

Cambridge University Press 978-0-521-67447-8 - State and Market in European Union Law: The Public and Private Spheres of the Internal Market before the EU Courts Wolf Sauter and Harm Schepel Table of Contents More information

Contents

Acknowledgements pa					
Abbreviations					
Table of Cases					
1.	Intro	oduction	1		
	1.1.	The economy in European constitutionalism	2		
	1.2.	Approaches to the European Economic			
		Constitution	11		
	1.3.	Blurring the distinction between the public and			
		private spheres of the economy	19		
	1.4.	1 /1			
		research questions and approach	22		
PA	RT I.	Economic activities v. the exercise of			
		public authority	27		
2.	Free movement: treaty provisions and				
	secondary rules		29		
	2.1.	The interplay of prohibitions and justifications			
		under the free movement rules	29		
	2.2.	State measures and the concept of 'public bodies'			
		under the free movement provisions	43		
	2.3.	'Public bodies' under secondary law	46		
	2.4.				
		under primary law	60		
	2.5.	Public authority exceptions to free movement			
	2.6	under secondary law	66		
	2.6.	Conclusion	73		

v



Cambridge University Press 978-0-521-67447-8 - State and Market in European Union Law: The Public and Private Spheres of the Internal Market before the EU Courts Wolf Sauter and Harm Schepel Table of Contents More information

vi CONTENTS

3.	The competition rules		75		
		Introduction	75		
	3.2.	The concept of 'undertaking' under the			
		competition rules	75		
	3.3.	Economic activities of an industrial or a			
		commercial nature	79		
	3.4.	The public authority task	83		
	3.5.	5	85		
	3.6.	Restrictive agreements between undertakings			
		falling outside the scope of the competition rules	90		
		Delegation of public authority	93		
	3.8.	Conclusion	94		
4.	Public constraints on private parties and private				
	cons	straints on public measures	97		
	4.1.	Introduction	97		
	4.2.				
		private parties	98		
	4.3.	The application of competition rules to State			
		measures	104		
	4.4.	Attribution to the State or to undertakings	120		
	4.5.	Free movement or competition rules?	124		
	4.6.	Conclusion	128		
D A	RT I	I. The Public Private Interface: Articles 31,			
FA	IKI II	86 and 87-88 EC	129		
		00 and 07 00 EC	147		
5.	Artio	cle 31 EC: commercial state monopolies	131		
	5.1.		131		
	5.2.	Delegation, sub-delegation and private agreements			
		under Article 31 EC	133		
	5.3.		134		
	5.4.		136		
		Public interest exceptions and Article 31 EC	137		
	5.6.	F	139		
	5.7.	Conclusion	140		
6.	Article 86(1): public undertakings, special and				
	exclusive rights				
	6.1.	Introduction	142		
	6.2.	The role and structure of Article 86 EC	142		
	6.3.	Public undertakings, special and exclusive rights	145		
	6.4.	The legality of monopoly rights	147		



Cambridge University Press 978-0-521-67447-8 - State and Market in European Union Law: The Public and Private Spheres of the Internal Market before the EU Courts Wolf Sauter and Harm Schepel Table of Contents More information

		CONTENTS	vii		
	6.5.	The prohibition on abuse of statutory			
		monopoly rights	148		
	6.6.	General public interest defences under			
		Article 86(1) EC	152		
	6.7.	Convergence between free movement and			
		competition rules under Article 86 EC	154		
	6.8.	Delegation of regulatory functions under			
		Article 86 EC	155		
	6.9.	Pre-emption under Article 86 EC?	159		
	6.10.	Conclusion	162		
7.	Article 86(2) EC: derogation for services of general				
		omic interest (SGEI)	164		
	7.1.	Introduction	164		
	7.2.	The role and structure of Article 86(2) EC	167		
	7.3.		169		
	7.4.	The scope of the Article 86(2) EC derogation	171		
	7.5.	Services of general 'economic' interest	172		
	7.6.	Proportionality and Article 86(2) EC	179		
	7.7.	'Pre-emption' and Article 86(2) EC	182		
	7.8.	Private restraints on competition and			
		Article 86(2) EC	187		
	7.9.	Article 86(2) EC and State aid	189		
	7.10.	Conclusion	191		
8.	Articles 87–88 EC: State aid		193		
	8.1.	Introduction	193		
	8.2.	Public or private bodies	194		
	8.3.	Public or private funds	196		
	8.4.	General measures and State aid	199		
	8.5.	Public and private investors	204		
	8.6.	State aid and other internal market rules	207		
	8.7.	Conclusion	210		
9.	Conc	lusion	211		
Ret	erences		222		
	Index				