

Contents

<i>List of Figures</i>	<i>page xi</i>
<i>List of Tables</i>	<i>xiii</i>
<i>Acknowledgments</i>	<i>xv</i>

PART I BACKGROUND: POPULISM, DEMOCRACY, ECONOMY

1	Introduction	3
	A Context: Populism, Democracy, Markets, and Competition Law	3
	B Existing Debates and the Topic of the Book	6
	C Approach	13
	Principal Questions	13
	Structure	15
	Methodology	17
	Selection of Countries	19
	D Background Information on Hungary and Poland	20
	E Terminology	22
2	Populism and Its Relationship with Democracy and the Economy	24
	A Populism as a Driver of Illiberal Change in Democracy	24
	Populism: In Search of a Common Meaning	24
	Populism: Departure from Liberal Democracy	29
	B Populism as a Driver of Illiberal Change in the Economy	39
	Populism and the Economy	40
	Populism: Departure from a Liberal Economy	44
	C Conclusions	53

PART II POPULIST INFLUENCE ON COMPETITION LAW SYSTEMS

3	Conceptualization of the Impact of Populism on Competition Law Systems	57
	A Variables	58
	First Variable: The Extent of the Dismantling of Checks and Balances and the Rule of Law	58
	Second Variable: The Extent of Reevaluation of the Free Market Economic Model	60
	B Impact Scenarios	61
	Deconstruction	61
	Marginalization	62
	Atrophy	63
	Limited Impact	63
	C Limitations	63
	D Further Study	65
4	Institutions	66
	A Independence of Competition Agencies	66
	Politically Driven Appointment Process	68
	Limited Autonomy of Decision-Makers	72
	Negative Perception of Agency Independence	77
	Legislative Interventions	78
	Agency's Self-restraint	79
	Summary: Linking Weak Independence with the Impact Scenarios	80
	B Operating Capabilities of Competition Agencies	83
	Leadership Change	84
	Staff Fluctuation and the Decrease in Expertise	87
	Scarce Resources	89
	Other Challenges	92
	Summary: Linking the Decrease in Operating Capabilities with the Impact Scenarios	93
	C The Mandate of Competition Agencies	95
	Prioritization of Consumer Protection	97
	Blurring the Agency's Mandate	100
	Linking the Broad Mandate of a Competition Agency with the Impact Scenarios	105
	D Judicial Review	106
	Weakening of Independence of the Judiciary	108
	Decrease in Expertise of the Judiciary	116
	Weakening of Constitutionality Review Related to Competition Law	119

Contents

ix

Linking Risks for the Independence and Expertise of the Judiciary with the Impact Scenarios	122
E Conclusions	124
5 Enforcement	126
A Characteristics of Enforcement	126
Limited Enforcement	127
Politically Motivated Enforcement	134
Linking Enforcement Characteristics with Impact Scenarios	140
B Application of Competition Law to SOEs	141
Limited Number of Abuse of Dominance Cases against SOEs	142
Lenient Review of Mergers Involving SOEs	145
Linking Limited Scrutiny Over SOEs' Activities with the Impact Scenarios	151
C Exemptions and Other Limitations on Enforcement	152
Cartel Enforcement Limitations	153
Public Interest Exemption in Mergers	158
Linking the Introduction of Limitations to the Application of Competition Law with the Impact Scenarios	163
D Advocacy	164
An Agency's Limited Advocacy Role	165
Linking Competition Agencies' Limited Advocacy Role with the Impact Scenarios	168
E Conclusions	170
PART III A REGIONAL SYSTEM	
6 A Regional System: The Case of the EU	175
A Legal Reforms: The Case of the ECN+ Directive	176
B Reaction: EU Law-Based Defenses	185
Limitation of NCAs' Powers: A Study of an Insufficient Reaction	186
The Independence of Competition Courts: A Study of Limits on Intervention	190
C Deficit of Trust and Rule-of-Law Challenges in the Decentralized System of Competition Law	195
D The Regional System's Central Level: The European Commission	204
E Conclusions	211
PART IV FINAL DIAGNOSIS AND PROSPECTS	
7 Conclusions and the Way Forward	217
A Diagnosis	217
Characteristics of Populism Relevant to Competition Law	218
Influence of Populists' Governments on the Institutional Structure and Enforcement of Competition Law	219

Interactions within the Regional System of Competition Law: The Case of the EU	219
B Lessons about the Relationship between Competition Law, Democracy, and Free Markets	222
C Projecting the Future	224
D Solutions	228
Enhancing Resilience: The Institutional Setting	229
Offering Responses: Enforcement and Advocacy	235
The Role of the Regional System	237
<i>Bibliography</i>	241
<i>Index</i>	253