

Regulatory Competition in Contract Law and Dispute Resolution

von
Prof. Dr. Horst Eidenmüller

Dr. Horst Eidenmüller is Professor of Civil Law, German, European and International Corporate Law at the Ludwig-Maximilians-University Munich. With 13 contributions of eminent scholars in the field of contract law and dispute resolution.

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Preface

Law has become a product in many regions of the world and with respect to many different subject matters. Businesses, in particular, shop for the most attractive legal rules, and states compete for customers of their legal wares. This is true, for example, in tax law, corporate law, securities law, and bankruptcy law. It is also true with respect to contract law and dispute resolution: parties to a contract choose the substantive law applicable to their transaction, and they pick a forum in which potential disputes will be resolved. This relates to both the procedure that will be used and the place where the case will be heard.

General regulatory competition as well as regulatory competition specifically in contract law and dispute resolution can occur in at least three different forms. First, there is what can be termed *horizontal regulatory competition* between states or other public entities. Second, there is *vertical regulatory competition* between states and some supra-national or federal entity that offers its own legal product. This form of regulatory competition can be studied, for example, with respect to the Common European Sales Law recently proposed by the European Commission. Third, there is regulatory competition between public and *private systems*. Such private systems establish what can be called “governance by contract”.

This volume contains the edited versions of papers presented during an international conference at Ludwig-Maximilians-University in Munich from 13 to 15 October 2011. The conference brought together renowned scholars from all over the world who work in the areas of contract law and dispute resolution. The papers in this volume span the whole field of regulatory competition in these respective disciplines. In terms of methodology, several papers represent empirical legal scholarship, some present theoretical models, and others engage in doctrinal legal analysis. I am confident that they deepen our understanding of horizontal and vertical regulatory competition with respect to contract law and dispute resolution and the public/private competition that occurs in these areas. The authors have produced insights that, I hope, will further inspire and inform scholarship on regulatory competition in contract law, dispute resolution, and in other realms.

The conference was part of a research program sponsored by Ludwig-Maximilians-University of Munich under the “Excellence Initiative Scheme” of the German Research Foundation. This research program on “Law as a Product” was hosted and administered by Munich University’s Center for Advanced Studies. The Center for Advanced Studies also provided the forum for the conference that led to this volume’s creation. I should like to thank the German Research Foundation and Munich University for providing the financial support that has made the “Law as a Product” research program possible. I should also like to thank Munich University’s Center for Advanced Studies staff – especially Dr. Sonja Asal and Dr. Annette Meyer – for so efficiently and professionally administering the organizational aspects of the research program and for being such excellent conference hosts. In addition, Christina Pennant was very helpful in handling organizational issues for the conference.

Dr. Philipp Reuß, Franziska Reich, and Johanna Stark provided excellent research assistance for this volume. Johanna Stark deserves special praise for her work, which

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has been invaluable throughout the editing process. Further, my secretary Marina Javid-Mamasani unfailingly and most efficiently managed people and processes – as always. I should also like to thank the publishing houses Beck, Nomos and Hart, and in particular Dr. Wilhelm Warth, for their support from the outset and for their professionalism in assisting the production process. Last but not least, many thanks go to all conference participants and authors whose work went into the chapters of this book. I am glad that such rich and diverse scholarship on “Regulatory Competition in Contract Law and Dispute Resolution” is now accessible in a single volume.

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May 2013

Horst Eidenmüller

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