

Preface

Regulatory competition is an ‘old’ subject that has taken on new ‘functions’ in a fast changing world, thereby reviving the interest of policy makers as well as academic research. Competitive interaction among different legal actors changes along with the legal framework that sets competences, choice of law and substantive legal rules in any market. The results, the allocative and overall welfare implications of such competition, are also susceptible to change each time the legal framework changes.

Regulatory competition is thus a sort of moving target; but should policy makers eradicate competition or embrace it? Ignoring competition is definitely not an attractive option, although current policy making rarely accounts for regulatory competition, and almost never employs competition as a means to achieve the desired outcome – at least not deliberately. This is probably due to old (mis-)conceptions about regulatory competition and the lack of an easily applicable toolkit to design optimal competitive interactions.

This book looks at competition from a regulatory perspective, having the above issues in mind. It explores the concept and different channels of regulatory competition, and analyses the drivers of competitive interactions through the description of its actual functioning in the EU’s Internal Market. Its contribution to existing literature consists in deeper general theoretical insights, as well as policy-specific conclusions in three EU policy fields: company law; securities law; and competition law.

As for the theory, Chapter 1 reviews the definition of regulatory competition and the conditions for its success or failure, with a more in-depth analysis of presumptions and underlying concepts that often remain under-explored in the literature. A closer look is offered at the broad and the narrow definition of regulatory competition, the concept of a ‘race to the bottom’; co-opetition; the measurement of the outcome of competitive interactions; and legal actors’ incentives. A number of issues are identified as possible ‘drivers’, determinants, of the functioning of regulatory competition. These include

- The channel of competitive interactions
- Which legal actor has competence
- The incentives of legal actors
- The governance mechanisms in place
- The allocation of choice of law or capacity for mobility across jurisdictions
- The potential externalities, both cross-border and across stakeholder groups
- The types of market failures that legal norms are aiming to correct
- The underlying theory of what efficient markets should look like and what outcomes they should achieve.

The descriptive part of the book (Chapters 2 to 4) then also serves the purpose of testing the general, theory-related questions. In order to better understand what the impact of these potential drivers are on competitive interactions, the current forms of regulatory competition are described in three legal areas: company law (Chapter 2); securities law (Chapter 3); and competition law (Chapter 4). The analysis looks at the issues identified above, and each chapter is structured in a similar manner, addressing:

- market failures and the various theories of efficiency;
- the channels of competitive interactions;
- existing legal norms, allocation of competences, allocation of choice of law (where applicable);
- the legal actors involved and governance mechanisms in place;
- the potential functioning of regulatory competition in a different legal environment.

The inquiry for each field thus starts with the analysis of that market, continuing with a positive description of regulatory competition, and closing with a hypothetical inquiry into how (a more intensive form of) regulatory competition would work in that policy field.

The scope of analysis necessarily had to be limited to some selected regulatory aspects within each policy field. Topics covered include: minimum capital requirements and employee participation within company law; transparency and market abuse rules in securities regulation; the functioning of the Modernisation Regulation and damages actions in competition law.

Chapter 5 offers some conclusions that emerge from the comparison of the three policy fields under analysis. General theoretical conclusions are drawn for the various drivers of competitive interactions, with an

emphasis on legal actors, the institutional environment and the governance mechanisms for different actors' interaction. Cross-cutting trends across the policy fields under examination are identified with regard to regulatory competition within the EU Internal Market. A research agenda is also set out, enumerating issues that require further analysis.

Readers interested only in regulatory competition in a certain policy field can go directly to the chapter dealing with the field of their interest. Those wishing to read the general theoretical conclusions can go from Chapter 1 to Chapter 5. My hope is that the book will provide useful insights and interesting new angles for both policy makers and academics.

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Brussels, May 2012