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Antitrust Federalism in the EU and the US

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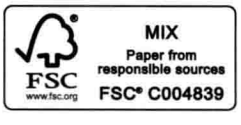

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Antitrust Federalism in the EU and the US

The EU and the US are the world's preeminent examples of multi-level polities and both have highly developed competition policies. Despite these similarities, however, recent developments suggest that they are moving in different directions in the area of antitrust federalism. This book examines multi-level governance in competition policy from a comparative perspective. The book analyses how competition laws and authorities of different levels – the federal and the state levels in the US and the national and the supranational levels in the EU – interact with each other. Inspired by the increasingly divergent policy developments taking place on both sides of the Atlantic, the author asks whether the EU and the US can draw policy lessons from each other's experiences in antitrust federalism.

Antitrust Federalism in the EU and the US reveals the similarities and differences between the European and American models of antitrust federalism whilst employing policy network models in its comparative analysis of issues such as opacity and accountability in networks. The book is essentially multidisciplinary in its effort to initiate dialogue between the Law and Political Science literatures in this field. This book will be of particular interest to academics, students and practitioners of Competition Law, Constitutional Law and Political Science.

Firat Cengiz is assistant professor in the European and International Law Department of Tilburg Law School in the Netherlands and is a senior member of the Tilburg Law and Economics Center (TILEC).

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This book has been written in six years and six cities. I have worked on this book since 2005 on and off in Norwich, Washington DC, Florence, Tilburg, Istanbul and Ankara. This was an extremely rewarding and challenging period of my life at the same time. In the first half of this period I conducted a doctoral research project that eventually led to the writing of this book. In the second half, I faced the challenge of finding a job in a shrinking market under the global economic crisis. Eventually, I was lucky enough to start my very first position as a junior academic in a well-respected university. These six years were marked with various episodes of moving between countries and re-adaptation. Also, during this period my longing for my country and my family have not diminished in the slightest. Nevertheless, at the same time this was also potentially one of the most rewarding periods of my life marked with achievements not only in my professional life but also in my social life. This was the result of invaluable support and help that I have received from various institutions and people. Thanks to them, despite all the difficulties and challenges I faced, I can still see things from a positive perspective when I look back.

The British Government and the Faculty of Social Sciences of the University of East Anglia generously and jointly funded my doctoral research. If it was not for them, I would not have been able to accomplish my lifelong dream of studying abroad. I had the pleasure of having Michael Harker and Hussein Kassim as my PhD supervisors. Lindsay Stirton continued to act as my mentor even after leaving the University of East Anglia that officially relieved him from all his duties as my PhD supervisor. The management team and members of the Centre for Competition Policy in Norwich provided a very hospitable and friendly environment for doctoral research. Additionally, the Centre for Competition Policy and the Faculty of Social Sciences of the University of East Anglia generously and jointly funded my research visit to the Georgetown University Law Center in Washington DC. The analyses of the US antitrust regime provided in this book are almost exclusively based on the research I conducted when I was in Washington. In other words, without this support, the writing of this book would not have been possible.

During my stay in Washington the academic and administrative staff of Georgetown University provided enormous help in technical and research-related matters. Additionally, Russell M. Damtoft, the Federal Trade Commission, and Andrew I. Gavil, Howard University, kindly provided contacts with federal and state antitrust officials who agreed to give me interviews. I am most grateful to Mr Damtoft and Professor Gavil for their kind help. Also, I am particularly grateful to my interviewees who sacrificed their precious time for my research despite their busy schedules. Due to the informal nature of inter-agency relations in the US, I would have never understood correctly the dynamics of the US network without the information provided during the interviews. I was surprised to see how enthusiastic they were to share information and how eager they were to learn how things work in Europe. Most of the interviewees also kept in touch after the interviews and brought new cases and literature to my attention.

In 2007 the Centre for Competition Policy organized a conference on multi-level competition law enforcement. This conference brought together competition enforcement specialists from both sides of the Atlantic, thus, provided a perfect opportunity to test the plausibility of my arguments and my understanding of the European and American regimes. I am most grateful to the attendees of this conference for their valuable feedback. I am particularly grateful to Andrew I. Gavil, Stephen Calkins and William E. Kovacic who praised my understanding of the US regime and my abilities as a comparative researcher and encouraged me to be more daring with my arguments.

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After finishing the PhD I spent a year in the European University Institute as a Max Weber fellow. The Max Weber Program provided a great opportunity for further academic skills training and networking while enjoying the beautiful city of Florence and re-boosting energy after three years of intense and painful research activity. I am grateful to the European Commission for the funding of this program, and to Program Director Ramon Marimon and other members of the management team for their efforts of bringing together an interesting collection of events and activities. After one year in Florence, I moved to Tilburg as assistant professor in Tilburg Law School and a senior member of the Tilburg Law and Economics Center.

During the two years I have spent in Tilburg I enjoyed greatly the relaxed and friendly working environment and received enormous help and support from my colleagues. I am grateful to Pierre Larouche and Eric Van Damme, TILEC Co-Directors, and to Willem van Genugten, Head of the European and International Public Law Department and the acting Dean of Tilburg Law School, for taking a personal interest in everyone's happiness. Additionally, I would like to thank everyone in Tilburg that I have worked with so far for being so friendly and helpful.

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Abbreviations

Am.	Amendment
AMC	Antitrust Modernization Commission
ATRR (BNA)	Antitrust and Trade Regulation Reports (Bureau of National Affairs)
Cl.	Clause
DOJ	Department of Justice
EC Treaty	Treaty Founding the European Community
EC	European Community
ECN	European Competition Network
ECR	European Court Reports
EEC Treaty	Treaty Founding the European Economic Community
EEC	European Economic Community
EU	European Union
EWGA	Executive Working Group of Antitrust
FTC	Federal Trade Commission
NAAG	National Association of Attorneys General
NCA	National Competition Authority
NCAs	National Competition Authorities
OJ	Official Journal of the European Union
State AG	State Attorney General
State AGs	State Attorneys General
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
US	United States of America

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