

TABLE OF CONTENTS

STATEMENT OF COPYRIGHT	V
ACKNOWLEDGEMENTS.....	VII
PREFACE.....	IX
LIST OF TABLES	XVII
LIST OF FIGURES.....	XIX
LIST OF ABBREVIATIONS.....	XXI

CHAPTER 1: INTRODUCTION

1.1. This Study	1
1.2. Research Questions.....	5
1.3. Methodology of the Research and Limitations	6
1.3.1. Doctrinal and Comparative Analysis	7
1.3.2. Regulatory-Policy Analysis.....	7
1.3.3. Empirical Text-Mining of the Fairness Rhetoric.....	8
1.3.4. Normative Framework Design and Scenario Testing	9
1.3.5. Cross-Cutting Reliability and Limitations.....	10
1.4. Chapter Breakdown.....	11
1.4.1. Chapter 2.....	12
1.4.2. Chapter 3.....	12
1.4.3. Chapter 4.....	13
1.4.4. Chapter 5.....	13
1.4.5. Chapter 6.....	14
1.4.6. Chapter 7.....	14
1.5. Original Contribution of the Research	15

**CHAPTER 2:
NEW REALITIES OF THE DIGITAL
ECONOMY: CHALLENGES FOR THE EU
COMPETITION LAW**

2.1. Introduction.....19

2.2. Characteristics of the Digital Economy.....20

 2.2.1. Network Effects21

 2.2.1.1. Direct Network Effects22

 2.2.1.2. Indirect Network Effects.....23

 2.2.2. Pricing Structure.....25

 2.2.3. Critical Mass, Multi-Homing and Switching Costs.....27

 2.2.4. Reliance on Data.....29

 2.2.5. Diversification of Business Models and Vertical Integration ...33

 2.2.6. The Tendency to Grow Over Profits.....35

 2.2.7. Competition for the Market.....36

 2.2.8. Tendency for Oligopoly36

2.3. Difficulties in the Examination of Digital Conduct.....37

 2.3.1. Market Delineation37

 2.3.2. Assessment of Dominance and Market Power.....41

 2.3.2.1. Actual Competition42

 2.3.2.2. Potential Competition.....45

2.4. Conclusions50

**CHAPTER 3:
THE MAINSTREAM GOAL OF THE EU
COMPETITION LAW: FOUNDATIONS AND
CRITICISMS OF CONSUMER WELFARE**

3.1. Introduction.....53

3.2. Background.....57

3.3. Fundamentals of Total Welfare	61
3.4. Different Interpretations of Consumer Welfare	65
3.4.1. Consumer Surplus Standard – Narrow Consumer Welfare.....	66
3.4.2. Extended Consumer Welfare	69
3.4.3. Consumer Welfare Focused on the Choice and Consumer Sovereignty.....	71
3.5. Criticisms Targeting Welfarist Goals	71
3.5.1. Criticisms on Economic Theoretical Grounds.....	73
3.5.1.1. Problems of the Revealed Preferences Theory	73
3.5.1.2. The Place of Distributive Justice.....	77
3.5.1.3. Applicability of the Choice Standard.....	79
3.5.1.4. The Interaction Between Different Types of Efficiencies.....	80
3.5.1.5. The Marginalisation of Law	86
3.5.2. Criticisms on the Digital Economy Grounds.....	88
3.5.2.1. Fundamental Limits for Capturing Harm to Consumers.....	89
3.5.2.2. Data-Driven Ways for Harm to Consumers and New Entry Barriers	90
3.5.2.3. Competition in Digital Business Models	93
3.5.2.4. Dynamic Efficiencies in the Digital Economy	94
3.5.2.5. Tendency to Bigness and Decreasing Dynamism.....	97
3.6. Interpretation of Consumer and Consumer Welfare Concepts in the EU	98
3.6.1. The Place of Consumers Before the Introduction of Consumer Welfare.....	99
3.6.2. Introduction of Consumer Welfare by the Commission.....	101
3.6.3. Reflection of Consumer Welfare in Soft Law	107
3.6.4. Reflection of Consumer Welfare in Case Law.....	110
3.7. Conclusions	122

**CHAPTER 4:
GATEKEEPERS, FAIRNESS AND THE
CONCURRENT ENFORCEMENT DILEMMA:
A CRITICAL ASSESSMENT OF THE DMA**

4.1. Introduction.....	127
4.2. Rationale and Goals of the DMA.....	130
4.2.1. The Process Leading to the DMA	130
4.2.2. The Right not to Be Prosecuted and Punished Twice.....	137
4.2.3. Complementary Nature and Objectives of the DMA	143
4.2.3.1. Positioning of the DMA.....	143
4.2.3.2. Goals of the DMA.....	146
4.2.3.2.1. Contestability Driven Obligations.....	151
4.2.3.2.2. Fairness Driven Obligations.....	155
4.3. DMA's Approach to Structural Failures	159
4.3.1. Background of DMA Implementation Standards	159
4.3.1.1. High Intervention Standards and Efficiency Issues in Finalisation.....	160
4.3.1.2. Inadequacy of Remedies.....	166
4.3.2. Solutions of the DMA	174
4.3.2.1. Lower Intervention Standards and Expected Procedural Improvement.....	174
4.3.2.2. More Effective Remedies.....	180
4.4. Criticisms of the DMA	182
4.4.1. Criticisms on Goals and Legal Ground	182
4.4.2. Criticisms on the DMA's Approach to Structural Failures	190
4.5. Conclusions	197

**CHAPTER 5:
FROM FOOTNOTE TO FRONT STAGE:
THE RISE OF FAIRNESS RHETORIC IN EU
COMPETITION LAW DISCOURSE**

5.1. Introduction.....	201
5.2. Rhetorical Shift in Fairness and Consumer Welfare Language	204
5.2.1. Methodology for Measuring the Language Change	206
5.2.2. Findings on Rhetorical Change in Fairness and Consumer Welfare Language.....	214
5.3. Linking the DMA Obligations to Their Jurisprudential Origins	232
5.3.1. Methodology for Linking the DMA Obligations to the Case Law	233
5.3.2. Findings on Case-Law Foundations of the DMA's Fairness Catalogue	236
5.4. Synthesis of Rhetorical Change and Case Law Findings.....	245
5.5. Conclusions	247

**CHAPTER 6:
FROM DESIGN TO DEPLOYMENT: A
FUNCTIONAL FAIRNESS FRAMEWORK OF
TEST, CATALOGUE AND GATEWAY**

6.1. Introduction.....	253
6.2. Pluralism and Public Policy Goals in EU Competition Law	258
6.2.1. Historical Roots of Pluralism.....	258
6.2.2. Inventory of Public Policy Considerations	261
6.2.3. The Consumer Welfare Turn and the Purpose Instrument Confusion	268
6.2.4. Advancing Analytical Tests Over Goal Labels in EU Competition Law	271
6.3. Operationalising Fairness in EU Competition Law	276

6.3.1. The Ambiguity of Fairness	276
6.3.2. Fairness as a Structured Proportionality Filter.....	279
6.3.3. Compatibility with Consumer Welfare Analysis	282
6.3.4. Clarifications for Possible Criticisms	287
6.4. Development of a Functional Fairness Framework.....	291
6.4.1. Deriving the Proportionality-Based Fairness Test.....	293
6.4.1.1. Methodology and Defined Steps of the Test.....	293
6.4.1.2. Case-by-Case Demonstration of the Test	297
6.4.2. Fairness Behaviour Catalogue	302
6.4.2.1. Normative Rationale of the Behaviour Catalogue	304
6.4.2.2. Dominance Threshold	309
6.4.3. DMA Alignment and the Single Gateway Rule.....	312
6.4.3.1. From Parallel Systems to a Single Gateway Architecture.....	313
6.4.3.2. Penalty Calibration and Deterrence	315
6.4.3.3. Procedural Coordination.....	319
6.5. Cross-Sector Transferability.....	324
6.5.1. Energy Data Access and Smart-Meter Gatekeepers.....	327
6.5.2. Open Banking APIs and Access Discrimination in FinTech ..	329
6.5.3. Digital-Health Triage and Self-Referral Bias.....	332
6.5.4. Further Suggestions for Contemporary Risk Domains.....	335
6.5.4.1. AI-Driven Bias.....	337
6.5.4.2. Sustainability Deception.....	339
6.6. Conclusions	341
CHAPTER 7: CONCLUSIONS	347
APPENDIX: CENTRAL PARAGRAPH CORPUS.....	353
BIBLIOGRAPHY.....	361