## Contents

Table of treaties and conventions	XIV
Table of EU legislation	XVII
Table of statutes and statutory instruments	xxiii
Table of CMA reports, decisions and publications	xxxiii
Table of guidelines, guidance and other publications	XXXVIII
Table of cases	xlvii
List of abbreviations	xcviii
1 Competition policy and economics	1
1. Introduction	1
2. Overview of the Practices Controlled by Competition Law	4
3. The Theory of Competition	5
4. The Goals of Competition Law	17
5. Market Definition and Market Power	22
2 Overview of EU and UK competition law	49
1. Introduction	49
2. EU Law	49
3. UK Law	59
4. The Relationship Between EU Competition Law and National Competition Laws	77
5. The Institutional Structure of EU and UK Competition Law	81
3 Article 101(1)	83
1. Introduction	83
2. Undertakings and Associations of Undertakings	84
3. Agreements, Decisions and Concerted Practices	103
4. The Object or Effect of Preventing, Restricting or Distorting Competition	121
5. The De Minimis Doctrine	145
6. The Effect on Trade Between Member States	148
7. Checklist of Agreements that Fall Outside Article 101(1)	153
4 Article 101(3)	155
1. Introduction	155
2. The Article 101(3) Criteria	160

	3. R	egulation 1/2003	172		
	4. B	lock Exemptions	176		
5	Artic	le 102	180		
	1. In	troduction	180		
	2. U	ndertakings	181		
	3. TI	ne Effect on Inter-State Trade	182		
	4. D	ominant Position	183		
	5. A	Substantial Part of the Internal Market	193		
	6. A	buse: General Principles	194		
	7. Ex	oploitative Abuses	210		
	8. Ex	clusionary Abuses	211		
	9. Si	ngle Market Abuses	219		
	10. D	efences	219		
	11. Th	ne Consequences of Infringing Article 102	223		
6	The o	bligations of Member States under the EU competition rules	224		
	1. In	troduction	224		
	2. Ai	rticle 4(3) TEU-Duty of Sincere Cooperation	225		
	3. Aı	ticle 106 TFEU—Compliance with the Treaties	232		
	4. Aı	rticle 37 TFEU-State Monopolies of a Commercial Character	254		
	5. Ar	rticles 107 to 109 TFEU—State Aids	256		
7	Articles 101 and 102: public enforcement by the European Commission and				
		nal competition authorities under Regulation 1/2003	258		
		troduction	258		
		verview of Regulation 1/2003	261		
		ne Commission's Enforcement Powers under Regulation 1/2003	263		
		egulation 1/2003 in Practice	303		
	o. ju	dicial Review	303		
8		es 101 and 102: private enforcement in the courts of Member States	311		
		troduction	311		
		J Law: Actions for Damages	312		
		ivate Actions in the UK Courts	328		
		ompetition Law as a Defence	342		
	5. Ar	bitration	34/		
9	Comp	etition Act 1998: substantive provisions	349		
	1. In	troduction	349		

CONTENITO	•
CONTENTS	TY.
CONTILITIO	170

	2.	The Competition Act 1998—Overview	350
	3.	The Chapter I Prohibition	353
	4.	The Chapter II Prohibition	383
	5.	Section 60A of the Competition Act	393
	6.	The Competition Act 1998 in Practice	397
	7.	Brexit and the Future of UK Competition Law	407
10	Со	mpetition Act 1998 and the cartel offence: public enforcement and	
	pro	ocedure	409
		Introduction	409
	2.	Inquiries and Investigations	410
	3.	Complaints	421
	4.	Opinions, Informal Advice and Warning Letters	422
	5.	Enforcement	424
	6.	The Cartel Offence	446
	7.	Company Director Disqualification	457
	8.	Concurrency	460
	9.	Appeals	464
	10.	Review of the Competition Act	472
11	Ent	terprise Act 2002: market studies and market investigations	473
	1.	Introduction	473
	2.	Gathering Information about Markets	474
	3.	Super-Complaints	474
	4.	Market Studies	477
	5.	Market Investigations	481
	6.	Public Interest Cases	490
	7.	Enforcement	491
	8.	Supplementary Provisions	495
	9.	The Market Investigation Provisions in Practice	498
	10.	Orders and Undertakings under the Fair Trading Act 1973	510
12	The	e international dimension of competition law	511
	1.	Introduction	511
	2.	International Competition Law Institutions	512
		Extraterritoriality: Theory	516
		The Extraterritorial Application of US Antitrust Law	519
		The Extraterritorial Application of EU Competition Law	521
		The Extraterritorial Application of UK Competition Law	530
		Resistance to the Extraterritorial Application of Competition Law	534

13	Ho	orizontal agreements (1): cartels	536
	1.	Introduction	536
	2.	Widespread Consensus that Cartels Should be Prohibited	537
	3.	EU Policy Towards Cartels	540
	4.	Horizontal Price Fixing	547
	5.	Horizontal Market Sharing	559
	6.	Quotas and Other Restrictions on Production	562
	7.	Collusive Tendering	564
	8.	Agreements Relating to Terms and Conditions	567
	9.	Exchanges of Information	568
	10.	Advertising Restrictions	576
	11.	Anti-Competitive Horizontal Restraints	578
	12.	UK Law	581
14		rizontal agreements (2): oligopoly, tacit collusion and collective	
		minance	588
		Introduction	588
		The Theory of Oligopolistic Interdependence	589
		Possible Ways of Dealing with the Oligopoly Problem	594
		Article 101	596
		Article 102 and Collective Dominance	602
	6.	UK Law	610
15	Но	rizontal agreements (3): cooperation agreements	613
	1.	Introduction	613
	2.	Full-Function Joint Ventures	614
	3.	The Application of Article 101 to Horizontal Cooperation Agreements and the Commission's Guidelines on Horizontal Cooperation Agreements	615
	4.	Information Exchange	620
	5.	Research and Development Agreements	620
	6.	Production Agreements	627
	7.	Purchasing Agreements	631
	8.	Commercialisation Agreements	633
	9.	Standardisation Agreements	635
	10.	Sustainability Agreements	640
	11.	Other Cases of Permissible Horizontal Cooperation	641
	12.	UK law: the Application of the Chapter I Prohibition to Horizontal	
		Cooperation Agreements	645
16	Ver	tical agreements	648
	1.	Introduction	648
	2.	Distribution Chains in the Modern Economy	649

CONTENTS	
----------	--

	3.	Vertical Integration	653
	4.	Commercial Agency	654
	5.	Vertical Agreements: Competition Policy Considerations	658
	6.	Vertical Agreements: Article 101(1)	663
	7.	Vertical Agreements: Regulation 330/2010	684
	8.	Vertical Agreements: Individual Application of Article 101(3)	707
	9.	Regulation 461/2010 on Motor Vehicle Distribution	708
	10.	UK Law	710
17	Ab	use of dominance (1): non-pricing practices	715
	1.	Introduction	715
	2.	Exclusive Dealing Agreements	716
	3.	Tying	723
	4.	Refusal to Supply	732
	5.	Non-Pricing Abuses that are Harmful to the Internal Market	747
	6.	Miscellaneous Other Non-Pricing Abuses	748
18	Ab	use of dominance (2): pricing practices	753
	1.	Introduction	753
	2.	Cost Concepts	754
	3.	Excessive Pricing	756
	4.	Conditional Rebates	768
	5.	Bundling	777
	6.	Predatory Pricing	779
	7.	Margin Squeeze	793
	8.	Price Discrimination	799
	9.	Pricing Practices that are Harmful to the Single Market	805
19	The	relationship between intellectual property rights	
	and	d competition law	807
	1.	Introduction	807
	2.	Licences of Intellectual Property Rights: Article 101	810
	3.	Technology Transfer Agreements: Regulation 316/2014	820
	4.	The Application of Article 101 to Other Agreements Relating	
		to Intellectual Property Rights	829
	5.	Article 102 and Intellectual Property Rights	837
	6.	UK Law	850
20	140	races (1): introduction	852
20		rgers (1): introduction Introduction	852
			852
		Terminology Merger Activity	854
	7	IVICIPELACTIVILY	0.24

XII CONTENTS

	4.	The Proliferation of Systems of Merger Control	85
	5.	Why Do Firms Merge?	856
	6.	What is the Purpose of Merger Control?	859
	7.	Designing a System of Merger Control	869
21	Me	ergers (2): EU law	87
	1.	Introduction	87
	2.	Overview of EU Merger Control	872
	3.	Jurisdiction	876
	4.	Notification, Suspension of Concentrations, Procedural Timetable and Powers of Decision	900
	5.	Substantive Analysis	908
	6.	Remedies	932
	7.	Powers of Investigation and Enforcement	938
	8.	Judicial Review	939
	9.	International Cooperation	944
	10.	The EUMR in Practice	945
22	Me	rgers (3): UK	959
	1.	Introduction	959
	2.	Overview of UK Merger Control	960
	3.	The CMA's Duty to Make References: Phase 1 Investigations	963
	4.	Determination of References by the CMA: Phase 2 Investigations	979
	5.	The 'Substantial Lessening of Competition' Test	982
	6.	Enforcement	993
	7.	Supplementary Provisions	1002
	8.	The Merger Provisions in Practice	1005
	9.	'Public Interest Cases', 'Other Special Cases' and Mergers	
		in the Water Industry	1012
23	Par	ticular sectors	1019
	1.	Introduction	1019
	2.	Nuclear Energy	1019
	3.	Military Equipment	1020
	4.	Agriculture	1020
	5.	Coal and Steel	1025
	6.	Transport	1025
	7.	Regulated Industries	1035
	8.	Electronic Communications	1038

CONTENTS	xii
9. Post	1042
10. Energy	1046
11. Water	1049
12. Digital Platforms	1050
Bibliography	1056
Index	1060