Index

Africa 241–2
AKZO v Commission [1991] EC 16
Alito, Justice Samuel (US Sup Ct) 33, 38
Alkali Manufacturers Association of India v American Natural Soda Ash (ANSAC) [1997] India 120
anti-competitive agreements, identifying 119–24
Anti-dumping Code (WTO) 244
Antitrust Authority (AA) (Czech Republic) 197–8, 201–3
Antitrust Criminal Penalty Enhancement and Reform Act 2004 (US) 316
Antitrust Modernization Commission (US) 310
Argentina 122–3
Aron, Raymond 180
Asnef-Equifax v Ausbanc [2006] EC 12
Australia 17–18, 239
Austria 266, 269, 303
autonomous law 172–4
autonomous-responsive law 172–7
and Anti-monopoly law in PRC 173–7
Baker, Donald 281, 286, 291
baker Vögtlin [1896] Switzerland 71
Bauer, Joseph 282
Bell Atlantic Corp v Twombly [2007] US 37, 43, 58
‘Berkeley Perspective’ 143, 173–4
Bhattacharjea, Aditya 136
bias, risk of 23–4
bid-rigging 55–6, 102, 120–23, 200–201
penalties for 258, 265–8, 271, 285, 290, 292
black lists 19–20

Blackmun, Justice Harry (US Sup Ct) 35, 53–4
block exemptions 20, 198–200, 266
Bloom, Margaret 283–4
Boge, Ulf 26
Brazil
cartels in
settlements as deterrence 210–32
admission of participation in 210, 214–16, 219, 222–30
advantages of 209–10, 218–19, 231–2
contractual nature of 213–15
criteria for agreement 215–17
detection/investigation methods 212–13
judicial role in 213
leniency agreements 211–12, 217, 221–2, 228–30
litigation costs 209, 213, 220–21
plea bargaining 215, 218, 223–5
settlements concluded 228–30
and waiver of rights 213–14
Competition Authority (CADE) 210, 212–13
Competition Law 2000 211
Brazilian Competition Policy System (SBDC) 210–11
Breyer, Justice Stephen (US Sup Ct) 33, 35–6, 41–2, 48–9, 57
Bryant, Peter 275–6
Business Climate Development Strategy, for Middle East and North Africa (MENA) 241–2
CADE (Brazilian Competition Authority) 210, 212–13
California Dental Association v FTC [1999] US 37, 41–2
Calvani, Terry 282–3, 289
Camesasca, P.D. 15
Cancun Ministerial Meeting 2003 (WTO) 245
Carlton, Dennis 7–8
Cartel Damage Claims (CDC) 309
cartels 19–20
in Brazil, settlements as deterrence in admission of participation in 210, 214–16, 219, 222–30
advantages of 209–10, 218–19, 231–2
contractual nature of 213–15
criteria for agreement 215–17
detection/investigation methods 212–13
judicial role in 213
leniency agreements 211–12, 217, 221–2, 228–30
litigation costs 209, 213, 220–21
plea bargaining 215, 218, 223–5
settlements concluded 228–30
and waiver of rights 213–14
and competition policy, impact on 220–21, 246–7
and detection, impact on 210–12, 218–20, 226, 231–2
enforcement
and admission of guilt 210, 214–16, 219, 222–30
criminal penalties, effectiveness of 218–19, 222–5, 270–72, 279–84
in Czech Republic 204
defendant’s role and choice model 220–28
fines, establishing prohibitive levels for 246, 274–9, 288
goals of 219–20
in India 120–23, 132–3
international policy development on 220–21, 246–7
in Japan 88–9, 92–3, 95, 102
leniency agreements 211–12, 217, 220–30, 246
OECD studies of 214–19, 278
plea bargaining 215, 218, 223–5
in PRC 161
settlement design criteria 219–21
in Switzerland 69, 71, 79
and tradable rights 218
in US 215–17, 279–84
export cartels, exclusion from national competition laws 132–3, 204
marine hose cartel case 268, 291
vitamins cartel case 121
Cartels Act 1995 (Switzerland) 69, 71, 79
certainty
importance of 19, 51, 192, 197, 218–19
miscommunication between lawyers and economists 21–3, 323–4
and per se rules 48–9, 327
certiorari process, in US Supreme Court 34–5, 58
Chase, Justice Samuel (US Sup Ct) 31
Chester City Council v Arriva [2007] UK 26
Chicago School of Economics 28, 58–9
on efficiency 6, 14
influences on competition law/policy 30, 72, 105
China, People’s Republic of
Anti-monopoly Law 2007
implementation
Anti-unfair competition law phase 161–7, 169–71
in autonomous-responsive law framework 171–7
enforcement powers, deficiencies in 167–71
on mergers/concentrations 160–61
monopolistic behavior 160–63
regional blockades 159–60, 168–9
policy development 142–4
non-market economy, influence of 156–7
phase 1 ‘Market Gestation’ phase (1978–1993) 144–8
phase 3 ‘Market Consumption’ phase (2003–) 154–8

Roger Zäch, Andreas Heinemann and Andreas Kellerhals - 9781849803571
Downloaded from Elgar Online at 01/27/2019 03:44:44AM via free access
and ‘state-market’ relationship 143–4, 147, 152–4, 157–8
12th CPC Conference 145
13th CPC Conference 146
14th CPC Conference 148–51
15th CPC Conference 151
16th CPC Conference 145, 154–5, 157–8

Anti-unfair Competition Law 1993 151–3, 161–7
deficiencies of 169–71
on mergers/concentrations 167–8
monopolistic behavior 160–63
predatory pricing 161–3
and public utilities/regulated industries 165–7
regional blockades 163–5, 168–9
in autonomous-responsive law framework 171–7
and cultivation of competition culture 176–7
and entry into WTO 155, 157, 178–9
and industrial policy 177–8
and intellectual property rights 151–2, 179
and judicial review 176
policy documents

Build a well-off society in an all-round way, create a fresh base for the socialist career with Chinese characteristics (2002) (16th Conference of CPC) 154

Create a fresh phase for the construction of the socialism modernization entirely (1982) (12th Conference of CPC) 145

Decision of the Central Commission of the CPC on several issues for the consummation of the socialist market economic system (2003) (16th Conference of CPC) 154–5, 158

Decision on the reform of the economic system (1982) (12th Conference of CPC) 145

Hold high the great banner of Deng Xiaoping’s theory high, push the construction of the socialist careers with Chinese characteristics entirely into the 21st Century (1997) (15th Conference of CPC) 151

Hold high the great banner of the socialism with Chinese characteristics, fight for the new success for the construction of a well-off society (2007) (16th Conference of CPC) 157

Interim provisions on the takeover of domestic enterprises by foreign investors (2003) 167

Interim provisions on the takeover of domestic enterprises by foreign investors (2003) (PRC) 167

Memorandum of Understanding between the PRC and the USA for the Protection of Intellectual Property 1992 151–2, 179

Move forward along the socialist road with Chinese characteristics (1987) (13th Conference of CPC) 146

Notice on breaking the market blockade between districts and further livening commodities circulation (1990) 168

Notice on guiding and standardizing market pricing behavior (2003) 163
Proposals of the Central Commission of the PRC for the Amendment of part of the content of the Constitution Law (1993) (14th Conference of CPC) 149–50

Regulation on prohibiting the behaviors of public utility enterprise in restricting competition (1993) 165

Regulation on prohibiting the regional blockade in market economic activities (2001) 164–5

Regulation on repressing the unfair competition in the civil aviation transportation market (1996) 166–7

Regulations on telecommunications of the PRC (2002) 166

Regulations on the administrative punishment of illegal price behavior (1999) 163

Regulations on the administrative punishment procedure concerning price behavior (2001) 163

Speed up the reform, opening-up and the modernization construction, achieve greater success for the socialist career with Chinese characteristics (1992) (14th Conference of CPC) 148

Temporary method on undertakings annexation (1989) 160

Temporary Regulation of the State Council on expansion and protection of the socialist competition (Ten Stipulations on competition) (1980) 148, 158–60

Temporary Regulation on repressing price monopolistic behavior (2003) 162–3

Temporary Regulation on the prevention of seeking extravagant profits (1995) 162

class actions 302, 318

Clayton Act 1914 (US) 8, 32, 65–6, 302–5

Coase, Ronald 23–4

Coffee, John 291

Competition Act 1998 (UK) 268

Competition Appellate Tribunal (CAT) (India) 138–9

Competition Commission of India (CCI) 118–19, 124–30, 137–40

Competition Committee (OECD) 242–4

Competition Disqualification Orders (CDOs) (UK) 287

Competition Fund (India) 119

competition law, generally
and consumer welfare 6–12, 27, 64–71, 76–82, 248, 321, 329
and freedom to compete 76–83
and total welfare 6–12, 27, 61–4, 219, 321, 329
convergence of 320, 329
defining ‘competition’ 322–4
and developing countries, generally
as discovery procedure 77–8
and freedom to compete 61–4, 76–83
in EU law 66–74, 71–5
in Swiss law 70–71
and US constitutional law 65–6
global expansion of 272–3, 319–20
and constitutional law 64–71, 74–5
fairness vs. protection from power 321
whether final or intermediate 322–4
whether judiciary changing 71–6
whether multiple 321–2
influences on policy development 220–21, 238–9, 246–7
and international/multilateral trade 236–7, 242–9
as Magna Carta of free enterprise 142
and market outcome, dependence on 78–80, 237–8
OECD development 240–41
role in changing world economy 235–40, 248–9
Connor, John 274–6
constitutional law
and competition law
conflicts between 64–71, 74–5
and consumer welfare 64–71, 76–83
de lege ferenda 76–82, 324–9
in EU 66–74
in India 109–11
in US 65–6
consumer welfare, role in competition policy 6–12, 27, 61–4, 248, 321–2, 329
and constitutional law, conflicts with 64–71, 76–83
consumer benefit test 12
and de lege ferenda 76–7
and freedom to compete 76–82
welfare paradigm 4–5
consumers
enforcement rights of, individuals/associations 306–8
Continental TV, Inc. v GTE Sylvania Inc. [1977] US 48–9, 56, 59
Council of Europe 15–16
Courage v Crehan [2001] EC 26–7, 301, 304–6, 310
courts, national see also Supreme Court under United States referrals to ECJ 16–17
Credit Suisse Securities LLC v Billing [2007] US 37, 57–8
criminal law
burden of proof 253, 259, 263
characteristics of 251–3
criminal penalties
effectiveness of 269–73
and harm 251–2
and moral condemnation 252, 284–5
and enforcement of competition (see also under enforcement)
in EU
and harmonization, impact of lack of 293–9
impact on trade between member states 266–9
and national laws 264–73
penalties for breach 250–51, 264–9
trends in criminalisation/decriminalisation 269–73
under European Convention on Human Rights 254–7
in US 257–9
intent 252, 259
investigation, powers of 252, 259
rights of defence 253
Cyprus 265
Czech Republic
Act on Protection of Competition 1991 198–203
Antitrust Authority (AA) 197–8, 201–3
Austrian Commercial Code 1863 190
Civil Code 1948 190–92
Code of International Trade 192
Commercial Code 1991 189–90
competition law, development in 189–203
Act on Protection of Competition 1991
on abuse of dominance 198–201
amendments to 199–203
on block exemptions 198–200
compared with EC Treaty Article 86 199
leniency provisions 200–202
on mergers 198–201
Antitrust Authority, role and powers of 197–8, 201–2
conflicts with political/industrial policies 190–97, 206
and economic policy 190–97
and foreign investment 192, 196–7
harmonization with EU law 193–4
Ministry for the Protection of Economic Competition 198
privatisation policy 194–7, 199, 202–3
and property ownership 191–3
socialist/economic competition, defining 192–4
and state’s economic role, pre-revolution 190–94
Economic Code 1948 190–92
Velvet Revolution 1989 189
pre-revolution legislation 190–92

Daimler Chrysler [2007] EC 10
damages, for competition enforcement 288
calculation of 302–3, 308, 312–14
and confidentiality 317
and consumer associations 308
EU papers on 301–2, 306–7, 312–13, 316, 318
Daubert standard (US) 24
Davidow, Joel 273
de minimis rule 188, 199
Denmark 251, 266, 303
Department of Justice, Antitrust division (US) 39, 259, 280–90
role in Supreme Court antitrust decisions 38–9, 45–6
developing countries 106–8, 121, 156, 178, 235, 248
directors, criminal liabilities and penalties 265–6
disqualification of 271–2, 284–8, 293, 296
disclosure, of evidence information exchange 293–9
and private enforcement 314–15
Doha Round of Multilateral Trade Negotiations (WTO) 245, 248
dominant position, abuse of
in Czech Republic 198–201
in India 124–6
in Japan 96–102
Dr. Miles Medical Co v John D. Park & Sons [1911] US 46–7
Drexl, J. 13
Easterbrook, F.H. 28
Eastman Kodak Co v Image Technical Services, Inc. [1993] US 29, 34
EC Treaty, of Lisbon 14
EC Treaty Article 2 66
EC Treaty Article 3 66, 266–9
EC Treaty Article 14 66
EC Treaty Article 30(a) 250
EC Treaty Article 31 250
EC Treaty Article 81
Article 81(3) EC
and consumer welfare 8–9, 68, 83
efficiency/economics-based approach 11
constitutional conflicts with 67–70
court interpretation 72–4
criminal penalties for breach 250–51, 253, 264–9
national law compatibility 269–71
and goals of competition 323
EC Treaty Article 82
compared with Japanese law 92–3
constitutional conflicts with 67–70
and consumer welfare 79
court interpretation
and efficiency/economics-based approach 8
and essential facilities doctrine 10
criminal penalties for breach 250–51, 253, 264–9
national law compatibility 269–71
and goals of competition 323–4
EC Treaty Article 86 199
EC Treaty Article 98 67
EC Treaty Article 230 16–17
EC Treaty Article 234 17
EC Treaty Article 101 (after Treaty of Lisbon) see EC Treaty Article 81
EC Treaty Article 102 (after Treaty of Lisbon) see EC Treaty Article 82
Eckard, Woodrow 275–6
Economics
in competition law/policy 76–7 (see also freedom to compete)
consumer welfare vs. total welfare 6–12, 27, 68, 81–2, 321, 329
and de lege ferenda, role in 76–82, 324–9
and developing countries 106–8
in EU, trends in use of 3–5, 11–13, 27–8, 63–4
in EU transition countries 206–8
and market outcome, dependence on 78–80, 237–8
and efficiency 5–7, 11–14, 107–8, 183, 328
role of competition 239–40, 320, 322–4
as evidence 24–6
industrial organisation (IO) 328–30
institutional economics 330
and law, relationship between 21–3, 323–9
in creating new rules 328–9
interpreting existing rules 327–8
per se rules vs. rule of reason 326–7
on questions of fact 324–5
Index

and legal certainty 21–3, 323–4
legitimacy of use of 13–18
positive vs. normative 5–6
problems with use of 18–24
and risk of bias 23–4
role in decision-making 4
efficiency
and economics 5–7, 11–14, 107–8, 183, 328
role of competition/competitiveness 239–40, 320, 322–4
emerging markets see China; developing countries; EU transition countries; international trade and policy
enforcement 220
cartel deterrence, as punishment (see under Brazil, cartels in)
criminal penalties 320
advantages of imprisonment 274, 282–5
directors disqualification 271–2, 284–8, 293, 296
effectiveness of 269–73
impact on trade between EU member states 266–9
need for political support for 291
whether desirable 273–93
in EU
criminal offences, treatment of 250–51
damages, calculation of 308, 312–14
damages, EU papers on 301–2, 306–7, 312–13, 316, 318
Euro-defence 26, 300
and evidence/disclosure 314–15
information exchange 293–9
harmonization, impact of lack of 293–9
and national authorities, role of 186–7
private enforcement 300–318
collective actions 305–9
indirect purchasers 305, 309–12
individual member state rules 303–4
and leniency agreements 316–17
rights of individual consumer 306–7
relating to lower level offences 188–9
role of economics in 4–5, 11–13, 61–4
fines 201, 231, 292–3
for cartel activity 246, 274–9
on individuals 286–7
setting prohibitive levels for 274–9, 288
whether adequate incentive 279
in France 303, 307–8
imprisonment
advantages of 274, 282–5
alternative penalties 286–8
cartel activity, impact on 297
effectiveness of 292–3
conditions for 288–91
EU law harmonization, impact of lack 295–9
judiciary, role of 290–91
and moral condemnation 252, 284–5
offences/violations, suitable for 285–6
in India 137–40
investigators, need for dedicated bodies 289–90
in Japan 91–2, 95
judiciary, role of 290–91
national authorities, role in 237, 247–8
passing on defence 309–12, 318
and political support, need for 291
private
and indirect purchasers 305–6, 309–10
opt-in collective actions 306–7
opt-out principle 302, 307–8, 318
vs. public 24–7, 292–3, 317–18
protection of competition vs. competitors 10–11
rights, of individual consumers/consumer associations 306–8
settlements, as deterrence (see under Brazil, cartels in)
in US 302–6, 309–10
Enterprise Act 2002 (UK) 267–8, 272
essential facilities doctrine 10
Estonia 265, 271, 293
EU transition countries 181–3 see also
individual countries by name
conflicts with national policies 204–8
and economics, increasing role in
206–8
enforcement 185–9
decentralised 186–7
and legal security 187–9
and national authorities, role of
186–9
and European modernization 181–2
impact of differing levels of
development 203–4
and industrial policy 205–6
and political power 204–6
state intervention, role of 183–5
and statutory interpretation 184–5
and unity in variety 203–4
whether competition in interests of
developing market economy
183–5
European Coal and Steel Community
(ECSC) 65, 270
European Commission
and Council, relationship with 15–16
and European Court of Justice,
relationship with 16–17
policy documents
Discussion Paper on Exclusionary
Abuse 2005 (EC) 17
Green paper on damages actions
for breach of the EC Antitrust
Rules 2005 (EC) 301, 316
White paper on damages actions
for breach of the EC Antitrust
Rules 2008 (EC) 301–2, 306–7,
312–13, 318
prosecutorial bias of 25
and role/influence of economics on
15–17
European Commission of Human
Rights 255
European Convention on Human
Rights 1952 254–7
European Court of Human Rights
254–7
European Court of Justice
and economics, influence on 15–17,
24–7
European Commission, relationship
with 16–17
referrals to 16–17
role in competition law/policy 14–15,
72–4
European Union
accession countries of 2004 (see EU
transition countries)
as barrier to competition 182–3
constitutional basis of 66–74, 237
and developing countries’ models
106–7
European University Institute (EUI)
274
evidence
information exchange, between EU
member states 293–9
and private enforcement 314–15
extra-territorial conduct 40–41
extra-territorial scope, of national
competition laws 134–5, 204
Fair Trade Commission of Japan
(JFTC) 89–92, 95–6
Federal Trade Commission (FTC)(US)
39, 259
role in US Supreme Court antitrust
decisions 38–9, 41–2, 45–6
Federal Trade Commission v Brown
Shoe Company [1966] US 124
filters 20
fines see under enforcement
Finland 253, 255
France 265, 269, 303, 307–8
Francovich v Italy [1991] EC 304
free rider argument 50–52
freedom to compete, of individual
and competition law, conflicts with
61–4
in EU law 66–74
in Swiss law 70–71, 78–9
and US constitutional law 65–6
G8/G20, competition law place in
policies of 236
Gavil, Andrew 21, 24
General Agreement on Tariffs and
Trade (GATT) 243
General Agreement on Trade and
Services (GATS) 243
Gerber, D.J. 16, 18–19
Germany 290
conflicts, between law and policy 77,
206
criminal penalties 251, 266, 270,
272
private enforcement 300–301, 303,
305, 309
evidence/disclosure 314–15
passing on defence 310–11
Gifu Credit Corporation [1977] Japan
98–9
Ginsberg, Justice Ruth Bader (US Sup
Ct) 33, 35, 56
global financial crisis 235–6, 238–9,
248–9
globalisation 204, 235–49
liberalisation, privatisation and
globalisation (LPG) paradigm
112–14, 116
Google/Doubleclick acquisition
130–31
Greece 266
Green paper on damages actions for
breach of the EC Antitrust Rules
2005 (EC) 301, 316
Gulf Co-operation Council (GCC)
242, 247
Hammond, Scott 280, 283
Hanover Shoe Inc. v United Shoe
Machinery Corp [1968] US 304,
309
Haridas Exports v All India Float Glass
Manufacturers Association [2002]
India 134–5
Hartford Fire Insurance Co v California
[1994] US 29, 37, 40
Hartley, T.C. 16
High Level Committee on competition
law (India) 115–16
F. Hoffman LaRoche Ltd v Empagran
[2004] US 37, 40–41
horizontal agreements/conspiracies
21–3
in India 119–23
in Japan 92–3
penalties for 285–6, 292
in US 41–3, 47, 258, 276
Hovenkamp, Herbert 17
Hüls v European Commission [1000]
EC 255
Hungary 266, 271
Illinois Brick Company v Illinois [1977]
US 304–5, 309–10
Illinois Tool Works v Independent Ink,
Inc. [2006] US 37, 45, 47
immunity see leniency provisions
imprisonment see under enforcement
In re Modern Food Industries Ltd
[1996] India 128
In re Sarabhai Chemicals Private Ltd
[1978] India 122
India
Competition Act 2002 109, 117–20
on abuse of dominance 124–8
adjudication under 137
on anti-competitive agreements
119–24
appeals under 140
background to 115–16
on competition advocacy 118–19
Competition Appellate Tribunal
(CAT) 138–9
Competition Commission (CCI),
role of 118–19, 124–30,
137–40
exceptions and exemptions under
131–4
on export cartels 132–3
extra-territorial scope of 134–5
on horizontal agreements 119–23
and intellectual property rights
131–2
investigation and enforcement
provisions 137–40
leniency agreements 136
on mergers/acquisitions 129–31
and MRTPA 1969, comparison of
provisions 140–41
predatory pricing 127–8
relevant market, defining 125–6
specific sectoral regulations 135–6
on vertical agreements 123–4
Competition Commission of India
118–19, 124–30, 137–40
Competition Fund (India) 119
constitutional law basis of 109–10
High Level Committee on 115–16
industrial policy of 1956 110–11
Monopolies and Restrictive Trade Practices Act 1969
on cartels 120–23
and ‘command and control’ policy approach 109, 114
economic basis for 109–11, 114
goals of 112
and intellectual property rights 132
and liberalisation, privatisation and globalisation (LPG) paradigm 112–14, 116
on mergers 114–15
on monopolies 111–12
reforms to 113–15, 140–41
indirect purchasers, involvement in enforcement 305–6, 309–10
industrial organisation (IO) 328–30
institutional economics 330
intellectual property, exclusion from anti-competition law 131–2, 179
international trade and policy and competition law, generally 236–7
multilateral policy developments 155, 157, 178–9, 243–5, 247–8
Investment Compact for South East Europe 2006 241
Ireland, enforcement in criminal penalties 265, 271, 280, 293, 298
information exchange 294
private enforcement procedure 303, 312, 315
Italy 303
Japan
Anti-monopoly Act 1947
on abuse of dominant position 96–102
amendments to 89–90, 93, 98–9, 100–103
background to 87–8, 93–6
on cartels 88–9, 92–3, 95, 102
and EU law, compared (Article 82) 92–3
Fair Trade Commission of Japan (JFTC) 89–92, 95–6
guidelines/legislation connected with 94–5
implementation measures 90–92
and industrial policy, conflicts with 93–6
influences/restrictions, on development of 93–6, 105–8
key provisions of 88–92, 96–105
on mergers/acquisitions 94, 105–6
on monopolies 90–92, 94
penalties under 91–2, 95
Premiums and Misleading Representations Act 1956 102–3
and small/medium-sized enterprises (keiretsu), competitiveness of 96–100, 106–7
Subcontract Act 1956 93, 100–102
on unfair trade practices 89–90, 92–3, 96–102
Designation of Unfair Trade Practices 1953 89–90, 98–9
Subcontract Act 1956 93, 100–102
JFTC see Fair Trade Commission of Japan
judiciary, generally see also Supreme Court under United States
role in competition law 74–5
whether changing goals of 71–6
Kartte, Wolfgang 113
Kennedy, Justice Anthony (US Sup Ct.) 33, 36, 38, 46–8, 51, 53
Kolasky, William 283
Korah, Valentine 3
Kroes, Commissioner N. 4, 7–8, 298–9
Kunzlik, Peter 298
Landes, W. M. 32–4
lawyers, and economists, miscommunication between 21–3, 323–4
leniency agreements
best practices for 246
in Brazil 211–12, 217, 221–2, 228–30
in Czech Republic 200–202
effectiveness of 279–82
in India 136
Index

and private enforcement 316–17
US policies on 279–82, 289–90
liberalisation, privatisation and
globalisation (LPG) paradigm
113–14, 116, 238
Linman, Arthur 282
Lisbon, Treaty of (EU) 14
Luxembourg 269–70
Magna Carta of free enterprise,
competition law as 65–6, 142
Majone, G. 15–16
Malta 266
Manfredi v Lloyd Adriatico
Assicuzioni [2006] EC 26–7, 301, 313
Manju Bhardwaj v Zee Telefilms Ltd
[1996] India 133
marine hose cartel case 268, 291
Marrakesh Agreement 1994 (WTO)
243
mergers/acquisitions
in Czech Republic 198–201
in India 114–15, 129–31
international policy development
on 246
in Japan 94, 105–6
non-co-ordinated effects of 325–6
in PRC 160–61, 167–8
proof of dominance 21–3
Middle East and North Africa
(MENA), Business Climate
Development Strategy 241–2
Ministry for the Protection of
Economic Competition (Czech
Republic) 198
Mitsui–Sumitomo Bank [2005] Japan
98–9
Mitsukoshi Department Store [1982]
Japan 98–9
monopolies
in India 111–12
in Japan 90–92, 94
in PRC 160–63
restriction on, as interference in
market competition 182–3
Monopolies Inquiry Commission
(MIC) (India) 111
Monterrey consensus 2002 (UN) 238
multilateral policy developments 245–8
national competition laws
and criminal enforcement penalties
264–73
and EU law
compatibility with 269–71
restrictions on 266–73, 293–4
export cartels, exclusion from 132–3,
204
extra-territorial scope of 134–5,
204
and Intellectual property, exclusion
from 131–2, 179
national authorities, role of 186–7
Nestlé/Perrier merger 15
Netherlands 269, 271, 303
Neven, D.J. 25–6
Nonet, Philippe 143, 172–4, 177
NYNEX Corp v Discon, Inc. [1998]
US 37, 42
O’Connor, Justice Sandra Day (US
Sup Ct) 44–5
OECD
on anti-dumping 244
Business Climate Development
Strategy, for Middle East and
North Africa (MENA) 241–2
cartel settlements, studies of 215–19,
275
Competition Committee 242–5
competition law/policy development
240–46
on criminal sanctions on individual
281–2
Investment Compact for South East
Europe 2006 241
Recommendation of the Council
concerning effective action
against hard core cartels 1998
246
Recommendation on merger review
2005 246
Revised Council recommendation on
co-operation among member
countries on restrictive business
practices 1986 245–6
Office of Fair Trading (UK) 272, 284,
287
opt-in collective private enforcement
actions 306–7
The development of competition law

opt-out principle, in private enforcement actions 302, 307–8, 318
ordoliberalism 10

passing on defence 309–12, 318
per se rule 19–20, 41
and certainty 48–9, 327
and resale price maintenance
free rider argument 50–52
Leegin case 45–52
and rule of reason 119–20, 123, 326–7

Policy Framework for Investment 2006 (PFI) (OECD) 240–41
Posner, R.A. 32–4
PRC see China, People's Republic of precedent, judicial see stare decisis
predatory pricing 21
analysis of 18–19
examples of 20, 26
in India 127–8
in PRC law 160–63
US Supreme Court rulings on 52–7

Premiums and Misleading
Representations Act 1956 (Japan) 102–3
pricing see predatory pricing; resale price maintenance
proof
burden of 19–20
of dominance 21–3
quick look doctrine 41–2
Raghavan, S.V.S. 115
recession
and government intervention 235–6, 249
impact on competition 248–9
Recommendation of the Council concerning effective action against hard core cartels 1998 (OECD) 246
Recommendation on merger review 2005 (OECD) 246
regional blockades, in PRC 159–60, 163–5, 168–9
Regulation 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (EC) 264–6
Article 3 186–7
Article 5 264–6, 293
Article 9 10–12
Article 10 186–7
Article 12 264, 293–7
Article 23(5) 250
economics-based approach of 11–12
fines 255
information exchange, between member states 293–9
restrictions on national laws 266–73, 293–4
trends in criminalisation/decriminalisation 270–73
Rehnquist, Chief Justice William (US Sup Ct) 36–8
repressive law 172–4
resale price maintenance 93, 162–3
and per sale rule
free rider argument 50–52
Leegin case 45–52
rule of reason test 119–20, 123, 326–7
Revised Council Recommendation on co-operation among member countries on restrictive business practices 1986 (OECD) 245–6
Rivlin, Judge Geoffrey (UK) 291
Roberts, Chief Justice John (US Sup Ct) 31, 36, 38
Robinson Patman Act 1936 (US) 56
Roosevelt, Franklin 32
rule of reason test 119–20, 123, 326–7
Russia 255
safe harbours 20
Scalia, Justice Antonin (US Sup Ct) 33, 36, 40, 54–5, 57–8
Scott, R.E. 226
self-incrimination 252, 281–2, 290
Selznick, Philip 143, 172–4, 177
settlements, as deterrence see under Brazil, cartels in Sherman Act 1890 (US) 65–6, 319
criminal penalties under 257–9
and extra-territorial conduct 40–41
and horizontal conspiracy 41–3
judicial interpretation 32
and predatory conduct 52–7

Roger Zäch, Andreas Heinemann and Andreas Kellerhals - 9781849803571
Downloaded from Elgar Online at 01/27/2019 03:44:44AM via free access
Singapore Ministerial Meeting 1996 (WTO) 244
Singh, A. 117
Slovak Republic 265
small and medium-sized enterprises, in Japan 96–100, 106–7
Souter, Justice David (US Sup Ct) 33, 35–6, 40–43
Spectrum Sports, Inc. v McQuillan [1993] US 37, 52–3
stare decisis/precedent and economic analysis 30, 58–60 and US judicial activism 51–2, 58–60
State Oil Co v Khan [1998] US 37, 44–5, 47
Stevens, Justice John Paul (US Sup Ct) 33, 35–6, 43, 45, 53–4, 56–8
Stigler, George 24
Stuntz, W.J. 226
Sumitomo Metals v MITI [1965] Japan 94
Supreme Court (US) see under United States sustainable development 235 Sweden 303 Switzerland 63, 70–71, 78–9
T-Mobile Austria/Tele.ring merger 21–3
Tetra Laval v Commission [2005] EC 15
Texaco Inc. v Dagher [2006] US 37, 42–3
Thomas, Justice (US Sup Ct) 33, 43, 56–7
tie-in arrangements 123–4, 160, 163 total welfare standard 6–10, 27, 321, 329
transparency 12
Treaty, EC see EC Treaty
United Kingdom Competition Act 1998 268
Competition Disqualification Orders (CDOs) 287
Enterprise Act 2002 267–8, 272 penalties, criminal/non-criminal 265, 267–8, 271–2, 280, 293
Department of Justice, role of 38–9, 45–6
Federal Trade Commission (FTC), role of 38–9, 41–2, 45–6
private competition suits, trends in 29
stare decisis/precedent
and economic analysis 30, 58–60
and judicial activism 51–2, 58–60
whether court has agenda 30, 58–60
Supreme Court, generally
appointment/nomination, of judiciary 31–2
Chief Justice, role of 36, 38
constitutional basis of 30–32
impeachment procedure 30–31
political affiliations, of judiciary 32–6
political nature of 32–4
quick look doctrine 41–2
tenure, of judiciary 30–31
Uruguay Round of Multilateral Trade Negotiations 1986–1994 (WTO) 243
Vallal Peruman v Godfrey Phillips (India) Ltd [1994] India 132–3
van den Bergh, R.J. 15
vertical agreements/restraints 3
and block exemptions 20
detection of 285–6
in India 123–4
and interbrand competition,
influence on 8–9, 27, 49–51
US Supreme Court rulings on 44–52
vitamins cartel case 121
Volvo Trucks North America Inc. v Reeder-Simco [2006] US 37, 56–7
Washington consensus 1989 (UN) 238
welfare, consumer
role in competition law, generally 6–12, 64–71, 68, 321–2
and constitutional law, conflicts with 64–71, 76–83
and freedom to compete 76–82
vs. total welfare 6–12, 27, 61–4, 219, 321, 329
welfare paradigm 4–5
whistleblowers
effectiveness as enforcement mechanism 279–82
and self-incrimination 252, 281–2, 290
White, Justice Byron (US Sup Ct) 35
white lists 20
Willig, Robert 244
Working Group on Trade and Competition (WTO) 244–5, 248
World Bank 241–2
World Trade Organization (WTO)
Anti-dumping Code 244
Cancun Ministerial Meeting 2003 245
Doha Round of Multilateral Trade Negotiations 245, 248
Marrakesh Agreement 1994 243
PRC entry into 155, 157, 178–9
on role of competition in international / multilateral trade 243–5, 247–8
Singapore Ministerial Meeting 1996 244
Working Group on Trade and Competition 244–5, 248