

Competition Law's Market Failure Paradox

Economic Efficiency, Consumer Welfare and Public Policy in EU Antitrust and State Aid Law

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Organization: LUND UNIVERSITY, Faculty of Law

Document name: Doctoral Dissertation

Date of issue: 12-18-2023

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Sponsoring organization:

Title and subtitle: Competition Law's Market Failure Paradox: Economic Efficiency, Consumer Welfare and Public Policy in EU Antitrust and State Aid Law

Abstract:

This thesis addresses the pressing challenge for contemporary markets to secure socially and economically outcomes. It highlights the increasing prominence of market failures, notably those accentuated by sustainability and income inequality issues, within competition law discourse from both doctrinal perspectives and in the realm of policymaking.

The thesis aims to investigate the role and value of market failure theory within the context of competition law, particularly when assessing the compatibility of public policy measures with the legal framework. Whilst competition law has undergone a modernisation process over the past two decades, emphasising economic efficiency and consumer welfare, the integration of broader public policy goals within this framework remains nebulous. In this context, market failure theory has gained some traction in EU antitrust scholarship as a concept capable of explaining the outcome of public policy measures. This research unveils the juridification of the concept in EU competition law, yet notes the challenges posed by the ambiguous definition of market failure.

To achieve its purpose, the thesis is constructed upon three pillars. Initially, it establishes a framework for assessing the relevance of market in EU competition law. The theory of market failure is conceptualised as a tool to systematise the applicable law. The principle of proportionality is identified as a fundamental tool for conceptualising market failure as a legal requirement. Subsequently, the thesis applies the market failure framework across the different areas of EU competition law, thereby determining its functionality. Finally, it dissects the nexus of market failure within the different fields of EU competition law.

The core argument posits a contemporary 'market failure paradox' within EU competition law, which manifests both theoretically and in practice. The theoretical paradox arises from the ubiquitous nature of market failures, as delineated by economic theory, and their exceptional treatment in EU competition law. Such a paradox leads to inconsistent and ambiguous enforcement policies, thereby undermining the coherence of competition law modernisation. On a practical level, this thesis demonstrates that the role and value of market failure are not constant, varying in alignment with varied objectives across EU competition law sectors. Consequently, this ostensibly objective economic concept can be deployed within the legal framework to both expand and restrict public policy intervention in markets.

Key words: Competition law, State aid, Public Policy, Sustainability, Cohesion, Cooperation Agreements, EU law, Economic Analysis of Law.

Classification system and/or index terms (if any)

Supplementary bibliographical information

Language: English

ISSN and key title:

ISBN: 978-91-8039-876-3 (digital)

978-91-8039-877-0 (print)

Recipient's notes

Number of pages: 597

Price

Security classification

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Date 2023-11-05