



PhD in Law and Economics

INNOVATION AND COMPETITION IN THE FINANCIAL SYSTEM

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Abstract:

The dissertation takes as its point of departure the global financial crisis of 2007-2008. While many factors contributed to the crisis, at its roots lies the circumstance that improvements in computer and telecommunication technology led to revolutionary changes in the structure of financial markets and institutions, which became increasingly globalized and interconnected, while a fragmented nationally-based approach continued to apply to financial sector regulation and supervision. Moreover, the financial crisis has brought to light that financial innovation has too strongly increased complexity of financial products, which have become too complex to understand. Problems of complexity affected financial practices such as securitization, but more broadly involved new securities design made possible by recent advances in theory of finance and by absence of regulation. Now, after the crisis, new rules apply to over the counter derivatives, a new mandatory disclosure system is in force, and some sort of product regulation is provided for in Europe by a new discipline governing intermediaries conduct.

This study consists of two parts, besides a short introduction. The first part of the dissertation considers financial product innovation as means for competition, and in this view it makes an assessment of the new European regulatory framework on «product governance» (Mifid II Directive) and «product intervention» rules (Mifir Regulation), which in large part address investor protection issues. Such measures might serve well the purpose to tackle complexity in financial products, especially since complexity helped to maximize and to exploit the comparative informational advantage of intermediaries on end-users. On the other side, this thesis argues that in the new European regulatory framework some protection of intellectual property rights would be a balanced mechanism in order to avoid over-regulation effects on financial innovation. More precisely, a patent system for financial product innovation would likely increase R&D in “good” financial product design, thus indirectly improving financial market efficiency.

The second part of the dissertation focuses on the problem of patent eligibility for financial products. In Europe, business method patentability is subject to limitations under Art. 52 EPC. The U.S. Patent Act does not provide for such limitations; yet business method patents are a hot topic also in the United States, where the Supreme Court recently elaborated a new patent eligibility test in its 2014 decision *Alice Corporation v. CLS Bank International*. The study offers an analysis of this issue and concludes with a slightly positive assessment of financial product patent eligibility both in the Europe and the U.S..