Index

accountability see transparency
Adalid, S. 129
administrative monopoly abuse see Chinese administrative monopoly abuse
administrative monopoly abuse regulation, EU 156–61
mandatory requirements and proportionality principle 161, 162–3, 164
administrative simplification to improve competition see EU Services Directive and pro-competitive regulation, administrative simplification to improve competition
advertising and tracking of online users’ activities, EU 201–2
Aguado i Cudolà, V. 111, 115, 126, 127, 132
air space supervision, EU 91
Albrecht, J. 199
Aldomà i Buixadé, I. 124, 129
Allen, D. 218
Almunia, J. 183–4, 200, 201
Alves, D. 179
Anderson, R. 278–9, 280, 282
anti-competitive effects, criticism of, EU Data Protection Directive reform package 193–4
anti-competitive regulation, EU Services Directive 108–10
anti-pollution surveillance, EU 91
Arbix, G. 52, 53
Arias Martínez, M. 130
Arriño Ortiz, G. 111
Arowolo, O. 106
Arrowsmith, S. 290
Australia, cases

ABC Production Facilities, Investigation 26–7
AIS Swim School 25–6
Defence Housing Australia 28–9
Meteorological Services to Aviation 27–8
NBN Co 19–25, 34–5
New South Wales, State Valuation Office 29–30
New South Wales v. Commonwealth 5
Queensland, Cattletrain 30–31
Victoria, City of Ballarat (childcare services) 31–2
Australia, competitive neutrality and government’s market advantage 3–39
business pricing decisions 16–17
businesses and activities subject to competitive neutrality policy 13–15, 31–2
commercial rate of return 33–4
Commonwealth Competitive Neutrality Policy Statement 14, 25
community-service obligations 16–17
Competition and Infrastructure Reform Agreement 13, 38–9
competition law and policy reform 4–6
Competition Policy Review 35–6
Competition Principles Agreement 6, 10, 14, 17, 37–8
Council of Australian Governments (COAG) 13
Dawson Review 36
Financial Management and Accountability Act 14–15
Government Business Enterprises (GBEs) and private-sector regulation, subject to 10–11
Government Business Enterprises (GBEs) as significant businesses 14
Hilmer Report 5–6, 8–9
markets and role of government 6–7
National Competition Council (NCC) 6, 17, 32–3
National Competition Policy (NCP) reforms 6, 10, 15, 17, 33
net competitive advantage, determination of 17, 25–6
policy implementation 16–17
population dispersal effects 7
Productivity Commission 33–4
public benefits of competitive neutrality policy 12–13
reform progress measurement 32–4
relationship with other policy objectives 15–16
Trade Practices Act limitations 4–5
Australia, competitive neutrality and government’s market advantage, competitive neutrality complaints 18–32
Australian Government Competitive Neutrality Complaints Office (AGCNCO) 21–4
Civil Aviation Safety Authority (CASA) 27–8
Commonwealth Competitive Neutrality Complaints Office (CCNCO) 25–8
Commonwealth Competitive Neutrality Policy Statement 25, 26
Commonwealth government businesses 19–29
competitive advantages conferred by market position 21–2
complaints procedures 18–19
expected rate of return on assets and related issues 23–5
fund commitment as shareholder loan 24–5
licensing requirements for the provision of property sales and management services 28–9
ministerial determinations 25
pricing discounts 50–51
pricing of infrastructure in greenfield developments 22–3
public-interest test process 32, 35
risk broadbanding and rate of return on assets 24
sale of consumer goods and studio rentals as business activities subject to competitive neutrality 26–7
tender process complaints 22
Australia, competitive neutrality and government’s market advantage, competitive neutrality policy as response to market distortion 7–12
competitive advantage measurement 11–12
competitive disadvantages arising from government ownership 8
Hilmer Report competitive neutrality recommendations 8–9
resource allocation distortions 7–8
specific factors 7–8

Badinger, H. 121
Badura, P. 44, 45, 46
Bailey, D. 106
balancing approach search, administrative monopoly abuse
see under China, administrative monopoly abuse
Baldez de Almeida, L. 249, 251
Baldwin, R. 107, 281
Bandeira De Mello, C. 47
Bansal, N. 299
Baquero Cruz, J. 112
Barnard, C. 116, 117, 120, 127
Barrionuevo, Arthur 239–60
Bassi, E. 71
Bennett, C. 193
Bercovici, Gilberto 40–54
Bettencourt Nunes, Leonor 103–34
bid-rigging prohibition, India 278–9
Bilac Pinto, F. 46
Index

Blakemore, M. 65
Blume, P. 190
'Bolkestein' Proposal, EU Services Directive 115–17
Bolton, P. 177
Boner, R. 143
Borges Barbosa, D. 53
Braga, O. 46–7
Brazil, investment targets in pay-TV market 239–60
capital expenditure 249–50
economically attractive municipalities, parameters for identifying 247–51
inhabitants without access to service 248
monopolistic regime of excludivity comparison with competition 246
National Communication Agency (ANATEL), regulatory power 253–5
new operators with compulsory coverage in the pay-TV market, entry of 248–51
regulatory agencies, and technical expertise 241–2, 243–4
Brazil, investment targets in pay-TV market, Law on Conditional Access Services (SeAC Law) 255–9
authorization granted by ANATEL 257
compulsory coverage of geographical areas, absence of 258–9
and free competition 256
licence conversion provisions from previous regime, absence of 257
non-compulsory nature of 256–7
universal services obligation 256, 259
Brazil, investment targets in pay-TV market, National Communication Agency (ANATEL) Questionnaire 239–55
economic effects of proposal 244–7
and freedom of initiative rule 253
inappropriate consultation 241–3
investment incentives compromised 244–5, 254–5
lack of conformity with the law 251–3
and non-compliance with General Telecommunications Law (LGT) 242, 243, 255
power asserted by ANATEL, and broadband coverage 240–41, 243, 255
proposal contained in 243–4, 255
public consultation 239–40
technological neutrality compromised 244
violation of the law and universal service obligation 252–3
Brazil, oil policy and Petrobrás 40–54
competition policy 50–52
constitutional concept of monopoly 43–5
cross-subsidies 49
depdeepwater oil production
development (PROCAP) 53–4
equalization costs to match the prices of oil by-products 49
Freight for Uniform Costs levy 49
fuel adulteration and tax evasion problems 49
fuel market formation 40–42
fuel supply market and administered prices 48–50
importation of oil by-products (1997) 49
innovation and competition, relationship between 52–3
liberalization of fuel prices 49–50
National Extended Consumer Price Index 49–50
national fuel supply system as public utility 46–8
National Oil Agency, oil product sales, regulation of 47–8, 49
National Oil Council control and Decree-Law No. 3.236/1941 41–2
Ninth Amendment to Constitution and abolition of state monopoly 45
oil imports and balance of trade (1940s) 41–2
Petrobrás, indirect price control powers 50
Petrobrás, and industrial and innovation policies 53–4
Petrobrás monopoly in imports of oil and oil by-products 42
Petrobrás, Office of Distribution of Oil By-Products (EDIPE) 42–3
Petrobrás purchasing power 50–54
state intervention and capital reproduction 43
state monopoly and fuel supply 42–6
state monopoly with a 'reservation to breach' (current situation) 46
system of direct public activity 45
Brazil, water and sanitation services 166–80
big client segments 178–9
competition aspects, agency risk 176–7
economic crisis effects 174
efficiency levels 171–2, 179
illegality of alternative sources 178
individual incentives format 176
long-term financing, shortage of 171
non revenue water (NRW) 169
R&D research levels 172
regulation requirements 173–5
Sanitation Law 173–5, 178
sanitation situation and coverage 167–70
service provision competition 176–9
tax structure and inefficiencies 179
unfair competition 178
universalization investment 170–73
water loss level 169
yardstick competition 176, 177
Bresnahan, T. 247
Brill, J. 185
Brockhoff, J. 200
Bryson, J. 181
Bucheb, J. 46, 47
Buendia Sierra, J. 302
business activity (state) and subsidiarity principle see Peru, state business activity and subsidiarity principle
Government Business Enterprises (GBEs), Australia 10–11, 14
operations costs, increase in, Venezuelan over-regulation 218–19
pricing decisions, Australian competitive neutrality 16–17
subject to competitive neutrality policy, Australia 13–15, 31–2
transaction costs, increase in, Venezuelan over-regulation 217–18, 222–4
Butts, C. 203
Caglia, M. 65
Campbell, J. 201
Capobianco, A. 3
Carvalho, G. 42, 43
certificate-trading schemes, EU 308–9
Céspedes Zavaleta, A. 58
Chabaud, L. 120
Chakravarthy, S. 277–95
Chemerinsky, E. 154, 156
Cheng, Thomas K. 135–65
Chianale, G. 297
China, administrative monopoly abuse 135–65
Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), case against 149
Anti-Monopoly Law 135, 139
‘AQSIQ’ 143
balancing approach search 151–65
balancing approach search, EU comparison 156–61, 162–3, 164
balancing approach search, free movement of goods 157
balancing approach search, non-discriminatory administrative measures that hinder internal trade 151–2, 162
balancing approach search, US comparison 152–6, 163
Chongqing City mineral water promotion 138
Index

decline 139
examples 136–9
Heyuan municipal government and GPS transportation tracking 146–8
‘hukou’ system and free movement of persons, lack of 157
internal trade barriers 139
overview 136–40
regional border checkpoints 138–9
regional protectionist measures, problem with focus on 150–51, 164
Shanghai discriminatory car licensing policy 136–7
Shanxi Joint Transport Group and Taiyuan Railway Bureau 148, 150
Shuchen County protective measures 137–8
soft regional protectionism, rise in 140, 151
Taiyuan Railway Bureau case 148, 150, 164
China, administrative monopoly abuse, laws, relevant 140–51
abuse of administrative monopoly, inclusion of 142–4
administrative inaction or omission cases 150
Anti-Monopoly Law 142–4
Anti-Monopoly Law, implementation 144–51
Anti-Unfair Competition Law 140–42, 144
early laws and regulations 140–42
enforcement cases 146–51
National Development and Reform Commission (NDRC) responsibilities 145, 148, 152
penalty provisions 141–2, 143–4, 147
price-related monopolistic agreements 145
private abuse-of-administrative-monopoly cases 149–50
public-safety defense 147–8
purchases of goods or services from designated undertakings, government’s prohibition of 143, 144–5, 146–8
State Administration for Industry and Commerce (SAIC) responsibilities 144, 145, 147–8, 152
CHP (combined heat-and-power) technology subsidization, EU 307–9
Christiansen, H. 3–4
Cintioli, F. 110
Clarke, J. 278
cloud computing providers and data transfer, EU 197–8
Coase, R. 218
Cohn, G. 41
Coleman, C. 219
Coma, M. 45
commercial rate of return, Australia, and competitive neutrality 33–4
commercial re-use of public sector data see EU, regulation of public sector information, commercial re-use of data and national law
community-service obligations, Australia 16–17
competition law and data protection regulation, interface between see EU, personal data protection, interface between competition law and data protection regulation
competitive neutrality and government’s market advantage see Australia, competitive neutrality and government’s market advantage
constitution
constitutional concept of monopoly, Brazil 43–5
formula restricting state business activity, Peru 59–60
patent and copyright as constitutional rights, US 265
Venezuelan National Constitution, and suppression of competition
State-initiated restraints of competition

policy agenda 215–16, 229, 233–4
consumer access to usage data, benefits of, EU Data Protection Directive reform package 198
consumer goods, sale of, as business activity subject to competitive neutrality, Australia 26–7
consumer protection, EU, personal data protection 185–6, 204
corruption as barrier to efficient and sustainable development, India 279–80, 282
fuel adulteration and tax evasion problems, Brazil 49
country-of-origin principle, EU Services Directive 116–17, 124
Craig, P. 158
Crespy, A. 115
cross-border situations EU Data Protection Directive 186, 188
regional border checkpoints, China 138–9
cross-subsidies Brazil, oil policy and Petrobrás 49
protection, EU, regulation of public sector information 76
Curiel Leidenz, Claudia 213–38
Cutts, M. 131
da Rocha Viana, C. 42
Dalla Costa, A. 53, 54
Davies, G. 117
Dawar, K. 278, 279, 286, 288, 290, 291
De Anhaia Mello, L. 46
De Burca, G. 158
De Mattos Dias, J. 43, 53
De Moraes, A. 46
De Waele, H. 119
Del Carmen Alveal Contreras, E. 42, 43
Delgado, J. 121
Derenne, J. 301
Dewatripont, M. 177
Diez Sánchez, J. 130
digital content
information markets, emergence of, EU 79–80
libraries and digitised content, EU 93, 97
public-private partnerships for digitisation of data, EU 95–6
see also online services
discrimination
car licensing policy, China 136–7
preferences, discriminatory nature and hierarchy of, India 285–6
see also non-discrimination
dispute resolution mechanism, India 299–300
dominant position abuse, EU, personal data protection 202, 205–6, 209
Domingues, M. 131
Drexl, Josef 64–100, 206
Dutra, Pedro 239–60
economic crisis effects, Brazil 174
economic effects, Brazil, investment targets in pay-TV market 244–7
economic incentive rationale for patents and copyrights, US 265–7, 271
economic reforms and Washington Consensus, Peru 56
educational, research and cultural establishments, EU, regulation of public sector information 72–3, 76, 83–4
Edwards, E. 200
efficiency
inefficiency of state-owned enterprises, justification for, Peru, state business activity and subsidiarity principle 60
market efficiency concerns, Venezuela, over-regulation, and suppression of competition policy agenda 220
efficiency levels, Brazil, water and sanitation services 171–2, 179
EFTA, Creditinfo Lánstraust v. Registers Iceland 75
Eifert, M. 53
Elliot, K. 279
entry barriers
EU Services Directive and pro-competitive regulation 105–6

Venezuelan SMEs, over-regulation, and suppression of competition policy agenda 218, 226, 227–8

EU

administrative monopoly abuse regulation 156–61
administrative monopoly abuse regulation, mandatory requirements and proportionality principle 161, 162–3, 164
administrative monopoly abuse regulation, TFEU Article 34, quantitative restrictions on imports and measures having equivalent effect (MEQR) 157–60, 162, 163

balancing approach search, EU comparison with China 156–61, 162–3, 164
bonus/malus system for milk levies according to quality 307
certificate-trading schemes 308–9

CHP (combined heat-and-power) technology subsidization 307–9
functionalist approach 303–4, 307
innovation and standards-essential-patents (SEPs) 273–4

state aid definition 303–4
subsidies, enforcement power and sanctions 301
subsidies and public control of decision to grant and finance aid 304–5

subsidy loopholes, granting aid without assuming control over the resources 305–7
subsidy rules 300–301, 302–3

TFEU and open internal market 156–7, 160–61
EU, cases

Aéroports de Paris v. Commission 92
Bond van Adverteeders 118

Cassis de Dijon 105, 116, 118, 158–9, 161
Commission v. Austria 185
Commission v. Denmark 119
Commission v. Germany 185
Commission v. Ireland 157, 158
Commission v. Italy 88, 105, 157, 160
Commission v. UK 157–8

Compass 66, 88–91, 92–3, 100
Consorzio Industrie Fiammiferi 208, 209
Consten and Grundig 113
Corsten 119
Dassonville 105, 113, 118, 157, 158

Deutsche Telekom 208–9
Diego Calì 91
FAPL and Murphy 113
FENIN 87–8

GB-Inno 208
Gebhard 119
Google/DoubleClick 200–201, 203

Gouda 118
Höfner 87, 88, 92
In Re Google Inc. (Buzz feature) 208–9

Keck and Mithouard 159–60
Les Verts v. European Parliament 206
Magill 67–8, 86, 92, 93

Nungesser and Eisele v. Commission (‘maize seeds’) 82
Parliament v. Council 186

Säger 116
SAT 91

van Binsbergen 118
Van Eycke 208

EU, personal data protection 181–210
cross-border trade considerations 186

consumer protection 185–6
implementation reports and unresolved problems 189

collection and processing of personal data 187
regulatory framework evolution 185–91
regulatory approach 192–9
regulatory impact 182–4

collection and processing of personal data 187
collection and processing of personal data 187
collection and processing of personal data 187
personal data, control over 186–7
personal data definition 186
sensitive personal data 187
anti-competitive effects and growth restrictions, criticism of 193–4
cloud computing providers and data transfer 197–8
Commission’s ‘consistency mechanism’ 191
consent requirements 190
consumer access to usage data, benefits of 198
cooperation among the supervisory authorities, reinforcement of 191
cross-border data processing and international transfers, increase in 188
data misuse concerns 204–5
data portability right 196–9, 205
data portability right, standardization of data formats 199
data protection in law enforcement sector 189–90
and e-Privacy Directive 195
European Data Protection Board role 191
exporting of personal data to another service 196–7
harmonization benefits 192
legal fragmentation costs 189–90
mandatory administrative sanctions for intentional or negligent infringements, criticism of 193
national supervisory authorities, reinforcement of role and powers 191
and networked society 188
notification fatigue and desensitization, avoidance of 195
organizational burdens 192, 195, 197–8
personal data access and transfer right 196–7
personal data breaches, requirement to notify 194–5
remedies and sanctions, improvements in 190–91, 193
right to be forgotten 190, 192–3
EU, personal data protection, interface between competition law and data protection regulation 183–4, 200–210
advertising and tracking of online users’ activities 201–2
Article 102 TFEU market definition enforcement and data-driven practices 203–6, 208
automatic data transfer concerns 209–10
behavioural advertising 202
competition dimension of personal data 200–202
conflict potential between data protection and competition policies 205–10
consumer harm assessment 204
data misuse concerns 204–5
dominant position abuse 202, 205–6, 209
fundamental rights 207
human-rights dimension 206–7
knowledge sets, different types of 203–4
merger control 200–201
personal data from online social interactions 204
personal data-related issues and dominant position abuse 202
private entities’ liability 208–9
Treaty commitment to ‘undistorted competition’ 206–7
Treaty loyalty clause 207–8
Web 2.0 technologies 188, 202, 206
EU, regulation of public sector information (PSI) 64–100
competition dimension 67–8
future monitoring, need for 99–100
history of 96–8
industrial policy approach 66, 97, 98
personal data protection 71
public sector bodies, definition of 70
Index 321

public sector information, definition of 70–71
Public Sector Information (PSI) Directive 64–5
Public Sector Information (PSI) Directive, EU competition law overlap 66, 100
re-use of PSI, recognition of obligation to allow 69
scope of application 69–73
sector-specific regulation 69–77
TV programme listings 67–8, 86, 92
EU, regulation of public sector information (PSI), commercial re-use of data and national law 69–74
charging policy, exclusive rights’ restrictions 76–7, 100
charging policy, marginal costs 75–6, 78, 88
commercial re-users producing substitutable information 78–9
cross-subsidisation protection 76
documents falling within public task, exceptions for 73, 97–8
educational, research and cultural establishments 72–3, 76
format decisions 73–4, 76–7
legal reasons for limiting access 71
media archives of public broadcasters, sub-licensing 72
non-discrimination for comparable categories of re-use 74, 97
non-discrimination for public sector body acting as competitor of private re-users 75, 78
third parties holding IP rights 71–2, 82
EU, regulation of public sector information (PSI), competition policy evaluation 77–86
commercial re-users producing substitutable information 78–9
digital information markets, emergence of 79–80
educational, research and cultural establishments, PSI exemption 83–4
exclusive rights, effects on competition 81–3
free-riding protection 82
Google business strategy 78, 79
harmonisation requirements 85
libraries and digitised content 93, 97
marginal-cost pricing strategy effects 78, 79, 84
marginal-cost standard, anti-competitive effect 90–91
marginal-cost standard and production of PSI 80–81
prevention of competition in upstream market where information is produced 78–80
public broadcasting, PSI exemption 84, 100
sector-specific exemptions 83–4
EU, regulation of public sector information (PSI), public sector bodies as undertakings 86–96
air space supervision 91
anti-pollution surveillance 91
application of PSI Directive to undertakings, uncertainties in 94–6
competition restraint in downstream information market 93
exercise of public powers not of an economic nature 89–91
holder of PSI as undertaking 87–94
limitations 87–8
public-private partnerships for digitisation of data 95–6
re-use of publicly held data 89–91
statutory obligation to provide certain information 90–92
Transparency Directive and use of public undertaking term 95, 96
undertakings and general economic interest, differences between 94
EU Services Directive and pro-competitive regulation 103–34
anti-competitive regulation 108–10
barriers concerning the liberal professions 109
‘Bolkestein’ Proposal 115–17
case-law, inspiration from 118–19
CJEU ‘state action doctrine’ 106
CJEU’s market-access approach 105
competition in market of services 114–23
convergence between regulation and competition aims 110–11, 112–14
country-of-origin principle 116–17
delegated regulation 107
entry barriers 105–6
free market access and market integration 104–7, 112–13
freedom of establishment 118–19
freedom of services 113–14
fundamental freedoms, regulation and implementation of 111, 112–14
gambling and healthcare exclusions 120
intellectual property rights, protection of 113–14
invisible administrative barriers 109–10
legal barriers to free movement of services 122–3
liberalisation of network industries 111
mutual recognition principle and free movement of services 116–17
natural monopolies 110–11
non-discrimination and proportionality principles 118, 119
original version, criticism of 115–17
prohibited requirements 119
quota and distance restrictions 109
regulation, reasons for 106–9
regulation as tool to eliminate barriers 106–7
regulatory barriers 108–9
scope of application 119–21
sector-specific exclusions 120
’single market imperative’ in competition policy 112–13
technical reasons for regulation 107–8
trade-enhancing effects 121–2
EU Services Directive and pro-competitive regulation, administrative simplification to improve competition 123–32
administrative burdens as legal barrier 123–5
authorisation schemes and requirements, elimination consideration 127
elimination of country-of-origin principle in favour of country-of-destination principle 124
freedom of establishment 126
necessity and proportionality 126–8
plain language use 130–31
points of single contact 128–30, 132
principles and guidelines 125–32
swiftness, transparency and predictability requirements 131–2
Evenett, S. 278, 283
exclusive rights, EU, regulation of public sector information 76–7, 81–3, 100
exports growth, India and public procurement 282–3
software services, India 282–3
expropriation motivations, Venezuela 223, 230, 234–6
federal regulatory framework, India 286
federalist systems and subsidy competition 298, 299
Fels, A. 148
Fichtner, N. 116–17
Fikentscher, W. 51
Finn, P. 7
Flett, J. 299
Forgioni, P. 50–51
forgotten, right to be, EU Data Protection Directive reform package 190, 192–3
Fox, E. 165
free competition investment targets in pay-TV market, Brazil 256
Index

meaning of 263–4
re-introduction of, US 267–8
and social market economy 56–9
free market
access and market integration, EU 104–7, 112–13
balancing approach search, China 157
legal barriers to free movement of services, EU 122–3
liberalization of fuel prices, Brazil 49–50
mutual recognition principle and free movement of services, EU 116–17
freedom of initiative rule, investment targets in pay-TV market, Brazil 253
Frison-Roche, M. 107
Fukuyama, F. 219
fundamental rights, EU 111, 112–14, 207

Galbraith, J. 50
Galgano, F. 43
Gamero Casado, E. 129, 130
Gergen, M. 270
Germany
“Germany’s Gold” 72, 84
Hesse Data Protection Act 181
Gómez Sigala, E. 217
Google business strategy 78, 79
see also under EU, cases for Google cases
Gordon, D. 290
Gorjão-Henriques, M. 125
governance impact, public procurement, India 278–80
government market advantage and competitive neutrality see Australia, competitive neutrality and government’s market advantage
GPS transportation tracking, China 146–8
Graham, R. 116
Grau, E. 43, 44
green electricity surcharges 306
greenfield developments, infrastructure pricing 22–3
Greenleaf, G. 182
Grossman, E. 115
Guan, B. 138, 139, 140
Gurria, A. 182
Hancher, L. 300, 301
Hanrahan, I. 14, 16
harmonization benefits, EU Data Protection Directive reform package 192
harmonization requirements, EU, regulation of public sector information 85
Harris, H. 142
Hatje, A. 117
Hatzopoulos, V. 114, 124, 126
Hauptkorn, B. 48, 50
Healey, Deborah 3–39
Hoda, A. 286, 292, 293
Hoppmann, E. 51
Hovenkamp, H. 53
Huang, J. 146
Huang, Y. 136, 142

imports
oil by-products, Brazil (1997) 49
oil imports and balance of trade (1940s), Brazil 41–2
state as importer, effects of, Venezuela 226, 227
India, public procurement and benefits of competition policy 277–95
accountability and transparency requirements 286–7, 291, 292–3
bid-rigging prohibition 278–9
corruption as barrier to efficient and sustainable development 279–80, 282
discriminatory nature and hierarchy of preferences 285–6
dispute resolution mechanism 299–300
export growth 282–3
federal regulatory framework 286
General Financial Rules (GFR) 286–7
governance impact 278–80
improvement suggestions 291–3
integrity in administrative process of procurement 279
legal instruments, need for 280–81
legal instruments, requirements 281–2
negotiated rate contracts 287
non-discrimination provisions 281
open tendering 287
petty purchase of goods or works 288
price preferences and social responsibility 286, 288–9, 291, 292
railways, postal, telecommunication and defence sectors and global tendering 288
redress mechanism for unsuccessful and disappointed bidders 300–301
rent-seeking concerns 279–80, 282
software services exports 282–3
transparency framework 281–2, 283
unsuccessful bidders, lack of transparency for 299
India, public procurement and benefits of competition policy, WTO Agreement on Government Procurement (GPA) 277, 280–81, 282–4
accession considerations 291–3
developing countries, key elements of interest 283–4
membership and access to procurement markets of other countries 282–3
innovation
and competition, relationship between 52–3
and intellectual property rights, US 271, 272–4
policies, Brazil 53–4
and standards-essential-patents (SEPs), EU 273–4
intellectual property rights protection of, EU Services Directive 113–14
as state-initiated restraints of competition see US, intellectual property rights as state-initiated restraints of competition
third parties holding, EU regulation of public sector information 71–2, 82
investment targets in pay-TV market see Brazil, investment targets in pay-TV market
Italy, Ribes (re-use of public service information) 90
Jaeger, Thomas 296–311
Janssen, K. 86
Jenny, F. 278
Jones, A. 105, 106
judicial bodies, inclusion in competition principles, Venezuela 215
Kaercher Loureiro, L. 47
Karpenschif, M. 128
Kelly, S. 199
Kliksberg, B. 219
Klocker, P. 72
Knorr, A. 297
Konder Comparato, F. 43, 45
Kovacic, W. 185
Kox, H. 121
Kresalja, B. 56, 57, 58, 59, 61
labour relationships’ regulation, Venezuela 219
labour solvency and job security, Venezuela 226, 227–8
Laffont, J.-J. 176, 177
Lagos, Y. 197, 199
Landes, W. 267
language, plain language use, EU Services Directive 130–31
Leitão Marques, M. 124, 125, 126, 128, 129, 131
Lianos, I. 207
liberalization see free market
libraries and digitised content, EU 93, 97
see also digital content
Lima Sathler, M. 49
Index

Lindh, P. 113
long-term financing, shortage of, Brazil water and sanitation services 171
Lucinda, C. 245, 247
Lundqvist, B. 65, 69, 88, 91, 92, 93, 94
McAfee, R. 106
Machlup, F. 44
Mangabeira, F. 43
Manuel Leitão Marques, Maria 103–34
marginal-cost pricing strategy effects, EU, regulation of public sector information, competition policy evaluation 78, 79, 84
marginal-cost standard, EU, regulation of public sector information 80–81, 90–91
market advantage and competitive neutrality see Australia, competitive neutrality and government’s market advantage
market concentration bias, Venezuela 218–19
market distortion, and competitive neutrality see Australia, competitive neutrality and government’s market advantage, competitive neutrality policy as response to market distortion
market efficiency concerns, Venezuela 220
Martimort, D. 177
Martínez Gutiérrez, R. 130
Martins, L. 41
Maydel, N. 123
Mayer, H. 44
Means, G. 48
media
archives of public broadcasters, sub-licensing, EU 72
investment targets in pay-TV market see Brazil, investment targets in pay-TV market
public broadcasting, public sector information exemption, EU 84, 100
TV programme listings, EU 67–8, 86, 92
merger control, EU personal data protection 200–201
Michel, V. 120
Miklin, E. 115
monopoly
abolition of state monopoly, Brazil 45
administrative monopoly abuse see China, administrative monopoly abuse
natural monopolies, EU Services Directive 110–11
regime of exclusivity, Brazil, investment targets in pay-TV market 246
state monopoly and fuel supply, Brazil 42–6
Monteagudo, J. 122
Morgan, B. 107, 108
Motta, M. 51
Moura e Silva, M. 52
mutual recognition principle and free movement of services, EU 116–17
negotiated rate contracts, India 287
networked society, and EU Data Protection Directive 188
Ning, S. 146
non-discrimination
EU regulation of public sector information 74, 75, 78, 97
and proportionality principles, EU Services Directive 118, 119
public procurement, India 281
see also discrimination
Ochoa, C. 56, 57, 59, 61
Ohlhausen, M. 201
oil policy see Brazil, oil policy and Petrobrás
Oliveira, Gesner 166–80
online services
advertising and tracking of online users’ activities, EU 201–2
personal data from online social interactions, EU 204
Web 2.0 technologies, EU, personal data protection 188, 202, 206
see also digital content
open tendering, public procurement, India 287
O’Reilly, T. 202
organizational burdens, EU Data Protection Directive reform package 192, 195, 197–8
Ortiz Neto, J. 53, 54
Osei-Lah, K. 282
over-regulation, and suppression of competition policy agenda see Venezuela, over-regulation, and suppression of competition policy agenda
Owen, B. 136
Pardo, J. 127
Parisio, V. 127, 132
patents see intellectual property rights
Paterson, I. 109
pay-TV market, investment targets see Brazil, investment targets in pay-TV market
penalty provisions, China, administrative monopoly abuse 141–2, 143–4, 147
Pérez Fernández, J. 128
Peritz, Rudolph J.R. 261–74
personal data protection
EU see EU, personal data protection public sector information 71
Peru, state business activity and subsidiarity principle 55–63
constitutional formula restricting state business activity 59–60
economic reforms and Washington Consensus 56
free competition principle of social market economy 56–9
inefficiency of state-owned enterprises, justification for 60
Law on the Repression of Unfair Competition 60
parliamentary authorization of exercise of state business activity 61
private offer, lack of real or potential 62–3
public interest or national interest, justified 61–2
restrictive role 59–62
state business activity restrictions and competition rules 60–61
state as guarantor 57–8
subsidiarity principle, essential content 61–2
supply and demand relationship 62–3
welfare benefit provision 60
Petit, N. 110
Philip, G. 53
Picker, R. 184
Pollock, R. 65
population dispersal effects, Australia 7
Portugal, zero licensing and EU Services Directive 125, 127
Posner, R. 267
Possas, S. 52
Potter, A. 149
prices and pricing control, Brazil, oil policy and Petrobrás 50
discounts, competitive neutrality complaints, Australia 50–51
fuel supply market and administered prices, Brazil, oil policy and Petrobrás 48–50
infrastructure in greenfield developments, Australia 22–3
marginal-cost pricing strategy effects, EU, regulation of public sector information 78, 79, 84
preferences and social responsibility, India 286, 288–9, 291, 292
price-related monopolistic agreements, China 145
private abuse-of-administrative-monopoly cases, China 149–50
private actors, distortion of competition to prejudice of, Venezuela 225–8
private entities’ liability, EU personal data protection 208–9
private property guarantee, corrosion of, Venezuela 233–6
private re-users, EU regulation of public sector information 75, 78
private sector, regulation, Government Business Enterprises (GBEs), Australia 10–11
privatization of state-owned monopolies, Venezuela 215
privileges for political reasons, effects of, Venezuela 220, 226, 227–8
property intellectual see intellectual property rights
licensing requirements for provision of property sales, Australia 28–9
proportionality principle
administrative monopoly abuse regulation, EU 161, 162–3, 164
EU Services Directive 118, 119, 126–8
protectionism, regional measures, China 140, 150–51, 164
public activity, system of direct public activity, Brazil 45
public benefits of competitive neutrality policy, Australia 12–13
public broadcasting, public sector information exemption, EU 84, 100
public control of decision to grant and finance aid, EU 304–5
public procurement policy see India, public procurement and benefits of competition policy
public sector information regulation see EU, regulation of public sector information
public utility, national fuel supply system as, Brazil 46–8
public-interest test process, Australia 32, 35
public-private partnerships for digitisation of data, EU 95–6
public-safety defense, China, administrative monopoly abuse 147–8
purchases of goods or services from designated undertakings, China 143, 144–5, 146–8
purchasing power, Petrobrás and Brazil oil policy 50–54
Quaglino, M. 43, 53
R&D research levels, Brazil 172
Raghavan, C. 291
Randall, L. 43, 49, 54
Reding, V. 181
regional border checkpoints, China, administrative monopoly abuse 138–9
regional economic integration zones, lack of subsidy rules 299
regional protectionism, China 140, 150–51, 164
regulation of public sector information see EU, regulation of public sector information
regulation, reasons for, EU Services Directive 106–9
regulation requirements, Brazil, water and sanitation services 173–5
regulatory agencies and technical expertise, Brazil, investment targets in pay-TV market 241–2, 243–4
regulatory approach and impact, EU, personal data protection 182–4, 192–9
Reich, N. 51, 119
Reiss, P. 247
Rentrop, T. 115
resource allocation distortions, Australia 7–8
Richardson, J. 281
Ricolfi, M. 75, 95
Rodríguez Font, M. 127
Rosch, J. 201, 206
Rosen, J. 193
Rovati, A. 71
Rubini, L. 296, 298, 300, 301, 302, 303
Ruy Barbosa, A. 46
Säcker, F. 301
Salomão Filho, C. 53
Sampson, A. 40
sanctions
EU Data Protection Directive reform package 190–91, 193
State-initiated restraints of competition

and incorporation of precautionary measures, Venezuela 218–19, 222–4, 230, 235–6
sanitation services see Brazil, water and sanitation services
Santiago Iglesias, D. 132
Sauron, J.-L. 130
Sawkins, J. 177, 178
Schellmann, G. 298, 299
Schumpeter, J. 52, 53
Semmelmann, C. 112
sensitive personal data, EU Data Protection Directive 187
Services Directive, EU see EU Services Directive and pro-competitive regulation
Shleifer, A. 176, 177
Smulders, B. 302
social responsibility, and price preferences, India 286, 288–9, 291, 292
software services exports, India 282–3
Sokol, D. 3
Song, B. 165
Srivastava, V. 286, 292
state aid definitions 303–4, 307
state business activity and subsidiarity principle see Peru, state business activity and subsidiarity principle
state as importer, effects of, Venezuela 226, 227
state intervention and capital reproduction, Brazil 43
state intervention effects, Venezuela 220, 234
state monopoly and fuel supply, Brazil, oil policy and Petrobrás 42–6
state and private subsidies and state character test 296–311
bonus/malus system for milk levies according to quality (EU) 307
certificate-trading schemes (EU) 308–9
combined heat-and-power (CHP) technology subsidization (EU) 307–9
federalist systems and subsidy competition 298, 299
functionalist approach (EU) 303–4, 307
green electricity surcharges 306
loopholes, granting aid without assuming control over the resources (EU) 305–7
parafiscal charges 305, 306–7
parafiscal charges, public body with no discretion on how money is spent 307
public control of decision to grant and finance aid (EU) 304–5
rationale behind subsidy control 297
regional economic integration zones, lack of subsidy rules 299
state aid definitions 303–4, 307
state preference of certain undertakings, problem of 298
state-initiated restraints of competition by means of subsidies 302–9
WTO subsidy rules 299–300, 301, 302, 303, 307
WTO subsidy rules, rudimentary enforcement 301–2
Stelkens, U. 125, 128
subsidiarity principle and state business activity see Peru, state business activity and subsidiarity principle
subsidies and state character test see state and private subsidies and state character test
Suchi, B. 286, 292, 293
Sufrin, B. 105, 106
surpluses, community reinvestment proposal, Venezuela 231
Swire, P. 197, 199, 205
Tácito, C. 44
Tavares Guerreiro, J. 50
taxation
fuel adulteration and tax evasion problems, Brazil 49
tax structure and inefficiencies, Brazil 179
television
investment targets in pay-TV market
see Brazil, investment targets in pay-TV market
programme listings, EU 67–8, 86, 92
see also media
third parties holding IP rights, EU 71–2, 82
Timburg, C. 193
Tiomno Tolmasquim, M. 49
Tirole, J. 176
trade
barriers, internal, China 139
technology-enhancing effects, EU Services Directive 121–2
WTO see WTO (World Trade Organization)
transparency
EU Transparency Directive 95, 96
requirements, EU Services Directive 131–2
requirements, India, public procurement 281–2, 283, 286–7, 291, 292–3
Trembath, A. 13, 14, 15, 17
trust issues regarding policy, Venezuela 219, 222–4
Tucker, C. 182–3
UK, Water Act and yardstick competition 177–8
undertakings, public sector bodies as see EU, regulation of public sector information, public sector bodies as undertakings
unfair competition
Anti-Unfair Competition Law, China 140–42, 144
Brazil, water and sanitation services 178
universal service obligation, Brazil 252–3, 256, 259
universalization investment, Brazil, water and sanitation services 170–73
US
anti-monopoly law, lack of 153
commerce clause 299
Constitution, interstate commerce clause 153–5, 162, 163
merger control 200–201
non-discriminatory state laws 155–6
public utility, understanding of 46–7
regional protectionism 152–6
state action doctrine 145
US, cases
Bibb v. Navajo Freight Lines 155–6
California Liquor Dealers v. Midcal Aluminum 106
CTS Corp. v. Dynamics Corp. of America 155
eBay 268, 269, 270, 271, 273
Gibbons v. Ogden 153–4, 155
Kodak 268–9
Maine v. Taylor 155
Minnesota v. Clover Leaf Creamery 155
Munn v. Illinois 47
Parker v. Brown 106, 145
Pike v. Bruce Church 154, 155, 162
Southern Pacific Co. v. Arizona 154
Xerox 268–9, 270–72
US, intellectual property rights as state-initiated restraints of competition 261–74
antitrust decline and expansion of IPRs, explanation for 263–6
damages as compensation 270
economic incentive rationale for patents and copyrights 265–7, 271
free competition, meaning of 263–4
free competition, re-introduction of 267–8
innovation impact and opportunity costs 271
innovation and standards-essential-patents (SEPs) 272–4
IPRs and antitrust regulation, history of 262–3
IPRs as natural property rights 264–5, 266
patent competition policy 267–8
patent and copyright as constitutional rights 265
State-initiated restraints of competition

patent infringement liability and remedy 279
patent infringements and equitable balancing approach 270
patent infringements and requirement to deal 271
patent ownership, competitive effects 268–72
repair and replacement parts market competition 271–2

Van de Gronden, J. 119
Van der Sloot, B. 71
Van Vliet, H. 302

Venezuela, over-regulation, and suppression of competition policy agenda 213–38
academic infrastructure, lack of 215
business operations costs, increase in 218–19
business transaction costs, increase in 217–18, 222–4
Communal Council fiscal supervision role 231
Communal Power Commission 229, 230–31
competition advocacy agenda 214–15
Constitutional Reform proposal (2007) 233–4
displacement of economic agents and imposition of restrictions 221–8
distortion of competition to the prejudice of private actors 225–8
Enabling laws 216
entry barriers for SMEs 218, 226, 227–8
expropriation motivations 223, 230, 234–6
fiscal supervision actors, increase in number of 230
High Authority for the People’s Defence Economy 236
institutional components 217–21, 222–4
institutional learning process 215–16 institutional risks, increase in 217, 222–4
inter-institutional policy consultation 215
judicial bodies, inclusion in competition principles 215
labour relationships’ regulation 219
labour solvency and job security 226, 227–8
Law of Costs and Fair Prices (LCFP) 221, 222, 230–31, 236
Law for the Defence of the Consumer in the Access to Goods and Services (INDEPABIS) 218, 222, 234–5
Law for the Promotion and Protection of Free Competition 213–15
market concentration bias 218–19
market efficiency concerns 220
National Constitution 215–16, 229, 234
parallel control of economic activity through social organizations 229–33
policy initiatives and policy grading of 221, 222–4
private property guarantee, corrosion of 233–6
privatization of state-owned monopolies, Superintendence function 215
privileges for political reasons, effects of 220, 226, 227–8
sanctions and incorporation of precautionary measures 218–19, 222–4, 230, 235–6
‘siege of private economic activity’ 216–36
state as importer, effects of 226, 227
state intervention effects 220, 234
Superintendence for the Promotion and Protection of Free Competition 214, 215
surpluses, community reinvestment proposal 231
trust issues regarding policy 219, 222–4
Vezzoso, Simonetta 181–210
Wade, R. 277
Index

Waller, S. 203
Walmott Borges, A. 46
water and sanitation services see Brazil, water and sanitation services
Wathlet, M. 117
Web 2.0 technologies
EU, personal data protection 188, 202, 206
see also online services
Weichert, T. 200
Weiss, P. 65
welfare benefit provision, Peru 60
Whish, R. 106
Williamson, J. 56
Williamson, O. 218
Wirth, J. 41
Woll, C. 115
Wolswinkel, J. 108

WTO (World Trade Organization)
GPA see India, public procurement and benefits of competition policy, WTO Agreement on Government Procurement (GPA)
state aid definition 303
subsidy rules 299–300, 301–2, 303, 307

yardstick competition, Brazil, water and sanitation services 176, 177
Yeung, K. 107, 108
Yoo, C. 205, 206
Yu, L. and D. 139, 151
Zheng, W. 139
Zúñiga-Fernández, Tania 55–63