

TABLE OF CONTENTS

| | |
|---|-----------|
| PREFACE TO THE SECOND EDITION | iii |
| PREFACE TO THE FIRST EDITION | v |
| ACKNOWLEDGEMENTS..... | vii |
| TABLE OF CASES | xxvii |
| CHAPTER 1 Introduction | 1 |
| A. The Framework of Legal Issues Raised by Basic Antitrust Economics..... | 1 |
| B. The Remedial Structure..... | 11 |
| 1. An Overview of U.S. Antitrust Laws and Remedial Structure ... | 12 |
| 2. An Overview of EU Competition Laws and Remedial Structure | 49 |
| 3. A Brief Overview of Antitrust Laws and Remedies in Other Nations..... | 70 |
| Questions on Remedies | 72 |
| CHAPTER 2 Which Horizontal Agreements Are Illegal? | 73 |
| A. Relevant Laws and Basic Legal Elements | 73 |
| 1. Relevant U.S. Laws and General Legal Standards | 73 |
| 2. Relevant EU Laws and General Legal Standards | 77 |
| 3. Other Nations..... | 84 |
| B. Horizontal Price-Fixing..... | 85 |
| <i>United States v. Trenton Potteries</i> | 85 |
| Questions on <i>Trenton Potteries</i> | 87 |
| <i>Broadcast Music, Inc. (BMI) v. Columbia Broadcasting System</i> | 88 |
| Questions on <i>BMI</i> | 96 |
| <i>Arizona v. Maricopa County Medical Soc'y</i> | 98 |
| Questions on <i>Maricopa</i> | 106 |
| <i>Texaco Inc. v. Dagher</i> | 107 |
| Questions on <i>Texaco v. Dagher</i> | 109 |
| Horizontal Price-Fixing Under EU Law..... | 110 |
| <i>Commission Decision of 23 April 1986 No 86/398/EEC, Polypropylene</i> | 111 |
| Questions on <i>Polypropylene</i> | 113 |
| <i>Commission Decision 85/77/EEC of 10 December 1984, Uniform Eurocheques</i> | 114 |
| Questions on <i>Uniform Eurocheques</i> | 118 |
| Agreements Fixing Other Trade Conditions..... | 119 |
| Other Nations' Regulation of Horizontal Price-Fixing..... | 119 |
| C. Horizontal Output Restrictions..... | 121 |
| <i>NCAA v. Board of Regents of Univ. of Oklahoma</i> | 121 |
| Questions on <i>NCAA</i> | 129 |
| <i>Commission Decision 84/380/EEC of 4 July 1984, Synthetic Fibres</i> | 130 |
| Questions on <i>Synthetic Fibres</i> | 136 |
| Other Nations' Regulation of Horizontal Output Restraints | 139 |
| D. Horizontal Market Divisions..... | 140 |
| <i>Palmer v. BRG</i> | 141 |
| Questions on <i>Palmer v. BRG</i> | 142 |

| | | |
|----|--|-----|
| D. | Horizontal Market Divisions—Continued | |
| | <i>U.S. DOJ/FTC, Antitrust Guidelines for Collaborations Among Competitors</i> | 145 |
| | Questions on FTC–DOJ Guidelines..... | 147 |
| | EU Law on Horizontal Market Divisions..... | 148 |
| | <i>Commission Decision 91/227 of 19 December 1990, Soda–Ash–Solvay/ICI</i> | 148 |
| | Questions on Soda–Ash..... | 151 |
| | Specialization Agreements Under EU Law..... | 152 |
| | Other Nations’ Regulation of Horizontal Market Divisions and Bid–Rigging..... | 153 |
| E. | Horizontal Agreements Not to Deal With Particular Firms..... | 153 |
| | 1. Boycotts by Unrelated Rivals..... | 154 |
| | <i>Klor’s Inc. v. Broadway–Hale Stores, Inc.</i> | 154 |
| | Questions on <i>Klor’s</i> | 156 |
| | <i>Fashion Originators’ Guild of Am. v. FTC</i> | 157 |
| | Questions on <i>Fashion Originators’</i> | 159 |
| | <i>Commission Decision 1999/60 of 21 October, Pre–Insulated Pipe Cartel</i> | 161 |
| | Questions on <i>Pre–Insulated Pipe</i> | 162 |
| | 2. Exclusions and Expulsions From a Productive Collaboration of Rivals..... | 162 |
| | <i>United States v. Terminal Railroad Ass’n</i> | 162 |
| | <i>Associated Press v. United States</i> | 166 |
| | Questions on <i>Terminal RR and Associated Press</i> | 168 |
| | <i>Northwest Wholesale Stationers v. Pacific Stationery</i> | 170 |
| | Questions on <i>Northwest Stationers</i> | 174 |
| | <i>Joined Cases 96–102, 104, 105, 108 and 110/82, NV IAZ International Belgium and others v. Commission (ANSEAU)</i> | 175 |
| | Questions on <i>ANSEAU</i> | 177 |
| | Other Nations’ Regulation of Boycotts..... | 179 |
| F. | Are Social Welfare Justifications Admissible?..... | 180 |
| | <i>National Society of Professional Engineers v. United States</i> | 180 |
| | Questions on <i>Professional Engineers</i> | 186 |
| | <i>FTC v. Indiana Federation of Dentists</i> | 187 |
| | Questions on <i>Indiana Dentists</i> | 191 |
| | <i>FTC v. Superior Court Trial Lawyers Ass’n</i> | 192 |
| | Questions on <i>Trial Lawyer’s Ass’n</i> | 196 |
| | <i>California Dental Ass’n v. FTC</i> | 197 |
| | Questions on <i>California Dental</i> | 205 |
| | Burdens and Orders of Theory and Proof after <i>California Dental</i> | 206 |
| | <i>Case C–309–99, Wouters</i> | 208 |
| | Questions on <i>Wouters</i> | 212 |
| | Other Nations’ Treatment of Social Welfare Justifications..... | 212 |
| | The Policy Relevance of Nonprofit Status..... | 213 |
| | The Legal Treatment of Nonprofits Under U.S. and EU Law..... | 214 |
| | <i>United States v. Brown University</i> | 216 |
| | Questions on <i>United States v. Brown</i> | 223 |
| G. | Does Intellectual Property Law Justify an Anticompetitive Restraint?..... | 225 |
| | <i>United States v. General Electric</i> | 226 |
| | Questions on <i>General Electric</i> | 228 |
| | <i>United States v. New Wrinkle, Inc.</i> | 230 |
| | Questions on <i>New Wrinkle</i> | 232 |
| | <i>Case 27/87, Sprl Louis Erauw–Jacquery v. La Hesbignonne Sc.</i> | 233 |
| | Questions on <i>Erauw–Jacquery</i> | 234 |

| | | |
|--|---|-----|
| G. | Does Intellectual Property Law Justify an Anticompetitive Restraint?—Continued | |
| | U.S. DOJ/FTC, Antitrust Guidelines for the Licensing of Intellectual Property (1995) | 235 |
| | <i>Commission Regulation (EC) No 772/2004 of 27 April 2004 on the Application of Article [101(3) TFEU] to Categories of Technology Transfer Agreements</i> | 242 |
| | <i>Commission Guidelines on the Application of Article [101 TFEU] to Technology Transfer Agreements</i> | 244 |
| | Questions on the U.S. Guidelines and EU Regulation 772/2004 and its Accompanying Guidelines | 248 |
| | Other Nations' Treatment of the Antitrust–Intellectual Property Intersection | 248 |
| H. | Buyer Cartels | 249 |
| | <i>Mandeville Island Farms v. American Crystal Sugar</i> | 249 |
| | Questions on <i>Mandeville</i> | 252 |
| | <i>Commission Decision 80/917 of 9 July 1980, National Sulphuric Acid Association</i> | 254 |
| | Questions on National Sulphuric Acid Association | 259 |
| | The EU Safe Harbor | 260 |
| | Countervailing Power and the Problem of the Second Best | 260 |
| | Other Nations' Regulation of Buyer Cartels | 264 |
| CHAPTER 3 What Unilateral Conduct Is Illegal? | | 265 |
| A. | Relevant Laws & Basic Legal Elements | 265 |
| | 1. U.S. Laws and Legal Elements | 265 |
| | 2. EU Law and Legal Elements | 270 |
| | 3. Other Nations | 273 |
| B. | The Power Element | 276 |
| | 1. Economic and Legal Tests of Market Power Generally | 277 |
| | 2. Legal Tests of Monopoly Power or a Dominant Position | 283 |
| | <i>Guidance on the Commission's Enforcement Priorities in Applying Article 82 EC Treaty [now 102 TFEU] to Abusive Exclusionary Conduct by Dominant Undertakings</i> | 286 |
| | Questions on the Commission's Guidance Paper on Article 102 | 289 |
| | The Power Element in Other Nations | 289 |
| | 3. Market Definition | 291 |
| | <i>United States v. du Pont & Co. (The Cellophane Case)</i> | 291 |
| | <i>du Pont</i> (The Cellophane Case) and Various Bases for Defining Markets | 298 |
| | <i>U.S. DOJ/FTC, Horizontal Merger Guidelines</i> | 304 |
| | Note on the U.S. Market Definition Guidelines | 315 |
| | Is Market Definition Necessary? | 317 |
| | <i>Case 27/76, United Brands v. Commission</i> | 319 |
| | Questions on <i>United Brands</i> | 321 |
| | <i>Commission Notice on the Definition of the Relevant Market for the Purposes of Community Competition Law</i> | 322 |
| | Note and Questions on the Commission Notice | 329 |
| | Technical Methods Used in Market Definition | 330 |
| | Market Definition in Other Nations | 334 |
| | 4. Aftermarkets | 335 |
| | <i>Eastman Kodak v. Image Technical Servs.</i> | 335 |
| | Questions on <i>Kodak</i> | 343 |

| | |
|---|-----|
| C. Second Element: Anticompetitive Conduct | 344 |
| 1. General Standards | 344 |
| a. The Conduct Element for Proving Monopolization Under U.S. Antitrust Law | 344 |
| b. The Conduct Element for Proving Abuse of Dominance Under EU Competition Law | 347 |
| <i>Guidance on the Commission's Enforcement Priorities in Applying Article 82 EC Treaty [now 102 TFEU] to Abusive Exclusionary Conduct by Dominant Undertakings</i> | 347 |
| Questions on the Article [102] Guidance Paper | 351 |
| c. The Conduct Element in Other Nations | 353 |
| 2. Predatory Pricing | 353 |
| a. Below-Cost Predatory Pricing | 354 |
| <i>Brooke Group Ltd. (Liggett) v. Brown & Williamson Tobacco Corp.</i> | 354 |
| Note and Questions About <i>Brooke</i> | 363 |
| The U.S. Conflict on the Proper Cost Measure | 365 |
| <i>Elhauge, Why Above-Cost Price Cuts to Drive out Entrants Do Not Signal Predation or Even Market Power—and the Implications for Defining Costs</i> | 366 |
| <i>C-62/86, Akzo Chemie BV v. Commission</i> | 368 |
| Note and Questions on AKZO | 369 |
| Note and Questions on Recoupment Under EU Law | 370 |
| <i>Commission Decision 2001/354/EC of 20 March 2001, Deutsche Post AG</i> | 371 |
| Questions on <i>Deutsche Post</i> | 375 |
| Case T-340/03, <i>France Télécom/Commission</i> | 375 |
| Questions on <i>France Télécom v. Commission</i> | 378 |
| <i>Guidance on the Commission's Enforcement Priorities in Applying Article 82 EC Treaty [now 102 TFEU] to Abusive Exclusionary Conduct by Dominant Undertakings</i> | 378 |
| Questions on the Commission's Guidance Paper | 380 |
| Below-Cost Predatory Pricing in Other Nations | 382 |
| b. Above-Cost Predatory Pricing | 383 |
| <i>Joined Cases T-24/93, T-25/93, T-26/93 & T-28/93, Compagnie Maritime Belge Transps. SA v. Commission</i> | 384 |
| <i>Joined Cases C-395/96 P & C-396/96 P, Compagnie Maritime Belge Transps. SA v. Commission</i> | 386 |
| Note and Questions on <i>Compagnie Maritime</i> | 387 |
| Case T-228/97, <i>Irish Sugar PLC v. Commission</i> | 389 |
| Questions on <i>Irish Sugar</i> | 391 |
| <i>Enforcement Policy Regarding Unfair Exclusionary Conduct in the Air Transportation Industry</i> | 392 |
| Note and Questions on the Proposed U.S. Department of Transportation Enforced Policy | 394 |
| <i>United States v. AMR Corp.</i> | 395 |
| Questions on <i>American Airlines</i> | 398 |
| Other Nations' Treatment of Above-Cost Predatory Pricing Claims | 399 |
| 3. Predatory Overpaying by a Monopsonist | 399 |
| <i>Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber</i> | 399 |
| Note and Questions on <i>Weyerhaeuser</i> | 403 |
| Predatory Over-Paying by a Dominant Firm in Other Nations | 404 |

| | | |
|----|---|-----|
| C. | Second Element: Anticompetitive Conduct—Continued | |
| 4. | Excessive Pricing | 404 |
| | <i>Verizon Communications v. Law Offices of Curtis V. Trinko</i> | 404 |
| | <i>Case 27/76, United Brands Company and United Brands Continental B.V. v. Commission of the European Communities</i> | 405 |
| | Note and Questions on <i>Trinko</i> and <i>United Brands</i> | 407 |
| | The Economics of Price Discrimination | 409 |
| | Excessive Pricing in Other Nations | 413 |
| 5. | Exclusions From Owned Property—Unilateral Refusals to Deal | 415 |
| | <i>Otter Tail Power Company v. United States</i> | 416 |
| | Questions on <i>Otter Tail</i> | 421 |
| | Should Natural Monopolies Be Immune From Monopolization Liability? | 424 |
| | <i>Aspen Skiing Co. v. Aspen Highlands Skiing Corp.</i> | 425 |
| | Questions on <i>Aspen Skiing</i> | 432 |
| | <i>Eastman Kodak v. Image Technical Servs.</i> | 435 |
| | Questions on the <i>Kodak</i> Duty to Deal With Rivals | 437 |
| | <i>Verizon Commun. v. Law Offices of Curtis V. Trinko</i> | 438 |
| | Questions on <i>Verizon v. Trinko</i> | 444 |
| | <i>Einer Elhauge, Defining Better Monopolization Standards</i> | 445 |
| | The U.S. Essential Facilities Doctrine | 446 |
| | The Application of U.S. Antitrust Duties to Deal to Intellectual Property | 448 |
| | <i>Cases 6 and 7/73, COMMERCIAL SOLVENTS AND OTHERS V. COMMISSION</i> | 449 |
| | Questions on Commercial Solvents | 449 |
| | <i>Joined Cases C-241/91P & C-242/91P, RADIO TELEFIS EIREANN (RTE) V. COMMISSION OF THE EUROPEAN COMMUNITIES (MAGILL)</i> | 450 |
| | Note and Questions on <i>Magill</i> | 452 |
| | <i>Case 7/97, OSCAR BRONNER GMBH & Co. KG V. MEDIAPRINT ZEITUNGS UND ZEITSCHRIFTENVERLAG GMBH & Co., KG</i> | 453 |
| | Questions on <i>Bronner</i> | 456 |
| | <i>Case C-418/01, IMS Health GmbH & Co. OHG v. NDC Health GmbH & Co. KG</i> | 457 |
| | Questions on <i>IMS</i> | 460 |
| | <i>Case T-201/04 Microsoft v. Commission</i> | 462 |
| | Questions on <i>Microsoft</i> | 469 |
| | <i>Guidance on the Commission's Enforcement Priorities in Applying Article 82 EC Treaty [now 102 TFEU] to Abusive Exclusionary Conduct by Dominant Undertakings</i> | 469 |
| | Questions on the Commission's Guidance Paper | 473 |
| | Unilateral Refusals to Deal in Other Nations | 474 |
| 6. | Price Squeezes | 476 |
| | <i>Pacific Bell Telephone v. Linkline Communications</i> | 477 |
| | Questions on <i>Linkline</i> | 483 |
| | <i>Case T-271/03, Deutsche Telekom v. Commission, 2008 ECR II 477</i> | 485 |
| | Questions on <i>Deutsche Telekom</i> | 488 |
| | <i>Case C-52/09, TeliaSonera, not reported yet</i> | 489 |
| | Questions on <i>TeliaSonera</i> | 492 |
| | Price Squeezes in Other Nations | 493 |
| D. | Causal Connection Between First and Second Elements Required? | 494 |
| | <i>Einer Elhauge, Defining Better Monopolization Standards</i> | 494 |
| | Monopoly Leveraging | 495 |
| | <i>Case C-333/94 P, Tetra Pak v. Commission</i> | 496 |
| | Questions on <i>Tetra Pak</i> | 499 |

| | | |
|--|---|------------|
| E. | Attempted Monopolization | 500 |
| | <i>Lorain Journal v. United States</i> | 501 |
| | Questions on <i>Lorain Journal</i> | 502 |
| | <i>United States v. American Airlines</i> | 503 |
| | Questions on <i>American Airlines</i> Attempted Cartel Case | 506 |
| | <i>Spectrum Sports v. McQuillan</i> | 507 |
| | Note and Questions on <i>Spectrum Sports</i> | 509 |
| | Attempted Monopolization in Other Nations | 510 |
| CHAPTER 4 Vertical Agreements That Restrict Dealing With Rivals | | 512 |
| A. | Introduction | 512 |
| | <i>Commission Regulation (EU) No 330/2010 of 20 April 2010 on the Application of Article 101(3) of the Treaty on the Functioning of the European Union to Categories of Vertical Agreements and Concerted Practices</i> | 514 |
| B. | Exclusive Dealing | 516 |
| | <i>United States v. Griffith</i> | 521 |
| | Note and Questions on <i>Griffith</i> and <i>Lorain Journal</i> | 524 |
| | <i>Standard Fashion v. Magrane-Houston</i> | 525 |
| | Questions on <i>Standard Fashion</i> | 526 |
| | <i>Standard Oil and Standard Stations v. United States</i> | 526 |
| | Questions on <i>Standard Stations</i> | 532 |
| | <i>FTC v. Motion Picture Advertising Service</i> | 533 |
| | Cumulative Foreclosure | 535 |
| | <i>Tampa Electric v. Nashville Coal</i> | 538 |
| | Note and Questions on <i>Tampa Electric</i> | 541 |
| | <i>United States v. Microsoft</i> | 542 |
| | The U.S. Lower Court Splits on Foreclosure Thresholds and Terminability Relevance | 548 |
| | Questions on <i>Microsoft's</i> Exclusive Dealing Holdings | 549 |
| | <i>EU Guidelines on Vertical Restraints</i> | 550 |
| | Note and Questions on the EU Guidelines on Vertical Restraints | 559 |
| | <i>Guidance on the Commission's Enforcement Priorities in Applying Article 82 EC Treaty [now 102 TFEU] to Abusive Exclusionary Conduct by Dominant Undertakings</i> | 559 |
| | Exclusive Dealing in Other Nations | 561 |
| C. | Tying | 562 |
| | <i>Jefferson Parish Hospital v. Hyde</i> | 575 |
| | Questions on <i>Jefferson Parish</i> | 585 |
| | <i>Eastman Kodak v. Image Technical Servs.</i> | 588 |
| | Questions on <i>Kodak</i> | 594 |
| | <i>Illinois Tool Works Inc. v. Independent Ink, Inc.</i> | 595 |
| | Questions on <i>Illinois Tool Works</i> | 599 |
| | <i>United States v. Microsoft</i> | 601 |
| | Questions on U.S. <i>Microsoft</i> Case Holdings on Tying | 607 |
| | <i>EU Guidelines on Vertical Restraints</i> | 608 |
| | Introduction to EU Cases on Tying as an Abuse of Dominance | 610 |
| | <i>Commission Decision 88/138/EEC, Eurofix-Bauco v. Hilti</i> | 610 |
| | <i>Commission Decision 92/163/EEC, Tetra Pak II</i> | 613 |
| | Note and Questions on <i>Hilti</i> and <i>Tetra Pak II</i> | 616 |
| | Case T-201/04, <i>Microsoft v. Commission</i> , [2004] ECR II 4463 | 617 |
| | Questions on EU <i>Microsoft</i> Case | 624 |
| | <i>Guidance on the Commission's Enforcement Priorities in Applying Article 82 EC Treaty [now 102 TFEU] to Abusive Exclusionary Conduct by Dominant Undertakings</i> | 626 |
| | Tying Doctrine in Other Nations | 628 |

| | |
|---|-----|
| D. Loyalty and Bundled Discounts | 629 |
| <i>United States v. Loew's Inc.</i> | 640 |
| Questions on <i>Loew's</i> | 642 |
| <i>FTC v. Brown Shoe</i> | 643 |
| Questions on <i>FTC v. Brown Shoe</i> | 644 |
| <i>Concord Boat v. Brunswick Corp.</i> | 645 |
| Questions on <i>Concord Boat</i> | 648 |
| <i>LePage's Inc. v. 3M</i> | 648 |
| Questions on <i>LePage's</i> | 655 |
| <i>Cascade Health Solutions v. PeaceHealth</i> | 656 |
| Questions on <i>Cascade Health</i> | 661 |
| The U.S. Lower Court Splits on Loyalty and Bundled Discounts | 662 |
| Case 85-76, <i>Hoffmann-La Roche v. Commission</i> | 664 |
| Questions on <i>Hoffmann-La Roche</i> | 666 |
| Case 322/101, <i>Nederlandsche Banden-Industrie Michelin v. Com-</i> <i>mission (Michelin I)</i> | 666 |
| Questions on <i>Michelin I</i> | 668 |
| Case T-203/01, <i>Manufacture française des pneumatiques Michelin</i> <i>v. Commission (Michelin II)</i> | 669 |
| Questions on <i>Michelin II</i> | 675 |
| British Airways Case | 677 |
| Case T-219/99 <i>British Airways PLC v. Commission</i> | 677 |
| Questions on the CFI judgment in <i>British Airways</i> | 683 |
| <i>Judgment of the Court of Justice in Case C-95/04 P British</i> <i>Airways v. Commission</i> | 684 |
| Questions on the ECJ judgment in <i>British Airways</i> | 689 |
| <i>Guidance on the Commission's Enforcement Priorities in Applying</i> <i>Article 82 EC Treaty [now 102 TFEU] to Abusive Exclusionary</i> <i>Conduct by Dominant Undertakings</i> | 690 |
| Loyalty and Bundled Discounts in Other Nations | 693 |

**CHAPTER 5 Agreements and Conduct That Arguably Distort
Downstream Competition in Distributing a
Supplier's Products**

695

| | |
|---|-----|
| A. Introduction | 695 |
| B. Intra-brand Distributional Restraints on Resale | 699 |
| 1. Vertical Nonprice Restraints on Distribution | 699 |
| <i>Continental T.V. v. GTE Sylvania</i> | 701 |
| Questions on <i>Sylvania</i> | 707 |
| EU Law on Vertical Territorial Restraints | 708 |
| <i>Joined Cases 56 and 58-64, Consten and Grundig v. Commis-</i> <i>sion</i> | 708 |
| Questions on <i>Consten Grundig</i> | 710 |
| <i>Commission Regulation (EU) No 330/2010 of 20 April 2010 on</i> <i>the Application of Article 101(3) of the Treaty on the Func-</i> <i>tioning of the European Union to Categories of Vertical</i> <i>Agreements and Concerted Practices</i> | 711 |
| <i>EU Guidelines on Vertical Restraints</i> | 711 |
| Questions on the Commission Guidelines | 715 |
| Direct v. Indirect Market Partitioning | 715 |
| <i>Commission Decision 98/273/EC, VW</i> | 715 |
| <i>Commission Decision 2001/791 Glaxo Wellcome,</i> | 717 |
| Case T-168/01, <i>Glaxosmithkline Services v. Commission</i> | 722 |

| | |
|---|-----|
| B. Intra-brand Distributional Restraints on Resale—Continued | |
| Questions on VW and <i>Glaxo-Wellcome</i> | 731 |
| <i>Cases C 501/06 P, C-513/06 P, C-515/06 P and C 519/06 P, GlaxoSmithKline v. Commission</i> | 732 |
| Questions on <i>GlaxoSmithKline v. Commission</i> | 734 |
| Other Nations' Treatment of Vertical Non-Price Restraints on Distribution | 735 |
| 2. Vertical Maximum Price-Fixing | 735 |
| <i>State Oil Co. v. Khan</i> | 737 |
| Questions on <i>State Oil v. Khan</i> | 742 |
| <i>Commission Regulation (EU) No 330/2010 of 20 April 2010 on the Application of Article 101(3) of the Treaty on the Functioning of the European Union to Categories of Vertical Agreements and Concerted Practices</i> | 742 |
| <i>EU Guidelines on Vertical Restraints</i> | 743 |
| Other Nations' Treatment of Vertical Maximum Price-Fixing .. | 743 |
| 3. Vertical Agreements Fixing Minimum Resale Prices | 743 |
| <i>Leegin Creative Leather Products v. PSKS, Inc.</i> | 744 |
| Notes and Questions on <i>Leegin</i> | 764 |
| <i>Commission Regulation (EU) No 330/2010 of 20 April 2010 on the Application of Article 101(3) of the Treaty on the Functioning of the European Union to Categories of Vertical Agreements and Concerted Practices</i> | 767 |
| <i>EU Guidelines on Vertical Restraints</i> | 767 |
| Questions on the EU Guidelines on vertical Restraints | 770 |
| <i>Case 243/83, SA Binon & Cie v. SA Agence et Messageries de la Presse</i> | 770 |
| Questions on <i>Binon</i> | 772 |
| Other Nations' Treatment of Vertical Minimum Price-Fixing .. | 772 |
| 4. How to Characterize Agreements | 773 |
| a. Are Dual Distribution Agreements Vertical or Horizontal? .. | 773 |
| <i>Commission Regulation (EU) No 330/2010 of 20 April 2010 on the Application of Article 101(3) of the Treaty on the Functioning of the European Union to Categories of Vertical Agreements and Concerted Practices</i> | 775 |
| <i>EU Guidelines on Vertical Restraints</i> | 776 |
| b. Vertical Agreements to "Boycott" the Rival of a Dealer Without Any Procompetitive Justification | 776 |
| <i>NYNEX v. Discon</i> | 776 |
| Questions on <i>NYNEX v. Discon</i> | 779 |
| C. Price Discrimination That Arguably Distorts Downstream Competition | 780 |
| Robinson-Patman Act § 2, 15 U.S.C. § 13 | 781 |
| <i>FTC v. Morton Salt Co.</i> | 781 |
| Questions on <i>Morton Salt</i> | 785 |
| <i>Texaco v. Hasbrouck</i> | 786 |
| Questions on <i>Texaco v. Hasbrouck</i> | 792 |
| <i>Volvo Trucks N.A. v. Reeder-Simco GMC</i> | 794 |
| Questions on <i>Volvo</i> | 798 |
| Other Robinson-Patman Act Provisions | 800 |
| <i>Damien Geradin and Nicolas Petit, Price Discrimination under EC Law: The Need for a Case-by-Case Approach</i> | 800 |
| <i>British Airways PLC v. Commission</i> | 803 |
| Questions on <i>British Airways</i> | 804 |
| Other Nations' Treatment of Price Discrimination | 804 |

CHAPTER 6 Proving an Agreement or Concerted Action 807

| | | |
|----|--|-----|
| A. | Are the Defendants Separate Entities? | 807 |
| | <i>Copperweld Corp. v. Independence Tube Corp.</i> | 807 |
| | Questions on <i>Copperweld</i> | 811 |
| | <i>Case C-73/95 P, Viho Europe BV v. Commission</i> | 813 |
| | Questions on <i>Viho</i> | 814 |
| | The Relevance of Agency Relations | 814 |
| | <i>American Needle v. National Football League</i> | 816 |
| | Note and Questions on <i>American Needle</i> | 825 |
| | Single Entity Theory in Other Nations | 829 |
| B. | Standards for Finding a Vertical Agreement | 830 |
| | <i>Monsanto Co. v. Spray-Rite Service Corp.</i> | 831 |
| | Questions on <i>Monsanto</i> | 834 |
| | Cases C-2/01 P and C-3/01P, Bundesverband der Arzneimittel- Importeure eV and Commission v. Bayer AG | 836 |
| | Questions on <i>Bayer</i> | 840 |
| | Finding a Vertical Distributional Agreement in Other Nations | 841 |
| C. | Standards for Finding a Horizontal Agreement or Concerted Ac- tion | 842 |
| 1. | Parallel Conduct Equally Consistent With an Independent Motive | 843 |
| | <i>Theatre Enterprises v. Paramount Film Distributing</i> | 843 |
| | Questions on <i>Theatre Enterprises</i> | 845 |
| | <i>Matsushita Electric v. Zenith Radio</i> | 845 |
| | Questions on <i>Matsushita</i> | 850 |
| | <i>Cement Manufacturers Protective Ass'n v. United States</i> | 851 |
| | Questions on <i>Cement Manufacturers</i> | 853 |
| | <i>Joined Cases 29/83 and 30/83, Compagnie Royale Asturienne Des Mines Sa and Rheinzink GmbH v. Commission</i> | 853 |
| | Questions on <i>Companie Asturienne des Mines and Rheinzink v. Com- mission</i> | 855 |
| 2. | Parallel Conduct that Would Be Unprofitable If Not Engaged in by Other Firms | 856 |
| a. | Where Parallel Conduct Is Implausible Without an Explicit Agreement | 856 |
| | <i>Eastern States Retail Lumber Dealers' Ass'n v. United States</i> | 856 |
| | Questions on <i>Eastern States Lumber</i> | 857 |
| | <i>American Column & Lumber v. United States</i> | 858 |
| | Questions on <i>American Column</i> | 863 |
| | <i>American Tobacco v. United States</i> | 863 |
| | Questions on <i>American Tobacco</i> | 865 |
| | <i>Case 48/69, Imperial Chemical Indus. v. Commission (Dyes- tuffs)</i> | 866 |
| | Questions on <i>Dyestuffs</i> | 871 |
| b. | Where Parallel Conduct Follows Common Invitations or Secret Meetings | 872 |
| | <i>Interstate Circuit v. United States</i> | 872 |
| | Questions on <i>Interstate Circuit</i> | 876 |

| | |
|---|------------|
| C. Standards for Finding a Horizontal Agreement or Concerted Action—Continued | |
| c. Where Parallel Conduct Can Be Explained by Oligopolistic Price Interdependence | 877 |
| <i>Joined Cases C-89/85, C-104/85, C-114/85, C-116/85, C-117/85 and C-125/85 to C-129/85, A. Ahlström Osakeyhtiö and Others v. Commission (“Woodpulp II”)</i> | 878 |
| Questions on <i>Woodpulp II</i> | 883 |
| Standards for Proving a Horizontal Agreement in Other Nations | 883 |
| 3. Agreements or Practices that Facilitate Oligopolistic Price Coordination | 884 |
| <i>Maple Flooring Manufacturers Ass’n v. United States</i> | 886 |
| Questions on <i>Maple Flooring</i> | 890 |
| <i>United States v. Container Corp.</i> | 891 |
| Questions on <i>Container</i> | 895 |
| <i>United States v. United States Gypsum</i> | 897 |
| Questions on <i>Gypsum</i> | 900 |
| <i>FTC v. Cement Institute</i> | 901 |
| Questions on <i>Cement Institute</i> | 906 |
| <i>Commission Decision 92/157, UK Agricultural Tractor Registration Exchange (UK Tractors)</i> | 907 |
| Questions on <i>UK Tractors</i> | 911 |
| CHAPTER 7 Mergers | 913 |
| A. Horizontal Mergers | 922 |
| 1. Unilateral Effects | 924 |
| <i>U.S. DOJ/FTC, Horizontal Merger Guidelines</i> | 924 |
| <i>EU Guidelines on the Assessment of Horizontal Mergers</i> | 936 |
| Questions on the U.S. and EU Guidelines on Unilateral Effects | 941 |
| <i>FTC v. Staples, Inc.</i> | 941 |
| Questions on <i>Staples</i> | 948 |
| U.S. Agency Enforcement Activity | 948 |
| 2. Oligopoly Effects & Collective Dominance | 949 |
| <i>U.S. DOJ/FTC, Horizontal Merger Guidelines</i> | 949 |
| Questions on U.S. Guidelines on Oligopoly Effects | 952 |
| Qualitative v. Empirical Assessments | 952 |
| <i>FTC v. H.J. Heinz Co.</i> | 953 |
| Questions on <i>FTC v. Heinz</i> | 958 |
| Early EU Caselaw on Oligopolistic Coordination and Collective Dominance | 960 |
| <i>Case T-102/96, Gencor Limited v. Commission</i> | 961 |
| <i>Case T-342/99, Airtours v. Commission</i> | 962 |
| Note and Questions on <i>Airtours</i> | 972 |
| Proving That a Merger Would Worsen Oligopolistic Coordination | 973 |
| <i>EU Guidelines on the Assessment of Horizontal Mergers</i> | 974 |
| Questions on the EU Guidelines on Coordinated Effects | 978 |
| Merger Assessments in Other Nations | 978 |
| 3. Post-Merger Entry | 981 |
| <i>U.S. DOJ/FTC, Horizontal Merger Guidelines</i> | 981 |
| Questions on U.S. Guidelines on Entry | 983 |
| <i>FTC v. Staples, Inc.</i> | 983 |
| Questions on <i>Staples</i> | 985 |
| <i>EU Guidelines on the Assessment of Horizontal Mergers</i> | 985 |
| <i>Case T-342/99, Airtours v. Commission</i> | 987 |
| Questions on <i>Airtours</i> Analysis of Entry | 988 |
| Post-Merger Entry Analysis in Other Nations | 988 |

| | |
|--|------|
| A. Horizontal Mergers—Continued | |
| 4. Efficiencies & Weighing the Equities..... | 989 |
| <i>U.S. DOJ/FTC, Horizontal Merger Guidelines</i> | 989 |
| <i>EU Guidelines on the Assessment of Horizontal Mergers</i> | 991 |
| Questions on U.S. and EU Guidelines | 993 |
| Merger Efficiencies and Total v. Consumer Welfare..... | 994 |
| <i>Commissioner of Competition v. Superior Propane Inc.</i> | 995 |
| Note and Questions on <i>Superior Propane</i> | 1003 |
| Consumer Trusts and Other Coasian Solutions to the Total v. Consumer Welfare Debate | 1004 |
| Other Nations' Treatment of Efficiencies | 1005 |
| <i>FTC v. Staples, Inc.</i> | 1006 |
| Note and Questions on <i>Staples</i> | 1009 |
| <i>FTC v. H.J. Heinz Co.</i> | 1009 |
| Questions on <i>FTC v. Heinz</i> | 1015 |
| How to Balance the Equities in Merger Cases..... | 1015 |
| 5. The Failing Firm Defense..... | 1016 |
| <i>International Shoe v. FTC</i> | 1016 |
| Note and Questions on <i>International Shoe v. FTC</i> | 1018 |
| <i>Citizen Publishing v. United States</i> | 1019 |
| Note and Questions on <i>Citizen's Publishing</i> | 1021 |
| <i>U.S. DOJ/FTC, Horizontal Merger Guidelines</i> | 1022 |
| Note and Questions on Merger Guidelines on the Failing Firm De- fense | 1023 |
| <i>Joined Cases C-68/94 and C-30/95, French Republic and So- ciété commerciale des potasses et de l'azote (SCPA) and Entreprise minière et chimique (EMC) v. Commission (Com- mission v. France)</i> | 1024 |
| Questions on <i>Kali und Salz/Commission v. France</i> | 1025 |
| <i>Commission Decision 2002/365, BASF/Eurodiol/Pantochim</i> | 1026 |
| <i>EU Guidelines on the Assessment of Horizontal Mergers</i> | 1026 |
| Questions on <i>BASF/Pantochim/Eurodiol</i> and the Commission Guide- lines on the Assessment of Horizontal Mergers | 1027 |
| Treatment of Failing Firms in Other Nations | 1027 |
| 6. The Relevance of Buyer Power, Sophistication, or Views..... | 1028 |
| a. Mergers Between Buyers That Create Buyer Power..... | 1028 |
| <i>U.S. DOJ/FTC, Horizontal Merger Guidelines</i> | 1030 |
| <i>EU Notice on the Definition of the Relevant Market for the Purposes of Community Competition Law</i> | 1030 |
| <i>EU Guidelines on the Assessment of Horizontal Mergers</i> | 1031 |
| Questions on U.S.—EU Agency Materials on Buyers That Enhance Buyer Power | 1031 |
| <i>Case No. IV/M.784—Kesko/Tuko</i> | 1032 |
| Questions on <i>Kesko/Tuko</i> | 1033 |
| b. Should Mergers Between Sellers Be Deemed Constrained by Buyer Power?..... | 1033 |
| <i>U.S. DOJ/FTC, Horizontal Merger Guidelines</i> | 1033 |
| <i>EU Guidelines on the Assessment of Horizontal Mergers</i> | 1034 |
| Questions on Whether Buyer Power Should Alter Assessments of Mergers That Otherwise Create Seller Market Power | 1035 |
| <i>United States v. Baker Hughes, Inc.</i> | 1035 |
| Note and Questions on <i>Baker Hughes</i> | 1037 |
| <i>Commission Decision 1999/641/EC, Enso/Stora</i> | 1038 |
| Questions on <i>Enso Stora</i> | 1040 |
| <i>Commissioner of Competition v. Superior Propane Inc.</i> | 1041 |
| Note and Questions on <i>Superior Propane</i> | 1042 |

| | |
|---|-------------|
| A. Horizontal Mergers—Continued | |
| c. Should Buyer Views Alter Assessments of Mergers Between Sellers? | 1043 |
| <i>Commission Decision 1999/641/EC, Enso/Stora</i> | 1043 |
| Questions on <i>Enso Stora</i> | 1043 |
| <i>U.S. DOJ/FTC, Horizontal Merger Guidelines</i> | 1043 |
| Buyer Noncomplaints | 1045 |
| B. Vertical Mergers | 1048 |
| U.S. DOJ, 1984 Merger Guidelines | 1050 |
| Note and Questions on U.S. Vertical Merger Guidelines | 1053 |
| <i>In the Matter of Cadence Design Systems, Inc.</i> | 1054 |
| Questions on <i>Cadence</i> | 1061 |
| <i>T-210/01, General Electric v. Commission</i> | 1063 |
| Questions on Vertical Merger Issues in <i>GE v. Commission</i> | 1066 |
| EU Guidelines on the Assessment of Non-Horizontal Mergers Under the Council Regulation on the Control of Concentrations Between Undertakings (2008) | 1067 |
| Question on the EU Guidelines on Non-Horizontal Merger Guidelines | 1078 |
| Vertical Mergers in Other Nations | 1079 |
| C. Conglomerate Mergers | 1080 |
| U.S. DOJ, 1984 Merger Guidelines | 1083 |
| <i>U.S. DOJ/FTC, Horizontal Merger Guidelines</i> | 1085 |
| Note and Questions on U.S. Guidelines on Mergers Affecting Potential Competition | 1086 |
| <i>United States v. Marine Bancorporation</i> | 1088 |
| Note and Questions on <i>Marine Bancorp</i> | 1093 |
| <i>EU Guidelines on the Assessment of Horizontal Mergers</i> | 1094 |
| Questions on EU Horizontal Merger Guidelines Regarding Potential Competition | 1095 |
| <i>Commission Decision 98/502/EC, Guinness/Grand Metropolitan</i> | 1095 |
| Questions on <i>Guinness/Grand Metropolitan</i> | 1099 |
| <i>Case T-5/02, Tetra Laval BV v. Commission</i> | 1100 |
| <i>Case C-12/03 P, Commission v. Tetra Laval BV</i> | 1105 |
| Questions on <i>Tetra Laval</i> | 1108 |
| When to Block a Merger Based on a Risk of Post-Merger Misconduct | 1109 |
| <i>Damien Geradin and Nicolas Petit, Article 230 EC Annulment Proceedings Against Competition Law Decisions in the Light of the “Modernisation” Process</i> | 1110 |
| <i>T-210/01, General Electric v. Commission</i> | 1112 |
| Questions on <i>GE/Honeywell</i> | 1124 |
| <i>William J. Kolasky, Deputy Assistant Attorney General Antitrust Division, U.S. Department of Justice, “Conglomerate Mergers and Range Effects: It’s a Long Way From Chicago to Brussels”</i> | 1127 |
| Questions on the EU-U.S. Difference on <i>GE-Honeywell</i> | 1129 |
| EU Guidelines on the Assessment of Non-horizontal Mergers Under the Council Regulation on the Control of Concentrations Between Undertakings (2008) | 1130 |
| Questions on EU Guidelines on Conglomerate Mergers | 1134 |
| Conglomerate Mergers in Other Nations | 1135 |
| CHAPTER 8 Markets That Span Multiple Antitrust Regimes | 1137 |
| A. Extraterritorial Conduct Affecting Domestic Commerce | 1141 |
| Background on the Extraterritorial Application of U.S. Antitrust Statutes | 1141 |
| <i>Hartford Fire Insur. v. California</i> | 1146 |

| | | |
|----|--|------|
| A. | Extraterritorial Conduct Affecting Domestic Commerce—Continued | |
| | Questions on <i>Hartford Fire</i> | 1152 |
| | <i>U.S. DOJ–FTC, Antitrust Enforcement Guidelines for International Operations</i> | 1154 |
| | Questions on U.S. International Enforcement Guidelines..... | 1160 |
| | <i>F. Hoffmann–La Roche Ltd. v. Empagran S.A.</i> | 1161 |
| | Note and Questions on <i>Empagran</i> | 1170 |
| | Background on the Extraterritorial Application of EU Competition Law..... | 1174 |
| | <i>Imperial Chemical Industries Ltd. v. Commission of the European Communities (Dyestuffs), Case 48–69</i> | 1177 |
| | <i>A. Ahlström Osakeyhtiö and Others v. Commission of the European Communities (Wood Pulp), joined Cases 89, 104, 114, 116, 117 and 125 to 129/85</i> | 1178 |
| | Questions on <i>Dyestuffs and Wood Pulp</i> | 1180 |
| | The Application of EU Merger Law to Foreign Firms..... | 1181 |
| | <i>Gencor Ltd v. Commission</i> | 1182 |
| | Questions on <i>Gencor</i> | 1187 |
| | The Treatment of Extraterritorial Conduct in Other Nations..... | 1187 |
| B. | Special Treatment of Conduct Affecting Exports..... | 1188 |
| | <i>U.S. DOJ–FTC, Antitrust Enforcement Guidelines for International Operations</i> | 1188 |
| | Questions on U.S. Guidelines Regarding Exports..... | 1191 |
| | EU Law Regarding Exports..... | 1193 |
| | <i>Javico International and Javico Ag v. Yves Saint Laurent Parfums SA (YSLP)</i> | 1193 |
| | Questions on <i>Javico</i> | 1195 |
| | Other Nations’ Antitrust Treatment of Exports..... | 1195 |
| C. | The Trade–Antitrust Intersection..... | 1196 |
| | <i>Commissioner of Competition v. Superior Propane Inc.</i> | 1196 |
| | The Applicability of Trade Law’s Nondiscrimination Rule..... | 1197 |
| | Introduction to the Tension Between Antitrust and Antidumping Law..... | 1199 |
| | <i>U.S. DOJ–FTC, Antitrust Enforcement Guidelines for International Operations</i> | 1200 |
| | Questions on the Competitive Implications of U.S. Trade Laws..... | 1203 |
| | Background on EU Antidumping Legislation..... | 1204 |
| | <i>Extramet Industrie SA v. Council, C–358/89</i> | 1205 |
| | Questions on <i>Extramet</i> | 1207 |
| | Trade–Antitrust Intersection in Other Nations..... | 1207 |
| D. | Anticompetitive Conduct Involving Foreign Sovereigns..... | 1208 |
| | <i>U.S. DOJ–FTC, Antitrust Enforcement Guidelines for International Operations</i> | 1208 |
| | Questions on U.S. Doctrines Where Foreign Sovereigns Are Involved..... | 1213 |
| | Foreign Nations as U.S. Antitrust Plaintiffs..... | 1213 |
| | <i>W.S. Kirkpatrick & Co. v. Environmental Tectonics</i> | 1214 |
| | Questions on <i>Kirkpatrick</i> | 1218 |
| | <i>Opinion of Advocate General Fennelly Delivered on 29 October 1998, Joined Cases C–395/96 P and C–396/96 P Compagnie Maritime Melge NV and Dafra–Lines v. Commission of the European Communities</i> | 1220 |

| | |
|--|------|
| D. Anticompetitive Conduct Involving Foreign Sovereigns—Continued | |
| <i>Compagnie Maritime Belge Transports SA, Compagnie Maritime Belge SA and Dafra-Lines A/S v. Commission, Joined Cases C-395/96 P and C-396/96 P</i> | 1223 |
| Questions on <i>Compagnie Maritime Belge</i> | 1224 |
| E. International Cooperation in Antitrust Enforcement | 1225 |
| <i>U.S. DOJ-FTC, Antitrust Enforcement Guidelines for International Operations</i> | 1225 |
| Background on U.S.–EU Antitrust Cooperation | 1226 |
| <i>Agreement Between the Government of the United States of America and the Commission of the European Communities Regarding the Application of their Competition Laws</i> | 1227 |
| Questions on the 1991 U.S.–EU Coordination Agreement | 1230 |
| <i>Agreement Between the Government of the United States of America and the European Communities on the Application of Positive Comity Principles in the Enforcement of Their Competition Laws</i> | 1231 |
| Questions on the 1998 U.S.–EU Positive Comity Agreement | 1234 |
| <i>Intel Corp. v. Advanced Micro Devices, Inc.</i> | 1234 |
| Questions on <i>Intel v. AMD</i> | 1238 |
| International Cooperation Involving Other Nations | 1239 |
| F. The Prospects for International Antitrust Law | 1239 |
| <i>Damien Geradin and Michel Kerf, “Leveling the Playing Field: Is the World Trade Organization Adequately Equipped to Prevent Anti-Competitive Practices in Telecommunications?”</i> | 1240 |
| <i>Doha Ministerial Declaration</i> | 1241 |
| Doha Work Programme Decision Adopted by the General Council on 1 August 2004 | 1242 |
| Explaining the Inability to Negotiate International Antitrust Rules So Far | 1242 |
| INDEX | 1249 |