

INDEX

- Absolute territorial protection, 124, 130–1
- Abuse
 - overview, 15, 16
 - annulment proceedings
 - administrative action, 161
 - mergers compared, 161–2
 - other decisions, 166–7
 - prohibition decisions, 162–6
 - Areeda-Turner test, 155
 - “as efficient competitor” test, 155–6
 - bundling, 211, 253, 295–8
 - case selection, 177–8
 - consistency of competition law and, 312–13
- ECJ and
 - annulment proceedings, 166–7
 - case selection, 177–8
 - consistency of competition law in, 312–13
 - enforcement principles, 175–6
 - horizontal issues, 157–8
 - joint analysis, 171–3
 - preliminary references, 168–70
 - prohibition decisions, 162–6
 - resilience of case law and, 308, 309
 - variation in behaviour in EU Courts, 305, 310, 311
- European Commission and
 - annulment proceedings, 161–2, 166–7
 - case selection, 177–8
 - economic principles and, 176
 - exclusionary versus exploitative conduct, 174
 - expansive authority of, 173, 175
 - joint analysis, 171–3
 - preliminary references, 168
 - prohibition decisions, 162–6
 - rules versus standards, 174
 - unstructured tests, 173–4
- exclusionary conduct and, 152–3, 154–6, 174
- exclusive dealing (*See* Exclusive dealing)
- exploitative conduct and, 152, 156–7, 174
- General Court and
 - annulment proceedings, 166–7
 - case selection, 177–8
 - consistency of competition law in, 312–13
 - enforcement principles, 175–6
 - prohibition decisions, 162–6
 - variation in behaviour in EU Courts, 305, 310, 311
- horizontal issues, 157–8
- intellectual property and, 160
- joint analysis, 171–3
- leveraging
 - bundling, 211
 - legal tests for, 211–12
 - mixed bundling, 211
 - refusal to deal (*See* Refusal to deal)
 - tying, 211, 212
- margin squeeze practices, 160
- margin squeeze practices as, 160, 172–3, 174, 300, 301–2, 305
- mixed bundling, 211
- “no economic sense” test, 155
- predatory pricing (*See* Predatory pricing)
- preliminary references, 168–71
- preliminary rulings, 215–18
- prima facie cases, 153–4, 158–60
- prohibition decisions, 162–6, 212–15
- rebates, 158–60
- refusal to deal (*See* Refusal to deal)

- Abuse (cont.)
 - Regulation 1/2003 and, 161–2
 - rules and
 - overview, 154
 - predatory pricing, 159–60
 - rebates, 158–60
 - standards versus, 174
 - scope of analysis, 79
 - scope of TFEU, 152–3
 - “soft trigger” in, 173–4, 175
 - standards and
 - overview, 160–1
 - rules versus, 174
 - substantive choices
 - overview, 153–4
 - exclusionary conduct and, 154–6
 - exploitative conduct and, 156–7
 - tying, 211, 212, 295–8, 313
- Accuracy versus administrability
 - balance between, 29
 - rules versus standards, 29–32
- Administrative action
 - overview, 11
 - abuse and, 161
 - collective dominance, 245
 - endogenous constraints and, 71–2
 - refusal to deal, 203–7
 - repeated interactions and, 71–2
- Agreements
 - overview, 15–16
 - distribution agreements (*See* Distribution agreements)
 - future research agenda, 331–2
 - horizontal agreements (*See* Horizontal agreements)
 - joint purchasing agreements, 135–6
 - licensing agreements (*See* Licensing agreements)
 - pay-for-delay agreements, 282–3
 - restriction of competition by, 91–4
 - specialisation agreements, 132–3, 139
- Analytical framework of
 - competition law
 - overview, 21
 - abuse (*See* Abuse)
 - institutional framework (*See* Institutional framework of competition law)
 - mergers (*See* Mergers)
 - research questions, 79–80
 - restriction of competition (*See* Restriction of competition)
 - scope of analysis, 79
 - structure of study, 80–1
 - substantive law (*See* Substantive competition law)
- Ancillary restraints, 117–22
 - ECJ and, 117–18, 119–22
 - European Commission and, 117–19
 - franchising agreements and, 120
 - freedom of action and, 118, 121–2
 - goodwill and, 118
 - prima facie cases, 117–18, 120
- Annulment proceedings
 - abuse
 - administrative action, 161
 - mergers compared, 161–2
 - other decisions, 166–7
 - prohibition decisions, 162–6
 - mergers
 - overview, 229–32
 - abuse compared, 161–2
 - Regulation 139/2004, 231
 - Regulation 4064/89, 231
 - restriction of competition
 - commitment decisions, 101–2
 - exemption decisions, 98–102
 - negative clearance decisions, 98–102
 - prohibition decisions, 94–8
- Appeals. *See* Judicial review
- Areeda, Phillip, 155, 202
- Areeda-Turner test, 155, 179, 187
- “As efficient competitor” test, 155–6
- Bias. *See* Prosecutorial bias
- Block Exemption Regulation, 127–8, 139, 263, 276–7
- Bork, Robert, 48
- Briones, Juan, 242–3
- Bundling, 211, 253, 295–8

- Cartels
 - fact-intensive cases, 64, 89–90
 - finest, 333–4
 - future research agenda, 333–4
 - horizontal agreements and, 141–2
 - prohibition decisions and, 94
 - restriction of competition by
 - object, 16
 - single continuous infringement, 333
- Case-by-case assessment
 - collective dominance, 240–1, 243
 - in ECJ, 314–16
 - economic analysis and, 44
 - in European Commission, 261, 275
 - exclusive dealing, 314–15
 - in General Court, 314–16
 - horizontal agreements, 141–2
 - non-collusive oligopolies, 261
 - predatory pricing, 315–16
 - under Regulation 139/2004, 35
 - standard-based analysis and, 38–40
 - territorial licensing, 127
- Categorisation of practice, 34–5
- Checklist approach. *See* Case-by-case assessment
- “Chicago School,” 43
- Chief Competition Economist, 246
- Collective dominance
 - administrative practice, 245
 - Airtours*, 242–5, 322
 - assessment of, 239
 - case-by-case assessment, 240–1, 243
 - ECJ and, 238–9, 241, 245
 - economic analysis and, 242–6
 - effective competition, impeding, 238
 - European Commission and, 237–42
 - Airtours*, 242–3, 322
 - discretion of, 241–2
 - interpretation of Regulation 4064/89, 239–41
 - scope of powers, 239
 - General Court and, 238–9, 241–2, 244–5
 - institutional developments, 245–6
 - market position and, 238–9
 - probability of anticompetitive effects, 243
 - Regulation 4064/89 and, 237–42
 - applicability of, 241
 - interpretation of, 239–41
 - tacit collusion and, 237–8, 239, 241–3, 244–5
- Collusion
 - explicit collusion, 32–3
 - non-collusive oligopolies (*See* Non-collusive oligopolies)
 - restriction of competition and, 89
 - tacit collusion (*See* Tacit collusion)
- Commitment decisions
 - in ECJ, 98–102
 - energy markets and, 299
 - in European Commission
 - overview, 70–1, 98–102, 287–8, 299
 - analysis of, 291–8
 - context of, 298–9
 - contradiction of Guidance Paper, 295–8
 - controversy regarding, 288–90
 - departure from case law, 290–1, 293–4
 - expansion of case law, 295
 - institutional consequences of, 289–90
 - prevalence of, 288
 - refusal to deal, 291–3
 - reviewability of, 290–1, 330
 - substantive law and, 288–9
 - table, 325–7
 - in General Court, 98–102
 - horizontal agreements and, 143–4
 - prosecutorial bias and, 53–4
 - Regulation 1/2003 and, 101–2, 287–8, 289–90
 - restriction of competition, 101–2
 - tying and, 295–8
- Competition and Markets Authority (UK), 335
- Competition Appeal Tribunal (UK), 335
- Comprehensive approach of study, 19–21
- Concerted practice, future research agenda, 331–3

- Consistency of competition law
 overview, 11–12, 25
 abuse and, 312–13
 dynamic dimension of, 27–8
 in ECJ
 abuse and, 312–13
 case-by-case assessment, 315–16
 exclusive dealing and, 314
 frictions in case law, 311–14
 indirect or implicit approach, 317
 individual outcomes versus, 317
 mergers and, 313–14
 rules versus standards, 312
 in specialised cases, 318
 stability and, 316
 static inconsistency, 312–13
 tying and, 313
 in European Commission, 277–9
 in General Court
 abuse and, 312–13
 case-by-case assessment, 315–16
 exclusive dealing and, 314
 frictions in case law, 311–14
 indirect or implicit approach,
 317
 individual outcomes versus, 317
 mergers and, 313–14
 rules versus standards, 312
 in specialised cases, 318
 stability and, 316
 static inconsistency, 312–13
 tying and, 313
 incoherence, 25
 intertemporal dimension of, 27–8
 mergers and, 313–14
 opportunistic behaviour and, 28
 pre-commitment devices and, 28
 Regulation 1/2003 and, 12
 static dimension of, 25–7
 substantive inconsistencies, 329–30
 tying and, 313
 in US, 337
 Constructive refusal to deal, 207–10
 Cour d'appel de Paris (France), 335
 Court-agency relationship, 339–40
 Court of Justice of the European Union
 (CJEU), 44, 55
 Curial deference. *See* Deference
- Darmon, Marco, 129
 Deference
 overview, 7–8, 10–11
 in CJEU, 55, 61
 defined, 62
 due process and, 7–8
 in ECJ
 overview, 61
 legal tests and, 306
 variation in behaviour of EC
 Courts, 304, 307–8, 310, 311
 erroneous decision-making resulting
 from, 58–60
 in European Commission, 61
 in General Court
 overview, 57, 61
 legal tests and, 306
 variation in behaviour of EC
 Courts, 304, 307–8, 310, 311
 institutional framework of
 competition law and, 54–7
 interplay with substantive law,
 58–61
 as substantive matter, 60–1
 Delgado, Juan, 338
 Dethmers, Frances, 254
 Díaz, González, 242
 Digital Single Market, 51, 298
 Directorate General for
 Competition, 51
 Distribution agreements
 ancillary restraints, 117–22
 ECJ and, 117–18, 119–22
 European Commission and,
 117–19
 franchising agreements and,
 120
 freedom of action and, 118,
 121–2
 goodwill and, 118
 prima facie cases, 117–18, 120
 exclusive dealing, 112–17
 ECJ and, 114–15, 308–9
 European Commission and,
 112–14, 115–17
 freedom of action and, 112–13,
 114, 115–17
 General Court and, 117

- market access and, 114–15, 117
- prima facie cases, 114
- exclusive distribution, 109–12
 - ECJ and, 109–12
 - European Commission and, 109–12
 - exemptions, 111–12
 - intra-brand competition, 109–10
 - parallel trade, 110–12
 - restriction by effect, 110
 - restriction by object, 109–10
 - “severity of clauses,” 110
- Dodoo, Ninette, 254
- Dominant position
 - overview, 15–16
 - mergers and, 234–5
 - predatory pricing and, 178–80, 181–2, 183–4, 185
 - refusal to deal and, 198–203
 - Regulation 4064/89 and, 234–5
- Due process
 - overview, 6–8
 - deference and, 7–8
 - fundamental rights analysis, 7
 - prosecutorial bias and, 7–8, 49–54
 - substantive law, effect on, 7
- EC. *See* European Commission (EC)
- ECHR. *See* European Convention on Human Rights (ECHR)
- ECJ. *See* European Court of Justice (ECJ)
- Economic Advisory Group on Competition Policy, 246
- Economic analysis in competition law
 - overview, 13
 - case-by-case assessment and, 44
 - collective dominance and, 242–6
 - in ECJ, 321–4
 - in European Commission, 72–3, 195–6, 236, 279–80, 321–4
 - evolution of law and, 328–9
 - exclusive dealing and, 195–6
 - as exogenous constraint, 72–3, 77–8, 330
 - in General Court, 321–4
 - intervention and, 42–3
 - judicial review and, 321–4
 - mergers and, 236
 - non-horizontal mergers and, 255–6
 - rules versus standards, 41–4
 - scepticism toward, 329
- ECtHR. *See* European Court of Human Rights (ECtHR)
- Efficiency offenses, non-horizontal mergers and, 249–51
- Electricity markets, commitment decisions and, 299
- Endogenous constraints
 - overview, 18–19
 - administrative action and, 71–2
 - in European Commission, 61–2, 72, 279
 - exogenous constraints versus, 330
 - prima facie cases and, 18–19
- Energy markets, commitment decisions and, 299
- EU Courts. *See* European Court of Justice (ECJ); General Court (GC)
- European Broadcasting Union (EBU), 137–8
- European Commission (EC)
 - overview, 4, 9–10
 - abuse and
 - annulment proceedings, 161–2, 166–7
 - case selection, 177–8
 - economic principles and, 176
 - exclusionary versus exploitative conduct, 174
 - expansive authority of, 173, 175
 - joint analysis, 171–3
 - preliminary references, 168
 - prohibition decisions, 162–6
 - rules versus standards, 174
 - unstructured tests, 173–4
 - behaviour generally, 273, 280
 - Block Exemption Regulation, 127–8, 139, 263, 276–7
 - collective dominance and, 237–42
 - Airtours*, 242–3, 322
 - discretion of, 241–2
 - interpretation of Regulation 4064/89, 239–41
 - scope of powers, 239

- European Commission (cont.)
 commitment decisions in (*See*
 Commitment decisions)
 consistency of competition law in,
 277–9
 court-agency relationship, 339–40
 deference in, 61
 distribution agreements and
 ancillary restraints, 112–14, 115–17
 exclusive dealing, 112–14, 115–17
 exclusive distribution, 109–12
 ECJ, interaction with, 300–1
 economic analysis in, 72–3, 195–6,
 236, 279–80, 321–4
 effects, analysis of, 284–7
 endogenous constraints in, 61–2,
 72, 279
 enforcement instruments, 68–71
 enforcement powers, 330–1
 exclusive dealing and, 279
 in distribution agreements,
 112–14, 115–17
 economic analysis, 195–6
 Hoffmann-La Roche, 188–90
 rebates, 191, 196–7
 exemption decisions, 98–102
 exogenous constraints in, 61–2,
 72–3, 279
 expansion of scope, 24
 fact-intensive cases in, 64–5
 Green Paper on the Review of
 Regulation 4064/89,
 257–9, 261
 Guidance Paper, contradiction of,
 295–8, 301–2
 horizontal agreements and
 overview, 132–4, 136
 post-modernisation practice,
 140–4
 pre-modernisation practice, 136–8
 transition period, 139–40
 Horizontal Merger Guidelines, 223,
 238, 259
 individual enforcement
 instruments, 70
 institutional framework of
 competition law, centrality
 in, 44–9
 efficiency, 48–9
 institutional design, 45–7
 investigative and adjudicatory
 roles, combination of, 45–7
 public enforcement,
 predominance of, 45
 regulatory powers, 47–8
 intervention, rationale for, 66–7
 joint analysis involving, 105–6
 law-intensive cases in, 65–6
 legal evolution of, 61–3
 licensing agreements and
 overview, 122–3
 absolute territorial protection,
 130–1
 export prohibitions, 130
 no-challenge clauses, 128–9
 territorial licensing, 124, 127–8
 mapping behaviour of, 64–6
 margin squeeze practices and, 274
 mergers and
 overview, 69
 annulment proceedings, 229–32
 decisions, 69
 dominant position, 234–5
 economic analysis, 236
 expansion of scope of, 233–4
 institutional context, 227–9
 legal qualification of facts, 235–6
 legal tests, 235–6
 measure of anticompetitive effects,
 222–3
 probability of anticompetitive
 effects, 223–4
 rules versus standards, 219
 threshold of appreciability, 219–20
 national competition authorities
 (NCAs), interaction with,
 300, 302–3
 negative clearance decisions, 98–102
 negotiated outcomes, 70–1, 288
 1962 Notice, 122–3
 non-collusive oligopolies and
 case-by-case assessment, 261
 Regulation 139/2004, practice
 under, 260–5
 Non-Horizontal Merger Guidelines,
 245, 247

- non-horizontal mergers and
 - efficiency offenses, 249–51
 - GE/Honeywell*, 252–3
 - market structure, 255
 - standard of proof, 254
 - Tetra Laval/Sidel*, 251–2, 253–4
- non-individual enforcement
 - instruments, 70
- one-shot interactions
 - case-by-case assessment, 275
 - counterfactuals, 274–5
 - formal analysis, 275–6
 - qualified rules, 274
 - in repeated interactions
 - versus, 62–3
 - rules versus standards, 273–4
 - unstructured legal tests, 275
- ordoliberalism and, 279–80
- predatory pricing and
 - AKZO*, 178–80
 - dominant position, 178–80
 - expansion of *AKZO* rule, 181–5
 - Post Danmark I*, 186–7
- preliminary references in, 168, 280, 283–4, 285–6, 300–1
- private enforcement, encouragement of, 45
- prohibition decisions, 70–1, 97, 98
- prosecutorial bias in, 61
- refusal to deal and
 - Commercial Solvents*, 200
 - discretion of, 205–6
 - dominant position, 198–201
 - Magill*, 200–1
 - margin squeeze practices, 207–10
 - post-*Magill* law, 203–5
- Regulation 1/2003 and
 - overview, 280
 - centrality of, 46–7
 - national competition authorities (NCAs) and, 302–3
- repeated interactions in
 - one-shot interactions versus, 62–3
 - scope of Commission powers and, 276–7
- restriction of competition and
 - case selection, 109
 - effect versus object, 281–4
 - modern approach to enforcement, 108–9
 - traditional approach to enforcement, 107–8
- risk-averse strategies, 72
- risk-prone strategies, 72
- rules in, 67–8, 273–4, 277–9
- “soft trigger” versus “hard trigger,” 67–8
- standards in, 67–8, 273–4, 277–9
- European Convention on Human Rights (ECHR)
 - compatibility of competition law with, 12–13
 - deference under, 54–5
 - due process and, 6–7
 - prosecutorial bias and, 52–4
- European Council, mergers and, 232–4
- European Court of Human Rights (ECtHR)
 - case law as exogenous constraint, 78–9
 - deference in, 54–5
 - due process and, 6–7
 - prosecutorial bias and, 52–4
- European Court of Justice (ECJ)
 - overview, 20
 - abuse and
 - annulment proceedings, 166–7
 - case selection, 177–8
 - consistency of competition law in, 312–13
 - enforcement principles, 175–6
 - horizontal issues, 157–8
 - joint analysis, 171–3
 - preliminary references, 168–70
 - prohibition decisions, 162–6
 - resilience of case law and, 308, 309
 - variation in behaviour in EU Courts, 305, 310, 311
 - behaviour generally, 303–4
 - case-by-case assessment in, 314–16
 - collective dominance and, 238–9, 241, 245
 - commitment decisions, 101–2
 - consistency of competition law in
 - abuse and, 312–13
 - case-by-case assessment, 315–16

- European Court of Justice (cont.)
 exclusive dealing and, 314
 frictions in case law, 311–14
 indirect or implicit approach, 317
 individual outcomes versus, 317
 mergers and, 313–14
 rules versus standards, 312
 in specialised cases, 318
 stability and, 316
 static inconsistency, 312–13
 tying and, 313
 court-agency relationship, 339–40
 deference in
 overview, 61
 legal tests and, 306
 variation in behaviour of EC
 Courts, 304, 307–8, 310, 311
 distribution agreements and
 ancillary restraints, 117–18,
 119–22
 exclusive dealing, 114–15
 exclusive distribution, 109–12
 economic analysis in, 321–4
 European Commission, interaction
 with, 300–1
 exclusive dealing and
 consistency of competition law
 in, 314
 in distribution agreements,
 114–15
 Hoffmann-La Roche, 188–90
 rebates, 191–5, 197–8
 exemption decisions, 98–102
 exogenous constraints in
 economic analysis as, 77–8
 ECtHR case law as, 78–9
 formal analysis in, 306–7
 “gravity effect” and, 308–9
 horizontal agreements and
 overview, 134–6
 post-modernisation period, 142–3
 joint analysis involving, 105–6
 judicial review in
 clarity in, 320–1
 dynamic perspective on evolution
 of case law, 76–7
 economic analysis and, 321–4
 fundamental principles in, 319–20
 institutional framework and,
 318–19
 issues of law, 318
 lack of discretion, 74–5
 legal tests in, 320
 procedural context, 75–6
 legal evolution of, 61–3
 licensing agreements and
 overview, 123
 absolute territorial protection,
 130–1
 export prohibitions, 130
 no-challenge clauses, 128–30, 309
 territorial licensing, 124–7
 mapping behaviour of, 73–4
 mergers and
 annulment proceedings, 231
 consistency of competition law in,
 313–14
 dominant position, 234–5
 exogenous constraints, 236
 institutional context, 227–9
 legal qualification of facts, 235–6
 legal tests, 235–6
 probability of anticompetitive
 effects, 223–5
 temporal dimension, 226–7
 negative clearance decisions, 98–102
 non-horizontal mergers and, 251–2
 one-shot interactions in, 62–3, 306–7
 predatory pricing and
 AKZO, 181
 expansion of AKZO rule, 183–4
 formal analysis in, 306–7
 Post Danmark I, 187–8
 rules, 159
 preliminary references, 102–5,
 168–70, 308–9
 prohibition decisions, 94–8
 prosecutorial bias in, 61
 reasonableness versus correctness
 in, 62
 refusal to deal and
 Bronner, 202–3
 dominant position, 201–2
 formal analysis in, 307
 Magill, 201–2
 margin squeeze practices, 207–10

- repeated interactions in, 62–3
- resilience of case law in, 304–5, 307–9, 310–11
- restriction of competition and
 - case selection, 109
 - object versus effect, 35
 - resilience of case law and, 308
 - traditional approach to
 - enforcement, 107–8
 - variation in behaviour in EU Courts, 304–5, 310–11
- rules in, 312
- standards in, 314
- variation in behaviour in EU Courts
 - abuse and, 310, 311
 - deference and, 304, 307–8, 310, 311
 - formal analysis, 306–7
 - frequency of litigation, 311
 - mergers and, 304
 - one-shot interactions, 306–7
 - path dependence, 307–9
 - repeated interactions, 307–9
 - resilience of case law and, 307–9, 310–11
 - restriction of competition and, 304–5, 310–11
- Exclusionary conduct
 - abuse and, 152–3, 154–6, 174
 - prima facie cases, 154–6
 - restriction of competition and, 89
- Exclusive dealing
 - case-by-case assessment, 314–15
 - in distribution agreements, 112–17
 - ECJ and, 114–15, 308–9
 - European Commission and, 112–14, 115–17
 - freedom of action and, 112–13, 114, 115–17
 - General Court and, 117
 - market access and, 114–15, 117
 - prima facie cases, 114
- ECJ and
 - consistency of competition law in, 314
 - in distribution agreements, 114–15
 - Hoffmann-La Roche*, 188–90
 - rebates, 191–5, 197–8
 - European Commission and
 - in distribution agreements, 112–14, 115–17
 - economic analysis, 195–6
 - Hoffmann-La Roche*, 188–90
 - rebates, 191, 196–7
 - General Court and, 117, 197–8, 314
 - Hoffmann-La Roche*, 188–90
 - Intel*, 195–8
 - Post Danmark II*, 195–8
 - prima facie cases, 188–90, 191, 193–4
 - prohibition rule, expansion of, 191–5
 - rebates and, 188–90, 191–8
 - “soft trigger” in, 191
 - standards and, 197–8
- Exclusive distribution, 109–12
 - ECJ and, 109–12
 - European Commission and, 109–12
 - exemptions, 111–12
 - intra-brand competition and, 109–10
 - parallel trade and, 110–12
 - restriction by effect, 110
 - restriction by object, 109–10
 - “severity of clauses,” 110
- Exclusivity obligations, 57
- Exemption decisions, restriction of competition, 98–102, 147
- Exogenous constraints
 - overview, 18–19
 - in CJEU, 77–9
 - in ECJ
 - economic analysis as, 77–8
 - ECtHR case law as, 78–9
 - economic analysis as, 72–3, 77–8, 330
 - ECtHR case law as, 78–9
 - endogenous constraints versus, 330
 - in European Commission, 61–2, 72–3, 279
 - in General Court
 - economic analysis as, 77–8
 - ECtHR case law as, 78–9
 - mergers and, 236
- Explicit collusion, 32–3

- Exploitative conduct
 - abuse and, 152, 156–7, 174
 - prima facie cases, 156–7
- Export prohibitions, 130
- Fact-intensive cases
 - overview, 17
 - cartels, 64, 89–90
 - in European Commission, 64
 - horizontal agreements, 141–2
- “Fighting ships,” 182–3, 184–5, 186
- Focus of study, 14–17
- Foreclosure, non-horizontal mergers
 - and, 247–51, 252, 255–6
- Formal analysis, 306–7
- Formalism, 279–80, 328–9
- France, Cour d’appel de Paris, 335
- Franchising agreements, ancillary restraints and, 120
- Freedom of action
 - distribution agreements and ancillary restraints, 118
 - exclusive dealing, 112–13, 114, 115–17
 - horizontal agreements and, 133, 135–6
 - licensing agreements and, 122–3
 - territorial licensing and, 124, 125
- Future research agenda
 - overview, 331
 - agreements, 331–2
 - cartels, 333–4
 - concerted practice, 331–3
 - generalist courts, 335
 - institutional framework of
 - competition law, 334–5
 - national competition authorities (NCAs), 334–5
 - specialised courts, 335
 - substantive competition law, 331–4
 - tacit collusion, 332–3
 - transnational competition law, 338–9
 - US antitrust law, 336–8
- Gari, Gabriel, 230
- Gas markets, commitment decisions
 - and, 299
- General Court (GC)
 - overview, 20
 - abuse and
 - annulment proceedings, 166–7
 - case selection, 177–8
 - consistency of competition law in, 312–13
 - enforcement principles, 175–6
 - prohibition decisions, 162–6
 - variation in behaviour in EU Courts, 305, 310, 311
 - behaviour generally, 303–4
 - case-by-case assessment in, 314–16
 - collective dominance and, 238–9, 241–2, 244–5
 - commitment decisions, 101–2
 - consistency of competition law in
 - abuse and, 312–13
 - case-by-case assessment, 315–16
 - exclusive dealing and, 314
 - frictions in case law, 311–14
 - indirect or implicit approach, 317
 - individual outcomes versus, 317
 - mergers and, 313–14
 - rules versus standards, 312
 - in specialised cases, 318
 - stability and, 316
 - static inconsistency, 312–13
 - tying and, 313
 - court-agency relationship, 339–40
 - deference in
 - overview, 57, 61
 - legal tests and, 306
 - variation in behaviour of EC Courts, 304, 307–8, 310, 311
 - distribution agreements and, 117
 - economic analysis in, 321–4
 - exclusive dealing and, 117, 197–8, 314
 - exemption decisions, 98–102
 - exogenous constraints in
 - economic analysis as, 77–8
 - ECtHR case law as, 78–9
 - formal analysis in, 306–7
 - horizontal agreements and

- post-modernisation period, 142–3
- pre-modernisation practice, 136–8
- transition period, 139–40
- judicial review in
 - clarity in, 320–1
 - dynamic perspective on evolution of case law, 76–7
 - economic analysis and, 321–4
 - fundamental principles in, 319–20
 - institutional framework and, 318–19
 - issues of law, 318
 - lack of discretion, 74–5
 - legal tests in, 320
 - procedural context, 75–6
- legal evolution of, 61–3
- mapping behaviour of, 73–4
- mergers and
 - annulment proceedings, 231–2
 - consistency of competition law in, 313–14
 - dominant position, 234–5
 - exogenous constraints, 236
 - formal analysis in, 307
 - institutional context, 227–9
 - legal qualification of facts, 235–6
 - legal tests, 235–6
 - measure of anticompetitive effects, 222–3
 - probability of anticompetitive effects, 223–5
 - temporal dimension, 226–7
 - variation in behaviour in EU Courts, 304
- negative clearance decisions, 98–102
- non-horizontal mergers and
 - GE/Honeywell*, 252–3
 - market structure, 255
 - standard of proof, 254
 - Tetra Laval/Sidel*, 251–2, 253–4
- one-shot interactions in, 62–3, 306–7
- path dependence in, 307–9
- predatory pricing and
 - overview, 186
 - expansion of *AKZO* rule, 183–4, 185
- preliminary references, 102–5
- prohibition decisions, 94–8
- prosecutorial bias in, 61
- reasonableness versus correctness in, 62
- refusal to deal and, 205–7
- repeated interactions in, 62–3, 307–9
- resilience of case law in, 304–5, 307–9, 310–11
- restriction of competition and
 - case selection, 109
 - traditional approach to enforcement, 107–8
 - variation in behaviour in EU Courts, 304–5, 310–11
- rules in, 312
- standards in, 314
- variation in behaviour in EU Courts
 - abuse and, 305, 310, 311
 - deference and, 304, 306, 307–8, 310, 311
 - formal analysis, 306–7
 - frequency of litigation, 311
 - mergers and, 304
 - one-shot interactions, 306–7
 - path dependence, 307–9
 - repeated interactions, 307–9
 - resilience of case law and, 304–5, 307–9, 310–11
 - restriction of competition and, 304–5, 310–11
- Generalist courts, 335
- Gerard, Damien, 141
- Germany, territorial licensing in, 125–6
- Ginsburg, Douglas H., 335
- Goodwill, ancillary restraints and, 118
- “Gravity effect,” 308–9
- Green Paper on the Review of Regulation 4064/89, 257–9, 261
- Horizontal agreements
 - Block Exemption Regulation and, 139
 - cartels and, 141–2
 - case-by-case assessment, 141–2
 - commitment decisions and, 143–4
 - ECJ and
 - overview, 134–6
 - post-modernisation period, 142–3

- Horizontal agreements (cont.)
 - European Commission and
 - overview, 132–4, 136
 - post-modernisation practice, 140–4
 - pre-modernisation practice, 136–8
 - transition period, 139–40
 - fact-intensive cases, 141–2
 - freedom of action and, 133, 135–6
 - General Court and
 - post-modernisation period, 142–3
 - pre-modernisation practice, 136–8
 - transition period, 139–40
 - intellectual property and, 134–5
 - joint purchasing agreements and, 135–6
 - negative clearance decisions and, 133–4
 - non-compete obligations and, 134
 - post-modernisation practice, 140–4
 - pre-modernisation practice, 136–8
 - Regulation 1/2003 and, 140–1, 143–4
 - research and development and, 132–3, 139
 - restriction of competition and
 - by effect, 140–1
 - by object, 141–2
 - specialisation agreements and, 132–3, 139
 - trade marks and, 134–5
 - transition period, 139–40
- Horizontal Merger Guidelines, 223, 238, 259
- Hovenkamp, Herbert, 297
- Iacobucci, Edward, 338
- Ideology of competition law, 13–14
- Implications of study, 21–2
- Institutional framework of
 - competition law
 - overview, 3
 - context of, 8
 - deference and, 54–7
 - overview, 7–8, 10–11
 - erroneous decision-making
 - resulting from, 58–60
 - interplay with substantive law, 58–61
 - due process and, 6–8
 - deference and, 7–8
 - fundamental rights analysis, 7
 - prosecutorial bias and, 7–8, 49–54
 - substantive law, effect on, 7
 - effect on substantive law, 5–6
 - due process and, 7
 - lack of research on, 5–6
 - methodology of study, 6
 - US compared, 5
 - EU enforcement model and, 4–5
 - European Commission, centrality of, 44–9
 - efficiency, 48–9
 - institutional design, 45–7
 - investigative and adjudicatory roles, combination of, 45–7
 - public enforcement,
 - predominance of, 45
 - regulatory powers, 47–8
 - evolution of, 8–9
 - evolution of law and, 328–9
 - future research agenda, 334–5
 - interplay with substantive law
 - deference and, 58–60
 - prosecutorial bias and, 58–60
 - welfare analysis, 59–60
 - judicial review and, 319
 - non-collusive oligopolies and, 264
 - prosecutorial bias and, 49–54
 - overview, 10
 - in CJEU, 61
 - commitment decisions and, 53–4
 - concept of, 51
 - due process and, 7–8, 49–54
 - ECHR and, 52–4
 - ECtHR and, 52–4
 - erroneous decision-making
 - resulting from, 51–2, 58–60
 - in European Commission, 61
 - in General Court, 61
 - interplay with substantive law, 58–60

- investigative and adjudicatory
 - roles, combination of, 49–51
 - manifestations of, 51
 - sources of, 51
 - as substantive matter, 60–1
- restriction of competition (*See* Restriction of competition)
- US antitrust law and, 3–4
- Intellectual property
 - abuse and, 160
 - horizontal agreements and, 134–5
 - licensing agreements (*See* Licensing agreements)
 - preliminary references and, 105
 - trade marks, horizontal agreements and, 134–5
- Inter-brand competition
 - intervention and, 33
 - restriction of competition and, 87
- Intervention
 - collusion and, 32–3
 - economic analysis and, 42–3
 - inter-brand versus intra-brand competition, 33
 - rationale for, 32–3, 66–7
 - rules versus standards in, 67–8
- Intra-brand competition
 - exclusive distribution and, 109–10
 - intervention and, 33
 - restriction of competition and, 88–9
- Joint analysis
 - abuse, 171–3
 - restriction of competition, 105–6
- Joint purchasing agreements, 135–6
- Joliet, René, 109
- Judicial review
 - clarity in, 320–1
 - of commitment decisions, 290–1, 330
 - dynamic perspective on evolution of case law, 76–7
 - economic analysis and, 321–4
 - fundamental principles in, 319–20
 - institutional framework of competition law and, 318–19
 - issues of law, 318
 - lack of discretion, 74–5
 - legal tests in, 320
 - procedural context, 75–6
 - Regulation 1/2003 and, 319
- Kokkoris, Ioannis, 257
- Korah, Valentine, 117, 126
- Law-intensive cases
 - overview, 16–17
 - in European Commission, 65–6
 - restriction of competition, 94–7
- Leveraging
 - bundling, 211
 - legal tests for, 211–12
 - mixed bundling, 211
 - prima facie cases, 211
 - refusal to deal (*See* Refusal to deal)
 - tying, 211, 212
- Licensing agreements
 - overview, 122–3
 - absolute territorial protection, 124, 130–1
 - Coditel II*, 130–1
 - ECJ and
 - overview, 123
 - absolute territorial protection, 130–1
 - export prohibitions, 130
 - no-challenge clauses, 128–30, 309
 - territorial licensing, 124–7
 - Erauw-Jacquery*, 130
 - European Commission and
 - overview, 122–3
 - absolute territorial protection, 130–1
 - export prohibitions, 130
 - no-challenge clauses, 128–9
 - territorial licensing, 124, 127–8
 - export prohibitions, 130
 - freedom of action and, 122–3
 - no-challenge clauses, 128–30
 - ECJ and, 128–30, 309
 - European Commission and, 128–9
 - territorial licensing, 124–8
 - absolute territorial protection, 124, 130–1

- Licensing agreements (cont.)
 Block Exemption Regulation and, 127–8
 broad interpretation of, 126
 case-by-case assessment, 127
 ECJ and, 124–7
 European Commission and, 124, 127–8
 freedom of action and, 124, 125
 in Germany, 125–6
 “hard trigger” in, 126
 narrow interpretation of, 126–7
 open versus closed licences, 125
 prima facie cases, 126–7
 “soft trigger” in, 127
 Loyalty rebates, 191, 192–3, 197–8, 275
- Margin squeeze practices
 as abuse, 160, 172–3, 174, 300, 301–2, 305
 anticompetitive effects, 35, 285
 as constructive refusal to deal, 207–10
 defined, 207
 European Commission and, 274
- Market access, distribution agreements and, 114–15, 117
- Merger Regulation. *See* Regulation 139/2004
- Mergers
 annulment proceedings
 overview, 229–32
 abuse compared, 161–2
 case selection, 236–7
 challenged decisions, 266–9
 collective dominance (*See* Collective dominance)
 consistency of competition law and, 313–14
 dominant position and, 234–5
 ECJ and
 annulment proceedings, 231
 consistency of competition law in, 313–14
 dominant position, 234–5
 exogenous constraints, 236
 institutional context, 227–9
 legal qualification of facts, 235–6
 legal tests, 235–6
 probability of anticompetitive effects, 223–5
 temporal dimension, 226–7
 variation in behaviour in EU Courts, 304
 Horizontal Merger Guidelines, 223, 238, 259
 institutional context, 227–9

- legal qualification of facts, 235–6
- legal tests, 235–6
- measure of anticompetitive effects, 221–3
- non-collusive oligopolies (*See* Non-collusive oligopolies)
- non-horizontal mergers (*See* Non-horizontal mergers)
- prima facie cases, 219
- probability of anticompetitive effects, 223–5
- rules versus standards, 219
- scope of analysis, 79
- secondary legislation and, 232–3
- substantive choices
 - effects, 221
 - rules versus standards, 219
 - threshold of appreciability, 219–20
- temporal dimension, 226–7
- threshold of appreciability, 219–20
- Methodology of study
 - research questions, 79–80
 - scope of analysis, 79
 - structure of study, 80–1
- Mixed bundling, 211
- Monti, Mario, 41–2, 246, 248
- “More economic approach,” 41–2
- “More economics-based approach,” 41–2
- Morfe, Anna, 254
- Motta, Massimo, 195
- National competition authorities (NCAs), 46–7, 169–70, 300, 302–3, 334–5
- Negative clearance decisions
 - horizontal agreements and, 133–4
 - restriction of competition, 98–102, 147
- Negotiated outcomes, 70–1, 288
- No-challenge clauses, 128–30
 - ECJ and, 128–30, 309
 - European Commission and, 128–9
- “No economic sense” test, 155
- Non-collusive oligopolies
 - Block Exemption Regulation and, 263
 - econometric tools and, 264
 - efficiency defence and, 260–5
 - European Commission and
 - case-by-case assessment, 261
 - Regulation 139/2004, practice under, 260–5
 - Green Paper on the Review of Regulation 4064/89, 257–9, 261
 - institutional framework and, 264
 - “oligopoly gap”
 - overview, 256–7
 - closing of, 257–9
 - prima facie cases, 263–4
 - pro-competitive versus anti-competitive effects, 262, 263–4
 - proxies and, 265
 - Regulation 1/2003 and, 262–3
 - Regulation 139/2004 and
 - closing of “oligopoly gap,” 257–9
 - European Commission practice under, 260–5
 - Regulation 4064/89 and, 256–7
 - restriction of competition and, 262–3
 - safe harbours, lack of, 261–4
 - “significant impediment to effective competition” test, 259, 260
 - “substantial lessening of competition” test, 257
- Non-compete obligations, 118, 120, 134
- Non-horizontal mergers
 - bundling and, 253
 - ECJ and, 251–2
 - economic analysis and, 255–6
 - efficiency offenses and, 249–51
 - European Commission and
 - efficiency offenses, 249–51
 - GE/Honeywell*, 252–3
 - market structure, 255
 - standard of proof, 254
 - Tetra Laval/Sidel*, 251–2, 253–4
 - foreclosure and, 247–51, 252, 255–6
 - General Court and
 - GE/Honeywell*, 252–3
 - market structure, 255
 - standard of proof, 254
 - Tetra Laval/Sidel*, 251–2, 253–4
 - market structure and, 247, 251–2, 253–4, 255

- Non-horizontal mergers (cont.)
 Non-Horizontal Merger Guidelines,
 245, 247
 prima facie cases, 253
 pro-competitive versus anti-
 competitive effects, 247–9,
 251–2, 255–6
 Regulation 139/2004 and, 255
 Regulation 4064/89 and, 249–52,
 254–5
 scope of control, 246–9
 standard of proof and, 254
- Objective justification, 40–1
- Oligopolies. *See* Non-collusive
 oligopolies
- Operational benchmarks, 17–19
- Opportunistic behaviour, 28
- Ordoliberalism, 279–80
- Otero, Héctor, 338
- Padilla, Jorge, 242–3
- Parallel trade, exclusive distribution
 and, 110–12
- Patents, licensing agreements. *See*
 Licensing agreements
- Path dependence, 307–9
- Pay-for-delay agreements, 282–3
- Pérez-Asenjo, Eduardo, 338
- Plausibility, 36
- Pre-commitment devices, 28, 48
- Predatory pricing
 AKZO, 178–81
 Areeda-Turner test, 179
 in ECJ, 181
 in European Commission,
 178–80
 “hard trigger” in, 181
 “soft trigger” in, 180
 unstructured tests in, 180
 Areeda-Turner test, 179, 187
 case-by-case assessment, 315–16
 dominant position and, 178–80,
 181–2, 183–4, 185
 ECJ and
 AKZO, 181
 expansion of AKZO rule, 183–4
 formal analysis in, 306–7
 Post Danmark I, 187–8
 rules, 159
 European Commission and
 AKZO, 178–80
 dominant position, 178–80
 expansion of AKZO rule, 181–5
 Post Danmark I, 186–7
 expansion of AKZO rule, 181–5
 “fighting ships,” 182–3, 184–5, 186
 General Court and
 overview, 186
 expansion of AKZO rule,
 183–4, 185
 Post Danmark I, 185–8
 prima facie cases, 179–80
 rebates and, 185
 recalibration of principles, 185–8
 rules and, 159–60
 standards and, 160
- Preliminary references
 abuse, 168–71
 in ECJ, 102–5, 168–70, 308–9
 in European Commission, 168, 280,
 283–4, 285–6, 300–1
 in General Court, 102–5
 intellectual property and, 105
 restriction of competition, 101–2
- Presumptions, 36–7
- Price fixing, 90–1
- Prima facie cases
 overview, 17–18
 abuse, 153–4, 158–60
 ancillary restraints, 117–18, 120
 dynamic dimension of, 27–8
 endogenous constraints and,
 18–19
 exclusionary conduct, 154–6
 exclusive dealing, 114, 188–90, 191,
 193–4
 exclusivity obligations, 57
 exploitative conduct, 156–7
 intertemporal dimension of, 27–8
 leveraging, 211
 mergers, 219
 non-collusive oligopolies, 263–4
 non-horizontal mergers, 253
 predatory pricing, 179–80
 refusal to deal, 200, 203

- restriction of competition, 85–7
- rules and, 30, 35, 67
- standards and, 35
- territorial licensing, 126–7
- Prohibition decisions
 - abuse, 162–6, 212–15
 - cartels and, 94
 - in ECJ, 94–8
 - in European Commission, 70–1, 97, 98
 - in General Court, 94–8
 - restriction of competition, 94–8, 144–6
- Prosecutorial bias
 - overview, 10
 - in CJEU, 61
 - commitment decisions and, 53–4
 - concept of, 51
 - due process and, 7–8, 49–54
 - ECHR and, 52–4
 - in ECJ, 61
 - erroneous decision-making resulting from, 51–2, 58–60
 - in European Commission, 61
 - in General Court, 61
 - interplay between substantive law and institutional framework, 58–61
 - investigative and adjudicatory roles, combination of, 49–51
 - manifestations of, 51
 - sources of, 51
 - as substantive matter, 60–1
- Purpose of study, 9–11
- Qualified rules, 30, 274
- Quantity rebates, 191, 193–4, 196–7
- Rebates
 - exclusive dealing and, 188–90, 191–8
 - loyalty rebates, 191, 192–3, 197–8, 275
 - predatory pricing and, 185
 - quantity rebates, 191, 193–4, 196–7
 - rules and, 158–60
 - standards and, 160–1
- Refusal to deal
 - administrative action, 203–7
 - commitment decisions, 291–3
 - constructive refusal to deal, 207–10
 - dominant position and, 198–203
 - ECJ and
 - Bronner*, 202–3
 - dominant position, 201–2
 - formal analysis in, 307
 - Magill*, 201–2
 - margin squeeze practices, 207–10
 - European Commission and
 - Commercial Solvents*, 200
 - discretion of, 205–6
 - dominant position, 198–201
 - Magill*, 200–1
 - margin squeeze practices, 207–10
 - post-*Magill* law, 203–5
 - evolution of law, 198–203
 - General Court and, 205–7
 - indispensability and, 206
 - margin squeeze practices, 207–10
 - new products and, 205–7
 - post-*Magill* law, 203–7
 - prima facie cases, 200, 203
- Regulation 1/2003
 - abuse and, 161–2
 - commitment decisions and, 101–2, 287–8, 289–90
 - consistency of competition law and, 12
 - European Commission and
 - overview, 280
 - centrality of, 46–7
 - national competition authorities (NCAs) and, 302–3
 - horizontal agreements and, 140–1, 143–4
 - judicial review and, 319
 - negotiated outcomes and, 71, 288
 - non-collusive oligopolies and, 262–3
 - restriction of competition and, 281–2
- Regulation 139/2004
 - overview, 15, 21
 - annulment proceedings, 231
 - breadth of, 23–5
 - case-by-case assessment under, 35
 - expansion of scope of, 234
 - institutional context, 227–8

- Regulation 139/2004 (cont.)
 - non-collusive oligopolies and
 - closing of “oligopoly gap,” 257–9
 - European Commission practice under, 260–5
 - non-horizontal mergers and, 255
 - threshold of appreciability, 219–20
 - vagueness of, 23–5
- Regulation 4064/89
 - overview, 15, 21
 - annulment proceedings, 231
 - collective dominance and, 237–42
 - applicability of, 241
 - interpretation of, 239–41
 - dominant position and, 234–5
- Green Paper on the Review of Regulation 4064/89, 257–9, 261
- institutional context, 227–8
- legal qualification of facts and, 235–6
- legal tests and, 235–6
- non-collusive oligopolies and, 256–7
- non-horizontal mergers and, 249–52, 254–5
- Research and development, horizontal agreements and, 132–3, 139
- Restriction of competition
 - by agreements, 91–4
 - annulment proceedings
 - commitment decisions, 101–2
 - exemption decisions, 98–102
 - negative clearance decisions, 98–102
 - prohibition decisions, 94–8
 - bifurcated structure of TFEU, 85
 - case selection, 109
 - collusion and, 89
 - commitment decisions, 101–2
 - distribution agreements (*See* Distribution agreements)
- ECJ and
 - case selection, 109
 - object versus effect, 35
 - resilience of case law and, 308
 - traditional approach to enforcement, 107–8
 - variation in behaviour in EU Courts, 304–5, 310–11
- by effect
 - overview, 18, 85
 - distribution agreements and, 110
 - effects defined, 18, 39–40
 - in European Commission, 281–4
 - horizontal agreements and, 140–1
 - market power and, 281
 - object versus, 35, 281–4
 - rules versus standards, 35–8, 281
 - scope of analysis, 79
 - threshold of effects, 18
- European Commission and
 - case selection, 109
 - effect versus object, 281–4
 - modern approach to enforcement, 108–9
 - traditional approach to enforcement, 107–8
- exclusionary conduct and, 89
- exemption decisions, 98–102, 147
- formalism and, 329
- General Court and
 - case selection, 109
 - traditional approach to enforcement, 107–8
 - variation in behaviour in EU Courts, 304–5, 310–11
- growth in litigation involving, 107–8
- horizontal agreements (*See* Horizontal agreements)
- inter-brand competition and, 87
- intra-brand competition and, 88–9
- joint analysis, 105–6
- law-intensive cases, 94–7
- licensing agreements (*See* Licensing agreements)
- modern approach to enforcement, 108–9
- negative clearance decisions, 98–102, 147
- non-collusive oligopolies and, 262–3
- by object
 - overview, 16, 85
 - cartels, 89–90
 - distribution agreements and, 109–10
 - effect versus, 35, 281–4
 - in European Commission, 281–4

- horizontal agreements and, 141–2
- market power and, 281
- price fixing, 90–1
- principles from case law, 89–91
- rules versus standards, 35–8, 281
- scope of analysis, 79
- pay-for-delay agreements, 282–3
- preliminary references, 101–2
- preliminary rulings, 148–51
- prima facie cases, 85–7
- prohibition decisions, 94–8, 144–6
- Regulation 1/2003 and, 281–2
- rules versus standards, 35–8, 67–8, 85, 106–7, 281
- substantive choices, 85–7
- traditional approach to enforcement, 106–8
- vertical restraints, 108–9
- Ridyard, Derek, 256
- Rules
 - overview, 30
 - abuse and
 - overview, 154
 - predatory pricing, 159–60
 - rebates, 158–60
 - standards versus, 174
 - accuracy versus administrability, 29–32
 - in ECJ, 312
 - economic analysis and, 41–4
 - in European Commission, 67–8, 273–4, 277–9
 - in General Court, 312
 - mergers and, 219
 - predatory pricing and, 159–60
 - prima facie cases and, 30, 35, 67
 - qualified rules, 30, 274
 - rebates and, 158–60
 - restriction of competition and
 - effect versus object, 35–8, 281
 - standards versus, 35–8, 67–8, 85, 106–7, 281
 - standards versus
 - overview, 17–18
 - abuse, 174
 - accuracy versus administrability, 29–32
 - in ECJ, 312
 - economic analysis and, 41–4
 - in European Commission, 273–4
 - in General Court, 312
 - mergers, 219
 - restriction of competition, 35–8, 67–8, 85, 106–7, 281
- economic analysis and, 41–4
- in European Commission, 273–4
- in General Court, 312
- mergers, 219
- restriction of competition, 35–8, 67–8, 85, 106–7, 281
- in substantive competition law, 35–8
- under TFEU, 30
- unqualified rules, 30
- in US, 336–7
- Schlag, Pierre, 67
- Single continuous infringement, 333
- Siragusa, Mario, 127
- Specialisation agreements, 132–3, 139
- Specialised courts, 335
- Standards
 - overview, 30
 - abuse and
 - overview, 160–1
 - rules versus, 174
 - case-by-case assessment and, 38–40
 - in ECJ, 312
 - economic analysis and, 41–4
 - in European Commission, 67–8, 273–4, 277–9
 - exclusive dealing and, 197–8
 - in General Court, 314
 - mergers and, 219
 - predatory pricing and, 160
 - prima facie cases and, 35
 - rebates and, 160–1
 - restriction of competition and
 - effect versus object, 35–8, 281
 - rules versus, 35–8, 67–8, 85, 106–7, 281
 - rules versus
 - overview, 17–18
 - abuse, 174
 - accuracy versus administrability, 29–32
 - in ECJ, 312
 - economic analysis and, 41–4
 - in European Commission, 273–4
 - in General Court, 312
 - mergers, 219
 - restriction of competition, 35–8, 67–8, 85, 106–7, 281

- Standards (cont.)
 standard-based analysis, 38–40
 structured standards, 31
 in substantive competition law, 35–8
 under TFEU, 31
 unstructured standards, 31
 in US, 336–7
- Stone, Judd, 336
- Structured standards, 31
- Substantive competition law
 (See Abuse)
 accuracy versus administrability
 balance between, 29
 rules versus standards, 29–32
 breadth of, 23–5
 case-by-case assessment and, 38–40
 categorisation of practice, 34–5
 consistency of (See also Consistency
 of competition law)
 overview, 11–12, 25
 dynamic dimension of, 27–8
 incoherence, 25
 intertemporal dimension of, 27–8
 opportunistic behaviour and, 28
 pre-commitment devices and, 28
 static dimension of, 25–7
 deference and
 interplay with institutional
 framework, 58–61
 as substantive matter, 60–1
 effect of institutional framework, 5–6
 due process and, 7
 lack of research on, 5–6
 methodology of study, 6
 US compared, 5
 future research agenda, 331–4
 inconsistencies in, 329–30
 interplay with institutional
 framework
 deference and, 58–61
 prosecutorial bias and, 58–61
 welfare analysis, 59–60
 intervention, rationale for, 32–3
 mergers (See Mergers)
 objective justification, 40–1
 prosecutorial bias and
 interplay with institutional
 framework, 58–61
 as substantive matter, 60–1
 restriction of competition (See
 Restriction of competition)
 rules versus standards, 35–8
 standard-based analysis, 38–40
 vagueness of, 23–5
- Tacit collusion
 collective dominance and, 237–8,
 239, 241–3, 244–5
 explicit collusion versus, 32–3
 future research agenda, 332–3
- Territorial licensing, 124–8
 absolute territorial protection, 124,
 130–1
 Block Exemption Regulation and,
 127–8
 broad interpretation of, 126
 case-by-case assessment, 127
 ECJ and, 124–7
 European Commission and, 124,
 127–8
 freedom of action and, 124, 125
 in Germany, 125–6
 “hard trigger” in, 126
 narrow interpretation of, 126–7
 open versus closed licences, 125
 prima facie cases, 126–7
 “soft trigger” in, 127
- Theoretical framework, 21
- Trade marks, horizontal agreements
 and, 134–5
- Transnational competition law, 338–9
- Treaty of Rome, 180
- Treaty on the Functioning of the
 European Union (TFEU)
 abuse under (See Abuse)
 administrative action and, 11
 analytical framework and, 21
 breadth of, 23–5
 cartels under, 64
 CJEU and, 44, 55
 commitment decisions and, 53–4
 distribution agreements under (See
 Distribution agreements)
 ECJ and, 20
 enforcement instruments, 68–71
 exclusivity obligations and, 57

- focus of study and, 14–17
- licensing agreements under
 (See Licensing agreements)
- mergers under (See Mergers)
- practices under, 23
- procedural context of judicial review
 under, 75–6
- regulatory powers under, 47–8
- restriction of competition under
 (See Restriction of competition)
- rules under, 30
- standards under, 31
- static inconsistency under, 25–7
- vagueness of, 23–5
- Trebilcock, Michael, 338
- Tridimas, Takis, 230
- Turner, Donald F., 155
- Tying, 211, 212, 295–8, 313
- Type I errors, 4
- Undue deference. *See* Deference
- United Kingdom
 - Competition and Markets
 Authority, 335
 - Competition Appeal Tribunal,
 335
- United States
 - administrability of rules and
 standards, 336–7
 - antitrust law in, 3–4, 336–8
 - Clayton Act, 257
 - consistency of competition law
 in, 337
 - divergence from European
 competition law, 337–8
 - Federal Trade Commission (FTC),
 337–8
 - institutional framework of
 competition law, effect on
 substantive law, 5
 - private enforcement in, 45, 336–7
- Unqualified rules, 30
- Unstructured standards, 31
- Values of competition law, 13
- Veltrop, James, 117
- Verouden, Vincent, 87
- Vertical restraints, 65–6, 87, 103–5,
 108–9, 284
- Vesterdorf, Bo, 206, 207
- Wils, Wouter, 50, 51, 288
- Wright, Joshua D., 335, 336