

CONTENTS

VOLUME I

<i>Editors and Contributors</i>	v
<i>Correspondent Editors</i>	vii
<i>Foreword</i>	ix
<i>Preface to the Sixth Edition</i>	xi
<i>Note on Citation</i>	xv
<i>Tables of Cases</i>	
1. <i>Alphabetical Table of Community Cases and Decisions</i>	xxxiii
2. <i>Numerical Table of European Court of Justice Cases</i>	ciii
3. <i>Numerical Table of Court of First Instance Cases</i>	cxxx
4. <i>Numerical Tables of Commission Merger and Joint Venture Decisions</i>	cxlvi
5. <i>Tables of European Court of Human Rights, EFTA Court and National Cases</i>	clvi
<i>Tables of Treaties and Legislation</i>	
6. <i>Table of EU/EC Treaties</i>	clxxi
7. <i>Table of EC Regulations</i>	clxxix
8. <i>Table of EC Directives</i>	cxcvii
9. <i>Table of EC and EEA Decisions</i>	cciv
10. <i>Tables of EC and EEA Notices, Guidelines and Other Informal Texts</i>	ccvi
11. <i>Tables of National Legislation</i>	ccxx
12. <i>Table of International Treaties, Conventions and Agreements</i>	ccxxiii
 1. The Treaty and its Territorial Reach	
1. Introduction	1.001
2. The Community Treaties	1.003
3. The EC Treaty	
(a) Generally	1.013
(b) The main competition provisions	1.018
(c) Other provisions of the Treaty	1.026
4. The Institutional Structure of the Community	
(a) The Community institutions	1.038

(b) The Community and EFTA Courts	1.045
(c) The Directorate-General for Competition	1.052
5. The Aims of the Community Rules on Competition	1.071
6. Territorial Ambit of EC Competition Rules	
(a) The Member States: enlargement	1.078
(b) The Member States: current geographic scope	1.084
(c) EFTA and the EEA	1.085
(d) Agreements between the Community and third countries	1.096
7. The Territorial Jurisdiction of the Community Institutions	1.105
(a) Trade into the Community from third countries	1.106
(b) Trade from the Community to third countries	1.107
(c) Jurisdiction over undertakings outside the Community	1.110
8. Effect on Trade between Member States	
(a) Generally	1.115
(b) Particular aspects	1.127
 2. Article 81(1)	
1. Introduction	2.001
2. Undertakings	
(a) Generally	2.003
(b) The State as an undertaking	2.007
(c) Treatment of economically linked legal entities	2.017
3. Agreements, Decisions and Concerted Practices	2.022
(a) Agreements	2.023
(b) Concerted practices	2.038
(c) Agreements and concerted practices: other issues	2.052
(d) Decisions by associations of undertakings	2.059
4. Restriction of Competition	2.062
(a) Some conceptual issues	2.063
(b) The main decisions	2.069
(c) The present law	2.094
5. Appreciable Effect on Competition	2.121
(a) Jurisprudence of the Community Courts	2.122
(b) Commission guidance	2.128
 3. Article 81(3)	
1. Introduction	3.001
2. Application in Individual Cases	
(a) Generally	3.013

(b) The first condition: economic and other benefits	3.020
(c) The second condition: fair share of benefits for consumers	3.052
(d) The third condition: indispensability of restrictions	3.059
(e) The fourth condition: no elimination of competition	3.062
3. Block Exemption	
(a) Generally	3.068
(b) Current block exemption regulations	3.076
(c) Withdrawal and disapplication	3.086
4. Article 53(3) of the EEA Agreement	3.090
4. Market Definition	
1. Introduction and Overview	4.001
(a) The concept of the relevant market	4.003
(b) Relevance of market definition in EC competition law	4.005
(c) Methodology for determining market definition	4.015
2. Product Market	
(a) Demand-side substitution	4.033
(b) Supply-side substitution	4.051
(c) Particular issues in determining the product market	4.059
3. Geographic Market	
(a) Overview	4.070
(b) Demand-side substitution	4.073
(c) Supply-side substitution	4.084
(d) Particular issues in determining the geographic market	4.088
4. Temporal Market	4.089
5. Market Definitions in Particular Sectors	4.091
5. Common Horizontal Agreements	
1. Introduction	5.001
2. Cartels and Other Covert Conduct	
(a) The Commission's approach to cartel activity	5.005
(b) Anatomy of a classic cartel	5.008
(c) Ancillary restrictions supporting cartel activity	5.012
3. Agreements on Prices and Trading Conditions	
(a) Price-fixing	5.015
(b) Agreements on other trading conditions	5.035

(c) Professional services	5.037
(d) Banking and payment services	5.041
4. Output Restrictions	5.048
5. Market-sharing and Customer Allocation	
(a) Generally	5.059
(b) Buying and selling among competitors	5.068
(c) Bilateral market-sharing	5.074
(d) Sharing access to infrastructure or facilities	5.078
(e) Other market-sharing	5.080
(f) Customer allocation	5.083
6. Information Exchange	5.084
7. Collective Trading Arrangements	5.097
(a) Boycotts and collective exclusive dealing	5.098
(b) Collective selling of goods	5.106
(c) Collective selling of intellectual property and media rights	5.111
(d) Joint tendering	5.120
(e) Collective buying of goods	5.124
(f) Collective buying of intellectual property and media rights	5.129
8. Trade Associations, Cooperatives and Exhibitions	5.133
(a) Membership rules	5.134
(b) Common standards	5.139
(c) Joint marketing	5.146
(d) Trade exhibitions and auctions	5.152
9. Sporting Bodies and Competitions	5.156
6. Vertical Agreements Affecting Distribution or Supply	
1. Introduction	6.001
2. Regulation 2790/99	6.010
(a) Scope	6.011
(b) Market share	6.017
(c) Terms and conditions	6.022
(d) Withdrawal and disapplication	6.025
3. Agency Agreements	6.028
4. Exclusive Distribution and Supply Agreements	
(a) Generally	6.039
(b) Application of Article 81(1)	6.044
(c) Application of Article 81(3) to individual agreements	6.079

5. Selective Distribution Systems	
(a) Generally	6.086
(b) Article 81(1)	6.089
(c) Application of Article 81(3)	6.104
(d) Motor vehicle distribution and servicing	6.108
6. Exclusive Purchasing, Single Branding and Tying	
(a) Generally	6.139
(b) Application of Article 81(1)	6.143
(c) Application of Article 81(3)	6.164
7. Franchising Agreements	
(a) Generally	6.171
(b) Application of Article 81(1)	6.173
(c) Regulation 2790/99 and franchise agreements	6.182
(d) Application of Article 81(3)	6.188
8. Subcontracting	6.189
9. Waste Packaging Recycling Arrangements	6.196
 7. Joint Ventures and Similar Collaborative Arrangements	
1. Introduction	7.001
(a) Definitions	7.002
(b) Article 81 and the Merger Regulation	7.011
(c) Jurisdictional categories	7.016
2. Developing Treatment of JVs under EC Competition Law	7.019
3. The Application of Article 81(1) to Joint Ventures	
(a) Generally	7.031
(b) Formation of the JV	7.035
(c) Actual or potential competitors	7.044
(d) 'Spill-over'	7.046
(e) Foreclosure	7.048
(f) Network effect	7.050
(g) Specific restrictions	7.052
4. Application of Article 81(3)	
(a) Introduction	7.056
(b) Application of the Article 81(3) conditions	7.058
(c) Duration of Article 81(3) protection	7.064
5. R & D Agreements	
(a) Generally	7.067
(b) Application of Article 81 to R&D agreements	7.070

(c) Regulation 2659/2000: the R&D block exemption	7.078
6. Specialisation/Production Agreements	
(a) Generally	7.087
(b) Assessment under Article 81	7.091
(c) Regulation 2658/2000: the specialisation block exemption	7.097
7. Joint Ventures in Practice	7.104
(a) Production joint ventures	7.105
(b) Infrastructure and natural resources projects	7.111
(c) TV and other media	7.115
(d) Fixed and mobile telecommunications	7.121
(e) E-commerce platforms	7.128
(f) Airline alliances	7.133
 8. Merger Control	
1. Introduction	
(a) Summary	8.001
(b) Commission guidance	8.008
(c) Case law and statistics	8.010
2. Jurisdictional Scope of the Merger Regulation	
(a) Overview of ‘one-stop shop’ principle	8.012
(b) Concentrations	8.015
(c) Full-function joint venture undertakings	8.052
(d) Community dimension	8.060
(e) Pre-notification reallocation of jurisdiction	8.081
(f) Post-notification reallocation of jurisdiction	8.091
(g) National investigations on grounds other than competition	8.101
3. Procedure	
(a) In general	8.106
(b) Initial Phase I investigation	8.133
(c) In-depth Phase II investigation	8.141
(d) Commitments to enable clearance	8.162
(e) Commission’s powers of investigation	8.172
(f) Commission’s powers of sanction	8.178
4. Substantive Appraisal of Concentrations	
(a) In general	8.183
(b) Market definition	8.186
(c) SIEC test	8.192
(d) Unilateral effects	8.203
(e) Coordinated effects	8.209

(f) Vertical and conglomerate effects	8.216
(g) Other considerations relevant to substantive appraisal	8.225
(h) Coordinative aspects of certain full-function joint ventures	8.232
5. Judicial Review by the Community Courts	
(a) Procedures	8.235
(b) Acts of the Commission which may be appealed	8.238
(c) Persons entitled to appeal	8.239
(d) Scope of judicial review	8.244
(e) Standard of proof incumbent on Commission	8.253
(f) Consequences of annulment	8.256
6. Application of Articles 81 and 82 in Field of Mergers and Acquisitions	
(a) Background	8.257
(b) Ancillary restraints	8.263
(c) Minority shareholdings and other structural links	8.273
7. National Merger Control and International Cooperation	
(a) National merger control regimes within EEA	8.277
(b) Cooperation under EEA Agreement	8.280
(c) Cooperation with countries outside EEA	8.283
 9. Intellectual Property Rights	
1. Introduction	9.001
2. Infringement Actions and the Free Movement Rules	
(a) Generally	9.007
(b) Patents	9.015
(c) Trade marks	9.029
(d) Copyright and similar rights	9.051
3. Articles 81 and 82 and the Exercise of Intellectual Property Rights	9.066
4. Licensing of Intellectual Property Rights	
(a) Introduction	9.075
(b) Typical clauses in patent and know-how licences	9.086
(c) Technology pools	9.124
5. The Block Exemption for Technology Transfer Agreements	
(a) Introduction	9.129
(b) The scope of Regulation 772/2004	9.133
(c) Market share thresholds	9.141
(d) Hard-core restrictions	9.145

(e) Excluded restrictions	9.163
(f) Withdrawal of the block exemption	9.167
(g) Relationship between Regulation 772/2004 and other block exemptions	9.169
6. Licences of Other Intellectual Property Rights	
(a) Trade marks	9.172
(b) Copyright	9.179
(c) Plant variety rights	9.187
 10. Article 82	
1. Introduction	
(a) Generally	10.001
(b) Relationship between Article 82 and other competition rules	10.006
2. Structure of Article 82	10.012
3. Dominant Position	
(a) Generally	10.015
(b) The market position of the undertaking itself	10.021
(c) Barriers to entry and expansion	10.032
(d) Countervailing market power	10.040
(e) Appraisal of market power in more complex cases	10.043
(f) Collective or joint dominance	10.048
4. Abuse of a Dominant Position	
(a) Introduction	10.058
(b) Own market abuses: exclusionary pricing practices	10.069
(c) Own market abuses: exclusionary non-price conduct	10.097
(d) Own market abuses: exploitative pricing	10.104
(e) Related market abuses: exclusionary pricing	10.111
(f) Related market abuses: exclusionary non-price practices	10.118
(g) Other forms of abuse	10.145
 11. The Competition Rules and the Acts of Member States	
1. Introduction	11.001
2. State Compulsion	11.004
3. The Application and Enforcement of the Prohibition in Article 86(1)	11.009
4. Unenforceability of National Measures: Article 10	11.029

5. State Monopolies of a Commercial Character: Article 31	11.036
6. Derogations under Articles 86(2) and 296	
(a) Article 86(2): services of general interest	11.046
(b) Article 296: military equipment	11.057
12. Sectoral Regimes	
1. Introduction	12.001
2. Transport	
(a) Introduction	12.004
(b) Rail, road and inland waterway transport	12.009
(c) Maritime transport	12.019
(d) Air transport	12.036
3. Energy	
(a) Introduction	12.052
(b) Electricity	12.059
(c) Gas	12.073
(d) Energy and the environment	12.084
4. Electronic Communications	
(a) Regulatory framework	12.087
(b) Application of competition law	12.122
5. Insurance	12.169
6. Postal Services	
(a) Generally	12.180
(b) Liberalisation	12.183
(c) Application of competition rules	12.188
7. Agriculture	
(a) The objectives of Article 33 of the EC Treaty	12.194
(b) Application of competition rules	12.200
13. Enforcement and Procedure	
1. Introduction	13.001
2. The Former Enforcement Regime under Regulation 17	13.004
3. The European Competition Network and the Allocation of Cases	13.017

4. The Commission's Powers of Investigation	13.025
(a) Fundamental rights and the Commission's powers of investigation	13.026
(b) Power to obtain information	13.032
(c) Powers of inspection	13.041
(d) Privilege	13.055
5. Complaints	13.061
6. Formal Procedure Prior to an Adverse Decision	
(a) The nature of Commission proceedings	13.074
(b) Initiation of procedure and the statement of objections	13.082
(c) Access to the file	13.088
(d) The hearing and subsequently	13.101
7. Commitments and Settlement	13.113
8. Interim Measures	13.118
9. Declarations of Infringement and Orders to Terminate	13.124
10. Fines for Substantive Infringements	
(a) Generally	13.135
(b) Intentional or negligent infringement	13.137
(c) The calculation of the fine	13.144
(d) Basic amount	13.148
(e) Aggravating and mitigating circumstances and deterrence	13.158
(f) The Leniency Notice: cartel cases	13.182
(g) Periodic penalty payments	13.201
(h) Ancillary matters of law and practice	13.203
11. Review by the Court of First Instance	13.211
(a) Review under Articles 229 and 230	13.214
(b) Action under Article 232 in respect of failure to act	13.243
(c) Interim relief from the Court	13.246
12. Appeals to the Court of Justice	13.252
 14. The Enforcement of the Competition Rules in the Member States	
1. Introduction	14.001
2. Enforcement by National Competition Authorities	
(a) The National Competition Authorities	14.010
(b) Avoidance of multiple proceedings	14.014
(c) Cooperation within the Network	14.020
(d) Enforcement of Community competition rules in the United Kingdom	14.033

3. Enforcement by National Courts: Jurisdiction	14.042
4. Convergence, Cooperation and Consistency in the Application of the Competition Rules	
(a) Parallel application of Community and national competition law	14.054
(b) The convergence rule	14.060
(c) Cooperation between the Commission and the national authorities	14.064
(d) Duty to ensure consistency with decisions of European Commission	14.075
(e) Relationship between national courts and the Community courts	14.089
5. Enforcement by National Courts: Remedies	14.095
(a) Declarations of invalidity	14.098
(b) Action for damages	14.108
(c) Injunctive relief	14.128
(d) Reliance on Articles 81 and 82 as a defence	14.136
6. Practice and Procedure in the UK	14.143
7. Arbitration Proceedings	14.163
8. Table of National Enforcement Regimes	14.171
 15. State Aids	
1. Introduction	15.001
2. The Concept of an Aid	
(a) Generally	15.007
(b) Particular applications	15.030
3. Aids that are Compatible with the Common Market	15.039
4. Aids that may be Compatible with the Common Market	
(a) Generally	15.041
(b) Article 87(3)(a)	15.045
(c) Article 87(3)(b)	15.053
(d) Article 87(3)(c)	15.054
(e) Article 87(3)(d)	15.064
(f) Aid authorised by the Council	15.065
(g) Article 86(2)	15.068
5. Supervision under Article 88	15.069
(a) Review of existing aids	15.070
(b) Notification of new aids	15.074
(c) The formal investigation procedure under Article 88(2)	15.081

6. The Council's Legislative Powers	15.090
7. Unlawful Aid and Misuse of Aid	15.091
8. Judicial Remedies	
(a) National courts	15.108
(b) The Community Courts	15.112
9. The Relationship between Articles 87–89 and Other Provisions of the Treaty	15.128
Postscript on <i>Microsoft</i>	1615
<i>Index</i>	1621

VOLUME II

APPENDIX MATERIALS

Part A: Treaty Provisions	1
Part B: Modernisation and Procedural Matters	47
Part C: Substantive Antitrust Matters	203
Part D: Mergers and Concentrations	571
Part E: Sectoral Regimes	859
Part F: Public Undertakings	1255
Part G: State Aids	1321