, but also forms a necessary invitation to rethink the relationship between markets, the State, and societies at the end of the first quarter of the twenty-first century. The urgency to respond to such an invitation is perhaps even more immediate now at the start of 2025, than it was in the beginning of 2024 when the edited volume was published.

Throughout its ten distinctive chapters, this volume offers the reflections of a diverse group of authors (all working in the field of competition law) on Amato’s central ideas, and on what they consider the boundaries of competition law and enforcement against the legal, economic, and political developments of the past twenty-five years. Not an easy task, for various reasons. First, the book is inherently not merely a reflection on Amato’s book and his impressive analysis of constitutional and economic rules at the intersection of legal and political theory and history, but it also raises expectations similar to the exceptional study Amato wrote “from the Olympian heights” (Hawk, *Giuliano Amato, Antitrust and the Bounds of Power*, 21 *Fordham Int’l L.J.* (1997), p. 1669) of his public and scholarly experience by 1997. Second, as Amato has stated himself, his book was written for a broad audience, including young professionals at the start of their journey in the complex technical labyrinth of competition law, with the intended goal of highlighting the core of this field of law which remains “bound up” with important political and philosophical choices. Third, as an edited volume, maintaining some form of uniformity across the chapters in terms of length, language, structure, technical, and theoretical details, as well as sustaining a “storyline” along the chapters, is a challenging task for editors and contributors.

This book does a good job in addressing many, but perhaps not all of these challenges. Most importantly, this book makes a good attempt to address and capture the numerous and complex transformations that have taken place in the field, and outside of competition law, by investigating these developments through the prism of Amato’s ideas encapsulated in his book.

We do not have to be – as most of us are not – “leading competition law thinkers” to acknowledge that the metamorphoses that have taken place in the EU, in the US, and around the world in the field of competition law have not just been remarkable, but increasingly distressing. While the past twenty-five years witnessed the “coming of age” of competition law around the world, the birth of a dynamic transnational expert community against the ideological background of enduring liberal democracy, global capitalism with promises of rising living standards, and global peace, today shows a much grimmer “end of the end of the history” (Zissimos, “The end of the end of history: A political-economy perspective, 57 *Intereconomics* (2022) pp. 372–376.) picture, with declining levels of democracy worldwide, increasing economic nationalism and populism disrupting and contesting economic models of liberal democracies with free competition at their core. This new era points to very different “geopolitical and geoeconomic contours of the world” (Zissimos, p. 372), and comes with the re-evaluation of liberal democracy and, sometimes, the rejection of those checks and balances that characterize it, including competition as the accountability mechanism of markets, so eloquently discussed by Maduro in the volume.

Essentially, it is these transformations that make it clear why the implementation of competition law to protect competitive markets has a primary importance in modern democracies, and why it is an indispensable ingredient and safeguard of liberal democracy. These transformations unambiguously show that competition law is a key area of any jurisdiction’s legal and economic order, one that is also deeply connected and influenced by its broader political-economy context.

In the volume, the reflections on these transformations are organized into three parts, each containing three chapters. The first part is titled “Competition policy: New world? New mission?”, followed by the second part on “Competition law enforcement”, and, finally, a third part titled “The concept of power”. The volume’s last part contains an afterword by Amato himself.

While the choices of the titles can be connected back to the aim of the book to reflect afresh on Amato’s core ideas, it is not entirely clear how the three parts and the individual chapters link to each other or, more importantly, how the authors’ thoughts and insights are connected to one another. While there seems to be some common threads, for example between the discussion by Monti in Chapter 4 on antitrust liberation and the discussion by Bruzzone in Chapter 6 on the multitask competition policy, there are no cross-references, and the reader could have used a bit more guidance to link chapters even within the same part of the book. While there are extensive summaries of each chapter in the “Introduction”, readers could expect more guidance across

these contributions, and learn how this edited volume, as a genre that serves as a model for scholarly community and collaboration “in pursuit of a wider good” (Webster, *The Edited Collection: Pasts, Present and Futures* (Cambridge University Press, 2020)), allows researchers to engage in new conversations that transform their field of study.

At the same time, the book brings together carefully crafted contributions that historically and conceptually frame the core issues of power as a central theme of antitrust. The first part, beyond its somewhat unfortunate title, provides a historical framing of global developments in competition law since the end of the 1990s, and analyses existing boundaries in competition law from two different perspectives. On the one hand, the (increasingly blurred) boundaries set by how private market actors behave and public action is carried out by States, and on the other, how the boundaries of substantive competition law have been taking shape in an attempt of liberating antitrust from its multiple purposes still pursued by the end of the 1990s. These chapters help the reader to capture the broader legal and historical developments that took place since Amato’s book was published in 1997, and bring us back to the formative years of the 1990s, revisiting a specific vision of competition law and policy, and a very specific vision on the role of markets and States that started back then. As we stand at the beginning of a similar rethinking of which vision should guide competition law in the coming years, these reflections are valuable and timely, and put current thinking in a comparative perspective.

The second part of the book addresses enforcement. The theme of enforcement and its policy largely developed and gained relevance after 1997 as a result of the globalization of antitrust and the decentralization of EU competition law. Competition law enforcement became an important field of study not just for lawyers, but also for political scientists. The 1990s and 2000s witnessed the emergence and spread of competition laws in many countries across the globe, against the rise of economic policies of liberalization, privatization, and deregulation, and have been accompanied by the creation of various arm’s-length independent regulatory authorities, who were expected to operate more closely to the market and monitor market processes.

Over the past decades the task of public enforcement has been characterized by increasing social complexity due to technological change and specialization, and asymmetries in competence and information, among others. Accordingly, high level expertise has been required to sort out such complexities and knowledge-based decision-making has become indispensable in modern societies. It is in this context that the use of public power to enforce competition rules is analysed through three distinctive perspectives. First, through the much-debated role of the consumer welfare

standard in the enforcement of EU competition rules before the EU Courts. Second, through the investigation of the “complex and technically sophisticated” (p. 88) exercise of public enforcement of competition law in the EU today (as performed by the European Commission), by looking at the specific case of the presumption of innocence. Third, through an analysis of pro-competitive effects. These chapters, while deep diving in case law and policy documents, show the complexity which public enforcement has taken over the years and formulate specific insights on the legitimacy of public enforcement by addressing Amato’s dilemma about the boundaries of public intervention in markets.

The third part moves from the boundaries of substance and enforcement standards to the concept of power with three contributions. The three contributions show the evolution and the complex transformation of private economic power over time and, most importantly, the changes that took place as result of the “digital tsunami” (p. 194). These chapters powerfully show and analyse the various layers, and new forms and foundations of power, as well as the difficulties of “*ancien-régime*” competition law and other legal fields in addressing these. The authors in this part of the book warn us that Amato’s ideas must remain a “permanent agenda” (p. 189), while the balance between private and public power, and the actions that must be taken, are shifting and call for reassessment.

The volume closes with remarks by the celebrated author, Amato himself. This is a nice idea, and Amato manages to add original thoughts in his concluding remarks. At the same time, and while some of the contributors to the volume do formulate certain takeaways, the reader may expect a more ambitious ending. For example, in the form of a joint conclusion with some points for a future (research) agenda, or even a manifesto from this “remarkable cohort of antitrust thinkers” (p. 6) for the next twenty-five years of antitrust.

Overall, this volume is a valuable addition to the existing competition law scholarship. It allows the reader to engage with a diversity of perspectives, insights, and approaches linked by Amato’s academic legacy. The book could perhaps have been more daring to bring together more unusual perspectives from other disciplines, especially those closely linked with the external context of competition law, and offer reflections beyond the narrow technical boundaries of competition law. Still, as a celebration of Amato’s work and the core dilemmas of liberal democracy, this volume is an inspiring read for younger and older generations of competition scholars, practitioners, and policymakers.

Kati Cseres  
Amsterdam