Competition Law Enforcement in England and Wales

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1 Introduction

Competition law enforcement in England and Wales underwent significant changes in the 21st century with the entry into force of the Competition Act 1998 in 2000 and the Enterprise Act 2002 in 2004. The Competition Act and the Enterprise Act have altered both the substantive provisions applicable within the UK as well as the institutional framework for the enforcement of UK and European competition law. The reform aligned UK with European law, created enforceable national prohibitions, and modified enforcement institutions. The domestic system of competition law now parallels the Community rules on competition. Chapter I of the Competition Act (Chapter I Prohibition) prohibits agreements which have as their object or effect the prevention, restriction, or distortion of competition within the United Kingdom. The Chapter II Prohibition bans the abuse of a dominant position by a firm if this abuse affects trade within the UK. Like the Chapter I Prohibition, the restrictions on unilateral conduct are modelled after Community law. The only difference between Community rules and national law is that a breach of national law is defined as having an effect on trade within the UK.

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2 Although reference is made to UK, this article will only deal with the public and private enforcement in England and Wales.
4 Section 2 Competition Act 1998.
While the substantive provisions do not differ greatly from EU competition law – Community law is also used to interpret the national norms – the institutional and procedural framework has some features which set it apart from most continental European enforcement systems. The Office of Fair Trading (OFT) is the primary enforcement agency empowered to enforce consumer and competition law. The Enterprise Act created a special body, the Competition Appeal Tribunal (CAT), which reviews public enforcement decisions and adjudicates monetary private follow-on claims. Private enforcement benefited from enforceable substantive national provisions introduced by the Competition Act as well as from advantageous rules for bringing follow-on actions implemented with the Enterprise Act. Although the new enforcement framework has had less than a decade to fine-tune and settle, the OFT and the Competition Commission (CC), both of which are responsible for market investigations and Phase II merger investigations, will be abolished and their functions transferred to the Competition and Markets Authority (CMA).

The extensive changes at the beginning of the millennium and the proposed new reform compel to take a closer look at how public and private antitrust enforcement have developed through the present. While it is unrealistic to expect the new Competition Act to have an instant, far-reaching impact within its first years in force, now, after a decade of its existence, some traits characteristic of the enforcement system are emerging. This article surveys the current state of competition law enforcement in England & Wales. It examines the features of the new enforcement framework created by the Competition Act and the Enterprise Act as well as the key decisions that are likely to shape the future of competition law enforcement. This chapter focuses on the progress that has been made in England and Wales since the Competition Act 1998 came into force in 2000, largely excluding developments prior to its implementation. The first part of the text analyses the public enforcement of competition law while the second part deals with private enforcement of UK competition law. The third section offers concluding remarks.

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6 See also section 60 Competition Act 1998.