

Contents

<i>Table of treaties and conventions</i>	<i>xiii</i>
<i>Table of EU legislation</i>	<i>xiv</i>
<i>Table of statutes</i>	<i>xviii</i>
<i>Table of statutory instruments</i>	<i>xxii</i>
<i>Table of competition commission reports</i>	<i>xxv</i>
<i>Table of OFT reports, decisions and publications</i>	<i>xxvii</i>
<i>Table of cases</i>	<i>xxviii</i>
<i>List of abbreviations</i>	<i>lxix</i>
1 Competition policy and economics	1
1. Introduction	1
2. Overview of the Practices Controlled by Competition Law	2
3. The Theory of Competition	3
4. The Function of Competition Law	19
5. Market Definition and Market Power	25
2 Overview of EU and UK competition law	49
1. Introduction	49
2. EU Law	49
3. UK Law	58
4. The Relationship Between EU Competition Law and National Competition Laws	75
5. The Institutional Structure of EU and UK Competition Law	79
3 Article 101(1)	82
1. Introduction	82
2. Undertakings and Associations of Undertakings	83
3. Agreements, Decisions and Concerted Practices	99
4. The Object or Effect of Preventing, Restricting or Distorting Competition	115
5. The <i>De Minimis</i> Doctrine	140
6. The Effect on Trade Between Member States	144
7. Checklist of Agreements That Fall Outside Article 101(1)	149

4 Article 101(3)	151
1. Introduction	151
2. The Article 101(3) Criteria	155
3. Regulation 1/2003	166
4. Block Exemptions	168
5 Article 102	173
1. Introduction	173
2. The Commission's <i>Guidance on Article 102 Enforcement Priorities</i>	174
3. Undertakings	177
4. The Effect on Inter-State Trade	178
5. Dominant Position	179
6. A Substantial Part of the Internal Market	189
7. Small Firms and Narrow Markets	190
8. Abuse	192
9. Defences	210
10. The Consequences of Infringing Article 102	214
6 The obligations of Member States under the EU competition rules	215
1. Introduction	215
2. Article 4(3) TEU – Duty of Sincere Cooperation	216
3. Article 106 TFEU – Compliance with the Treaties	222
4. Article 37 TFEU – State Monopolies of a Commercial Character	245
5. Articles 107 to 109 TFEU – State Aids	246
7 Articles 101 and 102: public enforcement by the European Commission and national competition authorities under Regulation 1/2003	248
1. Overview of Regulation 1/2003	250
2. The Commission's Enforcement Powers under Regulation 1/2003	251
3. Regulation 1/2003 in Practice	288
4. Judicial Review	290
8 Articles 101 and 102: private enforcement in the courts of Member States	295
1. Introduction	295
2. Actions for an Injunction and/or Damages	297
3. Damages Actions in the UK Courts	306

4. Competition Law as a Defence	319
5. Arbitration	325
6. Proposals for Reform	327
9 Competition Act 1998 – substantive provisions	330
1. Introduction	330
2. The Competition Act 1998 – Overview	331
3. The Chapter I Prohibition	333
4. The Chapter II Prohibition	360
5. ‘Governing Principles Clause’: Section 60 of the Competition Act 1998	369
6. The Competition Act 1998 in Practice	374
10 Competition Act 1998 and the cartel offence: public enforcement and procedure	393
1. Introduction	393
2. Inquiries and Investigations	394
3. Complaints and Super-Complaints	402
4. Opinions and Informal Advice	403
5. Enforcement	404
6. The Cartel Offence and Company Director Disqualification	424
7. Concurrency	437
8. Appeals	439
9. Article 267 References	449
11 Enterprise Act 2002: market studies and market investigations	451
1. Introduction	451
2. Overview of the Provisions on Market Investigation References	452
3. Super-Complaints	454
4. OFT Market Studies	458
5. Market Investigation References	466
6. Public Interest Cases	474
7. Enforcement	474
8. Supplementary Provisions	477
9. The Market Investigation Provisions in Practice	479
10. Orders and Undertakings Under the Fair Trading Act 1973	486

12 The international dimension of competition law	487
1. Introduction	487
2. Extraterritoriality: Theory	488
3. The Extraterritorial Application of US Competition Law	491
4. The Extraterritorial Application of EU Competition Law	495
5. The Extraterritorial Application of UK Competition Law	501
6. Resistance to Extraterritorial Application of Competition Law	504
7. The Internationalisation of Competition Law	506
13 Horizontal agreements (1) – cartels	512
1. The Hardening Attitude of Competition Authorities Worldwide Towards Cartels	513
2. The European Commission’s Approach to Cartels	517
3. Horizontal Price Fixing	522
4. Horizontal Market Sharing	530
5. Quotas and Other Restrictions on Production	533
6. Collusive Tendering	536
7. Agreements Relating to Terms and Conditions	538
8. Exchanges of Information	539
9. Advertising Restrictions	547
10. Anti-Competitive Horizontal Restraints	550
11. UK Law	552
14 Horizontal agreements (2) – oligopoly, tacit collusion and collective dominance	559
1. Introduction	559
2. The Theory of Oligopolistic Interdependence	560
3. Article 101	567
4. Article 102 and Collective Dominance	571
5. UK Law	582
15 Horizontal agreements (3) – cooperation agreements	585
1. Introduction	585
2. Full-Function Joint Ventures	585
3. The Application of Article 101 to Horizontal Cooperation Agreements and the Commission’s <i>Guidelines on Horizontal Cooperation Agreements</i>	586

4. Information Agreements	592
5. Research and Development Agreements	592
6. Production Agreements	599
7. Purchasing Agreements	603
8. Commercialisation Agreements	605
9. Standardisation Agreements	607
10. Other Cases of Permissible Horizontal Cooperation	611
11. The Application of the Chapter I Prohibition in the UK Competition Act 1998 to Horizontal Cooperation Agreements	615
16 Vertical agreements	617
1. Introduction	617
2. The Distribution Chain	618
3. Vertical Integration	619
4. Commercial Agents	621
5. Vertical Agreements: Competition Policy Considerations	623
6. Vertical Agreements: Article 101(1)	628
7. Vertical Agreements: Regulation 330/2010	649
8. The Application of Article 101(3) to Agreements that do not Satisfy the Block Exemption	672
9. Regulation 461/2010 on Motor Vehicle Distribution	674
10. Sub-Contracting Agreements	676
11. UK Law	677
17 Abuse of dominance (1): non-pricing practices	681
1. Introduction	681
2. Exclusive Dealing Agreements	682
3. Tying	688
4. Refusal to Supply	697
5. Non-Pricing Abuses that are Harmful to the Internal Market	711
6. Miscellaneous Other Non-Pricing Abuses	712
18 Abuse of dominance (2): pricing practices	715
1. Introduction	715
2. Cost Concepts	716
3. Exploitative Pricing Practices	718

4. Rebates that have Effects Similar to Exclusive Dealing Agreements	728
5. Bundling	737
6. Predatory Pricing	739
7. Margin Squeezing	754
8. Price Discrimination	759
9. Pricing Practices that are Harmful to the Single Market	764
19 The relationship between intellectual property rights and competition law	767
1. Introduction	767
2. Licences of Intellectual Property Rights: Article 101	770
3. Technology Transfer Agreements: Regulation 772/2004	781
4. The Application of Article 101 to Other Agreements Relating to Intellectual Property Rights	791
5. Article 102 and Intellectual Property Rights	796
6. UK Law	806
20 Mergers (1) - introduction	809
1. Introduction	809
2. Terminology	809
3. Merger Activity	811
4. The Proliferation of Systems of Merger Control	812
5. Why Do Firms Merge?	813
6. What is the Purpose of Merger Control?	816
7. Designing a System of Merger Control	826
21 Mergers (2) - EU law	828
1. Introduction	828
2. Overview of EU Merger Control	829
3. Jurisdiction	833
4. Notification, Suspension of Concentrations, Procedural Timetable and Powers of Decision	855
5. Substantive Analysis	861
6. Remedies	884
7. Powers of Investigation and Enforcement	890
8. Judicial Review	891
9. International Cooperation	897
10. The EUMR in Practice	898

22 Mergers (3) – UK law	907
1. Introduction	907
2. Overview of UK Merger Control	908
3. The OFT's Duty to Make References	912
4. Determination of References by the CC	929
5. The 'Substantial Lessening of Competition' Test	932
6. Enforcement	941
7. Supplementary Provisions	949
8. The Merger Provisions in Practice	951
9. 'Public Interest Cases', 'Other Special Cases' and Mergers in the Water Industry	956
23 Particular sectors	962
1. Introduction	962
2. Nuclear Energy	962
3. Military Equipment	963
4. Agriculture	963
5. Coal and Steel	967
6. Transport	967
7. Regulated Industries	977
8. Electronic Communications	980
9. Post	984
10. Energy	989
11. Water	991
<i>Bibliography</i>	993
<i>Index</i>	997