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Book Review - Christopher Townley, *Article 81 EC and Public Policy*, Oxford/Portland, OR, Hart Publishing, 2009, 363 + i-xxxiii. ISBN 978-1841139685

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The 'modernisation' of EU competition law has been a buzzword since 1999, leading to groundbreaking reforms in 2003. The enactment of Council Regulation 1/2003[1] enhanced the powers of the Commission in finding and sanctioning competition infringement and provided express legal footing for the cooperation between the Commission and the national competition authorities as well as, albeit to a lesser degree and in different forms, the national courts. In what constituted perhaps the most evident change, the 2003 Regulation abolished the 'exemption monopoly' enjoyed, under Regulation No 17/62, by the Commission itself and established a regime of direct applicability of not just the prohibition contained in paragraph 1 of Article 101 TFEU, but also of the 'exemption clause' enshrined in Article 101(3) TFEU. Commenting on the Modernisation White Paper, published by the Commission at the end of 1999, Claus D Ehlermann voiced his support, albeit with some reservations, for the reform plans proposed by the Commission and later embodied in the new Regulation and emphasised how totally decentralising the application of Article 101 TFEU was a radical and courageous step as well as perhaps the only way in which the Commission could retain its guiding role in the enforcement of the EU competition rules in an enlarged and increasingly diverse Europe.[2] However, these reforms did not resolve the difficulties associated with the interpretation of the exemption clause, as well as of Article 101 TFEU as a whole. In fact, the implementation of the Modernisation 'package' took place against a very complex background of case law concerning the manner in which the prohibition clause should be interpreted and especially concerning whether it should provide for some of the elements characterising the 'standard of reason' developed by the US Supreme Court in its reading of Section 1 of the Sherman Act.

As is well known, the 'default position' of the Commission and, at least up to a point, of the EU Courts[3] has been to exclude that the prohibition clause should be interpreted as allowing for a degree of balancing between pro- and anti-competitive effects of

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[1] Regulation 1/2003/EC, OJ 2003, L1/1.

[2] CD Ehlermann, 'The modernisation of EC competition policy: a legal and cultural revolution' (2000) 37(3) CMLRev 537, pp 588-590.

[3] See eg Case T-328/03 *O2 v Commission* [2006] ECR II-1231; for commentary, *inter alia*, Jones, 'Analysis of agreements under US and EC antitrust law—convergence or divergence?' (2006) 51(4) Antitrust Bulletin 691; also, Marquis, 'O2 (Germany v Commission and the exotic mysteries of Article 81(1)' (2007) 32(1) ELRev 29.

restrictive practices.[4] The 'bifurcated structure' of Article 101 TFEU, framed in a 'prohibition' and an 'exemption' clause, meant that the 'first step' of the assessment entailed a consideration of whether an arrangement having an appreciable effect on interstate trade had an anti-competitive object or resulted in anti-competitive effects, either actual or potential. If, following this stage of the assessment, a practice was shown to have a 'restrictive nature', in the sense outlined by the prohibition clause, the second step of that assessment would entail a consideration of its allegedly pro-competitive effects and a determination of whether the latter outweighed the practice's negative impact on the market. In this specific respect, although they acknowledged that the assessment of whether an arrangement entailed a restriction of competition should be carried out in light of a more 'economics based' approach, the Commission and the Courts repeatedly emphasised that the appropriate 'place' for this assessment should be the framework provided by Article 101(3) TFEU.[5]

According to the Commission's Guidelines on the application of Article 101(3) TFEU, published after the enactment of the Modernisation Regulation, the function of Article 101(3) TFEU would be to recognise that 'restrictive agreements may generate objective economic benefits' which, if they outweighed the negative impact on competition caused by a given practice and assessed in light of Article 101(1) TFEU, by meeting the four conditions listed in the exemption clause, would render the sanction of nullity provided by paragraph 2 inapplicable to the practice.[6]

This interpretation of Article 101 TFEU was, however, thrown in discussion by a number of judgments concerning the interpretation of the notion of 'restriction of competition' especially in cases involving allegations of 'less obvious' infringements of the competition rules. Thus, in *Remia* and *Pronuptia* the Court of Justice expressly recognised that certain prima facie restrictive practices would fall outside the scope of Article 101(1) TFEU if having regard to their legal and economic context and to the conditions of competition within a given market, they pursued a 'legitimate commercial purpose' and were limited in their duration and geographic scope.[7] The apparent 'extension' of these concepts of necessity and proportionality to cases concerning prima facie restrictive practices adopted in the 'public interest' contributed to casting a shadow to the bipartite structure of Article 101 TFEU championed by the Commission and the Courts. Commenting on cases such as *Wouters* or *Meca Medina*,[8] commentators argued that by incorporating, in substance, an element of 'balancing' of the pro- with

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[4] See, for example, Case T-112/99 *Metropole (M6) and others v Commission* [2001] ECR II-2459, paras 72, 75. Also, Commission Guidelines on Article 81(3) EC, OJ 2004, C101/97, especially paras 11-12.

[5] *Inter alia*, Case T-374/94 *ENS and others v Commission* [1998] ECR II-3141, paras 136-137; also Commission Guidelines, op cit, n 4, paras 11, 33-34.

[6] See Commission Guidelines, ibid, especially paras 32-34.

[7] See, for example, Case 42/84 *Remia BV v Commission* [1985] ECR 2545, paras 17-19; also Case 161/84 *Pronuptia de Paris* [1986] ECR 353, especially paras 14-18. For commentary see, *inter alia*, Whish, *Competition Law*, 6th ed, Oxford, OUP, 2008, pp 124 & 126.

[8] Case C-309/99 *Wouters v Algemene Raad* [2002] ECR I-1577; see also Case C-519/04 P *Meca Medina and Majcek v Commission* [2006] ECR I-6991.

the anti-competitive effects of the arrangements at issue, the Court of Justice had de facto adopted a 'rule of reason' approach to its assessment of the existence of a restriction of competition.[9]

These developments, coupled with the other *O2* judgment,[10] with its emphasis on the need to apply a 'counterfactual analysis' to the assessment of whether the arrangement restricted competition within the meaning of the prohibition clause, therefore prompt significant questions as to how we should construct the framework for assessment provided by Article 101 TFEU: should we continue to assume that the 'division of labour' between paragraph 1 and paragraph 3 is more or less 'equal'[11] as suggested by the Courts' earlier case law and by the Commission's guidance documents? Or should we perhaps recognise that, as a result of the pressure toward a more 'economics based' and 'realistic' view of what constitutes a 'restriction of competition', this structure has changed?[12]

In the aftermath of the *O2* decision, a number of commentators suggested that the application of a 'comparative analysis' of the state of competition on the relevant market 'without' vis-à-vis 'with' the agreement *de facto* allowed the General Court to apply a test which was very close to what we would have regarded as 'rule of reason' and which allowed at least a degree of 'balancing' to take place at the stage of application of Article 101(1) TFEU. However, if this is indeed the case, what does the application of the 'counterfactual analysis' championed by the General Court mean for the function of the exemption clause? Should we consider the scope of Article 101(3) TFEU to be limited only to exempting 'hard-core' restrictions of competition? And what type of objectives should this 'residual' balancing function take into account? Also, in respect to less 'serious' infringements, will its scope be limited to performing the role of 'public interest exception'?

Overall, these recent decisions question our approach to the interpretation of Article 101 TFEU and especially its effectiveness not just for the attainment of its prime objective, i.e. the protection and strengthening of competition within the single market, but also for the achievement of other, non-strictly economic goals. In fact, it is apparent from the Courts' case law and the Commission practice that the application of this provision to individual cases has often involved, whatever the precise 'framework' for assessment, the engagement of 'public policy' goals, on the basis of a purposive reading of the Treaty as a whole and especially of the 'old' Articles 2 and 3 EC.

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[9] For example, Marquis, 'O2 (Germany v Commission and the exotic mysteries of Article 81(1)' (2007) 32(1) ELRev 29 at 44.

[10] Case T-328/03 *O2 v Commission* [2006] ECR II-1231.

[11] Jones, 'Analysis of agreements under US and EC antitrust law—convergence or divergence?' (2006) 51(4) Antitrust Bulletin 691 at 788.

[12] Marquis, 'O2 (Germany v Commission and the exotic mysteries of Article 81(1)' (2007) 32(1) ELRev 29 at 44.

The examination of the extent to which prima facie restrictive practices result in the attainment of 'positive' objectives that are protected within the spectrum of the Treaty itself has often taken place in light of the four conditions of the exemption clause: that was the case of *CECED*,[13] concerning agreed reduction of output for the purpose of environmental protection. However, other cases, one of which was *Wouters*,[14] have seen these 'public interest considerations' play a part in the assessment of the existence of a 'restriction of competition', within Article 101(1) TFEU. In the light of the above considerations and also on the ongoing debate on the structure of Article 101 TFEU, what is the 'right place' for these 'non-competition goals' to be appropriately taken into account and weighed against the anti-competitive effects of individual practices? Is this exercise compatible with the very structure of the EU Treaties and with the *raison d'etre* of Article 101 TFEU itself?

The book by Townley constitutes a timely, informative and strongly argued response to these and to other questions. The book discusses the role of public policy goals in the implementation of competition policy and seeks to provide a framework within which the 'balancing' exercise between, on the one hand, the preservation of effective rivalry on the market and, on the other hand, the attainment of other, not necessarily 'economic' goals can be carried out. At the basis of this examination appears to be the conviction that, for competition policy in the EU to be truly effective and perhaps most importantly, fully consistent with the spirit of the Founding Treaties the competition rules cannot be read in isolation, but must necessarily be applied against a background of values, objectives and principles that go beyond their realm and embrace the 'European project' as a whole.

The book is divided into three parts: in the first part the author considers the rationale for the relevance of policy objectives for the implementation of EU competition policy with a view to demonstrating that these objectives are still relevant today and that their relevance is consistent with the design of the Treaty. For this reason, Chapter 1 provides a theoretical discussion as to the 'why' goals other than just the pursuit of economic efficiency should be relevant in the competition assessment and as to 'when' their assessment should be carried out in the context of implementing competition policy. With respect to the theoretical rationale for the incorporation of non-welfare objectives into competition policy, the author argues that if competition law is to benefit society as a whole, it must necessarily pursue a 'total' welfare goal, namely an objective of welfare which sums up not just what is 'good' for producers, in terms of productive efficiency and profit maximisation, but also what is 'good' for consumers. It is in fact only in this way that competition policy can actually both ensure efficient markets and remain morally and politically justifiable.

To maintain the integrity of competition policy as a whole this process of 'incorporation' of public policy within purely economic objectives can only occur in

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[13] Commission Decision 2000/475/EEC of 24 January 1999, *CECED*, OJ 2000, L187/47.

[14] Case C-309/99 *Wouters v Algemene Raad* [2002] ECR I-1577.

certain conditions and within relatively strict confines. In relation to the former, the author points out that the consideration of public policy objectives must be both open and transparent, to maintain the legitimacy of the decision making process and that the relevance of these objectives must be acknowledged at the outset. In relation to the latter issue of 'when' this process of 'incorporation' should occur, the author recognises the difficulties associated with addressing this question in a 'legal vacuum'. Nonetheless, he argues that, consistently with adopting a 'total welfare' goal, competition intervention should occur when there is a reduction in the consumer welfare standard. In addition, and so that the legitimacy of the decision making is preserved, the outcomes of this intervention should be appreciable and take into account the extent to which other institutional actors, especially the legislature, have already intervened in the area.

In Chapter 2, the author discusses the question of the 'why' public policy objectives should be relevant in implementing competition policy within the EC/EU legal framework. In the first part, the chapter analyses the arguments in favour of incorporating these objectives in the application of Article 101 TFEU and does so from the standpoint of the overarching goals of the Treaty, starting from the old Articles 2 and 3 of the EC Treaty. The author analyses these general provisions and demonstrates that both the very structure of the Treaty itself and the presence within it of a number of 'policy linking clauses', namely provisions identifying individual policy goals and providing a framework within which these objectives can be 'taken into account' in the attainment of other policy objectives, favours the idea that, if the Treaty itself is to deliver its 'ultimate aims' there must be a process of continuous balancing or 'reconciling' among these objectives. The author emphasises how, even when the Treaty seems to draw a hierarchy of values, it rarely suggests 'exclusion' as a way of resolving tensions, opting, instead, for a balancing exercise whose outcome can change in response to the circumstances.

He then analyses specific cases to provide examples of the approach adopted by the EU institutions in dealing with this process: thus, in relation to the idea of 'exclusion' of a value in event of conflict, he examines, among others, the case of *Albany*,[15] concerning the apparent tension between social policy, especially in labour relations, and the achievement of effective competition, and argues that while the ECJ had probably been entitled to conclude that the latter objective should yield precedence to the former, it could be questioned whether the two sets of objectives could be at all irreconcilable. In respect to the more frequent dynamic of compromise, the *Wouters*[16] and *Meca Medina*[17] cases are regarded as providing a powerful example of how non-economic goals can be embedded in Article 101 TFEU decision making. The author acknowledges that the exemption clause, due to its relatively narrow boundaries, cannot be used to incorporate all policy objectives in this process and therefore argues that, in

[15] Case C-67/96, [1999] ECR I-5751, paras 60-70.

[16] Case C-309/99, [2002] ECR I-1577, paras 94-98.

[17] Case C-519/04 P, [2006] ECR I-6991.

addition to adopting a 'generous reading' of its four conditions to allow that balancing, adopting a teleological reading of Article 101 TFEU as a whole may be required to allow that balancing to happen.

In the final part, chapter 2 examines a number of objections to the balancing of public policy and competition objectives. The author dismisses the arguments based on an alleged 'public/private' divide within the Treaty as a result of which public policy goals should not come into the picture in the application of directly effective rules as being 'incompatible' with the 'functional' definition of 'undertaking' and with the very letter of the Treaty. He points out that where the Treaty drafters wished to exclude the applicability of the EU competition rules, they did so expressly and therefore argues that, in the silence of the Treaty, balancing public policy goals with competition policy should remain possible. Overall, he argues that while from a theoretical standpoint, balancing, while possible, should be carried out within strict confines, the picture of the 'practical' approach to that 'reconciliation' process is one in which both the Treaty itself and the institutions 'embrace the balancing of these objectives' against the goals of Articles 101 and 102 TFEU readily.

Townley points out that this readiness to embrace disparate policy goals may come a cost, which is perceived by a number of commentators as well as, to a degree, by the author itself, to lie in a loss of legal certainty. Against this background, a question emerges as to how these public policy objectives should be incorporated in the competition decision making process in individual cases and how the balance should be struck between them, and this constitutes the subject matter for Part 2. In Chapter 3, the author considers what he terms as 'mere-balancing' of public policy against competition objectives within the scope of Article 101(1) TFEU: this process involves balancing the former against the latter 'outside of the economic efficiency assessment', that is, at the stage in which the decision-maker considers whether a given practice falls within the remit of the prohibition clause because it appreciably restricts competition. The author considers in particular two public policy goals, namely market integration and environmental protection. On the basis of the analysis of *Consten*[18] the author argues that the ECJ appears to have developed a per se rule on the basis of the assumption that the goal of establishing the common market ought to prevail over strictly efficiency related objectives.

He then moves on to consider how the Commission tilted the balance between economic efficiency and environmental protection in its policy statements and in individual cases. It is suggested that while the latter is undoubtedly more and more important in the Commission's policy agenda, 'where' actually that balance may lay is still an open question. In the latter part of the chapter the author considers two allied questions, the first being what the limits are to this 'balancing' within Article 101(1) TFEU: he argues that the doctrine of 'ancillary restraints' could be regarded as a framework within which this assessment may be conducted. However, he also points

[18] Case 56/64 *Consten and Grundig v Commission* [1966] ECR 429.

out that this theory does not seem entirely compatible with other decisions, such as *Wouters* or *Meca Medina*, where a regulatory, as opposed to a commercial goal is pursued.

The second question relates instead to 'why' the balancing exercise takes places at both the prohibition and the exemption stage. The author argues that this may be due to procedural as well as substantive reasons. In relation to the former, he especially wonders whether, had the agreements in *Wouters* and *Meca Medina* been notified to the Commission and thus subjected to the appraisal under the four conditions of Article 101(3) TFEU, the outcome of the decision may have been the same, especially in light of the differing outcomes that balancing carried out within the prohibition as opposed to the exemption clause could have and asks whether, now that the exemption monopoly has been abolished, this question may have become moot, with the consequence that the boundaries between non-efficiency related and public policy objectives are now more blurred.

Chapter 4 considers, instead, the 'mere-balancing' exercise within the framework of the exemption clause. The author argues that Article 101(3) TFEU has been consistently used, especially in the Commission's administrative practice, to reconcile non-economic objectives with those of competition policy, both alone and in reciprocal combination and to that end points to the wide reading of the 'efficiency' condition, contained in Article 101(3)(a) as a means to allowing that balancing. However, what he also emphasise is that the 'process' through which this balancing occurs remains often unrefined and relatively vague and that, more generally, it is still unclear whether any 'hierarchy of values' can be drawn between public policy objectives as well as between the latter and the economic efficiency rationale guiding the exemption clause.

In Chapter 5 the author considers the other mode of balancing public policy objectives against the pursuit of genuine competition, namely 'market balancing', which entails accommodating public policy goals within the economic efficiency assessment of individual practices and considers how the Commission had carried it out in its decision making activity. The chapter examines three distinct aspects of this analysis, namely the apparent tension between producer and consumer welfare, the interplay between productive efficiencies (including the drive to invest) and allocative efficiencies and the overall impact of these factors on the welfare standard adopted in the competition analysis.

It is argued that, although the Commission does not tend to be particularly explicit in its 'market balancing' of individual practices, some trends can be detected. The author points out how the Commission openly advocates a consumer welfare approach, in its policy statements, while at the same time allowing industrial policy considerations to emerge in individual cases. Thereafter he considers the approach to productive efficiency and points out how, for all the emphasis on consumer welfare as a 'value' within the competition decision-making process, the Commission seems prepared, in order to boost R&D investment, to accept significant losses in allocative efficiency, thus suggesting a marked preference for a partial, as opposed to a total equilibrium

analysis, in which market definition plays a key part in the legal assessment of prima facie anti-competitive practices.

At the same time, the author emphasises how the General Court has in a number of cases hinted at the possibility to go 'beyond' the partial equilibrium approach, by taking into account not only the effects of a practice on the relevant market or indeed on a given group of consumers but also any benefits that it may have on other markets. Consequently, he argues that although the current Article 101(3) Guidelines go some way toward putting the Commission's position on a clearer and more certain footing, the framework for analysis that they propose is still relatively indefinite and unstructured and therefore demands proper explanations of how the market balancing is actually conducted.

In the final part the book reflects on both the 'why' and the 'how' the balancing of public policy against competition goals should be conducted within Article 101 TFEU and, after highlighting a number of issues arising from the preceding analysis, suggests a possible solution to ensure more transparency, predictability and more respect for economic principles in this assessment. Chapter 6 analyses how the balancing should be conducted in the context of the prohibition clause: the author starts from the consideration of the concept of 'restriction of competition' and makes a convincing argument in favour of reading that concept as referring to practices entailing an appreciable restriction of consumer welfare, rather than to a general restriction of the parties' economic freedom. Thereafter, he considers the actual dynamics of the balancing (both mere and market) within Article 101(1) TFEU and argues that for the sake of clarity and predictability, market balancing should not occur when interpreting and applying the prohibition clause, for that would lead to the analysis straying too far from its focus on consumer welfare. Nor, in the author's opinion, should mere balancing occur when applying the prohibition clause: Townley points out that, although the competition authorities should not be reduced to being 'hostages to clarity', it would be preferable to confine consumer welfare considerations to Article 101(1) TFEU, to safeguard the transparency and coherence of this process, and to employ the framework provided by the exemption clause to conduct mere balancing. Although this solution may give rise to difficulties due to the confines of the four conditions listed in Article 101(3), it would preserve the 'integrity' of Article 101(1) as a 'consumer welfare focused' clause.

In Chapter 7 the book deals with public policy balancing in the context of the exemption clause and does so in relation to each of the four tests listed by Article 101(3) TFEU. The author points out how, due to the generous interpretation of the first condition that has prevailed in the case law of the EU Courts and of the Commission, allowing for public policy balancing within the exemption clause leaves that test as a 'wide' one, focused in substance on the impact of public policy goals on consumer welfare. Consequently, he suggests that the other three limbs of the exemption clause should be applied so as to 'refine' the outcome of the first stage of the assessment and thereby determine how far competition can be restricted in order to achieve the balance between the competing goals pursued in individual cases.

Therefore, the author suggests that the notion of 'fair share to consumers', contained in the second condition, should be read as to restrict the impact of the 'tolerated' restriction only to the private end users of the relevant goods or services (p 282). In addition, and consistently with the structure of the exemption clause, he advocates the use of the two 'negative conditions' to identify the scope for 'optimal antitrust intervention' and to ensure that any market distortions resulting from the pursuit of non-competition objectives are kept to a minimum. Overall, he argues that:

> 'considering all relevant non-economic objectives under [Article 101(3) TFEU] … is in line with the view of the Treaty … of a wide range of interlinking, self-reinforcing and conflicting objectives … which should be blended to achieve the optimal Community balance' (p 283)

That application of the exemption clause would also ensure more transparency and predictability in the decision making and is likely to limit the possibility for individual decision-makers to 'distort' the framework for analysis provided by Article 101 TFEU to accommodate and achieve policy goals. However, as the author points out, adopting a generous view of what constitutes an 'improvement in the efficiency' of production or distribution, as suggested earlier, carries with it a number of evidentiary and conceptual difficulties. It is for this reason that the last Chapter of the book is dedicated to suggesting an 'alternative' blueprint for the balancing process. However, it is worth emphasising that the framework proposed by the author does not indicate to the Commission, the national courts and the national competition authorities 'how to balance': that is in fact largely determined by the domestic rules, in accordance with the principle of national autonomy, albeit within the confines of the general principles of EU law. What the author seeks to suggest, instead, is a 'minimum framework' articulated along three distinct areas: first of all, it is indispensable to determine what the 'ultimate objective' of the exercise will be. The second step is to identify the factors affecting the relative 'weight' of each of the relevant objectives within the balancing process. And the third step is to consider how, at least generally, this balancing exercise can be conducted, in light of the nature of the meta-objective as well as of the relative importance of the concurring competition and policy goals involved.

In relation to the first step of the proposed framework, the chapter explores the pros and cons of defining the ultimate objective of the balancing exercise and argues forcefully in favour of it, to the benefit of clarity and predictability. With respect to the factors informing the relative importance to be attached to each goal, the author points out how, for all the difficulties involved in attaching a specific 'weight' to individual objectives (a process which remains in many respects inherently arbitrary), this process is likely to simplify the balancing process and suggests that the primary source for this specific stage of the framework should be the Founding Treaty. Consequently, he suggests that a cost/benefit-type analysis that takes into account also the passage of time and an assessment of the 'appreciability' of the impact of the practice should be employed, to ensure uniform decision making and optimal intervention. Finally, the chapter discusses how this balancing should occur in practice and to that end suggests the selection and adoption of a 'common meter' through which different outcomes can

be 'converted' and made comparable (p 305). It is argued that, whatever the meter chosen by the decision maker and whatever its nature (quantitative or qualitative) it is indispensable to ensure that it is used consistently and applied clearly and predictably.

In his overall conclusions, Townley recapitulates on the arguments and the discussion developed throughout the book and makes a number of convincing remarks about the relevance of public policy in the application of Article 101 TFEU, the manner in which these goals should be balanced against the pursuit of competition, to the benefit of consumer welfare and about how this process should be articulated. The author brings into sharp focus the apparent tension between the tendency to treat competition law as a 'legal sub-system' insulated from the rest of EU law and the demands for a more holistic interpretation of Article 101 TFEU, which must be informed by the overarching objectives of the Treaty.

Townley is fully aware of the difficulties associated with this process, of its lack of clarity and consistency, as shown in relation to the Commission's decision-making practice, and especially of the risk that as a result of it the framework of analysis enshrined in Article 101 may be irremediably altered. For this reason, he suggests that, while the analytical approach characterising Article 101(1) should be fully informed by the goals of consumer welfare, it should be for the exemption clause to provide a forum within which policy goal can be weighed against the objective of genuine competition, with the first test providing the structure for a 'full balancing' and the other three tests allowing for its outcome to be 'refined' to ensure optimal and proportionate antitrust intervention. Consequently, he argues that, as is illustrated in Chapter 8, the Commission should provide guidance as to how this balancing process should occur. Townley points out that while not being 'reduced to a mathematical formula' (p 317), a possible framework for analysis should entail the determination of an ultimate objective for it, should contain an indication, albeit a general one, of the relative weight to be attached to each of the relevant policy goals, in both qualitative and quantitative terms, and should give some indication of how the assessment of each goal can be converted into a common meter to allow for a comparison of inherently diverse objectives. In fact, it is only by laying down clearer guidelines that this mechanism can operate in a manner which is clear, uniform and predictable and therefore consistent with legal certainty, while at the same time satisfying the need for flexibility of decision making in individual cases.

Article 81 and Public Policy constitutes a timely and constructive contribution to the debate on the direction of competition policy in changing and challenging times. Christopher Townley gives a dispassionate and convincing account of the trends and the themes characterising the application of Article 101 TFEU in cases involving the attainment of public policy goals alongside the more 'traditional' objective of protecting and enhancing effective competition: his commentary is extremely exhaustive and engaging and encourages stimulating reflection in the reader and, it is hoped, food for thought for policy makers at EU and national level.

Overall, this is as much a book about the goals of 'the law' as it is one about the objectives of competition law: in his conclusions, Townley points out how, since competition policy is deeply embedded in the EU 'legal order's constitution', it has a 'transversal' impact on the way in which each of the Treaty's provisions should be read and therefore calls almost 'naturally' for public policy goals to be reconciled with as well as attained through competition policy. This is undoubtedly true, not just for competition policy, and it should inform the 'holistic' implementation of that policy on the part of the Commission as well as of its domestic partners. There may be less agreement as to 'how' to carry out this balancing process in individual cases: however, as Townley has convincingly illustrated, the 'if' and the 'why' this process should be conducted are beyond doubt.