Table of Contents

Tilles of Cases	XV
Tables of Cases	XXV
Table of Legislation	xxix
List of Abbreviations	
(F)	1
I. Private Regulation and EU Economic Law	
1. Introduction	1
1.1 The scope of the book	2
1.2 Private regulation and economic law—rea	asons to consider 4
their relationship	_
2. Private Regulation—A Growing Phenome	0
3. Distinctions, Taxonomies, and Definition	3
4. The Costs and Benefits of Private Regulat	1011
5. Private Regulation and EU Policies	14
6 FILLaw and Scrutiny Over Private Regul	ation 16
6.1 Competition and free movement: An uno	certain relationship 18
6.2 Competition law	21
6.3 Free movement law	23
6.4 EU legislation	25
Outline and Methodology	2)
II. Free Movement and Private Regulation	27
II. Free Movement and I invate regulation	Effet Utile of EU Law 27
1. Introduction: Horizontal Effect and the I	Silver of the of Zo Zo
2. A Taxonomy of Private Action Under the	32
2.1 Co-regulation	34
2.2 (Purely) private regulation	36
2.3 Pure private relationships	20
2.4 Private action based on restrictive legisla2.5 Limits? The case of goods	39
2.6 Alternative techniques: Member State lia	ability
and indirect effect	42
3. Free Movement Between Public and Priv	rate 44
3.1 The many meanings of 'private autonom	_{ny} ' 48
3.2 The institutional context: When judicial	scrutiny
might make sense)0
4. The Legal Test(s) for Private Action Und	er the Free
Movement Rules)4
4.1 The scope of the free movement rules ar	nd the definition of
a restriction)/
4.2 Justifying private regulation	61
5. Conclusion	66

An Develotion	68
III. Competition Law and Private Regulation	68 .
1. Introduction	72
1. Introduction 2. Competition Law and Regulation—Two Competing Visions 2. Competition Law and Regulation—Two approaches	77
	84
and the state of Competition Law to I livate regularion	84
2.1 Applying the competition rules directly to provide	85
	89
3.1.2 The notion of a restriction of competition under the	92
	97
3.1.3 The inherent restriction test 3.1.4 Justifying regulatory restrictions under Art 101/3 or Art 102 3.1.5 Private regulation under Article 106/2—do private regulators	
perform services of general economic interest?	101
3.1.6 The three avenues for justification	102
atate action	103
3.2 Private regulation and state action 3.2.1 The EU state action doctrine: Applying competition law	105
March of State measures	105
3.2.2 The relationship of state action immunity and the useful	108
effect doctrine	109
2.2.2 Special and exclusive rights	111
3.2.4 EU-wide co-regulation and competition law	112
4. Conclusion	112
IV. The Relationship of Free Movement and Competition Law	114
	114
1. Introduction	115
2. The Overlap	116
 The Overlap Competition and Free Movement in the Context of the Internal Market 	116
3.1 The 'seamless web: A mutually removed a	119
3.2 The separation view	120
3.3 Objectives: Does the Treaty help?	122
4. The Status Quo: Incomplete Separation	122
4.1 Market integration as the common aim	124
4.2 Separate legal tests4.3 Shortcuts and hybrids	128
5. The Problems of the Status Quo	132
6. Possible Solutions: Convergence or Separation?	134
6. Possible Solutions. Convergence	134
6.1 Convergence 6.1.1 The foundational differences	136 140
(1.2 The doctrinal differences	146
6.1.2 The doctrinal differences in institutions and remedies	151
6.2 Selection or conflict rules	154
7. Conclusion—Maintaining Separation	1)4
V. Conditional Autonomy: EU Internal Market Law and the Private	
V. Conditional Autonomy: EU Internal Harris -	157
Regulation of Sport	157
1. Introduction	160
1.1 The specificity of sport and the European sport model	162
1.2 Measures that can raise EU law concerns	

	Table of Contents	xiii
	2. Sport and the EU Political Process	163
	3. Free Movement and the Regulation of Sport	167
	4. Competition Law and Sports	169
	4.1 'Business as usual'	171
	4.2 Regulatory and organizational aspects	173
	4.2.1 The Meca-Medina test	176
	5. The Specificity of Sport as Regulatory Autonomy	178
	6. The Relationship Between Free Movement and Competition	181
	7. Institutional Strategies: Interactions Between the Court,	
	the Commission and the Political Process	184
	8. Conclusion	186
VI.	The Learned Art: Regulating the Legal Profession	189
	1. Introduction	189
	2. The Context of Legal Services Regulation	190
	2.1 Restrictive measures and their justifications	191
	3. Free Movement of Lawyers	195
	4. Internal Market Legislation	198
	4.1 The Lawyers' Services Directive	199
	4.2 Qualifications and establishment: The general framework	200
	under the Diploma Directive	200
	4.3 The Lawyers' Establishment Directive4.4 The Services Directive	202 206
	5. Competition Law and the Legal Profession	208
	5.1 EU case law	208
	5.1.1 Public or private restrictions of competition?	211
	5.2 The Commission's Report on Competition in Professional Services	213
	6. National Case Law and Reforms	215
	6.1 National reforms	215
	6.2 National enforcement	217
	7. Relationship Between Free Movement and Competition	218
	8. Conclusion	220
VII.	Standard Setting, Competition, and Trade	224
	1. Introduction	224
	2. Standard setting in EU Law: The New Approach	
	and Product Legislation	227
	2.1 SSOs and technical regulations	228
	2.2 The EU standardization system	230
	3. Standard setting and Competition Law	233
	3.1 Anticompetitive abuse of standard setting	235
	3.2 Anticompetitive standard setting	237
	3.2.1 Substance and procedure in the competition law analysis	a / =
	of standard setting	240
	3.2.2 Can EU law impose mutual recognition on SSOs?	241
	3.2.3 Justification under Art 101/3 and beyond	242 243
	3.3 Standards and the application of competition law to the State	LTJ

xiv

Table of Contents

4. Standard setting and Free Movement	244
4.1 Standard setting beyond functional definitions of the State. The implications of the <i>Fra.bo</i> judgment	246
Standard setting and the Relationship Between Free Movement and Competition	250 251
6. Conclusion	
VIII. Conclusion	254
1 Adaptations: The Response of EU Law to Private Regulation	255
1.1 Distinct, but non-exclusive: Dealing with the overlap of free movement and competition law	258
2. Regulatory Autonomy: The Impact of EU Law	260
on Private Regulation	260
2.1 Focus on governance and procedure	
2.1 Poets on governance and pro- 2.2 Negotiated approaches: Free movement and competition law	262
as leverage for reform	263
2.3 Institutional choices and legal doctrine	264
3. An Effective Accountability Mechanism?	
	267
Bibliography	283
Index	