Index

Abbott, A. 570
abuse see dominance abuse headings
Adler, M. 14, 29, 30
Aghion, P. 5–6
Aghion, C. 32, 504
Akerlof, G. 153, 271
Akman, P. 1–2, 27, 30, 32, 71, 419, 420
Albæk, S. 269
Albors-Llorens A. 253
Allain, M. 222
Allan, B. 431, 438
Allen, R. 25
allocative efficiency
merger control 532–4, 536–40, 544
vertical agreements, intrabrand restraints 182–3
Alschuler, A. 232
Amelio, A. 270, 316
Anderman, Steven 561–87
Anderson, D. 239
Andreangeli, A. 489
Andrews, P. 376
Andriychuk, O. 2, 31, 38, 70
anti-competitive effects
foreclosure and proportionality test
under Article 102 478–80, 505
information exchange agreements
and foreclosure as theory of harm 145–6
innovation, IPRs and competition law 563–4
intellectual property rights and harm
574, 576, 581, 582–3, 585
intent, difficulties in inferring, and information exchange 249–50
margin squeeze and exclusionary pricing abuses 444–5, 453–5
merger control, substantive issues 518, 521, 525–6, 529, 540, 548, 555, 556
rebates and price discrimination 459, 460, 464–7, 468–9, 471
tying and bundling 507–12
vertical agreements, interbrand restraints 185–6, 189
vertical agreements, intrabrand restraints 179–81, 188
Areeda, P. 343, 399, 427–8, 459, 470, 488
Ariely, D. 271
Armstrong, M. 270, 275
Arquit, K. 182
Arrow, K. 5, 568, 571
Art, J.-Y. 503
Articles, TFEU see TFEU
Atkinson, A. 10
Atkinson, R. 283
Audretsche, D. 283
Australia, cartel sanctions 231, 233
Avenel, E. 328
Averitt, N. 22
Ayal, A. 397
Ayres, I. 277
Azcuenaga, M. 133, 150

Bacon, K. 608
Bagwell, K. 265
Bailey, D. 71, 256
Bain, J. 263, 362, 363
Baird, D. 138
Baker, D. 238
Baker, J. 374
Banasevic, N. 564
Baquero Cruz, J. 606
Barens, M. 228
Barnard, C. 477
Barnett, J. 252
Bavasso, A. 335, 609
Baxter, S. 312, 521
Baxter, W. 220
Beaton, J. 532
Beaton-Wellis, C. 233
Becker, G. 220
Beckner, C. 415, 475
Bekkers, R. 343

629

Ioannis Lianos and Damien Geradin - 9781781006023
Downloaded from Elgar Online at 07/22/2019 01:33:46AM
via free access
Bellamy, C. 419
Bellis, J. 193
Belmont, S. 297
Ben-Shahar O. 221
Bendell, T. 133
Bennett, M. 130, 133, 142, 143, 144, 169, 242, 252, 253, 254
Bentham, J. 220
Bently, L. 250, 562, 568
Bergman, M. 131
Bergson, A. 29
Bernheim, B. 267, 278
Bertrand, J. 261, 262, 272
Bentsch, C. 269
Besanko, D. 186, 475
Biancini, S. 270
Bibas, S. 232
Billard, O. 330–31
Binmore, K. 22, 139
Biro, Z. 189
Bishop, B. 322
Bishop, W. 179, 278, 438, 553
Björkroth T. 148
Black, J. 589
Blair, R. 1, 69
Blake H. 338
Blaug, M. 6

block exemption
Regulations on Research and Development and on Specialization Agreements 91, 93, 95, 99, 101, 123
regulations, vertical agreements 191, 192, 193, 196–7, 201–3, 207–10
technology transfer block exemption regulations (TTBERs) 574
vertical agreements, not covered by 210–11
Bloom, M. 223
Blume, A. 268
Bonassias, P. 48
Borenszttein S. 378, 380
Bork, R. 1, 274, 362, 427, 538
Boulter, L. 133
Bouttes, J. 598
Bovis, C. 62
Bows, S. 29
Braithwaite, J. 589
Brander, H. 271
Breit, W. 236
Brenning-Louko M. 207
Bresnahan, T. 268, 269, 330, 374
Bright, C. 190
Brittan, L. 394
Broberg, M. 257
Brock, W. 267
Brodley, J. 264, 429, 532
Brozen, Y. 264
Buccirossi, P. 247
Buendia Sierra, J.-L. 62
bundled products and services as entry barrier 367
bundled rebates, and exclusionary pricing abuses 468–9
bundling and tying see dominance abuse and exclusionary non-pricing abuses, tying and bundling
Busse, M. 267
Buttigieg, E. 2

Canad

Canada

cartel infringements as criminal 223
Innovation and Dynamic Efficiencies 23
mergers and overall welfare standard 537–8
Canoy, M. 338
Capobianco, A. 133, 165
Carle, J. 133
Carlin, F. 190
Caronna, F. 295
Carrier, M. 566
cartels 217–41
compliance programmes, failure to reward 226
criminal cases, evidence obtained through administrative process, problems with 225–6
damages claims 234–8
enforcement purpose 219–27
fine levels 219–20, 238–9
fines-only approach, concerns over 221–4
information exchange agreements 130–31
legal privilege rules 227
national level criminal sanctions 225
opt-out system of collective claims, suggestion for 239
optimal deterrence theory 220–21, 222, 236
private enforcement and compensation 235–6
probability of detection 221
public and private enforcement, relationship between 234–9
Regulation 1/2003 225, 234
sanctions 219–25
side effects of anticartel policies, oligopoly problem 319–21
time lags between cartel decisions and corporate fines 223
under-deterrence possibilities 221–2
whistleblower immunity 235
cartels, leniency programmes and direct settlement 227–33, 235, 238–9
abuse and unfair outcomes concerns 229–30
leniency as source of evidence 230–31
settlement concessions 230–32
settlement decision not in firm’s best interests 231, 232–3
cases see European Court of Justice, court cases
Cason, T. 134
Cass, R. 254, 475
Cave, M. 626
cellophane fallacy 356–8, 378
Cengiz, F. 618
Ceriani, L. 590
Cesare, R. 87
Clough, M. 306
Chamberlin, E. 262–3, 264, 265
Charbit, N. 598
Charter of Fundamental Rights 62, 66
Church, J. 186
Christiansen, A. 68, 475, 608
Christie, W. 270
Christoffersen, J. 477
Collins, P. 133, 140, 142, 143, 144, 169, 242, 252, 253
collusion
effects, vertical agreements, intrabrand restraints 188
Hub and Spoke see information exchange and Hub and Spoke Collusion, UK
invitations, dealing with, information exchange agreements 167
joint payoff maximization and perfect collusion, information exchange agreements 141
semicollusion research, oligopoly problem 271
welfare losses and tacit collusion, oligopoly problem 273–4
collusion, tacit collusion
analysis and market definition 287
and behavioral economics 271–2
and conscious parallelism, oligopoly problem 263, 291–2, 308, 328–30

Chicago School, oligopoly problem 264–5, 274–5, 283
China, Anti-Monopoly Law 55
Choi, J. 186, 511
Chong, D. 220
Charter of Fundamental Rights 62, 66
Chauve, P. 616
Chavez, J. 118
Chen Z. 268

Index
Handbook on European competition law

comparative institutional analysis see goals of EU competition law, comparative institutional analysis, need for

comparative market test, excessive prices as abuse 402–3
competition
agency intervention, appropriateness of, and exclusionary pricing abuses 449–51
‘as efficient competitor’ standard 621–2
‘as if ’ competition standard 32, 33 equally efficient competitor test 425–6
information exchange, and horizontal cooperation agreements see horizontal cooperation agreements and Article 101 TFEU, information exchange, competitive assessment of
law in constitutional framework, implications of 53–60
law remedies, oligopoly problem 322–5, 325–44

law, supremacy of, substantive perspective 603–5
law and vertical agreements see vertical agreements, competition law, treatment under
National Competition Authorities (NCAs) 61
pro-competitive effects, information exchange agreements 132–5
pro-competitive or efficiency-enhancing conduct, information exchange agreements 147–53
proof of intent to eliminate competitors 431–2
restriction capability, information exchange agreements 155–9
restriction, information exchange and Hub and Spoke Collusion, UK 247–50, 253–7
restrictive effects on, and horizontal cooperation see horizontal cooperation agreements and Article 101 TFEU, restrictive effects on competition supra-competitive profits (SPC paradigm) 263
tendency to restrict competition test 496–7

competitive energy markets, barriers to 612–13
competitive process as intrinsic normative value 36–41 as ‘wasteful’ argument 150–51
Compte, O. 267
coordinated practice information exchange agreements 163–8
information exchange and hub and spoke collusion, UK 246–7, 251–2
understanding of, oligopoly problem 290–91
Connor, J. 157, 221–2
Constantinos, L. 284–5
constitutional and legal dimension, regulation/competition interaction 603–8
constitutional and sub-constitutional levels, distinction between 35
Constitutional Treaty, competition as
Index 633

guiding principle (fifth principle) 49–50, 52
consumer harm
exclusionary non-pricing abuses, refusal to supply 497–500
exclusionary non-pricing abuses, tying and bundling 506, 510–11
test, proportionality test under Article 102 479–80, 494
see also harm theory
consumer protection
welfare effects test, and exclusionary pricing abuses 425–6
consumers
adverse effect on, vertical agreements, intrabrand restraints 181, 182–3
choice, optimal level as goal 21–3, 35, 45
choice reduction, merger control 521–4
consumer protection as goal see goals of EU competition law, consumer protection
customer switching, merger control 529
producers’ efficiency gains and consumer distribution 9–10
surplus standard, merger control 539
territorial and customer restrictions, vertical agreements 200–203
see also social dimension; welfare
Cook C. 89
Cooper, T. 268
copyright protection 568–9
see also innovation, IPRs and competition law
Cornish, W. 562
Coscelli, Andrea 350–84
Cosme da Costa Viera, P. 540
Cournot, A. 261, 272
Cournot effects, merger control 544
Cournot-Nash equilibrium and perfect collusion, distinguishing between 164–5
Cowen, T. 11, 12, 13
Craig, P. 477
Craycraft, C. 222
Creighton, S. 484
Croicioni, P. 488
Crowther, P. 626
Cseres, K. 20
Cuff, R. 239
customers see consumers
damages claims
cartels 234–8
private damage suits and excessive pricing 422
Damania, R. 342
Dautricourt, C. 194
Davidson C. 271
Davies S. 331
Davis, J. 236, 241
Davis, P. 279
De Burca, G. 477
De Hauteclercque, A. 612, 626
De la Mano, M. 532, 538
De Minimus Notice, vertical agreements 174–5, 195, 197, 206
De Muyter, L. 599
De Roos, N. 271
De Roover, R. 391
De Streele, A. 399, 418, 420, 598
De Visser, M. 602
Deneckere, R. 271
Deringer, A. 252
Desanti, S. 266
Dethmers, F. 198, 312, 521
Diaz, F. 503
Dick, A. 309–10, 532
Diplock, W. 81
discriminatory pricing see under pricing
distribution agreements, reciprocal and non-reciprocal, horizontal cooperation agreements 125
distributive justice
principles, and exploitative abuses, prohibition 392–3
Social Welfare Function (SWF) 29–30
Dixit, A. 138
Doherty, B. 488
Dolmans, M. 503, 504
dominance abuse
Handbook on European competition law

fair price setting problems 445–6
independent price squeeze offence 451–3
legal test developed in EU 446–55
leveraging process 444
margin squeeze definition and appropriate antitrusts standard 442–6
refusals to supply, treated as similar to 455–7
unlawful margin squeeze and lawful price competition, distinguishing between 454–5
dominance abuse and exclusionary pricing abuses, predatory pricing and selective low pricing 427–42
AKZO and Post Danmark judgments 430–35
cost-based test to distinguish between predatory and competitive pricing 428–30
Guidance Paper 439–40
legal price-cost test 430–35
legal test for predation 430–36
meeting competition defence 436–7
objective concept, concept of abuse as 432–3
over-inclusive argument for EU test 439
predatory pricing by dominant undertakings on secondary markets 435
proof of ‘intent’ to eliminate competitors 431–2
recoupment 436, 438
selective low pricing 440–42
dominance abuse and exclusionary pricing abuses, rebates and price discrimination 457–71
anti-competitive effects 459, 460, 464–7, 468–9, 471
bundled rebates 468–9
exclusionary effects 459–60, 466
fairness between buyers, concerns over 460
foreclosure effects 461–2
loyalty rebates 458–67
minimum viable scale application 466
potential exclusionary effects 461–7
price discrimination, secondary line injury 467
retroactive rebate schemes 466–7
rolled-back rebates 465
target rebates 462–4
dominance and market power 350–84
aftermarkets analysis 376–81
assessments, key criteria used in 354–76
competition authority guidance 354
definitions 351–3
dominance in highly dynamic markets, analysis of 381–3
Herfindahl-Hirschman Index (HHI) market concentration index 356
information flow problems 377
prices and profits, direct assessment of 373–6
prices and profits, direct assessment of, pricing analysis 373–4
prices and profits, direct assessment of, profitability analysis 374–6
reputation considerations 380–81
dominance and market power, market characteristics, qualitative assessments 361–72
access to key inputs or distribution networks 366–7
brand awareness as entry barrier 367
bundled products and services as entry barrier 367
competition, nature of 371–2
countervailing buyer power as entry barrier 372
economic strength as entry barrier 369, 370
economies of scale and scope as entry barrier 364–5, 370
entry barriers and expansion 361–72, 375
innovation competition markets as entry barrier 359, 371–2
intellectual property rights (IPRs) as entry barrier 366–7
legal or administrative entry barriers 370
network effects as entry barrier 368
sunk costs 363–4, 365
switching costs as entry barrier 368–9, 370, 377, 378–9
technological superiority of established firms as entry barrier 367–8
dominance and market power, market structure
case law presumptions of dominance 360–61
cellophane fallacy 356–8, 378
high market shares, effects of 358–9, 371
low market shares and absence of substantial market power 357
market share safe-harbours in dominance assessments, dangers in 357–8
quantitative assessments 355–61
dominance test gap, merger control 517–18, 520–26, 528–31
Douglas-Scott S. 477
Downing, R. 447
Drauz, G. 308
Drexl, J. 2, 54, 386–7, 566, 568
duopolistic markets 315
see also oligopoly problem
Durand, B. 255, 258
Duso, T. 269
Dutz, M. 5
Dworkin, R. 5, 67
Easterbrook, F. 67, 232, 418, 427, 475, 561, 565
Eberlein, B. 600, 601
economic analysis
economic theory, drawing policy lessons from 273–87
economic welfare 3–16, 21, 23–4, 37, 45–6, 53–4, 56–7, 67–9, 78–9
exploitative abuses, prohibition, possible rationales of 388
fluctuating semantics and category errors, oligopoly problem 284–7
and legal context, consideration of, horizontal cooperation agreements 113
literature overview, oligopoly problem 261–73
order of Rule of Law 78–9
value measurement, excessive prices as abuse 410
vertical restraints 177–89
economic strength as entry barrier 369, 370
Economides, N. 505, 506, 510, 622
economies of scale and scope as entry barrier 364–5, 370
Eddy, A. 130–31, 137
Edgeworth, F. 261, 262, 272
Edwards, Geoff 350–84
effects-based approach
agreement concept, information exchange agreements 151–2, 164
effects analysis or object restriction, distinction between 169–70
horizontal cooperation agreements 128–9
horizontal transparency as benefit in itself, information exchange agreements 151–2
object and effect of collusive conduct to restrict competition 247
efficiency assessment
benefits and integration elements, joint ventures 118
and distributive consequences 74
dynamic efficiency analysis, merger control 531–2, 533
dynamic efficiency measurement, merger control 534–5, 536
efficiencies passed on to consumers, merger control 540–41
enforcement efficiencies, merger control 541–5
enforcement efficiencies, merger control see merger control, substantive issues, enforcement efficiencies, assessment of equally efficient competitor test 425–6
gains, potential, vertical agreements, interbrand restraints 186–7
horizontal mergers and case law efficiencies 545–52
inefficiencies investigation, excessive prices as abuse 403
large efficient firms, debatable involvement of, oligopoly problem 282–4
productive efficiency, merger control 532–3
Index

seminal cases, merger control 555–8
vertical agreements, intrabrand restraints 181–4
Ehlermann, C. 32, 36, 42, 521
Ehrlich, I. 415
Elhaug, E. 425
Ellison, G. 165
Elzinga, J. 236
Elzinger, K. 429, 438
entry barriers
anti-entry strategies, oligopoly problem 338–41
market characteristics 361–72, 375
merger control 523–4
and tie-in clauses, vertical agreements, interbrand restraints 186
Esteva Mosso, C. 555
Eucken, W. 31, 45
European Commission, Enforcement Priorities Guidance 30, 44
European Convention of Human Rights (ECHR), EU accession to 50–51
European Court of Justice
collective labour agreements 62–3
‘competition as such’, protection of 53
domestic legislation that jeopardize the effet utile of Article 101 TFEU, provisions for 49, 55
free competition principle 48–9
free movement principle 50
ne bis in idem principle 51
European Court of Justice, court cases
Aalborg Portland 51, 254
ABB Asea Brown Boveri 226
ABB/Daimler-Benz 302, 348, 549
ABF/GBI Business 316, 349
ABGi/Oil companies operating in the Netherlands 298
Accor/Wagons-Lits 546, 548
Activision Blizzard Germany 201
Adalat 176
Adriatica di Navigazione SpA 255
AEG 176, 191–2, 203, 257
Aerospatiale-Alenia de Havilland 546, 548
Aghi-Gevaert/DuPont 549
Agorà Srl and Excelsior Snc
Di Pedrotti Bruna, v Ente Autonomo Fiera Internazionale di Milano 61–2
Ahlström Osakeyhtiö 135, 154, 248, 250, 291, 292, 293
Ahmed Saeed 298–9, 404, 595
Air France/KLM 549
Air Liquide/Messer Targets 311, 348, 349
Airtours 138, 302, 303, 310, 324, 348, 517, 519, 620
Albany 48, 62–4, 66, 603
Alcatel Espace/ANT 102
Alcatel/Teletra 549
Almelo 301, 346
Alroxa 617–18
Alsatel Novasam 298–9
AM & S Europe 227
Amino Acids 226
Anic Partecipazioni Spa 248, 251, 253–4, 257
AOK Bundesverband 58, 603
Archer Daniels Midland 226
Asnef-Equifax Ausbac 135, 145–6, 147, 152, 154, 156, 157, 158
AstraZeneca 46, 483, 575, 577, 580–81
AT&T/NCR 548
ATAB 48
Atlantic Container Line 326
Atlantic Sugar 320
Atlas 609
Audiolux 51
Austria v Parliament and Council 60
Avebe 120
Axalto/Gemplus 550
Bananas 250
Barilla/BPL/Kamps 519
Barry Brothers 94, 95, 96, 97, 254
BASF 201
Bassano 302, 346
BAT and Reynolds 295
Bayer 176, 246, 257, 349
Bayer/BP Chemicals 102
Belasco 257
Belgian Architects Association 63
Bertelsmann AG v Impala 138, 305
Handbook on European competition law

Binon 298
BMW Belgium 175
Bodson 404, 408
Bohringer 575
BP/Kellogg 102
British Airways 43, 47, 81, 225–6, 230–31, 233, 357, 463, 464, 465, 466, 467, 480–82, 583
British Gypsum 226, 462, 481, 487
British Interactive Broadcasting/Open 102
British Leyland 402, 404, 405
British Midland v Aer Lingus 495–6, 497
British Sugar 166, 502
British Telecom/MCI 548
Brunswick Corporation v Riegel Textile Corporation 577
Bulmer v Bollinger 70
Carbon Gas Technology 102
Cartonboard 230, 551–2, 555
CB EM v CLT 481, 489, 490
CECED 57, 59, 60
Centro Servizi Speditoporto v Spedizioni Marittima del Golfo 302
Chemie BV 512
CICCE 402
CIF 450
Cimenteries CBR 257
Clearstream Banking 496, 497, 499
CMA GCM & Others 57–8
Coditel v Ciné-Vog Films 563
Comité Central d’Entreprise de la Société Anonyme Vittel 59
Commercial Solvents 48, 366, 489, 491, 492–3, 498, 582
Commission v Austria 50
Commission v Federal Republic of Germany 64, 65
Commission v France 50
Commission v Italy 606
Commission v Portuguese Republic 454
Compagnie Maritime Belge 57, 144, 304, 325, 333, 346, 438–9, 440–41, 485
Confederación Española de Empresarios de Estaciones de Servicio 215, 216
Consorzio Industrie Fiammiferi 49, 606
Consten and Grundig 201
Continental Can 48, 49, 70, 484
Copper Fittings 230
Copper Plumbing Tubes 226
Corbeau 607–8
Corsica Ferries Italia 467
Courage 48, 234
Crespelle 595, 608
Criminal proceedings against Jean Claude Becu 63
DaimlerChrysler 214
DanishCrown/Vestyske Slagterier 348, 547
Dansk Rorindustri A/S 226, 230
Danske Slagterier 50
De Poste-LaPoste 469
Delimitis 192, 208
Deutsche Grammophon 403
Deutsche Post 394, 405, 467
Deutsche Telekom 44, 47, 425, 446–9, 450, 451, 452, 453, 454, 585, 605, 609, 621–5
Digital 376
Distrigaz 613–14
DON Elsam/Energi E2 349, 620
Dorit Harz v Deutsche Tradax 595
Dunlop Slazenger 201
Dyestuffs 289–91, 297
EBay Inc. v MercExchange LLC 577
EDF/British Energy 620
EDF/Segebel 620
Edouard Leclerc v SARL ‘Au blé vert’ 48
EFIM 327
Electrical and mechanical carbon and graphite products 226
EnBW/EDP/Cajastur/Hidrocanábilico 313, 349, 619
ENI SpA 615
Enichem/ICI 102
E.ON 612, 616–18, 620, 627
ERT v DEP 48, 595
Euromax/IMAX 404
European Directories/Gouden Gids 555–6
European Night Services 97
Expedia Inc. v Autorité de la concurrence and Others 17
Index

FENIN 603–4
Florimex and VGB 127
FNCBV 257
Ford 176
Ford/Volkswagen 58
France Télécom 349, 431, 436, 437, 438–9, 512
France v Commission 302, 304, 594
Francolor 290, 291
Frankfurt Airport 614
Gas Natural/Endesa 613
GDF Suez 614, 615, 619–20
GEAE/P&W 102
Geitling 288
Gencor 302–3, 308, 608, 620
Gencor/Lonrho 302, 348, 548
General Electric/Honeywell 548
General Motors 400, 401, 405, 407, 410
German electricity wholesale market 616
GFU-Norwegian Gas Negotiation Committee 610
GlaxoSmithKline 17, 43, 46, 54, 69, 87, 94, 96, 112, 201, 205–6, 256
Global/GCap 556–7
Graphite Electrodes 223
Greek lignite and electricity markets 612
Greenpeace 60
Grundig 175
Grupo Villar Mir 313, 349
GT-Link 404
Hasselblad 171, 248
Heinz 517
Hercules Chemicals 226
HFB 256
Hilti 361, 366, 368, 372, 481, 504, 505, 507–8, 512
Hoffman-La Roche 45, 48, 298, 300, 351, 361, 370, 423, 461, 462, 463, 467, 478, 479, 486, 487, 563
Höfner and Elser 334
Höfner v Macroton 595, 606, 607
Hugin 376
Huls 248, 251
Hutchison/RCPM/ECT 369
ICI 135, 252, 297
Impala 328–30
IMS 368, 489, 491, 492, 497, 498, 583
Inco/Falconbridge 550–51, 555
Industrie des poudres sphériques SA 446
Instrumentarium 519
Intel 470–71, 575, 577, 580
Interbrew/Beck’s 312
Irish Sugar 301, 332, 333, 346, 433, 441–2, 462, 464, 481, 483
ISAB Energy 613
Italian Flat Glass 299, 300
Italy v Commission 605
ITT Promedia 484–5
JCB Service 199, 248
John Deere 111, 135, 145–6, 148, 154, 156, 157, 158, 252
Kali und Salz 302, 348
KANAL 5 409–10
KLM/Martinair 549–60
Kodak 376, 378
KPN/E-PLUS 527
La Crespelle 301–2, 346
Langnese-Iglo GmbH 209
Laurent Piau 304–5, 305–6, 325–6, 327, 346
Laval 50, 65
Leopold Henri Van Esbroeck 51
Lessig v Tidewater Oil Co 254
Limburgse Vinyl Maatschappij 257
Long-term contracts, France 613–14
Louis Erauw-Jacqueryv La Hesbignonne 252, 258
Lufthansa/SN Airholding 550
Magill 340, 481, 489, 490–91, 493, 497, 564, 583
Manfredi v Lloyd Adriatico
AssicurazioniSpA 234
Mannesman/Valourec/Ilva 549
Marathon 340
Marleasing 60, 595
Masterfoods 83
Matra-Hachette 87
Matsushita Electric Industrial Co v Zenith Radio Corp 424
MCI/WorldCom/Sprint 315
Mecca-Medina 58, 94, 95, 104, 105–6
Mercedes-Benz 176
Mercedes-Benz/Kässbohrer 547–8, 549
Handbook on European competition law

Merci Convenzionali v Porto di Genova 63–4, 595, 606, 607
Metro 58, 192, 203
Métropole Television (M6) 58, 94–5, 96, 103
Metsol/Aker Kvaerner 552, 555
Michelin I 44, 376, 423, 463, 464, 467, 478, 581
Michelin II 44, 47, 366, 368, 433, 464, 465, 467, 480, 496
Miller 201
MOTOE 47
MSG MediaService 547
Musique Diffusion Française SA 248
Naloo 406
Napier Brown-British Sugar 446, 502, 621
Napp 222
Nathan-Bricolux 199
National Carbonising 446
Nestlé/Périer 302, 348
Nokia/NAVTEQ 554
Nordic Satellite Distribution 548
Norma Kraaijenbrink 51
O2 94, 95, 104, 106–9, 604
Olivetti-Digital 295
Olympic/Aegean Airlines 315
Omega Spielhallen 50
Opel 176, 254
Oracle/Peoplesoft 519–26
Oscar Bronner 82, 452, 489, 492, 493, 496, 623
Österreichische Postsparkasse AG 46
P & I 334
Pacific Bell 624
Parke Davis 385
Parker Pen v Commission 201
Pasteur-Mérieux/Merck 59
Pavel Pavlov and Others v Stichting Pensioenfonds Medische Specialisten 63
Pelikan/Kyocera 376
Peugeot and Peugeot Nederland 176, 201
Pfleiderer 235
Philips/Osram 58–9
Phoenix/Global One 609
Pierre Fabre Dermo-Cosmétique 203–4
PO/Territorial restrictions–Austria 610
PO/Yamaha 199
Port of Helsingborg 406–10
Port of Rodby 614
Porti de Genoa 386
Portugal v Commission 467
Post Danmark 19, 46, 81, 426, 430–35, 437, 442
Poucet v Assurances Générales de France 58
Pre-Insulated Pipes 230
PreussenElektra 60
Price-Fixing of Replica Football Kit 243
Procter & Gamble/Gillette 555
Prompuntia 191, 198, 248
Qualcomm 127–8
Queen v Minister of Agriculture, Fisheries and Food 617
Raiffeisen Zentralbank Österreich AG & Others 48
Rambus 127, 580
Régie des Poste (Belgian Post Office) 607
Remia BV 90, 105
REN/Turbogás 613
Rhône-Poulenc SA 248, 252, 254
RTE, ITV and BBC 564
RTT v GB-INNO-BM 597, 607
Rüffert 50
RWE 349, 612, 616, 620
Ryanair/Aer Lingus 548–9
SABAM 386
Sabine von Colson and Elisabeth Kamann v Land Nordrhein-Westfalen 595
Sacchi 595
SALEM 402–3, 404, 408
Saint-Gobain/Wacker-Chemie/NOM 546, 547
Sandoz prodotti farmaceutici 176, 201
SCA/Metsä Tissue 317, 348
Schmidberger (Eugen), Internationale Transporte und
Planzüge v Republic of Austria 50
Schneider Electric 620
Scottish Nuclear, Nuclear Energy Agreement 613
SCPA 302
Sea Containers Ltd/Stena Sealink 614
SEP and others/Peugeot 176
Showa Denko KK 48
Siemens/Drägerwerk/JV 519
Silavo Raso 607
Sirena v Eda 385
Société Minière et Technique 104
Sodemare 302
Solvay 349, 463, 471
Sot Lélos kai Sia 18, 19, 500, 501
Souris-Topps 198, 206
Spain, Belgium and Italy v Commission 594
Spain v Commission 454
Stichting Baksteen 58
Suiker Unie 135, 154, 214, 243, 249, 251, 252, 291, 461, 487
Svk (Svenska–Kraft-nät) 615
Swedish Interconnectors 615
Syfait I 438
T-Mobile Deutschland/O2 Germany 604
T-Mobile Netherlands 43, 53, 97, 135, 154, 156, 157, 159, 170, 254, 293–4
T-Mobile/Tele.ring 519
TACA 326–7
Tate & Lyle 166–7, 171, 251, 252
Telecommunications Directive
Terminal Equipment 607
Telefónica 449, 455, 527, 604
Téléméarketing 490, 493, 582
TeliaSonera 44, 45, 82, 449, 450, 451, 452–3, 454, 527, 582, 583, 621–5
Territorial Restrictions 609–11
Tetra Laval 330, 620
Tetra Pak II 431, 432, 435, 436, 444, 455, 484, 503, 504, 508, 511–12
Thyssen Stahl 135, 154, 157
Tiercé Ladbroke 491, 497
Tobacco advertising 594
Tomra Systems 464, 465–6, 470
TomTom/Tele Atlas 554
Transgás/Turbogás 613
Tréfleurope v Commission 257
Unilever Bestfoods 193
Van den Bergh Foods 192–3, 208, 461, 487
Vattenfall/Nuon Energy 620
VBA v VGB and Florimex 127
VBBB/VBVB 58
VEBA/VIAG 348, 619
Vegetable Parchment 171
Vereniging voor Energie 614–15
Verizon Communications 624
Viking 50, 65, 66
Virgin/British Airways 357
Vodafone/Airtel 348, 527
Volkswagen 176, 198, 199, 201, 249
Volkswagen and VAG Leasing 214
Volvo 490
Volvo/Scania 550
VVR v Sociale Dienst van de Plaatselijke en Gewestelijke Overheidsdiensten 214
Walt Wilhelm v Bundeskartellamt 456
Wanadoo 436, 443, 604, 621, 624
Wolf W. Meng 606
Wood Pulp II 135, 154, 155, 163, 166, 167, 291–3
Wouters 48, 58, 59, 94, 104–5, 325–6, 347
X/Open Group 129
Zinc Producer Group 291
Züchner 135, 154, 291
Evans, D. 382, 413, 416, 417, 418, 419, 420, 475, 503–4
Evans, W. 267, 269
exclusionary effects

dominance abuse and exclusionary pricing abuses, rebates and price discrimination 459–60, 466
dominance in highly dynamic markets, and market power 382–3
intensity of, exclusionary non-
pricing abuses, refusal to supply 492–5
non-pricing abuses see dominance abuse and exclusionary non-pricing abuses
pricing abuses see dominance abuse and exclusionary pricing abuses
exclusive dealing
foreclosure effect, vertical agreements, interbrand restraints 185, 189
free-riding prevention, vertical agreements, interbrand restraints 187
purchasing, and exclusionary non-pricing abuses 486–8
exclusive or special rights, granting of 605–7
exploitative abuses 385–422
conceptual challenges 396–400
discriminatory pricing 386–7
dynamic analysis, need for 398–9
fairness factors 388, 395, 397–8
market’s self-correcting forces 396–7
monopoly pricing, EU/US regulation differences 386
social welfare and monopoly pricing 388
exploitative abuses, critical analysis of prohibition 414–22
decision-making 415–17
ex post application of abuse prohibition 421
fair ratio between price and economic value, determination of 417–18
false positive errors, costs of 418–19
information costs 416–17
institutional considerations 421–2
legal process costs 415
monopoly pricing as abuse, doubts over 419–20
practical challenges 414–21
price regulation requirements 421
private damage suits and excessive pricing 422
probability of error 415–16
exploitative abuses, legal rule, excessive prices as abuse 400–14
British approach 412–14
Commission decisions 404–10
comparative market test 402–3
Dutch approach 411–12
economic value measurement 410
foundational cases 400–404
inefficiencies investigation 403
national authorities’ prohibition, application of 410–14
non-interventionist approach 405
Port of Helsingborg decisions 406–10, 417
weighted average costs of capital (WACC) 411
exploitative abuses, prohibition, possible rationales of 387–95
common market creation 394–5
comunitarian notions of fairness 393
distributive justice principles 392–3
economic rationales 388
excessive pricing harmful to basic purpose of society 393
just price doctrine 390–91
moral rationales, history of 388–91
oral justifications and modern concept of fairness 391–3
ordoliberal ideology 389–90
political economy considerations 395
price regulation seen as essential 393–4
social contract between all market players, implied 391–3
Ezrachi, A. 295, 396–7, 416, 419–20

Faella, Gianluca 174–216, 459

fairness between buyers, concerns over, exclusionary pricing abuses 460
comunitarian notions of 393
factors, exploitative abuses 388, 395, 397–8
fair price setting problems, exclusionary pricing abuses, margin squeeze 445–6
fair share concept, consumer protection 26
false conviction and over-deterrence, exclusionary non-pricing abuses 475, 494
false positive errors, costs of, exploitative abuses 418–19
Farrell, J. 27, 287, 343, 367, 369, 370
Faull, J. 62, 335, 419
Federico, G. 619
Fershtman C. 271
Feuerstein, S. 266
Fine, B. 7
Fingleton, J. 518
Fish, E. 390
Fisher, F. 373
Fleischacker, S. 25, 39
Fletcher, A. 189, 399, 422
Flint, D. 343
foreclosure
of competitors, requirement to prove, exclusionary non-pricing abuses 507–10
dominance in highly dynamic markets, and market power 383 exclusionary pricing abuses, rebates and price discrimination 461–2 test, exclusionary non-pricing abuses, refusal to supply 495 and tie-in clauses, vertical agreements, interbrand restraints 185–6
Fosfuri, A. 270
Foster, C. 596
Foucault, M. 34, 35, 39, 78
Fox, J. 271
Fraas, A. 157
France, mobile telephony oligopoly 341
FRAND requirement 127, 128, 129, 344, 576, 577
Frech, H. 429
free-riding theory, vertical agreements, intrabrand restraints 181–2, 183 freedom of action theory, vertical agreements 190 ‘freedom to compete’ principle see goals of EU competition law, ‘freedom to compete’ principle
Fried, D. 133
Friedman, J. 265, 334
Fuller, L. 75, 78, 80
Furse, M. 168, 225, 232, 400, 404–5, 420, 421
Gal, Michal S. 322, 385–422
Gal-Or E. 133–4
Galbraith, J. 282
Gale, J. 285
game theory
and complete information 138–40, 159
and equilibrium selection 140–42 non-cooperative equilibrium, oligopoly problem 265–6 prisoners’ dilemma (PD) game, information exchange agreements 140–41, 159 research, oligopoly problem 265–6
Gandhi, A. 544–5
Garcia, A. 503
Garg, A. 162
Garrod, L. 419, 420
Gavil, A. 426
Genovesio, D. 132
Geradin, Damien 156, 302, 306, 352, 364, 458, 592, 596, 603, 608, 621, 623, 625
Gerard, D. 606
Gerber, D. 31, 32, 36, 388, 394
Germany, anti-competitive recommendations 168
Ghidini, G. 566
Gifford, D. 254
Gilbert, R. 270, 571
Gilo, D. 268, 269, 295, 396–7, 416, 420
Giovannetti E. 242
Girgenson, I. 156
Glachant, J.-M. 612
Glader, M. 128
goals of EU competition law 1–84 case law of European courts, current state of 41–7 competition law in constitutional framework, implications of 53–60 competitive process as intrinsic normative value 36–41 consumer choice, optimal level as goal 21–3, 35, 45 courts, ambiguity in treatment of dominant position 46 courts, ‘equality of opportunity’ as aim 47 courts, and ‘special responsibility’
of dominant firms to protect competitive process 44–5
economic welfare 3–16, 21, 23–4, 37, 45–6, 53–4, 56–7, 67–9, 78–9
evidence perspective for legal sub-system, suggestion of 40–41
free movement principle 50
happiness studies, problems with 15–16
holistic EU competition law, obstacles to 60–62, 80–81
integration clauses, effects of 60–61
Internal Market principle 53–4, 65–6
interpretive method, problems with 68–75
legal framework, evolving 47–52
market integration objective 17–19, 39, 42–3
non-economic welfare view 16–41
normative perspective 3–41
parallel trade restrictions 17–19, 54
positive law perspective 41–66
producers' efficiency gains and consumer distribution 9–10
proportionality principle 66, 71
public interest objectives 57–60
resource allocation, economic efficiency approach 4–6, 9–12
revealed preference theory approach 8–9
social dimension and collective labour agreements 62–6
social market economy 51–2, 55–6, 60–62
social market economy and environmental protection 56, 60–61
Treaty perspective 47–66
goals of EU competition law, comparative institutional analysis, need for 66–84
cost-benefit analysis 73
decision-making process 77–8
economic order of Rule of Law 78–9
efficiency and distributive consequences 74
foundations for, in EU law 75–84
interpretive choice 75–7
over-representation risks 74–5
pluralist programme problems 77
polycentric problems 79–80, 83–4
welfare and participation effects 73–4
goals of EU competition law, consumer protection 19–30, 54–5, 67–9
and competitive rivalry 25
consumer choice, optimal level as goal 21–3, 35, 45
distributive justice objective 25–30, 39–40, 56–7
and fair share concept 26
protection of the interest of final consumers 45, 46
R&D investment costs, conflict between 23–4
and welfare 20–21
goals of EU competition law, ‘freedom to compete’ principle ‘as if ’ competition standard 32, 33
constitutional and sub-constitutional levels, distinction between 35
and monopoly control 32
ordoliberal view and Article 102 TFEU 43
ordoliberal view, assumed opposition of 34
ordoliberal view and complete competition 31–6, 37–8
ordoliberal view, and consumer sovereignty 35
ordoliberal view and judiciary role 78–9
ordoliberal view, Ordo-Austrian approach to competition law and constitutional status of competition 38–9
goals of EU competition law, preferences and budget constraints 8
and choice, limitations of 13–14
as evidence of well-being 14–15
objective list of (or capabilities) 15
and revealed preferences theory 12–13, 14–15
Goldman, B. 297
Gordley, J. 391
Gorrie, A. 161
Gould, J. 184
Graf, T. 503, 504
Index 645

Gravengaard, M. 474
Green, E. 172
Greer, D. 157
Grether, D. 134
Griffith, R. 5–6
Griffiths, M. 193
Grillo, M. 168, 335
Grimes, W. 183–4
Guidance Paper on Article 102
dominance abuse and exclusionary
dominance abuse and exclusionary
pricing abuses 424–5, 448–9, 455, 459–60, 469, 470
see also TFEU Article 102
Gundlach, G. 183
Gyselen, L. 62
Hall P. 52
Haltiwanger J. 267
Hammond, S. 228
Hancher, L. 608, 626
happiness studies, problems with 15–16
Harbo, T.-I. 477
Harding, C. 230, 293
harm theory
excessive pricing harmful to basic
purpose of society 393
exclusionary conduct that harms
effective competition structure 48
information exchange agreements
137–46, 159, 160
intellectual property rights 574, 576, 581, 582–3, 585
oligopoly problem, legal remedies
311–12, 331
see also consumer harm
Harrington, J. 143, 247, 267, 273
Harris, R. 271
Harstad, R. 134
Hart, H. 288
Hart, P. 264
Hartley, T. 477
Harvard School, oligopoly problem
263–4, 276, 283
Harvey, D. 143
Haufler, A. 269
Haupt, H. 306, 310
Hausman, D. 13–14, 22
Hausman, J. 374
Hawk, B. 190, 303, 307, 308, 314, 320, 393
Hay, G. 163, 429
Hayek, F. 37, 133, 150
Hayri, A. 5
Heaton, N. 238
Heide, J. 187
Heidhues, P. 268
Heller, M. 567
Hellstrom, P. 564
Helm, D. 590
Henry, B. 133
Henry, D. 305
Herfindahl-Hirschman Index (HHI)
market concentration index 356
Heritier, A. 595
Hicks, J. 6
Hinlooopen J. 221
Hoeren, T. 390
Holmes, K. 234
Holt, A. 268
Hong, J. 134
Honoré, T. 249
Hordijk, E. 404, 405, 411, 412
horizontal cooperation agreements
oligopoly problem 294
transparency as ancillary restraint,
information exchange agreements 149–50
transparency as benefit in itself,
information exchange agreements 150–53
horizontal cooperation agreements and
Article 101 TFEU 85–129
analytical framework in Horizontal
Guidelines 88–96, 110–11, 121–2
analytical framework in Horizontal
Guidelines, shortcomings and
suggestions for improvement 94–5
analytical framework in Horizontal
Guidelines, tripartite analytical
grid, abandonment of 90–91, 92–4
areas covered by Horizontal
Guidelines 85–6
Article 101(1) general prohibition
rule 90–92, 101, 104–6, 128–9
Article 101(3) exemptions 88, 89, 95, 96, 101, 103, 106, 128
Block-Exemption Regulations on
Research and Development and
on Specialization Agreements
91, 93, 95, 99, 101, 123
commercialization agreements 124–7
commercialization agreements,
market share threshold 126–7
competition concerns or risks,
identification of 91
cooperation agreements between
non-competitors 93
criteria for identifying functional
type of agreements 110–11
distribution agreements, reciprocal
and non-reciprocal 125
market power assessment 95, 97
Merger Regulation 89–90, 100, 116
Merger Regulation, ‘significant
impediment to effective
competition’ application 89–90
preliminary presumption of
lawfulness, apparent elimination
of category 91–3
research and development
agreements 122–4
research and development
agreements, market foreclosure
risks 124
rule of reason evaluation 103, 107
specific types 121–9
vertical agreements, effects of 88
see also vertical agreements
horizontal cooperation agreements and
Article 101 TFEU, information
exchange, competitive assessment
of 111–15
case-by-case basis assessment,
suggestion of 113
distinction between situations of
object and effect of restriction
of competition 112–13
legal and economic context,
consideration of 113
market considerations 113, 114
public information exchange 114–15
strategic information exchange 114
see also information exchange
agreements
horizontal cooperation agreements and
Article 101 TFEU, joint ventures
86, 100, 115–21
analysis consideration 115–17
characterization, key elements
117–21
efficiency benefits and integration
elements 118
full-function joint ventures as
concentrations 116–17
full-function and non-full-function
89–90
operational factor and autonomy
117
organizational structure,
intermediation of 119
parent-subsidiary single undertaking
presumption 120–21
horizontal cooperation agreements
and Article 101 TFEU, restrictive
effects on competition 98–110
by object 96–8, 99, 106–7
competition situation existing in
absence of agreement 106–9
complementary activities and
development and introduction
of new products 102, 104–5
market share indicator 98–101
pro-competitive effects 101–3
public interest considerations 106–7
quick-look test 97–8
horizontal cooperation agreements
and Article 101 TFEU,
standardization agreements 127–9
effects-based approach 128–9
FRAND requirements 128, 129, 344
and market power creation risk 128
participation in the standard-setting
process 129
safe harbour application 128
Horizontal Cooperation Guidelines
information exchange agreements
136–7
information exchange and Hub and
Spoke Collusion, UK 243, 251
Horizontal Merger Guidelines,
enforcement efficiencies,
assessment of 540–45
Index

horizontal mergers and case law efficiencies 545–52
Hornig, S. 134
Hotelling, H. 272
Hovenkamp, E. 448
Hovenkamp, H. 1, 160, 177, 186, 399, 425, 426, 427–8, 448, 459, 468, 469, 470, 539, 589
Hub and Spoke Collusion see information exchange and Hub and Spoke Collusion, UK
Huffman, M. 1
Hughes, J. 134
Hughes, P. 614
Hüschelrath, K. 221
Hvid, M. 134
Hylton, K. 254, 475
Iacobucci, E. 320, 326, 335
Incardona, R. 488
information costs, exploitative abuses, critical analysis of prohibition 416–17
flow problems, aftermarkets analysis, and market power 377
information exchange agreements 130–73
analytical framework 153–62
anti-competitive foreclosure as a theory of harm 145–6
anti-competitive foreclosure as a theory of harm, raising rivals’ costs 146
benchmark use and agreement as mutual understanding 164
cartels 130–31
Chinese Wall situation 161–2
collusion invitations, dealing with 167
competition restriction capability 155–9
competitors’ payoffs, incomplete information about 139–40, 142
coordinated practices 163–8
conflicting preferences for alternative equilibria 142
countervailing benefits, potential 160
Cournot-Nash equilibrium and perfect collusion, distinguishing between 164–5
effects analysis or object restriction, distinction between 169–70
effects-based concept of agreement 151–2, 164
equilibrium selection and game theory 140–42
game theory and complete information 138–40, 159
harmon theories 137–46, 159, 160
history of 130–32
Horizontal Cooperation Guidelines 136–7
horizontal transparency as ancillary restraint 149–50
horizontal transparency as benefit in itself 150–53
horizontal transparency as benefit in itself, competitive process as ‘wasteful’ argument 150–51
horizontal transparency as benefit in itself, and information asymmetries 152–3
indispensability and less restrictive alternatives versus balancing 160–62
indispensable anti-competitive aspects, efficiency enhancing effects 153
joint payoff maximization and perfect collusion 141
legalistic constraint 154–5
market concentration and market transparency 157
market concentration and payoff structure incentives 157–8
monitoring market entry 144
monitoring and perfecting information 142–3
Nash equilibrium 140–41, 142, 145
organization of exchange 158–9
petrol station duopoly example 143, 149–50
price mechanism efficiency 133
prisoners’ dilemma (PD) game 140–41, 159
private labels cases 161–2
pro-competitive effects 132–5
pro-competitive or efficiency-enhancing conduct 147–53
public coordination concerns 165–6
public domain information, anti-competitive aspects of 170–72
punishing mechanism, competitive strategy, reverting to 144–5
punishing mechanism, price war with predatory prices 144
sanctions for cheating 143
strategic information definition problems 168–9
tacit collusion hurdles 138–40, 142, 146, 154–5, 162
transparency, distinguishing vertical from horizontal 147–9, 160–62
transparency-enhancing conduct 154–5
type and nature of information, parameters of 158
unilateral information transmission 166–7
see also horizontal cooperation agreements and Article 101 TFEU, information exchange, competitive assessment of
information exchange and Hub and Spoke Collusion, UK 242–58
agreements between undertakings 246–7
anti-competitive intent, difficulties in inferring 249–50
collusion, phase I 246–7
collusion, phase II 250–53
commercially sensitive information disclosure 248–9, 252–3
consorted practices 246–7, 251–2
decisions of associations of undertakings 246–7
direct exchange of information and credible information 252–3
direct exchange of information and type of information 248–9
Horizontal Cooperation Guidelines 243, 251
indirect information exchange, analysis of 243–7
information disclosure producing market outcome different without disclosure 254–5
information exchange as breach of ‘obligation of independence’ 242–3
information used to determine own future pricing intentions 253–4
object and effect of collusive conduct to restrict competition 247
presumption of restriction, rebutting 255–7
restriction of competition, phase I 247–50
restriction of competition, Phase II 253–5
unilateral disclosure of information as concerted practice 251–2
innovation competition markets as entry barrier 359, 371–2
innovation, IPRs and competition law 561–87
anti-competitive effects 563–4
competition law, perceived need for 566–7
competition law and policies and ‘limiting innovation’ contention 565
copyright protection 568–9
cumulative technology industries 569–70
follow-on innovation, encouragement of 569
innovation theory in competition rules 570–72
internal balance in IP rules and innovation 567–70
internal balance in IP rules and innovation, informational benefits 568
‘limiting innovation’ contention 563–7
market dominance and exclusionary strategies 566
monopoly conditions 571
new economy network and market power 565–6, 569–70
patent grant of exclusivity 568, 569
research costs 571
see also R&D
innovation, IPRs and competition law, competition rules, actual treatment of IPRs under 572–86
abusive commercial strategy 580–81
anti-competitive harm 574, 576, 581, 582–3, 585
Article 101, modernization of 573–5
Article 102, IPRs and strategic commercial conduct 575–86
Article 102, \textit{per se} rules and effects 581–5
Article 102 and IPRs, interpretation of 578–9, 582–3
Article 102(b) TFEU, exceptional circumstances test under 579–81
block exemption regulations (BERs) 574
dominant abuse, treatment of 578–9
FRAND requirement 576, 577
generics, preventing entrance of 576, 577–8, 580–81
innovative efficiency defence 583–5
licence restrictions 573–4, 579
monopolies 572
objective justification 583–6
patent flooding and trolling 576–7
payment for delay settlements in pharmaceutical sector 577–8
technology licensing agreements 573
technology transfer block exemption regulations (TTBERs) 574
unfair prices, treatment of 579
wide patent portfolios 576
institutional analysis
comparative see goals of EU competition law, comparative institutional analysis, need for exploitative abuses, critical analysis of prohibition 421–2
regulation/competition interaction see regulation/competition interaction, institutional perspective
integration clauses, effects of 60–61
intellectual property rights (IPRs) as entry barrier, market characteristics, qualitative assessments 366–7
innovation and competition law see innovation, IPRs and competition law
licensing, and exclusionary non-pricing abuses, refusal to supply 489–90, 493–4, 497–500
Internal Market principle 53–4, 65–6
Internet
e-commerce and free-riding, vertical agreements, intrabrand restraints 183
selective distribution systems, and internet use 203–4
territorial and customer restrictions, online sales 202
interpretive method, problems with 68–75
Ivaldi, M. 267, 268
Jacobson, J. 425
Jakobsen, P. 257
Jans, J. 477
Jardine, A. 399, 422
Jenkinson, T. 590
Jephcott, M. 332
Joerges C. 52
Johnsson, M. 133
joint ventures, horizontal cooperation agreements see horizontal cooperation agreements and Article 101 TFEU, joint ventures
Joliet, R. 290, 297, 326–7, 334
Jones, Alison 155, 193, 301, 423–72, 503
Jones, C. 238, 241
Jones, K. 338
Joshua, J. 228, 230, 293
Joskow, P. 421, 429
Jullien, B. 180, 269
Kahan, D. 220
Kahneman, D. 12, 15
Kaldor, N. 6
Kamien, M. 268–9
Kao, J. 134
Kaplow, L. 26, 69, 139, 142, 143, 163, 164, 283, 291, 293
Kattan, J. 163
Katz, M. 27, 268
Kauper, T. 278, 488
Kaysen, C. 263, 264
Kellerbauer, M. 474
Kennedy, D. 561, 564
Kenny, A. 433
Kerber, W. 68, 475
Handbook on European competition law

Layard, R. 15
Leban, R. 598
legal and constitutional dimension, regulation/competition interaction 603–8
legal constraint, information exchange agreements 154–5
legal context, consideration of, horizontal cooperation agreements 113
legal entry barriers 370
legal framework, evolving 47–52
legal privilege rules, cartels 227
legal remedies, oligopoly problem see oligopoly problem, legal remedies (current), in EU competition law
legal rule, excessive prices as abuse see exploitative abuses, legal rule, excessive prices as abuse
legal standard reform, merger control 517–31
legal sub-system, evidence perspective for 40–41
legal substantive test, merger control 517–18
legal test for predation 430–36
leniency programmes, cartels see cartels, leniency programmes and direct settlement
Levenstein, M. 138
Lever, J. 254
Levy-Faur D. 589
Lewis, M. 270
Li, L. 133
Lianos, Ioannis 1–84, 161–2, 163, 175, 177, 178, 196, 211, 214, 476, 494, 505, 506, 510, 570, 626
Lieberman, M. 270
Lipsey, R. 11
Llewellyn, D. 562
Lock, T. 50
Loftis, J. 281–2
Lopatka, J. 163, 324, 335, 344
Lott, J. 231
Lovdahl Gormsen, Lisa 2, 30, 31, 423–72, 474
Lowe, P. 396, 397, 424, 546
Luescher, C. 532–3
Lugard, H. 190
Lyons, B. 27, 396–7
margin squeeze
and exclusionary pricing abuses
see dominance abuse and
exclusionary pricing abuses,
margin squeeze
regulation/competition interaction,
substantive perspective 621–2
market
characteristics, qualitative
assessment see dominance
and market power, market
characteristics, qualitative
assessments
commercialization agreements,
market share threshold 126–7
concentration and market
transparency, information
exchange agreements 157
concentration and pay-off structure
incentives, information
exchange agreements 157–8
considerations, horizontal
cooperation agreements 113,
114
definition, importance of, for tacit
collusion analysis 287
dominance and exclusionary
strategies 566
integration concerns, vertical
agreements 176
integration objective 17–19, 39,
42–3
opening reforms in network
industries, oligopoly problem
315–16
post-merger market structure effects,
merger control 517–18, 522–3,
524–5, 529, 530
research and development
agreements, market foreclosure
risks 124
self-correcting forces, exploitative
abuses 396–7
share indicator 98–101
share thresholds 194–207
structure see dominance and market
power, market structure
structure and tacit collusion,
oligopoly problem 264–5, 266–9
market power
creation risk, and horizontal
cooperation agreements 128
and dominance see dominance and
market power
exclusionary non-pricing abuses,
tying and bundling 510–12
horizontal cooperation agreements
95, 97
and new economy network,
innovation, IPRs and
competition law 565–6, 569–70
Markham, J. 268, 343
Markovits, R. 265, 338–9
Marks, R. 141
Marquis, M. 32, 36, 42
Martimort, D. 179
Martin, S. 268
Marvel, H. 182, 184
Marvel, H. 187
Mason, C. 134
Mason, E. 263
Massey, P. 279, 326, 327
Meese, A. 488
merger control, substantive issues
516–60
anti-competitive impact 518, 521,
525–6, 529, 540, 548, 555, 556
customer choice reduction 521–4
customer switching 529
dominance test gap 517–18, 520–26,
528–31
entry barriers 523–4
legal standard reform 517–31
legal substantive test 517–18
and non-collusive oligopoly theory 519–31
non-coordinated effects in
oligopolistic markets 517–19, 530
*Oracle*/Peoplesoft and non-collusive
oligopoly theory 519–26
post-merger market structure effects 517–18, 522–3, 524–5, 529, 530
*T-Mobile*/Tele.ring and non-collusive
oligopoly theory 526–31
unilateral effects standard 521
merger control, substantive issues,
enforcement efficiencies,
assessment of 531–58
allocative efficiency 532–4, 536–40, 544
allocative efficiency, and double-
marginalization problem 544
allocative efficiency measurement 533–4
allocative efficiency, welfare standard
and efficiencies 536–40
case law efficiencies 545–55
complementary products in
conglomerate merger 543–4, 556–7
consumer surplus standard 539
contractual loopholes, exploitation
of 554
cost savings 542
Cournot effects 544
deadweight loss 535, 539
demand side efficiencies 542–4, 550
dynamic efficiency analysis 531–2, 533
dynamic efficiency measurement 534–5, 536
efficiencies passed on to consumers 540–41
efficiency assessment, seminal cases 555–8
efficiency types in merger assessment 541–5
Horizontal Merger Guidelines 540–45
horizontal mergers and case law
efficiencies 545–52
merger costs 535–6
merger specificity criteria 541, 548, 549, 551–2, 556, 557
modified price standard 539
network effects 543, 544–5
non-horizontal mergers 552–5
pass on requirement 550, 551, 554–5, 557–8
product quality assessment 534
production rationalization 533
productive efficiency 532–3
productive efficiency loss prediction 533
pure price standard 538–9
substitutable brands, repositioning
of 544–5
supply-side efficiencies 542, 550
verifiability criteria 548–9
merger policy and oligopoly problem
indirect clarifications in merger
control 301–5
merger rules, first-order reasons as
intrinsic limitations to 314–19
merger rules, second-order reasons,
side effects of anticartel policies 319–21
merger simulation techniques 279–80
merger-only paradigm, argument for
revisiting 313–21
scope issues 314–16
and tacit collusion 308, 328–30
Merger Regulation 59
competitor acquisition or exclusive
rights 484, 493
horizontal cooperation agreements
and Article 101 TFEU 89–90, 100, 116
oligopoly problem see oligopoly
problem, legal remedies
(current), in EU competition
law, Merger Regulation,
collective dominance to
coordinated effects
’significant impediment to effective
competition’ application 89–90
structural remedies 619–20
Merges, R. 568, 569
Mestmäcker, E. 33
Meyring, B. 244
Mezzanotte, F. 274, 304, 305, 323, 327, 329, 331, 336
Index

Mills, D. 429, 438
Milonakis, D. 7
Møllgard, P. 148
Monnier, C. 221

monopoly
- conditions for, innovation, IPRs and competition law 571
- control, ‘freedom to compete’ principle 32
- innovation, IPRs and competition law IPRs under 572
- wide monopoly rights, granting of 607–8

see also oligopoly

monopoly pricing
- as abuse, doubts over 419–20
- EU/US regulation differences 386 and social welfare 388

Montangie, Y. 200
Monti, G. 70, 335, 419, 581, 605, 608, 609, 610, 611, 619, 625
Morais, Luis D. S. 85–129

moral rationales, history of, exploitative abuses, prohibition 388–91
Moran, M. 223, 589
Möschel, M. 44
Möschel, W. 31, 44
Mosso, C. 489, 503
Motta, M. 179, 242, 303, 307, 308, 314, 320, 399, 418, 420, 539, 540
Mowbray, A. 477
Muller, U. 489
Mullin, W. 132
Munier, B. 141
Muñiz, P. 335
Muris, T. 538

Nalebuff, B. 138
Nash, S. 168, 225
Nash equilibrium
- information exchange agreements 140–41, 142, 145
- oligopoly problem 262, 265

national authorities’ prohibition,
- application of, excessive prices as abuse 410–14

National Competition Authorities (NCAs) 61, 307, 329

national court involvement 595

national regulatory authorities (NRAs)
see regulation/competition interaction, institutional perspective, national regulatory authorities (NRAs)

Nazzini, Renato 20–21, 22, 34, 473–515
Nelson, B. 390
Nelson, R. 566, 569, 570
Netherlands, excessive prices as abuse, legal approach 411–12

network effects
- as entry barrier 368
- market opening reforms in network industries, oligopoly problem 315–16
- merger control 543, 544–5
Neubauer, S. 254
Neubecker, L. 268
Neven, D. 27, 275, 285, 313, 474, 533
Neyrinck, N. 307–8, 347
Nicklisch, A. 271
Nickpay, A. 419
Nielson, R. 289
Niemeyer, H. 148
Nihoul, P. 2, 21, 302
Nikpay, A. 62, 335
non-pricing abuses, exclusionary see dominance abuse and exclusionary non-pricing abuses

Noonan, J. 390
Nozick, R. 36
NRAs (national regulatory authorities)
see regulation/competition interaction, institutional perspective, national regulatory authorities (NRAs)

Nussbaum, M. 15, 40

O’Donoghue, J. 417–18, 420
O’Donoghue, R. 336, 355, 361, 438, 447, 473, 503, 603, 621, 625, 626
Odudu, Okeoghene 2, 68, 71, 103, 148, 242–58

OECD, Better Life Initiative 15
O’Flaherty, J. 503
O’Kane, M. 168
Okun, A. 26
Olcszak, M. 331
Oldale, A. 538
Handbook on European competition law

oligopoly
distributors and weakening of inter-store competition, vertical agreements, intrabrand restraints 180
non-collusive oligopoly theory, and merger control 519–31
non-coordinated effects in oligopolistic markets, merger control 517–19, 530
Oracle/Peoplesoft and non-collusive oligopoly theory, merger control 519–26
T-Mobile/Tele.ring and non-collusive oligopoly theory, merger control 526–31
see also monopoly
oligopoly problem 259–349
behavioral economics and tacit collusion 271–2
economic literature overview 261–73
economic theory, drawing policy lessons from 273–87
economics, fluctuating semantics and category errors 284–7
empirical analysis 269–70
epistemological overview 272–3
game theory research 265–6
Harvard School 263–4, 276, 283
history of 259–60
lack of predictive accuracy 277–80
large efficient firms, debatable involvement of 282–4
market definition, importance of, for tacit collusion analysis 287
market structure and tacit collusion 264–5, 266–9
maximization of joint profits 264–5
models beyond standard model 270–71
moral justifications for tacit collusion, flawed 280–81
Nash equilibrium 262, 265
non-collusive oligopolistic interdependence 272–3
non-cooperative equilibrium of game theory 265–6
oligopolistic interdependence concept 285
‘one-size-fits-all’ approach to tacit collusion, misguided 276
rational conduct in tacit collusion, not a cause of exoneration 280–82
remedial difficulties, overstated 281–2
remedial intervention need, despite tacit collusion infrequency 274–5
semicollusion research 271
supra-competitive profits (SPC paradigm) 263
tacit collusion economics 261–72
tacit collusion theory, instability issues 277–8
welfare losses and tacit collusion 273–4
oligopoly problem, legal remedies (current), in EU competition law 288–314
announced prices, findings in relation to 292–3
avoidance strategies, effects of 319–20
compliance strategies 320–21
concerted practice, understanding of 290–91
conscious parallelism 291–2
explicit collusion avoidance strategies 319–20
financial links amongst oligopolists 295
harm theory, testing 311–12, 331
horizontal cooperation agreements 294
merger policy see merger policy and oligopoly problem
National Competition Authorities (NCAs) 307, 329
Regulation 139/2004 305, 307, 308–9, 322
SIEC (significant impediment to effective competition) 309
sui generis remedies 321–2
technology transfer agreements 296
Type I errors 324, 333, 336, 340
vertical agreements that facilitate tacit collusion, outlawing of 294–5
oligopoly problem, legal remedies (current), in EU competition law, Article 101 TFEU
competition law remedies 322–5
competition law remedies, legal standard 324–5
competition law remedies, scope issues 322–4
indirect application of, to facilitating agreements 293–6
oligopoly as defense to direct application of 289–93
side effects of anticartel policies under 319–21
oligopoly problem, legal remedies (current), in EU competition law, Article 102 TFEU
collective dominance as effective tacit collusion 325–32
collective dominance as effective tacit collusion, evidentiary issues 328–31
collective dominance theory and anomalous enforcement practice 296–301, 303–4, 305–6, 307
competition law remedies 325–44
enduring enforcement disinterest for tacit collusion under 305–7
oligopoly problem, legal remedies (current), in EU competition law, Article 102 TFEU, abuse of collective dominant position 332–44
adaptive strategies 341–4
anti-disruption practices 337
anti-entry strategies 338–41
conventional notion of abuse 333–4
excessive prices charged by tacitly collusive oligopolists 334–5
external shocks, effects of 341–3
facilitating practices 335–6
FRAND requirement 343–4
pros and cons of rejuvenating 344–5
retaliation practices taken against cheating oligopolists 336–7
oligopoly problem, legal remedies (current), in EU competition law, Merger Regulation
collective dominance to coordinated effects 309–12
coordinated effects cases, track record of Commission in 312–13
coordinated effects and structural prevention of tacit collusion 308–13
duopolistic markets 315
ex ante and ex post merger competition, comparison of 330
internal growth strategies falling short of 315
market opening reforms in network industries 315–16
oligopolists playing ‘cat and mouse’ with Commission 316
procedural issues 317
public policy implications 319
remedial issues 317–19
substantive issues 316–17
Type II errors risk 316, 317, 323–4, 335, 344
O’Loughlin, R. 104–5
Onderstal, S. 338
optimal deterrence theory, cartels 220–21, 222, 236
Orbach, B. 1, 20
ordoliberal view
exploitative abuses, prohibition 389–90
‘freedom to compete’ principle see under goals of EU competition law, ‘freedom to compete’ principle
Ordover, J. 268, 566
Ornstein, S. 187
Orr, D. 266, 277
Ortiz Blanco, L. 325
Osborne, D. 266, 277
over-deterrence and false conviction, exclusionary non-pricing abuses 475, 494
over-representation risks, comparative institutional analysis, need for 74–5
Overgaard, P. 148
Page, W. 143, 251, 475
Pakes, A. 271
Panner, A. 445
Papadias, L. 302, 305
Papandropoulos, P. 25, 555, 626
Papanikolaou, A. 542
parallelism
conscious, and tacit collusion, oligopoly problem 263, 291–2, 308, 328–30
trade restrictions 17–19, 54
Pardo, M. 25
Pareto, V. 3
Parker, D. 279
Parker, P. 267
Parsons, T. 4
pass on requirement, merger control 550, 551, 554–5, 557–8
Pate, H. 425, 426
patents 568, 569, 576–7
see also innovation, IPRs and competition law
Paulis, E. 405, 420
Peacock, A. 52, 389
Pepperkorn, L. 139, 180
Pelkman, J. 593
Penard, T. 277
Peritz, R. 561
Perry, M. 186
Perry, S. 26
Peston, R. 233
Petit, Nicolas 163, 259–349, 458
Pflanz, M. 312
Philips, L. 134, 140, 157
Pierce, R. 269
Pigou, A. 281
Pinkse, J. 328
Piraino, T. 111, 163
Pitofsky, R. 1, 488
Pleatsikas, C. 382
Plott, C. 134
Polanyi, K. 52, 55
Polinsky, A. 475
Pollak, M. 595
Popofsky, S. 415, 419
Porat, A. 269
Porter, R. 165, 172
positive law perspective, goals of EU competition law 41–66
Posthuma de Boer, P. 198
Powell, M. 225
predatory pricing
by dominant undertakings on secondary markets 435
definition 427–8
and selective low pricing see dominance abuse and exclusionary pricing abuses, predatory pricing and selective low pricing
Preece, S. 326
preliminary presumption of lawfulness, apparent elimination of category 91–3
Preston, L. 184
pricing
discriminatory pricing, exploitative abuses 386–7
excessive prices charged by tacitly collusive oligopolists 334–5
excessive, prohibition against see exploitative abuses, legal rule, excessive prices as abuse
exclusionary pricing abuses see dominance abuse and exclusionary pricing abuses
fair price setting problems, exclusionary pricing abuses, margin squeeze 445–6
independent price squeeze offence, exclusionary pricing abuses, margin squeeze 451–3
information used to determine own future pricing intentions 253–4
just price doctrine 390–91
maximum resale prices, vertical agreements, intrabrand restraints 184
modified price standard, merger control 539
Index 657

monopoly see monopoly pricing
non-pricing abuses, exclusionary
see dominance abuse and exclusionary non-pricing abuses
predatory see predatory pricing
price mechanism efficiency, information exchange agreements 133
punishing mechanism, price war with predatory prices, information exchange agreements 144
pure price standard, merger control 538–9
regulation requirements, exploitative abuses, critical analysis of prohibition 421
regulation seen as essential, exploitative abuses, prohibition, possible rationales of 393–4
unfair prices, treatment of, innovation, IPRs and competition law 579
Primeaux, W. 533–4
prisoners’ dilemma (PD) game, information exchange agreements 140–41, 159
profit-sacrifice test, exclusionary pricing abuses 425
profits
maximization of joint profits, oligopoly problem 264–5
profitability analysis and market power 374–6
prohibition, critical analysis of see exploitative abuses, critical analysis of prohibition
proportionality assessment 66, 71, 617–18
proportionality test under Article 102 see dominance abuse and exclusionary non-pricing abuses, proportionality test under Article 102
Prosser, T. 598
Protocol No. 26, Services of General Interest 61–2
Protocol No. 27, Internal Market and competition 52, 55–6
public interest
coordinated concerns, information exchange agreements 165–6
information exchange, horizontal cooperation agreements 114–15
objectives 57–60
policy implications, oligopoly problem 319
public domain information, information exchange agreements 170–72
restrictive effects on competition,, horizontal cooperation agreements 106–7
Purps, S. 616
quick-look test, horizontal cooperation agreements 97–8
R&D
complementary activities and development and introduction of new products 102, 104–5
horizontal cooperation agreements 122–4
investment costs and consumer protection, conflict between 23–4
see also innovation, IPRs and competition law
Rahl, J. 264, 296–7
Rahnasto, I. 561, 586
Rapp, R. 427
Ratliff, J. 228, 469–70
Rawls, J. 10, 27–9, 64, 392
Raz, J. 14
rebates and price discrimination see dominance abuse and exclusionary pricing abuses, rebates and price discrimination
refusal to supply and dominance abuse see dominance abuse and exclusionary non-pricing abuses, refusal to supply
dominance abuse and exclusionary pricing abuses, margin squeeze 455–7
Regulation 1/2003 225, 234, 611–18
Regulation 139/2004 305, 307, 308–9, 322
Regulation 330/2010 see vertical
agreements, Regulation 330/2010, adoption of Regulation 2790/1999 193–4, 196, 198, 204
regulation/competition interaction 588–627
degree of regulation 589–90
single market objective 590
regulation/competition interaction, institutional perspective 590, 591–602
Article 106 and liberalization 594
Article 114 and liberalization 594
distrust and mistrust 601–2
government influence on regulators, mistrust of 602
liberalization process 593–4
modernization of regulatory frameworks 600–601
national court involvement 595
regulation by coordination 599–601
regulatory landscape changes 592–601
sector-specific rules 595
special and exclusive rights 594
regulation/competition interaction, institutional perspective, national regulatory authorities (NRAs) creation of, and legislative strategy 592–9, 625
decentralized expansion 598–9
diverse principles 598
as independent authorities 596–7
national variations in powers 597–8
ranking 602
regulation/competition interaction, substantive perspective 590–91, 603–25
Article 101 and collusion 603–4
Articles 102 and 106 TFEU, combined reading of 605–8
‘as efficient competitor’ standard 621–2
commitment decisions pursuant to Article 9 of Regulation No 1/2003 611–18
competition law, supremacy of 603–5
competitive energy markets, barriers to 612–13
competitive markets and sovereign rights 606–7
conflict of interest situations 607, 615
constitutional and legal dimension 603–8
Deutsche Telekom and TeliaSonera cases 621–5
dominance abuse and commitment decisions 613–18, 624–5
duty of loyal cooperation, violation of 605–6
early antitrust settlements 609–11
ex ante intervention 624–5
exclusive or special rights, granting of 606–7
exclusive or special rights, holders of 605–6
investigation termination without the finding of infringement 611–18
margin squeeze 621–2
Merger Regulation structural remedies 619–20
national legislation effects 624
network divestiture 617
proportionality assessment 617–18
regulatory antitrust, emergence of 608–25
wide monopoly rights, granting of 607–8
reputation considerations, aftermarkets analysis, and market power 380–81
resale price maintenance (RPM) 180, 183, 198–200
Rey, P. 180, 266, 269, 286–7, 383
Ridyard, D. 255, 258, 458, 470, 488, 503, 511
Rieter H. 31
Riley, A. 223
Riordan, M. 553
rivals’ costs, raising, exclusionary non-pricing abuses, refusal to supply 495–7
Rizzo, M. 37
Robbins, L. 3, 6–7
Robertson, P. 566
Rodenhausen, A. 489
Rodford, P. 302
Index 659

Rodger, B. 340
Rödl, F. 52
Röller, L. 27, 267, 310, 336, 399, 420
Romaine, R. 475
Röpke, W. 36, 79
Rosch, J. 132, 136, 168, 169, 241
Rosenthal M. 542
Ross, D. 135, 184, 267, 268, 272, 277, 338, 343
Ross, T. 268, 538
Rousseva, E. 19, 489, 503
rule of reason evaluation, horizontal cooperation agreements 103, 107
Rullière, J.-L. 141
Russo, F. 295
Rusu C. 330
Sabbatini, P. 279
Sadowska, M. 616
safe harbour application horizontal cooperation agreements 128
market power, market structure 357–8
Saft, L. 187
Salinger, M. 415, 475, 545
Salop, S. 185, 268, 415, 425, 426, 474–5, 622
Samuelson, P. 29
Samuelson, S. 12–13
Sanchirico, C. 30
sanctions cartels 219–25
information exchange agreements 143
Sandel, M. 393
Sanderson, M. 23
Schaffer, G. 73
Scheffman, D. 222, 268, 278, 279
Scheinkman, J. 267
Schelling, T. 337
Schengen Convention, Article 54, ne bis in idem principle 51
Scherer, F. 135, 179, 184, 265, 267, 268, 272, 277, 338, 343, 345, 567–8
Schinkel M.-P. 316, 320
Schjelderup, G. 269
Schmalansee, R. 565
Schmalensee, R. 363, 382
Schmidt, A. 136, 170
Schmidt, H. 570
Schmidt, I. 546
Schmolz, M. 31
Schodermeier, M. 340
Schot, U. 616
Schroder, D. 195
Schulhofer, S. 232
Schultz, C. 268
Schulze, R. 390
Schumacher, T. 60
Schumpeter, J. 531–2, 533, 565, 571
Schwartz, L. 264
Schweitzer, H. 42, 389
Scott, C. 589, 599
Scott, P. 237
Seabright, P. 533
Seitz, C. 136, 173
selective distribution systems, vertical agreements 191, 203–4, 209
selective pricing see dominance abuse and exclusionary pricing abuses, predatory pricing and selective low pricing
Selten, R. 141, 157, 158, 259, 267
Sen, A. 14, 15, 40
Shaffer, G. 212
Shafir, E. 22
Shapiro, C. 268, 287, 378–9, 576
Shavell, S. 26, 475
Shearling, C. 589
Sherman, B. 250, 562, 568
Shiller, R. 271
Sidak, J. 374, 382, 445, 622
Silverstone, Z. 567, 568
Simaan, Y. 270
Simpson, M. 237
single market objective 394–5, 590
Siragusa, M. 87
Skidelsky, R. and E. 16
Skitol, R. 283
Slade, M. 270, 328
Smith, J. 340
Soames, T. 300, 306, 346
social dimension collective labour agreements 62–6 contract between all market players, implied 391–3
see also consumer headings; welfare social market economy 51–2, 55–6, 60–62
Sokol, D. 1, 69
Sorana, V. 358
Sorgard, L. 271
Soskice, D. 52
South Africa, *Mittal Steel* 399
Spagnolo, G. 221
Spain, cigarette company price war 341–2
Spence, M. 5
Spengler, H. 553
Spulber, D. 475
Stallibrass, D. 242
standardization agreements see horizontal cooperation agreements and Article 101 TFEU, standardization agreements
Stango, V. 270
Steen, F. 271
Stefanidis, C. 186, 511
Steindl, J. 315
Steiner, R. 179, 180, 181, 183
Stenborg, M. 267, 271, 272, 275
Stephan, Andreas 217–41
Stephanou, S. 329
Steuer, R. 187
Stevens, R. 81
Stigler, G. 3, 149, 161, 250, 264, 266, 277, 362
Stiglitz, J. 10, 40, 180
Storr, V. 13
Stothers, C. 488
Stratakis, A. 488–9
Stroux, S. 267, 328, 333, 335, 340
Stucke, M. 1, 16, 68, 133, 137, 173, 271–2, 484
Stuijlaart, R. 295
Stuyck, J. 55
Subiotto, R. 194
Sufrin, B. 193, 300, 301, 321, 334, 503
Sullivan, L. 254, 280
Sullivan, M. 212–13
Sunderland, R. 233
sunk costs, market power, market characteristics 363–4, 365
Sunstein, C. 271
Surowiecki, J. 283
Suslow, V. 138
Svetlicinii, A. 546
switching costs as entry barrier 368–9, 370, 377, 378–9
tacit collusion see collusion, tacit collusion
Tajana, A. 626
Tallberg, J. 395–6
Talus, K. 609, 610
Tapia, Javier 588–627
Taylor, C. 567, 568
technology cumulative technology industries, innovation, IPRs and competition law 569–70
licensing agreements, innovation, IPRs and competition law 573
superiority of established firms as entry barrier to entry 367–8
technology transfer block exemption regulations (TTBERs) 574
transfer agreements, oligopoly problem 296
Teece, D. 378–9, 382, 565
Telser, L. 181
Temple Lang, J. 303, 314, 331, 333, 340, 438, 488, 626
tendency to restrict competition test 496–7
Tepperman, A. 23
TEU Article 3, competition without distortion 48, 51, 55
Article 3, Internal Market with competitive social market economy 51–2
Article 6-1, Charter has same legal value as Treaties 50
Article 6-2, EU accession to European Convention of Human Rights (ECHR) 50–51
TFEU Article 3, competition law and functioning of Internal Market 52
Article 9, social market economy 56
Article 11, social market economy and environmental protection 56, 60
Article 12, consumer protection requirements 55, 56
Article 14, role of services of general economic interest 61
Article 106, regulation/competition
Index

interaction, substantive perspective 605–8
Article 106, social market economy 62
Article 107, financing of services of general economic interest 62
Article 114, liberalization 594
TFEU Article 101
agency agreements 213–14, 216
block exemption regulation 209, 210–11
and collusion 167, 603–4
competition protection 43, 53, 59, 60–61, 70, 79, 147, 152
competitive process efficiencies 152
conflict resolution 70–71
corporate harm assessment 27, 63
corporate protection 9, 19, 26, 27, 57–8, 59–60, 70
de minimus threshold 195
domestic regulation and effet utile concept 49
efficiency enhancing measures 27, 147, 154
financial links amongst oligopolists 295
horizontal cooperation agreements see horizontal cooperation agreements and Article 101 TFEU
information exchange 246
market share threshold 195
modernization of 573–5
oligopoly problem see oligopoly problem, legal remedies (current), in EU competition law, Article 101 TFEU
parallel trade restrictions 17
public policy considerations 70
Regulation 330/2010 hardcore restrictions 198, 207
requirement for an agreement between undertakings 153
resale price maintenance 199
restriction by object 203
technology transfer agreements 296
vertical agreements 175–6, 190–91, 192, 294–5
TFEU Article 102
collective dominance theory 296–301
competition protection 43, 46, 48, 60–61, 605–8
consumer protection 19–20, 42–3, 60–61, 70
dominance abuse and exclusionary non-pricing abuses see dominance abuse and exclusionary non-pricing abuses
dominance abuse and exclusionary pricing abuse see dominance abuse and exclusionary pricing abuses
dominance and market power see dominance and market power
exceptional circumstances test, innovation, IPRs and competition law 579–81
excessive pricing case law 164
exploitative abuses see exploitative abuses
‘freedom to compete’ principle 30–31
goals, debate over, exclusionary pricing abuses 424–5
IPRs and strategic commercial conduct 575–86
market share threshold 195
oligopoly problem see oligopoly problem, legal remedies (current), in EU competition law, Article 102 TFEU
and ordoliberalism 43
parallel trade restrictions 18–19
per se rules and effects, innovation, IPRs and competition law 581–5
price discrimination, secondary line injury 467
proportionality test see dominance abuse and exclusionary non-pricing abuses, proportionality test under Article 102
travaux préparatoires analysis 71–2
see also Guidance Paper on Article 102
Thaler, R. 12, 13, 271
Thatcher, M. 596, 597, 599
Thompson, R. 503
Tirole, J. 266, 383
Tor, A. 468
Torsvik, G. 269
Handbook on European competition law

Townley, C. 2, 57, 58, 68, 104
Trachtman, J. 73
transparency, information exchange agreements 147–9, 154–5, 160–62
Treacy, P. 575
Treaty of Amsterdam, Article 2, competitiveness as aim 49
Tribe, K. 34
Tridimas, T. 617
Tversky, A. 12
tying and bundling see dominance abuse and exclusionary non-pricing abuses, tying and bundling

UK
Apex Asphalt and Paving Co Limited v OFT 251, 253
Argos Limited and Littlewoods Limited v OFT 244, 245, 246, 247, 248, 250, 252, 253, 258
Attheraces 413–14
BHB Enterprises plc v Victor Chandler 413
British Airways 230–31, 233
cartels and sanctions 168, 223–6, 227, 231, 233, 235, 236
Collusive Tendering for Flat Roofing Services in the West Midlands 253, 257
Competition Disqualification Order 224–5
Construction Bid-Rigging 227
dairy products investigation 231, 246, 251
Enterprise Act 224
excessive prices as abuse, legal approach 412–14
extended warranties for domestic electrical goods 378
Hasbro 245, 249
information exchange see under information exchange and Hub and Spoke Collusion, UK
JJB Sports v OFT; Allsports v OFT 245, 249, 251, 252, 256
Makers UK Limited v OFT 248, 249
NAPP 412–13
OFT on dominance and market power see dominance and market power
OFT Early Resolution Agreements 231, 237
Replica Kit 245, 248, 255, 257
Restrictive Trade Practices Act (RTPA), Section 21 implementation 80–81
Safeway Stores Ltd v Twigger 236–7
Tesco v OFT 246, 247, 249, 250, 251, 252, 254, 256, 257
US
AA Poultry Farms v Rose Acre Farms 438
ALCOA 397
Antitrust Criminal Penalty Enhancement and Reform Act (ACPERA) 236
Brand Name Prescription Drugs Antitrust Litigation 249
Brooke Group Ltd. v Brown & Williamson Tobacco Corp 437
Brown Shoe 283
cartel sanctions 223, 226, 229, 236, 238
Clamp-all Corporation 282
Coordinated Pretrial Proceedings in Petroleum Products 161
cy près awards in antitrust cases 239
Dr. Miles 199
Hardwood 131, 133
Horizontal Merger Guidelines 547
independent price squeeze offence 451
IPRs 586–7
Leegin 83, 199–200
leniency programmes 227
linkLine 451
Lomar Wholesale Grocery, Inc. v Dieter’s Gourmet Foods, Inc. 249
Maple Flooring Manufacturers’ Association v US 131
merger control 525, 538, 547
monopoly pricing, EU/US regulation differences 386
Pacific Bell 445–6, 450, 452
Sherman Act 130, 131, 167, 282, 289, 297, 446
State Oil Company v Barkat U. Khan 200
Supreme Court test for predation 437–8
*Trinko* 398, 418, 425
*United States v American Airlines* 167
*United States v American Linseed Oil Co.* 131
*United States v Mercury PCS II* 149
*United States v Oracle* 525
*United States v Socony-Vacuum Oil Co.* 256
*United States v. Sugar Institute* 131–2
‘wire fraud’ cases 167
Utton, M. 189

Valletti, T. 270
Van Bael, I. 193, 232
Van Barlingen, B. 228
Van den Bergh, R. 250, 474, 488, 503
Van Miert, K. 590–91, 593
Van Rompuy, B. 2, 71, 329
Vanberg, V. 32–3, 34, 35, 36, 52
Vasconcelos, H. 539, 540, 626
Vatiero, M. 272
Vecchi, T. 335
Veljanovski, C. 221, 239, 488
Vergé, T. 269
Vermeule, A. 75–7
vertical agreements 174–216
agency agreements 213–16
agency agreements, risk factors 215–16
block exemption, not covered by 210–11
competitive impact of vertical restraints 178–9
*De Minimis* Notice 174–5, 195, 197, 206
economic analysis of vertical restraints 177–89
effects of, horizontal cooperation agreements and Article 101 TFEU 88
evidence required to prove and concurrence of wills 176–7
horizontal agreements, differences between 175
market integration concerns 176
tacit collusion, facilitating, oligopoly problem 294–5
upfront access payments and category management agreements 211–13
see also horizontal cooperation agreements and Article 101 TFEU
vertical agreements, competition law, treatment under 189–94
2000 Guidelines 193
block exemption regulations 191, 192, 193, 196–7, 201–3, 207–10
competition protection emphasis 193
formalistic approach 189–92
formalistic approach drawbacks 192–3
freedom of action theory 190
Regulation 2790/1999 193–4, 196, 198, 204
selective distribution agreements 191
straitjacket effect 192
vertical agreements, interbrand restraints 178–9, 184–7
anti-competitive effects 185–6, 189
efficiency gains, potential 186–7
entry barriers and tie-in clauses 186
exclusive dealing, foreclosure effect 185, 189
exclusive dealing, free-riding prevention 187
exclusive dealing and promotional efforts of distributors, securing 187
intrabrand competition used to soften 180
leverage theory 185–6
relationship-specific investments and exclusive dealing 187
tie-in clauses, and foreclosure effects 185–6
transaction cost reduction and exclusive dealing 187
tying clauses, use of 187
vertical agreements, intrabrand restraints 177–8, 179–84
anti-competitive effects 179–81, 188
collisionary effects 188
consumers, adverse effect on 181, 182–3
e-commerce and free-riding 183
efficiency gains, potential 181–4
free-riding theory 181–2, 183
horizontal collusion in the
downstream or upstream
market 179–80, 188
interbrand competition, used to
soften 180
loss leaders’ theory 184
maximum resale prices 184
oligopolistic distributors and
weakening of inter-store
competition 180
and resale price maintenance 180, 183
sales promotion, negative impact on
allocative efficiency 182–3
vertical agreements, Regulation
block exemption, withdrawal and
disapplication 209–10
components’ sale 204
excluded restrictions 207–9
market share thresholds 194–7
market share thresholds, buying
power of distributors 196–7
market share thresholds, false
negatives, reducing costs of 197
market share thresholds, hardcore
restrictions 197–207
non-compete obligations 207–8
non-compete obligations after
termination of agreement 208–9
resale price maintenance 198–200
selective distribution systems,
and internet use, hardcore
restrictions 203–4
selective distribution systems,
prohibition on sale of products
of particular competing
suppliers 209
territorial and customer restrictions
200–203
territorial and customer restrictions,
online sales 202
Vita, M. 163
Vitzilaiou, L. 284–5, 303
Vives, X. 134, 139, 149, 150, 156, 165, 169, 261, 268
Vogel, S. 588
Von Hirsh, A. 222
Von Rosenberg, H. 609, 611, 626
Von Stackelberg, H. 261, 262, 272
Waelbroeck, D. 470
Waelbroeck, M. 458
Wagner-von Papp, Florian 130–73
Waldman, M. 383, 511
Walker, M. 179, 278, 280, 438
Ware, R. 186
Warwick, R. 191
welfare
economic 3–16, 21, 23–4, 37, 45–6, 53–4, 56–7, 67–9, 78–9
and goals of EU competition law,
consumer protection 20–21
losses and tacit collusion, oligopoly
problem 273–4
and monopoly pricing 388
non-economic welfare view 16–41
and participation effects 73–4
see also consumer headings; social
dimension
Went, D. 609
Wenzel, M. 220
Werden, G. 139, 140, 275, 425, 426, 542
Wessely, T. 251, 258
Weyant, J. 270
Whelan, P. 148
Whinston, M. 186, 267, 278, 511
Whish, R. 71, 106, 131, 156, 169, 193, 300, 321, 334, 340, 419, 503
whistleblower immunity, cartels 235
White, L. 241
Willgerodt, H. 52, 389
Williams, M. 407
Williamson, O. 174, 535–6, 538, 539–40
Willig, R. 268, 566
Willis, P. 614
Wils, W. 220, 221, 222, 238, 239,
240–41
Winston, I. 75, 78, 80
Winter, R. 264, 320, 335, 570
Winter, S. 566
Withers, C. 332
Witt, A. 474
Wolinsky, A. 265
Wood, J. 589
Wright, J. 1, 69, 212, 213, 475
<table>
<thead>
<tr>
<th>Name</th>
<th>Page(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yamey, B.</td>
<td>81</td>
</tr>
<tr>
<td>Yao, D.</td>
<td>266</td>
</tr>
<tr>
<td>Yao, T.</td>
<td>270</td>
</tr>
<tr>
<td>Zäch, R.</td>
<td>38</td>
</tr>
<tr>
<td>Zeckhauser, R.</td>
<td>12–13</td>
</tr>
<tr>
<td>Zimmer, D.</td>
<td>2, 43</td>
</tr>
</tbody>
</table>