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**"The Enforcement of Competition Law in Hungary and Portugal — A Comparative
Approach — Focusing On The Powers Of The Ncas"**

Summary of Doctoral Thesis

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Scope

The thesis "The Enforcement of Competition Law in Hungary and Portugal — A Comparative Approach" by Noémia Rute Peres de Bessa Vilela, presented at Eötvös Loránd University under the supervision of Dr. István Hoffman, constitutes a scholarly examination of the modalities and efficacies of competition law enforcement within the respective jurisdictions of Hungary and Portugal. This doctoral inquiry, conducted within the purview of the European Community's legal framework, particularly focuses on the operational dynamics of the National Competition Authorities (NCAs) in these nations, following the ECN+ Directive.

This scholarly work delineates a comparative methodology, leveraging a robust framework of qualitative and legal research paradigms, eschewing quantitative measures for a deep-dive analysis into the legislative texts, statutory regulations, and judicial oversight pertaining to competition law within the two countries. The thesis systematically analyzes the evolution and transposition of the Directive (EU) 2019/1 from December 11, 2018, across Hungary and Portugal, emphasizing the distinct historical, economic, and institutional landscapes that shape the enforcement of competition laws in each state.

Through a meticulous examination of the legal frameworks, the thesis extrapolates the implications of differing enforcement mechanisms: NCAs' powers, and the judicial review processes, therein providing a granular analysis of the effectiveness and challenges encountered in harmonizing EU directives with national laws. Case studies and regulatory outcomes are explored to ascertain the practical applications of theoretical legal principles and their ramifications on market practices within both jurisdictions.

The thesis contributes significantly to the field of comparative competition law by offering insights into the nuanced interpretation of EU competition law across member states, with a particular focus on the divergent paths taken by Hungary and Portugal in response to common European mandates. This work not only advances academic discourse but also serves as a critical resource for policymakers and legal practitioners navigating the complexities of competition law in a multi-jurisdictional context.

In conclusion, while the candidate's survey was methodologically sound, the fundamental discrepancies between national and EU competition laws, exacerbated by the Directive's shortcomings, render the survey less useful for its intended purpose of comparative analysis. The findings suggest a reevaluation of the ECN+ Directive is necessary to ensure it adequately addresses the realities of competition law enforcement in a diverse and evolving European market. This reevaluation could form the basis for future doctoral or post-doctoral studies, potentially influencing the next generation of EU competition regulations.

Introduction

In the introductory section, it is established a comprehensive context for the study, emphasizing the critical importance of competition law in maintaining market integrity, promoting consumer welfare, and mitigating market failures that arise from monopolistic practices and other forms of economic malfeasance. The thesis underscores the role of the state as a mediator in the economic domain, tasked with the preservation of a free and competitive market landscape that discourages abusive economic practices and behaviors detrimental to the ethos of fair trade and competition.

Delving deeper, the methodology segment of the thesis articulates the foundational approaches adopted in this research. It intricately details the juxtaposition of legal comparative methodologies, incorporating a blended approach to existing methods, namely the functional comparative analysis, historical comparative analysis. Consists of the development of a comparative framework for the examination of how different jurisdictions achieve common legal functions. It assesses the strategies employed by legal systems to meet their objectives and the success of these efforts.

This section is pivotal, as it outlines the systematic challenges inherent in legal comparative studies, especially when juxtaposing diverse legal systems and enforcement mechanisms within the broader European Union framework, adeptly navigating through these complexities, setting a detailed precedent for evaluating the effectiveness and efficiency of legal processes in a comparative light.

Selection of the Members States to compare

Comparing the national legal systems of Portugal and Hungary in the context of competition law involves an intriguing blend of historical, economic, demographic, and EU integration factors.

Portugal has historically had a free and open market economy while Hungary had a closed planned economy until the 1990s, belonging to the Eastern bloc of the Warsaw pact together with SSSR, behind the iron curtain.

Such a proximity between being in a closed planned economy and having joined the EU (HU 2004) vs. being included into a "free market", the ECC (PT 1986) whilst having historically had a free and open market economy posed challenges that lead to this choice.

Comparing the national legal systems of Portugal and Hungary in the context of competition law unveils a fascinating juxtaposition shaped by their distinct historical trajectories: economic models, demographic profiles, and paths to European Union (EU) integration. This comparison is not just an academic exercise but a reflection of how deeply ingrained historical and economic contexts influence the development and implementation of competition law in EU member states.

The comparison of Portugal and Hungary's competition law systems reveals the profound impact of historical, economic, and EU integration factors on the development of national legal frameworks. While Portugal's transition involved adapting an existing free market system to fit within the broader EU framework, Hungary underwent a comprehensive systemic change from a centrally planned to a market-driven economy. Both paths highlight the adaptability and resilience of national legal systems in the face of globalization and European integration. This comparative analysis not only enriches our understanding of EU competition law's diversity but also underscores the importance of considering national contexts in its application and enforcement.

Conclusions

The analysis of the implementation and effectiveness of the ECN+ Directive within the legal frameworks of Portugal and Hungary illuminates the complex interplay between national characteristics and European Union directives. The developed survey aimed to assess how these two member states have adapted their national competition laws to align with the ECN+ Directive, revealing a significant divergence in interpretation and application that stems from each country's unique historical, economic, and EU integration background.

Portugal and Hungary have shown adaptability and resilience in integrating EU directives into their national legal systems, yet the effectiveness of these adaptations, as evidenced by the survey results, is less clear. The survey intended to provide a comparative analysis of the NCAs' efficiency in both countries. However, the lack of coherence in how the questions and answers were interpreted within the survey framework made it challenging to gauge the true effectiveness of the NCAs and their compliance with the Directive.

This discrepancy highlights a fundamental issue with the ECN+ Directive itself, which, according to the candidate's analysis, contains a "genetic flaw." This flaw arises from the assumption that anti-competitive behaviors exhibit the same characteristics across both national and EU jurisdictions, which is often not the case. Such an assumption undermines the purpose of having distinct national and EU competition laws, as the nuances of local markets and economic conditions necessitate tailored approaches to competition regulation.

Moreover, the principle of national procedural autonomy allows member states considerable leeway in how they implement EU laws, provided they do not infringe on the effectiveness and equivalence of these laws. The current situation could potentially threaten the uniform application of rights to damages arising from infringements of Articles 101 and 102 TFEU, suggesting some national approaches may be incompatible with the Directive and the principle of effectiveness.

The survey, while well-intentioned and robust in its design, falls short in delivering actionable insights due to the inherent limitations of the Directive it seeks to analyze. This outcome prompts the candidate to speculate that future amendments to EU competition laws or a comprehensive overhaul of Regulation 1/2003 may be necessary to rectify these foundational issues.

This comparative analysis reveals that while both Hungary and Portugal are aligned in their goals to comply with the ECN+ Directive and enhance the efficacy of their respective NCAs, their strategies and implementations reflect their individual economic landscapes and administrative traditions. The ongoing developments and future assessments, as facilitated by OECD reports and NCAs' own evaluations, will provide further insights into the effectiveness of these legislative changes and their impacts on market Competition and economic efficiency in both countries.

Methodology

In this chapter, the candidate delves into the intricate nuances of legal research, initially addressing the vital aspect of citation and referencing within legal academia. Emphasizing the fundamental purpose of citations—to guide the reader effortlessly to the sources that bolster the writer's arguments—the discussion critiques the inadequacy of the Harvard System for legal citations due to its failure to meet the unique requirements of legal scholarship. These requirements include comprehensive citations that facilitate easy access to primary sources, the preference for authorized versions of legal materials, and the necessity for pinpoint citations to direct readers to the exact portion of the material referenced. The narrative advocates for a sophisticated approach to citation, suggesting the use of footnotes as an elegant solution that consolidates complete citation details succinctly, ensuring that all necessary information is available at a glance, thereby adhering to the legal academic community's standards for clarity and brevity.

Transitioning to methodologies, the chapter presents a critical examination of the traditional quantitative methods borrowed from natural and social sciences, juxtaposed against qualitative approaches deemed more conducive to the exploration of legal phenomena. The candidate outlines several qualitative methodologies, including action research, case studies, and ethnography, arguing their suitability for capturing the complex dynamics of law within its societal and institutional context. However, it becomes apparent that neither quantitative nor these qualitative methodologies fully satisfy the unique demands of the research at hand, prompting the candidate to advocate for a more tailored approach that aligns with the specificities of legal inquiry.

The narrative then unfolds into a detailed discussion on the methodology of legal research, distinguishing between the procedural steps of identifying relevant legal provisions and their subsequent interpretation. The candidate highlights the dual challenges of accessing and interpreting legal rules amidst the burgeoning output of legislative bodies and the evolving role of information technology. This section thoughtfully explores the overarching objectives of legal research—be it scientific inquiry, legislative drafting, or judicial analysis—positioning the research within the broader discourse of legal doctrine and jurisprudence.

An in-depth analysis follows on the crucial preliminary step of determining the jurisdiction or legal order under study. This foundational decision shapes the research trajectory, directing focus toward national, EU, or international law as appropriate and

delimiting the sources of law deemed relevant and binding within the chosen jurisdiction. The discussion on legal interpretation emphasizes its normative character, exploring the multifaceted elements that guide legal scholars in elucidating the scope and consequences of legal rules.

The chapter then transitions to a compelling critique of traditional comparative law methodologies, acknowledging the valid concerns raised by postmodern critics regarding the cultural, social, and legal contexts that shape legal norms. In response to these challenges, the candidate advocates for a comparative law approach that embraces the complexity and diversity of legal systems. This part of the discussion critiques existing methodologies while proposing a collective discipline approach as a means to transcend the limitations identified in traditional comparative analysis.

Focusing on data collection, the chapter meticulously outlines the methods employed to gather and analyze legal data from selected jurisdictions, specifically Hungary and Portugal. Through a detailed presentation of survey questions, the candidate explores various dimensions of anti-competitive practices, the institutional aspects of National Competition Authorities (NCAs), their investigative and enforcement powers, and the mechanisms of judicial review. This section aims to assess the efficacy of NCAs in upholding EU and national competition laws, underscoring the candidate's commitment to a thorough and methodical approach to legal research.

In summary, this chapter offers a comprehensive exploration of the complexities inherent in legal research, from the foundational practices of citation and referencing to the nuanced considerations of methodology. The candidate navigates these complexities with a keen eye for detail and a deep understanding of the legal academic landscape, setting a solid foundation for the comparative analysis that follows.

The performance of the NCAs based on the assessment by the OECD

In assessing the transposition and enforcement of the ECN+ Directive in Hungary and Portugal, we observe nuanced approaches reflecting each country's unique administrative and regulatory contexts. The Organisation for Economic Co-operation and Development (OECD) has facilitated these evaluations through detailed surveys that offer insights into the efficacy and efficiency of Competition policies implemented by National Competition Authorities (NCAs).

In Hungary, the amendments brought about by the ECN+ Directive, notably Act XIX of 2020, have significantly revamped the operational landscape of the Hungarian Competition Authority (GVH). The legislation has endowed the GVH with enhanced tools for enforcement and broader scopes for cooperation, aligning with the Directive's goals to bolster the effectiveness of Competition oversight. These modifications include tightened conflict-of-interest parameters for case handlers, a mandate for annual reports, and the establishment of prioritization frameworks guided by public interest considerations. Additionally, the GVH has been granted the authority to conduct expedited sector inquiries, facilitating prompt interventions in markets exhibiting anti-competitive practices.

In Portugal, the focus has been equally transformative, with the Portuguese Competition Authority (AdC) taking proactive steps in influencing legislative and regulatory frameworks across multiple sectors including banking, energy, and digital economies. The AdC's efforts are concentrated on promoting a competitive environment through the issuance of opinions and recommendations that aim to refine existing legislation and introduce new regulatory measures that foster fair Competition. Furthermore, the AdC engages in various outreach initiatives, such as public webinars and advocacy campaigns, to enhance the understanding and implementation of Competition policies.

Both countries' adaptations to the ECN+ Directive underscore a shared commitment to refining the enforcement mechanisms of Competition law, though their methods and areas of focus exhibit distinct national characteristics. Hungary's approach is notably procedural, enhancing the capabilities of its Competition authority through legal reforms that expand investigative and operational capacities. Conversely, Portugal's strategy encompasses a broader, more integrative approach that involves active participation in policy formulation and a strong emphasis on sector-specific advocacy.

temporary control acquisitions by certain financial entities. A notable procedural shift allows companies to notify mergers based on a demonstrated good faith intention, aligning with EU practices but leaving some procedural specifics to future regulatory interpretation. The introduction of the letter of formal notice by the President of the Gazdasági Versenyhivatal (GVH) represents an innovative approach to encourage voluntary compliance before formal enforcement actions are necessary.

Both countries have thus adapted the ECN+ Directive to fit their national frameworks while addressing specific local needs and challenges. Portugal's amendments reflect a broadening of accountability within corporate structures and a more stringent financial penalty regime, aiming to strengthen enforcement capabilities. Hungary's modifications emphasize procedural clarity and efficiency in merger control, with an increased focus on promoting early compliance through pre-enforcement communication. These changes in both countries signify a proactive alignment with broader European mandates while catering to domestic legal and economic intricacies.

On the Effectiveness of Law

This chapter delves into the complexities surrounding the effectiveness of law, framing its exploration around the challenges of law-making and the practical outcomes of legal regulation. It begins by addressing the intricate relationship between the efficacy of law-making and the effectiveness of legal regulation, emphasizing the need for a nuanced understanding of what constitutes effective legal processes. The chapter identifies two critical dimensions of regulation effectiveness: formal efficiency, which focuses on the procedural aspects of law-making, and social efficiency, which examines the impact of legal norms on society.

The discussion then shifts to the criteria for evaluating the effectiveness of legal processes. It presents a multifaceted approach that includes understanding the purpose of a legal phenomenon within society, evaluating its functions within the legal system, and assessing its impact on both legal subjects and the broader societal context. This approach acknowledges the dynamic nature of legal systems and the challenges posed by their interaction with various social phenomena.

Subsequently, the chapter distinguishes between "effective law-making" and "effective regulation." It clarifies that effective regulation concerns the alignment between the actual outcomes of regulatory functions and their potential maximum impact, whereas effective law-making involves comparing the actual results of the law-making process with its intended objectives.

The effectiveness of legal regulation is further dissected into formal and social categories. Formal effectiveness is measured by the extent to which legal norms achieve their intended level of regulation, while social effectiveness considers the broader impact of these norms on societal relations and behaviors. The chapter outlines various functions of legal regulation, including ordering, guaranteeing, coordinating, integrating, stabilizing, modeling, orienting, and providing incentives or constraints within society.

An effective regulation matrix is introduced as a tool for assessing the efficiency of legal regulation across different functions and social relations. This matrix, constructed through peer review or a specific formula, helps in identifying areas where legal regulation may fall short of achieving its intended functions.

Finally, the chapter suggests the use of a specialized algorithm to assess errors in legal regulation, emphasizing the importance of ensuring that the essential elements of legal norms are capable of fulfilling their designated functions and meet the necessary societal conditions.

Through this comprehensive exploration, the chapter sheds light on the multifaceted nature of legal effectiveness, offering insights into the criteria and methods for evaluating the impact of legal processes on society.

EU accession catalyzed further legislative updates and a heightened focus on network industries and digital markets. The 2022 amendment to Hungarian competition law reflects ongoing adaptations to the digital economy and EU regulatory frameworks, highlighting the fluid nature of competition policy in response to economic and technological evolutions.

Both Portugal and Hungary have charted distinct trajectories in the development of their competition laws, moulded by their respective historical, economic, and political backdrops. Portugal's gradual regulatory evolution towards a comprehensive EU-aligned framework contrasts with Hungary's brisk overhaul of competition policy to meet EU norms and address a market economy's challenges. The recent legislative updates in both countries underscore the continual evolution of competition law in reaction to both internal and external influences, demonstrating a dedication to cultivating fair competition and safeguarding consumer interests within an increasingly integrated European market.

A hallmark of this analysis is the inclusion of case studies from both jurisdictions, shedding light on the practical enforcement of legal principles: the nature of anti-competitive behaviors addressed, and the tangible outcomes of enforcement actions. In synthesizing these findings, the thesis not only underscores the unique insights derived from the comparative analysis but also integrates these insights into the broader discourse on EU competition law enforcement.

In exploring the transposition and enforcement of the ECN+ Directive within Portugal and Hungary, significant legislative amendments tailored to each country's unique legal and economic context have been implemented. In Portugal, the third amendment of the 2012 Competition Act was enacted through Law no. 17/2022, which came into effect on September 16, 2022. This law significantly expands the scope of liability for antitrust infringements to include parent companies and introduces a calculation of fines based on worldwide turnover, a departure from the previously more limited national turnover assessment. Additionally, it details joint and several liabilities for association members and revises the procedures for handling business secrets and complainants within antitrust proceedings. Furthermore, it establishes more robust procedural frameworks for appeals and statutes of limitation, potentially affecting legal certainty.

Conversely, Hungary's legislative adjustments through Act LV of 2022, effective January 1, 2023, focus primarily on merger control regulations within the Act LVIII of 1996. The amendments include increased thresholds for merger notifications and clarified rules for

Competition Law in Portugal and in Hungary

At the heart of the thesis lies the foundation for a comparative analysis, meticulously examining the competition law frameworks of Portugal and Hungary. This exploration is deeply anchored in the distinct historical contexts of both countries, their unique economic models, and their respective timelines of accession to the EU, offering an insightful examination of the legislative texts, statutes, and regulations that shape competition law in each country. Through this analytical lens, the thesis unfolds a historical narrative of competition law's evolution, further enriched by a deep dive into the enforcement mechanisms wielded by the National Competition Authorities (NCAs).

The genesis of competition law in Portugal traces back to 1936, albeit with limited impact until more comprehensive frameworks began to materialize in the 1960s and beyond, culminating in the establishment of modern laws and the Competition Authority in the early 2000s. Initial legislations were primarily focused on controlling economic coalitions and fostering market integration, mirroring efforts to align with GATT principles and tackle restrictive practices. Nevertheless, these efforts were often hindered by political and economic instabilities. The stride towards a market-oriented economy and EU integration during the 1980s and 1990s signified a critical juncture, with the 1982 Constitution acknowledging the state's role in promoting balanced competition. Laws such as Law No. 18/2003 and Law 19/2012 marked significant updates to the competition framework, ensuring alignment with EU directives and enhancing the Portuguese Competition Authority's powers. The 2022 amendments, embodying the ECN+ Directive, further bolstered the Authority's role, underscoring the significance of a vigorous competition policy within the internal market.

In Hungary, the shift from a socialist to a market-oriented economy at the close of the 20th century necessitated the formulation of a new competition law framework. Initial economic reforms introduced market mechanisms alongside state-owned entities, with pivotal changes emerging during the 1989-1990 transition to democracy. The Hungarian Competition Act of 1990, establishing the Hungarian Competition Authority (GVH), marked the formal inception of Hungary's competition policy. Early transition challenges, such as privatisation and liberalisation, shaped the GVH's focus on advocacy and regulation. By the late 1990s, Hungary had achieved significant strides towards a market economy, with the GVH playing a central role in sculpting competition policy amid continuous economic and political reforms.

On the Effectiveness of Law

Offering a thorough exploration of the challenges and methodologies associated with assessing the effectiveness of law-making and legal regulation, it delves into the complex relationship between the creation of laws and their practical implementation, highlighting the necessity of differentiating between these two processes to evaluate their efficiency accurately. The chapter begins by establishing the foundational theory that effectiveness in legal regulation encompasses both formal and social dimensions, emphasizing the importance of aligning law-making processes with these dimensions to achieve desired outcomes.

A significant portion of the chapter is dedicated to defining what constitutes an effective legal process. It introduces a multi-faceted approach to evaluate legal phenomena, considering factors such as the purpose of the law within society, its functions within the legal system, and its impact on legal subjects and societal integration. This approach underlines the need for a dynamic understanding of law's effectiveness, considering the interaction between legal regulations and social realities.

The chapter critiques the traditional "purpose-result" metric for assessing legal phenomena's effectiveness, advocating for a more nuanced and multidimensional evaluation. It proposes alternative criteria for measuring effectiveness, including the analysis of legal processes' functions, their societal significance, and the potential errors in their conception and execution.

In detailing the criteria for evaluating legal processes, the chapter emphasizes the importance of understanding the goal-result dynamic, scrutinizing legal phenomena's purposes, and their actual outcomes. This includes a comprehensive assessment of how legal regulations and their actual outcomes. This includes a comprehensive assessment of how legal regulations interact with other elements within the legal system and the broader society, and how these interactions influence the effectiveness of legal processes.

The chapter then transitions into a discussion on the effectiveness of legal regulation, distinguishing between formal and social effectiveness. It meticulously examines various regulatory functions, such as ordering, guaranteeing, coordinating, and integrating social relations, and how these functions contribute to the overall effectiveness of legal regulation. An effective regulation matrix is introduced as a tool to systematically evaluate the efficiency of legal regulation across different functions and social relations.

In conclusion, Chapter 4 presents a sophisticated framework for understanding and evaluating the effectiveness of legal processes. It challenges conventional metrics, proposing a more holistic approach that considers the dynamic interactions between legal phenomena and societal needs. This comprehensive analysis not only contributes to the theoretical discourse on legal effectiveness but also offers practical insights for enhancing the efficiency of law-making and legal regulation.

The National Competition Authorities

In examining the role of National Competition Authorities (NCAs) across Europe, it is apparent that these entities are integral to the enforcement of Competition Law and the preservation of market fairness. NCAs operate both within their national jurisdictions and collectively at the European level to combat anti-competitive practices such as cartels, dominance abuses, and restrictive mergers. This coordination is crucial for sustaining the European Single Market, thereby facilitating a competitive landscape where businesses prosper based on merit and consumers enjoy greater choice and lower prices.

The genesis of Europe's NCAs can be traced to the establishment of the European Coal and Steel Community in 1951 and the European Economic Community in 1957, under the Treaty of Rome. These foundational steps not only set the stage for modern European Competition Law by emphasizing the prohibition of restrictive practices but also underscored the historical lessons of economic nationalism leading to conflict, thereby cementing the role of Competition policy in fostering economic stability and integration.

The decentralization of Competition Law enforcement to Member States' NCAs became more pronounced in the 1980s and 1990s, culminating in Regulation 1/2003. This regulation empowered NCAs and national courts to directly apply Articles 101 and 102 of the Treaty on the Functioning of the European Union, positioning them as pivotal actors in enforcing EU Competition Law alongside the European Commission.

A comparative examination of Portugal and Hungary's legal frameworks reveals the profound influence of each country's historical, economic, and political contexts on the development and enforcement of Competition Law. Portugal's smooth transition into the European Economic Community in 1986 reflected its longstanding free-market inclinations and stable democratic evolution. Conversely, Hungary underwent significant transformations to dismantle its state-controlled economic structures, necessitating comprehensive reforms in its Competition Law framework to align with EU standards.

These distinct paths highlight the adaptive challenges and diverse strategies within the EU, underscoring the critical role of historical and economic contexts in shaping the enforcement of Competition Law by National Competition Authorities.

The Community Constituent Vision

In the exploration of "The Community Constituent Vision," the candidate delves into the intricate evolution of EU competition law, tracing its transition from focusing primarily on market integration to encompassing a broad spectrum of societal and economic objectives. This comprehensive analysis highlights the multifaceted nature of competition law, shaped by the dynamic interplay between evolving economic conditions, societal expectations, and legal precedents within the European Union.

The chapter begins with a reflection on the initial orientations of the European Commission and the Court of Justice, which scrutinized vertical restrictions with more intensity than horizontal agreements and abuses of dominant positions. This approach, rooted in ordoliberal principles, underscored an early focus on preserving market competition structures primarily to facilitate the broader goal of market integration. The candidate examines how these foundational aspects of competition law were instrumental in dismantling trade barriers to create a unified internal market, mirroring the overarching aims of the European project for economic and political cohesion.

As the narrative progresses, the candidate unpacks the diversification of competition law's aims, which have expanded to include promoting innovation, environmental sustainability, and cultural enrichment. This broadening of objectives signifies a pivotal shift in the perception and application of competition law, indicating its evolution from a mere tool for market integration to a key element of EU policy with wide-ranging implications for consumer welfare and economic prosperity.

A significant focus of the candidate's work is the contemporary framework within which EU competition law operates. Emphasizing efficiency and consumer welfare as primary objectives, the candidate illustrates a matured approach to competition law, one that reconciles the imperatives of market integration with the pursuit of broader economic and societal benefits.

On Community/ EU Law

Here we meticulously explore the multifaceted landscape of Community law, showcasing its dynamic evolution and the broad spectrum of its sources. It begins by framing Community law within a complex network of traditional and innovative legal sources, distinguishing it as a unique hybrid within the international legal domain. This hybridity is evidenced by Community law's reliance not only on conventional pathways characteristic of international law—such as treaties and structured legislative instruments—but also on less conventional sources like custom, jurisprudence, and even academic doctrine. These auxiliary sources play a pivotal role, providing a supplementary foundation that enriches and expands the legal framework of the European Union (EU).

At the heart of this chapter is a critical examination of the dual classification system of EU law sources into primary and secondary legislation. Primary legislation encompasses the foundational treaties of the EU, while secondary legislation comprises the legal acts derived from these treaties. However, the chapter emphasizes a more nuanced approach, prioritizing the distinction between original Community Law—rooted in the treaties that gave birth to the European Communities—and subsequent legislation, which includes treaty amendments, accession treaties, and international conventions concluded by the Community.

The narrative then transitions to an in-depth analysis of the original Treaties, underscoring their enduring relevance in shaping the institutional and legal architecture of the EU. Despite numerous amendments and the expansion of the EU, the foundational principles embedded in these treaties, such as the principles of cooperation, speciality, legality, and equality, have remained largely unaltered. This steadfastness underscores the treaties' role as the bedrock of the EU's legal and institutional structure.

Subsequent legislation is scrutinized next, highlighting its role in refining and expanding upon the original treaties. This includes the treaties that have revised the foundational treaties and the accession treaties that have facilitated the EU's enlargement. The chapter meticulously dissects the legal and institutional implications of these subsequent treaties, illustrating how they have contributed to the evolution and adaptation of the EU's legal framework to new challenges and realities.

The concept of the *acquis communautaire*, representing the entirety of EU law, is explored in depth, emphasizing its critical importance in maintaining the continuity and integrity of the EU legal order. The chapter elucidates how the preservation and development of the *acquis communautaire* serve as a fundamental objective of the EU, ensuring the effectiveness of its mechanisms and institutions in an ever-evolving political and legal landscape.

Through a series of seventeen pivotal treaties, ranging from the establishment of the European Coal and Steel Community in 1951 to the Treaty of Lisbon in 2008, the chapter offers a comprehensive overview of the milestones in the EU's treaty history. It delves into the significant revision attempts of the Treaty of Nice, providing a context for understanding the iterative process of treaty reform in the EU.

The role of the Court of Justice of the European Union (CJEU) in interpreting and shaping Community law receives special attention. The chapter presents the CJEU's jurisprudence as a cornerstone of the EU legal system, highlighting landmark opinions that have defined the constitutional nature of the Treaties and affirmed their primacy and direct effect. Through these judicial pronouncements, the CJEU has clarified the unique legal order established by the Treaties, one in which Member States have consciously limited their sovereign rights in favor of a supranational legal system that directly impacts both the states and their citizens.

In its exploration of the constitutional framework of the European Community, the chapter identifies fundamental principles such as the separation of powers and the rule of law that underpin the EU legal order. It examines how these principles manifest in the principle of effectiveness, which demands that EU law be given full effect in a manner that maximizes its impact and ensures the protection of rights derived from Community law.

This detailed and expansive exploration of Chapter 5 offers readers a nuanced understanding of the complex and evolving nature of Community law. It highlights the interplay between traditional legal sources and innovative mechanisms that collectively shape the legal landscape of the EU, underscoring the enduring significance of the foundational treaties and the critical role of the CJEU in interpreting and applying EU law.

doctrine with ordoliberal ideas, placing competition as a pivotal element for economic efficiency and societal welfare.

Lastly, the chapter addresses the origins of EU competition law, showcasing the substantial impact of German ordoliberalism and American antitrust fundamentals. It elaborates on the treaty drafting process, the contributions of key figures in establishing the competition law framework, and the specific articles aimed at regulating market power and government interventions. The narrative underscores the ordoliberal influence on the European legal stance towards competition, focusing on regulating market behaviors to sustain competitive market environments.

Offering a detailed exploration of competition law's historical development across different regions, the chapter illustrates the ongoing efforts to balance market liberty with regulatory measures against monopolistic and abusive practices for societal benefit.

The discourse on market failures introduces the concept of competition law as a remedy, highlighting its role in safeguarding competitive markets and ensuring efficient resource allocation. The candidate contrasts systems that address potential versus actual damage, reflecting on the philosophical underpinnings of competition law and its implications for economic policy.

In a systematic and dogmatic characterization of Competition Law, the candidate situates it within the broader spectrum of Economic Law, pondering its relationship with Public and Private Law dogmas. This section contemplates the regulatory nature of Competition Law, its alignment with neoliberal economic principles, and its dual strands concerning contractual relations and regulatory oversight.

Here, a comprehensive exploration of anti-competitive practices is provided: their categorization, implications, and the legal frameworks designed to combat them. Through this rigorous analysis, the candidate underscores the intricate balance between market power exploitation and the pursuit of economic efficiency, paving the way for a deeper understanding of competition law's role in contemporary economic landscapes.

The Formation of Competition Law

The chapter dedicated to the historical evolution and formation of competition law is segmented into five comprehensive sections. It begins with an examination of market regulation's early days, evolving through common law and culminating with the enactment of the Sherman Act. This progression underscores ancient concerns over market practices and the essential role of legal measures in safeguarding societal welfare against abusive market behaviors.

The narrative then delves into the Sherman Act's establishment, detailing its significance in the development of US antitrust laws. It highlights pivotal cases and legislative adjustments that have influenced the direction of American antitrust enforcement over time.

The focus shifts to Europe with a discussion on Austria's early efforts to introduce competition law in the late 19th century, emphasizing the intellectual and economic milieu that prompted these initiatives. The chapter progresses to Germany's adoption of competition law in the early 20th century, set against the backdrop of economic challenges and the subsequent influence of ordoliberalism and American antitrust principles on post-World War II legislation. This segment provides a nuanced understanding of how German law synthesized US antitrust

On Competition Law

The candidate embarks on a thorough exploration of the foundational dilemma in economics—the necessity to choose which needs to satisfy with limited resources. This exploration leads to a discussion on decision-making concerning the production and distribution of goods, which serves as a springboard into the classification of economics into market, directed, and mixed types. The identity of the decision-maker, whether the market, the state, or a combination of both, emerges as a pivotal criterion in this classification, each bearing significant implications for the management of production factors and the structure of property within an economy.

Delving deeper, the narrative scrutinizes the aspirations of these economic systems to achieve an efficient allocation of resources, positioned at the frontier of production possibilities, to ensure both productive and welfare efficiency. However, the discourse introduces a critical examination of the limitations of pure laissez-faire solutions, as highlighted by Sen's liberal paradox and Arrow's impossibility theorem, underscoring the necessity for a balance between private initiative and state intervention, especially in the context of public goods.

A significant portion of the chapter is dedicated to the philosophical underpinnings and practical implications of Adam Smith's "invisible hand" mechanism within the market economy. The candidate elucidates how the pursuit of private interests, guided by competition intrinsic to the state of nature, contributes to the overall efficiency and development of the economic system. Yet, this natural order is challenged by the potential for market failures, necessitating the intervention through well-designed and enforced competition laws to maintain efficiency and protect the competitive process.

The discussion on the role of price in resource management transitions into an examination of the microeconomic foundations of supply and demand, alongside the factors influencing price formation. This section offers an in-depth analysis of supply and demand elasticity, the cost factors affecting supply, and the pivotal role of marginal costs in competitive and non-competitive markets. The chapter also addresses the concept of opportunity cost, emphasizing its relevance in understanding economic choices within competitive markets.

As the narrative unfolds, the candidate critically assesses the structure of the market, identifying different market configurations—competitive, imperfect competition, and monopoly—and their impact on economic efficiency and welfare. This analysis segues into a detailed exploration of market failures, including imperfect competition, externalities, and the challenges posed by imperfect information. Each type of market failure is dissected to understand its origins, consequences, and the necessity for regulatory responses to safeguard economic efficiency and consumer welfare.

Concluding the chapter, the candidate reflects on the intricate interplay between efficiency, market structures, and regulatory mechanisms. Through this comprehensive discourse, the candidate not only navigates the complexities of economic theory and policy but also lays the groundwork for a nuanced understanding of competition law's role in preserving market integrity and promoting economic welfare.

Anti-Competitive Practices

Regarding Anti-Competitive Practices, the candidate ventures into their complex realm, acknowledging the inherent challenges in cataloguing such behaviors exhaustively. The exploration is aimed at identifying patterns among these practices, which are understood as behaviors by operators to maintain product prices above those in a competitive market, thereby exploiting market power.

The discussion categorizes anti-competitive practices into collective and individual practices, emphasizing that the exploitation of market power, while often criticized, may be justified under certain conditions. This nuanced approach sets the stage for a detailed examination of various forms of anti-competitive behaviors and their classifications.

In delving into collective practices, the narrative differentiates between horizontal and vertical practices, focusing on the immediate objectives and outcomes of these behaviors. The candidate meticulously unpacks horizontal practices, such as price fixing, market sharing, and limiting supply, highlighting their implications for market concentration, the substitution effect, and demand elasticity. This section underscores the secretive nature of these practices and the challenges they pose for enforcement.

The analysis then transitions to vertical agreements and practices, offering insights into distribution agreements and licenses. Here, the candidate emphasizes the conditional anti-competitive nature of these arrangements, suggesting that they often facilitate market entry for additional operators.

Special attention is given to crisis cartels and instrumental agreements, including information exchange and professional or sectoral associations. The discussion reveals the dual nature of these practices, which can either hamper or enhance market competition.

Shifting focus to individual practices, the narrative delves into abuses of a dominant position, dissecting pricing practices and exclusionary behaviors. The candidate challenges conventional difficulties in identifying abusive or predatory pricing, advocating for a straightforward approach based on deviations from competitive market prices.