Florence Thépot provides the first systematic account of the interaction between competition law and corporate governance. She challenges the ‘black box’ conception of the firm – or ‘undertaking’ – in competition law, as applied to increasingly complex corporate relations. The book opens the ‘black box’ of the firm to understand the internal drivers of collusive behaviour, and proposes a unified approach to cartel enforcement, based on the agency theory. It explores key issues including corporate compliance programmes, the attribution of liability in corporate groups, and structural links between competitors; and should be read by anyone interested in how the evolution of the corporate landscape impacts competition law.

Florence Thépot is a lecturer in competition law at the University of Glasgow and holds a PhD from University College London. Her research focuses on the law and economics of competition, with an emphasis on issues at the interface with corporate governance. She received the Young Writers’ Award from Kluwer Law International for an article on two-sided platforms. In 2014, she was an American Bar Association International Scholar in Residence.
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The Interaction Between Competition Law and Corporate Governance

OPENING THE ‘BLACK BOX’

FLORENCE THÉPOT
University of Glasgow
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Preface and Acknowledgements

This book is the outcome of a long journey, which I began as a PhD candidate at University College London in September 2010, and which I now complete as a lecturer in competition law at the University of Glasgow. This monograph is a structurally and substantially revised version of my PhD thesis, defended on 18 November 2014. The experience in teaching and research accumulated since then has enabled me to strengthen the theoretical contribution and to streamline the structure of my argument. The time span between the completion of my PhD and more recent work on my monograph allowed me to incorporate discussions of some issues that have gained significance in past years. This book thus discusses the issues of the anticompetitive effects of common ownership by institutional investors, and dedicates substantial developments to the question of liability attribution in corporate groups. This book reflects the law as it stood, to the best of my knowledge, on 31 May 2018. All the URLs were also accurate as of this date.

This book would not have seen the light of day without the support and guidance of a number of people. First, I am extremely grateful to my primary PhD supervisor, Professor Ioannis Lianos, for his firm and active guidance throughout this journey. My work greatly benefited from his immense academic knowledge and his highly innovative thinking. His steering of a very dynamic and international community of competition scholars has also played a very significant role in my development as an academic researcher. I would like to thank Professor Florian Wagner-von Papp, my secondary supervisor, for our very helpful discussions on key themes of my research, during my PhD and beyond. I was honoured to have my PhD examiners, Professor Andreas Stephan and Professor William Kovacic, engage with my research. I would like to thank them for their detailed comments on my work and for a very fruitful viva discussion that has enriched my research and greatly benefited this monograph.

Specific parts of this project also benefited from the expertise of a number of people. Special thanks go to Joe Murphy for our very interesting discussions on corporate compliance programmes throughout the years. I am also very grateful to Dr Marc Moore for his insightful feedback on the corporate governance aspects of
my research. To Professor Alison Diduck and Professor Valentine Korah, I give many thanks for providing very helpful comments on my research project at its very beginning. I owe special gratitude to the Section of Antitrust Law of the American Bar Association for funding a three-month research visit to Georgetown University Law Center, as part of the framework of the International Scholar-in-Residence Programme in 2014. I am particularly grateful to Professor Andy Gavil for the very warm welcome I was given, for making all the introductions and for providing me with the opportunity to present my work at the Federal Trade Commission. I would also like to express my gratitude to Clare Sandford for detailed proofreading of my thesis, and to Lisa Creevy for her excellent research assistance.

Revision of my thesis to transform it into this book took place within the very stimulating and supportive working environment of the School of Law, University of Glasgow. I often found inspiration contemplating the unique scenery of Professors’ Square, and the myriad colours of the sky and of the Clyde. I will always be grateful to my colleagues and friends Professor Rosa Greaves and Professor Mark Furse for their tremendous support in every aspect of my academic career since my very first day. I thank them for their very helpful reading of some parts of this book. I wish also to thank all my colleagues who steered me, with practical and moral support, through the writing process, with special mention to my friends Maria and James. This book is a tale of different institutions and cities. I want to thank all the people and friends who have been part of this exciting adventure, in London (UCL), Washington DC (Georgetown), Strasbourg (BETA) and Munich (Max Planck Institute for Innovation and Competition).

On a more personal note, I would like to thank my godfather, Richard, for guiding me since the very beginning of my academic adventure. I profoundly thank my mother, Véronique, for her genuine support and special attention along the way, and my father, Jacques, for inspiring and advising me at all stages, as well as for reading my work with detailed interest. I also would like to thank my siblings, and my new family in Boofzheim, for their continuous support in every aspect of this adventure. Finally, I wish to dedicate this book to my husband, Thibault. I am immensely grateful for his unconditional support and love. Thanks to him, this has been a beautiful journey.

The wooden-box of the cover image is hand-crafted by Thibault, and the picture taken by us with the River Clyde in Glasgow as background.
Abbreviations

AAMS Amministrazione Autonoma des Monopoli di Stato
ABA American Bar Association
ASV Axel Springer Verlag
AVG Aschaffenburger Versorgungs GmbH
CAT Competition Appeal Tribunal
CC Competition Commission
CDDA Company Directors Disqualification Act 1986 (UK)
CDO competition disqualification order
CEO chief executive officer
CMA Competition and Markets Authority
D&O director and officer insurance
DG COMP Directorate-General for Competition
DoJ US Department of Justice
EEA European Economic Area
EU European Union
FBI Federal Bureau of Investigation
FTC Federal Trade Commission
GmbH Gesellschaft mit beschränkter Haftung
GWB Gesetz gegen Wettbewerbsbeschränkungen
ICC International Chamber of Commerce
ISO International Organization for Standardization
NBA National Basketball Association
NFL National Football League
NFLP National Football League Properties
NGO non-governmental organisation
OECD Organisation for Economic Cooperation and Development
OFT Office of Fair Trading (UK)
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