

Preface

The writing and publication of a book is often a composition of different factors that give its author the motivation to start a work that, in its early stages, has an uncertain final form. In my case, I had three strong motivations.

The first motivation for this book derived from my research method. During my still short experience as a lecturer and researcher, I have always concentrated my efforts on the interpretation of the living law in order to understand the real implications of the law in the life of the people it affects. In fact, I think that before entering into the study of academic doctrines, it is necessary to understand the “reality of law”. By this I mean that although scholars can discuss theories and academic contrasts as long as they like, in the end, the most important goal of a researcher should always be a “product” directly applicable to concrete situations.

For this reason, during my studies, I have always appreciated every source that could provide me with concrete examples of the application of the law, as close to reality as possible, and preferably through the direct reading of cases. One such source is the fantastic casebook of Berman, Goebel, Davey, and Fox, *Cases and Materials on European Union Law* (2011), where it is possible to read and gain a deeper understanding of every single relevant case concerning European Union law. Only through the direct reading of the judgments it is possible to understand the true grounds for judicial decisions. Judicial opinions offer the most reliable way to grasp a law’s effects as applied to real life, and consequently, provide the most reliable indicia for determining best behaviors according to the law. In fact, the underlying goal of legal certainty is tightly bound to the comprehension of judicial decisions, which create the real behavioral parameters for people and companies.

The second motivation is set in my desire to carry out a new academic challenge. I have focused my years of research activity on the regulation of infrastructures from two distinct, yet related, perspectives: access to relevant markets and the law of competition. Yet despite the ample scholarship on infrastructure regulation, I never found a complete reference of cases related to transport infrastructures. During my studies, I reflected on how much I would have appreciated a casebook through which I could have directly compared scholars’ theories to judicial decisions. I soon realized how much simpler my research would be had I direct access to the most important cases on this issue. Moreover, such a book has the potential to both support researchers’ and professors’ activities and, in my opinion, stimulate academic discussion on the laws as they are actually applied by

the most important courts, rather confining such discussion to topics emerging from academic conferences or workshops.

The third reason for writing this book is set in my lectureship purpose. I often prepare lectures for graduate and post-graduate programs on European Transport Law. I have always preferred an empirical approach to teaching effected through the explanation of cases and the direct study of the opinions of courts. The point is that I could never suggest to my students a text to use as a reference of cases. This is one of the most important reasons leading me to put together this compendium of all the most important cases I discussed with students and the most important materials on which I based my research. The result should be a casebook where scholars and students can appreciate the different approaches to the regulation of different infrastructure markets: seaports, railways, and airports.

The research method of this book is based on the direct reading of cases. However, before entering into the discussion on the single facilities, I thought it was necessary to introduce the most important applicable rules of European Union law. Indeed, it is now clear that the European model of regulation has gone beyond its initial purposes and is already competent to regulate the situations internally located within a member State, as the concrete effects of the public or private restraint of competition can potentially interest people and companies from other member States.

Consequently, the boundaries of the application of European Union law have expanded beyond traditional geographical borders. In order to understand whether a concrete situation falls within the scope of European Union law, it is necessary to find a specific norm emanating from the treaties that set the field of application for European rules. It is, therefore, possible to state that some matters are entirely covered by European Union law even if the actual effects of measures and behaviors are internally located within a particular member State. If only one other European subject can have a potential interest in that situation, it will be regulated by European Union law.

In the infrastructures market, the potential interest of operators from different member States is always present thanks to the globalized dimension of transport services companies. Indeed, maritime services and air services have become liberalized and every single company from Europe has the right to access every facility under the same conditions as domestic operators. This framework has enjoyed many years of application and is leading to the liberalization of transport infrastructures, even if national practices continue to create some breaches of European Union law. The case of railways is a little different. There, the liberalization of services is not yet a concrete reality, although there are some tendencies to let European carriers enter into national markets. For this reason, the discussion of cases on regulation in the railway sector in this book takes into consideration the experience of the United States of America, where we can see cases of rail de-regulation over the past two hundred years. Importantly, the same principles applied by the Supreme Court were introduced in the rail liberalization directives and are now being applied by the European Court of Justice and by the European Commission.

The result is that European Union law created a common legal framework that defines a real uniform law applicable to the regulation of transport infrastructures. The aim of this book is to provide the main principles and reasoning that are behind this uniform law.

As with any project that takes a lot of time, this book benefited from the important help of many people that I thank but I cannot list all of them. First of all, I should thank my father, for the education and inspiration of my research activity, and Professor Sergio Carbone who trained me in the study of this difficult field. I also thank Justin Kesselman who gave me detailed, page by page, comments and an important concrete help. Last but not least, I thank Simona, who helped me in the research and always supported me, and my mother, who continuously encouraged me.

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