

CONTENTS

| | |
|------------------------------|-------|
| <i>Tables of Cases</i> | xiii |
| <i>Tables of Legislation</i> | xxi |
| <i>List of Figures</i> | xxiii |
| <i>List of Tables</i> | xxv |

| | |
|--|------------|
| 1 INTRODUCTION: STARTING FROM FIRST PRINCIPLES | 1 |
| 1.1 Competition Economics and You | 1 |
| 1.2 What does Economics Contribute to Competition Law? | 2 |
| 1.3 The Book's Approach to Explaining Competition Economics | 6 |
| 1.4 Explaining Some Basic Principles the Economic Naturalist's Way | 8 |
| 1.5 Some Health Warnings on Competition, Competition Policy, and Competition Economists | 17 |
| 1.6 The Remainder of this Book | 21 |
| 2 MARKET DEFINITION | 23 |
| 2.1 Why Market Definition? | 25 |
| 2.2 Dimensions of the Relevant Market | 29 |
| 2.3 The Demand Side: Substitution and Elasticities | 31 |
| 2.4 Bringing in the Supply Side: The Hypothetical Monopolist Test | 37 |
| 2.5 Critical Loss Analysis: 'Could' or 'Would'? | 56 |
| 2.6 The Cellophane Fallacy | 65 |
| 2.7 Supply-Side Substitution and Market Aggregation | 68 |
| 2.8 Price Discrimination Markets | 74 |
| 2.9 Chains of Substitution, and Specific Aspects of Geographic Market Definition | 77 |
| 2.10 Market Definition for Complements and Bundles | 85 |
| 2.11 Markets Along the Vertical Supply Chain | 91 |
| 2.12 Product Substitution Versus Product Migration | 95 |
| 2.13 Market Definition for Features Other than Price | 98 |
| 2.14 Market Definition in Practice: Main Empirical Methods | 102 |
| 2.15 Conclusion: Why Market Definition? | 112 |
| 3 MARKET POWER | 115 |
| 3.1 The Core Concern in Competition Law | 116 |
| 3.2 What is Market Power? | 118 |
| 3.3 Assessing Market Power Through Market Shares and Concentration | 123 |
| 3.4 Entry and Exit Barriers | 132 |
| 3.5 Collective Dominance, Tacit Collusion, and Effective Competition | 142 |

| | | |
|----------|---|------------|
| 3.6 | Profitability as a Measure of Market Power | 150 |
| 3.7 | Buyer Power and Bidding Markets | 166 |
| 3.8 | Market Power, Investment, and Innovation | 171 |
| 4 | ABUSE OF DOMINANCE | 177 |
| 4.1 | Successful Competitor or Dangerous Monopolist? | 179 |
| 4.2 | General Principles for Assessing Exclusionary Conduct | 182 |
| 4.3 | Cost Benchmarks for Exclusionary Conduct | 189 |
| 4.4 | Predation | 198 |
| 4.5 | Price Discrimination | 215 |
| 4.6 | Loyalty Rebates, Discounts, and Exclusive Dealing | 223 |
| 4.7 | Margin Squeeze | 239 |
| 4.8 | Bundling and Tying | 249 |
| 4.9 | Refusal to Supply and Essential Facilities | 261 |
| 4.10 | Excessive Pricing | 268 |
| 5 | CARTELS AND OTHER HORIZONTAL AGREEMENTS | 283 |
| 5.1 | Are All Cartels Bad? | 283 |
| 5.2 | Economic Characteristics of Hardcore Cartels | 287 |
| 5.3 | Non-Hardcore Horizontal Agreements: Counterfactual Analysis | 293 |
| 5.4 | Finding Cartels: Can Economics Help? | 302 |
| 6 | VERTICAL RESTRAINTS | 309 |
| 6.1 | Business Practices, the Law, and the Economics | 309 |
| 6.2 | Economic Rationales for Vertical Restraints | 312 |
| 6.3 | Anti-Competitive Effects of Vertical Restraints | 322 |
| 6.4 | Conclusion: Questions for Competition Law | 331 |
| 7 | MERGERS | 333 |
| 7.1 | What Can Economics Add to Merger Control? | 334 |
| 7.2 | What is the Test for Judging a Merger to be Anti-Competitive? | 335 |
| 7.3 | The Counterfactual | 338 |
| 7.4 | Unilateral Effects in Horizontal Mergers | 345 |
| 7.5 | Non-Horizontal Mergers | 363 |
| 7.6 | Merger Efficiencies | 371 |
| 8 | STATE AID | 379 |
| 8.1 | State Aid in a Wider Context | 380 |
| 8.2 | The Basic Economic Principles of State Aid | 384 |
| 8.3 | Where Does Economics Fit in to a State Aid Case? | 386 |
| 8.4 | Is there State Aid? If So, How Much? The Market Economy Investor Principle | 388 |
| 8.5 | Is there a Distortion of Competition or Trade? | 402 |

| | | |
|-----------|--|------------|
| 8.6 | Services of General Economic Interest: The <i>Altmark</i> Criteria | 409 |
| 8.7 | Services of General Economic Interest: Measuring Appropriate Compensation | 418 |
| 8.8 | Does the State Aid Measure Address a Market Failure? | 425 |
| 8.9 | Aid for the Rescue and Restructuring of Companies in Difficulty | 428 |
| 8.10 | The Balancing Test | 433 |
| 8.11 | Remedies to Minimize the Distortion of Competition | 437 |
| 8.12 | Conclusion: Comments on State Aid Enforcement | 441 |
| 9 | DESIGN OF REMEDIES | 443 |
| 9.1 | After the Diagnosis, What Next? | 443 |
| 9.2 | Structural Remedies | 445 |
| 9.3 | Behavioural Remedies: Price and Access Regulation | 453 |
| 9.4 | Behavioural Remedies: New Insights from Behavioural Economics | 464 |
| 9.5 | Fines | 474 |
| 9.6 | Measuring the Costs and Benefits of Remedies, and of Competition Law | 480 |
| 10 | QUANTIFICATION OF DAMAGES | 491 |
| 10.1 | Damages Claims, Economics, and the Law | 493 |
| 10.2 | Main Stages in the Damages Estimation | 499 |
| 10.3 | Harm From Hardcore Cartel Agreements: Conceptual Framework | 500 |
| 10.4 | Harm From Exclusionary Conduct: Conceptual Framework | 508 |
| 10.5 | A Classification of Methods and Models for the Quantification of Damages | 514 |
| 10.6 | Comparator-Based Approaches: Cross-Sectional | 524 |
| 10.7 | Comparator-Based Approaches: Time Series | 529 |
| 10.8 | Comparator-Based Approaches: Difference-in-Differences | 534 |
| 10.9 | Approaches Based on Financial Analysis | 536 |
| 10.10 | Approaches Based on Market Structure and Industrial Organization Theory | 546 |
| 10.11 | Insight into the Pass-on of Overcharges | 553 |
| 10.12 | From the Counterfactual Stage to a Final Damages Value: Interest and Discounting | 561 |
| 11 | THE USE OF ECONOMIC EVIDENCE IN COMPETITION CASES | 567 |
| 11.1 | Smokescreens and Mud-Slingers? | 567 |
| 11.2 | Best Practice in Presenting Economic Evidence | 568 |
| 11.3 | When Can Courts Rely on Economic Experts? | 570 |
| 11.4 | The Use of Economics: A Promising Future? | 580 |
| | <i>Bibliography</i> | 587 |
| | <i>Index</i> | 597 |