

The Role of Judges in Economic Law

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Freedom

Division

Confusion

Solidarity

Diversity

Dispute

Chaos

Equality

“Our political constitution has nothing to envy to the laws which govern our neighbors; far from imitating others, we set an example to follow.

“Our political constitution has nothing to envy to the laws which govern our neighbors; far from imitating others, we set an example to follow. Because the state, in our country, is administered in **the interest of the population** and not of a minority, our regime has taken the name of **democracy**.

“With regard to particular disputes, **equality** is assured to all by the laws;

▪

“With regard to particular disputes, equality is assured to all by the laws; but as far as participation in public life is concerned, everyone gets consideration because of his **merit**, and the class to which he belongs matters less than his **personal worth**”

(Pericles, Thucydide)

Independent

Administrative

Authorities



Rule of law ²

Formal aspect

“The rule of law is a law of rules” (Scalia)

+ Jurisprudential concept

« Inner morality of the law »

+ Substantive concept

« various opinions on this »

“This is the rule of law that strikes **a balance** between social’s need for political independence, social equality, economic development, and internal order, on the one hand, and the needs of the individual, his personal liberty, and his human dignity on the other” (Aharon Barack)

Strict framework

- « No dissenting opinion »
- « No trespassing » Separation of powers
- « No initiative » Principle of disposition
- « No unanswered claim » Statement of reasons
- “ True independence ”

Jurisprudence

Act 1. - Development

Act 2. - Critique

Act 3. - Intel

Act 1

Development



Quantities

Fidelity,
exclusivity

Individual
target sales

*“Such a situation is calculated to prevent dealers from being able to **select freely** ... the most favourable offer ... and .. change supplier without suffering any appreciable economic disadvantage.*

Such a situation is calculated to prevent dealers from being able to select freely ... the most favourable offer ... and to change supplier without suffering any appreciable economic disadvantage.

*It thus limits the **dealers' choice** ... and makes **access** to the market more difficult for **competitors**"* (Michelin I, 70, 73, 85)



**Market
structure**

**Market
access**

**Freedom
of choice**

Act 2

Critique

Economics trends – The logic of
scientific careers – Public
enforcement – ...- Limitation of
intervention



Dominant firm:
« Big is not bad »

Competitors:
« you should not
protect them »

Consumers:
only harmed
when outcome is
not efficient

Act 3

Intel

“That is why Article 102 TFEU prohibits a dominant undertaking from, **among other things**, adopting pricing practices that have an exclusionary effect on competitors considered to be as efficient as it is itself **and strengthening its dominant position by using methods other than those that are part of competition on the merits**”.

The judgment

- Arguments raised by firm ...

Principle of disposition 138

- ... should be addressed by Commission ...

Due process, statement of reason 139-140

- ... and reviewed by the General Court. 141

Conclusions

- **AEC part of discussion**
 - Commission, Courts
- **General Court**
 - Substance, reasons, competence
- **Stability**
 - What words transpire from society?
- **Reversals**
 - Stability, changes are progressive, « cross words », change in status