

Cambridge University Press & Assessment 978-1-009-35725-8 — Separation of Powers and Antitrust Vincent Martenet Table of Contents More Information

## Contents

Preface		
oduction	1	
PART I FOUNDATIONS		
Power	9	
1.1 A Multifactorial, Multidimensional, Contextual,		
and Evolutive Notion	9	
1.2 Concentration and Abuse	11	
1.3 Separation of Powers	13	
1.4 Antitrust	18	
Economic Content of the Separation of Powers Theories?	25	
2.1 Montesquieu	25	
2.2 Hayek	27	
2.3 Aron	29	
Political Content of Antitrust from a Historical Perspective	31	
3.1 United States	31	
3.2 Germany	34	
3.3 Japan	36	
3.4 European Union	37	
Political Content of Antitrust in the Digital and Artificial		
Intelligence Era	39	
4.1 Concentration of Power	39	
4.2 Political Power of Digital Platforms	46	
4.3 Digital Infrastructure of Democracy	49	
	PART I FOUNDATIONS  Power  1.1 A Multifactorial, Multidimensional, Contextual, and Evolutive Notion 1.2 Concentration and Abuse 1.3 Separation of Powers 1.4 Antitrust  Economic Content of the Separation of Powers Theories? 2.1 Montesquieu 2.2 Hayek 2.3 Aron  Political Content of Antitrust from a Historical Perspective 3.1 United States 3.2 Germany 3.3 Japan 3.4 European Union  Political Content of Antitrust in the Digital and Artificial Intelligence Era 4.1 Concentration of Power 4.2 Political Power of Digital Platforms	



Cambridge University Press & Assessment 978-1-009-35725-8 — Separation of Powers and Antitrust Vincent Martenet Table of Contents More Information

x Contents

## PART II INTERACTIONS

5	Sep	paration of Powers in Antitrust	57
	5.1	Various Sources Imposing Checks and Balances to a Firm	57
	5.2	Search for an Analogy between Separation of Powers	
		and Antitrust	59
		5.2.1 Breaking Up or Unbundling Firms	59
		5.2.2 Merger Control and Politico-Economic Power	63
		5.2.3 Public or Private Regulation and Antitrust	66
	5.3	Organizational Remedies or Commitments	74
		5.3.1 Additional Checks and Balances	75
		5.3.2 Platform Assemblies or Parliaments	78
	5.4	Argument or Defense in Antitrust Matters	84
6	Ant	itrust in Separation of Powers	85
	6.1	Data, Platform, and Politico-Economic Powers	85
	6.2	Some Considerations on Market Definition	87
		6.2.1 Zero Monetary Price Products or Services	
		in Multisided Platforms	87
		6.2.2 Competition for an Election or a Referendum	91
	6.3	Data Access, Portability, Sharing, and Interoperability	93
	6.4	Abusive Discrimination	96
		6.4.1 Discrimination between Trading Parties	97
		6.4.2 Fundamental Rights, Principles, or Values	100
		6.4.3 Exclusionary or Exploitative Conducts	106
		6.4.4 Consumer Harm and Absence of Major Anticompetitive	
		Concerns or Administrative Hurdles	108
		6.4.5 Antitrust's Potential Contribution to Separation of Powers	111
	PAR	AT III TOWARD A NEW SEPARATION OF POWERS	
7	Ger	neral Issues	117
	7.1	State-Centered and Power-Centered Approaches	117
	7.2	Internal, External, Multilevel, Interinstitutional,	
		and Transversal Checks and Balances	118
8	Pro	mises and Shortcomings of Recent or Proposed Legislation	122
	8.1	Australia	122
	8.2	European Union	123
	8.3	·	128
	8.4		130
	8.5		132
	8.6	South Korea	132



Cambridge University Press & Assessment 978-1-009-35725-8 — Separation of Powers and Antitrust Vincent Martenet Table of Contents More Information

		Contents	xi
	8.7	United Kingdom	133
		United States	135
	8.9	Critical Assessment	138
9	Nev	v Politico-Economic Axes of the Separation of Powers	140
	9.1	Control of the Digital Infrastructure of Democracy	140
	9.2	Prohibition of Distortions of the Electoral and	
		Democratic Process	144
	9.3	Governmental Contracts	147
	9.4	Regulation and Deconcentration or Decentralization	
		of Artificial Intelligence	149
		9.4.1 Concentration Tendency and Need for Regulation	149
		9.4.2 Deconcentration or Decentralization	153
		9.4.3 Limits to Substantial Autonomous Powers	158
	9.5	Regulation and Deconcentration or Decentralization	
		of the Metaverse	160
		9.5.1 The Metaverse between Centralization and	
		Decentralization	160
		9.5.2 Antitrust on the Metaverse	164
		9.5.3 Antitrust in the Metaverse and Separation of Powers	166
10	Nev	v Institutional and Individual Axes of the Separation of Powers	169
	10.1	Institutional and Procedural Settings	169
	10.2	Personnel	173
	10.3	Campaign Finance, Lobbying, and Anti-corruption Laws and	
		Regulations	176
Con	clusi	on	182
Bibl	iogra	phy	185
Inde	Index		