

Lloyd Constantine, *Priceless: The Case That Brought Down the Visa/Mastercard Bank Cartel* (Kaplan 2009)

There is a growing literature in the United States consisting of books about major antitrust cases and issues intended for a more mass market audience. This min-trend probably began with Kurt Eichenwald's *The Informant*, a true crime thriller about the Archer Daniels Midland price fixing case involving lysine. It continued with a slew of books about the Microsoft litigation, the Christie's/Southeby's price fixing case, and other memoirs about particular cases or careers.

The most recent contribution along these lines is Lloyd Constantine's *Priceless* about the Visa-Mastercard antitrust litigation concerning credit and debit cards in the US. This has been an extremely important and long running series of cases in both the US and the EU that has involved both governmental and private litigation. Constantine was the lead lawyer for the plaintiffs in the private treble damage class action that resulted in a settlement on the eve of trial calling for \$3.4 billion in damages and significant changes to the way both Mastercard and Visa dealt with merchants throughout the United States.

Constantine traces in a lively fashion the events leading up to the case that consumed years from conception to settlement. He discusses the legal theories and the structure of the class action that was eventually filed without getting overly technical. He then focuses on six key procedural battles involving the scope of discovery, the intervention of the United States government into the case, the certification of the class action, the admissibility of key evidence, the denial of the defendants' motions for summary judgment along with the simultaneous granting of key portions of the plaintiffs' motion for partial summary judgment, and the denial of the defendants' final pre-trial motions. These uniquely US style litigation battles set the stage for Constantine's exhausting preparation for trial and the eventual settlement following mediation and intense pressure from the presiding judge.

A US reader may well focus on the nature of a large (virtually unprecedented) class action, the antitrust theories being litigated, the back and forth nature of private antitrust litigation, and the importance of the relief granted in the settlement. An EU reader may find this an even more useful lens to view and reflect upon the key issues of contingent fees, class actions, pre-trial discovery, the use of experts, the specter of a jury trial, attorneys fees, and the other features of the US litigation system as the EU struggles to better define and implement private rights of actions for competition cases.

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