
Index

Abbreviations

- DOJ Department of Justice
- FTC Federal Trade Commission

Abbreviated New Drug Application (ANDA)

373–6

advertising, expenditure on
marginal cost modeling, and 50

airlines

mergers

American Airlines 144, 157–9, 161–2,
164–9

competitors, presence in 5, 110–112

enforcement bias, in 307

international antitrust conflicts 299

merger simulation 38

potential competition, and 107–112

pricing studies 107–10

‘Southwest effect’ 111–12

predatory pricing 154–5

Alcoa see *United States v. Aluminum Co. of America*

ALM see antitrust logit model

American Airlines case

Court findings in 165–6

equally efficient competitor test, and 161–2,
166

marginal cost comparison, in 157–9

price freeze theory, and 144, 168–9

profit sacrifice test, and 165–6

American Banana Co. v. United Fruit Co.
287–8

American Bar Association

multijurisdictional mergers, compliance costs
study 296–8

American Tobacco Co. v. U.S. 154, 211–12

Antitrust Guidelines for the Licensing of Intellectual Property 1995 351

antitrust immunity

competition regulation, and

antitrust savings clauses 331–2, 334–7,
342–3

assessment, difficulties with 341–2

cases going to trial, probability of 344

Congress, role in clarification 348–50

Credit Suisse ruling 18, 327, 333–5

discretion, relevance of 345

essential facilities claims 338, 344–5

established v. novel antitrust claims
338–40, 343, 347–8

false negatives / positives, concerns over
341–5

group boycott claims 329

implication of immunity, basis of 330–31

public v. private actions, and 346–8

refusal to deal presumptions, and 330–32,
338–41

repugnancy, between 328–31, 333

simultaneous operation of 18, 327–8

Verizon v. Trinko ruling 18, 327, 330–32,
335–41, 343–5, 347–50

patent license refusals, and 356–63

antitrust law

antitrust authorities

Court rulings, influence on 346–8

powers, relevance of 346–8

regulatory force necessary 348

competition regulation

differences between 18, 310–311

domestic laws

economic development, and 286–7, 290,
293–5, 325–6

economic policy and 285–6, 289–90

effects doctrine 287–9

enforcement bias, and 302–4, 306–8

EU and US policies, compared 155–6,
190–93, 290–93, 298–9

jurisdictional differences in 289–95

jurisdictional reach, of 287–9

motivations, for adopting 285–7, 289–90

proliferation of 284–5

protectionism, and 285–7, 293–4, 301–8

trade-flow bias, and 302–4

under- or overregulation

global impact of 308–11

reasons for 302–4

international / multijurisdictional issues

agency problems, mitigation of 322–3

compliance costs 295–8

conflicting/ inconsistent decisions
298–301, 308–9

enforcement bias, and 306–8

export cartels 305–6

General Electric / Honeywell case 292,
298–301

global overregulation, and 308–11

- multijurisdictional merger reviews, costs of 295–8
- net-importers / net-exporters, differing focus of 302–5, 319–20
- optimal antitrust standards, variations in 302–5, 319–20
- prisoner's dilemma, and 302–5, 317
- protectionism, emergence of 301–8
- rational choice theory, and 302–5
- strictest regime, superiority of 308–11
- trade-flow bias, and 302–4
- international regime for
 - agency costs 322–5
 - bilateral cooperation agreements 312–15, 321–2
 - bonding and monitoring 322–4
 - compliance costs 319–25
 - as coordination game with distributional consequences (CGDC) 317–20
 - failure of, reasons for 317–25
 - implementation costs 322
 - institutional limitations 322–5
 - International Competition network 313
 - lack of, reasons for 17–18, 320–22, 324–5
 - multilateral cooperation agreements 312–13, 315–17, 321–2
 - net benefits, limitations of 320–22
 - optimal rules, disagreements over 317–20
 - proposals for 284, 311–17
 - world welfare, as basis for 16, 319
 - WTO policies on 314, 316, 319–20, 322, 324
- principles of 354
 - intellectual property law, compared 354–6
- antitrust logit model (ALM) 32–3, 47
- Antitrust Modernization Commission
 - loyalty discount attribution tests, on 136–41
 - overdeterrence and underdeterrence, on 343–4
- Apex Oil Co. v. Si Mauro* 224–5, 230
- Areeda, Phillip 10, 157, 160–61, 214
- Armstrong, Mark 274–5
- Ashcroft v. Iqbal* 203, 238
- Ashenfelter, Orley 51–2
- Aspen Skiing v. Aspen Highlands* 338–40
- auction models
 - unilateral effects, identifying 44–5
- Automobile Manufacturers Association, U.S. v.* 370
- Baker, Jonathan B. 38–9, 69, 164, 271–2
- Barnett, Tom 301
- Barry Wright Corp. v. ITT Grinnell Corp.* 146
- Baumol, W. 7–9, 145–6, 160–61, 167–70
- Bell Atlantic Corp. v. Twombly* 13 *see also*
 - horizontal agreements
 - criticism of 203–4
 - importance of 201–4, 341
 - motion to dismiss, standard of proof for 206–9
 - evidentiary sufficiency and legal sufficiency 209
 - lower court conflicts over 228–31
 - parallel conduct, on 232
 - plausibility of conspiracy, and 209, 230–31, 233–5, 240–45
 - plus factors, relevance 232–5, 238, 241–3
 - plus factors, relevance of 228–9
 - Second Circuit ruling on 229–31
 - summary judgment standard, and 231–4, 238–40, 244–5
 - Supreme Court ruling on 231–5, 233–5, 240–45
 - tends to exclude concept, and 231–5, 240–41
- benchmarks
 - damages, as measurement of 19–20, 381–5
 - merger simulation, in 34–6
- Bergman, Mats 114
- Bertrand competition model
 - differentiated products, for 44, 104
 - merger simulations, in 35–6
 - oligopolies, and 35–8
 - oligopsony, and 251, 253–4
 - potential competition, and 104
- Besanko, David 272, 275, 278–9
- 'bird-in-the-hand' theory 146
- Blomkest Fertilizer, Inc. v. Potash Corp. of Saskatchewan* 226–7
- Bolton, Patrick 154
- Bork, Robert 147, 150–51, 153
- Bradford, Anu 304–5, 317, 319
- brand locations, unilateral effects of mergers on 41–2
- brand-pushing rationale, in vertical price-fixing 10
- Bresnahan, Timothy F. 38–9
- Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.* 77, 161, 170–73
- Brown Shoe Co. Inc., v. U.S.* 75
- Budzinski, Oliver 323–4
- Bunch, David 154
- bundling *see* tying and bundling
- Burns, Malcolm 154
- Business Elecs. Corp. v. Sharp Elecs. Corp.* 177–8
- buyers
 - power of (*see* monopsony)
 - 'prisoner's dilemma' (*see under* loyalty discounts)

- C-O-Two Fire Equipment Co. v. U.S.* 213–14
- cable TV mergers
 potential competition, studies of 112–13
- capacity constraints
 developing countries, and 318
 unilateral effects, identification 45–6, 49–50
 unilateral effects, identifying 45–6, 49–50
- Cardizem CD Antitrust Litigation, In re.* 375–6
- Carlton, Dennis 147–51
- cartels
 collusive monopsony 249–50
 export cartels 305–6
 manufacturer cartels 190–91, 193–4
 patent pooling, as 370–72
 private v. public enforcement, relevance to 271–2
 protectionism, as 305–6
 resale price maintenance, and 190–91, 193–4
 vertical price-fixing, and 11
- Cascade Health Solutions v. PeaceHealth* 137
- ‘cellophane fallacy’ 67
- Chamberlin, Edward 255
- Chicago School
 ‘one surplus theory’ 122–5
 predatory pricing, plausibility of 147, 150–51
 criticism of 151–3
- China, antitrust law in
 adoption of 294
 Coca Cola acquisition, and 289, 294–5, 308
 focus of, differences in 295
 purpose of 294
- Citric Acid Litigation, In re.* 227
- Clayton Antitrust Act 1914 263–4
- Coca Cola, China’s prohibition of 289, 294–5, 308
- Colgate & Co., U.S. v.* 217
- collusion
 collusive monopsony 249–50, 261–2
 duopsony, and 255
 horizontal agreements, evidence of 204–5, 209–12, 217–28, 235–6, 242–3
 oligopsony, and 255, 262–3
 reporting, advantages of 278–90
 tacit collusion 255, 262–3
- Comanor, William 198–9
- Communications Act 1934 330–31
- competition regulation
 antitrust immunity, and
 antitrust savings clauses 331–2, 334–7, 342–3
 assessment, difficulties with 341–2
 cases going to trial, probability of 344
 Congress, role in clarification 348–50
Credit Suisse ruling 18, 327, 333–5
 discretion, relevance of 345
 essential facilities claims 338, 344–5
 established v. novel antitrust claims 338–40, 343, 347–8
 false negatives / positives, concerns over 341–5
 group boycott claims 329
 implication of immunity, basis of 330–31
 public v. private actions, and 346–8
 refusal to deal presumptions, and 330–32, 338–41
 repugnancy, between 328–31, 333
 simultaneous operation of 18, 327–8
Verizon Communications Inc., v. Trinko ruling 18, 327, 330–32, 335–41, 343–5, 347–50
- antitrust law, overlap and differences
 between 18, 310–311
- competitive constraints, and 64
- competitive constraints 58
- complementary products 63
- emphasis on, disadvantages 88–9
- entry, role of 63
- error cost framework 78–9
- indirect network effects 63
- market power, and 59–67
- market share, and 67–8, 78–9
- meaning 60–64
- multi-sided markets 64
- product repositioning 62–3
- regulatory constraints 64
- substitutes
 demand, role in 61–2
 entry, impact on products 63
 error costs in 78–9
 suppliers of, role 62–3
- Conley v. Gibson* 206, 230, 238
- conscious parallelism, doctrine of 211–12, 214–15, 224–6, 236
- conspiracy
 horizontal agreements, evidence of 204–5, 209–12, 217–28, 235–6, 242–3
- consumer-betterment test
American Airlines case, and 144, 164, 166–9
 predatory pricing, and 7–9, 144–6, 162–7
 price freeze theory, and 9, 167–70
- consumer harm *see* consumer welfare
- consumer surplus
 definition 124
 detrimental to consumer 129
 extraction of 124–30
 foreclosure of entry, for 130
 intra-consumer price discrimination 127–9
 intra-product price discrimination 125–7

- loyalty discount attribution tests, and 140
- 'one surplus theory' 122–5
- consumer welfare
 - antitrust damages, and 390–91
 - international antitrust enforcement, and 16, 319
 - patent law, in 352–6, 360–61, 366–7
 - potential competition, and 102–3
 - predatory pricing 7–8
 - price-cost tests, efficiency of 7–8
 - resale price maintenance, and 198–200
 - total welfare v. 15–16, 272–3
- consumers
 - demand
 - influences on 180–82
 - retailer discretion, and 179–80
 - retailer promotion, and 180–82
 - marginal consumers 180
- Continental Paper Bag Co. v. Eastern Paper Bag Co.* 356–7
- Continental T.V., Inc. v. GTE Sylvania, Inc.* 175, 217
- Conwood Co. v. U.S. Tobacco Co.* 387
- Cool, Karel 113
- coordination game with distributional consequences (CGDC) 317–20
- copyright law *see also* patent law
 - antitrust law, and
 - compared with 353–4
 - conflicts between 355
- coupons, discount 20–21, 391–3
- Cournot model
 - oligopsony, and 252–4
 - potential competition, in 97–104
- Credit Suisse v. Billing* 18, 327, 333–5
 - antitrust enforcement concerns over 334–5
 - immunity claim under 333–4
 - implications of 334, 347–50
 - savings clauses, reasons for overriding 334–5
- Verizon v. Trinko*, compared 335, 337
- critical elasticity 31–2
- Critical Loss Analysis 2, 31–2, 80–81
- CSU v. Xerox* 352
- damages, antitrust
 - class actions, obtaining in 378–9
 - consumer welfare, and 390–91
 - measurement of
 - benchmarks 19–20, 381–5
 - 'but-for' prices 380
 - calculation methods 19–21
 - Critical Loss Analysis 2, 31–2, 80–81
 - deadweight loss considerations 385–6, 390–93
 - discount coupons 20–21, 391–3
 - downstream customers, and 385–91
 - dummy variable approach 19–21, 382–3
 - forecasting method 19–21, 381, 383–5
 - indirect purchaser cases 20, 378–9, 388–91
 - lost profits damages 20, 385–8
 - market-share approach 20, 387–8
 - optimal deterrence, and 385–6
 - overcharges 378–85
 - pass-through, and 388–91
 - reduced-form analysis 389–90
 - yardsticks 19–20, 380
 - private actions, obtaining in 378–9
- Data General Corp. v. Grumman Systems Support Corp.* 357
- De Haviland / ATR* case 299, 301
- Delaware Valley Marine Supply Co. v. American Tobacco Co.* 213–14
- demand
 - competitive constraints, and 61–2
 - elasticity of 31–2
 - loss analysis, and 81
 - significant nontransitory increase in price (SSNIP), and 31–2
 - substitutes, role of 61–2
 - unilateral effects, identifying 46–8
- Department of Justice (US)
 - market definition, de-emphasis on 72–4
 - courts, conflict with over 74–5
- deterrence *see also* entry barriers
 - antitrust enforcement as
 - cartel price fixing, and 271–2
 - damages, as optimal deterrence 385–6
 - overdeterrence / underdeterrence, balance between 211, 343–4
 - private v. public enforcement methods 268–71
- developing countries
 - antitrust laws, in 286–7, 290, 293–5, 315
 - growing influence of 325–6
 - international regime, conflicts over 318–20
 - capacity constraints, and 318
 - competitive constraints, and 318
- differentiated products
 - discount attribution tests 138–40
 - hard market boundaries, and 56–8
 - loyalty discounts 138–40
 - potential competition, and 44, 104
- Director, Aaron 122–3
- discounts *see also* loyalty discounts
 - discount coupons 20–21, 391–3
- Drug Price Competition and Patent Term Restoration Act 1984 373–6
- Dung, Fei 326

- duopsony 253–5
 DVD patent pools 371–2
- Easterbrook, Frank 147, 153, 155
eBay Inc. v. MercExchange, L.L.C. 358
- economics, antitrust law, and 1, 87–8
 Edlin, Aaron 145–6, 152–3, 164, 167–70, 172
 efficiency *see* equally efficient competitor test
 Elhauge, Einer 169–70, 276, 304, 360–63
 Ellison, Glenn 114
 Elzinga, Kenneth 153–4, 172
- enforcement *see also* antitrust immunity;
 damages
 domestic laws
 bias 302–4, 306–8
 effects doctrine 287–9
 extra territoriality 287–9
 under- or overregulation 302–4, 308–11
 international / multijurisdictional
 agency problems 281, 322–3
 compliance costs 295–8
 concurrent jurisdiction, influence of
 17–18, 280–82
 conflicting / inconsistent decisions
 298–301, 308–9
 consequences of 16–17, 280
 correlated values auction problem,
 compared with 280–81
 enforcement bias, and 306–8
 expansion of 284–5
 export cartels 305–6
General Electric / Honeywell case 292,
 298–301
 global overregulation, and 308–11
 international regime
 calls for 284
 reasons for lack of 17–18
 merger reviews, costs of 295–8
 net-importers / net-exporters, differing
 focus of 302–5, 319–20
 optimal antitrust standards, variations in
 302–5, 319–20
 overenforcement, and 17–18, 280, 283
 prisoner's dilemma, and 302–5, 317
 problems with 13–14, 16–18, 280–82
 protectionism, and 17, 301–8
 rational choice theory, and 302–5
 strictest regime, superiority of 308–11
 trade-flow bias, and 302–4
 uncertainty, and 16–17
 private enforcement v. public enforcement
 13–14, 267–72
 antitrust immunity, and regulation 346–8
 deterrence, as
 cartel price fixing, and 271–2
 need to consider 268–9
 relevance of 270–71
 differences between 268–9, 272
 distortion, eliminating 269–70
 motives behind 268–71
 trends, in EU 268
 trends, in US 267–8
 regulation, overlap between
 evolution of 327–9
 self-regulation, and 327–8
 strategies
 asymmetric information, influence of
 278–80
 filing fees, advantages of 278–80
 timing of 13–14, 276–8
 prospective v. retrospective, advantages of
 276–8
 regulators, undermining 14
 welfare, optimal standards of 272–6
 consumer welfare v. total welfare 15–16,
 272–3
 international / multijurisdictional 16,
 319
 mergers, reasons for rejection of 273–5
 monopoly cases, in 275–6
 problems with 273
 total consumer surplus standard 273–6
- entry barriers *see also* potential competition
 competitors, impact of elimination 5–6
 predatory pricing, and 144
 equally efficient competitor test, and 164
 presumption of 146
 re-entry, delays to 148–50
 profitability, calculating 4–5
 resale price maintenance, by retailers
 192–3
 Stackelberg leadership model 4–5, 96,
 98–100, 102–3
 tying and bundling, and 130, 133–5
- Epstein, Roy J. 32–3
- equally efficient competitor test
American Airlines case, in 161–2, 166
 predatory pricing, in 7–8, 145, 160–62, 164,
 172–3
 principles of 7–8, 160–64
- Erickson v. Pardus* 238
- error cost framework
 Court emphasis on 76–9
 false negatives / positives, and 76–7, 79
 market definition, in 76–9
 market share, and 78–9
- European Union
 antitrust policy
 compared with US 290–93, 298–9
 enforcement bias, in 307–8

- international conflicts 292, 298–301, 315, 317–18
 - motivations behind 291–2
 - overenforcement, and 292–3
- antitrust policy, compared with US 290–93
- extra territoriality, of EU antitrust laws 288–9
- loyalty discount attribution tests, on 136, 138–9, 141
- predatory pricing, on 155–6
- private enforcement suits, in 268
- United States
 - antitrust policy, generally
 - compared with EU 155–6, 190–93, 298–9
- false negatives / positives
 - antitrust immunity, and regulation 341–5
 - error costs, and 76–7, 79
 - hard market boundaries 87–8
 - horizontal agreements 210–212, 216–22
- Falstaff Brewing Corp. U.S. v.* 93–4
- Farrell, Joe 2–4, 73–5, 272–3, 275
- Federal Power Act 1920 328, 330
- Federal Trade Commission (US)
 - market definition, de-emphasis on 72–5
- Fisher Ellison, Sara 114
- foreclosure
 - market percentage 135
 - patent law, and antitrust law, differences between 359–60
 - tying and bundling discounts 130, 133–5
 - ‘within’ and ‘beyond’ scope, distinguishing between 359–60
- Fox, Eleanor 319
- fraud, enforcement of patents obtained by 376–7
- free-riding
 - inapplicability of 178–9
 - principles of 175–6
 - resale price maintenance, and
 - absence of 178–89, 198
 - economic emphasis on 174–5
 - Internet retailing, and 188–9
 - prevention, by 175–8
 - retailer incentives for 175–7
 - services, on 9
 - vertical price-fixing, as justification for 9–11
- Fridolfsson, Sven 273
- Froeb, Luke M. 32–3
- FTC v. Procter & Gamble Co.* 91–2
- FTC v. Staples* 73, 115
- FTC v. Whole Foods Mkt., Inc.* 74–5, 84
- game theory 149–50, 255, 317–20, 326
- General Electric / Honeywell* case 292, 298–301, 309, 315
- General Foods, In re.* 154
- Genesove, David 154–5
- Gerardin, Damien 304, 309–10
- global markets, antitrust law in *see*
 - international/ multijurisdictional *under* enforcement
- Goldwasser v. Ameritech* 331–2
- Goolsbee, Austan 112
- Gordon v. New York Stock Exchange* 329–30, 333, 335, 343
- Gould, J.R. 185–6
- Guzman, Andrew 302–4, 319
- hard market boundaries
 - Court use of 53–6, 68
 - error costs 76–9
 - limiting 84–9
 - Critical Loss Analysis 2, 31–2, 80–81
 - economists’ views on 53–5
 - emphasis on
 - Horizontal Merger Guidelines, in 1, 4–5, 67–8, 72, 85
 - errors, ability to avoid 83
 - false negatives / positives 87–8
 - homogeneous product industry, in 56
 - Hypothetical Monopolist Test 70–72, 79–83, 87
 - marginal competitive constraints, and 4
 - meaning 53
 - difficulties with 56–7
 - ‘the market,’ and 55–8
 - product heterogeneity/ differentiation 56–8
 - traditional approach 55–6
 - soft boundaries, compared 85–6
- Hartford Fire Insurance Co. v. California* 288
- Hatch-Waxman Act 1984 373–6
- High Fructose Corn Syrup Antitrust Legislation, In re.* 215
- F. Hoffman La Roche Ltd. v. Empagran S.A.* 288
- horizontal agreements *see also* Horizontal Merger Guidelines
 - conscious parallelism, doctrine of 211–12, 214–15, 224–6
 - definition
 - illegal agreements, and 205
 - statutory 201, 204
 - false negatives / positives 210–212, 216–22
 - Matsushita* ruling 77, 155, 201–2, 216–23, 231–4, 239–41

- monopsony, and 263–4
Monsanto ruling 197, 201–2, 216–23, 222–8, 263
 plausibility of 206, 236–7
 proof, of anticompetitive behavior, standards of
 collusion/ conspiracy, evidence of 204–5, 209–12, 217–28, 235–6, 242–3
 independent and interdependent behavior, and 204–9, 218–23, 235, 245
 Lerner Index, and 13
 plus-factor pleading requirement, and 207–9, 212–15, 222–8
 summary judgment test 222–8, 244
 tends to exclude, concept 216–23, 225–8, 231–5, 240–41
- Horizontal Merger Guidelines 2010 (US)
 background to 25
 importance of 116–17
 market definition, changes to 1, 4–5, 57–8, 67–8, 72, 85
 market power, definition 64, 67–8
 potential competition, merger impact on 5–6, 90–91, 116–17
 presumptions of 29
 product repositioning, and 40–42
 support for, by economists 3
 unilateral effects theory 1–2, 29
- Hosken, Daniel 51–2
 Hovenkamp, Herbert 342, 387–8
 Hylton, Keith 326
 Hypothetical Monopolist Test 70–72
 empirical implementation 80–81
 historical development of 87
 market definition, and 70–72, 79–83, 87
 plausibility 81–3
 principles of 79
 problems with 72, 80–83
- Iacobucci, Edward 304, 319
 Ides, Allan 207
Illinois Tool Works, Inc. v. Independent Ink, Inc. 19, 352, 364–7, 390–91
Image Technical Servs., Inc. v. Eastman Kodak Co. 19, 357, 361–3
Independent Service Organizations Antitrust Litigation v. Xerox Corp. 357, 361–3
 indirect purchaser cases, damages assessment in 20, 378–9, 388–91
 information, asymmetric
 enforcement strategies, and 278–80
 predatory pricing, and 151–2
Intel Corp. (EU Commission Decision) 135, 138–9
- intellectual property law *see also* patent law
 antitrust law, and
 conflicts between 354–6
 overlap between 19
 similarities between 354
 incentives theory 353
 principles of 352–4
 international antitrust law *see under* enforcement
 International Bar Association
 multijurisdictional mergers, compliance costs study 296–8
International Business Machines Corp. v. United States 126
 International Competition Network (ICN) 297–8, 316–17, 321–2, 326
International Salt Co. v. U.S. 352, 363–4
 International Trade Organization (ITO) 313
Interstate Circuit, Inc. v. U.S. 211, 214
- Jefferson Parish Hospital District No.2 v. Hyde* 363–5
- Kaplow, Louis 4, 64–5
 Katz, Michael 272–3, 275
 Kerber, Wolfgang 323–4
 Kobayashi, Bruce 154
 Kolasky, William 300
 Korea, antitrust conflict over *Microsoft* 299–300
 Kwoka, John 107–10
- leadership model *see under* Stackelberg
Leegin Creative Leather Products v. PSKS, Inc. 9–12, 186
 rule of reason, in resale price maintenance
 anticompetitive theories 189–93
 antitrust policy standard 197–200
 coercion, and 194–7
 consumer welfare, and 198–9
 discounting retailers, termination of 197
 economic conditions, for anticompetitive effects 193–7
 entry prevention 192–3
 inter-retailer competition, limits on 192–3
 manufacturer cartels, and 190–91, 193–4
 manufacturer-motivated 190–94
 market power maintenance, and 191–2
 retailer-motivated 192–7
 safe harbors 193–4
- Lerner Index 13, 65–6, 256–9
 Levenstein, Margaret 326
 Levi, Edward H. 122–3
Loctite Corp. v. Ultraseal Ltd. 376
Loew's Inc., U.S. v. 129

- Lorain Journal Co. v. U.S.* 339
- loss, estimating *see* damages
- LOVEFiLM International Ltd. (UK, OFT)*
86–9
- loyalty discounts 6
- buyer's 'prisoner's' dilemma over 132, 140–41
 - discount attribution tests 140–41
 - Antitrust Modernization Commission, on 136–41
 - background to 136–8
 - consumer surplus, and 140
 - costs compared in 139
 - differentiated products, and 138–40
 - European Union, on 136, 138–9, 141
 - higher cost rivals, and 140
 - recoupment, and 141
 - transparency, impact on 140
 - disloyalty penalty, as 130–31
 - first unit discounts 132
 - foreclosure, and 133–5
 - illusory discounts 131
 - incontestable and contestable goods, on 135–6, 138–9
 - individualized discounts 132–3
 - lump sum discounts 132
 - 'most favored nation clause,' as 136
 - profit sacrifices, and 131, 141
 - retroactive discounts 132–5
 - single-product loyalty discounts 6, 135–6
 - types of 132–3
- Lyons, Bruce R. 273
- McAfee, R. Preston 268–70
- McGee, J.S. 154–5
- McGinnis, John 304, 323
- McCrary, Justin 383–4
- Mandeville Island Farms v. American Crystal Sugar Co.* 262
- marginal costs
- modeling
 - American Airlines*, in 157–9
 - predatory pricing 157–9
 - unilateral effects, identifying 49–51
 - Upward Pricing Pressure model, and 2–3, 30–31
 - monopsony, in 260
- Marine Bancorporation, U.S. v.* 105–6
- market definition *see also* competitive constraints; hard market boundaries; market power
- accuracy of 76–83
 - Critical Loss Analysis 2, 31–2, 80–81
 - economists' views on 53–5
 - emphasis on
 - changes, benefits of 54–5
 - conflicts over 53–5, 74–5
 - Courts, by 53–6, 68–70, 76–9, 84–9
 - DOJ/ FTC, by 72–5
 - Horizontal Merger Guidelines, by 1, 4–5, 67–8, 72, 85
 - limiting 84–9
 - errors
 - avoidance of 83
 - costs of 76–9
 - false negatives/ positives 87–8
 - evidence, availability of 72–4
 - expansion, of concept 84–5
 - as first stage in investigations 84–5, 89
 - homogeneous product industry, in 56
 - Hypothetical Monopolist Test 70–72, 79–83, 87
 - importance of 54–5, 75, 83–4
 - marginal competitive constraints, and 4
 - meaning 53
 - difficulties with 56–7
 - 'the market,' and 55–8
 - product heterogeneity/ differentiation 56–8
 - traditional approach 55–6
 - multi-sided markets 64
 - purpose of 3, 58–9
 - soft market boundaries
 - advantages of 85–7
 - Courts' approach to, suggestions for 84–9
 - substitutes, comparing 86–7
- market power
- business practices, and 59–60
 - 'cellophane fallacy' 67
 - competitive constraints, and 60–64
 - consumers, causing harm to 59–60
 - elimination, importance of 59–60
 - problems with 66–7
 - definition 64–5, 67–8
 - economic treatment, problems with 65–6
 - Lerner Index, role in 65–6
 - maintenance
 - resale price maintenance, and 191–2
 - rule of reason framework, in 191–2
 - market share, and
 - Courts' emphasis on 67–8
 - indicator of, reliability 3
 - presumption of
 - tying and bundling, in 366–7
- market share
- competitive constraints, and 67–9, 78–9
 - Courts' emphasis on 78–9, 85–6
 - damages, measurement of 20, 387–8
 - error costs framework 78–9

- market power, and
 - Courts' emphasis on 67–8
 - indicator of, reliability 3
- monopsony power, and 258–9
- Masimo Corporation v. Tyco Health Care Group* 137–8
- Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp.* 77, 155, 216–23
 - dissenting judgments 240–41
 - influence on Supreme Court ruling in *Twombly* 231–4, 239–41
- Merck-Medco Managed Care v. Rite Aid Corp.* 225–6
- Merger Guidelines 1982 (US) 90–91
- merger simulations
 - advantages 35–9
 - airline mergers 38
 - auction models 44–5
 - benchmarks, for 34–6
 - demand modeling, and 46–8
 - dynamic behavior, relevance of 47–8
 - marginal cost measurements 49–51
 - nonprice dimensions of competition 51
 - out-of-sample predictions, and 48
 - PCAIDS model 32–3, 47
 - principles 34, 36–7
 - supply-side, importance of 37–9
- mergers, generally *see also* potential
 - competition doctrine; unilateral effects analysis, historical development of 90–91
 - multijurisdictional, compliance costs 295–8
 - patents, involving 372–3
 - rejection of, reasons for 273–5
 - results of 2, 81–2
- Microsoft* cases 299–301, 368
- Mills, David 154, 172
- monopolies, generally
 - definition 163–4
 - existence of, reasons for 152–3
 - second monopolies, and 122–5
- monopsony
 - 'all-or-none' variant 248–9
 - antitrust policy regarding 259–62
 - consumers, impact on 261
 - economic rationale for 259–61
 - buyers, dominant, power of 250–51
 - cartels, and 249–50
 - collusive monopsony 249–50, 261–2
 - definition 246
 - duopsony 253–5
 - horizontal mergers, and 263–4
 - Lerner Index, for analysis of 257–9
 - oligopsony
 - models for 251–5
 - tacit collusion, and 255, 262–3
 - pure monopsony 246–8
- monopsony power 13
 - dominant buyer 257–9
 - elasticity of demand 259
 - elasticity of supply 259
 - Lerner Index, and 256–9
 - market share 258–9
- Monsanto Co. v. Spray-Rite Serv. Corp.* 197, 201–2, 216–28, 263
- Morrison, Steven 111
- Morton Salt Co. v. G.S. Suppiger Co.* 363
- 'most favored nation clauses' 136
- motion to dismiss, standard of proof for
 - Twombly* ruling on 206–9
 - evidentiary sufficiency and legal sufficiency 209
 - lower court conflicts over 228–31, 230–31
 - parallel conduct, on 232
 - plausibility of conspiracy, and 209, 230–31, 233–5, 240–45
 - plus factors, relevance 228–9, 232–5, 238, 241–3
 - Second Circuit ruling on 229–31
 - summary judgment standard, and 231–4, 238–40, 244–5
 - Supreme Court ruling on 231–4, 233–5, 240–45
 - tends to exclude concept, and 231–5, 240–41
- Mullen, Wallace 154
- multiple jurisdictions, issues affecting *see* international *under* enforcement
- Mumford, M. 153
- Nash equilibrium models
 - unilateral effects, identification limitations of 39–43
- National Association of Securities Dealers (NASD), U.S. v.* 330, 333, 335
- Nobelpharma AB v. Implant Innovations, Inc.* 377
- Office of Fair Trading (UK)
 - LOVEFiLM International Ltd.* 86–9
 - soft market boundaries, decisions based on 86–7
- oligopolies
 - predatory pricing, in 170–72
- oligopsony 251–5
 - Bertrand competition model, and 251, 253–4
 - Chamberlin model 255
 - Cournot oligopsony model 252–4
 - Stackelberg duopsony model 253–5
 - tacit collusion, and 255, 262–3

- 'one surplus theory' 122–5
- O'Neill, Paul 300
- Oracle Corp., U.S. v.* 44–5
- Ordoover, J.A. 157
- Organisation for Economic Co-operation and Development (OECD)
 - antitrust regime, role in developing 315–16
- Ottaviani, M. 276–8
- Otter Tail Power, U.S. v.* 330, 339–40
- Pacific Bell v. Linkline* 341
- pass-through, identifying unilateral effects 45
- patent law
 - antitrust law, and
 - conflicts between 354–63
 - consumer welfare, focus on 352–6, 360–61, 366–7
 - cross-licensing 370
 - developing policy on 351–2
 - exclusive licensing agreements 368
 - foreclosure 'within' and 'beyond' scope, distinguishing between 359–60
 - fraud, patents obtained by 376–7
 - 'grantback' clauses 368–9
 - immunity from 358–63
 - IP law principles 352–6
 - IP licensing, Guidelines on 351, 364–5
 - market harm, presumption of 363–7
 - mergers and acquisitions involving 372–3
 - overlap between 19, 352–4
 - patent cut-off, benefits of 360–63
 - patent licensing 367–70
 - patent pooling 370–72
 - permanent injunctions 358
 - pharmaceuticals litigation 373–6
 - presumptive rights 352
 - refusal to deal, and 356–63
 - rule of reason, and 367–70
 - sham patent litigation 377
 - tying, and 352, 363–7
 - vertical licensing arrangements 369–70
 - incentives theory 353, 359–60
 - principles of 351, 362–3
 - remedies
 - innovation policy, as 358–9, 362–3
 - rights to exclude 356–63
- PCAIDS merger simulation model 32–3, 47
- Penn-Olin Chem. Co., U.S. v.* 92
- Perloff, Jeffrey 147–51
- Peters, Craig 38
- pharmaceuticals
 - patent litigation involving 373–6
 - potential competition, studies of 113–14
- Phonotele v. AT&T* 330–31
- Picker, Randal 207
- Pitofsky, Robert 178
- plausibility
 - conspiracy, of, and motion to dismiss 209, 230–31, 233–5, 240–45
 - horizontal agreements 206, 236–7
 - Hypothetical Monopolist Test 81–3
 - predatory pricing, of 147, 150–51, 171–3
 - Twombly* ruling, after 209, 230–31, 233–5, 240–45
- Polinsky, A. Mitchell 390–91
- Posner, Richard A. 160–61, 163, 275–6
- potential competition doctrine
 - airline mergers, in 107–12
 - application criteria, establishment of 105–6
 - cable TV mergers 112–13
 - cases establishing 91–4, 105–6
 - challenges to mergers under
 - regulated industries, in 115–16
 - as secondary issue 115
 - settled cases 115
 - standards for 91–2
 - economic basis 94–5
 - actual and potential competition, effects of 95–8
 - assumptions of 103–4
 - Bertrand model, on 104
 - Cournot model, on 97–104
 - differentiated products, and 44, 104
 - entry deterrence models 98–100
 - joint profit maximization model 96–8
 - merger models 100–103
 - increase in allocative inefficiency, and 102–3
 - increase in consumer harm, and 102–3
 - incumbent's profits, increase in 100–101
 - multiple entrants, and 103–4
 - 'shared monopoly' case 97
 - Stackelberg leadership model 98–100, 102–3
 - evidence, of mergers concerning 107–10
 - evidence of
 - difficulties with 107
 - market-specific studies 106–7
 - airlines 110–112
 - cable TV 112–13
 - pharmaceuticals 113–14
 - railroads 112
 - merger-specific studies 106–7
 - presence of potential competitors 110–114
 - standards, judicial basis for 105–6
 - types of 106
- Horizontal Merger Guidelines 2010 (US)
 - 5–6, 90–91, 116
- judicial basis
 - application criteria, establishment 105–6

- cases amending 105–6
- cases establishing 91–4
- challenges, standards for 91–2
- evidentiary standards 105–6
- intention, relevance of 93–4
- joint ventures, and 92–3
- railroad mergers, in 112
- Precision Instrument Manufacturing Co. v. Automotive Maintenance Machinery Co.* 376
- predatory pricing
 - above-cost predation, and 169–70
 - American Airlines* case 144, 157–9, 161–2, 164–9
 - antitrust law, whether relevant to 144
 - asymmetric fundamental models, of 151–3
 - asymmetric information models, of 151–2
 - ‘bird-in-the-hand’ theory 146, 156
 - Chicago School view on 147, 150–53
 - consumer-betterment test 7–9, 144–6, 162–7, 169–70
 - consumer welfare, protection of 7–8
 - credibility of threat, and 148–50
 - definition 153
 - empirical evidence, of 153–5
 - equally efficient competitor tests 7–8, 145, 160–62, 164, 172–3
 - European Union on 155–6
 - fixed costs, problems with 162
 - frequency, of 147–51
 - game theory equilibria, and 149–50
 - high-cost incumbents, behavior of 152–3
 - interventionist policies, and 146
 - limit pricing 8, 154
 - low prices, and 148–9
 - marginal revenue, relevance of 158–60
 - market entry, and
 - as barrier to 144
 - presumption of 146
 - re-entry, delays to 148–50
 - oligopoly industries, in 170–72
 - paradox, as 144
 - plausibility of 147, 150–51, 171–3
 - price-cost tests 7–8, 156–60
 - price freeze theory, and 144–6, 167–70
 - reactive price cuts 144–5
 - recoupment requirement 172–3
 - sacrifice theories 7–9, 145, 156–60, 163, 165–6
 - success criteria for 147–51
 - US position on
 - conflicts with EU policy 155–6
 - cost-based tests 155–6
 - Supreme Court views on 155–6
- Preston, L.E. 185–6
- price-cost margin
 - incremental margin, estimating 80
 - operating margin, use of 80
 - predatory pricing, and 7–8, 158–60
 - test, efficiency of 7–8
- price fixing *see* predatory pricing; vertical price-fixing
- price freeze theory 145–6, 172
 - American Airlines*, in 144, 168–9
 - consumer-betterment test, and 9, 167–70
- prices *see also* predatory pricing; resale price maintenance
 - compensating cost reduction, and 32
 - discrimination
 - tying/ bundling, in 124–7
 - significant nontransitory increase in price (SSNIP)
 - assumptions based on 82–3
 - critical loss analysis, and 31–2, 80–81
- prisoner’s dilemma
 - antitrust enforcement 302–5, 317
 - loyalty discounts, in 132, 140–41
 - trade-flow bias, of antitrust law provision 302–4
 - tying and bundling, in 132, 140–41
- Private Securities Litigation Reform Act 1995 (PSLRA) 237–8
- product repositioning
 - addition brands or line extensions 41–2
 - competitive constraints 62–3
 - product substitutability 69
 - unilateral effects modeling, in 40–42
- products *see* differentiated products; product repositioning
- proof, of anticompetitive behavior
 - conflicts over 201–2
 - horizontal agreements, in
 - collusion/ conspiracy, evidence of 204–5, 209–12, 217–28, 235–6, 242–3
 - evidentiary sufficiency and legal sufficiency 209, 219–22
 - independent and interdependent behavior, and 204–9, 218–23, 235, 245
 - Lerner Index, and 13
 - plus-factor pleading requirement, and 207–9, 212–15, 222–8
 - summary judgment test 222–8, 244
 - tends to exclude, concept 216–23, 225–8, 231–5, 240–41
- protectionism
 - domestic laws, of 285–7, 293–4, 301–8
 - enforcement bias, and 17, 306–8
 - export cartels, as 305–6

- railroads, potential competition studies 112
- refusal to deal presumptions
 - antitrust immunity, and 330–32, 338–41
 - patent licenses, and 356–63
- regulation *see* competition regulation
- remedies *see* damages
- requirement programs *see* loyalty discounts
- resale price maintenance
 - distortion of 174–5
 - efficient competition mechanism, as 182–4
 - free-riding
 - in absence of 178–89, 198
 - economic emphasis on 174–5
 - Internet retailing, and 188–9
 - prevention of 175–8
 - manufacturer intervention in 174–5
 - market imperfection, as 175
 - motivations behind 174–5, 177–8, 186–7
 - principles of 176–7
 - procompetitive role of 199–200
 - retailers, and
 - compensation for 180–84
 - incentives for 175–7, 180–84
 - incompatibility 180–82
 - inter-retailer demand, and 180–82
 - Internet retailing 188–9
 - manufacturers’ compensation of 180–84
 - manufacturers’ retail distribution network, and 184–9
 - network disruption, caused by 184–9
 - outlets hypothesis 185–9
 - promotional discretion, of 179–80
 - promotional services, provision of 180–84
 - quality certification, and 187–9
 - rule of reason framework
 - anticompetitive theories 189–93
 - antitrust policy standard, after *Leegin* 197–200
 - coercion 194–7
 - consumer welfare, and 198–200
 - discounting retailers, termination of 197
 - economic conditions, for anticompetitive effects 193–7
 - entry prevention 192–3
 - inter-retailer competition, limits on 192–3
 - manufacturer cartels, and 190–91, 193–4
 - manufacturer-motivated 190–94
 - market power maintenance, and 191–2
 - retailer-motivated 192–7
 - safe harbors 193–4
- Rey, Patrick 278–9
- Rice Growers Association of California, U.S. v.* 264
- Richards, Krista 111–12
- Robinson, Glen 344–5
- Rubinfeld, Daniel L. 32–3, 382–4, 390–91
- Rudholm, Niklas 114
- rule of reason
 - antitrust law, and patent law, overlap 340, 367–70
- resale price maintenance, and
 - anticompetitive theories 189–93
 - antitrust policy standard, after *Leegin* 197–200
 - coercion 194–7
 - consumer welfare, and 198–200
 - discounting retailers, termination of 197
 - economic conditions, for anticompetitive effects 193–7
 - entry prevention 192–3
 - inter-retailer competition, limits on 192–3
 - manufacturer cartels, and 190–91, 193–4
 - manufacturer-motivated 190–94
 - market power maintenance, and 191–2
 - retailer-motivated 192–7
 - safe harbors 193–4
- Russell Stover Candies, Inc.* 181–2
- sacrifice theories
 - cost-based tests for 6–7
 - equally efficient competitor tests, and 7–8
 - loyalty discounts, and 131, 141
 - predatory pricing, for 7–9, 145, 156–60, 163, 165–6, 172–3
 - tying and bundling 6–7, 131, 141
- Sagers, Chris 154–5
- Salant, Steven W. 271–2
- Savage, Scott 112–13
- Scherer, Frederic 198–9
- Schwartz, Warren F. 270–71
- Scott Morton, Fiona 154
- Selten, R. 152
- Shapiro, Carl 2–4, 34–6, 64–5, 73–5
- Shavell, Steven 268–9
- Sherman Antitrust Act 1890
 - adoption 284
 - Section 1, horizontal agreements
 - collusion/ conspiracy, evidence of 204–5, 209–12, 217–28, 235–6, 242–3
 - collusive monopsony 261–2
 - conscious parallelism, doctrine of 211–12, 214–15, 224–6, 236
 - false positives/ negatives, concerns over 210–212, 216–22
 - independent and interdependent behavior 204–9, 218–23, 235, 245
 - Matsushita* ruling 77, 155, 201–2, 216–23, 231–4, 239–41
 - monopsony power, and 261–3
 - Monsanto* ruling 197, 201–2, 216–23, 263

- oligopsony 262–3
- overdeterrence and underdeterrence,
 - balance between 211
- plausibility of 206, 236–7
- prohibitions 201, 210
- proof, standards of
 - lower court interpretations of 222–8
 - plus-factor pleading requirement, and 207–9, 212–15, 222–8
 - tends to exclude concept 216–23, 225–8
- self-regulation of regulatory bodies, and 328
- summary judgment test 222–8, 244
- tacit collusion 262–3
- Twombly* ruling, concerns over 206–9
- Section 2, monopolies
 - patents obtained by fraud, enforcement of 376–7
 - refusal to deal presumptions, and 330–32, 338–41
 - regulation, and antitrust immunity 330–32, 342–3
- Section 7, and hard boundaries 54–5
- Shumilkina, Evgenia 107–10
- significant nontransitory increase in price *see* Hypothetical Monopolist test
- Silver v. New York Stock Exchange* 329–30, 333
- Simple Price effect model 2
- single monopoly theory, tying 6, 135–6
- Smiley, Robert 154
- Socony-Vacuum Oil Co., Inc., U.S. v.* 261–2
- soft market boundaries
 - advantages of 85–7
 - Courts' approach to, suggestions for 84–9
 - substitutes, comparing 86–7
- Southwestern Airlines 111–12
- Spirit Airlines, Inc. v. Northwest Airlines, Inc.* 162, 164
- Spulber, Daniel F. 272, 275, 278–9
- SSNIP test *see* Hypothetical Monopolist Test
- Stackelberg, Heinrich Freiherr von
 - duopsony model 253–5
 - leadership model 4–5, 41, 96, 98–100, 102–3
- Standard Oil Co. v. U.S.* 371
- Steiner, Peter O. 382
- Stephan, Paul 322–3
- substitutes
 - competitive constraints
 - demand, role in 61–2
 - entry, impact on products 63
 - error costs, in 78–9
 - suppliers, role of 62–3
 - soft market boundaries 86–7
- Sullivan, Lawrence 214
- Summit Technology/ VISX* patent pool case 372
- suppliers, substitute products, and 62–3
- Suslow, Valerie 326
- Syverson, Chad 112
- Telecommunications Act 1996 331–2, 335–6, 342
- Tellabs, Inc. v. Makor Issues & Rights, Ltd.* 237–8, 240
- Theatre Enterprises, Inc. v. Paramount Film Distributing Corp.* 212
- total welfare *see under* consumer welfare
- trade-flow bias 302–5
- trade secrets *see also* patent law
 - antitrust law, and 353–6
- trademark law *see also* patent law
 - antitrust law, and
 - compared with 354
 - conflicts between 355–6
 - principles 353–4
- Trebilcock, Michael 304, 319
- Trinko* case *see Verizon Communications, Inc.*
- Turner, D. 157, 160–61
- Twombly* case *see Bell Atlantic Corp.*
- tying and bundling
 - consumer surplus
 - definition 124
 - detrimental to consumer 129
 - extraction of 124–30
 - foreclosure of entry, for 130
 - intra-consumer price discrimination 127–9
 - intra-product price discrimination 125–7
 - 'one surplus theory' 122–5
 - definitions 6, 121–2
 - effects of 122, 142–3
 - illegality of 122–3
 - incentives for 127–30
 - liability criteria for, identifying 141–3
 - loyalty discounts 6
 - buyer's 'prisoner's' dilemma over 132, 140–41
 - disloyalty penalty, as 130–31
 - foreclosure, and 133–5
 - illusory discounts 131
 - incontestable and contestable goods,
 - bundling together 135–6
 - 'most favored nation clause,' as 136
 - profit sacrifices, and 131, 141
 - retroactive discounts 132–5
 - types of 132–3
- patent law, and antitrust
 - overlap between 352, 363–7
 - presumption of market power 366–7
 - price discrimination, and 365–6
 - social welfare, and 366–7
- profit sacrifice test 6–7, 131, 141

- single monopoly theory 6, 135–6
- strategic reasons for 125–30
- UNCTAD, role in developing antitrust regime 315–16
- unilateral effects
 - creation by merger, principles of 26–9
 - Horizontal Merger Guidelines 2010 (US)
 - emphasis on 1–2
 - presumptions of 29–30
 - identification 2–3, 29–34
 - additional brands or line extensions 41–2
 - advantages and disadvantages of 33–4
 - analysis testing 51–2
 - antitrust logit model (ALM) 32–3, 47
 - auction models 44–5
 - capacity constraints, and 45–6, 49–50
 - compensating cost reduction 32
 - Critical Loss Analysis 2, 31–2, 80–81
 - demand modeling 46–8
 - dynamic models 42–4
 - extensions, to models 39–46
 - marginal cost modeling 49–51
 - measurement issues 46–51
 - model exclusions and limitations 3
 - Nash equilibrium models 39–43
 - pass-through, and 45
 - PCAIDS model 32–3, 47
 - product repositioning, and 40–42
 - Simple Price effect model 2
 - Upward Pricing Pressure model 2–3, 30–31
 - importance of 25
 - merger simulation, and 34
 - advantages 35–9
 - airline mergers 38
 - auction models 44–5
 - benchmark calculations 34–6
 - demand modeling, and 46–8
 - dynamic behavior, relevance of 47–8
 - marginal cost measurements 49–51
 - nonprice dimensions of competition 51
 - out-of-sample predictions, and 48
 - supply-side, importance of 37–9
- United Nations Conference on Trade and Employment (Havana Charter, 1948) 313
- United States
 - antitrust policy, generally
 - compared with EU 155–6, 190–93, 298–9
 - enforcement bias, in 307–8
 - international conflicts 292, 298–301, 315, 317–18
 - underenforcement, and 292–3
 - United States v. Aluminum Co. of America* 53, 67–8
 - United States v. El Paso Natural Gas Co.* 91–2
 - Unitherm Food Systems, Inc. v. Swift-Eckrich, Inc.* 376–7
 - Upward Pricing Pressure model 2–3, 30–31
 - Valley Drug Co. v. Geneva Pharmaceuticals, Inc.* 375–6
 - Varney, Christine
 - rule of reason, in resale price maintenance
 - anticompetitive effects, economic conditions likely to establish 193–7
 - anticompetitive theories 189–93
 - antitrust policy standard, after *Leegin* 197–200
 - coercion in 194–7
 - consumer welfare, and 198–200
 - discounting retailers, termination of 197
 - economic conditions, for anticompetitive effects 193–7
 - entry, prevention by 192–3
 - inter-retailer competition, limits on 192–3
 - manufacturer cartels, and 190–91, 193–4
 - manufacturer-motivated 190–94
 - market power maintenance, and 191–2
 - retailer-motivated 192–7
 - safe harbors 193–4
 - Verizon Communications, Inc., v. Trinko* 18, 327
 - antitrust enforcement risks, after 337–8
 - antitrust savings clauses, and 331–2, 335–7
 - Credit Suisse v. Billing*, compared 335, 337
 - criticism of 343
 - essential facilities claims 338, 344–5
 - false negatives / positives, concerns over 343–4
 - implications of 340–41, 347–50
 - refusal to deal presumptions, and 330–32, 338–41
 - rule of reason, and 340
 - vertical licensing arrangements, for patents 369–70
 - vertical price-fixing
 - anticompetitive or procompetitive, whether 11–13
 - brand-pushing rationale 10
 - cartels, and 11
 - free-rider justifications 9–11
 - initiator of, relevance of 12
 - inter-retailer demand effects 10–11
 - Leegin* ruling on 9–12
 - manufacturer-motivated theories for 11–13
 - use of, reasons for 9–10
 - wholesale prices, reducing 10–11
 - Vickers, John 274–5

- Walker Process Equipment, Inc. v. Food Machinery & Chemical Corp.* 376–7
- Ward, Ettie 207
- Washington, U.S. v.* 263
- welfare *see* consumer welfare
- Werden, Gregory J. 32–3
- Weyerhaeuser v. Ross-Simmons Hardwood Lumber* 13, 261
- Whish, Richard 296
- wholesale prices
vertical price-fixing, and 10–11
- Wickelgren, Abraham L. 270–71, 276–80
- Willig, R.D. 157
- Winston, Clifford 111
- Wirth, Michael 112–13
- Wood, Diane 296, 320, 324
- Wood Pulp cases (Ahlström Osakehytö v. Commission)* 288
- World Trade Organisation, international
antitrust role 314, 316, 319–20, 322, 324
- yardsticks, for damages assessment 19–20, 380
- Zerbe, R. 153

