
CONTENTS

<i>Series Editors' Preface</i>	v
<i>Acknowledgements</i>	vii
<i>Table of Cases</i>	xiii
<i>Tables of Legislation</i>	xxvii

1 Introduction	1
1.1 EU COMPETITION LAW	1
1.2 ENFORCEMENT OF EU COMPETITION LAW	3
1.3 EU COMPETITION LAW DISPUTES BEFORE NATIONAL COURTS	5
1.4 CROSS-BORDER EU COMPETITION LAW DISPUTES	7
1.4.1 Problems related to jurisdiction of courts	8
1.4.2 Problems related to choice of law	8
1.4.3 Problems related to foreign judgments and foreign arbitral awards	9
1.4.4 Problems related to jurisdiction of arbitral tribunals	10
1.5 THE PURPOSE OF THE BOOK	10
1.6 THE RELEVANT PRIVATE INTERNATIONAL LAW SETS OF RULES	11
1.6.1 EU private international law	12
1.6.2 English law	16
1.7 CHARACTERISATION OF EU COMPETITION LAW CLAIMS	19
 2 Jurisdiction with Regard to Contract-Based EU Competition Law Claims	 22
2.1 INTRODUCTION	22
2.2 JURISDICTION UNDER THE BRUSSELS I REGULATION	23
2.2.1 Rules allocating jurisdiction in contract based EU competition law claims	23
2.2.2 Application of Article 5(1) to EU competition law claims	26
2.2.3 Application of Article 5(5) to EU competition law claims	48
2.2.4 Application of Article 6(1) to EU competition law claims	51
2.2.5 Application of Section 4 of Brussels I to EU competition law claims	54
2.2.6 Application of Article 22(4) in EU competition law cases	61
2.2.7 Application of Article 23 to EU competition law claims	62
2.2.8 Application of Article 31 to EU competition law claims	68

2.3	JURISDICTION UNDER ENGLISH TRADITIONAL RULES	70
2.3.1	<i>Service of a claim form within the jurisdiction</i>	70
2.3.2	<i>Service of a claim form out of the jurisdiction</i>	70
2.4	SOME CONCLUSIONS.....	85
3	Jurisdiction in Tort-Based EU Competition Law Claims	86
3.1	INTRODUCTION.....	86
3.2	JURISDICTION UNDER THE BRUSSELS I REGULATION	87
3.2.1	<i>Rules allocating jurisdiction in tort-based EU competition law claims</i>	87
3.2.2	<i>Article 5(3) and its application to tort-based EU competition law claims</i>	88
3.2.3	<i>Article 6(1) and its application to tort-based EU competition law claims</i>	102
3.2.4	<i>Conclusion</i>	104
3.3	JURISDICTION UNDER ENGLISH TRADITIONAL RULES	104
3.3.1	<i>Service of a claim form within the jurisdiction</i>	104
3.3.2	<i>Service of a claim form out of the jurisdiction</i>	107
3.4	CONCLUSIONS	117
4	Avoiding Parallel EU Competition Law Proceedings	119
4.1	INTRODUCTION.....	119
4.2	DECLINING JURISDICTION AND STAYING PROCEEDINGS UNDER THE EU RULES.....	121
4.2.1	<i>Lis pendens doctrine and its application to EU competition law claims</i>	124
4.2.2	<i>Related EU competition law actions</i>	127
4.2.3	<i>Specific issues: collective redress proceedings in the European context</i>	131
4.3	DECLINING JURISDICTION AND STAYING PROCEEDINGS UNDER THE ENGLISH TRADITIONAL RULES.....	135
4.4	CONCLUDING REMARKS	138
5	The Applicable Law in Competition Law Actions Brought Before English Courts	140
5.1	INTRODUCTION.....	140
5.2	APPLICABLE LAW: ACTIONS FOR NULLITY OF CONTRACTS DISTORTING COMPETITION.....	141
5.2.1	<i>Freedom of choice and its limitations under Arts 3 and 6 of Rome I</i>	141
5.2.2	<i>Competition law disputes: The applicable law in the absence of choice</i>	144
5.2.3	<i>Article 9 and its application in competition law cases</i>	149

5.3	APPLICABLE LAW: TORTIOUS COMPETITION LAW ACTIONS.....	156
5.3.1	<i>EU antitrust damage actions: the relationship between EU competition law and domestic law</i>	157
5.3.2	<i>Article 6(3) of Rome II and its application in EU competition law cases</i>	162
5.3.3	<i>Mandatory provisions and public policy.....</i>	174
5.4	APPLICABLE LAW: COMPETITION LAW ACTIONS FOR NULLITY OF A CONTRACT BROUGHT TOGETHER WITH A TORTIOUS CLAIM FOR ANTITRUST DAMAGES.....	179
5.5	CONCLUDING REMARKS	180
6	Foreign Judgments in Relation to EU Competition Law Claims Before English Courts	182
6.1	INTRODUCTION.....	182
6.2	POWERS OF THE ENGLISH COURTS UNDER THE BRUSSELS I REGULATION.....	184
6.2.1	<i>Definition of ‘judgment’ and decisions of NCAs</i>	184
6.2.2	<i>Recognition and enforcement of judgments under Brussels I.....</i>	187
6.2.3	<i>Public policy character of EU competition law for the purposes of recognition and enforcement of foreign judgments in England</i>	188
6.2.4	<i>Wrong application or neglect of EU competition law as a public policy defence</i>	192
6.2.5	<i>Irreconcilability of a foreign judgment with a Commission or an NCA decision</i>	200
6.2.6	<i>Recognition and enforcement of foreign judgments in relation to collective redress antitrust actions.....</i>	204
6.2.7	<i>Recognition and enforcement of foreign judgments awarding punitive (or exemplary) damages.....</i>	210
6.3	POWERS OF THE ENGLISH COURTS AT COMMON LAW	212
6.3.1	<i>EU competition law was misapplied/neglected by the foreign court.....</i>	214
6.3.2	<i>Irreconcilability of a foreign judgment with a Commission or an NCA decision</i>	218
6.3.3	<i>Recognition and enforcement of US antitrust class action judgments.....</i>	219
6.3.4	<i>The Protection of Trading Interests Act – Special Regime</i>	221
6.4	CONCLUSION	222
7	Arbitral Tribunals’ Jurisdiction and Awards in Relation to Competition Law Claims	225
7.1	INTRODUCTION.....	225
7.2	JURISDICTION OF ARBITRATORS IN COMPETITION LAW DISPUTES—SOME PRELIMINARY ISSUES.....	226

7.3	ARBITRABILITY OF COMPETITION LAW ISSUES	228
7.3.1	<i>Law applicable to arbitrability under the 1996 Act</i>	229
7.3.2	<i>Arbitrability of competition law claims under English law</i>	231
7.4	THE LAW APPLICABLE TO THE SUBSTANCE OF A COMPETITION LAW DISPUTE	236
7.4.1	<i>The relationship between the law applicable to the substance of competition law dispute and the issues of arbitrability</i>	238
7.4.2	<i>The law applicable to the substance of a competition law dispute and the assessment of antitrust damage</i>	246
7.5	JURISDICTION OF ENGLISH COURTS IN PROCEEDINGS ANCILLARY TO ARBITRATION IN RELATION TO EU COMPETITION LAW CLAIMS	248
7.5.1	<i>Support by the court as regards provisional measures</i>	249
7.5.2	<i>Support by the court as regards taking evidence</i>	252
7.5.3	<i>Reference to the Court of Justice through the English courts</i>	254
7.5.4	<i>Multi-party arbitral proceedings in relation to EU competition law claims</i>	257
7.5.5	<i>Review of arbitration awards in relation to EU competition law claims</i>	262
7.6	COHERENT AND UNIFORM APPLICATION OF EU COMPETITION LAW BY ARBITRATORS	270
7.6.1	<i>Article 15 and its relevance with regard to arbitral proceedings</i>	270
7.6.2	<i>Article 16 and its relevance with regard to arbitral proceedings</i>	272
7.6.3	<i>Concluding Remarks—Arbitration and the Mechanisms under Regulation 1/2003</i>	274
7.7	CONCLUSION	275
8	Conclusion	277
8.1	CONCLUDING REMARKS	277
8.2	REFORMING THE BRUSSELS I FRAMEWORK	278
8.2.1	<i>Amending jurisdictional rules</i>	279
8.2.2	<i>Proposals with regard to recognition and enforcement of foreign judgments</i>	283
8.3	ADDRESSING THE ISSUE OF AVAILABLE ANTITRUST DAMAGES AND THEIR ASSESSMENT AT EU LEVEL	285
8.4	IS THERE A NEED FOR A SPECIAL REGULATION DEALING WITH EU COMPETITION LAW CLAIMS?	286
	<i>Index</i>	289