

ECONOMICS FOR COMPETITION LAWYERS

GUNNAR NIELS
HELEN JENKINS
JAMES KAVANAGH

Oxera

B 375660

OXFORD
UNIVERSITY PRESS

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