Index

Abbott Laboratories v Teva 157
A.B. Dick v Henry 143
absolute cost advantages 133
abuse of dominance 148, 158–159, 165, 240–242, 387
ACHAP case 493–494
advertising industry 51
advertising restrictions, in codes of ethics 104–105
airline industry 41–42
Albrecht v Herald Co 254
ALCOA 127–128
Alese, Femi 107
Allied Tube & Conduit Corp. v Indian Head, Inc. 162
Comparative competition law

private antitrust enforcement 387
Arizona v Maricopa County Medical Society 80
Arrow, Kenneth 160, 394
artificial entry barriers 124
ASEAN (Association of Southeast Asian Nations)
Regional Guidelines on Competition Policy (2010) 17
Ausfaltos case 493
assessment of agreements 80–81, 99–103
AstraZeneca 157–159
AstraZeneca v Commission 158–159
AU Optronics 56
Australia
approval of Seagate/Samsung merger 205
categories of agreements 92, 103–104
competition law, overview 16, 17
criminalization of cartel conduct 57, 312, 326–327
enforcement agency model 272, 275, 286–287
exiting firms 186
extraterritorial reach of 380–382
geographic dimension of markets 41–42
monopoly DWL in 111
predatory pricing case law 139–140
price signalling 296
raising rivals’ costs case law 140
refusals to deal case law 137–139
search and seizure powers 290
Australian Competition and Consumer Commission v Australian Safeway Stores Pty Limited 140
Australian Competition and Consumer Commission v Baxter Healthcare Pty Ltd 119, 139
Ayres, Ian 294
Bainian market power see strategic market power
Baker, Donald I. 294
Baker, Jonathan B. 30–31, 123
Barnett, Thomas O. 286
BASF Aktiengesellschaft 321, 381
Beaton-Wells, Caron 286–287
Belgium
criminalization of cartel conduct 312
Berkey Photo, Inc. v Eastman Kodak Co. 145
BHP Billiton 371, 439
bid rigging 97, 306, 313, 323, 324, 419, 435, 436–437
bilateral agreements 20–22, 209–211, 299
Blair, R.D. 258
block booking 144
block exemption regulation (BER) (EU) 238–240
Blomkest Fertilizer, Inc. v Potash Corp of Saskatchewan 71–73
BMI Music, Inc. v Columbia Broadcasting, Inc. 145
Board of Trade of City of Chicago v US 99–100
Boeing/McDonnell Douglas merger 210
Boral Besser Masonry v Australian Competition and Consumer Commission 139–140
Bork, Robert H. 111, 119–120, 124
Bosch 167
bottleneck method, of direct foreclosure 127
boycotts 96, 104
Brathwaite, John 294
Brandes, Louis 99–100
Bray v F. Hoffman-La Roche Ltd 381–382
Brazil
abuse of dominance 494–499
administrative adjudication 485–486

John Duns, Arlen Duke and Brendan Sweeney - 9781785362576
Downloaded from Elgar Online at 01/17/2019 03:16:20PM via free access
<table>
<thead>
<tr>
<th>Topic</th>
<th>Page Numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>administrative enforcement model</td>
<td>272</td>
</tr>
<tr>
<td>Brazilian Competition Policy System (BCPS)</td>
<td>313–314</td>
</tr>
<tr>
<td>collusive agreements</td>
<td>489–494</td>
</tr>
<tr>
<td>Competition Act (Law No. 8, 884/1994)</td>
<td>478</td>
</tr>
<tr>
<td>Competition Act (Law No. 12, 529/2011)</td>
<td>478, 481, 484, 488–489, 496</td>
</tr>
<tr>
<td>competition agency</td>
<td>482–485</td>
</tr>
<tr>
<td>criminalization of cartel conduct</td>
<td>305, 306–307, 312, 313–314, 327–328</td>
</tr>
<tr>
<td>current institutional setting</td>
<td>479</td>
</tr>
<tr>
<td>Economic Crimes Law</td>
<td>485</td>
</tr>
<tr>
<td>extraterritorial reach of 378</td>
<td></td>
</tr>
<tr>
<td>Federal Constitution (1988)</td>
<td>479</td>
</tr>
<tr>
<td>goals and legal mandates</td>
<td>480–482</td>
</tr>
<tr>
<td>history of competition law</td>
<td>476–479</td>
</tr>
<tr>
<td>Law No. 4,137/1962</td>
<td>476–477</td>
</tr>
<tr>
<td>leniency programs</td>
<td>490–491</td>
</tr>
<tr>
<td>multiagency enforcement</td>
<td>281, 290</td>
</tr>
<tr>
<td>National Anti-cartel Strategy (ENACC)</td>
<td>327–328</td>
</tr>
<tr>
<td>PMN (pre-merger notification) regime</td>
<td>192, 199</td>
</tr>
<tr>
<td>private antitrust enforcement</td>
<td>387–388</td>
</tr>
<tr>
<td>Public Procurement Law</td>
<td>485</td>
</tr>
<tr>
<td>regional overview</td>
<td>472–476</td>
</tr>
<tr>
<td>sanctions</td>
<td>486–489</td>
</tr>
<tr>
<td>summary conclusion</td>
<td>499</td>
</tr>
<tr>
<td>Bresnahan, Timothy F.</td>
<td>123</td>
</tr>
<tr>
<td>Breyer, Stephen</td>
<td>68, 257, 357, 361</td>
</tr>
<tr>
<td>Broadcast Music, Inc v Columbia Broadcasting System, Inc.</td>
<td>60–61, 106</td>
</tr>
<tr>
<td>Carlton, Dennis W.</td>
<td>54, 118</td>
</tr>
<tr>
<td>cartels</td>
<td></td>
</tr>
<tr>
<td>antitrust treatment of ‘hard-core’</td>
<td>59–61</td>
</tr>
<tr>
<td>confessions by participants of 58, 61–62</td>
<td></td>
</tr>
<tr>
<td>historical background</td>
<td>10–11, 13, 15–16</td>
</tr>
<tr>
<td>orderly marketing of 90</td>
<td></td>
</tr>
<tr>
<td>proof of cartel agreement</td>
<td>61–62</td>
</tr>
<tr>
<td>stereotype of 56</td>
<td></td>
</tr>
<tr>
<td>see also criminalization of cartel conduct</td>
<td></td>
</tr>
<tr>
<td>Caspary, T.</td>
<td>266</td>
</tr>
<tr>
<td>categorisation of agreements</td>
<td>80–81, 92–99</td>
</tr>
<tr>
<td>Cathode Ray Tubes case</td>
<td>440</td>
</tr>
<tr>
<td>cathode-ray tube cartel</td>
<td>57</td>
</tr>
<tr>
<td>Cement Manufacturers Association</td>
<td>17</td>
</tr>
<tr>
<td>Chicago School</td>
<td></td>
</tr>
<tr>
<td>IP rights and 144</td>
<td></td>
</tr>
<tr>
<td>on NPVRs as procompetitive</td>
<td>224–225, 227, 251</td>
</tr>
</tbody>
</table>
private actions in Georgetown study and 405–406
on tying 228–229
see also classical market power
Chile
abuse of dominance 494–499
administrative adjudication 485–486
Cartels Division 492
collusive agreements 489–494
Competition Act (Law No. 2111973) 477, 481, 489–490
competition agency 482–485
criminalization of cartel conduct 328
current institutional setting 479
FNE (Fiscalía Nacional Económica) 483–484, 492
goals and legal mandates 480–482
history of competition law 476–479
Law No. 13 305, 476
leniency programs 491–492
prosecutorial enforcement model 274–275
regional overview 472–476
sanctions 486–489
summary conclusion 499
China 8, 443–471
abuse of dominance 455–457, 467–468
administrative monopolies 459–461
Antimonopoly Enforcement Authority 449–450, 461
Anti-Unfair Competition Law (AUCL) (1993) 444
approval of Seagate/Samsung merger 205
approval of Western Digital/Hitachi merger 205–206
civil court actions 470–471
competition law, overview 443–447
criminalization of cartel conduct 305
enforcement of AML 462–471
extraterritorial reach of 375–377
General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) 459
Guidelines on Antimonopoly Law Enforcement in the Field of Intellectual Property Rights 469
immunity from prosecution 285
legal liabilities 461–462
merger remedies 205
merger review 445, 457–459
Ministry of Information and Industry 468
monopolistic agreements 450–454
multiagency enforcement 283–284, 295–296
PMN (pre-merger notification) regime 192
Price Law (1998) 375, 444, 445, 466
Procurement and Bidding Law (1999) 444
prosecutorial enforcement model 274–275
Provisional Rules on Mergers and Acquisitions of Domestic Enterprises by Foreign Investors (2003) 445
resale price maintenance 451–452
Rules on Prohibiting Regional Blockades in Market Economic Activities 445
search and seizure powers 290
State Administration for Industry and Commerce (SAIC) 284, 445, 450, 462, 468–469
State Administration of Radio, Film and Television 468
state-owned enterprises (SOEs) 443–444, 446–447, 449, 464–465, 468
summary conclusion 471
China Construction Bank 456
China Mobile 456
China National Petroleum Corporation (CNPC) 466
China Netcom 456–457
China Telecom 468
China Unicom 468
CIBA Vision Vertriebs GmbH, Großostheim 266
Ciprofloxacin Hydrochloride Antitrust Litigation, In re 152
class actions 402
classical market power 115–124
exercise of 118–120
identification of 120–121
measurement of 121–124
power over price 115–117
underlying assumptions 117–118
cluster market concept 33–34
Coate, Malcolm B. 47–48
Coca-Cola/Huiyuan Juice merger 463–464
codes of ethics, restrictions on advertising 104–105
Collico case 494
collusion 126–131
Colombia
abuse of dominance 494–499
administrative adjudication 485–486
Anti-Corruption Statute (Law No. 1,474/2011) 489
collusive agreements 489–494
Competition Act (Law No. 155/1959) 476, 477, 478–479, 481–482, 490
competition agency 482–485
Constitution (1991) 478, 479
current institutional setting 479
goals and legal mandates 480–482
history of competition law 476–479
Ministry of Commerce, Industry and Tourism 482–483
regional overview 472–476
sanctions 486–489
SIC (Superintendencia de Industria y Comercio) 482–483, 484,

487–488, 492, 493, 495, 497, 498
summary conclusion 499
comity 349, 350–351, 355–359
commerciality and markets 49–50
Competition Law and Policy Committee (CLPC) (OECD) 14
concentration ratio 123
Connor, John M. 305, 315, 316–317, 319–320
c consumer surplus 118
c consumer welfare standard 176
Container Corp. case see United States v Container Corp.
Continental TV, Inc v GTE Sylvania 144, 231, 232, 251, 252–253
Conwood Co. v US Tobacco Co. 396–397
Copperveld Corp. v Independence Tube Corp. 88
Courage Ltd v Crehan 368, 371
Cournot model 68
court decisions
commerciality and substitutionability case 50
on fines for cartels 56
on geographic boundaries of markets 41–42
Gillette case 54–55
on price fixing 60–61
Staples case 47–48
see also individual courts and cases
CPTM 166–167
Crane, Daniel A. 275, 279, 280, 283, 284, 296
credit card interchange fees 50–51
Crest Theater 65–66
criminalization of cartel conduct 6, 18, 301–344
introduction 301–305
changes in the law 305–315
country comparison 341–344
development in other countries 312–315, 325–329
dual criminality 335–337
enforcement and policy developments 315–329
EU/EU member state change in the law 305, 309–311
EU/EU member state enforcement developments 317–318, 322–325
extradition and Ian Norris case 335–337
impacts of Vitamins Cases 320–322
impediments to implementation 338–340
international cooperation 329–335
leniency programs 337–338
summary conclusion 340
US change in the law 307–308
US enforcement developments 318–320
critical loss analysis and SSNIP 48–49
demand-side substitutionability 44
denomination Belgium 163
demand-side substitutionability 44
Denmark
prosecutorial enforcement model 274–275
deregulation 133
deterrence claims see private antitrust enforcement
developing countries and competition law 18
direct foreclosure method 126–127, 128
Direx case 425
discriminatory pricing 118, 127
domestic jurisdiction see international governance of competition and extraterritorial jurisdiction
double marginalisation 259–260
Dr Miles Medical Co v John D Park & Sons Co 249–250, 252, 254, 451
Dreyer’s Grand Ice Cream, Inc. 53
Dyestuffs case see Imperial Chemical Indus. v Commission
dynamic bundling 222
dynamic efficiency 80, 91–92, 110, 394
dynamic injuries 393–395
Dynamic Random Access Memory (DRAM) chips 323, 379–380
E. Bement & Sons v National Harrow Co. 143
Eastman Kodak 146–147
e-commerce 40
economic entity doctrine (EU) 87–88
economies of scale 132–133
Edion case 424
effects doctrine, in US 351–355
see also private antitrust enforcement
Egypt
criminalization of cartel conduct 329
Department to Protect Competition and Prohibit Monopoly 329
Elzinga, Kenneth G. 48–49, 406
Emmerich, V. 263–264
Empagran case see F. Hoffman-La Roche Ltd. v Empagran S.A.
entertainment see public enforcement
enforcement pyramid approach see public enforcement
Estonia
criminalization of cartel conduct 324
multiagency enforcement 281
Etablissements Consten SARL and Grundig-Verkaufs-BmbH v Commission 235–236
Ethyl Corp. v Federal Trade Commission 76–77
EU Guidelines
on competitor collaboration 86
on degree of control 87–88
infringement by object/effect 96–98, 101–103
European Commission (EC) 156
158–159, 165–166, 169
Director-General for Competition (DG Competition) 273–274, 276–277, 289–290, 310–311
enforcement by 236–237, 238, 318, 364–365, 432
EU Article 82/102 Guidelines 242
on failing firms 186
fine against Intel 410
Green Paper (2005) 384, 386
Recommendation on Collective Redress 369
on RPM 247–248, 261–262
vertical, use of term 220
Vertical Guidelines 237, 240
European Competition Network (ECN) 310–311
European Convention on Human Rights (ECHR) 336
European Court of Human Rights (ECHR) 336
European Court of Justice (ECJ)
on cartel horizontal agreements 65
on infringement by object/effect 96
private antitrust cases 386
on single economic entity doctrine 367
on undertakings 87
see also individual cases
European Court of Justice (EJC)
on ‘pure’ oligopoly pricing 68–69
European Economic Community (EEC) 11, 365
see also European Union (EU)
European Telecommunications Standards Institute (ETSI) 165
European Union (EU)
administrative enforcement model 272–274
approval of Google/Motorola merger 206
approval of Seagate/Samsung merger 205
Article 101(1) (TFEU) 96–98, 101, 166, 235–237, 265
Article 102 (TFEU) 165–166, 240–242, 364–368, 384, 425
block exemption regulation (BER) 238–240
categories of agreements 92, 103
categories of anti-competitive agreements 96–98
competition law in member states 281
competition law, overview 16
cooperation agreements with US 21–22
criminalization of cartel conduct 309–311, 317–318, 322–325
economic entity doctrine 86–88
EU Guidelines 86, 87–88, 96–98, 101–103
extraterritorial reach of 364–371
fines on cartels 57
FRAND (fair, reasonable, and nondiscriminatory) agreements 162, 164–167
Guidelines on Vertical Restraints 225–227
immunity from prosecution 285–286
implementation test 364–366
imposition of structural undertakings on Western Digital/Hitachi merger 206
inter-enterprise agreements 86–87
Merger Guidelines 366
non-price vertical restraints (NPVRs) 234–242
on price fixing 60
private actions and jurisdiction 368–371
private antitrust enforcement 386, 393, 403, 437
resale price maintenance (RPM) 258–266
restrictions on acquisition 221–222
restrictions on resupply 223
search and seizure powers 290
single economic entity doctrine 367–368
Evans, David S. 52
Eversley, DeCourcey 271
exclusionary conduct 119–120
see also strategic market power
exclusionary conduct, Salop’s four-step analysis 132
exclusive dealing see non-price vertical restraints (NPVRs)
exclusive distribution 221–222
extradition and criminalization of cartel conduct 335–337
extraterritorial jurisdiction see international governance of competition and extraterritorial jurisdiction
F. Hoffmann-LaRoche Ltd 321
facilitating practices 73–77
failing firm defence 185–187
Festival Records 50
First, Harry 340
first principles approach to prevailing price (Salop) 133–134
Fischer, Jeffrey H. 47–48
fixed RPM see resale price maintenance (RPM)
flat panel display companies 466
Focus Media 464
Fox, Eleanor M. 298
France
criminalization of cartel conduct 306–307
multiagency enforcement 281
FRAND (fair, reasonable, and nondiscriminatory) agreements 162, 164–167
FTC v Actavis 153–154
FTC v Brown Shoe Co 231–232
FTC v Superior Court Trial Lawyers Association 93
FTC v Watson Pharmaceuticals, Inc. 152–153
Fukui Prefectural Federation of Agricultural Cooperatives case 421–422
full-line forcing 222
Gans, Joshua S. 111
Gas Insulated Switchgear global cartel 366
GE/Honeywell merger 210
Gellhorn, E. 252
Gencor Ltd v Commission 366
generic drugs, delayed entry see pharmaceutical industry
geographic dimension of markets 39–42
Georgetown Private Antitrust Litigation Project 404–406
Geradin, Damien 300
Germany
criminalization of cartel conduct 306–307, 312, 324
Law against Restraints on Competition (GWB) 371
minimum RPM 266
Geroski, Paul 36
Gilbert, Richard J. 38
Gillette Company 54–55
Giovannetti, E. 261–262, 267–268
Glencore/Xstata merger 375–376
Global Financial Crisis 296–297
global LCD (liquid crystal display) cartel 374–375
globalisation and e-commerce 40
globalization of competition law 9–24
introduction 9–10
enhanced international competition 22–23
global competition law framework 15, 16–20
global nature of competition 14–16
historical background 10–14
multilateral vs. bilateral agreements 20–22
summary conclusion 23–24
Goldfarb v Va State Bar 60
Google 166–168
Google/Motorola merger 206
governance see international governance of competition and extraterritorial jurisdiction:
individual organizations and countries
graphite electrode cartel 327
Griffith, Rachel 36
Guidelines for the Licensing of Intellectual Property (US) 37–38
Gyselen, L. 259
hard core cartels, use of term 302
hard disk drive (HDD) market 205
Harding, Christopher 306–307, 315
Harris, Barry C. 48
Hausman, Jerry 122
Hay, George A. 120, 122
Haynes, J.S. 258
Henry, David 300
Herfindahl-Hirschman index (HHI) 123
Hershey Canada Inc. 380
Hicks, Robert 138–139
High Fructose Corn Syrup case 70
Hitachi 205
Hoffmann-La Roche 381
Hoffmann-La Roche v Commission 241
Hogarty, T.F. 48–49
Holmes, Oliver Wendell 351
Horizontal Merger Guidelines (US) 52–53
Hydrotherm Gerätebau GmbH v Compact del Dott. Ing. Mario Andreoli & C. Sas. 367
Hyman, David A. 271–272
Iacobucci, Edward M. 276, 279
IBM Corporation 145
Iceland
  criminalization of cartel conduct 312
Image Technical Services, Inc. v Eastman Kodak Co. (Kodak II) 146–147
Imperial Chemical Industries Ltd v Commission 65, 367
IMS Health GmbH & Co. OHG v NDC Health GmbH & Co. KG 148
InBev/Anheuser-Busch merger 463
Independent Service Organizations Antitrust Litigation (Xerox), In re 147
India
  Competition Act (2007) 17, 314–315
  Competition Commission of India (CCI) 17, 203–204, 284
  competition law enforcement 296
  criminalization of cartel conduct 305, 314–315
  extraterritorial reach of 377–378
  PMN (pre-merger notification) regime 192
  private antitrust enforcement 389
  Indonesia
    competition law, overview 17
    criminalization of cartel conduct 312
    industry structure
    actions against self-interest and plus factor and 72–73
    ‘The Informant’ (film) 320
    innovation markets 37–38, 100–101, 160–161
    see also research and development (R&D)
  Intel Corp. v Advanced Micro Devices, Inc. 410–411
  Intel/AMD antitrust war 410–411
  intellectual property rights, antitrust treatment of 141–170
  introduction 141
  history of 142–146
  innovation markets 160–161
  patent pools 168–169
  pharmaceutical industry 149–151
  pharmaceutical product hopping in EU 158–160
  pharmaceutical product hopping in US 156–158
  pharmaceutical settlements in EU 154–156
  pharmaceutical settlements in US 151–154
  refusals to license in EU 148
  refusals to license in US 146–147
  smartphone standard-setting 164–168
  standard-setting, generally 161–164
  summary conclusion 170
  Intel/McAfee merger 210
  Intergovernmental Group of Experts on Competition Law and Policy (UNCTAD) 13
Comparative competition law

International Chamber of Commerce (ICC) 211
International Competition Network (ICN) 173, 174, 211, 212, 216, 298, 301, 304, 307, 315–316, 348
Cartel Working Group 332–333, 339 cooperation among enforcement agencies via 299–300
criminalization of cartel conduct 329–330, 332–335
‘Defining Hard Core Cartel Conduct, Effective Institutions, Effective Penalties’ 333
on leniency programs 336
Manual on Anti-Cartel Enforcement Techniques 333
on merger efficiencies 189–190
on merger remedies 205, 207
on notification thresholds 197
Recommended Practices for Merger Analysis 182–184
scope of 14, 332–335
Statement of Achievements (2001–2013) 22
on timing of notification 199–200
on transparency in merger review 208
unjust enrichment principles 401–402
international governance of competition and extraterritorial jurisdiction 6–7, 345–383
introduction 345–346
concurrent jurisdiction 345–346
extraterritorial reach of Australia 380–382
extraterritorial reach of Brazil 378
extraterritorial reach of Canada 378–380
extraterritorial reach of China 375–377
extraterritorial reach of EU competition law 364–371
extraterritorial reach of India 377–378
extraterritorial reach of Japan 372–373
extraterritorial reach of South Korea 373–374
extraterritorial reach of US antitrust law 351–364
role of domestic jurisdiction in 347–351
summary conclusion 382–383
International League of Competition Law (LIDC) 211
International Salt Co. v United States 143–144
International Trade Organization (ITO) Draft Havana Charter 10–11
Interstate Circuit, Inc. v United States 63–65, 69–72
IP rights see intellectual property rights, antitrust treatment of
Ireland criminalization of cartel conduct 307, 323–324
Israel criminalization of cartel conduct 312, 328–329
prosecutorial enforcement model 274–275
Japan 8, 415–442
abuse of superior bargaining position 423–426, 432
administrative enforcement model 272, 275, 278, 428–436
appeal process 434–435
approval of Seagate/Samsung merger 205
cease-and-desist orders 431
competition law in cross-border cases 439–440
criminal enforcement 438
criminalization of cartel conduct 307, 312–313, 327
enforcement record of JFTC 435–436
ex ante merger control 439
extraterritorial reach of 372–373
fines/surcharges 431–433
goals of competition law 416–417  
history of competition law 415–416  
horizontal restraints 417–420  
investigatory powers 429–430  
Japan Fair Trade Commission (JFTC)  
282–283, 285–286, 290, 295,  
371–372, 416, 418, 419,  
420–422, 424–436, 438–442  
leniency system for cartels 433–434  
Liberal Democratic Party 440–441  
merger control 427–428 
Merger Guidelines 427  
Ministry of International Trade and 
Industry 441  
pre-order right to be heard 430  
private antitrust enforcement  
436–437  
private monopolization 420–422  
Subcontract Act 424–425, 426, 436  
summary conclusion 440–442  
unfair trade practice prohibition  
422–426  
JASRAC case 421  
JCB Service v Commission 258–259  
Jebsen, Per 122  
Jefferson Parish Hospital District No 2 
v Hyde 232–233  
Johnson & Johnson Medical (China) 
Ltd 452  
Joint Group on Trade and Competition 
(JGTC) (OECD) 14  
joint ventures 199  
definitions 85–86  
EU economic entity doctrine and  
87–88  
hard-core cartels and 60–61  
noncompete agreements 97  
US single enterprise doctrine and  
88–89  
Jorde, Thomas M. 37  
juries, in criminal cases 62  
jurisdiction, use of term 346  
Kansas  
Kansas Restraint of Trade Act (2013)  
256–257  
Kaplow, Lewis 69  
Kauper, Tom 406  
K-Dur Antitrust Litigation, In re 153  
keiretsu (network) 426  
Kiefer-Stewart Co v Joseph E Seagram 
& Sons 254  
Klein, B. 267–268  
Kloth v Microsoft 395  
Koh, Harold 340  
Kovacic, William E. 164, 271–272  
Kraft Export Association (KEA) 365,  
366  
Krattenmaker, Thomas G. 113, 125,  
126, 127–129, 131–132, 135  
Kroes, Neelie 368  
Lande, Robert H. 111, 112  
LCD cartel 56  
Leegin Creative Leather Products, Inc. 
v PSKS Inc. 254–257, 264,  
267–268, 451  
Lemley, Mark A. 92  
LePage’s Inc. v 3M 396  
Lerner Index 121  
Les Laboratoires Servier case 155, 156  
Leslie, Christopher R. 92  
LG 466  
Ling, Dong 299  
Lloyds 297–298  
Lombardo, J. Neil 126, 129–130  
Lunbeck 156  
lysine cartel 61, 320–322  
Majoras, Deborah 164 
Malaysia  
Competition Act (2010) 85, 89, 98 
competition law, overview 17  
non-price vertical restraints (NPVRs)  
243  
Manfredi v Lloyd Adriatico 
Assicurazioni SpA 368  
marginal consumers 45  
marginal cost 121–122  
marine hose cartel 328, 334, 336–337,  
374  
Marine Hose case 324, 326, 431–432,  
439–440  
market dominance test (dominance test)  
181–182  
market identification, sources of 45–46
market power, classical vs. structural approaches 5, 109–140
market power, regulation and establishment of 109–140
bundling 139
classical approach to 115–124
comparison of approaches 135–137
definitions 114–115
efficiencies 109, 111
predatory pricing 139–140
prioritization of concerns 113–114
problematic aspects 109–114
raising rivals’ costs 140
refusals to deal 137–139
rent-seeking behaviour 112–113
strategic approach to 125–135
transfers 109–112, 114
market sharing 97
markets and market power 4, 27–55
commerciality and 49–50
critical loss analysis and SSNIP 48–49
diminishing role for market definition 52–55
evidentiary basis for market definition and SSNIP 44–46
geographic dimension of 39–42
natural experiments and SSNIP 47–48
nature of markets 28–32
price correlations and 48
product markets 32–39
purpose of market definition 27–28
SSNIP test/hypothetical monopolist test 34–39
supply chain and 42–44
supply-side substitutionability 30–32
two-sided platforms/markets 50–52
Mars Canada, Inc. 380
Maryland
Maryland Antitrust Act (2009) 255–256
Matra Hachette v Commission 261
maverick firms 187
maximum RPM see resale price maintenance (RPM)
Melway Publishing Pty Limited v Robert Hicks Pty Limited 138–139
Mercosur 472
merger control rules 19
merger law 171–218
introduction 171–173
administrative structure and agency powers 192–193
administrative treatment 191–192
analytical approach 182–191
common filing form concept 215
cooperation, convergence, conflict 208–214
failing firm defence 185–187
international code for review 215
law and procedure differences 214–217
market definition and 187–188
maverick firms 187
national goals for international markets 179–181
rationale for regulation of 173–179
remedies 204–207
role of efficiencies in analysis 189–191
substantive law and analysis 181–182
summary conclusion 217–218
timeframe for merger review 202–204, 217
transparency 207–208, 216
see also notification obligations (PMN), in merger law
Merger Streamlining Group 211
mergers
Baker on 125
diminishing role for market definition and 52–55
FTC challenges of 161
SSNIP test/hypothetical monopolist test and 36
US Guidelines on 85–86
see also individual companies/corporations
Mexico
administrative enforcement model 272
criminalization of cartel conduct 313, 328
Microsoft 167, 394–395
Microsoft Corp. v Commission of the European Communities 148, 242
minimum quantities condition 222
minimum RPM see resale price maintenance (RPM)
Minn-Chem, Inc. v Agrium Inc. 363
Model Law on Competition (UNCTAD) 13, 213–214
monopoly thresholds 122
Monsanto v Spray Rite Serv Corp 252, 254
Monti, Mario 368
Morgan Crucible 336
Morganite 336
most-favored-nations clause (MFN) 76
Motion Picture Patents Co. v Universal Film Manufacturing Co. 143
Motorola Mobility (MMI) 165–168
movie theater industry 63–66
multilateral agreements 20–22, 211, 299
multilateral competition agreement proposals 347
music recording industry 50
Mutual Legal Assistance Treaties (MLATs) 334
‘naked’ exclusionary right 127–128
National Collegiate Athletic Association v Board of Regents of the University of Oklahoma 104–105
national courts, jurisdiction over Article 101 (TFEU) 103
National Society of Professional Engineers v US 94–95, 99–100, 103, 105
natural experiments and SSNIP 47–48
NCAA (National Collegiate Athletic Association) 60–61
Negotiated Data Solutions (N-Data) 163–164
Nestlé Canada Inc. 380
Nestle Holdings, Inc. 53
‘new sovereignty’ concept 349
New Zealand
commerciality and substitutionability case 50

Competition Act 41–42
criminalization of cartel conduct 312
Nine West Group, Inc., In the Matter of 255
Nippon Steel and Sumitomo Metal Industries merger 427
Noel, Michael 52
noncompete agreements 97
non-essential patents (non-SEPs) 164–165
non-price vertical restraints (NPVRs) 219–244
introduction 219–220
definitions and taxonomy 220–224
economics of 224–229
EU approach 234–242
foreclosure barrier to entry 228
leveraging barrier to entry 228–229
other jurisdictions 243
restrictions by acquirers 223–224
restrictions on acquisition 221–222
restrictions on resupply 223
summary conclusion 243–244
US approach 229–234
Norris, Ian 335–337
North American Free Trade Agreement (NAFTA) 301
Northern Pacific Railway v US 93
Norway
criminalization of cartel conduct 307, 312
notification obligations (PMN), in merger law 193–202, 216
fees 202
information requests 200–201, 216–217
thresholds for notification 197–199
timing of notification 199–200
voluntary vs. mandatory regimes 194–197
Novell 166–167
NT Power case see Queensland Wire Industries Pty Ltd v Broken Hill Proprietary Co Ltd
NTT East case 421
O’Brien v Leegin Creative Leather Products Inc. 256–257

Index
514  Comparative competition law

- oligopoly and analysis/proof 66–69
- orderly marketing of cartels 90
- Organisation for Economic Co-operation and Development (OECD) 11, 173, 211, 216, 298, 301, 304, 315–316, 348
- Competition Committee 300
- Competition Law and Policy Committee (CLPC) 14, 330
- Council Recommendation Concerning Effective Action against Hard Core Cartels 330
- criminalization of cartel conduct 312, 329–331
- Global Forum on Competition International Enforcement
- Cooperation (2013) 22–23
- Joint Group on Trade and Competition (JGTC) 14
- Model Law on Competition 13
- recommendations on cartels 13
- scope of 212–213, 334–335
- output restriction method 126–127, 128–129

- Padilla, Atilano Jorge 31
- Pareto optimality 111
- Parker Pen Holdings 54–55
- patent pools 168–169
- patent-antitrust intersection see intellectual property rights, antitrust treatment of
- Peperkorn, L. 262, 267
- People’s Republic of China (PRC) see China
- per se/rule of reason categorisation 4, 60–61, 92, 103–108
- in EU 96–98
- in other jurisdictions 98–99
- see also intellectual property rights, antitrust treatment of
- perfect competition model 118
- Perloff, Jeffrey M. 118
- Peru
- private antitrust enforcement 387
- pharmaceutical industry
- challenged merger attempts 161
- in China 467
- citizen petitions and 151
- follow-on products 159–160
- geographic dimension of markets 40–41
- innovation markets and 161
- IP rights 149–151
- product hopping in EU 158–160
- product hopping in US 156–158
- reverse payments 151, 408
- settlements in EU 154–156
- settlements in US 151–154
- vitamins cartel 326, 327, 374, 381–382, 391
- Vitamins Cases 320–322
- Polygram Holding Inc v FTC 105–106
- Portugal
- multiagency enforcement 281
- Posner, Richard 69, 70, 252–254
- power over price see also classical market power
- predatory pricing 118–119, 139–140, 407
- price correlations 48
- price fixing 59–60, 97, 102, 106, 144, 335–337, 338–339, 379–380
- see also individual cases
- private antitrust enforcement 7, 384–412
- introduction 384–385
- compensation 389–395
- cross-border antitrust litigation 410–412
- deterrence 389–390, 395–400
- dynamic injuries 393–395
- in EU 386, 393, 403
- expansion of antitrust constituency 409
- judicial backlash to 404–407
- jurisdiction and extraterritoriality 411–412
- prioritization of compensation/deterrence 400–404
- in South Africa, Asia, and South America 387–389
- spillovers to public enforcement 407–409
summary conclusion 412
in US 385–386, 390–393, 403–404, 410
product hopping see pharmaceutical industry
product vs. economic markets 32–39
product-differentiation advantages 133
productive inefficiency 110
Professional Engineers case see National Society of Professional Engineers v US
public education, on cartel offences 339
public enforcement 271–300
introduction 271
administrative model 272–274, 276–278
in China 283–284
compulsory acquisition of information/documents 289–290
detection and leniency policies 284–288
enforcement agency models 271–284
enforcement pyramid approach 291–294
during financial crises 296–297
in India 284
international cooperation 298–300
investigatory powers 289–290
multi-agency models 280–282
political influences and 295–298
promotion of compliance 291–295
prosecutorial model 274–276, 279
search and seizure powers 290
publishing industry 249, 470
‘pure’ oligopoly pricing 68–69
pure vs. mixed bundling 222
Queensland Wire Industries Pty Ltd v Broken Hill Proprietary Co Ltd 137–138
Ralse case 424–425
Rambus, In re 163
RAND (reasonable and nondiscriminatory) agreements 162, 164
Rapp, Richard T. 38, 123–124, 133
real foreclosure method, of direct foreclosure 127–128
Reckitt Benckiser 159
recommended RPM see resale price maintenance (RPM)
reduced intra-brand price competition 246–247
refusals to deal 137–139
refusals to license in EU 148
in US 145, 146–147
regional protectionism see China
re-importation 40–41
remedies, in merger law 204–207
rent-seeking behaviour 112–113
resale price maintenance (RPM) 245–268
introduction 245–246
anti- and pro-competitive effects 246–249
in EU 258–266
summary conclusion 266–268
in US 249–258
resale prices 16–17
research and development (R&D) cooperative collaboration on 91–92, 101
innovation markets and 37–38, 159–160
responsive regulation theory 291
reverse payments see pharmaceutical industry
Reysen, Marc 300
Rhone Poulenc 381
Rill, James F. 54
Rio Tinto 371, 439
Rockstar group 167
Rome Treaty, Article 85 365
Roosevelt, Franklin 11
RTE & ITP v Commission (Magill) 148
rule-of-reason see per se/rule of reason categorisation
Russia

competition law enforcement 296
criminalization of cartel conduct 305, 312, 314
Comparative competition law

PMN (pre-merger notification) regime 192, 198
safe harbors, for competitor collaboration (EU) 101–102
safety zones, for competitor collaboration (US) 100–101
Safeway 140
Salop, Steven C. 125, 126, 127–129, 131–132, 133–134
Sammelrevers case 263–264
Samsung 165, 205, 466
Samsung Electronics Co. 379–380
Sanyo Marunaka case 424
Schering-Plough Corp. v FTC 152
Schumpeter, Joseph A. 160, 394
Schwinn, US v General Motors Corp 231
Seagate 205
search and seizure powers see public enforcement
Set of Multilaterally Agreed Principles and Rules for the Control of Restrictive Business Practices (UNCTAD) 11–12
Sham litigation 147, 151
Shang Ming 193, 205
shareholders 396–399
Shell Oil Co. 88–89
Sherwin, R.A. 48
Simons, Joseph J. 48
Sina.com 464
Singapore
competition law, overview 17
non-price vertical restraints (NPVRs) 243
single economic entity doctrine (EU) 367–368
single enterprise doctrine (US) 86–87, 88–89
single monopoly profit 119
Sino-Agr 466–467
Sino-Chem 466–467
Sinopec 466
Slaughter, Anne-Marie 349
smartphone IP standard-setting 164–168
Snyder, Edward 406
software platforms 51
Sotomayor, Sonia 73
South Africa
Competition Act 387
criminalization of cartel conduct 305, 315
enforcement agency model 272, 274–275
private antitrust enforcement 387–389
South African Airways 387
South America, competition law overview 472–476
see also individual countries
South Korea
criminalization of cartel conduct 312, 313, 318, 327
extraterritorial reach of 373–374
Korea Fair Trade Commission (KFTC) 373–374
Monopoly Regulation and Fair Trade Act (MRFTA) 374, 388
private antitrust enforcement 388
Spahr v Leegin Creative Leather Products 256
Spain
multiagency enforcement 281
Spratling, Gary 336
SSNIP (small, sustained, not insignificant increase in price from the competitive level) 187
critical loss analysis and 48–49
defined 34
evidentiary basis for market definition and 44–46
natural experiments and 47–48
test/hypothetical monopolist test 34–39
two-sided platforms/markets and 50–52
standard essential patents (SEPs) 164–167
Standard Oil Co of California v US 231, 232
Standard Sanitary Manufacturing Co. v United States 143
standard-setting in IP 161–164
standard-setting organizations (SSOs) 162–163
Staples 54
Staples case 47–48
State Oil v Khan 254
Stevens, Robert 122
Stigler, G.J. 48
Stigler school
see also classical market power
Stigler-Sherwin test 48
Stiroh, Lauren Johnston 123–124, 133
strategic market power 113, 125–135
comparison to classical approach 135–137
exercise of 126–131
identification of 131–135
incentives and effects 125–126
Structural Impediments Initiative (SII) 416
substantial lessening of competition test (SLC test) 181–182
Sunshine, Steven C. 38
supply chain
product markets and 42–44
supply/demand elasticity 120
supply-side substitutionability debate
commerciality and 50
defined 30–32
supra-competitive prices 72–77
Swaine, Edward T. 299
Switzerland
criminalization of cartel conduct 313
Sylvania case see Continental TV, Inc v GTE Sylvania
T-Mobile Netherlands BV v Raad van Bestuur van de Nederlandse Mededingingsautoriteit 107
Tamoxifen Citrate Antitrust Litigation, In re 152
Tampa Electric Co v Nashville Coal Co 231–232
Tatham, T. 252
TDLC (Tribunal de Defensa de la Libre Competencia) 481, 483–484, 486, 488, 493–495, 497
Teece, David J. 37
Telser, L.G. 250, 252–253
Tennessee
Tennessee Trade Practice Act 256
Terminal Rail Road case see United States v Terminal Rail Road Association
territorial restraints 223, 231, 236
Texaco, Inc. 88–89
Texaco, Inc. v Dagher 88–89
Thailand
competition law, overview 17
criminalization of cartel conduct 312
Theatre Enterprises v Paramount Film Distributing Corp. 65–66, 70–71
theories of harm, in merger law 184–185
third-line forcing 222
Timberlane Lumber Co. v Bank of America 356–357, 359
Tirole, Jean 132–133
Todd v Exxon Corp. 73
Tokyo/Osaka stock exchange merger 427
Townshend v Rockwell International Corporation 147
Toyota 452
Toys‘R’Us case 424
transaction cost economics 91–92
transfers of market power 109–112, 114
transport services 41–42
Treaty on the Functioning of the European Union (TFEU) 27
see also European Union (EU)
Trebilcock, Michael J. 271, 276, 279
TriCor 157
Tsuchiya kigō v Japan Fair Trade Commission 419–420
two-sided platforms/markets 50–52
tying arrangements 119, 143–144, 145, 146, 147, 222, 228–229, 232–233, 242
UK Supreme Court 336
undertakings 87, 206
Union Oil Company of California, In re 163
United Kingdom (UK)

Tennessee
Tennessee Trade Practice Act 256
Terminal Rail Road case see United States v Terminal Rail Road Association
territorial restraints 223, 231, 236
Texaco, Inc. 88–89
Texaco, Inc. v Dagher 88–89
Thailand
competition law, overview 17
criminalization of cartel conduct 312
Theatre Enterprises v Paramount Film Distributing Corp. 65–66, 70–71
theories of harm, in merger law 184–185
third-line forcing 222
Timberlane Lumber Co. v Bank of America 356–357, 359
Tirole, Jean 132–133
Todd v Exxon Corp. 73
Tokyo/Osaka stock exchange merger 427
Townshend v Rockwell International Corporation 147
Toyota 452
Toys‘R’Us case 424
transaction cost economics 91–92
transfers of market power 109–112, 114
transport services 41–42
Treaty on the Functioning of the European Union (TFEU) 27
see also European Union (EU)
Trebilcock, Michael J. 271, 276, 279
TriCor 157
Tsuchiya kigō v Japan Fair Trade Commission 419–420
two-sided platforms/markets 50–52
tying arrangements 119, 143–144, 145, 146, 147, 222, 228–229, 232–233, 242
UK Supreme Court 336
undertakings 87, 206
Union Oil Company of California, In re 163
United Kingdom (UK)
518  Comparative competition law

Competition and Markets Authority 281
Competition Commission/Office of Fair Trading 29–30, 53
criminalization of cartel conduct 307, 312, 324–325
Enterprise Act (2002) 324
National Health Service 159
Office of Fair Trading (OFT) 159, 291, 297–298
private enforcement 369–371
prosecutorial enforcement model 274–275, 292
removal of RPM on books 268
search and seizure powers 290
UK Competition Act (1998) 84
UK Enterprise Act (2002) 84
United Nations Conference on Trade and Development (UNCTAD) 213–214, 301, 335, 348
Intergovernmental Group of Experts on Competition Law and Policy 13
Model Law on Competition 13
Set of Principles 11–13, 20
United Nations Economic and Social Council (ECOSOC) 11
United States of America (US) administrative enforcement model 272
Antitrust Enforcement Guidelines for International Operations 355–357
Antitrust Guidelines for the Licensing of Intellectual Property (US) 145–146
Antitrust Modernization Commission 47
approval of Google/Motorola merger 206
approval of Seagate/Samsung merger 205
Bankruptcy Act (1898) 186
categories of anti-competitive agreements 94–96
Clayton Act (1914) 229–234, 280, 422
Consumer Goods Pricing Act (1975) 250
cooporation agreements with EU 21–22
criminalization of cartel conduct 307–308, 318–320
Discount Pricing Consumer Protection Act, proposed 257
effects doctrine 351–355
exclusive dealing 231–232
extraterritorial reach of 351–364
Federal Courts Improvement Act (1982) 145
Federal Trade Commission Act (1914) 164, 231, 422–423
Foreign Trade Antitrust Improvements Act (FTAIA) 353, 360–364
Guidelines for the Licensing of Intellectual Property 37–38
Hatch-Waxman Act 150
Horizontal Merger Guidelines 186, 188
imposition of structural undertakings on Western Digital/Hitachi merger 206
McGuire Act 267
Miller-Tydings Fair Trade Act 267
MLATs of 334
as model for laws in other jurisdictions 110–111
monopoly thresholds 122
multiagency enforcement 280–281
non-price vertical restraints (NPVRs) 229–234
private actions and jurisdiction 359–363
Index 519

private antitrust enforcement 385–386, 390–393, 403–404, 407, 410
prohibited per se categorization 93–96
RAND (reasonable and nondiscriminatory) agreements 162, 164
re-importing of pharmaceuticals 40–41
resale price maintenance 16–17
resale price maintenance (RPM) 249–258
restrictions on acquisition 221
role of comity in jurisdictional test 355–359
search and seizure powers 290
Sentencing Guidelines 308
single enterprise doctrine 86–87, 88–89
tying and bundling 232–234
US Guidelines 85–86, 90, 100–101, 107
Webb-Pomerene Act (1918) 365
see also US Justice Department (DOJ); US Supreme Court and individual cases
United States v Aluminium Co of America 127–128
United States v Arnold, Schwinn & Co 250–252
United States v Container Corp. 94
United States v Line Material Co. 144
United States v Loew’s 144
United States v Terminal Rail Road Association 127
unjust enrichment principles 401–402
Uranium Antitrust Litigation;
Westinghouse Electric Corporation v Rio Algom Ltd 354
US Guidelines on characterization of agreements 107
on competitor collaboration 85–86, 90, 100–101
US Justice Department (DOJ) 144, 166–167
antitrust actions and share price 398–399
Antitrust Division 308, 319–320
consent judgments 293
criminalization of cartel conduct 308, 319–320
enforcement agency model 275, 280–281, 289, 293
extradition of Ian Norris 335–337
fines on LCD cartel 56
Guidelines for the Licensing of Intellectual Property 37–38
Horizontal Merger Guidelines 52–53, 55
predatory pricing suits 407
US National Football League 89
US Supreme Court on cartel horizontal agreements 63–66
on private enforcement 385, 389, 410–411
see also individual cases
US v Aluminium Co. of America 352
US v Colgate & Co 254
US v Microsoft 233–234
US v Nippon Paper Industries Co Ltd 358
US. v The Gillette Company 54–55
van den Bergh, Roger 90
VBVB and VBBB v Commission 262–263
Verizon Communications v Trinko 147
vertical conduct see non-price vertical restraints (NPVRs); resale price maintenance (RPM)
vertical integration and supply chain 43
vertical price fixing see resale price maintenance (RPM)
videotaping of cartel meetings 61–62
Vietnam competition law, overview 17
Comparative competition law

vitamins cartel 326, 327, 374, 381–382, 391
Vitamins Cases 320–322
Walgreen Co. v AstraZeneca Pharmaceuticals LP 157–158
Werden, Gregory 28
Western Digital 205–206
Whish, R. 21–22
Whitaker, Mark 320
Whole Foods 54
Wild Oats 54
Willig, Robert 47
Wood, William 406
Wood Pulp case 364–366, 368

World Bank 295, 348
World Trade Organization (WTO) 295
lack of competition law forum in 213
multilateral competition agreement proposals 12–13
scope of 14, 15, 20
Xerox case see Independent Service Organizations Antitrust Litigation (Xerox), In re zaibatsu (large family-owned conglomerates) 417, 428
Zambia
criminalization of cartel conduct 312