

Preface

By sheer chance, one of the first cases that landed on my desk as a starting attorney in Brussels was a private antitrust lawsuit. I relished the thought of applying some of the economic theories that I had become enthused with while studying in the U.S. It was a rather rude awakening. None of the insights I had acquired in my antitrust law class seemed to matter much for the case I was handling. Instead, the case hinged on civil procedure, tort law, competition law and private international law. No handbook explained how those disparate fields of law interact to shape the litigation process and outcome.

I nonetheless enjoyed the mix of different fields of law and tried to involve myself in as many private antitrust cases as possible. This was easier said than done, since, as this book will explain, there were not so many cases to begin with. But in 2005, the European Commission issued its Green Paper on antitrust damages actions and in 2008, it followed with a White Paper. The legal community became abuzz with workshops and lectures about what everyone thought would be the new growth area of private antitrust litigation, and damages actions in particular.

As the debate picked up, so did the number of cases. As a practicing attorney, there was little time for reflection about the broader societal role of these cases and how reforms could impact them for better or worse. Gradually, the idea grew to write a doctoral thesis on the topic, and to explore how private antitrust litigation was developing outside Europe. Japan seemed like an ideal jurisdiction to examine, because its experience had been only scantily covered in the English-language literature and because its legal framework is similar to that of continental Europe. Admittedly, my positive experience with living and studying in Japan, as a university student and in high school in Kyoto, also influenced my choice.

At Kyushu University I found the ideal environment to conduct such a comparative study of Japanese and European law. I benefited greatly from the wide-ranging expertise and multi-jurisdictional outlook of my two thesis supervisors, Professors Toshiyuki Kōno and Ryū Kojima. They offered unwavering support, organized seminars and helped me find my way through the myriad sources of Japanese law.

After graduating, I moved to the University of Tokyo. There, in the quiet green of Hongō campus, I found a bustling center of antitrust scholarship. Professor Tadashi Shiraishi welcomed me with open arms, introduced me to numerous practitioners and scholars, and gave me full liberty to pursue my research interests. His seminars and guidance helped me transform my doctoral thesis into this book.

I also owe a deep debt of gratitude to the many fellow scholars, practitioners, friends and students who provided me with comments and ideas. Tomohiko Kimura, former

colleague at Linklaters and long-time friend, and Yasuo Daitō provided helpful feedback and comments. Alistair MacLean checked for consistency and errors with speed and accuracy. At the University of Tokyo, Ryūsuke Bushimata, Joel Rheuben, Shao Chiungyi, Ren Yatsunami and Andrea Ortolani helped me improve the manuscript, each in their own unique way. In Fukuoka, Professor Steven Van Uytsel was generous with time, advice and lending me so many volumes from his collection of books. With Professor Stefan Wr̄bka, Sean McGinty and Quach Thuy Quynh I co-organized a conference on collective actions that helped shape my ideas. Professor Caslav Pejovic made me realize the importance of the broader historical context of Japan's and Europe's approach to private antitrust litigation.

Tetsurō Hori, Masatoshi Tanaka – attorneys with busy legal practices – and Judge Shinji Sakakibara gave me insight into the reality of civil litigation in Japan. Dr. Kōki Arai of the Japan Fair Trade Commission and Professor Takashi Shimizu of the University of Tokyo patiently explained to me the intricacies of the economic analysis of law. Professors Dimitri Vanoverbeke, Mike Dowdle, Barry Rodger, Chenggang Xu, Jing Leng, Tamio Nakamura and Sōichirō Kozuka provided me with a stimulating forum to present my research to the community of scholars. My buddies Alexander Senge, Peter John Javier and Paulius Jurčys gave helpful comments on drafts.

In these times of strained budgets, I am particularly grateful for the financial support of the Japanese Ministry of Education, Culture, Sports, Science and Technology, which provided me with a scholarship throughout my doctoral studies, and the Japan Society for the Promotion of Science, for funding my post-doctoral research at the University of Tokyo.

Finally, I owe everything to my parents. They had and still have mixed feelings about my decision to trade a stable job in Brussels for the distant academic world of Japan. Yet they did not disinherit me but, instead, one day flew over to Japan and took me on a memorable trip to the blessed island of Naoshima, where modern art and nature reign supreme. I dedicate this book to them.

The book states the law as it stood on 1 September 2012. The European Commission has announced it will take a legislative initiative on antitrust damages actions in the course of 2012 and the author endeavors to post an update to this book at simonvandewalle.eu