

Index

- 2 Travel v Cardiff City Transport Services Ltd* 63–4
- AAH Pharmaceuticals Ltd v Pfizer Ltd* 63
- Aberdeen Journals Ltd* case 54
abuse of law 8, 120, 130–32
abuse of regulatory process 122–4
- Adidas-Salomon AG v Roger Draper and Paul Howorth* 61
- adjusted liability rule 83–95
- AKZO Chemie BV v Commission* 10, 22–3, 100
- Albion Water v Dwr Cymru Cyfyngedig* 64
- Albion Water Ltd v Water Services Regulatory Authority* 56
- algorithms 28–32
- anticompetitive collusions 16
- anticompetitive effects 24–5
- anticompetitive harm 14–15
- Apple 77, 78
- Arenaways/FS* case 128–9, 157–8, 163–5
- Arriva The Shires v London Luton Airport Operations* 66
- Article 101 TFEU 16, 85–6
- Article 102 TFEU 1–11, 119, 120
decentralization of enforcement 5, 8–11
dominance in 98–101
EU Commission enforcement in the energy sector 170, 171–5
role of intent *see* intent
sources of interpretation *see* *separate entry*
in the UK 52–67
- artificial intelligence 28–32
- as-efficient competitor test 39–40, 44
- AstraZeneca* case 4, 25, 120, 122–4, 134, 136, 156
- Attheraces v British Horse Racing Board* 65
- Austria 97–8, 107–17
definition of dominance 107–8
KartG 97, 108–9, 109–12, 113, 115, 116–17, 118
presumptions of dominance 10, 109–17, 118
- automated machines 28–32
- Autorità Garante per la Concorenza e il Mercato* (AGCM, Italian Competition Authority) 137, 139–40
- approach to interaction between regulation and competition law 140–41
- Italian courts and decisions of 127–30, 163–8
- primacy of competition over regulatory law 10, 152–63
- Autorità per le Garanzie nelle Comunicazioni* (AGCOM, Italian Regulatory Authority for Communications) 158–61
- Avastin 154–7, 162, 168
- average total costs (ATCs) 22
- average variable costs (AVCs) 22
- bargaining framework 87–90
- BAT* case 130–31
- BBI/Boosey & Hawkes* 122
- behavioural remedies 174, 183

- Belgium 178
- bid cap 178–9
- billing services 180–81
- Block Exemption Regulation for Vertical Agreements 114, 115
- British Airways* case 24, 49
- BT/MCI* case 151
- Bulgaria 181
- Bundeskartellamt* (German NCA) 104, 107
- bundling 3
- Burgess v OFT* 45–6, 56

- Calabresi, G. 95
- capacity limitation 171–2
- capacity withdrawal 176–9
- capacity withholding 172
- Cardiff City Transport Services Ltd* case 55–6
- case-by-case analysis 21–2, 24–5
- CEZ 181
- Chapter II Prohibition 52–67
- client switching requests 159–60, 166
- collective dominance 117, 118
 - Austria 108–9, 109–10, 111, 112–13, 116, 117, 118
 - Germany 102, 103, 105–6, 107, 117
- commitment decisions 35–6, 36–8, 50
- Compagnie Maritime Belge* case 23, 119
- Competition Act 1998 40, 46, 52, 54
 - Chapter II Prohibition 52–67
- Competition Appeal Tribunal (UK) (CAT) 45–6, 53, 56, 59, 60, 63–4, 67
- Competition and Markets Authority (UK) (CMA) 52, 53, 55, 57, 58, 60
- complementarity 10, 144–52, 168
 - EU approach 10, 146–52, 168
 - Italy and 160–63, 165–7
 - compliance by design standards 31
 - compliance programmes 28
 - compulsory licence defence 70, 71, 73, 83
 - conditionality 89–90
 - Conorzio Industrie Fiammiferi* (CIF, ruling of the Court of Justice of the EU) 156
 - Continental Can* case 3, 34–5
 - Coop Estense* case 129–30, 136–7
 - cooperative technical self-regulation 70–71
 - cost–price test 173, 177, 180, 181
 - costs structure 183
 - Court of Justice of the EU (CJEU) 16–17
 - definition of dominance 98
 - Huawei* judgment 79–82
 - incrementalism in case law 42–5
 - intent in case law 18–26
 - critical deference 34, 36, 45–9, 50

 - Dahabshiil Transfer Services Ltd v Barclays Bank plc* 62–3
 - damages
 - awards in the UK 63–4
 - Huawei* and damages claims 91
 - de facto standards cases 70, 71–2
 - applicability of *Huawei* 91–5
 - de minimis* rule 21, 48
 - decentralization of enforcement 5, 8–11
 - Denmark 176–7, 178–9
 - Deutsche Telekom* case 24–5, 147, 156, 165
 - discretion of public authorities 136–7
 - Discussion Paper on the Application of Article 82 of the Treaty to exclusionary abuses* 17
 - duty to deal 86, 87, 93
 - duty to license 86, 92–3
 - duty to negotiate in good faith 86, 93

- E2 177–8
- easyJet Airline Co. Ltd v Commission* 67
- ‘eBay-rule’ 69, 90, 96
- economic-analysis approach 19–21, 38
- effect/object distinction 16, 18
- efficiency defence 48–9
- Electrabel 178
- electricity markets 176–84
- elimination of competition 14
- Elsam* case 176–7, 178–9
- Emsland-Stärke* case 135
- Endesa 179
- ENEL Sicily* case 177, 178
- energy sector 10, 169–84
- EU Commission regulatory antitrust 10, 170, 171–5, 182
- NCA enforcement in relation to excessive pricing 10, 170, 176–84
- English Welsh & Scottish Railway Ltd* case 55
- ENI* case 172
- ENTEGA* case 179–80
- Enterprise and Regulatory Reform Act 2013 57, 58, 59, 67
- E.ON* case 172, 176
- Esselunga 129–30
- essentiality of a patent 83, 89–90, 92–3, 94–5
- Estel* case 16
- EU Charter of Fundamental Rights 80, 82, 121
- EU Commission
- commitment decisions 35–6, 36–8, 50
- complementarity between regulation and competition law 10, 146–52, 168
- Guidance Paper 17, 36, 38–42, 44, 53–4, 182
- market definitions 1–2
- market shares and dominance 99, 100, 101
- regulatory antitrust in the energy sector 10, 170, 171–5, 182
- SEPs and abusive patent injunctions 77–8
- EU Merger Control Regulation 113
- European Coal and Steel Community (ECSC) Treaty 2
- European Medicines Agency (EMA) 156, 157
- European Telecommunications Standards Institute (ETSI) 79
- ex ante* regulation 166–7
- ex post* control of anticompetitive conduct 166–7
- exceptional circumstances 124–6
- excessive pricing in the energy sector 10, 169–84
- exclusionary abuses 3
- critical deference 46–8
- EU Commission and the energy sector 170, 171–2, 173
- preservation but containment of the right to exclude 84–6
- pricing 35
- exclusionary intent 24–6, 120, 132–5
- exploitative abuses 2–3
- bargaining framework to prevent 87–9
- excessive pricing in the energy sector 10, 169–84
- fair, reasonable and non-discriminatory (FRAND) terms 68, 70, 72, 76, 124–6
- EU Commission 77–8
- Huawei* case 79, 80–82, 95–6
- shift from limited property rule to adjusted liability rule 84–6, 87–9, 90, 92
- Ferrovie dello Stato* (FS) group 128–9, 157–8, 164
- fidelity rebates 3, 24
- final customers, excessive prices on 179–81

- fines 56, 178, 181, 182, 183
 follow-on actions 9, 60, 63–4
France Télécom case 22–3
- Gas and Electricity Markets
 Authority 55
Gazprom case 174
GDF Suez case 36–7
General Motors case 173
Genzyme Ltd case 54–5
 Germany 5–6, 69, 83, 97–8, 101–7
 case law on patent injunctions
 73–7
 definition of dominance 101–2
 excessive prices in the energy
 sector 179–80
 Orange Book Standard 7, 8, 71,
 72, 73–5, 91–2
 presumptions of dominance 10,
 102–7, 117
Gesetz gegen
 Wettbewerbsbeschränkungen
 (GWB, German Act against
 Restraints of Competition) 97,
 101–5, 108
 good faith negotiations defence 78,
 82, 83, 89
 green energy 180
 Guidance Paper ('Guidance on the
 Commission's enforcement
 priorities in applying Article 82
 of the EC Treaty to abusive
 exclusionary conduct by
 dominant undertakings') 17,
 36, 38–42, 44, 53–4, 182
 Guidelines on the Applicability of
 Article 101 TFEU to
 Horizontal Cooperation
 Agreements 85
 Guidelines on the method of setting
 fines imposed pursuant to
 Article 23(2)(a) of Regulation
 No. 1/2003 28
 Guidelines on Vertical Restraints
 114–15
- Hendry v World Professional
 Billiards and Snooker
 Association* 64–5
Hilti AG v Commission 100
Hoffmann-La Roche case 1, 99
Huawei case 4, 7, 8, 69, 72, 79–96,
 125–6
 applicability in de facto standards
 cases 91–5
 CJEU's judgment 79–82
 damages claims 91
 shift to an adjusted liability rule
 83–95
- Hyman, W.J. 13
- Iberdrola 179
 illegal parallelism 30
Impala case 105–6
 implied immunity doctrine 144–5
 incrementalism 34–5, 36, 42–5,
 50
Industrie des Poudres Sphériques
 case 122–3
 infringement, findings of 54–7
Intel v Commission 4, 20, 100
 intellectual property rights (IPRs)
 3–4, 69–70
 liability rule approach 70, 83–95
 new abuses of dominance based
 on exceptional circumstances
 124–6
 patent injunctions *see separate
 entry*
 property rule approach 69–70,
 76–7, 95
- intent 6–7, 12–33
 artificial intelligence and 28–32
 in CJEU case law 18–26
 concept 13–15
 enforcement and procedural
 issues 26–8
 exclusionary 24–6, 120, 132–5
 in the text of EU competition rules
 15–17
 intention 13

- interim measures 57–8, 61–3, 67
- internal coherence in case law 44–5, 50
- internal market, realization of 141–2
- International Competition Network (ICN) 39
- interpretation, sources of *see* sources of interpretation
- Italy 5–6, 119–38, 177, 178
 - abuse of dominance in regulated sectors 10, 139–68
 - exclusionary intent 120, 132–5
 - Italian courts and AGCM
 - decisions 127–30, 163–8
 - new forms of abuse of dominance 7–8, 120, 126–30
 - primacy of competition law over regulation law 152–63
- ITT Promedia* case 25–6, 121–2, 135
- Jobserve Ltd v Network Multimedia Television* 61
- Kartellgericht* (KG) 108–9
- Kartellgesetz* (KartG) (Austrian Cartel Act) 97, 108–9, 109–12, 113, 115, 116–17, 118
- liability attribution 29–31
- liability rules 70, 95
 - shift from a limited property rule to an adjusted liability rule 83–95
- limitation of capacity 171–2
- limited property rule 83
- liquid natural gas (LNG) terminals 36, 37
- Liquid Petroleum Gas* case 109, 111
- London Metal Exchange* (LME) case 57
- long-term contracts 171
- long-term evolution (LTE) standard 79
- Lucentis 154–5, 157
- Magill* case 132
- margin squeeze 3, 25, 171–2
- market definition 1–2
- market shares 98–9
 - and presumptions of dominance 99–101, 104, 106–7, 109–10, 111, 112–18
- Melamed, D. 95
- metering services 180
- Michelin I* case 24
- Michelin II* case 24
- money remitters 62–3
- monopolies 14
- more economic approach 19–21, 38
- motive 14
- Motorola* case 7, 41–2, 77–8, 88, 120, 124–5, 134, 137
- Napp Pharmaceutical Holdings Ltd* case 54
- National Competition Authorities (NCAs) 3, 5, 8, 34, 56–7, 143, 148
 - enforcement approach in relation to excessive pricing in the energy sector 10, 170, 176–84
- National Grid* case 41, 55
- ne bis in idem* principle 150, 154, 160, 167
- new forms of abuse of dominance 7, 119–38
 - abuse of law 8, 120, 130–32
 - in the EU 121–6
 - in Italy 7–8, 120, 126–30
 - requisite causal link 136–7
 - role of exclusionary intent 120, 132–5
- new market entrants 183
- Nord Pool 176–7
- Novartis 154–7, 168
- object/effect distinction 16, 18
- objective concept, abuse as 6, 15, 18

- Office of Fair Trading (OFT) 46, 52, 54–5, 56, 57–8, 59
- Office of Rail Regulation 55
- OPCOM* case 42
- Orange Book Standard* 7, 8, 71, 72, 73–5, 91–2
- Oscar Bronner* case 43, 44–5
- Osram/Airam* case 120
- ownership unbundling 175
- Packet Media Ltd v Telefonica UK Ltd* 62
- patent injunctions 68–96
 EU Commission's position 77–8
 from a limited property rule to an adjusted liability rule 83–95
 German case law 73–7
Huawei judgment 79–82
- Perindopril* case 126
- Pfizer* case 127–8, 130, 156
- Phonak/GN Store* case 106
- Picht, P. 85
- platform markets 21
- Posner, R. 26
- Post Danmark* cases 24–5, 39, 44, 47–8, 54
- predatory pricing 3, 17, 22–4, 133
- presumptions of dominance 9–10, 97–118
 Austria 10, 109–17, 118
 Germany 10, 102–7, 117
 market shares and 99–101, 104, 106–7, 109–10, 111, 112–18
- Prezes Urzedu Ochrony Konkurencji I Konsumentów v Tele2 Polska sp. Z o.o.* 56
- price bargaining 87–9, 94
- price regulation 2, 87, 93, 178–9, 183, 184
- price setting 83–4, 87–9, 93, 94, 95–6
- primacy of competition law over regulatory law 152–63
- private enforcement 9, 59–66, 67
- procedural issues 26–8
- property rule approach 69–70, 76–7, 95
 shift from a limited property rule to an adjusted liability rule 83–95
- public enforcement 9, 54–8, 59
- Purple Parking v Heathrow Airport* 40, 65–6
- rebates 3, 24, 44
- Reckitt Benckiser* case 55
- refusal of access to an essential facility 3
- refusals to deal 3, 43–5, 45–6, 62–3, 158–61
- refusals to license 3–4, 44
 SEPs and abusive patent injunctions 7, 68–96
- regulated industries 10, 139–68
 AGCM and primacy of competition law over regulation law 10, 152–63
 energy sector *see separate entry*
 EU Commission approach 10, 146–52, 168
 interaction between regulation law and competition law 140–46
 Italian courts' approach 163–8
 primacy of competition law over regulatory law 10, 152–63
- Regulation 1/2003 8, 34, 182
 Article 3(2) 10–11, 34, 97–8
 Article 9 174
 Article 23(2) 16, 27–8
- regulatory antitrust approach 10, 170, 171–5, 182
- regulatory process, abuse of 122–4
- remedies
 algorithms and automated machines 31
 energy sector 174–5, 178–9, 181, 182, 183
- requisite causal link 136–7
- reverse hold-up 86
- right to exclude 83, 84–6, 93–4

- Roche/Novartis* case 154–7, 162–3, 167–8
- ‘rule of reasons’ cases 19
- RWE* case 172, 179–80
- Sainsbury’s Supermarkets Ltd v MasterCard Inc.* 60
- Samsung* case 7, 77, 124–5, 134
- Scottish Power 178
- Scottish Southern Energy 178
- sectoral regulators 52–3, 54–6
- Segers 131
- self-learning machines 29, 30–31
- self-regulation 31
 - cooperative technical 70–71
- separation of powers 162
- Sherman Act 6, 15
- Sicily 177
- significant damage 58
- Significant Impediment of Effective Competition (SIEC) test 103
- Si.mobil v Commission* 67
- single branding obligations 114–15
- single dominance 108, 110, 111–12, 113, 115, 116–17
- Slovak Telekom* case 25, 41, 42
- Slovakia 181
- smartphone wars 68
- Software Cellular Network Ltd v T-Mobile (UK) Ltd* 62
- sources of interpretation 34–51
 - commitment decisions 35–6, 36–8, 50
 - critical deference 34, 36, 45–9, 50
 - Guidance Paper 36, 38–42, 44
 - incrementalism 34–5, 36, 42–5, 50
- Spain 179
- Springer/Pro Sieben* case 106
- standalone actions 9, 60, 64–6
- standard-essential patents (SEPs) 124–6
 - and abusive patent injunctions 7–8, 68–96
- standard licensing agreements 94
- standard-setting organizations (SSOs) 85–6
 - standards set by 68, 70, 72, 75
 - see also Huawei* case
- Stergios Delimitis v Henninger Brau AG* 21
- Streetmap v Google* 40–41, 46–9, 50
- structural remedies 174–5
- subjective valuations 83, 87–9, 93–4
- tacit collusion 29, 30
- Telecom Italia* case 158–61, 165–7
- telecommunications sector
 - relationship between regulation and competition law 10, 146–52
 - see also individual cases*
- Telefónica* case 147–8
- Telekomunikacja Polska* case 41, 149–51, 165
- Telia Sonera* case 24–5
- termination clauses 76, 89, 94–5
- Tetra Pak* cases 23, 120
- Third Energy Legislative Package 175
- Toltecs trademark 131
- two-pronged test 25–6, 135
- tying 3, 23
- Ufficio per la Regolazione dei Servizi Ferroviari* (URSF, Italian Railway Authority) 158, 164, 165
- unconditional offers 75–6
- Unión Fenosa 179
- United Brands* case 100, 173, 177
- United Kingdom (UK) 5, 9, 52–67, 178
 - Chapter II Prohibition 52–67
 - Competition Act (1998) 40, 46, 52, 54
 - critical deference in England and Wales 45–9
 - Enterprise and Regulatory Reform Act 2013 57, 58, 59, 67

- Guidance Paper 40–41
- law on abuse of dominance 52–4
- private enforcement 9, 59–66
- public enforcement 9, 54–8
- United States of America (US)
 - 'eBay-rule' 69, 90, 96
 - implied immunity doctrine 144–5
 - Sherman Act 6, 15
- validity of a patent 83, 89–90, 94–5
- Van der Woude, M. 169
- vertical agreements 114
- vertical restraints 114–15
- Vestager, M. 88
- vexatious litigation 25–6, 121–2, 133–4
- violations of Article 102 TFEU 21–4
- Visa UK Ltd 58
- Volvo* case 131–2
- Wahl, N. 182
- Water Services Regulation Authority
 - 56, 59
- withdrawal of capacity 176–9
- withholding of capacity 172
- World Health Organization (WHO)
 - 157
- Worldpay 58
- ZSE Distribúcia 181
- ZTE 79