Index

Abbott, A 17, 480–93
abuse of process
bars to extradition 308–9
intellectual property rights 470–71
and market power 377–84
ACCC v Baxter Healthcare Pty Ltd 375
ACCC v Boral Besser Masonry Ltd
388–9
Act against Restraints of Competition,
Germany 446
advocacy 14, 185–208
competition culture, building 187–8
direct prohibition of anticompetitive
laws, regulations and
government actions 198
and enforcement 200
government, influencing 188–91
incremental approach 203–7
independent agency 196
limitations of traditional approach
185, 191–200
implications for competition
advocacy 196
institutional arrangements
impacting on type/efficiency of competition
advocacy 196–200
magnitude of political challenge
192–5
political drivers for competition
reform 195–6
ministerial system 197
neutral umpire 198
NGOs 151–2
policy approach 200–202
Australia’s National Competition
Policy 201–2
reconceptualisation of concept 207
reforms
making last 206–7
policyholder and stakeholders,
reforming 205–6
reform scene 203–5
regulatory impact statement review
bodies 198
traditional approach 186–91, 208
limitations of 191–200
Advocacy and Implementation Network
(AIN) 106
Advocacy and Implementation Network
Support Program (AISUP) 106
Advocacy Working Group, ICN 102
Africa, NGOs in 137
Africa Competition Programme
(AFRICOMP) 71–2
African Competition Forum (ACF) 63,
82–4, 138
Agency Effectiveness Workshop 99
Agreement on Trade-Related Aspects of
Intellectual Property Rights
(TRIPS) 452
developing economies 213–14
Ainsworth, L 413
Akzo Nobel v Commission
399, 402, 404
‘Alcoa’ decision (US v Aluminium Co of
America) 23, 24, 25, 26, 31, 45,
374, 387
Allendesalazar, R 351
Almuni, J 169
Amato, F 38
American Antitrust Institute (AAI) 147,
156
American Banana Corp v United Fruit
Corp 23, 45, 53
American Bar Association, Section of
Antitrust Law 155–6
American Needle, Inc v National
Football League 171, 393, 396,
412
Supreme Court opinion 416–20
‘American rule’, litigation costs 256,
264
Andenaes, J 278
Anderton, S 17, 451–79
Androgel Antitrust Litigation (No 11),
In re 532–3

565
566 Research handbook on international competition law

Animal Science Products v China Minmetals 31, 32

Anti-Cartel Enforcement Templates 99
Anti-Monopoly Act (AMA), Japan 495,
497, 499

Anti-Monopoly Law (AML), China 178, 198, 494

Article 55 513–16

Antitrust Criminal Penalty

Enhancement and Reform Act (ACPERA) 259

antitrust goals, limited convergence on 165–7

antitrust plaintiffs, private 249

antitrust standards, global 89–109

Anti-Unfair Competition Law (AUCL),
China 513, 515

ArcelorMittal Luxembourg SA v
Commission 404

Areeda, P 23, 25, 28, 35, 224, 408, 419

Arizona v Maricopa County Medical
Soc 411

arrest 302–3

Arrow, K 460, 463, 554

Art, JY 358

Ashworth, A 277

Asia, patent–competition interface 17,
494–520

whether Asian approach to 516–20

China 513–16
decisional practices

Japan 500–504

Korea 509–13

IP Guidelines

Japan 496–500, 507

Korea 505–9, 518, 519

Japan 495–504

Korea 504–13

Microsoft case 503, 510

Qualcomm case 503, 504, 510,
511–12

Asia Competition Forum 138

Asia Pacific Economic Cooperation
(APEC)

APEC-OECD Checklist on

Regulatory Reform 84

Competition Policy and Law Group

61–2, 75–6

Principles to Enhance Competition

and Regulatory Reform 75–6

Asian Competition Law and Economics

Centre (ACLEC) 138

Aspen Skiing Co v Aspen Highlands

Skiing Corp 261, 380, 381

Association for the Protection of

Competition, Egypt 137

Association of South East Asian

Nations (ASEAN) 81–2

ASEAN–Australian development

programme 81

Expert Group on Competition 63

Astra Zeneca v Commission 467, 469,
472, 539–40

athletic contests 163

Attorney General, Guidance for

Handling Criminal Cases with

Concurrent Jurisdiction between

the UK and the USA 294

Australia

Competition and Consumer Act 2010

(CCA) 268, 375, 376, 378, 383

market power

definitions 375–7

interlink with abuse, categorisation

381–3

market shares 388–9

National Competition Council 198

National Competition Policy 201–2

taking advantage, concept 381–2, 383

Australian Competition and Consumer

Commission (ACCC) 125, 285,
375, 382–3

Bailey, D 441

Bailey, EM 331

Baker, DI 15, 238–65, 277

Ball, HV 278

Bangladesh, competition law 144–5

Barnett, TO 168

Bartle, I 284

Basedow, J 41

Beaton-Wells, C 15, 266–90

Becker, F 50
Index

Becker, GS 194
‘beggar-thy-neighbour’ strategy 21, 51
behavioural economics 14, 155, 156, 171–80, 174
yielding increased convergence 175–80
Beinhocker, ED 160
Berkowitz, D 210, 217
Berman, MA 327
Bernitz, U 16, 426–50
Bertrand, M 173
Bhattacharjee, A 62, 214, 228, 229
BIC countries (Brazil, India and China) 342
bilateral agreements 228, 322
Block Exemptions/Block Exemption Regulations (BERs) 365, 466
Blumenthal, W 16, 299–321, 410, 419
Bode, M 73
Boeing, proposed acquisition of McDonnell Douglas 89
Bork, RH 218, 330
Botta, M 87, 227
Botti, S 173
Bradford, A 134
Brazilian Administrative Council of Economic Defense (CADE) 80
BRIC countries (Brazil, Russia, India and China) 227
Britain see United Kingdom (UK)
British Horseracing Board v Office of Fair Trading 422
Briuglio, L 221
Brogan, B 284
Brown, G 283
Brulotte v Thys Co 512
Brunell, R 437
Brusick, P 221, 222, 361, 364
Budinski, O 366
Budzinski, O 73, 128, 129
‘but for’ causation, Sherman Antitrust Act 1890 35
Buttigieg, E 221

Callery, C 450
Campbell, AN 91

Canada, International Development Research Centre see International Development Research Centre (IDRC), Canada
Canpotex (Canadian Potash export cartel) 11
capacity building 69, 149–50
capture theories 192
Cardizem CD Antitrust Litigation, In re 526–7
Cardozo, B 29–30
Carlton, DW 555
Carrier, MA 17, 451, 521–44
Carstensen, PC 555
cartels see export cartels
Casey, S 267
Cassidy, J 170
Category 1 countries, extradition 301–2, 311
arrest 302–3
extradition offence 304–6
initial hearing 303–4
Category 2 countries, extradition 302, 311
arrest 303
extradition offence 306
initial hearing 304
Cernat, L 119
Chakravarthy, S 87, 194
Cheng, TK 17, 494–520
Chicago Professional Sports Ltd Partnership v NBA 411
Chicago School 170, 172, 431, 547
capitalist welfare model 223
China absence from ICN 108
Anti-Monopoly Law 178, 198, 494
Article 55 513–16
antimonopoly law 109
Anti-Unfair Competition Law 513
Ministry of Commerce 219, 494
patent–competition interface 17
China Huiyuan, Coca-Cola’s acquisition 169, 170
Chovanec, P 219
Christiansen, A 176
Christophorou, T 45
568  

Research handbook on international competition law

Ciprofloxacin Hydrochloride Antitrust Litigation, In re 530

Ciriolo, E 156

civil law administrative systems 255

Clark, J 199

Clarke, JL 211, 376

Clayton Antitrust Act 1914 40, 239, 250, 251, 321

Clendenin, M 517

Coase, RH 163–4, 483

Coate, MB 327

Coca-Cola, acquisition of China Huiyuan 169, 170

Cole, E 292

Coleman, M 457

‘comfort’ letters, discontinued proceedings 310, 311

comity

limitations of 115–18

Sherman Antitrust Act 1890 32–4

tripartite test 33

Common Market for Eastern and Southern Africa (COMESA) 61, 69

Community of Portuguese-Speaking Countries (CPSC) 79

Compensating Marginal-Cost Reduction (CMCR) 330

competition, defined 163

Competition Act 1998, UK 41, 61, 217, 446, 556

Competition Act 2002, India 139

competition advocacy see advocacy

Competition Advocacy Toolkit, ICN 98

Competition Advocacy Web Postings, ICN 98

Competition and Consumer Act 2010 (CCA), Australia 268, 375, 376, 378, 383

Competition Assessment Toolkit 201

competition authorities, EU 78

Competition Commission of India (CCI) 146–7

Competition Commission, UK 556

Inquiry into the Supply of New Cars 558–9

Competition Committee (OECD) 67–8, 75, 85, 323

Competition Committee and Law Group (CPLG), APEC 61–2, 75–6

competition culture, competition advocacy building 187–8

competition law

international see international competition law

terminalogy 3

varying goals 10–11

competitive harm theories 331–2

concentrations, and mergers 48

concurrent prosecution 293–301

Attorney-General’s Guidance on US/UK concurrent jurisdiction 294–5

cooperative outcomes 300–301

Courts on jurisdiction 298–300

European Council Framework Decision on Jurisdiction 294, 295–8

see also extradition

Condor Review 292

Connor, JM 226, 230

Consumer Empowerment Organisation of Nigeria 137

consumer surplus 11

Consumer Unity and Trust Society (CUTS) 83, 136, 138, 143, 145, 561

prior to Competition Act 2002, India 146–7

recognition as a Recognised Consumer Association 139

‘7Up model’ 140–41, 142, 144, 152

‘Towards a Functional Competition Policy for India’ (study) 151

consumers and competition policy 545–64

case study interventions 556–61

innovation as bridge between consumer and total welfare 554–5

interface between consumer and total welfare 17, 547–54

NMAs/ICN survey 561, 562, 563
Index

Consumers’ Association, UK 556, 557, 561
Consumers’ Union 147
Continental TV Inc v GTE Sylvania Inc 433, 434
Contractor, FJ 459
convergence 10, 14
adoption of consensus-based practices, promoting 105–7
and behavioural anti-trust gambit 155–81
whether behavioural economics increase 171–80
consensus around best practices and techniques, developing 102–5
and current antitrust policy 160–71
defined 158–9
greater, on antitrust legal standards 167–71
importance 159–60
of international competition law 90–92
International Competition Network 13–14
activities in pursuit of convergence 101–7
challenges to approach of 107–9
forum to encourage convergence on antitrust law and enforcement 93–4
importance of convergence 157–8
persuasion, pursuing convergence by 94–6
practical pursuit by 93–6
strategy and operations 96–107
vision of 90–93
learning from experience of ICN Member agencies and NGAs 101–2
limited on antitrust goals 165–7
on a theory of competition 161–5
not seeking homogenization of international antitrust law 92–3
see also divergence
Cooke, JD 288
cooperation, international 11, 14, 110–35
binding commitments neither feasible nor helpful 118–21
comity insufficient 115–18
global gap/problems 114–15
national competition regimes, limited reach 115
networks 121–5
future 130–34
problems whether lack of efficiency 126
whether lack of inclusiveness 128
whether lack of legitimacy 126–7
whether reduced policy innovation 128–30
Copperweld Corporation v Independence Tube Corporation 393, 398, 399, 408, 411, 418, 424
extension of 400–401
Coppola, M 89, 105, 121–2, 125, 127
Cornish, W 454
cost/price test (Areeda and Turner) 224
Court of Justice of the European Union (CJEU), and extraterritoriality 42, 43, 45, 53
Crane, D 357, 358
Credit Suisse Sec (USA) LLC v Billing 262
criminal sanctions, cartels 15, 266–90, 291, 292
discontinued proceedings 310–11
Cseres, KJ 242
Curriculum Project (ICN) 100
Cy Pres rulings, US 563
Dabbah, MM 209
Damien, K 209
Dayagi-Epstein, O 560
de Streel, A 364
DECOM (NGO) 138
Department for International Development (DFID), UK 82, 136
Department of Justice (DOJ), US 117, 244

Ariel Ezrachi - 9780857934802
Downloaded from Elgar Online at 08/26/2019 07:27:17AM
via free access
Relevance of the International Competition Network 231–5

ev economies as a universalising critique 219–20
extraterritorial power, exercise by 226–8
in global economy 226–35
international competition law 7
international competition network 231–5
legal transplants 214–17
legislative form and economic interpretation 217–19
market context 221–3
and other transnational initiatives 362–4
situating competition law within 212–14
state monopolies 361–2
unilateral conduct 360–64
Dexian Corp v Sony Corp 513, 514, 515
Dick, AR 328, 333
direct effects test, Sherman Antitrust Act 1890 28–32
Directorates General, Brussels 243, 246
discontinued proceedings, bars to extradition 309–11
divergence whether behavioural economics increase 171–80
informed 104–5, 130, 211
merger control 326
unilateral conduct 355–7
see also convergence
Djelic, ML 348
Dobson, PW 431
domestic perspective on competition law 4–5
Doron, D 291
double jeopardy, bars to extradition 308

Dr Miles Medical Co v John D Park & Sons Co 432, 434
Draft for International Antitrust Code, Munich Group 96
Drahos, M 267
Drexl, J 353, 459, 460
Drug Price Competition Act 2009, US 534
Durham, AM 268
Dutz, MA 347
Easterbrook, FH 453, 457
Eastman Kodak v Image Technical Services Inc 374
Economic & Social Research Council Centre for Competition Policy, UK 268
Economic & Social Research Foundation (ESRF), Tanzania 137
Economic Advisory Group on Competition Policy 379
economic constitution, ideal of 224
effective competitive process concept, and Sherman Antitrust Act 1890 162
effects-based legal analysis 178
Egypt, Association for the Protection of Competition 137
Elhauge, E 213, 369, 374
Elzinga, K 335
Eommert, F 210
Empagran case see F Hoffmann-La Roche v Empagran
enforcement and advocacy 200
altruistic 21
amnesty programme of enforcement agency 258–60
antitrust plaintiffs, private 249
changing historical scene 243–6
Clayton Antitrust Act 1914 40, 239, 250, 321
complementary outcomes where law clear 257–8
costs and risks 256–7
evidence, discovering 253–4
Federal Trade Commission (FTC)
Act 1914 39, 138
follow-on private damage actions,
allowing 258–60
government enforcement agencies
247–9
international community of enforcers
12–13
jurisdiction 54–6
‘loser pays’ cost rule 256, 258
national competition authorities 241,
242, 252
net reckoning 265
NGOs, role in 136–54
over-enforcement 6, 56–7
overlaps and over-enforcement 23,
56–7
private and public 15, 238–65
amnesty programme of
enforcement agency 258–60
complementary outcomes where
law clear 257–8
core purposes, differences 246–52
export cartels 244–5, 257–8
follow-on private damage actions,
allowing 258–60
private litigation in cases where
law unclear and/or decisions
specific 260–64
processes and procedures,
importance 253–7
treble damages 245
private antitrust cases seeking only
injunctions 249–50
processes and procedures,
importance 253–7
proving a case 254–6
Sherman Antitrust Act 1890 37
territorial perspective 4–5
US State Attorney Generals (State
AGs) 250–52
under-enforcement 6, 210–11
see also criminal sanctions, cartels
Enterprise Act 2000, UK 556
Enterprise Act 2002, UK 41, 138, 145,
268, 283, 292, 306
environment friction 12

Epstein, R 328
EU Merger Regulation (EUMR) 47–8,
49, 405–6
application 49
‘domestic’ turnover thresholds
(Article 1) 48
Eurojust Guidelines 297
European Arrest Warrant (EAW) 302
European Commission
Competition Directorate 77
Guidance on Enforcement Priorities
478
Guidelines on Vertical Restraints 441,
443, 444
Horizontal Co-operation Guidelines
405, 480, 492
sector inquiry report, pharmaceutical
industry 541
European Competition Network (ECN)
63, 76–8, 242
European Convention on Human Rights
and Fundamental Freedoms
(ECHR) 1950 312
European Council
Framework Decision on Jurisdiction
294, 295–8
Framework Decision on the
European arrest warrant 302
European Union (EU)
competition authorities 78
Computer Program Directive 461
export cartels 49–51
extraterritorial reach of competition
law 42–9
Béguelin Decision 42
Commercial Solvents Decision 43
Dyestuffs Decision 42, 47
Europemballage and Continental
Can Decision 43
Gencor, and foreseeable,
immediate and substantial
effects 47, 48–9, 54
IBM and Microsoft Decisions 47
mergers 47–9
whether single economic unit,
implementation or effects
42–6
Wood Pulp I Decision 42, 43, 44, 46, 47, 48

joint ventures
whether association of undertakings can also be an undertaking 423–4
cooperaion arrangements between parents and JVs 420–23
decisions by associations of undertakings 420–23

on limited convergence on antitrust goals 165–6
market power
definitions 370–73
interlink with abuse, categorisation 379–80
market shares 386–7

Merger Regulation (EUMR) 47–8, 49, 405–6

national competition authorities 241, 242, 252
pharmaceutical industry
product hopping 539–41
settlements 535–7
resale price maintenance, legal position
application of TFEU 101(3) to fixed and minimum prices 441–4
application of TFEU 101(3) to maximum and recommended resale prices 444–5
in EU Member states 445–7
general prohibition 438–41
state involvement 52–4
undertaking in EU law, notion and boundaries 399–400
unique nature 8

see also Treaty on the Functioning of the European Union (TFEU)
Europemballage Corp and Continental Can Co Inc v Commission 380

Evans, P 17, 545–64
Evenett, S 151, 209, 211, 221, 222, 232, 361, 364
evidence, discovering 253–4
Ewald, C 176

excessive pricing concept 103
exclusionary behaviour 396
export cartels 13, 49–51
criminal sanctions 15, 266–90, 291, 292
discontinued proceedings 310–11
extradition and concurrent criminal prosecution 291–316
extraterritoriality and competition law 49–51, 59
international competition law 5, 11

legalised 51
private and public enforcement 244–5, 257–8
public opinion on conduct 269–76
behavioural implications 278–81
enforcement implications 285–9
philosophical implications 276–8
political implications 284–5
sociological implications 282–4
wealth transfers 5

Export Trading Company Act 1982, US 49

extradition 301–16
arrest 302–3
bars to 306–16
abuse of process 308–9
discontinued proceedings 309–11
double jeopardy 308
human rights and extraneous considerations 312–14
passage of time 315–16
physical and mental conditions 314
specialty 307–8

Category 1 countries 301–2, 311
arrest 302–3
extradition offence 304–6
initial hearing 303–4

Category 2 countries 302, 311
arrest 303
extradition offence 306
initial hearing 304

Extradition Act 2003 15, 302, 304, 314

Extradition Treaty 2003 309–10
initial hearing 303–4
offence 304–6
process 302–6
see also concurrent prosecution
extraterritoriality and competition law
13, 21–59
‘Alcoa’ decision 23, 24, 25, 26, 31, 45
developed and developing economies
Extraterritoriality and Competition Law
7
Empagran case 27, 31, 33, 34, 35, 36, 59, 227
enforcement jurisdiction 54–6
EU law, extraterritorial reach 42–9
exercise of extraterritorial power
by developed countries 228–31
by developing countries 226–8
Federal Trade Commission (FTC) Act 1914 39
Foreign Trade Antitrust Improvement
Act (FTAIA), 1982 27, 28, 31, 32, 35
home jurisdiction 21–2
implementation doctrine 41, 44, 45, 48
inbound commerce 37
international competition law 6
outbound export cases 37–9
overlaps and over-enforcement 23, 56–7
Sherman Act see Sherman Antitrust
Act, 1890
whether single economic unit,
implementation or effects 42–6
state involvement in US and EU 52–4
conduct permitted in one, but
prohibited in another
jurisdiction 52
liability for anticompetitive
conduct 54
petitioning the state to adopt
anticompetitive measures
53–4
‘true conflict’ cases 52–3
US law, international reactions to
extraterritorial reach of 40–41
Ezrachi, A 3–17, 48, 96, 267

FA Premier League v QC Leisure 423
Facebook 147
Farber, DA 218
Farrell, J 328
Federal Cartel Office, Germany 350
Federal Trade Commission (FTC) 454
‘IP rights in standard selling’ project
488–92
advisability of antitrust review 489
alternatives to duty to search/good
faith expectation 490
consumers’ interests 491–2
costs and benefits of patient search
requirement 489–90
patient commitments 490
prevalence of patent hold-up
problems 488–9
RAND licensing terms 491
standard-setting organisations’
ability to solve hold-up
problems 489
IP3 Report (Evolving IP
Marketplace: Aligning Patent
Notice and Remedies with
Competition) 481–8
background 481–2
damage remedies and hold-up
485–6
improving notice 482–3
patent remedies 483–4
policy perspective on assessment
of patent remedies 486–8
in Korea 69, 509–13
and pharmaceutical industry 524,
534, 535
private and public enforcement 241, 247
and Unilateral Conduct Working
Group, ICN 350
Federal Trade Commission (FTC) Act,
1914 39, 138
Fels, A 14, 128, 185–208
Fingleton, J 92, 113, 122, 124, 125, 127,
129, 130
Finkelstein, K von 123–4
Fipra (Finsbury International Policy &
Regulatory Advisers) 562
Fisse, B 267
Fletcher, G 281
Foer, A. 139
Food Sovereignty Campaign (NGO) 148
Foot, R 348
Foreign Direct Investment (FDI) 210
Foreign Sovereign Compulsion Doctrine, US 52
Foreign Sovereign Immunities Act (FSIA) 1976, US 53
Foreign Trade Antitrust Improvement Act (FTAA), 1982 27, 28, 31, 32, 35, 230
Foros, O 337
Fox, EM 91, 94, 95, 102, 116, 124, 209, 210, 223
France Télécom SA v Commission 371
FRAND (‘Fair, Reasonable and Non-Discriminatory’) commitments 468, 469
hold-ups 492, 493
Frank, RG 523
Fraser, EM 161
Friedman, LM 278
Froeb, L 327, 330
Fuji Electric System Co Ltd v Commission 397, 408, 415
Gal, MS 214, 215, 216, 226, 227, 229, 320, 336, 347
Gambia (The), Pro-Poor Advocacy Group 137
General Agreement on Tariffs and Trade (GATT) 96
General Electric/Honeywell Decision 62, 74, 168, 220, 346
Geradin, D 116, 213, 369
Gerber, DJ 22, 41, 74, 164, 195, 212, 224, 357
Germany, Act against Restraints of Competition 446
Ghana, competition law 144
Ghidini, G 452
Gidley, JM 326
Gilo, D 337
Ginsburg, DH 159, 161, 169
Global Forum on Competition (GFC) 68–9, 86
Gomes and Goodyer v Government of Trinidad & Tobago 315
Gotttrap-Klim ea Grovvareforening er v Dansk Landbrugs Grovvareselskap AmbA 386
government advocate inside 197–8
agency inside 197
competition advocacy influencing 188–91
enforcement agencies 247–9
government departments 198
Government of India 143
Green, S 279
Greenhalgh, C 451
Gruenes, AP 180
Guiding Principles for Merger Notification and Review 99
Guzman, AT 119, 215, 229
Haas, PM 322
Habermas, J 283
Haines, F 269
Hale, T 121, 126
Hammond, A 281
Hammond, S 288
Harding, C 266, 277, 280
Hart, HM 277
Hartford Fire Insurance v California 26, 27, 29, 31, 34, 52, 261
Hart-Scott-Rodino Antitrust Improvements Act 1976 (HSR) 40
Hatch-Waxman Act, US 525, 526
Havana Charter 8, 95
Heather, S 118, 119
Heimert, AJ 102, 104, 106
Heinrich, J 174
Heller, M 452
Hellström, P 359
Helmers, CG 226
Henneberry, T 292
Hijzen, A 232
Hindustan Lever Ltd, CUTS complaint against takeover of TOMCO Ltd 146
Index 575

Hoffmann-La Roche & Co AG v Commission 371, 373, 380, 512
Hollman, HM 13–14, 85, 86, 89–109, 366
Holstrom, B 320
home jurisdiction 21–2, 50
Horizontal Merger Guidelines, US 326, 327
Hosoda, K 76
Hovenkamp, H 23, 25, 28, 35, 321, 396, 419, 427
human rights, bars to extradition 312–14
Ibanez Colomo, P 358
Ibero-American Competition Forum 63, 79
Imperial Chemical Industries v Commission 401, 403
implementation doctrine 41, 44, 48 versus effects doctrine 45
IMS Health GmbH & Co OHG v NDC Health GmbH & Co 475
IMS v Commission 507
India
Competition Commission 146–7
competition policy for 143, 150–51
National Competition Policy 151 NGOs in 139
Indonesia
competition law in (1999) 144 and IMF 210
information technology (IT) industries 482
informed divergence 104–5, 130, 211
innovation 17, 451–79 as bridge between consumer and total welfare 554–5
‘follow-on’ innovators 478 intellectual property rights, actual treatment under competition rules 464–5 and internal balance in intellectual property rules 459–62
lessening innovation litigation defence strategy 456
‘limiting innovation’ contention, use of 455–9
oversimplified assertions 453–5
‘pioneer’ inventors 478
theory of in competition rules 462–4
Institute for Economic Affairs, Kenya 137
Intel v AMD 56
intellectual property
IP Guidelines Japan 496–500, 507 Korea 505–9
intellectual property rights (IPRs) 17, 451, 452, 453
actual treatment under competition rules 464–5
TFEU (Article 101), modernisation 465–7
TFEU (Article 102) 467–77
‘exceptional circumstances’ test (Art 102(b)) 471–3 interpretation 470–71
objective justification 475–7
per se rules and effects 473–5 strategic commercial conduct 467–70
interbrand versus intrabrand competition 431–2
interest group theories 192
Intergovernmental Group of Experts on Competition Law and Policy (IGE) 61, 70, 138
International Antitrust Enforcement Assistance Act (IAEAA) 1994 118
International Association of Machinists and Aerospace Workers (IAM) v Organization of Petroleum Exporting Countries (OPEC) 54
International Competition Advisory Committee (ICPAC), Department of Justice 89, 90
international competition law convergence 90–92
convergence, limits 10
developed and developing economies 7
domestic perspective 4–5
environment friction 12
extraterritoriality 6
networks see networks
non-state players 9–10
obstacles to binding wide membership frameworks 7–8
voluntary frameworks, rise of 8–9, 96
wealth transfers 5–6, 7
International Competition Network (ICN) 60, 73–5, 89–109, 111
China, absence from 108
commitments, formalisation issues 133–4
competition advocacy, defined 186
consumers and competition policy 548
on convergence in competition law 13–14
activities in pursuit of 101–7
challenges to ICN approach 107–9
developing consensus around best practices and techniques 102–5
forum 93–4
importance of convergence 157–8
learning from experience of ICN Member Agencies and NGAs 101–2
persuasion rather than rule-making approach 94–6
practical pursuit of 93–6
promoting adoption of consensus-based practices 105–7
vision 90–93
Eight Guiding Principles for Merger Notification and Review Procedures 324
and extraterritoriality 57, 58
formation (2001) 89, 232
Member agencies and NGAs 101–2, 232, 323–4
Merger Working Group 105, 232
Analytical Framework Subgroup 332
Merger Working Group Survey 2010 123
Merger Workshop 99–100
operational framework 96–7
Recommended Practices for Merger Notification and Review Procedures 105, 232, 233, 324, 334
Recommended Practices on Dominance/Substantial Market Power 100, 123, 349
soft law initiatives 8, 322, 323, 324, 325
Steering Group 97, 106, 107, 158
strategy and operations 96–107
unilateral conduct 348, 349–50
work product 97–100
Working Groups see Unilateral Conduct Working Group, ICN; Working Groups, ICN
International Development Research Centre (IDRC), Canada 82, 136–7, 156
International Monetary Fund (IMF) 143
investigations, pharmaceutical industry 542–3
Iyengar, SS 173
Jacobs, SH 197
Jakobsson, M 327
James, C 95
Janow, ME 62
Japan
Anti-Monopoly Act 1947 495, 497, 499
decisional practices 500–504
Fair Trade Commission 346
IP Guidelines 496–500, 507
keiretsu (vertical and conglomerate agreements) 38
non-assertion of patents (NAP) provisions 501, 503
patent–competition interface in 17, 495–504
Japan Fair Trade Commission (JFTC) 494, 495, 496, 498, 499, 500, 502–3, 520
Jenny, F 69, 195
joint ventures (JVs) 16, 408–24
American Needle, Inc v National Football League 171, 393, 396
Supreme Court opinion 416–20
antitrust scrutiny under Sherman Act section 1 or TFEU, Article 101 416–24
cooperation arrangements with parents 420–23
decisions by associations of undertakings 420–23
EU law whether association of undertaking can also be an undertaking 423–4
cooperation arrangements between parents and JVs 420–23
decisions by associations of undertakings 420–23
full function, and notion of an undertaking 412–15
judging as single firm conduct 408–15
lawful, whether should be regarded as a single entity 408–9
Texaco Inc v Dagher, Supreme Court opinion 171, 409–12, 418
Jones, A 16, 393–425
Joshua, J 292
Kahan, D 278
Kakis v Government of Cyprus 315
Kallaugher, J 466
Kallay, D 17, 480–93
Kaplan, S 320
Kaplow, L 225, 331
Karlan, D 173
K-Dur Antitrust Litigation, In re 533
Kennedy, D 210, 453, 457
Kenyan Institute for Economic Affairs 137
Kerber, W 176
Kevatin, M 151
KFTC (Korea Fair Trade Commission) 507, 520
decisional practices 509–13
Khemani, RS 187, 195
Kind, HJ 337
Kitch, E 457
Klevorick, AK 229, 231
Kneepkens, M 426
Kolasky, WJ 331, 333
Korea Fair Trade Commission (KFTC) 507, 509–13, 520
and fairness 507
Federal Trade Commission 69, 509–13
IP Guidelines 505–9, 518, 519
Monopoly Regulation and Fair Trade Act 1980 504–5, 550
patent–competition interface in 17, 504–513
unfair transaction substance concept 506–7
Kovacic, WE 13–14, 85, 86, 89–109, 128, 133, 158, 196, 278, 327, 328, 366
Kroes, N 241
Kronrather, F 87, 210, 213, 222
Kugler, M 279
La Porta, R 337
Lagdameo, CL 102, 104, 105, 106
Laker Airways v Sabena 33, 40
Latin American and Caribbean Economic System (SELA) 72
Latin American Competition Forum (LACF) 68
Leegin Creative Leather Products Inc v PSKS Inc 427, 434–6, 447, 448, 449, 450
post-Leegin development 437–8, 447
Leniency Guidance 292
Leonard, GK 331
Leslie, CR 396
Levenstein, MC 50, 226
Levy, N 358
Llewellyn, D 454
Lobrano, G 118, 119
matchboxes, under-filling practice 146
Matsushita Electric Ind Co Ltd v Zenith Radio Corp 263
Maxwell King v United States of America 309, 315–16
May, R 175–6
McAdams, RH 341
McCarter, T 410, 419
McDonald, JB 348
McDonnell, BH 218
McDonnell Douglas, proposed acquisition by Boeing 89
McGraw, K 279
McGuire Act 1952, US 433
MCI Communications Corp v AT&T 261
McKinsey & Company 155
McMahon, K 15, 209–37
Mehta, P 14, 136–54, 194
Melamed, AD 120
Melway Publishing Pty Ltd v Robert Hicks Pty Ltd 376, 381, 388
Memoranda of Understanding (MOUs) 84, 122
MERCOSUR 61
Mereand-Sinha, K 238
merger control 16, 319–44
competitive harm theories 331–2
control or smaller holdings 336–7
convergence on antitrust legal standards 168–9
effects on competitors, analysis 328–9
efficiencies, measuring 332–3
Eight Guiding Principles for Merger Notification and Review Procedures (ICN) 324
EU Merger Regulation (EUMR) 47–8, 49, 405–6
EU–US clashes 168
financial weakness of a merging firm 333
foreseeable, immediate and substantial effects 47–9
informational requirements 338–9
international, institutional structure 341–3
Index 579

justifications and implementation
319–22

‘market definition’, use in substantive
analysis 330–31

market dynamics 332

Merger Workbook 350

NGOs and competition law
enforcement 146, 147–9

patchwork of divergence 326

procedural norms and differences
334–40

approval or notice 335

whether coextensive with
substantive statute 339

whether conclusive determination
as against agency or
subsequent challenge allowed
339

whether control or smaller
holdings 336–7

whether informational
requirements 338–9

mandatory or voluntary 335

whether nexus to jurisdiction 336

whether or not conclusive against
private parties 339

whether or not suspensive 335

whether procedural phases 338

procedural rights, nature 340

triggering event 337–8

procedural rights, nature 340

remedies used 333–4

safe harbours 334

soft law, use for 322–5

structure (substances and process)
325–41

substance and process 340–41

substantive norms and differences
326–34

analysis of effects on competitors
328–9

competitive harm theories 331–2

efficiencies, measuring 332–3

financial weakness of a merging
firm 333

‘market definition’, use in
substantive analysis 330–31

market dynamics 332

remedies used 333–4

safe harbours 334

welfare standard used in analysing
effects on society 329–30

triggering event 337–8

US Horizontal Merger Guidelines
326, 327

welfare standard used in analysing
effects on society 329–30

Merger Streamlining Group 233

Merger Working Group, ICN 105, 232

Merges, R 460, 461, 462

Microsoft v Commission 455, 473, 474,
475, 476

Mifflin, H 460

Millennium Development Goals
(MDGs) 212

Miller-Tydings Fair Trade Act 1937, US
433

Mills, DE 427

Ministry of Commerce (MOFCOM),
China 219, 494

Mises, L von 164

Mohr, P 267

Monaghan, MJ 524

Monaghan, MS 524

Monetary and Economic Union of
Central Africa (CEMAC) 61

monopolies 193

developing countries 361–2

monopolisation law versus merger
law 319

Monopolies and Restrictive Trade
Practices Act (MRTPA) 1969,
India 139, 143

Monopolies and Restrictive Trade
Practices Commission (MRTPC)
146

Monopoly Regulation and Fair Trade
Act (MRFTA) 1980, Korea 504–5,
550

Monti, G 16, 345–8, 473

Moore, DW 159, 169

Möschel, W 224

Moshe, Y 337

Motta, M 364
580  Research handbook on international competition law

Mozambique, Competition Policy and Law 138
Mullainathan, S 173
Munich Draft International Antitrust Code, international competition law 8
Munich Group, Draft for International Antitrust Code 96
Muris, TJ 101, 102
Nader, R 194
National Association of Attorneys General (NAAG) 250
national competition authorities (NCAs) 241, 242, 252
National Competition Council, Australia 198
National Competition Policy (NCP), India 151
National Development and Reform Commission (NDRC), China 514, 516
National Directorate for Commerce of Mozambique 80
National Drug Data File (NDDF) 537
‘Natwest Three’, UK 294
Nelson, R 457, 461, 462
neoclassical economic theory 171, 175
Nesbitt, N 266
network effects 91
networks 60–88
African Competition Forum 63, 82–4, 138
APEC Competition Policy and Law Group 61–2, 75–6
ASEAN see Association of South East Asian Nations (ASEAN)
European competition authorities 78
European Competition Network 63, 76–8, 242
future 130–34
Ibero-American Competition Forum 63, 79
ICN see International Competition Network (ICN)
international competition 231–5
whether lack of inclusiveness 128
linkage areas 132–5
Lusophone Competition Network 63, 79–81, 84
Nordic cooperation 78–9
OECD see Organisation for Economic Cooperation and Development (OECD)
outline of 64–6
overlapping 84–6
overview 61–84, 64–6
problems 125–30
whether lack of efficiency 126
whether lack of legitimacy 126–7
whether reduced policy innovation 128–30
proliferation 9, 13
transgovernmental 121, 125
UNCTAD see United Nations Conference on Trade and Development (UNCTAD)
Neven, DJ 358
Ng, W 14, 185–208
NGAs (non-governmental advisors) 85, 94, 122, 127
and ICN 101–2, 232, 323
international competition law 9, 10
international competition law enforcement 136–54
overlapping and flanking activities 149–52
pre-adoption stage 140–43
research and capacity building 149–50
rising significance 137–40
role in competition law enforcement 136–54
Nicholson, MW 217
Nigeria
competition law 144
Consumer Empowerment Organisation 137
Index 581

'no action' letters, discontinued proceedings 310–11
Noerr-Pennington doctrine, and extraterritoriality 54
non-governmental advisors see NGAs (non-governmental advisors)
non-state players 9–10
Nordic cooperation 78–9
Nordic Council of Parliamentarians 78
Norris v United States of America 312, 313, 314
North, D 164
Northern Irish banking sector 146
Norwegian Agency for Development Cooperation (NORAD) 137
Nowag, J 426
Ntambirweki, B 145
O Parsons, D 320
O’Brien, DP 336
Office Depot, merger with Staples, 1996 147
Office of Fair Trading (OFT) 138, 145, 146, 156, 190, 556
failings 284–5
sanctions by 292, 293
Ohara, Y 38
O’Kane, M 15, 291–316
O’Keefe, E 179
Olley, GS 331
Olympic Air and Aegean Airlines of Greece, merger prohibited between 169
Onwuzulike v United States of America (‘Onwuzulike’) 299
Orbach, BY 330
ordoliberalism 224
Ordover, J 331, 457
Organisation for Economic Cooperation and Development (OECD) 61, 67–9, 83, 89, 94, 112, 155, 201
APEC-OECD Checklist on Regulatory Reform 84
Budapest regional centre 69
capacity building 69

Competition Committee 67–8, 75, 85, 323
Journal of Competition Law and Policy 67
Seoul regional centre 69
to and soft law for merger control 322, 323, 324, 325
Ornstein, S 430
Osaka Action Agenda 75
over-enforcement extraterritoriality 6
and overlaps 23, 56–7

pacta sunt servanda doctrine 119
Padilla, JA 215, 216, 347
Papadopoulos, A 13, 60–88
parent–subsidiary relationships 16
EU law, undertaking in 399–400
extension of Copperweld Corporation v Independence Tube Corporation 400–401
imputation of liability for infringements 401–8
parents and partially owned subsidiaries and ‘sister’ corporations 400–408
parents and wholly owned subsidiaries 398–400
single economic entities 16, 398–408
substantive rules, applicability 401–8
undertaking in EU law 399–400
expanding concept of 401–8
US antitrust system, logic underlying 398–9
Parisi, JJ 122
Parker, C 269, 279, 280
Patent and Trademark Office (PTO), US 481
patents
advisability of antitrust review 489
alternatives to duty to search/good faith expectation 490
durability commitments 490
FTC IP3 Report 481–8
hold-up problems 17
Procedures (ICN) 105, 232, 233, 324, 334
Recommended Practices on
Dominance/Substantial Market Power (ICN) 100, 123, 349
Reeves, AP 155
regulation
economic theory (Stigler) 192–3
pharmaceutical industry 525–6
regulatory impact statement review bodies 198
resale price maintenance 16
comparative perspective 426–50
fixed resale prices and minimum resale prices 428
general prohibition 438–41
horizontal price fixing 430
interbrand versus intrabrand competition 431–2, 435
law on in EU Member states 445–7
legal position of in EU competition law 438–45
fixed and minimum prices,
application of TFEU Article 101(3) to 441–4
general prohibition 438–41
maximum and recommended resale prices, application of TFEU Art 101(3) to 444–5
legal position of in US antitrust law 432–8
American legal development 432–4
Leegin decision 427, 434–6, 447, 448, 449, 450
post-Leegin development 437–8
maximum resale prices and recommended resale prices 428, 429
minimum 428, 429
Leegin decision see above
price floor 428
Regulation on Vertical Agreements 442–3, 444
Rule of Reason 433, 434, 436, 442
types 428–30
vertical relationships 429–30
Reynolds, RJ 331
Richards, TJ 428
Rill, JF 62, 117
Rio Tinto v Westinghouse 40
Roberts, B 291
Roberts, JV 287
Robertson, AS 13–14, 89–109
Rockwell, DB 45
Rogers, EM 179
Rogers, M 451
Rosch, JT 155, 156
Rosseger, G 451
Rousseva, E 365, 372, 378
Rowley, JW 91
RTE & ITP v Commission (Magill) 456, 475, 507, 508
Rubinfeld, D 328, 469
Rungien, S 369
Rural Press Limited v ACCC 382
Salinger, MA 331
Salkever, DS 523
Salop, SC 336
Samuel, G 125
Schäfer, A 322
Schaub, A 117
Schering-Plough Corp v FTC 527–8
Schmalansee, R 457
Schmidt, H 16, 369–92
Scholz, J 279
Schulenberg, S 328
Schumpeter, J 457, 462
Schwalbe, U 327
Schwartz, B 173
Scott Morton, FM 523
S-curve life-cycle 160, 161
Sector Regulators 153, 154
Sen, A 225
Sengupta, R 141
Serious Fraud Office (SFO), UK 294
Serious Organised Crime Agency (SOCA), UK 302
‘7Up model’ (CUTS) 140–41, 142, 144, 152
Shaffer, G 266, 337
Shafir, E 173
Shanda Interactive Entertainment v Beijing Sursen Electronic Technology 515
Shapiro, C 328, 468
shares, market
Australia 388–9
defining relevant market 384–6
European Union 386–7
United States 387–8
use in market power assessment 384–91
Sherman Antitrust Act 1890 218, 321
basic effects test 23–6
causation 35
comity 32–4
criminal enforcement 37, 246
damage recovery rule 239
direct, substantial and reasonably foreseeable effects 28–32, 58
and effective competitive process concept 162
extradition 305
extraterritorial application in US 23–39
government enforcement agencies 247
‘ignorance of the consequences of one’s actions’ 28
whether intended and/or actual effects 26–8
‘linked’ domestic and foreign harm, remedies for 35–6
outbound export cases 37–9
Section 1
antitrust scrutiny under 416–24
joint and unilateral conduct 394, 395
Section 2 225, 548
innovation and IPRs 455, 479
market power 373, 374, 380, 381, 387, 389, 390, 394, 397
private and public enforcement 247, 248, 261, 262, 263
unilateral conduct 346, 351, 355, 394–5
unilateral conduct 351
Shleifer, A 337
Sibony, O 155
Silberstone, Z 459
Silver v NYSE 261
Silvey, J 276
Singapore, competition law in (2005) 144
Sjöblom, D 78, 108
Slaughter, A-M 91, 94, 121, 126, 211, 234, 348, 366
small but significant and non-transitory increase in price (SSNIP) test 330, 385
Small States Network for Economic Development (SSNED) 138
soft law norms and ICN 231–5
merger control 322–5
networks 63, 233
voluntary frameworks, rise of 8
Sokol, DD 16, 61, 67, 74, 110, 211, 319–44
South Africa, competition authority 147, 225
South Asia Watch on Trade, Economics & Environment (SAW-TEE) 137
Southern African Development Community (SADC) 61, 83
specialty, bars to extradition 307–8
Spiegel, Y 337
standard-setting organisations (SSOs) 489, 490
Staples, merger with Office Depot, 1996 147
State Administration of Industry and Commerce (SAIC), China 514, 516
state involvement in competition law conduct permitted in one, but prohibited in another jurisdiction 52
liability for anticompetitive conduct 54
petitioning the state to adopt anticompetitive measures 53–4
‘true conflict’ cases 52–3
Statute of Monopolies 1623 240
Steering Group, ICN 97, 106, 107, 158
<table>
<thead>
<tr>
<th>Name</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Steiner, RL</td>
<td>431, 524</td>
</tr>
<tr>
<td>Stephan, A</td>
<td>268, 284</td>
</tr>
<tr>
<td>Stephan, J</td>
<td>87, 210</td>
</tr>
<tr>
<td>Stewart, T</td>
<td>213</td>
</tr>
<tr>
<td>Stigler, GJ</td>
<td>192</td>
</tr>
<tr>
<td>StopCartel (Greek NGO)</td>
<td>149</td>
</tr>
<tr>
<td>strategic commercial conduct, TFEU (Article 102)</td>
<td>467–70</td>
</tr>
<tr>
<td>Structural Adjustment Programmes, World Bank</td>
<td>143</td>
</tr>
<tr>
<td>Stucke, ME</td>
<td>14, 155–81, 280</td>
</tr>
<tr>
<td>Stylianou, S</td>
<td>274</td>
</tr>
<tr>
<td>subsidiaries</td>
<td></td>
</tr>
<tr>
<td>partially owned 400–408</td>
<td></td>
</tr>
<tr>
<td>single economic entities 16, 398–408</td>
<td></td>
</tr>
<tr>
<td>wholly owned 398–400</td>
<td></td>
</tr>
<tr>
<td>super-dominance 372</td>
<td></td>
</tr>
<tr>
<td>Supreme Court, US 162</td>
<td></td>
</tr>
<tr>
<td>American Needle, Inc v National Football League</td>
<td>171, 393, 416–20</td>
</tr>
<tr>
<td>Texaco Inc v Dagher</td>
<td>171, 409–12, 418</td>
</tr>
<tr>
<td>Surplus People Project (NGO)</td>
<td>148</td>
</tr>
<tr>
<td>Suslow, VY</td>
<td>50, 226</td>
</tr>
<tr>
<td>Suttmeier, RP</td>
<td>517</td>
</tr>
<tr>
<td>Svetiev, Y</td>
<td>345</td>
</tr>
<tr>
<td>Svetlicinii, A</td>
<td>430</td>
</tr>
<tr>
<td>Swedish Competition Authority</td>
<td>350</td>
</tr>
<tr>
<td>Sweeney, B</td>
<td>93</td>
</tr>
<tr>
<td>Sykes, AO</td>
<td>229, 231</td>
</tr>
<tr>
<td>Symes v Greece</td>
<td>313–14</td>
</tr>
<tr>
<td>Tait, N</td>
<td>291</td>
</tr>
<tr>
<td>Tamoxifen Citrate Antitrust Litigation, In re</td>
<td>528–9</td>
</tr>
<tr>
<td>Tanzania</td>
<td></td>
</tr>
<tr>
<td>Competition Authority 83</td>
<td></td>
</tr>
<tr>
<td>Economic &amp; Social Research</td>
<td></td>
</tr>
<tr>
<td>Foundation 137</td>
<td></td>
</tr>
<tr>
<td>Tarullo, DK</td>
<td>67, 95, 120</td>
</tr>
<tr>
<td>Tasch, W</td>
<td>367</td>
</tr>
<tr>
<td>Taylor, C</td>
<td>459</td>
</tr>
<tr>
<td>Technology Transfer Block Exception Regulation (TTBER)</td>
<td>466, 467</td>
</tr>
<tr>
<td>Teece, D</td>
<td>457</td>
</tr>
<tr>
<td>Telecommunications Act 1996</td>
<td>262</td>
</tr>
<tr>
<td>202</td>
<td>213</td>
</tr>
<tr>
<td>Teleseminar on Competition Advocacy with Lawmakers</td>
<td>98–9</td>
</tr>
<tr>
<td>Telser, LG</td>
<td>431</td>
</tr>
<tr>
<td>Temurshoev, U</td>
<td>337</td>
</tr>
<tr>
<td>territorial perspective, enforcement 4–5</td>
<td></td>
</tr>
<tr>
<td>Tetra Pak International SA v Commission (Tetra Pak II)</td>
<td>379, 380</td>
</tr>
<tr>
<td>Texaco Inc v Dagher, Supreme Court opinion</td>
<td>171, 409–12, 418</td>
</tr>
<tr>
<td>TFEU see Treaty on the Functioning of the European Union (TFEU)</td>
<td></td>
</tr>
<tr>
<td>Timberlane Lumber Co v Bank of America</td>
<td>23, 26, 29, 32, 33</td>
</tr>
<tr>
<td>TOMCO Ltd, Cuts complaint against takeover of by Hindustan Lever Ltd</td>
<td>146</td>
</tr>
<tr>
<td>Tompno, W</td>
<td>203</td>
</tr>
<tr>
<td>Tondino, M</td>
<td>348</td>
</tr>
<tr>
<td>total welfare</td>
<td></td>
</tr>
<tr>
<td>Chicago School, economic efficiency goal 223</td>
<td></td>
</tr>
<tr>
<td>and consumer innovation as bridge between 554–5</td>
<td></td>
</tr>
<tr>
<td>interface between 547–54</td>
<td></td>
</tr>
<tr>
<td>total welfare and consumer, interface between 17</td>
<td></td>
</tr>
<tr>
<td>Trade Law Centre (TRALAC), South Africa</td>
<td>137</td>
</tr>
<tr>
<td>Trade Policy Review Mechanism, WTO</td>
<td>143–4</td>
</tr>
<tr>
<td>transaction costs 216</td>
<td></td>
</tr>
<tr>
<td>transgovernmental networks 121, 125</td>
<td></td>
</tr>
<tr>
<td>Treaty of Lisbon 2007 295–6</td>
<td></td>
</tr>
<tr>
<td>Treaty on the Functioning of the European Union (TFEU) Article 101</td>
<td></td>
</tr>
<tr>
<td>antitrust scrutiny under 416–24</td>
<td></td>
</tr>
<tr>
<td>extraterritorial reach of competition law 42–6</td>
<td></td>
</tr>
<tr>
<td>joint and unilateral conduct 394, 395, 407</td>
<td></td>
</tr>
<tr>
<td>legislative form and economic interpretation 218</td>
<td></td>
</tr>
<tr>
<td>modernisation, and IPRs 465–7</td>
<td></td>
</tr>
<tr>
<td>and NCAs in Europe 252</td>
<td></td>
</tr>
</tbody>
</table>
Article 101(1)
resale price maintenance 438, 439, 440, 441

Article 101(3)
application to fixed and minimum prices 441–4
application to maximum and recommended resale prices 444–5

Article 102
competition law model for developing countries 224
extraterritorial reach of competition law 46–7
innovation and IPRs 463, 467–77
joint and unilateral conduct 394
legislative form and economic interpretation 218
market power 370–73
and NCAs in Europe 252
objective justification 475–7
per se rules and effects 473–5
strategic commercial conduct 467–70
unilateral conduct 345, 351

Article 102(b), ‘exceptional circumstances’ test under 471–3

Trebilcock, MJ 38
TriCor decision, pharmaceutical industry 537–8
TRIPS Agreement see Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

Trust for Community Outreach (NGO) 148
Tschantz, S 330
Turner, DF 224
Twining, W 216

Uganda, competition law 144, 145
Ulrick, SW 327
under-enforcement, extraterritoriality 6
undertaking
whether association of undertaking can also be an undertaking 423–4

concept 406–7
expanding 401–8
and full function joint ventures 412–15
decisions by associations of undertakings 420–23
in EU law, notion and boundaries 399–400
unilateral conduct 345–68
and concerted action, boundary 16
decision-makers 357–9
developing countries 360–64
divergence, resulting 355–7
extraterritoriality and competition law 22–3
institutional capacities 359–60
institutions 357–60
International Competition Network, methods of 349–50
and joint conduct, boundaries 393–425
joint venture see joint ventures (JVs)
ojectives 351–7
parent–subsidiary relationships see parent–subsidiary relationships
survey evidence 351–4

Unilateral Conduct Recommended Practices 100

chair 350
objectives 352, 353, 354
Unilateral Conduct Workbook 350, 354, 360

United Brands Corp v Commission 370, 371, 372, 373

United Kingdom (UK)
Competition Act 1998 41, 61, 217, 446, 556
Competition Authority 556
Competition Commission 556, 558–9
Consumers’ Association 556, 557, 561
Department for International Development 82, 136
Economic & Social Research Council Centre for Competition Policy
268
Enterprise Act 2000 556
Enterprise Act 2002 41, 138, 145,
268, 283, 292, 306
Office of Fair Trading see Office of
Fair Trading (OFT)
Statute of Monopolies 1623 240
Trade and Industry Select Committee
of the House of Commons 557,
559
‘Which?’ (NGO) 145
United Nations (UN)
Conference on Trade and
Development see United
Nations Conference on Trade
and Development (UNCTAD)
Millennium Development Goals 212
United Nations Conference on Trade
and Development (UNCTAD)
70–72, 83, 94, 112, 228
Intergovernmental Group of Experts
on Competition Law and Policy
61, 70, 138
model competition law (1980) 85
Model Law on Competition 2003,
Chapter IV 362, 363
MOU with Portuguese Competition
Authority 84
Set of Multilaterally Agreed
Equitable Principles and Rules
for the Control of Restrictive
Business Practices 362
unilateral conduct 349
United States (US)
American Antitrust Institute 147, 156
antitrust system, logic underlying
398–9
Clayton Antitrust Act 1914 40, 239,
250, 251
Cy Pres rulings 563
Department of Justice see
Department of Justice (DOJ),
US
export cartels 49–51
Export Trading Company Act 1982
49
extraterritorial application of
Sherman Antitrust Act 23–39
see also Sherman Antitrust Act,
1890
Foreign Sovereign Compulsion
Doctrine 52
Foreign Sovereign Immunities Act
(FSIA) 1976 53
Foreign Trade Antitrust Improvement
Act (FTAIA), 1982 27, 28, 31,
32, 35
Horizontal Merger Guidelines 326,
327
international reactions to
extraterritorial reach of US law
40–41
market power
definitions 373–5
interlink with abuse, categorisation
380–81
market shares 387–8
pharmaceutical industry 537–9
resale price maintenance, legal
position in antitrust law
American legal development
432–4
Leegin decision 427, 434–6, 447,
448, 449, 450
post-Leegin development 437–8,
447
Sentencing Guidelines 288, 289
State Attorney Generals (State AGs)
250–52
state involvement 52–4
Supreme Court see Supreme Court,
US
Webb-Pomerene Act 1918 49
United States v Colgate & Co 433
United States v Grinnell Corp 373
United States v LSL Biotechnologies
29–30
United States v Microsoft Corp 381
United States v Pilkington 39
United States of America v Cotroni
(“Cotroni”) 299
Upward Pricing Pressure (UPP) 330, 331
Uruguay Round 61
Vagliasindi, M 347
Varney, CA 160, 355
Verdier, P-H 95
Verizon Communications Inc v Law Offices of Curtis v Trinko 262
Vickers, J 365
Vietnam, competition law in (2005) 144
Vihoe Europe BV v Commission 400, 403, 404
Vogelenzang 377, 378, 383
VOICE (consumer group) 146
Waarden, F van 267
Wagner-von Papp, F 13, 21–59
Walker Process Equipment Inc v Food Machinery & Chemical Corp 261, 507
Waller, SW 155
Warman, M 291
Washington Consensus 210
Wassmer, IF 320
Waterson, M 431
Watson, A 214
wealth transfers 5–6, 7
Wearden, G 525
Weber-Waller, S 367
Wenzel Bulst, F 359
Werden, G 327, 330, 331, 395
West African Economic and Monetary Union (WAEMU) 61, 69, 72, 362
Weyerhaeuser Co v Ross-Simmons Hardwood Lumber Co 263
Whish, R 197, 441
White, A 291
Widegren, M. 78, 108
Wilcox, C 8
Wilks, S 77, 282, 284, 285
Williamson, J 210
Williamson, OE 332
Willig, R 457
Wils, W 406
Wilson, JQ 194
Winter, S 457
Wise, M 203
Wool, D 45
Working Group on the Interaction between Trade and Competition Policy (WGTC), WTO 213
Working Groups, ICN 97, 100, 101–2
Advocacy 102
Unilateral Conduct see Unilateral Conduct Working Group, ICN
World Bank 83, 143
World Trade Organisation (WTO) 8, 89, 94, 209
Ministerial Conference, Doha (2001) 96
non-discrimination principle 214
Trade Policy Review Mechanism 143–4
Working Group on the Interaction between Trade and Competition Policy 213
Wu, L 331
Yao, X 517
Yassine, M 137
Zambia, Competition and Consumer Protection Authority 148
Zanettin, B 37
Zedner, L 277
Zimmer, D 327
Zinman, J 173