Regulatory Convergence in Financial Market Infrastructures: Complementary Role of Competition Law in Access to Clearing and Settlement Systems

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Abstract

In the context of financial markets, this article examines the relationship between sector-specific regulation and competition law, with an emphasis on clearing and settlement infrastructure access. It looks at how competition authorities, particularly the European Commission, make decisions and how those decisions align with or deviate from statutory frameworks. The Clearstream ruling is a crucial case study that illustrates how competition law handles access to vital financial market infrastructures. The article describes the Clearstream case's facts, assesses it under antitrust law, and compares how it was handled under regulatory law, emphasizing the influence on the development of competition law in the banking industry. Bottleneck scenarios that require access to vital infrastructure in order to enter the market are given more consideration. The research highlights distinctions in the scope of regulated organizations and the rationale behind access limits by contrasting how competition law and regulatory law handle such access concerns. The article shows that competition law may serve as a catalyst for legislative advancements in financial market regulation in addition to serving as a supplement to regulation. Additionally, it demonstrates that the European Commission frequently takes on a quasi-regulatory role when implementing competition legislation, especially when it comes to instances requiring access to clearing and settlement systems.

Keywords: *EU financial market regulation, competition law, market access.*

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1. Introduction

In the context of financial markets, this article examines the relationship between sector-specific regulatory frameworks and competition legislation. It explores

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how competition authorities, especially the European Commission, make decisions in financial services disputes, building on the distinctive features of these sectors. The degree to which competition law functions independently of or in tandem with financial market regulation is a key area of interest. The goal of the article is to make clear where regulatory law imposes more general or specific requirements for market access and competitive activity and where competition law offers specific legal remedies. The European Commission's dual role, formally enforcing competition laws and frequently acting in a quasi-regulatory capacity, influencing legislative processes and market structures, is a central subject. In scenarios requiring access to financial market infrastructures, where bottleneck situations regularly occur, this dynamic is most noticeable.[3] These happen when dominant market actors, usually big banks or stock exchanges, control crucial infrastructure like trading platforms, clearing houses, or payment systems. These vertical silos can restrict competition and impede new entrants.[4] The significance of payment systems in accomplishing internal market integration is also emphasized in the article. The shift to digital payments makes it easier for capital to flow freely, which promotes international commerce in products and services. Nonetheless, there are still issues with the national division of financial services, particularly in the payment services industry. As a result, the European Commission has made it a top priority to create a cogent legal framework that integrates regulatory efforts with competition enforcement. In addition to advancing the EU's internal market goals, this integrated strategy seeks to eliminate structural impediments and provide equitable access to vital infrastructures. The interaction between regulation and competition law in this area highlights the changing character of market governance in the financial industry by demonstrating both complementary and overlapping uses.

2. The Aim and Methodology

This article's goal is to examine how sector-specific regulation and competition law interact in the financial markets, with an emphasis on how the European Commission uses both frameworks to guarantee equitable market access and further integration. The article looks at situations where the two legal systems overlap, complement, and differ. The methodology blends case-based analysis with a legal-analytical approach. Important rulings from the European Commission are examined to show how structural obstacles in financial sub-markets have been addressed through competition legislation. The article also uses scholarly commentary and regulation sources to place the European Commission's activities in the perspective of more general market integration objectives.

[3] Giorgio Monti. „The digital markets act: improving its institutional design". *European Competition and Regulatory Law Review*. vol. 5, issue 2 (2021): 90-101, https://doi.org/10.21552/core/2021/2/4.
[4] Robert Whish and David Bailey, *Competition Law.* Oxford: Oxford University Press. 2021. Alessandra Tanda and Cristiana-Maria Schena. *Bank strategies in the light of the digitalisation of financial activities. FinTech, BigTech and Banks: Digitalisation and its Impact on Banking Business Models*. Cham: Springer International Publishing, 2019.

3. Claims to Access Infrastructure Facilities

The opening of different financial services sub-markets was the main issue in a number of instances that the European Commission handled. The so-called vertical silo constellations, which occur when one or more market players have access to infrastructures necessary for market entrance, are a common problem in these situations. These are usually well-established businesses, such big banks or stock exchanges.[5] The settlement mechanisms for capital market transactions are especially impacted by this. The corresponding trading venue frequently owns central securities depositories and clearinghouses, which are used to handle securities transactions. Because of this, the trading venue is motivated to combine the parties' transaction and settlement services into its own infrastructure.[6] Payment settlement processes are also impacted. For the European Commission, payment services are a crucial part of internal market integration. The free flow of capital is greatly facilitated by the transition to digital payment methods. Since both are interrelated and the free movement of money enhances the interchange of actual economic results, this in turn propels the integration of cross-border commerce in goods and service. [7] Therefore, the European Commission's primary goal is to establish a legislative framework that completes the internal market aim for payment and securities services through the implementation of both regulatory measures and competition rules. The complimentary and overlapping application of competition laws and regulations may be seen in the aforementioned domains.[8]

4. Access to Clearing and Settlement

The European Commission's Clearstream Decision[9] addresses the availability of clearing and settlement services for specific securities. Factual complexity characterizes the case, especially because of the complicated clearance and settlement processes involving several parties at various levels. Three stages can be distinguished in the trading of securities, or more broadly, financial instruments: transaction

[5] Jonathan Macey and Maureen.O'Hara. „Regulating Exchanges and Alternative Trading Systems: A Law and Economics Perspective". *Journal of Legal Studies*. vol. 28, no. 1 (1999), Article 2. Available at: https://chicagounbound.uchicago.edu/jls/vol28/iss1/2.

[6] European Commission decision of 29.3.2017, declaring a concentration to be incompatible with the internal market and the functioning of the EEA Agreement (Case M.7995– Deutsche Börse/London Stock Exchange).

[7] Jens Tapking, Jing Yang. „Horizontal and vertical integration and securities trading and settlement". *Journal of Money, Credit and Banking*, vol. 38, no. 7 (October 2006): 1765-1795, https://www.jstor.org/stable/3838965.

[8] Rastislav Funta, Filip Juriš, and Libor Klimek. *Európske právo.* Bratislava: Wolters Kluwer. 2024.

[9] European Commission decision of 02.6.2004, COMP/38.906 – Clearstream; confirmed by General Court, judgment of 9 September 2009, Clearstream v Commission, T-301/14, ECLI:EU:T:2014:747.

completion, clearing,[10] and settlement.[11] The delivery phase is commonly referred to as "settlement," and the clearing phase as "clearing." These procedures are essential to the bulk transfer of securities. A central securities depository (CSD) handles clearing and settlement in the trade of securities listed on the stock market. According to the Central Securities Depositories Regulation (CSDR), these legal organizations run a securities delivery and settlement system and offer other services. The sole approved securities depository bank in Germany is Clearstream Banking AG (Clearstream), a Frankfurt-based company that serves as the country's primary securities depository. This organization was the target of the European Commission's inquiry.

4.1. Factual Background of the Clearstream Decision

Clearstream was the (sole) German central securities depository, and thus held a monopoly on the custody of German securities. Under the umbrella of its parent company, Clearstream International SA, it also included Clearstream Banking Luxembourg SA, an international central securities depository. The only other international central securities depository within the Union was Euroclear Bank SA (hereinafter Euroclear). Moreover, Euroclear also functions as the national central securities depository for the United Kingdom, France, the Netherlands, and Belgium. Clearstream denied Euroclear access to its clearing and settlement services for registered shares via the Cascade RS system for a period of nearly two and a half years (from mid-1999 to the end of 2001). Because of this, Euroclear had to rely on another intermediary that Clearstream had authorized in order to serve as a (direct) international intermediary for secondary clearing and settlement of German securities. Technical and commercial concerns, which were perhaps pretextual, were cited as the reasons for the denial. Additionally, from 1997 to 2001, Euroclear was subject to an otherwise uncommon yearly flat cost in addition to paying greater fees than other market players for a variety of additional services offered by Clearstream. The premium was about twenty percent. Euroclear was given access to Cascade RS and the costs for the extra services were lowered to a level typical of the market after the European Commission opened investigations into Clearstream.

[10] Clearing refers to the process of establishing positions, including the calculation of net obligations, and ensuring that financial instruments, cash, or both are available to cover the risk arising from these positions." Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.

[11] Settlement refers to "the finalization of a securities transaction, regardless of where it was concluded, with the aim of fulfilling the obligations of the parties involved in the transaction through the transfer of money, securities, or both." Settlement represents the legal fulfillment of the transaction. Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012. Thorsten Köppl and Cyril Monnet. „Guess what: It's the settlements! Vertical integration as a barrier to efficient exchange consolidation". *Journal of Banking & Finance*, vol. 31, issue 10 (2007): 3013-3033. https://doi.org/10.1016/j.jbankfin.2006.11.021.

4.2. Antitrust Assessment

According to the European Commission, the behavior in question qualified as abuse under Article 102 TFEU.[12] The market for primary clearing services for other national and international central securities depositories had to be defined as a distinct market, according to the European Commission's findings. Customers felt that secondary clearing was insufficient because using an intermediary custodian resulted in shorter deadlines, higher costs, a higher risk of error, and more complicated settlement. Clearstream was in the lead in this market. As the sole central securities depository in Germany, Clearstream has a "quasi-monopoly." Due to the significant obstacles to market entry, potential competition was not anticipated. Clearstream committed the abuse in two ways: first, by restricting access; second, by enforcing discriminatory pricing. Since Clearstream stopped its unfair activities as soon as the European Commission's inquiry began, the European Commission concluded that the infringements took place during a completed period. Clearstream was mandated to abstain from the aforementioned behaviors going forward. There was no fine imposed by the European Commission. The financial markets' lack of precedents and the intricate market segmentation for clearing and settlement served as justifications for this ruling. It was decided that Clearstream was unable to evaluate the legality of its actions in accordance with competition legislation.

4.2.1. Refusal of Access

Every business is, in theory, free to arrange its supply connections in a way that best serves its financial objectives. Dominant businesses have the same ability to select their contractual partners.[13] However, a refusal to provide might be considered an abuse under Article 102 TFEU, especially under paragraphs 2(b) and (c), because dominant enterprises have a specific obligation to ensure effective competition.[14] A responsibility to allow access — that is, the right to be granted access — is the legal consequence of such a breach. The Court of Justice of the European Union (CJEU)[15] established certain standards to ascertain whether a denial of access qualifies as abuse based on this basis.[16]

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[12] Peter Miskolczi-Bodnár. *Visszaélés gazdasági erőfölénnyel [Abuse of Economic Dominance].* In András Tóth, Miklós Juhász & Juhász Dorina Ruszthiné (eds.) *Kommentár a tisztességtelen piaci magatartás és versenykorlátozás tilalmáról szóló* 1996. évi LVII. törvényhez, Gazdasági Versenyhivatal, 2014.

[13] Judgment of the Court of First Instance (Grand Chamber) of 17 September 2007. T-201/04. Microsoft Corp. v Commission of the European Communities. ECLI:EU:T:2007:289.

[14] Judgment of the Court (Fourth Chamber) of 30 January 2020. C-307/18. Generics (UK) Ltd and Others v Competition and Markets Authority. ECLI:EU:C:2020:52.

[15] Bystrík Šramel, Peter Horváth. „Internet as the communication medium of the 21st century: Do we need a special legal regulation of freedom of expression on the internet?". *Lawyer Quarterly*. vol. 11, no. 1 (2021): 141-157.

[16] Václav Šmejkal. „Abuse of Dominance and the DMA – Differing Objectives or Prevailing Continuity?". *Acta Universitatis Carolinae. Iuridica*. vol. 69, no. 2 (2023): 33-51. https://doi.org/10.14712/23366478.2023.13; Tomáš Peráček. „The perspectives of european society and the european cooperative as a form of entrepreneuship in the context of the impact of european economic policy." *Online Journal Modelling the New Europe 34*, (2020): 38–56. https://doi.org/10.24193/ojmne.2020.34.02.

An abuse under the so-called essential facilities doctrine exists when the following three conditions are cumulatively met:

- The dominant undertaking controls an essential facility that is indispensable for access to the downstream market — meaning there is no potential or actual substitute.
- The refusal of access must be capable of eliminating all competition in the downstream market by the access seeker.[17]
- The refusal must not be objectively justified.[18]

Therefore, if there are no "technical, legal, or even merely economic obstacles" to independently building the necessary facility, the claim to access is eliminated. These requirements were deemed to be met by the European Commission. Clearstream was able to prevent Euroclear from effectively offering cross-border secondary clearing as a new product because of its de facto monopoly in the main clearing market. Unjustified delays are the same as outright rejections; this is known as "constructive refusal."[19] The European Commission concluded that there were neither real nor anticipated alternatives to Clearstream's services. Specifically, the introduction of a second central securities depository as a possible substitute would only be economically feasible if a large number of the assets stored at Clearstream were moved to the new provider—something that market participants did not want, according to a market poll. According to the Bronner criterion, a possible alternative was precluded by these and other market entrance obstacles. Despite being a viable option, access to clearing services through an intermediate custodian was insufficient to replace direct access because of a number of drawbacks related to timing, cost, risk management, and operational processes. Consequently, the denial of access limited competitiveness in the downstream market. The extended delay until access was eventually granted could not be justified. For other clients, access was typically granted within a period of no more than four months.

4.2.2. Price Discrimination

The second accusation involved Clearstream's pricing discrimination. According to Article 102(2)(c) TFEU, abuse may result from "applying dissimilar conditions to equivalent transactions with other trading parties." In comparison to other national and international central securities depositories, Euroclear was required to pay about 20% more for clearing and settlement services. It also had to pay an annual flat fee that other national central depositories were not subject to. Neither more work nor more services were offered to justify this. In comparison to other national and

[17] Alexei Alexandrov, George Deltas, Daniel Spulber. „Antitrust and competition in two-sided markets". *Journal of Competition Law & Economics*, vol. 7, issue 4 (December 2011): 775–812, https://doi.org/10.1093/joclec/nhr012.

[18] Judgment of the Court (Sixth Chamber) of 26 November 1998. C-7/97. Oscar Bronner GmbH & Co. KG v Mediaprint Zeitungs- und Zeitschriftenverlag GmbH & Co. KG, Mediaprint Zeitungsvertriebsgesellschaft mbH & Co. KG and Mediaprint Anzeigengesellschaft mbH & Co. KG. ECLI: EU:C:1998:569.

[19] Communication from the Commission — Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings. OJ C 45, 24.2.2009.

international central securities depositories (including Clearstream itself), Euroclear was thus at a competitive disadvantage.

4.3. Treatment under Regulatory Law

There was no all-encompassing European regulatory framework for clearing and settlement services at the time of the European Commission's 2004 ruling. Rather, the authorization of CSDs and the provision of associated services were governed by a patchwork of national rules. In order to make cross-border clearance and settlement easier, these national regulations were eventually harmonized, as described in following developments. The CSDR is especially pertinent in light of the Clearstream ruling. Articles 33 and 51 of the CSDR largely regulate access to clearing and settlement services. The overall guideline for all market participants is outlined in Article 33 of the CSDR, which mandates that a CSD give all legal entities wishing to engage fair and open access. Specific requirements for linkages between two CSDs are outlined in Articles 50 to 52 of the CSDR. As part of a "standard link," a CSD is required by Articles 33 and 50 to provide its services to another CSD in an impartial and nondiscriminatory manner. According to Article 33 (2), applications for such access must be processed within a month. Applications must be responded to within three months in accordance with Article 52 (1). According to Articles 33 (3), 51 (1) sentence 1, and 52 (2), access may only be refused when a thorough risk assessment yields unfavorable results. In particular, as stated in Article 51 (1) sentence 2 CSDR, possible market share losses of the receiving CSD may not be utilized as a basis for rejection for customer-specific linkages to another CSD. The competent supervisory authority has the jurisdiction to issue an order compelling the CSD to stop its operations in the event that the regulations are broken, especially where there is an unwarranted restriction of access. This is predicated on national policies that comply with CSDR Article 63 (1) (e), (i), and (2) (b). Article 63(2) further grants the supervisory body additional authorities, such as the ability to withdraw license to offer services (lit. c) and impose fines on the accountable natural or legal persons (lit. e–g). The supervisory authority has access to a variety of enforcement mechanisms that both partially overlap and go beyond those of competition authorities.[20] Similar regulatory overlaps and the evolution of block exemptions can be observed in other sectors, such as franchising, where sector-specific regulation and competition law interact to shape market access and contractual freedoms[21].

4.4. Comparison and Evaluation

It is evident that the legal ramifications of implementing competition law and

[20] David Yusuf. „Antitrust Laws and the Future of Market Competition". *Journal of Modern Law and Policy*. vol. 4, no. 3 (2024): 1-13, https://doi.org/10.47941/jmlp.2163.

[21] Martin Daňko. *Franchisingové zmluvy v európskom súťažnom práve*. In: Zborník Milníky práva v stredoeurópskom priestore 2013. Bratislava: Univerzita Komenského v Bratislave, Právnická fakulta, 2013. 415-424.

those of the later regulatory framework are nearly identical.[22] However, even if the regulatory framework may provide a more useful set of instruments from a practical perspective, the CSDR's rules do not exclude the use of competition law. On the other hand, it also looks at how regulation affects how competition law is applied. The same issues that were previously brought up in antitrust actions are addressed by access regulation, including the requirement to provide clear, non-discriminatory pricing and to process access requests quickly. Since impacted parties can now immediately assert access rights under Articles 33 and 51 of the CSDR, a competition law finding would be mainly superfluous. These clauses permit claims based on both publicized price terms and processing schedules.[23] This strategy is in line with the Clearstream ruling's legal ramifications. However, pursuing access rights under the CSDR is frequently more practical: under Article 33(3), second phrase of the CSDR, impacted parties can register a complaint with the appropriate body rather than endure a protracted antitrust investigation. Such complaints must be handled by the authority, and a prompt resolution is anticipated given the few grounds on which a CSD may refuse access. Furthermore, under Article 7(2) of Regulation 1/2003, there is a far greater burden of evidence when filing a complaint with a competition body. The authorities may decide not to start legal action even if there is enough proof. Market players now have a clear grasp of how competition authorities evaluate access denials thanks to the precedent set by the Clearstream ruling. Authorities would therefore probably apply sanctions under Article 23 (1) of Regulation 1/2003 in comparable future situations, which would have a more potent deterrence impact.

4.4.1. Arguments in Favor of Regulation

The arguments in favor of regulation are:

a) Network Effects and Quasi-Monopolies. Direct network effects define the clearing and settlement markets. A trading platform or clearinghouse's improved liquidity makes it more appealing to new consumers as its user base grows. Since most of the expenses associated with a trading platform or clearinghouse are fixed upon setup, combining these services with a single supplier lowers transaction costs. Economies of scale result from this as well. Furthermore, there are strict regulations that must be followed in order to provide these services.[24] Because clearing and settlement processes are frequently connected to a national stock exchange through corporate structures, this raises obstacles to market entrance and results in monopolization. There are also other aspects of natural monopolies, such the high starting costs and the challenge of

[22] Viacheslav Shavshukov, Natalia A. Zhuravleva. „National and International Financial Market Regulation and Supervision Systems: Challenges and Solutions". *Journal of Risk and Financial Management*. vol. 16, issue 6 (2023): 289, https://doi.org/10.3390/jrfm16060289.

[23] David Easley, Maureen O'Hara, Liyan Yang. „Differential Access to Price Information in Financial Markets". *Journal of Financial and Quantitative Analysis.* vol. 51, no. 4 (2016): 1071-1110, https://doi.org/10.1017/S0022109016000491.

[24] Cristina Elena Popa Tache, Cătălin-Silviu Săraru. "Lawfare, Between its (Un)Limits and Transdisciplinarity", *Precedente Revista Jurídica 23*, (2023): 37-66, https://doi.org/10.18046/prec.v23.5889.

reproducing such infrastructure. Regulation seems appropriate in this regard, as demonstrated by the network industries.

b) Safeguarding Systemic Stability. Furthermore, suppliers of clearing and settlement services are essential to preserving financial stability. CSDs are essential to the financial system because of the large volume of daily transactions and their connections to other financial institutions.[25] However, they also provide possible stability hazards, especially with regard to credit and liquidity problems. In addition to providing and managing collateral for securities transactions between credit institutions, CSDs guarantee the integrity of securities issuance. Because of this, the European legislator seeks to foster cross-border competition among central securities depositories rather than national competition through third-party providers.[26] Furthermore, CSDs are to be restricted in their scope of activity and prohibited from offering risk-prone financial services outside their core mandate.

4.4.2. TARGET2-Securities as a Pivotal Technological Development

Despite a history of self-regulation, the EU was able to find a regulatory solution thanks, at least in part, to a major technical advancement. The Eurosystem developed a framework called TARGET2-Securities to streamline securities trading, harmonizing the settlement of both local and international securities transactions. The goal of TARGET2-Securities is to standardize and expedite the delivery-versus-payment (DvP) procedure for securities rather than to replace CSDs. Through a single system, it links the several CSDs. The European Central Bank's member credit institutions' central bank accounts are utilized for this purpose; securities are delivered in return for payment in central bank funds.

4.4.3. Impact of the CSDR on Competition Law

The main source of the factual underpinnings for regulation is antitrust decision-making behavior.[27] On the other hand, there are two ways in which the CSDR can affect how antitrust legislation is applied. First, the essential facilities doctrine's criteria may become outdated due to the CSDR's right of access. Additionally, a clause in Article 34(6)–(8) of the CSDR makes it easier for competition authorities to pursue

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[25] Adam Marszk, Ewa Lechman. „Reshaping financial systems: The role of ICT in the diffusion of financial innovations – Recent evidence from European countries". *Technological Forecasting and Social Change*. vol. 167 (2021): 120683.

[26] John Wald. „Antitrust damages in financial markets". *Journal of Competition Law & Economics.* vol. 16, no. 1 (2020): 63–73; doi: 10.1093/joclec/nhaa003; Preethi Vijayagopal, Bhawana Jain, Shyam Ayinippully Viswanathan. „Regulations and Fintech: A Comparative Study of the Developed and Developing Countries". *Journal of Risk and Financial Management*. vol. 17, issue 8 (2024): 324. https://doi.org/10.3390/jrfm17080324; Tomáš Peráček. „A few remarks on the (im)perfection of the term securities: a theoretical study." *Juridical Tribune - Tribuna Juridica* vol. 11, issue 2 (June 2021): 135-149, doi: 10.24818/TBJ/2021/11/2.01.

[27] Michal Kaššaj. „The Impact on Investors of Legislative Restrictions on the Activities of Securities Traders: The Case of the Slovak Republic". *International Investment Law Journal 5*, no. 2 (2025): 185-205, https://doi.org/10.24818/tbj/2021/11/2.01.

a novel kind of case constellation. As stated, Article 102 TFEU is still relevant in conjunction with the CSDR and cannot be superseded by secondary law. In actuality, though, there might not be much space left to implement the basic facilities concept. This theory states that a dominating business must take use of its position to prevent rivals from entering the downstream market. This criteria might not be satisfied, though, if there is a right of access under regulatory law; in such case, the impacted business is free to make its regulatory claim and get market access.[28] Consequently, the competition authorities can no longer intervene. Additionally, the claimant cannot request additional technological access variations under competition law and is restricted to the access alternatives specified by regulatory law.

In contrast, the CSDR provides a new point of reference for antitrust action and includes a feedback mechanism to competition legislation. Article 34(6)–(8) of the CSDR provides the foundation for this. Central securities depositories must segregate their charges for core and auxiliary services in accordance with these regulations. This is meant to facilitate the efficient implementation of competition regulations, as stated in paragraph 8. It should make it possible to determine if fundamental services are cross-subsidized. It's still unclear, though, how this relates to the application of competition laws. The European Commission is in charge of enforcing these regulations in accordance with Article 105(1) TFEU. For instance, it is possible that the European Commission might step in when cross-subsidization occurs and punish a breach of Article 102(1) TFEU, such as predatory pricing tactics or discriminatory acts under Article 102(2)(c) TFEU. A violation could probably be found rather easily using the disclosed revenue and cost data because almost all national CSDs are monopolists, (possible) competition is not evident, and the Clearstream decision's narrow market definition for the provision of primary clearing and settlement services.[29] Nonetheless, the national supervisory authorities are the recipients of the data and the competent authorities under Article 34(6) and (7) CSDR. These authorities are not responsible for enforcing competition law. Therefore, an additional step would be required: making the data accessible to competition authorities. In this context, it is possible to start a competition law proceeding and notify the European Commission about the impact of central securities depositories' parallel supply of banking services that distort competition.[30] The legislative process itself may account for this fairly laborious

[28] Florence Thepot. „Market power and gatekeepers: complements or substitutes?". *Market and Competition Law Revie*w, vol. 9, issue 1 (2025): 41-76, https://doi.org/10.34632/mclawreview.2025.17736; Tomas Peracek, Milena Noskova, Boris Mucha. (2017) 'Selected issues of Slovak business environment', In Miroslaw Przygoda, Marijan Cingula, Li Yongqiang (eds.), *Economic and Social Development. 24th International Scientific Conference on Economic and Social Development - "Managerial Issues in Modern Business"*, Warsaw, 13-14 October 2017, pp. 254–259, https://www.esd-conference.com/upload/book_of_proceedings/Book_of_Proceedings_esdWarsaw_2017_Online.pdf#page=260.

[29] A condition for establishing a predatory pricing strategy, according to the CJEU, is either: that the company's sales prices are below its average variable costs; in this case, the pricing is always considered abusive, or that the sales prices are below the average total costs; in that case, an intention to eliminate competition must be proven. See e.g. Judgment of the Court (First Chamber) of 2 April 2009. C-202/07 P. France Télécom SA v Commission of the European Communities. ECLI:EU:C:2009:214.

[30] Shaofang Li, Matej Marinč, „Competition in the clearing and settlement industry". *Journal of International Financial Markets, Institutions and Money*. vol. 40 (January 2016): 134-162, https://doi.org/

construction and legislative style. The European Committee on Economic and Monetary Affairs introduced the cross-subsidization identification provision during the parliamentary process, adding it to what was then Article 31(6) of the CSDR. The Council of Ministers finally came up with the current version of paragraphs 6–8 as a compromise. This also explains Article 34(8) CSDR's peculiar language, which looks more like a recital of paragraphs 6 and 7 than a provision with significant regulatory significance. A disagreement among Member States about whether and how CSDs should be permitted to offer banking services served as the backdrop. According to Article 34(8) CSDR, the potential of cross-subsidization of key services was a worry. The precise inclusion of competition criteria and the creation of a possible method may have been overlooked as a result of this disagreement.

5. Conclusions

The purpose of this article was to examine the relationship between sector-specific regulation and competition legislation in the administration of financial market infrastructures, specifically with regard to clearing and settlement system access. The main goal of the article was to ascertain if regulatory action is required to guarantee equal access and systemic stability, or if competition legislation alone is adequate to remedy market failures in these highly specialized and monopolized industries. The analysis of the Clearstream ruling offered a specific illustration of how dominant financial infrastructure providers' exclusionary conduct might be contested under competition law using the necessary facilities theory. It was determined that Clearstream's discriminatory pricing and reluctance to allow access violated Article 102 TFEU, proving that antitrust enforcement may successfully resolve bottleneck issues and encourage market entrance. But the case also demonstrated the drawbacks of depending just on competition law, especially with regard to the intricacy of the process, the burden of proof, and the length of time needed to settle disagreements. On the other hand, a more organized and proactive approach was provided by the CSDR, which was subsequently introduced. The CSDR decreased reliance on antitrust litigation and gave market players more predictable and effective remedies by codifying access rights, establishing clear deadlines, and giving supervisory agencies enforcement powers. Importantly, the regulation did not replace competition law but complemented it — creating a dual framework where both legal regimes reinforce each other.

The results indicate that in markets with natural monopolies, substantial entry barriers, and systemic risk, regulatory convergence — the alignment of competition legislation with sector-specific regulation — is not only advantageous but also essential. Systems for clearing and settlement are essential to the operation of financial markets and the economy as a whole. Their importance in preserving financial stability and their monopolistic character support a regulatory strategy that goes beyond conventional antitrust enforcement. Further examples of how technical innovation may propel regulatory reform are the creation of TARGET2-Securities and the harmonization of

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legal frameworks throughout the EU. These programs have made it easier for central securities depositories to compete internationally, standardize post-trade procedures, and lessen fragmentation. Lastly, the regulatory environment was significantly shaped by the Clearstream case. Although it did not immediately result in the CSDR's adoption, it did offer insightful information on market dynamics and enforcement issues, which helped shape legislative initiatives. Additionally, it emphasized the European Commission's changing position as a quasi-regulatory player affecting market integration and structure in addition to its duty as a competition enforcer. In summary, the analysis shows that regulation and competition legislation are strategic complements rather than replacements when it comes to the management of financial market infrastructures. To provide equitable access, encourage innovation, and protect the stability and integrity of the financial system, their coordinated use is crucial.

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