

Index

abuse of market dominance see under residual ground of review/substantive competition law: abuse dimension to rule of law 191 acte clair doctrine 163 anti-competitive agreements see competition guidelines on the constitutional scope of law: cartels the doctrine 164 anti-competitive conduct see competition and rise of doctrine of judicial precedent law: abuse 156 association agreements 52, 55 actus contrarius, principle of 56 Union's treaty-making powers 70-1 agencies, European Parliament's role in appointment of 18 block exemption regulations 279-80 agreements budgets and revenues competition law see under competition Council's budgetary powers 15, 25 European Parliament's budgetary powers law: cartels international agreements see under 15, 25 external relations international agreements with ancillary restraints doctrine 274-5 important budgetary implications 55 annulment actions: judicial review 178, Member States fixing Union revenue 186-200 15 competence and procedure for judicial bundling see tying and bundling review 186, 187 distinctions between different types of candidates for accession to European Union applicants 184 remedies 187 cartels see competition law: cartels "whether": the existence of a "reviewable" Charter of Fundamental Rights see under act 187-9 fundamental rights acts not capable of being reviewed Chicago School 269 citizens see European citizenship bodies subject to judicial review 187-8 collective dominance 287-90 "who": legal standing see legal standing criteria for finding collective dominance before the European Court 289-90 "why": legitimate grounds for review economic links between undertakings 289 189-200 collusion see under competition law: cartels "formal" and "substantive" grounds Committee of the Regions 8 190 - 1legal standing before the European Court/ lack of competence 190 semi-privileged applicant 193-4 Committees of Inquiry, Parliamentary 16 misuse of powers 191 procedural irregularities 190 Commission 8, 26-31 procedural and substantive definitions collective censure motions of European of rule of law 189, 191 Parliament 18 composition and election 26-7 proportionality: a substantive ground 191-3 European Council's role in election 17, see also proportionality principle 27

Index 303

European Parliament's role in election Common Foreign and Security Policy 17-18.27 competence 76 Members' duty of independence 26-7 Court of Justice having no jurisdiction over constitutional prerogative to make 179 legislative proposals 14 international agreements 54-5 Council meetings, attending 21-2 High Representative proposing to de minimis rule in competition law 276 Council suspension of agreement 56 and market share 276 High Representative recommending to enforcement actions against Member Council 52 States 180-2 Luxembourg Compromise 24-5 competences, Union 59-82 administrative stage/reasoned opinions categories of Union competences 60-1, defences 182 75-82 discretion not to bring proceedings 185 complementary competences: Article 6 duty to ensure Member States give effect TFEU 81-2 to European law 180 coordinating competences: Article 5 nature of violations 181-2 TFEU 80-1 functions and powers 29-31, 180 exclusive competences: Article 3 TFEU acting as guardian of the Union/ 76-9 exclusive and non-exclusive overseeing application of European competences 75-6 enforcing European competition law 31 shared competences: Article 4 TFEU ensuring application of the Treaties 79-80 conferral, principle of 59-60 30 - 1promoting interests of the Union/ legal developments posing threats formally proposing legislation 30, 37 to 60 international agreements soft principle of conferral 62 Commission as Union negotiator 53 strict principle of conferral 61-2 proposing to Council suspension of definition of a legislative competence 60 agreement 56 general competences of the Union 60, recommendations for agreements 52 64-70 judicial review of preparatory acts harmonization competence: Article 114 excluded 188 TFEU 64, 65-7 see also annulment actions: judicial review residual competence: Article 353 TFEU lack of confidence in individual members 64, 68-70 implied (external) powers doctrine 60, legal standing before the European Court/ 70 - 4codified in Lisbon Treaty 73-4 privileged applicant 193 "ministerial" responsibilities 29 parallel external powers 71-3 lack of competence, judicial review for 190 President as "Chief" Commissioner 27-8 and misuse of powers 191 and "his" college 27-9 supremacy of European law/ultra vires elected by European Parliament 13, 17, control see under (legal) supremacy teleological interpretation 60, 61-4 27 European Council nominating 17, 27 amending original rule/method of incremental change 62 powers 28 reporting to European Parliament and Court interpreting Union legislation in answering questions 15-16 teleological manner 63-4 role "marginalized" by European teleological interpretation adopted by Parliament and Council 26 Union 62-3 Common Commercial Policy (CCP) 57 wrong competence, acting under 190 exclusive competence 76-7 competition law: abuse 281-301 Union's treaty-making powers 70-1 abuse of market dominance 290-9



304 Index

competition law: abuse (cont.) horizontal and vertical agreements Article 102[2](a) and "predatory pricing" "tacit acquiescence" versus "unilateral 292 - 4Article 102[2](b) and "refusal to supply" conduct" 263-5 294-5 vertical agreements falling within Article 102[2](c) and "discretionary jurisdictional scope 262-3, 270 pricing" 296-7 definition of undertaking 258-9 Article 102[2](d) and "tying or bundling" forms of collusion between undertakings 260 - 6exploitative and exclusionary abuses agreements as "concurrence of wills" prohibited 291 261, 263 market structure and behaviour 290 "apparently unilateral" behaviour prohibition of abuse extended to 263-5 "downstream"/"adjacent" markets function of European competition law 257 - 8(potential) effect on trade between Member special responsibility of dominant undertaking 291 States 267-8 agreements with a European dimension Article 102 sanctioning unilateral behaviour amounting to market abuse 267 pattern-of-trade test 267-8 281 - 2dominance itself not prohibited 282 prohibition of collusion between undertakings under Article 101 market dominance 285-90 collective dominance 287-90 259-60 definition of dominance 286 restriction of competition: antigeneral considerations 285-7 competitive object or effect 269-76 and market share 286-7 ancillary restraints doctrine 274-5 the "market": product and geographic hardcore restrictions 271-3, 276, 277, dimensions 283-5 cross-price elasticity test 283-4 meaning of "restriction of competition" demand substitution 283-4 "interchangeability" of two products non-appreciable restrictions: the de 283 minimis rule 276 same geographic market 284 restrictions by effect: a European "rule "substantial part" of the internal market of reason" 273-5 restrictions by object: European "per se supply substitution 284 rules" 271-3, 276, 277 two dimensions of market concept 283 two dimensions of competition: objective justification: apparently abusive inter-brand/ intra-brand competition behaviour 299-301 270-1, 274 efficiency defence 300-1 concerted practices and parallel conduct special context justification 300 265-6 competition law: cartels 257-80 Conciliation Committee 38-9, 41 Article 101(3): exemptions through proconferral, principle of 59-60 judicial review for lack of competence competitive effects 277-80 direct exemption under Article 101(3) 190 legal developments posing threats to 60 exemption by category: block soft principle of conferral 62 strict principle of conferral 61-2 exemption regulations 279-80 cartel decisions through associations of supremacy of European law and undertakings 266 competences limits 146-9 concerted practices and parallel conduct German Constitutional Court's ultra 265-6 vires doctrine 147



Index 305

national review for specific/manifest	no judicial review of unilateral acts 187
violations of conferral principle	Court of Justice of European Union 31-4
148-9	appointment of judges 18
consistent interpretation doctrine see under	challenges to "constitutionality" of draft
direct effect	international agreements 54
Coreper I and II 20-1	competition law see competition law:
functions 21	abuse; competition law: cartels
Council 18-25	European actions see European actions
composition and configuration 19-20	exclusive competences 76-9
mandate of Council configurations 20	fundamental rights see fundamental rights
Member States represented 19	implied external powers doctrine 71-3
decision-making and voting 21-5	implied limitations to Union's residual
new Lisbon system of qualified majority	competence 69-70
voting 23-5	infringement actions 109
procedural irregularity 190	interpreting Union legislation in
qualified majority voting 22-5	teleological manner 63-4
quorum 22	judicial architecture: European court
simple majority voting 22	system 32–3
triple majority system 23	Civil Service Tribunal/specialized courts
unanimity voting 22	32
weighted votes 22-3	Court of Justice 32
functions and powers 25	General Court 32
budgetary function with European	judicial review see annulment actions:
Parliament 25	judicial review
coordinating functions 25	jurisdiction and judicial powers 33-4
legislative functions 25	adoption of declaration theory 156-7
policy-making functions 25	direct and indirect actions 34
internal structure and organs 20-1	judgments binding erga omnes 155-6
functions of Coreper 21	judicial enforcement through financial
and international agreements see under	sanctions 182-3
external relations	limitations on jurisdiction 179-80
judicial review	nature and role 34
excluded for preparatory acts 188	not entitled to void national laws
of legislative acts 187	violating European law 182-3
see also annulment actions: judicial review	preliminary rulings see under national
legal standing before the European Court/	actions
privileged applicant 193	retroactive effects of decisions 157
legislative functions and procedures	legal standing before see legal standing
14–15, 25, 37–8, 39	before the European Court
required to discuss legislation in public	no actions against Court for failure to act
21-2, 25	184
see also legislation, Union	supremacy of European law see (legal)
position changed by rise of European	supremacy
Parliament/European Council 19, 25	customs duties 208-13
Union revenue, fixing 15	Article 30: absolute prohibition for imports
willingness to be questioned by European	and exports 209–11
Parliament 16	charges having equivalent effect
Court of Auditors	prohibited 209
appointment, European Parliament's role	measures qualifying as internal taxation
in 18	211
legal standing before the European Court/	mere presence of a restricting effect
semi-privileged applicant 193-4	sufficient 209-11
no actions against for failure to act 184	definition of customs duty 209



306 Index

customs duties (cont.) indirect effect of European law on general prohibition of customs duties national law interpretation 128 within Union 209 indirect imposition of new obligations objective "justifications" 211-13 130 - 1charge constituting consideration for limits to the duty of consistent service rendered 212 interpretation 131-2 compensation for frontier checks national courts adjusting interpretation 212 - 13according to national law 131 monism and dualism 107-8, 109-11, 120-20 damages actions: Union liability 178, 200-4 contractual and non-contractual liability nature of European treaties as framework treaties 108, 112 procedural conditions: from dependent to secondary law, forms of 108-9 independent action 201-3 directives see under direct effect independent liability actions 202 discriminatory internal taxation 213 procedural requirements for liability Article 110 (1): discrimination against actions 202-3 "similar" foreign goods 214-16 substantive conditions: from broad interpretation of concept of Schöppenstedt to Bergaderm 203-4 similarity 215 objective justification 215-16 conditions conferring right to reparation 203 - 4similarity and comparability 214 de minimis rule 276 Article 110 (2): protection against and market share 276 "competing" foreign goods 216-18 direct effect 107-32 Court's approach to when goods are in direct applicability and direct effect competition 216-18 domestic tax systems protecting national 109 - 12direct applicability of European law goods outlawed 213-14 dualism and monism 110-11 and direct effect 109-11 dualism rejected by European Court 110-11 directives 120 relationship between direct applicability dualism rejected by European Court and direct effect 111-12, 121-2 direct effect of primary law 112-19 dualism, nature of 107-8, 135 direct effect: from strict to lenient test dualist and monist traditions in Member 114-17 States 135 initial test for direct effect 114 federal unions characterized by political vertical and horizontal direct effect dualism 144 117-19, 132 monism, nature of 107-8 direct effect of secondary law: directives and supremacy of European law 135 120 - 8direct effect of directives: conditions and Economic and Social Committee 8 limits 120-3 effectiveness principle 152, 165, 167-70 estoppel argument 122-3, 125 European Court's development of the exception to the rule: incidental principle horizontal direct effect 127-8 initial period of restraint/minimal limitation to the rule: wide definition of standard 167, 168 State (actions) 125-6 period of balance/medium standard no-horizontal-direct-effect rule 122-5 167-8, 170 indirect effects: doctrine of consistent period of intervention/maximum interpretation 128-32 standard 167-70 definition of doctrine of consistent as limitation on national procedural interpretation 129 autonomy 152, 165 demanding nature of the duty 131 see also national actions

Index 307

effet utile 71, 147 standing of natural/legal persons see under environmental policy legal standing before the European Charter of Fundamental Rights 98-9 Court development of policy prior to Single see also annulment actions: judicial European Act 68-9 review; damages actions: Union equivalence principle see under national liability actions European Commission/Court of Human "essential facilities" doctrine 295 Rights (full) direct review on Union law after European actions 178-204 actions against the Union: failure to act accession 103-4 (limited) direct responsibility of Member 178, 183-6 consequences of establishing failure to States for Union acts 102-3 act 186 European Convention on Human Rights parties to actions 183-4 (ECHR) procedural stages 184 accession by European Union 52, 55, 96 fundamental rights see under fundamental requirement of existence of an "obligation to act" 185 rights types of inaction that can be challenged European Council 8 184-5 Commission, role in electing 17, 27 annulment actions: judicial review see nominating President of the Commission 17, 27 annulment actions: judicial review judicial review of internal acts excluded damages actions see damages actions: Union liability enforcement actions against Member see also annulment actions: judicial review States 178, 180-3 national "quotas" for Union's judicial enforcement through financial Parliamentary representatives, sanctions 182-3 deciding 11 procedural conditions under Article 258 policy-making functions 25 TFEU 180-2 reporting to European Parliament 15-16 judicial competences of Court of Justice rise restricting Council's executive powers 178-9 European Central Bank willingness to be questioned by European appointment, European Parliament's role Parliament 16 European Investment Bank 8 legal standing before the European Court/ European Ombudsman semi-privileged applicant 193-4 appointment, European Parliament's role reporting to European Parliament 15-16 in 18 European citizenship 234, 251-6 European citizens complaining to 16-17 electing representatives of European European Parliament 9-18 Committees of Inquiry 16 Parliament 9-11 by proportional representation 12-13 formation: electing Parliament 10-13 movement rights 252-4 degressively proportional representation lawful residence and equal treatment 11 - 12directly elected representatives of 256 mid-term residency rights 255-6 Union's citizens 9-11 permanent residence 256 election of individual members by short-term residency rights 254-5 proportional representation 12-13 size and composition of European rights pertaining to European citizens Parliament 11-12 251 - 2right to "petition" European Parliament/ international agreements 15 complain to Ombudsman 16-17 consultation and consent 54-6

right to vote and to stand as European

Parliamentary candidate 13

right to be informed 53, 56

judicial review



308 Index

European Parliament (cont.) exports see under customs duties; regulatory excluded for internal acts 188 barriers of legislative acts 187 external relations see also annulment actions: judicial review association agreements 52, 55 legal standing before the European Court/ Union's treaty-making powers 70-1 privileged applicant 193 CCP 57 original minimal role substantially exclusive competence 76-7 increased 9-10, 13, 19, 25 Union's treaty-making powers 70-1 Parliamentary powers 13-18 doctrine of implied (external) powers see budgetary powers 15, 25 under competences, Union exclusive competence of the Union 77-9 Commission, role in electing 17-18, 27 Committees of Inquiry, temporary 16 (ordinary) treaty-making procedure 37, elective powers 17-18 51-8 legislative powers 14-15, 37-8, 39 challenging "constitutionality" of draft see also legislation, Union agreements before conclusion 54 power to be consulted on Commission Council authorizing Union negotiator proposals before Council adoption 13 53, 56 President of Commission, electing 13, Council's central role in concluding 17, 27 international agreements 51-2 Question Time 16 European Parliament's role 15, 53, 54-6 role in concluding international initiation and negotiation 52-4 modification and suspension agreements 15 supervisory powers 15-17 (termination) 56-7 European Union signing and conclusion by Council 54-6 accession to ECHR 52, 55, 96 Union succession to Member State and fundamental rights see under agreements 52, 57-8 fundamental rights see also Common Foreign and Security actions against the Union: failure to act see Policy under European actions competences see competences, Union federalism duty to state reasons when adopting legislative conflicts, resolving 133-4 European law 190 political dualism 144 European actions see European actions subsidiarity as a political safeguard of history 1-2 international agreements see under subsidiarity as principle of cooperative external relations federalism 44 institutions 7-34 Union based on system of cooperative challenging "constitutionality" of draft federalism 150, 152, 159 international agreements 54 free movement of workers 232-43 Council see Council codification of workers' rights 235 Court of Justice see Court of Justice of direct effect of provisions 234-5 European Union justifying restrictions see under internal European Commission see Commission market: persons European Council see European Council material scope: discrimination and beyond European Parliament see European 239-43 Parliament direct and indirect discrimination 240-1 institutional framework of the Union equal treatment rights for migrant 7-9 workers 241 legislation see legislation, Union non-discriminatory restrictions to free original members 1 movement of workers 242-3 powers not inherent/not a sovereign body personal scope: workers and quasi-workers 59-60 235-9

Index 309

broad definition of concept of worker quasi-workers in past employment 238-9, 255 quasi-workers seeking future employment 239 remuneration, nature of 236-7 freedom of establishment 232-4, 241-2 justifying restrictions see under internal market: persons material scope: discrimination and beyond primary and secondary establishment 245-6 prohibited restrictions 246-7 personal scope: self-employed persons (and companies) 244-5 characteristic feature underlying personal scope 244-5 functional succession doctrine 52, 57-8 governing principles 58 fundamental rights 83-104 birth of European fundamental rights ECHR, significance of 87, 89-91 European standard - an 'autonomous' standard 87-91 fundamental human rights enshrined in European law 86 inspiration from common constitutional traditions of Member States 87-91 limitations, and "limitations on limitations" 91-3 national constitutional rights as indirect national fundamental rights/"mortgage theory" 85-6 relationship between national rights and European rights 86-7, 88-9 Charter of Fundamental Rights 96-101 codifying existing fundamental rights 97 explanations/commentary 97 (hard) rights and (soft) principles 98-100 limitations, and "limitations on limitations" 100-1 structure 97-8 "external" bill of rights: ECHR 101-4 after accession: (full) direct review of Union law 103-4 before accession: (limited) indirect review of Union law 102-3 significance of ECHR 87, 89-91, 101-2

foundational place in the Union 83–4 judicial review of Union legislation 191 national challenges and supremacy of European law see under (legal) supremacy sources of human rights 84 United Nations law: external limits to European human rights 93–6

Germany
judicial federalism 151
supremacy of European law and
competences limits 146–9
Constitutional Court's ultra vires
doctrine 147
national review for specific/manifest
violations of conferral principle

supremacy of European law and fundamental rights 134, 144–6 limited supremacy of European law, refined national perspective on 145–6 relative national limits to European law

144–5

hardcore restrictions 272, 276, 277, 280 harmonization competences complementary competences and

prohibition of harmonization 81–2 constitutional limits on scope of harmonization power 66–7 coordinating competences 81 harmonization competence: Article 114

harmonization competence: Article 114 TFEU 64, 65–7 shared competences 80

wide reading of competence previously employed 65–6 national laws affecting establishment or

functioning of internal market 65
Harvard School 269

horizontal agreements see under competition law: cartels human rights see fundamental rights

numan rights see fundamental rights

implied (external) powers doctrine see under competences, Union

imports *see under* customs duties; regulatory barriers

inter-brand and intra-brand competition 270–1, 274

internal market: goods 207-31



310 Index

internal market: goods (cont.) (legal) supremacy 133-49 constitutional regime for "common competences/ultra vires control 134-5 market" in goods 207-8 European perspective: absolute supremacy fiscal barriers: customs duties see custom 135-40 duties autonomous Union legal order/ fiscal barriers: discriminatory internal executive force of law not varying taxation see discriminatory internal Court's vision of supremacy of European law absolute 137-8, 144 regulatory barriers see regulatory barriers supremacy over internal law of Member internal market: persons 232-56 European citizenship: general right to States 135-8 move and stay 234, 251-6 supremacy over international treaties of Article 21(1) TFEU: a direct source of Member States 138-40 movement rights 252-4 supremacy of European law over Directive 2004/38: rights and limitations subsequent international agreements 254-6 139-40 free movement of workers see free supremacy of prior international movement of workers agreements over European law 138-9 freedom of establishment see freedom of Member States and Union perspectives on establishment supremacy 134-5 justifying restrictions on (self)-employed national courts invalidating European persons 247-51 law 146-7 express public interest justifications/ supremacy of European law absolute (implied) imperative requirements 137-8, 144 247-9 supremacy of European law relative 144 limitations on grounds of public policy/ national challenges: competences limits security/health 247, 256 146-9 public service exception 249-51 German Constitutional Court's ultra internal security of Member States 179-80, vires doctrine 147 national review for specific/manifest international agreements see under external violations of conferral principle relations 148-9 intra-brand and inter-brand competition national challenges: fundamental rights 270-1, 274 134, 144-6 Ioannina Compromise 24 limited supremacy of European law, refined national perspective on 145-6 judicial review see annulment actions: relative national limits to European law judicial review 144-5 resolution of legislative conflicts requiring legal certainty principle 191 hierarchy of norms 133-4 legal standing before the European Court supremacy and direct effect 133-4 supremacy's "executive" nature: 193-200 natural or legal persons/non-privileged disapplication, not invalidation applicants 194 140 - 3Lisbon formulation and its interpretative national courts' obligation to disapply problems 197-200 conflicting national law 140-2 Plaumann test/meaning of "direct and supremacy as "remedy" concerning individual concern" 196-7, 199-200 "executive force" of European law

142 - 3

legislation, Union 35-58

direct effect see direct effect

judicial review for ultra vires legislation

"regulatory" acts, meaning of 198-9

Rome formulation and its judicial

interpretation 194-7

semi-privileged applicants 193-4

privileged applicants 193



Index 311

ordinary legislative procedure 35-6, 37-42 coordinating competences 80-1 conciliation stage 38-9, 41 exclusive competences 76 constitutional practice: informal shared competences 79-80 trilogues 41-2 direct effect see direct effect constitutional theory: formal text 37-40 dualism and monism see dualism and European Parliament and Council as co-legislators 36 enforcement actions against Member first reading 37-8 States see under European actions proposal stage 37 financial sanctions against 182-3 second reading 38 free movement of workers see free signing and publication 39-40 movement of workers third reading 39 freedom of establishment see freedom of excursus: (ordinary) treaty-making establishment procedure 51-8 fundamental rights see fundamental rights challenging "constitutionality" of draft internal market agreements before conclusion 54 goods see customs duties; Council authorizing Union negotiator discriminatory internal taxation; 53, 56 regulatory barriers Council's central role in concluding persons see internal market: persons international agreements 51-2 international agreements European Parliament's role 15, 53, 54-6 challenging "constitutionality" of draft international agreements 54 initiation and negotiation 52-4 modification and suspension judicial review of international (termination) 56-7 agreements prohibited 187-8 signing and conclusion by Council 54-6 supremacy of European law over Union succession to Member State subsequent international agreements agreements 52, 57-8 139-40 supremacy of prior international principle of subsidiarity see subsidiarity, principle of agreements over European law special legislative procedure 36, 42-3 138-9 consent procedure and consultation Union succession to Member State agreements 52, 57-8 procedure 42-3 European Parliament or Council as judicial review of acts of Member States dominant institution 36, 42 prohibited 187-8 legitimate expectations 191 law and order and internal security letters of formal notice 180-1 179-80, 192 Luxembourg Compromise 24-5 legal standing before the European Court/ privileged applicants 193 market dominance see under competition legislation national Parliaments and "justified" law: abuse market-sharing clauses/hardcore restrictions draft legislation 45-8 272, 276, 277, 280 State liability and discretion in exercising legislative powers 175-7 markets see competition law: abuse; competition law: cartels national actions and national courts see Member States national actions competition law see competition law: national procedural autonomy principle abuse; competition law: cartels see under national actions and the Council national standards and regulatory barriers blocking Council decisions 24 see under proportionality principle coordinating economic policies 25 public service/State jobs 249-51 represented in the Council 19 sovereignty preserved by strict principle of conferral complementary competences 81-2



312 Index

Member States (cont.)	oligopolies 286
sovereign equality	collective dominance 287-90
and different sizes for national	Ombudsman see European Ombudsman
parliamentary delegations 10	open method of coordination 25
weighted votes in Council decision-	output-limiting clauses/hardcore restrictions
making 22–3	272, 276, 277, 280
supremacy of European law see (legal)	
supremacy	parallel conduct and concerted practices
Union revenue, fixing 15	265–6
minimum/fixed resale prices/hardcore restrictions 272, 276, 277, 280	parallel trade/hardcore restrictions 272–3, 276, 277, 280
monism see under dualism and monism	pattern-of-trade test 267-8
monopolies 286	"per se rules" 271–3
mutual recognition principle 222, 225	police and law enforcement in Member States 179–80, 192
national actions 150-77	prices and pricing
national courts applying European law/	discretionary/discriminatory pricing as
system of cooperative federalism 150	abusive behaviour 296-7
duty of sincere cooperation 150-1, 165	direct price discrimination 296
national procedural autonomy principle	discounts/rebates as indirect price
151	discrimination 296-7
autonomy never absolute 151-2	excessive pricing 292
principle of State liability as European	predatory pricing as abusive behaviour
remedy 152, 172-3	292-4
principles of equivalence and	rule/presumption for illegitimate
effectiveness as limitations on 152,	predatory pricing 292-3
165, 172–3	price-fixing/hardcore restrictions 272,
national remedies: equivalence and	276, 277, 280
effectiveness 152, 165-70, 172-3	private parties
effectiveness principle 165, 167-70	as European citizens see European
equivalence principle 165-7	citizenship
preliminary rulings: general aspects 151, 152-7	natural/legal persons, standing of <i>see</i> <i>under</i> legal standing before the
interpretation and application	European Court
distinguished 154	undertakings and markets see
jurisdiction of European Court 153-4	competition law: abuse; competition
legal nature of preliminary rulings	law: cartels
155-7	procedural irregularities see under annulment
procedure 152–3	actions: judicial review
relating to interpretation or validity of	professional bodies and associations 266
European law 153, 156, 163	proportionality principle
rulings binding on national court 155	fundamental rights 91-3
preliminary rulings: special aspects	as ground for judicial review 191-3
157-64	justifying draft legislative acts 45-6, 49
obligation to refer and "acte clair"	margin of appreciation/standard of review
162-4	192–3
"what": necessary questions 160-2	one of oldest general principles of Union
"who": national courts and tribunals	legal order 191
158–60	proportionality test 192, 229
State liability: the <i>Francovich</i> doctrine 152, 171–7	regulatory barriers and national standards 229–31
birth of <i>Francovich</i> doctrine 171–4 three conditions for State liability 173–7	acceptance of State's national standards 229–31

Index 313

meaning of proportionality 229 subsidiarity as a judicial safeguard 48-51 Sunday trading cases 154, 222-3 limited judicial review 49 subsidiarity as a political safeguard of reasoned opinions 180-1 federalism 45-8 refusal to supply 294-5 justifying draft legislative acts 45-6 "essential facilities" doctrine 295 monitoring of draft legislative acts by regulatory barriers national Parliaments 45-8 justifying regulatory barriers: Article 36 and trade agreements 267 and mandatory requirements supremacy of European law see (legal) supremacy implied justifications: mandatory requirements 227-8 taxation legitimate interests 226-7 customs duties and internal taxation 211 proportionality principle and national discriminatory internal taxation see discriminatory internal taxation standards 229-31 measures having an equivalent effect teleological interpretation 60, 61-4 (MEEQR) 219-24 amending original rule/method of incremental change 62 absolute standard pre-Keck 222-3 concept of MEEQR 219-20 Court interpreting Union legislation in Dassonville formula 220-1 teleological manner 63-4 distinction between product and equivalence principle 167 teleological interpretation adopted by requirements and "selling arrangements" 223-4 Union 62-3 exports 225-6 and ultra vires doctrine 147 unreasonable restrictions 221-2 trilogues system 41-2 nature of regulatory barriers 218 "tying and bundling" quantitative restrictions 218-26 as abusive behaviour 297-9 mutual recognition principle 222, 225 bundling 297-9 nature of quantitative restrictions 219 tying 297-8 quantitative restrictions on exports: Article 35 224-6 undertakings and markets see competition law: abuse; competition law: cartels quantitative restrictions on imports: Article 34 219 unilateral conduct/behaviour see under "rule of reason" 273-5 competition law: abuse and doctrine of ancillary restraints United Kingdom 274-5 dualist tradition 135 elections 12-13 self-employed persons see under freedom of judicial review 189 establishment; internal market: legislation 35-6 Parliament 59-60 persons sincere cooperation, duty of 150-1, 165 House of Lords 11 standing see legal standing before the Parliamentary sovereignty 135 European Court Question Time 16 State liability see under national actions rule of law, procedural definition of 189 subsidiarity, principle of 36-7, 43-51 Sunday trading cases 154, 222-3 development into constitutional principle Supreme Court 162 of the Union 44 **United Nations** definition 44-5 UN law: external limits to European national insufficiency test/comparative human rights 93-6 efficiency tests 44, 48-51 United States subsidiarity in a strict sense/subsidiarity competition law in a wide sense 44-5, 48-51 monopolies 282 nature of the principle 43 "per se rules" 272



314 Index

United States (cont.)

"rule of reason" 273

Constitution 68
federal system 150

House of Representatives 11
judicial review 189
rule of law, substantive definition of 189
taxation 15

vertical agreements *see under* competition law: cartels voting in Council *see under* Council individual right to vote and to stand as European Parliamentary candidate 13

workers see internal market: persons