Index

Abbott, A.F. 356–94
abuse of dominance 213, 555, 556–8
A.C. Nielsen 655–6
Act of Congress 2002 94
Adams (company) 721–4
Adams, W. 612
Administrative Procedure Act 175
ADP 21
Advisory Committee on Concentrations 93
advocacy 542
Aetna/Prudential merger 54–5
AETR principle 451
Ahlborn, C. 195–234
Air Canada 131
Air Canada (‘Gemini I’) (1989) 115, 131
Air Canada (‘Gemini II’) (1993) 113
Air Canada/Canadian Airlines (1999) 116
Air France 133, 656
air service agreements (ASAs) 452
Air Transport: A Community Approach 444
air transport sector 444–65
common external policy 445–7
competition issues and transatlantic alliances 447–8
entry into force 463
European Commission: full mandate 455
European Commission: ‘soft rights’ mandate 449–51
internal market liberalization: single European aviation market 444–5
market access 460–61
negotiations – 2003–5 456–60
‘open skies’ policy 448–9, 451–5
ownership and control 463–4
regulatory cooperation 461–2
Airbus 63
Airline Deregulation Act 448
Airtours 84, 157–9, 161, 164, 167, 173, 180
AKZO v. Commission 217, 220–22
Albany 608
Alcan/Pechiney (2003) 123, 132
Alcoa/Reynolds 399, 471, 648, 658
ALD 470
Alestra 709
allocative efficiency see consumer welfare
allocative inefficiency 605–6
Aloha Petroleum/Trustreet Properties (2005) 128
AmBev–Quilmes merger 750
Amer Group/Salomon (2005) 124
American Antitrust Institute 573
American Bar Association: Antitrust Law Section 530, 534
ANA (Brazil) 418, 430
ANATEL (Brazil) 421, 424, 425, 430, 431–2
ancillary restraints doctrine 343
Andean Community 736
Anderman, S.D. 335–54
Anderson v. Liberty Lobby Inc. 521
Andreas (United States) 470
ANEEL (Brazil) 416–17, 421, 424, 425, 430, 432–3
ANP (Brazil) 417, 430, 434, 436
ANS (Brazil) 418, 430
ANTAQ (Brazil) 418, 430
Antitrust Civil Process Act 657
Antitrust Criminal Penalty Enhancement and Reform Act 2004 525, 526
Antitrust Division: bilateral enforcement cooperation agreements 659
criminal laws, enforcement and application of 469
extradition 496

759
intellectual property licensing 335, 337
judicial review of mergers: Tetra Laval and GE/Honeywell 173–4
Manual 469
merger to monopsony 54
private enforcement of competition laws 518, 525, 526–7, 535
regime dynamics in merger control 73–4
secrecy of antitrust documents and hearings 553–4
United States–Mexico arbitration on telecommunications services 696
antitrust enforcement 543–4
Antitrust Enforcement Guidelines for International Operations 471
Antitrust Guidelines to the Licensing of Intellectual Property 335–6, 338
Antitrust Improvements Act see Hart–Scott–Rodino Act
Antitrust Modernization Commission 94, 244–5, 516, 527, 534, 535
Antitrust Mutual Assistance Agreement 508
Antitrust Procedures and Penalties Act 1974 469
ANTT (Brazil) 418, 430
ANVISA (Brazil) 418, 430
AODCEE 320
AOL/Time Warner (2000) 126
APEC 745
Arch Coal (FTC) 173, 176, 178–80
AREVA/Urenco (2004) 123–4
Argentina 326, 434
during Washington Consensus 739, 740
post-Washington Consensus 742–4, 745, 746, 747, 748, 749–50, 751, 752
pre-Washington Consensus 736
Second State Reform 737
Supreme Court 735
Arrangements of Attendance 653
arrangements, separate 112
ArSat 745
Article 1(1) ECMR 337
Article 4(3) ECMR 347
Article 12(3) ECMR 479
Article 43 ECMR 452
Article 81 ECMR 154, 404, 405, 527, 595–6, 683
criminal laws, enforcement and application of 473, 474, 479, 484
dominant firm's duty to deal 236, 237, 240, 244
intellectual property licensing 336, 338, 339–40, 341, 343, 346, 350
Mexico: competition law 719, 720, 728
tying 288, 310, 313
Article 81(1) 237, 310, 407, 649, 683
intellectual property licensing 336, 340–41, 346–9, 610
Article 81(3) 244, 310, 337, 340–41, 346–9, 610
 Article 82 237–40, 405, 527
criminal laws, enforcement and application of 473, 474, 479
discounts, rebates and selective pricing 196, 212, 217, 218–22, 224
dominant firm's duty to deal 241–2, 243–4, 245–6, 249, 260, 263–4
judicial review of mergers: Tetra Laval and GE/Honeywell 154–5, 170
Mexico: competition law 719, 720
tying 287–8, 294–6, 297–304, 307–15
United States–Mexico arbitration on telecommunications services 683
Article 82(a) 238, 609
Article 82(b) 242, 250
Article 82(d) 219
Asea Brown Boveri/Westinghouse (1989) 115
Ashurst Report 515–16
Asia 320
asset package, viable 111
Associated General Contractors of
Index

California Inc. v. California State Council of Carpenters 522
Associated Press (1945) (United States) 407
Astral/Zeneca (1999) 120–21
Astral/Télémédia (2002) 117, 132
AT&T 697, 699, 700, 704, 709, 710, 711
AT&T/MediaOne (2000) 126–7
Atlantic Richfield Co. v. USA Petroleum Co. 522
Atomic Austria GmbH 124
attorney–client privilege 531
Attorneys General 159, 473
Assistant 20, 74
behavioural merger remedies 124, 125
regime dynamics in merger control 74, 90, 93–5
Atwood, J.R. 655
Australia 508, 599, 644, 646
Competition and Consumer Commission 628, 644, 663
Austria 60–61, 449, 451, 467
automobile industry 598
Avantel 709
aviation security 458
Avis/Budget Rent–a–Car (2002) 117

Babine Forest Products Ltd. 49
Bailey, D. 195–234
Baker, D. 472, 484
Baker, D.I. 398–412
Baker Hughes (United States) 179
Baker, J. 83, 585
Barrot, Vice–President 459–60
Barry Wright v. ITT Grinnell 215–16
BASF AG 472
Baxter, W. 568
Bearing Point 21
behavioural merger remedies 108–47
appropriateness 128–30
Canada: enforcement agency practice 114
Canada: leading cases 114–18
Canada: legal framework 113–14
divestiture remedies, strengths and weaknesses of 111–13
enforceability 130–31
Europe: enforcement agency practice 118–20
Europe: leading cases 120–24
Europe: legal framework 118
and non–merger cases 133–4
private benefits and costs 110–11
privatization of enforcement 131–3
privatization of monitoring 131
public interest in effective remedies 109–10
United States: enforcement agency practice 125–6
United States: leading cases 126–8
United States: legal framework 124–5
Belgium 449, 451
Belgrano Cargas 745
Bell System 700
Bertrand model 3, 6–9
Bertrand–Nash equilibrium 3
best-of-breed vendors 25
bilateral cooperation in multilateral setting 629–33
bilateral enforcement cooperation agreements 641–71, 676–8
basic structure of agreements 642–3
between United States and European Union 646
confidentiality clause 656–9
exchange of information – meetings between officials 651–3
first generation agreements, inability of to address important cases 659–61
negative comity (avoidance of conflicts) 647–50
Norway/Iceland/Denmark 662–3
notification, cooperation and coordination 650–51
positive comity 653, 654–6
reactive agreements 646
soft law 644–6
as strategy of strong states 643–4
as substitute/alternative to harmonization of competition laws 641–2
and trade flows 644
United States/Australia agreement on mutual antitrust enforcement assistance 661–2

Philip Marsden - 9781847204370
Downloaded from Elgar Online at 07/21/2019 06:22:53PM via free access
United States/European Union Agreement on Positive Comity 1998 653–4
Bimbo 747
Black’s Law Dictionary 175
Block Exemption Regulations 337–8, 341–2, 343, 346, 349
see also Technology Transfer Block Exemption Regulations
Boeing/Hughes (2000) 127
Boeing/McDonnell Douglas 63, 120, 128, 182, 659–60, 664
Bolivia 742
Bolton, P. 572
Bork, R. 291–2, 568–9, 583, 584
Botteman, Y. 662
bottleneck monopoly 398
Braithwaite, J. 643
BRATTLE group 464
Brazil 414–38, 440–43
agency directors 419
bilateral enforcement cooperation agreements 660
Competition Defense System 740, 749
Conselho Administrativo de Defesa Econômica (CADE) 479, 739–40, 748, 750
cooperation and convergence 629
dominance enforcement abuse 321, 323–6
during Washington Consensus 737, 738, 739, 741
electricity sector 432–3
future prospects 437
how agencies are seen by private sector 421–4
independence indicator 440–42
Institute of Studies on Competition, Consumer Affairs and International Trade (IBRAC) 740–41
management structure of agencies 420
natural gas sector 435–6
petroleum sector 434–5
post-Washington Consensus 742, 743, 744, 745, 746, 748, 750, 751, 752
pre-Washington Consensus 736
quarantine arrangements for agencies 421
reform in financing infrastructure 436
regression results of the model 443
regulation in historical perspective 414–16
regulatory agencies, characteristics of 416–21
regulatory agencies in comparative perspective 424–31
–Russia agreement 642
sanitation sector 433–4
telecommunications sector 431–2
transparency instruments and participation in agencies 422–4
Breyer, Judge 216
British Airways v. Commission 195, 217, 221, 244
British Columbia Timber Sales auction programme 50
Brittan, Sir L. 155
Broadcast Music Inc. v. Columbia Broadcasting System Inc. 520
Brodley, J. 572, 583
Brown Shoe Co. v. United States (1962) 182, 574
Brown University (United States) 610
Brunswick Corp. v. Pueblo Bowl–O–Mat Inc. 521
BSE 45–7
BSkyB 121
Budget 132
Buenos Aires Consensus 742
Bullard, A. 746–7
bundled (quasi–tying) discounts 199, 203–4, 214, 218–19
burden of proof 209–10, 309–11
bureaucratic heart of United States merger control 75–9
Burnside, A. 662
Bush, G.W. 456, 523, 734
buyer power 58–9
buyer, suitable 111–12
California Air Resources Board 360–61
California Dental Association v. Federal Trade Commission 521
Calleja, D. 444–65
Campbell, N. 108–47
Campos Filho, L. 435
Canada 472
Canada (Commissioner of Competition) v. Superior Propane Inc. (2002) 42
Canada Post Corporation/Purolator (1993) 116
Canada–Australia–New Zealand agreement 646
Canadian Airlines 115, 131
Canadian Regional Airlines Ltd. 116
Canel’s 721–4
Cantor Corporation 48–9, 51
CAPAC/PROCAN (1990) 115–16
capture theory 571
Caremark/Advance 53–5
Cargill Inc. v. Montfort of Colorado Inc. 521–2
Cargill Limited/Better Beef Group of Companies 45–8
Cargill/Continental merger 54–7
Carrefour/Promodes merger 61–3
Carstensen, P.C. 56–7
cartels 554–5, 556–8
Carter Administration 448
case allocation, more formal system of 94–5
Casino 62
Category 1, 2, 3 and 4 cases 129–30
Cato Institute 570
Celotex Corp. v. Catrett 521
Cendant 132
Central and Eastern Europe 322–3
Chamberlin, E. 4
Chapters/Indigo (2001) 117
Charter of Rights and Freedoms: section 7 503
Chevron Corporation 361
chewing gum preadtion saga 721–5
Chicago Bd of Trade v. United States 369
Chicago Board of Trade 56
Chicago Convention 444
Chicago School 182, 288
consumer welfare 566–7, 568–73, 575, 579
intellectual property licensing 335, 337
Chile 479, 736, 738–9, 741–2, 746–7, 751
Civil Aviation Memorandum 444–5
Clarke, C. 493
Clarks 722–3
Class Action Fairness Act 523
Clayton Act:
bilateral enforcement cooperation agreements 78, 175–6, 567, 657
section 3 517
section 4 517
section 6 608
section 7 43, 73–4, 124, 125, 378, 517
section 15 124
section 16 517
section 20 608
Clicac (Panama) 599
Clinton, B. 449
closed user group 696–7
Clyde, P. 322
CN 132
CNTV 745
Coate, M.B. 325
Code of Conduct 117
Code of Regulations for Telecommunications 726
Coditel 343
Cofetel 680–81, 686, 710
Colgate & Co. (United States) 246–8, 253, 255, 262
College of Commissioners 80, 82, 86
Colombia 321, 324, 326, 328, 736, 738, 739, 752
Comercializadora de Insumos y Suministros Agropecuarios 745
Comisión Federal de Competencia (CFC) 705, 746
Comisión Nacional de Defensa de la Competencia (CNDC) 736, 737, 740, 746, 747, 748, 750
Comité des Sages 446, 449
comity principle 471–2
Commercial Solvents (Commission) 248–51, 260
‘commercially viable share’ 223–4
Commission of Competition and the
Consumer (Australia) 599
Commission Notice 596
Commissioner of Competition
(Canada) 195
Common Aviation Area 450–51
Commonwealth scheme 497
Compagnie Maritime Belge Transport
220–22
Compagnie Nationale du Rhône 122
Company v. Commission 174
competition 461–2
Competition Act 1998 45–6, 117, 473,
477, 493–4, 506
section 45 503
section 92(1)(e)(iii) 113
section 92(1)(f)(iii) 113
Competition Bureau (Canada) 42,
44–51, 117, 118
behavioural merger remedies 108,
114–15, 130, 132, 134
Competition Commissioner 554
competition courts with exclusive
jurisdiction over competition
claims 527–8
Competition Defense System (Brazil)
740, 749
Competition Directorate-General (DG
Comp) 58–60, 241, 553
competition enforcement and
consumers 594, 596, 597
intellectual property licensing 335–6,
339
judicial review of mergers: Tetra
Laval and GE/Honeywell 158,
167, 173, 176
regime dynamics in merger control
79–80, 83, 86, 93
competition enforcement and
consumers 594–604
good intentions to practice 595–6
information about consumer needs
and competition problems 597
institutional relations at national,
regional and international level
599
problems of competition that affect
consumer citizen 597–9
Competition Law 1999 740, 748
Competition Law Bill 479
competition law in Mexico 718–31
anticompetitive practices, rules on
719–21
chewing gum predation saga 721–5
insight with hindsight 728–30
TV programmes, sale of 725–8
Competition Policy Advisory Comity
656
competition policy in the European
Community 336–47
formalistic Block Exemption
Regulations 337–8
pre Block Exemption Regulations
336–7
Technology Transfer Block
Exemption Regulations 338–47
competition policy and intellectual
property law from Federal Trade
Commission perspective 356–94
patent law: implications for
innovation and welfare 356–7
see also ex ante price-related
negotiations: exclusion
payments
competition policy and the professions
544–5
‘Competition Policy Related to Single-
Firm Conduct’ 196, 226
competition test 630
Competition Tribunal (Canada) 42, 45,
49, 113–14, 131, 133
competitive harm 28–9, 208
competitive market and price setting
equal to long-run average
incremental cost 693–5
compliance incentives 131
compulsory access as antitrust remedy
398–412
economic tension 399–400
essential facilities concept 400–402
intangible facilities and statutory
rights 402–3
joint ventures v. single firm
monopolies 405–6
patents as essential facilities 403–5
computer reservation systems 115,
131–2, 133, 463
Concord Boat Corp. v. Brunswick Corp
(2000) 214
concurrent jurisdictions of state and federal actors in United States 93–4
confidential information, exchange of 661–3
confidentiality of agency investigations 535–6
confidentiality clause 642, 656–9
Congress 175, 683
air transport sector 448, 457
competition policy and intellectual property law 374, 377, 378, 379, 381–2
consumer welfare 567, 574, 579
distributional consequences of antitrust 607, 610
private enforcement of competition laws 526, 527
regime dynamics in merger control 77, 94
regulation in Brazil 418, 433, 434, 436, 437
Conoco/Phillips (2002) 127
Conseil de la Concurrence 61
Conselho Administrativo de Defesa Econômica (CADE) (Brazil) 739–40, 748, 749, 750
Consent Agreements 49, 118
consistency requirement 207–8
Consten/Grundig decision 337, 346
constituency development 542–3
Consumer Impact Form 597
Consumer Liaison Officer 596, 597
consumer surplus 576, 585
consumer welfare 575, 577, 583
consumer welfare effects test 242
consumer welfare in United States 566–91
declaration of victory is premature 569–73
dynamic efficiency 581–3
making economics work for the electorate 574–5
making the most of what we have 575–6
making the pie larger 576–7
multiple goals of antitrust 583–6
political goals 577–9
populism to consumer welfare 567–9
state efficiency goals 579–81
Consumers International 599
Continental Paper Bag Co. v. Eastern Paper Bag Co. 404
Continental T.V. Inc. v. GTE Sylvania Inc. 519–20
Convention of International Civil Aviation 454
convergence 181–3
convincing evidence test 176–7
cooperation 650–51
Cooperative Agreements Act 2000 (United States) 348
coordination 650–51
Coprocom (Costa Rica) 599
Copyright Act 259
Cora 62
Corasa 745
Costa Rica 320, 599, 738, 739
Council of Ministers 445–6, 447, 450, 454, 455, 457, 748
Courage v. Crehan 527–8
Court of Appeals 74, 178, 296, 649
competition policy and intellectual property law 368, 371
for the District of Columbia Circuit (D.C. Circuit) 179, 292–3, 296, 298–9, 309, 369
Eighth Circuit 214
Federal (Canada) 113
First Circuit 215, 258–9
Ninth Circuit 258–9, 648
Second Circuit 255
Seventh Circuit 254, 256, 402
Third Circuit 215, 526, 610
courts 555–6
European Court of Human Rights 182
High Court 502
see also District Court; Court of Appeals; European Court of Justice; European Court of First Instance; Supreme Court
Covetel 745
credibility hypothesis 430
criminal laws and competition 466–91
collaboration in course of investigations 479–81
collaboration in enforcement and extradition 481–4
leniency in the United Kingdom 476–9
leniency in the United States 475–6
United Kingdom 472–4
United States 468–72
cross-border transactions see merger
control and cross-border transactions
cross-subsidiation policy chosen by Mexican government 695–6
Crown Prosecution Service 501
CRS 131–2
Amadeus 133
CSU, LLC v. Xerox Corp 258
customer bargaining power 202
customer relationship management software 18
CVA Azúcar 745
CVA Cereales 745
CVA Lácteos 745
CVA Oleaginosas 745

DaimlerChrysler/Deutsche Telekom
(2002) 122
damages, contribution for 533–4
Data General Corp v. Grumman Systems Support Corp 257–9
Daubert v. Merrell Dow Pharm. Inc.
(1993) 533
De Croo, H. 446
De León, I. 737
De Palacio, L. 453, 458–9
de Soto, H. 543
deadweight loss 43, 605
defersence, unsuitability of 175–7
Denmark 449, 451, 653, 662–3
–Iceland–Norway agreement 642
Department of Defense (United States) 127
Civil Reserve Air Fleet programme 464
Department of Finance (Canada) 115
Department of Justice:
behavioural merger remedies 108, 125, 126, 133–4
bilateral enforcement cooperation agreements 651, 655–6, 658, 660, 663
competition policy and intellectual property law 357, 363, 379
compulsory access 408
consumer welfare 575
cooperation and convergence 631–2
criminal laws, enforcement and application of 470, 472, 474–6, 479–80, 481, 482
discounts, rebates and selective pricing 196, 203, 212, 226
distributional consequences of antitrust 610
dominant firm’s duty to deal 243, 245
extradition 493, 495–7, 501, 503, 506, 507
judicial review of mergers: Tetra Laval and GE/Honeywell 174, 176, 178, 180
Latin America 740
merger to monopsony 55–7, 63
Oracle/PeopleSoft: harmonious
dissonance 17, 21, 22–3, 24, 26–7, 28–9, 30–31, 32–6
regime dynamics in merger control 75–9, 88–90, 94
Second Request 19–20
unilateral effects from mergers: Oracle case 4
see also Antitrust Division
Department of Trade and Industry 493, 494
Department of Transportation (United States) 448–9, 461–3
dependent market 399–402, 404, 405–6
differentiated products industries 3–7
Dinar 745
Diocletian edict 467
direct enforcement cost 206–7
Directive:
92/12/EEC 453
92/14 454
92/81/EEC 453
97/67 453
2002/30/EC 454
Directorate-General for Health and Consumers Protection
(DGSANCO) 597
disciplined pluralism 573
discounts, rebates and selective pricing 195–234
analytical framework 206–11
consistency requirement 207–8
error costs and direct enforcement cost 206–7
relevant factors 208–9
safe harbours 210–11
standard and burden of proof:
balancing harm and efficiencies 209–10
bundled discounts: tying analogy 199
economic analysis 200–206
bundled (quasi-tying) discounts 203–4
loyalty (quasi-exclusivity) discounts 201–3
quasi-exclusivity discounts, anti-competitive rationales for 202–3
European Commission Discussion Paper 222–6
European Union law 217–22
assessment 221–2
discounts/selective price-cutting, other 219–21
quasi-exclusivity/loyalty discounts 217–18
quasi-tying/bundled discounts 218–19
legal standards and institutional structures 212–13
loyalty/target discounts: exclusivity analogy 197–9
market power and abuse, degree of 213
predation analogy 199–200
quasi-predatory discounts and selective pricing, other 204–6
uniform pricing, different types of 197
United States law 213–17
assessment of case law 216–17
other (single item) discounts 215–16
quasi-exclusivity/loyalty discounts 214
discovery evidence 33–4
distribution costs 289
distributional consequences of allocative inefficiency 605–6
antitrust 605–16
see also wealth distribution
District Court 178, 401, 493
dominant firm’s duty to deal 248, 255
Federal 20
Oracle/PeopleSoft: harmonious dissonance 17, 22
diversion ratios 5, 6, 9
divestiture process monitoring 112
Dobson Consulting study 59, 62
doing business issues 463
dominance enforcement abuse in Latin America 319–33
design and enforcement of dominance provisions 325–8
overenforcement fears 320–25
dominance test 630
dominant firm and duty to deal 236–83
Article 82 and section 2 237–40
liability, conditions for 259–62
review and modernization: 240–45
see also refusal to supply a competitor
double-criminality rule 483
downstream market power 41
Drahos, P. 643
Dresser/Halliburton 658
dual criminality principle 496, 497, 498, 503
dynamic efficiency 576–7, 581–3, 611
EAGCP 241
EAS 23, 27–9, 31, 35
Easterbrook, F. 300
Eastman Kodak Co v. Image Technical Services Inc 253–6, 258, 262
EC Merger Regulation:
Article 2 79, 86, 160
Article 3 80
Article 4 80
Article 4(4) 93
Article 4(5) 93
Article 8 82
Article 9 (German clause) 91, 92
Article 10(1) 81
Article 11 81, 82, 83, 556
Article 13 81, 82
Article 18(4) 83
Article 21 80
Article 21(2) 83, 84
Article 21(3) 90
Article 22 92
Article 22(4) (Dutch clause) 91–2
behavioural merger remedies 118, 119
bilateral enforcement cooperation agreements 649, 654, 659
cooperation and convergence 630
dominant firm’s duty to deal 236, 240
judicial review of mergers: Tetra Laval and GE/Honeywell 155–6, 158, 159, 163, 164, 169, 175
Oracle/PeopleSoft: harmonious dissonance 16–17, 19, 30, 36
Recital 11 91
Recital 12 92
Recital 15 92
regime dynamics in merger control 75
tying 288
EC Treaty:
Article 10 454, 683
Article 84(2) (now 80(2)) 445–6
Article 95 594
Article 113 (now 133) 446
Article 153 594–5
Article 230 84, 165
compulsory access 407
judicial review of mergers: Tetra Laval and GE/Honeywell 159
Mexico: competition law 718, 720, 725
regime dynamics in merger control 79
secrecy of antitrust documents and hearings 561
see also Article 81; Article 82
economic precedents, accumulation of 546
economic tension 399–400
Ecuador 479, 742
EdF/EnBW (2001) 121–2
education 542–3
Edward VI 467
effective price calculation 223
effects doctrine 648, 649, 650, 738
efficiencies 209
efficiency losses 56
E.I. DuPont de Nemours & Co. (1961) (United States) 125
Eisner, M.A. 567
El Salvador 427, 432–3, 598
Ellig, J. 582, 583–4
Enarsa 745
enforceable commitments, formulation of 130–31
enforcement, privatization of 131–3
English auction 7–9, 35
Enrichment Technology Company 123–4
Enterprise Act 467, 502, 507
section 188 474, 481, 483, 494, 497
section 188(1) 472–3
section 188(2) 473
section 190 483
section 190(3) 474
section 190(4) 478
section 191 481, 498
enterprise applications software 17–19
Enterprise Bill 494
Enterprise Resource Planning 1, 17–18
environment 462
equally efficient competitor test 210–11, 226, 242
Erauw Jacquery 343
error costs 206–7
essential facilities doctrine 249, 256–7, 398–400, 400–402, 403–6, 408–9
European Arrest Warrant 483, 500
European Commission:
air transport sector 444–7, 450–51, 454, 456–62
annus horribilis (2002) 156–9, 181
behavioural merger remedies 108, 118, 120–24, 128, 130, 132, 133–4
bilateral enforcement cooperation agreements 649, 651, 654–60
competition enforcement and consumers 594–5, 597, 598
competition policy and intellectual property law 376, 380
compulsory access 401–2, 403
cooperation and convergence 630–32
criminal laws, enforcement and application of 468, 474, 477, 478–9
Decision 19–23, 25, 27, 30–32, 36
discounts, rebates and selective pricing 195, 197, 212–13, 217–21
Discussion Paper 196, 219, 221, 222–6
assessment 224–6
dominant firm’s duty to deal 236–7, 241, 243, 264
effective price calculation 223
future enforcement policy 222
quasi-exclusivity discounts, proposed assessment of 222–3
‘required share’ v. the ‘commercially viable share’ 223–4
distributional consequences of antitrust 611
dominant firm’s duty to deal 240, 244, 247, 249, 250, 252, 260
extradition 496, 507
full mandate 455
Guidelines on Horizontal Mergers 27–30
Guidelines on Technology Transfer Block Exemption 343, 349, 407, 432
intellectual property licensing 335, 336–9, 340, 341, 346, 347–9, 350
Latin America 740
Market Definition Notice 685
merger to monopsony 41–2, 60–63
Notice on case referral in respect of concentration (2005) 91
Notice on Remedies (2000) 119
Oracle/PeopleSoft: harmonious dissonance 16, 17, 21, 24, 26, 33–5, 37
private enforcement of competition laws 515–16, 530
regime dynamics in merger control 76, 81–2, 83, 84, 86, 90–91, 92–3
‘soft rights’ mandate 449–51
Staff Working Paper 516
tyings 287–8, 290, 293–8, 300, 304–7, 308–9, 310, 311–13, 315
unilateral effects from mergers: Oracle case 10
United States–Mexico arbitration on telecommunications services 692
see also Competition Directorate-General; open hearings
European Committee of Domestic Equipment Manufacturers (CECED) 611
European Competition Network 478–9, 599
European Consumers Consultative Group 597
European Consumers Organization (BEUC) 597
European Convention 1957 494
European Convention on Extradition 497–8
European Convention on Human Rights 480
European Council 658
European Court of First Instance: behaviour merger remedies 118
bilateral enforcement cooperation agreements 649
compulsory access 403
criminal laws, enforcement and application of 474
discounts, rebates and selective pricing 196, 217, 219–21, 224
dominant firm’s duty to deal 244, 250, 252
Oracle/PeopleSoft: harmonious dissonance 27, 29
regime dynamics in merger control 72, 83–4
tyings 293–4, 302–3, 307
see also open hearings
European Court of Human Rights 182
European Court of Justice: air transport sector 461–2
behaviour merger remedies 649
bilateral enforcement cooperation agreements 400, 403
criminal laws, enforcement and application of 474
discounts, rebates and selective pricing 196, 217, 219–21
distributional consequences of antitrust 608
dominant firm’s duty to deal 237–40, 244, 247–50, 252, 259–61, 263–4
intellectual property licensing 343
judicial review of mergers: *Tetra Laval* and *GE/Honeywell* 153–6, 159–69 *passim*, 183
‘open skies’ judgements 451–5
private enforcement of competition laws 527
regime dynamics in merger control 83–5
tying 294, 297, 302–3, 311–12
European Parliament 454
European Supply Agency 124
European Union Guidelines 408–9
European Union–United States agreement 647, 650, 652
European Union–United States Summit 456–7
*Europemballage and Continental Can v. Commission* 155
Evaluation Report on the Technology Transfer Regulation 339
Evans, D.S. 203
Evans, Judge N. 483, 493, 502, 507
evidentiary matters 32–6
evidentiary test 169
ex ante price-related negotiations by standard-setting organizations 357–65
holdups in government setting: *Unocal* case 360–61
holdups in private standard-setting: *Rambus* case 359–60
licensing terms and royalties 361–5
standards, background on 357–8
standards, benefits and drawbacks of 358–9
exchange of information – meetings between officials 651–3
exclusion payments made in settlement of patent litigation 365–82
patent and not payment must provide exclusion resulting from agreement 374–7
payments to eliminate uncertain competition 369–70
pharmaceutical patent litigation can harm competition 370–72
prohibiting exclusion payments is consistent with patent policy 381
prohibiting exclusion payments will not chill patent settlements 379–80
revisiting merits of patent litigation in antitrust analysis would discourage settlements 380–81
right to exclude is neither unbounded nor unconditional 377–8
right to exclude must be exercised consistent with other laws 372–4
uncertain litigation outcomes, assessment of 367–8
undermine policies of *Hatch–Waxman* Act 381–2
exclusionary conduct 325–6, 328
Exclusionary Conduct Study Group 245
Exclusionary Rules conduct 245
exclusivity analogy 197–9
Executive Power 433
*Expanding Horizons* 446
exploitative conduct 325–6, 328
extradition 481–4
extradition: North Atlantic treaty alliance against cartels 493–513
extradition 494–5
from Canada to United States 503–6
international cartels, drive against 495–7
Norris case 501–2
offences in English law 498–9
United Kingdom criminalization and transatlantic extradition 497–8
United Kingdom Extradition Act 2003 500–501
United States–United Kingdom Extradition Treaty 499–500
Extradition Act 1870: section 2 481
FNE 479
Foer, A.A. 566–91
Ford/Volkswagen 611–12
foreclosure 306–7
foreign investment limitations 735
Foreign Trade Antitrust Improvements Act 1982 471, 648
forestry mergers 48–53
Form C 595–6
Form CO 19–20, 81–2, 86
formal power 130
ForoCompetencia 751
Fox, E. 643
Framework Decision: Article 2 483
France 59, 61, 62, 156, 449, 472, 653
Conseil de la Concurrence 740
Franceschini, J.I. 750
freedom 578
freedom-not-to-deal principle 262
Freshfields Bruckhaus Deringer 181
Froeb, L.M. 3, 9
fuel sector (Brazil) 427
fuel taxation 458
Fugitive Offenders Act 1882 503
Fujiiwa, T. 414–38, 440–43
Fulton–Rodgers understanding 641
fundamental defect 88
Furse, M. 466–91
G3 cooperation agreement 507
GE/Honeywell:
applying and refining the standards 168–73
bilateral enforcement cooperation agreements 659–60, 664
cooperation and convergence 632–3, 645
regime dynamics in merger control 72
General Dynamics (United States) 174, 178–9, 181
General Framework for the Application of Article 81 347
General Motors 127
geographic market definition 28
Gerber, D.J. 665
Germany 59, 156, 451, 472, 650
Center for Economic and Social Development (ZWS) 740
Gillette Co. (1993) (United States) 3
Gilpin, R. 573
Ginsburg, R.B. 179
government:
corporations, large 735
incentives, strong 735
subsidies and support 462
Goyder, D. 607
Grady, K.E. 515–39
Greece 653
Green Paper 515–16, 527–8, 530
Option Nos. 1–10 532
Option 27 529
Option No. 16 535
Option No. 17 535
Option No. 28 536
Option No. 30 534
Option No. 35 533
Grimes, W. 552, 563
groundhandling 462
Group of Consumer Correspondents 597
growth 584
Grupo Warner Lamber México 724–5
Guinness/Grand Metropolitan 658
Halladay, C. 108–47
Hampton, C. 560–61
Hand, Judge L. 399
Hapag–Lloyd 124
hard law 644–5
harm and efficiencies, balancing of 209–10
Hart–Scott–Rodino Act 19, 75, 81, 86, 661
Premerger Notification and Report Form 75
Hatch–Waxman Act 379, 381–2
Hausman, J. 3, 9
Havana Charter 625
Hawker, N. 571–2
health maintenance organization 54
Hearing Officer 83
Helou, A. 655
Herfindahl–Hirschman Index 708
High Court 502
high function market 23–5
Hoffmann–La Roche Ltd v. Empagran (2004) 182, 466, 484, 649
Hoffmann–La Roche v. Commission 217, 219–21, 472
hold-up problems, solutions to 201
Holyhead Harbour decision 401–2, 405
Home Secretary 495, 500, 502, 506
Honduras 751
horizontal agreements 339
Horizontal Merger Guidelines: cooperation and convergence 630–31
merger to monopsony 58
Oracle/PeopleSoft: harmonious dissonance 32, 36
regime dynamics in merger control 77–8
unilateral effects from mergers: Oracle case 4, 5
United States–Mexico arbitration on telecommunications services 684–5
House of Lords 500
Hovenkamp, H. 198, 201, 211
HSR filing 81
Huber, U. 647
Hugessen, Mr Justice 113
Hull, D.W. 287–316
Human Relations Management software 1–2, 5, 9, 34
human resource management software 18
human resources 18–19, 23–6, 27, 29–30
Hutcheson (United States) 608
Iberia 656
Iberoamerican Competition Forum 751
Iberoamerican Competition School 751
IBM Global Services 19
Iceland 642, 662–3
IEEE 364
IFS 19, 25
ILD Rules 709
Illinois Brick Co. v. Illinois 520, 521
Imperial Oil/Texaco (1990) 116
implementation doctrine 649
import substitution model 414
IMS Health GmbH & Co. OHG v. NDC Health GmbH & Co. KG (2004) 251–2, 260, 403, 562
incentives, elimination of for forum shopping among Member states 529
Indecopi (Peru) 599, 747, 748
independence indicator 427–30, 440–42
Information Bulletin on Merger Remedies 114
infringements, justifications for 609–13
innovation 356–7
Institute of Studies on Competition, Consumer Affairs and International Trade (IBRAC) (Brazil) 740–41
intangible facilities 402–3
intellectual property 400, 403
compulsory access 408
pools 407–9
rights 249–51
see also substantial convergence and intellectual property licensing
INTERAC case 133
Inter-Agency cooperation 494
Inter-American Development Bank 751
intermodal provisions 462
internal market liberalization 444–5
International Air Transportation Association 457
International Antitrust Enforcement Assistance Act 508, 661, 662
International Chamber of Commerce 663
International Competition Network 108, 182, 427, 599
bilateral enforcement cooperation agreements 664
cooperation and convergence 626–7
extradition 494
Latin America 753
Recommended Practices and
Index 775

competition policies 732–55
post-Washington Consensus 734–6
communication channels, new 751–2
institutional framework, weakening of 748–9
judicialization of competition enforcement 750–51
merger control 749–50
new draft competition law bills 751
non-traditional concepts in antitrust analysis 746–8
policies during Washington Consensus 736–41
creation of competition agencies 739–41
merger control regimes 741
proliferation of competition laws 738–9
policies pre-Washington Consensus 734–6
Washington Consensus 734
see also dominance enforcement abuse in Latin America
Lawsky, D. 522–65
Lawson 19, 21, 25
Leary, T. 87, 578
leniency arrangements 474–9
Leniency Notice 2002 477
Leonard, G. 3, 9
Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach 524, 530
liability, conditions for 259–62
licensing terms 361–5
Life Support Systems 122
likelihood of success test 178
limiting production test 242
Lindsay, A. 129–30
linear pricing 197
litigation see exclusion payments made in settlement of patent litigation
logit model of consumer demand 6
Long Island Medical Center (1997) (United States) 3
long-run average incremental cost 692, 694–5, 710
Lorain Journal 248, 253, 261
loyalty discounts see quasi-exclusivity
loyalty/target discounts 197–9
Lufthansa 656
Lufthansa/United/SAS 447
Luxembourg 449, 451, 562
Lysine 496
McLachlin, Judge 505
McReynolds, Justice 246
Magill 250–51, 252, 403, 405
Maize Seeds 343
managed system of exclusive competencies in European Community 90–93
‘manifest error’ 164–6
Mannington Mills Inc. v. Congoleum Corp. (1979) 472
manufacturers and distributors, aligning interests of 201
Marathon Oil 655
Marbury v. Madison 154
‘margin of discretion’ 164–6
market access 458, 460–61
market definition 684–5
market power 213, 304
Marshall, A. 567
Marshall, J. 154
Marshall’s Laws of Derived Demand 707
Matec 323–4
Matsushita Electric Industrial Co. v. Zenith Radio Corp. 521
MCI Communications Corporation v. AT&T 256
Medicare Modernization Act 379
Mercosur 736
merger control 749–50
merger control and cross-border transactions 622–39
bilateral cooperation in multilateral setting 629–33
multilateral initiatives, non-binding 626–9
national (merger control) and international (business) 622–5
merger control regimes 741
Merger Guidelines 1992 89, 696
Merger Remedies Study (EC Study) 119–20
merger simulation models 34–6
merger to monopsony 41–70
Canada 44–53

Cargill Limited/Better Beef Group of Companies 45–8
forestry mergers 48–53
economics of monopsony power 42–4
Europe 58–63
United States 53–7
mergers 553–4, 558–9
Mexico 320–21, 324, 326, 328, 736–9, 746–7, 751
cooperation and convergence 629
peso crisis 741–2
Michel, S. 356–94
Michelin II 195, 219–21, 224, 226
Michelin v. Commissio 195
Microsoft 25, 252–3
behavioural merger remedies 133–4
bilateral enforcement cooperation agreements 658, 660
competition policy and intellectual property law 369–71
compulsory access 405
consumer welfare 583
Oracle/PeopleSoft: harmonious dissonance 18–19, 21
secrecy of antitrust documents and hearings 555, 557
tying 287–8, 290, 292–6, 298, 304, 306–14
Mid Pac Petroleum 128
mid-market 24
Miert, K. van 444–65
Miller, J. 568
Mineta, N. 457, 459–60
minimum royalties clause 347
Minister of Justice (Canada) 504
Ministry of Communications (Brazil) 424
Ministry of Economy and Production (Argentina) 748, 749
Ministry of Mines and Energy (Brazil) 433
Ministry of Trade and Industry 721, 722
Molson/Elders (Carling O’Keefe) (1989) 115
monitoring, privatization of 131
monopolistic competition model 3, 4
monopolization 555
monopoly market 399–402, 405–6
Monsanto Co. v. Spray-Rite Service Corp 521, 522
Monti, M. 158–9, 515–16, 527, 530, 594, 596, 649–50
Moreira, A. 434
Morganite Inc. and The Morgan Crucible Co. plc (United States) 501
Morton Salt (FTC) 609
Motion Picture Patents Co. v. Universal Film Mfg. Co. 378
Motta, R.S. 433–4
multilateral initiatives, non-binding 626–9
Murray, B.C. 51
Mutual Legal Assistance Act 1985 503
mutual legal assistance treaties 480
Naim, M. 734–5
Nash, J.F. Jr 3
Nash non-cooperative equilibrium 3
National Association of Attorneys General 94
National Commission to Ensure a Strong Competitive Airline Industry (United States) 448–9
National Competition Authorities 596
National Cooperative Research Act 1984 526
National Cooperative Research and Production Act 1993 526
National Society of Professional Engineers v. United States 575, 609–10
natural gas 435–6
natural monopoly enterprises 322–3
Neale, A.D. 607
negative comity (avoidance of conflicts) 647–50
Nestlé 747
Nestlé/Dreyer (2003) 128
Nestlé/Garoto 748
Nestlé/Ralston (2002) 127
Netherlands 91–2, 448, 466, 484, 647
New Deal 183
New Zealand 646
Newscorp/Telepiù (2003) 122–3
Niels, G. 718–31
‘Nine No-Nos’ policy 335, 337
Nippon Paper (United States) 648–9
Nippon Paper II (United States) 471
no economic sense test 242
go-action letters 478
non-compete clause 347
non-dominant firms, behaviour of 209
non-litigation strategies 541–50
advocacy 542
antitrust enforcement 543–4
competition policy and the professions 544–5
competition policy research and development 545–7
education and constituency development 542–3
research and studies 543
non-traffic-sensitive costs 692–3
Norris (United States) 482–3, 493, 495, 501–2, 507
Norris–LaGuardia Act: section 4 608
North American Free Trade Area 50
North Atlantic treaty alliance against cartels see extradition
Northern Pacific Railway Co. v. United States (1958) 290
Northwest Wholesale Stationers Inc. v. Pacific Stationery & Printing Co. 520
Norway 642, 662–3
Notice of Proposed Rulemaking 463
notification 650–51
NYLCare-Gulf Coast 55
NYLCare-Southwest 55

O’Connor, Justice 292, 297–9
Odudu, O. 605–16
OEW 121
Office of Fair Trading 473, 474, 477–8, 484, 497, 599
Official Journal 80, 81, 82, 83, 553
Ohira, T.H. 433
Oliveira, G. 414–38, 440–43
Olympia Equipment Leasing Co v. Western Union Telegraph Co. 254
one-stop shop principle 91–2
Open Aviation Area 455–6, 464
open hearings from European Union Court and Commission documents 552–65
arguments, evaluation of 559
arguments for open hearings on abuse of dominance and cartel cases 556–8
cartels 554–5
closed briefs before the court, arguments for 559–60
comparison between United States and European Union 553
courts 555–6
description of Commission hearings 556
mergers 553–4
monopolization or abuse of dominance 555
opening court briefs, arguments for 560–63
reasons for closed hearings in merger cases 558–9
open skies regime 449–50, 456, 461
Opera 62
Oracle (United States) 173
Oracle/PeopleSoft 1–2, 5, 9, 179–80, 556
harmonious dissonance 16–40
agencies’ pas de deux for European Union clearance 19–22
competitive harm theory 28–9
geographic market definition 28
product market definition 23–8
transaction 17–19
transatlantic dissonance 23
transatlantic harmony 22–3
unilateral effects theory 29–36
see also unilateral effects from mergers: Oracle case
Oral Hearing 21, 30–31
Order In Council 498
Ordover, J. 322
Organization for Economic Co-operation and Development 182, 496, 626–8
bilateral enforcement cooperation agreements 641–3, 647, 653, 664
Committee on Competition Law and Policy 628
Global Forum on Competition 628  
Latin America 751, 753  
Mexico: competition law 724  
Recommendations on Merger  
Review 629  
Report on Notification of  
Transnational Mergers 628  
origin/destination approach 447  
Oscar Bronner v. Mediaprint  
Zeitungsund Zeitschriftenverlag  
GmbH & Co. KG 246, 251–2, 260, 263–4  
Owen, B. 737  
Paemen, D. 16–40  
Panama 320, 599, 738, 739, 742  
 Papadopoulos, A. 641–71, 676–8  
Papua-New Guinea 644  
paragraph 39 test 176  
Paraguay 479, 751  
Pareto optimality 579–80  
Parker v. Brown 683  
Partnership Guarantor Fund 436  
Pas Lumber Company 51  
Pate, H. 195–6, 216, 226, 242–3  
Patent & Trademark Office 367  
Patent Block Exemption Regulation 335  
payment law: implications for innovation  
and welfare 356–7  
payment litigation see exclusion  
payments made in settlement of  
patent litigation  
 patents as essential facilities 403–5  
 Pauline conversion 494  
payments to eliminate uncertain  
competition 369–70  
peculiar rule of reason 295  
Peña, F. 449  
Peña, J. 732–55  
Penrose report 473, 477  
per se rule 290–92, 296, 297–9, 362  
restrictive 294–5  
Perez Companc Forestal 747  
performance measurement and  
evaluation 547  
Peritz, R. 469  
Peru 320, 326, 479, 543, 599, 737–9, 741, 744–8, 751–2  
Petrobrás (Brazil) 434–5  
Petrobras-Pecom 747–8  
Petroessence and SG2R v. Commission  
(2003) 164  
Petroleum Law (Brazil) 434–5  
 petroleum sector 434–5  
pharmaceutical patent litigation and  
competition 370–72  
Phase I proceedings 20, 76, 79–80, 81, 83, 88  
Phase II proceedings 19–22, 27, 29, 33, 80–82, 83, 88  
Philadelphia National Bank (United  
States) 178  
Piaggi/Aprilia (2004) 123  
Pittman, R. 319–33  
Planasa (Brazil) 433  
Poland 629  
Polar 744  
Police and Criminal Evidence Act 1994  
480  
political background 430  
political goals 577–9  
political influence, susceptibility to  
86–7  
populism to consumer welfare 567–9  
Porter, M. 572–3, 576–7, 582, 583–4  
positive comity 653, 654–6  
Posner, R. 175–6, 568–70, 573  
potential harm 209  
Poucet and Pistine 608  
predation analogy 199–200  
predatory pricing rule 217  
Preferential Trade Agreements 644  
prejudgment interest in lieu of treble  
damages 534–5  
prescription benefit management 54  
price competition increase at  
downstream level 201–2  
price discrimination 57  
price and exchange controls 735  
pricing 289  
private enforcement of competition  
laws in United States 515–39  
attorney–client privilege 531  
civil justice system, positive aspects  
of 525–6  
common economic experts as  
independent arm of the court  
532–3
competition courts with exclusive jurisdiction over competition claims 527–8
confidentiality of agency investigations 535–6
damages, contribution for 533–4
fee shifting for prevailing party under criteria that lessens likelihood of frivolous actions 528–9
history of modern private enforcement 518–19
impact of Supreme Court’s decisions 522–3
incentives, elimination of for forum shopping among Member states 529
judicial system, characteristics of 523–5
prejudgment interest in lieu of treble damages 534–5
scope of discovery, limits on 531–2
state law counterparts 517–18
Supreme Court reduces incentives for plaintiffs to bring antitrust lawsuits 519–22
transfer and trial of cases if multiple members have equal jurisdiction 529–30
treble damages through legislation 526–7
privatization 414–15
Privatization Program 415
Pro-Growth Agenda 746
procedural rules, appropriate 309
Prodi, R. 456
producer surplus 575, 585
product market definition 23–8
production costs 289
productive efficiency 575, 583, 611
Productora y Comercializadora de Televisión (PCTV) 721, 725–9
profit sacrifice test 242
Promptuia 343
provisional application 463
public–private partnerships 436
QAD 25
quality improvement 289
quasi-exclusivity/loyalty discounts 202–3, 214, 217–18
quasi-tying see bundled
Quebecor/Sogides (2005) 118
Rambus (2002) 359–60
Rawls, J. 585
Re Pinochet Ugarte (No.3) (2000) 498
Reagan, R. 568
Recitals 340
recoupment test 724
Red Notice 481, 507
Reference Paper 710, 711
section 1 689–90
section 2 687–9
refusal to license 257–9
refusal to supply a competitor 248–59
European Community law 248–53
United States law 253–9
regime dynamics in merger control 72–104
bureaucratic heart of United States merger control 75–9
case allocation, more formal system of 94–5
concurrent jurisdictions of state and federal actors in United States 93–4
fine-tuning of administrative regime in European Community 79–83
judicial supervision, absence of in United States 90
juridical façade of United States merger control 73–5
juridical turn in EC merger control 83–5
managed system of exclusive competencies in European Community 90–93
political influence, susceptibility to 86–7
structural differences between European Community and United States 85–6
transparency in merger enforcement in United States 87–90
regional variation in costs 693
Regulation 1/2003 300, 315, 473–4, 479, 508
request principle 483
‘required share’ 223–4
research 543
research and development agreement (EC 2659/2000) 339
research and development funding through wealth distribution 612
Rewe/Billa/Meinl 60–61
Rewe/Meinl 60–61
Ridge Landfill case 113–14
Ridpath, J. 570
Riordan, M. 572
risk 57
allocation 201
Riverside Forest Products Ltd. 49
Rivière y Martí, J.A. 594–604
‘Road Runner’ 126–7
Roberts, Justice 183
Robinson, J. 4
Robinson–Patman Act 245, 517
Rodrigues, A.P. 433, 435
Roosevelt, F. 183
Rosenberg, Judge 505
Ross, D. 582
Ross, S.F. 574
Rousseau, J.-J. 585
Rowat, M. 736
royalties 361–5
RPM 720
Rubinfeld, D. 204
rule of reason 297–301
bilateral enforcement cooperation agreements 648
competition policy and intellectual property law 362, 369
compulsory access 407
Latin America 738
Mexico: competition law 720
restrictive 292–3
tests, comparison of 296
tying 287, 290, 292, 293, 294, 308–9, 310, 314–15
Russia 642
Sabre CRS 133
Sabre/Amadeus 656
safe harbours 210–11
safety 461
St. Louis Terminal Railroad, Associated Press (1945) (United States) 401
sales opportunity data 33
Salinger, M. 203
Samuel, G. 628
Sanderson, M. 41–70
Sanguinetti, J. 752
sanitation 433–4
SAP 2, 5, 9, 18–19, 23, 24, 25, 27, 28–31, 34–5
Saskatchewan Wheat Pool 45
Scalia, Justice 238, 247, 255
Schechtman, R. 433
Schedule of Specific Commitments (Mexico) 690
Scherer, F.M. 582
Schering decision 372, 380
Schering-Plough/Upsher-Smith 366, 376
Schneider Electric v. Commission 84–5, 158–9, 164, 167–8, 173, 180
Schumpeter, J. 582
Schwartz, M. 57
scope of discovery, limits on 531–2
Scott, A. 72–104
SDE 479, 740, 748
SEA 479, 740, 748
Sealink/B&I Holyhead: Interim Measures 249
SEB/Moulinex (2002) 122, 132
‘second degree’ price discrimination 197
‘Second Package’ 445
second request 77
second stage 463
Secretariat of Competition Defense 748
security 461
Serious Fraud Office 507
Shapiro, C. 3, 5–6
Shell/BASF (Project Nicole) (2001) 121, 132
Sherman Act 1890:
Index 781

bilateral enforcement cooperation agreements 648
competition policy and intellectual property law 370
compulsory access 407
consumer welfare 567, 574
criminal laws, enforcement and application of 467, 469, 472, 481
distributional consequences of antitrust 607
dominant firm’s duty to deal 247–8
extradition 496, 498, 502, 503, 507
Mexico: competition law 718, 725
private enforcement of competition laws 519, 530
section 1 73, 404, 406, 482–4
criminal laws, enforcement and application of 468
extradition 493, 495, 501
Mexico: competition law 719, 728
private enforcement of competition laws 517, 521
section 2 73, 212–14, 216, 237–40
competition policy and intellectual property law 369
compulsory access 406
criminal laws, enforcement and application of 468, 482
dominance enforcement abuse in Latin America 325
dominant firm’s duty to deal 236, 244–6, 255–7, 261–3
Mexico: competition law 719
private enforcement of competition laws 517
United States–Mexico arbitration on telecommunications services 683
Sidak, J.G. 679–716
SIEC test 16
Siemens/Drägewerk (2003) 122
Simitis, K. 456
Singapore 720
Singer, H.J. 679–716
Singer Mfg. Co. (United States) 371
Slaughter, A.-M. 182
Slocan Forest Products Ltd. 48–9, 51
Smith, A. 406
société GMB 62
soft law 626, 644–6
Soros, G. 734
South Africa 43, 649
Southam (Canada) 113
Spain 59, 61, 740, 751
specialization agreement (EC 2658/2000) 339
Spector, D. 202
Sprint 697, 710, 711
SS Lotus (France v. Turkey) (1927) 471
standard of proof 160–63, 209–10, 311–13
evidentiary test 169
standard-setting organizations 358, 360, 363–5, 383
see also ex ante price-related negotiations
Standards Development Organization Act 2004 526
Standards Development Organization Advancement Act 2004 526
Staples Inc. (1997) (FTC) 3
Staples/Office Depot 179
stare decisis 292
state conduct, antitrust scrutiny of
682–4
state efficiency goals 579–81
State Oil Co. v. Kahn 520
Statement of Objections 82, 158
Oracle/PeopleSoft: harmonious dissonance 20, 21, 22, 29–31, 34–5
secrecy of antitrust documents and hearings 554, 556–9
static efficiency 576–7, 581, 584
statutory rights 402–3
Stewart, Justice 178
Stigler, G. 203
Stiglitz, J. 568
structural differences between European Community and United States 85–6
subsidiarity principle 91
substantial convergence and intellectual property licensing 335–54
licensing agreements between competitors 348–9

Philip Marsden - 9781847204370
Downloaded from Elgar Online at 07/21/2019 06:22:53PM
via free access
see also competition policy in the European Community
substantial evidence rule 175–7
Superior Court Trial Lawyers Association (FTC) 520
supply chain management software 18
Supreme Court:
of Argentina 735
behavioural merger remedies 108, 125
bilateral enforcement cooperation agreements 648–9
of Canada 113, 505
competition policy and intellectual property law 369, 374, 378
compulsory access 400–401, 405
consumer welfare 568
criminal laws, enforcement and application of 466, 469, 484
discounts, rebates and selective pricing 196, 214, 217
distributional consequences of antitrust 608, 609
dominant firm’s duty to deal 239, 245–8, 253–8, 261, 264
judicial review of mergers: Tetra Laval and GE/Honeywell 159, 174, 178–9, 182–3
Mexico: competition law 725
private enforcement of competition laws 517–19, 524, 526
reduces incentives for plaintiffs to bring antitrust lawsuits 519–23
regime dynamics in merger control 74
tying 290, 291–2, 302
United States–Mexico arbitration on telecommunications services 682–3, 684–5
Sutherland, P. 155
Sweden 449, 451, 472
Swedish Match (2000) (FTC) 3, 179
Switzerland 472
Syfait v. GlaxoSmithKline AEVE 237
Taubman, A. 496, 555
Tavares de Araujo, J. 740
TCI 433
technical background 430
Technology Transfer Block Exemption Regulations 335–6, 338–49, 350
Article 4 344
Article 4(1) 348
Telcel 745
Telecable de Oriente 725
Telecommunications Act 1996 255, 691, 709
telecommunications sector 427, 431–2, 598
see also World Trade Organization: United States–Mexico arbitration on telecommunications services
Telefónica-Bell South 747
Telemarketing (1985) 251
Telmex 324, 679–81, 686, 687–9, 690, 691, 692–3, 695, 704
Telmex market power 696–710
cost structure, size and resources 703–5
countervailing market power of United States long-distance carriers in bilateral negotiation of international settlement rates 708
incentive to eliminate double marginalization on southbound calls and incentive to lower northbound calls 698–9
international simple resale, absence of and southbound calls termination 709–10
marginal customers, critical share of 705–8
market power for northbound point-to-point telecommunications services 699–700
northbound services supply by rival networks and price elasticity 702–3
relevant product and geographic market 696–8
southbound calls demand and price elasticity 700–702
termination access, price of 708–9
Tenet Healthcare Corp. (FTC) 179
Tennant, Sir A. 481, 496, 501
territoriality:
United Kingdom 474
United States 471–2
Index 783

Tetra Laval v. Commission 84–5, 311–13
Tetra Laval/Sidel 118
Tetra Pak (Commission) 294–5, 297–8, 302–3, 307
‘third degree’ price discrimination 197
‘Third Package’ 445
Thomas, C. 179
threat point 62
Tiercé Ladbrooke SA v. Commission 251, 403
Timberlane Lumber Co. v. Bank of America (Timberlane 1) (1976) 472, 648
Tineo, M. 319–33
Tizzano, Advocate General 164–5, 167
TNDC 748, 750
Tolko Industries Ltd. 49
total surplus 575–6, 585
total welfare 568–9
trade barriers, strong 735
trade flows 644
transaction costs 289
Transener 748
transfer and trial of cases if multiple members have equal jurisdiction 529–30
transparency in merger enforcement in United States 87–90
Transport Council 451, 455, 458–9
transportation sector (Brazil) 427
Treaty of Rome 154, 182
Article 84 447
Article 89 447
treble damages through legislation 526–7
Tribunal de Defensa de la Libre Competencia 479
Tribunal Nacional de Defensa de la Competencia 740
TRIPS 643
TUI/CP Ships (2005) 124
turf war 76
Turolla, F.A. 433
TV programmes, sale of 725–8
two-products test 291, 301–4
tying 199, 287–316
Article 82 297–301
burden of proof 309–11
economics of 288–90
EU law 294–5
foreclosure 306–7
legal tests: United States law 290–93
market power 304
objective justifications and efficiencies 307–8
order 301
procedural rules, appropriate 309
products tied together 305–6
rule-of-reason tests, comparison of 296
standards of proof 311–13
two products 301–4
Understanding on Rules and Procedures Governing the Settlement of Disputes: Article 6 679
uniform pricing, different types of 197
unilateral conduct 720
unilateral effects 16, 26–7, 29–36
different approaches 29–32
evidentiary matters 32–6
unilateral effects from mergers: Oracle case 1–14
United States government’s theory 1–2
Walker, Judge: treatise on unilateral effects in differentiated products industries 3–7
Walker, Judge: treatise on unilateral effects omitted important theories including United States government’s theory 7–9
Union of Industrial and Employers’ Confederation of Europe (UNICE) 663
United Brands v. Commission 247, 259, 261
United Kingdom 59
air transport sector 449, 451
criminal laws, enforcement and application of 466, 467, 474, 484
extradition 493, 494, 497, 506
/United States Mutual Legal Assistance Treaty 480
United Nations Conference on Trade and Development (UNCTAD) 626, 740, 753
United States:
–Australia agreement 642, 646
/Australia Agreement on
   Enforcement Cooperation 661, 663
/Australia Agreement on Mutual
   Antitrust Enforcement Assistance 661–2
–Canada agreement 646
–Canada Memorandum of
   Understanding 646
Constitution 683
   Seventh Amendment 523
   Supremacy Clause 517
Department of Agriculture 56
   Forest Service 51
/European Union agreement 663, 664
/European Union Agreement on
   Positive Comity 1998 653–4
–Germany Friendship, Commerce
   and Navigation Treaty 1954 653
United States Guidelines 408
United States Gypsum Co. (United
   States) 469
United/US Airways 447
Universal 121
Unocal 359, 360–61
Upsher-Smith 366
upstream market power 41
Uranium Cartel 646
Uruguay 479, 737, 742, 743, 744–5, 751
U.S.C. section 1407 524
Venepal 744
Venezuela 326, 479, 737–9, 742–5, 751
Verizon/Trinko 238–9, 245–6, 247, 253–6, 257, 261–2, 264
vertical agreements 720
Vertical Agreements block exemption
   (EC 2790/1999) 339
Vesterdorf, B. 160, 164–8, 175
Vienna Convention: Article 31(4) 694
Vinje, T. 16–40, 562
Virgin/British Airways 195, 218
Vivendi/Canal+/Seagram (2000) 121, 132
VKI v. Commission 535
Volvo v. Veng 250, 404
Wakil, O. 108–47
Walker, Judge V. 1, 3–9, 21, 23, 25–7, 33, 556
Waller, S.W. 643
Ward, C.E. 48
Warner Lambert Company 722
Washington Consensus 320, 568, 573, 732–3
wealth distribution 606–15
   infringements, justifications for
   609–13
   scope of antitrust 607–8
   substance of antitrust 608–9
Weinberg, J. 153–92
Weldwood of Canada Ltd. 48–9
   welfare 356–7
Wendell Holmes Jr, O. 398–9
Werden, G.J. 1–14
West Fraser Timber Co. Ltd. 48–9, 51
Whitacre, M. 470
White, Justice 371
White Paper 2001 494
Wholesale Energy Market 432
Williamson, J. 734–5, 742
Wilmer Hale attorneys 163, 167–8
Wood, D.P. 657
Wood Pulp Cartel: A Ahlstrom Oy v.
   Commission (1988) 474, 649
Woodgate, T. 398–412
World Trade Organization 182, 562, 625
   bilateral enforcement cooperation
   agreements 659
   Dispute Settlement Body 679
   Negotiating Group on
   Telecommunications 694
   Reference Paper 686–9, 691, 693
   section 1.1 691
   section 2.2 691
   tying 291
United States–Mexico arbitration on
   telecommunications services
   679–716
   competitive market and price
   setting equal to long-run
   average incremental cost
   693–5
   cross-subsidisation policy chosen
   by Mexican government
   695–6
market definition: European Union 685
market definition: United States 584–5
Mexican regulatory regime 686
Mexico’s commitments under section 1 of Reference Paper 689–90
Mexico’s commitments under section 2 of Reference Paper 687–9
Mexico’s commitments under section 5 of General Agreement on Trade in Services Annex on Telecommunications 690–91
non-traffi c-sensitive costs that Telmex cannot recap through other charges 692–3
regional variation in costs that Telmex incurs in providing network access 693
state conduct, antitrust scrutiny of: United States 682–3
state conduct, scrutiny of: European Union 683–4
United States’ contentions 686–7
see also Telmex market power
Worldcom 697, 709, 710, 711
WorldCom/MCI 658
Yang (United States) 505
Zeno Constitution 467
Zona, J.D. 3